

**FASHION LAW AND INTELLECTUAL PROPERTY RIGHTS:
PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS
AND ECONOMIC INEQUALITIES IN THE GLOBAL FASHION
INDUSTRY**

Research Question: How effective are existing intellectual property laws in protecting Traditional Cultural Expressions from cultural appropriation in the fashion industry?

Authors: Divi Shrotriya

ABSTRACT

In the modern globalized market, increasing movement of cultural symbols, motifs, designs, and practices across borders has revived interest in the ongoing discussion about the protection of Traditional Cultural Expressions (TCEs). This paper explores the conceptual gap between cultural appropriation and cultural appreciation, and how this gap fits within the larger context of IP law. It examines the scope of existing IP instruments, such as copyright, trademark, geographical indications, industrial designs, and the doctrines of unfair competition in protecting the interests of source communities and assesses the need for sui generis protection regimes specific to the collective, intergenerational, and sacred nature of TCEs. In the context of an Indian illustration on the Geographical Indications of Banarasi silk sarees, Kanchipuram silk sarees and Madhubani paintings, the paper advocates the use of IP as providing partial and partial protection, but is in a structurally weak position to protect the communal authorship and perpetual temporality of traditional knowledge. The paper then reflects upon the potential benefits and drawbacks of IP protection and suggests a multi-layered, community-based strategy that integrates traditional IP mechanisms with new sui generis legislative instruments and benefit-sharing mechanisms.

Keywords: *Traditional Cultural Expressions (TCEs); Intellectual Property Rights; Fashion law; Cultural Appropriation; Cultural Appreciation; Sui generis Protection; Cultural misappropriation; Traditional Knowledge; Community rights;*

1. INTRODUCTION

Given that today's world is characterised by unprecedented contact between societies and cultures, the question of how societies interact with cultures other than their own is both legally, ethically, and economically significant. The terms cultural appropriation and cultural appreciation have become prevalent in the discussion of this issue. It is often confused with the second, but the two are quite distinct in terms of modus operandi, normative implications, and, more recently, legal implications.

This paper examines systematically both concepts, before moving to an analysis of the role of intellectual property rights (IPR) in, or out of, the picture in the relationship between cultural communities and the outside world that they value and tap.

Traditional Cultural Expressions (TCEs) such as music, dance, designs, symbols, performances, names, signs and more – are cultural products of a community's cultural identity and heritage, and somewhere between, or outside, the spectrum of IP systems. While IP was traditionally understood to cover particular, identifiable and time-limited works of creation, TCEs are normally works of creation that are collective, anonymous in authorship, and have an indefinite lifespan and no time limits. This mismatch is at the core of most of the challenges communities experience in trying to prevent unauthorised appropriations of their cultural heritage, and it is this mismatch that the present paper aims to explore. (World Intellectual Rights Organisation, n.d.) (Zografos, 2010)

The paper is divided into four parts covering how the conceptual separation of cultural appropriation and cultural appreciation is developed; further, it provides a survey of different strands of IP law impacting upon the protection of TCEs and provides Indian and comparative examples to illustrate each of these strands; and critically examines the positive and negative implications which have been flowing from the use of IPR for TCEs. Towards the end, it presents final reflections and recommendations for a unified protection system.

2. LITERATURE REVIEW

2.1 Cultural Appreciation and Cultural Appropriation

The sharing of culture, ideas, traditions and art has always been an important part of social development and innovation. Within this context, cultural appreciation can be defined as mindful, informed and respectful participation in something other than one's own culture. It is characterised by a sincere attempt to grasp the historical, social, and symbolic meanings of cultural practices, symbols, and expressions. Cultural appreciation is not simply using cultural aspects for personal or business gain; it is understanding where they come from, respecting the people from whom they come, and building cross-cultural understanding. This participation can be in the form of learning, informed consent to attend cultural events, or recognition of cultural influences in art or business.

Cultural appropriation, on the other hand, is the unearthing, adoption, or use of cultural expressions, symbols, practices or knowledge from one community by another without permission, recognition, understanding, or remuneration. Appreciation and appropriation are both about intercultural contact, but appropriation is defined as taking something from its cultural origin; using it for personal, artistic, or commercial purposes. Often, cultural appropriation leads to the commercialisation of cultural heritage and can help to diminish the control of the community of origin over its culture.

One of the hallmarks of cultural appropriation is that there is a power imbalance between the appropriator and the community that is being appropriated. These imbalances can be economic, political, historical or social, for example, when cultural expressions of indigenous, traditional or historically marginalised communities are used by dominant groups or multinationals. In such situations, the economic and reputational advantages of the appropriation of cultural expressions are likely to be enjoyed by the appropriating community, and not by the original people. Accordingly, cultural appropriation is no longer being considered just a problem of cultural borrowing but rather one of cultural justice and economic equity. (Lenard & Balint, 2020)

In the fashion industry, cultural respect versus cultural appropriation takes on specific meaning. The exchange of cultural influences has always been an integral part of

fashion and designers often take inspiration from a variety of customs, fabrics, patterns, and techniques. But there's a thin margin between respectful inspiration and exploitative appropriation. Cultural appreciation in fashion means recognising the cultural roots of fashion, interacting with the source communities, and accurately and respectfully representing cultural influences. Cultural appropriation, however, is defined as when Traditional Cultural Expressions (TCEs) are appropriated by fashion houses without their authorization, attribution, and meaningful participation, especially in the context of commercial profit (Tiwari, 2025).

The economic effects of cultural appropriation in fashion are further explored in this section. In this section, the economic impact of cultural appropriation in the fashion industry is further explored.

2.2 Cultural appropriation in Fashion industry: Economic impact

One of the major topics of current scholarship is the commercialisation of TCEs in the global fashion industry. (Lenjo, 2017) Frequently, cultural appropriation is marked by the incorporation of traditional embroidery patterns, folk motifs, ceremonial garments or cultural symbols into luxury fashion collections and commercial goods. Oftentimes, fashion companies will rework these cultural aspects and sell them as luxury items, creating a commercial value for what is a cultural heritage of the community. (Pozzo, 2025)

The economic implications of this practice go beyond the issue of cultural recognition. Traditional Cultural Expressions can be important sources of livelihood for weaving, embroidery, handicraft and other traditional livelihoods. If fashion brands take such designs without permission or payment, the source communities are denied any economic revenue from commercialisation of their cultural heritage. This has resulted in a disproportionate share of the profits being gained by multi-national corporations and economically marginalised communities who have to preserve and transmit these traditions.

The disparity in benefits reflects a larger issue of economic inequity in the fashion sector. Cultural appropriation undermines the cultural value of TCEs when they are taken

from their socio-cultural and historical context, and creates inequalities when communities do not receive a fair share of the benefits from their cultural resources. Thus, the question is not only about what is right or wrong in terms of cultural sensitivity but also about what is legal, what rights communities have and how distributive justice should be applied. Such concerns highlight the need to investigate whether the current intellectual property system can protect and preserve TCEs from commercialisation and guarantee fair economic results for the communities that develop and maintain them.

2.3 Supply-Chain Governance and Ethical Sourcing of TCEs

The protection of Traditional Cultural Expressions (TCEs) also goes beyond IP to ethical governance of the supply chain of fashion brands, in terms of their sourcing, production, and marketing processes, which are linked to their cultural significance. Governance through the supply chain is more focused on responsible business practices that reduce the risk of cultural exploitation and increase corporate responsibility, as opposed to legal protection. OCEDs Due Diligence Guidance for the Garment and Footwear Sector is a tool to assist companies in identifying and addressing human rights, cultural heritage and unfair commercial practices issues in their supply chains. (OECD, 2018)

The ethical sourcing of traditional designs is a responsibility for fashion manufacturers to confirm the traditional designs' origin, consult with source communities and get proper consent before commercializing them. More and more brands are turning to the models of the artisans collaboration, giving cultural knowledge to the artisans in the process of designing and producing their products without paying them excessively, but paying them fairly. Likewise, mechanisms of benefit sharing e.g. licensing agreements, royalties, community development projects aim to share the economic benefits of commercialisation more fairly.

Human rights due diligence also is an important governance instrument, which will involve engaging stakeholders, conducting cultural risk assessments, and creating grievance processes. Further, supply-chain traceability, with the help of blockchain, digital product passports and other technologies, allows businesses to affirm that products

are from a specific origin, enhance transparency and prove adherence to ethical sourcing commitments. These governance practices are complementary to legal protection and support good business practice and the cultural and economic interests of indigenous peoples when combined.

2.4 Existing IP protections for TCEs

Traditional Cultural Expressions (TCEs) have a special place in the realm of culture, identity and trade, and their protection is a key issue in the current intellectual property debate. While intellectual property law is the primary vehicle for societies to control the ownership and exploitation of intangible creations, there is no particular branch of IP law dedicated to the protection of TCEs from cultural appropriation, especially in the fashion industry. Where protection exists (and it does not in all cases), TCEs are protected through a 'layered' regime of overlapping and combined use of multiple IP protections, such as copyright, trademark, geographical indications, industrial designs and other protections. These frameworks, however, were not developed to incorporate the collective, intergenerational and cultural dimension of Traditional Cultural Expressions. They provide only limited protection, leaving many traditional designs, motifs, textiles and symbols unprotected from unauthorised commercial use by fashion corporations. This legal gap has been linked to the ongoing appropriation of cultural heritage and the lack of benefits from its commercialisation for source communities. (World Intellectual Property Organisation, n.d.)

2.3.1 Copyright Protection

Copyright is granted to original literary, artistic, musical and dramatic works recorded in a tangible medium. In principle, copyright may attach to the result of recording or otherwise materialising Traditional Cultural Expressions, such as transcription or recording of traditional songs, writing down of stories and recording of paintings, sculptures and performances. (Zografos, 2010)

The copyright owner enjoys several practical advantages where copyright exists. It allows the creators or community to control the reproduction and distribution of work that might otherwise be made possible by technology; it allows the community of origin to have

some control over further use of the protected work; and it opens the possibility of licensing the work for a royalty to the community of origin.

However, copyright is not an effective mechanism for TCE protection; there are significant restrictions. Copyright assumes an identifiable author or authors, and protects for a limited period of time, generally the life of the author plus a specified number of years. In their nature, TCEs are often very ancient, passed down orally from one generation to the next, and attributable neither to a specific individual nor even to a single generation of authors. The temporal and authorial presumptions in copyright law thus do not fit neatly with the practices of traditional cultural production, and many TCEs are not even subject to copyright at all, either through having been recorded in a fixed form not recognised by copyright law or because copyright that may have once existed in them has since passed.

2.3.2 Trademark Protection

There is also the second aspect of trademark law in the context of traditional symbols, names, logos and signs that have become associated with a particular community. These may be registered as ordinary trademarks or, where the rights are to be held collectively, as collective or certification marks.

The value of trademark protection is essentially its ability to prevent third parties from using the same or something essentially the same mark in the course of trade, to secure the commercial reputation of the goods which the community produces, and to ensure that consumers can be sure that products are a product of the community. For example, a tribal cooperative could file a certification mark for products made by its members using traditional methods, which would offer some protection and provide a marketing benefit from the use of the mark.

However, trademark protection has a more limited scope than that of the TCEs themselves – it does not cover underlying cultural knowledge, practice or artistic tradition but only the use of a sign in connection with certain goods or services in the context of trade. It is quite possible, then, to have a trademark registered that will prevent the use of a specific symbol without authorization for commercial purposes, while preserving the

culture or knowledge from which the symbol comes. (World Intellectual Property Organisation, n.d.) (Zografos, 2010)

2.3.3 Geographical Indications

Geographical Indications (GIs) are a mechanism of protection which is of significant importance in the context of Indian TCEs. A good is identified by a GI when a specific quality, reputation or other characteristic of the good is substantially due to its geographical origin. In India, GI Protection is provided by the Geographical Indications of Goods (Registration and Protection) Act, 1999.

The role of GIs is 3-fold: they serve to protect traditional products from being imitated by those outside the region; they encourage and sustain traditional production practices (the value of the GI depends on the production method); they increase the value of the authentic product to the consumer by indicating it is a traditional product. Significant number of GIs have been registered in respect of products containing traditional cultural knowledge, such as 'Banarasi Saree', which embodies the intricacies of the weaving technique of Banaras, a city in Uttar Pradesh, traditionally known as 'Varanasi'; 'Kanchipuram Silk Saree', which is produced using the traditional weaving methods of 'Kanchipuram', a region in Tamil Nadu, India; and 'Madhubani Paintings', which is a traditional form of folk painting from 'Mithali', the name of a region in Bihar, India, where the vibrant natural dyes and pigments are used.

All of these GI registrations serve two purposes: safeguarding the economic rights of the artisans who still make the products using traditional techniques, and as a mechanism of cultural affirmation, recognising the link of a specific product with the community or region historically associated with it.

2.3.4 Industrial Design Protection

If an article is decorated in a way that embodies a traditional artistic design or motif, such as a textile having a distinctive pattern woven on it or a piece of furniture being carved with a traditional design, then industrial design may be available, subject to satisfying the statutory requirements of novelty and originality. Design protection is available to block

the unauthorised copying of the distinctive appearance of an article, and can thus provide protection for traditional motifs used in products and crafts, such as textiles.

The novelty requirement, which is the foundation of design protection, presents a major hurdle in the context of TCEs; however, a motif or pattern which has been continuously used within a community for generations is, by definition, not 'new' in the sense that design law requires and therefore may not be registered on that ground alone, namely because it is traditional and not novel. (Prażmowska, 2020)

2.3.5 Protection by Unfair Competition Law

An additional and complementary line of protection is given by the competition law, which bans misleading trade practices concerning the origin, authenticity or sponsorship of goods. A trader may have an action for unfair competition, or in Indian cases, for tort of passing off for misrepresentation that it has produced goods in a traditional manner, or by a particular community, when it has not.

In the context of TCE, the main benefit of the unfair competition doctrines is their ability to prevent the use of false claims of a product's authenticity and thus preserve the reputation that indigenous and local communities have developed for their traditional products, even if no IP right, either trademark or GI or design, has been acquired.

2.3.6 Sui Generis Protection

What's been happening, however, in the light of these shortcomings has been the emergence of a well-established scholarly and policy consensus, including debates on the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, in favour of the creation of sui generis legal regimes, that is, regimes that are specifically aimed at the protection of TCEs, and not at their adaptation to existing protection mechanisms developed for different purposes.

In general, a sui generis regime would have some material differences to the existing IP framework. It would acknowledge collective ownership, instead of individual ownership, which is typical of the vast majority of TCEs. It would provide for protection times that

would go beyond the statutory period of copyright or design protection, affording protection for an intergenerational duration of time to preserve the continuity of TK. The protected expression would have to be used with the prior informed consent of the relevant community. It would include benefit-sharing mechanisms, which would share any commercial value created with the community of origin through the use of the TCE.

A hypothetical example is provided to assist with the application of a layered protective approach. If a fashion brand wants to include a traditional tribal pattern in an upcoming line of clothing. Although there is no sui generis protection, if there were, it would require the company to seek the consent of the community to use the design, and share with the community any benefits resulting from the commercial use of the design. This ultimate sui generis layer is lacking in most jurisdictions, including India, which is the biggest missing piece in the existing protection regime.

2.5 Evaluating the existing IP laws protection

After learning about the main IP mechanisms that are available for protecting TCEs, the pros and cons of their actual application in practice should be considered. This assessment takes place by taking into account, first, the positive effects that have been observed to occur as a result of IP and second, the negative effects or limitations that still exist even in spite of the existence of IP protection.

2.4.1 Positive effects of IP Laws on TCEs

2.4.1.1 Protection against misuse and exploitation

The first advantage of IP protection is that it enables communities to defend against outsiders copying, editing and commercialising their cultural expressions without their consent. If, for example, commercial products come into use without the consent of the group of people who created the art, then a suitable IP right, such as trademark or design, or, in an appropriate sui generis context, a TCE-specific right, can be used to oppose and possibly prevent such unauthorised use.

2.4.1.2 Economic Empowerment of Communities

The legal rights can then be assigned to a third party for a fee (royalty or otherwise), creating an opportunity for the economic gain of the community of origin while preserving the cultural heritage in question. In the case of a geographical indication, artisans who produce traditional handicrafts may benefit from increased income, for instance, from the sale of products for which consumers can recognize their geographical origin thanks to the GI.

2.4.1.3 Preservation and Promotion of Cultural Heritage

Formal legal recognition of a cultural phenomenon under an IP mechanism often leads to enhanced efforts on the part of the community itself and the appropriate governmental bodies to document, conserve and actively promote the phenomenon being recognized. Music, dance and craft and similar cultural forms which are recognized in these ways are then likely to receive similar institutional support and visibility, a support which has a significant impact on the transmission of these forms to the next generation.

2.4.1.4 Recognition and Respect for Cultural Identity

IP protection, used correctly, guarantees to recognise communities formally as holders of their own cultural heritage. Such recognition is also important beyond the legal impact because it can help to reinforce a sense of cultural identity within the community, and encourage greater acceptance of indigenous and local traditions within a community.

2.4.1.5 Prevention of False Representation

Lastly, IP rights, and in particular GI protection, help consumers identify a genuine traditional product from a large number of products which are being mass-produced and are copying the reputation of traditional craftsmanship. For example, by using authentic traditional textiles, the market can be separated from the imitations which have no relation to the traditions that they are supposed to represent, thus protecting not only the consumers but also the reputations of the communities that are affected.

2.4.2 Negative Effects and Structural Limitations of IPR in Relation to TCEs

2.4.2.1 The Structural Mismatch Between Conventional IP Systems and TCEs

Structure, not incidental, is the most basic challenge faced by any attempt to protect TCEs using traditional IP law. As the regimes are now constituted, they are intended to safeguard certain creations ascribable to identifiable individuals or corporate bodies and for a limited time. TCEs are, however, typically the work of a group; not a single individual can be named as creator or author; and they are, by their nature, living traditions that are meant to last perpetually. The implications are that in many situations, the only result is that there is no one or thing that can meet the authorship requirements that traditional IP law assumes: a folk song or a traditional design may just not have an author in the sense that copyright law understands.

2.5.2.2 The Risk of Reverse Appropriation Through IP Rights

One of the most disturbing effects of the possibility of IP protection is that it could be used as a tool of cultural appropriation. When individuals or corporations outside a community remove some aspect of its traditional culture, change it, and secure IP rights, often copyright or design rights, over the (modified) item, it can be found that the rights are not held by the community but by the one who modified. This risk is best illustrated by instances in which the traditional symbols have been trademarked or where the designs have been used in fashion products by parties not connected with the producing community and in the absence of that community's consent. (Coombe, 1998)

2.4.2.3 Excessive Commercialisation and the Dilution of Cultural Meaning

The granting of robust commercial rights to cultural expressions can lead to the commodification of practices and symbols with a special and/or sacred meaning and significance. Whereas even if it is done formally with the consent of the community concerned, such commercialisation may reduce the original meaning and cultural significance of the expression, as in the case of sacred tribal symbols used as purely decorative motifs on consumer goods, without reference to the ritual or spiritual context in which they first appeared.

2.4.2.4 Difficulty in Identifying Rightful Owners

Many TCEs are shared among several communities, regions and even between countries, which makes the determination of an 'owner', which is a prerequisite for the exercise of any IP right, exceptionally complex. There are often many other similar folk songs, motifs or design traditions, which can be found in several different communities; variations on these will not be easily covered by any legal arrangement based on one rights-holding entity.

2.4.2.5 The Cost and Complexity of Legal Protection

Many traditional communities, especially in remote and economically disadvantaged areas, may not have the legal knowledge, documentation, or financial resources needed to implement IP rights in practice to register a title or to defend IP rights after registration. The outcome is that communities are unable to actually benefit from rights that are formally available because of the practical constraints of their ability to make use of the protection.

2.4.2.6 The Risk of Restricting Cultural Sharing

Last but not least, there is the danger that the protection, if too strict, could hinder the free transmission and exchange of cultural traditions within the community of origin as well as between the community of origin and others. Culture, by its very nature, grows through sharing and adaptation and through collective participation; a protective culture regime that assumes every use of a cultural expression by an outsider is presumptively illegal can result in the freezing of living traditions into static, legally fenced-off artefacts, which is a transformation that goes against the very nature of culture.

2.4.3 CASE STUDIES DESPITE THE LEGAL FRAMEWORKS

These controversies have been rising constantly from time to time, indicating the gap in the global legal framework to protect culture and local artisanship and therefore impacting the livelihood and cultural importance of the people preserving such art and TCEs from long back to the contemporary world.

a. Louis Vuitton and Maasai Heritage (Kenya/Tanzania)

More than 1000 companies have used the Maasai's traditional red-and-blue checked shuka without permission or without payment; this includes Louis Vuitton in their 2012 collection. One major reason the cultural brand of the Maasai was not protected in the public domain, and was able to generate a lot of money in annual corporate profits, is that they didn't have registered trademarks or specific statutory protections like the Navajo Nation. In response to this systematic exploitation, the community set up the Maasai Intellectual Property Initiative (MIPI) to actively seek formal licensing agreements. Conventional intellectual property law did not provide any formal remedy, so MIPI heavily resorted to moralism and orchestrated public pressure to slow down corporate extraction. (Jeffrey, C, 2022)

b. Dior and Mexican Embroidery: The Collaboration Dilemma (Mexico, 2024)

In response to persistent public and governmental pressure on past acts of cultural theft, Dior sought a more formal “collaboration” model for a 2024 collection, which will involve local Mexican artisans. But this strategic shift was very much contentious. Many local craftsmen and critics criticized the partnership as a thin veneer of business spin-off of further appropriation. They maintained that their traditional clothing had been transformed and utilized to conform with the aesthetic ideals of Western haute couture, and later presented as Dior's signature designs, without any true, legitimate, and fair community involvement. In this case, the thesis is that there are very complex and fragile boundaries between genuine partnerships and the unilateral appropriation of those. (C. Barbeito, 2023)

c. “Scandinavian Scarf” and the Decontextualization of the Dupatta (Global 2025)

In 2025, a key trend came up online in Western countries, with influencers on platforms such as TikTok dubbing the old South Asian garment, the

dupatta, a "Scandinavian scarf. This was a powerful example of cultural decontextualization. The name of the garment was taken away, and the dupatta was given a new name in an aesthetic framework pertinent to Western culture, thereby leaving the rich cultural heritage of the garment untouched, neglected, and erased from the culture of countries such as India and Pakistan, where the dupatta serves as a historical symbol of modesty and tradition. The online debate revealed a familiar post-colonial problem in that what used to be scorned or ignored by the mainstream when used by South Asians is now widely praised by them. Most importantly, in this case, the appropriation of culture is almost impossible to limit under current IP law. The term "dupatta" was not mentioned, so there was no base trademark infringement and, as per the existing legal principles, the very way of draping or wearing a garment is not protected by intellectual property rights.

2.6 Case Studies

he practical limitations of existing intellectual property (IP) regimes become evident when examining recent controversies involving Traditional Cultural Expressions (TCEs) in the global fashion industry. Rather than merely illustrating instances of cultural appropriation, these cases reveal recurring weaknesses in legal protection and reinforce the need for governance mechanisms such as ethical sourcing, community participation, and benefit-sharing.

The **Maasai** controversy demonstrates the structural incompatibility between conventional IP law and collectively owned cultural heritage. Although Maasai clothing patterns and beadwork possess strong cultural identity and commercial value, they could not be effectively protected through copyright because they evolved collectively over generations and lack identifiable authorship. Similarly, the absence of registered trademarks or geographical indications significantly limited legal remedies against commercial exploitation by international fashion brands. The subsequent establishment

of the **Maasai Intellectual Property Initiative (MIPI)** highlighted an alternative governance approach based on licensing negotiations, public advocacy, and benefit-sharing rather than litigation. This case illustrates that formal IP rights alone are often insufficient to protect indigenous cultural heritage and must be complemented by corporate responsibility and community-centred governance (Jeffrey, 2022).

The **Dior–Mexican embroidery** controversy reflects a different challenge: the distinction between collaboration and genuine participation. Although Dior adopted a collaborative sourcing model involving indigenous artisans, critics argued that commercial control, branding, and creative direction remained concentrated with the fashion house. The case demonstrates that ethical sourcing extends beyond consultation; it requires meaningful participation, equitable remuneration, transparency, and recognition of indigenous communities as co-creators rather than suppliers. Consequently, the effectiveness of governance depends not only on legal compliance but also on fair commercial relationships that preserve the cultural integrity of Traditional Cultural Expressions (Barbeito, 2023).

The "**Scandinavian scarf**" controversy illustrates the growing role of digital platforms in cultural appropriation. The rebranding of the South Asian *dupatta* through influencer culture did not infringe conventional intellectual property rights, yet it contributed to the decontextualisation of cultural heritage by detaching the garment from its historical and cultural origins. This example exposes an important limitation of existing IP law, which generally protects tangible creative works rather than cultural identities, traditions, or methods of wearing garments. It further demonstrates that digital commerce requires stronger mechanisms of cultural attribution and ethical representation alongside traditional legal protection.

A contrasting perspective is provided by the **Navajo Nation**, which successfully relied on registered trademarks to challenge the unauthorised commercial use of its name by fashion retailers. Unlike the previous cases, trademark registration enabled legal enforcement and ultimately facilitated licensing arrangements. However, the dispute also confirms that trademark law protects commercial identifiers rather than the broader cultural knowledge and artistic traditions associated with indigenous communities.

Collectively, these case studies demonstrate that while existing IP regimes may offer limited protection in specific circumstances, they remain fragmented and reactive. Effective protection of Traditional Cultural Expressions therefore requires an integrated framework combining legal safeguards with ethical supply-chain governance, prior informed consent, traceability, and equitable benefit-sharing. Such an approach better addresses both the commercial realities of the global fashion industry and the collective rights of indigenous communities.

2.7 Towards stronger protection of TCEs

The authors have pointed out that the protection of TCEs has been the concern of various debates and authorities, the question being whether TCEs should be protected by intellectual property rights, if so, how? The international organisation, World Intellectual Property Organisation, even began to explore this area of TCEs in 1978. (Jain, 2025)

3. METHODOLOGY

For this research, a qualitative doctrinal legal research methodology has been adopted to examine the effectiveness of existing Intellectual Property Rights (IPR) laws in protecting Traditional Cultural Expressions (TCEs) from cultural appropriation in the fashion industry. This study relies mainly on secondary sources of information such as academic books, journal articles, legal commentaries, policy documents and reports of the World Intellectual Property Organization (WIPO). Relevant laws and regulations, including copyright, trademark, geographical indications, industrial design protection and the unfair competition doctrines, have been examined and reviewed to evaluate their applicability to TCEs.

The research is descriptive & analytical. It first introduces the concepts of cultural appreciation, cultural appropriation and Traditional Cultural Expressions, and then

examines the advantages and disadvantages of the current IP regimes. A case study method has also been used to draw examples and document the situations of cultural appropriation that have become familiar in the world of fashion, such as the situation of Maasai cultural heritage, Mexican embroidery, and the South Asian dupatta. The study conducts a doctrinal analysis and comparative evaluation of the structural shortcomings of the traditional IP frameworks in order to see how these frameworks fail to respond to the collective, intergenerational and culturally binding nature of TCEs. Finally, the methodology facilitates considering more robust legal options, such as sui generis protection systems and community-based benefit-sharing mechanisms.

4. CONCLUSION

The globalisation of the fashion industry has created greater cross-cultural exchanges of cultural ideas, designs and traditions, thereby promoting cross-cultural appreciation but also increasing cultural appropriation of Traditional Cultural Expressions (TCEs). This study focused on the current state of IP laws and how these laws protect TCEs, and concluded that the protection is in general limited and fragmented.

The fundamental incompatibility between the nature of TCEs and existing IP frameworks is the key problem. While copyright, trademark and industrial design laws are designed to protect identifiable creations of a limited lifespan, TCEs are collectively owned, intergenerationally passed on and are culturally significant, can have enduring cultural values and can last indefinitely. This imbalance makes many traditional heritage sites unprotected by law.

Geographical Indications (GIs) are one of the most promising avenues of protection for traditional products, including the Banarasi Sarees, Kanchipuram Silk Sarees, and Madhubani Paintings from India, that are linked to the cultural identity of the local communities and can provide economic returns. However, GIs are still not broad enough to protect cultural heritage in a comprehensive manner.

Economic inequity is also an issue from cultural appropriation that benefits significantly fashion corporations through the use of traditional designs and craftsmanship, while source communities are barely recognised, compensated or

empowered to make decisions regarding their design use. The examples of the Maasai, the Mexican embroidery traditions and the dupatta from the South Asia highlight the lack of clarity and direction regarding consent, attribution and benefit-sharing in the law. Other challenges include cost and complexity of enforcement, unclear ownership, potential for reverse appropriation, and potential for harm to the cultural and spiritual life of traditional practices.

The study finds IP laws lack the capacity to stop appropriation of TCE. There should be a comprehensive community-centred approach that supports traditional IP rights through benefit-sharing, prior informed consent and meaningful community engagement, and ultimately builds a more sui generis legal framework that reflects the collective and intergenerational nature of TCEs. The protection of TCEs is a question of cultural justice, economic equity and heritage preservation for future generations, at its core.

6. REFERENCES

- C. Barbeito. (2023, May 22). *Fans Are Torn Over Dior's Mexico Show Honoring Frida Kahlo*. We Are Mitú.
<https://wearemitu.com/wearemitu/culture/dior-mexico-show-frida-kahlo/>
- Coombe, R. J. C. J. (1998). *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Duke University Press.
<https://doi.org/10.1215/9780822382492>
- Gamble, M. P. (2023). Cultural Appropriation in Fashion and Entertainment (Book review). *Dress: The Journal of the Costume Society of America*, 47(2), 187-189.
<https://doi.org/10.1080/03612112.2023.2206742>

- *Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*. (n.d.).

WIPO. Retrieved June 16, 2026, from <https://www.wipo.int/tk/en/>

- Jain, O. (2025, January 15). *Borrowed Aesthetics or Stolen Heritage: A Legal Inquiry into Fashion Appropriation and Intellectual Property Rights*. Indian Journal of Law and Legal Research. <https://www.ijllr.com/post/borrowed-aesthetics-or-stolen-heritage-a-legal-inquiry-into-fashion-appropriation-and-intellectual>
- Jeffrey, C. (2022). *The Loss of Profit: The Use of Maasai Culture for the Gain of Louis*

Vuitton & Valentino. Lindenwood Digital Commons.

<https://digitalcommons.lindenwood.edu/theses/85/>

- Lenard, P. T., & Balint, P. (2020). What Is (the Wrong of) Cultural Appropriation?

Ethnicities, 20(2), 331- 352. <https://doi.org/10.1177/1468796819866498>

- Lenjo, E. M. (2017). Inspiration Versus Exploitation: Traditional Cultural Expressions at the Hem of the Fashion Industry. *Marquette Intellectual Property Law Review*, 21(2), 139- 176. <https://scholarship.law.marquette.edu/iplr/vol21/iss2/4/>

- Merry, S. E. (1998). Law, Culture, and Cultural Appropriation. *Yale Journal of Law & the*

Humanities, 10(2), 575-603.

<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1202&context=yjlh>

- Pozzo, B. (2025). Fashion Between Inspiration and Appropriation. *Laws*, 9(1). <https://doi.org/10.3390/laws9010005>

- Prazmowska, K. (2020). Misappropriation of Indigenous Cultural Heritage: Intellectual Property Rights in the Digital Era. *Santander Art and Culture Law Review*, 6(2), 119-150. <https://doi.org/10.4467/2450050XSNR.20.013.13016>
- R. Tiwari. (2025, September 13). *Cultural Appreciation vs Cultural Appropriation: The Law Draws Line?* Legal Service India. <https://www.legalserviceindia.com/Legal-Articles/cultural-appreciation-vs-cultural-appropriation-the-law-draws-line/>
- Sádaba, T., LaFata, V., & Torres, A. (2020). Cultural Appropriation in the Digital Context: A Comparative Study Between Two Fashion Cases. In F. Fui-Hoon Nah & K. Siau (Eds.), *HCI in Business, Government and Organizations* (pp. 504- 520). Springer.

https://doi.org/10.1007/978-3-030-50341-3_38
- World Intellectual Property Organisation. (n.d.). *Traditional Cultural Expressions*. WIPO. <https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index>
- Zografos, D. (2010). *Intellectual Property and Traditional Cultural Expressions*. Edward Elgar Publishing. <https://doi.org/10.4337/9781849806336>
- Organisation for Economic Co-operation and Development. (2018). *OECD due diligence guidance for responsible supply chains in the garment and footwear sector*. OECD Publishing. <https://doi.org/10.1787/9789264290587-en>