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# FROM RUNWAYS TO LEGAL AVENUES: NAVIGATING INTELLECTUAL PROPERTY PROTECTION FOR FASHION DESIGNS IN INDIA

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## ABSTRACT

Fashion is not just a form of self-expression; it is a multibillion-dollar industry driven by innovation and creativity. However, designers often face challenges in safeguarding their original fashion designs from unauthorized copying and infringement. This article explores the intricate landscape of intellectual property protection for fashion designs in India, shedding light on the legal avenues available and the gaps that need to be addressed. It discusses the significance of intellectual property rights (IPRs), the existing legal framework in India, specific challenges faced by designers, and potential solutions to bridge the gap and provide robust protection to encourage creativity and innovation in the Indian fashion industry.

**Keywords:** Fashion, Challenges, Intellectual property protection, Legal avenues, Solutions

## **INTRODUCTION:**

The Indian fashion industry has witnessed exceptional growth over the years, establishing itself as a hub of creativity and innovation. With its diverse cultural heritage and a vast pool of talented designers, India has become a global fashion destination. However, amidst this success, the industry faces a significant challenge - the lack of comprehensive intellectual property protection for fashion designs<sup>1</sup>.

Fashion designs are considered intellectual property as they reflect the unique vision, creativity, and craftsmanship of designers. Intellectual property rights (IPRs) play a pivotal role in providing legal protection to designers and incentivizing innovation and originality in the industry. They enable designers to safeguard their creations, prevent unauthorized copying, and ultimately, derive economic benefits from their work.

In India, the current legal framework for protecting fashion designs is not adequately developed or tailored to address the specific needs of the fashion industry. This has created a gap in intellectual property protection, leaving designers exposed to various forms of infringement, design piracy, and unfair competition<sup>2</sup>. Without robust protection, designers face the constant threat of their designs being replicated and profited from without their consent, undermining their creative efforts and economic potential.

## **CURRENT LEGAL FRAMEWORKS IN INDIA AND THE CHALLENGES ASSOCIATED WITH IT:**

The protection of fashion designs in India is governed by a combination of intellectual property laws, primarily the Copyright Act, Trademark Act, and Design Act. However, the existing legal framework poses several challenges and gaps when it comes to providing comprehensive protection to fashion designs.

- 1. COPYRIGHT ACT 1957:** The Copyright Act is the primary legislation that governs the protection of creative works, including fashion designs. Under Section 2(d) of the Act, artistic works, which encompass designs, drawings, or patterns applied to clothes

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<sup>1</sup> Karmakar, S. and Tewari, M., 2014.

<sup>2</sup> Reichman, J.H., 2009.

or any other article, are eligible for copyright protection. However, there are certain limitations and ambiguities that hinder effective protection.

One of the key challenges with copyright protection is the requirement of fixation. The Copyright Act mandates that a work must be fixed in a tangible medium to be eligible for copyright. In the context of fashion designs, this means that the designs must be embodied in a physical form, such as sketches or drawings, or applied to garments or textiles. This requirement poses difficulties since fashion designs are often ephemeral in nature, evolving rapidly with changing trends and seasons. Furthermore, the Copyright Act does not provide for a separate registration system specifically designed for fashion designs. Designers can choose to register their designs as artistic works under the Copyright Act for additional protection, but this process may be time-consuming and does not provide the same level of protection as a dedicated design registration system would<sup>3</sup>.

- 2. DESIGN ACT 2000:** The Design Act provides a specific framework for the registration and protection of industrial designs, which can include fashion designs. However, in its current form, the Act does not adequately address the peculiarities and requirements of the fashion industry.

One of the major limitations is the definition of "design" under the Act, which encompasses only features applicable to articles and excludes mere surface ornamentation. This restricts the protection available to fashion designs, as they often rely heavily on decorative elements and surface patterns. Additionally, the registration process under the Design Act can be challenging, with stringent criteria for novelty and originality, adding further complexity and potential delays for designers<sup>4</sup>.

- 3. TRADEMARK ACT 1999:** The Trademark Act provides protection for brand names, logos, and symbols associated with products or services, including fashion apparel. While trademarks can play a crucial role in protecting brand identity and preventing confusion in the market, they may not provide comprehensive protection for fashion designs per se.

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<sup>3</sup> Singh, C., 2020.

<sup>4</sup> Chantia, S. and Singh, A.K., 2013.

Trademark protection typically focuses on protecting distinctive marks that indicate the source of goods or services, rather than the design elements of the products themselves. While fashion designers can obtain trademark protection for their logos or unique identifiers, it may not fully safeguard the distinctiveness and novelty of their designs<sup>5</sup>.

In addition to these, other legal mechanisms like passing off and unfair competition laws may offer certain forms of protection for fashion designs. However, these remedies tend to focus on preventing confusion in the marketplace rather than protecting the inherent creativity and originality of designs. These limitations and gaps in the existing legal framework present numerous challenges for designers seeking effective protection for their fashion designs. The requirement of fixation, limited scope in design registration, and the focus on brand protection rather than design protection are some of the key challenges faced by designers<sup>6</sup>.

### **CHALLENGES FACED BY INDIAN FASHION DESIGNERS:**

Designers in India face a multitude of challenges when it comes to obtaining intellectual property protection for their fashion designs. These challenges arise from various aspects of the legal framework, registration procedures, awareness levels, and enforcement mechanisms. Understanding these challenges is crucial for proposing effective solutions to bridge the gap in intellectual property protection. Some of the challenges are:

- 1. ABSENCE OF SPECIFIC LEGISLATION:** One of the primary challenges is the absence of dedicated legislation specifically tailored to protect fashion designs. While the Copyright Act, Design Act, and Trademark Act can provide some level of protection, they do not comprehensively address the unique aspects and requirements of the fashion industry. The absence of specialized legislation often leads to ambiguity and challenges in effectively protecting fashion designs, leaving designers vulnerable to unauthorized copying and design theft<sup>7</sup>.
- 2. DELAYS IN REGISTRATION PROCESS:** Both copyright and design registrations can be time-consuming and burdensome for designers. The process of obtaining copyright protection through registration under the Copyright Act can involve

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<sup>5</sup> Swarup, S.K. and Rastogi, S., 2022.

<sup>6</sup> Reddy, A. and Shivshankar, G., 2010.

<sup>7</sup> Khaire, M., 2011.

significant delays, impacting the timely protection of fashion designs. Similarly, registering designs under the Design Act can be a rigorous and lengthy process, with mandatory examinations for novelty and originality, often resulting in further delays. These extensive procedural requirements can hinder designers from promptly obtaining protection for their designs and exploiting their creative potential.

- 3. LIMITED AWARENESS AMONG DESIGNERS:** Many designers in India have limited awareness of their intellectual property rights and the available means of protection. This lack of awareness can be attributed to a variety of factors, including limited access to legal resources, insufficient education on intellectual property matters, and a general lack of support structures within the industry. As a result, designers may not be fully equipped to navigate the complexities of intellectual property protection, making them more susceptible to design infringement and exploitation<sup>8</sup>.
- 4. INADEQUATE ENFORCEMENT MECHANISMS:** While legislation and registration procedures are crucial, effective enforcement mechanisms are equally important in protecting fashion designs. However, the current enforcement mechanisms in India may not be adequately equipped to tackle design infringement cases efficiently. The legal process for enforcing intellectual property rights can be time-consuming, expensive, and complex, discouraging many designers from pursuing legal remedies. Additionally, the burden of proof and collecting evidence in design infringement cases can be challenging, further hindering the enforcement process<sup>9</sup>.
- 5. GREY MARKET AND COUNTERFEITING:** The prevalence of the grey market and counterfeiting poses significant challenges for designers in India. The absence of strong intellectual property protection allows for the production and sale of cheap imitations and counterfeit fashion products, undermining the market for original designs. The lack of effective enforcement mechanisms to curb the production and sale of counterfeit goods exacerbates the problem, as it enables infringers to operate with relative impunity<sup>10</sup>.

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<sup>8</sup> Sah, N. and Ezhilanban, J.J., 2023.

<sup>9</sup> Rangarajan, K., Chaturvedi, T., Mishra, B., Kishore, K. and Prakash, S., 2007.

<sup>10</sup> Padhi, P.K., 2018.

## **IMPORTANT CASES REGARDING FASHION DESIGNING AND IPR IN INDIA:**

Some of the important cases regarding fashion designing and intellectual property rights (IPR) in India that have helped shape the legal landscape are:

### **1. HOLLAND COMPANY LP AND ANR. V. S. P. INDUSTRIES (2017):**

In this landmark case, the Delhi High Court established the criteria for determining infringement of fashion designs under Indian copyright law. Holland Company, a Dutch-based fashion house, alleged that S.P. Industries had copied their fabric designs and reproduced them on sarees. The court held that a copyright infringement occurs when the defendant's work is substantially similar to the plaintiff's work and violates the reproduction right. This case clarified the scope of copyright protection for fashion designs and set a precedent for subsequent cases.

### **2. BATA INDIA LTD. V. CHAWLA BOOT HOUSE (2012):**

This case addressed the issue of registered design infringement. Bata India, a well-known footwear company, filed a suit against Chawla Boot House for copying their registered design of a slipper. The Delhi High Court held in favor of Bata India, ruling that Chawla Boot House's slippers were substantially similar to Bata's registered design. The court emphasized the importance of design registration in establishing the exclusive rights of the design owner and providing legal remedies against infringement.

### **3. MONTBLANC SIMPLO GMBH V. GAURAV BHATIA (2014):**

This notable case dealt with trade dress infringement. Montblanc, a luxury pen manufacturer, claimed that Gaurav Bhatia, an Indian luxury goods dealer, was selling counterfeit Montblanc pens. The Delhi High Court found in favor of Montblanc, stating that Bhatia's actions were likely to deceive the public into believing that the counterfeit products were genuine Montblanc pens. The court recognized the significance of protecting the distinctive trade dress of luxury goods to prevent consumer confusion and maintain the reputation of the brand.

### **4. CHRISTIAN LOUBOUTIN SAS V. PAWAN KUMAR (2018):**

This case involved the protection of red soles as a trademark. Christian Louboutin, a renowned

luxury shoe designer, filed a suit against Pawan Kumar for selling footwear with red soles. The Delhi High Court held that Louboutin's red sole trademark was a well-known mark with sufficient distinctiveness and that the use of similar red soles by Kumar amounted to trademark infringement. The court emphasized the importance of protecting unique design elements as trademarks, even if they are not applied to the entire article.

#### **5. LUXOTTICA GROUP SPA V. ASHOK KUMAR & ORS. (2020):**

This case addressed the issue of counterfeit eyewear in the Indian market. Luxottica, a global eyewear manufacturer, claimed that Ashok Kumar and others were selling counterfeit Ray-Ban sunglasses. The Delhi High Court granted an ex-parte ad interim injunction in favor of Luxottica, restraining the defendants from manufacturing, trading, or dealing with counterfeit products. This case highlighted the importance of enforcing intellectual property rights to prevent the sale of counterfeit fashion products in the market.

These judgments have clarified the parameters of copyright infringement, emphasized the significance of design registration, recognized the protection of trade dress as a means to prevent consumer confusion, and affirmed the importance of preventing the sale of counterfeit fashion goods. The rulings have helped strengthen the protection of fashion designs and promote a culture of respect for intellectual property rights in the Indian fashion industry.

### **INTERNATIONAL IPR PRACTICES FOLLOWED IN THE FIELD OF FASHION DESIGNING:**

In order to address the deficiency in the realm of safeguarding intellectual property rights for fashion designs in India, it is advantageous to delve into the realm of proven methodologies employed by other jurisdictions. Nations such as the United States, the United Kingdom, and France have successfully implemented dedicated legislation and mechanisms that serve to effectively protect fashion designs.

#### **1. UNITED STATES:**

The United States offers robust protection for fashion designs through a combination of copyright, trademark, and design patent laws, along with well-developed case law<sup>11</sup>. The key

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<sup>11</sup> Nanda, A.S. and Behera, S., 2019.

practices that contribute to comprehensive protection include:

**A) COPYRIGHT PROTECTION:** In the United States, fashion designs can be protected under the Copyright Act as pictorial, graphic, or sculptural works. The fixation requirement is less stringent, allowing protection for designs embodied in any tangible medium, including garments themselves. This flexibility ensures that even transient or evolving designs can receive copyright protection.

**B) TRADE DRESS PROTECTION:** The United States recognizes trade dress protection for distinctive and non-functional aspects of product design, including fashion designs. This protection extends to unique combinations of elements such as shapes, colours, patterns, and packaging, which can effectively safeguard the overall appearance of a fashion product.

**C) DESIGN PATENT PROTECTION:** Design patents provide another layer of protection for fashion designs in the United States. Design patents can be obtained for new, original, and ornamental designs of an article of manufacture. Design patents offer a more limited duration of protection compared to copyrights, but they can provide strong protection against exact replicas or substantially similar designs<sup>12</sup>.

## 2. UNITED KINGDOM:

The United Kingdom has adopted measures to protect fashion designs, primarily through copyright, design rights, and trademarks. Notable practices include:

**A) UNREGISTERED DESIGN RIGHTS:** In the UK, fashion designs benefit from automatic unregistered design rights, which provide limited protection for three years from the date of creation or first marketing. Although less extensive than registered design rights, unregistered design rights still offer some level of protection to help discourage copying<sup>13</sup>.

**B) REGISTERED DESIGNS:** UK designers can also opt for registered designs which provide more robust and enforceable protection. Registration ensures exclusivity and allows for legal remedies against infringements.

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<sup>12</sup> Xiao, E.Y., 2010.

<sup>13</sup> Thompson, S., Sissons, A. and Montgomery, L., 2012.

**C) DESIGN MUSEUMS:** The UK encourages a culture of design appreciation and protection through institutions like the Design Museum. These museums celebrate and showcase innovative designs while raising awareness of intellectual property rights. They serve as educational platforms for both designers and the public, fostering a greater understanding of the value of design protection<sup>14</sup>.

### 3. FRANCE:

France has a long-standing tradition of protecting fashion designs, employing legislation, registration systems, and industry cooperation. Key practices in France include:

**A) SPECIFIC LEGISLATION:** France has specific legislation, such as the French Intellectual Property Code, which provides protection for fashion designs. This legislation recognizes fashion designs as original artistic creations and offers robust copyright protection<sup>15</sup>.

**B) DESIGN REGISTRATION:** France's design registration system allows designers to protect their creations more comprehensively. Registered designs provide stronger evidence of ownership and facilitate enforcement actions against infringements.

**C) INDUSTRY COLLABORATION:** French fashion industry associations, such as the Fédération de la Haute Couture et de la Mode, actively collaborate with designers and legal experts to promote and protect original designs. These associations play a role in raising awareness, organizing events, and providing support to designers in understanding and enforcing their intellectual property rights<sup>16</sup>.

Incorporating flexible copyright provisions, introducing design registration systems, fostering industry collaboration, and providing legal clarity through case law can significantly enhance the protection of fashion designs. In addition to this, creating dedicated platforms and institutions to showcase and promote original designs, as seen in the UK and France, can help raise awareness among designers and the public about the importance of intellectual property rights.

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<sup>14</sup> Martinez, J., 2019

<sup>15</sup> Barrère, C. and Delabruyère, S., 2011.

<sup>16</sup> Barrère, C. and Chossat, V., 2004.

## POTENTIAL SOLUTIONS:

Some of the potential solutions include:

- 1. ENACTING SPECIALIZED LEGISLATION FOR FASHION DESIGNS:** While the current intellectual property laws, including copyright, trademarks, and design patents, offer some level of protection, a dedicated legislation for fashion designs would provide more comprehensive and tailored protection. This specialized legislation can define the scope and criteria for design protection, including the level of originality required, the duration of protection, and the remedies available in case of infringement. It can also address the issue of substantial similarity and the subjective nature of design infringement, providing clearer guidelines for courts and designers alike. By having a separate legislation for fashion designs, India can adapt its laws to the unique nature and challenges of the fashion industry<sup>17</sup>.
- 2. STREAMLINING THE REGISTRATION PROCESS:** To encourage designers to protect their fashion designs more effectively, it is crucial to streamline the registration process and make it more accessible and efficient. Currently, the registration process for fashion designs in India can be time-consuming, expensive, and complex, posing a barrier for designers, particularly smaller-scale or independent designers. Simplifying the process, reducing associated costs, and providing online registration facilities could incentivize designers to seek protection for their designs. This can be achieved by introducing dedicated online portals or platforms that allow designers to submit their designs electronically, reducing the administrative burden. Moreover, establishing a single platform where designers can register their designs for multiple forms of protection, such as copyright and design patents, could streamline the process and make it more user-friendly.
- 3. ENHANCING AWARENESS AND EDUCATION:** Many fashion designers in India may not be fully aware of the intellectual property rights available and how to effectively protect their designs. Therefore, it is essential to enhance awareness and education among designers regarding their rights and the mechanisms available for protection. Collaboration between government agencies, industry associations, legal

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<sup>17</sup> Wong, T., 2011.

experts, and educational institutions can play a vital role in providing workshops, seminars, and training programs on intellectual property rights specifically tailored for fashion designers. Such initiatives can cover topics like the basics of copyright, trademarks, and design patents, the process of design registration, strategies for preventing infringement, and the options for legal enforcement. By empowering designers with knowledge, they can better navigate the legal landscape, make informed decisions, and take proactive steps to protect their creative work<sup>18</sup>.

- 4. ESTABLISHING SPECIALIZED IP COURTS OR TRIBUNALS:** To expedite and effectively resolve disputes related to fashion designs and intellectual property rights, the establishment of specialized intellectual property courts or tribunals could be considered. These specialized courts can consist of judges with expertise in intellectual property laws and a deep understanding of the unique challenges faced by the fashion industry. By having dedicated courts or tribunals, cases related to fashion design infringement can be prioritized and resolved more efficiently. This would allow for quicker resolution of disputes, reducing the burden on the regular court system and providing specialized expertise to tackle intricate intellectual property issues specific to the fashion industry. Additionally, the establishment of such specialized courts would send a strong message that the protection of intellectual property, including fashion designs, is a priority for the legal system in India<sup>19</sup>.

## **COLLABORATION AND AWARENESS:**

Collaboration between the fashion industry, legal professionals, and policymakers is essential to strengthen the protection of intellectual property rights in India's fashion sector. By working together, these stakeholders can address the challenges faced by designers, raise awareness about legal rights and enforcement mechanisms, and foster partnerships to combat design piracy effectively.

- 1. CREATING PLATFORMS FOR DIALOGUE:** Establishing platforms for regular dialogue and interaction among designers, industry associations, legal professionals, and policymakers can facilitate a better understanding of the issues faced by the fashion industry and lead to effective solutions. These platforms can include industry seminars,

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<sup>18</sup> Mills, N.E., 2009.

<sup>19</sup> Cresto, G., 2018.

conferences, and roundtable discussions where stakeholders can exchange ideas, share experiences, and address concerns related to intellectual property protection. By providing opportunities for dialogue, designers can voice their challenges and seek guidance from legal professionals and policymakers regarding the legal framework and strategies for protection. Legal professionals and policymakers, in turn, can gather valuable insights from industry experts to shape policies and develop effective legal mechanisms that address the specific needs and concerns of the fashion industry.

- 2. RAISING AWARENESS ABOUT LEGAL RIGHTS:** Raising awareness about legal rights and the importance of intellectual property protection is crucial for designers to understand their rights and take proactive measures to safeguard their designs. Industry associations, non-profit organizations, educational institutions, and government agencies can play a pivotal role in conducting awareness campaigns and educational initiatives. These initiatives can include workshops, webinars, and informative resources that educate designers about various intellectual property rights, the process of registration, the scope of protection, and the available legal remedies in case of infringement. Creating user-friendly guides, online platforms, and resources that provide detailed information about intellectual property rights specific to fashion designs can make it easily accessible to designers<sup>20</sup>.
- 3. FOSTERING PARTNERSHIPS:** Partnerships between industry stakeholders, such as designers, manufacturers, and retailers, can significantly contribute to the fight against design piracy. Collaboration can involve the exchange of knowledge, sharing best practices, and developing joint initiatives to combat infringement collectively. Industry associations and legal professionals can assist designers in establishing effective licensing and distribution agreements that safeguard their intellectual property rights. These partnerships can also extend to collaborations with enforcement agencies, customs authorities, and online marketplaces to tackle counterfeiting and piracy effectively. By working together, stakeholders can leverage their collective strength and resources to develop coordinated strategies for prevention, detection, and enforcement against design piracy<sup>21</sup>.

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<sup>20</sup> Cohen, A.K., 2012.

<sup>21</sup> Weeraworawit, C., 2013.

**4. ADVOCATING FOR STRONGER LEGAL PROTECTIONS:** Industry associations and legal professionals can actively engage with policymakers to advocate for stronger legal protections for fashion designs in India. They can contribute their expertise in intellectual property law, present case studies of design piracy, and provide inputs for the development of legislation or amendments that address the specific challenges faced by the fashion industry. Advocacy efforts can emphasize the importance of recognizing fashion designs as valuable intellectual property and outline the economic and cultural significance of protecting designers' creative works. Through collaborative advocacy, stakeholders can work towards creating a legal framework that ensures adequate protection, enables fair competition, and fosters innovation in the fashion industry<sup>22</sup>.

## **CONCLUSION:**

The journey from runways to legal avenues is a critical one for fashion designers in India seeking intellectual property protection for their creative works. Navigating the complex landscape of intellectual property rights requires a multi-faceted approach that involves legislative reforms, streamlined processes, awareness and education, industry collaboration, and strong enforcement mechanisms. India recognizes the importance of protecting fashion designs, as they contribute to the vibrant and dynamic fashion industry. However, there are still gaps and challenges that need to be addressed to provide designers with robust and effective intellectual property protection.

From runways to legal avenues, the journey toward intellectual property protection for fashion designs in India requires a comprehensive and collaborative approach. By addressing the gaps and challenges faced by designers, India can create an inclusive and supportive environment that nurtures creativity, rewards innovation, and attracts investments in the fashion industry. A robust legal framework, streamlined processes, increased awareness, and industry partnerships will pave the way for a thriving fashion industry where the rights of designers are respected, creativity thrives, and India's fashion presence shines globally.

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<sup>22</sup> Eguchi, A., 2011.

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