

Remake of Folk Songs in India: Cultural Appropriations, Traditional Expressions and Copyright Dilemma

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India's indigenous communities have long been aesthetically vibrant, as seen by their complex handicrafts, rich literature, and traditional folk melodies. The Indian music industry is also susceptible to the effects of this indigenous culture's influence. In traditional music, there is also the issue of the constant reworking or recombination of accessible material within the traditional musical system. In order to accurately estimate the significance of intellectual property protection for folklore, the authors have studied the constitutive elements of Copyright laws and discussed them in the light of the preservation of Traditional Cultural Expressions, specifically folk songs, by interviewing a few experts who are associated with the Indian Music Industry. The study also emphasizes the necessity of defining, identifying, conserving, preserving, disseminating, and safeguarding folklore, which has been a dynamic cultural heritage of immense economic, social, and political relevance since ancient times.

Keywords: Folk Songs, Traditional Cultural Expression, Cultural Heritage, Music Industry, Copyright

The issues of multiculturalism, including cultural diversity, in particular in societies that have both indigenous communities and immigrant communities, necessitate cultural regulations to maintain a balance between the conservation and preservation of cultural expressions, whether traditional or otherwise, and the free exchange of cultural experiences. This is especially important in countries that have both indigenous communities and immigrant communities. Recognizing the richness, breadth, and, most importantly the social aspect of traditional music and transmission; and providing a fair, accurate, and proportionate portrayal of the music and its cultural context is of the utmost importance in the court of law. If this isn't done, it's an insult to the music and to the people who make it what it is, and it could end up killing out music as a participatory phenomenon altogether. Since the Statute of Anne was enacted in 1709, a narrow, text-based concept of the "literary or artistic work" has emerged, with specific philosophical premises on authorship, creativity, originality, individualism, and intellectual property at its core.¹ The principles of copyright, which come from this development of the concept of the work, are consistent with the mechanisms

of commodification that characterise a capitalist economic system.

However, there are two essential ways in which traditional culture, including traditional music & song in particular, clash with this theoretical paradigm. First, in the everyday use of these cultural expressions, tunes or songs are viewed as the consensus of practises, with an emphasis on processes, variation, and individual contributions over time, as well as the recognition of the work of creative persons in adding to a corpus of communally practised and distributed repertory.² Second, unlike the concepts of the Market Economy, private property, commodification, and copyright, the idea of Community Economy, a system of reciprocal exchange, is essential to understanding the transmission in traditional musical expression and the continuation of these forms at the amateur and community level.³

Traditional cultures encounter a challenge as a result of this conceptual and practical disparity. Unaware that they are operating within two fundamentally opposed, if not paradoxical, worldviews, many musicians from traditional cultures are benefiting from a growing music industry that perceives traditional forms of music as marketable commodities on the "World Music" scene. Because of

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the hegemonic disposition of the capitalistic ethos, its innate capacity to dominate and permeate at all levels of culture, and the inherent allure of a full-time career in the music business for musicians who love what they do, traditional cultures' musical expressions are becoming more and more commodified and thus more accessible for commercial exploitation. Without proper and systematic official protection for such founding non-market community structure, the commodification of traditional culture will continue to advance, endangering the transmission process as a crucial scene of social cohesion and humanising individual growth. The frame of reference from which we are used to perceiving the spectrum of legal systems must be turned upside down in order to appropriately assess the necessity for the protection of intellectual property of folklore.

Conceptual Framework

Traditional Knowledge (TK)

Traditional knowledge includes the knowledge, accomplishments and practises of indigenous and local groups around the world. Traditional knowledge is passed down orally from one generation to the next; it is based on accumulated wisdom from the past and reflects the specifics of the local culture and environment. It tends to be collectively held and takes the shape of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community regulations, local language, and agricultural techniques, including the development of plant species and animal breeds. It has been passed down orally through generations through singing, dancing, painting, carving, chanting, and performance, earning it the label of "oral tradition." Agriculture, fishing, health, horticulture, forestry, and environmental management are just few of the domains where traditional knowledge is extremely useful.

These days, people are beginning to recognise the worth of ancient wisdom. Not only does this information benefit the people who use it every day, but it also has applications in contemporary manufacturing and farming. Medicinal and cosmetic goods produced from plants, as well as other health and beauty aids, are all examples of the widespread use of traditional knowledge. Agricultural and non-wood forest goods and handicrafts are other valued items that draw on traditional expertise.⁴

Sustainable development may benefit greatly from traditional wisdom. The bulk of the world's genetic

resources are located in locations where indigenous and local populations predominate. Many of these societies have practised sustained cultivation and use of biological variety for centuries. As a result of their efforts, local biodiversity has increased and ecosystem health has been maintained via a number of their activities. But beyond their function as natural resource managers, indigenous and local groups make significant contributions to biodiversity protection and sustainable usage. These experts' knowledge and methods are invaluable to the global society, both as a source of data and as a template for biodiversity policy. Additionally, indigenous members and local communities are the most actively engaged in conservation and sustainable usage because they are on-site groups with significant knowledge of local habitats.⁵

Traditional Cultural Expression (TCE)

In order to define the extent of protection, it is important to examine the types of works that might be considered Traditional Cultural Expression. According to the World Intellectual Property Organization's definition, Traditional Cultural Expressions are forms of expression of traditional culture that are: fundamental to the social and cultural identity and heritage of local communities; preserved and developed by the holders of such expressions; and subject to ongoing change and evolution.⁵

Traditional Cultural Expressions (TCEs) are in two forms, tangible and intangible:

- Verbal expressions or symbols (stories, epics, legends, tales, riddles, etc.)
- Musical expressions (songs, instrumental music)
- Expressions by action (dance form, play, ritual, etc.)
- Tangible expressions (drawings, designs, paintings, body art, carvings, sculptures, pottery, terracotta, warli painting, mosaic, woodwork, rockwork, metal work, jewellery, basket, needlework, glassware, textiles, carpets, etc.)
- Intangible expressions reflecting traditional thought forms
- Architectural forms.”⁶

That means songs and instrumental music, whether or not they have been reduced to material form, qualify as TCEs. The community, rather than an individual, claims ownership of TCEs, and this claim to ownership stems from longstanding precedent. The originator of a TCE is often unknown, and the TCE has become 'Public Domain' *via* repeated use.

India is incredibly diversified and contains different indigenous communities as well as cultural identities, all distinct in cuisine, clothes, language, and even social structure. The musical styles of different communities are reflections of their own cultures. In recent years, with the free availability of material through social media and various OTT platforms, folk songs and musical instruments acquired appeal amongst the public. Thus, when folk songs and genres received widespread patronage and support from audiences, more and more Indian contemporary performers and music producers began borrowing indigenous music traditions. As a result, indigenous musical instruments and genres became more common within mainstream Indian music scene, including pop albums and songs in movies.

Intangible Cultural Heritage- Is this same?

What constitutes a people's cultural legacy is the sum total of their accumulated expertise in a certain field, as well as their continued use of that expertise in their daily lives and their deliberate, public demonstration of that expertise *via* fixed symbols. UNESCO's Convention for Safeguarding of the Intangible Cultural Heritage, 2003, defines "intangible cultural heritage"⁷ as "*the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts, and cultural spaces associated there with that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.*"⁷ So, cultural heritage may take the form of both material objects and immaterial experiences. Historical texts, objects, structures, and the like are examples of tangible heritage; folktales, songs, musical compositions, and cultural practises are examples of intangible heritage.

Economic property rights and copyright-derived rights are the two most significant types of IP rights. Considering their intellectual origins, they cannot be physically touched or held. Patents, industrial designs, and trademarks go within the purview of industrial property rights, whereas works of original creative production such as books, sculptures, films, poetry, etc. fall under the purview of copyright. Traditional Knowledge (TK) & Traditional Cultural Expression (TCE) are two common perspectives through which we examine cultural heritage through the lens of intellectual property (IP). The problem is that there is no unified definition of TK or TCE on a global scale.⁸

TCE encompasses a wide range of historical and

current manifestations of pre-existing materials, including adaptations, imitations, revitalizations, and more. One must be a "defining feature of a tradition" and have survived as a "living tradition within a community" in order to be considered a TCE. Many indigenous people have hoped for this kind of legal safeguard so that they might profit from passing down their knowledge from generation to generation and so that nobody can use it without proper permission.

In contrast, traditional communities' Traditional Knowledge (TK) encompasses their cultural traditions, customs, and the expertise behind these things. Traditional knowledge is not confined to the realm of the arts alone; it also includes such areas as agriculture, science, technology, ecology, biodiversity, and medicine. According to the WIPO Draft Article on TK, such accumulated knowledge must be passed down through at least five generations before it can be considered a TK.⁷

Many have argued that everyone should have equal access to cultural heritage since its benefits extend far beyond national boundaries. In contrast, the idea of intellectual property (IP) is inherently territorial.⁹ Therefore, providing some with monopolistic IPRs may prevent others from gaining access to the exact knowledge and legacy.¹⁰ Cultural heritage, in contrast to TK or TCE, has no expiration date, and is thus immune to legal temporal limits on the enjoyment of the corresponding right. Even if the rights to Leonardo da Vinci's Mona Lisa painting have long since expired, the picture itself is still a priceless cultural treasure that belongs to all people.¹¹

Remake of Folk Songs: Test of Cultural (Mis) Appropriation

There are many ways in which music has contributed to the development of people, communities, and cultures.¹² Folk music, of all the types of music in the world, has to be the most significant to a culture and civilization. Folk music, as its name implies, is music that celebrates and celebrates the people via its lyrics and rhythms. It serves as a link to the past, preserving the people's cultural and historical identity.¹³

Due to its use of two regional classics—*Nach Punjabian* by Pakistani artist Abrar-ul-Haq and *Dupatta Tera Sat Rang Da* by late Punjabi singer Surjit Bindrakhia—the recent big release from Dharma Productions, *Jugg Jugg Jeeyo*, has lately provoked controversy on Twitter.¹⁴ These instances are typical of a much longer trend in which regional

music is reworked and plagiarised for broad audiences. For decades, the industry has been recreating popular songs and folk tunes from all across India, including Tamil Nadu, Punjab, and Telangana.¹⁴

Badshah, a popular musician and rapper, has recently been accused of plagiarism for his song *Genda Phool*.¹⁵ The song is alleged to have been inspired by Ratan Kahar, the actual singer and writer of the song *Boroloker Biti Lo. Genda Phool*, which depicts the celebration of Durga Puja and uses songs and music from Bangla popular culture. In reaction to the charges, Badshah said that his team had looked into the song thoroughly and found that no previous iterations of the song had attributed the lines to Ratan Kahar.¹⁵

The original aim and aesthetic worth of music is frequently lost when a song that is prominent within a region is remade without the approval of the original author and without regard for the cultural relevance it carries. It seems that the original artist or people of that area community weren't consulted when the song was adapted when the remakes modernised it to the point where it's almost unrecognisable. It's unjustifiable because it erases our history and marginalises us from the cultural fabric of the nation as a whole. It doesn't work elsewhere because of cultural differences.

Folk music, for example, is regarded to be "collectively owned" and hence cannot be safeguarded by copyright laws owing to the difficulties in establishing its origins. There are a few notable exceptions to this rule, though. When it is not known who for the first time sung a certain folk song, it is difficult to preserve the song using copyright laws. Folk songs may so often be reproduced or reinterpreted in Bollywood in the absence a formal purchase of the copyright to the original song themselves. This is because Bollywood does not recognise folk music as a genre. However, ownership of the rights to original music may be held by a single entity or shared among many different parties.¹⁶

Threats to Traditional Communities

India is home to a large number of indigenous groups and cultural identities, each of which has its own cuisine, clothes, language, and even social organisation. India's population is incredibly diversified. The musical style of a community is a reflection of its cultural heritage and traditions.

Traditional melodies and musical instruments have seen a resurgence in popularity in recent years, thanks in large part to the proliferation of free material made available via social media and over-the-top (OTT) platforms. As a direct result of this, an increasing number of Indian pop performers and music producers began incorporating indigenous music forms into their work as a response to the growing popularity of Indian folk songs and styles among consumers. As a consequence of this, the use of native musical instruments and techniques has become a prevalent phenomenon in the commercial Indian music industry, including on pop albums and in the songs included in movies.¹⁶

This resulted in the melodic depth of traditional Indian music being brought to light, and it also produced a large number of well-known artists and musicians who were subsequently successful in breaking into the mainstream music business. Another illustration of this may be seen in Tamil folk music, namely the kind of music known as gaana, which was made famous by Tamil movies. Gaana is the city folk music that originates directly from the heart of Chennai, more specifically from the hearts of the marginalised people. Most of the singers in gaana come from communities of fishermen or slum dwellers, and they use upbeat and fast-paced beats to sing about their daily lives and the challenges they face. It is a kind of music that is so entwined with the lives of the people that it can hardly be separated from their lives. These musical techniques have been sampled and copied by music producers, who have then blended them into musical compositions that belong to an entirely new genre. As a result, the quality of the original work of art is diminished.¹⁶

In this scenario, classic music forms are broken down and reinterpreted in such a way that they reach a point where they are no longer recognised and are often frowned upon. The music business does not take folk performers seriously, and they are often disregarded. The same thing can be said of Rajasthani as well as Punjabi folk music, both of which are frequently reworked and integrated into Bollywood tunes. Coke Studio and the song producer and lyricist of a Sambalpuri folk song called Rangabati got into a disagreement because the song was mislabelled as a remix of an Odia number, despite the fact that it had been written as a Sambalpuri song in the first place.¹⁷ This was the primary cause of the disagreement.

Cultural identities are threatened when indigenous populations are subjected to acts of cultural appropriation and unlawful remixing. Although it is essential to the creative process to make new interpretations and variations, we must also appreciate that folk music is a valuable resource that originally belonged to the community that protects it. This would also be consistent with one of the fundamental principles of intellectual property law, which is the pursuit of a fair balance between the inventor and the public. More importantly, India currently lacks TCE-specific *sui generis* rules for protecting intellectual property.¹⁷

Recent Developments in Indian Law

The Indian Permanent Mission to the United Nations presented a document in 2001 that examined the current IPR law's protection of TKs, TCEs, and Genetic Resources (GRs), as well as the potential for drafting new laws wherever such protections fell short. However, the Inter-Governmental Committee (IGC) is currently working on building a universal instrument that all states can agree with; therefore a legislative system like this has not yet come to fruition. This Union Intellectual Property Rights Policy was adopted by the Union Cabinet in May 2016. In three separate passages, the Policy makes passing reference to TCEs. Misappropriation of TK, GR, and TCE in foreign nations should be rigorously pursued, as stated in clause 6.7 of the Union Intellectual Property Rights Policy, 2016. However, this is where the policy ends, and no means are provided for detecting or pursuing misappropriation. This hazy and unclear Policy clause does little to solve the pressing issues pertaining to TCEs.¹⁸

There is currently no legislation in place that formally protects intangible TCEs. A lack of legislation safeguarding TCEs means that communities responsible for maintaining and perpetuating these traditions are under no legal mandate to receive recognition or financial compensation for their efforts.

Legal Challenges for Protecting Folklore and Traditional Cultural Expression: A Copyright Dilemma

Despite India's growing recognition of the need to safeguard its folktales and traditional cultural expressions (TCEs), actual legislative protection for TCEs remains elusive. India's copyright law is based

on the concept of original authorship. Traditional cultural expressions have this issue since they are often performed by a whole community, and their creator is often unknown. The argument over the Sambalpuri song was unusual in that its composers were identified; this is not the case with other traditional tunes. In addition, copyright is for a limited time, after which the work would enter the public domain; however, in the case of folklore and TCEs, the copyright conferred should be everlasting. These issues are not anticipated by the current copyright laws. The protection of TCEs is not explicitly addressed in the Copyright Act. The Act may provide some measure of indirect protection for the rights of TCE owners, although its provisions are most relevant to the protection of modern TCEs.¹⁹

Traditional cultural expressions is a term that the World Intellectual Property Organization (WIPO) has specifically defined to mean "expressions of folklore." It has come to describe works that include and preserve the distinctive aspects of a community's long-standing creative history. Some examples of this include folk stories spoken orally and songs as well as instrumental music played by hand. To them, traditional means, not "ancient" but rather an expression having roots in or ties to an indigenous or traditional civilization (whether defined by geography or shared values) and that is carried out in the customary manner of that group.²⁰ It states:

*"2.273: Pre-existing traditional culture is generally trans-generational (that is, old), collectively owned by one or more groups or communities and is likely to be of anonymous origin, to the extent that the notion of authorship is relevant at all. Pre-existing traditional culture as such and particular expressions thereof are generally not protected by current copyright laws and are treated, from the perspective of the intellectual property system, as part of the public domain. This is the approach followed in the national laws of States such as Australia, Belgium, Canada, Colombia, the Czech Republic, Honduras, Italy, the Netherlands, Japan, Kyrgyzstan, the Republic of Korea, the Russian Federation and Vietnam."*¹⁹

However, what has been protected is a particular manifestation of the cultural work in question that demonstrates originality, or at least is an adaptation that incorporates unique parts and demonstrates the application of skill and judgement.²⁰

"2.274: On the other hand, a contemporary literary and artistic production based upon, derived

from or inspired by traditional culture that incorporates new elements or expression is a new work in respect of which there is generally a living and identifiable creator or creators. Such a contemporary production may include a new interpretation, arrangement, adaptation or collection of pre-existing cultural heritage and expressions in the public domain, or even their re-packaging in the form of digital enhancement, colorization and the like. Contemporary, tradition-based expressions and representations of traditional cultures are generally protected by existing copyright for which they are sufficiently original. The law makes no distinction based on authenticity or the identity of the author – that is, the originality requirement of copyright could be met by an author who is not a member of the relevant cultural community in which the tradition originated.”²⁰

Copyright is centred on the author, but it has been acknowledged that in the case of traditional expressions or ones carried out in a traditional manner, there is no author at least in the sense that the term "author" is used in the area of copyright. Therefore, such traditional aspects of expression become a generic notion that cannot be monopolised for the reasons of continuing use and a place in cultural history. Keep in mind that since traditional song lyrics are part of the cultural fabric and not an original work of art, no copyright or exclusive right to exploitation may be asserted over any such lyrics that have been published. Copyright may be asserted over certain collections or expressions of the same if they show sufficient evidence of originality. There is a strong case for protecting novel adaptations and derivative works.²¹

Despite the fact that generic parts are not copyrightable in and of themselves, an original compilation is nonetheless copyrightable after analysing the landmark case rules on the idea of originality in India and the recognised norm elsewhere. The case of *Eastern Book Company v D.B.Modak*²², following the Canadian case of *CCH Canadian v Law Society of Upper Canada*²³ had made it perfectly clear that "Skill and Judgment" will serve as India's "originality threshold" for copyright protection. The copyright applies to the compilation as a whole, rather than to its constituent parts.²⁴

The facts of the case heard by the Delhi High Court may be compared to a similar situation in *Institute of Inner Studies v Charlotte Anderson and Ors*²⁵, where

it was decided that basic dance moves and social routines cannot be copyrighted since they are considered to be aspects that are common to all cultures. Nevertheless, in the event that a particular and selected compilation that includes those individual general stages has been submitted, a copyright claim may be upheld. This compilation, on the other hand, cannot be purely a mechanical exercise; rather, it must include some selection and the application of judgement in order to be protectable, in accordance with the standards of originality that are relevant.²⁶

Therefore, the court that is hearing this case has to do an analysis of the work to which copyright is being asserted in order to determine whether or not the work contains components that transcend being conventional or generic and meet the requirements necessary to be considered original. A claim of intellectual property rights on the expression of a traditional song that is just lyrically composed should not, under normal circumstances, be admissible, and there should be no violation of the law.

However, a copyright may exist in renditions of the folk song that display significant originality and call for a high degree of artistic and/or intellectual discernment. A Rajasthani folk song like "Kesariya Balam" is probably not copyrightable in and of itself, but a new arrangement of the same song that has significant differences in the way it was originally composed might be. Therefore, copyright infringement might be claimed if a new rendition of the classic song is recorded and distributed without permission.²⁷ However, a claim based only on the lyrics, which are general and conventional in character, would be unenforceable in court. Section 22 of the Copyright Act of India states that once a work is published, the author's copyright continues to exist for an additional 60 years after his or her death.²⁸ Therefore, copyright should nevertheless continue for that term if the creator of a traditional song is recognised (which is really rather antithetical to the notion of traditional).

The name "Traditional" alludes to the existence of a communal economy, within which authorship is most definitely not of paramount importance. For both freshly written works and the musical history that has been handed down through the years, the idea of public domain, in the sense of limitless access to those who desire to engage in the community economy, is such a given that its usage as a phrase

would appear needless. Composers in traditional societies sometimes consent to their work being absorbed by the exact participatory procedures that inspired them in the first place. Due to the transient nature of musical practice throughout multi-tiered societies, securing ownership of musical works and establishing fair compensation for creators is challenging.²⁹

Empirical Enquiry of Practice of Remake of Folk Songs in India: *Legitimate Inspiration v Inappropriate Adaptation and Copying*

In most cases, the original creator of a work has exclusive authority over any modifications that are made from that work. Examples include any sort of rewriting, translation, or adaptation of the original text. It's common to group them together under the umbrella term "derivative works." If they're different enough from the original work, derivative works could also be eligible for copyright protection. Since a new interpretation, arrangement, adaptation, or gathering of public domain information might result in a new different expression that is sufficiently 'original,' even works produced from such elements can be granted copyright protection. The incorporation of new components into a literary or creative output that draws from or is influenced by traditional culture helps to explain why such a creation may be recognized as a unique and original work deserving of protection. In order to understand this practice from a practical point of view, the authors have conducted interviews with 10 experts who are working in the Music Industry and are associated with the creation of folk music and folk songs. The survey was disseminated to professionals in order to assess the severity of the matter and gauge the level of knowledge within the Music Industry regarding the safeguarding of Traditional Cultural Expression, the ramifications of copyright legislation, and the acknowledgement of cultural legacy.

Since this study called for professionals actively engaged in the subject of folk music and acquainted with its intricacies, a purposive random sampling method was used. Experts working in film and theatre projects in Pune and Mumbai were contacted. Experts were also contacted using the recommendations provided by the members previously questioned. The methodology employed for the present research combines doctrinal and empirical methods with an exploratory and analytical approach. In doctrinal

researchers have reviewed the existing available resources, and as far as empirical research is concerned, the researchers have used tool of interview techniques of experts working in the field of folk music.

Overview of Background and Area of Expertise of the Interviewees

The researchers have interviewed 10 experts who are working in the Indian Music Industry to conduct this study using the deductive method of interview technique. 60% of these interviewees, i.e., 6 of them, are working for more than 10 years in this field, while 20% i.e., 2 of them have experience of 6-10 years and the rest 2 interviewees, i.e., 20% is associated with this field for 5 years and less (Fig. 1). These experts were contacted based on their association with folk music and experience in the music industry. The additional data is collected through focused group discussions and informal interactions through telephonic conversations with the experts.

The majority, i.e., 80% of all the 10 experts who are interviewed as a part of the research, have working experience as Music Composers and the rest have experience as Music Arranger (20%), Singer (30%), Instrument Player (30%), and Music Producer/Distributors (10%) (Fig. 2). Further, as reflected in Fig. 3, the area of work of the Interviewees and their association with the Music Industry. 60% of them have worked for commercial music for films and television series, experimental

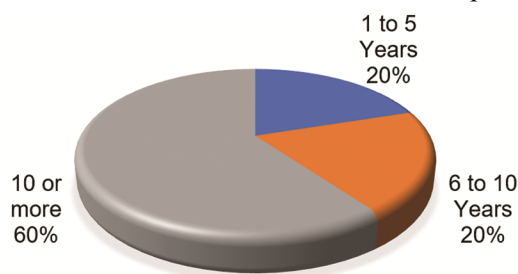


Fig. 1 — Total experience working in the Indian music industry

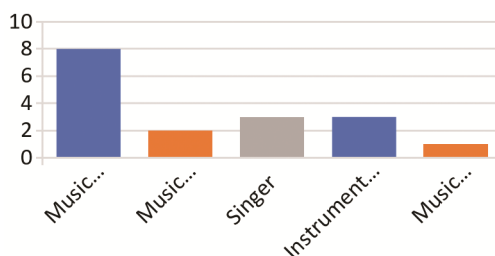


Fig. 2 — Field of work of the interviewees

music, while 40% have exposure of working in the field of theatre music and stage show performances. Responses and experiences shared by them are discussed in detail in the coming segments of the paper.

Association and Experience in the field of Folk Music

All 10 interviewees are associated with the composition, creation and distribution of folk melodies (Fig. 4). Further, to understand the area of folk music, the interviewees have specified that all of them have worked in the field of traditional folk music, while 60% of them have worked in the field of devotional folk songs, and 10% have worked in other fields of folk melodies, and accordingly have shared their experiences and insights related to challenges pertaining to remake and creation of folklore (Fig. 5).

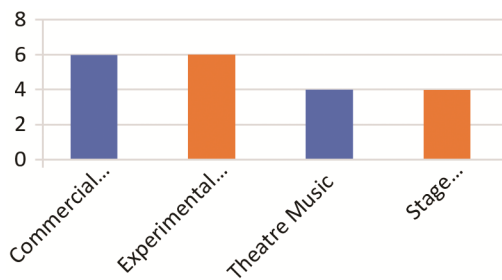


Fig. 3 — Specifications pertaining to the field of work of the interviewees

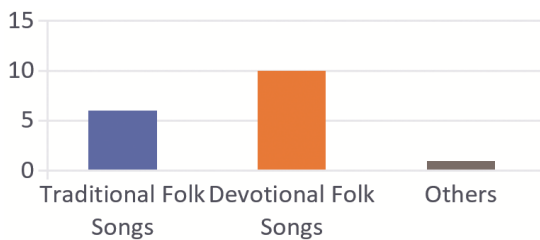


Fig. 4 — Experience of working in the field of folklore

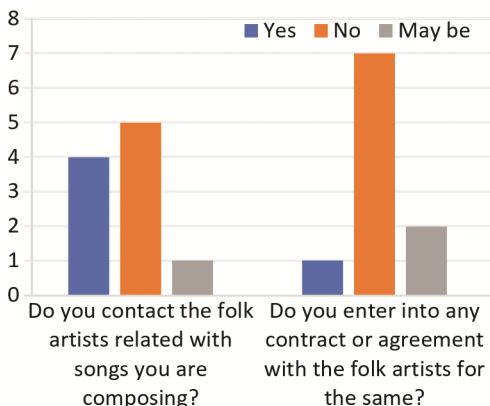


Fig. 5 — Experiences pertaining to forms of folklore

Inspiration and Appropriation for Composing a Folk Song

It's hard to overstate the importance of folk music to society and culture. To put it simply, folk melodies honor and praises the common people through their rhythms and lyrics. It helps keep the people's history and culture alive by acting as a bridge to the past. Thus, in order to understand the process of creation and re-creation of folk song, the interviewees were asked for subjective responses on their "experience on choosing the tunes for composing a folk song" and "elaborate reference of earlier work in their new creation, if any".

In response, the interviewees explained about various factors that they keep in mind while composing a folk song, such as "the script of the project", "emotional association with the lyrical context", "synopsis of the background work" etc. Some of them has also stated that they often take "ideas and inspiration from various folk songs from the public domain" and re-create them as per their project requirements. Preference for "preserving traditional tunes, especially uncommon ones" and changing the lyrics by various composers is another method that has been discussed in the interview. These responses pertaining to the creation of songs reflect the argument previously discussed in this paper that copyright may, however, exist in interpretations of the folk song that show substantial originality and require a high level of aesthetic and/or intellectual judgement. As a standalone work, a Rajasthani folk song like "Kesariya Balam" is definitely not copyrightable, but a new arrangement of the same song that significantly deviates from the way it was originally produced may be.

Assertion of Recognition and Remuneration of Folk Artists

According to Section 38 of the Indian Copyright Act, any performer has a performer right related to the performance, and this is deemed to mean and include indigenous artists. This right stays in effect for 25 years, and anyone who violates this provision by making an audiovisual recording and exploiting it commercially infringes the performer's right, except in cases where he uses it for educational or reporting purposes. In view of such provisions, the researchers asked the music experts their opinion and practices regarding recognition and payment of remuneration to the folk singers related to their compositions. The subjective questions that were put forward were, whether they contact the folk artists related to songs they are composing; whether they enter into any

contract or agreement with the folk artists for the same; whether they pay or agree to pay any amount to the folk artists and whether they give credit to the original folk music composer or singer for using their tune (Fig. 6).

As reflected in the responses of the interviewees, they often get in touch with folk artists (40% of them), while some are hesitant to associate with them as well (50% of them), and the rest 10%, they decided according to the requirement of the ongoing project. We have to always keep in mind that these folk artists are keeping the folklore alive in our culture and society but often lacks the opportunity of commercializing their talents. Further, this assertion can be understood from the next questions regarding entering into a formal contract with these traditional folk artists. The majority (70%) of the interviewees answered negatively regarding their intention to enter into an official contract with folk artists and formally recognize their work, while only 10% agreed and the rest 20% stated that only if the artist demands, then they can proceed for the same.

The trend of response pertaining to agreement of payments shows that 20% of them are willing to support the artists monetarily for their initial ideas and inspiration, while 50% deny doing so and 30% shall proceed according to the demands and requirements of the project. The reflection of responses for giving credit to original folk singers are as follows, 20% responded positively, 70% responded negatively, and 10% were undecided on this. The further substantiation that was given by these interviewees is that when they re-create a traditional folk song, they also incorporate their own ideas and creativity into the existing art, and hence are of the opinion of not giving credit or monetary recognition to the original folk composer or singer. Further, the majority of them also raised a common point, i.e., regarding reaching out to this traditional artist. They stated that it becomes very difficult to trace these local rightful people from an entire community, as a result of which they often get discouraged from finding them and sharing credits.

Revisiting the Relationship between Folk Melodies and Intellectual Property Rights

While there is rising awareness in India of the need of protecting its folktales and traditional cultural expressions (TCEs), legislative guidelines for TCEs are still limited. The principle of original authorship is fundamental to India's copyright legislation.

The majority of them, i.e., 80% of the experts, stated that the right of ownership of intellectual property must belong to the Music Composer/Singer who is publishing it, while only 20% of them believe that the same must be given to the Community or Public (Fig. 7). Further, through a subjective question, they also expressed that there is lack of awareness among the folk artists about their rights, and initiatives must be made so that they can get aware of their legal rights in order to avoid any future conflicts.

Article 29 of the Indian Constitution guarantees the right to maintain one's cultural identity, and the government must provide the means for the indigenous groups to do so. Although, it is difficult to detect and prevent the theft of intangible TCEs, formal protection must be established in order to deter infringers and, more importantly, to safeguard the community that has been preserving the art from extinction, acknowledge their rights, and economically empower them. Furthermore, it would prioritise development and research in this sector, both of which are urgently required. It is necessary

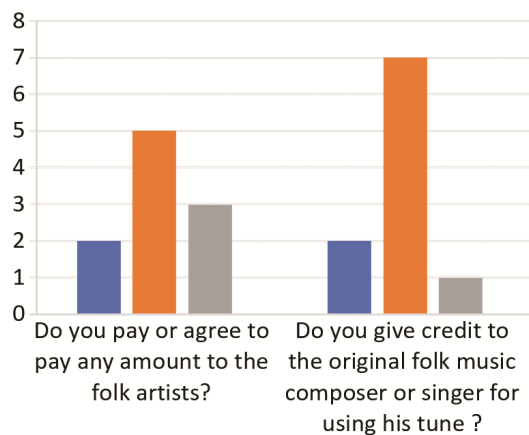


Fig. 6 — Recognition and remuneration of folk artists

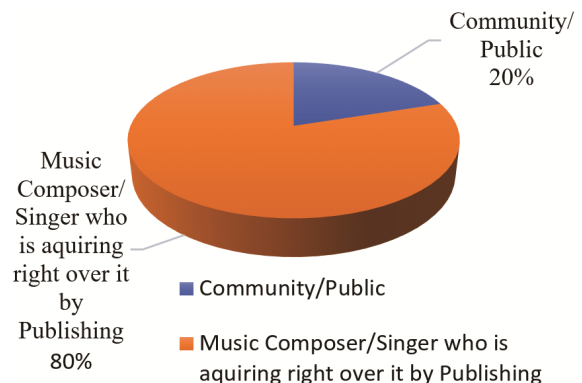


Fig. 7 — Ownership of intellectual property rights over folk music

first to identify TCEs and folklore in order to provide protection for them. TCEs and folk music should be published in an online library and classed with the region or communities that practise and conserve it, much like the "Traditional Knowledge Digital Library," a digitalized library comprising roughly 3,30,044 traditional pharmaceutical formulas. This calls for deep research of the TCEs and the societies that surround them. Recognizing the TCE and its users via such a register will provide some kind of defensive protection. This was also recommended by the interviewees because, most of the time they find reaching out to traditional artists very difficult, and such initiatives shall retain the authenticity of cultural identities.

Giving communities economic and moral rights over their folklore and folk music is the primary motivation for protecting TCEs. This implies that communities should have the right to be credited as the composers of the music whenever it is performed, as well as the right to protect their creative property from being distorted in any way. Interviewees also recommended that communities develop organisations that may serve as hubs for this purpose, but no model for doing so exists. Even though this is a daunting endeavour, it is possible to identify communities and develop organisations or trusts to promote their folk art and music via careful research. These groups may facilitate the establishment of systems for the distribution of royalties and the assignment of credit. However, the government must play a pivotal role in supporting them with legal help and facilitating IP awareness initiatives among folk music and folklore creators. The Government's IP Office can create a specialised unit dedicated to the promotion and protection of TCEs on a national and state level, as well as actively restraining the misuse of folk lyrics and music of cultural significance in popular culture through the creation of sui generis rules and the issuing of notices. These are a few of the more general ideas that might be explored as part of a larger effort to create a system to safeguard indigenous intellectual property and give locals a greater say in the economy.

Conclusion

The idea that intellectual property (IP) is not really a good fit for safeguarding works of folklore is widely held, while the reasons why are open to debate. Folklore items are the result of decades of hard effort by unknown individuals, and the communities that

created them view intellectual property to be ineffective since it does not preserve their community production. Others may be unsatisfied with present IP protection because they believe it obstructs the free flow of knowledge and slows down human advancement, as stated by most of these people who are closely associated with the music industry. This highlights the critical need for fundamental changes in the areas of folklore, intellectual property, and copyright. In fact, the sui-generis legal framework for folklore will make it easier for people to have access to reliable information by archiving it digitally and making it more difficult for authorities to censor it. Plus, it will help save many folktales from being lost forever. In addition, benefit-sharing emerging from such commercial use will provide justification for the use, creating a *quid pro quo* relationship between the commercial users of folklores and their legitimate proprietors.

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