

A Study on Existing Legal Framework on Fashion & Traditional Cultural Expressions in India

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Abstract—This study critically examines the adequacy of the existing Intellectual Property (IP) framework in India in protecting Traditional Cultural Expressions (TCEs) within the fashion industry. India's rich heritage of textiles, crafts, and indigenous designs has increasingly become a source of inspiration for global fashion brands. However, the absence of effective legal safeguards has resulted in widespread instances of cultural appropriation, where traditional designs are commercially exploited without recognition or compensation to the artisan communities.

The research analyses key legislations, including the Copyright Act, 1957, the Designs Act, 2000, and the Geographical Indications of Goods Act, 1999, highlighting their structural limitations in addressing the collective and intergenerational nature of TCEs. Through case studies such as the Prada-Kolhapuri controversy and the Dior-Chanakya collaboration, the study contrasts exploitative practices with ethical models of engagement. Further, the research draws upon international frameworks, particularly the efforts of the World Intellectual Property Organization (WIPO), and comparative legal approaches to emphasize the need for reform. It identifies a significant gap between existing legal protections and the realities of traditional craft preservation. The study concludes that the current IP regime is inadequate to safeguard TCEs and advocates for the introduction of a *sui generis* legal framework that incorporates principles of communal ownership, prior informed consent, and equitable benefit-sharing. Such a framework is essential to ensure both cultural preservation and economic justice for artisan communities.

This scenario is not an isolated incident of corporate overreach; it is the direct result of a massive legal void within the Indian Intellectual Property (IP) regime. The current legal framework relentlessly protects the modern, commercial fashion house while categorizing centuries-old Traditional Cultural Expressions (TCEs) as "public domain," rendering them free for the taking. This project critically examines these statutory inadequacies and argues that without a *sui generis*

(unique) legal framework, the unauthorized commercialization of India's folklore will continue unabated.

I. INTRODUCTION

1.1. Defining the Terms

It is important that core terms are analysed as per the definition of recognised organisation. WIPO (World Intellectual Property Organization) have defined TCEs/folklore and explain how it applies to Indian textiles and crafts.

- Traditional cultural expressions (TCEs), also called "expressions of folklore", may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.

Traditional cultural expressions:

- may be considered as the forms in which traditional culture is expressed;
- form part of the identity and heritage of a traditional or indigenous community;
- are passed down from generation to generation.

TCEs are integral to the cultural and social identities of indigenous and local communities, embody know-how and skills, and transmit core values and beliefs.

Their protection is related to the promotion of creativity, enhanced cultural diversity and the preservation of cultural heritage. TCEs encompass the tangible and intangible forms in which traditional culture is expressed-identifying and reflecting the values, traditions, and beliefs of communities.

Crucially, WIPO states that for an expression to be a TCE, it must be:

1. Handed down from generation to generation: It is

not a new trend; it has antiquity.

2. Linked to cultural/social identity: It reflects the values, traditions, and beliefs of a community.
3. Collectively maintained: It is authored or kept alive by an indigenous or local community, rather than a single individual.

In the Indian context, this perfectly describes heritage textiles and handicrafts such as Kalamkari prints, Ikat dyeing techniques, Banarasi weaves, and Kolhapuri leather braiding. These crafts are not merely "designs" in the modern commercial sense; they are communal socio-historic assets.

The legal friction arises from this exact definition. Western-centric Intellectual Property systems, which India has largely adopted, are inherently individualistic. They grant temporary monopoly rights (patents, copyrights, designs) to an identifiable human "author" for creating a "novel" work. Conversely, Indian TCEs form an intergenerational public wealth; they are communally maintained and, by their very nature, not novel. Because they are classified by modern law as existing in the "public domain," WIPO notes that the design, reputation, and style associated with these handicrafts are left intensely vulnerable to imitation and misappropriation by third parties. Thus, the Indian legal system fails indigenous artisans not by active suppression, but by structural exclusion.

1.2. Cultural Appropriation vs. Appreciation

In the current world of fashion, brands often look at international inclusivity and diversity. This started on a positive note where collaboration was encouraged and inclusivity was appreciated, later the loophole of the unprotected "public domain" was exploited. The distinction between cultural appropriation and cultural appreciation has become a defining issue in fashion law.

Professor Susan Scafidi, a pioneer in fashion jurisprudence, defines cultural appropriation as the unauthorized taking of intellectual property, traditional knowledge, or cultural expressions from another culture without permission, credit, or compensation. In the context of Indian textiles, appropriation occurs when a multinational entity utilizes its disproportionate economic power to mass-produce a traditional indigenous craft such as the Prada Kolhapuri incident - relegating the originators to mere spectators of their own commercialized heritage.

Conversely, cultural appreciation is rooted in consent, credit, and equitable compensation. A notable contemporary example of this is the Christian Dior Pre-Fall 2023 collection showcased in Mumbai. Rather than merely extracting traditional motifs, Dior officially collaborated with the Chanakya School of Craft, ensuring that the Indian artisans who executed the renowned *zardozi* and *ari* embroideries were prominently credited, compensated, and integrated into the global supply chain.

While the Dior model represents an ethical gold standard, the fundamental flaw in the Indian legal system is that such equitable treatment is entirely voluntary. Because Traditional Cultural Expressions are legally categorized as public domain under current IP regimes, foreign and domestic brands are not statutorily obligated to engage in benefit-sharing. The absence of a legal mandate means that artisans must rely on the precarious goodwill of corporations or the volatile nature of social media "call-out culture" for protection, rather than enforceable legal rights.

1.3. Research Methodology, Objectives, and Scope of the Study

Research Objectives The primary objective of this study is to critically analyse the inadequacies of the existing Indian Intellectual Property framework in protecting Traditional Cultural Expressions (TCEs) within the rapidly expanding fashion industry. Specifically, this research aims to:

1. Examine the structural limitations of the Copyright Act (1957), the Designs Act (2000), and the Geographical Indications of Goods Act (1999) concerning communally owned, indigenous textile crafts.
2. Analyze contemporary case studies, such as corporate misappropriation by international luxury brands, to demonstrate the economic and cultural impact of the current legal void.
3. Evaluate international mechanisms and comparative jurisprudence, particularly the directives of the World Intellectual Property Organization (WIPO), regarding the protection of folklore.
4. Propose actionable, *sui generis* legislative reforms and benefit-sharing frameworks to harmonize commercial fashion interests with the rights of traditional artisan communities in India.

Research Methodology:

This research employs a doctrinal (theoretical) methodology, relying on a qualitative analysis of statutes, case laws, and legal conceptual frameworks. Primary sources include bare acts of Indian IP legislation, namely the Copyright Act, the Designs Act, and the Geographical Indications Act. Secondary sources comprise WIPO Intergovernmental Committee (IGC) reports, peer-reviewed legal journals, fashion law commentaries, and authenticated contemporary news reports tracking instances of cultural appropriation.

Scope and Limitations The scope of this study is strictly confined to the intersection of fashion law and the protection of Traditional Cultural Expressions (specifically textiles, weaves, and indigenous garment designs). While the concept of Traditional Knowledge (TK) encompasses agriculture and medicinal practices (such as Ayurveda), those sectors are explicitly excluded from this research to maintain a concentrated legal analysis on the fashion and design supply chain.

II. THE EXISTING INDIAN IP FRAMEWORK AND ITS INADEQUACIES

To understand why the misappropriation of Traditional Cultural Expressions (TCEs) remains legally permissible in India, one must critically evaluate the existing legal frameworks. The Indian Intellectual Property regime, primarily comprising the Copyright Act (1957), the Designs Act (2000), and the Geographical Indications of Goods Act (1999), was drafted to foster industrial growth and protect temporary, individual commercial monopolies. Consequently, when applied to intergenerational, communally owned indigenous crafts, these statutes act as a major loophole, leaving local artisans entirely unprotected against exploitation by multinational fashion conglomerates.

2.1. The Copyright Act, 1957: The "50 Reproductions" Trap for Artisans

At first glance, the Copyright Act of 1957 appears to be the most natural sanctuary for traditional textile designers. Under Section 2(c) of the Act, an "artistic work" is protected by copyright the moment it is created, without any mandatory requirement for formal registration. Therefore, when an indigenous artisan hand-paints a Kalamkari motif or carves a

wooden block for Bagru printing, that exact visual expression technically originates as a protected artistic work.

However, the statutory architecture of Indian IP law strictly bifurcates "pure art" from "commercial commerce." This dichotomy is enforced through Section 15 of the Copyright Act, which acts as a fatal trap for indigenous weavers and fashion artisans.

- Section 15(1) prevents dual protection, stating that copyright shall not subsist in any work which has been registered under the Designs Act, 2000.
- Section 15(2) contains the most devastating clause for the fashion industry: *"Copyright in any design, which is capable of being registered under the Designs Act... but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person."*

The Judicial Interpretation: The legislative intent behind this provision was clarified in the landmark case of *Microfibres Inc. v. Girdhar & Co.* (2009). The Delhi High Court held that if an artistic work is applied to an article to be commercially exploited (mass-produced), it loses its status as a pure artistic work and must be governed by design law. The court established that if a creator wishes to mass-produce an artistic design applied to an object, they must register it under the Designs Act to receive a 15-year monopoly. If they fail to do so, and reproduce it more than 50 times, the design falls irreversibly into the public domain.

Application to Traditional Fashion and Crafts: While this logic serves modern industrial manufacturers well, it disproportionately penalizes traditional artisan clusters. A weaving community relying on their ancestral craft for daily survival will inevitably produce more than 50 identical handwoven sarees, embroidered bags, or printed fabrics to sustain their livelihood. Because the courts have historically interpreted "industrial process" broadly enough to include repetitive hand-manufacturing and block printing, artisans almost immediately trigger the restrictive clause of Section 15(2).

Once that 51st piece is produced, the artisan's inherent copyright evaporates. The law demands that they should have proactively registered the pattern under the Designs Act prior to commercialization. As will be

explored in the subsequent section, this is a legal impossibility for Traditional Cultural Expressions, leaving the artisans abandoned by both the Copyright Act and the Designs Act, and granting fast-fashion brands the legal liberty to duplicate their generational crafts without infringement.

Another vital point of friction in applying Section 15(2) to traditional crafts is the artisan's method of production. Indigenous fashion is overwhelmingly handmade, meaning no two garments or woven bags are ever microscopically identical. One might argue that hand-weaving or hand-painting does not constitute the "industrial process" required by Section 15(2) to strip an artisan of their copyright. However, Section 2(d) of the Designs Act, 2000, explicitly defines the application of a design to include "*any industrial process or means, whether manual, mechanical or chemical.*"

Consequently, Indian jurisprudence evaluates these crafts based on "overall visual impression" rather than exact uniformity. Even if an artisan hand-weaves 50 bags with slight natural variations in the braid, the core motif is legally deemed to have been mechanically reproduced for commerce. This places the manual labour of rural artisans on the exact same legal footing as a fast-fashion factory machine, entirely ignoring the organic nature of Traditional Cultural Expressions and forcing them into a rigid statutory framework built for identical, mass-manufactured clones.

2.2. The Designs Act, 2000: The "Novelty" Hurdle and the Public Domain Exploit

Having lost copyright protection under Section 15(2) of the Copyright Act, an artisan's only statutory recourse to protect a mass-produced motif, weave, or embroidery is to register it under the Designs Act, 2000. Under Section 2(d) of the Act, a "design" is defined as the features of shape, configuration, pattern, or ornament applied to any article.

However, the Designs Act acts as a rigorous gatekeeper, built entirely around the Western concept of industrial innovation rather than cultural preservation. The fatal blow to indigenous artisans lies within Section 4 of the Designs Act, which strictly prohibits the registration of any design that is not "new or original."

The Threshold of Prior Publication: Section 4(b) states

that a design cannot be registered if it has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use prior to the filing date. Furthermore, Section 19(1)(b) allows for the cancellation of a registered design if it is proven that it has been published previously. The courts in India, as seen in cases like *Bharat Glass Tube Ltd. v. Gopal Glass Works*, have consistently upheld that absolute novelty is the non-negotiable bedrock of design protection; if the public has seen it before, it cannot be monopolized.

The Incompatibility with Traditional Cultural Expressions (TCEs): This statutory requirement is fundamentally antagonistic to the very nature of Traditional Cultural Expressions. As defined in Chapter 1, TCEs: whether it is the geometric braiding of Kolhapuri leather, the intricate weaves of a Kanjeevaram sari, or the painted storyboards of Kalamkari are defined by their antiquity. They are intergenerational assets that have been visibly practiced, worn, and sold by communities for centuries.

Because traditional crafts have been in the public eye for generations, they inherently fail the test of "novelty" and "prior publication." In the eyes of the law, these ancient designs are classified as existing in the "public domain."

The "Public Domain" Exploit by Fast Fashion: Categorizing TCEs as public domain creates a massive legal loophole for cultural appropriation. Multinational fashion conglomerates and fast-fashion retailers understand that Indian artisans cannot legally register or claim ownership over ancestral weaves. Consequently, a luxury brand like Prada can lift a traditional Indian leather-braiding technique, apply it to a luxury tote bag, and face zero liability for design infringement.

Even more alarmingly, the Designs Act allows for commercial brands to slightly "tweak" a traditional design. If a fast-fashion brand takes a centuries-old Banarasi motif, alters the colour palette, and adjusts the border adding a modicum of modern "novelty" they can successfully register that derivative work as their own original design. The artisan communities, who preserved the foundational craft for centuries, are left completely defenceless, barred by the high costs of legal registration and mathematically disqualified by the statute of novelty.

2.3. The Geographical Indications of Goods Act, 1999: Protecting the Name, but Not the Design

When confronted with the inadequacies of the Copyright and Designs Acts, the Indian legal system frequently points to the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the "GI Act") as the ultimate safeguard for traditional crafts. The GI Act was enacted to comply with the TRIPS Agreement and protect goods, such as agricultural products or handicrafts that possess a specific geographical origin and qualities, reputation, or characteristics attributable to that origin.

Under Section 2(1)(e) of the Act, geographical indications are rigorously defined, and India has successfully registered numerous textile crafts, including Kanjeevaram silk, Banarasi brocades, and Chanderi sarees. The primary rights conferred by registration (Section 21) grant authorized users the exclusive right to use the GI tag in relation to the goods.

However, a critical legal analysis reveals that while the GI Act prevents false "passing off" of the *origin* of a product, it entirely fails to protect the *visual expression and design* of the product itself.

The Delusion of GI Protection in Fashion: The fundamental limitation of a GI tag is that it operates as an indicator of source, much like a trademark, rather than a protector of intellectual creation. It strictly prevents a manufacturer in Surat or Milan from producing a machine-made silk garment and legally labelling it a "Banarasi Saree."

However, the GI Act does not prevent a fast-fashion brand or luxury conglomerate from perfectly replicating the traditional Banarasi motif, the exact Kanjeevaram weave structure, or the precise geometry of a Naga shawl. If an international brand like Prada studies the traditional leather braiding techniques of Kolhapur (a GI-registered craft) and applies identical techniques to a €2,000 "Woven Leather Tote Bag" manufactured in Italy, they have successfully bypassed the GI Act completely.

Because they did not physically stamp the word "Kolhapuri" or claim the bag was made in Maharashtra, no GI infringement occurred. They effectively mined the cultural heritage for its aesthetic value without appropriating the protected geographical name.

The Enforcement Failure: Furthermore, even when blatant GI infringement occurs (such as local Indian retailers falsely labelling cheap, power-loom sarees as

handwoven "Banarasi"), the enforcement mechanisms are practically inaccessible for rural artisans. The GI Act is inherently proactive, it requires the registered proprietors (often unorganized artisan collectives or state boards) to actively monitor the market, send cease-and-desist notices, and engage in costly, protracted litigation to enforce their rights against well-funded corporate infringers.

Unlike a *sui generis* framework that might mandate upfront benefit-sharing or digital library protection, the GI Act places the entire burden of policing the global multibillion-dollar fashion industry squarely onto the shoulders of impoverished, marginalized craft clusters. Consequently, the GI Act functions merely as a labelling law. It preserves the authenticity of the regional name but leaves the underlying Traditional Cultural Expression wide open for legalized plagiarism.

2.4. Summary: The Structural Incompatibility of Indian IP Laws

The Indian intellectual property regime operates on an industrial blueprint that systematically excludes Traditional Cultural Expressions. The Copyright Act (Section 15) strips artisans of protection the moment their craft achieves commercial scale; the Designs Act (Section 4) locks them out by demanding unprecedented novelty; and the GI Act protects only the regional nomenclature, leaving the ancestral designs exposed in the "public domain." Bereft of a *sui generis* legal mechanism built for communal, intergenerational assets, indigenous fashion represents a vast, unprotected resource. The next chapter will examine how multinational fashion corporations exploit this specific legal void, utilizing case studies such as Prada's woven designs and Dior's sourcing practices in India.

III. MULTINATIONAL CORPORATIONS AND THE COMMODIFICATION OF FOLKLORE

Having established that the Indian Intellectual Property framework systematically excludes traditional indigenous crafts from statutory protection, it is crucial to examine how this legal void manifests in the commercial global market. The structural gaps within the Copyright Act, Designs Act, and GI Act create a legally permissive environment for foreign and domestic fashion conglomerates to commodify India's

Traditional Cultural Expressions (TCEs) without engaging in equitable benefit-sharing.

3.1. Exploiting the Statutory Void: The Prada Case Study

A prominent illustration of legalized cultural appropriation involves the European luxury house Prada. Recently, the brand released lines of woven leather tote bags and footwear that closely mirrored traditional Indian leather braiding techniques. Most notably, Prada faced international backlash for retailing toe-braided leather sandals that were visually and structurally identical to Maharashtra's indigenous *Kolhapuri chappals*. While authentic Kolhapuris are crafted by local artisans for minimal profit, the luxury items were marketed globally at exorbitant price points, sometimes exceeding \$680. The initial launch offered neither credit nor financial compensation to the Indian artisan communities who had preserved these exact designs for centuries.

From a jurisprudential perspective, Prada's commercial strategy flawlessly illustrates the inadequacies of the Indian IP regime discussed in Chapter 2.

Bypassing the GI Act:

Although Kolhapuri footwear was granted a Geographical Indication (GI) tag in India to protect the artisans of Maharashtra and Karnataka, Prada's actions did not trigger infringement under the Geographical Indications of Goods Act, 1999. By manufacturing the sandals outside the protected region and refraining from officially labelling or marketing them with the protected "Kolhapuri" name, the brand successfully circumvented the statute. This case study practically demonstrates that while a GI tag effectively protects regional nomenclature to prevent "passing off," it is entirely powerless to prevent a multinational corporation from copying the physical design, architecture, and aesthetic of the protected craft.

Exploiting the Public Domain:

Furthermore, Prada's appropriation of the woven leather bag design exposes the fatal flaw of the Designs Act, 2000. Because these complex Indian braiding techniques are intergenerational and have been openly used by artisan clusters for decades, they inherently fail the strict "novelty" and "prior publication" thresholds required by Section 4 of the Act.

Consequently, the Indian legal system classifies these specific weaves as existing in the "public domain." Prada was legally permitted to extract this communally owned cultural asset from the public domain, apply it to a commercial luxury product, and absorb the absolute economic profit. Because the underlying craft is legally deemed unowned, the multinational corporation faced no statutory obligation to seek consent, pay royalties, or enter into a benefit-sharing agreement with the originating artisans. The law, as it currently stands, successfully facilitated the extraction of heritage capital.

3.2. Voluntary Compliance vs. Legal Obligation: The Dior Case Study

While the Prada incident illustrates the statutorily permissible extraction of indigenous crafts, Christian Dior's Pre-Fall 2023 collection presents a contrasting model of equitable collaboration. Instead of mining India's Traditional Cultural Expressions from the public domain without compensation, Dior's creative director, Maria Grazia Chiuri, initiated a formal partnership with the Chanakya School of Craft and Chanakya ateliers in Mumbai.

The pre-fall ready-to-wear collection heavily featured centuries-old Indian craftsmanship, including *zardozi*, *ari*, and intricate appliqué work. However, distinguishing itself from standard extractive fast-fashion practices, the luxury house ensured that the master artisans were openly credited on a global platform, fairly compensated, and integrated directly into the brand's supply chain as respected collaborators rather than invisible labourers.

The Legal Implications of Corporate Goodwill:

From a cultural perspective, Dior's approach represents the zenith of "cultural appreciation" encompassing consent, credit, and compensation. However, from a strictly jurisprudential perspective, this case study exposes a profound vulnerability for Indian artisans: Dior's equitable behaviour was driven entirely by corporate goodwill, public relations, and internal brand ethics, not by any statutory mandate under Indian Intellectual Property law.

As established in Chapter 2, the *zardozi* and *ari* techniques utilized by Dior lack the "novelty" required by the Designs Act and are therefore legally categorized as being in the public domain. Had Dior chosen to quietly replicate these exact embroidery

patterns in a European factory or hire Indian artisans through exploitative intermediary contractors without providing formal credit or equitable royalties, the brand would have faced zero legal repercussions under Indian law.

This highlights a critical failure in the current IP regime. The socioeconomic survival and intellectual property rights of India's indigenous craft clusters should not be contingent upon the moral compass or voluntary charity of European luxury houses. Relying on an ethics-based, voluntary system leaves the vast majority of artisan communities exposed to brands that prioritize profit margins over cultural respect. This case study practically demonstrates that mutually beneficial "Benefit-Sharing Agreements" are commercially viable at the highest levels of global fashion; however, to ensure uniform protection, these agreements must transition from being acts of voluntary corporate social responsibility to mandatory legal requirements under a *sui generis* framework.

The Prada incident exposes how completely lawful exploitation can thrive within India's existing intellectual-property framework. It demonstrates that in the absence of statutory recognition for communal creativity, even globally visible appropriation escapes liability. Yet, the Prada episode represents only one end of the spectrum the extreme where law permits unethical behaviour.

At the opposite end lies a contrasting narrative: global couture houses that voluntarily choose ethical collaboration despite lacking any legal obligation to do so. The following section examines such a case Christian Dior's Pre-Fall 2023 collection in Mumbai to explore how moral choice and brand responsibility can temporarily fill the legal void. By comparing appropriation with appreciation, this segment underscores that genuine protection of India's Traditional Cultural Expressions must evolve from optional goodwill to codified legal duty.

IV. INTERNATIONAL PERSPECTIVE & COMPARATIVE JURISPRUDENCE

4.1. Global Movement toward Protection of Traditional Cultural Expressions

Across jurisdictions, the paradox of cultural appropriation has generated sustained international debate. While India continues to rely on fragmentary IP provisions, other nations and multilateral fora have

experimented with models specifically tailored to safeguard Traditional Cultural Expressions (TCEs). The cumulative trend emphasizes that such protection cannot be left to voluntary corporate ethics; it must be grounded in binding law.

4.2. The WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Since 2000, the World Intellectual Property Organization (WIPO) has led formal negotiations to establish international standards for safeguarding TCEs. The IGC's draft articles most recently consolidated in 2022 outline core principles that any national legislation should include:

- Recognition of collective and intergenerational ownership, reflecting communal rather than individual rights.
- Prior informed consent before commercial use of TCEs.
- Equitable benefit-sharing arrangements.
- Perpetual protection: rights do not expire over time.
- Defensive protection mechanisms, enabling states to prevent improper IP filings relating to traditional art or designs.

These guiding principles mark a conceptual shift from Western IP orthodoxy to cultural equity. Countries such as Panama and Kenya have already implemented domestic statutes inspired by the IGC's draft provisions. India's participation in these discussions underscores its capacity, but also its hesitation to embed these norms in domestic law.

4.3. Panama's Sui Generis Law on the Rights of Indigenous Peoples (Law No. 20 of 2000)

Panama was the first jurisdiction to enact a *sui generis* statute granting indigenous communities collective intellectual rights over their traditional art, clothing, and designs most famously the Mola textiles of the Guna people.

Key features include:

1. Collective moral and economic rights vested in recognized communities.
2. Community registration system administered through the National Directorate of Crafts.
3. Perpetual duration rights endure as long as the community exists.

4. Authorization requirement: commercial use by third parties demands prior consent and payment of a royalty or benefit fee.

The law thus transforms cultural respect into a legal mandate. Unauthorized reproduction of Mola motifs is treated as an act of unfair competition and subject to seizure or damages. This represents precisely the kind of enforceable protection Indian craft clusters currently lack.

4.4. United States – Indian Arts and Crafts Act (1990, amended 2010)

While not a full IP statute, the U.S. Indian Arts and Crafts Act (IACA) operate as a *truth-in-advertising* law. It prohibits the marketing of products as “Indian-made” unless produced by members of federally recognized tribes or certified Indian artisans.

Key lessons for India:

- Consumer protection orientation: focuses on *misrepresentation* rather than copyright, but still deters cultural impersonation.
- Institutional enforcement: violations are monitored by a federal Board with investigative powers a model notably absent in India’s GI framework.
- Penal sanctions: civil fines and criminal penalties attach to false representation, adding deterrence rather than relying on goodwill.

While IACA stops short of granting positive ownership rights, it affirms that regulatory enforcement mechanisms can effectively protect both cultural integrity and economic value.

4.5. African and Pacific Models

Several African and Pacific jurisdictions, guided by WIPO’s templates, have enacted hybrid systems combining copyright and customary law:

- Kenya’s Protection of Traditional Knowledge and Cultural Expressions Act (2016): establishes a Traditional Knowledge and Cultural Expressions database and mandates community consent for commercial use.
- Fiji’s Traditional Knowledge and Expressions of Culture Act (2010): provides perpetual protection, government-administered benefit-sharing, and recognition of customary custodianship.

These models confirm that protecting communal creativity through formal statute is neither impractical nor unprecedented.

4.6. Comparative Insights for India

Jurisdiction	Core Mechanism	Relevance to India
Panama (2000)	Collective rights + royalty regime	Demonstrates viability of perpetual, community-based protection for crafts.
U.S. (1990)	Truth-in-advertising law	Suggests a low-cost, enforcement-oriented approach complementing IP rights.
Kenya (2016)	State-maintained registry + consent requirement	Parallels India's TKDL model; can extend to fashion and craft domains.

Collectively, these jurisdictions show that *sui generis* and hybrid frameworks are not theoretical aspirations but functional realities. They replace moral expectation with legal enforceability a transformation India urgently needs as its cultural industries globalize.

The global jurisprudence on Traditional Cultural Expressions demonstrates that cultural equity is achievable through legislative innovation, not corporate benevolence. With tested models now available, India’s challenge is not conceptual but political and administrative: to craft a framework that aligns its diverse artisan heritage with a coherent regime of collective rights. Chapter 5 therefore proposes concrete reforms, statutory amendments and a dedicated *Protection of Traditional Cultural Expressions Rights Bill*: to operationalize these insights within the Indian legal system.

V. BRIDGING THE LEGAL GAP

5.1. Introduction: The Need for a Dual-Track Reform Strategy

The preceding chapters have established that India’s existing intellectual property regime operates on an industrial blueprint that systematically excludes Traditional Cultural Expressions (TCEs). Because statutes like the Copyright Act, 1957, and the Designs Act, 2000, demand individual authorship, absolute novelty, and time-bound monopolies, generational crafts are legally abandoned to the public domain. To

bridge this gap, India cannot rely solely on the ethical goodwill of luxury houses. As observed in international frameworks, the transition from cultural appropriation to equitable appreciation requires binding legislation. This chapter proposes a dual-track legal reform strategy: introducing immediate corrective amendments to the existing IP framework, and subsequently enacting a comprehensive *sui generis* (standalone) legislation tailored to the unique economic and social realities of indigenous fashion.

5.2. Tier One: Amending the Existing Statutory Arsenal

Before a standalone law can be drafted and passed, immediate relief must be provided to artisanal clusters by plugging the loopholes within existing statutes.

5.2.1. Carving an Exception in the Copyright Act, 1957

The most devastating blow to traditional textiles is Section 15(2) of the Copyright Act, which states that copyright in a design ceases once it has been reproduced more than fifty times by an industrial process. As interpreted by the Delhi High Court in *Microfibers Inc. v. Girdhar & Co.* (2009), this clause forces creators to register mass-produced applied art under the Designs Act. However, for rural artisans whose livelihood depends on creating hundreds of handwoven sarees or block-printed fabrics, this 50-reproduction limit acts as an automatic forfeiture of their intellectual property.

To remedy this, the legislature must insert a specific proviso to Section 15(2). The amendment should explicitly state that the fifty-reproduction limit shall not apply to "artistic works produced manually by registered artisanal cooperatives or recognized traditional craft clusters." By legally distinguishing between factory-based industrial replication and community-based manual craftsmanship, the law would allow indigenous artisans to retain their copyright irrespective of the scale of their livelihood-sustaining production.

5.2.2. Relaxing the Novelty Threshold in the Designs Act, 2000

If artisans are barred from copyright, the Designs Act currently offers no sanctuary owing to Section 4, which strictly prohibits the registration of designs that are not "new or original" or have been previously published. Since TCEs like Banarasi motifs or

Kolhapuri braids are ancestral and publicly visible, they inherently fail this test.

To bridge this, an amendment must introduce a sub-category of "Traditional Community Designs" under Section 2(d) of the Act. For this specific classification, the traditional requirement of absolute novelty should be waived provided the applicant is a recognized custodian community representing the craft. Protecting "prior publication" within the community would allow artisan guilds to defensively register their ancestral motifs, granting them the legal standing to file infringement suits against fast-fashion brands that attempt to copy and commercialize these exact patterns.

5.3. Tier Two: Enacting a Sui Generis Framework (The Protection of TCEs Bill)

While amendments act as a temporary tourniquet, they do not resolve the fundamental mismatch between Western IP philosophies and Indian traditional realities. India requires a standalone "Protection of Traditional Cultural Expressions Rights Bill," drafted in alignment with the World Intellectual Property Organization (WIPO) Intergovernmental Committee's guidelines.

5.3.1. Recognizing Communal Ownership and Perpetual Duration

Modern IP rights vest in a singular legal "author" and expire after a set period (e.g., 60 years for copyright, 15 years for designs) to enrich the public domain. A *sui generis* law must completely invert this paradigm. The proposed legislation must legally recognize "Communal Ownership," wherein the rights over a textile, weave, or print vest jointly in the recognized indigenous community or a state-appointed craft trust acting on their behalf. Furthermore, because cultural heritage does not have an "expiration date," these rights must be granted in perpetuity.

5.3.2. Prior Informed Consent (PIC) and Benefit-Sharing Mechanisms

The foundation of the proposed bill must rest on the principles of Access and Benefit-Sharing (ABS). A highly successful precedent for this already exists in Indian jurisprudence under the Biological Diversity Act, 2002. Under Section 21 of the Biodiversity Act, any commercial entity seeking to use India's biological resources must secure approval from the

National Biodiversity Authority and enter into a benefit-sharing agreement with local communities.

A similarly structured National Crafts and TCE Authority should be established. Under this framework, if an international luxury brand or domestic fashion house wishes to utilize an indigenous craft technique or motif in their commercial collection, they would be legally mandated to obtain Prior Informed Consent (PIC) from the community. Furthermore, the brand would have to sign a "Benefit-Sharing Agreement," stipulating that an equitable percentage of the royalties or a fixed upfront fee is channelled back to the artisan cluster. This transforms the voluntary charity seen in the Dior case study into an enforceable legal duty.

5.4. Defensive Protection: Instituting a Traditional Cultural Expressions Digital Library (TCEL)

Legal rights are meaningless without the evidentiary tools to defend them. One of the most common forms of cultural appropriation occurs when a foreign fashion house slightly alters an Indian craft and successfully patents or registers it as a "novel" design in a foreign jurisdiction (such as the US or EU).

To mount a defensive strategy, India must create a Traditional Cultural Expressions Digital Library (TCEL). This initiative would perfectly mirror the Traditional Knowledge Digital Library (TKDL) created by the Council of Scientific and Industrial Research (CSIR) to successfully prevent foreign bio-piracy of Neem and Turmeric. The TCEL would exhaustively document indigenous weaves, embroidery patterns, and block-print motifs, translating them into multiple international languages. By giving global patent and design examiners access to this database, the TCEL would establish undeniable "prior art." If a fast-fashion retailer attempts to register a derivative of a pure Kalamkari print as their own novel creation, international examiners would instantly reject the application based on the TCEL's digital evidence.

The legal void surrounding India's fashion heritage is not an insurmountable administrative hurdle; it is a legislative oversight that can be corrected. By simultaneously amending the rigid novelty and reproduction clauses of current IP laws, and enacting a robust *sui generis* framework centered on communal consent and benefit-sharing, India can protect its vulnerable artisan clusters. Implementing these

measures would legally mandate the respect that Traditional Cultural Expressions inherently deserve.

VI. CONCLUSION AND POLICY RECOMMENDATIONS

6.1. Conclusion

The Consequences of Legislative Inertia This research has critically examined the intersection of India's rapidly expanding fashion industry and the profound vulnerability of its Traditional Cultural Expressions (TCEs). The central hypothesis is that the existing intellectual property framework in India is structurally misaligned with the nature of indigenous crafts, has been conclusively demonstrated through statutory analysis and contemporary case studies.

The Indian intellectual property regime, rooted in the Copyright Act, 1957, the Designs Act, 2000, and the Geographical Indications of Goods Act, 1999, was architected to protect individualistic, novel, and time-bound industrial innovations. As established in Chapter 2, these statutes function as a legal barricade against artisan communities. Section 15(2) of the Copyright Act systematically strips rural craft clusters of protection the moment their handcrafted production achieves commercial viability. Simultaneously, the strict "novelty" threshold of Section 4 of the Designs Act classifies centuries-old textiles and motifs as existing in the public domain, rendering them ineligible for defensive registration. Furthermore, the GI Act, while effective in protecting regional nomenclature, completely fails to protect the underlying design or weave from being replicated and sold under different names by foreign luxury houses and fast-fashion conglomerates.

Consequently, as analysed in Chapter 3 through the contrasting actions of Prada and Christian Dior, the Indian legal system has outsourced the defence of its cultural heritage to the precarious realms of corporate goodwill and social media "call-out culture." When multinational entities misappropriate indigenous patterns such as Kolhapuri leather braiding or traditional block prints they operate entirely within the bounds of Indian law. This legislative inertia effectively sanctions the economic dispossession of artisan communities, allowing global brands to monetize India's cultural capital without the obligation of Prior Informed Consent (PIC) or equitable benefit-sharing.

6.2. Policy Recommendations

To correct this structural imbalance and transition India from a state of cultural vulnerability to juridical accountability, the following policy interventions and legal reforms are urgently recommended:

6.2.1.Immediate Statutory Amendments

The legislature must swiftly enact amendments to mitigate the exclusionary effects of current IP laws.

- Amendment to the Copyright Act, 1957: A specific proviso must be inserted into Section 15(2) explicitly exempting "artistic works applied to articles by registered artisanal collectives or indigenous craft clusters" from the fifty-reproduction limitation. This would recognize manual, livelihood-sustaining craftsmanship as distinct from industrial mass production.
- Amendment to the Designs Act, 2000: Section 4 must be amended to create a sub-classification for "Traditional Designs." This would allow recognized custodian communities to register ancestral motifs defensively, waiving the absolute novelty requirement to protect these designs from third-party duplication.

6.2.2.Enactment of a Sui Generis

TCE Law Amending existing statutes provides only temporary relief; India's long-term strategy must centre on enacting a standalone *Protection of Traditional Cultural Expressions Rights Bill*. Modelled on successful international precedents such as Panama's Law No. 20 of 2000 and the directives of the WIPO Intergovernmental Committee, this legislation must:

- Vest perpetual, communal intellectual property rights in recognized indigenous and artisan communities.
- Mandate Prior Informed Consent (PIC) for the commercial use of any registered TCE.
- Establish a mandatory Access and Benefit-Sharing (ABS) mechanism: analogous to Section 21 of the Biological Diversity Act, 2002: ensuring that fashion houses channel an equitable percentage of royalties back to the originating craft clusters.

6.2.3.Establishment of a Traditional Cultural Expressions Digital Library (TCEL)

The Ministry of Textiles, in collaboration with the Department for Promotion of Industry and Internal

Trade (DPIIT), must construct a public, digitized repository of traditional textile designs, weaves, and embroidery techniques. Functioning identically to the Traditional Knowledge Digital Library (TKDL) used to combat bio-piracy, the TCEL would serve as irrefutable "prior art." By granting international patent and design examiners access to this database, India can proactively prevent foreign fashion brands from falsely registering derivative indigenous crafts as their own novel designs.

6.2.4.Strengthening GI Enforcement and Certification Marks

The enforcement burden under the Geographical Indications Act must be shifted away from impoverished artisan societies. The GI Registry should be empowered with *suo motu* authority to initiate infringement proceedings against brands utilizing protected geographical names. Additionally, certification marks backed by digital traceability (such as the Handloom Mark) must be fiercely promoted and legally defended to guarantee authenticity and ethical sourcing in the global market.

6.3. Final Remarks

In an era where the global fashion industry is increasingly scrutinized for sustainability and ethical sourcing, the legal protection of Traditional Cultural Expressions is no longer merely a matter of cultural preservation; it is a critical economic imperative. The artistry of India's weavers, embroiderers, and craftsmen is not a public resource waiting to be mined by fast fashion, but a sovereign intellectual asset. By implementing a *sui generis* framework that guarantees consent, credit, and compensation, India can fundamentally reshape the global fashion supply chain ensuring that the communities who have safeguarded the nation's heritage for centuries finally reap the economic rewards of their labour.

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