



## Fashion Design and Intellectual Property Rights: An Indian Perspective

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IP protection to fashion design is in a transition phase due to the uncertainties as to the protection and the awareness of the same among fashion designers. In addition to this, there is a significant overlapping of the Design Act, 2000 and the Copyright Act, 1957, when it comes to protecting design. The filing trends of design is not categorically analysed backed by a viable approach to promote design protection. Against this background, the present article is an attempt to locate various issues involved in the protection of fashion design, covering its evolution, available, protections, overlapping of relevant legislations, design piracy and undertake an analysis of the recent filing trends in fashion design domain and possible suggestions.

**Keywords:** Fashion Design, Design Act, 2000, Copyright Act, 1957, Overlaps, Articles, Jewellery, IBEF Report 2019 on Textile and Apparels, McKinsey: The State of Fashion 2019, EU Directive

Ever since the evolution of the human mankind i.e. homo-sapiens around 200,000 years ago,<sup>1</sup> the other important thing that evolved apart from the food, fire and implement is the invention of clothing in the primitive sense. It is believed that early humans used the barks, leaves from the trees to cover up themselves and protect themselves from the cold or scorching heat and also from the scratches which they got while moving along the forest. Later on, it is believed that they also started using 'Fur' or animal skin to cover themselves along with the use of paints, dyes obtained from the plants. It is believed that early humans started wearing clothes as early as 100,000 years ago.<sup>2</sup> Evidence of handmade sewing needles has been found from the year 19,000 BC to 15,000 BC, near France which is believed to be invented by 'Solutrean culture'.<sup>3</sup> Similarly, the evidence of the use of *flax fibre* dating back to around 36,000 BC has been found near the present Republic of Georgia.

There have been numerous examples of prehistoric humans using something or the other to be used for covering themselves. There is substantial evidence of using the needle and knitting to assemble the *flax fibre* or *skin* to make it usable as a cloth for covering. Clothing was a need, a necessity and therefore it evolved. Since that time the need for good clothing is still evolving with new and innovative clothes being produced daily. However, the discussion regarding

the evolution thus far was restricted to need-based evolution meeting the clothing requirement. Fashion brings a different kind of evolution of clothing that goes beyond the need-based requirements. Fashion brings out the feeling of looking well and looking different from others. The first-ever evidence of clothing which is different and incorporates details of some new characteristics of sewing and cutting can be seen in a 5000-year-old garment. The said garment is supposed to be Egyptian and defines the fashion statement of those years. This garment, known as '*Tarkhan Dress*'<sup>4</sup> has been beautifully stitched with pleats and it is believed to be an ancient *Haute Couture* prepared for some wealthy and important person. That dress itself had a nicely cut V-neck shape with narrow pleats, nicely stitched around the V-neck. The dress also has tailored sleeves. Similar evidence of a woollen trouser, supposed to be the oldest pant has been found near China, which is believed to be invented for riding the horse.

Fashion in India has a rich cultural heritage and tradition. The sense of dressing up, the colour combinations and use of the artefacts on the dresses are traditionally well known in India. Fashion in India changes regionally, with every region or state having its unique fashion statement. Different types of clothes can be seen in India from Kashmir in the north to Kanyakumari in the south and also from Rajasthan in the west to Arunachal in the east. Every state has different traditional attire which is associated with

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rich cultural heritage. Even the use of colours is also traditional and is being prepared traditionally.

The Indian fashion, in the present form, sees a mix of a lot of these cultures in the fashion statement. This may be, for example, the use of very bright colours, artefacts on the clothes, from Rajasthan to the use of bamboo or pineapple fibres in making the clothes from the North-eastern states. Every design is innovative and is widely accepted throughout the country. Similarly, the Banana and Palm tree leaves are being used to prepare unique eco-friendly and sustainable clothing.<sup>5</sup> It is to be noted that much of the traditional work in these categories are being carried out by the artisans through the cottage industries which are preparing them using a handloom.

Now, looking at the textile industry in India, which of course will relate to the fashion industry, there has been a tremendous increase in its output. According to the 'IBEF Report 2019 on Textile and Apparels', India is the world's second-largest producer of textile and garments. Also, an increase in the per capita income of the country has created a shift in the preference towards the branded products. It has been reported that the domestic textile and apparel market is estimated to be around US\$ 100 billion in the year 2018-19 with the growth of around 10% since 2005-06 and further, the growth is expected to reach around US \$ 220 billion by 2025.<sup>6</sup> Further, the export of the textile and apparel is estimated at around US \$ 38. 70 billion in the financial year 2019 and is expected to increase to US \$ 82 billion by the financial year 2021.<sup>7</sup>

According to the Report 'McKinsey: The State of Fashion 2019', the Indian apparel market will worth US \$ 59.3 billion in the year 2022, making it the sixth-largest in the world.<sup>8</sup> Thus, it is evident that the textile and apparel industry is poised for growth. However, despite the growth in the textile and apparel sector, which is expected to touch around US \$ 82 billion, piracy in the fashion industry is extremely rampant. The protection to the fashion industry through IPR is either minimal or is under-protected.

In fact, the statement of Miranda Priestly (played by Meryl Streep) in the famous movie '*The Devils wear Prada*'<sup>9</sup>, is very apt while describing the piracy in the fashion design and how the piracy of a famous apparel design trickles-down the chain where it is available at very cheap cost on the streets. This lack of protection of fashion designs under IPR, allows any person to simply make an exact replica of the original and sell it at a very cheaper cost. Such replicas, although of very

inferior quality are called knock-offs but they do bring a bad name to the original designer and of course, take a huge part of the designer's profit.

### **Protection of Fashion Designs/Apparels in India - Legal Positions**

Under the Indian IPR laws, fashion design/apparel design can either be protected under the copyright or industrial design laws.<sup>10</sup> Under the Copyright Law<sup>11</sup> in India, Section 13, Section 14, Section 15 and Section 22 are some of the important provisions which may deal with the protection of the fashion designs/apparels in India. Section 13 of The Copyright Act, 1957, deals with the work in which the copyright subsists. It states that "*The Copyright shall subsist throughout India in the following classes of work:*"<sup>12</sup>

- a) *Original literary, dramatic, musical and artistic works,*
- b) *Cinematographic films and,*
- c) *Sound recordings."*

The fashion design/apparel design, therefore, appears to be falling under the category of '*artistic work*'. Further, the word '*artistic work*'<sup>13</sup> means:

- a) *a painting, a sculpture, a drawing (including diagrams, maps, charts etc.);*
- b) *a work of architecture;*
- c) *any other work of artistic craftsmanship.*

Thus, the designs pertaining to fashion designs/apparel designs may qualify as an artistic work under Section 2(c) and hence may qualify for the protection under Section 13(1) of the Copyright Act, 1957.

Now once the fashion design/apparel design is protected under the provisions of the Copyright Act, 1957, the term of protection of the copyright becomes very important. Accordingly, Section 22 of the Copyright Act 1957, provides that the copyright shall subsist in the artistic work for a period of 60 years beyond the life of the author.

Further, fashion design/ apparel design, if registered under the Copyright Act, enjoys certain protections under the meaning of the copyright in artistic work. The author of the work will therefore have an exclusive right to do or to authorise the doing of the following acts<sup>14</sup> in case of the artistic work:

- a) *To reproduce the work in any material form including:*
  - (i) *the storing of it in any medium by electronic or other means; or*
  - (ii) *depiction in the three dimensions of a two-dimensional work; or*

(iii) *depiction in two dimensions of a three-dimensional work.*

- b) *to communicate the work to the public;*
- c) *to issue the copies of the work to the public;*
- d) *to include the work in cinematographic films;*
- e) *to make any adaptation of the work.*

As can be seen from the above, the author of the artistic work (fashion design/apparel design in this case) is free to exercise certain rights as mentioned in Section 14 of the Copyright Act.

Thus, the author of the Design shall have the exclusive right even on the drawings or figures of the dress, which the author has made initially while depicting the designs on paper. The author shall have full rights over the drawings/figures as well as the physical apparel as such. It will be an infringement if the 3D object is made from the 2D figures or *vice versa*.

Further, even after the rights are licensed or sold by the author of the fashion design/ apparel, there still remains the ethical rights or the moral rights with the author of the design. The author can still stop or claim damages from the licensee for any distortion, mutilation and modification of the design, since such acts may be prejudicial to the reputation of the designer.

In *Amarnath Sehgal v Union of India and Another*,<sup>15</sup> where the moral rights of an artist were not honoured, Hon'ble Justice Jaspal Singh, while passing an interim order restraining further loss or injury to plaintiff's mural and from doing anything as is prejudicial to his honour or reputation as the author of the work; emphasized that:

*"In a country rightly proud of its creativity and ingenuity, a man who can hardly distinguish the heads of Venus from those of Mars, cannot be allowed to decide the fate of the artists who create our history and heritage. The cry is Ils ne passeront pas<sup>16</sup> and in such situation, Indian courts will always be found dynamic and responsive. Section 57 of the Copyright Act provides the light".*

Apart from various provisions under the Copyright Act, 1957, regarding the protection of fashion design/apparel design, there is another provision under the copyright act which provides for special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 2000.

As per Section 15 of the Copyright Act:  
*"Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 2000".*

Copyright in any design, which is capable of being registered under the Designs Act, 2000 but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than 50 times by industrial process, by the owner of the copyright or with his licence, by any other person.

On analysing Section 15 of the Copyright Act, there appears to be an overlap between the Copyright and Designs Act on the issues relating to the protection of industrial designs. The joint reading of Section 15 of the Copyright Act, 1957 and the Design Act 2000 gives:

- (i) Industrial designs registered as per the provisions of the Designs Act, 2000,<sup>17</sup> gets the protection only under the Designs Act;
- (ii) Industrial designs which are capable of being registered under the Designs Act but have not been registered so far may get protection under the Copyright Act, 1957;
- (iii) Industrial designs, which do not come under the purview of protection of the designs, may get protection under the Copyright Act 1957.
- (iv) Before delving deep into the provisions of Section 15 of the Copyright Act, 1957, let us first examine how the Designs Act, 2000, may help to protect the fashion design/ apparel designs in India.
- (v) The Designs Act, 2000, intends to give protection to the designs which are new and original and deals primarily with the appearance and looks. According to Section 2(d) of the Designs Act, 2000,

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

The word article has been defined under Section 2 (a) and means

*“any article of manufacture and any substance, artificial, or partly artificial and partly natural and includes any part of an article capable of being made and sold separately”.*

Now let us look at the conditions for registration of designs. Such conditions/provisions<sup>18</sup> have been reproduced as:

*A design which:*

- a) is not new or original; or*
- b) has been disclosed to the public anywhere in India or any other country by publication in intangible form or by use or in any other way prior to the filing date or where applicable, the priority date of the application for registration; or*
- c) is not significantly distinguishable from known designs for combination of known designs; or*
- d) comprises or contains scandalous or obscene matter,*
- e) shall not be registered.*

Therefore, for a design to be registrable under the Designs Act, it has to be new or original. However, the word ‘original’ has been defined as: *“Original, in relation to design means originating from the author of such design and includes the cases which though old in themselves yet are new in their applications”.*<sup>19</sup>

Therefore, the term ‘original’ in Designs is different as compared to the Copyright Act, since in Designs Act, the application of the design to the *article* should be ‘new’ even though the design in itself is not ‘new’. Whereas in Copyright Act, 1957, ‘original’ does not mean that the work should be the expression of the original or inventive thought.

Originality for the purpose of copyright law relates to the expression of thoughts, but such expressions need to be original or novel.<sup>20</sup> Therefore, for design to be registered under the Designs Act 2000:

- (i) It has to be applied to an article of manufacture;
- (ii) It has to be new or original;
- (iii) It should not be an artistic work as defined under Copyright Act, section 2(c);
- (iv) It should not be a mechanical device;
- (v) It should not be a trademark or property mark.

Now coming back to the protection of fashion design/apparel design, it can be said that the fashion design / apparel design can easily qualify for protection under the Copyright Act, 1957, as an *artistic work*.

However, under the Designs Act, 2000, artistic work defined under Section 2(c) of the Copyright Act, 1957, has been explicitly barred from registration.

However, the work of ‘*artistic craftsmanship*’ can qualify for protection under the Designs Act, 2000, since the artistic craftsmanship refers to the products of handicrafts reproduced by hands or machine or otherwise.

In the words of Lord Reid, “*work of art*” is generally associated with the fine arts than with craftsmanship and maybe setting too high a standard. The whole conception of artistic craftsmanship appears to me to be to produce things which are both useful and artistic in the belief that being artistic does not make them any less useful.<sup>21</sup> Therefore, the fashion designs/apparel design can also be protected under the Designs Act, 2000. One of the differences between the protection under the Copyright Act and Designs Act is the duration for the protection.

Under the Copyright Act, the protection may be obtained for a period of life of the author plus 60 years whereas if the protection is sought under the Designs Act, 2002, then it is for a period of 10 years extendable by another 5 years i.e. for a maximum of 15 years. However, since fashion design/apparel design is a dynamic phenomenon, wherein new fashion designs /apparel designs are seen frequently, there appears to be no point in protecting the design for a period of 60 years beyond the life of the author. Therefore, the protection of the fashion design through the Designs Act appears to be a more viable method of protection which gives protection for a period of 15 years and is also robust as compared to the copyright protection. Now coming back to Section 15 of the Copyright Act, 1957, it says that copyright shall not subsist under this Act in any design which has been registered under the Designs Act, 2000. Operation of Section 15(1) implies that if a design is registered under the Designs Act, 2000, then there shall be no copyright under the Copyrights Act.

However, an analysis of Section 15(2) of the Copyright Act, 1957, suggests that if the design is capable of being registered under the designs act, which of course the fashion design is capable, but it is not registered, shall cease as soon as any article to which the design has been applied has been reproduced more than 50 times by any industrial process by the owner of the copyright or with his licence, by any other person. In such a scenario, if the newly created fashion design is not protected under the Designs Act, 2000 and if the author makes more

than 50 copies of the same article, then author or creator loses the right to protect the design under the Designs Act, 2000 as the product will not be new since copies of the same are now available in the public domain as well as the author will also lose the protection under the Copyrights Act, 1957, because of the operation of Section 15(2) of the Copyright Act, 1957. Thus, the author is left with no protection at all.<sup>22</sup>

Interestingly, the EU Design Protection Directive [98/71/80] and the EU Regulation [6/2002] called as EU Directive and adopted by the European Union, provides for a unique way of protection of ‘unregistered design’. The Unregistered Community Design<sup>23</sup> are unique in a way that there are no formal requirements of the registration of design and the unregistered community design receives protection for a period of 3 years from the date on which it is made available to the public. Thus, this type of registrations will be very helpful for the fashion industry where the life cycle of the product is very short.

**Protection under the Designs Act, 2000**

Under the Designs Act, 2000, fashion designs/apparel designs, goods designed by the fashion designers etc., can be protected under different classes of articles as mentioned in the Schedule III of the Designs Rules 2001. The relevant

classes<sup>24</sup> for the protection of fashion design/apparel design are:

- Class 2 : Articles of clothing and haberdashery
- Class 3 : Travel goods, cases, parasols and personal belongings, not elsewhere specified
- Class 5 : Textile piece, goods, artificial and natural sheet material
- Class 10: Clocks and watches and other measuring instruments, checking and signalling instruments
- Class 11: Articles of adornment

The year-wise filing of the design application in respect of the above classes has been given in Table – 1.

Referring to Fig. 1 above, it is observed that the total combined filings under the reference Classes 2, 3,5,10 and Class 11 (all these classes taken together) if compared with the total filing during that year have not been substantial.

As can be seen, the filings in these particular categories have been fluctuating between 10 to 23% of the total filing. Therefore, it appears that although the filing trend is increasing, there is not much increase in the registration under these reference categories which generally relates to the Fashion technology. It also appears that the creators of the fashion design articles/apparel designs etc. are not

Table1 — Year-wise filing of the design applications in the reference classes

Financial year	Class-2	Class-3	Class-5	Class-10	Class-11	Total (combined classes)	Total filing	% Filing (combined classes/total filing)
2002-03	268	83	91	91	38	571	3124	18.28
2003-04	202	82	247	64	69	664	3357	19.78
2004-05	235	48	120	57	55	515	4017	12.82
2005-06	310	81	231	60	100	782	4949	15.80
2006-07	278	46	223	60	150	757	5521	13.71
2007-08	168	32	133	85	234	652	6402	10.18
2008-09	147	32	323	120	170	792	6557	12.08
2009-10	135	62	183	120	254	754	6092	12.38
2010-11	217	60	248	142	324	991	7589	13.06
2011-12	228	69	379	157	242	1075	8373	12.84
2012-13	191	85	334	173	228	1011	8337	12.13
2013-14	284	129	428	198	274	1313	8533	15.39
2014-15	369	117	1017	140	238	1881	9327	20.17
2015-16	458	125	1150	191	342	2266	11108	20.40
2016-17	633	170	668	153	314	1938	10213	18.98
2017-18	1113	143	683	232	350	2521	11838	21.30
2018-19	1248	232	760	283	427	2950	12583	23.44

Source: Annual Reports of the Controller General of Patents, Designs and Trademarks and CIPAM

much inclined in getting the protection for their products.

Referring to Fig. 2 above, if we analyse the data in respect of the class-wise filing with respect to the total filings in these years, it is observed that there has been an increase of about 30% in the filing under Class 2 during the financial year 2017-18 as compared to the financial year 2016-17. Thereafter, an increase in the filing trend is observed in the Class 2.

Also, under Class 5, it is observed that there has been an increase in the filing of about 13% in this category during the financial year 2015-16 as compared to financial year 2014-15. However, after that, there has been a considerable decrease in the filing under this category. The filings in other categories of the classes are almost stagnant or show a gradual increase their filings.

The reason for the increase in the filings in these particular categories cannot be ascertained but may be attributed to the various outreach and awareness programmes undertaken by the Indian Government in the field of IPR, by the way of announcing the National IPR policy as well as by expanding the

outreach through its various awareness programs held across India. However, it is certain from the data that the enthusiasm to protect the fashion design/apparel through the industrial design registration is lacking among these stakeholders/entrepreneurs.

**Protection under the Copyrights Act, 1957**

As discussed previously, Section 13 (1) of the Copyright Act 1957, provides that:

The copyright shall subsist throughout India in the following classes of work:

Original literary, dramatic, musical, and artistic work;

Cinematographic films; and

Sound recordings

The word *artistic work*<sup>25</sup> means:

a painting, a sculpture, a drawing (including diagrams, maps, charts etc.)

a work of architecture

any other work of artistic craftsmanship.

Therefore, the apparels/fashion designs are protectable under the Copyright Act. However, the important factor here is the term of protection which becomes ‘life of author + 60 years’ as compared to 10 + 5 years if the same is registered under the Designs Act, 2000. Further, if the protection is sought under the applicable copyright laws, then Section 14 of the Copyright Act further extends certain acts, where the author has an exclusive right to perform many actions such as:

To reproduce the work in any material form including:

Storing it in any medium by electronic or other means or

Depiction in three dimension of a two dimensional work

Depiction of two dimensional work of a three dimensional work

- to communicate the work to the public;
- to issue copies of the work to the public;
- to include the work in cinematographic films;
- to make any adaptation of the work.

Therefore the author shall have extensive rights on the dress/apparel as well as the drawings/figures which the author has contemplated initially while conceptualizing the design. Needless to say, the author shall still have the moral and ethical rights, even after the rights are licensed or sold<sup>26</sup>.

Thus, the protection of the apparel/fashion design under the copyright act is definitely a viable option as

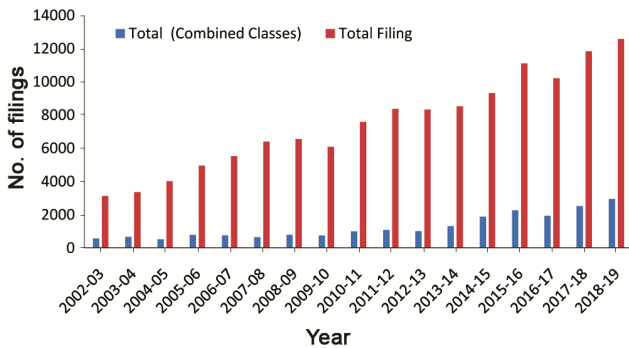


Fig. 1 — Graphical representation of total filing (combined classes) v total filing

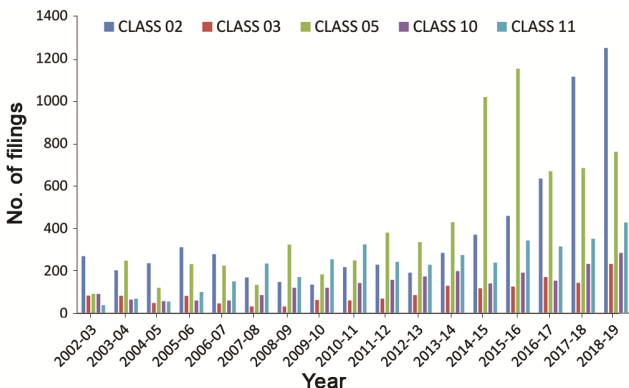


Fig. 2 — Graphical representation of the class wise filing in the reference classes

it gives a plethora of rights with increased duration.

Since the protection under the copyright laws appears to be a viable option, the data pertaining to the copyright registration was analysed. However, the data available at the website of the Registrar of Copyrights<sup>27</sup>, only provides the details of the registered copyright from the year 2016 onwards with the month wise registration details.

Further, registered copyrights have been broadly identified under the categories like artistic work, literary work, computer software, etc. There are no further subdivisions under the category of artistic work, which is obviously our concern to identify the different works under the artistic work category. Therefore it is difficult to assess, which artistic work may fall under the category of fashion design/apparel design or any other category which may fall under the fashion design work. There is no such subcategory of artistic works in copyrights, as is available in industrial designs under different classes.

However, to identify the various works registered under the copyrights in the category of artistic work, the data has been searched for keywords associated with Fashion designs to identify such registered works. The keywords used are fashion, fashion design, fashion design house, prints related to clothes and garments, garments, clothes, clothing, apparels apparel designs, Sarees, dresses, dress material, textile material, jewels/ jewellery, fashion accessory bags handbags etc. Details obtained after the analysis are given in Table 2 below:

Referring to Table II, Fig. 3, it is observed that although there is an increase in the number of cases registered over the years but there is no significant increase in the registration of the copyrights in the categories associated with the fashion design and fashion accessories.

Further, referring to Fig. 4, if we analyse the registration in terms of individual categories, it is also

observed that there is no substantial increase in the registration of copyright even in a particular category. However, sporadic instances of increase in the registration in a particular category are observed. It can therefore be deduced that use of copyright registration is still not perceived as a viable option for the protection of apparels/fashion designs and fashion accessories.

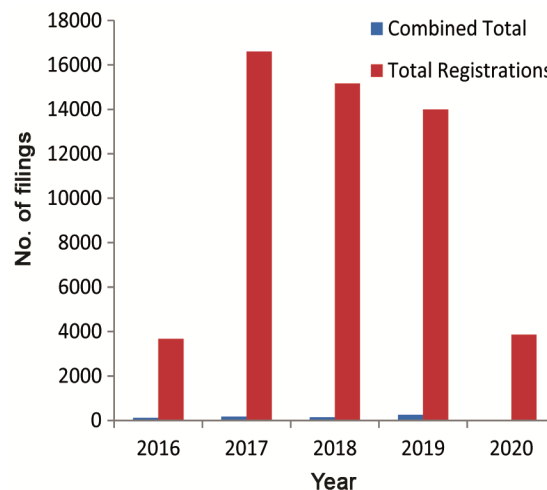


Fig. 3 — Graphical representation combined total with total filing

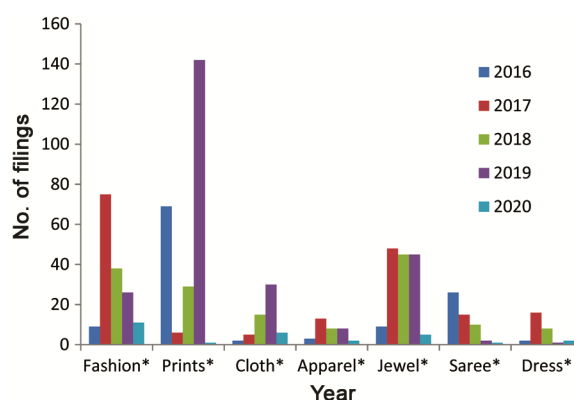


Fig. 4 — Graphical representation of year-wise filing in different categories

Table 2 — Registered copyrights under artistic work

Year	Category: artistic work							Combined total in all categories	Total registrations	% (Combined total/ total registration)
	Fashion*	Prints*	Cloth*	Apparel*	Jewel*	Saree*	Dress*			
2016	9	69	2	3	9	26	2	120	3679	3.26
2017	75	6	5	13	48	15	16	178	16603	1.07
2018	38	29	15	8	45	10	8	153	15170	1.01
2019	26	142	30	8	45	2	1	254	13995	1.81
2020*	11	1	6	2	5	1	2	28	3866	0.72

\*Till March 2020

Source: List of registered copyrights, available at the [www.copyright.gov.in](http://www.copyright.gov.in)

It is, therefore, observed that the entrepreneurs, stakeholders are neither using the protection offered under the industrial designs nor using the protection under the Copyright Act for protecting the fashion apparels/fashion designs.

### Conclusion

Both the Copyright Act, 1957 as well as the Designs Act, 2000 offers the provision for protecting the fashion designs etc.

Fashion designer can choose between the Copyright Act and the Design Act depending upon the type and duration of the protection required. Under the Copyright Act, he may seek a greater protection period i.e. 'life of author + 60 years' whereas under the Designs Act, 2000, the author may get only 15 years of production but with the ability to use for multiple productions.

However, from the available data it is clear that there appears to be no inclination from the manufacturers, designers to get their products protected either through the Copyright Act or through the Designs Act.

The *piracy paradox*<sup>28</sup>, therefore, appears to be true in terms of fashion piracy vis-à-vis fashion protection. It has been argued that the piracy in fashion industry as a whole, leads to a tendency creating new fashion designs thereby making the fashion designs more affordable to the public and also increasing the outreach of the fashion from big fashion houses to low-cost Fashion Street. These so called 'knock-off' makes the fashion 'affordable' to the people at large.<sup>29</sup>

Therefore, although it appears that this fashion piracy should lead to less and less new fashion coming out of the fashion houses (due to piracy), but the reality is not as expected. This piracy has induced even more competitiveness in the market wherein the fashion houses are bringing more and more new creations. The fashion designers are free to borrow, imitate, review, recombine, transform and share design elements without paying royalties or worrying about infringing intellectual property rights<sup>30</sup>. As it has been said '...culture grows by accretion, each new creator building on the works of those who came before'.<sup>31</sup>

The other possibility is "whether we can make the existing laws more favourable to the users so that the apparels/ fashion design/ fashion accessories can be protected in this field".

Protecting the fashion design under the Designs Act, 2002, is comparatively very easy as compared to

protecting the IPs under the Patents Laws. The whole process of registration of industrial design under The Designs Act is electronic and can be done using the e-filing facilities. The formalities required under the Act are also very minimal and does not require any special skill to make up the forms and other documents. Further, the processing of the applications for design registration is also electronic and the registration is also completed within a period of 6 months as compared to 2 to 3 years in case of patents.

However, in case of fashion designs, even the duration of 6 months appears to be too long, as the fashion industry is very dynamic and fast changing industry. The users may not like to spend so much time getting their products registered and therefore, in order to have more registrations, we may have to provide a separate category of fashion design in the definition of designs itself<sup>32</sup>. The timelines for the registration under this category may also be reduced to cater to this fast-changing fashion industry.

The protection of fashion designs/ apparel designs under the 'unregistered design' category akin to that offered by EU Design protection Directive, is yet another way to promote the protection of fashion designs/ apparel designs. This will ensure that the unregistered design shall have a protection for a period of 3 years from the date of disclosure. This type of registration system will be helpful for the industries where the life cycle of the product is very short.

Finally, there is yet another possibility, wherein the user can enjoy the protection under Copyright Act as well as the Designs Act.

The user may get the work registered under the Copyright Act, 1957, so as to enjoy various protections under the act and simultaneously he or she can prepare a maximum of fifty replicas of the fashion design for making it commercially available to the public<sup>33</sup> under the designer outfit product category. In this manner the author may retain the copyright protection as well as commercialize some of the replicas without invoking the Section 15 to the Copyright Act, 1957.

As can be inferred from the available data above, apparently there is no interest in the manufacturers/ designers to get their products protected either through the Copyright Act or through the Designs Act. Therefore, in order to have more and more registration in these categories, it becomes important that faster means of registration are made available to the public.



**References**

- 1 Sato M, "Time, Chronology and Periodization in History", *International Encyclopedia of the Social & Behavioral Science*, (2001) 15686.
- 2 What did pre-historic people wear?, available at <http://www.historyofclothing.com/clothing-history/prehistoric-clothing> (accessed on April 19<sup>th</sup> 2020).
- 3 <http://www.historyofclothing.com/clothing-history/prehistoric-clothing> (accessed on April 19<sup>th</sup> 2020).
- 4 See the World's Oldest Dress, available at: <https://www.nationalgeographic.com/news/2016/02/160218-oldest-dress-egypt-tarkhan-archaeology/> (last accessed on April 19<sup>th</sup> 2020).
- 5 Ministry of Textiles, Government of India, "Fibre Policy Report on other natural fibres", available at [https://www.industree.org.in/wp-content/uploads/2016/08/Fibre\\_Policy\\_Sub\\_Groups\\_Report\\_dir\\_mg\\_d\\_20100608\\_6.pdf](https://www.industree.org.in/wp-content/uploads/2016/08/Fibre_Policy_Sub_Groups_Report_dir_mg_d_20100608_6.pdf) (last accessed on April 19<sup>th</sup> 2020).
- 6 Indian Brand Equity Foundation, "Textile and Apparel Report"(2019).
- 7 Indian Brand Equity Foundation, "Textile and Apparel Report"(2019).
- 8 McKinsey & Company, "The State of Fashion 2019" (2019).
- 9 The Devil Wears Prada is a 2006 American comedy-drama film directed by David Frankel and produced by Wendy Finerman. The screenplay, written by Aline Brosh McKenna, is based on Lauren Weisberger's 2003 novel of the same name.
- 10 Designs Act, 2000 and the Design Rules, 2001
- 11 Narayanan P, *Laws of Copyright and Industrial Designs*, 62-64, 68-79 (Eastern Law House, Fourth edition, 2007)
- 12 The Copyright Act, 1957 (14 of 1957), Section 13(1).
- 13 The Copyright Act, 1957 (14 of 1957), Section 2(c).
- 14 The Copyright Act, 1957 (14 of 1957), Section 14.
- 15 2005 (30) PTC 253 Del.
- 16 literally means "one does not pass"; this being a common French idiom to express interdiction.
- 17 The Designs Act, 2000 (16 of 2000), Section 2(d).
- 18 The Designs Act, 2000 (16 of 2000), Section 4.
- 19 The Designs Act, 2000 (16 of 2000), Section 2(g).
- 20 Macmillan & Co. v Cooper, AIR 1924 PC 75;51 IA 109.
- 21 Hensher George v Restawile Upholstery (Lancs), RPC (31) (1975) 52
- 22 Microfibres Inc. v Girdhar & Co. & Ors., 128 (2006) DLT 238, 2006 (32) PTC 157 Del
- 23 EUIPO, available at :<https://euipo.europa.eu/ohimportal/en/designs-in-the-european-union> (last visited on May 5<sup>th</sup> 2020)
- 24 The Design Rules, 2001, Rule 10, Schedule-III
- 25 The Copyright Act,1957 (14 of 1957), s. 2(c).
- 26 Sehgal Amarnath, versus Union of India and Another, 2005 (30) PTC 253 Del.
- 27 [www.copyright.gov.in](http://www.copyright.gov.in), (last accessed: 05<sup>th</sup> May, 2020)
- 28 Raustiala Kal & Sprigman Christopher, "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design", 92 *Virginia Law Review*, 1717 (2006).
- 29 Brandon Scruggs, "Should Fashion Design be Copyrightable?" 6 *Northwestern Journal of Technology and Intellectual Property* 122 (2007).
- 30 Cox Christine & Jenkins Jennifer, "Between the Seams, A Fertile Commons: An Overview of the Relationship Between Fashion and Intellectual Property, *A Norman Lear Centre Conference, Annenberg Auditorium, USC Annenberg School for Communication*, (2005)
- 31 White v Samsung Electronics, 989 F.2d 1512, 1513, (9<sup>th</sup> Cir. 1993) (Kozinski, J. dissenting).
- 32 Tiwari Shishir, "Intellectual Property Rights Protection of Fashion Design in India" SSRN Electronic Journal (2014), DOI: 10.2139/ssrn.2805346.
- 33 Bharti Sunanda, "Legal Protection of the Fashion Design in Apparels in India: A Dilemma under the Copyright and Design Law" 3 *The Delhi University Journal of the Humanities and the Social Sciences*, (2016).