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FASHION LAW AS A LEGAL NICHE: INTELLECTUAL PROPERTY, ETHICS & EMERGING CHALLENGES IN THE INDIAN FASHION INDUSTRY

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ABSTRACT

Fashion law is a rapidly emerging niche within the broader spectrum of intellectual property and commercial law, positioned at the creative intersection of art, commerce, and legal regulation. As the Indian fashion industry expands toward an estimated market value of USD 115 billion by 2026, the legal frameworks governing design protection, trademark, copyright, counterfeit goods, sustainable fashion compliance, and contractual relationships between designers and brands have assumed critical importance. This paper examines fashion law as a distinct and viable legal specialisation, with particular focus on the Indian legislative and judicial landscape. It analyses key statutes — including the Designs Act 2000, Trade Marks Act 1999, Copyright Act 1957, and the Geographical Indications of Goods Act 1999 — and their application to fashion disputes. The paper further explores the ethical obligations of a fashion lawyer, the challenges of fast fashion, digital counterfeiting, and the protection of traditional Indian textile heritage. It concludes by arguing that fashion law deserves recognition as a formal niche practice area in India, supported by dedicated legal education, specialised bar expertise, and stronger legislative protection.

Keywords: *Fashion Law, Intellectual Property, Designs Act 2000, Trade Mark, Copyright, GI Tags, Counterfeit Fashion, Fast Fashion, Legal Ethics, Indian Fashion Industry*

I. INTRODUCTION

Fashion is no longer merely a cultural phenomenon — it is a multi-billion-dollar global industry that intersects with law at every level of its supply chain, creative process, and marketplace. A fashion lawyer operates at the confluence of intellectual property law, contract law, employment law, international trade, and ethical regulation. Despite this complexity, fashion law remains one of the least institutionally recognised specialisations in the Indian legal system.

India holds a unique position in the global fashion ecosystem. It is simultaneously one of the world's largest producers of textiles, a reservoir of centuries-old craft traditions — from Banarasi silk to Chanderi weaves — and an increasingly prominent consumer market with a booming domestic luxury and fast-fashion segment. This position makes the need for a robust fashion law framework not only commercially necessary but culturally urgent.

This paper argues that fashion law is not merely a sub-specialty of intellectual property law. It is an interdisciplinary niche that demands expertise across multiple legal domains, ethical sensibility toward issues of cultural appropriation and labour exploitation, and an understanding of the business models that drive the fashion industry. The fashion lawyer of the 21st century must be as conversant with NFT licensing as with the traditional law of passing off.

The paper proceeds as follows: Part II surveys the Indian legislative framework applicable to fashion. Part III examines landmark cases. Part IV maps the key practice areas of a fashion lawyer. Part V addresses ethical dilemmas specific to fashion law practice. Part VI considers emerging issues. Part VII offers conclusions and recommendations.

II. THE INDIAN LEGISLATIVE FRAMEWORK FOR FASHION LAW

~\$165B Indian Textile & Apparel Market <i>Projected by 2026</i>	~₹1,00,000 Cr Counterfeit Fashion Losses <i>Annual estimate, India</i>	50+ GI-Tagged Textiles <i>Registered in India</i>
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2.1 The Designs Act, 2000

The Designs Act, 2000 is the primary statute protecting the visual or aesthetic aspects of a product. A 'design' under Section 2(d) refers to features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article by any industrial process. Fashion products — garments, handbags, footwear, jewellery — are squarely within this definition, provided the design is novel and not purely functional.

Registration under the Designs Act grants the proprietor an exclusive right for an initial period of ten years, extendable by five more years. However, the Act's protection is limited: it does not extend to artistic works protected by copyright, and it requires formal registration — an unregistered design has no statutory remedy, only the equitable remedy of passing off.

2.2 The Trade Marks Act, 1999

Trademark protection is the most commercially deployed tool in fashion law. Luxury brands like Louis Vuitton, Hermès, and Gucci — and their Indian counterparts like Sabyasachi, Manish Malhotra, and FabIndia — rely on trademark registration to protect brand identity, logos, monograms, and even signature colour combinations (known as 'colour marks').

Section 2(1)(zb) of the Trade Marks Act defines a trademark broadly to include any mark capable of distinguishing goods of one person from another. Section 29 provides protection against infringement, and Section 135 allows civil remedies including injunctions, damages, and delivery-up of infringing goods. The Act also addresses well-known marks (Section 11), which are particularly relevant to luxury fashion brands operating in India.

2.3 The Copyright Act, 1957

Copyright law intersects with fashion in nuanced ways. Purely functional aspects of clothing are not protected, but original artistic expression — the specific pattern on a fabric, the sketch of a design, the artwork printed on a garment — qualifies as a literary or artistic work under Section 2 of the Copyright Act, 1957. The copyright vests automatically upon creation and does not require registration.

The challenge in fashion copyright is the doctrine of merger — when an idea and its expression are inseparable (e.g., a simple geometric pattern), copyright protection is thin or non-existent. Courts must distinguish between protectable expression and non-protectable ideas, a distinction that is particularly difficult to draw in the context of textile prints and surface designs.

2.4 Geographical Indications of Goods (Registration and Protection) Act, 1999

India's rich textile heritage — Banarasi sarees, Kanjivaram silk, Kashmiri pashmina, Pochampally ikat, Chanderi fabric, Phulkari embroidery — is protected through the GI Act, 1999. A Geographical Indication (GI) tag certifies that a product possesses qualities, reputation, or characteristics essentially attributable to its geographical origin.

GI protection is of immense importance to Indian fashion law. The Banarasi saree GI tag (registered in 2009) has been the subject of significant enforcement disputes, with Varanasi weavers fighting against machine-made imitations from Surat. The fashion lawyer plays a critical role in both securing GI registrations and enforcing them against infringers — a role that simultaneously serves commercial and cultural preservation interests.

III. LANDMARK CASES IN INDIAN FASHION LAW

Indian courts have had occasion to grapple with fashion law disputes across trademark, copyright, design, and passing off. The following cases illustrate the judicial approach:

☞ **Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.**

Citation: Delhi High Court, 2016 (IA No. 9338/2015 in CS(OS) 2029/2015)

Ruling: The Delhi High Court addressed whether copyright subsists in patterns printed on fabric. The Court held that original artistic patterns applied to garments are protected as artistic works under the Copyright Act, 1957, and that copying of such patterns for commercial production constitutes infringement. This case established a significant precedent for design copyright in Indian fashion.

☞ **Louis Vuitton Malletier v. Atul Jaggi & Anr.**

Citation: Delhi High Court, (2010) 42 PTC 42

Ruling: The Delhi High Court granted a permanent injunction against the defendant who was manufacturing and selling bags bearing counterfeit LV monograms. The Court recognised the well-known status of the LV mark in India and held that even without evidence of actual confusion, the use of a near-identical mark on identical goods constitutes infringement and passing off.

☞ Crocs Inc. USA v. Bata India Ltd. & Ors.

Citation: Delhi High Court, CS(OS) 1273/2011

Ruling: Crocs sought protection of its distinctive footwear design under both the Designs Act, 2000 and trademark law. The Court analysed the overlap between design registration and trade dress protection, holding that a product's overall visual appearance can acquire trademark significance as trade dress, distinct from registered design protection. This case is foundational for fashion product design law.

☞ Fab India Overseas Pvt. Ltd. v. Majumdar & Ors.

Citation: Delhi High Court, 2016

Ruling: FabIndia successfully obtained an injunction against a defendant using a deceptively similar trade name and trade dress. The Court emphasised the importance of protecting the distinctive identity of brands that have built their goodwill on traditional Indian textiles and crafts, linking brand protection with artisan community welfare.

IV. PRACTICE AREAS OF A FASHION LAWYER

A fashion lawyer's practice is multi-dimensional. The following are the primary domains of work:

4.1 Intellectual Property Portfolio Management

The core of fashion law practice involves registering, maintaining, and enforcing a brand's intellectual property portfolio. This includes trademark applications for brand names, logos, slogans, and trade dress; design registrations for new product forms; copyright documentation for fabric prints and creative works; and GI-related advisory for heritage textile brands. Infringement monitoring — including online marketplace surveillance — is a growing sub-practice.

4.2 Licensing and Collaboration Agreements

Fashion brands routinely enter into licensing arrangements — authorising third parties to manufacture or sell products under their brand name in specific territories or product categories. Fashion lawyers draft and negotiate these licensing agreements, ensuring adequate quality control provisions, royalty structures, exclusivity clauses, and termination rights.

Collaboration agreements between designers and brands (such as high-street brand x luxury designer collections) present additional complexity around IP ownership and creative control.

4.3 Anti-Counterfeiting and Enforcement

Counterfeit fashion goods represent a massive economic and reputational threat to brands. Fashion lawyers lead anti-counterfeiting strategies, including conducting raids under the Trade Marks Act and Copyright Act (with police assistance under Section 53A of the TM Act), filing civil suits for injunctions and damages, and engaging with customs authorities to intercept infringing imports. In India, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 provide a customs recordal mechanism.

4.4 Supply Chain, Labour, and Sustainability Compliance

Following global scrutiny of fashion supply chains — particularly after tragedies like the Rana Plaza collapse in 2013 — fashion lawyers increasingly advise on supply chain due diligence, labour law compliance, and environmental sustainability regulation. In India, the Factories Act, 1948, the Minimum Wages Act, 1948, and the Contract Labour (Regulation and Abolition) Act, 1970 are all relevant to garment manufacturing operations. Emerging ESG (Environmental, Social, Governance) obligations also fall within the fashion lawyer's purview.

4.5 E-Commerce, Social Media, and Influencer Contracts

The rise of e-commerce and social media marketing has created new legal needs in the fashion industry. Fashion lawyers draft and review influencer agreements, ensure compliance with the Advertising Standards Council of India (ASCI) guidelines on sponsored content disclosure, advise on platform liability for counterfeit listings, and negotiate revenue-sharing arrangements with online marketplaces like Myntra, Nykaa Fashion, and Amazon Fashion India.

V. ETHICAL DILEMMAS IN FASHION LAW PRACTICE

5.1 Cultural Appropriation vs. Cultural Appreciation

One of the most contested ethical issues in fashion law is cultural appropriation — the adoption of elements of a minority culture by members of a dominant culture, often without permission, understanding, or compensation. When a Western luxury brand 'inspired' by Banarasi brocade patterns releases a collection without crediting or compensating Indian weavers, is this a legal violation, an ethical failure, or both?

Current Indian law does not directly address cultural appropriation — GI tags protect geographical origin but do not regulate how motifs may be used by outsiders. The fashion lawyer advising brands must navigate not only what is legally permissible but what is ethically defensible. This requires sensitivity to indigenous rights, craft community interests, and reputational risk.

5.2 Fast Fashion, Labour Exploitation, and the Ethics of Representation

The fast fashion model — producing large volumes of trend-driven clothing at low prices through compressed supply chains — raises profound ethical questions about labour conditions, environmental damage, and consumer deception. Fashion lawyers who represent fast fashion conglomerates must grapple with the tension between zealous client representation and the broader social harm their client's business model may perpetuate.

The BCI Rules (Rule 36) prohibit an advocate from engaging in conduct unbecoming of a legal professional. While this does not bar representation of ethically controversial industries, it does impose an obligation of honesty in dealings and a broader duty not to facilitate illegal conduct — including supply chain labour violations.

5.3 Conflicts of Interest in Multi-Client Fashion Representation

A fashion law boutique may represent multiple competing designers or brands. Conflicts of interest can arise when confidential business information — upcoming collections, pricing strategies, supplier relationships — obtained from one client is relevant to the interests of another. Fashion lawyers must maintain strict information barriers and comply with BCI Rule 33, which prohibits representation where conflict of interest exists.

5.4 Duty of Candour in IP Litigation

Fashion IP litigation often involves the temptation to overstate the originality of a design or the distinctiveness of a mark in order to secure registration or an injunction. A fashion lawyer who knowingly overstates the novelty of a design or withholds prior art references from the Registrar of Designs or the court violates the duty of candour and risks professional misconduct proceedings. The Indian Patents Office and the Trade Marks Registry rely significantly on applicant disclosures, making honest representation especially critical.

VI. EMERGING ISSUES IN FASHION LAW

6.1 Digital Fashion, NFTs, and the Metaverse

The emergence of digital fashion — virtual garments designed for use in online gaming environments, social media avatars, and metaverse platforms — raises entirely new legal questions. Can a digital garment be a 'design' under the Designs Act, 2000? Who owns the IP in an NFT (Non-Fungible Token) linked to a fashion item? What happens when a luxury brand's trademark is used in a metaverse environment without authorisation?

Indian law does not currently address these questions. The Information Technology Act, 2000 and its amendments do not contemplate NFT transactions or metaverse commerce. Fashion lawyers operating at this frontier must draw on analogical reasoning from existing IP law, international practice, and emerging regulatory guidance from bodies like the World Intellectual Property Organization (WIPO).

6.2 AI-Generated Fashion Designs and Authorship

Generative artificial intelligence tools can now produce original-seeming fashion designs at scale. This raises the question of authorship: if an AI generates a textile pattern, who holds the copyright — the developer of the AI, the user who prompted it, or no one? Under the Copyright Act, 1957, only human authors can hold copyright in India (unlike the UK, where computer-generated works are protected for 50 years under Section 9(3) of the CDPA, 1988).

Fashion lawyers must advise clients on the copyright risks of using AI-generated designs — including the risk that designs generated from a training dataset containing copyrighted works may themselves infringe on those works. This is an area of live litigation globally and requires careful monitoring.

6.3 Sustainable Fashion and Green Claim Regulation

Consumer demand for sustainable fashion has driven brands to make environmental claims — 'eco-friendly', 'sustainable', 'carbon-neutral' — that are often unsubstantiated. This practice, known as 'greenwashing', is increasingly subject to regulatory scrutiny. In India, the Consumer Protection Act, 2019 and the guidelines of the Central Consumer Protection Authority (CCPA) prohibit misleading advertisements, which may encompass unsubstantiated green claims. The Bureau of Indian Standards (BIS) is also developing sustainability certification frameworks for textiles.

6.4 Protecting India's Intangible Cultural Heritage in Fashion

India's handloom and handicraft sector employs over 43 lakh weavers and artisans. The fashion lawyer has a critical role in protecting this heritage — not only through GI registrations but through advocacy for stronger sui generis protection of traditional knowledge and traditional cultural expressions (TK/TCE), which are currently under discussion in the WIPO Intergovernmental Committee (IGC). The Fashion Law Foundation in India has been a leading voice in connecting legal advocacy with artisan community empowerment.

VII. RECOMMENDATIONS

The following recommendations are proposed to strengthen the fashion law ecosystem in India:

- ▶ **Establish Fashion Law as a Formal Legal Specialisation:** The Bar Council of India should formally recognise fashion law as a distinct specialisation, enabling law firms and advocates to build and represent dedicated expertise. Law schools should introduce elective courses in fashion law, IP for creative industries, and sustainable business regulation.
- ▶ **Legislative Reform of the Designs Act, 2000:** The Designs Act should be amended to extend protection to unregistered designs for a limited period (as in the EU, where unregistered Community designs are protected for three years), reducing the burden on small designers and independent creators who may lack resources for formal registration.
- ▶ **Dedicated GI Enforcement Mechanism:** A specialised GI Enforcement Cell under the Department for Promotion of Industry and Internal Trade (DPIIT) should be established to conduct market surveillance, assist weavers in filing complaints, and coordinate with customs authorities to intercept GI-infringing imports.
- ▶ **Regulatory Framework for AI-Generated Designs:** The Copyright Act, 1957 should be amended to address the authorship, ownership, and liability issues raised by AI-generated creative works, including fashion designs. Clear guidance is needed before AI becomes the dominant design tool in the industry.
- ▶ **Mandatory Sustainability Disclosure for Fashion Brands:** Large fashion brands operating in India should be subject to mandatory disclosure of supply chain labour conditions and environmental impact, analogous to the UK Modern Slavery Act 2015 and the proposed EU Corporate Sustainability Due Diligence Directive.

- ▶ Anti-Greenwashing Enforcement by CCPA: The Central Consumer Protection Authority should issue sector-specific guidelines for the fashion industry on permissible environmental claims, establishing clear standards for what constitutes a substantiated sustainability claim and imposing meaningful penalties for violations.

VIII. CONCLUSION

Fashion law is not a vanity specialty. It is a serious, technically demanding, and socially consequential area of legal practice that touches the lives of millions of artisans, consumers, designers, and workers across India. The fashion industry's intersection with intellectual property, labour law, environmental regulation, digital commerce, and cultural heritage makes it one of the most intellectually rich niches available to the modern lawyer.

India stands at a crossroads. Its textile heritage is among the most diverse and storied in the world. Its emerging fashion market is one of the fastest-growing globally. Yet its legal framework for protecting creative expression in fashion remains fragmented, underenforced, and largely unfamiliar to the practising bar. Closing this gap is not merely a matter of commercial interest — it is a question of cultural justice.

The fashion lawyer in India must be more than a technician. She must be an advocate for the Banarasi weaver whose livelihood depends on GI enforcement, a guardian of the independent designer whose sketches are copied by fast-fashion imitators, an adviser to the luxury brand navigating the metaverse, and a counsellor to the sustainability-conscious label seeking to make honest green claims. These roles demand expertise, ethics, and empathy in equal measure.

It is time for Indian legal education, the Bar Council of India, and the legislature to recognise fashion law as the serious, sophisticated, and socially vital niche it has already become in practice.

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