

# FASHION LEGISLATION, A NEED OR A LUXURY?





## HISTORY:

The influence of Indian culture and heritage on international fashion has grown as the world communities are getting closer. Since ancient times, people have been fond of clothing. People have been wearing cloth made from materials such as malmal, muslin and pashmina. This leads to the history of the fashion industry. Now by fusing their extensive expertise, creativity, and innovation, Indian fashion designers have contributed to the international fashion arena with their beautiful weaves, embroideries, fabrics, and designs.

Today, fashion is an integral component of daily living. Fashion has always been a method for people to express themselves without saying much. Every facet of our lives, from wanting to wear the newest formals to work to desiring the best lehenga for the wedding day, is influenced by fashion. It's remarkable to watch how the fashion sector has developed and expanded through time, as it accounts for a significant portion of the nation's GDP.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

## Introduction [1]:

Food, clothing, and shelter are three fundamental necessities of mankind. Food has its own set of laws (The Prevention of Food Adulteration Act, 1954, FSSAI etc.), as does the property (Real Estate Regulatory Authority, 2016, Easements Act, 1882 etc.).

But what about clothing? In India, there is no such thing as fashion legislation.

Have you ever wondered whether the clothes you are wearing today could be copyrighted? In India, there is no dedicated statute pertaining to fashion laws. Thus, one needs to take shield under different enactments to get comprehensive security. Therefore, fashion industry becomes culmination of various laws

From the moment an artist thinks of a design in her mind, to when she sketches it out on a piece of paper, then she goes to her Karigar to get it done as a sample then manufacture in a mill, then to supply chain, then to the retailer and finally to the consumer, the laws that are applicable for the piece of fabric are involved in something called "Fashion Laws".

Essentially, from the beginning to the end, the laws involved in creating a particular garment fall under the umbrella of "Fashion Laws" and many laws operate together to protect this piece of fabric from getting it copied.

India's apparel industry is valued at \$59.3 billion by the end of 2022, ranking as the sixth largest in the world[1]behind the United Kingdom, Germany, and other nations.

Fashion law is a new and upcoming branch of law that focuses on copyright and the protection of artistic works and designs.

In today's world, due to social media platforms, one is just a click away to see or view the original work done by big brands. The original work by a designer gets published on these sites and may receive appreciation and validation from celebrities, colleagues, and peers. While good thing about such sharing is publicity, fame, and hype for the brand, it comes with the cost of plagiarism, as these brands are publishing their designs in public domain.



[2]Latest Numbers for India's apparel industry:  
<https://economictimes.indiatimes.com/news/how-to/how-sustainable-fashion-can-be-affordable/articleshow/94532376.cms>



## How Important is Intellectual Property (IP) In Fashion Industry?

You may have heard the term "intellectual property". This phrase implies that it is a type of property, specifically something that is your own creation, brainchild, and is protected by intellectual property rights in India. Essentially, anything that is created from your own intellect, based on your own creativity, labour, and skill can be considered intellectual property.

These creations can be protected, and you have exclusive rights to sell or license them or reproduce them in any form. The fashion designs that we see every day are the intellectual property of the designers who originally created them. The designer's intellectual property is their own creative work, which must be new and may be protected as an artistic work or a design.

IPRs, such as copyright (The Copyright Act, 1957), trademark (The Trademark Act, 1999), and patents (The Patent Act, 1970), serve different purposes:

- Patents protect "inventions."
- Copyright protects "creative work."
- Trademark protects "brand names, labels,"

- Designs protect original and unpublished designs like features of shape, any configuration, pattern, ornament or composition of lines or colours which may be applied to articles and this specifically excludes artistic works.

For example, if one looks at an event like **Lakme Fashion Week**:

1. The logo, along with the colour scheme, is its trademark, which can be protected/registered under the Trademarks Act, 1999.
2. Next comes the fashion designs that they make which may be subject to copyright:
  - 2D Designs i.e., paper-based designs.
  - 3D Designs i.e., costumes designed by fashion designers and worn by models.

However, one must remember that to obtain protection under the Designs Act, 2000 the design must be unique and unpublished. If one chooses to display a design in an event or in public, then the design shall be considered as published and not eligible for protection.

Owner of an IPR can sue the other party if any aspect of their intellectual property rights like designs, trademarks, logos etc. are copied resulting in an infringement.



## What is Copyright?

Copyright is a type of intellectual property that protects original works like literary works, artistic works, musical compositions, choreography, films, architecture, advertisement, maps and technical drawings done by an individual as soon as it is created.

Section 2(c) of the Copyright Act, 1957 reads as under:

(c) "artistic work" means, -

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality.

(ii) a work of architecture; and

(iii) any other work of artistic craftsmanship.

It should be noted that a mere idea in a brain cannot be protected unless it has a creative expression. The registration of copyright is not mandatory. The moment you create any artistic work, the copyright subsists on the work automatically.

But why do people get it registered? It is done so that if any infringement occurs, it is easier for them to have proof that they have created it and somebody else using illegally is an offender. Therefore, registration is advisable for this purpose.

## What is Copyright Infringement?

When any piece of work is protected by the copyright, a permission is required to be obtained from the author to use that particular work and if the work is used without obtaining the permission, such situation is called copyright Infringement.

## What is Design[3] ?

Section 2(d) of the Designs Act 2000 defines a design as only the features of a shape, pattern, configuration, composition, or ornament of lines or colours that are applied to any two-dimensional, three-dimensional, or both article by an industrial process or any means whether mechanical, manual, or chemical, separated or combined, and which in the finished article are judged solely by the eye; but is not taken into account upon the principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957 (14 of 1957).

Registration of a design is mandatory to avail protection under the Designs Act, 2000.

Looking at the definition of artistic works under Copyright act and designs under Designs Act, it is clear that a fashion designer may choose to protect his/her designs as an artistic work or a design. However, this discretion should be exercised diligently and thoughtfully. As per Section 15(2) of the Copyright Act,

*Copyright in any design, which is capable of being registered under the Designs Act, 2000 (16 of 2000), but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person."*

Thus, after the artistic work has been applied 51st time through an industrial process, if the fashion designer has not registered the work under the Designs Act, the designer may be left without a remedy.



#### **RAJESH MASRANI VERSUS TAHILIANI DESIGN PRIVATE LIMITED[4]**

The Plaintiff, Tahiliani Design private limited (operating under the creative leadership of Tarun Tahiliani) has filed a suit against the Defendant, Rajesh Masrani to prohibit Rajeev Masrani from reproducing, printing, publishing or offering for sale any print which are colorable imitations or reproductions of the fabric prints of Tahiliani Designs private limited.

In this case, Tahiliani Designs claimed copyright protection and admittedly they had not registered their designs under The Design Act, 2000. The designs belonged to Couture line and therefore were exclusive and not more than 20 copies were made of the designs. The Single Judge granted the injunction,

and the Respondent Rajesh Masrani filed an appeal before the Delhi High Court contending that the textile designs do not constitute artistic work and thus were required to be registered under the Designs Act, 2000.

The Appellate Court ruled in favor of Tahiliani Designs private limited and recognized the copyright of Tahiliani Designs in the pattern of the fabric as a distinct right. The Copyright of a person inherently comes into existence with the Intellectual property created by an individual without any registration. Hence, the copyright aspect was concluded as infringed and a case of piracy. The work was held to be an original artistic work. Since the work is an 'artistic work' which is not covered under Section 2(d) of the Designs Act, 2000, it is not capable of being registered under the Designs Act and the provisions of Section 15(2) is not applicable as only 20 copies were produced. Thus, the appeal was dismissed.

[4] Delhi High Court: FAO (OS) No.393/2008



## **RITU KUMAR PRIVATE LIMITED VS.BIBA APPARELS PRIVATE LIMITED[5]**

Ritika Pvt. Limited (identifiable with the brand Ritu Kumar), the Plaintiff, had created certain designs and sketches which were then applied through an industrial process to certain dresses. The plaintiff alleged that the designs are distinctive, exclusive and identifiable with the brand Ritu Kumar and had earned goodwill and reputation. Ritu Kumar sued BIBA which is also a famous boutique apparel designer brand in India for reproducing and selling those designs while claiming that her designs and sketches were covered under artistic works under the Copyright Act and that these designs and sketches were copied by the Defendant.

BIBA Apparels vehemently denied any copying of the designs and sought a dismissal of the suit as the case was covered under section 15(2) of the Copyright Act.

As per **section 15 (2) of the Copyright Act**, if you are reproducing an article over 50 times through an industrial process, after the 50th time of the reproduction, you cease to have copyright protection in that particular article, and it goes on to the Industrial Design Domain.

The plaintiff in this case had not registered the sketches and designs under the Designs Act, and thus the suit was dismissed by the Delhi High Court as this issue was squarely covered by an earlier judgement of the Division Bench of the Delhi High Court in Division Bench of this Court in the case of Microfibres Inc. Vs. Girdhar & Co. & Anr[6].

*Section 15 of the Copyright Act is in two parts. The first part i.e. Sub-section (1) states that copyright shall not subsist under the Copyright Act in any design which is registered under the Designs Act. Consequently, once the design is created and got registered under the Designs Act,*

*whether or not the design is eventually applied to an article by an industrial process, the design loses its protection as an artistic work under the Copyright Act. Therefore, subject to whatever rights that are available under the Designs Act, the registered design holder cannot claim protection or complain of copyright infringement in respect of the registered Design under the Copyright Act.*

*Sub-section (2) of Section 15 deals with the situation where the design, which is capable of being registered under the Designs Act, is not so registered. It provides that copyright in such a design shall cease as soon as any article to which the design has been applied has been reproduced more than 50 times by an industrial process by the owner of the copyright or with his licence, by any other person. .... Therefore, the law tolerates only a limited industrial, or shall we say commercial, exploitation of the original artistic work by the application/reproduction of the said work in any other form or reproduction of copies thereof in exercise of the rights under Section 14(c)(1) and 14(c)(iii) of the Copyright Act. Beyond the specified limit, if the design derived from the original artistic work is exploited (i.e. if the design is applied more than 50 times by an industrial process on an article) the copyright in the design ceases unless it is registered under the Designs Act.*

*If it is a design registrable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation, in our view, would harmonize the Copyright and the Designs Act in accordance with the legislative intent."*

[5] Delhi High Court: CS(OS) 182/2011

[6] Delhi High Court: FAO (OS) No.393/2008



It was an admitted position that the designs were reproduced more than 50 times. Thus, the plaintiff had lost the copyright protection and since there was no registration under the Designs Act, the suit was dismissed.

### **Conclusion:**

The design industry has profoundly evolved in recent years, regulated by progression and further encouraged by good implementation and application of regulations. Nonetheless, it has been observed that inventors frequently fail to protect their intellectual property through the legal process. Therefore, we need to raise public awareness about this flourishing area and we may simply do this by implementing new statute in India. It is about time that India needs to wake up to the need for Fashion Legislation in our country.

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