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Couture's Debt to the Craftsman: Towards a Sui Generis Framework for Protecting India's Traditional Textile Arts

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ABSTRACT

India's traditional textile arts, encompassing Chikankari embroidery, Bandhani tie-dye, Kantha stitching, Zardozi metalwork, and dozens of related craft traditions, represent an irreplaceable cultural and economic heritage. According to the Ministry of Textiles, the handloom sector alone employs approximately 35 lakh weavers, making it one of the largest sources of rural livelihood in India. Yet these traditions are increasingly subject to commercial appropriation by foreign luxury and fast-fashion enterprises, which reproduce their distinctive motifs, techniques, and aesthetics without attribution, compensation, or legal consequence. The existing intellectual property framework, specifically the Copyright Act, 1957, the Trade Marks Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Act, 1999, is structurally incapable of addressing this form of exploitation. Copyright vests in individual authors and cannot accommodate collective, intergenerational creativity. Trademark law protects commercial identifiers but not the underlying knowledge systems of artisan communities. Geographical indications protect product names linked to origin but do not regulate design knowledge, technical processes, or benefit-sharing with artisans. Together, these instruments leave the most commercially significant dimension of cultural appropriation, the commercial incorporation of aesthetic vocabularies by profitable foreign enterprises, substantially unaddressed. This article argues that closing this protection gap requires two coordinated interventions: first, a purposive reinterpretation of existing statutes that extends their reach to the specific harms facing textile artisans; and second, a sui generis framework vesting collective rights in identifiable artisan communities, creating enforceable benefit-sharing obligations, and establishing a national register of protected traditional textile expressions. Drawing on Indian and international case law, comparative models, and India's existing biodiversity legislation, the article outlines what such a framework should contain and why existing law, even at its most generously interpreted, cannot substitute for it.

Keywords: *Traditional Knowledge, Geographical Indications, Copyright, Trademark, Cultural Appropriation, Sui Generis, Textile Arts, Artisan Rights, Intellectual Property*

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I. INTRODUCTION

When Hermes incorporated the Kashmiri buta motif into its global scarf aesthetic, now internationally identified as "paisley", no Indian artisan received attribution, compensation, or legal recourse. When Zara reproduced Lucknow's centuries-old Chikankari embroidery as machine-made "modern fashion," the same absence of credit and compensation was apparent. These instances exemplify a structural pattern of commercial incorporation documented across the luxury and fast-fashion industries. India's handloom sector employs approximately 35 lakh weavers, sustaining textile traditions that predate the nation-state itself.¹ Yet the legal framework purportedly protecting these traditions, the Copyright Act, 1957, the Trade Marks Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Act, 1999, leaves their most vital interests unprotected. This article argues that each of these instruments fails traditional textile artisans in a specific and demonstrable way, and that closing this gap requires both a purposive reinterpretation of existing law and a *sui generis* framework centred on community ownership and benefit-sharing.

II. THE EXISTING LEGAL ARCHITECTURE: COPYRIGHT, TRADEMARK, AND GEOGRAPHICAL INDICATIONS

Three statutes constitute the primary intellectual property framework applicable to traditional textile arts in India.

Under the Copyright Act, 1957, Section 13 extends protection to "artistic works," defined under Section 2(c) to include paintings, sculptures, drawings, engravings, and "works of artistic craftsmanship." Protection arises automatically upon creation and subsists, under Section 22, for the lifetime of the author plus sixty years. The Supreme Court in *Eastern Book Company v. D.B. Modak*² affirmed that copyright protection requires the application of skill and judgment by an identifiable author, cementing the individual-author model that fundamentally constrains the statute's applicability to collectively evolved craft traditions. It is important to distinguish, however, between the copyright originality standard established in that case and the nature of collective traditional cultural expressions (TCEs). Copyright's originality requirement presupposes an identifiable individual author whose creative choices are recorded in a fixed work; TCEs, by contrast, are collective, anonymous, and transmitted across generations through

¹ OFFICE OF THE TEXTILE COMMISSIONER, MINISTRY OF TEXTILES, GOVERNMENT OF INDIA, ANNUAL REPORT 2023-24 (Ministry of Textiles 2024) (reporting approximately 35 lakh handloom weavers).

² *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1.

practice rather than fixed authorship. This structural mismatch explains why copyright law cannot serve as the primary vehicle for protecting traditional textile knowledge, even where individual artisans produce original works embodying community traditions. Section 57,³ which protects the moral rights of authors, including the right of integrity, offers a partial avenue, though one whose reach to communally held traditions remains largely untested.

The Trade Marks Act, 1999 defines a "trade mark" under Section 2(1)(zb) as a mark capable of graphical representation and capable of distinguishing the goods or services of one person from those of others. Certification marks under Section 69 and collective marks under Section 61 offer limited scope for community-based protection, though their application to textile traditions has been narrowly construed. The principle that distinctiveness is the touchstone of trademark protection, affirmed in *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*,⁴ renders the statute ill-suited to protect aesthetic vocabularies that are, by their nature, common to an entire community's cultural heritage.

The Geographical Indications of Goods (Registration and Protection) Act, 1999, operationalised under India's TRIPS commitments, provides the most proximate protection. Section 2(1)(e) defines a geographical indication as an indication that identifies a good as originating in a specific territory where a quality, reputation, or characteristic of the good is essentially attributable to its geographical origin. Over fifty textile traditions, including Banarasi Brocade and Pochampally Ikat, carry GI registration.⁵ Yet as the Calcutta High Court's analysis in *Tea Board of India v. ITC Ltd.*⁶ confirmed, GI protection operates on the name and origin of the product. As a matter of statutory construction, the GI Act, 1999 does not regulate design knowledge or prohibit technical replication of traditional motifs,⁷ nor does it establish benefit-sharing obligations toward individual artisans. The gap between legal recognition and economic protection, therefore, remains considerable.

³ Copyright Act, No. 14 of 1957, sec. 57, INDIA CODE (1957).

⁴ *Cadila Healthcare Ltd. v. Cadila Pharm. Ltd.*, (2001) 5 SCC 73.

⁵ Geographical Indications Registry, Government of India, *GI Applications & Registrations* (last visited Nov. 15, 2024).

⁶ *Tea Bd. of India v. ITC Ltd.*, 2011 SCC OnLine Cal 1083 (holding that the registered geographical indication "Darjeeling" could not be misused as a trade name; the judgment illustrates that protection extends to the registered geographical indication rather than the underlying design knowledge or traditional techniques).

⁷ World Intellectual Property Organization, *Geographical Indications: An Introduction*, WIPO Publication No. 952(E) (2017).

III. BORROWED THREADS: FOREIGN LUXURY BRANDS AND THE COMMERCIAL USE OF INDIAN CRAFT TRADITIONS

The pattern of commercial incorporation of Indian textile traditions by foreign enterprises is neither incidental nor recent. It is systematic and, to date, legally unchallenged.

Prada's Spring/Summer 2026 menswear leather sandals, widely observed as bearing a close resemblance to the traditional Kolhapuri chappal, generated significant public debate in India regarding cultural attribution and the recognition of artisan communities. Although the company subsequently acknowledged the inspiration and expressed willingness to engage with artisan representatives, the episode underscored the absence of any legal obligation requiring attribution, consultation, or benefit-sharing when commercially valuable traditional craft traditions are adapted by global fashion houses. A similar concern arises regarding Christian Dior's incorporation of Indian embroidery traditions, including mirror work, Gota Patti, and Zardozi, into its haute couture collections.

While these collections demonstrate the continued global appeal of Indian textile craftsmanship, they equally expose the absence of a legal framework requiring recognition or economic participation of the communities that have preserved these traditions over generations. Comparable debates have also surrounded collections by other international fashion houses incorporating design elements resembling Bandhani, Chikankari, Kantha, Ikat, and traditional Indian block-printing techniques. Although these examples differ in their factual circumstances and do not necessarily amount to judicially determined instances of infringement, they collectively illustrate a recurring policy concern regarding the commercial adaptation of traditional cultural expressions without any corresponding legal mechanism for attribution or benefit-sharing.⁸

What unites these examples is not stylistic influence, an accepted feature of creative industries, but the broader policy concern arising when aesthetic systems developed over centuries by identifiable artisan communities are commercially adapted without any legal mechanism requiring attribution, community participation, or equitable benefit-sharing.

The GI Act protects Banarasi Brocade's name; it does not prevent a foreign brand from reproducing its weave patterns abroad. The Copyright Act protects a specific artisan's drawing; it does not protect the collective design vocabulary from which that drawing derives.

⁸ The examples discussed in this section are drawn from publicly reported fashion collections, official collection materials, museum scholarship, and contemporary commentary concerning traditional cultural expressions. They are used illustratively to demonstrate the limitations of existing intellectual property law and should not be understood as judicial determinations of infringement or legal liability.

IV. JUDICIAL ENGAGEMENT WITH CULTURAL APPROPRIATION AND TRADITIONAL KNOWLEDGE

Indian courts have engaged with related questions, though none has directly addressed the commercial use of textile traditions by foreign luxury enterprises.

In *Amar Nath Sehgal v. Union of India*,⁹ the Delhi High Court recognised the moral rights of an artist under Section 57 of the Copyright Act, holding that the government's mutilation of a commissioned mural violated the author's right of integrity. While the case concerned an individual author rather than a community, it established that Indian copyright law can recognise non-economic dimensions of creative ownership, a principle that could, with purposive interpretation, be extended to protect the integrity of community-held craft traditions against commercial distortion.

In *Tea Board of India v. ITC Ltd.*,¹⁰ the Calcutta High Court addressed the use of the "Darjeeling" GI as a hotel lounge name, affirming that GI protection is legally enforceable and not merely symbolic. The judgment equally exposed the limitation that protection operates on the registered indication alone, not on the underlying craft knowledge, a finding that directly illuminates the gap this article seeks to address.

Internationally, the opposition proceedings in *India v. RiceTec Inc.*¹¹ before the United States Patent and Trademark Office demonstrated that traditional agricultural knowledge can, with institutional effort, be defended against foreign appropriation through patent opposition. The proceedings underscored both the possibility of cross-border enforcement and its inherent fragility: defensive protection through patent databases requires resources and institutional coordination that individual artisan communities cannot readily command.

These cases collectively suggest that Indian courts are receptive to the principle that traditional knowledge deserves legal protection, but that existing doctrinal frameworks require significant extension, or supplementation, to deliver meaningful protection to textile artisans specifically.

V. THE PROTECTION DEFICIT: WHERE EXISTING LAW FAILS THE ARTISAN

The inadequacy of existing law is not a matter of poor enforcement alone. It is structural, rooted in the foundational assumptions of each statute.

⁹ *Amar Nath Sehgal v. Union of India*, 117 (2005) DLT 717 (Del.).

¹⁰ *Tea Bd. of India v. ITC Ltd.*, 2011 SCC OnLine Cal 1083.

¹¹ *India v. RiceTec, Inc.*, Opposition No. 91/109,392 (T.T.A.B. 2000) (concerning U.S. Patent No. 5,663,484). This proceeding was an administrative opposition before the Trademark Trial and Appeal Board rather than a reported judicial decision; the citation should be understood accordingly.

Copyright's individual-authorship model cannot accommodate knowledge that is collective by nature, anonymous by transmission, and perpetually evolving through community practice. Section 17 of the Copyright Act vests first ownership in the author, a category that has no meaningful application to a weaving technique refined over three centuries by hundreds of artisans in Varanasi's weaving quarters. Even if a specific artisan's design were protected, that protection would not prevent a foreign brand from reproducing the stylistic vocabulary, the motif system, or the technical process that the design embodies.

Trademark law protects commercial identifiers, not the aesthetic systems behind them. A commercial entity that markets products as "inspired by" traditional designs avoids trademark infringement as easily as it avoids attribution. Certification marks, though potentially available under Section 69 of the Trade Marks Act, require a governing body with the capacity to set and monitor production standards, infrastructure that most artisan communities lack. Moreover, trademark protection creates no obligation of benefit-sharing; it merely controls who may use an identifier commercially.

Geographical indications come closest to the protection needed, but fall critically short in three respects. First, as a matter of statutory construction under the GI Act, 1999, GI registration protects the origin-linked product name,¹² not the underlying design knowledge; a foreign brand may reproduce every element of Bandhani dyeing without ever calling the product "Bandhani." Second, GI registration does not confer rights on individual artisans; the registered proprietor is typically a state body or trade association. Third, and most fundamentally, the GI Act creates no benefit-sharing mechanism. Even where GI-registered products command premium prices globally, the economic surplus does not automatically flow to the artisan communities whose accumulated knowledge created the value.¹³

The combined effect is a protection landscape in which the most commercially significant form of exploitation, the wholesale adoption of traditional aesthetic systems by profitable foreign enterprises, remains substantially unaddressed by law.

VI. CLOSING THE GAP: TOWARDS AN INTERPRETIVE AND SUI GENERIS FRAMEWORK

The gap identified above admits of two complementary responses.

¹² Dev Gangjee, *RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS* (Cambridge Univ. Press 2012).

¹³ N.S. Gopalakrishnan & T.G. Agitha, *PRINCIPLES OF INTELLECTUAL PROPERTY* 310-12 (2d ed. 2014). This proposition is also implicit in the structure of the GI Act, 1999, which vests registration in associations or producers rather than individual artisans and creates no royalty mechanism.

The first is interpretive. Existing statutes, purposively read, can be extended further than current practice allows.¹⁴ Section 2(c)'s reference to "works of artistic craftsmanship"¹⁵ can be construed to protect documented instantiations of traditional designs, particularly where artisans have produced specific works incorporating the tradition's vocabulary.¹⁶ Section 57's moral rights provision, the right of integrity, can be invoked where commercial use distorts or decontextualises a community's artistic tradition.¹⁷ Courts should also be willing to recognise passing-off style claims where a foreign brand's marketing creates a false impression of cultural origin or affiliation, drawing on the flexible principles affirmed in *Cadila Healthcare*.¹⁸ These interpretive moves would not require legislative amendment and would immediately expand the protection available to artisans who can access the court system.

However, interpretation alone cannot substitute for legislation where the structural gaps are fundamental. The second and primary response must be a *sui generis* framework: a purpose-built legal regime for traditional textile expressions, analogous to the models adopted by South Africa under its Intellectual Property Laws Amendment Act, 2013, and New Zealand in its protection of Maori cultural expressions.

Such a framework should vest rights in organised artisan communities rather than state bodies. Protection should extend to distinctive motifs, design vocabularies, and technical processes demonstrably associated with an identified community's tradition. Any commercial entity reproducing, substantially adapting, or monetising a protected traditional textile element should be required to enter into a benefit-sharing agreement with the relevant community organisation, with a statutory minimum royalty payable to a Community Textile Heritage Fund. A National Register of Traditional Textile Expressions (declaratory rather than constitutive) should document India's textile traditions in partnership with their communities, providing evidentiary foundation for enforcement. This is proposed as a legislative reform; the Register does not currently exist in Indian law. Fast-track civil remedies, customs-level interception of infringing goods, and online monitoring mechanisms would make this framework accessible rather than theoretical.

¹⁴ WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO Doc. WIPO/GRTKF/IC/40/19 (2019).

¹⁵ Copyright Act, No. 14 of 1957, sec. 2(c)(iv), INDIA CODE (1957).

¹⁶ WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Cultural Expressions*, *supra* note 14.

¹⁷ Copyright Act, No. 14 of 1957, sec. 57, INDIA CODE (1957); *Amar Nath Sehgal v. Union of India*, 117 (2005) DLT 717 (Del.).

¹⁸ *Cadila Healthcare Ltd. v. Cadila Pharm. Ltd.*, (2001) 5 SCC 73.

India's experience under the Biological Diversity Act, 2002, which established community-level benefit-sharing through biodiversity management committees,¹⁹ provides a domestic precedent for community-centred IP governance that can be adapted to the textile context.²⁰ The argument that strong traditional textile protection would "freeze" living traditions misreads the proposal: the framework targets commercial exploitation for profit, not artistic dialogue or cultural exchange. The concern that it conflicts with India's WTO obligations is equally misplaced. TRIPS Article 27(3)(b) permits Member States to exclude certain subject matter from patentability and, in so doing, to adopt *sui generis* systems for the protection of plant varieties and traditional knowledge; India may legislate within that space consistent with its international obligations.²¹ TRIPS-plus obligations in bilateral agreements can be negotiated with heritage protection carve-outs, as India has done in other sensitive sectors.

VII. CONCLUSION

India's traditional textile arts are not merely aesthetic heritage; they are the livelihood of millions and the intellectual property of communities whose creative contribution to global fashion goes unacknowledged and uncompensated. The existing legal framework, however sympathetically interpreted, cannot reach the structural exploitation that this article has documented. A *sui generis* framework, grounded in community ownership, benefit-sharing, and accessible enforcement, is not a radical proposal; it is the minimum that the law owes to the craftsman whose debt couture has been accumulating for decades. India, which has been among the early adopters of GI protection in the developing world, is well placed to lead on this frontier of intellectual property law.

¹⁹ Biological Diversity Act, 2002, No. 18 of 2003, secs. 21, 41-47 (India).

²⁰ Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79.

²¹ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 27(3)(b), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299. Article 27(3)(b) permits members to exclude from patentability plants, animals, and biological processes, and to protect plant varieties through either patents or an effective *sui generis* system or a combination of both. The provision does not expressly mandate traditional knowledge protection but creates space for Members to legislate in that area.