



From tradition to exploitation - How the global lack of tce protection hits India hard: A case study of well-known global fashion brands

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Abstract

The unchecked misappropriation of Traditional Cultural Expressions (TCE) by commercial presents a global challenge, disproportionately impacting culturally rich nations like India. While Geographical Indication protect products from a specific origin, TCE's embody a community's living heritage. The global fashion industry's exploitation of indigenous design without proper acknowledgment, consent, or compensation to the communities exacerbates the issue. Though TCE's have been discussed through the 1960's and even had a brief mention in the Berne Convention in 1967, the lack of specific framework is particularly problematic for India. This paper examines instances where Indian TCE's were commercially exploited by well-known global brands, like Gucci, Dior and Levi's in the International Fashion Shows which captured the attention of India. Through these examples, this paper seeks to highlight the tangible repercussions of inadequate legal safeguards especially in India and the urgent need for recognition of TCE's as a distinct intellectual property right, which will offer protection to indigenous communities a greater control over their cultural heritage and ensure fair compensation for its commercial use.

Keywords: Traditional Cultural Expressions (TCEs), misappropriation, cultural heritage, Intellectual Property Rights, indigenous communities

Introduction

Traditional Cultural Expression (TCE), encompasses a dynamic and constantly evolving living manifestation of cultural heritage and a community's identity. World Intellectual Property Organization (WIPO) defines TCE's as a form of cultural heritage including handicrafts, music, art, design, ceremonies and other expression that form part of the identity and heritage of a traditional or indigenous community (Purwandoka et.al, 2021). Since 2021^[4] WIPO has been working on draft provisions for the protection of TCE's but these expressions still have not been recognized as a distinct Intellectual Property (IP). The Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resource has been central to pushing for a sui generis system of protection that recognizes the unique characteristics of traditional knowledge and cultural expressions (Thomas, 2022) ^[16].

While these efforts have increased awareness about the issue the global lack of legal protection for TCEs leaves indigenous communities vulnerable to exploitation and cultural appropriation (SpicyIP, 2021). Cultural Expressions are vital for ensuring for preservation of 'a living culture', the increase in globalization has resulted in increased misappropriation of cultural expressions, particularly in the fashion industry where global brands often draw inspiration from culturally rich communities and countries without seeking permission and providing credit or compensation to the communities that they originate from (Guha, 2018; Brown et.al, 2022) ^[3]. India as a country with a rich and diverse cultural heritage faces significant challenges in safeguarding its TCEs from misappropriation due to the lack of specific legal frameworks and international recognition. The country's vast repository of artistic and spiritual expression is often a target by global brands seeking 'exotic' elements in their designs. Existing legal protection has proven to be inadequate of protecting TCE's.

This unchecked system of global brands insensitive and unapologetic misappropriation of TCE's highlight the necessity of recognition and protection of a distinct Intellectual Property Right, ensuring that communities have economic control of their cultural heritage and control the narrative of how they are expressed.

Understanding TCEs and Current Legal Gaps

The push for the protection of Traditional Cultural Expressions took root in the 1960s, alongside the rise of post-colonialism thought. Developing countries, particularly those of the global south began advocating at the international level for the protection of TCEs, viewing it as a way to regain control over their cultural heritage and prevent cultural imperialism. However, the early effort overlooked the economic potential of TCE's and failed to recognise the rights of the communities that created and maintained them.

In 1967, The Berne convention for the protection of Literacy and artistic works provided some means of protection, however, did not fully accommodate the nature of TCE's (WIPO, 1967). In 1982^[18, 19], WIPO and United Nation Educational, Scientific and Cultural Organization (UNESCO) jointly adopted Model Provisions for National Laws on the Protection of Expressions of Folklore (WIPO, 1982) ^[19], which served as a guide for countries looking to develop national laws to protect folklore, including traditional cultural expressions. While progressive for their time, these model provisions had minimal impact on the development of enforceable international standards.

The 1990s saw a steady though slow recognition of the role of indigenous communities in global cultural and environmental preservation. Article 8(j) of the Convention on Biological Diversity, adopted in late 1992 (United Nations, 1992) ^[17], recognizes the importance of traditional knowledge for conservation and sustainable use of

biodiversity. This led to the growing recognition that indigenous communities should have the right to control and benefit from the use of their knowledge. WIPO currently has a draft article on the protection of TCE's, which still remains under negotiation. In the absence of binding international law, the principles of *Consent, Credit and Compensation* have emerged as ethical guidelines.

The protection of TCE's faces several conceptual and structural hurdles because the conventional IP framework is ill-suited to adequately protect the communal, ancestral and evolving nature of TCE's. These expressions unlike other form of intellectual expressions of a community's cultural and social identity passed down through generations, involving traditional music, stories, rituals, designs, and other artistic, spiritual, and cultural manifestations in contrast to conventional Intellectual Property (IP) that revolve around individual ownership, originality and fixed terms of protection (Ahmad, 2010) ^[1].

Tradition and Cultural Expression in India

Despite its extraordinary cultural wealth, India lacks a dedicated legal framework to protect TCE's. While existing IP tools provide some legal protection, they are grossly inadequate, GI being the most promising one, lack international enforcement. Our indigenous communities are left with little to no recourse, to assert ownership or claim damages when their cultural expressions are commercialized without consent.

This legal vacuum has serious consequences. It allows global corporations to extract cultural value from Indian communities without seeking permission, offer recognition, or sharing economic benefits. As a result, artisans and knowledge holders- many of whom are already socio-economically marginalised end up getting alienated from the commercial success of their own work and consequently rendered invisible in the global marketplace. The exploitation is twofold- at an economic level it leads to a loss of income and opportunities for indigenous communities whose livelihoods often depend on these TCEs and who are deprived from the chance to profit from their own creation and at a cultural level TCE's when stripped of their cultural and spiritual context, and presented as an aesthetic trend, communities lose agency over their own identity and heritage (Awopetu, 2020) ^[2].

The failure to legally define and protect TCEs leaves a major gap in the intellectual property landscape. For countries like India, where culture is not just heritage but also livelihood, this gap is more than a legal oversight — it is a structural injustice.

Case Studies of Cultural Plunder in the Indian Context

The vulnerability of India's TCE's is most visible in fashion where global brands shamelessly misappropriate cultural goods and expressions. Gucci's Indy Full Turban in 2018^[9] Milan Fashion Week, Dior's dress in that contained an exact replication of block printed design that was created and sold by 'People Tree' in India (January Issue of Elle India), Levi's Shirt resembling Mizo Thangchhuah Shaw (Caravan Staff, 2021) ^[4] and the rebranding of '*bindi*' as a 'forehead jewel' by various global brands. These examples illustrate how lack of legal protection enable global brands to commodify cultural and spiritual symbols without consent, credit or compensation.

1. Gucci's Indy Full Turban

Gucci during the Milan Fashion Week 2018^[9] sparked heavy controversy and sparked outrage over its "Indy Full Turban", a stylised headwrap worn by non-Sikh, mostly white models. The *dastar*, or turban is a core Sikh article of faith symbolizing spirituality and identity. However, Gucci's presentation of it as a stylized runway piece stripped its cultural and religious significance, reducing it to a mere fashion accessory (Khar and Ayachit, 2013) ^[8]. The fashion watchdog Diet Prada, criticised on Instagram "While various turban styles have been re-interpreted in fashion since the late 18th century, the four *Dastaar* that popped up on Gucci's FW18 runway (on non-Sikh, mostly white models) was one that should have been left on the mood board. There are many ways this disaster could have been averted: consultation, acknowledgement, or just leaving it alone" (Smith, 2018) ^[13].

This act without consultation, acknowledgement how sacred expressions can be decontextualised and aestheticized, when TCE's are faced with the juggernaut of global fashion. What global fashion houses see as exotic flair; communities see as cultural and religious sacrilege and this is a telling case of cultural insensitivity and commodification.

2. Dior's Hand Block Heist

In 2018, Christian Dior, became a centre of controversy and faced accusation of plagiarizing traditional Indian hand-block print design from an Indian brand called which is a non-profit organization that collaborates with local artisans. Dior appropriated the distinctive motifs and patterns of People Tree for its collection without giving any credit or compensation (Guha, 2018). The issue gained traction because Sonam Kapoor, an Indian actress and fashion icon, wore it in the cover of "Elle India", a popular Indian fashion magazine (Mehta, 2023) ^[10].

Hand Block Printing is a rich century old handicraft of dyeing and printing textile using wooden blocks. Each motif has deep symbolic meaning and often tells stories about local traditions, mythologies, and the natural world. By mass producing these designs Dior not only erased the artisan labour but also undermined the livelihood of the Indian craft communities who are the custodian of this traditional art.

In a country like India where artisans are already marginalized due to mechanization and industrialization, and small home-grown brands which are trying to preserve our rich textile heritage, Dior's theft was a real blow to India.

3. Stolen Stripes and Levi's whitewash of Thangchhuah Shawl

In contrast to Dior and Gucci case which did make a few ripples since involved more widely recognized cultural expressions and symbols, Levi's quiet theft of the pattern of 'Thangchhuah Diar', a shawl from the lesser-known state of Mizoram, where it is earned through acts of valour or public service. However, Levi's did not even acknowledge the print and presented it as a generic tribal print. This triggered deep sense of cultural appropriation and disrespect to Mizo people, the post said "It is almost as if our identity has been stolen from us" said a research scholar at the Indian Institute of Technology's IDC School of Design in Mumbai (Chumo, 2023) ^[10]. In addition to Levi's insensitive act of thievery, the brand rubbed salt in the wound by calling it a generic

tribal print, and also claiming they got it from “Levi’s archive” instead of an original source.

This highlights how even when Indian TCE’s are freely plagiarized by Global fashion brands, the most vulnerable are lesser-known communities whose voices are ignored and whose culture is often ignored within the country.

4. The Bindi Rebrand

The Bindi, with its deep roots in Hinduism, represents the third eye and spiritual awakening, and is one of the earlier instances of cultural appropriation as ‘forehead jewellery’ making appearances in fashion runways and festivals. The reinterpretation has detached the Bindi from its original meaning and has become a fashion statement or an aesthetic embellishment. While some may view it as a harmless form of cultural appreciation, but the western commodification of the Bindi by taking it out of cultural context is not only economic exploitation of TCE’s but also a disregard of the history behind it and its importance to Hinduism (Gardetti and Muthu, 2016) ^[7].

These four brief examples reflect how various ways global brands have appropriated Indian TCE’s. Ranging from religious symbols like Turbans, to handicraft techniques like block printing, tribal patterns like Thangchhuah shawl and cultural objects like the bindi, the four cases have revealed various facets of the same systemic problem where lack of proper legal and ethical safeguards at global level has turned Indian tradition into a free mine for brands to take from.

Global Lessons Learnt

Treaty of Waitangi signed in 1840 which is an agreement between the British Crown and various Māori chiefs of New Zealand is probably the oldest known treaty recognizing the economic and social value of TCE’s. This landmark treaty was the foundation of recognizing the economic, social and spiritual rights of the indigenous communities over their cultural resources and has evolved into a guiding light for modern TCE protection laws (Brown & Vacca, 2022) ^[3]. While the country has received international recognition for its approach to Taonga Works, in WIPO and IGC, it’s still a work in progress. Government and Maori-led bodies are consulting on a sui generis system that would protect visual expressions like weaving and pattern design as culturally bound. The Waitani Tribunal specifically addresses control over taonga-derived fashion, symbols and art empowering them with consent over their cultural resources, better benefit sharing and preventing misappropriation (Cox, 2002) ^[6].

In contrast a country as culturally diverse as India, the protection of TCE relies upon Geographical Indications, copyright laws and community advocacy, yet is in dire need for a comprehensive legal framework. However, meanwhile India should advocate consent, credit and compensation in international forums.

Conclusion and Suggestions

The case of appropriation cases by well-known global brands like Gucci, Dior and Levi’s and the commodification of the ‘bindi’ demonstrate how vulnerable the Indian TCE’s are in the face of globalisation. The current IP framework fails to protect the communal, spiritual and intergenerational nature of TCE’s.

There is an urgent need in India for a dual strategy-Nationally be recognising community custodianship of

TCE’s, mandate prior consent and also to ensure some benefit sharing for the communities they origin from. There needs to be a community led documentation and archiving to strengthen legal claims. Internationally, India needs to advocate for a binding global agreement that not only mandates consent, credit and compensation and also establishes a robust enforcement to protect culturally sensitive work.

Cultural exchange should be encouraged but there is a need to have proper respect, acknowledgement and reciprocity. Without adequate safeguards and legal framework, global fashion houses would continue to mine Indian cultural heritage as free, unregulated resource.

The current intellectual property framework inadequately addresses the communal and evolving nature of Traditional Cultural Expressions, leaving India vulnerable to cultural appropriation and economic exploitation by global brands. Without a sui generis legal system and international recognition, Indian TCEs remain unprotected cultural assets susceptible to misuse.

The current intellectual property framework also fails to adequately address the unique characteristics and communal ownership of Traditional Cultural Expression. This inadequacy has led to blatant appropriation by global brands that misappropriate India’s rich cultural and spiritual heritage. To rectify the injustice, international IP law must recognize the rights of Indian communities to control, protect and benefit from their TCE’s.

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