

A Critical Analysis of Legal Frameworks Protecting Indigenous Knowledge and Environmental Heritage in India

¹Anjana Roy, ²Dr. Ajoy Jose

¹LL.M. Student, ²Assistant Professor

¹²Amity Law School

¹²Amity University Bengaluru

Abstract—Tribal art forms, traditional knowledge systems, sacred motifs and intergenerational cultural expressions are priceless living heritage that are integral to the ecological identity and connection with nature of indigenous communities all over India. However, traditional property systems, which are geared towards individual authorship and commercial innovations, are structurally not well suited to safeguard the communal, oral and time immemorial nature of such heritage. In this paper, the author critically analyses whether sui generis legal frameworks - systems of law which go beyond the traditional IP paradigm - can provide a viable and justicebased approach for the protection of indigenous art and cultural heritage in India.

This paper examines the issue of the loss of indigenous cultural heritage in the context of indigenous rights and environmental protection and suggests that the loss of indigenous cultural heritage is not only a legal or a question of intellectual property it is an environmental justice issue. Indigenous traditional ecological knowledge (TEK), culture, and tradition which are embodied in sustainable land use, conservation of biodiversity, and ecological worldviews are being appropriated and commodified, thus compromising the biocultural integrity of the communities whose knowledge, culture and tradition are encoded in their land use. The paper highlights the existing lacunae in the legal protection by tracing the interface between the Convention on Biological Diversity (CBD), the Nagoya Protocol, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the existing domestic laws in India, such as, the

Biological Diversity Act, 2002 and the Protection of Plant Varieties and Farmers' Rights Act, 2001.

This paper examines proposals for community-based geographical indications, folklore registers and defensive publication mechanisms as sui generis tools, and evaluates the claims of these tools in the context of the analysis of key cases of cultural appropriation that include the use and commercialization of Warli, Madhubani and Gond art forms. It also discusses the constitutional aspect of such protection in Article 29, 51A(f) and the Fifth and Sixth Schedules and studies the role of judicial activism in closing legislative lacunas. The paper finds that a reworking of the legal architecture is required if protection is to be effective, with a shift towards placing community sovereignty, free prior informed consent and benefit-sharing at its heart, not just as IP policy, but as a duty arising from environmental justice and constitutional morality.

Index Terms—Generis, Intellectual Property, Indigenous Cultural Heritage, Traditional Knowledge, Biocultural Rights, Cultural Appropriation, Environmental Justice, CBD & Nagoya Protocol, UNDRIP, Tribal Art Protection, Constitutional Morality

I. Introduction

India is home to more than 700 distinct groups of scheduled tribes,¹ who have embedded over the ages a collection of art forms, ecological practices and spiritual cosmologies into collective memory that have co-evolved with the natural world. The paintings of the Warli of Maharashtra, the Madhubani of Bihar and the Gond of Madhya Pradesh are not just aesthetic expressions. They capture traditional land, season, biodiversity and communal knowledge. But in an era of fast commercialisation and globalisation, fast digital reproduction, these living traditions are under threat: systematic appropriation of indigenous cultural heritage without consent, attribution and benefit sharing.

The traditional intellectual property (IP) regime, which rests on individual authorship, fixed expression, and commercial innovation, is structurally unable to cover heritage that is communal, oral, inter-generational and spiritually bound.² Novelty is required for patents; individual authorship is required for copyrights; commercial use is required for trademarks. All of these do not fully reflect the essence of traditional knowledge (TK) and traditional cultural expressions (TCEs).³

In this paper, I examine the possibility of a *sui generis* legal framework – one that is designed to address the special characteristics of indigenous heritage. It places the inquiry in the context of environmental justice because it views the destruction of indigenous cultural heritage as ecological harm, as it disconnects communities from the biocultural systems by which they interact with, manage and sustain their natural environments. The paper covers the international and domestic legal frameworks, a case study of certain types of cultural appropriation, a critical evaluation of the *sui generis* proposals, a constitutional analysis, and a final call for a reimagined legal architecture based on community sovereignty and environmental justice.⁴⁵⁶

II. Literature Review

There is a vast literature on the protection of TK and ICH, covering international law, IP theory, anthropology and environmental studies. Home to Michael Brown's *Who Owns Native Culture?* This critique

¹ Ministry of Tribal Affairs, Government of India, Annual Report 2022–23, at 14 (2023) (noting India has 705 scheduled tribes across 30 states and union territories).

² Madhavi Sunder & Anupam Chander, *The Romance of the Public Domain*, 92 Cal. L. Rev. 1331, 1334 (2004).

³ Srividhya Ragavan, *Protection of Traditional Knowledge*, 2 Minn. Intell. Prop. Rev. 1, 4 (2001).

⁴ Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

⁵ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Oct. 29, 2010, U.N. Doc. UNEP/CBD/COP/DEC/X/1 [hereinafter Nagoya Protocol].

⁶ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter UNDRIP].

of IP frameworks on indigenous heritage, by (2003), asserts that the Western approach to ownership is contrary to indigenous epistemologies of collective cultural stewardship.⁷

At the Indian level, researchers like Madhavi Sunder and Anupam Chander have explored the apparent contradiction between IP rights that allow for biopiracy and the protection of knowledge systems that IP is often used to create innovations from.⁸ Srividhya Ragavan's work on the Traditional Knowledge Digital Library (TKDL) shows the potential and challenges of the defensive protection strategies.⁹

The activity of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC) at the World Intellectual Property Organization (WIPO) has

played a key role at the international level in the creation of a normative framework for TK protection.¹⁰ The Nagoya Protocol to the Convention on Biological Diversity (CBD) (2010) is an important development in the field of access and benefit-sharing (ABS) for genetic resources and associated TK, but it has been criticized for its narrow approach on cultural expressions.¹¹

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) provides a rights based approach, including the rights of indigenous peoples to maintain, control, protect and develop their cultural heritage and traditional knowledge. But not all is lost as Megan Davis points out: UNDRIP is a non-binding document and therefore has limited force in domestic legal systems, such as India.¹²

There are some specific literature that focus on Indian tribal art and its legal vulnerability, such as a study by Parul Bhatnagar on Indian art of Warli and its exploitation by a commercial¹³ enterprise and a study performed by the National Institute of Design (NID) on Indian art of Madhubani and Gond motifs and its exploitation by

⁷ Michael F. Brown, *Who Owns Native Culture?* 3–5 (Harvard University Press 2003).

⁸ Sunder & Chander, *supra* note 2, at 1336–38.

⁹ Ragavan, *supra* note 3, at 6–9 (discussing TKDL as a defensive publication mechanism against biopiracy).

¹⁰ WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, *Draft Articles on the Protection of Traditional Cultural Expressions*, WIPO Doc. WIPO/GRTKF/IC/45/4, at 2 (2023).

¹¹ Nagoya Protocol, *supra* note 5, art. 7 (requiring parties to take measures to ensure prior informed consent of indigenous communities for access to traditional knowledge).

¹² Megan Davis, *Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples*, 9 *Melbourne J. Int'l L.* 439, 461 (2008).

¹³ Parul Bhatnagar, *Protecting Traditional Art in India: Legal Frameworks and Tribal Communities*, 12 *J. Intell. Prop. L. & Prac.* 987, 990–92 (2017).

commercial enterprises.¹⁴ All these studies point to the lack of a coherent, community-driven legal remedy in the existing Indian law.

III. Objectives

This paper is based on the following objectives:

- To explore the critical issues of limitations of existing IP frameworks for the protection of ICR in India.
- To trace the current international and national legal context surrounding TK and TCE including key gaps;
- To Identify specific examples of cultural appropriation of Indian tribal art forms and determine the legal consequences of such appropriation.
- To assess the potential of sui generis legal tools such as community GIs, folklore registers and defensive publications as means of protection.
- To discuss the constitutional aspects of the protection of indigenous cultural heritage in the Indian Constitution.
- To advocate reimagining the legal system to embed this protection in the context of environmental justice and community autonomy.

IV. Methodology

The research method used in this paper is a method of doctrinal research and analytical research. The doctrinal element requires a systematic analysis of primary legal sources (constitutional provisions, statutes, international conventions and judicial decisions) relevant to the protection of indigenous knowledge and cultural heritage. These include, inter alia, the Biological Diversity Act, 2002, the Protection of Plant Varieties and Farmers' Rights Act, 2001, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Copyright Act, 1957, as well as international documents like the CBD, the Nagoya Protocol and UNDRIP.

This analytical dimension entails an in-depth scrutiny of these models with critical attention to the unique socio-legal context of India's indigenous communities, utilizing secondary sources such as scholarly research articles, government reports, NGO studies, and anthropological fieldwork. The paper also applies a comparative approach, comparing and contrasting the sui generis models of other jurisdictions, such as Panama's Collective Rights Law (Law 20 of 2000) and the Pacific Regional Framework on the Protection of

¹⁴ National Institute of Design, Documentation of Traditional Art Forms: Madhubani and Gond 22–25 (NID Publications 2018).

Traditional Knowledge and Expressions of Culture, to determine best practices that can be used in the Indian context.

The paper does not draw on empirical field research, but rather locates its normative assertions in reported cases of cultural appropriation and the real lives of the communities involved, as represented in the written literature and institutional reports.

V. Analysis

A. Structural Inadequacy of Conventional IP Frameworks

The current framework of the IP system is based on a series of assumptions that are not compatible with the nature of indigenous cultural heritage. The doctrine of originality and individual authorship, as required by copyright law, does not apply to oral traditions, traditional art forms that are co-created by multiple individuals, or traditional expressions of a religious nature passed through generations.¹⁵ However, patent law is based on novelty and inventive step, which excludes knowledge systems that have been around for centuries. The extent to which it is relevant to distinctive trademarks is not discussed in this context, but trademark protection is focused on commercial enterprise, not community stewardship.

Indian law does not have a separate statute to protect TCEs. The Copyright Act 1957 does not cover collective or anonymous works, except within the framework of Section 31A, which covers government use of ‘works of folklore’.¹⁶ The Geographical Indications Act, 1999, which may be useful for associating cultural product with communities of origin, has not been applied consistently, and has not dealt with the issue of misappropriation of the underlying artistic grammar of tribal art.¹⁷

It creates a legal void: indigenous peoples can see their sacred designs on luxury handbags and fast-fashion clothes; their medicinal knowledge patented by outside companies; their art traditions twisted and turned into a business with little or no legal options.

B. International Legal Framework: Promises and Gaps

The Convention on Biological Diversity (1992) was a turning point in international environmental law, which embodies the principles of state sovereignty over genetic resources, prior informed consent, and

¹⁵ The Copyright Act § 13, No. 14 of 1957, India Code (1957) (requiring ‘original’ work by an identifiable ‘author’ — a requirement communal traditions cannot satisfy).

¹⁶ The Copyright Act § 31A, No. 14 of 1957, India Code (1957) (authorising compulsory licence for works of folklore to the government, but conferring no rights on originating communities).

¹⁷ Geographical Indications of Goods (Registration and Protection) Act § 2(1)(e), No. 48 of 1999, India Code (1999) (defining ‘geographical indication’ by reference to quality or reputation attributable to geographic origin).

fair and equitable benefit-sharing.¹⁸ The Nagoya Protocol (2010) implements these principles for the use of genetic resources and associated traditional knowledge, and mandates access and benefit-sharing (ABS) agreements with indigenous and local communities.

India has ratified the Nagoya Protocol in 2012 and made an amendment to the Biological Diversity Act.¹⁹ National Biodiversity Authority (NBA) has the power to regulate access to biological resources and associated TK. The scope of the Protocol, however, is limited it does not apply to traditional cultural expressions, artistic forms or sacred symbols,²⁰ but only to biological resources and directly associated TK. The Warli painting or the Gond motif, which is taken over by a fashion house, is not within its scope.

Although UNDRIP is not prescriptive in nature, it does identify the rights of indigenous peoples to maintain, control, protect, and develop their TCLE, including their rights to their cultural heritage, their traditional knowledge, and their traditional means of expression (Article 31).²¹ India has adopted the UNDRIP, but not made it a part of national law.²² Additionally, the nonbinding nature of the Declaration reduces its domestic force.

Since 2000, the WIPO Intergovernmental Committee (IGC) has been working on instruments on TK, TCEs and genetic resources, but without significant progress, nor have any binding instruments been adopted so far.²³ The disconnect between the international aspirations and domestic legal reality is too large.

C. Case Studies: Cultural Appropriation of Indian Tribal Art

The above issue of a legal vacuum is illustrated by the commercial exploitation of the Indian tribal art forms. There are three forms that require special consideration.

Warli: Warli paintings, made by the Warli tribes living in Maharashtra's Dahanu area, tell the story of communal life, nature and ritual through the use of geometric shapes. In the past few decades, Warli motifs

¹⁸ CBD, supra note 4, arts. 1, 15 (establishing sovereign rights over genetic resources and the principle of prior informed consent and benefit-sharing).

¹⁹ Nagoya Protocol, supra note 5, art. 3 (limiting the Protocol's scope to genetic resources within the CBD and their associated traditional knowledge).

²⁰ Biological Diversity (Amendment) Act, No. 19 of 2023, India Code (2023) (amending Biological Diversity Act, No. 18 of 2002, to align with Nagoya Protocol obligations).

²¹ UNDRIP, supra note 6, art. 31(1) (affirming indigenous peoples' rights to 'maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions').

²² Davis, supra note 12, at 452–55 (noting India's support for UNDRIP but absence of domestic implementing legislation).

²³ WIPO IGC, supra note 10, at 3 (noting over two decades of negotiations without a binding instrument on TCEs).

have been reproduced in textiles, home furnishings, corporate branding materials and digital products sometimes without attribution to the community, without their

consent, and without any benefit sharing.²⁴ Although the art has been given a Geographical Indication (GI) tag, it does not mean that GI protection is applicable to the underlying artistic tradition, and cannot forbid non-tribal artisans or foreign manufacturers from employing the stylistic vocabulary of Warli art.²⁵

Madhubani Art: Madhubani painting, also known as Mithila painting, is a traditional practice that women have been doing in the Mithila region of Bihar using natural dyes and complex patterns, and is a representation of mythological and ecological themes. Artistic traditions have not been protected as a community, although some artists have been granted copyright protection for specific works of art. The form of Madhubani has been reproduced by commercial enterprises with non-traditional materials and contexts, detracting from its cultural integrity.²⁶

Gond Art: The Gond artists of central India are known for their elaborate paintings which convey the bond between humans and nature, animals and spirits. With the rise of Gond art in urban markets, it is now being appropriated by non-Gond artists and businesses, which is threatening the livelihoods and cultural identity of the Gond people.²⁷

The themes and form of these cases are similar: the appropriation of a communal, intergenerational, ecologically based culture practice by outsiders for commercial benefit, without consent, attribution, or benefit sharing and the apparent failure of current laws to stop this harm.

D. Sui Generis Mechanisms: Evaluation

In this context, academics and decision-makers have suggested a variety of mechanisms for protecting indigenous cultural heritage that are not covered by the WIPO treaties. There are a number of sui generis mechanisms that have been proposed by the scholars and decision-

²⁴ Bhatnagar, *supra* note 13, at 993–95 (documenting Warli motif reproduction on luxury goods without community attribution or consent).

²⁵ Geographical Indications Registry, GI Tag Certificate No. 418 (Warli Painting, Maharashtra) (2011) (conferring GI status but not addressing misuse of underlying artistic vocabulary).

²⁶ National Institute of Design, *supra* note 14, at 30–33 (documenting mass-produced Madhubani-style products by non-Mithila manufacturers).

²⁷ Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* 65–70 (South End Press 1997) (contextualising Gond art appropriation within the broader pattern of indigenous resource extraction).

makers for the protection of indigenous cultural heritage against the backdrop of the aforementioned situation.

Community Based Geographical Indications: GIs are geographical indications which are in principle confined to the producers in a given community.²⁸ The Tirupati Laddu, Darjeeling Tea and Pochampally Ikat GI tags are examples of the potential. In the case of tribal art, community GIs may be able to limit use of terms such as 'Warli art' or 'Madhubani painting' to people from the community from which it comes, thus giving a certain degree of economic protection. Stylistic imitation or appropriation, however, of the underlying artistic grammar (the visual vocabulary of geometric forms or narrative motifs) is not prevented by GIs.

The Defence: Traditional cultural expressions can be protected against patenting and/or trademarking by third parties through the use of folklore registers and documentation. The precedent is offered by India's Traditional Knowledge Digital Library (TKDL), which deals with traditional medicine knowledge.²⁹ There is a parallel register for TCEs to document tribal art forms, their community of origin, their cultural significance, and the customary protocols that exist for that art form that could be used defensively and as evidence. But with documentation come the dangers, however it can increase the accessibility of cultural content and can never replace positive protective rights.

Free Prior Informed Consent (FPIC) Mechanisms: A strong FPIC measure, implemented through community-based procedures and legally binding consent agreements would allow indigenous people to exercise control over the use and access of their cultural expressions. FPIC is an integral part of UNDRIP and the Nagoya Protocol,³⁰ however, the implementation of FPIC in India is minimalistic, predominantly through environmental clearance procedures under forest and land laws.

Benefit Sharing Frameworks: Benefit sharing arrangements for TCEs might involve commercial users of tribal art forms paying a share of revenue to a community development fund, managed by the communities from which the art form is derived, and inspired by the

ABS model of the Nagoya Protocol. A few State governments have already launched schemes of this sort for specific art forms, but there is no overarching national structure.

Positive Protection Through Collective Rights: The widest possible solution would be to establish, via a sui generis enabling statute, collective rights that would have the characteristics of intellectual property rights, but would be held collectively by the original communities and administered via a representative body. There

²⁸ Geographical Indications of Goods (Registration and Protection) Act §§ 11–21, No. 48 of 1999, India Code (1999) (setting out the registration and protection mechanism for GIs).

²⁹ Traditional Knowledge Digital Library, About TKDL, <https://www.tkdil.res.in> (last visited May 20, 2026) (describing the TKDL database covering over 0.3 million medicinal formulations in multiple languages).

³⁰ Nagoya Protocol, supra note 5, arts. 5, 9 (mandating benefit-sharing with communities and establishing community protocols).

are comparative models in Panama, in the Collective Rights Law (2000)³¹ and the Pacific Regional Framework.³² A law that would allow communities to establish and/or withhold permission to reproduce, adapt and commercially use their TCEs, without time limits, mirroring the eternal nature of a community's heritage.

E. Constitutional Dimensions

There are several provisions in the Indian Constitution that offer some leverage to safeguard indigenous cultural heritage but have not been elaborated upon in this context. Under Article 29, a section of the citizens can have a distinct language and script or culture and enjoy the right to maintain the same.³³ Although this right has been invoked most often in regard to language rights and education, it is sufficiently wide-ranging to include the right to protect and preserve their cultural and artistic heritage from appropriation and distortion by tribal communities.

Every citizen has a fundamental right to "value and preserve the rich heritage of the Indian composite culture" as per Article 51A(f).³⁴ When read purposefully, this provision can serve as a basis for a legislative responsibility to put in place protection frames for indigenous cultural heritage.

The Fifth and Sixth Schedules of the Constitution give special administrative status to the tribal areas, including provisions for governance of the Scheduled Areas and Tribal Advisory

Councils.³⁵ There are institutional opportunities that might be available to implement community consent and benefit-sharing mechanisms for TCEs through these mechanisms.

Lacking legislation on occasion, judicial activism has filled in the blanks in this area. Courts have interpreted the right to life under Article 21 also to include cultural rights and dignity, and have affirmed the rights of indigenous communities against their displacement and exploitation.³⁶ There is a potential for judicial

³¹ Ley No. 20 sobre el Régimen Especial de Propiedad Intelectual sobre los Derechos Colectivos de los Pueblos Indígenas [Law No. 20 on the Special Intellectual Property Regime for Collective Rights of Indigenous Peoples] (Pan. 2000) (creating sui generis collective rights in indigenous cultural expressions without time limitation).

³² Pacific Community, Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture arts. 3–5 (Secretariat of the Pacific Community 2002) (establishing community-based custodianship rights).

³³ India Const. art. 29(1) ('Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.').

³⁴ India Const. art. 51A(f) (imposing on every citizen a fundamental duty 'to value and preserve the rich heritage of our composite culture').

³⁵ India Const. sched. V, para. 5 (empowering Governors to modify or annul laws for Scheduled Areas); India Const. sched. VI, para. 3 (conferring legislative powers on District Councils including over management of forests and social customs).

³⁶ Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191, ¶ 69 (holding that tribal communities have constitutionally recognised interests in their land and resources that the state must respect).

recognition of community rights in TCEs, even in the absence of legislation or formal agreements, through a purposive interpretation of these provisions coupled with India's international obligations under CBD and UNDRIP.

VI. Findings

There are the following main findings from the analysis:

Structural shortcomings of conventional IP frameworks to safeguard the communal, oral, intergenerational aspect of indigenous cultural heritage. The requirement of copyright law for individual authorship, the novelty requirement of patent, and the commercial requirement of trademark all work to exclude meaningful protection for indigenous TCEs.

The current international framework (CBD, Nagoya protocol and UNDRIP) offers some normative foundations but gaps exist, especially with respect to TCEs as opposed to biological resources and related TK. These instruments are not fully implemented in India.

The appropriation of Warli, Madhubani and Gond art form is a clear example of a systemic violation of the cultural and economic rights of indigenous communities for which current laws are inadequate. Protection of the GI, as a strategy, is good to some degree, but it is not a solution to the issue of stylistic appropriation and cultural distortion.

There are mechanisms which are more promising but less effective on their own, such as community GIs, folklore registers, FPIC protocols, benefit-sharing frameworks and collective rights legislation. The strongest possible measures of protection would be a robust sui generis measure granting positive rights to collectives (TCEs) alongside with a robust FPIC requirement and robust benefit sharing mechanisms that are under community control.

The Indian Constitution offers yet unutilised text and structure to safeguard the indigenous cultural heritage, especially through the Fifth and Sixth Schedule and the Article 29 and 51A(f). These provisions could be developed significantly by judicial activism before they are enacted by the legislatures.

Erosion of indigenous culture is an environmental justice issue. Indigenous cultural expressions carry the knowledge and identity of bio-culturalism, and their appropriation and distortion is a threat to the ability of communities to sustain their relationship with their natural environments.

VII. Conclusion

Protection of IC lands in India is on a critical juncture. Traditional IP regimes have proven to be structurally ill-equipped to do so; international instruments offer aspirational principles and standards but lack

domestic implementation; and proposals based on sui generis measures offer potential but remain for legislative enactment. In the interim, these tribal arts, along with others such as the Warli, Madhubani, Gond and more, are being appropriated in a systematic manner – benefiting the commercial actors while leaving the communities who are the possessors of the creative and ecological intelligence of their traditional arts poorer.

This paper has claimed that the stakes of this failure are not just those of IP policy. Erosion of indigenous cultural heritage is an environmental justice problem because it not only disconnects communities from their biocultural knowledge systems, which have long stewarded biodiversity, landscapes and ecological relationships, but it also does so in the name of a dominant Western perspective that is disconnected from these systems. A legal answer to this challenge should focus on three principles, none of which is a concession to IP maximalism: community sovereignty, free, prior and informed consent, and equitable benefit sharing.

A sui generis legislative framework is needed that establishes positive collective rights in the TCEs, develops community-level protocols for the application of the FPIC, establishes mechanisms for community benefit sharing with transparent community-controlled governance, and is based on the constitutional obligations of cultural conservation and environmental stewardship already embedded in the Indian Constitution. International commitments and constitutional principles can be a catalyst in this process through judicial activism, although legal action is of course essential.

The native people of India are not only the guardians of cultural heritage, but they are also the caretakers of the ecological and moral legacy of humankind. The law has to meet the challenge of safeguarding them.

References

International Instruments

- [1] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.
- [2] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Oct. 29, 2010, U.N. Doc. UNEP/CBD/COP/DEC/X/1.
- [3] United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
- [4] WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, Draft Articles on the Protection of Traditional Cultural Expressions, WIPO Doc. WIPO/GRTKF/IC/45/4 (2023).

Indian Statutes

- [5] Biological Diversity Act, No. 18 of 2002, India Code (2002), amended by No. 19 of 2023.
- [6] The Copyright Act, No. 14 of 1957, India Code (1957).

[7] Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India Code (1999).

[8] Protection of Plant Varieties and Farmers' Rights Act, No. 53 of 2001, India Code (2001).

Books and Articles

[9] Brown, Michael F. *Who Owns Native Culture?* Harvard University Press, 2003.

[10] Davis, Megan. Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples. 9 *Melbourne J. Int'l L.* 439 (2008).

[11] Bhatnagar, Parul. Protecting Traditional Art in India: Legal Frameworks and Tribal Communities. 12 *J. Intell. Prop. L. & Prac.* 987 (2017).

[12] Ragavan, Srividhya. Protection of Traditional Knowledge. 2 *Minn. Intell. Prop. Rev.* 1 (2001).

[13] Shiva, Vandana. *Biopiracy: The Plunder of Nature and Knowledge.* South End Press, 1997.

[14] Sunder, Madhavi & Anupam Chander. The Romance of the Public Domain. 92 *Cal. L. Rev.* 1331 (2004).

Cases

[15] *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.

Reports and Other Sources

[16] Ministry of Tribal Affairs, Government of India. *Annual Report 2022–23.* Government of India, 2023.

[17] National Biodiversity Authority. *Annual Report 2022-23.* NBA, Chennai, 2023.

[18] National Institute of Design. *Documentation of Traditional Art Forms: Madhubani and Gond.* NID Publications, 2018.

[19] Traditional Knowledge Digital Library (TKDL). About TKDL. <https://www.tkdil.res.in> (last visited May 20, 2026).

Constitutional Provisions

[20] India Const. arts. 21, 29, 51A(f), sched. V, sched. VI.