
**THE CONSTITUTIONAL PROTECTION OF FOLK
TRADITIONS IN CONTEMPORARY INDIA: BETWEEN
CULTURAL RIGHTS AND COMMERCIALISATION**

Author: Srishti Rai

Affiliation: Mahatma Gandhi Kashi Vidyapeeth, Varanasi

Email: srishtirai0059@gmail.com

Submitted to: Journal of International Research & Multidisciplinary Innovation (JIRMI)

Date: 30 July 2026

Abstract

Folk traditions — oral epics, ritual performances, textile weaves, wall paintings, and craft techniques transmitted across generations within identifiable communities — occupy an uneasy space in Indian constitutional and legal thought. The Constitution of India recognises cultural plurality through Articles 29 and 30, the fundamental duty under Article 51A(f), and an expansively read Article 21, yet it vests no enforceable proprietary right in a community over its own folklore. Meanwhile, the market has discovered folk aesthetics: Warli motifs appear on factory-made garments, Madhubani strokes are licensed for home décor, and Pattachitra patterns are digitised into wallpaper, frequently without the originating community's consent or any share in the resulting revenue. This paper examines the gap between constitutional recognition of cultural rights and the absence of a corresponding proprietary or benefit-sharing mechanism. It traces how India's intellectual property statutes — the Geographical Indications of Goods (Registration and Protection) Act 1999, the Copyright Act 1957, and the Biological Diversity Act

2002 — have been pressed into service to fill that gap and identifies where each instrument falls short of protecting the interests of the practising community itself. Using doctrinal analysis of constitutional text, statutory provisions, and comparative sui generis models from Panama and Peru, the paper argues that India's folklore-protection regime is a patchwork sustained by proxy legislation rather than a coherent right and proposes a community-trust-based sui generis framework anchored in the cultural dimension of Article 21.

Keywords

Folk traditions; cultural rights; Geographical Indications; traditional cultural expressions; commercialisation; Article 29; sui generis protection; intangible cultural heritage

i. Introduction

India's cultural landscape is stitched together not by a single dominant tradition but by thousands of localized practices—the Warli wall paintings of the Konkan hill communities, the Madhubani and Mithila paintings of Bihar, the Pattachitra scroll narratives of Odisha and Bengal, the oral Baul songs of rural Bengal, the Gond-Pardhan paintings of Madhya Pradesh, and countless textile weaves, ritual performances, and craft techniques that survive precisely because a community keeps practising them. These are not museum pieces frozen in a colonial-era ethnographic photograph; they are living, evolving expressions that communities continue to create, adapt, and transmit orally or by demonstration rather than through any written or registered form.

The Constitution of India, drafted at a moment preoccupied with nation-building and minority protection, addresses this plurality obliquely rather than directly. Article 29 guarantees any section of citizens with a distinct language, script or culture the right to conserve it¹, and Article 51A(f) imposes on every citizen the duty to value and preserve the rich heritage of the country's composite culture². Article 21, read expansively since the mid-1970s, has been interpreted to embrace far more than physical survival³, a reading that plausibly extends to a community's interest in its own cultural continuity. Yet none of these provisions confers on a community an enforceable proprietary interest in its folk expressions. No community 'owns' Madhubani painting the way a novelist owns a manuscript, and nothing in the Constitution itself stops a garment company from printing Warli motifs on a factory-made kurta so long as no registered trademark or Geographical Indication is infringed.

This paper interrogates that gap — the distance between India's constitutional commitment to cultural pluralism and the near-absence of a legal mechanism through which folk communities can

¹Constitution of India 1950, art. 29(1).

²Constitution of India 1950, art. 51A(f).

³Constitution of India 1950, art. 21; see *Maneka Gandhi v Union of India* (1978) 1 SCC 248, where the Supreme Court read Article 21 as guaranteeing a life of dignity rather than mere animal existence, a reading later academics have extended to cultural and community life.

control, or share meaningfully in the economic value of, the commercial use of their own traditions. It proceeds in eleven further parts. Part II situates the study historically, from colonial-era documentation of folk art to the post-1999 intellectual property overlay. Part III states the specific problem this paper addresses, followed by the research questions, objectives, and significance of the study in Parts IV to VI. Part VII reviews the existing literature on traditional knowledge and traditional cultural expressions, and Part VIII sets out the research methodology. Part IX undertakes the central critical analysis of the constitutional and statutory framework, examining Geographical Indications, copyright, and the biodiversity regime in turn, before Part X offers suggestions for reform and Part XI concludes.

ii. Background of the study

India's engagement with folk traditions as an object of policy long precedes its engagement with folk traditions as an object of law. Colonial administrators and ethnographers catalogued tribal and rural art largely as anthropological curiosity, with no accompanying notion that the originating communities held any right in what was documented. After independence, the state built an institutional apparatus for culture rather than a legal one: the Sangeet Natak Akademi was established in 1952⁴, followed by the Lalit Kala Akademi and the Sahitya Akademi in 1954, each tasked with promotion, award, and archival documentation rather than rights administration. Folk and tribal art entered the market gradually through state emporia, export promotion councils, and later through designer collaborations, well before any legal regime existed to regulate the terms on which that entry occurred.

The legal vacuum began to close only when India's international trade obligations demanded it. India's accession to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994 required a domestic Geographical Indications regime⁵, resulting in the

⁴Sangeet Natak Akademi, established 1952, functions under the Ministry of Culture, Government of India, and maintains an indicative national inventory of intangible cultural heritage.

⁵Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, arts. 22-24.

Geographical Indications of Goods (Registration and Protection) Act 1999. Around the same period, the controversies over the patenting of turmeric's wound-healing properties in the United States⁶ and a neem-based fungicide in Europe⁷ exposed the vulnerability of undocumented traditional knowledge to foreign appropriation, prompting the Biological Diversity Act 2002, the creation of the Traditional Knowledge Digital Library⁸, and the insertion of a traditional-knowledge exclusion into the Patents Act in 2005⁹. India ratified the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage in 2005¹⁰, but its domestic follow-through has been largely confined to inventory-building rather than the creation of enforceable rights. It is against this backdrop of reactive, trade-driven, and often biology-focused lawmaking that the artistic and performative folk traditions this paper is concerned with have had to find whatever protection they can.

iii. Statement of the problem

India's existing legal architecture treats folk traditions in one of two ways: either as heritage to be documented and museumised by the state, with no operative legal consequence, or as a tradeable good once a Geographical Indication has been secured, with legal consequence but limited community control. Neither category captures the practising community's living, evolving relationship with its own tradition. Article 29's guarantee is a shield against state suppression of a culture rather than a right to control commercial exploitation by private third parties. Even where a Geographical Indication is registered, the statute vests the resulting right in a registered

⁶United States Patent No. 5,401,504 on the wound-healing properties of turmeric was revoked in 1997 after the Council of Scientific and Industrial Research demonstrated prior traditional use.

⁷European Patent No. EP 0436257 on a neem-based fungicide was revoked by the European Patent Office in 2005 following opposition on grounds of prior traditional use.

⁸The Traditional Knowledge Digital Library was jointly established by the Council of Scientific and Industrial Research and the Department of AYUSH in 2001 to document codified traditional medicinal knowledge for defensive use in patent examination.

⁹Patents Act 1970, s. 3(p), inserted by the Patents (Amendment) Act 2005.

¹⁰UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003; India deposited its instrument of ratification on 9 September 2005.

'Association of Persons' or body of producers rather than directly in every practising artisan, so individual creators frequently see little of the value that GI recognition generates. The problem, in short, is one of a constitutional promise of cultural protection that has never been translated into an operative, community-held economic right — leaving folk traditions simultaneously constitutionally cherished and legally undefended against commercial appropriation.

iv. Research questions

1. What is the constitutional basis, if any, for treating folk traditions as a protectable cultural right rather than merely a matter of state cultural policy?
2. To what extent do India's existing intellectual property statutes — the Geographical Indications Act, the Copyright Act, the Biological Diversity Act, and the Patents Act — protect the interests of the originating community, as opposed to merely regulating third-party market use of the folk expression?
3. Does the commercialisation of folk traditions through Geographical Indication tagging and craft-marketing schemes economically empower originating communities, or does it primarily benefit intermediaries while diluting the cultural meaning of the practice?
4. What would a coherent, rights-based sui generis framework for the protection of folk traditions in India look like, drawing on comparative experience from jurisdictions such as Panama and Peru and the ongoing WIPO Intergovernmental Committee process?

v. Research objectives

1. To examine the constitutional provisions bearing on cultural rights in India and assess whether they can ground a claim to protection of folk traditions.

2. To critically evaluate the adequacy of the Geographical Indications Act, the Copyright Act, and the Biological Diversity Act as instruments for protecting the community-held character of folk traditions.
3. To assess, through illustrative case examples, whether commercialisation under the present regime benefits originating artisan communities or predominantly benefits intermediaries.
4. To propose reform measures, including a sui generis legislative model, informed by comparative and international practice.

vi. Significance of the study

The question is not merely academic. India's handicraft and handloom sector employs several million artisans, a large proportion of them in rural and tribal communities that hold no other capital asset besides the skill transmitted to them. Government schemes promoting district-level craft branding have accelerated the pace at which folk motifs enter mainstream commerce, often faster than the legal or institutional capacity to ensure that the originating community shares in the resulting value. At the same time, the erosion of ritual and spiritual meaning that can accompany mass commercial reproduction raises cultural, and not merely economic, stakes. This paper contributes to a comparatively underdeveloped strand of Indian legal scholarship — most existing traditional-knowledge literature in India concentrates on biological and medicinal knowledge following the turmeric and neem controversies, leaving artistic and performative folk traditions comparatively under-examined. By bringing constitutional cultural-rights doctrine into direct conversation with the intellectual property statutes, the paper aims to clarify where the present regime's protection genuinely lies, and where it merely appears to.

VII. LITERATURE REVIEW

The international literature on traditional knowledge and traditional cultural expressions provides the conceptual scaffolding for this paper. Carlos Correa's early study for the Quaker United Nations

Office¹¹ distinguished traditional knowledge in the technical or biological sense from traditional cultural expressions in the artistic or performative sense, arguing that conventional intellectual property categories — built around individual authorship, novelty, and fixed terms — are structurally unsuited to knowledge that is collectively held, continuously evolving, and often orally transmitted. This distinction is foundational to the present paper, which focuses specifically on the latter, comparatively neglected category.

The World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore has, since 2001, produced successive draft instruments attempting to define protectable 'traditional cultural expressions' and the beneficiaries entitled to control them¹², but member-state disagreement over the binding character of any resulting instrument has left the process without a concluded treaty. A commissioned WIPO-UNESCO study specifically examining India, Indonesia, and the Philippines¹³ found that India's approach relies almost entirely on adapting existing intellectual property categories — principally Geographical Indications and copyright — rather than legislating a dedicated folklore statute, a finding that remains substantially accurate more than two decades later and forms the empirical starting point for this paper's critical analysis.

Indian scholarship on the subject has tended to bifurcate along the same technical/artistic line identified by Correa. Commentary following the turmeric and neem patent controversies concentrated heavily on defensive documentation strategies for medicinal and agricultural knowledge, culminating in the Traditional Knowledge Digital Library and the biodiversity access-and-benefit-sharing regime. By comparison, sustained doctrinal engagement with the constitutional and statutory protection of artistic and performative folk traditions — painting

¹¹Carlos M. Correa, *Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge* (Quaker United Nations Office, Geneva, 2001).

¹²World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), sessions convened periodically since 2001.

¹³P.V. Valsala G. Kutty, *National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Expressions: India, Indonesia and the Philippines* (WIPO-UNESCO study, 2002).

styles, textile motifs, oral narrative forms, and ritual performance — remains comparatively sparse, with most treatment confined to descriptive accounts of individual Geographical Indication registrations rather than an integrated assessment of whether the registration model actually serves the interests of the practising community. This paper attempts to address that gap by reading the constitutional cultural-rights provisions and the statutory intellectual property regime together, as components of a single, if incoherent, protective architecture.

viii. Research methodology

This paper adopts a doctrinal legal research methodology, supplemented by a comparative and case-illustrative approach. The primary method is a black-letter analysis of the relevant provisions of the Constitution of India, the Geographical Indications of Goods (Registration and Protection) Act 1999, the Copyright Act 1957, the Biological Diversity Act 2002, and the Patents Act 1970, read alongside India's obligations under TRIPS, the Convention on Biological Diversity, and the UNESCO Intangible Cultural Heritage Convention. Illustrative examples drawn from the Geographical Indications Registry's records for specific folk art forms — Madhubani painting, Warli painting, Pochampally Ikat, and Thanjavur and Kalamkari painting among them — are used qualitatively to test how the statutory framework operates in practice, rather than as a statistically representative sample. The paper does not draw on primary empirical fieldwork among artisan communities, which is acknowledged as a limitation; its conclusions rest on documentary and statutory analysis and should be read as a doctrinal, not sociological, contribution.

ix. Critical analysis

9.1 The Constitutional Architecture: A Right Without a Remedy

Article 29(1) is, on its text, a promising foundation: it guarantees to any section of citizens with a distinct language, script, or culture the right to conserve it¹⁴. The Supreme Court's jurisprudence on the cognate Article 30, protecting minority educational institutions, has read the word 'conserve' generously in the institutional context¹⁵¹⁶, but Article 29 has rarely been invoked outside disputes over admission or language policy, and never, so far as the doctrinal record shows, to assert a community's control over the commercial use of its artistic practices. The provision protects against state suppression of a culture; it does not, on any natural reading, create a cause of action against a private garment manufacturer who reproduces a community's motifs without permission. Article 51A(f)'s duty to preserve the composite cultural heritage is, structurally, a Directive Principle-adjacent duty owed by the citizen to the state's cultural project, not a right a community can assert against a commercial actor¹⁷. Article 21's expansive reading since the late 1970s¹⁸ offers the most conceptually promising route — if 'life' includes dignity, and dignity is inseparable from cultural identity for many communities, a plausible argument exists that unauthorised commercial exploitation of a community's living tradition implicates Article 21. But this remains an argument awaiting judicial articulation rather than settled law; no reported decision has extended Article 21 in this specific direction. The result is a constitutional architecture that expresses unmistakable sympathy for cultural plurality while leaving the enforceable content of that sympathy almost entirely to ordinary legislation — legislation that, as the following sections show, was drafted with other purposes in mind.

9.2 The Statutory Overlay and Its Fragmentation

¹⁵In re The Kerala Education Bill 1957, AIR 1958 SC 956.

¹⁶T.M.A. Pai Foundation v State of Karnataka (2002) 8 SCC 481.

No single Indian statute purports to protect 'folklore' or 'traditional cultural expressions' as such. What exists instead is a set of statutes each designed for a different purpose, into which folk traditions have had to be fitted. The Constitution itself contributes to this fragmentation: cultural and archaeological subject matter is scattered across the Seventh Schedule¹⁹, with ancient monuments of national importance falling to the Union and other monuments to the States, and 'culture' nowhere appearing as a distinct legislative head. Article 49 imposes on the state an obligation to protect monuments and objects of artistic or historic interest²⁰, but this too is oriented toward physical heritage rather than living practice. The consequence is that a community's folk painting style, oral narrative tradition, or ritual performance must seek shelter under whichever ordinary statute its particular form of expression happens to resemble — a textile motif under Geographical Indications, a documented song under copyright, a plant-based dye recipe under the biodiversity regime — with no legislative home for the practice as an integrated cultural whole.

9.3 Geographical Indications: A Double-Edged Instrument

The Geographical Indications of Goods (Registration and Protection) Act 1999 is, by volume of use, India's principal instrument for folk-craft protection. A Geographical Indication protects a name associated with goods whose quality or reputation is essentially attributable to their geographical origin²¹, and India has used the Act extensively for handicrafts: Darjeeling Tea was the first product registered under it in 2004²², and a wide range of folk art forms followed, including Pochampally Ikat, Madhubani painting, Thanjavur painting, Kalamkari, and Warli painting²³. The Act's genuine achievement is defensive: registration prevents outsiders, whether domestic traders in unrelated regions or foreign producers, from using a protected name on goods

¹⁹Constitution of India 1950, Seventh Schedule, List I Entry 67 and List II Entry 12.

²⁰Constitution of India 1950, art. 49.

²¹Geographical Indications of Goods (Registration and Protection) Act 1999, s. 2(1)(e).

²²Darjeeling Tea, Application Nos. 1 & 2, was registered as India's first Geographical Indication in October 2004; the Act itself had come into force in September 2003. GI Registry, Chennai.

²³Pochampally Ikat (Application No. 4, registered 2004-05); Madhubani/Mithila painting (registered 2007); Warli painting (registered in the early-to-mid 2010s); Thanjavur painting (registered 2007-08); Kalamkari (registered 2007-08). GI Registry, Chennai.

that do not originate from the specified community, and it has demonstrably helped products such as Darjeeling Tea resist misappropriation in export markets.

The instrument's limitation lies in who it empowers. Section 11 vests the right to seek registration, and the resulting authorised-user status, in an 'Association of Persons' or body representing producers, not in each individual artisan²⁴. In practice, registration is frequently driven by state handicraft development corporations, trade associations, or exporter bodies rather than by the artisans themselves, and the economic benefit of a GI tag — a price premium, export access, brand recognition — accrues most reliably to whichever intermediary controls the registered association and the supply chain beneath it. An individual Madhubani painter or Warli artist does not automatically receive a greater share of sale proceeds merely because the art form carries a GI tag; the tag protects the name, not the artisan's bargaining position within the market for goods bearing that name. Geographical Indication protection is, moreover, available only for goods with an identifiable, geographically-bounded producer community and a describable connection between origin and quality — criteria that fit visual and textile art forms reasonably well but exclude oral narrative traditions, dance, music, and ritual performance almost entirely, since these are not 'goods' in the sense the Act contemplates.

9.4 Copyright: The Authorship Problem

The Copyright Act 1957 protects original literary, dramatic, musical, and artistic works²⁵, but its architecture assumes an identifiable individual author and a fixed term measured from that author's life, expiring sixty years after death²⁶. Folk traditions typically satisfy neither assumption: a Madhubani motif, a Baul melodic form, or a Warli compositional convention has no single identifiable author, having evolved collectively over generations, and even where a specific artisan paints a specific work embodying the tradition, copyright protects only that individual work — not

²⁴Geographical Indications of Goods (Registration and Protection) Act 1999, s. 11, read with s. 2(1)(a) and (o) (defining 'authorised user' and 'producer').

²⁵Copyright Act 1957, s. 13.

²⁶Copyright Act 1957, s. 22.

the underlying style, technique, or motif vocabulary that any other member of the community, or any outsider, remains free to use. A living artisan can copyright a particular painting; no one can copyright 'Madhubani style' itself, because style and technique are not protectable subject matter under conventional copyright doctrine anywhere, India included. The 2012 amendments strengthened performers' rights, granting performers a right against unauthorised recording or broadcast of a live performance independent of any underlying copyright²⁷, which offers folk musicians and dancers a genuine, if narrow, protection against unauthorised recording — but this protects the act of performance, not the traditional composition or choreography being performed, which typically remains too old, too collectively authored, or too undocumented to attract copyright in its own right.

9.5 The Biodiversity and Plant-Variety Regime: A Partial Analogy

The Biological Diversity Act 2002 offers the closest Indian precedent for a genuine benefit-sharing model, requiring equitable sharing of benefits arising from the commercial use of biological resources and associated traditional knowledge, administered through National and State Biodiversity Funds²⁸, while the Protection of Plant Varieties and Farmers' Rights Act 2001 separately recognises farmers' contributions to the conservation of plant genetic resources²⁹. These statutes matter to this paper less for their direct application — most folk art and performance falls outside 'biological resources' altogether — than as a demonstrated legislative willingness, elsewhere in the Indian statute book, to build a benefit-sharing architecture around collectively held, non-individually-authored knowledge. That the same willingness has not been extended to artistic and performative folk traditions is a legislative choice, not a conceptual impossibility: the Biodiversity Act shows that Parliament already knows how to draft a community-benefit-sharing mechanism when it chooses to.

²⁷Copyright Act 1957, ss. 38 and 38A, as substituted/inserted by the Copyright (Amendment) Act 2012.

²⁸Biological Diversity Act 2002, ss. 21 and 36(5).

²⁹Protection of Plant Varieties and Farmers' Rights Act 2001, s. 39.

9.6 Commercialisation: Threat and Lifeline at Once

Commercialisation cannot be treated as an unambiguous evil in this analysis, because it is simultaneously the primary threat to, and the primary economic lifeline for, many folk traditions. Without market demand, several folk art forms discussed in Geographical Indication literature would likely have continued their documented decline as younger generations move to urban wage labour; commercial sale on paper, textiles, and consumer goods has, in a number of well-documented instances, been credited with sustaining practices that were losing practitioners. At the same time, uncontrolled reproduction by parties outside the tradition — a textile printed with Warli-inspired motifs by a manufacturer with no connection to the Warli community, sold without any indication that it is an inspired reproduction rather than an authentic work — can depress the market for genuine artisan-made work, misrepresent the tradition's meaning, and capture commercial value that never reaches the originating community at all. The present legal regime is largely indifferent to this distinction: outside the narrow band of GI-protected names, nothing in Indian law requires accurate labelling of 'tradition-inspired' goods as distinct from 'tradition-authentic' ones, leaving consumers unable to make an informed choice and originating communities unable to capture the premium that authenticity might otherwise command.

9.7 The Absence of a Sui Generis Framework

India has, unlike a number of jurisdictions, never enacted a dedicated statute for the protection of traditional cultural expressions as such. Panama's 2000 legislation creates a special collective intellectual property regime specifically for indigenous cultural expressions, administered through a dedicated registry³⁰, and Peru's 2002 legislation establishes a protective regime for collective knowledge held by indigenous peoples, expressly outside the framework of conventional patent and copyright law³¹. Both models share a structural feature entirely absent from Indian law: they

³⁰Panama, Law No. 20 of 26 June 2000 on the Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples.

³¹Peru, Law No. 27811 of 2002, Regime for the Protection of the Collective Knowledge of Indigenous Peoples Related to Biological Resources.

treat the community itself, rather than any individual member or any state-appointed intermediary association, as the holder of the right, with consent and benefit-sharing required as a precondition of commercial use. India's continued reliance on Geographical Indications, copyright, and biodiversity legislation — each designed for a different purpose and adapted to folklore only by analogy — leaves a structural gap that these comparative models suggest is neither inevitable nor especially difficult to close through dedicated legislation.

x. Suggestions and recommendations

1. Enact a dedicated *sui generis* statute for traditional cultural expressions, modelled loosely on the Panama and Peru frameworks, that vests the protectable right directly in the originating community rather than in a registered producer association, and that extends to oral, performative, and ritual expressions presently excluded from Geographical Indication protection.
2. Reform the governance of Geographical Indication registration for folk art forms by requiring that registered 'Associations of Persons' under Section 11 include direct, verifiable artisan representation and periodic public accounting of how licensing or premium revenue is distributed to practising artisans.
3. Extend a benefit-sharing mechanism analogous to the Biological Diversity Act's National and State Biodiversity Funds to commercial use of registered folk art forms, so that a defined share of revenue from large-scale commercial licensing returns to a community fund rather than being captured entirely by intermediaries.
4. Introduce a mandatory 'tradition-inspired' labelling requirement for mass-produced goods that use recognisable folk motifs without artisan involvement, giving consumers the information needed to choose authentic artisan-made work and allowing genuine practitioners to compete on that distinction.

5. Extend the documentation model of the Traditional Knowledge Digital Library beyond medicinal knowledge to artistic and performative folk traditions, creating a community-controlled digital registry that can serve both an evidentiary function in disputes and a living archive for transmission within the community itself.
6. Give Article 21's cultural dimension doctrinal content through strategic public interest litigation, inviting judicial articulation of a community's interest in the integrity of its living traditions as an element of dignity, comparable to the Court's earlier willingness to read new substantive content into Article 21.

xi. Conclusion

India's Constitution speaks confidently about cultural plurality and the value of the country's composite heritage, but that confidence has not been carried through into an operative legal right that folk communities can assert when their traditions are commercially exploited by others. What exists instead is a set of statutes — Geographical Indications, copyright, biodiversity, and patent law — each built for a different purpose and each capable of protecting only a fragment of what a living folk tradition actually is: a name and a region under the Geographical Indications Act, a single fixed work under copyright, a documented biological use under the biodiversity regime, and nothing at all under any of them for oral narrative, dance, or ritual performance. Commercialisation has, in this vacuum, become both the reason several traditions have survived economically and the mechanism through which their value most often escapes the community that created them. Comparative models from Panama and Peru show that a coherent, community-held sui generis right is a legislative choice within reach, not a conceptual impossibility. Until India makes that choice, its folk traditions will remain constitutionally cherished in principle and legally undefended in practice — protected, at best, by analogy, and left, at worst, to the market alone.

Bibliography

A. Primary Sources

(i) Constitutional and Statutory Materials

Constitution of India 1950.

Copyright Act 1957 (as amended by the Copyright (Amendment) Act 2012).

Geographical Indications of Goods (Registration and Protection) Act 1999.

Geographical Indications of Goods (Registration and Protection) Rules 2002.

Patents Act 1970 (as amended by the Patents (Amendment) Act 2005).

Biological Diversity Act 2002.

Protection of Plant Varieties and Farmers' Rights Act 2001.

(ii) International Instruments

Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

Convention on Biological Diversity 1992.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization 2010.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003.

(iii) Cases

Maneka Gandhi v Union of India (1978) 1 SCC 248.

In re The Kerala Education Bill 1957, AIR 1958 SC 956.

T.M.A. Pai Foundation v State of Karnataka (2002) 8 SCC 481.

Bal Patil v Union of India (2005) 6 SCC 690.

B. Secondary Sources

Correa, Carlos M., Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge (Quaker United Nations Office, Geneva, 2001).

Kutty, P.V. Valsala G., National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Expressions: India, Indonesia and the Philippines (WIPO-UNESCO study, 2002).

World Intellectual Property Organization, Intellectual Property and Traditional Cultural Expressions/Folklore, WIPO Booklet No. 1 (WIPO, Geneva).

World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Session Reports (2001-present).

Ministry of Culture, Government of India, Annual Report (various years).

Geographical Indications Registry, Chennai, Geographical Indications Journal (various issues).

Note: Secondary source citations should be independently verified for exact volume, page, and edition details prior to formal submission, in accordance with the citation style prescribed by the relevant journal or institution.