



Safeguarding Yakshagana: Insights from International Case Studies on Protecting Traditional Cultural Expressions through Intellectual Property Laws

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Preserving traditional cultural expression (TCE) through intellectual property rights (IPR) is pivotal in safeguarding the cultural identity of Indian indigenous communities. This paper explores the legal challenges and opportunities in safeguarding TCE, focusing on Yakshagana—a traditional theatre form from Karnataka that epitomizes the cultural heritage and collective intellectual contributions of native communities. Yakshagana, with its unique blend of dance, music, dialogue, costume, makeup, and stage techniques, serves as a compelling case study for examining the intersection of TCE, IPR, and cultural identity. The communal nature of Yakshagana, characterized by its oral transmission and regional variations, complicates its protection under conventional IPR frameworks designed for individual and documented knowledge. Legal challenges include the difficulty of documenting and codifying oral traditions, risks of misappropriation, and the inadequacy of existing legal instruments, such as the Indian Patent Act and the Biological Diversity Act, to fully encompass the cultural and intellectual essence of Yakshagana. Despite these challenges, there are significant opportunities to safeguard Yakshagana through innovative legal approaches. The integration of sui generis systems, specifically designed to protect TCE, can offer more effective and culturally sensitive protection. Community protocols and benefit-sharing agreements can ensure that the custodians of Yakshagana receive fair recognition and compensation. Moreover, geographical indications (GI) can be leveraged to protect the regional identity and authenticity of Yakshagana, preventing unauthorized commercial exploitation. This paper underscores the importance of legal reforms and community empowerment in protecting TCE like Yakshagana. By advocating for a balanced approach that harmonizes modern IPR frameworks with the unique needs of indigenous communities, the paper highlights how India can set a global precedent in preserving and valuing the rich heritage of its indigenous populations.

Keywords: Traditional Knowledge, Traditional Cultural Expression, Cultural Identity, Misappropriation, Intellectual Property Rights, Geographical Indications, Ownership, Sui-Generis system

Individual Rights v Community Rights

The cultural identity and inheritance of native people around the world depend extensively on the safeguarding and preservation of their traditional cultural expressions (TCEs). In India, Traditional Knowledge (TK) encompasses a wide array of practices and innovations across various fields, including agriculture, medicine, and the performing arts. One of the most prominent examples of such traditional knowledge is Yakshagana, a unique theatre form that has its roots in Karnataka. Yakshagana combines elements of dance, music, dialogue, costume, and makeup to narrate stories from Hindu epics and local folklore. It is a crucial part of the cultural legacy of the communities that perform it, in addition to being a source of entertainment. Despite its rich cultural significance, the protection of Yakshagana and similar forms of TCE faces

significant legal and ethical challenges, particularly in the realm of intellectual property rights (IPR).

The existing IPR frameworks are primarily designed to protect individual rights and documented knowledge, often neglecting the collective and oral nature of traditional knowledge. This misalignment leads to considerable challenges in safeguarding TCE against misappropriation and exploitation. Legal instruments such as the Indian Patent Act and the Biological Diversity Act provide some level of protection, but they often fall short of fully encompassing the uniqueness of traditional knowledge¹. Furthermore, the process of documenting and codifying oral traditions, which are integral to TCE, poses additional difficulties. The lack of formal recognition and protection of TCE often results in the exploitation of indigenous communities by commercial entities that capitalize on their knowledge without providing fair compensation or recognition².

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The case of Yakshagana highlights the urgent need for more effective legal mechanisms that can protect traditional cultural expression while respecting the contributions that Indigenous communities have made to their beliefs and culture. One of the significant challenges in protecting Yakshagana is the difficulty of documenting and codifying its oral traditions. Yakshagana is traditionally passed down through generations orally, making it challenging to fit within the conventional IPR framework that requires documented evidence of originality and ownership. This oral transmission is not only a means of preserving the art form but also a crucial aspect of its cultural significance³. The communal nature of Yakshagana further complicates its protection under the existing IPR framework. Unlike conventional knowledge, which is typically attributed to a single inventor or a group of inventors, traditional knowledge like Yakshagana is collectively owned by the community. This communal ownership is often not recognized by the IPR systems, which are designed to protect individual rights⁴. As a result, the knowledge and practices associated with Yakshagana are vulnerable to exploitation by commercial entities that may seek to profit from them without providing fair compensation or recognition to the indigenous communities⁵.

The risk of piracy, where commercial entities exploit traditional knowledge without proper authorization or compensation, is a significant concern for the protection of Yakshagana. The existing legal frameworks were primarily designed to protect conventional forms of knowledge and do not fully account for the unique characteristics of traditional knowledge, such as its communal ownership and oral transmission⁶. Despite these challenges, there are significant opportunities to enhance the protection of Yakshagana through innovative legal approaches. One such approach is the integration of *sui generis* systems, which are specifically designed to protect traditional knowledge. *Sui generis* systems can provide more effective and culturally sensitive protection for traditional cultural expressions by recognizing its unique characteristics and the communal ownership of indigenous communities⁷. Community protocols and benefit-sharing agreements are another promising avenue for protecting Yakshagana. These agreements can ensure that the custodians of traditional knowledge or TCEs receive fair compensation and recognition for their

contributions⁸. By involving indigenous communities in the decision-making process and ensuring that they have control over how their knowledge is used, benefit-sharing agreements can help to protect traditional cultural expressions from exploitation and misappropriation.

Geographical indications (GI) can also be leveraged to protect the regional identity and authenticity of Yakshagana. Geographical indicators are a sort of intellectual property rights that entitle a product as being from a certain geographical place and associating that location to its reputation, quality, or other attributable to its geographic origin⁹. By obtaining GI status for Yakshagana, it can be protected against unauthorized commercial exploitation, ensuring that only authentic Yakshagana performances can be marketed under its name¹⁰.

The case study of Yakshagana underscores the importance of legal reforms and community empowerment in protecting traditional knowledge. By advocating for a balanced approach that harmonizes modern IPR frameworks with the unique needs of indigenous communities, we can develop robust policies that safeguard traditional knowledge while respecting the cultural and intellectual contributions of native peoples. This research paper aims to explore the legal challenges and opportunities in protecting traditional cultural expressions, using Yakshagana as a case study. By examining the intersection of traditional cultural expressions, intellectual property rights, and cultural identity, the present study seeks to provide approaches into how current IPR frameworks can be adapted or reformed to better serve the needs of indigenous communities. Through this exploration, there is a possibility to contribute to the broader discourse on preserving cultural heritage and supporting the rights of indigenous populations in India and beyond. In the following sections, we will delve into the historical and cultural significance of Yakshagana, assess the limitations of existing legal protections, and propose strategies to enhance the safeguarding of this invaluable traditional cultural expression. By highlighting the unique challenges and opportunities associated with protecting Yakshagana, this paper aims to underscore the importance of developing innovative legal mechanisms that can empower native communities and ensure the safeguarding of their rich cultural heritage. Through such efforts, Yakshagana can continue to thrive as a vibrant symbol of cultural identity, fostering pride and

sustainable development among Indian indigenous communities⁴.

Literature Review

Indigenous people view the information they possess as a continuous aspect of their relationship with their ancestral homeland. According to this interpretation, the term "heritage" confirms that ancient customs, knowledge, and individual lifestyles make up the cultural and intellectual legacy of native communities. World Intellectual Property Organization (WIPO) defines Tradition Knowledge (TK) as the knowledge, abilities, and customs created, maintained, and transmitted through a community's generations and frequently contribute to its cultural and spiritual identity, such knowledge can be established in many different contexts pertaining to technology, medicinal, ecological, and scientific as well as knowledge of biodiversity. These knowledge systems may have advanced over a long time and are specifically related to the resources, land, culture, beliefs, and customs of indigenous peoples. These people are the custodians of indigenous intellectual property and are accountable for maintaining indigenous culture¹¹. An individual, a clan, or the entire population manage the legacy of indigenous knowledge in harmony with the regional ethnicity, rules and regulations, and traditions. An indigenous clan loses control over how its knowledge is used and represented when it is taken away from them. UNESCO defines cultural expressions as visible manifestations of the diversity of cultures that exist within communities, groups, and people¹². They include literature, music, dance, art, languages, folklore, crafts, and more. They are passed down from one generation to the next and are incessantly recreated.

Traditional knowledge or indigenous knowledge has become a matter of concern at international level. The United Nations recognizes the significance of traditional knowledge in achieving SDGs. The term is defined as a set of annotations, novelty, applications, and ideas that encourage sustainability and the wise use of resources (natural and cultural) through interactions between people and their surroundings¹³. Indigenous Knowledge cannot exist independently of the people who are intrinsically linked to it. It is applicable to phenomena in biological, physical, social, cultural, and spiritual systems¹⁴.

The United Nations' 18th session of the Permanent Forum on Indigenous Issues stressed the value of traditional knowledge held by native communities which must be preserved and appreciated globally.

The forum regarded traditional knowledge as fundamental to native identity, culture, languages, heritage, and livelihoods, passed down through storytelling, music, dances, carvings, paintings, and performances. It also promoted the preservation and protection of traditional knowledge. According to Anne Nuorgam (Finland), Chair of the Permanent Forum on Indigenous Issues, the oral culture including stories and songs, dance forms and performances, and the part forms including carvings, paintings are ways that we pass on knowledge throughout generations. Traditional knowledge must be safeguarded because it is the foundation of the identity of native communities, their culture, languages, legacy, and livelihoods. María Fernanda Espinosa (Ecuador), General Assembly President highlighted the need of preserving languages by pointing out that knowledge acquired over millennia in disciplines such as medicine, agriculture, meteorology, and other subjects will be lost forever. She said that to be ready for the immense difficulties that lie ahead, efforts must be made to enhance the understanding of traditional knowledge and identify strategies that strengthen indigenous peoples' voices within the UN.

Janke puts forward that indigenous knowledge comprises historical, contemporary, documented, artistic, creative, oral, and written information¹⁵. Among the forms available are: photos, stories, oral histories, and films, geographical data, genealogical data, and information on flora and animals. Traditional knowledge offers insights into ecological balance and sustainable living that have been learned over generations and are deeply embedded in cultural behaviors¹⁶. It contributes to preserving social cohesiveness and cultural identity by ensuring the continuity of cultural values and norms.

Traditional Knowledge and cultural expressions act as a repository for a community's history, knowledge, and experience and are essential for preserving cultural identity and variety¹⁷. They provide opportunities for economic development through creative industries and innovations, shaping economic structures and values¹⁸. In 2001, WIPO started discussion on Genetic Resources, Traditional Knowledge and Folklore (GRTKF), but the term was rarely used and the Intergovernmental committee referred to folklore as Traditional Cultural Expression. Hughes differentiates between Traditional Knowledge and Traditional Cultural Expressions. According to him, Traditional Cultural Expressions (TCEs) fall under copyright and trademark¹⁹. At the

same time, Traditional Knowledge (TK) corresponds to what could be patentable if it were novel or non-obvious, rather than traditional. For example, the terms TCE and TK occasionally overlap in terms of copyright, trademark, and patent. For instance, the described ritual pipe smoking ceremony encompasses both TCE and TK, as it includes smoke with actual, intended pharmacological effect.

Traditional Cultural Expressions and Intellectual Property Rights

The rights to TK by Indigenous people are being more widely acknowledged at international forums, but cultural expressions and traditional knowledge involve a number of difficult ethical and legal concerns, such as access, sharing of benefits, and intellectual property rights⁶. Due to the intangible form of the traditional knowledge, which is transmitted from one generation to another, it is in grave concern of protection. There are many case studies around the world on protecting Traditional Knowledge and Traditional Cultural Expressions (TCEs) by using various forms of IPR protection. E.g.: In Australia, many attempts have taken place to protect their Carpet made by indigenous artists by using Copyright and even Indigenous dance performances by Copyright. All the aboriginal arts are copyrighted, the moment any aboriginal artist creates any aboriginal art, it is protected under Australian Copyright Act 1968. In Australia, a new set of legislation has been called for in studies like *Our Culture Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights*; wherein the focus has been given on the creation of protocols inside business and government as enacting new legislation involves lengthy processes¹⁵. The report defines the “indigenous Culture and intellectual property (ICIP)”⁶; additionally, the Draft Declaration of the Rights of Indigenous Peoples uses the phrase “indigenous cultural and intellectual property”. In contrast to heritage, which is the entirety of the cultural practices, resources, and knowledge systems that Indigenous people have developed, nurtured, and passed down to express their cultural identity, ICIP refers to the rights of Indigenous people to their heritage. It has both tangible and intangible components.

It may be understood that Traditional Knowledge from developing countries cannot be protected under the Modern Intellectual Property Rights (IPR). There are many concerns already aroused due to its

intangible nature. Copyright laws also do not cover all dimensions of rights that Indigenous people want for their ICIP. Indigenous people and bearers of traditional knowledge are concerned, nevertheless, because protection is primarily focused on tangible expression rather than ideas. Another drawback is that intellectual property laws only provide temporary protection for works. For instance, works are only protected by copyright in India for 60 years following the creator's death. On the other hand, there are those who argue that an indefinite period of protection violates intellectual property laws and would not be practical.

Several countries have observed that folklore should be given unique, unrestricted protection. Regarding the application of folklore to intellectual property, this is a contentious issue. The majority of intellectual property laws grant monopoly rights for finite periods of time, after which the subject matter is released to the general public. In fact, the claims have been made that intellectual property rights allow the plundering of traditional knowledge by granting monopoly property rights to those who record or write down information in a material form, or who patent it¹⁵. Many countries are making an effort to use the legal framework of their own national legal systems to protect folklore. A legal framework in Panama, for example, safeguards the collective intellectual property rights and traditional knowledge of indigenous peoples over their creative works, such as models, drawings, designs, inventions, and innovations found in images, figures, symbols, graphics, stone carvings, and other details, as well as the cultural aspects of their history, music, art, and traditional forms of artistic expression that are subject to commercial use.

Many developing countries have introduced and practiced their sui generis form of protection for protecting folklore. Developing countries such as Sri Lanka, China, Kenya, Iran etc. have made attempts to include the term “folklore” in their Copyright laws. The People's Republic of China's Draft Law on the Protection of Ethnic Culture and Folklore, which was drafted in 2003 by the National People's Congress Education, Science, Cultural, and Public Health Committee, states that traditional culture that is "of historical value or in imminent danger within the territory of China" is protected by the state. It covers written and folk literature, as well as traditional oral literature. In addition, it features a variety of folk-art forms, music, dance, acrobatics,

fine arts (such as paper cutting and sculpture), traditional theater (puppet shows), and arts and crafts and processing skills. It also comprises cultural items, objects, and venues; festival celebrations and ceremonies; and traditional etiquette.

Thus, the existing body of literature underscores the significance of traditional cultural expressions (TCEs) as vital repositories of Indigenous identity and heritage, with scholars emphasizing the need for robust legal protections to prevent cultural misappropriation and unauthorized commercialization. Studies on Indian TCEs, highlight gaps in the current intellectual property (IP) framework, particularly in addressing community ownership and equitable benefit-sharing mechanisms. Yakshagana, with its distinctive amalgamation of storytelling, music, and dance, represents a rich cultural tradition vulnerable to exploitation due to its growing global popularity. Comparative analyses of international case studies, such as the Maori haka in New Zealand and Aboriginal art in Australia, reveal how countries have leveraged sui generis systems and collective rights to safeguard their cultural expressions²⁰. These examples offer valuable insights into best practices, including community consultations, digital registries, and customized IP laws, which could be adapted to protect Yakshagana. Moreover, the literature emphasizes the economic potential of safeguarding TCEs, noting that effective IP protection can preserve cultural heritage and foster sustainable development for indigenous communities^{21 22}. This review serves as a foundation for proposing tailored legal and policy recommendations to address the unique challenges faced by Yakshagana while aligning with global trends and practices.

Methodology

The present research explores the legal challenges and opportunities in protecting Traditional Cultural Expressions (TCEs) of Indian indigenous communities through Intellectual Property Rights (IPR) particularly Yakshagana dance form. Utilizing a qualitative methodology, the study will conduct a comprehensive literature review, legal analysis, and case studies. The literature review will include academic journals, books, and reports from organizations like WIPO and UNESCO, providing a theoretical and conceptual framework for understanding TCEs and IPR. Legal analysis will involve examining Indian laws such as the Indian Copyright Act, 1957 and The Patent Act 1970, alongside international treaties like the

Convention on Biological Diversity and the Nagoya Protocol. In-depth case studies will focus on specific indigenous communities, incorporating field visits, interviews with community members and leaders, and documentation of traditional practices. The cases will be analyzed thematically to identify recurring patterns and key issues, and a comparative legal analysis will highlight gaps in the current legal framework and propose reforms based on international best practices. The expected outcomes include identifying major legal challenges, highlighting opportunities for leveraging IPR to empower indigenous communities, and providing policy recommendations to enhance the protection of TCEs in India, thus contributing to the broader discourse on cultural preservation and intellectual property.

India, a country rich in cultural diversity, is home to countless Traditional Cultural Expressions (TCEs), ranging from folk music and dance to textile crafts and oral traditions. These expressions represent the living heritage of communities and are often passed down through generations, reflecting shared identity and indigenous knowledge. However, the protection of TCEs under Indian law remains a complex and evolving issue.

Unlike conventional intellectual property, TCEs are often communal, orally transmitted, and perpetual in nature—characteristics that do not align easily with existing legal frameworks, which typically assume individual authorship, novelty, fixation, and time-bound protection. As a result, safeguarding TCEs using current IPR mechanisms in India presents both opportunities and limitations.

In the absence of a single, comprehensive law tailored to the unique needs of TCEs, various existing legislations such as the Copyright Act, Patents Act, Trademarks Act, Designs Act, Geographical Indications Act, and the Biological Diversity Act have been applied—often creatively and inconsistently—to offer partial protection. Each of these laws provides a different angle of coverage, yet none offer a holistic solution.

To better understand how India's legal framework interacts with TCEs, the following table analyzes each relevant IPR law in terms of its potential applicability, key challenges, and its overall effectiveness. This comparative overview provides insight into the strengths and gaps of the current system and underscores the need for a more suitable approach (Table 1).

Table 1 — Existing Indian legal framework for TCEs

Law/Act	Potential Applicability	Challenges/Limitations	Conclusion
Copyright Act, 1957	Covers original literary, dramatic, musical, and artistic works (e.g., traditional stories, songs, art, dance if fixed in tangible form).	- TCEs often lack identifiable authors. - Many are oral or performative, not "fixed". - Limited duration (life + 60 years). - Community ownership not easily accommodated.	Limited protection; mostly useful for fixed or adapted contemporary versions.
Patents Act, 1970	Mainly relevant to Traditional Knowledge (TK) related to TCEs (e.g., medicine, agriculture).	- TCEs are not "inventions". - Section 3(p) excludes traditional knowledge.	Not suitable for TCEs per se; important for preventing TK misappropriation (e.g., via TKDL).
Trademarks Act, 1999	Traditional signs or names may be registered as collective/certification marks (e.g., for handicrafts).	- Requires commercial use. - Traditional symbols may lack distinctiveness.	Useful for branding, but not for protecting the expression itself.
Designs Act, 2000	May protect traditional motifs applied in novel ways to industrial products.	- Requires novelty and industrial application. - Does not protect the traditional design itself. - Limited term (10 + 5 years).	Limited; protects aesthetic applications, not traditional cultural value.
Geographical Indications (GI) Act, 1999	Strongest tool for TCEs tied to region and product (e.g., Kanjeevaram silk, Madhubani paintings).	- Does not protect the technique/expression if not product-linked. - Not suitable for intangible forms (e.g., music, dance).	Highly effective for tangible, geographically rooted TCEs.
Biological Diversity Act, 2002	Protects access and benefit-sharing of bio-resources and associated TK; indirectly covers TCEs linked to nature.	- Not an IPR law per se. - Applies where TCEs relate to biodiversity (e.g., natural dyes, medicinal plant knowledge).	Important complementary regime, especially for bio-linked TCEs.

Traditional Cultural Expressions (TCEs) in India are protected under a patchwork of existing Intellectual Property Rights (IPR) laws, none of which were specifically designed for them. The Copyright Act provides limited protection to TCEs that are fixed in tangible form, but struggles with issues like communal authorship and time-limited protection. The Patents Act generally excludes TCEs, though it plays a defensive role in preventing the misappropriation of associated Traditional Knowledge (TK), supported by initiatives like the Traditional Knowledge Digital Library (TKDL). The Trademarks Act and Designs Act offer modest protection by enabling registration of traditional symbols or motifs for commercial use, but require novelty, distinctiveness, and industrial application. The Geographical Indications (GI) Act stands out as the most effective tool, offering collective rights and perpetual protection for region-specific TCEs embodied in tangible goods like textiles or handicrafts. Additionally, the Biological Diversity Act ensures benefit-sharing for TCEs connected to biodiversity. Despite these efforts, the existing legal framework remains fragmented, highlighting the urgent need for a sui generis law tailored specifically to the unique, communal, and evolving nature of TCEs.

International Conventions on Safeguarding the Intangible Cultural Heritage

Both nationally and internationally, there is continuing discussion and debate about how to modify intellectual property laws to better safeguard traditional cultural forms, including folklore, against misappropriation and misuse. These debates center on how to establish a balance between local communities' interests and those of intellectual property creators and users. Several international instruments aim to safeguard traditional knowledge and cultural expressions, including:

- a. In 2000, an Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore was established by the World Intellectual Property Organization (WIPO) to address issues pertaining to genetic resource access and benefit sharing, traditional knowledge protection, innovations and creativity, and folklore expression protection. In order to accelerate its work and concentrate particularly on the international aspect of intellectual property and genetic resources, traditional knowledge, and folklore, the IGC extended its mandate in 2003.

The four key areas on which the IGC focuses to safeguard traditional knowledge are as follows:

- the prevention of insulting, derogatory, and/or culturally and spiritually objectionable uses, as well as the protection of traditional literary and artistic products against unlawful reproduction, adaptation, distribution, performance, and other such acts
- preservation of handicrafts, especially those with unique styles
- the avoidance of deceptive and fraudulent claims of origin and authenticity/the failure to acknowledge source; and
- the defensive protection of traditional signs and symbols

The IGC decided at one of its meetings to concentrate and expedite the committee's substantive work on traditional cultural expressions, including preparing drafts of an overview of policy objectives and fundamental principles for the preservation of traditional cultural expressions. The demands of Indigenous and traditional communities, as well as pertinent cultural policy interest problems from the entire community, are taken into account by most countries through a variety of policy alternatives and legal structures. Many nations considered codes, guidelines, checklists, and model clauses to be crucial instruments for folklorist museums and archives.

a. The WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions (1982) incorporates model provisions that may act as a guide while developing national laws to protect folklore against unauthorized use and other harmful activities.

b. The Convention for Safeguarding of the Intangible Cultural Heritage aims to safeguard the practices, knowledge, expressions, representations, and skills transmitted by individuals, groups, and communities which include folklore²³.

c. The ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), is centered on the rights of indigenous and tribal peoples, particularly the preservation of their cultural heritage and traditional knowledge, which includes folklore²⁴.

d. The World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal pact that includes measures to safeguard traditional knowledge and folklore²⁵.

e. Nagoya Protocol - An international agreement known as the Nagoya Protocol was approved on October 29, 2010, in Nagoya, Japan, as an addendum to the Convention on Biological Diversity (CBD). The Nagoya Protocol, while primarily concerned with genetic resources, addresses traditional knowledge concerning genetic resources and offers guidelines on benefit-sharing and access, which may include folklore about biodiversity. It establishes a legal framework for the fair distribution of benefits from the use of genetic resources and related traditional knowledge²⁶. This includes monetary benefits, technological transfer, and capacity building for countries and communities supplying these resources. It is a crucial step in the global effort towards addressing problems with biopiracy, biodiversity preservation, and the defense of traditional knowledge.

The relation between these conventions and the case studies presented lies in their collective aim to safeguard indigenous rights, including the protection of traditional cultural expressions (TCEs). These frameworks provide the legal and institutional scaffolding necessary to address the unique challenges faced by indigenous communities globally. The IGC, established by WIPO, focuses explicitly on developing international legal instruments for the protection of genetic resources, traditional knowledge, and folklore. The WIPO-UNESCO joint initiatives emphasize the preservation and promotion of intangible cultural heritage. These conventions resonate with the challenges faced by the Maasai and Maori communities, as seen in their efforts to protect cultural expressions such as traditional attire, ceremonies, and performance art. For instance, the IGC's principles inform policies on restricting unauthorized commercial exploitation, such as the global misuse of the Maasai shuka and haka dances. The Nagoya Protocol supports the principle of prior informed consent (PIC) and mutually agreed terms (MAT), aligning with the case of Aboriginal art in Australia. The protocol's emphasis on equitable benefit-sharing directly correlates to efforts to ensure that indigenous artists and communities gain fair compensation and recognition for their contributions. The ILO convention aligns with New Zealand's legislative efforts to protect the Maori haka by recognizing it as an integral aspect of Maori cultural identity, granting them rights to control its usage. The WTO's TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement provides a

global standard for IP protection but often falls short in addressing the communal and intergenerational aspects of TCEs. However, countries like Australia have incorporated specific clauses in their IP laws to protect Aboriginal art, drawing from international discourse under TRIPS to integrate sui generis protections. Thus, these conventions serve as a bridge, translating global norms into actionable policies that empower indigenous communities to preserve their cultural heritage while navigating modern legal and economic challenges. This link strengthens the argument for adopting similar frameworks to safeguard Yakshagana and other Indian TCEs, ensuring cultural preservation and equitable benefits for their custodians. These three cases have been discussed in detail in the next section.

Case of the Maasai Cultural Heritage on Protection of Cultural Expression

In East Africa, particularly in Kenya and Tanzania, the Maasai are a distinct ethnic group. They are renowned for their distinctive culture, which includes traditional dress, dexterous beading, livestock herding, and a nomadic way of life. Over the years, the Maasai have encountered issues relating to the unauthorized use of their cultural symbols and knowledge by others.

Maasai culture heavily relies on oral traditions, with folklore acting as a medium of transmitting knowledge, values, and identity. Lessons about their past, societal norms, and beliefs are frequently contained in these tales. The preservation of the rich traditions and oral history of this native East African community depends on the protection of Maasai cultural heritage and folklore. Folklore, which consists of tales, myths, songs, and other cultural manifestations, is passed down through the generations and is crucial to the Maasai identity. The protection of folklore and the Maasai cultural heritage provide an insightful view into the difficulties that indigenous people face in preventing unlawful use and commercialization of their traditional knowledge and cultural expressions. The risk of misappropriation and exploitation increases along with the rise in interest in indigenous cultures on the global level.

Domestic Legal Safeguard Mechanisms

- Kenya has taken the initiative to acknowledge the importance of traditional knowledge. The Kenyan Constitution (2010) recognizes the importance of local communities for preserving culture, and the

country has made an effort to enact legislation protecting folklore.

- Traditional cultural expressions are also protected by the Kenyan Copyright Act (2001, as revised in 2012), which defines them as artistic works that are manifestations of folklore.

International Legal Safeguard Mechanisms:

- The African Regional Intellectual Property Organization (ARIPO) grants protection for folklore and traditional knowledge through the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010).
- The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore has been drafting international legal instruments to safeguard folklore and traditional knowledge.

The Case of Maori Communities in New Zealand

The Maori communities in New Zealand present a compelling example of indigenous efforts to protect traditional cultural expressions (TCEs) through legal and policy mechanisms. The Maori haka, a traditional war dance and performance art, has become an internationally recognized cultural symbol, largely popularized through its association with the national rugby team, the All Blacks. However, this widespread visibility has led to instances of cultural appropriation, unauthorized use, and commercialization, raising concerns about the preservation of its cultural integrity.

The Maori have utilized both domestic and international legal frameworks to assert their rights over the haka and other cultural expressions. Domestically, the New Zealand government has integrated protections for Maori culture into its broader legal system. The Treaty of Waitangi, a foundational document in New Zealand's legal framework, acknowledges Maori sovereignty and provides a basis for cultural preservation. Leveraging this treaty, Maori communities have successfully argued for legal and ethical obligations to consult them before any use of their cultural expressions.

Internationally, the Maori case aligns with principles outlined by the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, which advocates for the protection of cultural practices integral to community identity. Additionally,

the World Intellectual Property Organization (WIPO) supports the recognition of communal intellectual property rights for TCEs, a concept crucial for the Maori's collective ownership over the haka and other cultural artifacts.

Efforts to protect the haka include legal challenges to inappropriate commercial uses and unauthorized adaptations, often under copyright and trademark laws. However, these laws are not fully equipped to address the communal and intergenerational aspects of TCEs, prompting calls for the development of sui generis legal protections. For instance, the Maori Intellectual Property Rights framework has been proposed to safeguard cultural heritage while ensuring that benefits from its use are equitably shared with the community.

The Maori case illustrates the need for legal systems that recognize and respect indigenous worldviews, especially regarding collective ownership and cultural preservation. It also serves as a model for other indigenous communities, including those in India, to advocate for tailored legal frameworks that protect TCEs like Yakshagana, ensuring that cultural expressions are preserved and promoted responsibly.

The Case of Aboriginal Art in Australia

The protection of Aboriginal art in Australia offers a significant example of how legal and policy frameworks can address the challenges associated with safeguarding traditional cultural expressions (TCEs). Aboriginal art, renowned for its intricate symbolism, storytelling, and connection to indigenous traditions, represents a vital cultural asset. However, this art form has faced widespread issues of misappropriation, counterfeit production, and unauthorized commercial exploitation, undermining both its cultural integrity and the economic benefits due to its creators.

Legal Frameworks and Initiatives

Australia has employed a combination of intellectual property (IP) laws and community-driven initiatives to protect Aboriginal art. Copyright laws provide some level of protection by recognizing individual artists' rights over their works. However, these laws often fail to account for the communal and intergenerational ownership of many Aboriginal designs and stories, which are integral to their cultural significance.

To address these gaps, several sui generis protections and tailored mechanisms have been developed:

1. **Moral Rights Legislation:** Australian copyright law incorporates moral rights, which allow Aboriginal artists to prevent the distortion or misuse of their works. This is crucial for preserving the cultural authenticity of Aboriginal art.
2. **Indigenous Art Code:** This voluntary industry code of conduct ensures ethical dealings between artists and the market, promoting transparency and fair compensation. It also serves as a platform for raising awareness about the cultural significance of Aboriginal art.
3. **Digital Registries and Collective Marks:** Registries like the Indigenous Cultural and Intellectual Property (ICIP) system provide a way to document and protect traditional designs, while collective trademarks certify the authenticity of Aboriginal art, ensuring that only works created by Aboriginal communities are labeled as such.

Landmark Cases and Challenges

One notable case is *Milpurruru v. Indofurn Pty Ltd* (1994), where the Federal Court of Australia ruled against a company for reproducing Aboriginal artworks on carpets without authorization. The judgment emphasized the cultural harm caused by such actions and set a precedent for recognizing communal cultural rights in IP law.

Despite these advances, challenges remain. The global market for Aboriginal art has led to widespread production of counterfeit works, often by non-Indigenous artists, which dilutes the authenticity and economic value of genuine Aboriginal art. Additionally, there is a need for stronger enforcement mechanisms and greater community participation in IP policymaking.

The case of Aboriginal art in Australia underscores the importance of developing legal frameworks that respect and protect the unique characteristics of TCEs, such as collective ownership, cultural significance, and intergenerational transmission. It highlights the need for a combination of legislative action, industry self-regulation, and community-driven initiatives.

These lessons are directly applicable to other indigenous contexts, such as the protection of Yakshaganain India. Tailoring frameworks to address the specific cultural, social, and economic dimensions of Yakshagana could ensure that it is preserved as an authentic traditional cultural expression while equitably benefiting its custodians.

Yakshagana Case: Challenges and Opportunities

Yakshagana is a traditional theater form that combines stagecraft, makeup, dance, music, and speech with a distinct shape and style. The word 'Yakshagana' literally translates to "song (gana) of the demi-gods (yaksha)." It is primarily found in Karnataka, India's Malenadu region and coastal areas. Its roots can be traced back in early Dravidian performance traditions and the old Sanskrit theater. What we now know as Yakshagana was shaped by these, mixed with folk elements, bhakti traditions, and tribal rites. The history of Yakshagana begins with the 11th-century Bhakti movement. During the Vijayanagara Empire, the art form developed, blending elements of temple customs and folk drama. It was one of the several art forms that the Vijayanagara Empire (14th–17th century) supported and encouraged. A variety of artistic mediums were combined during this time to create "Yakshagana."

Yakshagana performances enthrall the audience with their dynamic interaction of diverse elements. It's an amazing experience that takes viewers to a realm of myths, stories, and old tales thanks to the colorful costumes, deep emotions, rhythmic dancing, and beautiful music. Traditionally, Yakshagana performances continue overnight, starting after dusk and culminating at dawn. Drums banging opens the show, setting the stage for the main act, "Prasanga." The music used in the art form is classified into two main categories: "Himmela" (background music) and "Mummela" (foreground). In the former, actors perform Maddale and Chande, whereas in the later, the Bhagavatha (the chief musician and storyteller) is accompanied by musicians. Hindu epics like the Ramayana, Mahabharata, and other Puranic texts serve as the basis for the majority of Yakshagana performances. But recently, Yakshagana has also incorporated issues that are current and pertinent to society²⁷. Yakshagana's colorful and intricate makeup and costumes are unique and essential to the overall aesthetic appeal. Every costume represents a certain kind of character, be it heroic, evil, or divine. Specifically, the facial makeup has elaborate embellishments that represent different character types and emotions²⁸.

The cultural tapestry of Yakshagana is vast and varied. Every element—from the musical notes to the legendary tales—weaves a story about a community, its ideals, and its dynamic relationship with tradition. Thus, Yakshagana is more than just a kind of entertainment; it's a live example of Karnataka's rich cultural legacy.

The complex cultural tapestry woven into this art form is explored in the following ways - a) Mythological and religious threads - it is a collection of stories about gods, goddesses, heroes, and demons that is mostly derived from ancient Hindu epics like the Mahabharata and Ramayana. These spiritually and morally grounded tales teach audiences dharma (duty/righteousness) as well as providing entertainment, b) Linguistic and literary warp - the art is mainly performed in Kannada, and has made a significant contribution to the language's survival and spread. The poetry-infused scripts, referred to as "Prasangas," support the rich literary traditions of the region, c) Ritualistic weft - the art form is intricately linked to rituals. The overnight performances have a ritualistic start and finish and are typically staged in temple courtyards or in open areas beneath banyan trees. The act of creating art is considered an offering to the god, d) Folk fusion - it has been evolved into a collection of regional narratives that represent the beliefs, habits, and practices of the local community through the incorporation of local folklore, tribal tales, and village legends, e) Social commentary - despite its deep roots in tradition, it has never been reluctant to tackle modern problems. All generations can relate to the art, which is modified by numerous troupes to make statements about contemporary social, political, or environmental issues, f) costumes and craftsmanship - its elaborate jewelry and costumes are evidence of the region's skilled craftsmanship. The intricate and colorful designs, which adhere to classical aesthetics, not only enhance visual attractiveness but also aid in character identification, g) Musical resonance - the "maddale" and "chande," among other musical instruments, are native to this region. The music, which frequently draws inspiration from traditional "ragas" (melodic frameworks), enhances the diversity of the culture, h) Gender dynamics - traditionally, men have played all Yakshagana roles, even those of female characters. This was a reflection of earlier social conventions. But as circumstances changed, more women started taking part, which resulted in all-female troupes and a change in the gender dynamics of the art form, and i) community cohesion - it has long been a community event, with locals taking part in a variety of roles, from planning shows to acting as amateur performers. The continued existence and growth of the art have been ensured by this shared ownership.

Thematic Analysis

After conducting the review of literature and analyzing the cases, the following themes are selected:

- (i) The tension between communal ownership of Traditional Cultural Expressions (TCEs) and the individual-centric nature of Intellectual Property Rights (IPR).
- (ii) The adequacy and effectiveness of current legal frameworks in protecting TCEs.
- (iii) The issue of cultural misappropriation and the role of IPR in preventing it.

Integrating Thematic Insights with Global Case Studies

After reviewing the literature and analyzing the case studies of the Maori communities in New Zealand, Aboriginal art in Australia, and other global examples, the selected themes emerge as key focal points in understanding the intersection of Traditional Cultural Expressions (TCEs) and Intellectual Property Rights (IPR). These themes provide a framework for critically analyzing the challenges and opportunities in safeguarding TCEs, such as Yakshagana, through legal and policy mechanisms.

The Tension Between Communal Ownership of TCEs and the Individual-Centric Nature of IPR

The case studies highlight the inherent conflict between the collective nature of TCEs and the individual-focused design of most IPR systems. For instance, the Maori haka and Aboriginal art are deeply rooted in community traditions, with their ownership extending across generations rather than being tied to a single creator. While IPR frameworks like copyright protect individual creators, they often fail to recognize communal and intergenerational ownership, as seen in the inadequacies of copyright protections for Aboriginal artists. This tension is particularly evident in Yakshagana, where the performance art represents a collective cultural legacy rather than the work of a single individual. Addressing this theme requires exploring sui generis legal mechanisms, such as collective trademarks or community registries, to reconcile these differences.

The Adequacy and Effectiveness of Current Legal Frameworks in Protecting TCEs

Both the Maori and Aboriginal case studies demonstrate that existing legal frameworks, while offering some protection, often fall short in addressing the unique characteristics of TCEs. In New Zealand, the Treaty of Waitangi provides a foundational basis for protecting Maori culture, but gaps remain in ensuring control over the haka's global

commercial use. Similarly, while Australian copyright law offers some moral rights to Aboriginal artists, it fails to adequately prevent counterfeit production or address broader cultural harm. These examples underscore the need for legal reforms tailored to TCEs, such as the Indigenous Art Code in Australia, which promotes ethical commercialization. The analysis suggests that for Yakshagana, a robust legal framework combining IP protections and community rights is essential to ensure its preservation and sustainable development.

The Issue of Cultural Misappropriation and the Role of IPR in Preventing It

Cultural misappropriation is a recurring challenge in the case studies, where TCEs are often exploited for commercial gain without the consent or benefit of the originating communities. The global commercialization of the Maori haka, often inappropriately adapted in advertising or entertainment, highlights the need for stronger controls over unauthorized use. Similarly, counterfeit Aboriginal artworks have diluted the cultural and economic value of genuine works, despite efforts like digital registries and certification marks. These cases emphasize the role of IPR in preventing cultural misappropriation by ensuring prior informed consent, benefit-sharing, and authenticity. For Yakshagana, misappropriation risks could be mitigated by adopting strategies such as community consultations, cultural registries, and certification systems to protect its integrity and equitable use.

The themes derived from the analysis of literature and case studies highlight the critical issues in protecting TCEs through IPR. The insights gained from the Maori and Aboriginal contexts provide a valuable foundation for developing tailored legal and policy solutions for Yakshagana, addressing communal ownership, legal adequacy, and cultural misappropriation to ensure its long-term preservation and equitable benefit-sharing.

Findings

Redistributing Traditional Cultural Expressions (TCEs) poses significant challenges related to intellectual property rights (IPR). These concerns revolve around ownership, control, benefit-sharing, and the potential for cultural misappropriation. These may include – a) Ownership and Control – the traditional communities often view their cultural expressions as collective heritage rather than

individual property. This perspective contrasts with conventional IPR systems that typically recognize individual or corporate ownership. This discrepancy creates significant legal challenges, as IPR frameworks typically do not recognize communal ownership, making it difficult for indigenous communities to protect their cultural expressions under existing laws (WIPO)²⁹. For example, the Indian Copyright Act, 1957, focuses on individual authorship, which does not align with the collective nature of TCEs in many indigenous cultures. Ensuring that TCEs are protected requires an understanding of communal ownership and mechanisms to enforce this protection. Legal frameworks need to acknowledge and respect the collective nature of TCEs, providing communities with control over how their cultural expressions are used and shared; b) Legal and Policy Frameworks - The existing legal frameworks in India, including the Indian Copyright Act and the Patents Act, are inadequate for effectively protecting TCEs.

Thus, examining critically the protection of Yakshagana, a composite art form that integrates dance, music, dialogue, elaborate costumes, and makeup; India lacks a dedicated legal regime for TCEs, compelling reliance on fragmented protection under multiple IPR statutes, each presenting inherent limitations.

The Copyright Act, 1957 emerges as the principal legislative instrument for the protection of Yakshagana's various elements. The Act allows for the protection of original literary works, such as written *prasangas* (scripts), and dramatic works, particularly choreographed theatrical presentations, as affirmed by the Supreme Court in *Academy of General Education, Manipal v B. Malini Mallya* (AIR 2009 SC 1982). This decision established that specific expressions—such as documented choreography and scenic arrangements—are protectable, while generic themes and styles remain unprotected. Furthermore, musical works, when fixed in tangible form, and artistic works, such as novel costume designs, may also qualify for protection, albeit with significant originality and fixation requirements. Performers' rights, codified under Section 38 A of the Act, provide Yakshagana artists exclusive rights over their live performances for fifty years, offering crucial, albeit limited, recourse against unauthorized commercial exploitation.

Nevertheless, the traditional and communal nature of Yakshagana—characterized by oral

transmission and collective authorship—renders much of the corpus ineligible for copyright protection. Additionally, narratives derived from epics like the *Ramayana* and *Mahabharata* are part of the public domain, further constraining the scope of exclusive rights. The fair dealing exception under Section 52, particularly for educational and non-commercial performances, introduces additional limitations.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 is deemed largely inapplicable to the performance art itself but could, in theory, protect tangible items such as costumes or musical instruments if a strong geographical linkage and reputation can be established. Similarly, the Designs Act, 2000 offers limited protection, as traditional Yakshagana costume designs often lack the requisite novelty and industrial applicability. The Trade Marks Act, 1999 provides a more pragmatic avenue for protection by allowing the registration of collective or service marks for troupe names or certification marks to assure authenticity and quality standards.

While traditional Yakshagana as a holistic, communal art form remains inadequately protected under Indian IPR laws, specific, original manifestations—such as documented scripts, choreographed performances, musical compositions, recordings, and commercial identifiers—are eligible for protection. The legal recognition accorded in the *Malini Mallya* case exemplifies the potential of copyright law to safeguard creative adaptations of traditional forms. Nevertheless, the broader challenges of protecting TCEs within the existing IPR framework persist, necessitating future reforms tailored to the unique characteristics of such cultural expressions.

Internationally also, these laws are primarily designed for modern intellectual creations and do not account for the traditional, communal nature of TCEs. Additionally, there is a lack of specific provisions addressing the unique needs of indigenous communities and their cultural expressions. Establishing comprehensive legal and policy frameworks is essential for the protection and redistribution of TCEs. These frameworks should be inclusive, reflecting the needs and rights of traditional communities. International cooperation and alignment of national laws with international standards, such as those promoted by WIPO, can enhance the protection of TCEs globally; c) Economic Benefits – the redistribution of TCEs should ensure that the originating communities receive fair compensation and benefits. When

appropriately adapted, IPR can provide significant economic benefits to indigenous communities by enabling them to control and profit from their TCEs. This can enhance their economic development and support cultural preservation efforts. This can be achieved through benefit-sharing agreements, which ensure that profits derived from the commercial use of TCEs are shared with the communities that created and maintain these cultural expressions. Such agreements can help mitigate exploitation and ensure that communities are financially and culturally empowered;

d) Preventing Cultural Misappropriation – the cultural misappropriation occurs when elements of a culture, especially those of marginalized or indigenous communities, are used without permission or respect. Protecting TCEs involves legal and ethical frameworks that prevent unauthorized use and ensure that cultural expressions are treated with respect. This includes stringent laws against the misuse of TCEs and educational programs to raise awareness about cultural sensitivity. However, the effectiveness of these protections depends on the proper adaptation and enforcement of IPR laws.

Recommendations

The following recommendations are designed to address the legal challenges and opportunities in protecting Traditional Cultural Expressions (TCEs) of Indian indigenous communities through Intellectual Property Rights (IPR). These measures aim to empower indigenous communities by recognizing their communal ownership of TCEs, ensuring fair benefit-sharing, preventing cultural misappropriation, and enhancing both national and international legal frameworks. By implementing these strategies, we can help safeguard the cultural heritage of indigenous communities and support their economic and social development. The recommendations draw on best practices from international models and insights from community leaders, and various case studies.

a) Incentivizing Traditional Cultural Expressions through Intellectual Property Rights

The incentives can protect different aspects of TCEs, they may include – a) Incentives to create and innovate cultural expressions, b) the incentives for development and commercialization of the art, and c) the incentives for preservation and conservation of TCEs. Such incentives are deeply intertwined with intellectual property rights (IPR). Bestowing the rights to communities may play a crucial role in encouraging creativity, innovation, and economic

growth by providing creators with legal protections and opportunities for financial gain.

i) Protection and Economic Incentives: Intellectual property rights, such as copyrights, patents, and trademarks, create a system where creators and innovators can secure exclusive rights to their work. This exclusivity provides a financial incentive for creators to invest time and resources into developing new ideas and cultural expressions, knowing they can control and profit from their use. It may be said that the protection of intellectual property stimulates economic, cultural, and social progress by encouraging the production and dissemination of knowledge and high-quality goods and services.

ii) Supporting SMEs and Innovation: Studies have shown that small and medium-sized enterprises (SMEs) that own intellectual property rights perform significantly better economically than those that do not. For instance, SMEs with IP rights have been found to have sixty eight percent higher revenue per employee as compared to those without such rights. This strong positive relationship underscores the importance of IPR in supporting innovation and economic performance, particularly for smaller businesses³⁰.

iii) Encouraging Cultural Diversity: IPR not only incentivizes individual creators but also supports cultural diversity by protecting traditional knowledge and cultural expressions. This protection ensures that communities can benefit economically from their cultural heritage, thereby promoting its preservation and continued innovation. The World Intellectual Property Organization (WIPO) highlights how patents, copyrights, and trademarks play a vital role in the commercial phase of innovation, helping to distinguish products and prevent unauthorized use by third parties.

iv) Balancing Protection and Access: While intellectual property rights provide significant incentives, they must be balanced to avoid stifling further innovation. Overly strong IP protections can hinder subsequent innovations by making it costly and difficult for others to build upon existing work. Conversely, too weak protections can lead to insufficient incentives for initial innovation. The right balance can stimulate a continuous cycle of innovation and creativity²⁹.

b) Modifying existing intellectual property laws to recognize and protect the communal ownership of Traditional Cultural Expressions (TCEs). This can

include creating legal mechanisms that acknowledge the collective nature of TCEs, ensuring that communities, rather than individuals, can own and control these expressions.

c) Strengthen legal protections to prevent the unauthorized use and exploitation of TCEs. This includes creating specific legal provisions that address cultural misappropriation and ensure that TCEs are used with proper authorization and respect.

d) Foster international cooperation to align national laws with international standards for the protection of TCEs. This can include adopting best practices from successful international models and participating in international treaties that protect traditional knowledge and cultural expressions.

e) Encourage indigenous communities to develop and document community protocols regarding the use and sharing of their TCEs. These protocols can serve as a formalized set of guidelines that external parties must follow to ensure respectful and appropriate use of TCEs.

f) Implement educational programs to raise awareness among indigenous communities about their rights under IPR frameworks. Empower communities with the knowledge and tools needed to protect and commercialize their TCEs effectively.

Conclusion

The study has explored the complex landscape of protecting Traditional Cultural Expressions (TCEs) of Indian indigenous communities through Intellectual Property Rights (IPR) particularly with respect to Yakshagana dance form. The analysis revealed significant legal challenges, including the tension between communal ownership and individual-centric IPR frameworks, the inadequacies of current legal protections, and the prevalence of cultural misappropriation. However, the study also identified numerous opportunities for enhancing the protection of TCEs, such as recognizing communal ownership, implementing benefit-sharing agreements, and fostering international cooperation. By integrating these recommendations, drawn from best practices and expert insights, we can create a more inclusive and effective legal framework that not only safeguards the cultural heritage of indigenous communities but also promotes their economic and social development. This approach will ensure that indigenous communities can protect, preserve, and benefit from their rich cultural traditions, thereby

contributing to their empowerment and the broader goals of cultural diversity and sustainable development.

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