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Research article

Indigenous Knowledge System and Traditional Cultural Expression: A Pathway for Protection under IP Laws beyond the Patchwork

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Abstract

Indigenous Traditional Cultural expressions (ICEs/TCEs) are a pertinent part of the Indigenous knowledge system (IKS). This knowledge comes from the corpus of Traditional Knowledge (TK), knowledge that is either in the public domain or publicly available, of which IKS is a part. In India, the law of the land reflects several points of exchange with TK and TCEs, yet it does not articulate a comprehensive legal basis for their protection. Moreover, laws such as the Intellectual Property Law (IP Law) do not afford complete protection to TCEs and instead limit their scope to a specific part of the TK system. Frameworks like the Patent system work in cases where knowledge can be translated into prior art; Geographical Indications protect collective marks of the community; Biodiversity law addresses access and benefit sharing where knowledge is linked to biological resources; the Traditional Knowledge Digital Library (TKDL) enumerates recognition of IKS existing in India for generations. The lacunae, however, lie in the fact that these frameworks protect only discrete components of the IKS and not TCEs as a whole, where transmission, regulation of adaptations, and continuing social obligation remain unnoticed, often due to their colonial implementation. This research highlights structural weaknesses in the Indian legal system, arguing that mere recognition under the Indian Constitution and the theoretical map of IPRs are insufficient. The paper aims to guide policymakers, academicians, researchers, and students to understand, study, interpret, analyse, and lay down policy guidelines for the protection of the Indigenous knowledge system of India.

Keywords: Traditional Knowledge (TK), Indigenous Knowledge System (IKS), Indigenous Traditional Cultural Expression (ICE/TCEs), Postcolonial Legal Framework, Intellectual Property Rights (IPRs)

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Introduction

India's traditional knowledge (TK) includes traditional songs, oral narratives, motifs, textile designs, performances, artisanal methods, and ritual forms, embodied in inherited knowledge, while also serving as a cultural expression of indigenous people. This knowledge is not easily divided into ritual, science, art, craft, and social practices. The legal treatment of this knowledge remains unsettled, as intellectual property law touches it at many points but rarely on its own terms and conditions. The ambit of IPR is broad, but in practice it is conceptually unstable, indirect, and scattered in protecting India's TK (Chakrabarty & Kaur, 2021; Babu, 2018).

However, the dominant Indian dialogue on conservation and protection of TK has been ignited and shaped by areas relating to biopiracy, biodiversity, and medicinal knowledge. The cases of India's resistance to patenting of neem, turmeric and other knowledge-based resources have helped produce a defensive mechanism for the protection of TK. This led to the adoption of the Traditional Knowledge Digital Library (TKDL), highlighting the patent problem as a central issue in India, even though many of the cases also involve folklore, ritual performances, songs, sacred forms, shared design and cultural expressions that cannot be reduced to prior art or genetic resources (Fredriksson, 2022; Fredriksson, 2023; Sagar, 2005)

This article argues that the Indian intellectual property laws do not fail to protect traditional cultural expressions because culture lies wholly outside the law, but because the available legal tools are built around the legal subject that does not match the character of traditional cultural expressions. The law relating to copyright and other neighbouring rights is enacted around the concepts of authorship, ownership, fixation, originality, and limited terms. Patent laws and TKDL emphasise novelty, industrial application, and prior art concepts. Geographical indications reflect upon the mark identity, product reputation, and territorial linkage. Biodiversity laws are shaped by access to biological resources and benefit sharing. Traditional cultural expressions, on the other hand, are governed by cultural norms, ongoing social obligations, and are collective and intergenerational in nature, rather than always being territorially bounded or having market value (Gopalakrishnan, 2002; Srivastava, 2004; Oguamanam, 2019).

In this case, it can be argued that India has built a patchwork of legal contact points that are more structural and have a central claim, but not a community-centred legal architecture for cultural expressions as part of TK (Ganesan, 2016; Chakraborty & Chatterjee, 2024). This argument matters as legal analysis for the protection of TK emphasises three main objectives that have been collapsed together in the existing legal system of IPRs. Firstly, preventing misappropriation by outsiders. Second, enabling communities and producers to derive market value from traditional products. Thirdly, recognising community ownership over access to, attribution of, and reuse of inherited cultural expressions (Fredriksson, 2022; Srivastava, 2004; Balasubramanian, 2012; Datta, Manchikanti & Bhattacharya, 2021; Roy, 2024). The Indian IPR system reflects more on the first one in relation to patents and the second one in selected GI sectors, but remains weakest on the third, which is the point that matters most for traditional cultural expressions.

Methodology

The methodology adopted is doctrinal, literature-based, and comparative. The primary legal sources, including statutes, constitutional provisions, and their operative sections,

along with limited cases having an impact on customary practices of India, are analysed and synthesised to understand the impact of Western countries and laws tailored to their needs. To understand the initiatives taken to protect IKS, the paper engages with international material, such as the Tunis Model Law, WIPO-UNESCO instruments, WIPO governmental committee reports, Model Provisions, etc.

The selection of literature primarily focuses on the elements of TK, TCEs, and initiatives taken in different parts of the world. The literature selected is instrument-based to understand the position of developing countries and their standing as compared to global understanding about TCEs. Articles, papers, and reports directly engaging with TK and TCEs and their protection in India were selected, extended to genetic resources and biopiracy, and not concerned with expressive culture.

This article undertakes the problem of protection, recognition and conservation of TCEs in seven stages. It first places the TCEs within the broader field of TK. It then explains the doctrinal mismatch between orthodox IP categories and the existing TCEs. It further examines the existing tools of protection, including copyright, related rights, GI laws, design laws, TKDL, and biodiversity law. Discussing the customary laws and community governance in the next section. Finally, it draws selective comparative lessons and outlines the elements of a more coherent Indian framework.

Traditional cultural Expression not an Ornament but a bucket of Knowledge

One of the weaknesses in the existing patchwork of legal design is the tendency to treat TCEs as a decorative surplus. Amongst the entire corpus of TK, biological resources, medicinal techniques, and ecological practices are considered part of knowledge. At the same time, songs, narratives, performances, motifs and designs are seen as secondary cultural products. The existing literature on the protection of TK strongly resists that division. TCEs are often, instead, considered as one of the main ways in which knowledge is stored, transmitted, authenticated and socially governed. (WIPO, 2003; Babu, 2018; Singh, 2016)

Another important argument that can be made here is that many forms of cultural knowledge are technical and oral, not written or expressed in any other form. They are carried and transmitted through performance, collective memory, repetition, symbolic patterns, and ritual use. A song may reflect and decode genealogy, ecological timing, or community history. A textile pattern may embody a local method, ritual status, or group identity. A performance tradition may depict not only the means of entertainment but also a rule-bound method of transmitting knowledge about sacred narratives, social roles, and collective belonging. (Babu, 2018; Chakraborty & Chatterjee, 2024; Naithani, 2020)

Hence, it can be said that to detach an oral expression from knowledge is to misunderstand both. Even various international works on TCEs have long stressed this entanglement. WIPO established various committees for the protection and recognition of the expression of folklore and TCEs as embodiments of the cultural and social identity of TK (WIPO, 2003). Indian scholars likewise highlighted that the real legal problem is not just unauthorised copying of beautiful things. It is the inability of the existing laws to acknowledge that these forms may be inherited, restricted and governed according to community norms rather than exposed to free appropriation and manipulation once they are fixed in a visible form. (Babu, 2018; Srivastava, 2004; Acharya & Rathore, 2023)

The category of TCEs is therefore useful not because it separates culture from knowledge, but because it shows the expressive face of knowledge. This is why legal study and analysis

must move beyond the assumption that TK includes within its ambit only medicinal practices and biodiversity-related know-how that can be protected under the patent system, overstating the relevance of only one area and understating the relevance of cultural authority, collective rights and customary governance as oral expressions. (Fredriksson, 2022; Sagar, 2005; Velpula & Vjayalakshmi, 2023)

The Doctrinal Mismatch of IP laws and TCEs- Core Problem

The existing literature identifies a structural mismatch between IP laws and the normative character of TCEs in terms of the design and edifice of the existing legal system incorporated in IPRs.

The conventional IP system is based on a recognizable and established set of principles and assumptions that do not fit in with the characteristics of TCEs. A work or invention as IP is associated with an individual or juridically recognizable right holder. The subject matter can be identified and circumscribed. Protection is extended on the grounds of originality, novelty, fixation, or registrability. Rights are endured for a limited time period. Exceptions and limitations are calibrated to balance public access and private interest and incentives. The concept of the public domain acts as a safe zone for the exploitation of material not protected or is no longer protected (Gopalakrishnan, 2002; Ganesan, 2016; Acharya & Rathore, 2023).

TCEs do not fit in well with any of these principles. First authorship is often collective, community-oriented, or diffuse. A song, performance, or design, inherited across generations, is modified incrementally within the community as it is passed down. Second, boundaries are often uncertain. TCEs may exist in various deviations, across related groups, or in forms whose social meaning cannot be separated from the context of use. Third, the relative claim is not always one of economic exclusivity. Communities may seek attributions, control over sacred material, respectful use, or authority to determine when and by whom a form may be performed or adapted. Fourth, the demand for protection is not naturally time-limited. The value of the expression lies in the continuity, not the novelty (Gopalakrishnan, 2002; Srivastava, 2004; Oguamanam, 2019; WIPO, 2018).

The mismatch between TCEs and IP laws (Table 1 - Broad structure of mismatch patchwork) can be understood by noting that it leads to two major arguments that can be misleading with respect to the characteristics of TCEs. Firstly, to declare TCEs as part of the public domain, either because the expression is too old to be expressed in its original form or to identify and name its authorship or ownership. Secondly, to involve the expression and holders of the community in legal categories that offer and reward only contemporary adaptations, commercially packaged derivatives, or branded products. In both these cases, the law treats TCEs as non-original, ownerless, or raw material for modern rights, rather than as a living, governed, and collectively held form of knowledge and inherited property of the vulnerable (Dwivedi & Saroha, 2005; WIPO, 2018).

Legal tool	What it can do	Why it falls short for TCEs
Copyright	Protects new works, performances, and some adaptations	Assumes authorship and a limited term, leaving inherited folklore largely in the public domain (Dwivedi & Saroha, 2005)

Legal tool	What it can do	Why it falls short for TCEs
Related rights	Offers some protection to performers	Protects performers more readily than communities as custodians of inherited expression (Ambast, 2008; Naithani, 2020)
GI law	Supports collective branding and market reputation for place-based goods	Protects names and reputation more than expression, meaning, or reuse (Blakeney, 2009; Frankel, 2011; KP, S., & CJ, A., 2023)
Designs law	May cover some visual forms if registrable	Poor fit for old, community shared, culturally governed designs (Deepak, 2008; Swarup & Rastogi, 2023)
Patent doctrine and TKDL	Blocks wrongful patent claims through prior art	Defensive rather than positive, most relevant to codified medicinal knowledge (Fredriksson, 2022; Balasubramanian, 2012; Choudhury & Khanna, 2015)
Biodiversity law and ABS	Addresses access and benefit sharing for bioresource-linked knowledge	Weak fit for songs, rituals, motifs, and expressive heritage (Sagar, 2005; Velpula & Vijayalakshmi, 2023)
Customary law	Reflects actual community governance of use and transmission	Weakly integrated into formal Indian IP architecture (Srivastava, 2004; Vedavathy, Madhu, Mrudula, Prasad & Guravaiah, 2004; Dam, 2005)

Table1: Broad structure of mismatch patchwork

These problems are essentially acute in the Indian legal system, each of which, though promising if analysed in isolation and in light of the requirements of the contemporary world, contains many partial tools towards the protection of TCEs. Copyright protects new arrangements of folklore as the original work of the author. GI markets only the handicrafts, agricultural products and other tangible creations specific to the place of origin. Biodiversity law governs access to certain biological resources. But these tools are

not efficient in the way they need to be to deal with the problem of exploitation and manipulation of TCEs. They do not emphasise the shared legal principles. The result is the need for doctrinal patchwork in which communities must translate one cultural claim into multiple ill-fitting legal reforms and diagnose the existing laws to meet the needs of the community (Chakrabarty & Kaur, 2021; Roy, 2024; Deepak, 2008).

Copyright and related rights protect the edge, not the inheritance.

Copyright deals with the work expressed in a tangible form that is original and novel. The literature on the interface between IP and TCEs is uniform in finding that copyright protects only the edge of the problem, not its core. The scope of copyright and related rights protects songs, dances, stories, visual motifs, and performances, all of which are expressive forms. These features of copyright seem to be the appropriate medium for the protection of TCEs. But the framework is weak. Under copyright, original works are protected that are attributed to the author (s) and operate for a limited period. TCEs do not meet these requirements in any straightforward way. This is because they are ancient, communally held, and continually transmitted from generation to generation without a fixed or identifiable author. In such cases, they are typically treated as part of the public domain (Singh, 2016; Dwivedi & Saroha, 2005; Ghose, Dhere, & Ali, 2024).

The public domain plays a pertinent role here. In Copyright law, since its inception, the public domain has been a space for promoting, encouraging, and fostering future creativity. However, in the context of TCEs, the same understanding can function as a doctrine of dispossession. Once the cultural material is attributed as part of the public domain because it is ancient, communally held, and difficult to categorize, the community's prescriptive rights about proper use, sacredness, transmission, or derogatory adaptation become legally indistinct (Singh, 2016).

This argument has major consequences. If a song is newly composed, or a filmmaker, fashion producer, and music label are inspired by folk songs or other TCEs, such creations would have protection under existing IP laws without extending any lawful protection to TCEs against their commercial exploitation and with no provision for benefit sharing. The current copyright laws thus protect the commercial adaptations and transformations from traditional sources better than community custodianship due to the existing patchwork of the IP system, which is one of the major flaws in IP laws (Ghose, Dhere, & Ali, 2024; Kothari, 2004). Moreover, under copyright law, no concept of community ownership exists; instead, it vests rights in individuals, making the existing laws inadequate to capture the stakes where folklore and inherited performance are involved and concerned (Naithani, 2020; Ambast, 2008).

Here, it can be stated that if copyright laws are amended to an extent to suit the needs of indigenous communities, it can act as a strong legal architect for the protection of TCEs. Contemporary creators from the community itself can be protected as the author of the work, guard against direct copying of new arrangements, and interact with attribution or moral rights concerns in some settings. The existing literature, however, rejects the proposition that copyright can serve as the engine for the protection of TCEs (Dwivedi & Saroha, 2005; Kumar, 2026). What it creates is the legal architecture with incidental protection for the identifiable living creators of the primary, secondary, or even derivative works for a limited period and not for community-held cultural expressions.

Some Market-Oriented Partial Solutions: Geographical Indications (GIs) and Designs Law

The basic features and characteristics of GI laws have been crafted in such a manner that they have fostered sustainable interest in the protection of certain forms of TCEs in India, thereby removing some of the defects existing in copyright laws. They are collective rights of a community, attributed to the place of origin, can endure indefinitely so long as qualifying conditions are met, and apply to traditional methods, techniques, and practices, creating a reputation and authenticity of the product in question (Blakeney, 2009; Datta, Manchikanti & Bhattacharya, 2021; Roy, 2024). Studies show that GIs have generated value in artisan sectors by creating market value for products, organising producer groups, and strengthening market recognition of products and producers associated with the region and its traditions. The legal structure has successfully supported the livelihood and visual representation of many traditional craftsmen and artisans, not only from misappropriation but also from market displacement by reputational dilution and machine-made imitation (Deepak, 2008; Basole, 2015).

Despite these supporting characteristics of GIs, the existing literature narrates the limits of GI laws as a means of protecting TCEs. A GI essentially protects a name or sign attributed to a place or product. It does not necessarily protect the sacred significance, visual language, or community authority over reuse. An outsider may circumvent misuse of the name while still imitating the style or drawing based on the traditions in ways the community regards as improper. The right is therefore more closely tied to market differentiation than to governance of expression itself (Frankel, 2011; Covarrubia, 2019).

The territorial aspect also creates a barrier. Some TCEs are not bound by place, and others circulate across related communities or regions. A ritual performance, motif or song form may be culturally significant and specific without being reducible to a geographically certified product. In such cases, the GI law emphasises the protection of TCEs in a narrow sense (Roy, 2024; KP, S., & CJ, A., 2023).

Design laws are even less satisfactory and suitable. It protects novel visual elements, leaving a gap in the protection of TCEs that are often old, embedded in repeated cultural use, and communally shared. Aspects like registration, novelty, originality, industrial application, and limited protection are all poor fits for the protection of TCEs under design law. Scholarship in the area of handicrafts proves that design law rewards new commodified forms rather than traditional inherited techniques or patterns (Deepak, 2008; Swarup & Rastogi, 2023).

GI and Design laws thus have pragmatic and limited application to the extent of protecting collective reputation and supporting economic organizations for place-based products and designs of visual representation and aesthetic value rather than extending protection to a general TCE regime.

Defensive Protection

TKDL

TKDL is a major institutional innovation that has translated and codified traditional medicinal knowledge into forms legible to patent examiners. It has strengthened prior art search and helped prevent wrongful patent grants over knowledge already present in the Indian knowledge system (Balasubramanian, 2012; Choudhury & Khanna, 2015). Formation of TKDL has been a milestone progressive step and a significant achievement towards protection of TK of India. Empirical works have highlighted that the codified prior art provision has helped reduce the cost and delay of contesting invalid patents and altering

examination practice in important patent offices, changing both search behavior and composition of patenting, diverting applicants from claiming rights over TK, working as a bio-piracy mechanism and a notable success (Choudhury & Khanna, 2015).

However, TKDL, being a defensive mechanism, can be argued to be obscure in its legal limits. It does not, by itself, create a positive right in communities over knowledge or expression, nor does it provide any general model for cultural expression. It applies best in cases where TK can be searched and translated into codified data and evaluated through patent doctrines of novelty and prior art. It does not emphasise protection or recognition of performances, songs, ritual forms, visual styles, and sacred narratives of traditional importance. Moreover, documentation alters the political status of the material it records; community knowledge is represented as state-managed information, national heritage, or scientific knowledge. In that context, the defensive rhetoric of the anti-distortion method can coexist with decontextualization, centralization, and the weakening of community control (Fredriksson, 2023; Balasubramanian, 2012; Kidd, 2012).

Therefore, the knowledge is protected from one form of enclosure only by being relocated into another structure of governance. In other words, TKDL is more viable in the field where knowledge is treated primarily as patent-relevant information, giving a narrow framework for cultural expressions. It emphasizes wrongful monopolization by outsiders, leaving gaps about derogatory use, sacredness, permissions, attribution, and community continued authority over inherited forms.

BIODIVERSITY LAWS

The Biological Diversity Act has also been central to the debates in India on TK associated with biological resources, highlighting provisions for access and benefit sharing as important safeguards towards problems of vulnerable unequal appropriation, commercialisation, and extraction (Biological Diversity Act, No. 18 of 2003, §§ 2, 7, 18, 20–21, India). Yet the literature suggests that even this patchwork of legal systems reaches TCEs erratically, and often not at all. Biodiversity laws provide a doctrinal hook towards TK, often as biological materials, bioresource-based innovation, or medicinal plants, not including aspects relating to songs, dance forms, motifs, ritual sequences, or narrative forms. These expressions embody knowledge, but not the kind of knowledge that the biodiversity frame legally recognizes. (Sagar, 2005; Velpula & Vjayalakshmi, 2023; Pentead, 2024). Considering biological diversity laws to include all forms of TK can be analyzed from the fact that the community interest in sacred visuals or ritual chants is not exhausted by the logic of benefit sharing. What is to be held up is the authority over usage, reproduction, adaptation, attribution, circulation, limits on mutilation, public display restrictions on adaptations and conversion in derivative works without consent. Such concerns implicate cultural integrity, community custodianship and control over cultural heritage in ways that extend beyond the conventional objectives of biodiversity regulation. These claims reflect more of cultural rights than of biopiracy regulations (Sagar, 2005; Srivastava, 2004; Dam, 2005; Bath & Prasad, 2025). Therefore, there exists an expressive gap in the contribution of the biodiversity framework towards the protection of the whole corpus of TK, including TCEs. Help securing a more vigorous patchwork covering some forms of TK while leaving TCEs under theoretical understanding. Hence, it can be argued that if Indian legal frameworks remain tied to biopiracy alone, it will continue to misstate the problems of TCEs, leaving the gaps unfilled.

Adoption from international experience

There is no single model that can be adopted as a regulatory framework for TCEs under existing comparative materials. They do, however, identify institutional and established landscapes that are more promising than having continued reliance on the conventional IP system alone. The legal and policy debate has been taken up by WIPO and UNESCO in collaboration and independently in the field of protection of TCEs either under the existing contemporary legal regime of IPR or under a 'sui generis' system (Jaszi, 2017). The issues relating to protection of TCEs were also taken up at the time of espousal of the Universal Copyright Convention (UCC) in 1952, WIPO-UNESCO World Forum on the Protection of Folklore, 1997 (WIPO-UNESCO (1997)). To mention a few, works in the direction of protection of TCEs are. Various committees and boards have been established for safeguarding, preservation, and protection of folklore of indigenous people, such as UNESCO- WIPO 'expert committee', 'Working groups on the intellectual property aspect of folklore protection', 'UNESCO executive board', 'UNESCO committee of governmental experts on the safeguarding of folklore', and 'UNESCO special committee of technical and legal experts on the safeguarding of folklore'. Various initiatives taken up by WIPO and UNESCO can be summarized as Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import, and Transfer of Ownership of Cultural Property adopted the General Conference of UNESCO at its thirteenth session (UNESCO, 1964), The General Conference at its fourteenth session, November 1966, adopted a Declaration of Principles for International Cultural Cooperation (UNESCO (1996), Tunis Model Copyright Law (Tunis Model Law- section 5bis, 6(1) (2) & (3), 17 of the Model Law) adopted in 1976 by the Tunisian government with the assistance of WIPO and UNESCO (Tunis Model Copyright Law, 1976), WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions, 1985 (the Model Provisions, 1985), In November 1989 UNESCO (twenty fifth session) adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore (UNESCO, 1989), UNESCO Universal Declaration on Cultural Diversity (UNESCO, 2002); Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture , a sui generis system created in 2002 (Pacific Model Law, 2002), WIPO Inter-Governmental Committee on Traditional knowledge, genetic resources and traditional cultural expressions established in the year 2000 (WIPO Doc. WIPO/GRTKF/IC/1/13), adoption of Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge on May 24, 2024. (WIPO, 2024).

Many Meetings, forums, programs, fact-finding missions, and international studies have also been conducted in the direction of protection of TCEs by international organizations. However, the best comparative lessons are learnt from the fact that, due to such comparative understanding, protection of existing TCEs improves. There is recognition of community custodianship, collective consent, and differentiated treatment of different kinds of expression. A useful Indian reform program would therefore borrow structure rather than text. It would not simply transplant a foreign model. It would adapt three linked ideas: community-centered authorization, differentiated levels of protection, and enforceable recognition of collective custodianship. (KP, S., & CJ, A. 2023; Blakeney, 2011)

Discussion

TCEs are administered by community norms and rules concerning performance, access, transmission, sacredness, secrecy, adaptation, and proper attribution. These standards

determine who may use a design and when, when ritual song may be performed, and what is considered a disrespectful transformation. Yet, the conventional IP system rarely treats TCEs as the primary legal source (Vedavathy, Madhu, Mrudula, Prasad & Guravaiah, 2004). Violations of these norms may take place in various forms. Commercially staging a ritual performance in a manner that may conserve some expressions but hampers its normative settings. Violating the social order from which a sacred motif comes while copying it in a way that, despite leaving a design visually intact, negatively impacts it. In the absence of any legal regulation, such infringements of the rights of the indigenous community stay difficult to clearly articulate and analyse. (Chakraborty & Chatterjee, 2024)

In India, some literature links customary practices with the legal system prevalent under the Constitution of India, access to justice, and constitutional values. Suggesting that indigenous and tribal groups and communities do not require pursuing recognition solely through legal forms that obliterate their prescriptive institutions (Dam, 2005). Others highlight that community rights over TCEs depend on recognition of customary practices effectively and legibly within the state laws rather than documenting them for outsiders' governance (Vedavathy, Madhu, Mrudula, Prasad & Guravaiah, 2004; Srivastava, 2004). Article 13 of the Indian Constitution, customary laws enjoy a special place by being treated as part of the formal legal system. However, such consideration is restricted and limited to the extent of recognition in a vague sense. There is no defined area and ambit of protection, leaving it to the discretion of the court to decide and analyse the status of the customary practices. (Gupta & Salpekar, 2018) In this context, it has been argued by different authors that customary practices should be treated as a substantive section of legal protection rather than being treated as part of the informal background. (Kothari, 2004; Gupta & Salpekar, 2018; Kumar, 2026; Srivastava, 2004; Vedavathy, Madhu, Mrudula, Prasad & Guravaiah, 2004; Dam, 2005)

A thorough study of the literature highlights that there is a need for a shift in the legal starting point for the protection of TCEs. Considering the present scenario and the extent to which TCEs are distorted by outsiders instead of stretching question upon inclusion of TCEs under the classic IP rights, the law should now consider the question of how community governance of its standards can be recognized, enforced, and evidenced in ways consistent with constitutional norms of procedural fairness and commitments.

From this discussion, three implications follow. First, the central point for the protection should be the consent of the keepers of the community and should not automatically be used by the outsider for it being publicly visible and old. Second, acknowledgment should be understood individually as well as collectively. Third, the restriction on manipulation or disparagement of culturally destructive use should be actionable even where it is hard to prove conventional economic loss. (WIPO, 2003; Oguamanam, 2019; Acharya & Rathore, 2023)

Result: Indian sui generis or hybrid framework

TCEs are the intangible property of the indigenous community, held and protected by a steward following the communal norms of its attribution and protection from generations. The best approach for the protection of culturally held knowledge is likely to be a hybrid model rather than a Sui-Generis system. This divergent view of the author is formulated and drawn after studying in-depth the requirements and practicalities involved in the protection of TK on the basis of its nature and characteristics. The rationale can be drawn keeping in mind the cultural knowledge existing in India and the requirements of

each type of knowledge (WIPO, 2003; Babu, 2018). Incorporating different forms of knowledge in different contexts would serve the purpose of protecting the wider aspects of knowledge under one mechanism without interfering with or diluting the relevance of one with another. GI, TKDL, and patent law play a significant role in the protection of certain forms of TK; similarly, if amendments are introduced under the Indian Copyright Act, rather than following an outdated and westernized formula narrated under the Act, the matter could be addressed in a more nationalized and Indianized form. The current problem is that they do not confer community rights of cultural expression for an unlimited period. Provision of moral rights and neighboring rights could solve the problem to some extent, yet the perpetual protection cannot be assured without proper implementation of hybrid provisions. A hybrid framework will enable retaining the existing provisions while delivering a well-structured architecture for a “new form of old creativity,” which we recognize as TCEs existing for generations as original material for the indigenous communities.

Some provisions that can be incorporated for an efficient application of the existing framework can be summarized as:

First, the subject matter under copyright and other related IPRs should be redefined to include TCEs as part of knowledge embodied as inherited, traditional, and inimitable. The recognition of the practice as an artifact and not merely as static. The ambit of work and originality should include all the features of TCEs, being oral, performative, visual, and craft-based. Preventing distortion and manipulation of work as derivative or works of adaptation, thus ensuring the treatment as a work of originality.

Second, the concept of communal authorship should be recognised to include beneficiaries as groups and communities, recognising custodial institutions rather than individuality. The concept of authorship and ownership extends the ambit of protection to the inherited property of the community. (Fasi, 2023; Ganesan, 2016)

Third, recognising the rights over the property for perpetuity rather than making them time-bound. Adding a provision for timeless protection. Continued custodianship will ensure communal benefits to the right holders of the cultural expressions. (WIPO, 2003; Oguamanam, 2019)

Fourth, do not subject recognition and protection to registrability; instead, adopt passing-off provisions with recognised remedies, as applied under IPR for other forms of exploitation and infringement. (Roy, 2024; Fredriksson, 2022)

Fifth, the concept of prior informed legal consent should be adopted to govern commercial adaptation, branding, use or registration by outsiders drawn substantially on identifiable and existing communal expressions. The consent is not treated merely as a courtesy but as a precondition and prerequisite to use any form of TCEs, backed by remedies. (Blakeney, 2011; Ganesan, 2016)

Sixth, Customary law should be identified as a sign of normative governance and entitlement. It means the legal patchwork should entail decision-makers contemplating community norms on transmission, authority, and appropriate use rather than attributing them to an assumed existence in the public domain, ensuring automatic enforceability after scrutiny. (Dam, 2005; Srivastava, 2004; Vedavathy, Madhu, Mrudula, Prasad & Guravaiah, 2004)

The ensuing legal patchwork would enable a movement of Indian law towards a coherent protection from a fragmented context in the matter of protection of TCEs. GI law would entail protection for traditional handicrafts, art, and crafts with regulation over its

commercial use, TKDL would operate as a defensive mechanism for patenting of TK in medicine and other related TK, Biodiversity law would suffice the protection for biomaterial and bioresources ensuring access and benefit sharing, copyright would facilitate in protecting novelty over old creativity. Having a hybrid framework or a sui generis system would entail and address issues and problems that these existing tools are not focusing on, such as community authorship with unlimited protection in perpetuity over inherited cultural knowledge as living knowledge of the community.

Conclusion

It can be concluded that the Indian framework is not legally weak because it ignores TCEs, but unstructured because it recognizes rights only through borrowed categories, protecting the wrong legal interests of the wrong people. Copyright law protects original expressions of contemporary creations rather than inherited forms of creations. GI protects market reputation and the name of the product only attributed to the place rather than associating the product with cultural meaning. TKDL limits the ambit of protection extended to TK to medicinal knowledge and practices from biopiracy and erroneous patenting. Biodiversity law addresses bioresources connected to knowledge more effectually than expressive cultural knowledge.

Amongst all these fields, one or the other aspect of protection of communally held knowledge is ignored and remains unattended. The most practical doctrinal conclusion that can be drawn from the existing literature is to frame the legal provisions meeting the needs and requirements of the community. It is undeniable that India has anti-misappropriation tools in place, but they lack a community-oriented legal patchwork and architecture for the protection of TCEs as part of TK in its complete sense.

Once the point of incomplete legal governance is accepted, the way ahead becomes stronger and clearer. What is required is a kind of framework in which subject matter is collective, normatively governed, intergenerational and attached to continuing social requirement and not the consideration whether the one existing tool can be stretched a little further. A convincing answer already exists in distributed form in various literature across India and other countries. The recent trend suggests that India should be adopting a hybrid model or a sui generis system based on the concept of collective ownership, differentiated protection, prior informed consent, and meaningful recognition of customary practices. Questions of shared heritage, representation, and inter-community overlap would remain unsolved, but the changes would facilitate moving beyond the current patchwork condition extending protection to different forms of TCEs. Moreover, it would clear the false assumption and presumption of choice between the public domain and recognizing TCEs as a residue of a dead past. The framework will be capable of setting standards for the protection of TCEs as a primary element rather than designating them as secondary knowledge. TCEs are a living form of knowledge held, transmitted, governed, and renewed by and through the community that needs protection beyond the existing Westernized patchwork.

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