



Legal Protection of Indigenous Music: Challenges and Opportunities in India

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India's rich and diverse cultural heritage finds its deep roots in the traditional practices of its indigenous societies and music plays a central role in upholding their identity and collective knowledge. It is passed orally down the generations and is a critical component of the country's intangible cultural heritage. But in cultural significance its music is constantly under the threat of commoditization, unauthorized commercial use and cultural misappropriation. India's prevailing intellectual property system and its Copyright Act 1957, mainly stresses the theory of individual authorhood and fails to recognize the concept of collective ownership that characterizes indigenous artistic productions. This gap leaves traditional music ineffective and provides external players the opportunity to use, modify and capitalize on it in turn, either in ignorance of or in disregard the respective community's consent and equitable sharing of benefits. This Study aims to examine the weaknesses in current legal system in the protection of indigenous music and examine options of legal and policy reform. It emphasizes the imperative of a more inclusive legal instrument that upholds the collective interests of indigenous peoples and encourages equitable access of traditional music to future generations.

Keywords: Indigenous Music, Traditional Knowledge, Intellectual Property Rights, Cultural Misappropriation, Legal Protection

India's musical identity is a rich brocade composed of many local traditions, each vibrating with the multiculturalism and multihistory of its people. Varying from the rhythmic beats of the *dholin Punjab* to the soulful sound of the *veena in Tamil Nadu*, local music is a core piece in the fabric of Indian cultural identity and local knowledge. India's indigenous music is as varied as its landscape which encompasses a multitude of genres, instruments and styles. In the northeastern state of Nagaland.¹

In Rajasthan, the *Jodhpur Rajasthan International Folk Festival (RIFF)* celebrates the region's musical diversity. Local musicians, such as the *Manganiyars*, blend Hindu and Muslim musical traditions, performing with instruments like the *kamaicha and khartal*. This festival not only highlights Rajasthan's syncretic musical heritage but also provides a platform for cross-cultural collaborations, drawing artists from around the world.² The *Carnatic and Hindustani* classical musical traditions are the zenith of classical musical heritage in India. Carnatic and Hindustani

classical music based on the south and north divisions of the country, respectively, trace their lineage back in ancient Vedic times. These classical modes have been molded over the course of centuries while incorporating local elements while adhering strictly to theoretical constructs.²

Traditional music in India is not mere entertainment but a reservoir of folk knowledge and a source of cultural identity. The songs are often a recap of historical events, a lesson in morals and a common value and an oral history in themselves. The *Meiteis in Manipur* have a rich musical and dance life with a performance dating back to ancient history and myth as well as they keep the people's history and religion on record.³ Music also plays an important role in rituals and ceremonies which makes significant life events and seasonal festivals. In Maharashtra, the *Lavani dance* form combines traditional song and dance performed to the enchanting beats of the *dholaki*. This art form has been integral to Maharashtrian folk performances and reflects societal narratives and emotions.³

Despite its cultural significance, indigenous music in India faces threats from misappropriation and

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exploitation. The lack of comprehensive legal protection leaves traditional musical expressions vulnerable to unauthorized use, often without acknowledgment or compensation to the originating communities.⁴

Overview of Indigenous Music in India

India is blessed with the world's richest and oldest tradition of music which is deeply rooted in the social and cultural life of the country. Indigenous music, also termed as folk music or tribal music is integral to the lives of the country's ethnically diverse people. Indigenous music is more than a mere source of entertainment, it is also a mean of expression of religious beliefs, social opinion as well as tradition preservation. From the *soul-stirring Baul songs of Bengal* to the *tribal chants of the Northeast*, from the *Langa and Manganiyar traditions of Rajasthan* to the *Gond and Santhali tribal music* of Central and Eastern India, every form of indigenous music carries unique rhythms, instruments and vocal styles that define the identity of its people.⁵

Indigenous music can be broadly defined as *the traditional and community-based musical expressions of native and tribal communities*, often created and performed collectively rather than attributed to a single individual. It is an oral tradition that encapsulates the *history, mythology and social values* of a community.

Key characteristics of indigenous music include: -

- (i) Oral Tradition: Indigenous music is seldom written down but is transmitted from generation to generation through word of mouth with each live performance being a dynamic experience which can evolve somewhat with the passage of time.
- (ii) Community Ownership: Unlike contemporary or classical compositions that have identifiable creators, indigenous music is often communally created and performed and belongs to the collective rather than an individual. Integration with Daily Life: Indigenous music is closely associated with the daily lives of the people, with the music being utilized for agricultural celebrations, religious ceremonies, storytelling, ceremonies for healing as well as social protest.
- (iii) Use of Unique Instruments: Indigenous music often features traditional musical instruments that are handcrafted using local materials. Some notable instruments include the Ektara (one-

stringed instrument used in Baul music), DhodroBanam (used by the Santhali tribe), Ravanhatta (folk violin of Rajasthan) and Tungna (a Himalayan string instrument).⁶

Historical Evolution of Indigenous Music in India

The roots of indigenous music in India trace back thousands of years while evolving through oral traditions and cultural exchanges. The *Rigveda* (one of the oldest Indian scriptures and composed around 1500 BCE) contains hymns and chants that resemble early folk traditions. Over time, musical expressions diversified across various tribal and regional communities which influenced by geography, social structures and historical events.

Ancient and Medieval Period

- (i) Indigenous music is also shaped through agricultural forms of existence, with songs being composed about harvests, rains as well as ceremonies of fertility.
- (ii) In tribal societies, music played an essential role in shamanic and animistic rituals with drumming and chanting believed to invoke spirits and heal the sick.
- (iii) The Bhakti Movement (7th-17th cent. CE) also deeply influenced, introducing local music styles in devotional songs. Bengal's Baul singing as well as Maharashtra's Varkari tradition emerged at this stage with local folk tunes being infused with spiritual content.⁷

Colonial Influence and Decline

During British colonial rule (18th–20th century), indigenous music suffered a decline as Western musical influences, Christian missionary interventions and colonial education systems favored European musical forms. Many indigenous communities were marginalized and led to a loss of traditional knowledge including their musical heritage. However, folk and tribal music survived within local communities which is often thriving in rural and isolated regions.⁷

Post-Independence Revival and Recognition

After India's independence in 1947, there emerged a revival of the patronage as well as preservation of indigenous music. Indian government organizations as well as indigenous music organizations have since been documenting as well as preserving these music genres. Agencies such as the *Sangeet Natak*

Akademias well as the *All India Radio* have been at the center of popularizing folk music. Global platforms have also seen indigenous music practitioners receiving international acclaim, with the resultant revival of traditional music in India as well as the world at large.⁷

International Perspective

WIPO's Traditional Cultural Expressions (TCEs) Framework

The World Intellectual Property Organization (WIPO) has been at the forefront of worldwide efforts to preserve Traditional Cultural Expressions (TCEs), often known as folkloric expressions. TCEs include a diverse spectrum of artistic and cultural expressions such as music, dance, art, designs, symbols, performances and ceremonies that are vital to indigenous and local community's cultural and social identities.

The Berne Convention for the Protection of Literary and Artistic Works adopted in 1886 is regarded as the cornerstone of international copyright protection. However, its original framework was designed primarily around the idea of individual authorship, which makes it ill-suited to safeguard creations that arise collectively within communities, such as Traditional Cultural Expressions (TCEs). These expressions, including traditional music, art, designs as well as performances are generally transmitted through generations and evolve under customary practices rather than being attributable to a single creator. While recognizing the limitations of the 1886 text, subsequent revisions sought to address certain gaps. The *Brussels Revision of 1948* and later the *Paris Revision of 1971* introduced provisions that dealt specifically with anonymous and pseudonymous works. *Article 7(3)* of the revised Convention stipulates that, for such works, copyright protection lasts for fifty years from the year in which the work was first lawfully made available to the public unless the author's identity becomes known earlier. Similarly, *Article 15(3) and (4)* allows the publisher to represent the author in exercising rights when the author's identity is unknown and even empowers national legislation to designate a competent authority to act on behalf of an unidentified author.⁸

Although these amendments extended protection to situations where authorship cannot be determined and they remain largely inadequate for TCEs. The Berne framework still relies on the concept of an *identifiable "author"* even if anonymous at first and does not

acknowledge collective or inter-generational custodianship. It also lacks any provision for equitable benefit-sharing or recognition of customary laws that govern such expressions within communities. These shortcomings in the Berne system ultimately prompted the international community, particularly through the World Intellectual Property Organization (WIPO) to explore the development of a *sui generis* legal framework specifically tailored for Traditional Cultural Expressions.⁸

WIPO's engagement with the traditional cultural expressions is intended to give these expressions their legal recognition as well as their protection. It ensures the control as well as the benefit of the traditional expressions from the people.

- (i) **Development of Global Norms:** WIPO facilitated the dialogue among the member states toward the adoption of international documents protecting the TCEs. These seek the development of norms acknowledging the people's rights with regard to their expressions of culture as well as discouragement from the use or use without authorization.
- (ii) **Model Provisions and Guidelines:** In collaboration with UNESCO, WIPO developed the "Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions" in 1982. These provisions serve as guidelines for countries to formulate national laws that safeguard TCEs.
- (iii) **Capacity Building and Technical Cooperation:** WIPO facilitates technical support as well as technical assistance to the countries in developing the policies as well as the laws protecting the TCEs. It organizes workshops as well as facilitates the international exchange of the best practices.

WIPO's framework underscores the need for a balanced approach that protects the rights of indigenous communities while promoting the sharing and appreciation of cultural expressions.⁹

Comparative Analysis

Australia

Australia has made significant strides in recognizing and protecting Indigenous Cultural and Intellectual Property (ICIP) (Table 1). While Australian law does not specifically protect ICIP right but existing laws offer some avenues for protection:

Table 1 — Comparative legal frameworks for protection of traditional cultural expressions and community rights

Country/Region	Legal Framework	Scope of Protection	Recognition of Community Ownership	Key Features / Mechanisms
Australia	<i>Copyright Act, 1968</i> - Protocols for Using First Nations Cultural and Intellectual Property in the Arts	Protects works with identifiable authors- Does not cover collectively created or traditional works	Not fully recognized under statutory law	Protocols emphasize ethical use, consent, attribution and benefit sharing- Developed to address gaps in legal protection
New Zealand	<i>Treaty of Waitangi (1840)</i> - <i>Trade Marks Act, 2002</i> - Waitangi Tribunal	Recognition of Māori rights to cultural expressions- Prevents offensive trademark registrations	Cultural recognition through Treaty interpretations and advisory structures	<i>Māori Advisory Committee</i> gives input on trademark matters- Waitangi Tribunal addresses IP-related grievances- Encourages cultural sensitivity and Māori participation
South Africa	<i>Intellectual Property Laws Amendment Act, 2013</i>	Extends IP protection to traditional knowledge and traditional cultural expressions (TCEs)	Explicitly recognized in statute	Acknowledges communal rights to traditional music- Enables benefit-sharing and legal commercialization of Indigenous works
Kenya	<i>Traditional Knowledge and Cultural Expressions Act, 2016</i>	Covers a wide range of traditional expressions and practices	Affirmed by legislation	Provides benefit-sharing frameworks- Prevents unauthorized commercial use and misappropriation
Ghana	<i>Copyright Act</i>	Protects folklore via state trusteeship	Community represented through the State	Use of traditional music and folklore must benefit the public- Ensures preservation and cultural continuity

- (i) Copyright Law: Indigenous creators can protect their works under the Copyright Act 1968, which grants exclusive rights to reproduce and communicate their creations. However, this protection is limited to identifiable authors and does not extend to communal ownership or traditional & collectively created works.
- (ii) Protocols and guidelines: Due to the inadequacies of the current regulation, Australia came up with protocols governing the ethical use of Indigenous people's cultural materials.¹⁰
- (iii) Waitangi Tribunal: The tribunal addresses claims by Māori regarding breaches of the Treaty of Waitangi, including those related to cultural and intellectual property. Through its recommendations, the tribunal has played a role in acknowledging and addressing grievances related to the misappropriation of Māori cultural expressions.¹¹

New Zealand

New Zealand's approach to protecting indigenous cultural expressions is closely tied to its recognition of the Māori people and their cultural heritage:

- (i) Treaty of Waitangi: The Treaty of Waitangi, signed in 1840 between the British Crown and Māori chiefs, acts as a foundational document recognizing Māori rights, including those related to cultural heritage. While the treaty does not explicitly address intellectual property, it has been interpreted to encompass the protection of Māori cultural expressions.
- (ii) Trade Marks Act 2002: This act includes provisions that prevent the registration of trademarks that are offensive to Māori. The act also established the Māori Advisory Committee, which advises the Intellectual Property Office on the registration of trademarks that may affect Māori culture.
- (iii) Waitangi Tribunal: The tribunal addresses claims by Māori regarding breaches of the Treaty of Waitangi, including those related to cultural and intellectual property. Through its recommendations, the tribunal has played a role in acknowledging and addressing grievances related to the misappropriation of Māori cultural expressions.¹¹

African Nations

Several African countries have passed laws to protect traditional expressions of culture:

- (i) South Africa: It is with the 2013 Intellectual Property Laws Amendment Act that indigenous knowledge is protected through the acknowledgment of traditional music through the insertion of the same in the current intellectual property laws. It ensures the acknowledgment of communal ownership & ensures the people's benefit from the use of their traditional expressions for commerce.
- (ii) Kenya: The 2016 Act for the Safeguarding of Traditional Knowledge and Cultural Expressions ensures extensive coverage of traditional expressions of culture. It recognizes the people's rights with regard to their traditional heritage as well as benefit-sharing mechanisms as well as exclusion from misappropriation.
- (iii) Ghana: Ghana's Copyright Act contains provisions safeguarding the country's folklore through the state's trusteeship of traditional works. This method ensures any use of the works

for commerce is for the benefit of the people as well as the preservation of heritage.¹²

Chhath Puja in Bihar: A Cultural and Musical Heritage

Chhath Puja is one of the major festivals of Bihar and is a living example of the state's cultural richness. Emphasized with enthusiasm, it marks the state's strong traditions, eco-awareness and the native musical tradition of the state. The rituals of the festival, particularly the rituals conducted in bodies of water reflect the devotion of the society to nature and the Sun deity "*Surya*".

Music is at the core of Chhath Puja, which are an integral strand in the festival's cultural fabric. The *ChhathGeet*, as the traditional devotional music is fondly known, is rooted deep in the cultural and linguistic heritage of Bihar, particularly the Bhojpuri and Maithili-speaking population. The people's oral tradition of singing these folk compositions from one generation to the next not only holds on to the music legacy of the region but is also an expression of collective religious sentiments. The lyrics usually tell stories associated with local mythology and are imbued with heartfelt piety towards Surya Dev (Sun God) and pray to the divine grace of ChhathiMaiya, who is revered as the goddess of purity and protection.

One such Bhojpuri song goes:

"Kaach hi bas kebahangiya, bahangilachkatjaaye, Hoinabalamjikhahariya, bahangighaatpahuchaaye."

This translates to:

"The delicate bamboo basket sways as it moves, Oh beloved, please carry it to the riverbank." (Fig. 1)¹³

These melodies, often accompanied by traditional instruments like the dholak and manjira, resonate during the rituals reinforces communal bonds and cultural identity.

Chhath Puja transcends religious differences, promotes unity and equality among the participants. Chhath rituals are not undertaken in the presence of priests, unlike most Hindu festivals and are therefore driven by personal devotion and spirit of collectivism. The egalitarian aspect makes it possible for people from all social rungs to participate on an equal level.

The festival also acts as a homecoming for many Biharis with families reuniting to celebrate together. The collective preparation of offerings, cleaning of local water bodies and communal singing of *ChhathGeet* strengthen social ties and reinforce cultural pride.

From the scientific perspective, the rituals during the festival are beneficial. Being in the water at dawn and at the setting sun helps the body to absorb vitamin D, which is essential to the well-being of the bones. The 36-hour fast followed by the devotees is thought to purify the body and clear the mental state.¹⁴

Chhath Puja rituals centre around water. *Arghya* (offering) to the setting and rising sun is offered by devotees with their feet immersed in waist-deep water (Fig. 2). It is an act which symbolises purification and sustenance of life. The use of natural water bodies for these rituals highlights the respect of the people for nature and the appreciation of the role played by water as the giver of life. The focus on cleanliness during the festival results in community-led clean-ups of rivers and ponds which enhances environmental stewardship and consciousness.

Lok Geet in Bihar: Preserving Cultural Identity through Song

In the state of Bihar, Lok Geets are not merely tunes, rather they beat the heart of its society's



Fig. 1 — Devotees offering arghya to the sun during chhath puja rituals



Fig. 2 — Representation of traditional chhath geet illustrating the cultural and devotional musical heritage of Bihar

'*culturality*'. These classic folk songs play a central role in ceremonial and ritual life as a means to communicate emotions, tell stories and connect people within the community. Sung in regional dialects like Bhojpuri, Maithili and Magahi, the songs represent the collective wisdom and experience of an age-old traditions.

Weddings in Bihar are vibrant affairs, deeply rooted in tradition where Lok Geet play an important role. Each phase of the wedding, from pre-wedding rituals like Haldi and Mehendi to the Vidaai (bride's farewell), is accompanied by specific songs that reflect the emotions and significance of the moment.

- (i) Haldi Geet: During the Haldi ceremony, songs are sung to bless the bride and groom, wishing them prosperity and happiness.
- (ii) Sohar: Traditionally associated with childbirth, Sohar songs are also adapted for weddings to celebrate the auspiciousness of the occasion.
- (iii) Vidaai Songs: These poignant songs express the mixed emotions of joy and sorrow as the bride leaves her parental home to start a new life.

These songs are typically performed by groups of women, creating an atmosphere of communal participation and emotional resonance. The lyrics often contain humor, satire and blessings reflects the community's values and social dynamics.

The *Upanayan Sanskar* often referred to as the *Janeu Sanskar* in Bihar is one of the most important *samskaras (sacraments)* in a Hindu boy's life, especially within the Brahmin and some other caste communities. It marks the spiritual rebirth of a boy and his formal entry into the matter of learning and Vedic studies. Traditionally performed between the ages of eight and sixteen, the ceremony is deeply symbolic as well as it signifies the acceptance of the student by a teacher (guru) and the beginning of formal education, both spiritual and worldly. In the cultural context of Bihar, the ceremony is not only a religious event but also a family and community celebration rich in customs, attire and ritual songs.

Existing Legal Framework in India

India's vibrant cultural tapestry is composed of diverse indigenous musical genres reflecting the histories and traditions of various groups. The safeguarding of such musical heritage within Indian laws and specifically under the Copyright Act of 1957, is looking problematic.

The Copyright Act, 1957

The Copyright Act of 1957 is the principal legislation governing intellectual property rights in India. It aims to protect the rights of creators over their original works, including literary, dramatic, musical and artistic creations. Under this Act, musical works are granted protection, providing composers, lyricists and performers with exclusive rights to reproduce, distribute and perform their creations. However, when it comes to indigenous music, which is often collectively created and owned by communities the Act presents several limitations.¹⁵

The Copyright Law only promises protection within a limited timeframe. The protection under the provisions in *Section 22* is for the *life of the author and a period of sixty years* following the beginning of the calendar year next following the death of the author. The protection within a limited timeframe is applicable in the case where there is a definite author and definite dates. In the case of indigenous music, where there is no author and where the piece has been in circulation over a century, the duration of protection is a concern. *Because there is no author, there is no method with which to calculate where and how the protection would commence.* Because of this, such a piece could technically fall in the public domain and is susceptible to misuse without recourse on the part of the original people.¹⁶

Section 57 under the Copyright Act grants authors with moral rights and these are:

- (i) Right to paternity: The authorship of the work is the right to claim.
- (ii) Right to Integrity: The author is entitled not to endure distortion, mutilation or other treatment of the work tending to harm the author's reputation and honor.

The concept of reputation would not fit in communal expressions of culture where authorship is not attributable to a person but is a matter involving the entire community. Moreover, moral rights under Section 57 are enforceable even in the case of assignment of the copyright and authorial personal rights are preserved. In the case of indigenous songs, *there is no authorship* and, accordingly, these moral rights are not enforceable in fact and deprive the community of legal recourse in combating distortion and misrepresentation of their cultural expressions.¹⁶

The duration of protection for works published anonymously or under a pseudonym is particularly governed under Section 23 of the Indian Copyright Act, 1957. The provision guarantees that the work

retains copyright protection even in cases where the author's identity is not immediately apparent. In these situations, works of literature, drama, music or art (except from pictures) are protected for sixty years, which start from the first day of the year after the year in which they were first published legally. If, however, the author's true identity is revealed before the expiry of this sixty-year period, the duration of copyright changes. It is then calculated on the same basis as ordinary works, i.e. sixty years from the beginning of the year following the author's death. The Act also lays down a detailed rule for joint authorship, where a work has multiple authors and only some of them reveal their identity, the term of protection is computed from the death of the last surviving author whose identity is known. If none of the authors are identified but one is later disclosed, that disclosure determines the new basis for calculating the term.¹⁷

The law further provides that until the identity of the author becomes known, the publisher is treated as the copyright owner and may exercise the rights attached to the work. Once the author's identity is established publicly or to the satisfaction of the competent authority, the ownership reverts to the author. Notably, the Act distinguishes photographs from other categories, as they are excluded from this specific provision. The "*disclosure of identity*" requirement is also clearly defined, it must be a public revelation by the author or publisher or otherwise recognized officially, typically by the Copyright Office or Board.¹⁷

Judicial Precedents

*Mannu Bhandari v Kala Vikas Pictures Pvt. Ltd. and Anr.*¹⁸

The facts of the case are centered on the acclaimed Hindi author Mannu Bhandari, known for her novel *AapKa Bunty*. This novel was a socially sensitive work that explored the emotional trauma of a young boy caught between separated parents and a stepmother. It was celebrated for its realism, emotional depth and feminist undertones. In 1983, Bhandari assigned the cinematographic rights of her novel to Kala Vikas Pictures Pvt. Ltd. for a consideration of ₹15,000. The agreement permitted adaptation for the screen including necessary changes to suit the medium but only after consultation with the author. Based on the assigned rights, the defendants produced a motion picture titled *Samay Ki Dhara*.

When it was released, Bhandari greatly disliked the completed film. She alleged that it was not an adaptation but a mutilation and misrepresentation of her work of literature. The key themes of the novel, she asserted, had been significantly altered. It was held by the trial court that since Bhandari had assigned the rights to the film adaptation and had accepted consideration for the same, she had no further claim over the adaptation. The court also emphasized that she had not proven a prima facie case of distortion and that her objections were raised too late, thus giving rise to the defense of delay or laches.

Bhandari was not happy with the trial court verdict and filed an appeal in the Delhi high court. Although the parties eventually settled the matter, both parties asked the High Court to deliver judgment on the substantive legal issues at stake. Justice S.B. Wad of the Delhi High Court allowed the application in view of the fact that the case involved important questions of law relating to moral rights that needed to be settled authoritatively. The decision ultimately provided the first detailed judicial analysis of Section 57 and clarified the legal position of an author's moral rights in India.

In its case, the High Court held that it is not enough to show that a work has been assigned in order for the ability of an author to object to derogatory treatment to come to an end. The wording of Section 57 which [including "even after the assignment"] was construed to state that though author can transfer the work for the purpose of business, author's moral rights in the work subsists notwithstanding the transfer. The court rejected the argument that the author's prior knowledge or acceptance of adaptation negated her moral rights. Even if changes were contemplated, any modification that goes to the root of the work and alters its fundamental character in a derogatory way would amount to a violation of moral rights.

The court observed that an adaptation inevitably involves some degree of transformation as different media have different demands. But this does not grant absolute liberty to the adapter to modify the work in any manner. The key test, according to the court was whether the modification caused prejudice to the author's honor or reputation. This test has both subjective and objective components. While the author's personal feelings about the damage are relevant, the claim must also be supported by an objective assessment of whether the distortion would be seen by a reasonable person as injurious to the

author's standing or the integrity of the original work. The court determined that her claims had merit.

*Amar Nath Sehgal v Union of India*¹⁹

A leading Indian case involving intellectual property and specifically the moral rights of creators, is *Amar Nath Sehgal v. Union of India* (2005). It is the story of the great sculptor Amar Nath Sehgal's battle with the Indian state about the eventual dismantling of his iconic bronze mural installed at *New Delhi's Vigyan Bhavan*. It established precedent regarding the safeguarding of works of art under Indian law and demonstrated the relevance of the moral rights of the artist under the Copyright Act, 1957. Amar Nath Sehgal, who is a renowned sculptor, produced a 1962 bronze mural for the Vigyan Bhavan. It is a work of national cultural significance regarded as being of great beauty. In the 1970s, the mural was arbitrarily demolished at the behest of the government authorities without the opinion of Sehgal. It caused extensive damage to the mural which forced the artist to approach the courts seeking recourse under the grounds of violation of his moral rights as the work's author.

He filed a lawsuit against the Union of India in the Delhi High Court while arguing that the unauthorized removal and destruction of his mural amounted to an infringement of his moral rights under Section 57 of the Copyright Act, 1957. Moral rights, as defined in the Act, grant an author the right to claim authorship of their work and to object to any distortion, mutilation or modification that would be prejudicial to their honor or reputation. Sehgal contended that the removal of his mural without his consent had violated these rights and sought legal remedy for the damage caused. The Delhi High Court, in 2005, adjudicated the case of Amar Nath Sehgal. It ruled in his favour. It asserted the role of moral rights and established the retention of the same by the artist even after the actual execution of the work. It put emphasis upon the point that the work of the artist is the reflection of his personality and any mutilation or destruction of the same without the agreement of the creator is illegal. It directed the payment of damages for the mutilation of his mural work as well as the recognition of his claim upon the leftovers of the work.

This case set an important precedent in Indian copyright law by asserting the doctrine of creator's moral rights. It established the principle that even if a work is commissioned or bought by a third party the creator still retains moral rights over their work and

emphasized the importance of maintaining the artistic integrity as well as the requirement of non-permission prior to any alteration or destruction of works of art.

*Civic Chandran v Ammini Amma*²⁰

Civic Chandran v Ammini Amma is a significant decision of the Kerala High Court that addressed the limits of the fair dealing exception in copyright law, particularly in relation to derivative works. Civic Chandran, a playwright and political activist, sparked the controversy by creating a counter-drama titled *Ningal Are Communistakki* (Who Made You a Communist?), which was based on and included significant portions of the iconic Malayalam play *Ningalenne Communistakki* (You Made Me a Communist) written by the celebrated playwright Thoppil Bhasi. The original play was a dramatic and ideological representation of communist ideals and had significant historical and cultural importance in Kerala's theatre tradition. The counter-drama produced by Civic Chandran was critical in nature and offered a satirical and political commentary on the original work and challenge its ideological underpinnings. In response, the legal heirs and representatives of Thoppil Bhasi, including his wife Ammini Amma filed a suit claiming copyright infringement while arguing that Civic Chandran's work had unlawfully copied large sections of the original script and dialogues without authorization.

In defense, Civic Chandran contended that his counter-drama did not amount to infringement because it fell under the ambit of the fair dealing provision under Section 52 of the Copyright Act, 1957. The High Court held that even if large sections of a copyrighted work are used, the fair dealing exemption may apply if the new work serves a broader purpose such as public interest, education, critique or social commentary. The Court highlighted that copyright law must strike a balance between the rights of original artists and the necessity to allow for freedom of expression and political criticism in a democratic society. It was observed that while creators have strong rights over their original expressions, those rights are not absolute and derivative works especially those that aim to provoke thought, critique or challenge dominant narratives may fall within the boundaries of fair dealing.

Challenges in Protecting Indigenous Music in India

India's indigenous music is a vital part of its cultural heritage which reflect the diverse traditions

and histories of various communities. However, safeguarding this musical heritage presents several challenges, particularly within the existing legal frameworks.

Incompatibility with Existing Intellectual Property Laws

The main issue is the non-applicability of the current intellectual property (IP) laws to the nature of indigenous music. The current IP laws, i.e., the Copyright Act of 1957, are designed with the perspective of safeguarding creations with an identifiable author and granting them exclusive control over their creations. The nature of indigenous music is just the contrary; such is the product of collective creativity and is passed on through generations without an identifiable author. The collective ownership is not applicable in a system with a single authorship-based approach. It is difficult for such societies to claim and enforce their customary musical expressions.

Difficulty in Definition and Documentation

A similar issue is the definition and documentation of indigenous music in legal systems. The fact that indigenous music is mostly transmitted orally with varying performance and interpretation makes defining and protecting such musical modes challenging. The fact that it is not written down makes defining and claiming authorship and ownership challenging, a requirement under existing IP laws. In addition, the fluid and evolving character of indigenous music makes even the effort at documentation insufficient in capturing its totality and results in over-simplification and distortion.²¹

Duration and Public Domain Issues

The temporal aspect of IP protection also poses problems for indigenous music. The Copyright Act provides protection for a limited period—typically the lifetime of the author plus sixty years. Given that indigenous music often lacks a specific author and has existed for centuries and determines the duration of protection becomes problematic. As a result, many traditional musical works may be considered part of the public domain which leave them vulnerable to unauthorized use and exploitation without any legal recourse for the originating communities.

Cultural Misappropriation and Lack of Benefit Sharing

Cultural misappropriation is a phenomenon on the rise where classical Indian art and music are

indiscriminately and widely adopted in commercials, films and products without a hint about their cultural value and origin. Not only is such misuse a disservice to the cultural identity associated with such art and music but such misuse is also depriving the original producers and respective societies economically. The free and indiscriminate misuse of expressions has left customary and indigenous societies in a state of despondency and powerlessness.²²

Opportunities for Protecting Indigenous Music in India

Indigenous music in India is a rich cultural heritage passed down through the ages. Although there is no dearth of difficulties in the legal protection of traditional music forms, there is more than enough opportunity for their preservation and safeguarding. These chances can be from the amendments in the intellectual property laws to active government interventions as well as active people's interventions. One of the greatest opportunities for the preservation of indigenous music in India is through the process of revising the current intellectual property laws according to the unique characteristics of traditional expressions. The 1957 Copyright Act, which largely recognizes the role of the individual as the author can be suitably amended with the introduction of a system of communal ownership. Legal provisions can be passed recognizing the role of the indigenous people as the collective authors with the guarantee that the profit from the traditional music is shared justly. A sui generis system of laws, a system of unique laws can also be established specifically for the preservation of indigenous music, just as the preservation of geographical indications.²³

Another significant sector is the preservation of traditional music through the role of people's movements. Indigenous people can be facilitated through cooperative societies as well as through cultural trusts to archive, document as well as control their traditional music. People's organizations can negotiate as a body, precluding traditional music from being commoditized through the commerce sector. Traditional knowledge digital libraries (TKDLs) can also be established for the recording of indigenous music with the documentation being accepted as proof of ownership in the case of any disputes. Technology presents another avenue for protecting and promoting indigenous music. Digital platforms and blockchain technology can be used to create secure, transparent records of traditional musical compositions

and ensures proper attribution and preventing unauthorized commercial use. Online repositories and streaming services dedicated to indigenous music can generate awareness and provide fair compensation to artists and their communities.²⁴

Recommendations

Amendments to the Copyright Act, 1957

The Copyright Act, 1957 should be amended to accommodate the unique characteristics of indigenous music which recognizes collective ownership and oral traditions.

- (i) **Acknowledgment of the Community's Ownership:** A new section can be introduced allowing the acknowledgment of the community as the collective author and allow indigenous peoples to assert the legal rights of their traditional music.
- (ii) **Oral Traditions Safeguard:** the requirement of fixation should be dispensed with or extended to include works transmitted through word of mouth. Instead of requiring written or recording forms the indigenous music should be safeguarded through documentation of the music's cultural heritage which ascertained through communal organizations or the government.
- (iii) **Moral Rights Expansion:** Section 57 should be amended to explicitly grant communities the right to object to distortion, misrepresentation or derogatory treatment of their traditional music.

Introduction of a Sui Generis System for Indigenous Cultural Expressions

India should adopt a sui generis legal framework dedicated to the protection of indigenous cultural expressions, including music

- (i) **Community-based Registration System:** Indigenous people can register their traditional music with a national registry under the system of collective ownership.
- (ii) **Benefit Sharing Mechanisms:** Profit from the use of indigenous music for commerce is shared with the relevant communities according to the law.

Utilizing the Geographical Indications (GI) Act, 1999

The GI Act should be expanded to include intangible cultural heritage, such as traditional music, under its protection.

- (i) **Amend the Definition of 'Goods':** The Act should be revised to explicitly include musical expressions linked to particular regions.
- (ii) **Community Control over Commercial Use:** Indigenous communities should be empowered to authorize and regulate the commercial use of their traditional music under the GI framework.

Integration with the Biological Diversity Act, 2002

The music is generally accompanied with traditional knowledge & the Act of Biological Diversity can be used to afford indigenous music the protective cover of the law.

- (i) **Inclusion of traditional music in benefit and access-sharing schemes:** The Act can be extended with the provision that when a traditional music is utilized for the benefit of a corporation or body, the originating people should be given just returns.
- (ii) **Prevent Biopiracy of Cultural Expressions:** Indigenous music should be protected from biopiracy by the implementation of sufficient protective measures under the Act.

Community Capacity Building and Awareness

- (i) **Legal Literacy Programs:** Indigenous people should be educated about their legal rights as well as how they can protect their music heritage.
- (ii) **Support for Local Artists:** The government initiatives must offer financial support to folk and tribal artists in order to encourage and preserve their art forms.
- (iii) **Community-Led Monitoring:** Indigenous people should be empowered to report and monitor the use of their traditional music without authorization.

International Best Practices and Collaborations

India can learn from international models like New Zealand's Waitangi Tribunal and Australia's ICIP (Indigenous Cultural and Intellectual Property) protocols.

- (i) **Bilateral Agreements:** India should enter agreements with other countries to prevent cross-border misappropriation of indigenous music.
- (ii) **UNESCO Recognition and Funding:** Indigenous music forms should be nominated for UNESCO's Intangible Cultural Heritage list to gain international recognition and funding.

Conclusion

The legal protection of indigenous music in India is a daunting yet important endeavor that converges cultural preservation, intellectual property rights and recognition of collective ownership. Indigenous music has been an integral component of India's cultural heritage, with strongly rooted traditions having evolved through centuries of oral transmission. It symbolizes a community's social, ritualistic and spiritual values in addition to artistic expression.

These musical traditions are profoundly ingrained in the daily lives of Indian Society, tribes and local communities, frequently accompanying religious events, marriages, births and harvests. The contemporary legal framework, nevertheless, cannot provide adequate protection to these unique musical expressions, in large part due to the fact that the present intellectual property law is inconsistent with the communal and dynamic nature of indigenous music. The Copyright Act of 1957, India's basic legislation protecting intellectual property is fundamentally based on the premise of individual authorship and fixed tangible works. This model assumes that the creator of a work is a single, identifiable person or group that can be named and attributed accordingly. However, in the case of indigenous music, this is rarely the reality. Traditional songs, rhythms and performance styles are often developed and refined over generations by unnamed contributors. In contrast, indigenous music is often an oral tradition passed down through generations with no clear author. As such, applying the standard copyright framework to these works leads to exclusion rather than protection. The result is a significant legal void, where many indigenous expressions fall outside the scope of protection and are thus vulnerable to misappropriation. Indigenous music is difficult to copyright protect since it lacks a specific author and is not fixed in a tangible medium.

It is the subject of intangible cultural heritage; address to the IP Laws protection has been elusive for the policy makers, leaders to the holders of that heritage and other stakeholders. The reality of this fact can be gauged from the fact of the WIPO negotiation for a draft treaty on folklore, traditional knowledge and genetic resources in it's first session in 2001. The Negotiations were underway; various nations were bereft of local legislation to protect Traditional Cultural Expression (TCEs) like south-Africa with rich biodiversity hotspots such as India.

India is rich in numbers of folklore/cultural expression yet to be without any legal protection within IP Laws. Several TCEs along with their originator communities are yet to be recognized by any governmental or autonomous authority. Due to the absence of legal protection to the TCEs, mass misappropriation has been recorded and on-going by Bollywood and Music recording companies.

Various Media reports time to time claimed regarding the misappropriation of these TCEs and

not granting the adequate compensations to the communities. The Media reports not only raised the issue of inadequate compensations but in some cases the TCEs has licensed by Music recording companies and the traditional artists are expected to get license to perform their very own traditional music which has now been protected under Copy Right Act by third party i.e. company get Copy Right on that TCEs.

In this context, it can be considered to develop a sui generis legislation specific to the protection of traditional cultural expressions (TCEs), including music. Many countries such as Panama and South Africa have already adopted such laws. A sui generis model would allow for the creation of a legal framework that acknowledges the collective and evolving nature of indigenous music, respects oral traditions and accommodates customary laws. This approach could bridge the current gap between conventional IP systems and the realities of traditional communities. Despite the legality issue, there is great scope for the enhancement of the safeguarding of indigenous music in India. Amendment of the Copyright Act can incorporate the system of communal ownership, under which the whole community can be declared as the holder of the rights.

Further, changes in the Geographical Indications Act can officially declare indigenous music as a protected cultural asset, keeping the process of unauthorized commercial use at bay. Government actions like documentation schemes and provision of funds for indigenous music practitioners can also give the safeguarding as well as transmission of traditional forms of music a boost. Documentation, must be approached with caution and respect for local customs. It should be done in collaboration with the community not imposed externally. Further, digitization projects should include metadata that reflects the community's authorship and control and preventing misappropriation through unauthorized digital dissemination. The involvement of local youth through training in digital archiving and legal literacy could ensure both preservation and continuity. The legal protection of indigenous music in India requires a holistic approach that combines legislative reforms, judicial recognition, cultural awareness as well as community participation.

It also demands an inter-disciplinary collaboration involving legal experts, ethnomusicologists, anthropologists, linguists and the communities themselves. Multilingual public awareness

campaigns, mobile legal clinics in tribal areas and the creation of local music councils could go a long way in empowering communities to claim their rights. The use of technology can also play a significant role here like community-led apps, blockchain verification for traditional music use and open-access archives that are protected by indigenous governance can become modern tools for safeguarding age-old traditions. By acknowledging the unique nature of indigenous music and developing tailored legal mechanisms India can ensure that its rich musical heritage is preserved, respected & fairly compensated. The challenge lies not only in crafting laws that align with the dynamic and collective nature of indigenous music but also in making an environment where traditional musicians can thrive without fear of exploitation. The road ahead demands a concerted effort from legal experts, policymakers & society at large to safeguard one of India's most invaluable cultural treasures for future generations.

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