AUTHORLESS AESTHETIC: INTELLECTUAL PROPERTY LAW & CULTURAL REBRANDING

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ABSTRACT

This article introduces the phenomenon of 'authorless aesthetic,' wherein traditional Indian fashion, which WIPO refers to as Traditional Cultural Expression (TCE), is considered ownerless according to the modern IP framework that allows for its appropriation as part of European heritage, and transformation into private property through rebranding. The paper argues that the IP framework's reliance on the Western notion of individual genius renders communal heritage vulnerable to appropriation, by drawing on Jaszi and Woodmansee's 'romantic notion of authorship,' James Boyle's 'second enclosure movement' and Vandana Shiva's critique of biopiracy. Furthermore, the paper delves into the limitations of GIs in protecting traditional aesthetics and the ongoing stalemate in WIPO's negotiations. It concludes by presenting how the rebranding does not only cause economic loss but also leads to an 'Epistemicide,' or expansive cultural erasure, because the legal structure is unable to recognise collective ownership of traditional wear.

Keywords: Authorless Aesthetic, Traditional Cultural Expression, Collective Ownership, Cultural Rebranding, Second Enclosure Movement.

INTRODUCTION

The trends of the fashion world change rapidly, but one recent trend has sparked debates on a larger issue of cultural erasure. It all began when the Danish brand, Munthe, marketed a 'scarf,' evidently modelled after the traditional Indian dupatta as a 'Scandinavian Scarf.'[1] The backlash

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[1] Mira Anant, ' "Scandinavian" Scarves and More: The Erasure of South Asian Influence on Western Fashion',115(17), The Spectator < https://stuyspec.com/article/scandinavian-scarves-and-more-the-erasure-of-south-asian-influence-on-western-fashion > accessed 06 January 2026

was immense; however, it further led netizens to unearth more instances of Western brands rebranding traditional Indian fashion as part of European heritage.

Traditional Indian fashion is a part of what the World Intellectual Property Organisation (WIPO) refers to as Traditional Cultural Expressions (TCEs) or simply "expressions of folklore." Cultural aspects or practices qualify as TCEs when they are created through intellectual activity, or are passed down from generation to generation, either by transmission or imitation, and represent the community's social and cultural values.[2]

Moreover, these expressions should be made by authors unknown/or unlocatable authors/ or communities. They are often made from natural sources and are made for religious purposes. Lastly, they are constantly evolving, developing, or being recreated within the community. These TCEs are protected under various intellectual property laws, including copyright laws, design laws, geographical indications, and appellations of origin.

The WIPO formed the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in October 2000, to address the protection of traditional knowledge (TK), Traditional Cultural Expressions (TCE), and Genetic Resources (GR). The organisation has long recognised the gap between the existing IP framework and the requirements for the protection of the cultural heritages of communities.[3]

Yet, the Indian fashion culture remains vulnerable to rebranding by Western brands, from 'boho-chic' to 'Ibiza tops',[4] trend after trend has popped up following the same pattern. Traditional Indian clothing is picked, then rebranded and marketed as Western, without any credit given to its origin. Despite growing engagement with cultural appropriation and traditional cultural expressions, these incidents persist due to the continued reliance of intellectual property law on an author-centric framework that protects individual invention and largely overlooks collective ownership. Hence, TCEs become vulnerable to rebranding and commercial ownership by individuals.

[2] World Intellectual Property Organization, 'Traditional Cultural Expressions', < https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index > accessed 08 January 2026
[3] World Intellectual Property Organization, 'Intergovernmental Committee (IGC),' < https://www.wipo.int/en/web/igc/ > accessed 08 January 2026
[4] Charan Dhinsey, 'The appropriation of south Asian culture in western clothing', (The Rewired Mind, 14 April 2025) < https://charandhinsey.substack.com/p/the-appropriation-of-south-asian > accessed 06 January 2026

This article aims to demonstrate that the possibility of cultural rebranding exists as a direct consequence of the dependence of IP laws on individual authorship. The concept of 'authorless aesthetic' aims to argue how, because of the prevailing laws, cultural expressions are left legally ownerless, enabling their transformation into private property.

PROBLEM OF COLLECTIVE CREATION

Michel Foucault, in his book 'What is an Author?' argues that 'the author' is a relatively recent invention. In 'Construction of Authorship,' Martha Woodmansee elucidates this to observe that while this "invention" may not encompass the current writing practices, it did influence the laws formulated around it in great measure.[5] She further writes of how the 'collective, cooperative and collaborative nature of writing' was radically reconceptualised to separate the "authoring" from ordinary literary labour by creating a pantheon of writers whose 'works' were differentiated from mere writing.[6] This created what Peter Jaszi, Woodmansee's co-editor, called the "Romantic" notion of authorship,[7] where a work is attributed to a solitary, inspired individual, instead of being a derivative of its predecessors.

Woodmansee and Jaszi argue that the copyright laws and other intellectual property laws, as accepted by the international community, are largely based on this notion of individual prowess, which is often not the reality behind the creation. Article 3 of the Berne Convention clearly defines the criteria for the protection of the 'work' based on the nationality and residence of the author.[8] Herein, the assumption is made that the author is an individual natural person, and hence their rights are defined based on 'droit d'auteur' or rights of the author. In addition to this, many argue that Article 15(4) of the Berne Convention provides for the protection of the work in cases where the author is not known,[9] and could be extended to collective creations had there not been a clearly defined role of an individual, unknown author. Similar circumstances occur with relation to Article 7(4), which provides for the protection of works of applied art,[10] which can be extended to traditional embroidery patterns like Zari work

[5] Martha Woomansee, 'On the Author Effect: Recovering Collectivity' in Martha Woodmansee and Peter Jaszi (eds), The Construction of Authorship: Textual Appropriation in Law and Literature (Duke University Press 1994) 15
[6] Ibid 18
[7] Peter Jaszi, 'On the Author Effect: Contemporary Copyright and Collective Creativity' in Martha Woodmansee and Peter Jaszi (eds), The Construction of Authorship: Textual Appropriation in Law and Literature (Duke University Press 1994) 31
[8] Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, entered into force 5 December 1887) 828 UNTS 221, art 3
[9] Berne Convention art 15(4)
[10] Berne Convention art 7(4)

or Kalamkari; however, the clause expressly lays down a period of 25 years from the making of such a work. This limitation instantly excludes TCEs since most of them have been in use since time immemorial.

While Foucault, Woodmansee, and Jaszi's ideas and the Berne Convention's authority are primarily restricted to rights over literary works, this notion of individual authorship is also extended to other intellectual property rights, including traditional cultural expressions such as traditional Indian fashion. The existing framework is restricted to ownership by an individual, identifiable author, and fails to provide adequate protection for intellectual property that falls within the purview of collective ownership by a specific community. This allows for illicit imitation under the disguise of 'inspiration' by individuals who secure protection rights easily under the treaty law.

REBRANDING AS TRANSFORMATION

In the summer of 2025, models walked down the Prada runway donning what any Indian could have easily identified as a traditional Kolhapuri Chappal. However, the brand only called them 'leather sandals' without ever crediting their Indian origin.[11] This invited an online outrage, especially due to the rising multiplicity of recent such cases. Following what the BBC called an "alleged appropriation," the Maharashtra Chamber of Commerce, Industry and Agriculture reached out to the Italian luxury brand, and a collaboration deal was signed.[12] The brand acknowledged the footwear's Indian roots, but claimed that these sandals were only "inspired" by the Kolhapuri sandals. While the brand is now working directly with Indian craftsmen to create a limited-edition line, the artisans should not have to wait for a social media outcry to claim their heritage.

What we are witnessing with this phenomenon is what James Boyle would refer to as the 'Second Enclosure movement', wherein the intellectual commons are being fenced off.[13] Boyle explains the concept of the opposite of property, which he calls 'the commons,' essentially resources available in the public domain to the people at large.[14] The West has adopted a habit of treating the traditional knowledge of indigenous communities as a global common. Further,

[11] Vinaya Deshpande Pandit, 'Global fashion giant Prada acknowledges Kolhapuri inspiration' The Hindu (Mumbai, 28 June 2025)
[12] Dipali Jagtap and Cherylann Mollan, 'Prada to launch $930 'Made in India' Kolhapuri sandals after backlash' (BBC, 12 December 2025) < https://www.bbc.com/news/articles/czxppe4q84do > accessed 12 January 2026
[13] James Boyle, The Public Domain: Enclosing the Commons of the Mind (Yale University Press 2008) ch 3
[14] Ibid ch 1 para 13

as an inevitable outcome, this traditional knowledge turned global common is claimed as Western prowess, and is legally 'owned' by an author based on the inherently biased system. The communal knowledge, here, takes the form of 'raw materials' for 'western ingenuity' to develop from. Boyle takes the example of the common lands in England, which were fenced off in the eighteenth century, to elucidate how the IPR framework in practice has become a mechanism for fencing off what should be a common resource available to all to promote invention and ingenuity.[15]

Vandana Shiva, in her exceptional work on Biopiracy, argues that the West treats knowledge of the Global South as 'terra nullius' or empty land. While Shiva talks about how inventors of the West claim the benefits of plants such as neem or turmeric as their own 'inventions,' and allege rights over them.[16] A similar pattern can be observed in the claims being made over Indian handicrafts and traditional wear.

Shiva furthers her criticism by explaining how IP has become a tool for economic domination for multinational corporations,[17] which make minor modifications to communal practices and utilise IP laws to enforce Western notions of ownership. With respect to TCEs like traditional wear, these minor modifications take the form of 'rebranding.' Simply defined, rebranding is the process of changing the way the public perceives an organisation or a product. Brands such as Prada, with its leather sandals, or Munthe with the Scandinavian scarf or Annie's Ibiza with its Ibiza-styled sequin tops, which are simply a rebrand of Zari embroidery; each brand changes the names, and the product becomes 'new' according to the prevailing IP standards.

Indian fashion has inspired the West for generations; however, the problem arises when the origin is disregarded, with the intention of making the product more palatable to Western consumers. Consequently, when the public reacts to the blatant ignorance, the brands claim 'inspiration' while simultaneously turning these cultural heritages into private property.

FAILURE OF THE CONTEMPORARY "FIXES"

Following decades of negotiations since its inception in 2000, on 24th May 2024, the World Intellectual Property Organisation adopted the WIPO Treaty on Intellectual Property, Genetic

[15] James Boyle, The Public Domain: Enclosing the Commons of the Mind (Yale University Press 2008) ch 3 para 6
[16] Vandana Shiva, 'Biopiracy: the plunder of nature and knowledge' (South End Press 1997) 17
[17] Ibid 13

Resources and Associated Traditional Knowledge. This treaty enforces a mandate on patent applicants to disclose the country of origin of genetic resources and/or the Indigenous community that provided the relevant traditional knowledge when the claimed inventions are based on genetic resources or traditional knowledge.[18] This treaty aims to ensure that no wrongful patents are granted for imitative or fraudulent inventions based on genetic resources.

As of January 2026, almost two years after the treaty was adopted, it continues to be unenforceable due to the reluctance of the nations of the Global North to become signatories.[19] This hesitation to enforce a treaty that can potentially protect the genetic resources from the Global South from exploitation is what Vandana Shiva calls a contemporary form of colonialism, knowledge extraction under the facade of innovation.[20]

While the GRATK Treaty is explicitly limited to genetic resources and allied traditional knowledge, its enforceability can provide a precedent for negotiations and treaty laws with respect to the protection of the fashion of indigenous communities against rebranding. Hence, the reluctance of the Global North to get on board with GRATK and the push for a 'soft-law'[21] exhibit the intention of the West to maintain its monopoly over the commercialisation of the resources from indigenous communities.

Before the establishment of WIPO's IGC, the type of IP that had implied authority over protecting traditional cultural expressions was Geographical Indications or Appellations of Origin. According to Article 22 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995, GIs are indications that identify a good as originating from a specific territory of a country, and the reputation or characteristic of the good being attributable to its geographical origin.[22] The difference between a TCE and GI is that the latter is restricted to protection based on geographical origin, whereas the former protects a good based on its links to a specific community. Hence, while the GIs may be able to protect Darjeeling tea, they

[18] World Intellectual Property Organisation, 'WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge' < https://www.wipo.int/en/web/treaties/ip/gratk/index > accessed 15 January 2026

[19] World Intellectual Property Organization, WIPO Lex' < https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=19830 > accessed 16 January 2026

[20] Vandana Shiva, 'Biopiracy: the plunder of nature and knowledge' (South End Press 1997)

[21] Press Information Bureau, Government of India, 'India joins consensus adoption of WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge' (24 May 2024) < https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2021716&reg=3&lang=2 > accessed 15 January 2026

[22] Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299, art 22

cannot protect Dupattas from being rebranded as Scandinavian Scarves due to dupattas having no specific traceable origin from a part of India. Such TCEs develop over generations, in different parts of the world where people of the community reside. Furthermore, Prada could imitate Kolhapuris because they did not indicate any origin, opting to call them leather sandals instead. GIs protect goods from being mislabelled based on origin, not in cases where the origin is completely disregarded.

Unsurprisingly, the TRIPS agreement provides more protection to wines and spirits originating in Bordeaux.[23] as compared to the Zari embroidery that takes Indian craftsmen months to create by hand, simply because it does not have a single place of origin within India. Another limitation of the GIs is that only those goods that have been registered as GIs in one of the member countries are qualified to receive protection in other member countries. Goods that are famously known to belong to a specific place, but are unregistered, do not receive any protection. In this way, the traditional Indian dhoti becomes the 'draped skirt.'[24] In addition, the inherent flaw of the international commercial law, as pointed out by Austin and Holland, persists: the lack of an enforcing authority. Even if a TCE was eligible to be protected under GI, and it was registered, but a brand in a different country copied it without crediting the origin, the process to enforce the GI will fall under private international law, and have no specific adjudicating authority or arbiter of dispute.

The legal oversight that refuses to provide visibility to the collective creation exists because the Global North profits from the traditional knowledge of the Global South. However, this issue is not only restricted to the economic loss of the craftsmen and the respective industry of the country, but is also leading to the erasure of the culture that is symbolised by the traditional wear.

CONCLUSION

The word dupatta comes from a combination of the Sanskrit words du, meaning two and Patta meaning stripes of cloth. This single piece of cloth holds much importance in the Indian culture since the Vedic era. From ritualistic significance to symbolism, a dupatta is a part of the cultural

[23] TRIPS Agreement art 23

[24] 'Influencer calls out international brands for copying Indian dhoti without giving credit' Times of India (08 November 2025) < https://timesofindia.indiatimes.com/etimes/trending/viral-on-instagram-influencer-calls-out-international-brands-for-copying-indian-dhoti-without-giving-credit/articleshow/125182263.cms > accessed 18 January 2026

identity. When brands like Munthe decided to market a dupatta as a 'Scandinavian scarf,' it was not only staking morally wrongful claims over Indian heritage, but a small part of the larger structural cultural erasure. While the West considers fashion as a form of self-expression, the Indian culture attaches deep significance to each piece of clothing. Every cloth, or accessory, every embroidery and stitch represents a shared history and belongingness. Kolhapuris, Zari embroidery, Pashmina, Madras Checks, all are reduced by brands to 'trends', completely disregarding and distancing themselves from the meaning and history behind them.

In Epistemologies of the South, Boaventura de Sousa Santos presents the concept of 'Epistemicide,' which he defines as the systematic destruction, silencing or devaluation of systems of knowledge that do not conform to the Western epistemic framework.[25] It is the complete erasure of knowledge traditions emanating from specific histories, cultures, and communities. He illustrates this with the examples of the colonial economies wherein traditional practices of agriculture, healing and astronomy were considered "backward" and outlawed by the colonial governments. In the contemporary world, legal invisibility of the communal ownership of resources and with respect to this article, aesthetics, is the modern alternative to de-legitimise the traditional knowledge that opposes the Western standards of knowledge.

Cultural rebranding of traditional Indian clothes to give them a European background is possible due to the systematic flaw in the framing of the Intellectual Property law. The basis is restrictive in the sense that it is unable to recognise collective ownership, which allows non-Indian individuals to claim "ownership" by changing names, a transformation in name only, yet enough to qualify as 'new' according to the IP framework. The economic loss rebranding to the artisans producing the traditional wear for generations, as well as to the industry in India, is insurmountable. Equally large in magnitude is the cultural loss it causes.

[25] Boaventura de Sousa Santos, 'Epistemologies of the South' (first published Paradigm Publishers 2014, Routledge 2016) ch 4