

## Chapter II

### Literature Review

In the USA, for a decade, scholars believed that low IP protection in the fashion industry would foster creativity in the fashion industry. However, with the advent of technology, piracy in the fashion industry has become a rampant issue. The Intellectual Property Laws in India aim to protect fashion designs but cannot protect them adequately. Loopholes and overlaps in the law create problems for fashion designers in protecting their fashion designs. This study of the literature intends to critically assess recent studies, scholarly works, and relevant publications that investigate the connection between fashion designs and IPR laws. This review will provide insight into the principal concerns concerning the protection of fashion designs. In addition, this review will highlight gaps in the existing literature and suggest lines of inquiry for further study, thus expanding our knowledge of the dynamics and complexity of the relationship between fashion designs and IPR regulations. The literature review is divided into five segments. The literature on copyright protection to fashion designs in the U.S. and UK is analysed, followed by design law and the extent of protection granted to fashion designs in the EU and UK, followed by trademark protection to fashion designs in combating counterfeiting in Kenya, followed by misappropriation of GIs by the fashion designs and protection of GIs and indigenous community and lastly, the literature on the extent of protection granted to the fashion designs under the IP laws of India.

#### 2.1 Copyright Law and Fashion Design Protection

1. Kal Raustiala & Christopher Sprigman, *The Piracy and Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687 (2006).

Low IP protection should be accorded to fashion designs so that there could be more growth in fashion designs. Low IP protection allows other designers to copy and improvise the original designs, enhancing creativity in the fashion industry. The author further states that the piracy paradox is a boon to the fashion industry, and fashion designers should be allowed to copy others' designs. Furthermore, the author justifies that copying should be allowed because it changes often. It is established that the fashion industry is volatile and that fashion changes every day. The author further opines that the proprietor of a fashion designer would not face losses even if their designs are copied because of first mover advantage. It examines the subject of copyright protection for fashion designs and how it connects to the broader framework of intellectual property law. The authors contend that copying can be advantageous for fashion designers and propose that Congress amend the valuable items rule to include fashion design under the copyright umbrella without interfering with the coherence of copyright rules. The essay examines the issue of fashion designs not having copyright protection and makes the case that this has not discouraged investment or innovation in the sector. It also implies that, paradoxically, piracy can help fashion designers. The whole contention of the authors can be summed up as creativity in the fashion industry is inversely proportional to intellectual property laws.

With the advent of technology and the metaverse, fashion design copying and counterfeiting a fashion design are easy. Overall, the Piracy Paradox highlights the complex and nuanced relationship between innovation and intellectual property in the fashion industry. While there are no simple solutions, it is evident that in order to preserve the long-term profitability and vitality of the sector, a balance must be struck between restoring intellectual property and encouraging innovation. However, the core tenet of copyright is that everything worth copying should be safeguarded. Million-dollar fashion designs should receive the necessary protection.

The article talks about the need for copyright protection for original designs in the fashion business. It examines the distinction between copying and current

fashions as well as how unchecked copying can undermine innovation. The article assesses criticisms of the claim that limited copyright protection prevents plagiarism, fosters creativity, and is desirable. The authors suggest specific protection for unique designs and take into account how copying might be affected by new laws in the United States. The paper explores the normative topic of whether to promote fashion innovations while also reasoning with the trends and economics of fashion.

The IPR framework in India has several unique complications not covered in the essay. India, for example, has taken a more nuanced approach to intellectual property, emphasising the protection of traditional knowledge and cultural expressions through solutions like geographical indications. The essay also doesn't go far enough into India's unique cultural and socioeconomic aspects, such as the prevalence of handmade craftsmanship and the complex connection between fashion and cultural heritage. When examining the legislation, culture, and economics of fashion in the Indian context, it is vital to take into account these variables because they significantly influence the Indian fashion sector.

2. Christopher Buccafusco & Jeanne C. Fromer, *Fashion's Function in Intellectual Property Law*, 93 NOTRE DAME L. REV. 51 (2017).

The useful articles theory and the distinction between artistic and utilitarian design elements are the main topics of the article's discussion of how copyright law is applied to the field of fashion design. The authors contend that the Supreme Court's application of the theory in *Star Athletica v. Varsity Brands* must be corrected and erred in clearly distinguishing between the two categories of features. They also highlight the difficulties in assessing utility in fashion design and suggest that in order to assess infringement, both experts and consumers should be consulted. Overall, the article thoroughly examines how copyright law and fashion design interact. The author grieves upon the dual nature of the fashion design that makes it difficult to protect under the Intellectual Property Law regime.

In India, the doctrine of separability has yet to develop, unlike in the USA. Indian Courts are yet to devise tests to separate the utility function from its artistic element. Though Indian Courts have dealt with the issue in *Micro Fibres v. Giridhar* and *Rajesh Masrani v. Tahiliani Designs*, the courts have failed to develop a test to determine conceptual separability. A fashion design usually consists of both artistic elements and functional elements. It is difficult to conceive them without the other. The research considers the dual situation where separating the functional and artistic elements is impossible and suggests a rational solution.

3. Susan Scafidi, *Towards a Jurisprudence of Fashion*, 29 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 429 (2019).

The article covers how fashion law became an eminent academic field and how it stands out in the economy as a means of expression for both wearers and creators. In addition to intellectual property, corporate finance, employment law, supply chain regulation, sustainability, taxes and tariffs, advertising, consumer protection, dress codes, and civil rights, the article discusses a variety of legal issues that arise throughout the life of a garment, from the designer's dream to the consumer's closet and beyond. An expanding area of law called fashion jurisprudence covers all legal issues that emerge over the lifespan of a garment, from the designer's vision to the customer's closet and beyond. It covers civil rights, business finance, supply chain regulation, employment law, taxes and tariffs, advertising, consumer protection, dress codes, and intellectual property.

The article is pertinent to the Indian fashion business since it argues for a unique legal framework that acknowledges the sector's unique qualities. The article helps to shape discussions and advocate for legal reforms that can further strengthen and protect the Indian fashion ecosystem by addressing the need for innovation protection, highlighting intellectual property considerations, and acknowledging fashion's social and cultural significance. However, it is significant to note that the

article's emphasis on a global perspective might not fully cover all the nuances unique to the Indian fashion business. The legal systems and issues unique to India include the requirement for solid enforcement mechanisms, streamlined registration procedures, and elevated awareness of intellectual property rights among designers and craftspeople. Although the essay offers a theoretical framework, it should be supplemented by knowledge of the Indian legal system and the distinctive socio-cultural fabric of the nation.

4. Anna Noel Huttner, *Overdressed & Underprotected: The Not-So Glamorous Side of the United States Fashion Industry without Explicit Copyright Protection*, 70 CLEV. St. L. REV. 357 (2022).

The article discusses the consequences for the fashion industry, independent designers, and the environment of the lack of clear copyright protection for fashion designs in the United States. It examines previous legal precedents and abandoned political initiatives intended to change the eligibility for copyright protection for the American fashion industry. The paper makes the case that a clear-cut regulation must be established to regulate accessibility to copyright defence for designers. Limited copyright protection has effects on the American fashion business that reaches beyond the designers themselves. Fast fashion benefits from the lack of adequate copyright protection in the fashion sector by luring buyers who prioritise quantity above quality.

It is significant to highlight that original artistic works, including fashion designs, are protected by copyright in India. It has been challenging to differentiate between the artistic and functional elements and their impact on enforcing copyright laws expressly for fashion designs. Because of this, even though India has copyright protection in theory, it is not very beneficial to the fashion industry because a fashion design is a culmination of both artistic and functional elements. It is critical to recognise that the Indian legal structure provides some amount of protection against counterfeiting and infringement through trademark laws, design registrations, and unfair competition statutes. However, there is room for

improvement in terms of how well enforcement and preventative measures are working to stop infringement and counterfeiting.

5. Margaret E. Wade, *The Sartorial Dilemma of Knockoffs: Protecting Moral Rights without Disturbing the Fashion Dynamic*, 96 MINN. L. REV. 336 (2011).

The dispute over whether copyright laws should be applied to protect fashion designs is covered in the article. It discusses reasons in favour of and against broadening the Copyright Act to cover fashion design. It also suggests a method that strikes a balance between rights and the advantages of copying. The phenomenon of fashion piracy, the state of intellectual property safeguards for fashion designers, and the proposed legislation presently before Congress are also covered in the article. A certification or collective mark that communicates authenticity to the buyer is the suggested answer to the issue raised in the article, allowing designers to distinguish their unique works without imposing new regulations on a booming fashion industry.

A trademark alone is insufficient to safeguard the fashion industry. Fashion designs need additional intellectual property protection due to their complexity and creativity, which includes copyright, designs, patents, and other specialised legal frameworks explicitly developed for the fashion sector. Intellectual property rights must be seen from a broad and multifaceted perspective to safeguard the fashion industry's artistic expressions and business interests. While trademarks are crucial for brand recognition and protection, they are only sometimes effective at preserving the originality and beauty of fashion designs.

6. Kal Raustiala & Christopher Jon Sprigman, *Faster Fashion: The Piracy Paradox and Its Perils*, 39 CARDOZO Arts & ENT. L.J. 535 (2021).

The authors contend that copyright laws are not necessary for the development of the fashion industry and that the freedom to copy fosters creativity in the sector. They also examine the negative repercussions of fast fashion on society, the

environment, and the labour force. The paper continues by arguing that additional study is required in this area and that the connection between innovation and intellectual property is more nuanced than previously believed. Fast fashion can significantly lower the cost of status competitiveness through clothing. Fast fashion may reduce the cost for less wealthy people to compete for status through clothing choices. Hence it may not be a good idea to introduce legal restrictions that make fashion imitation riskier and more expensive.

The level of IP protection for fashion designs in India is relatively low. Faster fashion and rapid replication may be encouraged by the absence of explicit copyright protection for fashion designs. To maintain a sustainable and vibrant fashion ecosystem in India, finding a balance between fostering innovation and defending designers' rights is crucial. The IPR landscape becomes even more complex when upcoming technologies like the metaverse and NFTs are taken into account. For the Indian fashion industry to promote innovation, safeguard designers' rights, and traverse the shifting technology landscape, balancing access and protection while modifying the legal framework to consider digital assets and changing business practices would be essential.

7. Kal Raustiala & Christopher Sprigman, *The Piracy Paradox Revisited*, 61 Stan. L. REV. 1201 (2009).

The article explores the connection between fashion design and intellectual property law, making the case that the fashion business thrives in a relatively relaxed IP legislation setting. The authors examine the interactions between fashion and intellectual property (IP) and the resulting policy issues. They come to the conclusion that the creation of derivative designs contributes to the cycle of fashion and that the low-IP legal system, which allows for the mass production of fashion designs, is beneficial to design change. The writers contend that the fashion industry shouldn't be subject to standard copyright laws.

The rise of technology-driven platforms, such as social media platforms and e-commerce websites, has aided in the democratisation of fashion and encouraged an innovative mindset among Indian designers. As a result, even though Raustiala and Sprigmann's analysis offers important insights into the larger global fashion landscape, their conclusions need to be reexamined in light of the developing Indian fashion industry, where technology has had a profound impact on how piracy, innovation, and the fashion industry's business are related.

8. Brandon Scruggs, *Should Fashion Design Be Copyrightable?*, 6 NW. J. TECH. & INTELL. PROP. 122 (2007).

The article explores whether current US law should grant copyright protection to fashion designs. It examines what constitutes a "useful article" and whether or not aesthetic and functional characteristics may coexist. The essay also looks at current legal precedents and alternatives to copyright protection for fashion designs. The author makes the case that the copyright law should be changed to include fashion design since it would benefit the sector and enable designers to recuperate their investments. The essay concludes by suggesting that Congress might amend copyright legislation to include fashion design and that, given the state of technology and the influence of fashion design on the economy and the daily lives of many Americans, there are better courses of action than doing something.

Finding the ideal blend between incentives and access is vital in the Indian scenario. The necessity for designers to be inspired by current trends and the dynamic character of the industry must be taken into account while ensuring proper protection for fashion creations. The expansion and advancement of the Indian fashion industry can be aided by a well-balanced strategy that fosters innovation and permits the free exchange of ideas. Fashion designs highlight the importance of carefully weighing the industry's rapid growth, the balance between incentives and access, and the functional and non-functional components of clothing. Investigating different types of protection, including unregistered

designs or a sui generis system, might offer more specialised answers for safeguarding fashion designs in India. While maintaining adequate rights for designers, addressing these concerns within the legal framework can aid in the expansion and innovation of the Indian fashion sector.

## **2.2 Design Law and Fashion Design Protection**

9. Maria Mercedes Frabboni, *Fashion Designs and Brands: The Role of the Informed User and the Average Consumer*, 23 J. WORLD INTELL. PROP. 815 (2020).

The paper looks into whether litigation involving fashion design and brands affects how legal standards are defined and used for the informed user and the average customer within the legal framework of the European Union. When making assessments that combine abstract legal standards with data gathered from the experiences that real users and consumers have with fashion designs and brands, it assesses important criteria that establish who these hypothetical persons are and how those criteria are applied. The article explores the difficulties in implementing the idea of the informed user in the fashion sector, particularly when determining the individual character of fashion designs and how the relevant consumer perceives fashion brands under trade mark law.

In order to effectively apply the ideas from the article "Fashion Designs and Brands: The Role of the informed user and the average consumer" to the context of Indian design laws and fashion designs, it is crucial to establish precise definitions of the informed user and average consumer that are unique to the Indian fashion industry, harmonise standards, address challenges with digital platforms and e-commerce, and take into account the various cultural factors influencing consumer perceptions in India. The protection and promotion of fashion designs and brands in the nation can be made more effective by improving specific areas of the Indian IPR framework.

10. Richard Hing & Leighton Cassidy, *Karen Millen Fashions Ltd v. Dunnes Stores, Dunnes Stores (Limerick) Ltd: Clarifying the Assessment of Individual Character in EU Designs*, 105 TRADEMARK REP. 1446 (2015).

The Court of Justice of the European Union's ruling in *Karen Millen Fashions Ltd v. Dunnes Stores*, which defines the evaluation of individual character in EU designs, is discussed in the article. The context of the case, the High Court's allegations, and the issues brought to the CJEU for a preliminary judgement are all explained in the article. The CJEU's decision makes it clear that the evaluation of an individual character must be based on a comparison with one or more specific, unique, and identifiable designs out of all the previously publicly available designs. The decision also makes clear that to prove the validity of the design in question; the right holder merely needs to list the characteristics that give it an individual character.

The assessment of individual character in European Union (EU) designs is the subject of the article "Clarifying the Assessment of Individual Character in EU Designs." Although the study focuses on EU designs particularly, we can nevertheless employ it to make conclusions and offer remarks regarding Indian IPR standards and fashion designs. Clarifying the Assessment of Individual Character in EU Designs" to the context of Indian IPR laws and fashion designs, it is crucial to emphasise clear assessment standards, take into account prior art, provide supporting data and expert opinions, and strive for consistency and harmonisation. The evaluation of a person's character can be improved by considering these factors inside the Indian IPR framework, resulting in better protection for fashion designs in India.

11. Sara Ashby and Catriona Smith, *Unregistered design law: the good, the bad, and the ugly*, 13(4) JIPLP (2018).

This article addresses quite a few of unregistered design rights, including the Community Unregistered Design Right (CUDR) and the UK's National

Unregistered Form of Design Protection (UKUDR). It looks at the definition of a design that includes an article's shape as a "part" and the effects of eliminating the "commissioner" certification requirements from UKUDR. The article also questions the idea that CUDR cannot exist if a design is first made publicly accessible outside of the EU. It asks for a shift in policy at the EU and UK levels and talks about how protectionism affects the world economy.

Unregistered design protection is crucial in India, where the fashion sector is thriving owing to the country's rich cultural heritage and traditional craftsmanship. The benefits of unregistered design rights are emphasised in the essay, namely the immediate and automatic protection they provide for fashion designs. This fits with the fast-moving, dynamic nature of the fashion industry and enables designers to achieve a certain degree of exclusivity without completing the official registration process. The article also discusses the limitations and drawbacks of unregistered design protection, including how challenging it can be to establish ownership and enforce rights. These issues are especially pertinent to the Indian fashion industry because it is prone to design theft and imitation. The article's analysis encourages additional research and demands a thorough analysis of the advantages and disadvantages of unregistered design protection in relation to the Indian fashion sector.

12. Estelle Derclaye, *CUDR and CRDR post-Brexit from a UK and EU perspective—Will all unregistered design rights become history?*, 13(4) *JILP* (2018).

This article focuses on how Brexit would affect unitary design rights and how copyright and design rights interact. It examines prospective modifications to design laws as well as the requirement for registration in order to get design protection in the UK. Brexit will have an influence on CUDR (Community Unregistered Design Right) because after the UK quits the EU, UK protection will no longer be derived from EU right ownership. Consequently, CUDR is unlikely to be applicable in the UK. The document explores the different repercussions of

Brexit on the protection of designs. It makes reference to the potential for streamlining and revising the UK's system for design rights and copyright/design interface. Also brought up are the consequences of pending design applications and the problem of right exhaustion. The document does not, however, offer a conclusive response to the precise modifications to design protection following Brexit.

The article's observations are applicable to the Indian fashion business even though it largely focuses on the UK and EU. With its rich cultural background and talented craftspeople, India's lively fashion scene frequently takes inspiration from international trends. The post-Brexit changes to the EU and UK's framework for design rights could have an impact on Indian fashion designers and companies that sell their products in the European market. The uncertainty around the maintenance of current rights and the requirement for designers to review their IP strategies are the two potential difficulties resulting from the changes in unregistered design protection that are highlighted in the article. Understanding the shifting nature of design rights in significant fashion markets like the UK and EU becomes essential as Indian fashion designers seek worldwide acclaim and market access. Further research is required to analyse if India has to adopt the EU or UK unregistered design protection to protect fashion designs adequately.

### **2.3 Trademark Law and Fashion Design Protection**

13. Amy Frerichs, *Attitudes Toward Counterfeit Fashion Products: A South Dakota State University Case Study*, 6 (4), *The Journal of Undergraduate Research SDSU*, pp 19 - 35 (2008)

The \$600 billion annual market of counterfeit fashion goods and commerce, which is on the rise every year, is discussed in the article. In order to comprehend the issue, the author conducted a case study on the attitudes and beliefs of South Dakota State University clothing merchandising students. The essay also covers the distinction between knockoff and counterfeit goods, the impact of counterfeits

on society, and the moral conundrum of buying counterfeit clothing. The author discusses the repercussions that counterfeiting can have on taxes, the economy as a whole, consumers, and fashion houses. Upon interpretation of data, the author concludes that people are aware of the lesser quality of counterfeit products but tend to buy them as offered at a lesser price.

The author only discusses why consumers buy counterfeit products but does not delve into the legal aspects of counterfeit fashion products. This research paper analyses the provisions of the Trademark Act, 1999 and the Customs Act 1962 that aim to curb counterfeiting in India. Irrespective of the laws in place, the country is witnessing a hike in the counterfeiting of fashion products. The paper discusses the reasons for the hike in counterfeiting and remedies to overcome the counterfeiting problem. This research focuses on changes that must be brought under the Trademarks Act 1999 to curb counterfeit fashion designs.

14. Ruth Burstall & Birgit Clark, *Blockchain, IP and the Fashion Industry*, 266 MANAGING INTELL. PROP. 9 (2017).

Blockchain technology can deliver a transparent and irreversible record of transactions, enabling the authentication and traceability of clothing. By utilising blockchain, customers, retailers, and regulators in India, where fake fashion products constitute a significant problem, may confirm the legitimacy of a product. Stakeholders may track each fashion item's origin, distribution, and ownership history by adding unique identifiers or smart tags and documenting their path on the blockchain, making it simpler to spot and stop the circulation of counterfeits.

There are a few difficulties to take into account, notwithstanding blockchain technology's ability to combat fakes in the Indian fashion business. To successfully adopt blockchain solutions, parties such as fashion firms, governmental organisations, and technology suppliers must work together. Second, given the huge volume of transactions and numerous participants in the

Indian fashion business, the scalability and cost-efficiency of blockchain systems need to be addressed. India can make enormous progress in preventing the sale of counterfeit goods, promoting consumer trust, and safeguarding the rights of fashion creators by deploying blockchain-based systems and platforms.

15. Sheetal Jain, Mohammed Naved Khan, Sita Mishra, *Understanding consumer behaviour regarding luxury fashion goods in India based on the theory of planned behaviour*, 11 (1) J. Asia Bus. Stud. 4 (2017).

The study was originally published in 2017 and appeared in the Journal of Asia Business Studies. The idea of planned behaviour is used in the study to analyse how Indian customers behave towards luxury products, which focuses on high-end apparel. The article explains the study's methodology, findings, and implications, as well as its review of the literature. The study discovered that although purchasing intentions are positively correlated with attitudes, subjective norms, and buying patterns, actual purchase behaviour is not always the result of those intentions.

Despite offering insights into consumer behaviour, the article can be criticised for its small sample size, lack of contextual considerations, disregard of technological influences, overemphasis on rational decision-making, lack of a longitudinal perspective, and few useful, practical recommendations for luxury fashion brands. The validity and applicability of the study in analysing and forecasting consumer behaviour in the Indian luxury fashion sector would be strengthened by addressing these shortcomings. A complete understanding of customer behaviour in the Indian premium apparel sector would result from including technological factors.

16. Kevin V. Tu, *Counterfeit Fashion: The Interplay between Copyright and Trademark Law in Original Fashion Designs and Designer Knockoffs*, 18 TEX. INTELL. PROP. L.J. 419 (2010).

The article analyses the inadequacies of copyright and trademark rules in preventing counterfeiting and piracy of fashion designs. Fashion designs can receive some protection under trademark and trade dress law, but only in certain circumstances. The whole look and feel of a product can be protected by trade dress law, whereas registered marks used by the designer can be protected by trademark law. Trade dress protection, however, falls short of being comprehensive and only partially covers the design configuration. Due to the burden of showing secondary meaning, only a tiny minority of designers will successfully seek restitution under trademark law. It makes the case that the original and creative components of fashion designs should be covered by copyright eligibility standards, making copyright law's regulatory framework the main means of design protection rather than trademark law. The article also covers the legislative initiatives related to safeguarding fashion designs from theft and copying.

The article's concentration on American law may not be entirely compatible with Indian intellectual property rights (IPR) rules and regulations. This is one of the article's limitations. In contrast to the U.S. approach, the Indian legal system has its own copyright and trademark protection provisions. Therefore, it may not be accurate or pertinent to directly apply the article's results to the environment of Indian fashion counterfeits. The difficulties experienced by small-scale Indian fashion designers and artisans are also not likely to be taken into consideration in the article's examination of the relationship between copyright and trademark legislation. For these people, the high expenses and complicated legal procedures associated with safeguarding intellectual property rights may provide substantial obstacles, restricting their capacity to resist counterfeiting successfully. The specifics of Indian IPR laws, the cultural setting, technological influences, and difficulties experienced by small-scale designers should all be considered. These restrictions can be addressed in order to gain a more complete picture of the Indian fashion counterfeits situation.

17. Laura Meraviglia, *Technology and counterfeiting: friends or foes?*, 61 (3) Bus. Horiz.467 - 475 (2018).

The article explores the connection between technology and counterfeiting and how emerging technologies can both aid and impede efforts to combat it. The fashion industry is particularly hit, with shoes, apparel, and accessories being the most commonly found counterfeit goods. There is no one-size-fits-all approach to preventing counterfeiting, so while new technology can be helpful weapons in the fight, businesses must carefully weigh the advantages and disadvantages of doing so. Since consumers frequently need access to the most cutting-edge technology tools and might not be aware of the illegal aspect of counterfeiting, their contribution is equally crucial. The significance of public-private collaboration and the necessity for institutions to play a more active role in the fight against counterfeiting are also discussed in the essay.

It is crucial to remember that there are more viable options than using technology alone to stop fashion copycats in India is not a viable option. Extensive legislative frameworks, successful enforcement methods, consumer education programmes, and industry partnerships must support it. In order to ensure widespread adoption and success, technology-based solutions should also be available, inexpensive, and user-friendly for both brands and customers. Technology can improve identification, verification, and enforcement efforts when used to stop Indian fashion counterfeits. To effectively handle the particular difficulties of the Indian fashion counterfeit business, it must be used in conjunction with other laws and regulations.

18. Diya Deep Singh, Mitali Arora, *Understanding Factors Affecting Consumer Behavior Towards Fashion Counterfeits: Reflection from Markets in Delhi (India)*, CNES O.P Jindal University.

The study in the article investigates the variables influencing Delhi, India, consumers' attitudes towards fashion knockoffs. The study surveyed consumers in

the 15- to 35-year-old age range from various genders using an integrated approach of ethnographic market research and descriptive research techniques. The study discovered that customers tended to purchase things in line with fashion trends and that the fleeting nature of fashion trends was the primary determinant variable driving consumer behaviour. The study also discovered many socioeconomic, psychological, and economic aspects that significantly impact Delhi consumers' propensity to buy counterfeit goods.

While the article "Understanding Factors Affecting Consumer Behaviour Towards Fashion Counterfeits: Reflection from Markets in Delhi (India)" provides insights into consumer behaviour in a specific market, it can be criticised for its limited generalizability, neglect of online counterfeiting, the limited scope of factors, lack of legislative implications, and insufficient focus on consumer awareness and education. Extending the scope, including online platforms and online shopping, and taking into account a more extensive range of criteria would improve the study's relevance and usefulness in countering fashion counterfeits in India.

## **2.4 Geographical Indications and Protection of Indigenous Fashion**

19. Prof. Dr Charulata Londhe, *A Study of Profile of Textile Industry for Geographical Indications in India*, LPP. 5078 (2021).

The importance of Geographical Indications (GI) registration in India's textile sector is discussed in this article. It gives a literature analysis of several studies on GI protection in India and the industry's problems. The report also provides a comparative analysis of GI registration in India's textile industry, emphasising the advantages of GI registration for producers, consumers, and the economy. The article also examines the legal structure of GI protection in India and the importance of GI as a signalling device for producers to differentiate their products in the market from rival items. Finally, the essay gives a case study of a

trademark fight against Germany's 'Khadi Naturprodukte' and the importance of effectively capturing prospective Indian IPRs.

It needs a fashion-specific focus, ignoring the unique characteristics and obstacles of preserving fashion-related GIs. The article also lacks an in-depth analysis of the legislative and regulatory framework around GIs for fashion products and a discussion of the worldwide perspective of fashion-related GIs. Furthermore, comprehensive regulations or initiatives for increasing the protection of fashion-related GIs in India still need to be improved. Overall, the article's efficacy in giving a complete overview of and remedies for protecting fashion-related GIs in India must be improved.

20. J. Janewa Osei-Tutu, *Protecting Culturally Identifiable Fashion: What Role for GIs?*, 14 FIU L. REV. 571 (2021).

Fashion products can be perceived as intangible cultural heritage (ICH) with quality, reputation, or attributes identifiable to their geographic origin. GIs can be protected if there is a link to the geographic origin, although it can be quality, reputation, or a trait that is primarily attributable to the geographic origin. The problem emerges when the link to the fashion item is solely reputational, with no quality connection to the land. The application of a reputation-based GI for fashion can be complex. In addition, the author explores the potential challenges and limitations of utilising GIs to safeguard fashion designs, particularly in cases of cultural appropriation.

Indian fashion products can be distinguished from imitations and counterfeits by acquiring GI protection, assuring consumers receive genuine, high-quality goods. GIs can also help local communities economic growth by developing a market niche and increasing the value of traditional fashion products. However, the paper recognises the difficulties in implementing GIs for fashion-related products in India. To fully realise the potential of GIs in the Indian fashion sector, it highlights

the necessity for a robust legal framework, efficient enforcement mechanisms, and widespread awareness among stakeholders.

21. Soumya Vinayan, *Intellectual Property Rights and the Handloom Sector: Challenges in Implementation of Geographical Indications Act*, 17 JIPR 55 - 63 (2012).

The paper encompasses the challenges of implementing GIs in India's handloom business. GIs are intellectual property rights that protect products originating in a particular geographic place. For the operationalisation of GIs, the paper emphasises the necessity of creating trust among stakeholders, strengthening connections, and facilitating market access. The paper also examines the legal framework for establishing GIs and its difficulties in enforcing them. According to the author, adopting GIs can encourage rural development, wealth creation, and the preservation of traditional knowledge.

It needs a thorough examination of the handloom sector's unique obstacles when utilising GIs. The article also ignores stakeholder perspectives, such as handloom weavers' and craftsmen's experiences. Furthermore, it fails to adequately investigate the legislative and institutional variables driving GI implementation adequately, needs an international perspective, and provides few practical proposals for overcoming the challenges. These constraints make it difficult for the article to thoroughly understand the difficulties and potential solutions for protecting handloom GIs in India.

22. Gargi Chakrabarti, *Geographical Indications: Ambiguity In Legal Provisions In India*' 2 Delhi J. Contemp. Law 17 - 23 (2020).

The article examines geographical indications as a community right and the legal requirements governing them in India. It draws attention to the uncertainty in the terms employed in the Geographical Indications of Goods (Registration and Protection) Act of 1999 and offers a solution. The article also proposes including

the producer associations in the registration procedure to optimise using geographical indicators to reap the most economic benefit. It also suggests capacity training for producers to familiarise them with the legal formalities and procedures for applying for and registering geographical indications. The necessity of quality control, packaging, and the usage of necessary marks for registered geographical indications is also emphasised in the article.

It can be difficult to stop the unauthorised use and infringement of GIs because the current enforcement measures are frequently insufficient. The challenge of battling counterfeiting and defending the reputation of fashion-related GIs results from inadequate resources and a lack of collaboration among enforcement agencies. These flaws demonstrate the need for more precise regulations, stringent enforcement, and better support systems to protect and advance fashion-related GIs like Mysore Silk in India.

23. Sara Cavagnero and Simona Giordano, *Sui Generis Geographical Indications Fostering Localized Sustainable Fashion: A Cross-Industry Assessment*" *Sustainability* 14(9) MDPI. 5251 (2022).

The possible implementation of geographical indicators (GIs) to safeguard and support sustainable fashion production is explored in this article. The authors use in-depth interviews with Apulia winemakers whose GIs are protected by law to examine the main motivators and obstacles that prevent GIs from being fully utilised in the creation of sustainable clothing. Despite their "non-terroir" nature, the article gives evidence for how the origin link could be interpreted to include garments and footwear items under the protection of the EU sui generis GI system. In order to increase the usage of GIs in the fashion industry, the authors provide policy proposals in their conclusion.

A comprehensive review of the potential benefits of GIs in promoting sustainable fashion practices is offered by Sara Cavagnero and Simona Giordano. While their research offers insightful information, it's crucial to assess it in light of the Indian

fashion industry and the country's intellectual property rights (IPR) legislation. India has a diverse traditional textile industry and a rich cultural legacy, both of which might considerably benefit from the application of GIs. The Indian fashion industry can preserve regional craftsmanship, guarantee fair compensation for workers, and promote sustainable production methods by identifying and protecting region-specific textiles through GIs, such as Banarasi silk or Kanchipuram sarees. The authors' study, however, ignores the difficulties faced by India's current IPR structure with special reference to the Indian Fashion industry.

## **2.5 Fashion Design Protection and Indian IPR Laws**

24. Vishaka Agarwal, *IPR Registration in the Fashion Industry of India*, 24 JIPR. 35-40 (2019).

The author of this article criticises the design registration process on the ground that the fashion cycle changes every three months, and the registration process takes approximately a year. The article discusses how infrequently the Indian fashion sector registers industrial designs, copyrights, patents, and trademarks. The author performed a survey to find out the causes of this and discovered that although many designers and businesses are aware of IPR registration, they are hesitant to do so because of the complex filing process, the expense, and their ignorance of the advantages of registration. The advantages of IPR registration, the need for streamlined filing procedures, and the significance of educating fashion designers about IPR are also covered in the study. In order to achieve economic progress, the author contends that the Indian government must take steps to increase IPR registration in the fashion design sector.

The author has not considered the overlaps between the Copyright Act 1957 and the Designs Act 2000 under section 15(2) of the Copyright Act 1957. The article also is silent concerning the protection of unregistered designs. Lastly, the article needs more details regarding the laws and regulations governing IPR registration in India. It would be beneficial to impart thorough awareness of the present

situation by learning about the relevant legislation, rules, and cases relating to IPR in the fashion business. However, the present research paper aims to critically analyse the overlaps in the IPR laws by highlighting all the relevant laws and cases.

25. Raveena. R. Nair & Dr Anju Mohan, *A Critical Study on Fashion Design and its Protection under Copyright Act, 1957 and Designs Act, 2000*, 15 (4) BJLP (2022).

The subject of intellectual property protection for fashion designs in India is covered in the article. It looks at the current legal system and makes the case that it is not adequate to safeguard the Indian fashion industry from piracy. The paper makes the case for adding an exclusive definition of "fashion design" to the Designs Act 2000, as well as for streamlining the registration process. The article also gives instances of court cases involving copyright infringement in the fashion sector and explores the relationship between the Designs Act 2000, and the Copyright Act 1957.

The article could have gone into detail about the particular problems with fashion design protection in the Indian context, such as the unclear distinction between functional and artistic aspects of the work, the difficulties presented by fast fashion and knockoffs, and the potential effects of cultural appropriation on fashion design protection. Comparative study, which looks at how other countries approach related challenges and draws conclusions or ideas that might be applied to the Indian context, will also enrich the already existing literature. In order to provide a more thorough understanding of the intellectual property rights protection of fashion design in India, additional studies should concentrate on filling in these gaps.

26. Adithya Reddy and Gowtham Shivshankar, *Legal Protection for Fashion Designs*, 6 INJLP. 85 (2010).

The article explains how fashion designs are protected by law in several nations, including the US, the EU, and India. It discusses the background of copyright safeguards for fashion designs as well as current laws, rules, and court case developments. The article also examines the connections between the Copyright Act 1957 and Designs Act 2000. The convoluted design law that protects fashion designs has been in need of clarification. The research examines two recent Delhi High Court judgements that have significant implications in this situation. The legal framework surrounding the topic in several other countries, primarily the US and the EU, is also covered in the article. The article's conclusion makes an attempt to simplify the judgements into a logical framework for the legal protection of fashion designs in India.

The article could have gone into detail about the practical difficulties and restrictions that Indian fashion designers have while seeking to secure and sustain legal protection for their creations. In addition, it would be beneficial to examine how Indian culture and tradition may affect what qualifies for protection and to what extent. The authors have missed how geographical indications and traditional knowledge could be used to safeguard Indian fashion designs and promote the preservation of cultural heritage. By filling in these gaps, this research will be able to offer a more thorough understanding of the legal protections offered for Indian fashion designs as well as the unique issues and factors related to Indian IPR laws.

27. Ardhendu Sekhar Nanda School of Law & Shikha Behera, *IP Rights and Fashion Technology - Comparative Analysis in Fields and Continents*, 2 (2) IJLMH (2019).

The significance of IPR protection in India's fashion sector is discussed in the article. It makes the case that India's current IPR laws are insufficient to safeguard the fashion industry against fraud and piracy. The article makes an argument for introducing the definition of "fashion design" in the Designs Act 2000 and for implementing a standardised, simplified procedure for design registration. The

article also argues that the Designs Act of 2000 ought to incorporate a provision of unregistered designs. The article's conclusion is that granting fashion designs IPR protection would boost the sector's innovation and expansion.

A comparison of Indian IPR legislation with worldwide practises, and case studies could provide insights into potential adjustments or modifications required in the Indian context. The essay failed to look at the role and impact of traditional knowledge and cultural legacy on preserving and promoting Indian fashion designs. This could involve looking at the best ways to preserve and present the unique characteristics of Indian fashion designs using geographical indications and traditional workmanship. A more thorough understanding of the protection of intellectual property rights in the Indian fashion sector can be attained by filling up these gaps through this research.

## 2.6 Observations

The available literature on Indian IPR and fashion law indicates the expanding importance and knowledge of intellectual property protection in the Indian fashion sector. Even though there has been plenty of progress, gaps and difficulties still need to be addressed. A few examples include the requirement for specialised types of IP protection, quicker registration procedures, and improved enforcement mechanisms. In order to solve IPR challenges in the Indian fashion ecosystem, the literature desires a comprehensive approach that takes Indian cultural, ethical, and economic considerations into account. The findings of this literature review will contribute to the Indian IPR and fashion law by illuminating the present level of knowledge in this field and highlighting potential directions for further study. This research mainly focuses on identifying and analysing the shortcomings of the Copyright Act 1957, the Designs Act 2000, the Trademarks Act 1999 and the Geographical Indication of Goods Act 1999. It is to be noted that the research does not focus on the Patents Act 1970 as it protects fashion designs to the best possible extent. Patents are granted only if they are novel and non-obvious.

Fashion designs rarely fulfil these conditions. If a fashion designer is able to satisfy the requirements of patent law, the Patents Act 1970 adequately protects their fashion designs. Another reason not to delve into patent law is that India does not grant design patents. Recommending a new mechanism like design patents or a sui generis legislation is not the objective of the research. It studies the existing IP regime, the extent of protection granted to fashion designs, and the scope for improvement in the laws to protect fashion designs adequately.