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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

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Glamour under the lens of Law: **Intellectualizing Fashion Law**

Author By- Nandini Rao Budhagavi

Abstract

Diana Vreeland said, “The only real elegance is in the mind; if you have got that, the rest really comes from it.” The creative minds behind the hot couture are the artists whose ideas have to be protected and recognized. The fashion industry, according to Anuradha Mahindra is known for working ahead of time, forecasting trends from its avant-garde realm, and technological innovation is a key factor in its continuous reinvention. But in the process, certain nuances are not being recognized which can be detrimental to all the stake holders in the fashion industry. These externalities which are not capable to be narrowed down to certain legislations makes certain sections of the society deprived of their rightful share. This article brings to the forefront many facets of fashion law and its interplay with society. Intellectualizing fashion industry and addressing labor problems, this article touches upon certain areas which are not often given precedence due to lack of transparency that exists in the fashion industry. Current legislations are not diverse or dynamic enough to encompass all the negative externalities that exists; therefore, this article is just an attempt to bring forth fashion law into mainstream legal scholarship and aid in its process of Becoming.

Keywords: Fashion Industry, Stakeholders, Intellectual Property Rights, Labor Laws.

Introduction

“Fashion is more than just a set of dresses. Fashion is in the air, on the sea, and on the street; fashion is about thoughts, how we work, and what is going on.” said the famous fashionista Coco Chanel. It is one medium of expression that liberates oneself and can be molded to define our identity. Its nuanced elements pave the way for an infinite spectrum of creativity, cultural identity and self-expression. Fashion is fluid in nature, allowing you to find yourself in the process. Your adoration of fashion represents your beliefs, channelizes your freedom of expression, secures your privacy and the sanctity of human body. Fashion and society have a long-standing history of portraying the reflection of societal sentiments and behavior. Their interaction is beyond representational value and is perennial to adapt modern day needs. The

journey from Victorian-era corsets, representing patriarchal dominance to the clothing on the lines of rainbow flag symbolizing LGBTQ community, fashion runs parallel to the globalization process. Fashion cuts across language barriers and provides a global platform for expressing and belonging.

The Fashion Law institute at Fordham University New York, defines fashion law as “the legal substance of style, including all the issues that may arise throughout the life of a garment, starting with the designer’s original idea and continuing all the way to the consumer’s closet”. This emerging field of law not only brings into its purview the legal developments and technicalities but also the ethical and social factors that govern a particular region or is culturally identified by it.

Fashion industry concerns itself with stakeholders far-ranging from Celebrity models to the daily wage laborers. This broad spectrum of categories has made fashion law into a global character which has the capacity to determine a country’s economy and contribute to its GDP growth. Paris is known as the fashion hub globally, and the income generated from the Paris Fashion Week contributes majorly to the government’s economy. But this industry needs more clarification, analyzation and recognition in terms of its legal aspects. This industry has transcended from being a mere convenient everyday routine phenomenon to a form of self-expression. But ironically, the legal framework governing this industry is not all encompassing. It is lacking in its true sense and making local artisans vulnerable against the giant industry conglomerates.

“Dress for the job you want”, this adage reflects the true essence of what fashion law is. This field of law fashions itself according to the need or the issue at hand. Be it contracts, labor legislations, privacy matters, property law, arbitration, intellectual property and many more aspects. And with the advent of digital topography, fast-fashion is acclimatizing itself with smart contracts, e-commerce, nanotechnology, metaverse, artificial intelligence to keep up with 21st century intelligentsia.

The basic genesis of fashion is the creative mind behind exclusive designs, indigenous to one’s own perception of self-expression. These are then channeled into beautiful apparels and accessories that make it to the runway. This creativity has to be protected to rightfully represent

one's originality and rightful ownership over the idea. Textile industry is the second largest generator of employment in the country. Big brands in fashion industry employ hundreds of employees for the factory work where the apparels are prepared from scratch. And the complexities involved in preparing the apparel, the time constraint involved, bulk work, unruly working conditions, exercise of disguised employment, unfair wage rates due to excess of employees employed, makes it imperative to through light in this exploitation, non-transparent working conditions.

Legal Issues concerning Fashion Industry

There are many lacunae when it comes to the technicalities and legalities of fashion industry which paves way for unfair practices leading to negative consequences for many. Nowadays imitation jewelry is in trend against traditional gold ones. Similarly, when we go to Manish Market in Bombay, Chandni Chowk in Delhi, Lucknowi Bazaar, Lamington Road, Fort Area, Mumbai, we can see apparels, similar to the dresses designed by big designers in the industry, at thrown away prices. Such counterfeit products result in patent infringement, trade design infringement. In the growing era of consumerism, such counterfeit products, which are low in quality as compared to the original ones, will lead to loss of consumers' trust. Certain articles are prone to design piracy where there is unauthorized use of the design against the consent of the registered proprietor of the design.

Informal wage is also a pertinent issue in this industry. "Dharavi" in Mumbai is a slum area, where most of the popular bag companies' manufacturing takes place. They are paid below authorized minimum wage. In this pandemic, the misery of the workers was upfront, the reality hit them hard and the true nature of their living conditions were brought into the forefront. This also led to several associated problems such as wage theft, wherein employers to reduce the institutional cost, resort to unfair wage payment practices, here since their status quo is comparatively low and too much is at stake, their bargaining power is also reduced. Many garment workers are not permitted to enter into any trade union. The employers fear their interests to be at stake. They are subjected to poor work conditions, prone to many hazards, long working hours. Leather, wool, fur industry has subjected their working terms to animal abuse. There is no check on such practices. There exist sweatshop conditions with unlawful and socially inappropriate working conditions.

With the advent of digitization and establishment of online shops, it has come up with host of negative externalities. Cyber-squatting is one such negative practice prevalent in the online fashion industry. Basically, Cyber-squatting is the unauthorized use of domain names identical or similar to an already established name. It is basically identity theft; whose main purpose is to divert the consumers' search and directing them to these cyber-squatted websites. There is no legal remedy or legal framework that takes into purview the practice of cyber-squatting. *Titan Industries Ltd. v. Prashanth Koorapati & Others*¹, was the first case which was filed in the matter of Cyber-squatting. In this case, the plaintiff had registered the trademark 'Tanishq' in 23 countries in order to manufacture and sell jewelry and clocks. The defendant registered the domain name 'tanishq.com,' and 'Tanishq' protested to this unauthorized use of its trademark as a domain name. 'Tanishq' asserted that customers were extremely likely to assume that the defendant was in some way affiliated with 'Tanishq,' which would result in unfair enrichment for the defendant while causing financial loss for 'Tanishq.' Because of the similarities, the Delhi High Court found in favor of 'Tanishq' and awarded an ex-parte ad-interim injunction prohibiting the defendant from using the tradename 'Tanishq' or any other name that is deceptively similar.

Fashion law under the scrutiny of Intellectual Property Rights

Many abuses in the fashion realm such as prevalence of counterfeit goods in the market, knock-off of many indigenous brands and artisans, the advent of globalization and the tactics of influencers in online platforms, has led to intellectual theft of the artist's creativity. One of the major facets of fashion law is the predominance of Intellectual Property Laws.

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. Section 22 of the Designs Act, 2000², provides for design piracy of articles that are registered and are subject to imitation by certain unauthorized players in the market. This section renders an order of injunction for its violation.

¹ Titan Industries Ltd. v. Prashant Koorapati & Others,

² Designs Act, 2000, Section 3, Act No. 16 of 2000.

In India, the problem of red-tapism is in practice for a very long time, and fashion industry is a fast-moving industry, wherein the shelf-life of a fashion trend is just for a few days. When we contrast this with the procedural complexity in our country then the stakeholders in the fashion industry are in for a huge loss. The registration process is very tedious and time-consuming. Therefore, during that period where the article is lined up for registration, the trend may become obsolete and also it is subjected to certain perils in fashion industry such as cyber-squatting, counterfeiting, etc., in the meantime.

Our country has rich cultural diversity, and a certain fashion to represent it. And this diversity is made up of local artisans representing indigenous fashion. But certain times, these big fashion houses, under the pretext of 'inspiration' for their new couture, steal the local handloom's ideas and style and incorporate in their dresses. They then don't even give due credit to the local artisans. These local, indigenous, craftsman don't have adequate resources and awareness about the IP regulations in our country. Such lacunae have to be identified and a proper legal framework has to be set up to protect such artisans where it is falling short to protect under current legal legislations.

Virtual reality is in fashion nowadays in this industry and in many retail shops, consumers are provided with virtual trial rooms wherein the VR would try on different dresses on the augmented version of yourself. And also, the collaboration of Tommy Hilfiger with Zendaya, incorporated Virtual Reality in their collection showcase, in 2019. But it comes with a host of issues. First of all, detecting illegal and unauthorized usages of a fashion house's trademark or copyright in the house's articles becomes much more difficult; second, conducting a diligent search to determine whether a particular trademark of a similar kind already exists on VR platforms becomes much more difficult³. In essence, the lack of a search engine for VR material raises the risk of infringement and makes prior-art similar searches more difficult. Certain times, in the license agreement, there might be a conflict of interest as to whom should be given the ownership title, to the fashion houses or to the Virtual Reality platforms who have modified the article to acclimatize it to suit their technicalities, thus a derivative title. Such disagreements have to be addressed.

³ Advovate Namrata Pahwa, Namah Bose, NEED FOR FASHION LAW IN INDIA, RGNUL Student Research Review (RSRR): rsrr.in/2021/01/28/need-for-fashion-law-in-india/

Certain Statutes like Consumer Protection Act, 2019⁴, Advertising Standards Council of India's Code for Self-Regulation in Advertising, Central Consumer Protection Authority Guidelines 2020, provide protection against the influencers who tend to showcase the products in a bad light to the consumers. Consumers generally relate to them more because of the nature and style of their body language. But to keep a check on such behavior many statutes have been legislated to maintain the true character of the artist's original idea being depicted by the influencer. There are certain bodies in the fashion industry such as Fashion Foundation of India, which take up Intellectual Property infringement cases and also have set up a legal cell which provides necessary suggestions and directions regarding IP Laws, Contracting, Licensing, etc. There are other industrial organizations such as Fashion Design Council of India, Apparels Export Promotion Council which work towards the same goal.

In *Ritika Private Limited v. Biba Apparels Pvt. Ltd*⁵, the issue at hand was that whether the copyrighted rights over the apparel of the plaintiff would cease to exist if the production of the said dresses exceed 50 in number. Here the apparels were not registered under the Designs Act, 2000. Here the Delhi High Court resorted to strict implementation of Section 15 of the Copyrights Act⁶, which states that if a design is registered under the Designs Act, 2000 the copyright in such design will cease. Copyright will also cease even if the design is not registered but is capable of registration and the design has been reproduced more than 50 times. The difference in the degrees of protection of the item and the number of subsequent uses barring the protected design is undoubtedly prominent in recognizing the presence of copyright in the development of design. As long as the copyright is not used for commercial reasons, the rights enjoyed under Copyright protection are limited. Thus, one must consider whether the degree of copyright protection given under the Designs Act, 200 through the limits imposed by Section 15(2) is fair and justiciable.

In *Apparel Export Promotion Council v. A.K. Chopra*⁷, was one of the first cases to have made it to the surface after the 'Vishaka Judgement'. Here, the Superior officer in the Delhi branch of 'AEPC' was dismissed owing to his sexual harassment towards the female employees at the workplace. Many labor legislations are extended towards the stakeholders in fashion industry. Many Fashion Models, in their initial stage face a lot of abuse both physically and mentally

⁴The Consumer Protection Act, 2019, No.35 of 2019 (India)

⁵ *Ritika Private Limited v. Biba Apparels Pvt. Ltd.* (2016) <https://indiankanoon.org/doc/20292476/>

⁶ Copyrights Act, 1957, Section 15, No.14 of 1957 (India).

⁷ *Apparel Export Promotion Council v. A.K.Chopra*, AIR 1999 SC 625.

such as racial discrimination, pornography, wherein recently ‘Raj Kundra’ was held in the case of pornography and many voices were then opined following that incident, invasive backstage photography, fake casting calls, etc. But there are some statutes that provide relief and social security to these models such as Equal Remuneration Act, 1976⁸, Maternity Benefit Act, 1961⁹, Sexual Harassment at Workplace Act, 2013¹⁰, Indecent Representation of Women (Prohibition) Act, 1986¹¹, Immoral Traffic (Prevention) Act, 1956¹².

Fashion and Society

Fashion played a very pivotal role in the colonization period. The Indian activists protested against the British imperialism adorning Indian clothing, as way of self-expression. They boycotted Foreign apparels and started to wear handwoven khaki dresses. This was encouraged by the stalwarts in the independence struggle. Adorning khaki fashion into their daily routine gave them a feeling of leaving the shackles of oppression and experiencing freedom. Our Honorable Prime Minister and members of the Parliament also adorn Indian wear as a means of expression and identity. For any foreign visit, our apparel stands distinct, characteristic of who we are. Certain religious sentiments are expressed through their fashion and can sometimes pose a conundrum regarding the cultural and social factors associated with it, when it clashes with legal framework set up for it. In 2010, France banned headscarves in public places and European Court of Human Rights upheld the decision to facilitate open-face communication and bind individuals together. but certain times such practices are discriminatory, in the case of *EEOC v. Abercrombie & Fitch Stores, Inc*¹³, the U.S. Supreme Court held that an employer may be liable for discrimination “if religion motivates an adverse employment action, regardless of whether the employer’s perception of the employee’s religion is accurate.” Even in India, recent Hijab Ban row has mirrored certain critical issues concerning the fashion of certain religions, and how critical is its role in the contemporary world.

Fast-fashion is the new law in this industry, which is also detrimental to the posterity, owing to its cost to the environment. And also United Nation’s sustainable development goals envisage sustainable economic growth and development, in order to give back to the society

⁸ Equal Remuneration Act, 1976, Act 25 of 1976 amended by Act 49 of 1987 (India)

⁹ Maternity Benefit Act, No. 53 of 1961 (India)

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), 2013 (India)

¹¹ Indecent Representation of Women (Prohibition) Act, 1986, Act No. 60 of 1986 (India)

¹² Immoral Traffic (Prevention) Act, 1956, Act No.104 of 1956 (India)

¹³ EEOC v. Abercrombie & Fitch Stores, Inc, 575US_(2015)

and also to look after the posterity. Many labels have come up who have started channelizing sustainable ethical fashions, owing to sustainable use of resources, into their mainstream line of apparels. 'Levi's' denim brand has committed itself to design clothing line by 100% sustainably sourced cotton and by recycling old jeans into home insulation. 'H&M', is also inclusive in its fashion sense by advocating body positivity. Their conscious collection which is miles apart from the concept of fast fashion by using materials like organic cotton and recycled polyester.

Conclusion

The legal framework should run along the lines of global fashion trends in order to effectively protect the originality of the idea. Fashion industry is vulnerable because of lack of protection offered to the creators and is subject to harsh critics, yet it is one of the significant contributors of our country's development. Fashion industry is also one of the largest employment generators. With so much at stake, this industry should not be let loose of the regulation's purview to protect the stakeholders. Therefore, to formalize fashion law in India, it should either amend the existing legislations so as to fill the lacunae or roll out separate statute covering all aspects of fashion law. One important aspect in respect of fashion industry is the accountability mechanism in the online platform. Due to technical advancements, in the fashion industry, influencers and infringers' accountability is at risk. Therefore, the need to bring fashion law into the mainstream legal jurisprudence is imperative to capitalize the power of clothes to adorn, liberate, express, and impoverish individuals and societies.

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