

The Legal Vacuum of Digital Fashion and NFTs in India: A Case for *Sui Generis* Protection

1 . Introduction

Historically, the global fashion and apparel industry relied on tangible goods and brick-and-mortar retail. However, this is changing with an emerging collection of technologies, including the Metaverse and NFTs, at the core of a far-reaching digital shift. Such a new paradigm introduces digital fashion: three-dimensional garments, virtual accessories, and immersive digital showrooms existing purely as a code or a flow of data.¹ While at first considered a niche market, virtual goods are fast-growing; valued in billions, India's online fashion market is a vital contributor, with key players now experimenting with tokenized asset sales and digital-only collections.² For Indian designers and brands, this is a whole different avenue for revenue and a global platform for creative expression.

A. The Digital Shift in Fashion

The rise of Digital Fashion fundamentally challenges traditional IP concepts. Unlike a physical garment, which cannot be instantaneously replicated and distributed worldwide, a digital asset exists in a decentralized, non-physical environment. The adoption of NFTs has brought an additional layer of scarcity and verifiable ownership to this digital landscape.³ Using blockchain technology, NFTs tokenize the digital asset for proof of provenance and allow unique or limited-edition virtual fashion pieces to be sold. The coming together of high fashion, blockchain technology, and the Metaverse places tremendous economic stakes on legal clarity, requiring a robust framework to protect the creative output of Indian designers.

B. Problem Statement (The Vacuum)

¹ Bain & Co., *India's Digital Fashion Disruptors* (2023), <https://www.bain.com/insights/indias-digital-fashion-disruptors/>

² *Id.*

³ The Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India); The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

The central argument in the present paper is that the current Intellectual Property regime in India is critically ill-equipped to protect these purely digital fashion assets and, thus, perpetuates a significant legal vacuum.⁴ The Designs Act, 2000, and the Copyright Act, 1957, are the two major statutes vested with the protection of aesthetic design and are intrinsically connected with the production of physical articles and the regulation of tangible reproductions. The absence of a "physical article" and an "industrial process" frustrates the Designs Act, while the restrictive provisions of the Copyright Act regarding mass production fundamentally undermine the protection.⁵ The ambiguity of this legal regime leaves the creators open to unfettered digital piracy and stifles technological innovation within the Indian fashion sector.

C. Scope and Methodology

The paper proceeds by first critically analyzing section by section the Designs Act, 2000, and the Copyright Act, 1957, in order to establish the insufficiency of their respective protections for non-physical, tokenized assets. The analysis will then extend to key interfaces, including at the intersection of digital branding with the Trade Marks Act, 1999, and the unique challenges presented under extant Indian contract law through Smart Contracts. The paper shall draw upon judicial precedents, including most pertinently the ratio laid down in *Microfibres Inc. v. Girdhar & Co.*, to demonstrate the statutory bar on protection for industrially reproduced works.⁶

The recommendation suggested at the end of the paper is a prescriptive one, advocating for the adoption of a new *sui generis* (novel) legal and regulatory regime in India. This law should grant technology-neutral protection in codified form to the creation, ownership, and disposition of digital fashion IP, thus providing all parties with legal certainty.

II. The Failure of the Designs Act, 2000

⁴ *Id.*

⁵ The Designs Act, 2000, § 2(a), (d); The Copyright Act, 1957, § 15.

⁶ *Microfibres Inc. v. Girdhar & Co.*, (2009) 40 PTC 519 (Del.) (India) (holding that copyright protection ceases once a design capable of being registered under the Designs Act has been applied to an article more than fifty times by an industrial process).; *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Del 1709 (India) (reaffirming the application of the Section 15 bar to garment designs).

The Designs Act, 2000 (hereinafter "the Act") is the foremost legislation in India for the protection of the visual appearance of an article of manufacture.⁷ Its system, however, is intrinsically based on a pre-digital industrial model that incorporates two threshold requirements—a physical article and an industrial process—which render the regime incapable of offering reliable protection to purely Digital Fashion assets and NFTs. These statutory obstacles are critically examined in this section.

A. Analyzing Key Definitions: "Article" and "Industrial Process"

The definitions in the Act betray a decisive prejudice for tangible, manufactured goods. Thus Section 2(a) defines "article" as "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."⁸ Similarly, Section 2(d) defines "design" as features "applied to any article. by any industrial process or means, whether manual, mechanical or chemical, separate or combined."⁹ The most basic legal challenge for a Digital Fashion NFT has to do with satisfying the "article" requirement thereof. An article or accessory that is a digital entity existing either as a data file or code to be rendered on a screen cannot fulfill the definition of an "article of manufacture" or a "substance."¹⁰ The judicial trend in India thus far has been to interpret the Designs Act narrowly to apply protection only to tangible objects. For example, in *Titan Industries Ltd. v. M/s Ramkumar Jewellers*, the court's framing of the issue in terms of infringement of advertising material with respect to jewelry—a tangible good—emphasizes the classic view that the purpose of the Act is to protect the appearance of a tangible product.¹¹ The intangible nature of a Metaverse asset runs directly counter to this interpretation.

B. The Ambiguity of "Applied by an Industrial Process"

⁷ The Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India).

⁸ *Id.* § 2(a).

⁹ *Id.* § 2(d).

¹⁰ V. K. Ahuja, *Law Relating to Intellectual Property Rights* 569–75 (3d ed. 2017) (discussing the material nature required for design registration).

¹¹ *Titan Indus. Ltd. v. M/s Ramkumar Jewellers*, (2012) 50 PTC 486 (Del.) (India) (where the court focused on the visual features applied to manufactured jewelry and the associated advertising).

The second, also insurmountable hurdle, is that the design must be "applied" to an article by an "industrial process."¹²

1. **"Application" in the Digital Sphere:** In its classic sense, "application" means stamping or applying a design onto a product, such as weaving a pattern into fabric or molding a shape. In the case of Digital Fashion, the design is not applied to an article; the design is the article, or more precisely, the code combined with the visual rendering is the article. The process of "minting" an NFT simply notarizes the hash of the digital file on a blockchain and conveys a tokenized right in a manner wholly unconnected to a "manual, mechanical or chemical" industrial process contemplated by the Act.
2. **Judicial Interpretation:** Whereas Indian courts have typically taken the word "industrial process" in cases like *P. V. S. Ramaswamy Gounder v. Tata Engg. & Locomotive Co. Ltd.* to imply mass manufacturing processes,¹³ the creation and distribution of a digital file is the result of information technology and data transfer and not industrial fabrication. Applying the word "industrial process" to a rendering through a server or a transaction via blockchain would be a radical, and perhaps unjustified, extension of the word's meaning in the statute, with further consequence of legal instability.

In conclusion, the Designs Act, 2000 provides absolutely no feasible way to protect Digital Fashion. The legal schema is tailored toward preventing aesthetic piracy of goods existing in the physical world, and its core definitional elements are incapable of even recognizing assets that exist in a purely virtual plane. This essentially leaves Indian fashion creators and brands who operate in the nascent Metaverse without statutory design protection, making them dependent upon the limited and often extinguished shield of Copyright Law analyzed in the next section.

III. The Copyright Conundrum: Section 15 and Digital Works

The inability of the Designs Act, 2000, to extend protection to digital fashion assets forces creators to seek refuge under the Copyright Act, 1957 (hereinafter "the Copyright Act").¹⁴ While the Copyright Act provides the most immediate and automatic protection for works of

¹² The Designs Act, 2000, § 2(d).

¹³ *P. V. S. Ramaswamy Gounder v. Tata Engg. & Locomotive Co. Ltd.*, 1973 SCC OnLine Mad 162 (India) (discussing the application of design to articles via manufacturing processes).

¹⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

creativity, its applicability to mass-market digital products is severely curtailed by a provision critically aimed at achieving harmony between the two acts: Section 15. This section, while initially designed to prevent eternal copyright monopolies over industrially applied designs, has created an impossible legal paradox for Digital Fashion, which in effect deprives it of protection.

A. Copyright and Fashion as Artistic Work

The Copyright Act provides wide protection to "artistic works," which are defined as "a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality."¹⁵ Indian courts have interpreted this definition to hold consistently that an original sketch, two-dimensional pattern, fabric print, and embroidery design—the building blocks of a garment—are artistic works.¹⁶ Crucially, copyright protection vests automatically upon creation, with no formal registration required to subsist.¹⁷ Therefore, the original computer file, drawing, or code that an Indian designer uses to create a virtual garment should instantly, at the point of its creation, enjoy full copyright protection, including the exclusive right to reproduce the work.¹⁸ This protection is robust and long-lasting, covering the author's lifetime plus sixty years.¹⁹ However, this longevity and ease of acquisition are immediately jeopardized the moment the artistic work is subjected to commercial, industrial exploitation.

B. The Fatal Section 15 Interface

Section 15 of the Copyright Act prescribes when copyright ceases to exist in works created for industrial purposes and, thus, provides harmony between the Copyright Act and the Designs Act.²⁰

Section 15 contains two key clauses:

¹⁵ *Id.* § 2(c)(i).

¹⁶ *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Del 1709 (India) (acknowledging that original drawings and sketches used for garments are artistic works).

¹⁷ The Copyright Act, 1957, § 13.

¹⁸ *Id.* § 14(c)(i).

¹⁹ *Id.* § 22.

²⁰ *Id.* § 15.

1. Section 15(1) states that copyright shall not subsist in any design which is registered under the Designs Act.²¹
2. Sec. 15(2) states that copyright in any design, which is capable of being registered under the Designs Act but has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process.²²

The intent of Section 15 is to compel a choice: an artist may have long-term, broad protection under the Copyright Act for pure artistic works, or they may receive a limited, monopolistic term -- up to fifteen years -- under the Designs Act for works of industrial utility.²³ It operates to preclude creators from concurrently enjoying an industrial monopoly and perpetual artistic rights..

C. The Paradox of the Fifty-Reproduction Limit in Digital Fashion

The judicial interpretation has drawn a clear line here, transforming art into something whose ownership, once mass-produced, becomes legally risky. In *Microfibres Inc. v. Girdhar & Co.*,²⁴ the Delhi High Court held that in cases when an artistic design is intended for and exploited industrially in large quantities, the limits under the Design Act apply to the owner. More specifically, once a design is applied to more than fifty articles, the original copyright is erased under Section 15(2).²⁵ This reasoning later resonated in *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, where the court dismissed a copyright infringement case of garment designs on the ground of industrial exploitation beyond the threshold of fifty copies without registration.²⁶

The Central Argument for Digital Fashion

It is that proven-in-court fifty-reproduction rule that creates a trap for both Digital Fashion and NFTs in the form of a hard-to-work-around paradox.

²¹ *Id.* § 15(1).

²² *Id.* § 15(2)

²³ M.K. Bhandari, *Law of Intellectual Property: A Comprehensive, Exhaustive and Critical Study* 421–25 (4th ed. 2010).

²⁴ *Microfibres Inc. v. Girdhar & Co.*, (2009) 40 PTC 519 (Del.) (India).

²⁵ *Id.*

²⁶ *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Del 1709 (India).

- **The Inevitable Threshold:** Physical goods have the threshold baked in practically through real manufacturing to hit fifty units, while Digital Fashion is for instant and widespread distribution by design. In contrast, a single NFT collection—think 10,000 unique avatars or virtual accessories—undergoes code creation, storing data, and minting; a successful launch instantly surpasses the limit of fifty copies.
- **The Unwanted Extinction:** Under current readings of Section 15(2), once a new virtual design achieves even modest commercial success—when it's reproduced more than fifty times by the creator or a licensee—its copyright protection ends.²⁷ The Designs Act can't shield it, because there's no physical article, a point argued in Section II. Even the Supreme Court's recent guidance in *Cryogas Equipment Private Limited v. Inox India Limited*, while clarifying the line between pure artistic work and an industrially applied design, reaffirms that putting a design into industrial use brings in the Section 15(2) limitations.²⁸

In other words, the Indian IP regime presents Digital Fashion with a Catch-22: it cannot be protected under the Designs Act since it is not physical, and it loses protection under the Copyright Act precisely because it is commercially successful and mass-produced digitally. This legal vulnerability provides little incentive for Indian creators to push innovation in the Metaverse and signals the need for a distinct protective regime.

IV. Trademark, Trade Dress, and Contractual Issues

Beyond the confines of the Designs and Copyright Acts, the presence of Digital Fashion in the Metaverse gives rise to critical legal issues involving brand identity, transactional integrity, and jurisdictional applicability. These matters go to the very core of the practice of premium commercial law firms, whose expertise and experience have been cultivated in protecting corporate goodwill and creating enforceable agreements.

²⁷ See The Copyright Act, 1957, § 15(2).

²⁸ *Cryogas Equip. Private Ltd. v. Inox India Ltd.*, 2025 INSC 483, 2025 SCC OnLine SC 483, 53 (India) (reinforcing the need to harmonize the two statutes and the applicability of the industrial-use limitation).

A. Trademark and Digital Identity

The protection of fashion brand identity depends essentially on the Trade Marks Act, 1999 (hereinafter "the Trademarks Act").²⁹ This Act proscribes the use of an identical or deceptively similar mark likely to cause confusion among the public.³⁰ The main difficulty in the Metaverse will always be establishing "use" in the course of trade for purely digital goods.³¹

1. **"Use in the Course of Trade":** The Trademarks Act provides for the registration of trademarks in respect of goods (such as clothing under Nice Class 25) or services (such as retail services under Nice Class 35). The sale of a Digital-Only Logo or a virtual accessory raises the fundamental issue as to whether this digital sale within the Metaverse amounts to "use" in the course of the Indian trade.³² While the Madras High Court has taken a positive step forward by recognizing digital tokens as property,³³ the legal position of trademark use in a virtual, intangible environment remains legally gray. Indian courts, however, have demonstrated an willingness to extend trademark principles into the digital space, such as extending the "Initial Interest Confusion" doctrine to keyword advertising and meta-tagging.³⁴ This ability of the courts to evolve suggests that "use" in the Metaverse may be held to exist if such use results in consumer deception within India.
2. **Trade Dress and Virtual Showrooms:** Protection of a brand's Trade Dress—the total image and overall appearance, such as the unique interior design of a physical boutique or the distinctive packaging—is essential for luxury fashion houses. Equally so, in the Metaverse, this is reflected in how virtual stores or showrooms are presented. Though there is no explicit definition of trade dress under the Trademarks Act, trade dress protection falls under the tort of passing off.³⁵ The hurdle here is to establish that the

²⁹ The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India).

³⁰ *Id.* § 29(1).

³¹ *Id.* § 2(1)(zb) (defining "use of trade mark").

³² M. S. V. P. A. N. Subrahmanyam, *Trademark Law in the Metaverse*, Scribd (2023) (discussing the application of "genuine use" requirements to virtual goods).

³³ *Rhulikumari v. Zanmai Labs Pvt. Ltd.*, 2025 SCC OnLine Mad 4599, 31 (India) (recognizing digital tokens as property capable of being owned).

³⁴ *DRS Logistics v. Google*, (2023) 4 HCC(Del) 515 (India) (adopting the Initial Interest Confusion doctrine for keyword advertising).

³⁵ *Marico Ltd. v. Piyush Oil Sales & Anr.*, (2024) 2 SCC 525, 18 (India) (discussing the essentials of the common law tort of passing off).

virtual aesthetics of a brand have attained the required secondary meaning or goodwill in India to be accorded protection against passing off in the Metaverse.

B. The Status of Smart Contracts and NFTs

Fashion NFTs are generally transferred thanks to Smart Contracts—those are self-executing agreements where the terms are directly written into code on a blockchain.³⁶ Thus, an analysis of the legal validity of such automated agreements under Indian law is warranted

1. **Validity under the Contract and IT Acts:** A Smart Contract is a type of electronic contract. The IT Act, 2000, has given legal recognition to electronic records and contracts, providing therein that a contract shall not be deemed to be invalid solely on the ground that it is in the form of an electronic record.³⁷ In addition, Smart Contracts usually fulfill the minimum requirements of a valid agreement under the Indian Contract Act, 1872—principally offer, acceptance, and consideration.³⁸ Yet, the decentralized and self-executing nature of Smart Contracts creates problems with its enforceability, especially regarding free consent, and how courts may interfere, interpret or modify it on grounds of coercion and mistake, among other grounds that are central principles in the law of contract.
2. **IP Rights vs. Token Rights:** A fundamental legal differentiation that needs to be borne in mind is that between the ownership of the NFT—the token—and that of the Underlying Intellectual Property—the design.³⁹ **Ownership of the NFT is the mere proof of a unique entry on a distributed ledger—the token right—and does not automatically confer any proprietary rights—like copyright or trademark—over the digital artwork itself.**⁴⁰ Unless the associated Smart Contract explicitly assigns or licenses the IP rights in clear, written terms—as mandated by Section 19 of the Copyright Act—the buyer of the NFT has

³⁶ Nick Szabo, *Smart Contracts: Building Blocks for Digital Markets* (1996), reprinted in 50 Harv. J.L. & Tech. 20 (2018).

³⁷ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India) § 10A.

³⁸ The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India) § 10.

³⁹ Norton Rose Fulbright, *NFTs and Intellectual Property Rights* (2022), <https://www.nortonrosefulbright.com/en-in/knowledge/publications/1a1abb9f/nfts-and-intellectual-property-rights>.

⁴⁰ *Id.* (stating that ownership of an NFT does not automatically transfer copyright to the underlying asset)

no more than a digital collectible and not the right to reproduce the design or use it commercially. This ambiguity is the source of frequent disputes and underlines the need for legal standards for NFT sale terms.

C. Jurisdiction and Enforcement

The blockchain and Metaverse being borderless creates significant hurdles in enforcing IP rights granted under Indian law.⁴¹

1. **Locus of Infringement:** When an infringement occurs on a globally accessible platform-e.g., a Metaverse server or a decentralized marketplace-the cause of action is not confined to one geographic location. Though the Trade Marks Act and the Copyright Act give the plaintiff the convenience of filing suit where they reside or carry on business,⁴² The enforcement of an injunction against an anonymous defendant or a foreign platform involves complex principles of private international law.
2. **Service of Process and Remedy:** For effective assertion of jurisdiction, Indian courts must localize the foreign activity.⁴³ While judicial precedents, such as the Banyan Tree Holding case, have helped define jurisdiction in inter-state and international online disputes, the decentralized architecture of blockchain-based assets, wherein the defendant, the platform and the infringement could all be said to exist in several jurisdictions at once, complicates service of process and the ultimate enforceability of a monetary decree or a takedown order.

This combination of three factors-an uncertain status of digital use under Trademark law, legal inflexibility of Smart Contracts, and complexity of cross-border enforcement-has altogether accentuated the state of legal vacuum for Digital Fashion in India, which demands a corresponding unified and forward-looking statutory solution.

V. Global Models and Comparative Analysis

⁴¹ K. Sharda & D. K. Sharma, *Jurisdictional Issues in Cyberspace*, 2 Ind. J. L. & Tech. 129 (2009)

⁴² The Trade Marks Act, 1999, § 134(2); The Copyright Act, 1957, § 62(2).

⁴³ *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, 2010 SCC OnLine Del 3175, 68 (India) (discussing the application of the "effect" test and "targeting" to assert jurisdiction in internet disputes).

The gap is similar to what many others face: our current laws simply do not fit this new class of assets. A look at how other major players handle the issue, especially the EU and the US, creates useful comparisons that may help shape a solution suited to the context of India.

A. International Responses

In practice, most jurisdictions have taken a pragmatic route—using existing laws with clarifications and guidance rather than building an entirely new statutory framework from scratch.

1. United States (US)

US law would generally rely on its existing IP statutes, namely the Copyright Act and the Lanham Act (Trademark).⁴⁴ Protection for digital assets will generally depend upon how an NFT is characterized:

- In instances where the NFT represents an underlying work of digital art, the registrations should explicitly include the work of art itself, not the blockchain token per se. The crucial factor here is the differentiation between the NFT token and the IP work represented.
- **Copyright:** The US Copyright Office has generally accepted copyright registration for the underlying digital art, but the application must specifically clarify that the registration covers the artwork and not the blockchain token itself.⁴⁵ The key distinction remains between the **NFT as a token** and the **IP as a creative work**.
- **Trademark:** enforcement has been swift against brands trying to repurpose existing marks for virtual goods. For instance, a landmark case, *Hermès International v. Mason Rothschild*, held that an artist can be sued for trademark infringement when consumers are likely to be confused into thinking the NFT—what was referred to as a "MetaBirkin"—is connected to the real Hermès Birkin bag.⁴⁶ This highlights a strong application of

⁴⁴ The Copyright Act, 17 U.S.C. §§ 101–1332 (2020); The Lanham Act, 15 U.S.C. §§ 1051–1127 (2020).

⁴⁵ U.S. Copyright Office, *Copyright Registration for Works Related to NFTs and the Blockchain* (2023), <https://www.copyright.gov/docs/nfts/copyright-registration-for-works-related-to-nfts-and-the-blockchain.pdf>.

⁴⁶ *Hermès Int'l v. Mason Rothschild*, No. 1:22-cv-00384 (S.D.N.Y. May 31, 2023) (holding that the MetaBirkins NFTs were likely trademark infringement).

trademark law in the Metaverse, with consumer confusion and not the physical nature of the goods being the driving force.

2. European Union (EU)

While the EU has largely relied on existing Design Regulation and issued guidance to fill the gaps.

- **EU Design Law:** The European Union Intellectual Property Office (EUIPO) allows for the registration of digital designs, provided they are capable of being *applied to* or *incorporated into* a product.⁴⁷ Protection could, therefore, extend to Graphical User Interfaces and icons, showing a broader take on what counts as an “article” than is currently contemplated under India’s Designs Act. Similarly, the EUIPO requires clear representations of the design, acknowledging the complexity of dynamic digital works.⁴⁸

B. Drawing Lessons for India

What the international experience suggests can be translated into India's sui generis framework, while keeping within the Designs Act, 2000, and the Supreme Court's principles:

1. **Decoupling the Asset from the Medium:** India must adopt the international clarification that the IP (the design or brand) is legally distinct from the NFT (the token/medium of exchange). This lesson, strongly evident in both US litigation and EU guidance, prevents the automatic extinction of copyright under Section 15(2) and allows for the separate licensing of the token and the artwork.
2. **Broadening the 'Article' for Designs:** India can follow the EUIPO’s flexible model by amending the Designs Act or enacting a new digital-focused regime that protects the aesthetic features of Virtual Articles and GUIs. The term "article" should broaden to

⁴⁷ Council Regulation 6/2002 of 12 December 2001 on Community Designs, arts. 3–4, 2002 O.J. (L 3) 1, 5 (EU).

⁴⁸ European Union Intellectual Property Office (EUIPO), *Designs Guidelines*, EUIPO, 14–17 (2023), <https://guidelines.euipo.europa.eu/2347392/2163351/designs-guidelines>.

include "digital representations of articles," enabling industrial protection without requiring a physical form, thereby addressing the Titan Industries hurdle.⁴⁹

3. **Focusing Trademark on Consumer Confusion:** The US approach provides a clear blueprint. Indian courts can address whether the average consumer would be confused as to a brand's affiliation in the Metaverse, and hence position the Trade Marks Act, 1999 as the primary tool for policing brand identity in the digital realm.⁵⁰ This respects existing law while extending its commercial reach into new digital realms.

Adapting these international models selectively, India will be able to construct a fine balance between a common-law principle framework and one that is flexible enough to handle the digital economy, rather than narrowly interpret the concepts that relate to "physical article."

VI. The Proposed *Sui Generis* Framework

The critical analysis of the existing IP statutes of India (Sections II, III, and IV) demonstrates the fundamental incapacity of the same to protect Digital Fashion. The present legal architecture for a physical economy has imposed statutory limitations-the "physical article" requirement of the Designs Act and the "fifty-reproduction" limit of the Copyright Act-which are incapable of being reconciled with the nature of commercially successful digital assets. Therefore, a purely amendatory approach can never be adequate; instead, what is needed is a comprehensive, forward-looking sui generis framework.

A. Justification for a Unique Law

Adding digital assets to the existing Acts would be an unnecessary structural burden and fraught with the potential for unintended consequences. For example, the simple rewording of the term "article" in the Designs Act to include digital creations would have the consequence of automatically applying the limited duration provided by the Act (that is, fifteen years) and the onerous registration requirements, yet it would not overcome the inherent conflict with the Copyright Act's fifty-copy rule.⁵¹ On the other hand, exempting Digital Fashion from Section 15(2) of the Copyright Act would create an internal inconsistency-a perpetual right for digital

⁴⁹ *Titan Indus. Ltd. v. M/s Ramkumar Jewellers*, (2012) 50 PTC 486 (Del.) (India).

⁵⁰ The Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India) § 29.

⁵¹ The Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India) § 11 (setting the duration of registration).

designers versus fifteen years for garment creators—an obvious constitutional infirmity based on equal protection.⁵² A specific, technology-neutral sui generis law, much like the Semiconductor Integrated Circuits Layout-Design Act, 2000, whereby protection for integrated circuit layout-designs was tailored, is required in that it would permit:

1. **Technological Neutrality:** The law can be drafted in a way that protects the visual representation of the asset, whatever the Metaverse, blockchain, or augmented reality might be underneath, ensuring future proofing.
2. **Clear Rights Separation:** Clearly separate the rights assigned to the design from the rights passed through the token to clear the very core ambiguity of NFTs.
3. **Dedicated Enforcement:** A dedicated statute could create a specialized registry and an effective dispute resolution mechanism matched to the speed of digital commerce.

B. Proposed Legislative Blueprint

Specific changes should now be made to address the vacuum on the basis of a new statute, provisionally entitled the Digital Design and Virtual Assets Protection Act.

1. Decoupled Definitions

The Act must introduce definitions completely decoupled from physical production:

- **"Virtual Article"**: means any three-dimensional or graphical representation of a functional or non-functional apparel, accessory, or component thereof, which exists in purely digital form and can be used or displayed within a simulated digital environment.
- **"Digital Design"**: means the features of shape, configuration, pattern or ornament applied to or inherent in a Virtual Article, which are judged solely by the eye and which are not solely attributable to the function of the Virtual Article.
- **"Digital Reproduction"**: The making of a new copy of a Virtual Article, by way of example and not limitation, the minting of an NFT representing the Virtual Article, the sale of a single copy, or the creation of a licensed instance for a defined digital platform. This definition explicitly replaces the physical constraints of "industrial process."

⁵² INDIA CONST. art. 14 (guaranteeing equality before the law).

2. Registration and Duration of Rights

The framework must establish a clear, centralized system for Digital Design IP:

- **Mandatory Registration:** The new Act should require mandatory registration for the protection of Digital Designs. This would avoid extinguishing the rights automatically under S.15(2) of the Copyright Act and categorically places them outside the purview of the Designs Act as well as the relevant provisions of the Copyright Act.
- **Duration:** The right should be granted for an initial term of ten years, renewable for an additional five years, to mirror the structure of the Designs Act at present but with a carve-out specifically ensuring the right is not extinguished if the underlying digital file also contains artistic elements, so as to avoid the pitfalls of s 15.

3. Rules Governing Tokenization (NFTs)

Specific clauses are necessary to govern the complex interaction between the design IP and blockchain technology:

- **Default Rights of NFT Holder:** The Act should have a clear default rule that the transfer of an NFT confers only the right to own and display the token (the Virtual Article) in a non-commercial manner, and does not include the right to reproduce or adapt the underlying Digital Design, or to commercially exploit that Digital Design.⁵³
- **Smart Contract Requirements:** Any Smart Contract that is intended to convey the commercial IP rights, such as reproduction or adaptation rights for the design, needs to include specific language to meet the formalities required under the Indian law for IP assignment or licensing. The Act should mandate linking the NFT metadata with the official registry record to ensure transparency of ownership and licensing terms.

By adopting this sui generis approach, the country will not only fill the legal lacuna but also set a precedent for protection of the digital creative assets across the world, thereby securing the future commercial interests of the fashion technology sector.

⁵³ Norton Rose Fulbright, *NFTs and Intellectual Property Rights* (2022), <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/1a1abb9f/nfts-and-intellectual-property-rights>. (discussing the default legal presumption that IP rights do not transfer with the token).

VII. Conclusion

The sudden rise of Digital Fashion and NFTs has brought to the forefront the severe legal lacuna existing in Indian Intellectual Property law. The two main statutes, namely, the Designs Act, 2000, and the Copyright Act, 1957, are rendered ineffective by their inherent bias toward physical articles and tangible industrial production. The Designs Act fails on the criterion of non-physicality of the virtual assets, and the Copyright Act extinguishes protection by the commercially inevitable mass-reproduction limits set by Section 15(2), with the result that successful Indian designers are left with no legal remedy.

This systemic failure to protect creative, tokenized digital assets directly hinders India's growth in the global fashion tech economy, making it a haven for piracy and stifling innovation. In order to secure the commercial interests of the creators in India and provide legal certainty, this paper proposes a technology-neutral, sui generis framework with decoupled definitions of "Virtual Articles" and its own registration system; this would resolve the statutory conflicts and place India at the forefront of protection of the IP rights of the digital future.