COPYRIGHT LAW AND TRADITIONAL CULTURAL EXPRESSION – PROTECTING FOLKLORE, INDIGENOUS ART UNDER IP LAW

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ABSTRACT

Cultural heritage lives through the traditions, artistic practices and creative expressions passed from one generation to the next. Traditional Cultural Expressions (TCEs), often associated with folklore, form an important part of the cultural identity and heritage of communities. They include traditional dances, music, paintings, crafts, textiles, patterns, symbols, stories, and performances that have been preserved and developed over generations. India, with its diverse cultural traditions, provides numerous examples, including Madhubani, Warli and Gond paintings, Pattachitra, traditional embroidery and handloom practices. However, protecting these expressions presents significant legal challenges because conventional copyright law is generally based on identifiable authorship, originality, and ownership.

This paper examines the protection available to TCEs under Indian intellectual property law, particularly through copyright, geographical indications, trademarks and industrial designs. It analyses the extent to which these existing mechanisms can address the collective and continuing nature of traditional cultural expressions. The paper also considers the role of cultural institutions, using the Nita Mukesh Ambani Cultural Centre (NMACC) as a case study to examine how traditional cultural practices can be preserved, presented, and promoted in contemporary cultural spaces.

The study highlights the limitations of the existing Indian intellectual property framework, particularly in relation to community custodianship, attribution, prior informed consent and benefit-sharing. It argues for consideration of a complementary sui generis framework that can recognise community interests while maintaining sufficient space for education, research, reinterpretation and legitimate artistic creativity. The objective is to develop a balanced approach that protects cultural heritage without restricting the natural evolution of living traditions.

Keywords: Traditional knowledge, Traditional cultural expressions, Copyrights, Expressions of folklore, Legal Framework.

Introduction

Communities retain their identity, history, and artistic practices through Traditional Cultural Expressions (TCEs), which are living forms of legacy. Folk music, dance, storytelling, art, fabrics, handicrafts, rituals, and patterns are just a few of the various ways they manifest. Because they link current generations to the cultural customs of their predecessors, their significance goes beyond creative expression[1].

William Thoms used the term "folklore" in 1846 to refer to the "lore of the people."[2] The WIPOUNESCO Model Provisions identify representations of folklore through four broad categories: verbal, musical, performative, and tactile expressions, notwithstanding the fact that national and international legislation do not offer a single, widely agreed definition of folklore. Folktales, music, dances, rituals, paintings, ceramics, jewellery, fabrics, costumes, and other traditional artwork are among them.[3]

India offers an important context for studying this problem because of its wide cultural variety. Through exhibitions, performances, and public interaction, organisations like the Nita Mukesh Ambani Cultural Center (NMACC) introduce Indian creative traditions into modern cultural settings. These projects also draw attention to real-world issues with appropriate cultural representation, documentation, credit, and replication.

This Paper contains the adequacy of existing intellectual property mechanisms for TCEs and explores whether a complementary legal approach can better recognise community interests while preserving freedom for genuine artistic creativity.

Understanding Traditional Cultural Expressions

The unique area between culture and creativity is occupied by traditional cultural expressions.

Instead of being kept by formal authorship systems, they are developed by community experiences and passed down via practice, memory, and transmission. A dance performed at a community festival, a song learned within a family, or a pattern repeated by generations of

[1] WIPO, *Traditional Cultural Expressions*, World Intellectual Property Organization.
[2] WIPO, *Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*.
[3] WIPO & UNESCO, *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (*1982).

craftsmen can all eventually become a part of a shared cultural identity. As a result, their value is found in both their creative form and the bonds they have with those who have supported them.[4]

Folklore encompasses a wide range of cultural expressions. Tales and poetry are examples of verbal forms; songs and instrumental traditions are examples of musical forms; dance, theatre, and rituals are examples of performative forms; and painting, sculpture, ceramics, jewellery, needlework, textiles, and handicrafts are examples of material forms. In practice, these groups frequently overlap. For example, a traditional festival may incorporate visual art, narrative, dance, music, and costumes into a unified cultural activity.[5]

Even though the two often interact, it's important to distinguish between traditional cultural expressions and traditional knowledge. Traditional knowledge often refers to information and abilities gained from communal experience, such as techniques for harnessing natural resources, farming methods, or medical expertise. The focus of TCEs is the artistic expression of cultural identity. A traditional cloth serves as an excellent example of this relationship: its themes, colours, and creative patterns may reflect cultural expression, while the process employed to create it may comprise traditional knowledge.

When individual artists expand upon local customs, a significant problem emerges. A modern artist could use a classic motif to create a brand-new picture, piece of clothing, or piece of music. Intellectual property protection may be granted to the new work if it demonstrates enough originality, but this protection should not be mistaken with ownership of the cultural source from which it originates. In situations when traditional forms lack an identified original originator, this difference becomes very crucial.[6]

There are many instances of this ongoing relationship between tradition and innovation in India. Through ongoing cultural practice, Madhubani, Warli and Gond painting, Pattachitra, Chikankari, handloom customs, folk music and dance have all evolved. Allowing them to adapt to shifting social and creative settings is more important to their existence than maintaining them unaltered. As a result, any legal framework pertaining to TCEs must preserve their cultural ties while allowing ample room for true creative expression, adaptation,

[4] WIPO, *Traditional Cultural Expressions*, World Intellectual Property Organization.
[5] WIPO & UNESCO, *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions* § 2 (1982).
[6] WIPO, *Traditional Knowledge*, World Intellectual Property Organization.

and reinterpretation.[7]

Protecting Traditional Cultural Expressions under Indian Intellectual Property Law

Traditional Cultural Expressions (TCEs) are not yet covered by a single, comprehensive intellectual property framework in India. Instead, depending on the type of expression and the context of its usage, protection may come from several areas of intellectual property law. While each can handle a specific feature of cultural material, copyright, geographical indications, trademarks, and designs have different criteria and goals. Because of this disjointed approach, it is vital to look at what is protected and who may benefit from it, rather than just whether protection exists.

When a cultural expression takes the shape of an original literary, theatrical, musical, or artistic work, copyright offers the most immediate kind of protection. The more general categories acknowledged by the Copyright Act of 1957[8] may include traditional paintings, musical works, written folklore, and specific types of performances. But the problem arises when the phrase has evolved over many generations, and its original author is unknown. Because copyright is inextricably tied to creativity and originality, the community does not immediately acquire a copyright just because a cultural tradition exists.

Another challenge is ownership. While TCEs may not have a single person who can claim to have produced the expression, the Copyright Act typically designates an author or legally acknowledged owner. Another structural distinction brought about by copyright's limited term is that, although copyright protection is technically time-bound, traditional cultural practices may endure forever. For individual artists and performers, however, moral rights and performers' rights can offer significant protection. The rights of performers in respect to performances are acknowledged by the Copyright Act, which places special emphasis on protecting live artists who present traditional content.[9]

As a result, the Indian Intellectual Property system offers a few protection options, each of which caters to a distinct legal interest. Trademarks can enhance commercial identification

[7] WIPO, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, WIPO Publication No. 933 (2020).
[8] The Copyright Act, 1957, (Act No. 14 of1957) S 38A, 57.
[9] The Copyright Act, 1957, (Act No. 14 of 1957), S 38A & 57.

and authenticity; design legislation can safeguard qualifying new visual designs; a GI[10] can safeguard the geographical identity of qualifying items; and copyright can protect an original contemporaneous invention. However, none of these systems are created expressly to acknowledge communities' collective guardianship of cultural manifestations that have evolved over many generations.

Therefore, the main obstacle is not the total lack of legal protection but rather the lack of a framework that views the community as an ongoing cultural participant. Current legislation can safeguard specific goods, artwork, signs, or designs, but it does not fully address issues of benefitsharing, cultural attribution, community permission, or protection from improper exploitation. This gap serves as the foundation for investigating whether Indian law necessitates a supplemental strategy that particularly addresses the collective and ongoing nature of TCEs.[11]

Copyright and the Problem of Collective Cultural Creativity

The foundation of copyright law is the notion that an identifiable author may be linked to creative work. Dealing with Traditional Cultural Expressions, which frequently result from a community's common behaviours rather than the efforts of a single, well-known person, makes this challenging. It might be challenging to identify who should be legally recognised as the author of a folk song, traditional pattern, or craft method that has been steadily developed over several generations.

Another challenge arises from its originality. A modern artist may begin a new painting, piece of music, or design using a conventional form. The final product may be protected by copyright if it demonstrates enough originality.[12] However, this protection should not be interpreted as giving someone ownership of the traditional form. Therefore, it is crucial to distinguish between a new expression and its cultural origins.[13]

When a tradition is seen as belonging to a community, the ownership issue becomes even more complicated. Collective custodianship is difficult to accommodate under traditional copyright

[10] The Geographical Indications of Goods (Registration and Protection) Act, 1999, S 2(e), 11 & 21.
[11] WIPO, *Intellectual Property and Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options*, World Intellectual Property Organization.
[12] *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.
[13] *Academy of General Education, Manipal v. B. Malini Mallya*, (2009) 4 SCC 256.

laws, especially in situations when the community lacks a legally acknowledged person who may exercise rights on its behalf. Even if they still have significant cultural and social worth, many earlier cultural expressions may also be considered to be in the public domain, meaning they are not subject to standard copyright protection.

This distinction is further emphasised by the short copyright period. While cultural practices may endure and change forever, copyright ultimately expires. As a result, safeguarding a recently produced work differs from safeguarding the tradition it is derived from. Therefore, while Indian copyright law can encourage individual innovation resulting from cultural legacy, it does not by itself offer a comprehensive system for protecting the community interests associated with that material.[14]

Global Structure for TCE Protection

1. Role of WIPO in the Protection of Traditional Cultural Expressions

The World Intellectual Property Organization (WIPO) has been a key player in influencing the debate on Traditional Cultural Expressions (TCEs) at the juncture between intellectual property rights, traditional knowledge, and cultural heritage. Its work acknowledges that traditional intellectual property arrangements, which are often built on identified artists and individual rights, may not necessarily accommodate creative traditions created and upheld by communities. WIPO has supported worldwide debates on potential legal strategies for safeguarding traditional knowledge and traditional cultural expressions through its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).[15]

The unapproved appropriation or commercial exploitation of cultural content without the proper acknowledgement or involvement of the associated communities is a major issue in these discussions. Therefore, WIPO's work takes into account strategies like attribution, protection against theft, prior informed permission, and fair benefit-sharing that may give community interests more prominence.[16] These guidelines are especially important in

[14] The Copyright Act, 1957, Act No. 14 of 1957, §§ 22–23; WIPO, *Traditional Cultural Expressions*, World Intellectual Property Organization.
[15] The Copyright Act, 1957(Act No. 14 of 1957) S 13 & 17.
[16] WIPO, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (2020).

situations when cultural manifestations are valuable commercially, but their authors or guardians cannot be identified.

The goal of WIPO's strategy goes beyond only prohibiting the application or modification of traditional culture. It also takes into account how legal cultural interchange, innovation, and ongoing progress can coexist with protection. Since TCEs are living behaviours rather than fixed objects, this balance is crucial.

WIPO's ongoing efforts offer India a helpful global benchmark. The current framework in India is based on a number of intellectual property mechanisms, such as trademarks, copyright, and geographical indications, although these laws deal with specific types of protection rather than TCEs as a separate category. Therefore, the global dialogues spearheaded by WIPO offer a useful foundation for evaluating whether further actions are necessary to acknowledge community interests while preserving the accessibility, creativity, and evolution of Indian cultural traditions.

2. WIPO-UNESCO Model Provisions on Expressions of Folklore, 1982

The WIPO-UNESCO Model Provisions of 1982 were created to give nations direction for drafting suitable legislation to safeguard folkloric expressions. They embraced a wide interpretation of folklore, encompassing verbal forms like poetry, riddles, and folktales; musical forms like songs and instrumental music; expressions through dance, drama, and rituals; and tangible forms like paintings, ceramics, jewellery, textiles, costumes, handicrafts, and architectural creations. This method is important because it acknowledges the existence of both material and performative forms of cultural innovation.

Addressing the unapproved or inappropriate use of folklore is one of the main goals of the Model Provisions, especially where it results in cultural harm or financial gain without sufficient acknowledgement of the relevant group. [17] As a result, the framework goes beyond the conventional copyright concept, which often links protection to a single, identifiable author.

Instead, folklore may grow organically within a community and be connected to it for many

[17] WIPO & UNESCO, *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions* (1982).

generations.

Since many Indian traditions, such as folk art, textiles, handicrafts, music, and dance, have evolved via community practice, the Model Provisions are especially pertinent to India. The Model Provisions offer a crucial conceptual framework for thinking about community-oriented protection, even if they do not by themselves establish legally binding international duties. Their strategy bolsters the more general claim that, in addition to traditional intellectual property rights, cultural identity, responsible use, and community interests must be taken into consideration in order to protect cultural manifestations.

3. Berne Convention and Protection of Artistic Works

One of the main pillars of the global copyright system is the Berne Convention for the Protection of Literary and Artistic Works, which was established in 1886. It is founded on key ideas including national treatment, automatic protection, and independence of protection, and it mandates that member states safeguard literary and artistic works. These guidelines make it possible for qualified works to get copyright protection without the need for member country registration or other requirements. Therefore, cultural material where a specific expression has been turned into a legally recognised creative work is subject to the Convention.[18]

However, the link between a work and its author is the main focus of its copyright structure. When it comes to traditional cultural expressions that have developed by group practice and been passed down over several generations without an identifiable author, this poses a problem. A complete system of perpetual communal ownership or custodianship over such heritage is not established under the Convention. However, if the final product meets the relevant copyright law standards, it could offer protection for a new artistic creation made by an individual utilising or modifying aspects of a conventional form. Therefore, while the Berne Convention can help safeguard individual innovation motivated by cultural traditions, it does not address the more general issue of safeguarding the collective cultural interests associated with the underlying tradition on its own.

This distinction is especially important for India, where long-standing community involvement

[18] Berne Convention for the Protection of Literary and Artistic Works, art. 2, 5(1)– (2) (1886, as amended 1971).

has led to the development of various artistic forms.[19]

NMACC as a Case Study: Culture, Creativity and Intellectual Property

The Nita Mukesh Ambani Cultural Center (NMACC) offers a helpful modern context for comprehending the presentation, preservation, and enjoyment of Indian cultural traditions by contemporary audiences. The organization blends many kinds of Indian and foreign artistic expression into a common cultural space through its exhibits, theatre, music, dance, and educational programs. Indian classical music and dance, folk customs, regional theatre, and other cultural performances have all been featured in its programming, showing how customs may reach audiences outside of their native social or geographic contexts.[20]

From the standpoint of intellectual property, these kinds of cultural venues present issues that go beyond merely putting on a show or exhibiting an artwork. When traditional material is exposed to the public, it becomes crucial to properly identify artists, performers, communities, and cultural sources. Separate copyright rights may also be created by documentation using digital platforms, pictures, recordings, and catalogues.[21] In a similar vein, permits needed for the original exhibition or presentation may differ from those needed for the commercial reproduction of an artwork, motif, performance, or design for retail or promotional reasons.

NMACC is an example of the increasing connection between cultural preservation and modern creative industries. The role of a cultural organization in preserving heritage lies in keeping proper provenance, recognition of the artists and cultural influences, and responsible reproduction and digital distribution. Nevertheless, while presenting culture, it is important not to turn the traditions into frozen objects but rather give an opportunity for their re-interpretation and development.

The importance of NMACC as a case study is seen through this balance. It shows how cultural organizations can be used as intermediaries for linking heritage with current audiences, as well as how responsible attribution and consideration for the cultural context and legal use of the creative work are encouraged. In the Indian context, such a practice can supplement the legal

[19] WIPO, *Intellectual Property and Traditional Cultural Expressions*, World Intellectual Property Organization.
[20] Nita Mukesh Ambani Cultural Centre, *Official Programme Calendar*, NMACC.
[21] The Copyright Act, 1957(Act No. 14 of 1957) S 3–14 & 38A.

framework of IPRs and help in protecting TCEs.[22]

Indian Judicial Approach in TCEs

A specific principle of law pertaining to Traditional Cultural Expressions (TCEs) has not yet evolved in India. Nevertheless, the case law of copyright law offers many principles which can help in comprehending the process of protecting traditional cultural expressions. As seen from the examples of cases mentioned below, the Indian copyright law makes a distinction between the tradition itself and the way it was creatively expressed by someone. This approach ensures that there is some form of protection for any form of creative work while preventing exclusive appropriation of the underlying cultural tradition

1. Eastern Book Company v. D.B. Modak (2008)

The Supreme Court in Eastern Book Company v. D.B. Modak ruled on the issue of whether editorial input into published judgments was entitled to copyright protection. It found that it was not enough that such labor or effort had been put in and ruled that the input should be sufficiently original. In regard to edited or derivative work, the contribution should involve skill and judgment and produce something distinct from the underlying work. Hence, the Court granted copyright protection only to the original editorial contribution but denied copyright protection to the judgments themselves which had become public property.

This ruling is important when it comes to TCEs since it distinguishes between what already exists in culture and what a person has done to create something original. A traditional song, motif, story, and artistic expression cannot be copyrighted by someone simply because he or she has reproduced or restructured the traditional item. But when an individual makes an original creation or adaptation of the traditional elements, copyright can cover the original input of the individual.[23]

2. Academy of General Education, Manipal v. B. Malini Mallya (2009)

The Supreme Court's decision in Academy of General Education, Manipal v. B. Malini Mallya is especially relevant in the context of traditional performance and copyright. The case

[22] WIPO, *Traditional Cultural Expressions*, World Intellectual Property Organization.
[23] *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1. The Supreme Court's decision is your key authority for the originality, skill, and judgment requirements.

involved a disagreement regarding the rights over Yakshagana, which is a traditional dance drama form, and Yaksharanga, which was created by Dr. Kota Shivarama Karanth through creative changes to traditional Yakshagana form. The Court considered the question of copyright of ballet performances based on such creations and confirmed the copyrightability of specific creative works of Dr. Karanth.

The case highlights an essential distinction in terms of TCEs. Copyright can apply to transformation of traditional cultural form in the sense that it does not mean denial of copyright for the individual artist's creation. To put it differently, the copyright can apply to the creative transformation without applying copyright to the traditional culture form itself. Such a rule is especially important in the context of Indian culture, as most artists create their works in established forms of musical, dance, craft and visual arts.[24]

3. Amar Nath Sehgal v. Union of India, 117 (2005) DLT 717; 2005 (30) PTC 253 (Del.)

In Amar Nath Sehgal v. Union of India, the High Court of Delhi has deliberated upon the moral rights of an artist whose huge bronze mural sculpture created for Vigyan Bhawan was mutilation. The case focused on the provisions of Section 57 of the Copyright Act, 1957 and highlighted that the rights of the author are not confined to mere economic control over the work. The judgment acknowledged the significance of proper credit and artistic integrity and took into account the destruction of work as an extreme case of mutilation and thus, subject to the provisions of Section 57.

However, the legal issue did not arise from a community-owned TCE but from the issue of a single artist and yet there are cultural implications of the reasoning. Traditional artwork is often associated with the culture and history of the community that maintains the tradition. The importance of the factors like authorship and cultural significance that have been emphasized by the court implies that legal protection should not only relate to commercial exploitation. For TCEs, these considerations apply to issues of proper attribution and avoiding any significant distortions to the culture-bearing artistic works. However, Section 57 protects the author’s moral rights and does not, by itself, create a general community right over TCEs.[25]

[24] *Academy of General Education, Manipal v. B. Malini Mallya*, (2009) 4 SCC 256. The case concerned Yakshagana and the *Yaksharanga* ballet developed by Dr. Kota Shivarama Karanth through creative modifications to the traditional form. The judgment is therefore particularly useful for your TCE analysis.
[25] *Amar Nath Sehgal v. Union of India, 117 (2005) DLT 717.*

4. K.R. Venugopala Sarma v. Sangu Ganesan, (1972) Cri LJ 1098

In the case of K.R. Venugopala Sarma v. Sangu Ganesan, the Madras High Court adjudicated on an issue of copyright infringement in relation to the portrait of Saint Tiruvalluvar. In this case, the plaintiff had made his artistic work after making extensive studies of Thirukkural and the defendant had copied the pictures that bore an uncanny resemblance to the plaintiff's artistic work. The Court paid emphasis on whether the substantial part of the copyrighted artistic work was being copied.

Relevance of the decision for TCEs- What makes this case significant for the TCEs is the separation of the cultural subject and its artistic embodiment. A culturally significant individual, tale, theme or subject does not mean that it can be claimed exclusively by an artist based on his artistic rendition of it. The copyright in question protects the specific embodiment of the artistic expression in the specific work. Hence, another artist may deal with the same cultural subject, but he cannot reproduce the artistic embodiment of that cultural subject in substantially similar form by any other artist.[26]

5. Contemporary Perspective: Dagar and A.R. Rahman Dispute

The conflict between Ustad Faiyaz Wasifuddin Dagar and A.R. Rahman has its roots in the claim that the composition “Shiva Stuti” was included in the track “Veera Raja Veera” of Ponniyin Selvan – II. According to Dagar, the composition “Shiva Stuti” that is said to belong to the Junior Dagar Brothers and is part of the Dagarvani school of Dhrupad music, had been used without appropriate permission.[27]

In a decision of the Delhi High Court made in April 2025, the question of whether “Shiva Stuti” was a musical composition and whether the Junior Dagar Brothers could be considered as the authors of the song was reviewed. The court came to a prima facie conclusion that there were enough creative elements in the composition, and it had the musical structure eligible for copyright.[28]

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[26] *K.R. Venugopala Sarma v. Sangu Ganesan*, 1972 Cri LJ 1098 (Mad.); The Copyright Act, 1957, S 13.
[27] *Mr. A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar & Ors.*, FAO(OS) (COMM) 86/2025, Delhi High Court, judgment dated Sept. 24, 2025.
[28] *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors.*, CS (COMM) 773/2023, I.A. No. 21148/2023, Delhi High Court, order dated Apr. 25, 2025; *Mr. A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar & Ors.*, FAO(OS) (COMM) 86/2025, Delhi High Court, judgment dated Sept. 24, 2025

This case is important since "Shiva Stuti" was part of the larger context of the Dhrupad and Dagarvani styles of music. It illustrates how challenging it is to dissociate the individual composition from the style of music in which it has developed. Copyright will protect the original composition but not necessarily grant exclusive rights to the style of music itself.

The hearing also brought out the distinction between attribution and ownership. In the beginning, the proceedings at the Delhi High Court sought alterations in the public attributions in order to bring out the identity of the Junior Dagar Brothers. The Division Bench subsequently struck down the interim order after the matter was argued before it on appeal.

The controversy highlights that Indian classical music involves special copyright issues, considering that the music can be passed through oral transmission and can be performed by generations and is set within certain gharanas. This means that copyright issues in the Indian context cannot be applied in an individual-centered manner.

This particular case between the Dagars and Rahmans proves that copyright can cover individual original works, but issues of genealogy, attribution, and community rights may go beyond traditional ownership laws. Hence, this ongoing case becomes one of the reasons for the need to come up with clearer policies when it comes to attribution, consent, and use of Traditional Cultural Expressions without stifling creativity. Furthermore, "The substantive questions concerning the parties respective rights ultimately remain matters for determination in the pending civil proceedings."

Issues Concerning Protection of TCEs in India

However, there are several practical challenges associated with the safeguarding of Traditional Cultural Expressions (TCEs) in India. Firstly, it is quite challenging to identify the appropriate community that has some linkages with the relevant tradition. This problem occurs in those cases when the same cultural tradition is common for different villages, regions, and communities. Moreover, collective ownership raises difficulties because traditional cultural expressions may not have a clearly recognised legal representative authorised to act on behalf of the community.[29]

[29] WIPO, *Traditional Cultural Expressions*, World Intellectual Property Organization.
This supports the difficulty of identifying communities, custodians, and beneficiaries of TCEs.

One of the most problematic issues is associated with the commercial use of TCEs and their cultural exploitation. Traditional designs, music, crafts and patterns might be replicated commercially without any kind of active involvement of communities that have kept and maintained such traditions. In addition, the expansion of the Internet and social media platforms has created additional risks of unauthorized reproduction of traditional cultural expressions through photographs, performances, and other forms of expression.

The lack of systematic recording and knowledge within the community makes it challenging for the community to trace the history, origin and ownership rights of cultural expressions. Despite the possible legal means of redress, the community will find it difficult to enforce such measures due to the lack of adequate financial means, legal knowledge, and monitoring of commercial activities. Protection, however, has to be balanced by creative freedom. Cultural practices are dynamic, and too much control might interfere with genuine creativity and learning. [30] It is, therefore, important that protection measures should prevent exploitation but allow creative expression.

Is India Ready for a *Sui Generis* Framework?

The current intellectual property regime in India has certain provisions for protecting some elements of TCEs; however, the individualistic and product-oriented nature of the intellectual property regime does not consider the collective nature of cultural heritage. Thus, sui generis protection is necessary to provide community protection of these expressions because the regime would provide protection to meet the specific needs of those communities that preserve and foster traditional expressions.[31]

It is essential that the community custodianship of cultural expressions be recognized under the law. The community should be recognized as having an ongoing cultural connection to the expressions even if there is no individual author or creator of the expression. This can be done using a system of prior informed consent in cases of culturally sensitive expressions. In cases of the proposed commercial and wide-scale use of cultural expressions, communities should be informed about the use and should have an opportunity to give consent to or modify it.

[30] WIPO, *Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions*, World Intellectual Property Organization.
[31] WIPO, *The Protection of Traditional Cultural Expressions/Expressions of Folklore: Outline of Policy Options and Legal Mechanisms*, WIPO/GRTKF/IC/7/4 (2004).

Is India Ready for a sui Generis Framework?[32]

An adequate framework would also allow for proper attribution and integrity of culture such that communities would get due recognition, and there would be no distortion or misrepresentation of their traditions. In cases where exploitation occurs, fair sharing of profits in the form of royalties, licenses, and others would ensure that communities get their share of economic value derived from their culture. Effective measures would also be in place to prevent unauthorized copying and misappropriation of expressions of cultural importance.[33]

However, while it is important to protect these cultures, it is important that the framework does not freeze these living cultures into some form of private monopoly. There would always be an evolution of TCEs by way of interpretation and interaction with current creativity. An effective framework in India should therefore protect community interests, but still leave enough room for education, research and cultural evolution through artistic expression.[34]

Suggestions for Strengthening the Indian Framework

Protection of TCEs can be enhanced in India using practical means rather than depending solely on the provisions of Intellectual Property Rights (IPR). One such means would be the statutory recognition of TCEs, which can be done by defining what TCEs are and determining the rights and interests of the communities associated with the TCEs.[35] Documentation of TCEs through registries, considering confidential information, can help in proving cultural origin if there is a dispute.

Attribution requirements will ensure that credit is duly given to artists, communities, and the cultural tradition when the expressions of culture are exhibited or exploited commercially. Prior consent for commercial exploitation of culturally sensitive expressions would be a simple requirement for such exploitation. When a commercial gain arises out of cultural expressions,

[32] WIPO, *The Protection of Traditional Cultural Expressions/Expressions of Folklore: Outline of Policy Options and Legal Mechanisms*, WIPO/GRTKF/IC/7/4 (2004); WIPO, *Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore*, World Intellectual Property Organization.
[33] WIPO, *Protecting Traditional Cultural Expressions – Some Questions for Lawmakers*, WIPO Magazine (2017).
[34] WIPO, *The Protection of Traditional Cultural Expressions/Expressions of Folklore: Outline of Policy Options and Legal Mechanisms*, WIPO/GRTKF/IC/7/4 (2004).
[35] WIPO, *Documentation of Traditional Knowledge and Traditional Cultural Expressions*, WIPO Background Brief No. 9 (2023); WIPO, *Documentation of Traditional Knowledge*, World Intellectual Property Organization.

then benefit-sharing agreements may be an appropriate reward.

Proper guidelines for provenance, presentation, permission, and reproduction are to be followed by museums and other cultural institutions. The NMACC and other similar cultural centers may help in achieving this by keeping proper record of things, giving credit to cultures from which they have originated, and involving the artist community in the programming process.[36]

In the last, proper mechanisms should be in place at India to address any unauthorized use of their culture on the internet and otherwise. Above all, there is a need to give some say to these communities about the IP policies that impact them.

Conclusion

The current intellectual property regime in India fails to sufficiently protect TCEs as they exist collectively, continually and communally. The use of copyright law is relevant when it comes to the protection of original creative works created by individual artists, while geographical indication laws, trademark laws and design laws are relevant as supplementary protection measures for specific products and specific creative outputs. But the above-mentioned laws do not cover the aspects of collective ownership, cultural attribution, prior consent and benefit sharing in respect of traditional expressions.

The same is true with regards to the judgments in India; courts have tended to protect identifiable individual creativity but not the cultural tradition from which this creativity has been derived. Another example is the case between Dagar school of musicians and A.R. Rahman, which is yet another illustration of the challenges that come about when one tries to apply conventional copyright concepts to traditional lineages.

Therefore, India would benefit from a complementary, community-sensitive framework for TCEs rather than relying exclusively on existing IP laws. Such protection must, however, remain balanced so that cultural traditions can continue to evolve through legitimate artistic creativity. The objective should not be to place traditional culture behind legal barriers, but to ensure that communities are recognised, respected and fairly benefited when their cultural

[36] WIPO, *Intellectual Property and Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options*, World Intellectual Property Organization; WIPO, *Traditional Knowledge and Intellectual Property*, World Intellectual Property Organization.

expressions enter the modern creative economy.

Hence, the Indian situation calls for an additional and community-friendly framework for TCEs in addition to current IP laws. Protection, however, needs to be balanced in such a way that it allows cultural expressions to continue evolving due to the creative works of artists. The intention is not to isolate cultural expressions behind legal fences but to make sure that the community receives recognition, respect, and fair benefits in the creative economy.

"The objective should not be to place traditional culture behind legal barriers, but to ensure that communities are recognised, respected and fairly benefited when their cultural expressions enter the modern creative economy."

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