Fashion Law and Intellectual Property Rights: Protecting Traditional Cultural Expressions in the Global Fashion Industry

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ABSTRACT

The communities of artisans and indigenous peoples in the developing world contribute to the global fashion industry, valued at USD 1.7 trillion a year, with their design language, weaving practices, and motif traditions, yet they obtain less than 5 percent of the retail value of their culture. This essay explores how these structural factors lead to the creation and perpetuation of economic inequalities within the exploitation of traditional cultural expressions (TCEs) and indigenous knowledge systems (IKS) within the global fashion industry, particularly through the example of Indian textiles. It addresses the following research question: ***How does the global supply chain contribute to unequal economic benefits derived from traditional cultural expressions (TCEs) and indigenous knowledge systems (IKS)?*** *Through doctrinal analysis of existing laws, including the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Copyright Act, 1957, the Biological Diversity Act, 2002, and international legal obligations of India in relation to the WIPO Intergovernmental Committee (IGC) negotiations and the Nagoya Protocol; through a value analysis of the supply chain, and engagement with existing academic literature to date, the essay outlines four mechanisms of economic marginalization: the limitations of the Geographical Indication (GI) approach, the intellectual property vacuum created by the idea/expression divide, the dominant structure of the supply chain, and the absence of benefit-sharing arrangements for TCEs. Another shortcoming identified in the existing literature on TCE exploitation is the notion that it should be considered under the category of legal classification rather than that of governance of supply chains. From the analysis of empirical evidence drawn from published studies and reports on the weaving clusters of Banaras, Chanderi, and Kutch, it is evident that the economic marginalisation of weaving communities is a policy-induced problem. The conclusion to this paper provides a comprehensive multi-perspective policy approach to TCE exploitation that comprises TCE-specific legislation, mandatory benefit sharing in supply chains, GI democratization, and constitutional approaches.*

Keywords: Traditional Cultural Expressions, Fashion Law, Indigenous Knowledge Systems, Inequalities in Supply Chains, WIPO IGC, Cultural Misappropriation, Benefit Sharing, Indian Textiles, Weaving Communities.

1. INTRODUCTION

The Indian subcontinent boasts a diverse textile tradition. The weaves of Banaras silk, the Chanderi silk cotton fabric, and the tie-and-dye technique known as Bandhani from the Kutch region represent examples of traditional knowledge in use that can be considered as TCEs. This type of cultural heritage has both ritualistic importance and represents the community knowledge passed through generations. On one hand, the paper focuses on a specific issue associated with TCEs; While traditional knowledge behind TCEs is pivotal to the global fashion industry, originating communities receive minimal commercial return. For instance, the daily wages of a Pashmina weaver in Srinagar are 200 to 500 rupees per day (in two decades), while shawls of the same design are worth more than 800-2,000 euros in luxury boutiques in Europe.This is not accidental. This is inherent in the structure of the global supply chain, which aims to reduce the cost of production, improve brand margins, and pass the cost of extraction of TCEs to the most vulnerable community in terms of extraction of TCEs. The present legal regime for TCE protection in both the national and international arena is highly fragmented and reactive, and structurally deficient. These challenges have become even more significant with the emergence of generative artificial intelligence (AI). AI systems can be trained on large datasets containing traditional textiles, motifs, and cultural designs sourced from digital archives, museums, and online platforms. This creates new concerns about consent, attribution, and the ability of artisan communities to benefit from the commercial use of their cultural heritage.

Against this background, this paper attempts to examine the following research question: *How does the global supply chain exacerbate the unequal economic benefits from the use of TCEs and indigenous knowledge systems?*

This paper concentrates mainly on the Indian scenario and uses Banarasi silk, Chanderi fabrics, Pochampally ikat and Kutch embroidery as its empirical examples. So far, the academic discussion surrounding the TCE-fashion dilemma has revolved around the issue of classifying the TCEs: can the TCEs be copyrighted, trademarked, and given a GI tag? This is a crucial issue that falls short in itself. Having an IP categorization system without a change in the value chain which the artisanal community depends upon will make little difference in the economic future of these communities.

2. LITERATURE REVIEW

2.1 Foundational Scholarship on TCE Regulation

Rosemary Coombe's The Cultural Life of Intellectual Properties (1998) proposed that the IP system, as it currently exists, is based on a concept of individual ownership of cultural information, short duration of protection, and valuation on the market, with the result that it is fundamentally incapable of safeguarding commons-based, multigenerational cultural knowledge. Coombe's observation that in the current fast fashion and luxury fashion industries, cultural expressions are treated as a raw commodity for commercial purposes is still relevant in the context of IP.

This criticism was further developed by Madhavi Sunder in From Goods to a Good Life (2012). She said that cultural expressions should be seen more than an economic good and that IP law should take account of a link between cultural expression, identity and human flourishing. Sunder argues that the issue of TCEs and their exclusion from the mainstream IP protection is not just a matter of technical legal issues. Instead, it is a sign of many power dynamics between the commercial and traditional knowledge holders.

Many of these same issues are raised by Michael Brown in Who Owns Native Culture? Who Owns Culture? (Susan Scafidi, 2003) (2005). Both authors discussed TCE in the North American context and the challenges of safeguarding community-based cultural heritage in a legal framework oriented towards the recognition of individual creativity. Scafidi mentioned the fashion industry's approach to design "appropriation" (understood as the idea-expression doctrine of copyright law) as a "zone of legitimate theft" since many cultural motifs, styles, and design traditions are not protected by copyright. This can lead to the commercial use of a community's cultural heritage without attribution and compensation.

2.2 Fashion Law scholarship and the TCE fashion interface

While some of the literature concerning the reasons for the inability to protect TCPs has laid the groundwork for the discussion, scholars in the field of fashion law are moving toward a discussion of how those vulnerabilities may be put into practice. The first and foremost contribution made by Elizabeth Lenjo is her Inspiration Versus Exploitation: Traditional Cultural Expressions at the Hem of the Fashion Industry published in Marquette Intellectual Property Law Review. According to the author, fashion law, while not protecting styles, motifs, silhouettes, or even designs per se, shows discrimination against traditional communities rich with TCEs by discriminating in favor of big fashion corporations as a matter of copyright. For this reason, these corporations can count on traditional cultural expressions for collections.

The WIPO acknowledges the issue by bringing together its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. In the past two decades, the committee has made an effort to determine how better to protect TCEs legally. There are still no international agreements in place regarding the matter. Therefore, people from these communities often depend on the legal system that does not cover collective cultural heritage.

2.3 Economic Inequality and Value Capture

Economic research contributes to the debate. Ownership and protection are the focus of legal scholars, while value distribution is the focus of economists. They question who is getting the profits from TCEs. According to a theory called Global Value Chain, the highest profits are typically achieved by those who control branding, technology, marketing and distribution. Sometimes producers and artisans get much less than the final retail value.

These critiques remain highly relevant to the global fashion industry. TCEs include weaving methods, embroidery techniques, motifs, and textile traditions that have been developed and preserved over many generations. Examples include Ajrakh block printing, Banarasi weaving, Chanderi textiles, and other Indian handloom traditions.

Primary weavers and embroiderers rely heavily on local traders and intermediaries, drastically reducing their bargaining power and value capture. Similar examples can be found in Māori designs in New Zealand, Native American patterns in the United States, and African textile traditions such as Kente cloth.

Despite their important contributions to cultural and creative industries, workers in cultural occupations make, on average, 27% less than workers in non-cultural occupations worldwide, as reported by UNESCO's Re|Shaping Policies for Creativity (2022).

It has been suggested by scholars too that the GIs can boost the value of the products by associating them with a particular place of origin. But greater value does not necessarily mean greater benefits for primary producers. Rangnekar's socio-economic arguments for the need of benefit-sharing mechanisms and legal protection (The Socio-Economics of Geographical Indications, UNCTAD-ICTSD, 2004) point to the fact that, without such mechanisms, legal protection does not necessarily ensure equitable value creation. However, another issue emerged from the study: international IP law's use of the term "public domain" for TCEs essentially means "public domain" resources are being used collectively by the international community, resources that indigenous and traditional communities see as their own (Madhavi Sunder and Anupam Chander, The Romance of the Public Domain, 2007). This public domain concept is built into copyright law and pre-TRIPS international IP system and operates as a legal means of dispossession.

The debate about Dior's collection for 2023 exemplifies this concern. Dior worked with artisans in India, and featured the traditional embroidery methods from communities in Gujarat and other parts of India. Unlike other instances of cultural appropriation, this one was not about copying or plagiarizing, but about the appropriation of people. Rather, it put questions on recognition, visibility and if artisans benefited commensurate with value they add to the economy.

Comparative international practice also supports the move towards benefit-sharing. Peru's *Law No. 27811 on the Protection of the Collective Knowledge of Indigenous Peoples (2002)* requires commercial users of Indigenous traditional knowledge to enter into licensing agreements with representative organisations. It also requires monetary benefits to be shared through community development funds. Although the law mainly applies to biodiversity-related traditional knowledge rather than textile-based TCEs, it shows that legally enforceable benefit-sharing mechanisms are possible. Australia's Indigenous Art Code also promotes ethical licensing, informed consent, and fair remuneration for Aboriginal and Torres Strait Islander artists. Together, these examples show a wider international shift towards governance and more equitable value distribution.

The legal-classification and the value-distribution literature have grown largely side-by-side, with little dialogue. The first question is what is a TCE in law; the second is who is able to capture the value once a TCE enters commerce. This paper takes that separation as the focal point of the gap in the field.

2.4 The Research Gap: Classification versus Governance as Distinct Analytical Frames

The current scholarship on TCEs is almost completely centred on a classification problem, whether TCEs should be protected as copyright, as trademark or as geographical indication or as a sui generis right. This paper will argue that classification and governance are two analytically different questions, and that the literature almost exclusively has tended to focus on the former one. Governance poses a different question: how is the value captured in a commercial supply chain once a TCE product is introduced, and by whom? A TCE can be completely "solved" as a classification level, for example, a weaver can be registered as a GI of Banarasi silk or Chanderi fabric and issues remain unsolved as a governance level, as they have to do with the intermediary margins, wage setting, or conditions on which the weaver does business with the trader. On the other hand, a TCE not legally regulated by any IP right at all (Kutch embroidery motifs reproduced without any protectable "expression" in the idea/expression split of copyright) might, however, be better regulated by supply chain tools such as mandatory disclosure, benefit-sharing levies, or licensing, without requiring the existence of any IP right.

The global value chain literature (Gereffi, Humphrey and Sturgeon; Rangnekar), which largely comes from the other side, hardly touches on IP doctrine at all: it has focused on the presence of the power differential in the chain, rather than its absence, and on the fact that lead firms at the brand and retail levels wield disproportionate power over the setting of prices and the margins they capture, irrespective of the legal status of the design. Both of these literatures have not been read in opposition to one another very often.

As a result, this paper's empirical results on Banarasi, Chanderi and Kutch are specifically aimed at testing this relation (Section 4). However, if classification was the sole criterion, then there should be a strong relationship between registration with GI and better incomes of artisans. The data does not indicate this is true for Banarasi and Chanderi, which are both protected under GI and still have artisan earnings at subsistence level, debt bondage under the peshgi system, and less than ten percent value capture at the production end.

A second, geographic gap exacerbates the first one: there has been a lack of IP literature that develops insights into governance versus classification from the perspective of an Indian textile TCE space, where the experiences of Māori, Native American and African case studies have been the principal focus. The Indian context, defined by its unique structure of GI law, the framework of the Biological Diversity Act, the caste based organisation of artisans, the colonial deindustrialisation legacy and the dynamics of the fashion market in the global context, strikes a balance between the development of classification (GI protection) and its absence as a residual unexplained variable, making it an unusually clean context for focusing on governance. This paper tackles both gaps, analytically separating TCE exploitation from classification and with the largely overlooked case of India.

3. RESEARCH METHODOLOGY

In this paper, the methodology that would be adopted is a doctrinal socio-legal methodology. The doctrinal aspect of the research will involve an analysis of systematic dialogue with the primary legal sources, which will include statutes, case law, international laws/treaties, and WIPO IGC draft articles on the purpose of making a doctrinal map of the existing legal framework concerning TCEs in India and identifying doctrinal gaps. The statutes analyzed are the Copyright Act, 1957 (amended in 2012), Biological Diversity Act, 2002, Geographical Indications of Goods (Registration and Protection) Act, 1999, and Designs Act, 2000. The international laws/treaties analyzed are TRIPS Agreement, 1994, Convention on Biological Diversity, 1992 and the Nagoya Protocol, 2010, and the WIPO IGC Draft Articles on Protection of Traditional Cultural Expressions (Rev. 9, 2022).

The socio-legal analysis is supported by empirical evidence from selected Indian weaving clusters. The paper focuses on Banaras, Chanderi, and Kutch because they represent well-established textile traditions and different forms of TCE protection. The empirical analysis is based mainly on secondary sources. These include reports published by the Development Commissioner (Handlooms), the National Handloom Census 2019–20, NABARD cluster studies, market surveys by the Craft Development Institute Srinagar, and published field studies on artisan communities. These sources provide data on artisan incomes, debt, supply chain structures, and value distribution. The evidence is then compared across the three weaving clusters to identify common patterns of economic marginalisation despite existing legal protection.

Furthermore, the paper features the analysis of secondary literature sources (law review articles, books, and policy papers) to evaluate the knowledge base, and discover any lacunae in the literature this paper intends to fill. The quantitative limitations of this methodological approach are associated with the use of secondary empirical information that might vary from source to source and is not always timely. Although much has been written regarding the artisan community of India, this literature is not uniformly distributed across space and time. If possible, several sources have been consulted to ensure the validity of certain facts.

4. FINDINGS

4.1 Supply chain value distribution: Empirical Evidence

Published studies on Banaras, Chanderi, and Kutch reveal severe imbalances between artisan earnings and value captured by brands. Analysis of these value chains demonstrates that value concentrates heavily at brand and retail levels while remaining suppressed at the primary production end

Banarasi Silk

A single Banarasi saree requiring weeks of intricate zari work on a handloom yields just INR 800–2,500 at source, while retailing for INR 15,000 to 1,50,000. The Development Commissioner (Handlooms) in its Annual Report for 2021-22 revealed that Banarasi weaver families received the average income of INR 6,000-9,000 per month, which is far lower than the minimum wage for skilled textile workers in Uttar Pradesh, which is around INR 11,000 per month. The research conducted by the Tata Institute of Social Sciences in 2019 revealed that more than 70% of Banarasi weavers mentioned that they took loans from the informal money-lenders for the procurement of raw materials which further imposes debt on them. The wavering of wages of the weaver's house has not been changed, although the GI efforts for Banaras Brocades and Sarees, registered in 2009, have helped to some extent in enforcing the ban on synthetic imitation products from Surat.

Chanderi Fabric

Chanderi weaving in Madhya Pradesh is another unique silk-cotton fabric that has been produced in the cluster for the last 600 years or more that is characterized by its natural butis (floral motifs) and translucency. The Chanderi GI was registered in 2005. The NABARD commissioned diagnostic study of the Chanderi cluster in 2018 revealed that more than 60% of Chanderi weavers were indebted to the local mahajans and trader-intermediaries who were having control over the input supply (yarn, thread, chemicals) and output market. The peshgi (advance payment) system, in which traders pay the weavers less than market rates in advance for production, was a kind of captive production, which effectively denied the weavers access to alternative traders or better markets. INR 5,500 to INR 7,500 was the average monthly income of the weavers' households. The same Chanderi fabric, bought at source and sold in urban retail outlets and e-commerce, fetches Rs 2500-8000/metre and the retail value is less than 6% of the total value of the fabric for the artisan weaver.

Kutch Embroidery

Among the most unique and internationally recognised TCEs are the distinctly geometric vocabularies of the Ahir, Rabari, Mutwa, Sodha and Jat communities of Kutch. Kutch embroidery has basically been created by ladies in the domestic domain unlike weaving based TCEs which are extremely difficult to measure the income generated from. In her field work with the Kutch embroidery communities, Judy Frater recorded the phenomenon of 'design tourism' - visits to the designers and brand representatives who would take photographs of the embroidery designs to reproduce without paying any compensation to the communities. International fashion collections featuring Kutch-inspired embroidery have been documented in French, Italian and British luxury fashion, and have been used widely in the fast fashion retail market in many parts of the world, without any licensing, attribution or payment to originating communities.

4.2 Legal Framework Analysis

The GI Framework: Partial Protection

India's main legislation governing the protection of TCEs in the textile industry is the Geographical Indications of Goods (Registration and Protection) Act, 1999. There are currently more than 370 GIs registered in the GI Registry as of 2023, many of which are related to handloom and craft products. GI protection is geographically limited but design neutral: it stops producers claiming that a product originated in a different region of the country but does not stop other producers reproducing Banarasi motifs outside the GI region. The design knowledge, pattern grammar, and technique of the TCE is in the public domain.

In most Indian textile GIs, the registered proprietor is a state government department or a producer association and not individual weavers. Institutional legal capacity is generally lacking among the artisan communities to enforce actions. Not necessarily, though, does the economic advantage flow to the artisan producer even if enforcement takes place: the

GI premium could be realised at the aggregator or exporter level, not as an increase in the weaver's wages.

The Copyright Vacuum

The Copyright Act 1957 is based on the principle of copyrighting individual, identifiable and original authorship, a principle that is structurally in contradiction to the communally produced and multigenerationally evolved TCEs. Neither the Pochampally double-ikat pattern nor the Banarasi kadwa weaving technique can be attributed to any specific weaver. The idea-expression dichotomy adds to the problem; the design vocabulary of a TCE (the defining motifs and pattern grammar) exists as an "idea" (which is available for free appropriation by commercial designers), but the particular appropriation of these motifs and pattern grammar by a particular commercial designer into a particular commercial product may be eligible for copyright in the hands of the appropriating designer. This is an inversion of the current copyright framework around TCEs: the originator has no rights, the appropriator does.

International Framework Gaps

The WIPO IGC, which was created in 2000, has been engaged in negotiations on an international binding instrument on TCE protection for more than 20 years, but without a resolution. The basic separation between developed country members who are proponents of flexible, non-binding approaches and developing country "demandeurs" such as India, the African Group and the Like-Minded Countries, who are calling for binding minimum standards, has stalled the progress toward a treaty. There is no specific reference to TCEs or traditional knowledge in the TRIPS Agreement. The CBD has prior informed consent and benefit sharing requirements for genetic resources and traditional knowledge, but not necessarily for cultural expressions other than textile designs, which are contested. This international framework fragmentation does not provide any international legal mechanism for the communities in India holding TCE to take action against foreign commercial appropriation.

5. DISCUSSION AND POLICY IMPLICATIONS

5.1 The Supply Chain as the Primary Site of Inequality

It becomes evident from the findings of the paper that the main thesis is supported – the marginalisation of TCE-holding artisan groups within the Indian economy is more of a failure of supply chain governance than the legal origin failure. The artisans have GI registered for their TCEs, but their earnings are still on a subsistence level. It means that regarding the global supply chain governance framework, which involves intermediaries, legal origin protection does not work when it comes to solving the issue of economic exploitation.

It is easy to observe all the features of the buyer-driven global value chain structure in Indian textiles: brand firms dominate market power over the producer artisans since the latter do not have access to knowledge concerning prices and intermediate firms often substitute their functions of supplying raw materials and marketing their own products. Besides, there are no community laws related to intellectual property protection in India, which makes it impossible for artisans to defend themselves legally in relation to their designs. These factors are hard to change due to GI registration; thus, governance of supply chains is required directly.

5.2 Why Copyright Law Struggles to Protect TCEs

The literature abounds in studies of copyright law. This is not quite appropriate for TCEs. As a rule, there must be an identifiable author, originality and fixed work. TCEs are a complex of laws developed over many years and which may not be tailored to meet these criteria. The commercialization of TCEs cannot be safeguarded by copyright, meaning that fashion businesses will not infringe IP by being inspired by TCEs.

The problem comes from the structure of copyright law itself. Copyright protects original expressions created by identifiable authors. Traditional cultural expressions rarely fit these requirements. Many designs have developed collectively over centuries and cannot be traced to a single creator. Courts therefore struggle to identify ownership. As a result, some of the most culturally valuable designs receive little legal protection despite continuing to generate commercial value.

5.3 The Limits of Geographical Indications

To try to address some of the issues raised above, India has come up with the Geographical Indications of Goods (Registration and Protection) Act of 1999. Geographical indications refer to products such as Banarasi sarees and Kanchipuram silk that are associated with a particular geographic area. The measures taken are good but they also come with some critical limitations. First, protection of geographical indication does not stem from a broader cultural framework. A company can copy elements of a design commonly employed in a protected name without making use of a protected name. Similarly, the AI product can be made in an indigenous style but without mentioning any protected geographical term. Another study shows that the introduction of geographical indicators might not help improve the financial position of the artisans. In most cases, large corporations and middlemen earn substantial amounts of money.

5.4 What the Dior-Kutch Example Reveals

The Dior-Kutch case is an instance that exemplifies the above arguments. Dior worked with Indian craftspeople in creating a line that displayed the artistry of India. It should be noted that unlike most instances of cultural appropriation, the case at hand did not present any form of copying or intellectual property violations. Rather, the debate centered on visibility and fair value distribution.

The significance of the Dior-Kutch example is that it moves the debate beyond copying. Dior worked with artisans rather than simply reproducing their designs. However, concerns still emerged about recognition and value distribution. This suggests that collaboration alone does not guarantee fairness. Even when artisans participate in the production process, they may not receive a share of the visibility or economic value generated by the final product. The controversy therefore supports the growing view that participation and benefit-sharing are just as important as ownership.

5.5 Generative AI as an Amplifier of Existing Inequalities

There are a number of issues which may be exacerbated by generative AI. For instance, AI algorithms can examine and produce designs based on thousands of cultural styles in seconds.

As a result, cultural aesthetics can be duplicated at an unprecedented scale. Existing copyright legislation cannot prevent such a use because it applies to individual products and not styles. Thus, cultural knowledge is utilized for training purposes but provides no tangible benefit to source communities.

This is not an issue confined to Indian textiles only. There have been a number of reports regarding training Māori designs, Native American motifs, and African textile traditions using AI algorithms. In these cases, the community offers unique knowledge which can be translated into valuable datasets for commercial purposes. However, the financial gains go to the companies rather than the communities.

5.6 Moving from Ownership to Governance

One of the most critical themes developed in the course of literature review is the shift from ownership to governance. As opposed to paying attention solely to the owners of particular designs, modern researchers prefer to look at issues related to participation, openness, and sharing of benefits. It is particularly relevant for the application of TCE theory. While communities might not necessarily claim sole ownership over each of their designs, they would definitely like to have an input into the decision-making processes as well as reap some profits from their utilization.

This governance-based approach is also reflected in other countries. Australia's Indigenous Art Code encourages ethical commercial relationships and fair payment for Indigenous artists. Peru's Law No. 27811 shows that benefit-sharing obligations can be introduced through legislation. It requires licensing agreements and directs monetary benefits towards community development funds. These frameworks have different purposes. However, they both show a broader shift away from focusing only on ownership. Instead, they place greater importance on participation and equitable value distribution. This approach is relevant whether the cultural expressions concern Ajrakh textiles in India, Māori designs in New Zealand, Native American patterns in the United States, or African textile traditions, the central question is increasingly one of participation and benefit-sharing rather than ownership alone.

5.7 The Constitutional Dimension: Artisan Rights as Fundamental Rights

The issue of economic marginalization of artisan communities through a systemic process involves the invocation of certain constitutional rights that have not been hitherto sufficiently deployed in the matter. As per Article 21 of the Constitution of India as elucidated in the cases of Maneka Gandhi v. Union of India (1978) and Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981), there exists the right to earn one's living in a dignified manner. The fact that skilled Banarasi weavers receive wages less than the statutory minimum for skilled textile workers while manufacturing products that fetch high prices in foreign markets indicates that there exists a violation of Article 21.

The protection provided to minorities in Article 29, namely the protection of their cultural and linguistic heritage, is pertinent to the issue of TCEs since it is pertinent to note that many of the finest textile traditions of the country belong to religious, linguistically or even caste-specific groups such as the Muslim weaving communities of Banaras and Chanderi, Changpa nomadic pastoralists of Ladakh, Rabari and Mutwa embroidery communities of Kutch. Moreover, Directive Principles in Articles 43 and 45, relating to labor rights and preservation of artisan crafts, are also significant.

5.8 Policy Framework Proposals

Enacting Sui Generis TCE Legislation

This recommendation directly addresses the copyright vacuum found in Section 4.2: If the idea/expression dichotomy entitles an appropriating designer to claim copyright to a TCE-based product, but the originating community does not have a legal right to claim copyright to the same design vocabulary, a copyright framework that acknowledges communal ownership of the vocabulary could close this gap.

The primary policy change that needs to be made is the introduction of a sui generis act for the purpose of protecting TCE. The act should define communal ownership over TCE types, wherein the community is recognized through the community’s own IP council elected democratically. This act should incorporate a system of defensive protection where there would be a registry of the TCEs as prior art, thereby disallowing any third party from using the design for their own IP registration. There would be a presumption in favor of community ownership in case of disputes. In addition, there must be mandatory licensing of registered TCEs, whereby license fees are deposited in community benefit sharing funds.

Supply Chain Transparency and Benefits Sharing (MSCB)

The proposal is based directly on the results from the supply chain analysis in section 4.1 - the use of the peshgi advance-payment system by Chanderi weavers and the result that more than 70% of Banarasi weavers depend on informal moneylenders to support their production efforts clearly indicate the presence of intermediaries who derive value from the artisans before any value accrues to them, irrespective of the legal protection of the TCE.

The TCE laws must therefore go hand-in-hand with the reformation of supply chain governance. Any commercial use of designs based on Indian TCEs must comply with mandatory disclosures and benefit sharing regimes, inspired by the EU Corporate Sustainability Due Diligence Directive (CS3D, 2024) and the Indigenous Art Certification Scheme of Australia. Businesses using registered TCEs must be mandated to: disclose the source community of the TCE used in the product; obtain a license from the concerned community IP council; provide a certain share of their turnover to community development fund; and submit annual reports of their supply chain.

Improving and Democratising the GI Framework

This recommendation is based directly on the findings of the GI Framework Analysis in Section 4.2 that noted that in India, GI owners are usually state departments and producer organizations instead of artisans, and GI premiums usually benefit aggregators or exporters instead of going into higher salaries of weavers. Recognition of artisan cooperatives as an official GI registered user resolves the exact structural problem of legal protection vs. artisan compensation identified in the findings. Artisan cooperatives need to be recognized as an official user of the GI system without involving state governments and producer organizations. In addition, India needs to establish a certified electronic database containing full design descriptions for all registered textile GIs, and negotiate reciprocal GI protection arrangements, including during EU-India free trade discussions, to enhance international “protective effect” of Indian textile GIs.

Strategic Constitutional Litigation

This gap establishes the case for Article 21 dignified livelihood, as discussed in Section 5.7, and provides the necessary data for constitutional action. In addition, apart from legislative action, Public Interest Litigation under Article 32 and Article 226 can argue that marginalization of artisan communities violates Articles 21 and 29. Structural mandamus can also be used, as in other instances in the past, to force the government to develop a national TCE policy.

International Advocacy at WIPO IGC

This recommendation arises directly from the International Framework Gaps described in section 4.2: the decades-long deadlock at the WIPO IGC combined with the lack of any binding TCE instrument has left communities such as the Kutch embroiderers, whose designs have been copied by luxury and fast-fashion brands without authorization, without any international remedy against foreign appropriation, a gap which the findings demonstrate cannot be bridged through domestic GI or copyright reform alone. India should advocate for a legally binding international instrument at the WIPO IGC which looks at governance of supply chains regarding TCE commodification. The findings regarding the inadequacies of legal-origin protection strengthen the argument for this advocacy agenda.

6. CONCLUSION

This paper demonstrates that the global supply chain is the primary vector of economic inequality in the exploitation of TCEs and IKs in India, driven by intermediary capture, uncompensated design appropriation, information asymmetries, and unenforced community claims

The study has uncovered what has been missing in the literature to date: The TCE-fashion problem is largely regarded as a legal problem of classification but is a problem of the governance of the fashion supply chain. Much of the literature focuses on whether TCEs should be protected through copyright, geographical indications, trademarks, or sui generis rights. This paper suggests that legal classification alone cannot solve economic marginalisation. The distribution of value throughout the supply chain must also be addressed if artisan communities are to benefit from the commercial use of their cultural heritage.

Without meaningful legal and policy reform, Banarasi weavers, Chanderi craftsmen, and Kutch embroidery communities are likely to remain economically marginalised despite the significant value their cultural heritage generates within the global fashion industry.

The stakes are high, both in terms of the constitutional, cultural and economic implications. In India, the handloom industry has 7.5 million handloom weavers and according to the National Handloom Census 2019-20, the number of handlooms in operation has declined by 37% over the past decade as the design vocabulary has been captured by others for free in an economy. It is not the assimilation of Chanderi weaving art that is threatening to end the tradition of 600 years but it is the economic marginalisation of a Chanderi weaver who can't earn his living from Chanderi weaving. The law should ensure that it does not occur.

The proposed reforms in this paper build on both Indian law and comparative international practice. Peru's Law No. 27811 and Australia's Indigenous Art Code show that benefit-sharing mechanisms can be included within legal and governance systems. These frameworks were developed for different contexts. However, they show that greater community participation and a fairer distribution of economic benefits are possible. Drawing on these examples, this paper proposes sui generis TCE legislation, mandatory benefit-sharing, GI democratisation, constitutional litigation, and continued advocacy through the WIPO IGC. These reforms require political will. They also require recognition that TCEs are not simply resources for commercial use. They are forms of community-owned cultural knowledge. The communities that preserve them should also share in the economic value they create.

Growing global demand for heritage textiles and consumer focus on ethical supply chains create unprecedented momentum for TCE reform. The challenge for Indian lawmakers, courts, and civil society is to convert this opportunity into structural legal protections—ensuring future generations of artisans can thrive on the extraordinary knowledge handed down.

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