



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 5 AND ISSUE 13 OF 2025

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 13 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-13-of-2025/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

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## GI AND CULTURAL APPROPRIATION : EMERGING FAULTLINES IN IPR

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**BEST CITATION** – SHREYASEE BANGA, GI AND CULTURAL APPROPRIATION : EMERGING FAULTLINES IN IPR, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (13) OF 2025, PG. 90-104, APIS – 3920 – 0001 & ISSN – 2583-2344.

### I. ABSTRACT

Geographical Indication (GI) is a form of Intellectual Property which identifies goods having special geographical origin and possesses qualities or a reputation that are due to that place of origin. They not only protect the economic value of goods but also act as preservers of culture and heritage. With the rapid pace of Globalization, expanding markets and facilitating cross-border trade, tensions exist between GI protection and the issue of cultural appropriation. Cultural Appropriation occurs through misuse, commercialization or re-interpretation of traditional goods without any acknowledgement of their origin or compensation. This raises questions about the adequacy of IPR laws to safeguard cultural heritage. This article analyses intersection of IPR, specifically GI law with the issue of Cultural appropriation. It also explores international agreements, mainly TRIPS & Lisbon Agreement and national law, namely Indian GI Act, 1999. Case studies such as disputes over Darjeeling tea, Basmati Rice, Kolhapuri Chappals and Prada illustrates the glaring limitations of current GI laws in preventing cultural misrepresentation and appropriation. The article argues that emerging fault lines stem from cross-border disputes, digital reproduction, e-commerce exploitation, & commercialization. To address these shortcomings, the article proposes integration of GI with Traditional Cultural Expressions protection, Sui Generis laws for indigenous communities and strengthening enforcement and community participation. Ultimately, IPR requires a re-evaluation to ensure that the legal system goes beyond mere name-based protection and establishes the rights of traditional communities to control their heritage and culture.

**KEYWORDS** : Geographical Indication (GI) , Intellectual Property Rights (IPR), Cultural Appropriation, Traditional Cultural Expressions (TCE) , Sui Generis Laws.

### INTRODUCTION

Geographical Indications (GIs) are a form of intellectual property that recognizes the unique qualities, reputation, and characteristics of products originating from a specific geographical location.<sup>89</sup> As per World Intellectual Property Organization (WIPO), A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a

reputation that are due to that origin.<sup>90</sup> In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

Cultural appropriation refers to the unauthorized and unrecognized borrowing of

<sup>89</sup> Singhal S, Geographical indications and traditional knowledge, *Journal of Intellectual Property Law & Practice*, 3 (11) (2008) 732, <https://doi.org/10.1093/jiplp/jpn160>.

<sup>90</sup> World Intellectual Property Organization, Geographical Indications: What do they specify?, <https://www.wipo.int/en/web/geographical-indications> (last visited Aug. 16, 2025).

tangible and intangible cultural heritage of a non-dominant group by a dominant group. Scholar Susan Scafidi defines cultural appropriation as “taking intellectual property, traditional knowledge, cultural expressions, or artifacts from someone else’s culture without permission... It’s most likely to be harmful when the source community is a minority group that has been oppressed or exploited in other ways or when the object of appropriation is particularly sensitive, e.g. sacred objects.”<sup>91</sup> It is the de-contextualization, misuse, and commercialization of traditional goods, knowledge and expressions without the free, prior and informed consent of the source community, and without fair sharing of the benefits that may arise when these are used.

With the rapid pace of Globalization, expanding markets and facilitating cross-border trade, tensions exist between GI protection and the issue of cultural appropriation. The very forces of globalization that create a worldwide audience for cultural products also create the ideal conditions for their exploitation. The biggest problem is that Geographical Indications safeguard the name, rather than the style. Globalization does not make it a level playing field. It sets tiny, local communities of artisans against massive multi-national corporations with large financial and legal bases. For example – It may not even dawn on a community of weavers in a distant village that their designs are being offered in online stores on the other side of the world. They do not have the means of investigating the huge global market. Even in case they find the appropriation, it is prohibitively expensive and complicated to pursue an international court case. The MNC will easily outlast them in court. Furthermore considering the modern market is driven by fast fashion and social media trends, moves at a lightning speed. It is possible to find a design through the online world, make a copy, manufacture it in large quantities and distribute it all over the globe within several weeks. GI

registration and enforcement is, by comparison and notoriety, a lengthy process, taking months or even years. By the time a community can mount a response, the trend has often passed, the profits have been made, and the appropriating company has moved on to the next thing, leaving the source community with no recourse. Thus, GI acts as the front door lock, affording the name, but leaving the backdoor of the culture appropriation of style and essence heavily ajar.

## II. LEGAL FRAMEWORK

Intellectual Property rights remain pivotal with increasing influence shaping trade at international and national levels. At the national level they are protected under the Geographical Indications of Goods (Registration & Protection) Act, 1999 and at the international level GIs are protected mainly by the TRIPS Agreement. The TRIPS Agreement is one of the pillars of global trade through the WTO which defines minimum standards of protection for IPR in WTO member states.<sup>92</sup> Geographical Indications (GIs) is one of the six domains mentioned in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization (WTO). This ensures legal safeguard to goods with GI tag, protecting their origin. Article 1(2) and 10 of the Paris Convention for the Protection of Industrial Property outlines GI under IPR.

### A. International Legal Framework

The international legal framework for protecting GIs is addressed under the following :-

#### 1. Paris Convention for the Protection of Industrial Property, 1883

Originally signed by eleven nations, the Paris Convention currently has one hundred eighty contractual member nations.<sup>93</sup> This treaty is the first multilateral agreement created to protect “appellations of origin (AO) and indications of source (IS)”.

<sup>91</sup> Scafidi, Susan. Who Owns Culture? Appropriation and Authenticity in American Law. Rutgers University Press, 2005.

<sup>92</sup> Genetic Resource Action International (GRAIN). “For a full Review of TRIPS 27.3 (b): An update on where developing countries stand with the push to patent life at WTO”, 2000.

<sup>93</sup> WIPO Administered Treaties, available at: WIPO Administered Treaties (last visited on 24 September 2025)

Under Article 1(2) of the Paris Convention, indications of source and appellations of origin were covered under the domain of Industrial property. It states, “The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.”

Under Article 10<sup>bis</sup>, the signatories had to assure protection against unfair competition. It states :

1. “The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following in particular shall be prohibited:

- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
- indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.”

#### 2. Madrid Agreement for the Representation of False and Deceptive Indications of Source on Goods, 1891

The Madrid Agreement establishes regulations to address issues related to misleading or deceptive indications of origin (IS). The Agreement is for the protection of IS but it does not define IS. It protects indications of source (IS) against misleading use by offering remedies like product seizure upon importation, importation prohibition, and product seizure

within the nation for illegally bearing a source indication. Article-1 states :

1. “All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.

2. Seizure shall also be effected in the country where the false or deceptive indication of source has been applied, or into which the goods bearing the false or deceptive indication have been imported.

3. If the laws of a country do not permit seizure upon importation, such seizure shall be replaced by prohibition of importation.

4. If the laws of a country permit neither seizure upon importation nor prohibition of importation nor seizure within the country, then, until such time as the laws are modified accordingly, those measures shall be replaced by the actions and remedies available in such cases to nationals under the laws of such country.

5. In the absence of any special sanctions ensuring the repression of false or deceptive indications of source, the sanctions provided by the corresponding provisions of the laws relating to marks or trade names shall be applicable.”

#### 3. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958

The Lisbon Agreement came into effect in 1966, initially signed by Cuba, Czechoslovakia, France, Haiti, Israel, Mexico, and Portugal. Today, the Agreement has membership of thirty countries, spanning from developed, developing, least developed, and transitional economies. The Agreement only focuses on Appellations of Origin (AO) unlike the Madrid Agreement. The Lisbon Agreement formally defined Appellations of Origin, making it the first historical occurrence of its formal articulation.

Under Article 2, Appellations of Origin (AO) and Country of origin is defined as the following:

1. "In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

2. "The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation."

Many provisions of the TRIPS Agreement is based on the Lisbon Agreement.

#### 4. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1995

The international agreements preceding TRIPS addressed geographical indication but were inadequate. The Paris Convention included only a broad provision on GIs, the Madrid Agreement only extended protection to indications of source. The Lisbon Agreement, despite its attempt to offer protection, suffered from limited membership, which constrained its effectiveness. To overcome these shortcomings, the TRIPS Agreement introduced enhanced provisions with the aim to safeguard GIs. Thus, The TRIPS Agreement came into force on 1st January 1995. It provides for minimum standard of protection to all GIs with additional protection to wines and spirits. WTO members are required under the Agreement to provide protection to GIs.

Part II, Section 3, Articles 22-24 of the TRIPS Agreement provide provisions for the protection of GIs.

Article 22 provides for protection of GI:

1. "Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory,

where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10<sup>bis</sup> of the Paris Convention (1967).

3. A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory."

Article 23 provides additional protection for wines and spirits:

"Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the 'like'."

According to Lisa P. Lukose “A higher-level protection is given not because of the unique characteristics of these products rather a compromise reached in the WTO negotiations in favour of the wine producing countries.”<sup>94</sup>

The provision on international negotiations is laid down under Article-24. It states the following :

1. “Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a

particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become

<sup>94</sup> Lisa P Lukose. “Rationale and Prospects for the Protection of Geographical Indication” 12 Journal of Intellectual Property Rights, 2007, 216.

generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country."

The international legal framework surrounding the protection of Geographical Indications (GIs) is rife with uncertainties. These stem from the inconsistent protections mandated under the TRIPS Agreement, which fail to adequately shield GI products. Nations retain the autonomy to determine their approach to GI protection, opting for mechanisms such as "Collective Marks" or a "Sui Generis" system. However, this fragmented approach to safeguarding origin-based goods leads to additional challenges.

## B. National Legal Framework

In India, the legal framework for safeguarding GIs is governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. India has been one of the few middle-income countries which has legislated on safeguarding GIs,<sup>95</sup> however, there have been criticism that this is a mere transplantation of European style legislation<sup>96</sup> which does not adequately protect the indigenous products.

Multiple social, cultural, economic, and political factors influenced the decision to legislate the GI Act, followed by the introduction of the GI Rules to ensure its effective implementation. One of the significant objects of India's GI laws was to protect and preserve the cultural heritage associated with specific geographical areas.<sup>97</sup>

Geographical Indication (GI) products are commonly crafted in rural and economically underprivileged regions of India. GI laws were to be implemented to develop these regions by helping local industries, provision of employment, and development of infrastructure. It was expected that the protection of Geographical Indications (GIs) would provide both producers and consumers with economic benefits. To producers, GIs provide a competitive advantage, which allows them to charge a premium on products that have unique characteristics. In the meantime, consumers have a privilege of assurance in quality and authenticity of what they buy. Moreover, the GI regulations in India are aligned with the international standards and treaties such as the TRIPS Agreement. This global alignment is paramount in improving the global marketability of the Indian GI products.

### Geographical Indications of Goods (Registration and Protection) Act, 1999

Section-2(1)(e) of the act defines "geographical indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of

<sup>95</sup> Marie-Vivien D, Protection of geographical indications in ASEAN countries: Convergences and challenges to awakening sleeping geographical indications, *The Journal of World Intellectual Property*, 23 (3-4) (2020) 328, <https://doi.org/10.1111/jwip.12155>.

<sup>96</sup> Caenegem W V & Nakano K, Standard trademarks, geographical indications and provenance branding in Australia: What we can learn from King Island,

*The Journal of World Intellectual Property*, 23 (5-6) (2020) 632, <https://doi.org/10.1111/jwip.12166>.

<sup>97</sup> Kneller E, EU-Australia FTA: Challenges and potential points of convergence for negotiations in geographical indications, *The Journal of World Intellectual Property*, 23 (3-4) (July 2020) 546-578, <https://doi.org/10.1111/jwip.12163>.

processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation.--For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;"

Products bearing a GI (Geographical Indication) tag stand out due to their unique connection to a specific location, which often influences their quality or other distinctive factors such as the region's soil, climate, or exclusive characteristics. This provision makes it possible to preserve symbols other than place names, such as

'Basmati'.<sup>98</sup> They can serve as appellations of origin, indications of source, or even a blend of both.

Under Section 8 of the act, a GI may be registered for any or all of the items, including any sorts of goods that the registrar may list.<sup>99</sup> The register may categorize the items as per the international division of goods in accordance with the stipulated method in order to register geographical indicators and publish in an alphabetical index of different goods. A geographical indication can be registered by any group of individuals, producers, organizations, or authorities established under relevant legislation representing the interests of the producers of the specified goods. These applicants are referred to as registered proprietors. A manufacturer will file an application to be jointly registered with the existing proprietor of a geographical indication

as an authorized user of that specific GI.<sup>100</sup> The authorized users will be able to use the GI to market their products.<sup>101</sup>

In India, the legislation on geographical indication is limited to only safeguarding the name and the origin of the products.<sup>102</sup> Section 21 of the GI Act confers the exclusive use of the GI to the authorized users and the right to bring claims against infringement, however, there are no robust enforcement mechanism of such rights in the legislation.<sup>103</sup>

### Challenges with the Geographical Indications of Goods (Registration and Protection) Act, 1999

The GI Act contains several fundamental structural flaws. The Act describes a GI as a marker for goods "originating" from a specific territory, where their "given quality, reputation, or other characteristic" primarily stems from the geographical origin. However, it fails to establish explicit criteria for determining whether this essential link exists. This ambiguity has resulted in inconsistent applications, such as challenges in differentiating products that are simply linked to a region from those fundamentally reliant on it. For instance, debates surrounding items like Basmati rice and Tirupati laddoo highlight the uncertainty in defining this distinction.

Furthermore, the limited scope of the Act has led to an influx of cheaper, machine-made imitations flooding the market, undermining the value of authentic GI products. Numerous GI products are linked to boards or organizations that are not financially strong enough to pursue legal actions against infringement both domestically and internationally.<sup>104</sup> To ensure

<sup>98</sup> Srivastava S C, Geographical indications and legal framework in India, Economic and Political Weekly, 38 (2003) 4022, 4028, <https://www.jstor.org/stable/4414050>.

<sup>99</sup> Mwakaje S J, Protection of geographical indications and cross-border trade: A survey of legal and regulatory frameworks in East Africa, The Journal of World Intellectual Property, 25 (11) (2021) 10.1111.

<sup>100</sup> Shafi M, Geographical indications and sustainable development of handicraft communities in developing countries, The Journal of World Intellectual Property, 25 (1) (2022) 10.1111/jwip.12211.

<sup>101</sup> Asri D P B et al., Valuing local heritage: Issue and challenges of geographical indication protection for local artisans in Indonesia Kasongan village heritage, The Journal of World Intellectual Property, 25 (1) 2021, <https://doi.org/10.1111/jwip.12206>.

<sup>102</sup> Medeiros Mirna de L & Passador João L, Examining the development attributed to geographical indications, The Journal of World Intellectual Property, 25 (1) (2022) 86-105 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jwip.12208>.

<sup>103</sup> Adebola T, The legal construction of geographical indications in Africa, The Journal of World Intellectual Property, 26 (1) (2023) 3, <https://doi.org/10.1111/jwip.12255>.

<sup>104</sup> Basole A, Authenticity, Innovation, and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari, Journal of World Intellectual Property, 18 (2015) 127.

proper protection for producers, government support becomes crucial. The Act does not make room for accommodation of such provision as well.<sup>105</sup>

The GI Act under Part VII discusses appeals to the Appellant Board, spread over Sections 31 to 36. But, by means of the Tribunal Reforms Act, 2021, various Tribunals including India's Intellectual Property Appellate Board (IPAB), were abolished.<sup>106</sup> The enforcement mechanism further deteriorated as disputes remained unresolved and overlooked, leaving producers and registered owners in the dark. The seemingly disproportionate nature of the GI protection system becomes evident when considering that, as of October 2020, only six cases concerning GI disputes had been addressed by the Supreme Court and various high courts.<sup>107</sup>

The main challenge lies in the process of GI (Geographical Indication) registration, which, in itself, does not guarantee that the product will fully benefit from market exposure or gain the desired level of prestige. A significant contributing factor to this issue is the lack of follow-up activities after registration. To address this, robust measures for protection need to be implemented both nationally and internationally. Additionally, effective marketing strategies are essential to enhance the impact of GI registration. One of the more complicated issues surrounding GI registration in India is the role of the "registered proprietor." Under Section 11 of the GI Act, any legally established group or organization representing the producers' interests can apply for a GI mark. However, the threshold for demonstrating adequate representation of the producers' interests is notably low, which undermines the efficacy of the registration process. The Indian GI

(Geographical Indication) system marginalizes traditional craftsmen and artisans, whose rights it is fundamentally designed to protect. When the Act was initially legislated, the introduction of the concept of a "registered proprietor" was justified on the grounds that Indian artisans often lack the financial resources, time, or expertise needed to file a registration application or obtain the status of an "authorized user." However, in practice, this framework has evolved into a mechanism that allows monopolization of GI benefits and curtails broader access. Critics and scholars argue that neither the GI Act nor its accompanying Rules include clear provisions to ensure that the so-called proprietor or producer genuinely represents the interests of traditional producers or that the claimed producer is even directly linked to the creation of the GI-registered product. Another major challenge in implementing GI-related rules lies in the limited awareness among producers and consumers regarding the importance of GI protection.<sup>108</sup> Many producers, especially in remote areas, are unaware of the benefits of GI registration and usage.<sup>109</sup> Enforcement of GI rights also has a significant handicap.

### III. INTER-SECTION OF GI AND CULTURAL APPROPRIATION

The Geographical Indications (GIs) are legal tools designed to preserve goods which possess unique features, reputation, or judicial traits that have a direct connection with the place of origin. Even though GIs is meant to maintain the economic and cultural value of traditional products, their ability to counter cases of cultural appropriation which can be referred to as unauthorized use or exploitation of knowledge, symbols, or even expressions of another culture by other parties is inadequate in practice.

<sup>105</sup> Oke E W, Rethinking Nigerian Geographical Indications Law, The Journal of World Intellectual Property, 25 (3) (2022) 746, <https://doi.org/10.1111/jwip.12248>.

<sup>106</sup> Syed S, Incorporation of competition-related TRIPS flexibilities in the Domestic Law: A case study of India, The Journal of World Intellectual Property, 23 (1-2) (2020) 20, <https://doi.org/10.1111/jwip.12137>.

<sup>107</sup> Calabrese B, Geographical indications used as ingredients or components: A proposed reform in 'sharp' contrast with the Circular Economy (to say the least), Journal of Intellectual Property Law & Practice, 18 (5) (2023) 339, <https://doi.org/10.1093/jiplp/jpad009>.

<sup>108</sup> Marie-Vivien D, The Role of the State in the protection of Geographical Indications: From disengagement in France/Europe to significant involvement in India, The Journal of World Intellectual Property, 13 (2) (2010) 121, <https://doi.org/10.1111/j.1747-1796.2009.00375.x>

<sup>109</sup> Telegraph India, <https://epaper.telegraphindia.com/imageview/459352/55020313/71.html> (accessed on 8 October 2025).

### Prada and Kolhapuri Chappals

The Kolhapuri chappal, a traditional handcrafted footwear from Maharashtra, was granted GI status in 2019 under Class 25 (clothing and footwear), jointly owned by Sant Roahidas Leather Industries & LIDCOM and Dr. Babu Jagjivan Ram Leather Industries Development Corporation (LIDKAR). On June 22, 2025, at Milan Fashion Week, the renowned Italian luxury label Prada introduced a collection that showcased open-toe leather sandals similar to Kolhapuri Chappals, the traditional handcrafted footwear originating from Kolhapur, Maharashtra.<sup>110</sup> The design incorporated signature elements such as braided leather straps, a T-strap layout, and a prominent toe-loop which are the distinctive features of authentic Kolhapuri craftsmanship. Although the sandals bore a strong visual resemblance to traditional Indian designs, Prada made no reference to their Indian origin, cultural heritage, or the artisans behind such craftsmanship in its show notes, promotional materials, or presentation. The footwear was merely labeled as “leather sandals,” which led to swift and widespread criticism. Hashtags like #PayArtisans and #KolhapuriNotCopy trended across India, with fashion commentators, designers, and the public accusing Prada of cultural appropriation and erasure of artisanal legacy.<sup>111</sup> A delegation of Kolhapuri artisans, led by a Member of Parliament, met with the Chief Minister of Maharashtra, demanding central government intervention to protect GI rights. A Public Interest Litigation (PIL) brought before the Bombay High Court alleged unauthorized commercialization by Prada and sought compensation for perceived harm to the community. The court, however, dismissed the PIL, stating that Prada had not specifically used the term “Kolhapuri,” and the Geographical Indication (GI) protection under Indian law does

not extend to design attributes alone.<sup>112</sup> The GI tag is enforceable only within India. Prada, manufacturing and selling the sandals in Italy and other global markets, remains outside the jurisdiction of Indian GI law. This creates a “territoriality trap” as artisans cannot prevent foreign brands from replicating and profiting from their designs abroad. Despite widespread criticism and legal disputes, the absence of international protection for the Geographical Indication has left artisans exposed to the constraints imposed by India’s intellectual property laws.

### Basmati Rice

Basmati rice stands out as one of India’s most renowned geographical indications (GIs), celebrated for its unique aroma and elongated grains. The Basmati cultivated in Punjab, Haryana, Delhi, Himachal Pradesh, Uttarakhand, and portions of Western Uttar Pradesh and Jammu & Kashmir were granted GI designation in May 2010. Despite its global recognition, India has encountered disputes with several neighboring countries, notably Pakistan but also Nepal, regarding the geographical boundaries of Basmati rice cultivation. These disagreements have sparked legal conflicts and complications in safeguarding and promoting Basmati rice as a distinct Indian product on the world stage. Nepal is the first least developed country (LDC) to join the World Trade Organisation (WTO), gained media attention in December 2020 when it opposed India’s registration of basmati rice as a GI with the EU. As a result,<sup>113</sup> Nepal’s opposition to India’s EU registration of Basmati rice sparked a discussion about the need to strengthen the country’s intellectual property laws and safeguard locally produced goods with a strong national identity. In 2025, the European Commission allowed Pakistan to export Basmati

<sup>110</sup> Prada Accused of Cashing In on Indian Culture with ‘Kolhapuri-Inspired’ Sandals, Guardian, June 30, 2025, <https://www.theguardian.com/world/2025/jun/30/prada-accused-of-cashing-in-on-indian-culture-with-kolhapuri-inspired-sandals>.

<sup>111</sup> FDDI, “The Kolhapuri Issue: Prada, Cultural Appropriation and the Global Debate,” FDDI Blog (blog), <https://blog.fddiindia.com/the-kolhapuri-issue-prada-cultural-appropriation-and-the-global-debate/>.

<sup>112</sup> HT News Desk, “Prada Dragged to Court, Compensation Sought over ‘Kolhapuri Chappals’ in 2026 Collection,” Hindustan Times, July 3, 2025, <https://www.hindustantimes.com/india-news/prada-dragged-to-court-compensation-sought-over-kolhapuri-chappals-in-2026-collection-101751616063583.html>.

<sup>113</sup> Kamatagi S, Geographical indications in India and the missing regulatory framework on post registration quality control measures, International Journal For Legal Research and Analysis, 2 (5) (2022) 10.

rice from Sindh to Poland, reigniting tensions. India argues that authentic Basmati is grown in specific regions of Punjab and Uttar Pradesh, while Pakistan asserts its Punjab region also produces genuine Basmati. The EU's refusal to grant exclusive GI status to India reflects the difficulty of adjudicating overlapping cultural claims in international trade law.

### Darjeeling Tea Dispute

Darjeeling Tea became the first product in India to be registered as a GI under the Geographical Indication of Goods (Registration and Protection) Act, 1999, in 2004. Darjeeling tea remains a renowned GI, often known as the 'Champagne of teas'. Its main challenge is unauthorized use of the GI label and imitation of the product in other regions. Exporters openly claim that they have exploited the Darjeeling GI as a tool to control and intimidate suppliers and customers,<sup>114</sup> however, even with such heavy-handed tactics they did not manage to have sufficient finances to neither promote it like Colombian coffee, nor protect it like Champagne or reach new foreign/domestic consumers. Indian Tea Exporters' Association Chairman while explaining the scenario relating to counterfeiting stated that the total annual production of Darjeeling tea is about 8.5 million kg, but about 50 million kg of Darjeeling tea is sold worldwide.<sup>115</sup> A severe breach of the GI Act, 1999, is evident, yet minimal efforts have been made to enforce the regulations or set up a robust mechanism to ensure the global sale of genuine Darjeeling tea.

The Tea Board of India oversees the registration and manages certification trademarks for Darjeeling tea, including its iconic logo featuring an Indian woman holding tea leaves. However, the Tea Board faced a legal setback in *Tea Board of India v. ITC Ltd.*<sup>116</sup> The Plaintiff in this

case was a statutory body<sup>117</sup> named Tea Board India. The Board was the registered proprietor of two different certification trademarks for tea; which fall under Class 30.<sup>118</sup> The first of the two 'certification trademarks' was a word mark<sup>119</sup> for "Darjeeling"<sup>120</sup> and the second was a device mark<sup>121</sup> for an image of a lady holding two tea-leaves along with a bud in her left hand along with the word "Darjeeling" inscribed to the left of the image.<sup>122</sup> The aforementioned marks had also been separately registered by the plaintiff in 2003 under the GI Act as a GI.<sup>123</sup> The Board sued ITC Ltd., a premier Indian industrial house that operated many premier hotels across the country, for having named a portion of its famous luxury hotel in Calcutta, the ITC Sonar Hotel as "The Darjeeling Lounge". The Board's chief contention was that the usage of the word "Darjeeling", which was protected by a trademark by ITC Ltd. was nothing short of an infraction upon its GI mark.<sup>124</sup> The Board also contended that it was a direct violation of the certification trademark registered by the Board which amounted to an act of 'passing-off'<sup>125</sup> with respect to unfair and unwarranted competition leading to an effective dilution of the very brand value attained by Darjeeling Tea because of its status as a GI. On the other hand, ITC Ltd. contended that the provisions of the GI Act could only be applied to goods, whereas the Darjeeling Lounge, which was at the centre of the entire controversy, was providing mere services.<sup>126</sup> The Calcutta High Court and later appellate decisions held that the GI registration and certification trademark only protected the use of the name "Darjeeling" in relation to tea

<sup>114</sup> Giovannucci D, et. al, Defining and marketing "Local" foods: Geographical indications for US Products, *The Journal of World Intellectual Property*, 13 (2) (2010) 94, <https://onlinelibrary.wiley.com/doi/10.1111/j.1747-1796.2009.00370.x>.

<sup>115</sup> The Hindu, <https://www.thehindu.com/news/national/otherstates/duplicate-darjeelings-from-nepal-add-to-indias-teaworries/article36979590.ece> (accessed on 8 October 2025).

<sup>116</sup> GA No.3137 of 2010: CS No.250 of 2010.

<sup>117</sup> Formed under Section 4 falling under Chapter II of the Tea Act, 1953 as an autonomous and non profit-making enterprise.

<sup>118</sup> Trademarks in India are divided into 45 classes; with Classes 1-34 relating to goods (divided according to industry/area of usage) and Classes 34-45 dealing with services (divided on the basis of industry/vocation).

<sup>119</sup> A standardized textual or graphical representation of an entity; used for branding, identification or immediate recall of a product.

<sup>120</sup> Trademark No. 831599.

<sup>121</sup> A standardized trademark relating to a particular brand and including text or images synonymous with a particular brand; thereby aiding that particular brand maintain its goodwill or reputation in the market.

<sup>122</sup> Trademark No. 532240.

<sup>123</sup> The word and the logo were assigned GI Nos. 1 and 2 respectively; being the first GI to be applied for in India.

<sup>124</sup> *Tea Board India*, supra note 28 at 6, p.10.

<sup>125</sup> *Id.* at 9, p. 3.

<sup>126</sup> *Id.* at 13, p. 8.

and tea products. The term Darjeeling being used for a lounge offering services rather than goods was determined not to violate GI rights, as geographical indication laws apply exclusively to goods and do not extend to services. The court observed that the term “Darjeeling” is a geographical name and cannot be exclusively claimed by the Tea Board for uses unrelated to tea. The board’s rights do not extend to all potential uses of the word outside the context of tea products. The legal rights over a GI must be upheld and protected after they are acquired, this requires constant market observation to ascertain whether fake items are being passed off.<sup>127</sup>

The recurring challenges highlighted in the cases of Darjeeling Tea, Basmati Rice, and Kolhapuri Chappals underscore the significant shortcomings of the current Geographical Indications (GI) framework when faced with the realities of modern global trade and cultural interplay. For agricultural products like Darjeeling Tea and Basmati Rice, the primary obstacles lie in enforcement, combating counterfeit goods, and resolving boundary disputes. The core purpose of GIs, which is to link a product’s reputation to its geographic origin, is often weakened by inadequate domestic enforcement mechanisms and intricate international claims. The Kolhapuri chappal controversy, however, presents an even deeper issue: it reveals that GI laws, which are fundamentally territorial and product-focused, struggle to address cases of cultural appropriation wherein foreign entities exploit design elements beyond the jurisdictional reach of national protections.

#### IV. EMERGING FAULTLINES

In today’s world shaped by globalization and digital inter-connectivity, the protective barriers that once preserved local knowledge, traditional craftsmanship, and cultural identity are becoming progressively fragile. The governance

of cultural and intellectual property is increasingly challenged by intricate fault lines that arise at the intersection of Geographical Indications (GIs) and cultural appropriation. These challenges manifest through a web of cross-border disputes, widespread digital reproduction, exploitation in e-commerce, and the broader commercialization of protected cultural assets. As traditional goods and cultural expressions enter transnational markets and digital spaces, they are detached from their socio-geographical origins and subjected to new regimes of representation and commodification.<sup>128</sup> The digital replication of cultural motifs and the widespread commercialization of “authentic” heritage products through e-commerce platforms erode the boundaries between original creations and imitations. At the same time, they heighten systemic inequalities between the communities that produce these works and the powerful global corporations that market them.<sup>129</sup> As a result, the legal structures regulating geographical indications (GIs) and the ethical discussions on cultural appropriation are increasingly challenged by shifting notions of ownership, authenticity, and fairness within the context of a fast-changing global economy.<sup>130</sup>

#### Cross-Border & Jurisdictional Disputes

Geographical Indications (GIs) are territorial by nature, meaning their protection is limited to the country where they are registered, unless extended through intricate bilateral agreements. Foreign entities can replicate the design, style, or essence of a GI-tagged product, such as the Kolhapuri chappal, without using the GI name itself. Since design attributes are not automatically protected under GI law, and the foreign firm (like Prada) is outside the GI’s jurisdiction, the originating community lacks

<sup>127</sup> Upreti P N, The battle for geographical indication protection of basmati rice: A view from Nepal, IIC 54, 710–731 (2023), <https://doi.org/10.1007/s40319-023-01323-w>.

<sup>128</sup> Dev S. Gangjee, Relocating the Law of Geographical Indications, 82 CHL-KENT L. REV. 1295 (2007).

<sup>129</sup> Rosemary J. Coombe, The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law (1998).

<sup>130</sup> Madhavi Sunder, From Goods to a Good Life: Intellectual Property and Global Justice (New Haven, Conn.: Yale University Press 2012).

an effective remedy.<sup>131</sup> This highlights the need for stronger international instruments that address the rights of TCE holders against non-literal appropriation.

#### Digital Reproduction & E-commerce Exploitation

The rapid expansion of online marketplaces like Amazon and Alibaba has intensified issues related to counterfeiting and the misuse of Geographical Indications (GIs) such as Darjeeling Tea. Fake products can be easily and inexpensively listed, distributed worldwide, and promoted with deceptive labels, resulting in consumer misinformation and diminishing the reputation and value of authentic brands.<sup>132</sup> Producers frequently face challenges due to limited resources and inadequate legal mechanisms, making it difficult to oversee and execute prompt removal of counterfeit listings across various international digital platforms.

#### Commercialization of Non-GI Features

The GI framework emphasizes the connection between a product's origin and its quality, as reflected in the reputation of its geographical indication, rather than its outward appearance or aesthetic qualities. When a luxury brand copies the distinctive design elements (e.g., braided leather straps, T-strap layout) of an artisanal product, but markets it using a generic term – “leather sandal”, the act falls into a legal blind spot.<sup>133</sup> The community faces the dual challenges of cultural erasure and economic damage, yet the GI holder lacks any legal avenues for redress unless the design is independently protected under a distinct intellectual property framework, such as design law.

#### Overlap with Trademark Law

Businesses frequently strive to trademark names that overlap with or include terms linked to geographical indications (GIs), resulting in

expensive and drawn-out legal disputes. In the case of *Tea Board of India v. ITC Ltd.*<sup>134</sup>, the courts determined that the term “Darjeeling Lounge” used for hotel services did not violate the “Darjeeling Tea” geographical indication (GI). The ruling clarified that GI laws are confined to goods and do not extend to services, effectively restricting the extent of protection afforded to the overall brand identity associated with the GI.

The growing fault lines caused by cross-border legal disputes, the expansion of e-commerce, and the commercial exploitation of design highlight a significant weakness within the current Geographical Indication (GI) framework. The territoriality trap hinders artisans from seeking justice against foreign brands, as the existing laws prioritize names over the essence of design. This approach leaves the cultural soul of artisanal creations vulnerable and exposed in the digital marketplace.

#### **V. INCLUSIVE IP SOLUTIONS**

Tackling the intricate challenges faced by indigenous communities and traditional artisans demands innovative, comprehensive approaches to intellectual property (IP) protection. While conventional frameworks provide a starting point, they often fail to adequately safeguard the cultural integrity and shared heritage inherent in traditional knowledge and expressions. To address these shortcomings, it is crucial to pursue integrative strategies that merge existing IP tools, such as Geographical Indications, with bespoke Sui Generis systems tailored specifically to protect Traditional Cultural Expressions (TCEs). Equally important is the reinforcement of enforcement mechanisms alongside the active involvement of these communities, ensuring that legal protections are not only effective and just but also aligned with the principles, values, and rights of indigenous peoples.

The current GI regime primarily addresses the misappropriation of the name (the indication

<sup>131</sup> The IP Press, Cultural Appropriation Versus Cultural Appreciation: The Case of the Prada-Kolhapuri Chappal (Aug. 13, 2025), <https://www.theipress.com/2025/08/13/cultural-appropriation-versus-cultural-appreciation-the-case-of-the-prada-kolhapuri-chappal/>.

<sup>132</sup> Jayanta Ghosh et al., Geographical Indication (GI) Laws in India and Its Implementation: A Critical Appraisal, 30 J. Intell. Prop. Rts. 235, 238 (2025).

<sup>133</sup> Supra note 22.

<sup>134</sup> Supra note 28.

itself), failing to adequately cover the design essence, the traditional cultural expression (TCE), that often forms the product's identity.<sup>135</sup> The recent controversy involving the Kolhapuri chappal, where an international luxury brand, Prada copied its distinctive toe-loop and braided T-strap design without using the registered GI name, highlights this critical gap.<sup>136</sup> The GI Act, much like the foundational elements of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), serves mainly as a mechanism to safeguard consumers from being misled about the origins of products. To address this issue, a statutory requirement should be established to incorporate the protection of TCEs into the GI framework. This requires an amendment to the GI Act that explicitly recognizes the associated traditional knowledge and design elements as integral components of the GI's "quality, reputation or other characteristic."<sup>137</sup> An amendment of this nature would empower registered proprietors of a GI to pursue legal action not only for unauthorized usage of the name but also for deceptive or exploitative imitation of the unique aesthetic characteristics rooted in the community's traditional cultural expressions. Such an approach would establish an essential, though interim, legal framework to protect the cultural essence of artisanal products, especially in light of the absence of a specific international agreement addressing TCEs.

The most profound long-term solution lies in establishing a Sui Generis (unique) legal framework specifically tailored to the rights of indigenous and local communities over their traditional cultural expressions and knowledge (TCE/TK).<sup>138</sup> Traditional intellectual property laws,

including copyright, patents, and trademarks, are fundamentally rooted in principles of individual ownership, limited time-frames, and the requirement for originality. These characteristics make them poorly equipped to safeguard collective knowledge that is communal in nature, perpetually evolving, and frequently tied to age-old cultural traditions.<sup>139</sup> A specialized sui generis law for Traditional Cultural Expressions (TCE) and Traditional Knowledge (TK) would serve several critical purposes -

- Acknowledge Collective Ownership : It would confer perpetual, inalienable rights to the originating community, ensuring these rights are held collectively rather than by a governmental entity or a temporary organization.
- Establish Moral Rights : Such legislation would empower communities to prevent or regulate the use of their TCEs in ways that are culturally disrespectful, offensive, or detached from their original context.
- Enforce Prior Informed Consent and Benefit Sharing : Crucially, it would require commercial users to obtain the community's express permission (Prior Informed Consent) before exploiting their TCE/TK outside the traditional context and establish a framework for mandatory, equitable benefit-sharing.<sup>140</sup>

India's current Biodiversity Act, 2002 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 incorporate aspects of sui generis protection to safeguard genetic resources<sup>141</sup> and farmers' traditional knowledge. Introducing a comparable, focused legislation for intangible cultural heritage would create a comprehensive protective framework. This law would shift the approach from merely combating 'unfair

<sup>135</sup> Dr. Irwin Lalmanpui Hnamte, Geographical Indications Act and Cultural Appropriation in Northeast India: Scope and Analysis, 5 Int'l J. L. Mgmt. & Humanities 137, 145 (2022).

<sup>136</sup> Tanishka Goswami & Shikhar Aggarwal, The Devil Wears Kolhapuri or Prada? Understanding GI Law, Cultural Appropriation & More, SPICYIP (July 4, 2025), <https://spicyip.com/2025/07/the-devil-wears-kolhapuri-or-prada-understanding-gi-law-cultural-appropriation-more.html>.

<sup>137</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999, S.2(1)(e).

<sup>138</sup> Kilian Bizer et al., Sui Generis Rights for the Protection of Traditional Cultural Expressions: Policy Implications, 2 J. Intell. Prop. Info. Tech. & Elec. Com. L. 114 (2011).

<sup>139</sup> Jane Anderson, Indigenous/Traditional Knowledge & Intellectual Property, Duke Law School Ctr. for the Study of the Pub. Domain, at 5 (2011).

<sup>140</sup> World Intellectual Prop. Org. Intergovernmental Comm. on Intell. Prop. & Genetic Res., Traditional Knowledge & Folklore, Sui Generis Rights for the Protection of Traditional Cultural Expressions, WIPO/GRTKF/IC/19/5 (2011).

<sup>141</sup> The Protection of Plant Varieties and Farmers' Rights Act, 2001, S. 39.

competition’ to affirming ‘inalienable community rights,’ establishing both a moral and legal defense against widespread cultural appropriation in the global fashion and design industries.

A well-designed law holds little value if it lacks proper enforcement and the support of an engaged community. Indian Geographical Indications (GIs) often face significant risks abroad due to the “territoriality trap,” leaving them exposed to infringement. Local artisan collectives struggle to pursue legal action in foreign courts, as the costs are overwhelmingly high. On the home front, enforcement efforts against digital piracy and e-commerce driven counterfeiting remain notably insufficient. To strengthen communities and enhance legal defense, a two-pronged strategy is recommended –

#### A. Strengthened State-Driven Enforcement

The government must establish a National GI Defense Fund. This fund, jointly supported by central and state governments, would be tasked with monitoring global markets for potential infringements and financing international legal actions on behalf of GI-registered communities unable to bear the financial burden themselves.<sup>142</sup> Furthermore, the Geographical Indications Act should be updated to empower enforcement authorities with enhanced capabilities, such as issuing immediate takedown notices and imposing stringent penalties on e-commerce platforms that enable the sale of counterfeit GI products.

#### B. Direct Community Empowerment

Empowering communities directly involves transferring authority to the producers themselves. This requires amending the law to enable simpler and more accessible registration processes for artisan cooperatives and local organizations, allowing them to serve as the Principal Registered Proprietors of Geographical Indications (GIs) without

depending on remote government bodies. Additionally, implementing required training programs, offering subsidized legal assistance, and streamlining the process to obtain Authorized User status would empower artisan communities with both the benefits and responsibilities of the GI designation, including the ability to take legal action against infringement. By decentralizing ownership and equipping these groups with the necessary tools for protection, India can evolve its GI system into a dynamic, community-driven model that safeguards collective intellectual and cultural heritage.

#### VI. CONCLUSION

The current international and domestic Intellectual Property Rights (IPR) framework, primarily designed to protect individual and corporate innovation through mechanisms like patents, trademarks, and copyrights, is fundamentally inadequate for safeguarding the vast and invaluable body of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs).<sup>143</sup> The prevailing system, even when attempting to address TK, often resorts to defensive, “name-based” protection such as mere documentation or the creation of digital libraries (like India’s Traditional Knowledge Digital Library (TKDL)). These defensive strategies fail to provide traditional and indigenous communities with the proactive, affirmative authority to manage their heritage. They also fall short of ensuring fair distribution of benefits derived from its commercial utilization. In the long run, the evolution of intellectual property rights calls for a profound overhaul, shifting focus from simply preventing bio-piracy to genuinely empowering these communities with control over their cultural and heritage assets. The primary conflict arises from the fundamental disparity between the principles underlying Intellectual Property Rights (IPR) and the essence of Traditional Knowledge (TK). While IPR assigns exclusive, time-bound

<sup>142</sup> Kasturi Das, Socio-economic Implications of Protecting Geographical Indications in India, Centre for WTO Studies Working Paper No. 12, at 20 (2009).

<sup>143</sup> R. Stephen Crespi, Biotechnology, Patents and the WTO, 17 Int’l Rev. Indus. Prop. & Copyright L. 19 (1996).

rights to an individual inventor for a specific innovative creation, TK embodies a collective and enduring heritage shared across generations. TK is a collective right, developed and maintained inter-generationally, and forms an intrinsic, inseparable part of a community's cultural identity and continued existence.<sup>144</sup> Thus, IPR requires a re-evaluation to ensure that the legal system goes beyond mere name-based protection and establishes the rights of traditional communities to control their heritage and culture.



<sup>144</sup> Toshiyuki Kono, The Protection of Traditional Cultural Expressions: An Analysis of the International Initiatives and National Measures, 12 J. World Intell. Prop. 72, 75 (2009).