

**THE LEGAL CONUNDRUM OF FASHION INDUSTRY:
A QUEST FOR AN EFFECTIVE INTERNATIONAL
FASHION LAW FRAMEWORK**



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FINAL APPROVAL

It is certified that we have read the dissertation submitted by Ms. Attika Rehman titled **“THE LEGAL CONUNDRUM OF FASHION INDUSTRY: A QUEST FOR AN EFFECTIVE INTERNATIONAL FASHION LAW FRAMEWORK”** as partial fulfillment for the award of degree of LLM International Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of the degree.

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Attika Rehman

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ABSTRACT

International Fashion Industry, as glamorous as it seems, is in fact hidden under the plethora of legal challenges, including, but not limited to international human rights law violations, international animal and environment law abuses as well as issues of intellectual property theft, due to the lack of any effective regulatory legal framework. This study highlights the need to understand the gravity of the lawlessness in this industry and aims to provide a comprehensive international legal framework specifically designed to regulate the fashion industry, hence, for that purpose firstly a comprehensive introduction to the fashion industry is provided by exploring the definition and meaning of Fashion, history, evolution and its key sectors. Additionally, it also studies the emerging importance of international fashion industry in contemporary world and its legal dimensions and highlights the dilemma of any explicit regional or international legal regime to regulate this industry. Furthermore, the study identifies the key legal challenges of the fashion industry and analyzes them with the case studies and critical analysis of relevant international laws. Moreover, the study delves upon the need for an effective international fashion law framework and provides a proposed framework regarding the same. The framework suggests a four-stage strategy to counter this challenge. In the stage one, policy measures at state level are addressed, then in stage two and three, policy measures at international and regional level are looked upon, and lastly, in stage four, the framework for International Convention on Fashion Industry is proposed. These measures if adopted will lead towards a better regularization of this industry at an international level and will also provide a step forward towards formalizing the emerging field of fashion law.

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LIST OF ABBREVIATIONS

CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
EUIPO	European Union Intellectual Property Office
ICAW	International Convention for the Protection of Animals Welfare
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRS	International Copyright System
IIDS	International Industrial Design System
ILO	International Labor Organization
IP	Intellectual Property
IPS	International Patent System

ITMS	International Trademark System
MFA	Multifiber Arrangement
OECD	Organisation for Economic Co-operation and Development
WOAH	World Organization for Animal Health
SDG	Sustainable Development Goals
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UDWA	Universal Declaration for the Welfare of Animals
UNCAP	UN Convention on Animal Health and Protection
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFCC	United Nations Framework Convention on Climate Change
WIPO	World Intellectual Property Organization

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CHAPTER 1

INTRODUCTION

1.1 Thesis Statement

Fashion industry currently lacks an effective enforcement mechanism leading to widespread violations of various International laws and treaties, hence, the establishment of a specific International Fashion Law Framework could play a crucial role in regulating the industry by establishing uniform standards and protocols for fashion law enforcement.

1.2 Introduction

The fashion industry is one of the major creative industries in the world, generating more business annually than the other creative industries of books, movies, and music combined.¹ Since everyone wears clothing, hence, unavoidably make some contribution to fashion. Textile design and production, apparel design and production, garment and product assembly, and fashion retailing, marketing, and merchandising are among the major segments of the global fashion industry.²

Although the fashion industry initially appears to be glowing with glitz and glamour, it also has a darker side. Over the past few years, consumption rates have surged and many fashion chains have seen significant success with fast fashion. Designs are being quickly adopted in no more than three to five weeks by retailers like Zara, H&M, New Look,

¹ C. Scott Hemphill and Jeannie Suk, "The Law, Culture, and Economics of Fashion," *Stanford Law Review* 61, no. 5 (2009): 1147-1199.

² Fabio De Felice and Antonella Petrillo, "Key Success Factors for Organizational Innovation in the Fashion Industry," *International Journal of Engineering Business Management* 5, no. 27 (2013): 1.

and Top Shop in an effort to draw customers and bring adaptations of the runway designs to the stores.³

Serious abuses of international human rights laws and standards, including but not limited to the setting up sweatshops, practice of child labour, discrimination, poor working conditions, and sexual harassment, have eventually been the result of Fast Fashion. According to estimates, 16.7 million children between the ages of 5 and 17 are working in South Asia of which about 10.3 million are under the age of 15.⁴ Workers in the fashion sector frequently put in long hours for little pay that barely meets the legal minimum and is much less than the living wage. According to a survey, a Cambodian organization fired 40 employees for refusing to work overtime and revealed that about 94% of factories inspected breached overtime restrictions.⁵ Workers were assaulted by supervisors in another Bangladeshi factory for failing to reach unrealistic production goals. Furthermore, the fashion industry lacks safety and health standards and regulations. A recent report by Clean Clothes Campaign cited fire department statistics which indicated that about 500 people were killed by factory fires alone.⁶ Employees are exposed to fine dust pollution, which has well-documented detrimental impacts on health, as their job is frequently done in enclosed spaces.⁷

³ Vand Bhardwaj and Ann Fairhurst, "Fast Fashion: Response to Changes in the Fashion Industry," *The International Review of Retail, Distribution and Consumer Research* 20, no. 1 (2010): 165-173.

⁴ Cathryne L Schmitz, Elizabeth KimJin Traver and Desi Larson, *Child Labor: A Global View* (London: Greenwood Press, 2004).

⁵ Gillian Kane, "Facts on Cambodia's Garment Industry," *Clean Clothes Campaign*, 2014, accessed 20 April, 2020, <https://cleanclothes.org/resources/publications/factsheets/cambodia-factsheet-february-2015.pdf>.

⁶ Tushar Kanti Saha, Aparajita Dasgupta, Arindam Butt, and Onkarnath Chattopadhyay, "Health Status of Workers Engaged in the Small-Scale Garment Industry: How Healthy Are They?," *Indian Journal of Community Medicine* 35, no. 1 (2010): 179–182.

⁷ Martje Theuws, Mariette van Huijstee, Pauline Overeem, Jos van Seters, and Tessel Pauli, *Fatal Fashion: Analysis of Recent Factory Fires in Pakistan and Bangladesh: A Call to Protect and Respect Garment Workers' Lives* (Amsterdam: Centre for Research on Multinational Corporations, March 2013).

Animal materials are also extensively used in the industry, however, the procedures used to make them and their subsequent effects are rarely addressed or discussed. Accordingly, billions of animals suffer and eventually die every year for clothes and accessories.⁸ Animals are kept in cages for their entire lives before being killed for their fur which is peeled off them to manufacture leather. Birds are held down while feathers are pulled out of their delicate skin. Similarly, the sheep used for obtaining wool and to make shearling are frequently beaten and mutilated.⁹ The mistreatment of goats for their cashmere and mohair is horrific. All this cruelty is done just in the name of fashion. Ethics, sustainability, animal well-being is often ignored which ultimately results in violation of many international animal rights laws.¹⁰

The adverse effects of the fashion industry on the environment are also expanding at a rapid pace. A recent report from the United Nations Economic Commission for Europe (UNECE) states that the fashion sector is the second-largest global user of water and is responsible for 20% of water waste production. Additionally, it accounts for 10% of the world's carbon emissions.¹¹ Environmental compliance isn't always on the textile manufacturers' priorities or goals, which has ultimately resulted in violation of number of environmental law treaties and conventions.¹²

Additionally, Intellectual Property Theft in the Fashion Industry is very prevalent. Although, International Framework of IP Laws has, rightfully so, provided protection to

⁸ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016).

⁹ Kitty G. Dickerson, *Inside the Fashion Business*, 7th ed. (Upper Saddle River, NJ: Prentice Hall, 2002).

¹⁰ Joshua Katcher, *Fashion Animals* (United States: Vegan Publishers, 2019).

¹¹ Dana Thomas, *Fashionopolis: The Price of Fast Fashion and the Future of Clothes* (London: Head of Zeus, 2019).

¹² Mathilda Tham, "Lucky People Forecast – A Systemic Futures Perspective on Fashion and Sustainability" (Phd Thesis, University of London, 2008).

designs, techniques, and other proprietary property associated with articles of fashion, however, they provide deficient Protection for regulating complex transnational Fashion Industry. The Issues of Copyright, Trademark, Licensing and Counterfeiting of Fashion Articles needs an inquisitive redressal to accommodate the requirements of protecting fashion items.¹³

Surprisingly, historically fashion industry has been regulated thoroughly throughout the human history, however, the laws of fashion did not develop further after the colonial period and hence, in the contemporary world today there are no uniform international or regional legal frameworks to regulate the industry, which has ultimately resulted in these mass violations of international laws and norms, hence, in light of these findings, there is an eminent need for an International Fashion Law Framework.

A most precise definition of Fashion law is given by a Fashion Law Institute at Fordham University in New York which is a principal authority in this area capitulates it as:

*"The legal substance of style, including all the issues that may arise throughout the life of a garment, starting with the designer's original idea and continuing all the way to the consumer's closet."*¹⁴

Therefore, fashion law refers to both the business, social, and ethical considerations that influence the legal policy and advancements as well as the statutory and regulatory framework that applies to the fashion industry. The Proposed Effective International Fashion Law Framework, this study will provide is also in line with this definition. The proposed framework suggests a four-stage strategy to counter this challenge. In the

¹³ Cassandra Elrod, "The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability," *Indiana Journal of Global Legal Studies* 24, no. 2 (2017).

¹⁴ Susan Scafidi, "What is fashion law?" Fashion Law Institute, 2020, <https://www.fashionlawinstitute.com/>.

Stage One, Policy Measures at State Level will be addressed, then in Stage Two, Policy Measures at Regional Level will be looked upon, further in Stage Three, Policy Measures at International level will be suggested and lastly, in Stage Four, the framework for International Code of Fashion Law would be proposed.

The main object of this thesis is to provide a step forward towards formalizing the emerging field of fashion law, hence, for that purpose, the structure of the study is distributed into four parts, the first part provides a comprehensive introduction to the topic by providing the definition and meaning of Fashion, history, evolution and key sectors of fashion industry. It also studies the emerging importance of International Fashion Industry in Contemporary World and its legal dimensions. The second part identifies the key legal challenges of the fashion industry and analyzes them with the case studies and relevant international laws. The third part delves upon the need for an effective International Fashion Law Framework and provides a proposed framework regarding the same. The framework suggests a four-stage strategy to counter this challenge. The thesis finishes with the findings and some recommendations of the author.

1.3 Significance of Research

International Fashion Industry, as glamorous as it seems, is in fact hidden under the plethora of legal challenges, including, but not limited to international human rights law violations, international animal and environment law abuses as well as issues of intellectual property theft, due to the lack of any regulatory legal framework. This study highlights the need to understand the gravity of the lawlessness in this industry and aims to provide a comprehensive international legal framework specifically designed to

regulate the fashion industry. These measures if adopted will lead towards a better regularization of this industry at an international level and will also provide a step forward towards formalizing the emerging field of fashion law.

1.4 Aims and objectives

Following will be the main aims and objectives of this research:

1. Study the origin and evolution of Fashion Industry and evaluate its emerging importance in the contemporary world today from an International Law perspective.
2. Analyze the International and Regional legal frameworks that regulate Fashion Industry through comparative analysis and cases studies and also assess whether the current legal framework is sufficient to regulate this transnational industry.
3. Identify and explore the hidden legal challenges of Fashion Industry through leading case studies of international fashion brands and investigate how these fashion companies are violating international laws and treaties due to lack of an efficient regulatory framework.
4. Provide measures to address the challenges of fashion industry by devising the international fashion law framework through a four-stage strategy and provide a step forward towards formalizing the emerging field of fashion law.

1.5 Literature Review

The review of literature for this research is conducted through both primary and secondary sources, including books, journals, articles and various international,

governmental and non-governmental reports, however, as fashion law is an emerging field the literature has certain limitations. The selected literature most relevant to the topic is presented below.

Scott Hemphill & Jeannie Suk in their article, "The Law, Culture and Economics of fashion" assert that world's most significant creative industries is fashion which is worth more than 200 billion annually relatively greater than those of books, films and music combined.¹⁵ The article examines the legal implications and economic significance of the fashion industry's emerging role in the modern world. While the article acknowledges the legal implications of the fashion industry, a more in-depth legal analysis could examine specific legal challenges faced by the industry, such as intellectual property issues, animal rights, and environmental regulations.

In their research paper, "Key Success Factors for Organizational Innovation in the Fashion Industry," Fabio De Felice and Antonella Petrillo discuss the key sectors of the International Fashion Industry today. According to them it includes "Textile Creation and Production, Fashion Design and Manufacturing, Garment and Product Arrangement, Fashion Retailing, Branding, and Promotions".¹⁶ The paper goes on to examine economic, environmental, and social factors that contribute to the success of the fashion industry. The study also emphasizes challenges and opportunities related to the new concept of sustainable fashion in this industrial sector. Although the paper offers valuable insights, a critical examination reveals that integrating case studies and examples of organizations that have successfully navigated challenges and capitalized on

¹⁵ C. Scott Hemphill and Jeannie Suk, "The Law, Culture, and Economics of Fashion," *Stanford Law Review* 61, no. 5 (2009): 1147-1199.

¹⁶ Fabio De Felice and Antonella Petrillo, "Key Success Factors for Organizational Innovation in the Fashion Industry," *International Journal of Engineering Business Management* 5, no. 27 (2013): 1.

opportunities in sustainable fashion could provide practical insights for industry practitioners and policy makers.

"Fast fashion: response to changes in the fashion industry" is a research study by Vertica Bhardwaj and Ann Fairhurst that explains how "the fashion industry has drastically transformed, primarily over the previous two decades."¹⁷ Retailers really need cheap costs, flexibility in design, high quality, and quick time to market in order to compete in the highly competitive market due to the changing dynamics of the fashion business. The literature on changes to the fashion garment business since the 1990s is reviewed in this article, with a focus on the emergence of the term "throwaway" or "quick fashion." It highlights numerous relevant research concerns and discusses fast fashion from both the supplier and consumer perspectives. While the study provides insights into the changing nature of the fashion industry, a comparative analysis between fast fashion and sustainable fashion models, exploring successful strategies and failures, could offer valuable lessons for the industry and policymakers.

Human rights violations in the fashion industry are covered by Jaleh Jennifer Sattari in her study, "Human Right Violations in the Fashion Industry: A Comparative Country Analysis."¹⁸ According to the author, potentially because of such a global supply chain, the apparel industry has a history of human rights violations. One business may have five distinct suppliers handling the same product on three separate continents; the policies and procedures of each supplier may vary significantly, as well as the operations, expenses, and employment practices. What is deemed appropriate in one

¹⁷ Vand Bhardwaj and Ann Fairhurst, "Fast Fashion: Response to Changes in the Fashion Industry," *The International Review of Retail, Distribution and Consumer Research* 20, no. 1 (2010): 165-173..

¹⁸ Jaleh Jennifer Sattarin, "Human Right Violations in the Fashion Industry: A Comparative Country Analysis" (Master's thesis, American University of Paris, 2013).

state might not be in other. A single company cannot possibly keep track of every action their suppliers take. Following a comparative analysis of four states, the author draws conclusions about which states have taken the most advanced approaches in terms of the protection of human rights in the fashion business. The study also highlights the significance of monitoring human rights for fashion companies. The book offers a valuable examination of these issues, however, the integration of the perspectives of workers within the supply chain, including their experiences, challenges, and recommendations for improvement, could provide a more holistic understanding of the human rights landscape.

Jan-Christian Niebank identifies the discrepancies in governance practices, weak regulatory frameworks, and intense competition for the fashion dollar and contends that this can develop an environment in which individuals are susceptible to abuse and monopolization in his research report, "Bringing Human Rights into Fashion: Issues, Challenges, and Underused Potentials in the Transnational Garment Industry."¹⁹ He argues, States and enterprises have a duty to ensure that basic human rights are safeguarded throughout the entire industry supply chain. This requires elimination of child labour and forced labour, ensuring everyone is treated with dignity and respect, and ensuring healthy and safe work environments. Niebank highlights systemic issues within the fashion industry, however, a more in-depth analysis of existing regulatory frameworks and their shortcomings are missing which presents a gap in his study.

¹⁹ Jan-Christian Niebank, *Bringing Human Rights into Fashion: Issues, Challenges, and Underused Potentials in the Transnational Garment Industry* (Berlin: German Institute for Human Rights, 2018).

Animal materials are widely utilized in the fashion business, however, as Barbara Ferreira writes in her book "The Use of Animals inside the Fashion Industry" that the mechanism behind this usage and the consequences are rarely addressed.²⁰ She also sheds light on the early history of the usage of animals for clothes as well as the ethical perspectives on this use. The book further highlights the effects it has on the environment, on those who work on farms and the fashion supply chain, and on the fashion business itself. It also provides an examination of how raw materials for making fashion products are acquired from animals, case studies of how various fashion businesses address the issue, market dynamics and new trends connected to the use of animals, and customer viewpoints obtained through interviews are all included in the study. The main shortcoming of the book is that the analysis of the existing international legal policy and regulatory landscape related to animal rights is not present in the study which could provide a broader understanding of the global regulatory influences on animal welfare.

Animal Rights: Noble Cause or Needless Effort? by Marna Owen explains about how animals are exploited in medical experimentation, agricultural industry, fashion business, and entertainment industry.²¹ She examines the policies aimed at protecting animals from maltreatment, problems with the implementation of those laws' and also presents the ideas and perspectives of individuals and groups both supporting and opposing animal rights.

²⁰ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016).

²¹ Marna A. Owen, *Animals Rights: Noble Cause or Needless Effort?* (United States: Twenty-First Century Books, 2009).

Fast Fashion: Good for Business, Bad for the Planet, by Vicky Yu recognizes that the adverse effect of the fashion industry on the environment is escalating exponentially. He contends, drawing from statistics, that the fashion industry generates 20% of the world water waste and is the largest single consumer of water globally.²² Additionally, it accounts for 10% of the world's carbon emissions. The major priority for textile and apparel importers is not environmental compliance, which has ultimately resulted in negative impact on the natural environment. The article presents a clear picture of the environmental repercussions of fast fashion, supported by compelling statistical data but does not further explore the existing international environmental policies and regulatory frameworks that provides for environmental compliance within the fashion industry which would contribute to a more comprehensive review.

The negative environmental impacts connected to the manufacture and utilization of fashion are covered by Mathilda Tham in her doctoral thesis, "Lucky People Forecast -A Systemic Futures Perspective on Fashion and Sustainability."²³ She argues that the top down production approaches for ecological sustainability do not stretch either to the user phase, where effect is greatest, or the design phase, where the potential for change is highest. Her research aims to broaden this acumen and apply it to the mass-market section of the fashion business, which has the most untapped potential.

Knockoffs and Counterfeits of designer brands continue to be produced and traded worldwide, resulting in significant economic and social implications, claims Carolyn Marcelo in her study paper, "The Crimes of Fashion: The Effects of Trademark and

²² Vicky Yu, *Fast Fashion: Good for Business, Bad for The Planet. What Can You Do?* (Manchester: Olympia Publishers, 2017).

²³ Mathilda Tham, "Lucky People Forecast – A Systemic Futures Perspective on Fashion and Sustainability" (Phd Thesis, University of London, 2008).

Copyright Infringement in the Fashion Industry."²⁴ Despite being illegal under the law, making and selling counterfeit goods has widespread repercussions that the public is often unaware of. In addition to costing legal companies and governments millions of dollars in lost revenue, the horrors of counterfeiting designer goods also include child labour, narcotics/drug trafficking, and global terrorism. The main shortcoming of the study is that it is silent on the challenges of enforcing laws against counterfeiting, including cross-border issues and jurisdictional complexities, which would provide insights into potential improvements.

In his article "Counterfeit Fashion: The Interplay Between Copyright and Trademark Law in Original Fashion Designs and Designer Knockoffs,"²⁵ Kevin V. Tu contends that "style piracy" has increased due to the expansion of the fashion industry and the reputation and status associated with particular designers and their signature styles. The degree of copying can vary, from trying to pass knockoffs as the genuine article to the production of "designer inspired" goods intended to capitalize on the appearance of similarity to the original. Limited legal protections are available to safeguard these invaluable artistic and economic interests from abuse by style pirates. According to the author, a much more comprehensive framework for safeguarding innovative fashion designs is required; however, he does not propose any solution to the challenge at hand which presents a gap in his study.

In the extremely competitive global market today, designers, business owners and executive officers need state, municipal, regional and global regulations to safeguard

²⁴ Carolyn Marcelo, "The Crimes of Fashion: The Effects of Trademark and Copyright Infringement in the Fashion Industry" (Master's thesis, Liberty University, 2011).

²⁵ Kevin V. Tu, "Counterfeit Fashion: The Interplay Between Copyright and Trademark Law in Original Fashion Designs and Designer Knockoffs," *Texas Intellectual Property Law Journal* 18, no. 3 (2010): 419-500.

their proprietary information and the consumer items through which their customers identify them, writes Guillermo C. Jimenez and Barbara Kolsun in "Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys." Fashion Law, in the words of the authors, provides a clear and comprehensive guide to the whole spectrum of legal challenges confronted by a fashion business as it rises from infancy towards international status.²⁶ Latest legal decisions as well as regulatory reforms are covered in the book, along with important subjects like intellectual property lawsuit, licensing, anti-counterfeiting, start-ups and accounting, business transactions, labor regulations and global trade.

In his article titled "Fashion Law: More than Wigs, Gowns, and Intellectual Property,"²⁷ Mark K. Brewer articulates the evolving field of fashion law and encapsulates its content from a global standpoint in order to draw attention to the key areas where the law and fashion converge and to pinpoint important future directions for research.

The existing literature sheds light on the challenging aspects within the fashion industry, however, it notably falls short in analyzing the current international laws and regulatory frameworks within the fashion industry in order to provide viable solution to the current problem at hand. This gap in the literature underscores the need to study the International and Regional legal frameworks that regulate Fashion Industry in order to assess whether they are sufficient to regulate this transnational industry and what more could be done to resolve the legal conundrum of fashion industry.

²⁶ Guillermo C. Jimenez and Barbara Kolsun, *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (New York: Bloomsbury Publishing, 2014).

²⁷ Mark K. Brewer, "Fashion Law: More than Wigs, Gowns, and Intellectual Property," *San Diego Law Review* 54, no. 4 (2017): 739-784.

1.6 Research Questions

The following research questions are constructed with reference to the aims and objectives of the study:

1. What is the origin, evolution and emerging importance of fashion industry in the contemporary world today from an International Law perspective?
2. What are the International and Regional legal frameworks that regulate Fashion Industry and whether the current legal framework is sufficient to regulate this transnational industry?
3. What are the legal challenges of Fashion Industry and are these fashion companies violating international laws and treaties due to lack of an efficient regulatory framework?
4. What measures can be taken to address these challenges of fashion industry and whether devising an international fashion law framework through a four-stage strategy would provide a step forward towards formalizing the emerging field of fashion law?

1.7 Research Methodology

The research will primarily utilize the doctrinal method to analyze the theoretical and legal framework of the International Fashion Industry. Adopting a qualitative approach, the study will investigate and explore the challenges faced by the fashion industry. Comparative analysis will be used to study case studies of different jurisdictions and to evaluate the applicable international laws and treaties. Primary

source books will be consulted. In addition to official and other secondary information, law journals, articles, general comments, and global jurisprudence will all be consulted during the research process. Libraries will also be used as a research tool as well as internet for data collection. Furthermore, views of the representatives of multinational fashion companies, Judges, Lawyers and Legal experts will be consulted while developing the international framework for fashion law.

CHAPTER 2

FASHION INDUSTRY: ORIGIN, IMPORTANCE AND LEGAL DIMENSIONS

2.1 Introduction

Fashion is one of the world's most important creative industries in terms of global economic output, however, is majorly unregulated resulting in violations of various international laws and treaties. The following chapter is divided into three sections, the first section provides a brief overview of fashion industry by explaining the meaning and definition of fashion, historical evolution and development of fashion industry and its key sectors, furthermore, the second section sheds light on the emerging importance of this industry in the contemporary world. The third section discusses the legal dimensions of this interdisciplinary and multinational industry and highlights the global dilemma of the absence of any explicit international or regional legal regime for its governance.

2.2 What is Fashion Industry?

2.2.1 Definition and Meaning of Fashion

In order to understand the meaning of fashion industry, it is important to first comprehend the meaning of the term "fashion" which can be determined by the definitions given by the different eminent jurists and writers. Nystrom advocates that "Fashion is nothing more or less than the prevailing style at any given time."²⁸ Daniels argues that "Fashion is

²⁸ Paul H. Nystrom, *Economics of Fashion* (New York: Ronald Press, 1928), 12-13.

a conception of what is currently appropriate."²⁹ Horn explains fashion as "a manifestation of collective behavior, and as such represents the popular, accepted, prevailing style at any given time."³⁰ The definitions given by these writers suggest fashion as something which is very contemporary in any society, hence, equating fashion with modernity. George Simmel defines "Fashion as a form of imitation that unites social classes and enables social equalization. The elite initiate a fashion and the mass imitate in efforts to obliterate external distinctions of class."³¹ Simmel's definition of fashion provides a sociological class view of the meaning of fashion which the middle/ lower class adopts to equate themselves with the elite class in the society. Fashion Theory: The Journal of Dress, Body & Culture, defined fashion as "the cultural construction of the embodied identity."³² This definition is quite vast and suggests that fashion includes everything from self-fashioning to street style to the high-end fashion created by designers which can be a part of one's identity.

The above given definitions demonstrate versatile and distinct concepts of the word "fashion" as each definition is exclusive, adding definite dimensions different from the other definitions. However, in light of the fundamental comparison of these definitions, two elements can be derived or understood, first, fashion is something which is accepted and followed by people at large and secondly, it is not constant and changes with the period of time. Therefore, in light of this analysis fashion in simple words can be defined as a prevailing norm in a community which is amenable to constant change.

²⁹ Alfred H. Daniels, "Fashion Merchandising," *Harvard Business Review* 29, no. 3 (1951): 51-60.

³⁰ Marilyn J. Horn and Lois M. Gurel, *The Second Skin: An Interdisciplinary Study of Clothing*, 3rd ed. (Boston: Houghton Mifflin, 1981).

³¹ Georg Simmel, "Fashion," *American Journal of Sociology* 62, no. 6 (May 1957): 541-558.

³² Alistair O'Neill, "Fashion Theory," *The Journal of Dress, Body and Culture* 12, no. 2 (2008).

Fashion industry on the other hand could only be best described in reference to the actors who comprise this industry, including manufacturers, designers, retailers, workers and consumers.³³ The industry primarily focuses on the production and design of articles particularly clothing and accessories which are deemed to be “fashionable”. Eminent scholars have distinguished between “fashion industry” and “apparel industry”, according to them the former produces “high fashion” and the latter produces “mass fashion” for covering basic human needs of clothing³⁴, however, in the recent times the distinction between the two has seemed to be blurred as the high fashion produced by the designers and the street style produced by the local manufacturers are altogether worn and followed by masses, hence, unifying the industry.

2.2.2 History and Evolution of the Fashion Industry

Fashion is usually denoted as a phenomenon of western world, however, this is contrary to the truth as the historical roots of fashion industry can be traced back to as early as 500 BC to the roman period.³⁵ The following account provides a brief historical background of the development of fashion industry and also demonstrates how it has evolved through different time periods to the current globalized industry in the 21st century.

2.2.2.1 Before the Revolution (3000 BCE – 1600 CE)

Textile is the most important sector of fashion industry as it provides with the raw material for making the fashion articles or cloths. The Fashion historian Phyllis G. Tortora in her book “Dress, Fashion and Technology from Prehistory to the Present”

³³ Valerie Cumming, C. W. Cunnington, and P. E. Cunnington, *The Dictionary of Fashion History*, 1st ed. (London: Bloomsbury Academic, 2010).

³⁴ Georg Simmel, "Fashion," *American Journal of Sociology* 62, no. 6 (May 1957): 541-558.

³⁵ Mary Ellen Snodgrass, *World Clothing and Fashion: An Encyclopedia of History, Culture, and Social Influence*, (New York: Routledge, 2014)

traces down the history of early tools used to produce fashion articles which later were revolutionized and developed into big fashion industries.³⁶ She points out the tools such as projectile points, rock scrapers, and bone needles were used to make fur and leather garments in early period.³⁷ The first manufacturing plant of textile was developed in the Roman Empire called “gynacea” which were synonymous to today’s factories or manufacturing sites where women who were mostly slaves used to weave cloths using different colors of threads. Furthermore, history also suggests that the several priests from Rome when returned from China brought back the trade secret of silk production i.e. silkworm larvae and mulberry tree seeds in hollow walking sticks and in this way production of silk started in the roman empire.³⁸ Hence, a form of modern fashion industry that we see today could be said to have started in the roman period. After the fall of the roman empire the system of “gynacea” came to an end as the practice of keeping slaves was gradually reducing, which led towards the shortage of workers who could weave and produce fashion articles.³⁹ Furthermore, with the advancements, the work of weaving went from rural areas to urban centers and women workers were replaced by the men as this business became more commercialized by the end of late Middle Ages.⁴⁰

2.2.2.2 The Industrial Revolution and the birth of Fashion Industry (1600-1900)

The Industrial Revolution with the help of rising capitalism resulted in the development of different technological and industrial inventions which gave birth to the modern

³⁶ Phyllis G. Tortora, *Dress, Fashion and Technology: From Prehistory to the Present* (New York: Bloomsbury Publishing, 2015), 38.

³⁷ Tortora, *Dress, Fashion and Technology*, 42.

³⁸ Jenny Lantz, *The Trendmakers: Behind the Scenes of the Global Fashion Industry* (London: Bloomsbury Publishing, 2016), 23-35.

³⁹ Giovanna Motta and Antonello Biagini, *Fashion through History: Costumes, Symbols, Communication (Volume I)* (Newcastle: Cambridge Scholars Publishing, 2017), 45-56.

⁴⁰ David Herlihy, “*Opera muliebria: women and work in medieval Europe*”, Temple University Press, (1990).

fashion industry. The prime factor behind this development was the high cost of the innovative machinery used to produce fashion articles. By the end of the 18th century, the spinning mule, the spinning jenny, and the Arkwright water-powered spinning frame was developed to increase the necessary speed required for carding and spinning to make fabric.⁴¹

In the 19th century, the revolution accelerated and resulted in production of goods that were quite cheaper in terms of prices. The notable development included the development of cotton gin that had a huge impact on cotton production. The annual output of raw cotton rose from 2 million to 85 million pounds within 16 years.⁴² Adoption of water or steam to power textile mills helped make cotton both affordable and available. Another big breakthrough in the development of the industry was when a Frenchman, Joseph Marie Jacquard, developed mechanized loom for weaving patterned fabrics which automatically raised and lowered yarns that formed the pattern. More than 10,000 of these looms were sold within the next ten years.⁴³

Though the industrial revolution resulted in the birth of the fashion industry and brought wealth and luxury to the industrial capitalists, however, produced squalor and misery for the workers. The new factory system that demanded the migration of people from rural areas to towns and cities that were unprepared to receive them. The workers worked for long hours in miserable unsafe conditions and even lower pay.⁴⁴ They were exploited by their employers who would simply say that their sewing was not good enough and

⁴¹ Carlo M. Cipolla and Derek Birdsall, *The Technology of Man: A Visual History* (New York: Holt McDougal, 1980), 23-36.

⁴² Phyllis G. Tortora, *Dress, Fashion and Technology: From Prehistory to the Present* (New York: Bloomsbury Publishing, 2015), 78-90.

⁴³ Jenny Lantz, *The Trendmakers: Behind the Scenes of the Global Fashion Industry* (London: Bloomsbury Publishing, 2016), 56-58.

⁴⁴ Giovanna Motta and Antonello Biagini, *Fashion through History: Costumes, Symbols, Communication (Volume I)* (Newcastle: Cambridge Scholars Publishing, 2017), 32-59.

refused to pay and later on sold those very products. The most targeted group included women, children and the un-skilled.⁴⁵ The industrial revolution though gave birth to this industry however brought with itself a number of problems.

2.2.2.3 Globalized Fashion Industry (2000-2100)

There are several factors which led towards the development of globalized fashion industry, first, the printed fashion technology became readily available, broadcasting material on style as seen in fashion magazines, and motion pictures, made fashion accessible to the common people.⁴⁶ Second, was the development of commercially produced paper clothing patterns and of cutting machines by Ebenezer Butterick which resulted in mass production of ready-made clothes throughout the globe.⁴⁷ Third, development in metallurgy, addition of rubber to clothing in multiple aspects, the development of celluloid, the use of computer technology in design and production were some of the advances that led towards this globalized industry in twentieth and twenty-first century.⁴⁸

The most important aspect in the globalization of this industry was when the industrialist and manufacturers started extracting raw material from one country, production in another and sold clothes in a completely different market. This was due to the fact that production for instance was cheaper in the developing counties and the extraction of raw

⁴⁵ Phyllis G. Tortora, *Dress, Fashion and Technology: From Prehistory to the Present* (New York: Bloomsbury Publishing, 2015).

⁴⁶ Joy Spanabel Emery, *A History of the Paper Pattern Industry: The Home Dressmaking Fashion Revolution* (London: Bloomsbury Publishing, 2014), 24.

⁴⁷ Linda Welters and Abby Lillethun, *Fashion History: A Global View* (London: Bloomsbury Publishing, 2018), 67.

⁴⁸ Mary Ellen Snodgrass, *World Clothing and Fashion: An Encyclopedia of History, Culture, and Social Influence*, (New York: Routledge, 2014), 42.

material for making a fashion article where it was readily available was easier also reducing the cost, hence, making the industry global.⁴⁹

2.2.3 Key Sectors of the Fashion Industry

Fashion industry is huge and diverse, containing various sectors each working on different aspects for bringing the fashion article or product to life. There are primarily four key sectors of fashion industry, the first sector is of textile design and production, second is of fashion design and manufacturing, third consists of assembling of the product and last is of fashion retailing and marketing. The following account discusses each sector in brief detail.

2.2.3.1 Textile Design and Production

The first sector of fashion industry is the production or extraction of raw material for making a product. The raw material that is often used for creating fashion is made from textile, including both natural and synthetic fabrics. The natural fabrics such as wool, cotton, silk, and linen and synthetic fabrics such as nylon, acrylic, and polyester are used to make fashion products.⁵⁰ In the 21st century the production of these materials has become automated owing to the industrial revolution and technological advancements, hence, greatly contributing to fast fashion. There are multiple techniques and processes such as dyeing, weaving, and printing that are used to create fabrics with different textures and colors to meet the consumer's demands.⁵¹

⁴⁹ Linda Welters and Abby Lillethun, *Fashion History: A Global View* (London: Bloomsbury Publishing, 2018), 76.

⁵⁰ Andrew Reilly, *Key Concepts for the Fashion Industry* (London: Bloomsbury Academic, 2018).

⁵¹ Jeannette A. Jarnow, Miriam Guerreiro, and Beatrice Judelle, *Inside the Fashion Business: Text and Readings* (London: Macmillan Publishers, 2010), 10-34.

2.2.3.2 Fashion Design and Manufacturing

The second sector in the industry is fashion design and manufacturing of the product. Most of the designing contrary to the popular belief is done in anonymity by design teams rather than the designers themselves.⁵² The goal of designers is often to produce designs that target average consumer markets, hence, they draw inspiration through films, television or street style to make their product as “trendsetter”. The techniques used for producing designs are now replaced from traditional methods such as making sketches on paper and draping fabric on mannequins to computer-assisted design techniques which helps the designers to make rapid changes to a proposed design.

After the product is designed the next stage is of manufacturing. Special units are dedicated to this task as this stage is quite important as it is the translation of design to the actual product, therefore, planning teams develop the entire product keeping in mind the specifications such as fabric, linings, buttons, etc that are required to be sourced and ordered.⁵³ Another important task of this team is to determine the design in different size range, which is a difficult task as it requires precise calculations in order for the design to remain intact.

2.2.3.3 Assembly of the Garment and Product

The next sector is of assembly of the garment or product which is labor-intensive. The designers and manufactures often try to seek low-wage environment in order to make their product consumer friendly which leads to the number human rights violations

⁵² Gavin Waddell, *How Fashion Works: Couture, Ready-to-Wear and Mass Production* (London: Blackwell Publishing, 2013).

⁵³ Rosie Wilson, *The Fashion Industry* (London: Wayland Publishing, 2012), 55-67.

including issues related to industrial safety and the exploitation of workers.⁵⁴ After the assembling of the product, the next stage is of finishing where decorative elements such as embroidery, beading, brand-name labels etc are applied. Finished products are then pressed and packed for shipment.

2.2.3.4 Fashion Retailing, Marketing, and Merchandising

The last sector of the industry is selling of the manufactured product through retailing, fashion marketing and merchandising. Fashion retailing is the business of buying clothes from the manufacturers and selling it to the consumers. Fashion marketing is a process used to target the consumers before the product is launched in the market. Different techniques such as sales tracking data, media coverage and focus groups are targeted to reach the potential customer. Selling the appropriate goods to the right customers at the right time, place, price, and quantity is fashion merchandising.⁵⁵ Merchandising also includes estimates relating to offering items for sale at appealing yet still profitable prices, and also to provide discount on overstocked goods.⁵⁶ In the modern fashion industry, fashion merchandising is the cornerstone for the success of any fashion brand due to intensive competition.

2.3 Emerging Importance of Fashion Industry in Contemporary World

2.3.1 Worldwide Monetary Significance

The fashion industry continues to grow in various emerging markets of the Asian, European and Western world and hence has a huge worldwide economic significance as

⁵⁴ Jeannette A. Jarnow, Miriam Guerreiro, and Beatrice Judelle, *Inside the Fashion Business: Text and Readings* (London: Macmillan Publishers, 2010), 65.

⁵⁵ Nathalie Evans, Michael Jeffrey, and Susan Craig, *Costing for the Fashion Industry*, (London: Bloomsbury Visual Arts, Bloomsbury Publishing, 2020), 240.

⁵⁶ Gavin Waddell, *How Fashion Works: Couture, Ready-to-Wear and Mass Production* (London: Blackwell Publishing, 2013), 98.

the industry is worth more than 2.5 trillion dollars which means that it contributes almost 2% to the world's Gross Domestic Product (GDP).⁵⁷ It is to be noted that the growth of fashion industry has seen a negative impact due to the Covid-19 pandemic, however, still the worldwide revenue of online fashion industry alone has been projected to rise to 712.9 billion US dollars by 2022, in contrast to 481.2 billion US dollars in 2018.⁵⁸ Fashion industry is highly decentralized and has manufacturing facilities around the globe, yet 60% of the total global production of fashion articles comes from Asia which include China, Bangladesh and Vietnam as top exporters.⁵⁹ Moreover, according to a research the industry also employs about 3,384.1 million labor force.⁶⁰ The industry is quickly thriving and becoming a backbone of many developing countries especially in South Asia by giving employment opportunities to women and the un-skilled workers.

2.3.2 Expansion of Fashion Houses into Transnational Enterprises

In the context of a globalized world, fashion trends are no longer produced for limited or classified audiences in specific country or locality instead they target the global market. The reason behind such change is firstly, the monetary value of the selling products in one locality over multiple places and secondly, the internet revolution which has made fashion global, hence, creating the need for fashion brands to expand across-borders and

⁵⁷ C. Scott Hemphill and Jeannie Suk, "The Law, Culture, and Economics of Fashion," *Stanford Law Review* 61, no. 5 (2009): 1147-1199

⁵⁸ Aaron Orendorff, "The State of the Ecommerce Fashion Industry: Statistics, Trends & Strategy," *Journal of Business Research* 2, no. 13 (2019): 19.

⁵⁹ Treibich Nahtigal, "Fashioning Justice: A call for mandatory and comprehensive human rights due diligence in the garment industry." *Clean Clothes Campaign*, (2021): 13-14.

⁶⁰ Nathalie Evans, Michael Jeffrey, and Susan Craig, *Costing for the Fashion Industry*, (London: Bloomsbury Visual Arts, Bloomsbury Publishing, 2020), 30.

transform into transnational enterprises having outlets and stores in different countries.⁶¹ Moreover, the production of fashion articles has also become global, as brands such as Zara and H&M which produce a wide variety of clothes, extract their raw materials from one country, assemble the product in another and sale these items in some other country, hence, making even the production of fashion article transnational.⁶²

2.3.3 Role of Fast Fashion: Impacts and Challenges

Fast Fashion has emerged as a new phenomenon which has resulted in violations of multiple human rights and environmental rights abuses. This industry massively over produces cheaper fashion products in short time frame to meet the needs of changing fashion styles while negating its harmful impacts. According to a report, fashion production covers 10% of total global carbon emissions, as much as the European Union and releases microfibers into the oceans which are equivalent to approximately 50 billion plastic bottles.⁶³ According to the UN Framework Convention on Climate Change, emanations from textile manufacturing only are expected to climb sharply by 60% by 2030.⁶⁴

Furthermore, rapid production implies that profits outweigh human welfare, a report found evidence of forced and child labour in the fashion industry in Argentina, Bangladesh, Brazil, China, India, Indonesia, Philippines, Turkey, Vietnam and others.⁶⁵

⁶¹ Sabine Ichikawa, "Creative Industries: The Case of Fashion," (New York: SAGE Publications, 2008), 21-34.

⁶² Rosie Wilson, *The Fashion Industry* (London: Wayland Publishing, 2012), 32.

⁶³ United Nations Environment Programme, "Putting the Brakes on Fast Fashion", (2018). accessed 19 December, 2021 , <https://www.unep.org/news-and-stories/story/putting-brakes-fast-fashion>

⁶⁴ Daniel Bodansky, "The United Nations Framework Convention on Climate Change: A Commentary," *Yale Journal of International Law* 18, no. 451 (1993).

⁶⁵ U.S. Department of Labor, "List of Goods Produced by Child Labor or Forced Labor," Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking (2018), accessed 20 December, 2021, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

In Dhaka, Bangladesh, an eight-story manufacturing building housing numerous textile companies collapsed in 2013, killing 1134 employees and injured over 2500 more.⁶⁶

Annie Radner Linden contends that the clothing industry has traditionally been low-capital and labor-intensive in her research, *An Analysis of the Fast Fashion Industry*.⁶⁷

Moreover, connected to fast fashion is the issue of Intellectual property theft and high production of counterfeit products of fashion articles. The value of imported fake goods worldwide topped \$509 billion in 2016 based on statistics from customs seizures, up from \$461 billion in 2013, which accounts for 2.5% of global trade, as per *Trends in Trade in Counterfeit and Pirated Goods*, a joint report by the Organisation for Economic Cooperation and Development ("OECD") and the European Union Intellectual Property Office ("EUIPO") published in 2019.⁶⁸ Hence, it is the need of an hour to overcome these challenges for a sustainable and equitable future.

2.4 Fashion Industry and Legal dimensions

Fashion is a multi-dimensional industry as it covers various sectors including production, manufacturing and retailing etc, hence, its legal dimensions also vary accordingly. The following account sheds light on the interdisciplinary and Multinational legal aspect of fashion industry and highlights the legal dilemma of the absence of any explicit international or regional regime for governing this industry.

⁶⁶ "Bangladesh Factory Collapse Toll Passes 1,000," *BBC News*, May 10, 2013, accessed December 22, 2021, <https://www.bbc.com/news/world-asia-22476774>.

⁶⁷ Annie Radner Linden, "An Analysis of the Fast Fashion Industry" (2016), *Senior Projects Fall 2016*, 30, https://digitalcommons.bard.edu/senproj_f2016/3.

⁶⁸ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*, Illicit Trade, OECD Publishing, Paris/European Union Intellectual Property Office, 2019, <https://doi.org/10.1787/g2g9f533-en>.

2.4.1 Interdisciplinary Legal Aspect

The fashion industry has an interdisciplinary legal aspect as it covers various branches of law such as intellectual property law, human rights law, environmental law and industrial law to name a few. It concerns with industrial law when a product is in production stage, further, at the same time, human rights laws with respect to labour rights and environmental laws also activated.⁶⁹ When the product is completed then intellectual property laws comes in to place for the protection of the new fashion article, hence, legal aspects of fashion industry are quite interdisciplinary.

2.4.2 Multinational Legal Aspect

The industry also has a multinational legal aspect as the industry is spread over the globe not only in terms of selling of the product but also in terms of production and manufacturing, hence, it invokes various laws of different states.⁷⁰ The multinational aspect can be observed from the international contracts, the way of delivery and production of products.

2.4.3 Legal Dilemma: Absence of Explicit International or Regional Legal Regime

As discussed earlier, fashion industry is governed by multiple disciplinary laws such as such as intellectual property law, human rights law, environmental law and industrial law to name a few, however, there are no explicit international or regional legal regimes that deals with this industry. The one reason behind this may be that “fashion law” is itself a quite new concept in the legal arena and is rapidly developing with passage of time as
Mark

⁶⁹ Guillermo C. Jimenez and Barbara Kolsun, *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (New York: Fairchild Books, 2014).

Brewer in his article *“Fashion Law: More than Wigs, Gowns, and Intellectual Property”* rightly argues that:

“Both the study and the practice of law must respond to changing business environments, new social norms and expectations, and the interconnected, globalized world. Unlike some of the more traditional areas of the law, fashion law uniquely captures the dynamics of modern consumer demand and the digital economy, rapid global communication and complex logistical chains, fundamental human rights questions, and accessible, high profile cases that appeal to a new generation of savvy students, businesses, and scholars. Hence, there is no better time to embrace fashion law.”⁷¹

Discrimination in the industry's ways of production, labour laws, and other practices presents a variety of challenges for the global fashion sector. Generally, the law should offer a standard system of rights protection as well as a way to seek remedies; however, the law has continuously fallen short of providing protection for those who are most disadvantaged in society and the fashion industry. The solution to these problems could be provided by a clearer understanding of the legal issues surrounding the fashion industry and its players. Accordingly, the next chapters of this research report will address some of the most important issues and will also take a first step toward formalizing the newly emerging field of fashion law.

⁷¹ Mark K. Brewer, "Fashion Law: More than Wigs, Gowns, and Intellectual Property," *San Diego Law Review* 54, no. 4 (2017): 739-784.

2.5 Conclusion

To conclude, this chapter provided a brief overview of fashion industry by explaining the meaning and definition of fashion, historical evolution and development of fashion industry and its key sectors, furthermore, the second section explained the emerging importance of this industry in the contemporary world. The third section discussed the legal dimensions of this interdisciplinary and multinational industry and highlighted the global dilemma of the absence of any explicit international or regional legal regime for its governance.

CHAPTER 3

THE HIDDEN LEGAL CONUNDRUM OF FASHION INDUSTRY: A CONSCIOUS CHALLENGE OF INTERNATIONAL LAW

3.1 Introduction

Fashion industry booms of glitter and gold, however, is stained with massive human rights, animal rights, environmental rights and intellectual property rights violations. The absence of any explicit legal regime to address this 3 trillion dollar industry is a conscious challenge of international law. The supplementary laws that are currently used to regulate this industry provide deficient protection to the challenges encountered by this globalized industry. The following study is distributed into four sections, the first section discusses some significant human rights challenges faced by the fashion industry in light of some leading case studies. The study also identifies the international laws which are violated as a result and points out the limitations of international law. The second section highlights the problems with usage of animals inside fashion industry by specifically discussing the problems in the fur, leather, wool, feathers, and silk industry and sheds light on the international animal rights laws and provides a critical analysis of the same. The third section highlights how fashion industry is the major contributor in the current environmental catastrophe faced by the world and critically evaluates the contemporary global environmental law regime and lastly the fourth section discusses the issues of intellectual property theft in fashion industry particularly highlighting the problem of knockoffs and counterfeiting of fashion articles and critically discusses the international legal framework of intellectual property laws. The chapter is concluded with a comprehensive conclusion that the current international laws does not provide sufficient

protection to the challenges faced by the industry, hence, a new specialized legal framework is required to regulate the industry.

3.2 Legal Challenges of International Fashion Industry

3.2.1 Human Cost of Fashion and Violations of Various International Human Rights

Treaties and Conventions

Fashion industry is tainted with massive human rights violations throughout its production chain even to the extent that most powerful fashion brands rest their success on systematic exploitation and abuse of their workforce.⁷² Fast fashion has created an unsustainable practice of introducing new styles every week, which ultimately passes down risks and costs to the workers. The industry have unsafe work environment, poor health standards and protocols, unfair employment practices and poor subsistence wages as well as prevalent issue of bonded and child labor additionally with the systemic issue of gender based violence. About 80% of the employees working in fashion industry are women and the industry actively thrives on business models based on gender discrimination.⁷³ Furthermore, the redressal mechanisms are not transparent or accessible, workers often have insufficient financial resources, lack of knowledge of legal requirements and procedures, language barriers to name a few which makes it extremely challenging or even impossible to report human rights abuses. Moreover, lack of this clear chain of information and data prevents statutory and law enforcement authorities from identifying companies that are violating these fundamental rights and standards. The

⁷² Treibich Nahtigal, "Fashioning Justice: A Call for Mandatory and Comprehensive Human Rights Due Diligence in the Garment Industry" (Clean Clothes Campaign, 2021), 34.

⁷³ Kelly Groen and Lis Cunha, "We Mean Business: Protecting Women's Rights in Global Supply Chains," Action Aid, March 2020, https://actionaid.nl/wp-content/uploads/2020/02/We-Mean-Business-Protecting-Womens-Rights-in-Global-Supply-Chains_ActionAid_March-2020.pdf.

following account will discuss some key human rights challenges in the fashion industry in light of some leading case studies and will identify the international laws which are violated as a result.

3.2.1.1 Inadequate Human Occupational Health Protocols

Fashion sector workers are exposed to a variety of occupational hazards and potential risks. Anything that could endanger or harm human health or safety is a possible occupational risk. Hazards can be of two types, those which are visible such as cutting instruments or moving heavy weight machinery whereas less visible hazards may include working for long hours without rest or exposure to noise for a prolonged period.⁷⁴ Exposure to these risks ultimately results in occupational health diseases and injuries which as consequence effects workers mental, physical and social well-being.

Poor human occupational health regulations have severe effects on the lives of fashion industry workers. According to ILO statistics, 2.3 million workers die from illnesses and injuries caused at work every year.⁷⁵ A further 160 million workers experience work-related illnesses, and 313 million encounter non-fatal injuries annually.⁷⁶ Thus according assessments, illnesses and injuries at work cost the global economy more than 4% of its annual GDP. Furthermore, work-related injuries and risks are also fueled by bad procurement practices, as employers avoid financing in occupational safety and health due to the budgets constraints. A report by a labor rights organization revealed that noncompliance rates by the employers with regard to occupational health and safety are

⁷⁴ Daniel Podgórski, "ILO Guidelines on Occupational Safety and Health Management Systems," in *Handbook on Standards and Guidelines in Ergonomics and Human Factors* (Florida: CRC Press, 2005), 493-505.

⁷⁵ Päivi Hämäläinen, Jukka Takala, and Kaija Leena Saarela, "Global Estimates of Fatal Work-Related Diseases," *American Journal of Industrial Medicine* 50, no. 1 (2007): 28-41.

⁷⁶ Treibich Nahtigal, "Fashioning Justice: A Call for Mandatory and Comprehensive Human Rights Due Diligence in the Garment Industry" (Clean Clothes Campaign, 2021), 43.

above 75% in garment factories globally, including risks from toxic chemicals, provision of protective instruments, emergency exits, and unsuitable bathrooms.⁷⁷

The following account highlights five key cases studies of multinational fashion industry suppliers in Pakistan, Bangladesh, China, Myanmar and Vietnam and elucidates how they are violating the international standards and protocols. These cases studies are specifically selected keeping in view the global lens as these companies are suppliers of the multiple leading fashion brands around the globe.

3.2.1.1.1 Case Studies

3.2.1.1.1.1 Bangladesh

3.2.1.1.1.1.1 ASK, BLAST and others Vs. Bangladesh and others, 2012 (Tazreen Fashion Case)

Tazreen Fashions was a nine story factory located in Bangladesh manufacturing fashion products for international fashion brands such as C&A, Disney, Li & Fung, MJ Soffe, Sears/Kmart and Walmart. In 2012, the factory caught fire and killed 112 workers and injured nearly twice of these numbers.⁷⁸

Workers died from smoke inhalation, failing to escape from windows or simply burning alive. Many survivors reported that the floor managers closed the main gates and stopped the workers from escaping instructing them to continue doing the work.⁷⁹ The fire

⁷⁷ Report: A focus on occupational safety and health, Better Work, ILO, (2020).

<https://betterwork.org/wp-content/uploads/2020/01/OSH-brief-v2.pdf>

⁷⁸ "Bangladesh Finds Gross Negligence in Factory Fire," *The New York Times* (2010), accessed January 10, 2022, <https://www.nytimes.com/2012/12/18/world/asia/bangladesh-factory-fire-caused-by-gross-negligence.html>.

⁷⁹ S. M. Solaiman, "Unprecedented Factory Fire of Tazreen Fashions in Bangladesh: Revisiting Bangladeshi Labor Laws in Light of Their Equivalents in Australia," *Hofstra Labor & Employment Law Journal* 31, no. 1 (2013), 126.

erupted due to a short circuit in the ground floor where a warehouse was illegally made and stored yarn which further fueled the fire.⁸⁰

The writ petition was filed by the human rights organizations in the high court of Bangladesh upon which the court ordered an incident report which revealed that there was no proper escape plan of the building and the factory did not have any closed-circuit television monitoring system. Furthermore, there were no fire extinguishers in the factory which suggested poor working condition of the factory and it also did not have any required fire safety certificate.⁸¹ The court further ordered compensation for victims and instructed government to initiate criminal proceedings against the owners.

3.2.1.1.1.2 Rana Plaza Case: A Mass Industrial Homicide

Rana Plaza was a building in Bangladesh, housing multiple production units of fashion garment brands including Walmart, the Gap, Adidas and dozen others. The building was in a very bad condition as reportedly, it was constructed with substandard materials.⁸² The owner eventually built more floors on the already deteriorating building without the approval of the relevant authorities. Big generators were also installed in the building that shook the structure of the building whenever they were turned on. A day before the deadliest incident in the global fashion garments industry, big cracks were observed by the workers which were timely reported to the owners, however, the workers were not given any leave and were asked to be return the next day. Over 1,100 workers were killed

⁸⁰ Tawfique Ali, "Tazreen Garment Factory: Unfit yet Licensed as Fire-Fit," *DAILY STAR* (Dhaka), January 30, 2013 (Bangl.), <http://archive.thedailystar.net/newDesign/newsdetails.php?nid=267090>.

⁸¹ ASK, BLAST and others Vs. Bangladesh and others, 2012, 1 SCMB [2015] AD 1 (Tazreen Fashion Case). https://www.supremecourt.gov.bd/resources/bulletin/1_SCOB_Total.pdf

⁸² ILO Report. *The Rana Plaza Accident and its aftermath*, https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm

and far more than 2,000 others were injured when the structure of the building collapsed the following day.⁸³

Criminal charges were brought against the owners and global attention was drawn towards the poor working conditions in supply chains of American and European fashion brands that were sourcing their material from there.⁸⁴ Many brands accepted responsibility and agreed to pay compensation, however, many declined any accountability. This further raised the concern of the international human rights activists and organizations and they campaigned for adequate working conditions and standards. Following this catastrophe, 1,106 factories utilized by Western fashion labels had their building assessments.⁸⁵ About 80,000 safety-related violations were discovered during these inspections; 20 Bangladeshi firms were deemed to be in danger of collapsing, and 110 were identified to have significant structural flaws.⁸⁶ However, no progress was made to fix any of the safety problems. These incidents will continue to happen around the world if no concrete steps in terms of applicable monitoring mechanisms and standards are not enforced. The murder trial of the case is still continuing even today and the victims are still waiting for justice.

⁸³ ILO Report. *The Rana Plaza Accident and its aftermath*, https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm

⁸⁴ Business and Human Rights Resource Centre Report. *Bangladesh court accepts murder charges in Rana Plaza factory collapse case*, <https://www.business-humanrights.org/en/latestnews/bangladesh-court-accepts-murder-charges-in-rana-plaza-factory-collapse-case/>

⁸⁵ John A. Quelch and Margaret L. Rodriguez, "Rana Plaza: Workplace Safety in Bangladesh (A)," Harvard Business School Case 514-034, 2013.

⁸⁶ David Goodman, "Widespread Safety Issues Identified at Bangladesh Clothing Factories," *Reuters*, October 14, 2014, <https://www.reuters.com/article/bangladesh-textiles-safety-idUSL6N0S834Y20141014/>.

3.2.1.1.1.2 Pakistan (Ali Enterprises factory (PILER and Others vs. Federation of Pakistan))

Ali Enterprises was a fashion garment factory in the district of Baldia in Karachi, Pakistan housing a big German fast fashion brand “KiK” as 70% of the production was owned by the brand.⁸⁷ On 11 September, 2012, flames erupted in the factory which left 250 dead and 55 seriously injured.⁸⁸ Most of the workers burnt alive in the factory and were unable to escape the building. After the incident, an inquiry was conducted which revealed shocking details with reference to the working conditions of the factory.

The factory was perfect death trap as it did not have any safe exits, fire alarms, open windows, and firefighting equipment.⁸⁹ What was more appalling was that only three weeks before the incident and Italian audit company RINA certified that the building was safe according to international standards.⁹⁰ Several cases were brought both in the domestic courts of Pakistan and Germany. The case filed by ECCHR in the German court was rejected on the bases of statutory limitation.⁹¹

In Pakistan, the First Information Report (FIR) of the case was initiated promptly after the incident. Initially, the blame was placed on the factory owners for the fires that occurred, however, a Joint Investigation Team (JIT) report narrated another reality. It

⁸⁷ “Death toll from Karachi factory fire soars.” *BBC News*. (2012), <https://www.bbc.com/news/world-asia-19566851>

⁸⁸ Saroop Ijaz, *No Room to Bargain: Unfair and Abusive Labor Practices in Pakistan* (United States: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/09/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>.

⁸⁹ Campaign, Clean Clothes, “Ali Enterprises: A Factory Inferno.” (2018), <https://archive.cleanclothes.org/safety/ali-enterprises>

⁹⁰ Declan Walsh and Steven Greenhouse, “Inspectors Certified Pakistani Factory as Safe Before Disaster,” *The New York Times*, September 19, 2012, <https://www.nytimes.com/2012/09/20/world/asia/inspectors-certified-pakistani-factory-as-safe-before-disaster.html>.

⁹¹ Zia Ur Rehman, “Eight years after the Ali Enterprises factory fire in Pakistan, victims and their families are still fighting for justice,” *Equal Times*, 2020, <https://www.equaltimes.org/eight-years-after-the-ali?lang=en#.YtpWO3ZBzIU>.

disclosed that the fire had been intentionally set by activists associated with a political party, for the extortion of money.⁹²

In a significant development, the Anti-Terrorism Court (ATC) formally charged the two primary accused, subsequently sentencing them to death in 2020.⁹³ The appeal against the judgment of ATC was filed before the Sindh High Court which was dismissed in 2023. Notably, in its judgment, the Sindh High Court went beyond the specific case and issued a directive for the inspection of all factories in Karachi. Additionally, the court mandated that factory owners must strictly adhere to Standard Operating Procedures (SOPs) to ensure the safety of their workers.⁹⁴

3.2.1.1.1.3 China (South China Headwear (Shenzhen) Co. Limited)

South China Headwear (Shenzhen) Co. Limited is the biggest supplier of collegiate products to captivating headgear to multinational brands such as Fanatics, Global Sourcing Connection, and Ahead.⁹⁵ In an investigation conducted on the factory, shocking details were revealed where a number of violations of international human rights law were identified.⁹⁶

The workers in the factory were required to work overtime to at least 113 hours per month apart from the required legal limit, furthermore, factory had a policy which does not provide for workers even a single weekly rest day. Moreover, factory workers were

⁹² "Baldia Factory Fire Act of Terrorism: JIT," *The Express Tribune*, July 6, 2020, <https://tribune.com.pk/story/2253556/baldia-factory-fire-act-of-terrorism-jit>.

⁹³ Naeem Sahoutara, "ATC hands death sentence to two MQM workers in Baldia factory fire case; Rauf Siddiqui acquitted," *Dawn*, September 22, 2020, <https://www.dawn.com/news/1581033>.

⁹⁴ The State Vs Abdul Rehman Bholi and others (ATC Special case No: 11 (vii)/2017)

⁹⁵ "South China Headwear (Shenzhen) Co. Limited." WRC. <http://www.scheadwear.com/>.

⁹⁶ "Assessment of Labor Rights Violations at South China Headwear (China)", *Worker Rights Consortium*, (2021), <https://www.workersrights.org/wp-content/uploads/2021/12/WRC-memo-re-SouthChina-Headwear.pdf>.

not enrolled in the government social insurance programs which deprived them of the benefits of these programs and lastly unsanitary conditions and non-provision of cooling systems in the excessive heat all amounted to the poor health standards and protocols in the factory.⁹⁷ It is important to note here that due to the security issues concerning investigators in China this report has certain limitations and it is estimated that the intensity of human rights violations with regard to the health protocols and safety are far more than this report suggests.

3.2.1.1.1.4 Myanmar/Burma (Honeys Garment Industry Ltd)

Honeys Garment Industry Ltd. is an apparel factory located in Yangon, Myanmar (Burma) and employs about 4000 regular employees and additional 700 workers on daily contracts.

According to a report, the industry's production accounts for about 20 percent of the company's sales in Japan as well their garments are also supplied to other major multinational retailers such as AEON Group, PARCO, and 7-Eleven.⁹⁸ An investigation was conducted based on 11 factors related to the status of implementation of occupational health and safety which included, fire safety, overcrowded factory buildings, machine guarding, ergonomics, failure to provide personal protective equipment, restricted access to toilets and inadequate toilet facilities, excessive temperatures, excessive noise, slip hazards, poorly maintained eating area and electrical safety. The assessment report

⁹⁷ "Assessment of Labor Rights Violations at South China Headwear (China)", *Worker Rights Consortium.*, (2021), <https://www.workersrights.org/wp-content/uploads/2021/12/WRC-memo-re-SouthChina-Headwear.pdf> .

⁹⁸ "Honeys Holding, Company Profile." *Worker Rights Consortium.* (2021), <https://www.honeyscojp.translate.goog/company/outline? x tr sl=ja& x tr tl=en& x tr hl=th& x tr pt=nu>.

revealed that the factory only has four semi-functional fire safety exits whereas the actual minimum requirement is of at least 12 fire exits.

Furthermore, to ensure workers' safety and wellbeing, law requires factories to provide a minimum amount of floor space per worker, however, the factory can legally house 1,012 workers instead of 4000 at present resulting in overcrowded factory buildings. Moreover, all sewing machines lacked legally required finger and eye guards which ultimately is exposing workers to risk of needle stick and eye injuries, in fact about 50 needle injuries were recorded in 6 months.⁹⁹ The industry also is not equipped with ergonomically sound chairs resulting in musculoskeletal disorders, thereby, violating the legal requirements of maintaining workers safety. Employees in the factory's cutting department are not provided with personal protective equipment in the form of steel gloves to protect them from the cutters' sharp blades. Further, there is also a restricted access to toilets and inadequate toilet facilities as each production line has only one washroom.¹⁰⁰ Excessive temperatures without any air conditioning system, excessive noise, slip hazards, poorly maintained eating areas with leaked roofs and non-provision of electrical safety with open circuit boards were observed which violated the minimum occupational health standards and protocols.

3.2.1.1.1.5 Vietnam (Can Man Garment Co. Ltd.)

Can Man Garment Co. Ltd. a garment factory located in Vietnam is a biggest supplier for multinational brands Aiden Health and Covered California. The factory is housed in a single building consisting of three stories each having a different department of

⁹⁹ "Assessment of Labor Rights Violations at Honeys Garment Industry Ltd." *Worker Rights Consortium*. (2021), <https://www.workersrights.org/factory-investigation/honeys-garment-industry-ltd/>

¹⁰⁰ Martje Theuws and Pauline Overeem, *The Myanmar Dilemma: Can the Garment Industry Deliver Decent Jobs for Workers in Myanmar?* (Netherlands: Centre for Research on Multinational Corporations, 2017), <https://www.somo.nl/the-myanmar-dilemma/>.

production. An investigation report regarding the assessment of occupational health and safety of workers revealed that there was no officially appointed workplace safety officer. The factory has also failed to provide any workplace safety training to the workers. Furthermore, there was also a lack of personal protective equipment in all the production departments of the factory as no masks or shields were provided to the workers while working with various chemicals.¹⁰¹

Moreover, a lack of adequate first aid equipment was also noted as only one first aid cabinet was installed in the factory which was also not adequately equipped with required supplies. Additionally, the factory also had an unapproved fire safety plan from the relevant authorities, hence, risking hundreds of lives. There were also electrical safety hazards as the electric system has not been tested since the last 10 years.¹⁰² Therefore, the occupational health and safety standards were severely inadequate to provide any safeguards to the workers.

3.3.1.1.2 Violation of International Human Rights Instruments

In a variety of contexts, the right to occupational health and safety is a fundamental component of international human rights legislation and conventions. Everyone has a right to fair and just living conditions, as per Article 23 of the Universal Declaration of Human Rights (UDHR).¹⁰³ In addition, Article 11.2(d) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes women's right to protection of their health and safety at work, including the protection of

¹⁰¹ “Assessment of Can Man Garment (Vietnam)”. *Worker Rights Consortium*. (2022), <https://www.workersrights.org/wp-content/uploads/2022/01/WRC-Report-Can-Man-Garment-Vietnam01242022.pdf>

¹⁰² Hassan Oteifa, *Vietnam's Garment Industry: Moving Up the Value Chain* (Vietnam: Labour and Social Publishing House, 2000).

¹⁰³ Lee Swepston, *The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles* (Leiden: Martinus Nijhoff Publishers, 2014), 23.

the reproductive system, and requires states to give pregnant women extra protection in jobs that have been proven to be detrimental for them.¹⁰⁴ In accordance with Article 70 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, States are required to take actions that are at least as favorable as those that apply to citizens in order to guarantee that the conditions of employment and living of migrant workers and their family members in a normal circumstance are in accordance with the standards of fitness, security, wellbeing, and respect and dignity.¹⁰⁵

Occupational health is protected by the International Covenant on Economic, Social, and Cultural Rights (ICESCR) under Article 12.2(b) and (c), which mandates that States take action to fully realize the right to health, such as by improving all key aspects of industrial hygiene and by preventing, diagnosing, treating, and controlling occupational and other diseases.¹⁰⁶ According to General Comment No. 14 of the Committee on Economic, Social, and Cultural Rights, Article 12.2(b)(Para15) of the Covenant covers safe and clean working conditions, protective measures for work - related injuries and illnesses, and the mitigation of potential health risks inherent in the work setting.¹⁰⁷ According to General Comment No. 14, States are required under Article 12.2(c) (para.

¹⁰⁴ Women, U. N. "Convention on the elimination of all forms of discrimination against women (CEDAW)." *UN Women* (1979): Article 11.2(d), <https://www.un.org/womenwatch/daw/cedaw/>

¹⁰⁵ "The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." *United Nations*. (1990): Article 70, <https://www.ohchr.org/en/instrumentsmechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

¹⁰⁶ Ben Saul, David Kinley, and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (United Kingdom: OUP Oxford, 2014).

¹⁰⁷ "General comment No. 14 of the Committee on Economic, Social and Cultural Rights." (2000): Article 12.2(b) (Para15), <https://www.refworld.org/pdfid/4538838d0.pdf>

16) of the Covenant to make appropriate technology accessible, use as well as enhance epidemiological monitoring, and gather data in a disaggregated manner.¹⁰⁸

The International Labour Organization (ILO), which considers occupational health and safety as a fundamental human right, has also enacted more than 40 conventions, guidelines, and standards of practise in this area.¹⁰⁹ The Convention on Occupational Safety and Health, the Convention on Occupational Health Services, the Convention on the Protection of Workers' Health Recommendations, and the Convention on the Working Environment (Air Pollution, Noise, and Vibration) are important laws.¹¹⁰ The ILO's agenda for decent employment advocates for safe, healthy employment which does not place employees in health related danger.¹¹¹ The ILO's main objective is to promote respectable working conditions as part of its goal for decent work.¹¹² According to the International Labor Organization's (ILO) Convention No. 155 on Occupational Safety and Health, it is applicable to all sectors of the economy where persons are employed, together with the informal sector where they are especially vulnerable.¹¹³

The UN Sustainable Development Goals (SDG) 8.8 also requires nations to safeguard all workers in terms of ensuring safe and secure working conditions, especially the migrant workers, women, and those in hazardous work.¹¹⁴

¹⁰⁸ "General comment No. 14 of the Committee on Economic, Social and Cultural Rights." (2000): Article 2(c) (para 16), <https://www.refworld.org/pdfid/4538838d0.pdf>

¹⁰⁹ International Labour Organization, "Health and life at work: a basic human right." (2009): 5; International Labour Organization. "ILO introductory report: Global trends and challenges on occupational safety and health." (2011): 42; "Seoul Declaration on Safety and Health at Work," *XVIII World Congress on Safety and Health at Work*. (2008).

¹¹⁰ International Labour Organization. "Health and life at work: a basic human right." (2009): 11.

¹¹¹ "Report of the Director General: Decent Work", *International Labour Conference* (1999):12.

¹¹² Anne Trebilcock, "Decent Work and the Informal Economy," Discussion Paper No. 2005/04, United Nations University, January 2005; ILO Convention No. 155, Article 1.

¹¹³ ILO Convention No. 155, Article 1, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155

¹¹⁴ UN sustainable development goals (SDG).” *United Nations*. (2015): Goal 8.8.

In light of all the international laws, reports and figures stated and all the cases-studies discussed above, it can easily be concluded that the international law provides adequate standards and protocols for the protection of workers right to adequate occupational health safety, however, fashion houses fail to comply with the given standards, hence, resulting in violations of various international laws and conventions. What remains to be identified is what more could be done to regulate the fashion industry so that the right of occupational health safety of workers in this industry could be ensured and monitored as according to the ILO's study, there are 160 work-related accidents and a workers death every 15 seconds, meaning that there is an urgent need for safety measures. The next chapter of this report attempts to provide certain guidelines and recommendations in this regard.

3.2.1.2 Forced and Child Labor

Historically, child labor has always been an issue of concern especially in under-developed states, however, with growing globalization the issue has escalated and reached a deplorable high. Child labour, according to the United Nations, is any work performed by a child who is too young meaning thereby he is working before the legal minimum age or work that is, overall, deemed harmful to children and is prohibited by law.¹¹⁵ According to the International Labor Organization (ILO) around 160 million children are involved in child labor globally out which around 70% are working in textile and garment sectors to meet the demands from the US, UK, Europe and beyond.¹¹⁶ Many multinational fashion retailers due to the cheap labor and production cost outsource their manufacturing from under-developed countries where children due to their economic and

¹¹⁵ “Child labour in the fashion supply chain.” *UNICEF*, <https://labs.theguardian.com/unicefchild-labour/>

¹¹⁶ “Child Labour: Global estimates 2020, trends and the road forward.” *ILO*. (2021). <https://childhub.org/sites/default/files/library/attachments/Global%20Estimates%202021.pdf>

social circumstances are exploited to work.¹¹⁷ Furthermore, it is a specific issue in the fashion industry as the supply chain involves very low-skilled labor and manufactures actually prefer children in some tasks for instance cotton picking as their small fingers prevents the crop from damaging.¹¹⁸ Moreover, children are easier to manage as they are more obedient as there are no social control mechanisms in place in the developing world which may raise concern regarding this issue. Child labor though is illegal globally, however, due to the rising fast fashion industry and weak enforcement of rules and regulations in developing countries these violations remain a constant challenge.

Bonded or forced labor is another prevalent issue in the fashion industry. The term "forced labour" refers to work that is performed against one's will, frequently under duress, and that is generally compelled by threats of physical harm, deportation, or financial liability.¹¹⁹ In the fashion business, there are three primary types of forced labour: bonded labour, trafficked labour, and state-imposed forced labour. An approximate 40.3 million people worldwide are living in modern slavery, of which 24.9 million are subject to forced labour, as reported by the International Labor Organization (ILO).¹²⁰ The ILO evaluates that of those in forced labor about half which makes around 8.2 million are in bonded labor, and that percentage rises above 70% for adults who were enforced to work in manufacturing which includes working in fashion industries.¹²¹ Further, the global nature of the fashion industry supply chain means any fashion product

¹¹⁷ Mohammad Tarikul Islam and Christina A. Stringer, "Challenges of Achieving Social Upgrading in Bangladesh's Apparel Industry," *Society and Business Review* 15, no. 2 (2018): 77-94

¹¹⁸ Jan-Christian Niebank, *Bringing Human Rights into Fashion: Issues, Challenges, and Underused Potentials in the Transnational Garment Industry* (Berlin: German Institute for Human Rights, 2018).

¹¹⁹ *Forced Labour Convention*, International Labour Organization (1930).

¹²⁰ *Global Estimates of Modern Slavery*, International Labour Organization, https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms_575479.pdf.

¹²¹ Ibid

may inadvertently be manufactured using forced labor. According to the Walk Free Foundation's 2018 Global Slavery Index, fashion industry is one of the top five producer of products which are made at risk of using forced labor.¹²²

The following account provides four key cases studies of multinational fashion industry suppliers in Pakistan, India, China and Bangladesh and explains how they are violating the international standards and protocols. These cases studies are specifically selected keeping in view the global lens as these companies are suppliers of the multiple leading fashion brands around the globe.

3.2.1.2.1 Case Studies

3.2.1.2.1.1 Pakistan

Child and forced labor is rampant in Pakistan's fashion and textile industries supplying for international fast fashion brands¹²³, however, due to the weak law enforcement and surveillance in the country the reported data is limited as the major fashion/textile houses are owned by powerful politicians many of whom are also parliamentarians, senators and ex-army officials, hence, in this situation workers are forced into silence and human rights groups can do limited work without the assistance of government. This study highlights an appalling report of the district Bahawalpur where most of the cotton is sourced for making fast fashion cloths in Pakistan and the report suggests that both child and forced labor is widely practiced during the process.

¹²² "The Global Slavery Index." *International Labor Organization*. (2018). https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms_575479.pdf

¹²³ "Issue: The problem of child labour." *Dawn*. (2009). <https://www.dawn.com/news/461770/issue-the-problem-of-child-labour>

According to a report by National Rural Support Programme¹²⁴, it is revealed that almost every cotton field in the district Bahawalpur employs underage children sowing and handpicking cotton which is used by textile industries to make fast fashion clothes. The report states that children ranging from even 8-10 years of age are also involved in the work. Most of the children remain out of the school and more specifically the tenant children on the fields remain there from dawn to dusk and help their parents in the process and eventually turn into full-time workers as they age because they didn't attain any formal education. Additionally, children are also exposed to many health hazards such as malaria, wounds on feet and fingers, scabies and insects biting. Sexual, verbal and physical abuse also exists, however, the report suggests that the interviewers were reluctant to report such incidents due to cultural barriers.

3.2.1.2.1.2 India (Coimbatore and Tirupur Factories (Tamil Nadu))

The Coimbatore and Tirupur factories in the region of Tamil Nadu produces most readymade garments for international fashion brands in India. The factories in Coimbatore are known as the “city of textiles”, whereas, Tirupur factories are known as the “T-Shirt city” in India.¹²⁵ According to a report, South Indian Mill Association (SIMA), launched a program known as “Sumangali Scheme” which is designed to bring down the labor cost as the pressure from the international fashion brands grew for low cost production. The scheme employed women instead of men and provided them a 3 year period of apprenticeship where they are compelled to live in company-controlled

¹²⁴ “Child Labor in Cotton Seed Farming A Rapid Assessment in District Bahawalpur, Pakistan.” *National Rural Support Program*. <https://www.nrsp.org.pk/publications/Baseline-Studies/Child-Labor-in-Cotton-Seed-Farming-Punjab.pdf>

¹²⁵ Delaney, Annie, and Tim Connor. "Forced labour in the textile and garment sector in Tamil Nadu, South India: Strategies for redress." *Non-judicial Redress Mechanisms Report Series 13* (2016). <http://indianet.nl/pdf/ForcedLabourTextileGarment.pdf>

hostels, without any freedom of movement or any other rights so that they were available to work anytime according to the required international orders.¹²⁶ Furthermore, the factories in both districts employed women from 12-20 years of age from poor rural backgrounds and an estimated 200,000 women work in the fashion industry in the Tamil Nadu. The report reveals that women are not allowed to quit or go home until they finish the 3 year contract. The condition of hostels are also reported to be in a very bad situation. The “Sumangali Scheme” clearly represents a modern form of slavery and a case of forced and bonded labor as workers have no right of freedom of movement and choice.

3.2.1.2.1.3 China (Xinjiang Region Factories)

China is the world's largest producer of cotton and yarn, with the Xinjiang area accounting for 84% of total production. This cotton and yarn is extensively used in making fast fashion products around the world. According to report, about 83 or more international fashion brands are involved in sourcing from china, including Gap, C&A, Adidas, Muji, Tommy Hilfiger, Calvin Klein, Zara, Vitoria Secret, H&M, Ikea and Marks & Spencer to name a few.¹²⁷ The Chinese government started a “re-education program” in the Xinjiang region in china where approximately about 1.8m ethnic and religious minorities were taken into the re-education camps and are enforced to work in factories, farms, internment camps producing fast fashion products.¹²⁸ The workers after passing the

¹²⁶ Rahul Neema, "Gender and Caste at Work: Evolution of a Factory Regime Under the Sumangali Scheme," *Social Change* 47, no. 1 (2017): 28-44.

¹²⁷ "China: 83 Major Brands Implicated in Report on Forced Labour of Ethnic Minorities from Xinjiang Assigned to Factories Across Provinces; Includes Company Responses," *Business & Human Rights Resource Centre*, March 1, 2020, <https://www.business-humanrights.org/en/latest-news/china-83-major-brands-implicated-in-report-on-forced-labour-of-ethnic-minorities-from-xinjiang-assigned-to-factories-across-provinces-includes-company-responses/>.

¹²⁸ Vicky Xiuzhong Xu, with Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser, "Uyghurs for Sale: 'Re-education,' Forced Labour and Surveillance beyond Xinjiang," *Australian Strategic Policy Institute, International Cyber Policy Centre*, 2021, <https://www.aspi.org.au/report/uyghurs-sale>.

“re-education program” are further transferred to other factories across china. It is estimated that around 80,000 Uighur and Turkic Muslim labor is forcefully transferred to work in factories where they are kept in a military style camps. They work in the factories in morning and in the evening they have classes where they learn mandarin and political culture of china. Hence, this is a massive modern forced labor in disguise of a government policy helping the underprivileged. Almost the whole world's garment sector is tainted by forced Uighur and

Turkic Muslim labour, said a representative of a human rights organization.¹²⁹

3.2.1.2.1.4 Bangladesh (Narayanganj and Keraniganj Factories (Dhaka))

Bangladesh is the top producer of the fast fashion products in the world and employs around 87 million workers. The factories in the country, however, use the practice of child labor extensively in making the fashion articles. One such example is of Narayanganj and Keraniganj Factories situated in Dhaka and which exports around 20% of the fast fashion products from Bangladesh.¹³⁰ These factory models conversely are quite different from the regular models. These factories are informal work stations situated in different plazas. The industry is semi-formal hence evades from granting any labor rights. The size of the factory or work-station is very small which employs around only 10-12 workers who are underage and are kept in those places. These children work around the clock without any benefits to support their families. Children frequently carry heavy objects, operate dangerous equipment, and handle chemicals without safety

¹²⁹ 'Virtually entire' fashion industry complicit in Uighur forced labour, say rights groups". *The Guardian* (2020). <https://www.theguardian.com/global-development/2020/jul/23/virtually-entire-fashion-industry-complicit-in-uighur-forced-labour-say-rights-groups-china>

¹³⁰Sheila Chanani, Hope Spector, Savitri Restrepo Alvarez, Nasir Chowdhury, and Patrick Ma, "Challenges to increasing visibility and support for children in Bangladesh's informal ready-made garment factories," *Business Strategy & Development* 5, no. 4 (December 2022): 361-374.

equipment while working up to 16 hours each day.¹³¹ In some instances it is reported that they are not even provided wages and are only compensated by food and shelter.¹³² This massive scale of worst form of child labor in producing fashion products for international brands is successfully thriving in Bangladesh.

3.2.1.2.2 Violation of International Human Rights Instruments

3.2.1.2.2.1 Child Labor

The international laws governing the protection against child labor are set out under the three main international conventions namely the Convention on the Rights of the Child (CRC)¹³³, the Minimum Age for Admission to Employment Convention¹³⁴ and the universally ratified Worst Forms of Child Labour Convention¹³⁵, along with other key international human rights instruments such as the United Nations Declaration of the Rights of the Child¹³⁶, United Nations Charter¹³⁷ and Universal Declaration of Human Rights (UDHR)¹³⁸ providing general safeguards. The Worst Forms of Child Labour Convention under its Article 2 provides protection to children who are below the eighteen years of age. The worst types of child labour, according to its Article 3, are slavery,

¹³¹ “Bureau of International Labor Affairs.” *ILAB*, (2018).

¹³² Sheila Chanani, Hope Spector, Savitri Restrepo Alvarez, Nasir Chowdhury, and Patrick Ma, "Challenges to increasing visibility and support for children in Bangladesh's informal ready-made garment factories," *Business Strategy & Development* 5, no. 4 (December 2022): 361-374.

¹³³ “The Convention on the Rights of the Child” *UNICEF*, (1989), <https://www.unicef.org/child-rights-convention/convention-text>.

¹³⁴ “Minimum Age for Admission to Employment Convention (No. 138)” *ILO*, https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::P12100_ilo_code:C138#:~:text=Article%203-.1..2.

¹³⁵ “Worst Forms of Child Labour Convention (No. 182).” “Minimum Age for Admission to Employment Convention (No. 138)”, *ILO*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹³⁶ “The United Nations Declaration of the Rights of the Child”, *United Nations* (1959), <https://www.humanium.org/en/declaration-rights-child-2/>.

¹³⁷ The United Nations Charter.” *United Nations*. (1945), <https://www.un.org/en/about-us/un-charter/full-text>.

¹³⁸ The Universal Declaration of Human Rights (UDHR). *United Nations*. (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

bondage, prostitution, drug trafficking, and any occupation that might endanger children's health, welfare, or morality. The Convention further under its Article 5 and 6 puts responsibility on ratifying states to take quick and operative measures to prohibit and eliminate child labor by planning and executing programs. Notably, the Convention creates impediments for those trading in products produced by child labor which itself a noteworthy step in curbing the ill of child labor in the trade industry.¹³⁹ Furthermore, the most universally recognized human rights instrument United Nations Convention on the Rights of the Child under its Article 32 explicitly established prohibition of child labor and further Article 32, 43, 44 puts duty of state parties to take effective measures and also stronger monitoring mechanism for elimination of child labor. The conventions universal acceptance imitates a global consensus of the international community on the abolition of child labor which in turn has developed into customary international law, hence, becoming universally applicable. Moreover, the Minimum Age for Admission to Employment Convention regulates the age of children for entry into the work force and provides under its Article 2 that the minimum age should not less be than 15 years and not less than the age of completion of compulsory schooling.

Additionally, the United Nations Declaration of the Rights of the Child under its second principle protects a child's right to physical, mental, moral, spiritual, and social development in a healthful, traditional manner while enjoying dignity and freedom.¹⁴⁰

The Declaration also under its Principle 7 proclaims a child's right to free and compulsory education entitlement to play, and recreation, hence a child cannot enjoy these rights if he is compelled to work. Moreover, under its Principle 9 mandates that a

¹³⁹ James Weaver, "Globalization with a Human Face," *Forum for Social Economics* 32, no. 1 (2002): 43-50, <https://doi.org/10.1007/BF02747265>.

¹⁴⁰ "United Nations Declaration of the Rights of the Child." *United Nations*. (1959): Principle 2.

child must not be engaged in any occupation or employment before a proper minimum age and any employment which may hinder the child's health or education. Furthermore, the Preamble, Article 1 and 55 of the United Nations Charter also provide similar protections. Lastly, Universal Declaration of Human Rights as parent document under its substantive provisions provide fundamental protections of right to life, liberty, equality, dignity and security¹⁴¹ as well as the freedom from slavery along with other rights. A child engaged in child labor cannot enjoy these rights, hence, violation of UDHR in such circumstance is inevitable.

3.2.1.2.2 Bonded and Forced Labor

There are three key international laws related to the prohibition on forced labor namely, Forced Labor Convention, 1930, Abolition of Forced Labor Convention, 1957 and Protocol of 2014 to the Forced Labor Convention, 1930 and Forced Labor (Supplementary Measures) Recommendation, 2014 which urges the state parties to develop procedures to eliminate such practice and provide mechanism of social integration and rehabilitation.

According to Article 2 of the Forced Labor Convention of 1930, which forbids all forms of forced or compulsory labour, forced labour is defined as any work or service that is demanded of a person involuntarily or under threat of punishment.¹⁴² In accordance with Article 25 of the convention, states must ensure that the specific legal sanctions are imposed and firmly adhered to with reference to unlawful forced or coerced labour.¹⁴³

¹⁴¹ "Universal Declaration of Human Rights", *United Nations* (1948): Article 1-4.

¹⁴² "Forced Labor Convention.", *ILO* (1930):Article 2

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

¹⁴³ "Forced Labor Convention.", *ILO* (1930): Article 25,

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

Additionally, the Abolition of Forced Labor Convention, 1957's Article 1 forbids forced or compulsory labour when it is employed for racial, social, national, or religious discrimination, political coercion, education, or labour discipline.¹⁴⁴ Article 2 of the convention puts obligation on the state members to carry out immediate effective measures to eliminate forced labor. Likewise, a more recent Protocol of 2014 to the Forced Labor Convention, 1930 and Forced Labor (Supplementary Measures) Recommendation, 2014 (No. 203) aims for the prevention¹⁴⁵, protection¹⁴⁶ and remedial measures¹⁴⁷ to eradicate all forms of forced labor.

Goal 8.7 of the Sustainable Development Goals (SDG) also urges the global community to take urgent and effective action to end child labour in all of its forms by the year 2025. This includes eliminating forced labour, putting an end to modern slavery and human trafficking, as well as ensuring the restriction and eradication of the most serious forms of child labour, including child soldiers.¹⁴⁸

3.2.1.3 Unfair Employment practices and Poor Subsistence Wages

Global fashion industry has a systematic practice of giving massively poor subsistence wages to the workers. The fashion brands usually sort their production from the third-world countries where workers due to poverty agree to work on extremely low wages. The situation is further fuelled by the fact that there are very weak laws and enforcement mechanisms in these countries. Another factor is that the global fashion brands have

¹⁴⁴ “Abolition of Forced Labour Convention.” *ILO*. (1957): Article 1.

https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105

¹⁴⁵ “Protocol of 2014 to the Forced Labour Convention.”, *ILO* (1930):Article 2 ; “Forced Labour (Supplementary Measures) Recommendation.” *ILO*. (2014).

¹⁴⁶ “Protocol of 2014 to the Forced Labour Convention.” *ILO*. (1930):Article 3 and 4(2)).

¹⁴⁷ “Protocol of 2014 to the Forced Labour Convention.” *ILO*. (1930): Article 4(1).

¹⁴⁸ Sustainable Development Goals (SDG). *United Nations*. (2015): Goal 8.7.

<https://www.unodc.org/roseap/en/sustainabledevelopmentgoals.html#:~:text=Target%208.7%20%2D%20Take%20immediate%20and,labour%20in%20all%20its%20forms>.

immense power over the fragmented network of suppliers in these countries where they have price- bidding system and give orders only at a lowest price. 52% of fashion suppliers who supplied 1,454 global manufacturing suppliers from 87 countries reported selling below production cost, according to the survey.¹⁴⁹ The report also highlights that the workers due to huge orders are given limited time to finish unreasonable daily targets and are allowed only limited toilet and lunch breaks. It is further reported that noncompliance with the production demand often led towards physical and verbal abuse by the supervisors as well.

The ILO defines minimum wage as the minimum amount of compensation that an employer must provide wage earners for services rendered during a certain time period and that cannot be modified by a collective bargaining agreement or an individual contract.¹⁵⁰ Further in its explanation it provides that minimum wages is to safeguard workers against unduly low pay and it ensures a just and equitable living for all. Minimum wages helps in overcoming poverty and decrease inequality, including gender inequality by promoting equal right to work. However, according to a report, only 2% of the workers in the fashion industry earn a living wage which means about 98% are living in systemic poverty.¹⁵¹

The following account highlights four key cases studies of multinational fashion industry suppliers in Pakistan, Bangladesh, China, and India and elucidates how they are violating

¹⁴⁹ Denis Boily, Jeanne Dumont, Marie Bataillard, Laurent Roy, and Emily Fancelli, "Human Rights in the Fashion Industry: Advancing Working Conditions and Fair Wages Through Collaboration and Blockchain Technology," Concordia University, (2020), <https://www.concordia.ca/content/dam/artsci/lsrc/SaCCUgradPosters/HRFashion.pdf>.

¹⁵⁰ "General Survey concerning the Minimum Wage Fixing Convention", *ILO* (1970):No. 131. ; "The Minimum Wage Fixing Recommendation", *ILO* (1970) ; "Committee of Experts on the Application of Conventions and Recommendations", *ILO* (2014).

¹⁵¹ Zeynep Ozdamar-Ertekin, "The True Cost: The Bitter Truth behind Fast Fashion," *Markets, Globalization & Development Review* 2, no. 3 (2017), <https://digitalcommons.uri.edu/mgdr/vol2/iss3/7>.

the international standards and protocols. These cases studies are specifically selected keeping in view the global lens as these companies are suppliers of the multiple leading fashion brands around the globe.

3.2.1.3.1 Case Studies

3.2.1.3.1.1 India (Karnataka Factories)

Karnataka is the state of India with over 1000 garment factories producing fast fashion products for International fashion brands such as C&A, Gap, H&M, Marks & Spencer, Nike, Puma, Walmart and Zara.¹⁵² The state of Karnataka increased the minimum wage of workers in 2020, however, the owners of the garment factories in Karnataka refused to comply with the said orders. The 400,000 garment workers have been continuously working in the factories, yet, have not received their wages. According to Workers' Rights Consortium, an international labor rights organization, this is the worst wage theft in the history of modern fashion industry, where approximately the total amount of unpaid wages is about \$55 million.¹⁵³ Several cases have been filed against the owners of factories and an international campaign has also been launched by the labor rights groups in order to compel the multinational fashion brands to pay the minimum wage, however, due to the lack of effective enforcement mechanism the workers plight are still unheard and they continue to suffer.¹⁵⁴

¹⁵²"India: Brands & retailers respond to 'worst wage theft' documented in garment industry in Karnataka, India," *Business & Human Rights Resource Centre*, 2022, <https://www.businesshumanrights.org/en/latest-news/india-garment-workers-in-karnataka-struggle-to-make-ends-meet-aftersuppliers-refuse-to-pay-legally-mandated-wage-increase/>.

¹⁵³ Annie Kelly, "Worst fashion wage theft" *The Guardian*, December 16, 2021.

¹⁵⁴ Jasmin Malik Chua, "India Wage Theft 'Worst' Fashion Has Seen," *Sourcing Journal*, January 7, 2022, <https://sourcingjournal.com/topics/labor/karnataka-india-wage-theft-hm-inditex-gap-worker-rightsconsortium-321732/>.

3.2.1.3.1.2 Pakistan (Korangi Industrial Area (Karachi))

The Korangi Industrial Area located in Karachi is the hub of the garment industry in Pakistan where multiple factories produce fashion articles for international brands. According to a report by Human Rights Watch, the majority of the employees are subjected to short-term, oral contracts, compelled to work overtime, and refused pay, paid maternity leave.¹⁵⁵ Even breaks for the bathroom were restricted. According to Pakistan Readymade Garments Manufacturers and Exporters Association President Mubashir Naseer Butt, "If they are going to spend an hour there, obviously, that is not on."¹⁵⁶ Another report by Dawn, states that the government increased the basic pay of the workers, however, the Karachi Chamber of Commerce and Industry (KCCI), the SITE (Sindh Industrial Trading Estates) Association and other trade associations refused to increase the minimum pay and filed petitions against the order.¹⁵⁷ Further, the workers are given difficult targets on daily basis to complete at least 1200 pieces. This insensitive attitude reveals that workers in these factories are working in inhumane conditions and are helpless without any voice as the relevant authorities themselves are involved in suppressing their rights.

3.2.1.3.1.3 China (Shein Factories Guangzhou)

Shein is a leading Chinese international fast fashion brand with its production units in Guangzhou. The fast fashion brand has even surpassed H&M and Zara in its production cycle and sales as it produces a new fashion article in just one week as opposed to 3 to 4

¹⁵⁵ Saroop Ijaz, "No Room to Bargain": Unfair and Abusive Labor Practices in Pakistan, *Human Rights Watch*, 2019, <https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusivelabor-practices-pakistan>.

¹⁵⁶ "Garment-makers deny violation of labour laws," *The Express Tribune*, February 14, 2019, <https://tribune.com.pk/story/1909974/garment-makers-deny-violation-labour-laws>.

¹⁵⁷ Fawad Hasan, "The Bitter Brews of Fast Fashion," *Dawn*, November 7, 2021, <https://www.dawn.com/news/1656428>.

weeks for other fast fashion giants.¹⁵⁸ A report by an international human rights organization reveals shocking details with respect to the human rights violations in its factories. The company interestingly does not have big production houses and instead have small units in residential buildings where around 5-10 workers are employed. The report also reveals that workers work for approximately 75 hours a week instead of 40 hours which is the legal requirement and also only get one day off in the entire month.¹⁵⁹ The workers also do not have any formal contract, the employees are paid per item and there is neither a basic wage nor an overtime premium.¹⁶⁰ This informal structure makes it possible for the company to evade its labor rights obligations.

3.2.1.3.1.4 Bangladesh (Dragon Sweater Ltd)

Dragon Sweater Ltd is a fast fashion brand in Bangladesh which provides for the international fashion brands such as Lidl, New Yorker, and Woolworths.¹⁶¹ As the pandemic hit in 2020, the company fired half of its employees without paying their rightful wages. On the protest of workers, the company hired goons to mitigate the situation. A media report states that about 12 workers were hospitalized.¹⁶² The international fashion brands for which the company was producing products were also reached out by the labor rights organizations to retrieve the payment of the workers,

¹⁵⁸Timo Kollbrunner, "Toiling away for Shein: Looking behind the shiny façade of the Chinese 'ultra-fast fashion' giant," *Public Eye*, November 2021, <https://stories.publiceye.ch/en/shein/#group-section-Theconclusion-RMJCWvd2Ds>.

¹⁵⁹ Lora Jones, "Shein suppliers' workers doing 75-hour week, finds probe," *BBC News*, November 12, 2021, <https://www.bbc.com/news/business-59245708>.

¹⁶¹ "Fired, Then Robbed: Fashion brands' complicity in wage theft". *Workers' Rights Consortium*. (2021). <https://www.workersrights.org/wp-content/uploads/2021/04/Fired-Then-Robbed.pdf>

¹⁶² "#UnitedAgainstTheDragon: Attack by goons – 12 workers hospitalised," *Global May Day (blog)*. (2020) <https://globalmayday.net/2020/10/09/unitedagainstthedragon-attack-by-goons/>

however, they evaded any liability and refused to comment.¹⁶³ The workers hence have no protection as the local as well as international remains redundant to ensure their rights. This is not just one instance, this is a situation of thousands of fashion companies in Bangladesh.

3.2.1.3.2 Violation of International Human Rights Instruments

The right to living subsistence wage is recognized in number of International Human Rights Instruments by UN and other International organizations. The Universal Declaration of Human Rights (UDHR) under its Article 23 safeguards the right to living wage.¹⁶⁴ Additionally, the article protects right to work and also puts obligation to ensure just and favorable conditions of work. Moreover, the article also provides safeguards with respect to gender discrimination and aims for the right of equal pay for equal work. The right to form and participate in trade unions is also protected.

Furthermore, International Covenant on Economic, Social and Cultural Rights (ICESCR) under its Article 7 recognizes the right of everyone to the enjoyment of just and favorable conditions of work.¹⁶⁵ The article further expands the protection and states that everyone has a right to a decent living for themselves and their families.¹⁶⁶ This encompasses various factors such as living wage should be such that the worker may be able to afford food, rent, healthcare, education, clothing, transportation and savings. The convention thus is wide in scope with respect to protection of living wages of workers.

¹⁶³ “Fired, Then Robbed: Fashion brands’ complicity in wage theft”, *Workers’ Rights Consortium* (2021). <https://www.workersrights.org/wp-content/uploads/2021/04/Fired-Then-Robbed.pdf>

¹⁶⁴ “The Universal Declaration of Human Rights (UDHR)”, *United Nations* (1948); Article 23. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁶⁵ “International Covenant on Economic, Social and Cultural Rights (ICESCR)”, *OHCHR* (1966): Article 7 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹⁶⁶ “International Covenant on Economic, Social and Cultural Rights (ICESCR)”, *OHCHR* (1966): Article 7 (a) (ii).

Since the establishment of International Labor Organization (ILO), it has upheld that right to minimum wages is a fundamental human right and hence in this regard it has promulgated various laws and conventions. The Constitution of ILO in its preamble states that a living wage is chief prerequisite for peace and harmony.¹⁶⁷ Furthermore, according to Article 427 of the Treaty of Versailles, which served as the foundation for the creation of the ILO in 1919, a worker shall be given a wage sufficient to maintain a reasonable standard of living as this term is currently defined in the state they reside in.¹⁶⁸ According to the ILO Minimum Wage Fixing Convention (No. 131, 1970), the minimum wage should be set so that it covers all of the worker's needs as well as those of their family. The convention, however, makes no mention of these requirements.¹⁶⁹

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2017) states that the wages, benefits, and working conditions provided by multinational corporations must be as beneficial to employees as those provided by employers in the same industry in the country in question. A multinational enterprise must provide the best wages, benefits, and employment conditions when it has operations in developing nations where there may not be other employers in the same field. These benefits must be adequate to at least cover the expenses of the worker's basic necessities and those of the worker's family. The accommodation, healthcare, and food that a

¹⁶⁷ “Constitution of ILO”, ILO (1919): Preamble. https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO

¹⁶⁸ “Treaty of Versailles”, (1919): Article 427 https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_441862.pdf

¹⁶⁹ “The ILO Minimum Wage Fixing Convention”, ILO (1970), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C131#:~:te xt=Article%202-.1..2.

multinational corporation offers for its employees must be of a high standard.¹⁷⁰ The ILO Committee of Experts states that ensuring a high quality of life for workers and their families is the clear goal of the ILO's Minimum Wage Conventions. The Equal Remuneration Convention of 1951, which establishes the idea of equal pay for workers of both genders is also important.¹⁷¹

The UN Sustainable Development Goals also protects for the right of living wage under its goal 1 relating to the eradication of poverty, goal 2 of zero hunger, goal 8 provides for decent work and economic growth, goal 10 relates to reduced inequalities. All these goals are only achievable if living wage is ensured.¹⁷²

The Human rights instruments as well as the ILO conventions provide a reasonable and decent standard to determine the scope of the right to living wages. The criteria as elucidated above depends on the state's economic standards, hence, living wage would be more in developed countries in comparison with the developing countries. However, it remains to be determined why the protection provided under the international law is not extended practically to the workers in the global fashion industry.

3.2.1.4 Limitations of International Law

The above section of this study shed light on the human rights protections provided by International Law to the workers in the fashion industry, however, together with the positives as explained above it is equally important to identify the areas where International Law due to its inherent features cannot help in situations of human and

¹⁷⁰ "ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy", *ILO*. (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/multi/documents/publication/wcms_094386.pdf.

¹⁷¹ Henri Telkki, "A living wage, a human right. A model for calculating a living wage and related recommendations," *Finnwatch*, 2015, <https://finnwatch.org/images/pdf/LivingWage.pdf>.

¹⁷² "UN Sustainable Development Goals", *United Nations* (2015), <https://sdgs.un.org/goals>.

labor rights abuses. Furthermore, it also imperative to critically analyze the areas where international law might have an impact but failed to do so as even the laws highlighted in the previous section provide restricted protection and have limited potential of future growth.

3.2.1.4.1 Inherent limitation of International Law

International law consists of treaties and conventions which governs the relationship between the two states.¹⁷³ However, it is considered to be a weak law and has inherent limitations at it offset as it is applicable on states only on the bases of their “consent”¹⁷⁴ as this is based on the concept of sovereignty of states, hence, even if there are multiple laws on the protection of human rights it won’t have any effect on the non-signatory states as the law as stated above is not binding on parties without their consent.

In a transnational fashion industry, where the process of production is so diversified as raw material is extracted from one state, manufacturing is processed in another and the product is finally sold in some other state, it is very difficult for international law to provide sufficient protection as some countries in the supply chain may not be the signatory of the international human rights instruments, hence, the inherent limitation of international law makes application of international human rights instruments quite difficult.

3.2.1.4. 2 Insufficient Enforcement Mechanism

As discussed above the most apparent limitation of international law is the absence of a “sovereign” or an international law making government of body. In domestic legal system, the sovereign in shape of parliament or congress make laws which are then

¹⁷³ Keith Suter, "The successes and limitations of international law and the International Court of Justice," *Medicine, Conflict & Survival* 20, no. 4 (2004): 344-354, <https://www.jstor.org/stable/27017609>.

enforced by the police force and judicial courts.¹⁷⁵ International law, however, is very different from domestic or municipal law as there is no concept of sovereign who can make absolute rules which can then be enforced by the police force or the courts.¹⁷⁶ UN General Assembly, International Court of Justice and INTERPOL though acts as legislature, court and police respectively, however, their enforcement mechanisms are limited in comparison to domestic legal system and their compliance again rests on the “consent” of the states.

3.2.1.4.3 Failure to change the terms of International Trade

In order effectively eliminate the human rights abuses in the international fashion industry, it is extremely important to integrate human rights concerns into the international trading system. However, the evidence suggests otherwise as for example WTO Ministerial Conference removed the trade-human rights link from their agenda.¹⁷⁷ This shows the reluctance of international organizations to step up and challenge the big multinational industries which is unfortunate.

3.2.2 The exploitation of Animals in Fashion Industry: A critical analysis of International Animal Rights Laws

The use of animals for making clothes and fashion accessories is massive in the fashion industry. According to a report, globally around 200 billion animals are used for making fashion articles every year.¹⁷⁸ The process behind making these products is however

¹⁷⁵ Holly Cullen, "The Interaction of Forms of Regulation in International Labour Law," in *WG HART LEGAL WORKSHOP SERIES*, vol. 3 (2000): 459-478.

¹⁷⁶ Stephen C. McCaffrey, *Understanding International Law* (United States: LexisNexis Matthew Bender, 2006).

¹⁷⁷ Christopher C. Joyner, *International Law in the 21st Century: Rules for Global Governance* (United Kingdom: Rowman & Littlefield, 2005).

¹⁷⁸ Gerald Dick, "Wear it Kind – Animal Welfare in Fashion Report," *FOUR PAWS* (2020), <https://media.4-paws.org/3/0/f/5/30f5ed3f4bd074fb228525ec2346d75d4594b126/FOUR-PAWS-2020Animal-Welfare-in-Fashion-Report.pdf>

another story as these animals live in horrific conditions ready to be killed through inhumane means and methods. Additionally, this is not an isolated issue as the environmental impacts that results from the production of animal based fashion products is alarming, for example, the manufacture of leather firstly, needs huge quantities of water and secondly, harmful chemicals are then used in its production which further contaminates the water.¹⁷⁹

According to a report, only 38% of the global fashion brands contemplate risks of animal welfare in the supply chain and process an issue, furthermore, just 25% brands have formal animal welfare policies whereas only 9% of the brands meet the international best practices standards to ensure animal welfare.¹⁸⁰ These statistics are deplorable in comparison to the amount to products produced through the use of animals. The following account highlights the issues with use of animals inside fashion industry by specifically discussing the problems in the fur, leather, wool, feathers, silk industry as well as the use of exotic and endangered species and sheds light on the international animal rights laws and provides a critical analysis of the same.

3.2.2.1 The issues with the use of Animals inside the Fashion Industry

Animals are used in variety of ways inside the fashion industry to make fashion products. The cruelty through which these products are made is an issue of real concern. The following account provides a brief insight into the issues with use of animals in fashion industry by discussing some major animal-textile industries.

¹⁷⁹ Quantis, *Measuring Fashion: Insights from the Environmental Impact of the Global Apparel and Footwear Industries study* (2018), https://quantis.com/wp-content/uploads/2018/03/measuringfashion_globalimpactstudy_full-report_quantis_cwf_2018a.pdf.

¹⁸⁰ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016).

3.2.2.1.1 Fur

With its primary markets in China, Russia, South Korea, Australia, and the United States, the fur trade continues to be one of the largest in the fashion sector.¹⁸¹ Every year, millions of foxes, minks, rabbits, seals, cats, dogs, raccoon dogs, coyotes, and chinchillas are cruelly killed and confined in terrible conditions. The fur farming is based on the traits related with pelt color, quality and body size of the animal.¹⁸² According to a report, the fur farms across the global are operating in a manner which is not consistent with animal welfare laws. The report identifies major issues in the global fur farming industry, firstly, the animals are kept in very tight cages which are often overcrowded which results in severe injuries, secondly, dirty cages often lead towards health issues both physical and mental which further exacerbates the animals sufferings, thirdly, the way they are handled leads towards abnormal behaviors due to anxiety and fear of humans.¹⁸³ The second phase in the fur farming industry is the slaughter of these animals once they are ready. The ways through which it is carried out includes gassing with carbon monoxide and anal electrocution which leads towards a very excruciating cardiac arrest with animal being fully conscious.¹⁸⁴ These animals do not die immediately and suffer extreme pain. This brutally in name of fashion is unwarranted and needs to be addressed immediately. Many global fashion brands such as Chanel, Prada, H&M, Michael Kors, Gucci, and Armani

¹⁸¹ Kate Abnett, "Inside the Growing Global Fur Industry," *Business of Fashion*, June 7, 2015, <https://www.businessoffashion.com/articles/intelligence/inside-the-growing-global-fur-industry>.

¹⁸² Heather Pickett and Stephen Harris, "The Case against Fur Factory Farming: A Scientific Review of Animal Welfare Standards and 'WelFur'" (Respect for Animals: Nottingham, UK, 2015), 23, <https://www.furfreealliance.com/wpcontent/uploads/2015/11/Case-against-fur-farming.pdf>.

¹⁸³ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 2004): 24-54.

¹⁸⁴ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016): 10-11.

have banned the sale products made of fur, however, the practice is still very prevalent in the fashion industry.

3.2.2.1.2 Leather

Leather is one the most significant and utilized animal skin industry with a global estimate of over 100 billion U.S. dollars per year.¹⁸⁵ According to a report, 1 in 5 people in the developed world own one leather product.¹⁸⁶ About 54% of the leather produced globally is used by the foot wear industry with its major consumers in US, UK, Italy, Germany, Japan and France.¹⁸⁷ The industry is divided into two sectors, regular leather industry and exotic leather industry. The former uses animals such as cows, buffalos, sheep and deer whereas the latter use exotic and endangered species such as snakes, lizards, crocodiles, elephants, frogs, sharks and dolphins.¹⁸⁸ The regular leather industry is inter-linked with the meat and dairy industry which provide 95% of the raw material, however, the erotic leather industry source its materials mostly from hunting and sometimes force bred the animals on farms.¹⁸⁹ The conditions in which these animals live are pathetic and the way they are slaughtered is horrendous. A report on crocodile farming reveals that the environment on farms is not habitable for crocodiles as they develop wounds from fighting and cannot walk or swim which results in abnormalities. Furthermore, the methods used to slaughter crocodiles are inhumane the use of machetes, axes, baseball bats or mallets are used to smash the thick skull of crocodiles which leads

¹⁸⁵ Johanna Knox, *Ethical Fashion* (New York: Rosen Publishing Group, 2019): 23-31.

¹⁸⁶ Ujwal Arkalgud and Jason Partridge, *Microcultures: Understanding the Consumer Forces That Will Shape the Future of Your Business* (North Carolina: Lulu Press, Incorporated, 2020): 32.

¹⁸⁷ Kate Gibson, "The Price of Luxury? Storied Brand Tied to Animal Abuse," *CBS News*, 2015, <https://www.cbsnews.com/news/price-of-luxury-storiedbrand-tied-to-animal-abuses/>.

¹⁸⁸ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016).

¹⁸⁹ Sanjida O'Connell, "Crocodile Farms: Is It Cruel to Keep These Wild Creatures Captive?," *The Independent*, October 5, 2006, <https://www.independent.co.uk/environment/crocodile-farms-is-it-cruel-to-keep-these-wild-creatures-captive-418794.html>.

towards a slow and very painful death of the animal.¹⁹⁰ Clothes, bags and other fashion accessories are then made from their skin. Due to the high demand of erotic leather products many animals are feared to extinct soon.¹⁹¹

3.2.2.1.3 Wool

The wool industry holds around 1 million of sheep which is estimated to produce about 2.1 million tons of wool for the fashion industry every year with its 25% production in Australia.¹⁹² This industry is considered more ethical then the fur or leather industry as it does not require killing of an animal for the production of a fashion product, however, the industry still faces many animal welfare issues which include firstly, the selective breeding of sheep for the purpose of producing excessive wool.¹⁹³ This excessive skin becomes prone to retaining moisture, urine, and faeces which leads them towards catching flystrike which is a very painful disease and often results in death of the animal. The second welfare issue is connected with the first issue as the sheep catch flystrike, the cheap and painful practice of mulesing is used to get rid of the excessive skin.¹⁹⁴ This process of mulesing is extremely horrifying as the flaps of infected skin of the sheep around their buttocks is removed with blades without any medication and is then left to heal which in fact leave open wounds on the skin which is more likely to catch

¹⁹⁰ Den Kirby, "Fashion Don'ts: Alligators Allegedly Tortured Before Being Killed and Turned into Luxury Handbags," *TakePart*, Participant Media, June 24, 2015, <http://www.takepart.com/article/2015/06/24/crocodilealligator-farming-abuse-skins-hermes-fashion/>.

¹⁹¹ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 2004): 48.

¹⁹² Joshua Katcher, *Fashion Animals* (United States: Vegan Publishers, 2019).

¹⁹³ Gerald Dick, "Wear it Kind – Animal Welfare in Fashion Report," *FOUR PAWS* (2020), <https://media.4-paws.org/3/0/f/5/30f5ed3f4bd074fb228525ec2346d75d4594b126/FOUR-PAWS-2020Animal-Welfare-in-Fashion-Report.pdf>

¹⁹⁴ Clive JC Phillips, "A Review of Mulesing and Other Methods to Control Flystrike (Cutaneous Myiasis) in Sheep," *Animal Welfare* 18, no. 2 (2009): 113-121.

infections.¹⁹⁵ Strict regulations with respect to mulesed wool needs to be made in order to get rid of this brutal practice.

3.2.2.1.4 Feathers

The feathers industry uses ostrich, peacocks, doves, geese, ducks and turkeys for the production of fashion articles. The framing practices used in the industry are very brutal as birds are forcefully breed and their feathers are plucked alive.¹⁹⁶ This live-plucking of feathers is extremely painful for the birds and they are left with open wound which are prone to infection. The wounds that result from this practice are sewn without any medication.¹⁹⁷ The birds go through this process every 5 weeks and which results in reopening of the previous wounds. Another issue prevalent in the feather industry is the thriving business of feathers from endangered species which needs to be adequately addressed.

3.2.2.1.5 Silk

The silk industry annually kills around 420 billion to 1 trillion silkworms to produce silk cloth, the material that is readily used for making cloths in fashion industry.¹⁹⁸ The welfare concern in this industry is that Bombyx Mori, the insect used for producing silk is brutally killed inside its cocoon before it can fly. The silk farms use painful techniques by placing the cocoons in the boiling water or hot steams in which the insect dies and then secure the silk thread. It is to be noted that it takes around 2500 silk worms to produce

¹⁹⁵ Bárbara Ferreira, *The Use of Animals Inside the Fashion Industry* (Barcelona: Istituto Europeo di Design, 2016).

¹⁹⁶ Steve Boggan, "Feathers ripped from birds' backs and gaping wounds sewn up with no pain relief: The barbaric cost of your winter coat," *Daily Mail*, November 28, 2012, <https://www.dailymail.co.uk/femail/article2240096/Feathersripped-birds-backs-gaping-wounds-sewn-pain-relief-Thebarbaric-cost-winter-coat.html>.

¹⁹⁷ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 2004): 27.

¹⁹⁸ Joshua Katcher, *Fashion Animals* (United States: Vegan Publishers, 2019).

about 500 grams of silk.¹⁹⁹ Since worms create molecules that behave similarly to opiates, which impact the perception of pain and pleasure, research suggests that they are capable of feeling pain as an analogous chemical mechanism exists in human brains.²⁰⁰ Furthermore, silk production is not an isolated issue it also harms the environment and rampant with human right abuses, therefore, better alternatives should be adopted for a sustainable future.

3.2.2.1.6 The use of Animals as Props

The use of animals as props by the fashion brands in their advertisement is another issue related to animal welfare, however, presently there is lack of research on this particular issue. Reports by some animal rights organizations reveals that these animals are kept in very poor conditions and are beaten or shocked to perform a certain task.²⁰¹ More research is required to investigate this issue in order to determine the level of cruel practices used by the fashion brands for the sake of advertisement. Laws and procedures must be established to regulate this practice.

3.2.2.2 International Animal Rights Law and its Limitations: A critical analysis

The welfare of animals has been described as the next big issue of the social justice movement of the world.²⁰² The core problem that surrounds this impending issue is that the international, regional as well as the domestic laws regarding animal welfare are

¹⁹⁹ Marc Bain, "Asos Is Banning Silk, But Is It Really Unethical to Wear?" *Quartz*, June 21, 2018, <https://qz.com/quartz/1309227/asos-is-banning-silk-but-is-it-really-unethical-to-wear>.

²⁰⁰ "Worms Can Feel Pain, Research Indicates." *The New York Times*. <https://www.nytimes.com/1979/09/11/archives/worms-can-feel-pain-researchindicates.html#:~:text=The%20group%20found%20that%20earthworms,help%20the%20animal%20endure%20pain>.

²⁰¹ Joshua Katcher, *Fashion Animals* (United States: Vegan Publishers, 2019).

²⁰² Deborah Cao, "Crimes against Animality: Animal Cruelty and Criminal Justice in a Globalized World," in *The Routledge Handbook of International Crime and Justice Studies*, (2013): 169-190.

poorly developed.²⁰³ In the domestic sphere, the laws differ greatly from one jurisdiction to the other, some providing basic animal welfare policies (mostly in the developed states) to the complete absence of these protections in the others (mostly in developing states). Even where the laws are present they are heavily qualified, as they provide protection to animals in one sphere and not in other areas. Due to this variability of animal protection on domestic level, unfortunately, the international legal regime regarding animal welfare is not currently present. There are, however, some international declarations and conventions which are currently being pursued to achieve a global legal consensus on animal welfare. The following account firstly discusses these international legal instruments and present a critical analysis of these laws. Secondly, it explores the role OIE can play in establishing a global animal rights law and thirdly, it sheds light on the regional legal regime more specifically, the EU treaties regarding animal welfare. Lastly, the account aims to identify the current gap of international legal protection of animal welfare and suggests a way forward.

The most developed and recognized international law on animal welfare is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which provides protection to the wild and endangered animals. According to the convention's Article VIII, members must take all reasonable measures to prevent harm, ill-treatment, or harsh treatment from occurring to any living specimens while they are in transit, storage, or export.²⁰⁴ It can be argued that provisions like these provide sentence of effected animals and can be adopted by states into their domestic law for

²⁰³ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 2004).

²⁰⁴ “Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).” (1975): Article VIII, <https://cites.org/eng/disc/text.php#VIII>

compliance²⁰⁵, critically, though these provisions are exceptions rather than a rule under international conservation law. For instance, provisions in the Convention on Biological Diversity (CBD) may be adverse to animals' welfare. Contracting nations are obligated by the Convention's Article 8(h) to prohibit the introduction, control, or eradication of alien species that pose a threat to ecosystems, habitats, or species.²⁰⁶ These treaties may be effective in providing protection to the environment and wild animals, however, they don't aim to provide protection to individual animals as Gillespie correctly points out that the primary goal of these treaties is not to preserve them because each individual animal can feel pain or pleasure, but rather to preserve them in order to save them from going extinct as a species..²⁰⁷ Additionally, these treaties may overlook the welfare of non-endangered species and domesticated animals. Therefore, it is clear from the discussion above that, despite widespread acceptance of the value of wildlife as a component of ecosystems, legal drafting has not yet given particular consideration to the conditions that lead to an individual animal's life or death due to the actions of humans around the world.²⁰⁸

The account will now discuss the important proposed legal documents related to animal's welfare starting with the Preamble of the Universal Declaration for the Welfare of Animals (UDWA), which recognises that animals are living, sentient beings who should be treated with respect. The development of acceptable standards for animal welfare, the

²⁰⁵ Bruce A. Wagman and Matthew Liebman, *A Worldview of Animal Law* (Durham, North Carolina: Carolina Academic Press, 2011).

²⁰⁶ "Convention on Biological Diversity (CBD)." (1993): Article 8(h), <https://www.cbd.int/convention/text/>

²⁰⁷ Alexander Gillespie, "Animals, Ethics and International Law," in Sankoff and White (eds), *Animal Law in Australasia: A New Dialogue* (1st ed., Sydney: Federation Press, 2009), 333-353.

²⁰⁸ David Favre, "An International Treaty for Animal Welfare," in *Animal Law and Welfare-International Perspectives* (Springer, 2016), 87-106.

implementation of appropriate preventative measures, and the promotion, recognition, and observance of the standards of animal welfare for each state are additional significant requirements. .²⁰⁹ Similarly, 1978 UNESCO Universal Declaration of Animal rights also provide similar protections. According to Article 1 of the declaration, all animals have an equal right to life and existence from birth. According to Article 2(2), no man, shall claim for itself the right to kill or use other species in an inhumane manner. Man has a responsibility to use his understanding to promote animal welfare. Most notably, Article 8 states that all forms of study, including scientific, medical, commercial, and other types of research, must use and develop alternatives to animal experimentation if it involves physical or psychological pain for the animal. Additionally, according to Article 12, any act that results in the mass slaughter of wild animals is a crime against the species known as genocide.²¹⁰

The limitations of these declarations is that even if they will be adopted by the United Nations it won't have any binding legal authority over its signatories as declarations are public statements , however, they do not have any binding effect on states.²¹¹ This now raises an important legal question that adoption of these declarations by UN would be of any significance at all. On this point Wagman and Liebman argue that it is an innovative and animal-centric text that would primarily highlight the importance of animal welfare

²⁰⁹ “Universal Declaration on Animal Welfare.”, <http://www.wspainternational.org/wspaswork/udaw/Default.aspx#.US60vDDg18E>

²¹⁰ Georges Chapouthier and Jean-Claude Nouët, *The Universal Declaration of Animal Rights: Comments and Intentions* (LFDA, 1998), https://www.google.com.pk/books/edition/The_Universal_Declaration_of_Animal_Righ/6h4oAQAAMAAJ?hl=en&gbpv=0&bsq=universal%20declaration%20of%20animal%20welfare.

²¹¹ Alexander Gillespie, "Animals, Ethics and International Law," in Sankoff and White (eds), *Animal Law in Australasia: A New Dialogue* (1st ed., Sydney: Federation Press, 2009).

concerns to the international community.²¹² Therefore, it can be said that as Universal Declaration of Human Rights though not binding paved a way for other binding international legal instruments, these declarations if adopted by UN may also result in international binding laws.

Moving further, the proposed international convention regarding animal welfare includes the UN Convention on Animal Health and Protection (UNCAHP) which also has the backing of United Nations. The convention defines Animal welfare as:

*“The state of the individual animal, regarding attempts to cope with its environment, including the absence of physical and psychological suffering, as well as the satisfaction of its biological, including physiological, ethological and social needs.”*²¹³

The convention under its Article 1 provides basic principles of animal welfare related to responsibility, care and assistance.²¹⁴ Article 2 of the convention states the guiding principles which includes five freedoms²¹⁵ and three R’s²¹⁶. Article 3(4) of the convention safeguards the intrinsic value of an animal,²¹⁷ whereas, sub clause 5 safeguards the dignity of the animals.²¹⁸ The convention also has an appropriate system of enforcement mechanism requiring state parties to formulate laws and submit periodic

²¹²Bruce A. Wagman and Matthew Liebman, *A Worldview of Animal Law* (Durham, North Carolina: Carolina Academic Press, 2011).

²¹³“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018).

²¹⁴“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 1.

²¹⁵“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 2: “Freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behavior.”

²¹⁶“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 2(2)(a): : “Three Rs for animals in scientific research: According to the OIE standards, the internationally recognized ‘three Rs’ (reduction in numbers of animals, refinement of experimental methods and replacement of animals with non-animal techniques) provide valuable guidance for the welfare of animals used in science.”

²¹⁷“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 3(4).

²¹⁸“UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 3(5).

reports.²¹⁹ Moving on, the International Convention for the Protection of Animals Welfare (ICAW) is another proposed law for the protection of animal welfare which is more comprehensive than the draft declarations. The convention is considered as an “umbrella treaty” encompassing general principles²²⁰ for the welfare of animals and additional protocols which describe the multiple enforcement mechanisms for the treatment of particular kinds of animals.²²¹ The convention restricts any unnecessary harm to the animals and contemplates range of situations where animals are used. According to Favre, this strategy is justified because one of the treaty's main objectives is to establish a global community that concentrates on animal issues and the treaty's provisions and its policies and procedures can only be as pragmatic on animal welfare issues as would be politically viable at a given point in time.²²²

These conventions hold immense importance in codifying the global animal law as they represent significant step forward in comparison to the UDWA and 1978 UNESCO Universal Declaration of Animal rights as they are conventions and under international law and jurisprudence they are considered as treaty which are signed by the contacting parties and once ratified these legal instruments will become binding on the states which in turn would require them to translate these rights into their domestic laws and in case of

²¹⁹ “UN Convention on Animal Health and Protection (UNCAHP).” *United Nations*. (2018): Article 7-13.

²¹⁵ “International Convention for the Protection of Animals Welfare (ICAW).” Article 1: Fundamental Principles:

1. Humans and animals co-exist within an interdependent ecosystem. Humans and animals share an evolutionary heritage. Humans, as moral beings, have an obligation to act responsibly toward animals.
2. Life has intrinsic value. No animal should be killed unnecessarily or be subjected to cruel acts or to unnecessary suffering.
3. When humans have control over specific animals they have a positive obligation to provide these animals with an environment and care appropriate for the species.

²²¹ “International Convention for the Protection of Animals Welfare (ICAW)” and “Companion Animal Protocol, Protocol for the Care of Exhibited Wildlife, Protocol for the Taking of Wild Animals, and Protocol for the International Transportation of Animals.”

²²² David Favre, “An International Treaty for Animal Welfare,” in *Animal Law and Welfare-International Perspectives* (Springer, 2016), 87-106.

their breach a penalty as under the law could be imposed. Moreover, it is also contended that “the provisions of these conventions and protocols would be enforceable as trade restrictions between signatory states, since exceptions to the requirements of the WTO and GATT regime include when a nation state carries out the requirements of another multilateral treaty.”²²³ However, this proposition is not strong in the EU Biotech case (2006), the WTO Dispute Settlement Body Panel held that:

*“The requirements of other treaties in deciding whether there had been a breach of relevant WTO requirements concerning regulation of genetically modified organisms is irrelevant, unless all parties to a WTO dispute had also ratified the relevant treaty it was not bound to consider the treaty requirements.”*²²⁴

The final thoughts on the enforceability of these conventions is that there are more comprehensive and includes all animal species in comparison to CITES which only cover endangered species.

The World Organization for Animal Health (OIE) is another influential body through which international animal welfare laws can be codified as the organization has 181 states as its members, hence, any treaty or convention regulated through OIE will have significant impact. The OIC primarily was created to improve animal health worldwide, however, recently, its focus has been shifted to animal welfare.²²⁵ The OIE issued 11 animal welfare regulations covering topics like the slaughtering process of animals for

²²³ In Article XX of the GATT there are three basic exceptions to the substantive provisions that could potentially be utilized to allow the regulation of animal welfare. The exceptions are restrictions that are: (1) necessary to protect public morals; (2) necessary to protect human, animal, or plant life or health; or (3) relating to the conservation of exhaustible natural resources.)

²²⁴ EU Biotech Case, European Communities – Measures Affecting the Approval and Marketing of Biotech Products. The Panel Report (WT/DS291/R, WT/DS292/R, and WT/DS293/R), 29 September 2006.

²²⁵ Andy Bayvel, "The globalisation of animal welfare: A New Zealand and Australian perspective on recent developments of strategic importance.", In *AAWS International Animal Welfare Conference, Gold Coast, Australia*, vol. 31, (2008). Available from: http://www.daff.gov.au/animalplanthealth/welfare/aaws/aaws_international_animal_welfare_conference.

human consumption, the usage of animals in scientific research and education, and the stunning and killing of farmed fish.²²⁶ The eight standards are incorporated into the Terrestrial Animal Health Code out of 11 sets of standards and three standards are incorporated into the Aquatic Animal Health Code, however, the animal welfare standards are only defined in one chapter meaning thereby that the focus of OIE remains animal health instead of general animal welfare.²²⁷ The limitations of OIC standards is that its language is very broad. The review of the language reveals that there is liberal use of the word “should” instead to “must” which means the standards are not mandatory and enforcement depends on the consent of the party.

On regional level the European Union has many treaties governing animal welfare. In accordance with Article 13 of the Treaty on the Functioning of the European Union, the Union and Member States shall give full consideration to the welfare requirements of animals, taking into account that they are sentient beings when formulating and implementing the Union's agricultural, fisheries, transportation, internal market, research and development, and space policies.²²⁸ In the landmark EU Seal Ban case, Norway and Canada challenged the EU legislation on the ban of the import of seal products in the European markets on the bases of “animal welfare” contesting that such ground is not admissible under the GATT regulations of trade and commerce. The panel held that “the ban was valid under the ‘public protection of morals’ exception in Art XX(a) of GATT”, hence, paving a way for enforcing animal welfare at trade level. This approach if used on

²²⁶ “The OIE’s Achievements in Animal Welfare.” *OIE*, (2013), <http://www.oie.int/animalwelfare/animal-welfare-key-themes/>

²²⁷ Steven White, "Into the Void: International Law and the Protection of Animal Welfare," *Global Policy Journal* 4, no. 4 (2013): 325-451.

²²⁸ “Treaty on the Functioning of the European Union.” (1958): Article 13, <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

the international level and help massively in resolving the issue at hand. However, the shortcoming of the European Union treaties is that they are regional and apply only on selected states, therefore, does not provide a comprehensive global legal framework.

It is significant to mention here an important international case, United States — Import Prohibition of certain Shrimp and Shrimp Products, Report of the Appellate Body of the World Trade Organization, which deliberated on the concept of "living" natural resources which are "renewable" and "exhaustible" natural resources and held that both are subject to the same protection under international law. The court held that:

*“One lesson that modern biological sciences teach us is that living species, though in principle, capable of reproduction and, in that sense, "renewable", are in certain circumstances indeed susceptible of depletion, exhaustion and extinction, frequently because of human activities. Living resources are just as "finite" as petroleum, iron ore and other non-living resources.”*²²⁹

From the above discussion, it can be concluded that animal welfare needs a comprehensive international legal regime in order to address the issue at hand. The abuse of animals in the fashion industry is rampant which needs to be addressed on immediate basis. The only way through which this can be addressed is through effective enforceable laws and procedures. All the possible legal avenues to protect animals were discussed with their limitations in this paper. The best possible way forward rests in the adoption of the international conventions either International Convention for the Protection of Animals Welfare (ICAW) or UN Convention on Animal Health and Protection

²²⁹ United States — Import Prohibition of certain Shrimp and Shrimp Products, Report of the Appellate Body of the World Trade Organization, WT/DS58/AB/R, 12 October 1998, paras. 128-131, 152-153, 167-169 and 185-186.

(UNCAHP). EU Seal Ban Case and US Shrimp Case also presents a yardstick for regulating the global trade industry to incorporate provisions of animal welfare.

3.2.3 Environmental Catastrophe caused by Fashion Industry and International Environmental Law: A Critical Analysis

The fashion industry can be termed as the “best dressed polluter” in the world as the industry’s contribution in the global pollution level is second to the oil industry.²³⁰

According to a report, clothing production has doubled since 2000.²³¹ This is due to the introduction of the concept of “fast fashion” in the clothing industry which now produces new styles biweekly and is further influenced by social media.²³² Global fast fashion brand such as Zara produced around 450 million items in 2018 alone.²³³ Due to this rapid expansion, the fashion industry is responsible for almost 20% of the world's wastewater and 10% of its greenhouse gas emissions.²³⁴ The prime reason behind such massive numbers is the unsustainable supply chain practices and wasteful materials used in the industry to produce clothing. By 2030, the UN projects that the emissions from the textile industry alone will rise approximately by 60 percent.²³⁵

Fast fashion brands are able to make cheap clothes majorly from synthetic fibers and outsource their production from low-income countries where environmental regulations

²³⁰ Ashley Lauren, "Why Regulations Aren't Solving the Fashion Industry's Environmental Problem," *Medium* (November 12, 2019), <https://perma.cc/4L2L-6JMS>.

²³¹ Morgan McFall-Johnsen, "The Fashion Industry Emits More Carbon than International Flights and Maritime Shipping Combined. Here Are the Biggest Ways It Impacts the Planet," *Business Insider* (October 21, 2019), <https://perma.cc/E4VJ-PSHF>.

²³² Robin Givhan, "The Troubling Ethics of Fashion in the Age of Climate Change," *Washington Post Magazine* (November 18, 2019), <https://www.washingtonpost.com/magazine/2019/11/18/troubling-ethics-fashionageclimate-change/?arc404=true>.

²³³ Dana Thomas, *Fashionopolis: The Price of Fast Fashion and the Future of Clothes* (United States: Penguin Press, 2019).

²³⁴ "U.N. Climate Change, UN Helps Fashion Industry Shift to Low Carbon," *Perma* (2018), <https://perma.cc/QA9K-6QE2>.

²³⁵ "U.N. Climate Change, Fashion Industry, UN Pursue Climate Action for Sustainable Development." (2018). <https://perma.cc/L7J4-KF7D>.

are non-existent.²³⁶ On the international level, there are plethora of international treaties, conventions, declarations and agreements addressing these concerns. In fact UN and some stakeholders in the fashion industry have also realized the gravity of this issue and have made a U.N. Climate Change, Fashion Industry Charter for Climate Action which aims to attain the objectives set out under the Paris agreement.²³⁷ Although identifying the issue at hand is a good start, the charter is not sufficient to enact a real change. This study in its first section highlights how fashion industry is the major contributor in the current environmental catastrophe faced by the world. The second section analyzes the current international environmental law regime and presents a critical analysis of the same.

3.2.3.1 Fast fashion as a global environmental justice issue

Fast fashion industry has become global environmental justice issue as the environmental cost of its production is not limited to one state and it transcends different boundaries. Environmental justice is the equitable treatment and meaningful participation of all people in the creation, enforcement, and application of environmental laws, guidelines, and policies, irrespective of their race, colour, country origin, or level of income.²³⁸ The following account will discuss the environmental catastrophe created by the fashion industry at each stage of its production and even after the disposal of a fashion article.

²³⁶ Tatiana Schlossberg, "How Fast Fashion Is Destroying the Planet," *New York Times* (September 3, 2019), <https://perma.cc/MA56-BCVP>.

²³⁷ "U.N. Climate Change, Fashion Industry Charter for Climate Action." (2018). <https://perma.cc/4AE9-4B9P>.

²³⁸ "Environmental Justice," *United States Environmental Protection Agency*, (2018), <https://www.epa.gov/environmentaljustice>.

3.2.3.1.1 Raw material extraction: issues of water waste and pesticide usage

The first stage in the life of a garment is extraction of raw material from which it will be made. The most common product used in the fashion industry for that purpose is polyester and cotton. Both polyester and cotton have substantial negative effect on the environment as the former requires petroleum to be produced and latter a huge amount of water and pesticides.²³⁹ According to a report, this sector makes up around 10-20% of pesticide for growing cotton which has resulted in a huge threat to the environment.²⁴⁰ The UN Alliance for Sustainable Fashion report reveals that fashion industry is accountable for 8% of carbon emission as from irrigation, harvesting, and transporting the crops which are then made into fabrics.²⁴¹ On the other hand, the process of producing polyester is an energy-intensive one that uses a lot of crude oil and emits pollutants such acid gases, particulate matter, and volatile organic compounds, all of which could trigger or intensify respiratory illnesses.²⁴² Hence in the first stage of the production of garment environmental hazards are magnificent.

3.2.3.1.2 Textile Processing: issues of Bleaching, Dyeing and Printing residues

The next stage in the fashion industry post raw material extraction is the processing of textile. This process will include bleaching, dyeing and printing of the garment which have huge negative impact on the environment as annually, textile production emits about

²³⁹ Sana Khan and Abdul Malik, "Environmental and Health Effects of Textile Industry Wastewater," in *Environmental Deterioration and Human Health*, ed. Springer (Dordrecht, 2014), 55-71, https://link.springer.com/chapter/10.1007/978-94-007-7890-0_4.

²⁴⁰ Alexandra Grace Speed, "Impact of Fast Fashion and International Law on Workers and the Environment," (Master's thesis, Oklahoma State University, 2021), https://shareok.org/bitstream/handle/11244/329906/oksd_speed_HT_2021.pdf?sequence=1&isAllowed=y.

²⁴¹ Lucy Siegle, *To Die For: Is Fashion Wearing Out the World?* (New York: Fourth Estate, 2011).

²⁴² V. Jha, "Rapidly Changing Fast Fashion Trends Dents Ecology," in *International Conference on Recent Trends in Humanities, Education, Arts, Culture, Languages, Literature, Philosophy, Religion, Gender, and Management Studies*, vol. 20, no. 20, (2019): 20, https://www.krishisanskriti.org/vol_image/03Jun201911061026.

1.2 billion tons of GHGs alone.²⁴³ A study found that the normal untreated textile dyeing chemicals are responsible for 17–20% of the world's industrial water contamination. In addition to endangering the environment, waste from these substances puts a manufacturing state's water supply at risk.²⁴⁴ A model of this can be taken from the case that was filed by the Tamil Nado government in the highest court of India. The thriving fashion industry in the state of Tamil Nado created a severe water quality issues which was intended to be used for agriculture. The water was full with harmful chemicals and resulted in killing wildlife and locals.²⁴⁵

3.2.3.1.3 Post-manufacturing: textile waste, Groundwater pollution, Air pollution and Climate change

After the manufacturing is completed and the garment is sold even then its environmental hazards continue as a study found that washing garments alone results in the discharge of 500,000 tonnes of microfibers into the ocean each year, 60% among which are plastics made of polyester. Furthermore, washing polyester garments and other synthetic textiles is estimated to be the source of 35% of all the microplastics inside the ocean. These tiny plastic fragments won't ever biodegrade.²⁴⁶ Even after the consumer has worn the item, it will still have a negative effect on the environment since it will be disposed of in a landfill, which is problematic because the majority of synthetic materials never biodegrade and even organic materials release methane, one of the most potent GHGs, as

²⁴³ “U.N. Climate Change, Fashion Industry, UN Pursue Climate Action for Sustainable Development.” (2018). <https://perma.cc/L7J4-KF7D>.

²⁴⁴ Adam Matthews, "The Environmental Crisis in Your Closet," *Newsweek* (August 13, 2015), <https://perma.cc/84AX-BGU5>.

²⁴⁵ Najmul Kadir Kaikobad, Md Zafar Alam Bhuiyan, Farhana Sultana, and Mahmudur Rahman, "Fast Fashion: Marketing, Recycling and Environmental Issues," *International Journal of Humanities and Social Science Invention* 4, no. 7 (2015): 28-33.

²⁴⁶ "Putting the Brakes on Fast Fashion," *U.N. Environment Programme*, 2018, <https://www.unep.org/news-and-stories/story/putting-brakes-fast-fashion>.

they break down.²⁴⁷ A study found that three out of every five fast fashion goods produced end up in landfills within a year. Some companies even burn their unsold inventory; in 2018 luxury label Burberry destroyed products worth £28.6 million to keep these items out of the hands of thieves and resellers.²⁴⁸ This discussion above illustrates how garment's lifecycle is rampant with negative environmental impacts, hence, it is necessary to compel the industry to adjust to the new realities related to environment in the global context.

3.2.3.2 International Environmental Law and its limitations: A Critical Analysis

Environmental rule of law or global environment justice is a recent phenomenon as the international community realized that the issues concerning environment do not have any boundaries, hence, this recognition resulted in the growth of various international environmental law instruments. There are about nine hundred international legal instruments which address the international environmental problems.²⁴⁹ This proliferation of the legislation however, does not mean that the environmental issues are resolved, as these laws in majority of cases present “international commitments” rather than “international obligations”. The non-binding language, weak or non-existence of effective enforcement mechanism, lack of any environmental liability are some of the main challenges which are faced by international environmental law.

²⁴⁷ Elizabeth Cline, "Where Does Discarded Clothing Go?" *The Atlantic*, 2014, <https://www.theatlantic.com/business/archive/2014/07/where-does-discarded-clothing-go/374613/>.

²⁴⁸ George Arnett, "How Quickly Do Fashion Materials Biodegrade?" *Vogue Business*, November 29, 2019, <https://perma.cc/C9P4-UWUY>; "Basic Information about Landfill Gas," *U.S. Environmental Protection Agency*, <https://perma.cc/E3RM-HS2Z>.

²⁴⁹ Edith Brown Weiss, "International Environmental Law: Contemporary Issues and the Emergence of a New World Order," *Georgetown Law Journal* 81 (1992): 675, <https://core.ac.uk/download/pdf/70375508.pdf>.

The following account firstly discusses the important international environmental law instruments, secondly it highlights the three important legal principles of international environmental law which can be said to have achieved the status of customary international law, thirdly it sheds light on the international environmental legal instruments directly addressing the fashion industry, fourthly, the account discusses some landmark judgments by international courts and tribunals on international environmental law and highlights the international jurisprudence on the issue, fifthly, a critical analysis of entire international environmental law regime is addressed and lastly, the account provides a conclusive conclusion and a possible way forward to tackle the current challenges of international environmental law.

The most influential legal instrument which laid down the foundation of global environmental governance is the Declaration of the United Nations Conference on the Human Environment, 1972. The declaration resulted in plethora of contemporary international environmental laws and treaties. It comprises of twenty six principles which safeguards the right to environmental justice and obligates states parties to refrain from carrying out measures that harms the environment. According to Principle 1 of the Declaration, Man has a right adequate living conditions in a quality environment that enables for a dignity-filled life and well-being. He also has a responsibility to preserve and improve the environment for both the present and future generations.²⁵⁰ In addition, Principle 6 stipulates that in order to prevent serious or irreparable harm to ecosystems, the discharge of toxic substances or other substances must be stopped.²⁵¹ Principle 21 of

²⁵⁰ Declaration of the United Nations Conference on the Human Environment, Principle 1, 1972.

²⁵¹ Declaration of the United Nations Conference on the Human Environment, 1972, Principle 6, <https://www.un.org/en/conferences/environment/stockholm1972>.

the declaration provides that in conformity with the United Nations Charter and the core principles of international law, States have the sovereign right to utilize their own resources in compliance with their own environmental laws. States also have the obligation to ensure that activities under their jurisdiction or control do not harm the environment of other States or of areas that are outside of their borders.²⁵² Similarly, another important legal instrument is the Rio Declaration on Environment and Development, 1992 comprising of twenty seven principles. The declaration reaffirmed the principles stated in 1972 declaration and upholds that the only way forward for the economic development is protection of environment.

States are required to establish effective environmental legislation, according to Principle 11 of the declaration. The development and environment context to which they are applicable should be reflected in environmental standards, management goals, and priorities. The standards that certain nations use may not be suitable and may cause unjustified economic and social costs to other nations, particularly developing nations.²⁵³

Both the declarations though provides an abstract policy framework for global environmental justice, however, a discussed in the previous section declarations under international law are non-binding instruments, hence, lack enforcement mechanism. On this issue, the 1972 declaration resulted in the formation of United Nations Environment Programme (UNEP) for the effective implementation of its principles, however, due to limited powers of UNEP it only condensed as a forum of policy and coordination of global efforts to achieve environmental justice.

²⁵² Declaration of the United Nations Conference on the Human Environment, 1972, Principle 21, <https://www.un.org/en/conferences/environment/stockholm1972>

²⁵³ Rio Declaration on Environment and Development, 1992, Principle 11, https://culturalrights.net/descargas/drets_culturals411.pdf.

The United Nations Framework Convention on Climate Change, 1992 is the landmark convention signed by all states of the world. The convention legally binds the states to eliminate all human interferences that are effecting the climate change. The convention's ultimate goal, as stated in Article 2 of the convention, is to ensure that greenhouse gas levels in the atmosphere be stabilised at a range which would limit dangerous anthropogenic interference with the climate system.²⁵⁴ Furthermore, Article 3 provides five principles of the convention including protection of climate change, responsibility of developed states, support for developing states, anticipatory and precautionary measures to combat climate change and promotion of sustainable development and economic growth.²⁵⁵ Article 4 obligates state parties to carry out effective measures whereas Article 7 establishes conference of parties (COP) for the review and implementation of the convention. The result of COP can be seen through the adoption of Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1998 which provided the enforcement mechanism to the climate change convention. The protocol, however, was unsuccessful largely because China and US as major emitters did not sign or rectify the protocol. In addition to this another factor that contributed to its failure was that it was based on the up and down model which placed more obligations on developed states than the developing states.²⁵⁶ The failure of Kyoto Protocol resulted in the adoption of Paris Agreement, 2015 which is legally binding on 196 states of the world. The agreement is

²⁵⁴ United Nations Framework Convention on Climate Change, 1992, Article 2, <https://unfccc.int/resource/docs/convkp/conveng.pdf>

²⁵⁵ United Nations Framework Convention on Climate Change, 1992, Article 3, <https://unfccc.int/resource/docs/convkp/conveng.pdf>

²⁵⁶ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1998. <https://unfccc.int/sites/default/files/resource/docs/cop3/107a01.pdf>

based on equal shared responsibility model of all states and obligates state parties to develop transparent measures for the mitigation and adaption of climate change.²⁵⁷

Other important legal instrument on international environmental law and quite relevant to the fashion industry includes the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the principle aim of the convention is the “reduction of hazardous waste generation, the restriction of transboundary movements of hazardous wastes and a regulatory system relating to cases where transboundary movements are permitted.”²⁵⁸ Article 4 and 11 of the convention obligates states parties to “adhere to the fundamental principles of environmentally sound waste management”²⁵⁹ and not to enter into agreements that “no less environmentally sound”.²⁶⁰

The Articles 6 and 7 of the convention elucidates the regularity system which is based on the informed consent of all parties.²⁶¹ Additionally, Articles 8 and 9 attribute liability to one or more of the participating States and impose the need to ensure safe disposal, whether by re-importation into the State of generation or another method.²⁶²

Apart from the declarations, conventions and agreements there are three important Principles of International Environmental Law (IEL) which are recognized and are given the status of customary international law. The first principle is the “Principle of

²⁵⁷ The Paris Agreement, (2015). <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

²⁵⁸ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, (1992), <https://www.basel.int/Portals/4/Basel%20Convention/docs/text/BaselConventionText-e.pdf>

²⁵⁹ , Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1992, Article 4.

²⁶⁰ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1992, Article 11.

²⁶¹ , Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1992, Article 6 and 7

²⁶² Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1992, Article 8 and 9.

sustainable development” which is defined as growth that satisfies present demands without jeopardizing the capacity of future generations to satiate their own needs.²⁶³ This principle is envisaged in various environmental law conventions and treaties including UNCED 1992 and RIO Declaration Agenda 21. The principle is based on the concept of intergenerational equity which is also recognized by International Court of Justice (ICJ) in the Nuclear Weapons Case, Judge Weeramantry in his dissenting opinion stated that:

*“the case before the court rises, as no case before has done, the principle of intergenerational equity - an important and rapidly developing principle of contemporary environmental law The court has not thus not far has occasion to make any pronouncement on this rapidly developing field ... (the case) ... raises in pointed form the possibility of damage to generations yet unbom.”*²⁶⁴

The second principle is “Polluter pays principle” which states that the cost of implementing pollution control measures or covering pollution-related damage should be borne by the polluter.²⁶⁵ Rio Declaration as well as 1972 OECD Guiding Principles on the International Economic Aspect of Environmental Policies also acknowledges this principle in their text.

The third principle is “precautionary principle” which requires that it is preferable to control an activity now rather than wait for conclusive scientific evidence if there is a

²⁶³ Halliday Arugu, "Critical Appraisal of Principles and Concepts of International Environmental Law," *University of Port Harcourt & Journal of Private Law* 3 no.1 (2018), https://www.academia.edu/40040983/CRITICAL_APPRAISAL_OF_PRINCIPLE_S_AND_CONCEPTS_OF_INTERNATIONAL_ENVIRONMENTAL_LAW.

²⁶⁴ Lauren Hartzell-Nichols, *A Climate of Risk: Precautionary Principles, Catastrophes, and Climate Change* (London: Routledge Research in Environmental Politics, 2017).

²⁶⁵ OECD, *The Polluter Pays Principle* (France: OECD Publishing, 2008).

growing suspicion that it will have negative effects on the environment.²⁶⁶ This principle is also codified in the Rio Declaration.

An important international instrument directly addressing the fashion industry is the UN Fashion Industry Charter on Climate Action. The preamble to the charter recognises that the fashion industry, as a significant worldwide player, must actively participate in contributing in the achievement of global environmental goals. Achieving net-zero greenhouse gas emissions by 2050 and halving greenhouse gas emissions from 2019 levels by 2030 is the first of the three main objectives of the charter. Second, by 2030, every material used in the fashion sector, including cotton, polyester, wool, and leather, must have a minimal climate effect, which means it must be produced without deforestation or land conversion and must be recycled in a closed loop.²⁶⁷ Lastly, banning coal from the sites either owned or supplied by 2030. The charter currently is signed by 150 fashion companies including Adidas, Chanel, LVMH, Nike, H&M and Primark, however, mere policy on the paper is not enough to solve this pressing issue, a concrete enforcement mechanism is the need of the hour, example of such mechanism can be taken from the Multifiber Arrangement (“MFA”) regulated under GATT enforced a quota system on the export of textiles and clothes from developing states to developed states in order to reduce the excessive production of clothes, the agreement however lapsed in 1995.

International jurisprudence on the international environmental law has also developed over the years addressing the major environmental law concerns. Some of the noteworthy

²⁶⁶ Katie Steele, "The Precautionary Principle: A New Approach to Public Decision-Making?" , *Law, Probability, and Risk* 5, no. 1 (2006): 19-31.

²⁶⁷ UN Fashion Industry Charter on Climate Action.
https://unfccc.int/sites/default/files/resource/Fashion%20Industry%20Charter%20for%20Climate%20Action_2021.pdf

cases in this regard are discussed in the preceding paragraphs. In *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*, Supreme Court of the Republic of the Philippines held that the concept of intergenerational responsibility corresponds to the right of balanced and healthful ecology. Furthermore the court expounded on the concept and stated that:

*“Nature means the created world in its entirety and it includes its management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.”*²⁶⁸

Furthermore, in *United States — Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body of the World Trade Organization, held that “clean air was a “natural resource” that could be “depleted”, hence a policy to reduce the depletion of clean air to conserve an exhaustible natural resource is required.”²⁶⁹ As discussed earlier, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J the court gave references to Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992 which expresses the common duty of states to ensure that their activities do not cause damage to the environment. The court held that:

²⁶⁸ *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*, Supreme Court of the Republic of the Philippines, (1994):185.

²⁶⁹ *United States — Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body of the World Trade Organization, WT/DS2/AB/R, (1996): 13, 15, and 16-18.

*“existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”*²⁷⁰

Furthermore, the International Court of Justice (I.C.J.) held in the Gabckovo-Nagymaros Project (Hungary/Slovakia) Judgment that there is a need to balance economic development with environmental conservation, which is appropriately articulated in the notion of sustainable development.²⁷¹

In addition, the court noted in the Ogoni Case (Nigeria), Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, Communication 155/96, African Commission on Human and Peoples' Rights that Government adherence to the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least authorizing credible scientific surveillance of threatened environments, requiring and publicizing environmental protection measures, and requiring and promoting environmental education.²⁷²

Moreover, the court held in its Award in the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdoms of Belgium and the Netherlands that environmental protection considerations also apply when a state exercises a right under international law on the territory of another state. Belgium's proposal to use its right of transit may therefore require the Netherlands to take environmental protection measures,

²⁷⁰ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports (1996): 226, 241244, 27-36.

²⁷¹ Gabckovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports. (1997): 7, paras. 53 and 140.

²⁷² Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, Communication 155/96, African Commission on Human and Peoples' Rights, (2002)L 53-58, 6869 and findings.

which Belgium will be required to pay for as part of its request. The environmental protection measures required by the anticipated usage of the railway line cannot be seen in isolation from the Iron Rhine railway's reactivation. The project and its expenditures are to include these measures in full.²⁷³

The limitations of current international environmental law regime are threefold, firstly the terminology and language used in most of the treaties, conventions and declarations is not obligatory. The language used often implies “commitments” rather than “obligations”, “remedies” or “sanctions”. For example the Paris agreement allows states to develop its own goals for climate change action and imposes no obligation in case of breach. Additionally, as discussed earlier most of the laws such as the Declaration of the United Nations Conference on the Human Environment, 1972 and the Rio Declaration are nonbinding, whereas, other conventions on environmental law require consent of state parties which ultimately gives powers to state to implement these laws.

Secondly, aligned with the first limitation there is a lack of effective system of enforcement of environmental laws. Most of the international environmental law is considered as a soft law, the recent first global UN report titled “Environmental Rule of Law” supports this contention. According to the report, despite a 38-fold rise in environmental legislation passed since 1972, one of the biggest obstacles to addressing climate change, cutting pollution, and limiting significant species and loss of habitat is the inability to actually implement and execute these laws. The report claims that there has been little advancement in both implementation and enforcement for a number of reasons. Laws might not be suited to local and national settings, or they might not contain

²⁷³ Award in the Arbitration Regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of Netherlands, 24 May 2005, reproduced in Reports of International Arbitral Awards, Vol. XXVII (2005): 35-125, 58-59 and 221-223.

essential mandates or clear standards. Comparatively to ministries in charge of economic or resource development, implementing ministries for climate are frequently underfunded and politically weak. These tendencies are not just present in underdeveloped nations. Environmental performance in developed nations is also falling behind.²⁷⁴ Hence, the issue of enforcement at international level is the lack of power of international organizations such as UN to enforce these laws due to the concept of sovereignty of states and at national level the issue lies in lack of motivation and finances required to implement these laws. The environment law scholars suggest that the solution to this issue lies in the establishment of centralized enforcement agency and a world environment court, however, the idea is quite far-fetched.

Thirdly, in order to address the concern of environmental impacts caused by fashion industry a complete life-cycle legal regime needs to be established which is currently not addressed under international environmental laws. The complete life-cycle regime means that the entire cycle of the production of fashion products should be environmental sensitive, for instance, from the stage of raw material extraction or manufacture to the process of production, sale and lastly the final deposition of the article. The entire lifecycle of the fashion product needs to be regulated.

From the above discussion, it is concluded that the international environmental law regime has developed extensively over the years, new treaties, conventions, agreements and declarations have been made, however, all the progress so far has been in the papers, this contention is supported by the recent global report by United Nations. There is an eminent need to develop an effective system of enforcement mechanism to address the

²⁷⁴ “Environmental Rule of Law First Global Report.” *UNEP*. (2019).
https://www.universal-rights.org/wp-content/uploads/2019/10/UNEP-Environmental_rule_of_law.pdf

current challenge. As for the fashion industry a complete life-cycle legal regime needs to be developed.

3.2.4 Intellectual Property Theft in the Fashion Industry: A critical analysis of International framework of IP Laws

Fashion industry since its inception has faced the issues of copying, counterfeiting, knockoffs and pirated goods. A study found that counterfeit goods account for 10% of all branded items sold and cost \$600 billion annually. One estimate indicates that over the past 20 years, the cost of counterfeit goods has climbed by 10,000%. The worldwide customs raids have found alarming information; one raid in France resulted in the seizure of enough counterfeit Louis Vuitton fabric to cover 54 tennis courts. A raid on the Chinese online marketplace Taobao resulted in the discovery of 18,500 fake bags, aprons, and shoes. A search in Madrid resulted in the seizure of 85,000 fake goods intended for the Christmas and Black Friday marketplaces. Nearly 700,000 counterfeit fashion items were confiscated in Istanbul in 2020.²⁷⁵ There are even studies and reports which reveal that profits made from selling these counterfeited products resulted in funding of terrorist attacks.²⁷⁶

On the other hand, international law concerning intellectual property is deficient in providing adequate protection and lacks on many accounts mainly due the presence of conflicting regional legal regimes, lack of protection of fashion design and effective enforcement mechanism. The following study is divided into two parts, the first section will discuss the issues of intellectual property theft in fashion industry particularly

²⁷⁵ Nicole Giambarrese, "The Look for Less: A Survey of Intellectual Property Protections in the Fashion Industry," *Touro Law Review* 26, no. 1 (2012): Article 8.

²⁷⁶ Maryanne Renz, "Don't Buy That Fake Louis Vuitton!," *St. Joseph's C. Mag.* (Fall 2008): 35.

highlighting the problem of knockoffs and counterfeiting of fashion articles, while the second section will discuss the international legal framework of intellectual property laws and will provide a critical analyses of same.

3.2.4.1 Issues of Intellectual Property theft in Fashion Industry: Knockoffs and Counterfeiting of Fashion Articles

The issue of intellectual property theft have always haunted the globalized fashion industry throughout its history, however, due to the invention of internet and digital technologies pace of challenges concerning intellectual property has risen massively. The following account will discuss the issues of Knockoffs and Counterfeiting in the fashion industry.

3.2.4.1.1 Counterfeiting of Fashion Articles

A counterfeit item is typically described as one that has been forcibly forged, copied, or otherwise illegally imitated with the intention of deceiving or defrauding by representing the item as real. This comprises the creation and sale of a product that bears a copy of an actual trademark, typically done to trick customers into thinking they are buying real goods.²⁷⁷ The Agreement on Trade-related Aspects on Intellectual Property Rights (TRIPs) defines counterfeiting as:

“any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and

²⁷⁷ Ali Ahmed, Muhammad Nauman Abbasi, and Omer Farooq, "What Defines Counterfeiting? A Timeline Analysis of the Definition," *Journal of Business and Social Review in Emerging Economies* 6, no. 2 (June 2020): 641-650.

*which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation”.*²⁷⁸

The US Department of Homeland Security reported that each year, counterfeit clothing and associated goods are confiscated for around \$155 million. Authorities from the European Union (EU) reported seizing 118 million counterfeit fashion articles, with 64 percent of the items coming from China. According to the World Customs Organization (WCO), the value of the trade in duplicates, fakes, or counterfeit goods is currently estimated to be around \$512 billion, or roughly 7% of global trade. According to a survey, internet counterfeiting costs premium businesses over \$30.3 billion annually.²⁷⁹

Furthermore, counterfeit products not only effect the designers but also results in criminal activities including drug trafficking, terrorism and funding organized crime.²⁸⁰ An example of drug trafficking can be taken from a case in which When police raided a warehouse in Manhattan, they discovered a sizable number of counterfeit handbags. When the bags were examined, the real surprise surfaced: illegal substances had been sewed into the interior lining of the purses. In order to sell both, traffickers smuggled the illegal substances into the country concealed in fake, unlawful handbags.²⁸¹ Additionally, a report stated that the terrorist organisation ETA, which is based in Southern Spain, has been engaged in the selling and trafficking of counterfeit apparel and handbags. Al Qaeda was discovered to have ties to the trafficking of counterfeit goods following 9/11.²⁸²

²⁷⁸ Trade-related Aspects on Intellectual Property Rights (TRIPs).

²⁷⁹ Michelle Nichols, "Fashion fakes are illicit global business," *Reuters*, February 12, 2007, <https://www.reuters.com/article/us-life-fashion-counterfeit-idUSN0127166320070212>.

²⁸⁰ Sam Cocks, "The Hoods Who Move the Goods: An Examination of the Booming International Trade in Counterfeit Luxury Goods and an Assessment of the American Efforts to Curtail Its Proliferation," *Fordham Intellectual Property, Media & Entertainment Law Journal* 17 no.1 (2006): 501.

²⁸¹ "The International Anticounterfeiting Coalition, 'Facts on Fakes,'" <http://www.iacc.org/resources/Facts%20on%20fakes.pdf>.

²⁸² "Al-Qa'idah Trading in Fake Branded Goods," *BBC Monitoring Report* (2002).

These incredibly high numbers and the negative impacts of sale of such goods depicts the dire need to address the issue of counterfeiting in fashion industry.

3.2.4.1.2 Knockoffs of Fashion Articles

A knock-off is an unofficial copy of another person's product that is typically offered for sale at a markedly reduced cost compared to the original. The trademark or logo of the company that made the original product is not present on knockoffs.²⁸³ Since establishment of fast fashion brands the issue of knockoffs in the fashion industry is massive. These small brands launch one collection per week, hence, they make small changes in the current trending designs and launch the collection.²⁸⁴ There are numerous lawsuits that have been filed by major fast fashion brands against each other.

In the famous case of *Tiffany vs. Costco*, the former sued the latter for selling non-tiffany rings with the name of “tiffany collection”. Costco argued that tiffany is a generic term used in jewelry industry as it means “ring settings comprising multiple slender prongs extending upward from a base to hold a single gemstone”.²⁸⁵ The court held that the collection by Costco depicts “dilution, unfair competition, and false and deceptive business practices” and declared the collection as a knockoff. Furthermore, in *Christian Louboutin vs. Yves Saint Laurent* the issue pertained to the trademark of red footwear outsoles. Christian Louboutin alleged that Yves Saint Laurent has copied and produced

²⁸³ Paul Duguid and Teresa da Silva Lopes, *Trademarks, Brands, and Competitiveness* (Ukraine: Taylor & Francis, 2010).

²⁸⁴ Nicole Giabarrese, "The Look for Less: A Survey of Intellectual Property Protections in the Fashion Industry," *Touro Law Review* 26, no.2 (2010): 243, <https://digitalcommons.tourolaw.edu/lawreview/vol26/iss1/8>.

²⁸⁵ *Tiffany & Co. v. Costco Wholesale Corp.*, No. 17-2798 (2d Cir. 2020). <https://cases.justia.com/federal/districtcourts/newyork/nysdce/1:2013cv01041/407903/438/0.pdf?ts=1517255863>

an identical footwear, hence, confusing the consumers. The case was settled outside the court where the former retained the trademark to the red soles.²⁸⁶

In addition of this, another famous case is of H&M vs. Forever 21 as the former alleged that it has copied its “Beach Please” tote bag. The court ordered Forever 21 to “immediately stop production, marketing and selling its version of the tote and to pay H&M all the profits earned from the sale of the bag.”²⁸⁷ Interestingly, in *Louis Vuitton Malletier, S.A. v. My Other Bag*, my other bag launched a bag with a photograph of Louis Vuitton signature bag, the court held that “a canvas tote bag ornamented with artwork made to look like luxury and designer bags was protected by the parody defense and ordered Louis Vuitton to pay the legal fees to My Other Bag.”²⁸⁸ These cases depict an uncertain position of courts with reference to position of intellectual property rights of fashion articles, most probably because fashion article due to their complicated nature are not covered adequately under the intellectual property laws.

3.2.4.2 International Framework of IP Laws and Its Deficient Protection for Regulating Fashion Industry

Intellectual property very broadly “refers to the protection of creations of the mind, which have both a moral and a commercial value”.²⁸⁹ International intellectual property law provides protection to the unique fashion designs and articles from being copied or reproduced as this protection is important due the economic value that they generate from the innovative designs. This protection is categorized under various types of IP laws,

²⁸⁶ *Christian Louboutin vs. Yves Saint Laurent*, 696 F.3d 206 (2012).
<https://cases.justia.com/federal/districtcourts/newyork/nysdce/1:2011cv02381/377601/53/0.pdf?ts=1543542948>

²⁸⁷ *H&M Hennes & Mauritz AB v. Forever 21, Inc.* 1:15-cv-05678 (2015).

²⁸⁸ *Louis Vuitton Malletier, S.A. v. My Other Bag , Inc.*, No. 1:2014cv03419 - Document 119 (S.D.N.Y. 2016)

²⁸⁹ World Intellectual Property Organization. <https://www.wipo.int/about-ip/en/>

including, copyright, trademark, industrial design, patent, trade secret, trade dress and sui generis. Copyright provides protection to the “original artistic and literary creations”²⁹⁰, whereas, Trademarks are distinguishing signs (words or symbols) that can be placed on goods to let consumers know where they originate from. Conversely, industrial designs protect the aesthetic or ornamental component of a piece and may include features like the shape, patterns, lines, or colour. Patents grant the owner of a novel, new, and valuable product the exclusive right of production.²⁹¹ Furthermore, Trade secret gives protection to the business secrets which includes the proprietary information that makes the product unique than its competitors, while Trade dress provide protection to the “total image of a product that involves size, shape, color(s), graphics, and texture.”²⁹² Sui Generis refers to the traditional knowledge that is utilized over centuries for the creation of the product and is afforded protection under the IP regime.

Fashion though is a thriving global industry with an annual global revenue of approximately 3 trillion US dollars, however, is not vigorously protected under the Global IP regime.²⁹³ The current international intellectual property law provides deficient protect to the innovative fashion designs due the presence of conflicting regional legal regimes and the lack of effective enforcement mechanism. The laws also fail to address the delicacy and intricacy of fashion designs. The following account provides an

²⁹⁰ Siva Vaidhyathan, *Intellectual Property: A Very Short Introduction* (Oxford: Oxford University Press, 2007).

²⁹¹ Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (United States: Delmar Cengage Learning, 2015).

²⁹² Kevin J. Hickey, "Intellectual Property Law: A Brief Introduction" (Congressional Research Service, 2022), <https://sgp.fas.org/crs/misc/IF10986.pdf>.

²⁹³ Padhi, Prafulla Kumar, "A Quest towards Fashion Design Protection Model for the Intellectual Property Rights Global Regime." *International Journal for Research in Applied Sciences and Biotechnology* 5, no. 5 (2018): 4-14. doi.org/10.31033/ijrasb.5.5.2

overview of the current international and regional IP regimes and highlights the challenges it possess to the protection of fashion designs in the globalized industry.

The most important legal instrument under international regime governing intellectual property is the Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) which provides a comprehensive coverage to all issues relating to intellectual property. The agreement has three main features, firstly, it provides some basic minimum standards with respect to intellectual property, secondly, it provides enforcement procedures and remedies to be followed for the implementation of intellectual property rights and lastly, the agreement provides the dispute resolution mechanism to be followed by member states in case of disputes.²⁹⁴

The Preamble, Article 7, and Article 8 of the TRIPS Agreement outline the agreement's main goals, which include reducing trade distortions and trade barriers, promoting effective and adequate intellectual property protection, and making sure that measures and processes to regulate intellectual property rights do not themselves obstruct legal trade.²⁹⁵ The agreement under Article 9-14 provides copyright protection and states that “copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such”²⁹⁶ Additionally, Article 15 defines trademark protectable subject matter as any sign, or any combinations of signs, that can differentiate the goods or services of one business from those of other

²⁹⁴ Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”).
https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

²⁹⁵ Preamble, Article 7 and Article 8, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”).
https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

²⁹⁶ Article 9-14, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”), (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

businesses.²⁹⁷ Moreover, Article 26 of the agreement, which deals with industrial designs, affirms that the owner of a protected industrial design has the right to stop third parties without the owner's permission from making, selling, or importing items containing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are carried out for commercial.²⁹⁸ When a product is the subject of a patent, Article 28 grants the owner of the patent the exclusive right to make, use, offer for sale, sell, or import the product for these purposes. Whereas, when a process is the subject of a patent, Article 28 prohibits third parties without the owner's consent from using the process and from the actions of: using, offering to sell, selling, or importing.²⁹⁹ Additionally, Article 39 governs trade secrets and stipulates that for a trade secret to be legally protected, it must meet the following criteria: (i) not be known or easily discoverable by anyone who could benefit from it; (ii) have economic value because of its limited availability; and (iii) the owner must have made a good faith effort to guard the secret and prevent its unauthorised use or disclosure.³⁰⁰

The enforcement mechanism under TRIPS is divided into five sections, the first section outlines general responsibilities under Article 41 of the agreement, which stipulates that enforcement procedures must allow for decisive action against every act of infringement against intellectual property rights, that remedies must be swift to stop infringements, and that they must act as a deterrent to future infringements. On the other hand, these methods need to be used in a way that prevents the development of obstacles to legitimate trade

²⁹⁷ Article 15, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

²⁹⁸ Article 26, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

²⁹⁹ Article 28, Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

³⁰⁰ Article 39, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

and provide protections against their abuse.³⁰¹ Furthermore, the procedures and remedies are contained under Article 42-49 which states that civil judicial remedies must be available in case of infringement of intellectual property rights. The article further elaborates upon the due process procedure, rules on evidence and remedies available in case of breach. In particular, Article 46 specifies that the judicial authorities must possess the power to compel the destruction of infringing items or, if constitutionally permissible, their disposal outside the channels of commerce.³⁰² Moreover, Article 41 requires provisional measures to be taken for effective enforcement of the agreement and provides that judicial authorities must have power to grant remedies even before hearing of the case if the reasonable grounds exist firstly where there is a requirement of stopping the infringement or where the infringed goods are to be stopped from entering commercial markets.³⁰³ In addition to this border measures are also provided under Article 51 where members are required to establish a competent authority, which may be administrative or judicial in composition, to whom right holders may submit requests for customs action and the infringed goods could be stopped at the source from entering other states.³⁰⁴ Lastly, Article 61 addresses criminal procedures and puts obligations on member states to establish criminal penalties including imprisonment and fine in case of

³⁰¹ Article 41, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

³⁰² Article 46, Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

³⁰³ Article 41, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

³⁰⁴ Article 51, Trade-Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

“counterfeiting or copyright piracy on a commercial scale”.³⁰⁵ However, gives discretion to the states to establish their own procedures.

The World Intellectual Property Organization (WIPO) also consists of international systems that regulate the intellectual property rights by providing easier procedure of international registration. The International Trademark System (ITMS) under the WTO is regulated under the Madrid system which provides coverage in 118 countries in the world making it almost 80% of the world. Through one single registration under this system the holder of trademark gets protection in all of its member’s states which saves time, money and effort of the holder. Furthermore, International Copyright System (ICRS) is a special treaty of WTO named as WIPO Copyright Treaty (WCT) which provides copyright protection in two matters, “firstly, computer software program and the mode of their expression; and (ii) data or databases compilations.”³⁰⁶ The treaty is signatory of 98 countries and provides protection to the holder for 50 years. Moreover, the International Patent System (IPS) also provides protection to the holder by one single application and has about 152 signatory states of the world.³⁰⁷ In addition to this International Industrial Design System (IIDS), industrial design can be registered in multiple countries. The main advantages of this method are that it allows for the registration of as many as 100 industrial designs on a single form and that it simplifies the administration of registered designs by allowing for the recording of revisions or

³⁰⁵ Article 61, Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) (1995), https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/1_tripsandconventions_e.pdf

³⁰⁶ International Copyright System (ICRS), https://www.wipo.int/treaties/en/ip/wct/summary_wct.html

³⁰⁷ International Patent System (IPS), [https://www.wipo.int/pct/en/#:~:text=The%20Patent%20Cooperation%20Treaty%20\(PCT,information%20relating%20to%20those%20inventions.](https://www.wipo.int/pct/en/#:~:text=The%20Patent%20Cooperation%20Treaty%20(PCT,information%20relating%20to%20those%20inventions.)

renewals in a single action.³⁰⁸ The WTO has not been able to provide system of international registration for trade dress, sui generis, and trade secrets which are instead regulated under national laws of the states.

As fashion is a globalized industry it is also important to discuss the Regional Regimes related to intellectual property protection at that level. In developed nations such as European Union and United states, the former has more stringent laws then the latter as it is observed that there are conflicting laws of IP protection, for instance in US the copyright law does not protect fashion articles especially clothing as they consider it as an “essential” whereas in Europe copyright protection is to afforded to the apparels, hence, this difference in the system results in in a deficient protection of intellectual property at international level.³⁰⁹ In the developing countries, there is little or no protection at all related to intellectual property, according to a report China, Turkey, Ukraine, India, Paraguay, Lebanon, Malaysia, Mexico, Philippines, Poland, Russia, Japan and Panama are hubs of counterfeited and pirated fashion goods and have a very weak or no laws related to Intellectual property protection.³¹⁰

The Limitations of international intellectual property law are twofold, firstly as intellectual property is mostly regulated under the national systems and as discussed above due to conflicting regimes and the context of globalized fashion industry this protection is not sufficient and ultimately results in negative consequences for designers as their fashion articles might be protected in one state but could be copied and sold in the

³⁰⁸ International Industrial Design System (IIDS), https://www.wipo.int/edocs/hagdocs/en/2018/hague_2018_8.pdf

³⁰⁹ Hedi Nasheri, "Addressing Global Scope of Intellectual Property Law" (January 2005), U.S. Department of Justice, <https://www.ojp.gov/pdffiles1/nij/grants/208384.pdf>.

³¹⁰ Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (United States: Delmar Cengage Learning, 2015).

other, hence, the lack of uniformity of laws eventually results in financial losses for the designers.

Secondly, the international intellectual property regime provides deficient protection to the fashion designs. The Trade-Related Aspects of Intellectual Property Rights Agreement as discussed above provides deficient protection to the fashion products as the protections fail to address the delicacy and intricacy of fashion designs, for instance, if a fashion house register their logo as a trademark their fashion design would still not be protected and can be copied as the protection is only limited to the logo of the brand. Furthermore, in order to fully protect a fashion article it is required to register in multiple categories to be fully secured, this multiplicity of registration process is costly and time taking which a fast fashion industry cannot simply afford.³¹¹

Moreover, the enforcement mechanism provided under the agreement even after decades has failed to protect the intellectual property rights as the enforcement provisions of the agreement have been correctly identified as its "achilles heel" by Jerome Reichman and David Lange, who also noted that because they were written as broad legal standards rather than specific rules, their inherent ambiguity will make it more difficult for mediators or dispute-settlement panels to identify blatant transgressions of international law and that the developed countries' right holders will be profoundly disappointed by the TRIPS Agreement's degree of enforcement, and that using coercive measures will not significantly help the situation in the near or longterm.³¹²

³¹¹ David Keeling, *Intellectual Property and Fashion* (United Kingdom: Bloomsbury Publishing, 2015).

³¹² J.H. Reichman and David Lange, "Bargaining around the TRIPS Agreement: The Case for Ongoing Public-Private Initiatives to Facilitate Worldwide Intellectual Property Transactions," *Duke Journal of Comparative and International Law* 9, no. 1 (2019): 11-68, 35, 38-39.

The first deficiency in the enforcement provisions is the vague, undefined and broad language of its provisions which uses words such as “effective”, “reasonable”, “undue”, “unwarranted”, “fair and equitable”, and “not unnecessarily complicated or costly”³¹³ For instance, Article 61 provides for criminal penalties to be imposed in case of infringement of IP at ‘commercial scale’, however, does not define the term at all. Furthermore, Article 59 provides empowerment norms instead of specific actions, this provision has resulted in a conflict between China and US the provision states that “competent authorities shall have the authority to order the destruction or disposal of infringing goods seized at the border.”³¹⁴ This provision only provides for the authority instead of exercise of such authority in a specific manner, hence, the US could not hold the argument that “the Chinese customs authorities had failed to destroy infringing goods seized at the border.”³¹⁵ Moving further, as if the vague language of the enforcement provisions was not enough, the law also have certain disastrous exceptions and limitations on the rights of intellectual property, one example of such is Article 41.5 of agreement which explicitly provides that “a WTO member is not required to devote more resources to intellectual property enforcement than to other areas of law enforcement.”³¹⁶ Moreover, one of the main areas where the agreement seems to be most deficient is the substantive provisions to address intellectual property rights in the digital space which

³¹³ Carsten Fink, M. Correa, and Carlos M. Correa, "The Push for Stronger Enforcement Rules: Implications for Developing Countries," in *The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries* (Geneva: ICTSD Programme on IPRs and Sustainable Development, 2009), 27–80.

³¹⁴ Peter K. Yu, "Currents and Crosscurrents in the International Intellectual Property Regime," *Loyola of Los Angeles Law Review* 38, no. 1 (2004): 323–443.

³¹⁵ World Trade Organization, *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights: Panel Report, WT/DS362/R* (2009), 7.604.

³¹⁶ Article 41.5 provides: ‘Nothing in [Part III of the Agreement] creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.’

has rendered the agreement as obsolete. In the present time internet, file-sharing networks, advanced social media technologies have made massive problem of intellectual property infringement around the world and hundreds of lawsuits have been filed in various jurisdictions. Marci Hamilton has rightly observed that:

*“despite its broad sweep and its unstated aspirations, TRIPS arrives on the scene already outdated. TRIPS reached fruition at the same time that the on-line era became irrevocable. Yet it makes no concession, not even a nod, to the fact that a significant portion of the international intellectual property market will soon be conducted on-line.”*³¹⁷

Due the novelty of internet linked issues and the limited protection provided under TRIPS, it can easily be said that the agreement failed to provide enforcement of IP rights in the digital space.

A significant investment in funds, the creation of supportive organizational infrastructures, and the development of supplementary policy reforms are additionally necessary due to economic imperatives to enforce the regulations. Both developed and developing countries still struggle with a lack of resources; the costs associated with creating appropriate institutional infrastructures, revamping existing organisations, acquiring specialized knowledge through education or other means, and staffing courts, police agencies, customs offices, and prisons are quite high, which tends to make the enforcement mechanism much more challenging to carry out.”³¹⁸

³¹⁷ Marci A. Hamilton, "The TRIPS Agreement: Imperialistic, Outdated, and Overprotective," *Vanderbilt Journal of Transnational Law* 29, no. 3 (1996): 613–34, 614–15.

³¹⁸ Marci A. Hamilton, "The TRIPS Agreement: Imperialistic, Outdated, and Overprotective," *Vanderbilt Journal of Transnational Law* 29, no. 3 (1996): 613–34, 614–15.

Lastly, enforcement facilitation is as important as enforcement mechanism, the developed countries need to facilitate the developing countries to develop the infrastructure to tackle the issue at hand. Without this support it understandably TRIPS will fail to address the current challenge of IP protection. As Robert Sherwood wrote in his article titled, "Some Things Cannot Be Legislated", it won't matter much what intellectual property conventions and laws provide until the judicial systems in emerging and transitioning states are improved.³¹⁹ Similarly, According to Keith Maskus, Sean Dougherty, and Andrew Mertha, improving IPR protection is a necessary but insufficient precondition for this. Instead, a comprehensive and well-coordinated set of policy efforts that maximise the usefulness of IPRs must be implemented to enhance the system. Additional enterprise structural reform, the liberalisation of trade and investment, the support of financial and innovation systems to commercialise new technologies, the expansion of educational opportunities to create a human capital capable of absorbing and developing technology, and the definition of rules for preserving effective local market competition are a few examples of such initiatives.³²⁰

From the above discussion it can be concluded that international intellectual property law regime provides a deficient protection to the current challenges posed to the fashion industry, lack of effective enforcement mechanism, vague language, lack of substantive provision addressing the digital space, hefty economic requirements and conflicting laws at regional level are some of the reasons that are contributing to this deficient protection.

³¹⁹ Robert M. Sherwood, "Some Things Cannot Be Legislated," *Cardozo Journal of International and Comparative Law* 10, no. 1 (2002): 37–46, 42.

³²⁰ Keith E. Maskus, Sean M. Dougherty, and Andrew Mertha, "Intellectual Property Rights and Economic Development in China," in *Intellectual Property and Development: Lessons from Recent Economic Research*, eds. Carsten Fink and Keith E. Maskus (2005): 295–331, 302–06.

3.3 Conclusion

From all the discussion above, it can be concluded that the current international laws does not provide sufficient protection to the challenges faced by the industry, the international human rights laws due to the inherent limitations lack an effective system of enforcement mechanism, furthermore, international animal rights regime is currently not present to regulate the industry, moreover, the international environmental laws and international intellectual property laws are vague in their language, have deficient enforcement mechanism and incur huge financial costs, hence, a new specialized legal framework is required to regulate the industry.

CHAPTER 4

PROPOSED EFFECTIVE INTERNATIONAL FASHION LAW FRAMEWORK: A FOUR STAGE STRATEGY

4.1 Introduction

As discussed in the previous chapter, conventional laws addressing fashion industry are not sufficient to address the challenges of globalized fashion industry. This is due the fact that fashion industry requires regulation that could address all the issues that arise in the life of a fashion product, starting from designers idea to extracting the raw material to consumers closet and eventually towards its final disposal as all these aspects are important to regulated as Brewer in his article rightly argues that:

“fashion industry denotes not only the legal and regulatory framework applicable to the garment industry, but also the business, social, and ethical factors that underpin policy and legal developments.”³²¹

The following account delves upon the imminent need of establishing an international framework to regulate the fashion industry, further it provides the proposed effective international fashion law framework which is in line with the life-cycle of a fashion product. The proposed framework suggests a four-stage strategy to counter this challenge. In the stage one, policy measures at state level are addressed, then in stage two and three, policy measures at international and regional level are looked upon, and lastly, in stage four, the framework for International Convention on Fashion Industry is proposed. The

³²¹ Mark K. Brewer, "Fashion Law: More than Wigs, Gowns, and Intellectual Property," *San Diego Law Review* 54, no. 4 (2017): 739-784.

main object of this thesis is to provide a step forward towards formalizing the emerging field of fashion law.

4.2 The Eminent Need for an International Fashion Law Framework in Contemporary World

The previous chapter of this study discussed the legal conundrum of the fashion industry and highlighted the need for an international fashion law framework in order to regulate this globalized industry. The main areas uncovered by the study were issues of human rights, animal and environment rights and intellectual property regulations which provide a deficient protection on international scale in their current form. The eminent need for an international legal framework simply lies in the fact the an industry with a global economic standing of 3 trillion dollars annually is functioning without any legal regime while squashing the human rights, rights of animal, rights of sustainable environment as well as IP protections to name a few.³²² It is important to point here that the scope of this paper is limited to only these areas of law and future research may indicate other areas where more regulations might be required.

The critics of this cognitive may point out that there is no need for new laws instead implementation of the existing laws is required, however, many academicians and writers on the other hand are of the view that such assessment is problematic as:

“fashion law uniquely captures the dynamics of modern consumer demand and the digital economy, rapid global communication and complex logistical chains,

³²² C. Scott Hemphill and Jeannie Suk, "The Law, Culture, and Economics of Fashion," *Stanford Law Review* 61, no. 5 (2009): 1147-1199

fundamental human rights questions, and accessible, high profile cases that appeal to a new generation of savvy students, businesses, and scholars. Hence, there is no better time to embrace fashion law."³²³

Additionally, emerging fields of law have always been criticized before they were recognized example of which can be taken from the sports law or cyber law, however, today they represent "coherent and fundamental building blocks of legal thought."³²⁴

4.3 Proposed Effective International Fashion Law Framework

The proposed effective international law framework is discussed in detail under a fourstage strategy below with policy measures addressed at each level and finally a convention on international fashion industry is proposed.

4.3.1 Stage One: Policy Measures at State Level

The proposed system for the effective regulation of fashion industry stems not from the traditional top down model approach but works through a bottom up model, meaning thereby that in authors view policy measures starting from state level may be more effective in bringing any change then any measures at international or regional level to begin with, the reason being that top-down models "frequently provide less clarity than bottom-up models on how procedural equity could be assured as bottom-down policy models provide more institutional feasibility".³²⁵ The author proposes that in stage one in

³²³ Mark K. Brewer, "Fashion Law: More than Wigs, Gowns, and Intellectual Property," *San Diego Law Review* 54, no. 4 (2017): 739-784.

³²⁴ Einer R. Elhauge, "Can Health Law Become a Coherent Field of Law?" *Wake Forest Law Review* 41 , no.1 (2006) : 365-366.

³²⁵ Jeffrey J. Rachlinskit, "Bottom-Up versus Top-Down Lawmaking," *The University of Chicago Law Review* 73, no..2 (2006): 933.

the quest for an effective international fashion law framework, policy measures at state level should be taken. These measures are discussed in the preceding paragraphs.

4.3.1.1 Public Education, Research and Awareness Measures: Role of States, Businesses and Civil Society

The capitalist system of economy has developed from an endless cycle of production and consumption. In fashion industry this excessive production and consumption has resulted in various challenges including human rights, animal and environmental rights and lack of IP protection. In order to counter this challenge it is important to identify the key players that are responsible for this situation and can bring a change. The key players in the fashion industry include states, businesses and civil society, hence, it is extremely important that they carry out measures to counter these challenges.

To begin with, awareness about the adverse impacts caused by fashion is a new phenomenon and there is ample lack of research and education in the area. Therefore, the first step in resolving any problem is to acknowledge it and then devise solution through research and educational measures. States, businesses and civil society have a role to play in this regard. States as the first bearer of responsibility, need to firstly carry out research programs to calculate the negative impacts of fashion industry and develop strategies to counter those challenges. Secondly, states need to translate those strategies into educational and awareness programs to make the consumers and society at large recognize the intensity of the situation. A good example of this is the anti-tobacco awareness campaign³²⁶ that, in Europe and the US, especially among younger people,

³²⁶ Richard J. Bonnie, Kathleen Stratton, and Robert B. Wallace, *Ending the Tobacco Problem: A Blueprint for the Nation* (United States: National Academies Press, 2007).

decreased smoking to a manageable level through anti-tobacco communications and by limiting smoking in public places.³²⁷ Furthermore, civil society has always been a strong actor in igniting change. Campaigns to raise awareness about the negative impact of fashion industry to influence consumer behavior and also to put pressure on business to carry out sustainable practices as well as compel state to regulate the industry through effective laws as few measures that civil society can take in order to start addressing this problem. For instance, in Sicily there was a strong organized mafia which took protection money from shop owners in order to operate and government had little or no control over the situation, resultantly, a civil society organization named 'Addiopizzo' in Sicily advocated and convinced many shop-owners to stop the payments and label anti-mafia on their windows which eventually influenced consumer behavior to buy goods only from those shops, hence, this presents a good example of how civil society can influence positive change.³²⁸ Moreover, businesses should also adopt these awareness measures in their marketing practices which will ultimately bring them customer loyalty.

4.3.1.2 Implementation of Corporate Social Responsibility and State regulated

Restrictions and Incentives

After raising awareness and developing educational and research facilities, the second measure that can be taken at state level is the implementation of corporate social responsibility. A management idea known as "corporate social responsibility" (CSR) calls on businesses to include human, social, and environmental issues into their daily

³²⁷ Guido Palazzo, Felicitas Morhart, and Judith Schrempf-Stirling, *Shopping for a Better World: How Consumer Decisions Can Help to Promote Sustainability and Human Rights* (London: Routledge, 2016): 200-208.

³²⁸ Naomi Crowther, "Rising Up Against the Racket: Palermitani Facing the Sicilian Mafia Head On," *Journal of Public and International Affairs* 1, no. 9 (2014): 131.

operations and interactions with stakeholders.³²⁹ The concept of Corporate Social Responsibility provides that companies should firstly adopt a transparent and reliable code of conduct which should be line with the international legal instruments such as UDHR, ILO conventions, environmental law conventions to name a few. Secondly, they shall develop the implementation mechanism for the enforcement of the code of conduct in this regard they can work with other stakeholders such as unions and national governments from where they are sourcing their products in order to minimize the various violations of international law. Lastly, by involving the workers to voice their issues and ensuring the right to collective bargaining and providing a forum for resolution of their disputes, companies can ensure their responsibility towards society. States need to make laws that make compulsory for fashion business to ensure Corporate Social Responsibility Mechanism in order to operate and additionally require them to submit a yearly transparency report for audit by the government agencies. States can further introduce restrictions on the sale of products by fashion businesses which do not comply with CSR through the introduction of government taxes and may provide incentives to those who do by providing them subsidies which can also be a tool of motivation for brands to comply with CSR.

4.3.2 Stage Two and Three: Policy Measures at Regional and International Level

Policies or laws that develop from bottom-up approach usually lack in equitable standards, uniformity, effective drafting and suffer from various procedural lacunas and loopholes, hence, at stage two and three the author proposes to establish laws and

³²⁹ Frida Hestad Torkelsen, "Textile and Garment Industry in India: Challenges of Realizing Human Rights and the Impact of the Ruggie Framework" (Master's thesis, Oslo and Akershus University College of Applied Sciences, 2017).

policies that are uniform and have equitable international standards in this regard regional and international organizations and actors should take up the challenge to crystallize these state practices by removing their shortcomings and develop uniform policies regulating the global fashion industry. These policies are discussed in detail below.

4.3.2.1 Policy for Supply Chain Accountability

Fashion industry as discussed earlier has a global supply chain which is not transparent and ultimately results in various violations. In order to counter this issue, there is an imminent need to develop a policy for global supply chain accountability to regulate the industry. Fashion companies are required by the principles of supply chain accountability to disclose the names, addresses, and other vital details about the factories that produce their branded goods.³³⁰ This transparency can ensure identification of those global fashion brands who source their products through factories which are not following the required standards. Factories which are working contrary to the set standards can then be identified by the Unions, NGO's and even workers themselves in order to pressurize them to follow all the required standards. The common minimum standard for supply chain disclosure may include "firstly, full name of all authorized production units and processing facilities, secondly, site addresses, thirdly, parent company of the business at the site, fourthly, type of products made and lastly, worker numbers at each site."³³¹ Companies may then be required to update this information twice in a year. The publication of this supply chain information is also in line with principles set out under

³³⁰ Aruna Kashyap, "Follow the thread: the need for supply chain transparency in the garment and footwear industry", *Human Rights Watch*, (2017), <https://www.hrw.org/report/2017/04/20/followthread/need-supply-chain-transparency-garment-and-footwear-industry>.

³³¹ T. C. Edwin Cheng and Tsan-Ming Choi, *Sustainable Fashion Supply Chain Management: From Sourcing to Retailing* (New York: Springer International Publishing, 2015).

the *UN Guiding Principles on Business and Human Rights* which provides a “Protect, Respect, Remedy framework to counter the challenges in the business industries.”³³² Furthermore, this supply chain disclosure can also help in the enforcement of laws under various jurisdictions. Moreover, international initiatives such as *Higgs index* or *Corporate Human Rights Benchmark* which publishes score card of brands that follow the environment sustainability and human rights compliance standards respectively can also be helpful in encouraging global fashion brands to follow the policy of supply chain accountability. Additionally, regional organizations can make supply chain disclosure policy mandatory for the brands in order to get license. In authors view this policy if developed and implemented on regional and then international level can help countering the current dilemma and challenges.

4.3.2.2 Policy for Product Life-Cycle Responsibility

Fashion brands must be held accountable under their product life-cycle responsibility which may comprise of principles related to human rights protection, animal welfare policies and regulations for sustainable environment. This may entail that fashion companies would be held responsible for ensuring that their products are manufactured conscientiously throughout its life-cycle. This policy model is already being practiced in various industries and has borne fruitful results, for example, “hazardous waste management under Cradle to grave scheme in the United States is governed by the

³³² United Nations, *UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN Guiding Principles), 2011, http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

federal Resource Conservation and Recovery Act and its state-level statutory counterparts.

Hazardous waste is tracked from generation through disposal. Outside of the US, the European Union published a directive in 2000 covering end-of-life processes for automobiles that was created expressly to lessen the environmental effects of those vehicles. The directive mandated that "economic operators" (those involved in the motor vehicle industry, such as automakers, distributors, motor vehicle insurance companies, etc.) set up easily accessible collection systems for all end-of-life vehicles, incentivized reuse and recycling of vehicle parts, and established materials regulatory requirements on the production end to restrict hazardous material."³³³ The author is of the view that, these implementation life-cycle systems can be used to develop a model for fashion industry by the regional and international organizations.

Prohibition of unsustainable materials and processes must be developed with the promotion of sustainable material and processes under life-cycle responsibility, for instance, fashion brands can be encouraged to use more sustainable material such as lyocell or circulose to make their products. Over 170 well-known and diversified brands, including Patagonia, H&M, TOMS, and Levi's, reportedly use lyocell. When finishing cotton denim, Levi's developed their "WaterLess" collection approximately ten years ago, combining procedures and reducing or eliminating water when stonewashing. Circulose, a newly patented textile product, was created to reuse used clothing in a novel method in much more recent advances. Circulose is produced entirely of recycled cotton textile

³³³ European Parliament and of the Council, "Directive on End-of Life Vehicles 2000/53/EC," (2000), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0053&from=EN>.

waste, according to its website. In its 2020 "green" collection, fast fashion company H&M employed Circulose for the first time in retail.³³⁴

Moreover, principles of animal welfare shall also be incorporated in life-cycle responsibly, reference can be made to the proposed principles under the animal welfare convention which provide that no animal should be murdered or subjected to harsh treatment or needless suffering. When certain animals are under human control, humans have a moral duty to give them housing and care that are suitable for their species according to its Article 1.³³⁵ Hence, protocols in line with these protections shall be made to compel fashion brands to carry out measures for animal welfare under their life-cycle responsibility. The author posits that these measures can only be implemented in a phase-out and ultimately a complete ban strategy.

4.3.2.3 Application of advanced cutting-edge technologies

In this digital age, protecting intellectual property rights of fashion design has become a herculean task as this challenge is present both on/offline space and current global intellectual property regime fails to provide protection. As the research and literature on this current issue is limited, some possible solutions to counter this challenge might be in the application of advanced cutting-edge technologies in both on/offline space, for instance, "Smart monitoring system (SMS) provides effective on/offline IP protection. SMS is a cluster innovation that assists in protecting fashion brands from online domain name infringements in a wise and economical manner. SMS can also efficiently monitor

³³⁴ Olivia Suraci, "The Best-Dressed Polluter: Regulation and Sustainability in the Fashion Industry," *Hastings Environmental Law Journal* 27, no.1 (2021): 225.

³³⁵ Article 1, International Convention For The Protection Of Animals, (2019).
<https://law.lclark.edu/live/files/22936-182-favrepdf>

the following functions to provide efficient on/offline brand IPR protection. On the Internet, it identifies information and logo abuse for quick enforcement. On Social Media, it follows a brand on social media and the content elimination process. It also eliminates unlawful content and scans the web for domain registrations that resemble the brand. Additionally, it keeps an eye on the main app stores to spot and remove any counterfeit apps. Paid search involves locating and removing various adverts that harm a brand's traffic and value, while IPR enforcement involves taking legal action against internet infringers. This state-of-the-art digital technology can recognise and delete web pages as well as other content online that violates a fashion company's intellectual property (unauthorised sales, unauthorised dissemination of private information, improper use of a logo, or other abuse).”³³⁶

Furthermore, the following advantages are provided for the fashion companies by the smart traceability system (STS), which is enabled by the convergence of technologies like artificial intelligence (AI), blockchain (BC), cloud computing (CC), and business intelligence (BI): Brand Protection (BP) eliminates testing at every step of the supply chain transaction and transforms the fashion brand into a quality symbol for consumers. Manufacturing Performance (MP) recognises fake goods and handles waste, inventory, and warranty costs more effectively. Stakeholder Engagement (SE) increases brand loyalty and offers actionable value chain insights for fashion brands. Sustainability

³³⁶ Prafulla Kumar Padhi, "A Quest towards Fashion Design Protection Model for the Intellectual Property Rights Global Regime," *International Journal for Research in Applied Sciences and Biotechnology* 5, no. 5 (2018): 4-14.

traceability is essential to a brand's product life-cycle analysis since it regulates the fashion company's influence on the environment and society.³³⁷

Additionally, international organizations such as WIPO and WTO should work with fashion industry stakeholder to enact further high equilibrium IP regime, WIPO should coordinate with member states of WTO, and TRIPs to enact IP laws for the global regime specially addressing the needs of fashion industry and work for enhancement and promotion of protection systems (ITMS, ITDS, ICS, IPS, IIDS, ISGS, ITSS, LSAO) for the global regime.³³⁸

4.3.3 Stage Four: International Convention on Fashion Industry

In the last stage, on the international level an International Convention on Fashion Industry (Annexure-A) is proposed for the regulation of globalized fashion industry. It is the duty of both national and international stakeholders to promote this convention and secure maximum signatures and ratification through public awareness and lobbying in order to regulate the industry.

4.4 Conclusion

From the above discussion, it can be concluded that there is an imminent need to regulate the international fashion industry, this challenge can be countered through this proposed four-stage strategy by following a bottom-up policy model instead of conventional top-down model for effective global implementation and acceptance. These measures if adopted will lead towards formalizing of the emerging field of fashion law.

³³⁷ Barbara Pozzo and Rossella Esther Cerchia, *The New Frontiers of Fashion Law* (Basel: MDPI AG, 2021).

³³⁸ David Keeling, *Fashion and Intellectual Property* (Cambridge: Cambridge University Press, 2020).

CHAPTER 5

CONCLUSION

5.1 Conclusion

Fashion is one of the world's largest industry with an annual global economic output of 3 trillion dollars, however, in contrast to its magnitude the industry is massively unregulated which presents a global dilemma as there is an absence of any explicit international or regional legal regime to govern this industry. The lawlessness in this industry has resulted in violations of various international laws and treaties, starting with the human cost of fashion, cases studies, reports and statistics analyzed in this study provides an inclusive view of the tragic state of affairs connected to human rights. The inadequate human occupational protocols, unsafe working conditions, forced and child labor, unfair employment practices and poor subsistence wages are some of the few examples how human rights are being violated in this industry. Although international human rights framework and conventions of International Labor Organization exists, this study highlighted that they are neither sufficient nor adequate to address the current challenge, moreover, the inherent limitations of international law due the "consent theory" results in the lack of effective mechanism to provide protection.

Furthermore, the exploitation of animals in various sectors of animal industry including fur, leather, wool, feathers and silk industry depicts the horrific situation in terms of the methods and processes which are currently being used to make fashion products. The use of carbon monoxide and anal electrocution to kill animals, process of museling, live plucking of feathers, boiling the cocoons for silk are few examples of this cruelty which

are used just for the sake of fashion. Unfortunately, presently no international animal rights law regime exists to govern this brutality, some proposed laws and framework are present including the UN Convention on Animal Health and Protection (UNCAHP), International Convention for the Protection of Animals Welfare (ICAW), 1978 UNESCO Universal Declaration of Animal rights, however, these proposed laws still needs to be adopted in order to impose any obligations on states and eventually the industry.

In addition to this, the environmental catastrophe which has resulted from the introduction of fast fashion is another issue of immediate concern, as highlighted by this study fashion industry is the world's best dressed polluter and contributes to climate change second to the oil industry. The entire life-cycle of production in this industry is rampant with environmental concerns, starting with the raw material extraction which presents the issue of water waste and use of pesticides for growing crops to make fashion articles, to textile processing where there are issues of bleaching, dyeing and printing residues, furthermore, in the post-manufacturing phase the textile waste, groundwater pollution, air pollution and eventually climate change are some of the impacts that are left by fashion industry. There are plethora of international environmental laws and principles that govern the issues related to environment including United Nations Framework Convention on Climate Change, 1992, Paris Agreement, 2015, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, UN Fashion Industry Charter on Climate Action, however, a critical analysis of these laws reveals that these laws are not effective or sufficient to address the need to this challenge as they present "international commitments" rather than "international obligations", the non-binding language, weak or non-existence of effective enforcement mechanism, lack

of any environmental liability, are some of the key challenges which are faced by international environmental law. With regard to the fashion industry, the principle of product life-cycle responsibility is also missing in this laws.

Moreover, the intellectual property theft ranging from the issues of copying, counterfeiting, knockoffs to pirated goods is a prevalent issue in fashion industry as this study has revealed that the revenue generated through selling these products is even used in funding terrorist activities. On the other hand, international law concerning intellectual property is deficient in providing adequate protection and lacks on many accounts mainly due the presence of conflicting regional legal regimes some providing stringent protection and others providing no protection at all, furthermore, lack of protection of fashion design and effective enforcement mechanism under the Agreement on Trade-related Aspects on Intellectual Property Rights (TRIPs), World Intellectual Property Organization (WIPO) international systems comprising of International Trademark System (ITMS), International Copyright System (ICRS), International Patent System (IPS) and International Industrial Design System (IIDS) and the revolution of internet has also made the current international intellectual property laws obsolete.

5.2 Recommendations

To counter these challenges as presented in this study, the author proposes a four stage strategy which is based on a bottom-up model of legislation and reforms, in contrast to conventional top down model, as the studies reveals that any change starting from a bottom-up model have more procedural equity, institutional feasibility and effective implementation.

1. To begin with, in the first stage, it is proposed that policy measures at state level should be taken which may start with the public education, research and awareness measures by states, businesses and civil society.
2. After raising awareness and developing educational and research facilities, the second measure that can be taken at state level is the implementation of corporate social responsibility. States need to make laws that make compulsory for fashion business to ensure Corporate Social Responsibility Mechanism in order to operate and additionally require them to submit a yearly transparency report for audit by the government agencies.
3. States can further introduce restrictions on the sale of products by fashion businesses which do not comply with CRS through the introduction of government taxes and may provide incentives to those who do by providing them subsidies which can also be a tool of motivation for brands to comply with CSR.
4. At stage two and three, policy measures at regional and international level should be taken, this is important due to the fact that practices or laws developed through bottom-up model usually lack in equitable standards, uniformity, effective drafting and suffer from various procedural lacunas and loopholes, hence, to counter this they need to be crystallized.
5. Several policies including, policy for supply chain accountability which makes it obligatory on companies to publish all the information of their supply chain in order to determine whether they are working in accordance with the set standards should be adopted.
6. Further, policy for product life-cycle responsibility which includes principles related to human rights protection, animal welfare policies and regulations for

sustainable environment should be adopted. This may entail that fashion companies would be held responsible for ensuring that their products are manufactured conscientiously throughout its life-cycle.

7. Moreover, application of advanced cutting-edge technologies including smart monitoring system (SMS), smart traceability system (STS) for protection of intellectual property rights in both on-line and offline space as discussed in detail in this paper should be developed.
8. In the final and fourth stage, a proposition is put forth at the international level—a call for the establishment of an International Convention on the Fashion Industry. This proposal aims to ensure the effective regulation of this globally interconnected industry. The convention encompasses a preamble and 19 articles, divided into four parts, offering a comprehensive framework to govern the international fashion industry.

In author's views, these measures if adopted will lead towards the formalization of emerging field of fashion law, however, this is only possible if there is a political will at all levels.

ANNEXURE-A**INTERNATIONAL CONVENTION ON FASHION INDUSTRY****PREAMBLE**

THE CONTRACTING PARTIES TO THIS CODE,

ACKNOWLEDGING, that the global fashion industry is massively unregulated and is in dire need of establishing effective and comprehensive international standards for its equitable and sustainable future,

CONCERNED, that the global fashion supply chain is rampant with human rights abuses including serious violations of labor rights specially the right to occupational health safety and standards to the issues pertaining to child and forced labor,

CONCERNED, that animal rights abuses in the fashion industry have severe environmental, cultural and economic impacts which is resulting in extinction of many animal species,

CONCERNED, that fashion industries environmental impact is adversely affecting the natural ecosystems and humankind and might result in huge environmental catastrophe if not addressed,

CONCERNED, that massive sale of counterfeited and knockoff fashion articles have an adversarial economic effects on the fashion industry and realizing that current intellectual property regime does not provide adequate protection, RECOGNIZING, that heretofore there existed no comprehensive international

legal regime which effectively dealt with the legal conundrum of fashion industry, REAFFIRMING, the principle of sovereignty of states in the international cooperation to address the conundrum of fashion industry,

RECOGNIZING, that States should enact effective fashion law legislation, that fashion law standards, management objectives and priorities should reflect the sustainable developmental context to which they apply,

CONVINCED that meaningful and effective improvements in the regulation of fashion industry can be assured through cooperative action by all States,

HAVE AGREED to the following provisions:

PART I: GENERAL PROVISIONS

Article 1 Definitions

For the purpose of this code:

1. “Fashion Industry” means “industry that includes the production, design, manufacturing and selling of fashion apparels, accessories and related products.”
2. “Supply Chain” means “the series of entities involved in the supply and purchase of materials and goods, from raw materials to final product and it will comprise the vendors of raw materials, Production Company, storage warehouses, distribution centers and the retailers.”
3. “Product Life Cycle” means “the total lifespan of a product and it begins when a product is first conceived in the development stage and continues through

when it first goes to market and finally, it ends when the product is removed from the market.”

4. “Un-sustainable Materials and processes” means “material and processes which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socioeconomic systems or on human health and welfare.”
5. “Animal” means “any nonhuman mammal, bird, reptile, amphibian or fish and any other organisms.”
6. “Climate Change” means “change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”
7. “Intellectual Property” means “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

Article 2

Objective

The ultimate objective of this Convention and any related legal instruments that the International Fashion Law Council may adopt, in accordance with the relevant provisions of the Convention, is to regulate the globalized fashion industry by providing guiding principles for fashion companies, effective system of

implementation, concrete financial mechanism and process of dispute resolution in order to ensure an equitable and sustainable future.

Article 3

Principles

The contracting parties shall be guided by the following principles in order to achieve the objective of the convention:

1. The state parties shall ensure the supply chain transparency of the fashion companies and guarantee that their supply chains are clear from any abuses of human rights, violations of principles of animal welfare, environment exploitation resulting in climate change as well as intellectual property misuse or any other international law.
2. The state parties shall ensure that fashion companies undertake the product life-cycle responsibility, manufacture products under complete corporate social responsibility and publish yearly transparency reports.
3. The state parties shall put prohibition on unsustainable materials and processes that are used in fashion industry and promote sustainable practices.
4. The state parties shall develop high equilibrium global intellectual property regime and incorporate the new concept of fashion product design, in order to ensure protection.

Article 4

Commitments

The state parties shall adopt national legislation to regulate fashion companies incorporating all principles, and effective enforcement procedures in order to mitigate the current challenges and further provide periodic assessment reports as per Article 9 of this convention for the evaluation of the progress.

Article 5

Research and Observations

In carrying out commitments under Article 4, all state parties shall engage in development and support to strengthen the national research facilities in order to carry out systematic observations required to establish effective standards and procedures to regulate fashion industry.

Article 6

Education, Training and Public Awareness

All state parties shall engage in carrying out measures to promote and facilitate both at national, regional, and international level in accordance with their national laws and within their respective capacities:

1. The development and implementation of educational and public awareness programs on fashion industry and its effects;
2. Public access to information on the effects of fashion industry;

3. Public participation in addressing the issues of fashion industry and its effects and developing adequate responses;
4. Promotion of the concept of corporate social responsibility for fashion companies; and
5. Training of scientific, technical and managerial personnel in this field.

PART II: ENFORCEMENT MECHANISM

Article 7

International Fashion Law Council

1. An International Fashion Law Council is hereby established.
2. The International Fashion Law Council, as a supreme body of this convention shall periodically review the implementation of the provisions of the Convention and any other related instruments that it may adopt, and within its jurisdiction and powers, shall make the necessary decisions for the effective implementation of the provisions of this convention. To this end, it shall:
 - a) Periodically examine the implementation of the provisions of the convention and obligations of the state parties;
 - b) Promote and facilitate the exchange of information related to the measures adopted by state parties to address the issues of fashion industry;

- c) Make assessment by examining all the information available regarding the implementation, overall measures taken by the parties as well as the collective impact and extent to which the objectives of the convention is being achieved;
- d) Ensure publication of regular reports on the implementation and enforcement of the convention;
- e) Suggest recommendations of any necessary matters for effective implementation;
- f) Mobilize to gather financial resources, establish subsidiary bodies, cooperate with international organizations and exercise any other function that is essential for the implementation of the convention.

Article 8

Secretariat

1. A secretariat is hereby established under this convention.
2. The secretariat shall have the following functions:
 - a. Make arrangements for the sessions of International Fashion Law Council;
 - b. Prepare, compile, and transmit reports on the activities of the International Fashion Law Council;

- c. Ensure necessary coordination required for the functionality of this convention.

Article 9

Subsidiary Body for Scientific and Technological Advice

1. A Subsidiary Body for Scientific and Technological Advice is hereby established to facilitate the International Fashion Law Council with timely provision of new information relating on scientific and technological matters related to the convention.
2. The body shall be multidisciplinary and shall comprise of experts from all state parties.
3. The body shall directly report to the International Fashion Law Council on all aspects of its work.

Article 10

Subsidiary body for Implementation

A Subsidiary body for Implementation is hereby established to assist the International Fashion Law Council by providing reports on the implementation of the convention. The body shall also provide reviews and suggest measures for the implementation of the convention.

Article 11

Financial Mechanism

1. A financial mechanism shall be adopted by the International Fashion Law Council in order to determine the eligibility criteria to provide funding for the projects to combat the challenges of fashion industry.
2. The financial mechanism shall follow a balanced approach and shall be equitable with a transparent system of governance including all state parties.

Article 12

Communication of Information related to Implementation

1. All state parties shall provide information related to implementation of the convention through the publication of transparency report to secretariat annually.
2. A detailed description of the policies and measures adopted by the parties to achieve the objectives of convention shall be incorporated in the report with the proposals for projects required for the implementation of the convention. Proposal may include request for financial funding, technological assistance, techniques or practices deemed necessary for the implementation of the project.

PART III: DISPUTE RESOLUTION

Article 13

International Arbitration Tribunal of Fashion Industry

1. An International Arbitration Tribunal of Fashion Industry is hereby constituted for the peaceful resolution of disputes between all parties.
2. The organizational structure, composition and powers of the tribunal shall be subject to consensus and decisions of International Fashion Law Council.

PART IV: PROCEDURAL PROVISIONS

Article 14

Amendments to the convention

1. All state parties can propose amendments in the ordinary session of International Fashion Law Council.
2. The Amendments to this Convention shall be adopted by a three-fourth majority vote of the parties to the Convention which are present and voting either affirmative or negative at the ordinary session.
3. Acceptance of the amendment shall be notified by the secretariat in writing and shall enter into force between all contracting parties within 13 days of such acceptance and notification.

Article 15

Signature, Ratification and Accession

1. The convention is open for signature by all states and all International and Regional Organizations.

2. The convention shall be subject to ratification and accession by all states and all International and Regional Organizations and Instruments of ratification and accession shall be deposited with the secretariat.
3. After the final deposition of the instruments and the notification by the secretariat, the contracting party shall be bound to follow all the obligations under the convention.

Article 16

Reservation

No reservation shall be made to the convention.

Article 17

Withdrawal

The state party may withdraw from the convention after three years from the date on which the convention entered into force for the party after giving written notification to the secretariat.

Article 18

Entry into force

The convention shall entry into force on the ninetieth day after the date of deposit of the instrument of ratification and accession by the contracting party.

Article 19

Authentic Texts

The original version of this convention, in Arabic, Chinese, English, French, Russian and Spanish language which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned parties, being duly authorized to that effect, have signed the present Convention.

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