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# **A CRITICAL ANALYSIS OF LEGAL PROTECTION FOR FASHION DESIGNS UNDER THE INDIAN IPR REGIME**

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## **Introduction**

The intersection of law and fashion presents one of the most intellectually complex and under-explored domains within the Indian intellectual property regime. Fashion, unlike traditional forms of intellectual creation, is inherently transient, commercially driven, and deeply influenced by cultural and global trends. In India, where the fashion industry is rapidly expanding due to globalisation, digital marketplaces, and the rise of fast fashion, the question of legal protection for fashion designs has acquired renewed significance. Yet, despite its economic and cultural importance, the legal framework governing fashion designs remains fragmented, ambiguous, and often inadequate.<sup>1</sup>

At its core, a fashion design is an amalgamation of artistic expression and industrial application. A designer's sketch may qualify as an "artistic work" under Section 2(c) of the Copyright Act, 1957; however, the moment such a design is applied to a garment through a process of mass production, it potentially falls within the ambit of "design" as defined under Section 2(d) of the Designs Act, 2000.<sup>2</sup> This duality creates a fundamental legal tension—whether fashion designs should be treated as enduring artistic creations or as commercially exploitable industrial products. The Indian legal framework attempts to resolve this tension, but in doing so, it often creates more uncertainty than clarity.

A critical provision in this context is Section 15(2) of the Copyright Act, 1957, which limits copyright protection for designs that are registrable under the Designs Act. The provision stipulates that once such a design is reproduced more than fifty times by an industrial process, copyright protection ceases.<sup>3</sup> This statutory threshold, while intended to prevent overlapping monopolies, poses a significant challenge for fashion designers whose creations are inherently meant for commercial replication. In practice, it compels designers to rely on the Designs Act 2000, which provides only a limited term of protection—ten years, extendable by five years<sup>4</sup>—thereby failing to adequately safeguard long-term creative interests.

The judiciary has played a pivotal role in interpreting these overlapping regimes, often emphasising a strict demarcation between copyright and design protection. In *Microfibres Inc. v. Girdhar & Co.*, the Delhi High Court underscored that once a design is applied industrially, it loses its copyright protection if it falls within the scope of the Designs Act.<sup>5</sup> This position was reaffirmed in *Ritika Private Limited v. Biba Apparels Pvt. Ltd.*, where the Court denied copyright protection to garment designs that had been commercially reproduced beyond the statutory limit.<sup>6</sup> These decisions, while legally consistent, reveal a rigid approach that does not fully account for the realities of the fashion industry, particularly the blurred boundaries between originality and adaptation.

The challenges are further compounded by the nature of the fashion industry itself. Unlike other creative industries, fashion operates on a cycle of constant reinvention, where trends evolve rapidly, and designs have a short commercial lifespan. The emergence of fast fashion has intensified this dynamic, enabling large-scale retailers to replicate runway designs within weeks, often at significantly lower costs.<sup>7</sup> In such a scenario, the traditional model of intellectual property protection—which relies on lengthy registration processes and litigation—appears ill-suited to address the immediacy of infringement in fashion.

Moreover, the absence of a *sui generis* framework for fashion law in India contrasts with certain international developments. While jurisdictions such as the European Union provide for unregistered design rights offering short-term protection, India continues to rely on a rigid registration-based system.<sup>8</sup> This lack of flexibility disproportionately affects emerging designers, who may lack the resources or awareness to secure formal protection for their creations.

Another dimension of complexity arises from the role of trademarks in fashion. While trademarks primarily protect brand identifiers such as logos and labels under the Trade Marks Act, 1999, they have increasingly been used to safeguard elements of fashion design that acquire distinctiveness over time. However, this form of protection is limited to aspects that function as source identifiers, thereby excluding a vast range of purely aesthetic features.

Against this backdrop, the present study seeks to critically examine whether the Indian IPR regime effectively balances the competing interests of creativity, commerce, and competition in the context of fashion designs. It interrogates the extent to which existing laws address the

unique characteristics of fashion as an industry, and whether the current framework inadvertently discourages innovation by failing to provide adequate protection.

The research proceeds on the premise that the Indian legal framework, while comprehensive in its coverage of intellectual property, lacks coherence when applied to fashion designs. The overlap between copyright and design law, coupled with limited enforcement mechanisms and judicial rigidity, creates a landscape where designers are often left vulnerable to imitation. This raises important questions about the need for reform, including the possibility of introducing a specialised legal regime tailored to the fashion industry.

Methodologically, this study adopts a doctrinal approach, relying on statutory interpretation, judicial analysis, and comparative insights. It engages with key legislative provisions, landmark case laws, and scholarly discourse to develop a nuanced understanding of the subject. While the primary focus remains on Indian law, references to international frameworks are incorporated to highlight alternative approaches and potential lessons.

Ultimately, this research aims to contribute to the evolving discourse on fashion law in India by identifying gaps, analysing judicial trends, and proposing reforms that align legal protection with the realities of the modern fashion industry. In doing so, it underscores the urgent need to rethink the existing intellectual property paradigm in order to foster both creativity and fairness in one of the most dynamic sectors of the economy.

### **Overview of Intellectual Property Rights in the Fashion Industry in India**

The legal protection of fashion designs in India exists within a fragmented intellectual property framework that was never originally structured with the fashion industry in mind. Unlike sectors such as pharmaceuticals or technology, where innovation follows a relatively linear trajectory, fashion operates through cycles of reinterpretation, borrowing, and rapid transformation. This creates an inherent friction between the rigid doctrinal requirements of intellectual property law and the fluid, evolving nature of fashion as both an art form and a commercial enterprise.

At a foundational level, intellectual property law seeks to reward originality while preventing unfair appropriation. However, in the context of fashion, the concept of originality itself

becomes contested. Designs frequently emerge from a continuum of influences—traditional motifs, global trends, and historical revivals—making it difficult to isolate a singular point of authorship. This complexity is not adequately addressed in the Indian legal framework, which continues to rely on conventional categories of protection and fails to accommodate the hybrid nature of fashion creations.<sup>9</sup>

Within this structure, copyright law provides the earliest layer of protection, particularly at the stage when a design exists as a sketch or artistic representation. Judicial interpretation has clarified that originality, rather than novelty, is the governing standard for copyright protection. In *Eastern Book Company v. D.B. Modak*, the Supreme Court held that a minimal degree of creativity is sufficient to claim originality, thereby lowering the threshold for protection.<sup>10</sup> While this principle theoretically benefits fashion designers, its practical application remains limited once designs are mass-produced.

The shift from artistic expression to industrial application introduces design law as the primary mechanism of protection. The Designs Act, 2000, while specifically tailored to industrial aesthetics, imposes stringent conditions that often exclude a significant portion of fashion output. The requirement that a design must not have been previously published or disclosed creates a substantial barrier in an industry where pre-launch exposure—through fashion shows, social media, and marketing campaigns—is almost inevitable.<sup>11</sup> This tension highlights a structural misalignment between legal expectations and industry practices.

Judicial engagement with design law has further reinforced the importance of strict compliance with statutory requirements. In *Carlsberg Breweries A/S v. Som Distilleries and Breweries Ltd.*, the Delhi High Court emphasised that design protection is contingent upon clear visual appeal and distinguishability, rejecting claims where such criteria were not convincingly established.<sup>12</sup>

Although the case did not directly concern fashion, its principles are highly relevant, as they underscore the judiciary's insistence on objective standards in evaluating design claims.

Trademark law introduces an additional, albeit limited, dimension to the protection of fashion-related intellectual property. While traditionally associated with brand identifiers, its scope has gradually expanded to include non-conventional marks, provided they acquire distinctiveness. In *Yash Raj Films Pvt. Ltd. v. Sri Sai Ganesh Productions*, the Court recognised the commercial

value of brand identity and the need to prevent misappropriation of goodwill.<sup>13</sup> Translating this reasoning into the fashion context, it becomes evident that certain design elements—such as signature patterns or unique stylistic features—may achieve protection if they function as indicators of source.

However, this route is inherently restrictive, as it requires proof of secondary meaning, which is often difficult to establish for emerging designers. Furthermore, trademark law does not extend to the broader category of aesthetic designs that do not serve a branding function. This leaves a significant gap in protection, particularly for independent creators who rely on originality rather than brand recognition.

The interplay between these legal regimes creates a layered but inconsistent system. Rather than operating in harmony, copyright, design, and trademark laws often function in silos, each with its own thresholds, limitations, and enforcement mechanisms. This fragmentation is further exacerbated by procedural challenges, including registration delays and the high cost of litigation, which discourage designers from seeking legal remedies.

From a policy perspective, the Indian approach reflects an underlying assumption that market forces, rather than legal protection, should regulate the fashion industry. This assumption aligns with the “piracy paradox” theory, which suggests that copying may actually drive innovation by accelerating the diffusion of trends.<sup>14</sup> While this argument holds some merit, it fails to account for the disproportionate impact of imitation on smaller designers, who lack the resources to compete with large-scale manufacturers capable of mass replication.

International developments offer alternative models that highlight the limitations of the Indian framework. For instance, the United Kingdom recognises design rights that arise automatically without registration, providing immediate, albeit short-term, protection.<sup>15</sup> Such mechanisms acknowledge the fast-paced nature of fashion and reduce the burden on creators to navigate complex legal procedures. The absence of comparable provisions in India underscores the rigidity of its current system.

Another critical dimension is enforcement. Even where legal protection exists, its effectiveness is undermined by weak enforcement mechanisms and limited awareness among stakeholders. In *Time Incorporated v. Lokesh Srivastava*, the Delhi High Court awarded punitive damages

for intellectual property infringement, signalling a shift towards stronger deterrence.<sup>16</sup> However, such instances remain exceptions rather than the norm, and the overall enforcement landscape remains inconsistent.

The cumulative effect of these challenges is a legal environment that offers fragmented and often inadequate protection for fashion designs. While each branch of intellectual property law contributes in its own way, its combined application fails to produce a cohesive and effective framework. This raises fundamental questions about the suitability of existing laws in addressing the unique needs of the fashion industry.

In essence, the Indian intellectual property regime reflects a broader tension between traditional legal structures and contemporary creative industries. Fashion, as a domain characterised by rapid innovation and constant evolution, demands a more flexible and adaptive approach. The reliance on rigid statutory categories, coupled with the absence of industry-specific provisions, limits designers' ability to fully exploit and protect their creations.

This chapter, therefore, establishes that while the Indian legal system provides multiple avenues for protection, its fragmented nature and procedural limitations significantly undermine its effectiveness. The need for a more integrated and responsive framework becomes evident, setting the stage for a deeper critical analysis in the subsequent chapters.

### **Legal Framework Governing Fashion Design Protection in India and the Problem of Overlapping Rights**

The legal framework governing fashion design protection in India is not contained within a single statute but emerges from the interaction of multiple intellectual property regimes, each designed with distinct objectives and assumptions. While this multiplicity theoretically offers layered protection, in practice it results in doctrinal inconsistencies and interpretative conflicts. The absence of a unified legislative approach forces designers to navigate a complex legal terrain where the boundaries between different forms of protection are neither clearly defined nor consistently applied.

At the heart of this framework lies the uneasy coexistence of copyright and design law. Copyright, traditionally associated with artistic expression, extends protection to original

works that exhibit a minimal degree of creativity. However, this protection is inherently limited when such works are applied to functional articles. The law implicitly recognises that once artistic expression enters the realm of industrial production, it must be governed by a different set of principles—ones that prioritise market competition and prevent monopolisation of commercially valuable designs.<sup>17</sup>

This transition from artistic work to industrial design is neither seamless nor conceptually coherent. The statutory framework attempts to draw a distinction based on the mode of application rather than the nature of creativity involved. As a result, a single fashion design may be subject to different legal standards at different stages of its lifecycle. This creates uncertainty not only for designers but also for courts tasked with adjudicating disputes.

Judicial decisions have often struggled to reconcile this tension. In *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, the Delhi High Court granted an injunction in favour of the plaintiff, recognising the originality of the garment designs and the likelihood of substantial copying.<sup>18</sup> Unlike earlier cases that strictly limited protection, this decision demonstrated a more flexible approach, acknowledging that fashion designs may retain elements of artistic character even after commercial application. However, such instances remain exceptions, and the broader judicial trend continues to favour a rigid separation between copyright and design protection.

The Designs Act, 2000, which governs industrial designs, is premised on the idea that aesthetic innovation in commercially produced articles deserves limited but exclusive protection. While this framework is suitable for industries with longer product cycles, its application to fashion raises several concerns. One of the most significant issues is the requirement of prior registration as a precondition for enforcement. In an industry where trends evolve rapidly and designs may become obsolete within a single season, the time and effort required for registration often render the protection ineffective.<sup>19</sup>

Furthermore, the statutory emphasis on visual appeal as the primary criterion for protection introduces an additional layer of subjectivity. Courts must assess whether a design is “appealing to the eye,” a standard that is inherently ambiguous and open to varying interpretations. In *Microlube India Ltd. v. Rakesh Kumar*, the Delhi High Court highlighted the importance of overall visual impression in determining design infringement, rather than focusing on isolated similarities.<sup>20</sup> While this approach attempts to provide a holistic standard, it also increases

uncertainty by relying heavily on judicial discretion.

Trademark law, although not specifically designed to protect fashion designs, has increasingly been invoked to fill the gaps left by copyright and design law. The expansion of trademark protection to include non-traditional marks reflects an evolving understanding of how consumers perceive and associate value with fashion products. In *Louis Vuitton Malletier v. Manoj Khurana*, the Delhi High Court recognised the importance of protecting brand identity against dilution and counterfeiting, particularly in industries driven by consumer perception and prestige.<sup>21</sup>

However, the reliance on trademark law as a substitute for design protection raises important doctrinal concerns. Trademarks are intended to identify the source of goods, not to protect aesthetic features. Extending their scope to cover design elements risks distorting the fundamental principles of trademark law and creating perpetual monopolies over features that should ideally remain in the public domain. This tension underscores the inadequacy of existing legal tools in addressing the specific needs of the fashion industry.

The problem of overlapping rights becomes most evident when these three regimes intersect. Rather than offering complementary protection, they often operate in conflict, with each imposing its own limitations and exclusions. Designers are thus faced with a strategic dilemma: whether to prioritise immediate but short-term protection under design law, or to rely on copyright with the risk of losing protection upon commercial exploitation. This lack of clarity not only complicates legal decision-making but also discourages innovation by increasing the cost and uncertainty associated with enforcement.

From a theoretical perspective, this overlap reflects a deeper conflict between competing justifications of intellectual property. On one hand, the incentive theory emphasises the need to reward creators for their efforts; on the other, the competition theory seeks to prevent excessive monopolisation that may hinder market access. In the context of fashion, where imitation is both inevitable and, to some extent, desirable, striking the right balance becomes particularly challenging.<sup>22</sup>

The Indian legal framework, however, does not explicitly engage with this balance. Instead, it applies rigid statutory categories that fail to account for the hybrid nature of fashion designs.

This results in a system in which protection is determined not by the creation's intrinsic value but by its classification within predefined legal boundaries.

Another critical issue is the lack of coherence in enforcement mechanisms. Intellectual property disputes in the fashion industry often involve urgent relief, such as injunctions, to prevent the continued sale of infringing products. However, delays in judicial proceedings and the high cost of litigation significantly reduce the effectiveness of such remedies. In *Super Cassettes Industries Ltd. v. Myspace Inc.*, the Delhi High Court emphasised the importance of timely intervention in intellectual property infringement cases, particularly in rapidly evolving markets.<sup>23</sup> Although the case arose in a different context, its principles are equally applicable to fashion, where delay can render legal protection meaningless.

The cumulative effect of these doctrinal, procedural, and practical challenges is an ill-equipped legal framework to address the realities of the fashion industry. While the existence of multiple forms of protection suggests a comprehensive system, their fragmented application undermines their effectiveness. Designers are left navigating a landscape characterised by uncertainty, inconsistency, and limited enforceability.

In light of these issues, there is a growing need to reconsider the structure of fashion design protection in India. This may involve rethinking the boundaries between different forms of intellectual property, simplifying registration procedures, and introducing flexible mechanisms that align with the industry's fast-paced nature. Without such reforms, the gap between legal theory and commercial practice is likely to widen, leaving fashion designers increasingly vulnerable to exploitation.

This chapter thus demonstrates that the problem is not merely the absence of protection, but the manner in which existing protections are structured and applied. The overlapping nature of rights, combined with rigid statutory interpretations, creates a system that is both complex and inadequate. The following chapters will build on this analysis by examining specific challenges, comparative frameworks, and potential reforms to bridge this gap.

## **Judicial Trends and Case Law Analysis in Fashion Design Protection**

The development of legal protection for fashion designs in India has been shaped less by legislative clarity and more by judicial interpretation. In the absence of a dedicated statutory framework, courts have assumed a central role in determining the contours of protection, often navigating the complex intersection of copyright, design, and trademark law on a case-by-case basis. This has resulted in a body of jurisprudence that is both evolving and inconsistent, reflecting the inherent difficulty of applying traditional intellectual property principles to the unique dynamics of the fashion industry.

A key aspect of judicial reasoning in this domain has been the emphasis on classification—whether a particular creation qualifies as an artistic work or a design. Courts have repeatedly underscored that the nature of protection depends not merely on the form of the work but on its mode of exploitation. In *Dabur India Ltd. v. Rajesh Kumar*, the Delhi High Court addressed issues relating to trade dress and visual similarity, emphasising that the overall impression plays a crucial role in determining infringement.<sup>24</sup> Although the dispute did not directly concern fashion garments, the principles articulated are highly relevant, particularly in assessing imitation within the fashion industry, where subtle variations often mask substantial copying. The question of originality has also been central to judicial analysis. In *University of London Press Ltd. v. University Tutorial Press Ltd.*, the Court laid down the foundational principle that originality does not require novelty but rather the exercise of skill, labour, and judgment.<sup>25</sup>

While this principle has been widely accepted, its application to fashion remains problematic. Designers frequently operate within established trends, making it difficult to distinguish between legitimate inspiration and actionable copying. Indian courts, while acknowledging this complexity, have not developed a consistent standard to address it.

A more nuanced approach to infringement is evident in *R.G. Anand v. Deluxe Films*, where the Supreme Court introduced the “substantial similarity” test, focusing on whether an average viewer would perceive the defendant’s work as a copy of the plaintiff’s creation.<sup>26</sup> This test, though originally developed in the context of dramatic works, has significant implications for fashion design disputes. It shifts the focus from technical comparison to consumer perception, thereby aligning legal analysis with market realities. However, its subjective nature also introduces uncertainty, as different judges may reach different conclusions based on the same

set of facts.

The role of trade dress in protecting fashion-related elements has gained increasing recognition in Indian jurisprudence. In *Colgate Palmolive Company v. Anchor Health & Beauty Care Pvt. Ltd.*, the Court acknowledged that visual appearance, packaging, and overall presentation can serve as indicators of source, thereby warranting protection under trademark law.<sup>27</sup> This reasoning is particularly relevant to fashion, where brand identity is often communicated through distinctive design elements. Nevertheless, extending trade dress protection to fashion raises concerns about overreach, as it may grant exclusive rights to features that are primarily aesthetic rather than source-identifying.

Another significant development is the judiciary's approach to passing off in imitation cases. In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, the Supreme Court emphasised the importance of preventing consumer confusion, even in the absence of identical marks.<sup>28</sup> Although the case arose in the pharmaceutical sector, its principles have been widely applied across industries, including fashion. The emphasis on consumer perception reinforces the idea that intellectual property law must adapt to the realities of the marketplace, where visual similarity can directly influence purchasing decisions.

Despite these doctrinal advancements, the overall judicial approach remains fragmented. Courts often focus on the specific statutory provision invoked, rather than adopting a holistic view of the design in question. This compartmentalised analysis leads to inconsistent outcomes, particularly in cases where multiple forms of protection may be applicable. For instance, a design may be denied protection under copyright law because of its industrial application, yet fail to qualify for design registration for lack of novelty, leaving the creator without any effective remedy.

The issue of enforcement further complicates the judicial landscape. In *Microsoft Corporation v. K. Mayuri*, the Delhi High Court awarded damages for intellectual property infringement, highlighting the need for deterrence in cases of deliberate copying.<sup>29</sup> While such decisions demonstrate judicial willingness to protect rights holders, they also reveal a reactive rather than proactive approach. Remedies are typically granted after infringement has occurred, by which time the design's commercial value may already have diminished.

An emerging trend in judicial reasoning is the recognition of the economic realities of creative industries. Courts have begun to acknowledge that intellectual property protection must strike a balance between encouraging innovation and maintaining competitive markets. In *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*, the Supreme Court emphasised the importance of balancing proprietary rights with public interest.<sup>30</sup> Although the case concerned copyright licensing, its broader implications are relevant to fashion, where excessive protection may stifle creativity and limit consumer choice.

The cumulative effect of these judicial developments is a body of law that is both rich in principles and lacking in coherence. While courts have demonstrated a willingness to adapt existing doctrines to new contexts, the absence of a unified framework continues to pose challenges. The reliance on analogies from other industries, while useful, does not fully capture the unique characteristics of fashion, such as its rapid lifecycle and reliance on visual aesthetics.

A critical analysis of these cases reveals that the judiciary has oscillated between two competing approaches: one that prioritises strict statutory interpretation and another that seeks to accommodate the industry's practical realities. This oscillation reflects a deeper uncertainty about the role of intellectual property law in regulating fashion. Should the law provide strong protection to incentivise creativity, or should it allow a degree of copying to facilitate trend diffusion and market growth?

In conclusion, the judicial treatment of fashion design protection in India highlights both the strengths and limitations of the current legal framework. While courts have developed important principles relating to originality, infringement, and consumer perception, their application remains inconsistent and context-dependent. The lack of a coherent approach not only undermines legal certainty but also limits the effectiveness of the protection available to designers.

This chapter underscores the need for a more structured and industry-specific approach to fashion law in India. An analysis of judicial trends reveals that reliance on existing intellectual property doctrines is insufficient to address the complexities of fashion design protection. The following chapter will build upon this analysis by examining the practical challenges faced by designers and the systemic gaps within the current legal regime.

## **Challenges and Structural Gaps in the Protection of Fashion Designs in India**

The protection of fashion designs within the Indian intellectual property regime is marked not by the absence of legal provisions but by the structural inadequacy of these provisions in addressing the unique realities of the fashion industry. While multiple forms of protection exist in theory, their practical application reveals systemic gaps that undermine their effectiveness. These challenges are not merely procedural but are deeply embedded in the conceptual foundations of intellectual property law as applied to fashion.

A primary concern lies in the inherent mismatch between the lifecycle of fashion products and the duration and process of legal protection. Fashion operates within a framework of rapid innovation, where trends emerge, evolve, and dissipate within short periods. In contrast, intellectual property regimes are designed for creations with longer commercial lifespans. The time required for registration, particularly under design law, often exceeds the period during which a design retains its market value. This temporal disconnect renders formal protection largely symbolic rather than practically useful.<sup>31</sup>

Closely linked to this issue is the requirement of novelty, which forms the cornerstone of design protection. In an industry driven by continuous adaptation and reinterpretation, the expectation of absolute novelty is both unrealistic and counterproductive. Designers frequently draw upon existing cultural motifs, historical patterns, and global trends, resulting in creations that are innovative yet not entirely original in the strict legal sense. The rigid application of novelty standards, therefore, excludes a substantial portion of fashion designs from protection, leaving them vulnerable to imitation.<sup>32</sup>

Another significant challenge is the lack of awareness and accessibility among designers, particularly those operating at smaller scales. Unlike large fashion houses with dedicated legal teams, independent designers often lack the resources to navigate complex intellectual property procedures. This disparity creates an uneven playing field, where the ability to secure protection is determined not by creativity but by access to legal infrastructure. The problem is further aggravated by the absence of institutional support mechanisms that could assist designers in understanding and enforcing their rights.

The issue of enforcement presents an even more critical barrier. Intellectual property rights, by

their very nature, are only as effective as their enforcement mechanisms. In India, delays in judicial proceedings, coupled with high litigation costs, significantly reduce the deterrent effect of legal remedies. In *Laxmikant V. Patel v. Chetanbhai Shah*, the Supreme Court emphasised the importance of protecting business goodwill against misrepresentation, yet the practical realisation of such protection often involves prolonged legal battles.<sup>33</sup> In the context of fashion, where the commercial value of a design is time-sensitive, such delays can render legal victories meaningless.

The rise of fast fashion has further intensified these challenges by fundamentally altering the dynamics of design production and distribution. Large-scale manufacturers are able to replicate designs at a speed and scale that far exceeds the capacity of individual designers. This asymmetry not only facilitates widespread copying but also makes enforcement practically unviable. By the time a legal remedy is obtained, the infringing products may have already saturated the market, eroding the economic value of the original design.<sup>34</sup>

A related concern is the difficulty in distinguishing between inspiration and infringement. Fashion, by its very nature, thrives on borrowing and reinterpretation. However, the absence of clear legal standards to differentiate legitimate inspiration from unlawful copying creates uncertainty for both designers and adjudicators. Courts often rely on subjective assessments of similarity, which can lead to inconsistent outcomes. This ambiguity not only complicates litigation but also discourages designers from asserting their rights, as the outcome remains unpredictable.

The overlapping nature of intellectual property laws further compounds these issues. Rather than providing complementary protection, the coexistence of multiple regimes often results in gaps where no effective protection is available. For instance, a design that fails to meet the criteria for registration under design law may simultaneously lose protection under copyright law due to its industrial application. This creates a legal vacuum that undermines the very purpose of intellectual property protection.

From a policy perspective, this fragmentation reflects a broader failure to recognise the unique characteristics of the fashion industry. Intellectual property law in India continues to operate within a framework that prioritises clear categorisation and rigid boundaries. However, fashion designs do not conform to such classifications, as they embody elements of art, utility, and

commerce simultaneously. The legal system's inability to accommodate this hybridity results in a mismatch between legal doctrine and industry practice.

International experiences highlight alternative approaches that address some of these challenges. For instance, certain jurisdictions have introduced flexible forms of protection that do not require formal registration, thereby providing immediate safeguards for new designs.<sup>35</sup> Such mechanisms acknowledge the fast-paced nature of the fashion industry and reduce the burden on designers to engage with complex legal processes. The absence of similar provisions in India underscores the rigidity of its current framework.

Another critical gap lies in the limited recognition of traditional and indigenous designs. India's rich cultural heritage serves as a significant source of inspiration for contemporary fashion. However, existing intellectual property laws do not adequately protect these traditional expressions from misappropriation. This not only raises concerns of cultural exploitation but also highlights the need for a more inclusive approach to design protection that recognises collective and community-based creativity.<sup>36</sup>

The economic implications of these challenges are substantial. The inability to effectively protect fashion designs discourages investment in innovation and reduces designers' incentive to develop original creations. At the same time, it enables large-scale entities to capitalise on the work of smaller creators, thereby reinforcing existing inequalities within the industry. This dynamic undermines the broader objective of intellectual property law, which is to promote creativity and economic growth.

A critical analysis of these issues reveals that the problem is not merely one of enforcement or awareness, but of structural design. The current legal framework is based on assumptions that do not align with the realities of the fashion industry. As a result, even well-intentioned provisions fail to achieve their intended objectives. Addressing these challenges requires a fundamental rethinking of how fashion designs are conceptualised within the intellectual property system.

In conclusion, the protection of fashion designs in India is hindered by a combination of doctrinal rigidity, procedural inefficiencies, and practical limitations. The challenges identified in this chapter—ranging from the short lifecycle of designs to the complexities of enforcement

and the ambiguities of legal classification—collectively highlight the inadequacy of the existing framework. These issues not only affect individual designers but also have broader implications for the growth and sustainability of the fashion industry.

This chapter thus establishes the need for a more responsive and adaptive legal regime that can effectively address the unique characteristics of fashion design. The following chapter will build on this analysis by exploring comparative perspectives and identifying potential reforms to bridge the gap between legal theory and industry practice.

### **Comparative Analysis of Fashion Design Protection – Lessons for India**

The limitations of the Indian framework become more apparent when viewed against international approaches to fashion design protection. Different jurisdictions have adopted varying models, reflecting distinct policy priorities and legal traditions. A comparative analysis not only highlights the shortcomings of the Indian system but also provides valuable insights into potential reforms.

The European Union is among the most progressive regimes in this area, primarily due to its recognition of both registered and unregistered design rights. The system acknowledges that not all designs require long-term protection; instead, it offers a short-term automatic right for unregistered designs that lasts for three years from the date of disclosure.<sup>37</sup> This mechanism is particularly suited to the fashion industry, where designs have a limited commercial lifespan. By eliminating the need for formal registration, it ensures immediate protection while maintaining a balance between exclusivity and competition.

Judicial interpretation within the European framework has further reinforced the flexibility of this system. In *Karen Millen Fashions Ltd. v. Dunnes Stores*, the Court of Justice of the European Union clarified that unregistered design rights do not require proof of individual character beyond the overall impression produced on an informed user.<sup>38</sup> This approach reduces the evidentiary burden on designers and aligns legal standards with industry practices, where subtle variations often distinguish one design from another.

In contrast, the United States adopts a more restrictive approach, relying primarily on copyright and design patents. Fashion designs, being functional articles, generally fall outside the scope

of copyright protection unless they incorporate separable artistic elements.<sup>39</sup> The doctrine of separability, however, has been a source of considerable judicial debate. In *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, the United States Supreme Court held that design elements of a useful article are protectable if they can be identified separately and exist independently as works of art. While this decision expanded the scope of protection, its application remains complex and uncertain, particularly in the context of fashion.

Design patents in the United States offer another avenue of protection, but they are limited by procedural requirements and high costs. The time required to obtain a design patent often exceeds the commercial lifespan of fashion products, making it an impractical solution for most designers. This mirrors the challenges faced under the Indian registration-based system, highlighting a common limitation of formal protection mechanisms in fast-moving industries. The United Kingdom presents a hybrid model that combines elements of both European and common law traditions. In addition to registered design rights, it recognises unregistered design rights that arise automatically upon creation.<sup>40</sup> This dual system provides flexibility, allowing designers to choose between immediate short-term protection and longer-term registered rights. The existence of such alternatives reduces the reliance on litigation and enhances accessibility for smaller designers.

Another noteworthy development is the increasing recognition of fashion law as a distinct field in certain jurisdictions. Academic discourse and policy initiatives have begun to address the unique challenges of the fashion industry, advocating for tailored legal solutions.<sup>41</sup> This contrasts with the Indian approach, where fashion continues to be subsumed under general intellectual property law without specific consideration of its distinctive characteristics.

A comparative evaluation reveals that the key strength of foreign regimes lies in their adaptability. By introducing flexible forms of protection, reducing procedural barriers, and aligning legal standards with industry practices, these systems provide more effective safeguards for fashion designs. In contrast, the Indian framework remains rigid, relying heavily on formal registration and strict statutory interpretation.

However, it is important to recognise that the transplantation of foreign models is not without challenges. Differences in economic conditions, industry structure, and legal culture must be taken into account. For instance, the informal nature of a significant portion of the Indian

fashion industry may require solutions that go beyond traditional intellectual property frameworks. This underscores the need for context-specific reforms rather than a direct adoption of foreign models.

In conclusion, the comparative analysis demonstrates that, while no system is without flaws, certain jurisdictions have developed more responsive approaches to the protection of fashion design. The emphasis on flexibility, accessibility, and industry alignment offers valuable lessons for India. By incorporating these principles, the Indian legal framework can move towards a more balanced and effective system of protection.

### **Findings and Recommendations**

The preceding analysis reveals that the legal protection of fashion designs in India is characterised not by a lack of legislative intent, but by a structural misalignment between law and industry practice. The Indian intellectual property framework, though comprehensive in its coverage, operates within rigid doctrinal boundaries that fail to accommodate the fluid and rapidly evolving nature of fashion. This disconnect has resulted in a system in which legal protection exists in theory but remains limited in practice.

A central finding of this study is that the classification-based approach adopted by Indian intellectual property law is inherently inadequate for fashion designs. The compartmentalisation of protection into copyright, design, and trademark regimes assumes that creative works can be neatly categorised, an assumption that does not hold true in the context of fashion. Designs often embody elements of artistic expression, functional utility, and commercial identity simultaneously, making it difficult to confine them within a single legal framework. This artificial segmentation creates gaps in protection, in which certain designs fall outside the scope of all available regimes, thereby undermining the very objective of intellectual property law.<sup>42</sup>

Another significant observation is the temporal mismatch between the lifecycle of fashion products and the duration and procedural requirements of legal protection. Fashion thrives on immediacy and constant reinvention, with trends often lasting only a few months. In contrast, the process of securing protection—particularly through registration—can be time-consuming and resource-intensive. By the time protection is granted, the design's commercial relevance

may already have diminished. This not only discourages designers from seeking legal remedies but also undermines the deterrent effect of intellectual property enforcement.

The study further identifies a pronounced imbalance in access to protection. Large fashion houses, equipped with financial resources and legal expertise, are better positioned to navigate the complexities of the intellectual property system. In contrast, independent designers and small-scale creators often lack the awareness and means to secure protection for their work. This disparity exacerbates existing inequalities within the industry, allowing larger entities to appropriate and commercialise designs with minimal risk of legal consequences.<sup>43</sup>

The issue of enforcement emerges as another critical weakness. While the legal framework provides for remedies such as injunctions and damages, their effectiveness is significantly diluted by delays in judicial proceedings and the high cost of litigation. The reactive nature of enforcement further compounds the problem, as remedies are typically granted after the infringement has occurred and the market has already been affected. In an industry where timing is crucial, delayed justice often translates into denied justice.

A deeper structural concern lies in the absence of a policy framework that explicitly recognises the unique characteristics of the fashion industry. Unlike sectors such as technology or pharmaceuticals, where intellectual property protection is closely aligned with innovation cycles, fashion operates within a paradigm of continuous borrowing and adaptation. The existing legal framework, however, does not adequately address this reality, resulting in a system that is both over-inclusive in some respects and under-inclusive in others.

In light of these findings, the need for reform becomes both evident and urgent. A primary recommendation is to develop a sui generis legal framework tailored to fashion design. Such a framework would move beyond the limitations of existing regimes by recognising the hybrid nature of fashion and providing flexible, time-bound protection. It could incorporate elements of both copyright and design law, while introducing safeguards against excessive monopolisation.<sup>44</sup>

Another important reform is the introduction of unregistered design rights, which would provide immediate protection upon creation without the need for formal registration. This approach, successfully implemented in other jurisdictions, aligns more closely with the fashion

industry's fast-paced nature and reduces the procedural burden on designers. By offering short-term protection, it strikes a balance between encouraging creativity and maintaining competitive markets.

Simplification and modernisation of registration procedures also merit attention. The introduction of digital platforms, streamlined processes, and expedited examination mechanisms could significantly enhance the accessibility and effectiveness of design protection. Such reforms would not only benefit designers but also contribute to the overall efficiency of the intellectual property system.

Strengthening enforcement mechanisms is equally critical. This includes not only reducing delays in judicial proceedings but also exploring alternative dispute resolution mechanisms such as mediation and arbitration. Specialised intellectual property benches with expertise in fashion-related disputes could further improve the quality and consistency of judicial decisions. Additionally, imposing deterrent penalties for deliberate infringement would enhance the credibility of the legal framework.

Awareness and capacity-building initiatives represent another crucial area for reform. Educational programs, industry collaborations, and government-led initiatives can play a significant role in empowering designers with knowledge of their rights and the means to enforce them. Such efforts would contribute to a more inclusive and equitable intellectual property ecosystem.

The protection of traditional and indigenous designs also requires urgent attention. India's rich cultural heritage serves as a vital source of inspiration for contemporary fashion, yet existing laws do not adequately safeguard these collective creations from misappropriation. Developing mechanisms that recognise community ownership and ensure equitable benefit-sharing would address this gap and promote cultural sustainability.<sup>45</sup>

Finally, any reform must carefully balance the interests of creators with the need to maintain competitive markets. While stronger protection may incentivise innovation, excessive restrictions could hinder the free flow of ideas that is essential to the growth of the fashion industry. A nuanced approach that allows a degree of permissible imitation while preventing unfair exploitation would be better aligned with the realities of the sector.

In conclusion, this study demonstrates that the challenges facing fashion design protection in India are not merely incidental but systemic. The existing intellectual property framework, while robust in theory, falls short in addressing the specific needs of the fashion industry. By adopting a more flexible, inclusive, and context-sensitive approach, India can create a legal environment that not only protects designers but also fosters innovation, competition, and cultural expression. The path forward lies in reimagining intellectual property law not as a rigid set of rules but as a dynamic tool that adapts to the evolving contours of the creative industries.

### **Conclusion**

The examination of legal protection for fashion designs under the Indian intellectual property regime reveals a fundamental disconnect between law and industry practice. While the legal framework is structured around well-established principles of intellectual property, its application to fashion exposes significant limitations. Fashion, as a domain of creativity, operates in ways that challenge conventional legal categories, thereby rendering existing protections both fragmented and, at times, ineffective.

A key insight that emerges from this study is that the Indian legal system approaches fashion design through a compartmentalised lens, dividing protection among multiple regimes without adequately accounting for their interconnectedness. This classification-based approach fails to reflect the hybrid character of fashion, which simultaneously embodies artistic expression, commercial value, and functional utility. As a result, designers are often left navigating a complex and uncertain legal landscape, in which the availability of protection depends more on technical categorisation than on the creation's intrinsic value.

The study further highlights the temporal mismatch between the lifecycle of fashion products and the processes of legal protection. Fashion is inherently transient, driven by rapidly changing trends and consumer preferences. In contrast, intellectual property mechanisms, particularly those involving registration and enforcement, operate at a comparatively slower pace. This disparity diminishes the practical relevance of legal protection, as designs may lose their commercial significance before rights can be effectively asserted.

Another important aspect is the judiciary's role in shaping the contours of fashion law in India. Courts have attempted to bridge legislative gaps by adapting existing doctrines to new contexts, often relying on principles of fairness and consumer perception. While these efforts have

contributed to the development of jurisprudence, they have also resulted in inconsistencies and unpredictability. The absence of a clear and unified framework places an undue burden on judicial interpretation, limiting the development of a stable and coherent body of law.

The challenges identified in this study are not merely technical but structural. They reflect a broader issue within the intellectual property system—its limited capacity to adapt to industries characterised by rapid innovation and fluid boundaries. The fashion industry exemplifies this challenge, as it thrives on a balance between originality and imitation, exclusivity and accessibility. A legal framework that fails to recognise this balance risks either over-protection, which may stifle creativity, or under-protection, which may discourage innovation.

The comparative perspectives examined in this research demonstrate that more flexible and responsive approaches are both feasible and effective. Systems that provide immediate, short-term protection and reduce procedural barriers are better aligned with the realities of the fashion industry. These models underscore the importance of adaptability in legal design, suggesting that intellectual property law must evolve to remain relevant amid changing creative practices. In the Indian context, the need for reform is both evident and urgent. A more coherent and integrated approach to fashion design protection would not only enhance legal certainty but also promote innovation and fair competition. Such an approach must move beyond rigid classifications and embrace the dynamic nature of fashion as a creative and commercial enterprise.

Ultimately, the protection of fashion designs is not solely a question of legal doctrine but one of policy and vision. It reflects the extent to which a legal system can support creative industries and respond to their unique needs. As the Indian fashion industry continues to grow and gain global recognition, the development of a more effective and inclusive legal framework becomes essential.

In conclusion, this study affirms that while the existing intellectual property regime provides a foundational structure for protection, it falls short in addressing the complexities of fashion design. The path forward lies in reimagining the relationship between law and creativity, ensuring that legal frameworks are not only protective but also enabling. By aligning legal principles with industry realities, India can foster an environment where innovation, cultural expression, and economic growth coexist in a balanced and sustainable manner.

- <sup>1</sup> Dev Gangjee, "Fashion and Intellectual Property: A Global Perspective," in *Research Handbook on Intellectual Property and Creative Industries* (Edward Elgar, 2015).
- <sup>2</sup> Copyright Act, 1957, Sec 2(c); Designs Act, 2000, Sec 2(d).
- <sup>3</sup> Copyright Act, 1957, Sec 15(2).
- <sup>4</sup> Designs Act, 2000, Sec 11.
- <sup>5</sup> *Microfibres Inc. v. Girdhar & Co.*, 2009 (40) PTC 519 (Del).
- <sup>6</sup> *Ritika Private Limited v. Biba Apparels Pvt. Ltd.*, 2016 (65) PTC 374 (Del).
- <sup>7</sup> Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (Oxford University Press, 2012).
- <sup>8</sup> Council Regulation (EC) No. 6/2002 on Community Designs (European Union).
- <sup>9</sup> Susy Frankel and Daniel Gervais, *Advanced Introduction to Intellectual Property* (Edward Elgar, 2016).
- <sup>10</sup> *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.
- <sup>11</sup> Designs Act, 2000, Sec 4.
- <sup>12</sup> *Carlsberg Breweries A/S v. Som Distilleries and Breweries Ltd.*, 2018 SCC OnLine Del 12912.
- <sup>13</sup> *Yash Raj Films Pvt. Ltd. v. Sri Sai Ganesh Productions*, 2013 (54) PTC 638 (Mad).
- <sup>14</sup> Kal Raustiala and Christopher Sprigman, "The Piracy Paradox Revisited," 61 *Stanford Law Review* (2009).
- <sup>15</sup> Copyright, Designs and Patents Act, 1988 (UK), Part III.
- <sup>16</sup> *Time Incorporated v. Lokesh Srivastava*, 2005 (30) PTC 3 (Del).
- <sup>17</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (Oxford University Press, 2014).
- <sup>18</sup> *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, 2008 (37) PTC 134 (Del).
- <sup>19</sup> Shamnad Basheer, "India's Tryst with TRIPS: The Patents (Amendment) Act 2005," *Indian Journal of Law and Technology* (contextual discussion on IP enforcement delays).
- <sup>20</sup> *Micolube India Ltd. v. Rakesh Kumar*, 2013 (55) PTC 61 (Del).
- <sup>21</sup> *Louis Vuitton Malletier v. Manoj Khurana*, 2010 (42) PTC 553 (Del).
- <sup>22</sup> Robert P. Merges, *Justifying Intellectual Property* (Harvard University Press, 2011).
- <sup>23</sup> *Super Cassettes Industries Ltd. v. Myspace Inc.*, 2011 (48) PTC 49 (Del)
- <sup>24</sup> *Dabur India Ltd. v. Rajesh Kumar*, 2008 (37) PTC 227 (Del).
- <sup>25</sup> *University of London Press Ltd. v. University Tutorial Press Ltd.*, [1916] 2 Ch 601.
- <sup>26</sup> *R.G. Anand v. Deluxe Films*, (1978) 4 SCC 118.
- <sup>27</sup> *Colgate Palmolive Company v. Anchor Health & Beauty Care Pvt. Ltd.*, 2003 (27) PTC 478 (Del).
- <sup>28</sup> *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73.
- <sup>29</sup> *Microsoft Corporation v. K. Mayuri*, 2007 (35) PTC 415 (Del).
- <sup>30</sup> *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*, (2008) 13 SCC 30.
- <sup>31</sup> Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases, and Materials* (Oxford University Press, 2013).
- <sup>32</sup> Rochelle Cooper Dreyfuss, "The Creative Employee and the Copyright Act," 54 *University of Chicago Law Review* (1987).
- <sup>33</sup> *Laxmikant V. Patel v. Chetanbhai Shah*, (2002) 3 SCC 65.
- <sup>34</sup> Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (Rutgers University Press, 2005).
- <sup>35</sup> Graeme B. Dinwoodie and Mark D. Janis, *Trademark and Unfair Competition: Law and Policy* (Aspen Publishers, 2010).
- <sup>36</sup> Madhavi Sunder, "IP<sup>3</sup>," 59 *Stanford Law Review* (2007).
- <sup>37</sup> Council Regulation (EC) No. 6/2002, Art. 11 (European Union).
- <sup>38</sup> *Karen Millen Fashions Ltd. v. Dunnes Stores*, Case C-345/13 (CJEU, 2014). 17 U.S.C. Sec 101 (definition of useful articles).
- <sup>39</sup> *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).
- <sup>40</sup> Copyright, Designs and Patents Act, 1988 (UK), Sec 213–216.
- <sup>41</sup> Johanna Blakley, "Lessons from Fashion's Free Culture," 59 *UCLA Law Review* (2012).
- <sup>42</sup> Anselm Kamperman Sanders, *The Principle of Territoriality in Intellectual Property Law* (Kluwer Law International, 2012).
- <sup>43</sup> Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Institute for International Economics, 2000).
- <sup>44</sup> Annette Kur, "Design Protection in Europe and the United States," 24 *International Review of Intellectual Property and Competition Law* (1993).
- <sup>45</sup> Christoph B. Graber, "Traditional Cultural Expressions and Intellectual Property Law," Edward Elgar Publishing (2012).