

## SAFEGUARDING INDIA'S INTANGIBLE CULTURAL HERITAGE: ETHICAL AND LEGAL CHALLENGES IN CINEMA'S REPRESENTATION OF TRADITIONAL KNOWLEDGE AND RITUALS

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### ABSTRACT:

*Important questions of permission, cultural appropriation, and the monetisation of intangible cultural assets are brought up by the way traditional knowledge and rituals are portrayed in Indian cinema. Filmmakers often depict Native American traditions without obtaining permission from the communities who own them, which creates ethical and legal quandaries. The Indian Copyright Act of 1957's shortcomings in safeguarding collective cultural expressions are examined in this article, which emphasises how the legal system gives individual rights precedence over community ownership of traditional knowledge. The study highlights the misrepresentation and monetisation of religious activities through case studies of films such as Slumdog Millionaire and Narmada Bachao Andolan. This portrayal not only distorts the cultural value of these practices, but it also abuses these communities economically. In order to protect India's intangible cultural legacy, the study highlights the necessity of a sui generis framework that recognises community intellectual property and guarantees that filmmakers have informed consent. It is critically necessary to implement legislative changes that recognise the collective nature of cultural assets in order to shield indigenous people from economic marginalisation and cultural exploitation. In order to address the ethical representation of traditional behaviours in Indian cinema, the paper suggests a complete framework that incorporates moral rights, social ownership, and benefit-sharing.*

**Keywords:** Cultural Appropriation, Community Consent, Copyright Law, Traditional Rituals, Intangible Cultural Heritage

### INTRODUCTION:

Legal and ethical considerations arise from the way traditional practices are portrayed in Indian movies, especially in a country with such a diverse culture as India. Filmmakers frequently run into issues with cultural appropriation and obtaining permission from the community when attempting to portray ceremonies, rituals, and traditional traditions. When filmmakers adopt the traditional expressions of indigenous and local groups without getting permission, it's known as cultural appropriation and can lead to moral and legal transgressions. The Indian

Copyright Act of 1957, in particular, and the country's present legal system prioritize the protection of individual writers' rights over collective intellectual property, such as folklore and traditional knowledge. This disparity frequently causes cultural aspects to be exploited in movies without the appropriate approval or payment to the affected communities. The moral component of this matter is equally important: obtaining community agreement is a moral duty that filmmakers must uphold rather than just a legal one.

Cultural conflict is the outcome of ignoring community consent, as demonstrated by a number of examples. For instance, the documentary "*Narmada Bachao Andolan*" came under fire for taking advantage of the customs and problems of indigenous tribes without getting their permission. Comparably, commercial films have frequently distorted Adivasi customs, which has angered indigenous populations.<sup>877</sup> With its widespread popularity, "*Slumdog Millionaire*" also attracted criticism for its inaccurate and culturally insensitive depiction of India's poverty.<sup>878</sup>

An additional instance is to the Kumbh Mela filming, wherein filmmakers faced accusations of transforming revered Hindu rituals into mere entertainment extravaganzas.<sup>879</sup> These disputes draw attention to the necessity of legislative changes that would force filmmakers to get communities' informed consent and safeguard India's intangible cultural heritage. Thus, in order to safeguard collective cultural rights and stop the appropriation of customs in film, this research supports the implementation of sui generis systems and stricter copyright legislation.<sup>880</sup>

### **CULTURAL SENSITIVITY IN INDIAN CINEMA:**

Cultural sensitivity means being aware of cultural differences and accepting of them. It suggests that a person is able to deal with these disparities and that he does not pass judgment on cross-cultural activities. The vast and varied history of Indian cinema reflects the country's cultural mosaic. Its portrayal of culture has not, however, always been free of controversy. The business has been calling for

and becoming more conscious of cultural sensitivity in recent years.<sup>881</sup>

Indian films are an important medium for showcasing the country's diverse range of cultural customs including its beliefs, myths and practices. The representation of these custom which range from religious ceremonies and folk rituals, has a great deal of potential to promote awareness and respect for cultural variety. Films and media also can overthrow cultural barriers by representing stories and tales from around the world. It can also showcase diverse experiences and also foster empathy.<sup>882</sup> Moreover, it can also alter one's way of understanding and perceiving a community's culture. But when a community's culture is commodified for mass consumption, its sensationalism, misrepresentation, or outright appropriation especially when filmmakers don't take the time to truly connect with the communities whose traditions they are depicting.

Consent is a fundamental ethical dilemma when it comes to how ancient rites are portrayed in films. The communities that maintain these traditions frequently see them as holy and private despite the fact that filmmakers may consider cultural practices to be public domain. In addition to cultural appropriation, the filming and representation of these behaviours without the approval of the community denigrates the value and belief of these cultures.

Filming religious rites or celebrations without the permission, sometimes with the dramatic effects added, is a well-known example of this. Filmmakers and the affected communities may become tense as a result of this trivialising the rituals or misrepresenting their importance. Assuring that filmmakers do not appropriate or misrepresent cultural expressions for profit

<sup>877</sup> Rousseleau, R. (2023). From Performance to Literature and Cinema: Adivasi Art and Activism, with a Focus on Eastern India. *South Asia Multidisciplinary Academic Journal*, 31. <https://doi.org/10.4000/11vws>

<sup>878</sup> *Post-Slumdog Millionaire in Light of Slum Children of India - Papers & Essays*. (n.d.). Child Research Net. [https://www.childresearch.net/papers/rights/2009\\_01.html](https://www.childresearch.net/papers/rights/2009_01.html)

<sup>879</sup> ISKCON News. (2017, December 8). *UNESCO Recognises India's Kumbh Mela As 'Intangible Cultural Heritage' Of Humanity*.

<sup>880</sup> Bizer, K., Lankau, M., Spindler, G., Zimbehl, P., & Göttingen. (2011). Sui Generis Rights for the Protection of Traditional Cultural Expressions: Policy Implications. *JIPITEC*, 2, 114–115.

<sup>881</sup> Riley, A. R., & Carpenter, K. A. (2016). Owing Red: A Theory of Indian (Cultural) Appropriation. In UCLA School of Law, University of Colorado, & UCLA American Indian Studies Center, *Texas Law Review* (Vol. 94, pp. 859–860).

<sup>882</sup> Shrestha, S. (2019). *A Conversation About Cultural Appropriation as Explored by an Emerging Media* (Sally McDonnell Barksdale Honors College), & Honors Theses). [https://egrove.olemiss.edu/hon\\_thesis/1052](https://egrove.olemiss.edu/hon_thesis/1052)

requires consent from the people who maintain these traditions, which is not only required by law but also by morality.<sup>883</sup>

Filmmakers in India are faced with the moral dilemma of faithfully and respectfully capturing rituals and customs when they are portrayed in their works. A careful balance between artistic expression and cultural sensitivity must be struck by filmmakers in India due to the country's many religious practices, regional customs, and indigenous traditions. This frequently entails appreciating the deeper significance of rituals, the holiness of particular customs, and the requirement for contextual truth. Failing to do so runs the risk of defaming, trivialising, or stereotyping important cultural traditions, which could incite retaliation from groups who believe their history has been minimised or exploited.

The representation of religious and indigenous ceremonies in Indian cinema is a crucial component of cultural sensitivity. Since certain rituals have their roots in both spirituality and social systems, any inaccurate or disrespectful portrayal of them might spark controversy and public outcry. Movies like *PK (2014)* and *Padmaavat (2018)* drew harsh criticism for grossly distorting or making fun of religious and cultural sentiments, which sparked discussions on the moral obligations of filmmakers.<sup>884</sup> It is not only legally required but also morally required for filmmakers to obtain informed consent from the people whose traditions they portray. Filmmakers can avoid cultural appropriation and possible harm to the communities concerned by speaking with cultural custodians and making sure that representation is accurate.

#### **COPYRIGHT LAW AND CULTURAL PRODUCTION IN INDIA:**

The Indian Copyright Act 1957<sup>885</sup> is the primary legislation that governs copyrighted works in India. It provides legal recognition as well as protection to original literary, artistic, musical, and dramatic works, as well as sound recordings and films. The Copyright Act has been amended several times to address the evolving cultural developments.

It is noteworthy that the Indian Copyright Act provides special protection to only certain expressions of traditional culture. For example, Section 38 of the Act gives rise to a special right known as "performers right" in relation to such performance.<sup>886</sup> In the duration of the performer's right, anyone who records the performance in audio or video without the performer's permission or disseminates the performance to the public in any way will be considered to have violated the performer's right, except when it is made for educational and reporting purposes. However, such protection is only limited in nature. For example, the above right is granted only to individual or group performers, whereas the cultural expression belongs to the whole community. Secondly, the right is granted for a very short duration of 25 years, and the cultural expression would come into the public domain, which will be free to distort and disrupt it in any manner.

The Act ignores the collective ownership of the cultural resources in favour of focussing primarily on the rights of the individual. Indigenous communities are frequently at risk of being appropriated by outside parties, because they lack the legal authority to assert ownership over their customs. A major gap that has been abused by filmmakers and content providers looking to capitalise on India's rich cultural legacy without giving the people involved proper recognition or recompense is the Indian

<sup>883</sup> Krishnappa, Gowtham & K, GOWTHAM. (2024). Evolving Stereotypes and Contemporary Portrayals of India in Global Cinema: A Cross-Cultural Analysis. *International Journal of Science and Research (IJSR)*. 13. 1537-1542. 10.21275/SR24323200338.

<sup>884</sup> *Padmaavat movie review & film summary (2018)* | Roger Ebert. (n.d.). Roger Ebert.

<sup>885</sup>The Copyright Act, 1957 (14 of 1957)

<sup>886</sup> Performer's right. (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.

(2) The performer's right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made.

Copyright Act's failure to protect traditional Knowledge.<sup>887</sup>

The Indian Copyright Act, 1957,<sup>888</sup> makes it difficult to strike a balance between the rights of individual authors and those of communities or groups. There is a significant void in the legal system that protects the communal ownership of traditional cultural expressions because it largely focuses on the intellectual property of individual producers.<sup>889</sup>

This constraint is especially noticeable in the film industry. Filmmakers are currently able to modify a community's ritual for a film without necessarily getting the community's consent directly. Rather, the legislation just needs the permission of a single author, if any. The legal structure in place results in a notable discrepancy between the obligations of the law and ethics for the preservation of indigenous groups' collective intellectual property rights.

The legal structure primarily focuses on defending the rights of authors, who are usually characterized as a single creator or a small group of co-creators. However, this framework is inadequate for defending the intellectual property of indigenous or traditional groups. Over several generations, these communities frequently create and maintain cultural customs, rituals, and artistic expressions, which together add to the understanding and articulation of their history. Regrettably, the ownership of these cultural assets by the community is not acknowledged by the current legal system.<sup>890</sup>

For instance, the Act only requires the consent of the individual author, if any, and not the community that upholds the custom, for a filmmaker to adapt a traditional rite or folk art into a motion picture. As a result, there is a

disconnect between the law and moral principles when it comes to safeguarding the cultural heritage of indigenous people. Despite being the actual guardians of the cultural expression, the community is rarely given a voice in how its customs are portrayed, which frequently leads to contempt or misrepresentation of the culture.

This mismatch causes economic inequality in addition to cultural exploitation. When their cultural assets are exploited, indigenous communities never ever obtain acknowledgement or financial remuneration. Filmmakers and other artists may thereby benefit from appropriated customs, but the original communities receive no real advantage. This disparity emphasizes how urgently the copyright legislation has to change to preserve communal rights and ensure that indigenous and traditional communities can fairly participate in the economy while having their cultural expressions used. A first step in resolving these problems would be to broaden copyright to cover collective rights, which would support ethical representation as well as cultural preservation.<sup>891</sup>

The Indian Copyright Act's incapacity to provide legal protection for folklore and traditional knowledge is one of its main shortcomings. Oral histories, artwork, rituals, and ceremonies are all considered to be part of traditional knowledge, which is generally considered to be in the public domain. As a result, anyone can take advantage of it without requesting permission from the community or payment. This frequently results in cultural appropriation, a practice whereby outside parties profit monetarily from cultural expressions without appreciating their cultural significance or paying homage to the original group.

The Act lacks provisions that safeguard traditional knowledge and folklore under a system of communal intellectual property rights. In contrast, many international

<sup>887</sup> *Protection of Traditional Expressions and Cultural Knowledge in India*. (2022, September 26). IP Helpdesk. [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/protection-traditional-expressions-and-cultural-knowledge-india-2022-09-26\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/protection-traditional-expressions-and-cultural-knowledge-india-2022-09-26_en)

<sup>888</sup> IDIB 11

<sup>889</sup> The Protection of Traditional Cultural Expressions: Draft Articles. (n.d.). In WIPO General Assemblies, *Draft Articles* (p. 2).

<sup>890</sup> James, T. C., & Yadav, D. (2019). Protection of Traditional Cultural Expressions in India. In Forum on Indian Traditional Medicine, *Forum on Indian Traditional Medicine*.

<sup>891</sup> Review, C. L. (2023, May 16). *Fair Use as Cultural Appropriation — California Law Review*. California Law Review.

frameworks and countries, such as the World Intellectual Property Organization (WIPO)<sup>892</sup>, have recognized the need to protect traditional knowledge and have proposed sui generis systems that cater to the specificities of indigenous and local communities. India's copyright law, however, remains silent on these issues, which makes it inadequate for preserving the country's vast and diverse intangible cultural heritage.

### **CULTURAL APPROPRIATION AND THE INDIAN COPYRIGHT ACT**

Unauthorized cultural appropriation involves a wide variety of activities within its ambit, and each of which involves some sort of use of something which is very valuable socially to who, from a particular point of view, it should not be entitled to it. To many indigenous people, Culture remains as the crux of their sovereignty. In many instances, copyright often fails to adequately protect Indigenous cultural creativity from unauthorized appropriations, harming the indigenous peoples and also it affects their autonomy and self-determination of such people. The term "cultural appropriation" describes the unapproved or improper use of components of one culture by people or organizations from another, especially when the dominant culture takes advantage of or commercializes the minority culture. When media professionals, fashion designers, and filmmakers take advantage of customs, art forms, and folklore without giving due credit or input to the communities who own these resources, it becomes a problem in India. For example, when religious or traditional traditions are used in movies, the communities concerned frequently do not provide their agreement, which causes sacred ceremonies to be misrepresented and turned into commodities.

The legal system is based on private property rights and the idea of "author's rights," emphasizing the creative freedom and uniqueness of the individual. However, customs, folklore, and other traditional cultural

expressions are typically the result of years of communal wisdom rather than the work of a single person. These collective creative outputs are regarded as "intangible cultural heritage," and their preservation calls for a more sophisticated strategy.

The Act makes indigenous cultural creations susceptible to plunder since it does not recognize collective or community intellectual property rights. The lack of current legislation covering traditional knowledge and folklore creates a serious gap in the protection of the cultural legacy of indigenous and local populations. Because of this exception, media producers, filmmakers, and other creatives are free to utilize certain traditional components without obtaining the communities' consent.

The current legal system in India leaves indigenous cultural assets especially vulnerable because it does not provide specific protections for collective cultural heritage. Although the Indian Copyright Act, 1957 was created to protect individual artists' rights, it does not take into account the distinctive characteristics of traditional cultural expressions, which are usually owned by communities and passed down through the generations. Due to the huge legal protection vacuum this produces, indigenous knowledge, customs, and folklore are vulnerable to appropriation and exploitation.

Without obtaining permission from the community or paying for their usage, filmmakers, artists, and businesses are free to exploit these cultural assets, which frequently results in commodification, misrepresentation, and the degradation of cultural integrity. Indigenous cultural traditions are particularly vulnerable due to the existing copyright system's lack of acknowledgment for collective ownership. This increases the possibility that they will be appropriated by more powerful groups, leaving impacted communities with little redress.

### **SUI GENERIS SYSTEMS AND CUSTOMARY LAWS:**

<sup>892</sup> (Inside WIPO, n.d.)

Within the international community, there have been many calls for the betterment of traditional cultural expressions, for which classic instruments of intellectual property rights do not seem to fit. In response to this, the last 40 days have seen the drafting of at least 5 model laws. These are referred to as sui generis because, though they generally belong to the realm of intellectual property, they structurally depart from classic copyright law to accommodate the needs of the holders of traditional cultural expressions.<sup>893</sup>

Indigenous groups rely heavily on their traditional knowledge (TK) and cultural legacy to maintain their unique identities. But safeguarding these intangible assets under traditional intellectual property regimes—like copyright—has proven extremely difficult because many of these frameworks are unable to take into account the communal, dynamic, and generational nature of traditional knowledge. As a result, several countries have created sui generis systems to remedy the shortcomings of the current legal frameworks in preserving traditional knowledge and cultural assets.<sup>894</sup>

With its "Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and Traditional Knowledge," Panama has created a thorough legal framework. The collective rights of indigenous groups over their traditional knowledge and cultural expressions are acknowledged and safeguarded by this system. The establishment of a registration system, which enables indigenous groups to register their traditional knowledge (TK) and Traditional cultural expressions (TCEs), is a crucial component in guaranteeing the protection of their knowledge from unapproved use. Benefit-sharing clauses

in the framework guarantee that communities get paid when their traditional knowledge is used for commercial purposes.<sup>895</sup>

The Indigenous Peoples' Rights Act (1997)<sup>896</sup> in the Philippines gives native groups control over their ancestral lands, including their customs and knowledge. The law places a strong emphasis on the necessity of getting indigenous peoples' free, prior, and informed permission (FPIC) before using their knowledge.<sup>897</sup> Additionally, the Act offers a framework for the creation of community-based intellectual property laws, giving native American tribes the ability to manage who has access to their traditional knowledge and artistic expressions.

The legal system of New Zealand contains safeguards for Māori knowledge and cultural expressions. The Toi Iho Māori made mark is a trademark that authenticates products manufactured by Māori people, and it was developed by Te Waka Toi, the Māori Arts Board. With the help of this mark, the Māori community is able to safeguard their cultural expressions and make sure that the Māori people profit from their commercial use.<sup>898</sup> Furthermore, the laws of New Zealand prohibit third parties from using indigenous signs and symbols without permission by using trademark principles to safeguard them.

The Indian Arts and Crafts Act of 1990 prohibits deceptive marketing practices and guarantees the authenticity of Native American items in the United States.<sup>899</sup> Selling goods under false pretences that they are "Indian-made" is prohibited by law unless the goods are actually

<sup>893</sup> López Romero, T. (2005). SUI GENERIS SYSTEMS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE. *International Law: Revista Colombiana De Derecho Internacional*, 301–339.

<sup>894</sup> WIPO & Secretariat. (2003). Comparative Summary of Sui Generis Legislation for The Protection of Traditional Cultural Expressions. In Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

<sup>895</sup> World Intellectual Property Organization. (1999). INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE. In *Booklet nr 1*.

<sup>896</sup> The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371)

<sup>897</sup> *The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371), Section 32* - Community Intellectual Rights-ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall presence, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

<sup>898</sup> *Toi Iho Maori Made Mark will bring cultural and economic benefits to New Zealand*. (2002, February 8). The Beehive.

<sup>899</sup> *Indian Arts and Crafts Act of 1990* | U.S. Department of the Interior. (n.d.). U.S. Department of The Interior. <https://www.doi.gov/iacb/indian-arts-and-crafts-act-1990>

made by Native Americans as that term is defined under the Act. The integrity of Native American traditional crafts is preserved while protecting indigenous artists and their cultural heritage from exploitation through the implementation of this "truth-in-marketing" rule. To prevent exploitation of their cultural expressions, indigenous tribes in the US are also permitted to file collective trademarks.<sup>900</sup>

Sui generis methods, which provide a customized and adaptable approach, have become an essential tool for safeguarding intangible cultural heritage (ICH). Sui generis regimes, in contrast to standard intellectual property rights (IPR), recognize the fluid and changing nature of traditional knowledge and cultural manifestations and permit the protection of collective ownership.<sup>901</sup> These frameworks, like the South Pacific Model Law and the UNESCO/WIPO Model Law, safeguard the moral and cultural rights of indigenous groups. Usually, they offer safeguards against the improper use and exploitation of traditional cultural expressions (TCEs), guaranteeing that communities maintain authority over their legacy.<sup>902</sup>

One important aspect of these systems is that, in contrast to copyright's restrictive terms, they frequently offer perpetual protection, meaning that rights holders can claim protection without having to go through a formal registration process. Sui generis frameworks also place a strong emphasis on benefit-sharing arrangements, which guarantee that indigenous community's profit from any commercial use of their knowledge and protect such communities' identity and dignity from exploitation.

India is in a unique position to carry out changes that better safeguard its intangible

assets because of its enormous storehouse of traditional knowledge and cultural legacy. Because of the particular nature of traditional knowledge and traditional cultural expressions, Indian copyright law is inadequate as it stands. Indian copyright law, like that of many other nations, places a strong emphasis on individual rights and leaves little room for collective protection. Moreover, the duration of copyright protection is restricted, in contrast to the everlasting character of traditional knowledge that is transmitted across successive generations.

#### RECOMMENDATIONS FOR LEGISLATIVE REFORMS:

Traditional communities and other indigenous groups have maintained a unique set of cultural practices and expressions that are very vital to their way of life. Nevertheless, these groups frequently experience cultural degradation and financial losses as a result of outsiders taking advantage of their customs. The necessity of community sovereignty over these customs in order to protect their cultural legacy is becoming more widely acknowledged.

According to the concept of community sovereignty, traditional communities and indigenous people ought to have the freedom and legal authority to decide how their knowledge and cultural expressions are used. Because traditional practices frequently have profound spiritual, social, and historical importance and are therefore more than just commercial goods, such sovereignty is essential. Unauthorized use of traditional forms of expression such as music, art, or medicine can result in the commercialization and distortion of cultures, thus depriving them of their context and significance.

The use and dissemination of cultural practices and knowledge are already governed by customary rules in many indigenous and local groups. These centuries-old customs, which have grown naturally among communities, frequently include intricate rules about who is allowed to access, utilise, and share particular cultural expressions. A strategy to safeguarding

<sup>900</sup> *Indian Arts and Crafts Act of 1990* | U.S. Department of the Interior, n.d.)

<sup>901</sup> Wipo/Grtkf/Ic/5/Inf/3 World Intellectual Property Organization Geneva Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore Fifth Session Geneva, July 7 To 15, 2003 Comparative Summary of Sui Generis Legislation for The Protection of Traditional Cultural Expressions

<sup>902</sup> United Nations Educational, Scientific and Cultural Organization, & Blake, J. (n.d.). *Intangible Cultural Heritage - Working definitions*.

intangible cultural assets that is more sensitive to cultural differences may be provided by incorporating these customary rules within the country's legal system.

The Indian legal system could formally recognise customary rules through legislative amendments, granting indigenous tribes the authority to uphold their customs. In addition to giving customs legal support, this would strengthen communities by recognising their sovereignty over cultural assets. Customary laws would provide a more thorough and culturally relevant method of protecting indigenous knowledge when paired with contemporary legal protections.

Legal frameworks must be modified in order to establish communal sovereignty. Intellectual Property rights that acknowledge communal ownership should be used to prevent unauthorized usage of traditional practices. Communities would have more control over the dissemination of their knowledge and practices, including through commercial endeavours, scholarly study, and cultural exchange. This methodology upholds the concept of "prior informed consent," guaranteeing that communities possess the power to authorize or refuse access to their cultural properties.

To more accurately address the special difficulties presented by traditional cultural expressions (TCEs) and other types of intangible heritage, India's copyright laws need to be updated. The Indian Copyright Act of today falls short in addressing the myriad issues related to safeguarding community-owned information and cultural expressions. Current copyright rules largely protect individual authors and creators, but traditional knowledge and expressions are often jointly owned by communities, passed down through generations. Thus, the introduction of a sui generis system—which is intended to safeguard TCEs and traditional knowledge—is one of the main recommendations.

Communities may be given more authority to manage how their cultural expressions are used

if a sui generis legal framework were in place. This would acknowledge community ownership and stop unauthorised commercial exploitation. With this strategy, native music, art, and customs would be protected from being appropriated by outsiders for profit. Communities could protect cultural integrity and object to deception or inappropriate exploitation of their cultural expressions by adopting moral rights. To protect community rights and facilitate business partnerships, an administrative organisation to record and register traditional cultural expressions (TCEs) should be established.

Diving into such a system to safeguard customs, folklore, and traditional knowledge would be beneficial for the Indian legal system, which would otherwise prioritise individual creation under intellectual property rules. A sui generis framework, based on global models such as those put out by the World Intellectual Property Organisation (WIPO), would confer exclusive rights over cultural assets to indigenous people, guaranteeing authority over the representation and usage of their customs. Cultural manifestations, in contrast to individual inventions, are frequently timeless and hence require ongoing conservation. Stronger security for indigenous communities will be provided by closing the legal protection gap for communal cultural assets through the implementation of such a system in India.

Ultimately, legal protections could be strengthened by aligning India's copyright laws with global TCE protection frameworks, such as the World Intellectual Property Organization's (WIPO) standards. This would facilitate the enforcement of rights globally and stop the unapproved global commercialization of Indian traditional knowledge. Through the controlled use of their traditional knowledge and cultural manifestations, these suggested reforms would encourage economic opportunities while balancing the commercial and cultural requirements of indigenous groups.



Traditional communities and other indigenous groups have maintained a unique set of cultural practices and expressions that are very vital to their way of life. Nevertheless, these groups frequently experience cultural degradation and financial losses as a result of outsiders taking advantage of their customs. The necessity of community sovereignty over these customs in order to protect their cultural legacy is becoming more widely acknowledged.

Intangible cultural assets, like folklore, traditional knowledge, and cultural expressions, need to be protected by a strong legal framework that takes into account the difficulties of shared ownership and the possibility of exploitation. The necessity for cultural preservation, economic progress, and respect for the rights of traditional communities must all be balanced in any future legislative framework.

The acknowledgement of collective rights ought to be a fundamental component of this framework. Intangible cultural assets, as opposed to individual intellectual property rights, are frequently held collectively by a community and passed down through the generations. Communities should have control over the use and distribution of their cultural assets thanks to a legal framework that guarantees the recognition and protection of these collective rights. In order to preserve community sovereignty over the commercialization or dissemination of their cultural heritage, legal procedures for the registration and documentation of intangible cultural assets would need to be established.

In addition to protecting ownership rights, the framework must include provisions for fair benefit-sharing. When intangible cultural assets are used commercially, whether by corporations or other external entities, the profits should be shared with the community that holds the rights to the asset. This principle of equitable benefit-sharing is already recognized in international agreements such as the Nagoya Protocol on Access and Benefit-

Sharing, and it should be a cornerstone of any framework protecting intangible cultural assets.<sup>903</sup>

Protection against cultural appropriation and misrepresentation is another crucial element. Communities should be able to file lawsuits against improper and unapproved uses of their cultural expressions within the framework, especially if the uses diminish or distort the asset's cultural value. This could entail the establishment of moral rights, which would enable localities to defend the authenticity of their cultural legacy.

Last but not least, harmonization of legislation and international collaboration are essential components of an efficient legal framework. Since intangible cultural assets frequently transcend national boundaries, international agreements and protocols are necessary to guarantee the global respect of communities' rights. Countries can better safeguard intangible cultural assets from foreign exploitation while fostering cultural diversity and respect for traditional knowledge systems by harmonizing national legislation with international standards.

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<sup>903</sup> Greiber, T., Peña Moreno, S., Åhrén, M., Nieto Carrasco, J., Kamau, E. C., Medaglia, J. C., Oliva, M. J., Perron-Welch, F., Natasha Ali, & China Williams. (2012). *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing*. In *IUCN Environmental Policy and Law Paper* (No. 83; p. xviii + 372). IUCN.

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