Journal of Intellectual Property Rights
Vol. 31, January 2026, pp 77-86
DOI: 10.56042/jipr.v31i1.12814

Beyond Copyright: Designing a Sui Generis Framework for Folklore and Traditional Knowledge Protection in India

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Received: 28th July 2024; revised: 2nd December 2025

Indian folklore and traditional cultural expressions (TCEs) showcase the diverse and rich Indian communal heritage, which is rich in traditions, rituals, oral practices, music, dance, art, and indigenous knowledge. While existing intellectual property laws and constitutional recognition of cultural preservation provide some legal protection for the collective, dynamic, and sacred characteristics of such cultural assets, these protections are inadequate. Conventional IP regimes focus on individual authorship and fixed duration; this completely fails to address communal custodianship, intergenerational passing of knowledge, characteristics of folkloric manifestations and TCEs. This research offers a critical analysis of the limitations of the Indian legal frameworks and highlights the urgency for a sui generis system tailored to the unique cultural, spiritual and socio-economic characteristics of Indian TCEs. This paper draws on doctrinal analysis and comparative international experiences to advocate for legal recognition of collective ownership, mechanisms for prior informed consent, consistent protection periods and equitable benefit-sharing arrangements. This proposed framework has the potential to empower indigenous custodial communities, protect cultural and civilisational integrity and promote sustainable cultural innovation and continuation. Finally, this article charts a path towards culturally sensitive, aware, inclusive and impactful safeguard provisions for India's priceless intangible heritage in the 21st century.

Keywords: Folklore, Traditional Cultural Expressions, Sui Generis System, Intellectual Property Law, Custodianship, Benefit-sharing, Cultural Heritage, Ownership, Legal reform

The closing decades of the last century have marked a major change towards recognising folklore and addressing its legal safeguards, despite it being considered a legal intangible and an almost untouchable area.[1] The change was intensified by the growing recognition of the imminent exploitation that threatens folklore and traditional cultural expressions (TCEs), particularly in developing nations with cultural assets at risk of misappropriation.[2] Advancements in technology have facilitated opportunities as well as hindrances for cultural dissemination in the form of control and protection. International institutions such as the World Intellectual Property Organisation (WIPO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) have responded to this issue by taking proactive steps and developing model legislations, tailored to offer countries guidance to incorporate folklore protection into national legislation.[3] Regardless, advancements in technologies, specifically in the areas of biotechnology and computing, have introduced modern modalities to appropriate and exploit folklore and cultural manifestations.[4]

The tech evolution has further convoluted the efforts to maintain integrity and equitable benefit-sharing arrangements when it comes to cultural integrity. This highlights the insufficient protection offered by earlier legal frameworks, which are outdated regarding the emerging challenges. If one analyses the trajectory of Intellectual property rights historically, it discloses the pattern of adaptation to respond to new forms of exploitation. To illustrate, recognised "related" and "neighbouring" rights were introduced to mitigate the risks faced by artists before the introduction of phonogram protections.[5] This exemplifies the dynamic nature of IP law, specifically its ability to adapt and enact new legal barriers to counter previously unchecked exploitative practices. Similarly, folklore remained insufficiently protected until the 1980s.

This era witnessed fast-paced development in audiovisual technologies, including sound and video recording, broadcasting, and transmission media. Such advancements also enabled commercialisation and exploitation of cultural expressions without allocating the appropriate benefit to the custodial

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communities.[6] Such exploitation and misappropriation have resulted in tangible harm to the cultural and religious sensibilities of such communities. This has caused fundamentalist tensions between traditional knowledge frameworks and modern scientific and technological paradigms.[7] Contemporary intellectual property rights (IPR) regimes, specifically those created under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, intend to extend safeguard provisions to emerging or newly emergent goods and processes within the global trade; however, folklore remains inadequately protected as it is increasingly susceptible to economic and cultural misappropriation.[8]

This is prevalent in developing nations as industrialised countries usually consider folklore as public knowledge and artefacts from a past era that was finished with the advent of modernisation and globalisation, hence making such accessible to all.[9] In contrast, developing countries consider the unregulated, unpermitted usage of folklore outside the respective communities of origin as violating economic and cultural rights as well as moral principles.[10] Considering India, which contains numerous ethnicities, religions, and cultural traditions, protecting folklore and traditional cultural expressions (TCEs) is a major cultural necessity and a matter of national and civilisational pride. The Indian cultural heritage showcases its diverse tapestry of ethnic, religious and cultural communities through a barrage of extensive TCEs and folklore.[11]

The folkloric traditions remain important in the modern day and retain their relevance, underscoring the civilisational and communal pride Indians have in them, contributing to the Indian identity. However, certain industries have failed to attribute them in the past, including the Bollywood or the Indian film industry and the music sector, which have often appropriated Indian traditional music, dance and other TCEs. Such appropriations usually do not include an acknowledgement of the original custodial communities.[12] The unregulated misappropriation of TCEs is pervasive and is amplified by legislative gaps, which weaken the legal protection granted to them. This has caused both economic and cultural detriment and dislocation in indigenous groups and communities, which have protected these traditions for centuries.

This study goes further by acknowledging the exploitation of TCEs by conducting a critical analysis of the structural and legislative framework and challenges underpinning this issue. This paper intends to examine the sufficiency of India's current intellectual property framework and related non-IP legislation to safeguard the country's diverse traditional cultural expressions. Additionally, the paper also evaluates incoming national and international legal trends and alternative legislative approaches to protect TCEs. This offers a wholesome look at copyright law, geographical indications, and sui generis systems as possible options for safeguarding TCEs. The article also highlights the core need for an urgent, robust, cohesive legal architecture that not only protects but also promotes the Indian cultural heritage. The study advocates for an integrated approach respecting and affirming indigenous people's rights while fostering sustainable preservation, usage and promotion of TCEs for the societal benefit across India. From a methodological perspective, this study adopts a doctrinal approach to facilitate a comprehensive analysis of the current Indian IP Laws, regulations and relevant international treaties to highlight the status of TCE and folklore protection. The analysis is also complemented by a comparative study of the sui generis frameworks used in other jurisdictions. This enables the author to make the best practices and formulation of informed recommendations customised to the Indian context.

Background: Protection of Folklore in India

Folklore and TCEs include complex and adaptive manifestations of cultural heritage that cover various kinds of creative expressions, knowledge systems, approaches and practices that have a deep embedding in the customs and traditions of indigenous, tribal and local communities. These manifestations take various forms, ranging from music, dance, visual arts, symbolic designs, oral histories, rituals, and traditional knowledge systems related to agriculture, medicine, and ecological management. As a whole, they form the important elements of the pluralistic social fabric India has traditionally housed as well as the collective knowledge, wisdom, beliefs and lived experience of various native communities across the country.[11 13 14] These TCEs serve as unique artistic or literary manifestations but also historical repositories of communal identity, history and social cohesion. This is an important contribution towards nurturing national pride and reinforcing the country's heterogeneous cultural landscape.[11]

Folkloric manifestations and TCEs are crucial to India's sociocultural milieu, and they are vital beyond mere aesthetic values. They act as a living testament to the country's rich heritage and diversity. However, these manifestations are still inadequately protected under extant legislation despite their cultural centrality and relevance. This leaves these cultural assets vulnerable to exploitation and misappropriation that has been further exacerbated by the forces of globalisation, rapid technological innovation and commercialisation. Notably, sectors such as Bollywood and the music industries in India and abroad have continued to be implicated in misappropriation and commodification of traditional cultural expressions without granting any recognition or remuneration to the original custodian communities.[15] These unauthorised usages usually include adaptation, distortion or simple reproduction of the cultural elements. This amplifies concerns regarding cultural dilution and hampers the authenticity of such manifestations. There are repercussions beyond mere economic deprivation, as such misappropriation assaults the integrity and sanctity of the cultural expressions safeguarded by indigenous groups.

Usually, such usages misrepresent or disrespect religious and cultural sensibilities of communities that have kept these practices alive over generations.[11] This clearly constitutes social grievances and obstructs the functioning of equitable cultural rights by harming the collective cultural identity. The Indian legal regime consists of the Copyright Act of 1957, with patent and trademark laws. These were enacted to safeguard discrete, identifiable creations and inventions that can be traced back to individual authors or entities. Hence, the provisions contained in these legislative pieces do not have the capacity to sufficiently address the communal and intergenerational nature of folklore and traditional cultural expressions, which usually do not fall under the conventional notions of authorship and ownership.[14] Without a tailored legislative instrument, specific challenges arise regarding ambiguous authorship criteria, restrictive temporal protection lengths that are not compatible with the perpetual nature of traditions, lack of mandatory prior informed consent from custodial communities and complications out of public domain usage.

The appropriation of a culture is considered to have occurred when a particular group's culture, which could include dress, food, crafts or rituals, is adopted or commercialised by another group, usually without taking permission or providing any credit or consideration due to the latter group's stronger socioeconomic status. A community's culture includes tangible manifestations such as clothing, architecture, and artefacts and also intangible aspects including beliefs, customs, oral traditions, and social norms. Marginalised and native communities have generated distinctive cultural products and knowledge systems over centuries; however, these are often adopted and replicated by dominant groups, usually Western corporations and fashion houses, for profit, prestige, and aesthetic novelty. This action erases cultural origins and denies the original creator's recognition and economic benefits. This is inherently exploitative as it removes the cultural context of the elements and hampers their historical and societal significance.

To illustrate, global fashion brands have consistently rebranded Indian attire for Western catwalks: Gucci once marketed a "wrap skirt" which was almost identical to the Indian dhoti or lungi;[16] Prada was criticised and scrutinised for promoting garments similar to the Kolhapuri chappals and tribal embroidery styles without attribution[17] and the French house Kafka marketed a scarf replicating the from traditional Rajasthani weaving and ornamentation.[18] Similarly, Indian women have historically worn the mangalsutra, and other culturally symbolic ornaments have been commodified by Western jewellery brands as "exotic baubles" without their marital and spiritual significance.[19] Even the Indian turban, which marks religious and cultural identity for Sikh men, has been appropriated on Western runways as a "bohemian" women's fashion accessory without considering its deep-rooted symbolic value.[20] This appropriation goes beyond mere fashion and also seeps into traditional medicine and wellness practices. Indian knowledge systems, such as haldi doodh (turmeric milk) and neem extracts, have been documented in the Ayurveda for centuries, have been patented or marketed under names like "golden milk" or "superfood supplements" without any credit to the communities or knowledge traditions where they originated, by corporations at an inflated price.[21] Such examples expose the inherent global inequities when it comes to Western cultural commodification. The decontextualization and commodification of iconic Indian practices and items for profit, while their origin

communities remain marginalised. While extensive Legal protections such as India's Geographical Indications (GI) Act, 1999 offer some safeguards to products such as Kolhapuri chappals, Darjeeling tea, or Pochampally ikat through GI tags.[22] these protections have failed to prevent misappropriation abroad due to their territorial applicability and have not been able to discourage global brands from marketing near-identical designs under different names. Apart from the legal barriers, the majority of the folk and indigenous communities also face structural hindrances such as a lack of legal literacy, a lack of awareness of their own rights, or resources.

This restricts them from contesting such appropriations in international IP forums. There are various instances of cultural borrowing from India which are now embedded in global usage, which has caused a collective global amnesia about their origin in the first place. Everyday items and practices such as chess, which evolved in India from the ancient game chaturanga, or ludo, derived from the Mughal-era pastime pachisi, are now considered universal games, snatched away from their Indian roots.[23] Similarly, the bandana, which is a globally popular fashion accessory, traces its etymology and design to the Hindi word bāndhnū (tie-dye technique from Rajasthan and Gujarat), with barely any recognition of its Indian provenance.[24] These examples highlight how Indian cultural contributions have been historically absorbed into global civilisation without any credits or attribution, showcasing a disturbing trend of appropriation and erasure which continues to date.

The repercussions are economic and socio-cultural, as such appropriation allows dominant groups to earn profits from marginalising originators by exclusion. Such traits are seen as exotic from a global fashion perspective while simultaneously stigmatising the groups that create such traits, highlighting the consistent double standards maintained by the West. For instance, turmeric milk was dismissed as an unsophisticated "home remedy" in its Indian context while being considered a luxury "detox drink" when repackaged in California cafes.[25] These actions not only distort but also trivialise the cultural significance of such heritages.

There is an obvious requirement for strengthening international legal frameworks to address such systemic imbalance. For example, there can be mandatory attributes towards cultural sources with formalised benefit-sharing clauses and clauses that reflect the principles laid down in the WIPO Intergovernmental Committee. Governments and consumers also need to fulfil their ethical duties by promoting awareness, supporting authentic community producers, and promoting responsible cultural exchange. Acknowledging and respecting the provenance of cultural traditions and manifestations is not just right for the original creators but also important to sustain the richness, diversity, and vitality of human civilisation itself.

Hence, there has been an emergence of sustained advocacy for a sui generis legal framework to mitigate these issues. Such a framework would recognise the specific attributes of folklore and TCEs and offer comprehensive protection against exploitation by acknowledging collective ownership features, indefinite protection periods, and enforcement approaches that are culturally sensitive and aligned to protect the intangible heritage of the diverse Indian communities.[26] Instead of recognising folklore and TCEs as individual intellectual property, by acknowledging them as communal cultural assets, sui generis systems can empower custodial communities, arrange equitable benefit-sharing, and safeguard cultural integrity while facing the modern commercial and technological pressures.

Existing Measures in India to Protect Folklore

Cultural rights of minority groups are recognised and protected by the Indian Constitution, which mandates the preservation of the country's cultural heritage. Articles 29 and 51(A) specifically articulate the protection of minority culture as a fundamental right and imposition of civilian duty to preserve and celebrate India's cultural legacy.[27] However, these provisions do not offer explicit safeguards for folklore and TCEs. Article 371 and Schedule VI recognise the distinct cultural identities of tribal communities and empower autonomous governance under customs. This allows self-administration by legislative authority and independent counselling bodies.[27] While these mechanisms offer cultural autonomy to an extent, they are not sufficient or comprehensive to fully protect folklore and TCEs. The Indian Copyright Act of 1957 is the principal statutory basis that protects individual rights against unauthorised copying, adaptation, public performance, and moral rights infringements. The Act functions on contrarian principles when it comes to the folkloric features, such as its communal and

evolutionary character. It requires identifiable authorship and the manifestation of this work in a tangible medium. Such conditions are not usually covered by oral and performative folklore traditions.[27] Hence, there is an obvious incompatibility, as folklore is not always presented tangibly but sometimes as collective cultural property passed on to the members of such a community across generations without specific authorship. The traditional notions of shared cultural stewardships that are a core trait of many indigenous and tribal societies conflict with the Act's insistence on absolute individual ownership, along with the fact that such protection is limited to works fixed in material forms. While folklore often features ephemeral performances, oral narratives, and symbolic acts, this makes its essence vulnerable. The Act also offers a protection period of 60 years post the death of the author, which is also a very small timeframe for something as intergenerational as cultural expressions, that is intended to perpetually endure. Derivative works from folklore and TCEs may acquire copyright protection, but it can be granted without the consent of the source communities. This allows potential exploitation.[28] Concerning rights, they can afford some protection for folkloric and TCE manifestations such as live performances or audio recordings, but the foundational heritage is still insufficiently covered.[28] Hence, the Indian copyright regime needs to evolve from offering partial protection to derivative or fixed expressions towards improving the current situation of the foundational folkloric manifestations and TCEs that are still susceptible to unauthorised usage and amend its inherent individualistic bias.

Other Intellectual Property and Non-IP Measures

The Indian IP laws complement the copyright framework. To illustrate, Section 3(p) of the Patents Act, 1970 does not include folklore and traditional knowledge while listing manifestations that can be patented and protected from wrongful commercialisation; the Trademarks Act, 1999 and Designs Act, 2000 do not allow the registration of marks or designs that are non-original or inherently connected to community cultural aspects.[28] Similarly, the Geographical Indications of Goods Act, 1999 protects manifestations of traditional cultural expressions in the form of commercial products carrying geographic or artisanal connections, such as artisanal crafts, textiles, or foodstuffs; however, such protection is static and is limited by the dynamic evolution of folklore.[28] Furthermore, India's Biological Diversity Act, 2002, provides mechanisms for benefit-sharing arrangements between the concerned parties, regarding traditional biological knowledge, which includes folklore with economic significance. The Plant Varieties Act, 2001 and Farmers' Rights Act, 2001, also require a party to disclose any community contributions in genetic resources.[28] Regardless of such provisions, various folkloric expressions are intangible cultural heritage and oral tradition, remaining out of the purview of legal protection. Apart from the IP statutes, there are non-IP instruments that also aid in preventing misappropriation. Contract law and stipulations against unfair trade practices and unfair competition can also protect folklore in situations where there is a stipulation of prior informed consent, documentation and benefit-sharing.[28]

Cultural provenance and ownership can be proven by documentation and can be used against illegal exploitation, despite the risk of undermining the dynamic and secret nature of some folklore. There are various enforcement issues exacerbated by the limited legal awareness and illiteracy of custodial communities. This further complicates the usage of formal contracts and traditional litigation methods. The scattered provisions of the existing Indian IP and non-IP legal infrastructure cannot provide sufficiently holistic and culturally attuned protection to ensure the preservation of the communal, evolving, and sacred nature of folklore and TCEs comprehensively. This gap in the framework highlights the urgency for a customised or tailored sui generis legal system in India to recognise traditional customs, collective ownership, and perpetual protection of folklore.

Need for Sui Generis Protection

The need for a sui generis framework in India originates from the basic insufficiencies of the conventional intellectual property regime in India regarding the distinctive nature and traits of folkloric manifestations and traditional cultural expressions. These assets are communal by nature, ever-changing and intergenerational while being deeply connected to its religious, societal and spiritual roots. These traits, bound to the lives of the ingenious communities, fundamentally resist assumptions of copyright, patents, and trademarks. Traditional IP law offers fixed authorship, novelty, originality, and limited

statutory duration,[27] contrasting the inherent nature of folklore and TCEs that are transmitted from generation to generation through oral traditions, rituals, ceremonies, dances, visual symbols, and performative arts. These actions usually do not have identifiable "authors", creating a structural conflict between living cultural heritage and IP law's design.[29] The Indian IP regime exemplifies this mismatch. The Copyright Act 1957 mandates fixation and identifiable authorship, clearly excluding oral or performative folklore from its safeguards. While the Act provides performers' rights (as amended in 2012), courts have mostly interpreted these concerning commercial entertainment industries, with little to no extension towards indigenous performers.

To illustrate, in the case of Indian Performing Rights Society v. Eastern India Motion Pictures Association (1977),[30] the Supreme Court acknowledged the collective rights of film producers over songs, highlighting how communities of authors may be aggregated inside a commercial-industrial logic. Likewise, the Delhi High Court ruled on moral rights under Section 57 in decisions such as Amarnath Sehgal v. Union of India (2005),[31] which highlights the need to safeguard integrity and attribution. While the aforementioned cases did not directly concern folklore, they could offer an analogy to extend moral rights frameworks to communal custodianship of TCEs. Similarly, Geographical Indication (GI) disputes such as Tea Board of India v. ITC Ltd. (2011)[32] underscore legal recognition of collective ownership connected to community heritage and reputation, even if it is implemented through product protection. These case laws showcase that Indian courts' doctrinal vocabulary regarding moral rights, performers' rights, and GI collective ownership within the existing frameworks remains incomplete. This fragment is limiting and inadequate in relation to folklore and TCEs. Limited periodical protections also highlight how the conventional IP framework is insufficient. In India, Copyright typically lasts for the life of the author plus sixty years, while patents last twenty years. However, Folklore is meant to survive indefinitely as a crucial element of continuing identity, not a finite commercial aid that allows a temporal monopoly. Hence, TCEs remain perpetually exposed to distortion and commodification by outsiders without a legal framework recognising perpetual custodianship. The Indian policy frameworks also reflect this obvious gap.

While the National IPR Policy 2016 addresses safeguarding traditional knowledge systems and promotes the importance of establishing strong institutional approaches, such as prior informed consent, benefit-sharing arrangements, and dispute resolution mechanisms. However, it does not articulate a sui generis legislative response to folklore, meaning they have to be protected on an ad hoc basis under patents, GIs, and biodiversity legislation. Similarly, parliamentary discussions on the Protection of Traditional Knowledge Bill (draft iterations between 2007 and 2010) demonstrate legislative awareness of community custodianship, but did not enact any enforceable law, because of ambiguous and complicated definitions and disagreements between different stakeholders.[33] The enduring gaps and lacunae just show a broad systemic reluctance to comprehensively address the problems around folkloric protections. However, comparative frameworks can help mitigate this issue.

The Swakopmund Protocol under ARIPO explicitly mandates prior informed consent and protects the moral rights of communities by prohibiting derogatory uses.[34] Peru's Law No. 27811 has implemented benefit-sharing by establishing a National Register of Collective Knowledge with INDECOPI oversight.[35] This allows voluntary disclosure with the preservation of secrecy. Likewise, the Pacific Regional Model Law (2002) showcases collective ownership by design, through established community councils that are enabled to allow or limit usage.[36] These instruments develop three foundational elements under-addressed or absent in Indian law: (i) perpetual collective custodianship, (ii) feasible consent mechanisms connected to community governance, and (iii) benefit-sharing arrangements governed by institutions. For India, a tailored sui generis model needs to combine these comparative lessons regarding its own constitutional values and duties under Articles 29 and 51(A), which talk about acknowledging minority cultural rights and duties of preservation.

An Indian Folklore and TCE Authority can potentially operate as a statutory oversight institution under the Ministry of Culture's governance. This body could incorporate regional custodial councils and community registries to embed customary law and community decision-making within a constitutionally valid statutory enforcement regime. Furthermore, prior informed consent mechanisms

would also be mandated along with established perpetual protections in line with the continuity of the culture and finally, equitable benefit sharing arrangements from commercialising. Also, extended moral rights protections could prohibit derogatory or distorted uses of sacred cultural heritage. The protection of such manifestations must be grounded in both community authority and legal enforceability. A sui generis framework can address the institutional inadequacies of the current Indian IP law structure while also realising the policy goals enshrined in the IPR agenda, harmonising judicial trends on collective rights, moral integrity, and GI-based custodianship into a comprehensive statutory cohesion. These reforms would also strengthen cultural sovereignty, enable native indigenous peoples and bolster the Indian pluralistic identity in a globalised IP world.

Comparative and Practical Insights

Various jurisdictions all across the world have Model sui generis systems, such as the Pacific Regional Model Law,[36] the African Regional Intellectual Property Organisation's Swakopmund Protocol,[34] and Peru's Law No. 27811.[35] These systems illustrate feasible approaches to protect communal cultural rights, equitable benefit-sharing arrangements, and enforceability mechanisms. These instruments offer lessons for customising a culturally sensitive statutory framework while also resonating strongly with the Indian challenges. The Pacific Regional Model Law incorporates collective custodianship by acknowledging communities as legal rights-holders instead of just individuals.[36] This protection is indefinite and conditioned to prevent harmful or offensive usage. The law offers established community registers and state-level institutions to act as a dual system to document cultural expressions without exposing their secrecy in accordance with the community's wishes. This is a blueprint for India to centralise folklore and TCE authority in line with regional customary councils with the power to entertain access requests, documentation and authorised usage.

The Swakopmund Protocol mandates that users obtain prior informed consent from the original communities for the commercialisation of traditional knowledge or expressions of folklore.[34] It establishes moral rights protections, allowing communities to object to derogatory or culturally inappropriate usage. The Protocol is governed regionally through ARIPO and depends on national agencies to ensure compliance and community approval. For India, it exemplifies a mandatory consent mechanism implemented through the official recognition of community representatives. Such custodial representatives must be formally acknowledged by both state authorities and community governance institutions to secure legitimacy in granting or withholding consent. Peru's Law No. 27811 offers the structure for benefit-sharing arrangements along with access and commercialisation of traditional knowledge.[35] Majorly, it establishes a National Register of Collective Knowledge overseen by the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI). Registration is voluntary and does not extinguish rights, while forming a legal presumption of ownership and allows enforcement. For India, creating a tiered system of registries is crucial, as the creation of a National Folklore Registry to administer protection measures, research use, and documentation under state oversight is highly relevant. Community registers maintained by local councils for oral and performative expressions would ensure that documentation stays under community-defined protocols rather than the state alone. This dual registry model would improve provenance claims in courts and provide safeguards against misappropriation and unwanted disclosure of sacred knowledge. After analysing these comparative experiences, India can produce a three-tiered institutional design.

The first institution would be the National Folklore and TCE Authority (NFTA), which could act as a statutory body coordinating sui generis safeguard measures, maintaining the national registry, overseeing disputes and conflict resolutions, and coordinating with WIPO/UNESCO mechanisms. This could be followed by a Regional Custodial Council, which would act as a group of semi-autonomous bodies that would include elected community representatives, legal advisors, and cultural experts with the ability to entertain access requests, negotiate benefit-sharing, and establish what knowledge can be disclosed or what knowledge needs to be kept confidential. Following the abovementioned groups, Community Elder/Representative Committees could also be established as grassroots custodial bodies authorised by law with established veto power over unauthorised usage of TCEs. This would make sure that the indigenous governance practices

remain fixed. This framework mitigates excessive centralisation by fixing customary law and governance practices within the jurisdiction of formal institutions, and offers law-backed as well as state-backed recognition, which ensures rights are enforced in courts and against commercial actors. Codified Prior informed consent, perpetual protection, and obligatory benefit-sharing arrangements, along with cultural exceptions (education, non-commercial research, inter-community sharing) would impactfully enhance protective measures to prevent cultural fossilisation.

From a methodological perspective, this study included a systematic review of domestic and international legal instruments to examine how sufficient the current folkloric and TCE protection is. At the national level, the study analysed Indian statutes such as the Copyright Act of 1957, the Geographical Indications of Goods Act of 1999, and the Biological Diversity Act of 2002, with constitutional provisions contained in Articles 29, 51(A), 371, and the Sixth Schedule. At the international level, the analysis covered key treaties and frameworks, such as the TRIPS Agreement, WIPO's Intergovernmental Committee draft texts, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003, the Pacific Regional Model Law,[36] the Swakopmund Protocol of ARIPO,[34] and Peru's Law No. 27811, which serve as comparative benchmarks.[35] The intentional selection of the Pacific, ARIPO, and Peruvian acknowledges and attempts to fill the critical dimensions absent in the Indian system.[35] By triangulating these sources, the research identifies fundamental design elements for an Indian sui generis system.

Conclusion

The research highlights the current need to confront the vulnerabilities faced by the Indian folklore and TCEs within the existing legal and constitutional institutions. The Indian Constitution mandates the preservation of cultural heritage through Articles 29 and 51(A) that recognise minority cultural rights and the nation's duty to protect diverse cultures; however, it does not offer focused, actionable safeguard mechanisms to protect folklore and TCEs and their inherent collective, cultural and living nature. Similarly, the current Indian IP laws are created to protect individual creations with fixed authorship and temporary rights. They do not adequately address complications regarding TCEs and folkloric manifestations such as communal cultural heritage. Hence, folklore and TCEs are susceptible to widespread misappropriation and exploitation. As there is insufficiency in explicit and wholesome safeguards regarding commercial interests, which are further exacerbated by globalisation and rapid digital transformation, the risk of using Indian folklore and traditional knowledge without consent, attribution, or equitable benefit-sharing with the custodial communities that have preserved these traditions for generations has amplified much more. These exploitations steal the community's legitimate economic rights and harm the culture by distorting and disrespecting elements that have deeper social and religious meaning in the Indian societal fabric. The establishment of a sui generis system against this backdrop showcases an indispensable corrective measure.

It would reform some fundamental flaws in the Indian legal architecture by recognising Indigenous custodianship of folklore and TCEs, allowing legitimate collective ownership aligned with customary laws and practices. This would also allow economic and moral rights to be guaranteed, which would empower the source communities to regulate the use and dissemination of their cultural heritage. The sui generis approach is unique as it allows indefinite protection, which aligns with the perpetuity of folklore, recognises the sacred cultural contexts of TCEs, and maintains culturally sensitive enforcement mechanisms respecting the dignity and integrity of custodial groups.

Further, this system would also advance equitable benefit-sharing arrangements, protecting communities from exploitative commercialisation, while fostering the sustainable use and transmission of cultural expressions respectfully. This protection would be balanced with cultural dynamism and pluralism. By providing exceptions for education, research, and cultural exchange initiatives, it promotes further innovation and cross-cultural dialogue. This implementation must be grounded in domestic realities, aligned with effective community engagement and best practices from international legal frameworks.

Comparative models are a demonstration of the importance of incorporating relevant mechanisms in preserving intangible cultural heritage. The unique, complex and diverse social structures in India need

nuanced adaptations to such models and ensure that the system is legitimate and functional in a multifaceted context. The implementation of such a framework would also require robust institutional capacity, such as specialised bodies to oversee cultural registries, resolve disputes, and govern enforcement with the community councils. Custodial communities would also require proper training, awareness campaigns, and legal literacy initiatives so they could easily navigate legal processes and protect their rights properly. In summation, the protection of Indian folklore and TCEs goes beyond legal formalities; it represents a very important commitment towards justice, cultural preservation and social equity. By embedding collective custodianship and equitable rights through a sui generis legal framework, India can protect its priceless cultural heritage from distortion, degradation and commodification. This enables Indigenous and tribal communities to enrich national identity and strengthen the intergenerational passing of persisting heritage in an unprecedented modernising world. The pathways tailored in this article provide a respectful, inclusive, and sustainable model for cultural preservation and India's pluralistic future.

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