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Beyond Commercial Value: Reimagining GI Protection for Tribal Designs through the Lens of Indigenous Sovereignty-A Comparative Study of India and Australia

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Imagine a sacred tribal motif, painstakingly passed down through generations, now mass-printed on luxury handbags without consent, context, or credit. Across continents, the commercialization of tribal art has turned ancestral wisdom into market commodities, often stripping indigenous communities of their cultural agency. This research interrogates the limitations of India's Geographical Indications (GI) law in safeguarding tribal designs, shifting the conversation from mere economic branding to indigenous sovereignty and legal dignity. By undertaking a comparative analysis with Australia's evolving Indigenous Cultural and Intellectual Property (ICIP) frameworks, this paper argues that India's GI regime, despite offering some protection, remains structurally unfit to recognize the cultural, spiritual, and communal dimensions of tribal creativity. Through doctrinal review, policy analysis, and landmark case studies, including *Milpurrurru* v *Indofurn Pty Ltd* in Australia and the GI registrations of *Warli* and *Sohrai* paintings in India, the paper highlights how Australia's inclusion of FPIC (Free, Prior and Informed Consent), collective custodianship, and remedies for cultural harm present a more holistic model of protection. The paper concludes by proposing a sui generis rights-based framework for India, rooted in constitutional morality, that recognises tribal communities not merely as producers of art but as sovereign custodians of living heritage.

Keywords: Geographical Indications, Tribal Designs, Indigenous Sovereignty, ICIP, Cultural Justice, India-Australia Comparison, Traditional Knowledge Law

In the heart of many tribal communities lies a sacred inheritance: visual languages, ancestral symbols, and intricate art forms that transcend aesthetics to embody cultural identity, spiritual memory, and territorial belonging. These designs are not just forms of artistic expression; they are also codified archives of indigenous knowledge that is based on cosmology, stories, and ritual. In the global market based on speed, fashionability, and mass commodification, these same tribal designs are often found on high-end textiles, decorative artifacts, and brand merchandise without consent, compensation, or acknowledgement. Therefore, a silent but systematic appropriation from Indigenous culture occurs while traditional knowledge is stripped of its context and framed as a branding opportunity, while its originators remain legally and economically invisible.[1] Given the diversity of India's tribals across states like Jharkhand, Odisha, Maharashtra, and Chhattisgarh, the Geographical Indications of Goods (Registration and Protection) Act, 1999, has been enacted to identify and protect traditional art practices such as Warli, Sohrai, and Pattachitra. The act was intended to foster economic development by allowing communities to have exclusive rights to commercialize goods specific to their region.[2] While this has produced marginal economic benefits, the legislation is still fundamentally based on Western notions of intellectual property associated with economic utility, marketability, and formal registration, while ignoring the deeper cultural and communal ethos behind tribal design practices.[3]

The paper challenges the reductionist view of tribal design protection as a commercial activity and moves to reframe it in terms of indigenous sovereignty, which is more than a geo-political phenomenon, as it encompasses the right of indigenous peoples to control the production, use, dissemination, and legal recognition of their cultural expressions.[4] This right requires recognition and protection; specifically, protection in a legal context that acknowledges and reflects the realities of the

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lives of tribal peoples, their governance structures, and consent-based customs of tribal communities. To explore what this transformation in law may look like, this paper compares India's GI Act to Australia's developing Indigenous Cultural and Intellectual Property (ICIP) laws. While Australia does not have a standalone statute for ICIP, it has established significant principles around Aboriginal and Torres Strait Islander communities' moral and cultural rights through protocols, case law, certifications schemes, and institutional engagement. The watershed case of *Milpurrurru* v *Indofurn Pty Ltd*, popularly known as the "carpets case," created legal liability for the unauthorized reproduction of sacred Aboriginal art and introduced cultural harm and spiritual offence into the category of justiciable injury. In contrast, while the Indian model is progressive in theory, it remains procedural and exclusionary in practice. The process of registering a GI typically involves external experts, legal intermediaries, and agencies with minimal participation of actual local tribal artists or elders. Additionally, the Indian legal framework provides no remedy for cultural distortion or misuse once a GI is granted; there is no concept of "cultural harm" or "spiritual offence" under the current statute. As a result, even GI-registered tribal designs are vulnerable to manipulation, misappropriation, and commercial exploitation that fall outside the narrow boundaries of infringement as defined by the Act. The comparative analysis undertaken in this paper is both doctrinal and normative. It seeks to map how Australia's ICIP framework, despite its gaps and non-binding nature, offers valuable lessons for India, particularly in recognizing indigenous communities not as beneficiaries of state benevolence but as sovereign cultural custodians with inalienable rights. The objective is not to transplant foreign laws but to contextualize indigenous justice within India's constitutional fabric, drawing from principles of dignity, autonomy, cultural integrity, and the right to life under Article 21. In doing so, this paper positions GI not merely as a tool for economic development but as a vehicle for cultural justice, a legal bridge between the past and the future, between heritage and human rights. This area is of growing importance given the burgeoning commercial market and demand for tribal and indigenous designs, often misappropriated without authorisation or benefit sharing. The absence of effective legal safeguards necessitate the need to address questions regarding ownership, cultural integrity and equitable benefit sharing before India's intellectual property framework.

Legal Framework for GI Protection in India and Australia

India: The Geographical Indications of Goods (Registration and Protection) Act, 1999

The Indian legal arrangement for geographical indication protection is anchored in the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into force in 2003. The enactment of this Act complied with the obligations of India under the TRIPS Agreement and aims to acknowledge and protect products deriving from an acknowledged geographical area that have a reputation, quality, or uniqueness based on that origin.[5] Withstanding the apparent progressive agenda, the protection reflects a commercial outlook, largely based on Eurocentric models of Intellectual Property, notably deficient in its structure as it does not comprehend or address the cultural and spiritual dimensions of tribal artistic traditions.[6] The Act allows for an association of persons or producers to apply for registration of a GI, where the product possesses characteristics or a reputation that is attributable to the geographical place of origin. After registration, the GI right is bestowed upon the registered proprietor and authorized users. However, the GI Act is fundamentally constructed around market utility, and not around the cultural worldviews and customary law of indigenous communities.[7] The GI Act's focus on "goods" and "producers" leaves out lots of tribal artisans who do not meet the formal collective criteria, or whose art is deeply rooted in ritual and oral transmission, not commodifiable as an economic product.[8]

The limitation is also evident in the registration and post-registration journey of tribal designs such as Warli Painting from Maharashtra and *Sohrai* and *Khovar* Paintings from Jharkhand.[9] *Warli art*, an ancient art of the *Warli tribe*, comprises of rudimentary geometric figures symbolizing their relationship with nature, land, and life cycles, with granted GI registration in 2011.[10] Similarly, *Sohrai* and *Khovar* paintings, ritualistic mural traditions practiced by tribal women of the Hazaribagh region in Jharkhand, were granted GI status in 2020.[11] While these registrations mark a form of symbolic

recognition, they remain confined within the procedural formalism of the GI Act. In neither case did the law demand consultation with tribal elders or ensure free, prior, and informed consent (FPIC) of the communities. The applications were filed and processed by NGOs or state bodies, sometimes with little or no direct involvement of the grassroots custodians. The GI certificates bear the names of organizations, not tribal elders who breathe life into these traditions.[12]

Moreover, the Act provides no safeguards against cultural distortion, misuse, or non-consensual commercialization once a GI is registered. There is no cultural audit, no quality enforcement rooted in tradition, and certainly no mechanism for enforcing respect for ritual or sacred contexts. For instance, *Warli* motifs are now freely reproduced on fashion items, packaging, and urban art spaces, often in stylized, decontextualized formats that would be unrecognizable or offensive to traditional practitioners. The GI law does not consider this a violation unless it occurs without GI certification or in a misleading geographical context.[13] The deeper harm, the dislocation of meaning, the rupture of tradition, the desecration of sacred forms, is legally invisible. In contrast to traditional custodianship, the GI framework recognizes only market-oriented usage, reducing a living cultural practice to a static economic indicator.[14] This fundamental incongruence between the structure of the GI law and the lived realities of tribal art forms reveals the limitations of using a commercial IP tool to safeguard what is, in essence, an intangible heritage of belief, memory, and communal identity. The absence of tribal representation during registration, the lack of FPIC, and the inability to claim compensation for cultural harm or unauthorized adaptations all point toward a framework that fails to align with indigenous legal consciousness. While the Act has allowed some tribal products to gain international visibility and market access, it remains woefully inadequate in addressing the broader spectrum of rights that tribal communities ought to be entitled to rights not only economic benefits, but to recognition, dignity, self-determination, and legal authority over their own culture. Essentially, this demonstrates that although India's GI law seeks to facilitate access to the market, it still reinforces a deeply extractive model of cultural engagement whereby tribal designs are only acknowledged when commodified. This disconnection serves as a substantive comparative inquiry into how alternative jurisdictions like Australia are moving to reconcile this divide by enacting aspects of indigenous sovereignty into the architecture of intellectual property law.[15]

Australia: Intellectual Property and Indigenous Cultural and Intellectual Property (ICIP) Frameworks

In sharp contrast to India's commodity-driven orientation of the GI regime, Australia's way of protecting Indigenous art has been moving to a much more nuanced sovereignty-recognising policy space. While Australia lacks a standalone statutory framework for Indigenous Cultural and Intellectual Property (ICIP), it has enacted a considerable number of soft law instruments, ethical protocols, and common law precedents to demonstrate an increased recognition that Aboriginal and Torres Strait Islander people are the rightful guardians of their artistic, cultural, and intellectual heritage. The core of the Australian ICIP framework is about preserving dignity and identity that are through every brush stroke of an Aboriginal artwork and motif drawn from Dreaming stories. One of the most essential documents in this regard is the ICIP Protocols for First Nations Cultural and Intellectual Property in the Arts, enacted by the Australia Council for the Arts (2020); based on the principles of free, prior and informed consent (FPIC), attribution, cultural integrity, and community control that calls for clear and respectful consultation with Indigenous communities, culturally appropriate licensing agreements, and active prevention of appropriation or distorting use of Indigenous works of art. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has also helped document cultural rights and the development of policy frameworks around Indigenous data sovereignty and cultural continuity.[16]

The landmark case of *Milpurrurru* v *Indofurn Pty Ltd* [(1994) 54 FCR 240], popularly known as the “carpets case,” remains a cornerstone in the legal protection of Aboriginal art in Australia. In this case, a company based in Perth imported and sold carpets made in Vietnam bearing unauthorized reproductions of sacred Aboriginal artworks. The court found the company liable for copyright infringement and awarded the plaintiffs significant damages. However, more than being constricted to issues of copyright, the case was distinguished by the fact that there was judicial recognition of cultural harm, an

acknowledgment that using sacred designs on floor coverings was more than the infringement of copyright, but an actual desecration of the cultural meaning associated with the work. Justice von Doussa noted the considerable spiritual distress suffered by the Aboriginal plaintiffs, cognitively linking moral and emotional damage to the act of intellectual property infringement. This case remains one of the first internationally to have treated the relationship between Western IP law and the cultural cosmology of Indigenous peoples as a continuum. The Aboriginal and Torres Strait Islander Art Code, launched in 2010, is a voluntary but highly regarded code of conduct that sets minimum standards around dealing with Indigenous artists. The code encourages fair trade practices, proper attribution, transparent contracts, and culturally respectful marketing.[17]

Adding another layer to this ecosystem is the Product of Origin Labelling Framework, introduced to assist consumers with identifying original Aboriginal-owned products from mass-produced products that are simply imitating Indigenous art. The labelling mechanism is particularly necessary in Australia due to the rampant use of fake 'Aboriginal art' marketed to tourists, which were neither made nor endorsed by Aboriginal people.[18] The label allows for traceability, provenance, and ethical sourcing. It functions not only as a consumer safeguard but as a symbol of Indigenous economic sovereignty, redirecting profits to artists and communities. Despite these developments, Australia's ICIP framework is not without its limitations. Most of the protections granted still rely on soft law instruments and ethical obligations, which are not enforceable under formal courts. Copyright law is sometimes of assistance as it did in the *Milpurrurru* case, is still an inadequate framework for addressing communal authorship, secret-sacred knowledge, and customary laws governing usage. In addition, given that Australia does not have a binding sui generis statute for ICIP, Indigenous communities are still trying to navigate a complicated legal space to defend their rights. However, the Australian experience can offer valuable insight for jurisdictions like India with vast tribal cultural diversity, yet it largely looks at tribal art through the lens of state-controlled GIs. The Australian approach signals a way forward: one that centres the community, restores agency, and reimagines intellectual property as a tool of cultural justice, not commercial conquest.[19]

Theoretical Framework: From Commercial Property to Cultural Sovereignty

At its core, the world's existing global IP regime is premised on Eurocentric, liberal-capitalist notions: that creativity is individual, property is exclusive, and cultural goods are valued commodities that can be owned, transferred, and commodified. These notions have been inherited through colonial legal transplantation and reinforced by agreements like TRIPS, which is fundamentally at odds with the ways in which Indigenous and tribal communities conceive of knowledge, art, and ownership. Given this context, many contemporary legal instruments, such as the Indian GI Act, with its progressive facade, remain deeply embedded within a Western framework of commodification that privileges market value over cultural meaning and property over personhood. Postcolonial legal theory provides a powerful critique of this asymmetry; this body of theory reveals how law has often served as a vehicle of epistemic violence, silencing native ways of knowing, regulating indigenous lifeworlds, and displacing community-based norms with state-centric control.

Cultural relativism in legal discourse adds yet another layer of critique to a presupposition that there is a singular universal model of property rights, predominantly Western, which can be justly applied to all cultures.[20] In a great many tribal traditions in India and Australia, artistic knowledge is neither "owned" in a legal sense, but entrusted and held by families, elders, and spiritual custodians. The act of artistic creation is inseparable from ceremony, kinship, land, and cosmology. To limit such works to mere "indications" of geographical origin, which then become subject to bureaucratic registration and legal enactment, is to erase the ontological depth of tribal creativity. The notion of cultural sovereignty emerges here as an important counterpoint because, in the context of Indigenous and tribal sovereignty, land never exists in isolation from the right to determine, control, and protect cultural expressions according to one's own laws, beliefs, and governance structures. It is a legal space that acknowledges the law must recognize that cultural harm is not limited to economic loss or copyright infringement; it includes spiritual desecration, intergenerational trauma, and violation of ancestral trust. In India and Australia, the clash between commercial property models and cultural sovereignty is at the heart of the debate around protecting tribal designs. India, despite

recognising tribal GIs legally, the GI Act fails to embed cultural sovereignty into its framework. There is no process where tribes can engage with the notion of how their art is used, no requirements for consent from the traditional custodians to use the designs, and it does not recognize the sacredness or ritual context of these artworks. In comparison, although both countries work from a Western legal tradition, Australia has taken tentative but meaningful steps to reflect cultural sovereignty through protocols, ethical codes, and jurisprudence that affirms the communal and spiritual nature of Aboriginal art.[21] Ultimately, this research is grounded in the belief that the protection of tribal art must move beyond economic utility and embrace a reparative jurisprudence, one that seeks to restore cultural agency and redefine intellectual property not as a tool of enclosure, but as a site of ethical engagement and mutual respect.[22]

Comparative Analysis: *India* v *Australia*

The legal landscapes of India and Australia display two different journeys in protecting tribal and Indigenous cultural expressions when placed side by side. Both countries are home to communities with historical traditions of artistic expression. However, the legal systems they have developed to protect these expressions differ in their normative assumptions, structural inclusivity, and recognition of cultural sovereignty.[23] At the most basic level, the Indian GI regime and the Australian ICIP framework differ in their conception of what is being protected. The Geographical Indications Act in India is oriented to "goods" that acquire distinctiveness because of their geographical origin. Tribal art, folded into this framework, loses the layers of cosmology and spirituality and becomes a product of a cultural artifact re-conceptualized into a market commodity. By contrast, the Australian ICIP model, though not codified in a single statute, begins with the premise that Indigenous cultural expressions are not products at all, but elements of cultural continuity and sovereignty. ICIP protocols ask not just *what* is being used, but *who* is entitled to use it, *why* they are using it, and *with whose consent*. This ethical infrastructure embeds consent, control, and attribution into the fabric of the cultural engagement process.[24]

The question of community ownership and authorship lies at the heart of this divergence. Under India's GI law, ownership is given primarily to producer associations or formal cooperatives, often registered and managed by NGOs or state institutions.[25] Frequently, the communities whose cultural expressions form the basis of the GI claims are either peripherally involved or entirely erased from the decision-making process. In the GI registration process, there is no statutory requirement to involve tribal elders or spiritual custodians. Even when GI status is granted to tribal art, as is the case with *Warli* or *Sohrai* paintings, the profits frequently go to intermediaries. In contrast, the Australian ICIP system, while non-binding in nature, makes community agency central to any artistic engagement.[26] The protocols developed by the Australia Council for the Arts and AIATSIS specifically stress the importance of working directly with communities, respecting their governance structures, and obtaining Free, Prior and Informed Consent (FPIC) before using any Indigenous material.[27] The difference is profound: India legalizes access, Australia seeks ethical permission. Another crucial area of divergence lies in the recognition of cultural harm and the provision of remedies. In India, the GI framework allows enforcement only on the grounds of infringement, unauthorized use of the GI tag, or misleading commercial representations. There is no legal space to argue that the improper use of a tribal motif, say, a sacred Warli symbol on commercial packaging, constitutes harm if the technical parameters of infringement are not met. Cultural injury, distortion of meaning, and spiritual offence are legally irrelevant. Australia, through landmark cases like *Milpurrurru* v *Indofurn Pty Ltd*, has expanded the imagination of IP law to include cultural damage.[28] The court's acknowledgement of the emotional and spiritual anguish caused to Aboriginal artists by the misuse of their sacred art on carpets was more than symbolic; it was jurisprudentially significant.[29]

The comparative analysis is a realisation of the fact that law is not neutral; it is a representation of the priorities and biases of the systems that create it. While India's GI Act offers an economic motivation, it is still caught within a technocratic model of intellectual property that fails to recognize the pluralities of tribal existence. Australia, despite its colonial legacy and legal shortcomings, has begun to chart a path that privileges consent and cultural integrity.[30] The Indian legal system must begin to conceptualize protection not just through registration and enforcement, but through a shift in juridical

imagination, one that rethinks ownership, authorship, harm, and justice from the standpoint of tribal communities themselves.

Quantitative Insights

A rigorous analysis of policy data reveals both the promise and the shortcomings of India's approach to tribal design protection through GI, especially when compared to community-empowering frameworks like those in Australia.

Government-Sourced Data on Tribal GI and Empowerment in India

The Tribal Cooperative Marketing Development Federation of India (TRIFED), under the Ministry of Tribal Affairs, spearheads GI initiatives for tribal art and crafts. As of mid-2024, TRIFED[31] 's internal reports show that they market 66 GI-tagged tribal items across 147 Tribes India outlets, catering to domestic and e-commerce channels. Authorised user (AU) status has been granted to 82. In 2025 alone, TRIFED set an ambitious target: 75 new tribal products for GI registration, identifying 37 items from North-Eastern states and several from Jharkhand and Madhya Pradesh (Fig. 1). They also established an "*Atmanirbhar Bharat Corner*" in 100 Indian missions abroad, placing authentic tribal products on a global cultural stage. Financially, the Ministry reported online sales of ₹99.74 lakhs (FY 2020–21), rising to ₹1.28 crore by November 2021. Meanwhile, total sales dropped from ₹40.30 crore (FY 2019–20) to ₹18.43 crore (by October 2021) due to pandemic disruptions. Beyond GI, TRIFED's flagship Van Dhan Yojana (launched in 2018) had, by mid-2020, established 1,205 tribal enterprises across 18,000 Self-Help Groups, benefiting approximately 360,000 tribal gatherers.[32]

These positive figures belie a deeper structural paradox: while GI recognition has grown quantitatively, the data suggest the law has not effectively uplifted tribal custodians as sovereign rights-holders. GI-related benefits remain mediated through TRIFED and state agencies, rather than flowing directly to the tribal custodians themselves. Moreover, the sharp decline in total sales post-pandemic reveals the fragility of a model that relies too heavily on intermediated distribution, rather than strengthening community-controlled channels.[33]

Australia's ICIP-influenced Initiatives: The Qualitative Edge

Although Australia lacks centralized GI statistics akin to India, its Australia Council for the Arts ICIP protocols (2020)[34] have seen widespread adoption across public arts institutions, leading to the across-the-board inclusion of FPIC clauses in grant agreements. The *Milpurrurru* v *Indofurn* decision in 1994 was a landmark: the Federal Court awarded AU$188,640 in damages (equivalent to about ₹1.0 crore today) for unauthorized reproduction of Indigenous art. Institutional mechanisms such as the Aboriginal and Torres Strait Islander Art Code certify over 200 galleries and retailers, enforcing ethical standards ranging from accurate attribution to culturally appropriate marketing. The Product of

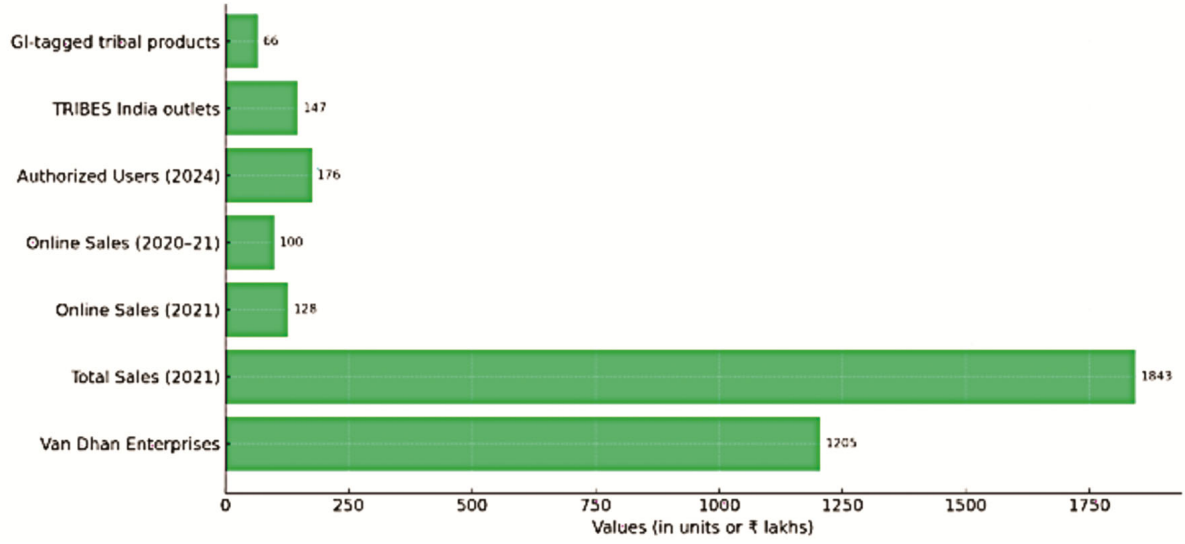

Fig.1 — Empirical data on tribal GI initiatives and economic empowerment in India, based on official sources like the Ministry of Tribal Affairs (MoTA) and TRIFED

Origin Labelling Framework provides labels to over 1,000 different products each year, allowing Aboriginal-owned products to claim legitimacy and traceability. Systems such as legal recognition of FPIC, judicial sentencing that addresses cultural harm, and market mechanisms driven by ethical certification ensure that Indigenous communities maintain decision-making power over their cultural expressions, creating a tangible buffer against commodification that goes well beyond mere protection of origin.[35]

Comparative Insights: *Numbers* v *Norms*

India's GI development with respect to GI tags, outlets, and enterprises is impressive. However, the data shows another trend: increased formal recognition, but limited tribal self-agency and direct economic benefit. Furthermore, Australia provides community agency, cultural governance, and ethical validation through protocols, governance, and legal frameworks, rather than volume-driven metrics. This unique stance reveals a fundamental divergence: India measures success through quantity (tags, sales, stores), while Australia measures it through quality (community control, cultural integrity, legal justice.

Challenges and Barriers to Cultural Sovereignty in Law

There have been observable advancements in policy language and institutional action, yet the legal frameworks for protecting tribal and Indigenous designs continue to fall short of respecting cultural sovereignty when interpreted in any real and meaningful sense.[36] Both India and Australia, though they have adopted divergent models of intellectual property regulation, continue to grapple with legal infrastructures that were never designed to accommodate collective ownership, spiritual meaning, or ancestral stewardship. The law remains, in many ways, a language foreign to the communities it claims to protect. In India, the limitations of the Geographical Indications of Goods (Registration and Protection) Act, 1999, are not only rooted in its narrow commercial focus but are also revealed in its implementation. The requirement that a GI applicant be an association of producers or a registered body often excludes grassroots tribal communities whose knowledge is held communally rather than through formal institutions. Even where state agencies or NGOs intervene to facilitate registration, the process frequently lacks true community consultation, free, prior, and informed consent. Moreover, the Indian GI framework offers no remedy for cultural harm as it has no doctrinal space to recognize spiritual desecration or distortion of meaning as legal injury. When sacred tribal motifs are reproduced without context on fashion accessories, commercial packaging, or digital media, the community has no means to assert their disapproval or demand redress unless the infringement is purely geographical or commercial in nature. This not only commodifies culture but strips it of its dignity. It is a continuation of epistemic violence, reducing living traditions to decorative patterns. The absence of any statutory linkage between the GI law and broader constitutional guarantees under Article 21 (right to life with dignity) or Article 29 (protection of cultural rights of minorities) further weakens the potential for an integrated approach to tribal cultural protection.[37]

In Australia, while the recognition of Indigenous Cultural and Intellectual Property (ICIP) principles has gained traction through ethical protocols, case law, and community-driven certification codes, the lack of statutory force remains a serious limitation.[38] The ICIP protocols, which the Australia Council for the Arts established and subsequently promoted by bodies like AIATSIS, are soft law instruments that guide but do not mandate. Its authority relies on moral obligation and sector ethics, rather than on legally enforceable obligations. As a result, there is now a two-tiered system whereby institutions and grant-funded organizations may conform to ICIP principles, but private actors within the commercial art sector are not legally compelled to do so.

In India and Australia, a further complicating issue is the structural misalignment of Western legal concepts such as copyright, property, and authorship with Indigenous epistemologies that understand art not as a commercially tradable item but rather as a sacred obligation.[39] Western IP regimes are predicated upon the notion of knowledge and creativity being individual and transferable, while tribal knowledge systems typically endorse collective authorship and the intergenerational transmission. The law's failure to accommodate these relational dimensions of ownership creates a continued misfit between legal protection and cultural meaning. This gap is more than theoretical; it has material implications. It affects the ways in which benefits are dispersed, how harm is defined, and how communities interact with the law. In India and Australia, the legal capacity to bring suits for

infringement, enforce the terms of licenses, or defend cultural expressions is often well beyond the financial capacity of the communities themselves. In India, reliance on centralised bureaucracies and registered associations has the effect of sidelining individual artisans or clans, especially ones without legal literacy and financial capacity. Even with a better ethical infrastructure in Australia, the enforcement of ethics relies on the ability to access pro bono legal networks or institutional intervention, which are unevenly distributed across rural and remote communities. Until the law is capable of speaking the language of the people it seeks to protect, it will remain structurally incapable of delivering justice. Protection must move beyond formality to become participatory, transformative, and reparative in cultural, spiritual, and existential senses that tribal communities across continents have long demanded and deeply deserved.[40]

Protection in India is tied to the territorial origin of the product hence the community must stay physically linked to the designated region to claim the designated area to claim/maintain GI rights. Internally displaced group when relocate due to environment or development project factors , loose eligibility on move out of the notified region. Legal and policy framework in Australia is flexible and based on community ownership and cultural origin rather than depending on geographical linkage. The Australian council protocol promote consent based and community driven controls over indigenous and traditional designs.

India can draw inspiration from Australian model by adopting community-based approach or sui generis recognition mechanisms. By recognising cultural continuity equivalent to geographical origin will allow displaced or migrant tribal groups to register affiliated GIs linked to their cultural heritage irrespective of their current location. Incorporating community based registration, FPIC requirements and recognising cultural moral rights would help India's IP regime with the real world problems of tribal communities.

Conclusion

The journey through this comparative inquiry into the legal regimes for the protection of tribal and Indigenous designs in India and Australia has revealed a recurring and disquieting concern that law rooted in property, commerce, and formalism is a brittle and inadequate vessel for carrying the cultural lifeworlds of Indigenous peoples. Tribal and Indigenous art is not a commodity; it is prophecy, archive, and ceremony. The Indian legal system, with its GI Act of 1999, has adopted a model of recognition rooted in economic utility, with elevated visibility but at the cost of agency. As tribal designs have entered new marketplaces and won national awards, communities that create those designs remain at the margins of legal processes. The law simply failed to see them, not just as artisans but as sovereign legal subjects, whose right to say "no" is as important as their opportunity to say "yes". The law has further failed to acknowledge that a *Warli motif* or a *Sohrai* line may encapsulate sacred, fiercely guarded meanings that cannot be divulged outside the realm of ritual. To commercialise such sacred forms without consent is, therefore, not mere copyright infringement but spiritual violence. Australia has, in contrast, attempted to create an umbrella of ICIP protocols that aim to bring Indigenous ethics into dialogue with law. Nevertheless, the reliance on soft law and voluntary codes, though morally laudable, has limited its ability to transform. Without statutory teeth, a community's Indigenous right to claim their property is always going to be vulnerable to appropriation, even as they are invited to consult and guide. Cases like *Milpurrurru* v *Indofurn Pty Ltd* demonstrate the judiciary's capacity to recognize cultural harm, but they remain isolated. The promise of cultural justice needs to be firmly established on enforceable rights and community governance.

What both jurisdictions need is not just legal reform but a legal reimagination. A conception of law in which Indigenous art is not conceived of as a derivative object of the market, but as a constitutional issue, implicated with dignity, identity, and cultural autonomy. Law must move beyond being a means of registration and enforcement to be a space of listening, a connection between customary norms and public justice, and a conduit through which communities can reclaim the authority to define their art. This paper has argued that, in order to offer genuine protection of tribal and Indigenous designs, one needs to shift fundamentally in three critical aspects. First, there must be a shift from protection to participation in which communities are not passive beneficiaries of legal schemes, but, more importantly, are engaged as active architects of their own terms. Second, there must be a shift from commodification to consent in which cultural expressions are not simply subjected to profit, but commissioned through respect, permission, and sacred boundaries. And

lastly, a shift from fragmentation to sovereignty, where law does not simply see individual designs, but is cognizant of the entire system of culture from which design emerges. Enacting this vision will require not simply statutory change but a decolonization of legal categories. It will require making courts, lawmakers, and academics open to Indigenous jurisprudence to ways of thinking that might not conform to the tidy boxes of IP doctrine.

Ultimately, protection of tribal designs is not only about heritage preservation, but restoring legal dignity to communities long silenced, and restoring the credence of the law to land. Moving toward cultural sovereignty means moving toward a reparative legal imagination and a new jurisprudence that is not simply influenced by Indigenous culture, but is reformulated through one. Only in that transformation can the law become not a tool of erasure, but a vessel of repair. There is a need to move beyond the limits of existing IP laws by enacting sui generis legislation catering to traditional knowledge and traditional knowledge expressions mandating allowing a perpetual protection, moral rights and mandating free, prior and informed consent before any commercial or research use for commercial purposes. Availability of remedies in case of any misappropriation or distortion is also desirable. WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore has already suggested such models internationally alongside the comparative experiences from Australia, Peru and Panama can help India to better align legal protection to come up with conceptually sound and practically workable solutions to indigenous social realities.

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