



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy Studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS THROUGH IPR IN INDIA.

AUTHORED BY - ANJANA SUNIL¹

Abstract

The protection of Traditional Knowledge (TK) and Cultural Expressions (CE) in India is a critical and developing theme in intellectual property law, reflecting the nation's vast diversity in indigenous medicinal practices, folklore, agricultural systems, handicrafts, and performing arts. These forms of knowledge and expression, intrinsically woven into the lives of local and tribal communities, are frequently threatened by misappropriation, bio piracy, and unauthorized commercial exploitation at both national and global level. Key legal mechanisms such as the Traditional Knowledge Digital Library (TKDL) and the Geographical Indications (GI) Act have helped document and defend valuable resources while promoting recognition for region-specific products like Darjeeling tea and Madhubani paintings.

This paper focuses on critically evaluating the strengths and shortcomings of India's current legal tools, such as TKDL and GI, in the protection of both codified and non-codified traditional knowledge and cultural expressions. It further investigates the gaps in coverage for oral traditions, performative arts, and community-held folklore, emphasizing the lack of comprehensive sui generis legislation and effective benefit-sharing frameworks. The research highlights the urgent need for more inclusive legal reforms and capacity-building measures for indigenous stakeholders, aiming to align India's approach with international best practices and conventions.

Additionally, the paper explores case studies of successful interventions, such as patent revocations facilitated by TKDL, and analyzes the challenges faced by communities in leveraging GI status for economic gain and cultural preservation. It seeks to recommend actionable strategies for harmonizing national law with global commitments under treaties like the Nagoya Protocol and the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. In doing so, this research aims to provide a path toward stronger, more equitable

¹ Anjana sunil , century corbel ,sahakarnagar, anjanasunil2210@gmail.com

protection of India's TK and CE, ensuring that these cultural treasures continue to benefit their rightful custodians for generations to come.

Keywords: Traditional Knowledge; Cultural Expressions; Intellectual Property Rights; Sui Generis Legislation; Geographical Indications; TKDL; Benefit Sharing; Indigenous Communities; Policy Reform; Intangible Heritage

Hypothesis

India's existing legal and policy frameworks are insufficient to provide effective, equitable, and sustainable protection of Traditional Knowledge and Traditional Cultural Expressions for their originating communities.

Research Problem

India's conventional Intellectual Property Rights, system is predominantly tailored for industrial inventions and trademark hence fails to adequately recognize the collective, evolving, and often undocumented nature of traditional knowledge and cultural expressions. As a result, indigenous communities face the erosion of their heritage through unauthorized patenting abroad, misappropriation of cultural symbols, and commercial exploitation without equitable benefit sharing. Despite institutional innovations such as the Traditional Knowledge Digital Library and Geographic Indication registrations, systemic challenges persist: lack of coverage for oral and intangible heritage; weak enforcement at national and international levels; and bureaucratic barriers that marginalize the very stakeholders the system aims to protect. This research problem seeks to identify legal lacunae within India's IPR regime, evaluate the effectiveness of existing mechanisms, and propose comprehensive solutions that align with both global best practices and community aspirations.

Research Questions

1. What is the effectiveness of India's sui generis mechanisms, such as the Traditional Knowledge Digital Library and the Geographical Indications Act, in preventing misappropriation and ensuring equitable benefit sharing of traditional knowledge and cultural expressions?

2. Whether integrating community-driven protocols into India's national intellectual property framework can enhance the recognition, enforcement, and preservation of intangible cultural heritage?

RESEARCH OBJECTIVES

- To analyze the conceptual framework and cultural significance of traditional knowledge and cultural expressions in India.
- To evaluate the effectiveness of existing legal mechanisms, including the Geographical Indications Act, Biological Diversity Act, and Traditional Knowledge Digital Library.
- To examine socio-economic barriers such as poverty, illiteracy, and limited access to legal awareness that affect rural communities in asserting intellectual property rights over TK and CE.
- To investigate prominent case studies of cultural misappropriation and legal challenges in protecting India's TK and CE in national and international contexts.
- To recommend legal, policy, and institutional reforms that enhance community participation, equitable benefit sharing, and inclusive protection frameworks aligned with international treaties.

RESEARCH METHODOLOGY

The methodology adopted in this paper is purely doctrinal and analytical, focusing on a detailed examination of existing legal frameworks, policies, international agreements, and scholarly literature concerning the protection of traditional knowledge (TK) and cultural expressions (CE) in India. The study primarily relies on secondary sources including statutes such as the Geographical Indications Act, Biological Diversity Act, the Traditional Knowledge Digital Library (TKDL) resources, judicial decisions, government reports, and academic commentary. Case studies of recent cultural misappropriation incidents, such as the Prada-Kolhapuri sandal controversy and culinary heritage issues, are analyzed to illustrate practical challenges in enforcement and policy gaps. The research critically assesses whether current laws effectively safeguard TK and CE and empower local communities, while also exploring socio-economic constraints such as literacy and resource access that impede these protections. The doctrinal approach enables synthesis of legal principles, interpretation of statutory provisions, and policy evaluation within the context of global and national developments in TK and CE protection.

EXISTING LEGAL SITUATION

India's protection of traditional knowledge and cultural expressions is grounded primarily in a combination of conventional intellectual property laws and sui generis mechanisms. The Geographical Indications of Goods (Registration and Protection) Act, 1999, safeguards region-specific products by granting collective rights to producers and preventing unauthorized commercial use that could dilute authenticity. The Biological Diversity Act, 2002, promotes equitable sharing of benefits derived from genetic resources and associated knowledge and mandates community participation in biodiversity management.

A landmark initiative is the Traditional Knowledge Digital Library (TKDL), which compiles and translates documented traditional medicinal knowledge to prevent wrongful patenting and biopiracy internationally. While TKDL has successfully thwarted numerous patent claims, it remains confined mainly to documented medicinal knowledge and operates with limited transparency and benefit-sharing mechanisms for indigenous communities.

Other areas of traditional knowledge and intangible cultural heritage are insufficiently protected under current laws. Intellectual property rights frameworks like copyright and patents are designed for individual, novel inventions and do not easily accommodate collective, evolving, and orally transmitted knowledge systems. Further, socio-economic realities in rural India—characterized by illiteracy, poverty, and restricted access to legal resources—impede widespread awareness and effective enforcement of protections among traditional knowledge holders.

India is also party to international agreements such as the Convention on Biological Diversity and the Nagoya Protocol, which emphasize the fair and equitable sharing of benefits arising from the utilization of genetic resources and associated TK. However, harmonizing domestic legislation with international obligations remains complex, requiring enhanced cooperation and legal innovations.

Therefore, while India has made significant strides in developing a multi-faceted legal regime for the safeguarding of TK and CE, both doctrinal gaps and practical challenges persist in ensuring that protections are comprehensive, enforceable, and reflect the socio-cultural realities and rights of indigenous communities.

1. INTRODUCTION

Traditional Knowledge and Cultural Expressions constitute the foundation of India's intangible heritage, creating a dynamic repository that safeguards the insights, spiritual beliefs, and artistic accomplishments of its communities throughout the ages. These systems, built up and refined over generations, extend well beyond simple folklore they encompass ecological knowledge, skilled craftsmanship, cooking customs, healing techniques, textile innovations, and spiritual practices, all deeply connected to social identity and local ecosystems². As India carves out its role in a swiftly globalizing world, these customs ground communities in shared memory, supplying strength amid transformation and establishing a distinct foundation for sustainable growth and creativity³.

Even with its significance, Traditional Knowledge and Cultural Expressions in India face growing risks from cultural uniformity, exploitation by commercial entities, and challenges posed by urbanization and digital platforms. Over the past thirty years, legal experts and regulators have launched a strong defense in courts and international settings, advocating for sui generis legal frameworks that honor the communal roots, oral traditions, and evolving characteristics of these cultural practices⁴. However, the intrinsic diversity and context-specific nature of Indian traditions indicate that codification initiatives cannot adopt a 'one size fits all' approach; protection needs to correspond with the realities of rural stewardship, involvement of communities, and changing cultural practices.

This chapter offers an analytical summary of Cultural Expressions and Traditional Knowledge. It consists of three main parts: a historical overview that outlines the ancient origins and methods of passing down these traditions; a discussion of their development during colonial, national, and modern times; and a current evaluation of the situation following independence. These segments lay the groundwork for grasping the legal, cultural, and policy structures essential for safeguarding, revitalizing, and fairly distributing India's rich intangible heritage.

² Maguipinamei, M., 2016. Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Rights of Tribes in North-Eastern Region of India. *International Research: Journal of Library and Information Science*, 6(2).

³ Wendland, W.B., 2006. Intellectual property and the protection of traditional knowledge and Cultural expressions. *Art and Cultural Heritage Law, Policy and Practice*, Cambridge University Press, New York, pp.327-339.

⁴ Sengupta, N., Sengupta, N. and Ghosh, 2019. *Traditional knowledge in modern India*. Springer India.

1.1 *HISTORICAL BACKGROUND OF TRADITIONAL KNOWLEDGE (TK) AND CULTURAL EXPRESSIONS (CE) IN INDIA.*

The narrative of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) in India spans millennia, rooted in some of the planet's earliest urban communities and intricate civilizations. Excavations from the Indus Valley Civilization, which date to approximately 3300–1300 BCE, showcase significant progress in urban design, farming, artisanal manufacturing, and commerce. Cities such as Harappa and Mohenjo-Daro were constructed with exact grid layouts, featuring advanced drainage and sanitation systems, uniform weights and measures, and skilled metallurgy⁵, which included tools and jewelry crafted from copper, bronze, and semi-precious stones. These advancements underscore a well-structured society where expertise in building, resource utilization, and creativity flourished.

The civilization's writing, made up of pictographs on tablets and seals, is still undeciphered but suggests advanced communication related to cultural and economic practices. In addition to archaeological findings, ancient literary texts like the Vedas, Upanishads, and Puranas amassed extensive information regarding astronomy, medicine, linguistics, and environmental sciences. Texts such as the Charaka Samhita and Sushruta Samhita established the principles of Ayurveda, whereas the Arthashastra formalized the systems of political and economic management⁶. The Natya Shastra offered structured insight into performing arts, while the Shilpa Shastra elaborated on architectural and craftsmanship principles, showcasing the varied yet interrelated areas of knowledge.⁷

A significant portion of this knowledge was passed down through oral traditions and preserved via lived experiences, mentorship, family lineage, and communal ceremonies. Folk performances, ceremonial dances, weaving, pottery, and native healing traditionally depended on direct transmission and communal stewardship. This integrated TK and TCE into the social and spiritual framework of communities, with clans, guilds, and mendicant customs acting as protectors. Different regions cultivated distinct forms of expression connected to their cultures and surroundings, ranging from the Tamizh Sangam poetry in South India to the Shaivite

⁵ Rajesh Babu, R., 2018. Protection of traditional knowledge and expressions of folklore: Locating India in the global framework. In *Locating India in the contemporary international legal order* (pp. 151-183). New Delhi: Springer India.

⁶ Sahai, S., 2013. Indigenous knowledge and its protection in India. In *Trading in Knowledge* (pp. 166-174). Routledge.

⁷ Perrett, R.W., 1999. History, time, and knowledge in ancient India. *History and Theory*, 38(3), pp.307-321.

thought in Kashmir, showcasing India's diverse heritage⁸.

Sanskrit, tribal, Islamic, and indigenous traditions lived alongside each other and engaged over centuries, creating vibrant cultural amalgamations. Traditional temple dances such as Bharatanatyam and Kathakali combined spiritual symbolism with artistic features, whereas folk plays like Yakshagana and Ramleela transformed mythological stories for community presentations. Local arts like Warli, Madhubani, and Patachitra painting incorporate cosmological and ecological themes that are distinctive to their cultural backgrounds. This unparalleled variety aligns with India's vast linguistic and ecological spectrum, showcasing the resilience and adaptability of TK and TCE throughout migrations, societal shifts, and historical upheavals⁹.

Across this timeless continuum encompassing grand cities, classical literature, and dynamic living traditions. India's Traditional Knowledge and Cultural Expressions continue to embody symbols of identity and channels of creative expression, laying the groundwork for current legal protection and cultural policy.

1.2 EVOLUTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS IN INDIA.

The development of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) in India signifies a nuanced conversation between stability and transformation within the nation's evolving political, social, and cultural environments. This legacy has evolved through ancient, medieval, colonial, and contemporary contexts, influencing and being influenced by the individuals who uphold it.

In ancient India, the growth of classical arts and sciences was bolstered by royal support and academic circles. Works like the Arthashastra established rules for governance, the Natya Shastra governed theater and dance, while Ayurvedic texts preserved comprehensive medical and healing information. Knowledge retained its communal nature even after formal codification, remaining shared through oral traditions and apprenticeship practices in families and guilds. Cultural expression intertwined with natural and spiritual cycles through social

⁸ Chakrabarty, S.P. and Kaur, R., 2021. A primer to traditional knowledge protection in India: the road ahead. *Liverpool Law Review*, 42(3), pp.401-427.

⁹ Singh, B.P., 2023. Biodiversity, tribal knowledge and life in India. *Environment and Social Psychology*.

rituals and festivals, emphasizing the connection of knowledge to everyday life¹⁰.

Medieval India experienced lively syncretism as native traditions interacted with influences from the Persian-Islamic realm and Central Asia. Mughal support enhanced music, dance, architecture, and textile crafts by blending Persian styles with local traditions. Sufi verse, miniature artistry, and Indo-Islamic architecture developed, enhancing India's cultural mosaic while fostering local traditions.¹¹

The British colonial era (18th to mid-20th century) brought about structural changes that displaced numerous native knowledge systems. Western education and science were favored, frequently undermining oral, spiritual, and community-oriented knowledge as unscientific. British intellectual property laws were enforced, prioritizing personal ownership and documented inventions, making them inadequate for safeguarding collective and dynamic TK and TCE. Nonetheless, oral traditions, folk arts, and healing practices continued to thrive in rural India and among underserved communities.

Post independence, India engaged in a proactive effort to rediscover and incorporate these knowledge systems into its national identity and progress. Organizations backing Ayurveda, Yoga, Unani, and various Indian Medical Systems obtained official acknowledgment and financial support. Cultural preservation initiatives recorded and revitalized traditional crafts, dance, and music, while legal changes sought to address shortcomings in intellectual property protections—leading to sui generis laws like the Geographical Indications Act, Biological Diversity Act, and Traditional Knowledge Digital Library.

The wave of globalization that began in the 1990s led to a rise in demand but also introduced new challenges. Traditional Indian products, medicines, and cultural symbols transformed into global commodities, frequently lacking fair acknowledgment of their origins or advantages to local communities. Disputes over patents concerning turmeric, neem, and yoga emerged, resulting in greater recognition of the necessity for protective documentation and fair benefit-sharing. Advancements in digital archiving and participatory documentation are working to

¹⁰ Sengupta, N., 2018. Traditional cultural expressions, expressions of folklore. In *Traditional Knowledge in Modern India: Preservation, Promotion, Ethical Access and Benefit Sharing Mechanisms* (pp. 127-152). New Delhi: Springer India.

¹¹ Sarkar, P., REVIVING INDIAN HISTORY AND CULTURE IN MODERN CONTEXT. *Reviving India*, p.185.

democratize access and management of TK and TCE, yet obstacles persist such as varied awareness, bureaucratic challenges, and tensions between cultural fluidity and legal formalization.¹²

Consequently, the development of India's TK and TCE symbolizes resilience, integration, and continuous dialogue between tradition and modernity. It influences both cultural identity and emerging models of sustainable innovation and intellectual property safeguarding in India and worldwide.

1.3 PRESENT DAY SITUATION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS IN INDIA AND NEED FOR INTELLECTUAL PROPERTY RIGHTS.

Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) remain vital to the socio-economic and cultural landscape of India. These vibrant traditions and knowledge systems—including indigenous farming techniques, herbal remedies, crafts, tribal ceremonies, dance, music, and oral storytelling—are essential to the identities and livelihoods of millions within rural and indigenous communities. Even with the challenges of modernization, urban migration, and globalization, these practices continue to thrive, creating a vibrant heritage firmly anchored in local histories and settings.¹³

India has made notable progress in legislation and policies to safeguard TK and TCE. A significant development in this area has been the passage of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which provides exclusive rights to producers from certain geographic areas to sell products recognized for their distinctive characteristics associated with location and traditional production methods. This legislation has been essential in protecting genuine local products such as Darjeeling Tea, Kanchipuram Silk, and Kolhapuri sandals from unfair competition and unauthorized use, thus aiding in the preservation of community heritage and boosting rural economies.¹⁴

Also supporting this is the Biological Diversity Act of 2002, which aims to foster fair and just sharing of benefits with local communities concerning biodiversity resources and their related

¹² Ghosh, S., 2003. Globalization, patents, and traditional knowledge. *Colum. J. Asian L.*, 17, p.73.

¹³ Sengupta, N., Sengupta, N. and Ghosh, 2019. *Traditional knowledge in modern India*. Springer India.

¹⁴ Gogineni, R.R., Kallivayalil, R.A., Sharma, S., Rataemane, S. and Akhtar, S., 2018. Globalization of culture: Impact on Indian psyche. *Indian Journal of Social Psychiatry*, 34(4), pp.303-312.

knowledge. Via Biodiversity Management Committees, communities acquire a role in conservation and commercialization—yet these frameworks face challenges due to administrative complexities and insufficient awareness at the grassroots level.¹⁵

India's innovative initiative, the Traditional Knowledge Digital Library (TKDL), digitizes and translates ancient medicinal formulations from traditional systems like Ayurveda, Siddha, Unani, and Yoga. TKDL acts as a resource for patent examiners worldwide, hindering incorrect patent claims by offering recorded prior art. The cancellation of the turmeric patent in the U.S., following India's submission of ancient Sanskrit medical texts, illustrates how defensive safeguarding through TKDL has aided in combating biopiracy.

The growing significance of intellectual property rights (IPR) in safeguarding TK and TCE arises from the distinct challenges these types of knowledge present. In contrast to contemporary inventions, TK and TCE are frequently shared collectively, developing over time and passed down orally across generations, rendering them inappropriate for standard patent or copyright systems designed for unique and individual creations. There is an immediate necessity to create unique systems within the IPR framework that recognize the collective and evolving essence of TK, guarantee documentation available to patent examiners to avert misuse, and set up systems for benefit sharing with knowledge providers.

Current IP laws offer limited defensive protection but fail to provide proactive, significant control and economic advantages to communities. Additionally, numerous intangible elements of TK and TCE, including oral traditions, performing arts, and changing rituals, are at risk, highlighting the necessity for reforms that integrate legal enforcement with community empowerment and respect for cultural practices.¹⁶

India's current challenge involves merging these legal safeguards with inclusive methods that enhance awareness, streamline access to rights, and empower communities to engage in managing their heritage. Enhancing legal structures and acknowledging the distinct nature of TK and TCE through novel IPR systems are crucial for safeguarding India's diverse cultural

¹⁵ Rajesh Babu, R., 2018. Protection of traditional knowledge and expressions of folklore: Locating India in the global framework. In *Locating India in the contemporary international legal order* (pp. 151-183). New Delhi: Springer India.

¹⁶ Correa, C.M., 2001. Traditional knowledge and intellectual property. *Geneva: The Quaker United Nations Office (QUANO)*, 17.

heritage in an ever-evolving environment.

In summary, this paper analyzes the legal structures protecting traditional knowledge and cultural expressions in India by assessing relevant statutes, judicial interpretations, and policy measures. It evaluates the efficacy of existing protections, paying particular attention to socio-economic factors that affect enforcement and benefit distribution. The study examines prominent case studies, including the Prada-Kolhapuri sandal controversy and issues relating to the appropriation of Indian culinary heritage, to illuminate practical challenges faced by knowledge holders. This paper will be addressing the above issues in the following chapters.

Chapter 2: India's Legal Framework for protection of Traditional knowledge and Cultural expressions.

Chapter 3: Socio – economic barriers to effective protection.

Chapter 4: Case Studies of cultural misappropriation and Legal challenges.

Chapter 5: Conclusions and recommendations for Reform.

By addressing the above issues in the chapters mentioned the paper advocates to more culturally sensitive and participatory intellectual property frameworks that respect India's rich traditional heritage, promote community agency and navigate the complexities posed in the new age.

2. India's Legal Framework for Protection of Traditional Knowledge and Cultural Expressions

India's legal regime for traditional knowledge (TK) and cultural expressions (CE) represents one of the most complex and evolving domains in national and international law. Recognizing that Traditional knowledge and Cultural expressions constitute vital cultural, spiritual, and economic resources that are deeply embedded within India's diverse communities, the country has developed a multi-pronged strategy combining conventional intellectual property protections, innovative sui generis systems, detailed state policies, and defensive documentation¹⁷. This chapter explores the core legal instruments dedicated to safeguarding Traditional Knowledge and Cultural Expressions, highlights significant policy developments, and illustrates enforcement and legal gaps through landmark cases.

¹⁷ Lai, J.C., 2014. *Indigenous cultural heritage and intellectual property rights*. Springer,.

India's primary intellectual property laws, namely the Copyright Act, 1957, and Patents Act, 1970, offer some protection to Traditional Knowledge and Cultural Expressions, but only within limited parameters. The Copyright Act can cover documented folk music, paintings, and choreographed performances, provided individual authorship and originality can be established. For example, if a tribal song is transcribed and released as an album, copyright may protect that specific recording but not the unwritten knowledge or style shared across the community.¹⁸

However, these frameworks fundamentally struggle to accommodate the communal ownership, oral transmission, and evolving nature of TK and CE. Unlike patented scientific inventions or copyrighted books, spiritual practices, oral folklore, or generational wisdom lack a clear "inventor" or "author."

Recognizing these inadequacies, India enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999, to safeguard the unique identity, reputation, and methods associated with region-specific products. Under this regime, products are protected only if their specific qualities or reputations stem from their geography such as Darjeeling Tea, Kanchipuram Silk, Kolhapuri Chappals, and Banarasi Sarees. Such protection not only recognizes cultural heritage but also ensures the preservation of livelihoods for thousands of traditional artisans and farmers.

The GI system's success is evident in cases like *Tea Board India v. ITC Limited* [Calcutta HC, 2011],¹⁹ which affirmed the exclusive rights of Darjeeling tea producers over GI-marked products and curtailed the misleading commercial use by outsiders. However, not all GI disputes are easily solved, as seen in the "Basmati Rice" controversy, wherein India and Pakistan both claimed GI status for Basmati rice. The eventual compromise led to co-existence in certain jurisdictions but revealed how cross-border claims may complicate enforcement.

The Traditional Knowledge Digital Library (TKDL), established by the Council of Scientific and Industrial Research (CSIR) and the Ministry of AYUSH, is another landmark defensive

¹⁸ Bath, S. and Prasad, S., 2025. Legal protection of traditional knowledge and traditional cultural expressions under copyright laws: LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS. *Indian Journal of Traditional Knowledge (IJTK)*, 24(4), pp.384-394.

¹⁹ *Tea Board v. I.T.C. Limited*, 2011 SCC OnLine Cal 2834

mechanism. TKDL has digitized and translated ancient Indian medical knowledge (Ayurveda, Unani, Siddha, Yoga) into multiple languages for patent examiners worldwide. This resource acts as “prior art,” preventing erroneous patenting of Indian-origin medical formulations by foreign entities. Crucially, in the famous “Turmeric Patent Case,” US-based researchers had received a patent for turmeric’s wound-healing properties. The Indian government produced evidence from ancient Sanskrit texts, leading to the patent’s revocation by the US Patent and Trademark Office.

Despite these successes, the TKDL mainly benefits documented, codified knowledge, defensively preventing theft or misappropriation, while much oral or community-held wisdom still remains unprotected and receives limited proactive recognition or economic return.

A vital advancement was the Biological Diversity Act, 2002,²⁰ which established Biodiversity Management Committees (BMCs) and People’s Biodiversity Registers (PBRs) for local documentation and management. The Act mandates prior informed consent and calls for fair and equitable benefit sharing (FEBS) whenever biological resources or associated TK are accessed or commercialized.

Nonetheless, bureaucratic delays, low village-level awareness, and enforcement weaknesses have hindered full benefit sharing and local empowerment under these legal frameworks.

Recent developments highlight the need for more robust, context-sensitive laws. The Protection of Traditional Knowledge Bill has proposed a comprehensive framework emphasizing collective ownership, community registers, prior informed consent, civil and criminal enforcement of rights, and detailed mechanisms for benefit sharing. It would establish a National Authority for Traditional Knowledge tasked with both documentation and dispute resolution thus moving beyond the defensive model toward active community participation.

State-level initiatives are also gaining momentum. Kerala’s IPR and TK Policy promote documentation, legal literacy, technical assistance, and contextual commercialization, aiming to integrate TK protection with rural development. These regional experiments provide valuable models for pan-Indian policy reforms.

²⁰ The Biological Diversity Act ,2002

Despite advances, many intangible expressions, such as folk dances, rituals, and oral traditions, escape documentation and standardization, relying on community vigilance. GI and TK rights enforcement faces continued jurisdictional complications, especially internationally, as in the Basmati rice dispute or North American bio piracy.

Another challenge is balancing legal protection with cultural dynamism. Legal documentation may “freeze” practices that are inherently adaptive and fluid, risking cultural atrophy. Likewise, commercial benefit-sharing mechanisms encounter resistance from elite intermediaries, who may exploit gaps to monopolize profits.

Finally, high-profile cases such as the Prada-Kolhapuri sandal issue and legal battles over Indian cuisine reinforce these gaps: even when legal protections exist, lack of awareness, financial or technical support, and political will can render them ineffective for grassroots communities.

India’s evolving legal regime for TK and CE reflects the country’s leadership and ambition but also exposes practical limitations. A sophisticated hybrid of conventional IP law, GI protection, TKDL documentation, and benefit-sharing statutes exists, yet challenges of enforcement, awareness, and equity endure. Recent judicial decisions and policy innovations point toward a future grounded in community empowerment and international cooperation. However, only continued legislative reform alongside active involvement from rural and tribal communities can ensure that India’s traditional knowledge and cultural expressions are sustained as dynamic, living assets integral to its national and global identity.

3. SOCIO-ECONOMIC BARRIERS AND NORMATIVE FRAMEWORK FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS IN INDIA.

Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) in India are intertwined with complex social, economic, ecological, and legal frameworks. They serve multiple functions, including cultural identification markers, livelihood resources, and potential drivers of sustainable development. In practice, communities that sustain these knowledge systems face a dense web of vulnerabilities, including erosion of intergenerational transmission, environmental degradation, structural inadequacies of intellectual property (IP)

regimes, inequitable benefit sharing, deep-seated social marginalization, and fragmented, often mistrusted documentation practices. To protect TK and TCE, an integrated normative framework must address vulnerability and build appropriate legal, policy, and community-based instruments²¹.

3.1 Modernization, Environmental Change, and the Erosion of TK/TCE.

Modernization and globalization have significantly affected the social contexts in which TK and TCE are created, reproduced, and valued. Migration, the breakup of joint family systems, the spread of mass education, and the domination of metropolitan cultural standards have all harmed the intergenerational transfer of oral knowledge in many communities. Traditional pedagogies apprenticeship, ritual participation, and embedded learning through ordinary subsistence activities are being replaced by standardized curriculum that rarely acknowledge indigenous epistemologies as legitimate forms of "knowledge"²². As a result, newer generations frequently regard ancestral trades, healing methods or performance traditions as economically unviable or socially inferior, hastening cultural discontinuity.

Environmental deterioration and climatic change further contribute to socio-cultural decline. A considerable chunk of Indian traditional knowledge, particularly in agriculture, forestry, livestock raising, and medicine, is inextricably linked to local ecosystems. The loss of forests, water bodies, and biodiversity threatens the material foundation of traditional livelihoods while also limiting the ecological "laboratories" in which traditional knowledge is tested, polished, and passed. When holy forests disappear, wild medicinal species become extinct, or traditional farming patterns become unsustainable, communities lose not just resources but also the experiential contexts that make traditional knowledge valuable. Thus, modernity and environmental decline coexist, resulting in the displacement of TK and TCE from both social and natural settings²³.

3.2 Structural Limitations of the Current IP and Regulatory Regime

Socio-ecological constraints combine with an outdated legal framework that fails to recognize

²¹ ²¹ Chakrabarty, S.P. and Kaur, R., 2021. A primer to traditional knowledge protection in India: the road ahead. *Liverpool Law Review*, 42(3), pp.401-427.

²² Sahai, S., 2013. Indigenous knowledge and its protection in India. In *Trading in Knowledge* (pp. 166-174). Routledge.

²³ Sengupta, M., 2015. Obstacles to the use of indigenous knowledge. *Development in Practice*, 25(6), pp.880-894.

the dynamic nature of TK and TCE. Individual authorship, novelty, fixation, and limited lengths of protection are all foundational principles of traditional intellectual property law. TK and TCE, on the other hand, are often created by multiple generations without a distinct "first author" and evolve through ongoing adaptation. As a result, much TK and TCE lies outside the scope of patent, copyright, and design protection.²⁴

India has implemented various measures to address the issue, including amending the Patents Act to exclude traditional uses, enacting the Biological Diversity Act with access and benefit-sharing provisions, the Protection of Plant Varieties and Farmers' Rights Act, and the Geographical Indications (Registration and Protection) Act.²⁵ In parallel, documentation methods such as the Traditional Knowledge Digital Library (TKDL) seek to provide defensive protection by establishing previous art against misappropriate patenting. However, these measures remain fragmented, issue-specific, and defensive in nature. Currently, there is a lack of recognition for customary law, pluralistic ownership structures, and internal governance practices, as well as strong, community-centered rights over TK and TCE.

Furthermore, procedural complexities, a lack of legal literacy, and the expenses of interacting with formal institutions effectively prevent many communities from meaningfully participating in these systems. Formal rights, such as GIs or ABS agreements, are generally held by state agencies, cooperatives, or corporate intermediaries, rather than knowledge-holding communities. This perpetuates a structural asymmetry between communities and external players (states, companies, non-governmental organizations, or scholars) who are better suited to manage legal and administrative procedures.

3.3 Economic inequities, social marginalization, and documentation dilemmas

The fundamental limits of the current legal system translate directly into economic disparities. TK and TCE are extensively used in commercial items such as phyto-pharmaceuticals, nutraceuticals, fashion, tourism, wellness services, and the creative sectors, yet knowledge holders do not receive corresponding benefits. Even in local value chains, intermediaries and market-facing actors typically receive a disproportionate part of returns, leaving craftspeople, healers, and cultivators in uncertain livelihoods. Despite the promise of benefit-sharing under

²⁴ Krishnaswamy, S., 2011. Access to knowledge and traditional knowledge protection. *Access to knowledge in India*. London: Bloomsbury Academic, pp.14-35.

²⁵ Sengupta, N., Sengupta, N. and Ghosh, 2019. *Traditional knowledge in modern India*. Springer India.

biodiversity and GI regimes, monitoring and enforcement measures are insufficient.²⁶

These disparities are exacerbated by historical patterns of social exclusion. Many TK/TCE custodians are from Scheduled Tribes, Scheduled Castes, or other marginalized groups whose access to education, credit, land, and political representation has been severely limited. Gendered hierarchies obfuscate women's contributions to seed selection, food processing, healing, and ritual performance. In such cases, "participation" in intellectual property or heritage regimes can be tokenistic, with communities expecting to agree to documentation or commercialization without any actual negotiating power, information, or control over downstream use.

Documentation is at the heart of this tension. Systematic documentation is crucial for recognition, legal defense (as prior art), intergenerational transmission, and community-led planning. On the other hand, communities are understandably concerned that external documentation will promote expropriation or commodification, especially if previous experiences with extractive research or biopiracy are still fresh. Ethical documentation involves clear rules for free, prior, and informed permission, community ownership or co-ownership of records, culturally acceptable classification methods, and meaningful control over access, use, and benefit flows. Without such checks, documentation risks reinforcing the very inequalities it attempts to address.

3.4 Towards an Integrated Normative and Policy Framework.

Custodial communities should be recognized as major rights holders and decision-makers, with legal frameworks that include customary laws, collective authorship, and community-level organizations. To enable community stewardship, layered ownership, and non-commercial values like sacredness and confidentiality, IP must be reimagined beyond an individualistic, market-driven approach.²⁷

Frameworks must ensure that economic value from TK/TCE is shared transparently, predictably, and in community-defined ways. This could include hybrid instruments that

²⁶ Ismail, Z. and Fakir, T., 2004. Trademarks or trade barriers? Indigenous knowledge and the flaws in the global IPR system. *International Journal of Social Economics*, 31(1/2), pp.173-194.

²⁷ Dagne, T., 2012. The protection of traditional knowledge in the knowledge economy: Cross-cutting challenges in international intellectual property law. *International Community Law Review*, 14(2), pp.137-178.

combine GIs, ABS contracts, equitable licensing, and community protocols to implement both defensive and positive protection. Mechanisms should be accessible, low-cost, and responsive to community equality, including gender and caste dynamics.²⁸

Epistemological and cultural pluralism: state policies must recognize multiple knowledge systems as genuine and complementary, rather than hierarchical. This entails incorporating TK and TCE into education, research, conservation, and development planning in ways that honor their epistemological basis, rather than simply mining them for "useful" facts.²⁹ Collaborative research methodologies, co-production of information, and participatory monitoring can bridge the gap between scientific and indigenous perspectives without sacrificing either. To ensure ethical documentation and digital governance, communities should collaborate to devise solutions that balance preservation, legal defensibility, privacy, secrecy, and culturally appropriate distribution. To protect custodial interests, digital repositories, community archives, and local registers should include granular access controls, benefit-sharing linkages, and feedback mechanisms.

4. CONCLUSION AND SUGGESTIONS

The previous chapters investigated the historical evolution of Traditional Knowledge and Cultural Expressions in India, their current socioeconomic and ecological context, and the constraints of existing legal and policy frameworks. The discussion focused on how modernization and environmental degradation disrupt intergenerational transmission and erode the material foundations of indigenous knowledge systems, while traditional intellectual property regimes remain out of sync with their collective, cumulative, and dynamic nature. The study found that economic disparities, theft, and social marginalization of custodial communities are exacerbated by institutional deficiencies, despite efforts to repair trust through fragmented recordkeeping and top-down preservation. This chapter summarizes the study's findings and proposes a framework for safeguarding and revitalizing traditional knowledge and cultural expressions in India that is community-centered and ethical.

4.1. CONCLUSION

The study found that protecting Traditional Knowledge (TK) and Traditional Cultural

²⁸ Benoiel, D., 2025. Intellectual Property Inequality Alleviation. *Chi.-Kent J. Intell. Prop.*, 24, p.66.

²⁹ Evans, S., 2008. *Intellectual property rights, traditional knowledge and access and benefit-sharing: towards a new international cultural-legal relativity narrative* (Doctoral dissertation, Carleton University).

Expressions (TCE) in India is more than just a technical exercise in intellectual property design; it is a multifaceted governance challenge that involves culture, ecology, economics, and social justice. TK and TCE are still vital to community identity, livelihoods, and sustainable resource management, but they are being systematically destroyed by modernity, environmental degradation, structural limits of existing legal frameworks, and historically established inequalities. The cumulative impact is the deterioration of intergenerational transmission, the weakening of customary institutions, and the continuous extraction of value from indigenous knowledge systems without adequate recognition or compensation.

The analysis highlights India's enormous normative, institutional, and community-level resources, allowing for a more coherent framework to be developed. Constitutional commitments to cultural and linguistic variety, sectorial regulations on biodiversity, plant varieties, and geographical indicators, and initiatives like the TKDL all point to an emergent, albeit fragmented, framework for TK/TCE protection. However, these solutions are mostly defensive, issue-specific, and significantly influenced by governmental or market actors. To ensure a sustainable future, communities must be prioritized as decision-makers, legal and policy design should align with customary governance and collective authorship, and participatory mechanisms should be built to transform TK and TCE into living assets rather than static "heritage" that can be curated from above. Hence the study agrees to the hypothesis:-

“India’s existing legal and policy frameworks are insufficient to provide effective, equitable, and sustainable protection of Traditional Knowledge and Traditional Cultural Expressions for their originating communities.”

4.2. SUGGESTIONS

Building on the preceding analysis, it is clear that the conservation of Traditional Knowledge and Cultural Expressions in India cannot be achieved through progressive or solely doctrinal changes. The issues of socioeconomic fragility, ecological change, poor legal recognition, and fragmented recordkeeping call for a community-centered reorientation of policy and practice. To be effective, any reform strategy must address ownership, benefit-sharing, cultural authority, and epistemic acknowledgment, while also taking into account community diversity and the adaptability of TK and TCE. Against this context, the following recommendations are presented as a series of mutually reinforcing interventions aimed at translating the study's analytical conclusions into tangible, implementable policies at the legislative, institutional, and

community levels.

1. Enact a sui generis TK/TCE framework

- Develop a comprehensive, stand-alone legislation on TK and TCE that:
 - Recognizes collective and intergenerational ownership, including community institutions as legal right-holders.
 - Gives legal effect to customary norms regarding access, use, secrecy, and sacredness.
 - Provides both defensive protection (against misappropriation) and positive rights (licensing, royalties, moral rights, control over distortion and derogatory use).

2. Embed community-centric benefit-sharing mechanisms

- Make benefit-sharing a mandatory component of all commercial and research uses of TK/TCE, with:
 - Direct flows to community-controlled funds or institutions, not only to intermediaries.
 - Transparent formulae co-designed with communities, including gender-sensitive allocation.
 - Requirements for periodic reporting to and review by community bodies.

3. Integrate TK/TCE into broader development and environmental policy

- Treat TK and TCE as cross-cutting resources in agriculture, health, climate adaptation, and cultural industries by:
 - Incorporating TK-based practices into agroecology, biodiversity conservation, and public health strategies.
 - Supporting community-led cultural tourism, crafts, and creative industries with safeguards against commodification and misrepresentation.
 - Linking TK/TCE protection to climate and biodiversity financing mechanisms, so that communities are rewarded for stewardship.

4. Reform documentation and digital governance

- Shift from extractive documentation towards participatory, rights-based models by:
 - Establishing local and regional TK/TCE registers controlled or co-controlled by communities.
 - Embedding free, prior and informed consent, granular access controls, and clear conditions of use into all databases.

- Providing technical and financial support for community archives, including training in cataloguing, digitisation, and negotiation of access/benefit terms.

5. Strengthen institutional coordination and capacity

- Create or empower a national coordinating body (with state-level counterparts) to:
 - Harmonize biodiversity, IP, culture, and tribal welfare policies affecting TK and TCE.
 - Issue model guidelines and contracts for ABS, licensing, and cultural collaborations.
 - Facilitate capacity-building for local government institutions, customary councils, and community organizations on legal rights, negotiation, and documentation.

6. Promote epistemic and curricular pluralism

- Reform educational and research institutions to:
 - Integrate TK and TCE into school and university curricula as legitimate knowledge systems, co-taught where possible with practitioners.
 - Encourage interdisciplinary and co-produced research with communities as partners, not merely “informants”.
 - Support youth engagement programmes and apprenticeships that make traditional livelihoods and arts socially prestigious and economically viable.

7. Enhance international engagement and South–South cooperation

- Use multilateral and regional forums to:
 - Advocate for binding international standards on TK/TCE and genetic resources that reflect India’s experiences and community priorities.
 - Share best practices, model laws, and community protocols with other countries facing similar challenges.
 - Build coalitions to resist biopiracy and advocate for fairer global IP and trade rules.

Protecting Traditional Knowledge and Cultural Expressions in India requires long-term legal, institutional, and societal transformation, not just technical reforms. The proposed approaches prioritize custodial communities as main rights holders, connect intellectual property and biodiversity laws with collective and customary realities, and integrate TK and TCE into broader agendas of cultural pluralism, ecological stewardship, and inclusive development. Effective implementation requires continuous political will, inter-institutional collaboration, and genuine engagement with local populations.