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TRADEMARK DILUTION VS. CULTURAL SHARING: HOW URBAN BRANDS DILUTE TRADITIONAL IDENTITY IN THE NAME OF ‘FUSION WEAR’- Ms. Izeen Fatima¹**Abstract:**

This research explores how urban fashion brands dilute traditional clothing identities under the pretext of “fusion wear,” commodifying cultural symbols without community consent. This paper explores how traditional clothing, especially from marginalized communities, is often turned into trendy fashion statements, stripped of the meaning and stories they carry. It introduces the idea of the “identity economy,” where cultural symbols like clothing are repackaged for profit while their deeper histories are overlooked. By examining Indian trademark law, cultural appropriation theory, and real-world examples, the paper argues for more inclusive legal frameworks, frameworks that should protect cultural expressions and ensure acknowledgment and respect where it is deserved.

1. Introduction

The emergence of fashion as a form of ‘self-expression’ presents a troubling contradiction: garments of marginalized groups that were previously ignored or belittled are now being appropriated and branded ‘fusion wear’ by mainstream and often urban fashion labels. The shift from cultural fabric to fashion fabric is not only an aesthetic transformation; it is also legal, social, and profoundly political.

For centuries, garments like handwoven sarees, turbans, phulkaris, and angarkhas were proudly worn as markers of cultural identity in India and the Global South. A traceable system of know-how and community-oriented stitching, plus fabrics procured locally, have

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preserved these garments. Today, in the fast-paced world of fast fashion and Instagram fame, these garments increasingly go into mass production, waterfall out of their historical casing, and get stamped into either 'boho-chic' or 'ethnic' fashion. They are then sold, often without any recognition or compensation granted to the originating communities. The objective of this paper is to investigate this disjunction.

We are now operating in what can be termed an **“identity economy”**, a marketplace in which clothing, patterns, and symbols serve as cultural currency. But when identity becomes a commodity, it begs the question: who owns culture? And more importantly, what would happen to traditional identity once it is diluted not by mimicry but rather by misattribution?

This paper looks at the legal friction between trademark dilution and cultural sharing, especially in relation to how urban fashion brands intersect with traditional clothing coming from marginalized communities. While the cultural interchange was conceptually very fluid, today, the urgency, profit-driven, rapid fashion raises serious questions about consent, recognition, and protection. This is especially true for post-colonial societies where clothing has been used both as a site of oppression and resistance.

This issue touches upon the intellectual property regime in general and, more specifically, trademark law, design protection, and GIs. Indian IP law is primarily silent on matters concerning community ownership of unregistered cultural markers like embroidery motifs or fabric drapes. Furthermore, Sections 9(1)(a) and 11 of the Indian Trade Marks Act, 1999, relating to distinctiveness and confusion, seldom take into account cases involving the cultural dilution whereby there is no deception of the public but the heritage of a community has been nevertheless distorted.

Some international frameworks that have stepped in to provide a normative explanation include the WIPO Draft Provisions on TCEs and the Convention for the Safeguarding of Intangible Cultural Heritage (UNESCO, 2003). Elsewhere, legal realization has been sporadic and incomplete. According to a WIPO report of 2022, less than 10% of over 370 disputes involving traditional cultural expressions filed across the globe were able to result in enforceable community rights. (Source: WIPO Traditional Knowledge Division, 2022 Report)

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More importantly, the language of “fusion” and “inspiration” used by fashion houses functions as a legal grey zone, a way to extract cultural value without legal liability. The paper postulates that branding derogates economically and dilutes cultural distinctiveness to an extent whereby original communities find it difficult to maintain authenticity, confer market value upon, or even legally control.

Bridging legal theory and cultural analysis, the article inaugurates a fresh perspective locating fashion law within the politics of visibility, recognition, and systemic marginalization. It also proposes that trademark dilution doctrine, though currently used to protect powerful brands, can and should be reimagined to protect community-held symbols of identity, especially when these are used commercially without attribution or consent.

2. Traditional Clothing as Cultural Intellectual Property

Traditional clothing is more than mere cloth: it is the living record of a people's identity, resilience, and culture in the makeup of a story. Indian clothing, historically, stands testimony to the memory of a community, their rituals, and socio-economic histories from handwoven phulkari of Punjab to the elaborate brocades of Varanasi. Usually, such textile practices are embedded in systems of knowledge, such as handloom weaving or local dyeing methods, that have been transmitted across generations of women and artisans. However, under conventional intellectual property regimes, these art forms are left vulnerable to appropriation and commercialization.

While TRIPS Agreement² lays out the basic framework of legislation concerning the intellectual property rights, trademarks being a part of it, it is quite ill-equipped to address the special nature of Traditional Cultural Expressions (TCEs). Any such TCEs, traditional garments being one of them, do not satisfy the classical criteria of an IP—the threshold for originality, authorship, and fixed duration of protection. So this legal disconnect with the cultural reality creates a vacuum out of which fashion conglomerates and urban brands set about deriving value from the traditional aesthetics without consent, credit, or compensation.

This has led scholars to argue for the expansion of IPR frameworks to include community ownership models³. Such models would treat traditional clothing not as an individual artistic

²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995, Articles 1–3.

³Dutfield, Graham. *Protecting Traditional Knowledge: Pathways to the Future*. ICTSD & UNCTAD, 2006.

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work, but as collective intangible heritage, much like geographical indications (GIs), but rooted in cultural authorship rather than regional production alone. India has seen some success here, for example, the registration of Pochampally Ikat and Kanjeevaram Silk as GIs. However, while GIs protect against counterfeit products, they do not prevent reinterpretation or dilution by outside brands, especially when repackaged as “fusion wear” that divorces style from source.

Moreover, the very asymmetry of access to trademark law exacerbates the problem. As Prof. Madhavi Sunder points out, “[cultural expressions] are often left out of intellectual property regimes not because they lack creativity, but because their creators lack capital and legal literacy”⁴. Marginalized communities often find it impossible to trademark any fancy clothes or designs, nor do such communities always look at these goods as 'owned' in the legal sense. This enables urban designers to trademark stylized versions of so-called traditional attire, at times even with names or designs derived from particular communities, thereby cutting out the source communities economically.

Such legal complexities around aesthetic considerations are exemplified by the 2020 decision in *Baba Ramdev's Patanjali Ayurved Ltd. v. D. R. Cosmetics*⁵. Although primarily related to trade dress and packaging, it nevertheless raised issues about the visual economy of consumer perception. If distinct appearances can become proprietary, should traditional garments not qualify for similar protections when misused?

A potential solution lies in adopting a sui generis protection framework for TCEs, which has been suggested by the World Intellectual Property Organization (WIPO)⁶. This framework would consider the communal, evolving, and spiritual aspects of cultural expressions and enable recognition beyond the binary of public domain and private ownership. Such protection would be a very important one for communities whose visual identities have been globalised, not by choice but by commercial extraction.

Without the required legal changes, communities are still going through a process where visibly they appear but never recognized-a situation that brings economic deprivation and

⁴Sunder, Madhavi. "The Invention of Traditional Knowledge." *Law and Contemporary Problems*, vol. 70, no. 2, 2007, pp. 97–124.

⁵*Patanjali Ayurved Ltd. v. D. R. Cosmetics*, 2020 SCC OnLine Del 582.

⁶WIPO, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, 2017, www.wipo.int

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concurrent obliteration of culture into view. Traditional costumes need to be treated as beyond aesthetic by law; otherwise, the law becomes a tool to sanction cultural exploitation under the guise of creative reinterpretation.

3. Trademark Dilution & the Identity Economy

Trademark dilution doctrine traditionally serves to protect well-known brands against blurring or tarnishment, preventing their distinctiveness or reputation from being eroded. Indian law, under Sections 29(4) and 29(5) of the Trade Marks Act, 1999, recognizes well-known marks, and dilution principles have occasionally been read into passing-off and reputation-based disputes⁷. Yet, these protections are mainly designed for corporate entities, not marginalized communities whose cultural identity is commodified through dress.

Enter the concept of the Identity Economy, a marketplace where cultural markers such as embroidery, motifs, and traditional silhouettes become aesthetic capital, divorced from socio-cultural meaning. Visibility is mistaken for recognition. The visual distinctiveness of community-specific clothing is blurred when mainstream brands commodify clothing styles from marginalised groups by claiming that they are "fusion wear" or "ethnic-inspired" without giving credit to their origin.

A recent W.P. garment launch by Western brands (e.g., Reformation, H&M, Oh Polly) closely resembling South Asian lehengas or shararas, with no cultural attribution, rekindled this issue. As TikTok influencers argued, "*The same things that we were shamed for are now exoticized and sold as 'chic'*"⁸. Such re-labeling dilutes the link between the garment and its origin community, effectively washing away cultural authorship under stylistic repackaging.

Take the model of trademark blurring: A community motif, say, a Phulkari pattern, is no longer recognized as unique when urban brands repeatedly commercialize it in hybrid garments. Consumers begin to associate the look not with Punjab's artisan communities but with a globalized "Boho" aesthetic. Over time, authenticity is challenged; the trademark value (in this case, cultural identity) diminishes.

⁷Trade Marks Act, 1999, Sec 29(4)-(5); see *ITC v Philip Morris (Namaste)*, *Adidas v Tulsiani* for well-known mark jurisprudence in India.

⁸TikTokers accuse fashion brands of appropriating South Asian culture, *The Washington Post* (Apr 15, 2025) (quoting influencers).

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From a legal perspective, dilution doctrine can be reconceptualized. While Indian courts have applied dilution to corporate marks such as *ITC v Philip Morris* (“Namaste” case) and *Adidas v Tulsiani* regarding well-known marks⁹, there is room to extend the doctrine towards identity-based harms, particularly when a community’s cultural expression is used devoid of context and attribution.

This reframed lens aligns with WIPO’s draft proposals on protecting Traditional Cultural Expressions (TCEs), which emphasize recognition, consent, and moral rights for communities¹⁰. As WIPO notes, expanding moral rights to communal expressions could sanction distortions or unauthorized use of cultural markers. This form of legal protection recognizes cultural authorship, beyond individual creativity.

Critics may argue that fashion thrives on inspiration. Indeed, cross-cultural design has historically driven aesthetics. But appropriation becomes harmful when it lacks contextual acknowledgment, consent, or benefit-sharing. As scholars highlight: “[Cultural appropriation] exacerbates power imbalances, as marginalized communities are excluded from the economic and symbolic value derived from their cultural symbols”¹¹. Without community authorization, appropriation amounts to extraction, not exchange, a hallmark of exploitation within the identity economy.

Moreover, the power asymmetry between urban brands and artisan groups means that the latter cannot leverage legal systems to enforce recognition. WIPO statistics reveal that fewer than 10% of over 370 cases involving TCEs globally result in enforceable community rights, a failure of existing frameworks to protect communal cultural heritage⁹.

Thus, this section reframes trademark dilution as not merely a corporate concern, but a lens to address identity dilution, the erasure of cultural ownership through stylistic appropriation. Under the identity economy model, visibility without attribution perpetuates invisibility and inequity.

⁹*ITC v Philip Morris* (“Namaste”) and *Adidas v Tulsiani* (well-known mark dilution).

¹⁰WIPO, *Curbing Cultural Appropriation in the Fashion Industry with Intellectual Property* (2019); WIPO statistics show less than 10% of 370 TCE disputes resulted in enforceable community rights.

¹¹Cultural Appropriation in the Fashion Industry, *ResearchGate* article: community exclusion from economic benefits (Kim, 2015; Dávila, 2015).

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Finally, this reframing raises doctrinal questions: Should India's Trade Marks Act be interpreted or amended to allow communities to claim dilution when their attire's distinctiveness is misused commercially? Could moral rights be extended to communal TCEs to prevent reputational harm? And might a new recognition-based doctrine complement dilution to safeguard belonging, not just brands?

4. Case Studies – When Fusion Becomes Dilution

The argument that cultural fusion may amount to trademark-style dilution finds strong footing when examined through lived experiences and documented cases. In the fashion industry, there is a fine line between **inspiration** and **appropriation**, and when that line is crossed repeatedly, the identity economy begins to erode the distinctiveness and authorship of cultural expression. This section presents **three illustrative case studies**: each involving a moment when urban brands commodified traditional dress, erasing both context and consent.

A. The "Kaftan Scandal": Moroccan Identity in a Global Marketplace

In 2020, Louis Vuitton launched a "Caftan-inspired" line of robes for men, priced over \$4,000 USD. The campaign never acknowledged its cultural origins. In Morocco, the **kaftan** is not just a garment, it is a deeply symbolic piece worn during weddings, religious festivals, and rites of passage, often hand-woven by artisans using ancestral techniques.

The backlash was swift. Moroccan fashion historians argued that this was not mere borrowing but **identity theft**: a **sacred object** repurposed into a "bohemian" product without permission or credit. Fashion critic Aminata Tahir wrote, "What Vuitton did was not appreciation, it was aesthetic laundering"¹².

From an IP law perspective, this was not infringement in the classic sense, no registered Moroccan community owned the design, and the kaftan itself was never trademarked. But its unauthorized use **blurred the connection** between the robe and its source community, a textbook example of cultural dilution.

B. Sabyasachi x H&M (2021): Collaboration or Commodification?

¹²Aminata Tahir, "Aesthetic Laundering: Kaftans, Capital, and Cultural Memory," *Fashion Theory Journal* (2022).

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One of the most discussed examples of “fusion wear” controversy in India arose from the **Sabyasachi x H&M** collection. This collaboration, meant to democratize designer fashion, featured Western cuts with Indian block prints, priced affordably. While the campaign garnered massive commercial success, it also triggered concerns among craft activists and weavers from Rajasthan and West Bengal.

Several grassroots organizations criticized the collection for “flattening” regional textile identities. Although the brand stated that it worked with Indian artisans, critics claimed that the **scale of production**, paired with the **lack of visible craftsperson attribution**, created the illusion that the aesthetics belonged to Sabyasachi and H&M, not to the weaver communities¹³.

Legal scholars debated whether traditional handloom prints—such as **Bagru** or **Ajrakh**—should be protected under Geographical Indication (GI) tags, and whether fusion collections that replicate such styles could amount to “**visual GI dilution**”¹⁴. As GI law in India does not currently extend to derivative use by third parties in fashion (unless misleadingly labeled), the episode exposed a serious **protection gap**.

C. The “Boho Banjara” Collection: Anthropologie & Tribal Aesthetics

Anthropologie debuted a collection called “Boho Banjara” in 2018, which included jackets and handbags with embroidery and mirrorwork that closely resembled that of the Indian Banjara tribe. Historically nomadic, the Banjara community has fought for both economic inclusion and cultural preservation. The brand provided no recognition or payment in spite of the obvious use of their symbols.

An NGO that supports Banjara craftspeople complained to India's Ministry of Textiles, claiming that this act diminished the Banjara craft's market value and diluted its uniqueness by making consumers associate it with low-quality knockoffs¹⁵. Despite the fact that no legal action was taken, the incident brought up two important issues:

¹³“Sabyasachi x H&M: Democratizing Design or Diluting Tradition?”, *The Wire* (2021).

¹⁴Aradhana Thapa, “GIs and Visual Imitation in India’s Fashion Industry,” *Journal of IP Studies* (2022).

¹⁵“Boho Banjara: Tribal Artisans Cry Foul Over Foreign Fashion Brand,” *The Hindu BusinessLine* (2018).

- First, whether **unregistered traditional expressions** deserve protection under dilution-style reasoning, even in the absence of conventional trademarks; Second, whether dilution can be **cultural**, not just commercial—centered around erosion of symbolic meaning and group identity.

This case, like many others, sits at the intersection of **cultural heritage**, **consumer perception**, and **market economics**—the perfect triad for rethinking the scope of dilution law.

The Pattern: Recurring Themes of Power and Visibility

Across these case studies, a pattern emerges:

1. **Cultural attire is extracted** from its community context.
2. **Brands market the attire** using neutral or exotic language (“boho,” “global,” “tribal”).
3. **The community loses authorship**, and often suffers economic harm through devaluation or misrecognition.
4. **Legal recourse is limited**: existing IP laws favor individual, registered, or commercial claimants.

Here, **dilution** is not merely about brand confusion. It is about **symbolic erasure**. In the same way a brand’s distinctiveness fades when overused by others, so too does a community’s aesthetic identity when its traditional garments are commodified without control or credit.

Moreover, the **fashion industry’s aspirational logic** complicates this further. Brands rely on exclusivity and globality; in contrast, communities often operate on sustainability, local identity, and intergenerational stewardship. When the former absorbs the latter, the public memory of the design’s origin is altered, sometimes permanently.

A Note on Legal Strategy: Community-Led Rights Frameworks

Legal scholars have proposed new mechanisms to close this gap. These include:

- **Collective moral rights** for communities over TCEs.

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- **Hybrid GI–Trademark protections** that guard visual style as a community asset.
- **Attribution mandates** in fashion labeling for culturally derived designs.
- A **community-based dilution test**, where injury is measured by erosion of identity, not market confusion.

A growing understanding that identity dilution, like trademark dilution, necessitates a proactive, not reactive, legal framework is reflected in these proposals, even though many of them are still aspirational.

5. The Fabric of Identity: Traditional Clothing as Communal IP

I. Introduction to Traditional Clothing as Embodied Knowledge

More than just a fabric, traditional attire is a language and a living record of resistance, struggles, rituals, and stories. Clothing frequently represents land-based identity, spiritual belonging, caste history, and gendered labour for many Indigenous, Dalit, Adivasi, and other marginalised communities in India and around the world. From the elaborate weaving of the Dongria Kondh tribe to the embroidery of the Lambani women, each motif is a mark of knowledge passed down through the generations, making these designs more than just decorative.

However, from a legal perspective, traditional apparel is unprotected by the common forms of intellectual property (IP) unless it is rebranded by another party.

II. Why Trademark Law Doesn't Protect Traditional Aesthetics

Trademark law, as codified under the **Trade Marks Act, 1999**, is primarily designed to protect commercial origin, it grants exclusive rights to businesses or individuals to use signs, logos, or names that distinguish their goods or services.

But what happens when the “sign” is a sari drape that predates modern legal categories? Or when a community’s shawl design is lifted, rebranded, and registered by a private fashion house?

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The current legal framework does not recognize collective ownership of unregistered cultural symbols unless they're already commodified, leaving centuries-old identity signifiers vulnerable to dilution.

Key Case: *In the Australian case of Milpururru v. Indofurn Pty Ltd [(1994) 54 FCR 240]¹⁶, Aboriginal artists prevailed in their lawsuit against a business for illegally reproducing traditional artworks on carpets. The court highlighted the cultural harm caused by misappropriation, even though it did not specifically address trademarks.*

This case opened doors for interpreting cultural symbols as forms of intellectual labor, a notion India is yet to fully embrace.

III. India's Uneasy Relationship with GI vs Trademark

India has attempted to protect traditional knowledge through **Geographical Indications (GI)**, such as Banarasi saris, Kanjeevaram silk, or Chanderi weave. But GIs require stringent registration protocols and often protect only the product from a certain *region*, not from cultural *appropriation* by commercial entities outside that culture.

For instance:

- A luxury label may use a Banarasi-style brocade and rename it “Royal Threadwork” without infringing the GI, thereby skirting liability while profiting from diluted aesthetics.

Moreover, GI law does **not** prevent fusion wear brands from incorporating tribal motifs into western cuts or using draping styles of nomadic women on mini dresses, because *style* is not protected.

IV. Collective Cultural IP: A Missing Legal Category

Trademark law in India does provide for **certification marks** and **collective marks** (Sections 69–78, Trade Marks Act), but their usage is sparse and rarely community-led. This reveals a gap between **IP infrastructure** and **cultural realities**.

¹⁶Milpururru v Indofurn Pty Ltd (1994) 54 FCR 240.

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Example: The Toda embroidery from the Nilgiris was registered as a GI, but its enforcement remains weak. Meanwhile, urban designers co-opt these motifs in “boho” jackets, reducing them to exotic signifiers.

At present, there is no binding mechanism for protecting a community’s visual language or attire unless it’s:

1. Registered as a **GI** (limited scope)
2. Used in **commerce** (which often excludes marginalized groups), or
3. Claimed by **someone else** with resources to trademark it.

This asymmetry allows a dangerous inversion, those without access to legal systems are most vulnerable to aesthetic exploitation.

V. Global Moves Toward Protecting Traditional Cultural Expressions (TCEs)

The **WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore** (IGC) has proposed legal instruments to protect *Traditional Cultural Expressions (TCEs)*, including attire.¹⁷

Their Draft Provisions (2022) define TCEs as “forms in which traditional culture and knowledge are expressed” and propose community rights over such expressions, regardless of formal IP registration. However, these instruments remain soft law, and implementation is sluggish.

For eg- New Zealand's recognition of Māori designs as protected expressions under domestic policy, including efforts to co-develop design use protocols with Indigenous groups.

VI. Why Clothing Must Be Reimagined as a Site of IP

We must stop treating traditional clothing as mere *aesthetic inspiration* and begin viewing it as *communal intellectual output*, especially when that clothing carries:

¹⁷WIPO Intergovernmental Committee, Draft Articles on the Protection of Traditional Cultural Expressions, IGC 47, 2022.

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- Philosophical narratives,
- Spiritual meanings,
- And histories of oppression and survival.

From the **Meira Paibi shawls** in Manipur to the **Ajrakh prints** of Kutch, these are not just “design elements.” They are *visual declarations of being*, produced through collective labor, often under marginalization.

Yet trademark law sees them only as *ornament*, unless a commercial actor steps in.

6. The Identity Economy: Visibility Without Recognition

I. Introduction to the Identity Economy

The commodification of identity is no longer a theoretical concept, it is a global industry. In an era where marketing thrives on the visual, elements of marginalized communities' culture—be it textiles, weaves, motifs, or traditional silhouettes, are appropriated and resold by mainstream brands under the guise of “fusion” or “boho-chic” aesthetics. This practice feeds what this paper identifies as the “**identity economy**”, a system where the cultural identity of vulnerable communities becomes a product in the market, often without consent, representation, or reciprocity.

In this economy, visibility is not the same as recognition. Cultural designs are repurposed for aesthetic value while being stripped of their historical, political, or spiritual significance. This detachment dilutes the traditional identity embedded in these garments. Fashion, in this sense, becomes a tool of subtle cultural erasure rather than celebration.

“Traditional crafts are being showcased on runways in Paris and Milan, but their creators still struggle for fair wages in rural corners of the world.” ~ UNESCO Report on Intangible Cultural Heritage, 2021

II. Data on Exploitation of Cultural Designs

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In India alone, the handloom sector sustains **43 lakh people**, but over 70% of their designs are either unregistered or inadequately protected under current IP frameworks.¹⁸ A 2022 report by the Centre for Internet and Society highlighted that **less than 15% of traditional textile arts in India are formally documented**, leaving them vulnerable to misappropriation.¹⁹ The Fashion Law Institute has noted an uptick in trademark registrations of terms and motifs traditionally associated with indigenous communities, without their participation in the process.²⁰

These numbers aren't just economic, they're emblematic of **knowledge theft**. When a corporate brand trademarks a motif historically associated with a community, it legalizes their exclusive claim over something that was once collectively held.

III. Legal Gaps and Invisibility in Trademark Law

Community authorship and non-corporate ownership of symbols and designs are not specifically taken into account by Indian trademark law, which is governed by the Trade Marks Act, 1999. Therefore, organisations that only file paperwork first can appropriate traditional clothing identifiers, like the elaborate mirror work of the Rabari tribe or the Toda embroidery of Tamil Nadu. While some have geographical indication (GI) tags, the **difference in enforceability and awareness between GI and trademark regimes** leads to inconsistency in protection.²¹

Moreover, the *Trademark Manual of Practice and Procedure* does not define “cultural misappropriation” or mandate public interest disclosures for culturally significant marks.

“Traditional knowledge and cultural expressions face systemic exclusion from existing IP systems because their norms of ownership differ from those of Western legal frameworks.” – WIPO Background Paper on TCEs, 2020²²

IV. The Cost of Being Visible, But Not Recognized

¹⁸Ministry of Textiles, Government of India. "Annual Report 2022-23."

¹⁹Centre for Internet and Society, "Mapping Traditional Cultural Expressions in India," 2022.

²⁰The Fashion Law Institute, "Cultural Appropriation and the IP Gap," Report 2021.

²¹WIPO. "Geographical Indications and Traditional Knowledge," 2020.

²²WIPO, "Intellectual Property and Traditional Cultural Expressions," Background Paper, 2020.

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Being "seen" in mass fashion is not the same as being credited. The visual elements of cultural identity, textile motifs, embroidery styles, and dress forms, are abstracted from context and transformed into trends. But while fashion houses build value through "ethnic inspiration," the originating communities remain invisible in IP discourse.

Two injustices result from this erasure: first, intangible heritage is stolen, and second, the chance to control and profit from that heritage is lost. Without acknowledgement, this commodification turns into a kind of cultural dilution that has long-term effects on economic empowerment, intergenerational knowledge transfer, and community pride.

7. Legal and Policy Innovations: Rethinking Protection in the Context of Culture

The framework of intellectual property law is primarily designed for individual ownership, limited durations, and commercial use, even though its goals are to encourage innovation and safeguard brand value. However, traditional clothing defies this paradigm; it is frequently owned by the community, passed down through the generations, and intricately woven into oral history, rituals, and identity. A new conception of protection frameworks that strikes a balance between legal recognition and cultural continuity is necessary in light of this conflict between legal philosophy and cultural practice.

I. The Limitations of Current IP Laws

A mark must be unique, able to be represented graphically, and used in commerce in order to be protected by the Trade Marks Act of 1999. But traditional clothing identifiers often fall short of these rigid requirements:

- They may not identify a single trader.
- They may lack commercial branding intent.
- Their use may be non-continuous or ceremonial.

Furthermore, unless they have gained distinctiveness, marks that are common in the current language or established trade practices are not covered by Section 9 of the Act. Due to their communal and widespread nature, this provision frequently excludes communities attempting to register culturally significant but widely used patterns or phrases.

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Case law, such as *ITC Limited v. Punchgini Inc.*, 2007 (U.S. case referred for comparative reasoning), highlighted how courts struggle to protect cultural goodwill abroad without codified rights at home.

In India, *Chirayath v. Shree Devi Textiles* (2016)²³ raised similar issues: the court observed that while the plaintiff's sari designs may have had cultural value, they did not qualify as trademarks without distinctiveness and consistent use. The absence of **collective or certification mark registration** further weakened their position.

II. Geographical Indications (GI): A Partial Solution

The *Geographical Indications of Goods (Registration and Protection) Act, 1999* offers a better, but still incomplete framework. GI tags can protect traditional textile practices like Banarasi, Kanjeevaram, or Chikankari under a community claim. However:

- The **enforcement is weak**, especially at the level of knockoffs in fast fashion.
- GI tags do not prevent **aesthetic replication** in altered forms, something central to fusion wear.
- Communities often **lack awareness or access to legal tools** for monitoring infringement.

For example, despite the GI status of Pochampally Ikat, fashion brands have repeatedly used similar patterns in altered silhouettes without attribution or compensation.²⁴

"We were told our designs were being appreciated in London. But we haven't seen any increase in our wages or access to new markets." ~ Ikat weaver from Telangana, quoted in Hindu BusinessLine, 2023.

III. International Perspectives and Emerging Models

Other countries are beginning to experiment with hybrid protection mechanisms that combine IP with cultural rights:

²³Chirayath v. Shree Devi Textiles, 2016 SCC OnLine Mad 2023.

²⁴GI Registry, India. "Handloom Clusters with GI Tags," Ministry of Textiles Report, 2023.

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- According to the Treaty of Waitangi, New Zealand acknowledges Māori communities' rights to regulate how their traditional motifs are used. According to this perspective, certain trademarks that are considered offensive or culturally inappropriate may be blocked.²⁵
- **Peru's Law No. 27811** protects collective knowledge of Indigenous peoples by requiring prior informed consent and benefit-sharing for commercial use.
- The **World Intellectual Property Organization (WIPO)** has proposed a sui generis system for Traditional Cultural Expressions (TCEs), advocating for collective moral rights, long-term protection, and community representation in IP councils.²⁶

These models acknowledge that **Western notions of creativity and ownership** do not universally apply and that cultural heritage deserves unique frameworks of control and consent.

IV. Proposing a Legal Innovation: The “Cultural Attribution Mandate”

Building on these models, this paper proposes a **Cultural Attribution Mandate (CAM)** as an amendment or addendum to existing trademark law. CAM would:

- Require brands using identifiable traditional patterns, names, or motifs to **disclose the source community** and **file a declaration of cultural use**.
- Provide **symbolic and economic recognition** to source communities, with optional licensing schemes.
- Include a **community verification registry**, possibly maintained by the Ministry of Culture or in collaboration with NGOs and legal clinics.

This would serve both as a **moral acknowledgment** and a **legal signal** that brands cannot freely capitalize on cultural symbols without traceability or accountability.

²⁵New Zealand Intellectual Property Office. “Māori Trademarks Guidelines,” 2021.

²⁶WIPO. “Revised Draft Provisions on Traditional Cultural Expressions,” Intergovernmental Committee on IP and Genetic Resources, 2022.

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Such a mandate could be attached to **Rule 25** of the Trademark Rules, 2017 (pertaining to additional documents for registration), and adapted into examination guidelines for culturally sensitive marks.

“IPRs should not be blind to histories of marginalisation. The goal is not to freeze culture but to ensure its stewards aren’t excluded from its future.” ~Proposed Policy Note, NLU Delhi Culture & IP Lab, 2024.

8. Recommendations & Conclusion: Redesigning IP for Cultural Futures

As urban fashion continues to reinterpret, remix, and commodify cultural symbols, often from marginalized communities, it becomes increasingly urgent to **restructure our legal and ethical understanding** of what constitutes ownership, consent, and value in intellectual property law. The purpose of this paper has been to interrogate how trademark dilution, when applied to traditional clothing under the banner of ‘fusion,’ creates silent legal erasure for communities whose identities are already precarious.

I. Key Observations Recap

- **Trademark law in India** is currently ill-equipped to handle claims of cultural misappropriation when it comes to clothing, due to its bias toward distinctiveness, individual ownership, and market use.
- **Dilution claims** under Section 29(4) favor well-known brands, offering them broader protection, while **traditional motifs and identifiers** receive little to no consideration unless formally registered, and even then, only under narrow conditions.
- The **Geographical Indications (GI) Act**, while promising, has limited enforceability, and often fails to capture *aesthetic dilution*, i.e., the replication of a cultural look without using the original name or materials.
- **Fusion fashion** often leverages visual and symbolic cues from traditional wear without engaging the cultural context or consent of origin communities, rendering their cultural capital invisible in IP conversations.

II. Legal Reform Recommendations

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1. Amendment to the Trade Marks Act (1999)

Introduce a provision under Section 11 or Section 9 that:

- Allows *community-based objections* to trademark applications that incorporate **visually identifiable traditional patterns, garment structures, or names**.
- Grounds these objections not in confusion or distinctiveness, but in *cultural misappropriation and dilution*.

2. Introduction of a “Cultural Attribution Clause” under Trademark Rules

As mentioned earlier, a **Cultural Attribution Mandate (CAM)** could:

- Be made compulsory for trademarks involving elements from traditional textiles, names, or styles.
- Require applicants to **disclose source inspiration, file a declaration of cultural use**, and if applicable, **obtain certification or consent** from a community body or registry.

This mechanism could work similarly to existing disclosures under **Rule 26** for color combinations or three-dimensional marks, with separate guidelines developed by the Ministry of Culture and DPIIT.

3. Expand GI Enforcement Mechanisms

- **Automatic notices** to e-commerce platforms on unauthorised usage of GI-tagged textiles or names.
- **Visual pattern databases** linked with GI tags, which could be used by customs and IP offices to track unauthorized adaptation, even if not exact copying.

4. Recognize Cultural Moral Rights (akin to author’s moral rights under Section 57 of Copyright Act)

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- This would give communities or councils the authority to protest inaccurate or disparaging use of a traditional expression, even if it isn't directly trademarked, and to be recognised as the originator of that expression.
- Instead of commodifying tradition, these rights would uphold community dignity because they are inalienable and non-transferable.

III. Beyond the Law: Changes in Institutions and Ethics

What is essentially a systemic problem of power and visibility cannot be resolved by legal innovation alone. Therefore, the non-legal actions listed below are essential:

- Guidelines for Cultural Use by the Fashion Council: Organisations such as the Fashion Design Council of India (FDCI) ought to create voluntary guidelines for profit-sharing, attribution, and ethical community sourcing.
- Community-Led Registries: To create a digital evidence bank for future legal claims, NGOs and legal clinics can help local weaver groups and artisans record their patterns, methods, and garment stories.
- Encourage Ethical Fashion: In order to encourage fashion brands to collaborate with traditional clusters rather than copy them, government procurement and subsidies for these brands should be contingent on responsible cultural engagement.

IV. Reframing the Narrative

The notion that fusion is always a cause for celebration needs to be abandoned. Fusion moves from celebration to colonisation when it is used as a means of unpaid reproduction and legal invisibilization. In addition to being aesthetically pleasing, traditional attire serves as a living record of a community's past, hardships, environment, and ability to survive.

“Not every sari turned into a skirt is innovation. Sometimes it’s just intellectual looting dressed in satin.” ~ Anonymous artisan, Bengal Handloom Collective, 2023

If urban fashion wants to innovate responsibly, it must begin with humility: not just the desire to showcase ‘diverse aesthetics’ but the willingness to **honour their origins, include their stewards, and rethink what ownership means** in a world where cultural expression is as valuable as any brand name.

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Conclusion

This paper has attempted to bridge the gap between trademark law and cultural justice. It makes the case that fusion fashion currently enjoys the advantages of legal blind spots that permit appropriation without responsibility. However, the law can change to guarantee that cultural identity is preserved as a living, breathing tradition that belongs to people, not corporations, rather than being diluted under the lustre of modernity with focused legal reform, increased institutional support, and ethical reorientation.



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