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Threads of Exploitation: The Silent Erosion of Indian Indigenous Art and Handloom Heritage Under Weak IP Protection

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ABSTRACT

India's indigenous art forms and handloom traditions, embodying centuries of cultural expression, face an alarming threat of exploitation under the weak intellectual property protection framework. Despite the existence of Geographical Indications (GI) laws, enforcement remains inadequate, allowing unauthorized commercial use of folk designs like Madhubani paintings, Kojeevaram Silks and Pattachitra by global brands. Traditional IP structures, built around individual authorship, fail to accommodate the collective ownership nature of indigenous creativity. As a result, artisans face economic marginalization, cultural dilution and the loss of intangible heritage. This paper critically examines these systemic gaps and highlights the urgent need for sui generis legal protections, stronger GI enforcement and internationally recognized frameworks through WIPO. By situating indigenous art protection at the nexus of intellectual property, cultural preservation and human rights, the research advocates for reforms that ensure rightful recognition and sustainable preservation of India's artistic legacy.

Keywords: Indigenous art, Handloom heritage, Intellectual Property Rights, Geographical Indications, Cultural Protections.

I. INTRODUCTION

India, with its rich tapestry of culture and traditions, is home to some of the world's most unique and diverse indigenous art forms and handloom heritage³. From the intricate patterns of Madhubani paintings to the fine skills of Kojeevaram sarees, these art forms and textiles are not just artistic expressions but represent countries of craftsmanship, cultural identity and socio-economic resilience. However, despite their intrinsic value, these indigenous arts and handlooms face an increasing risk of exploitation⁴. This issue arises when the traditional

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³ UNESCO, *Intangible Cultural Heritage of Humanity*, <https://ich.unesco.org/en/lists> (last visited 2025).

⁴ World Intellectual Property Organization (WIPO), *Protecting Traditional Cultural Expressions: Overview*, https://www.wipo.int/tk/en/cultural_heritage/tce_overview.html (2022).

creators of these arts- artisans, weavers and local communities- lose control over their creations, while others commercially benefit without due recognition or compensation⁵.

At the heart of this exploitation lies the weakness of the Intellectual Properties Protection System in India, which fails to adequately address the unique nature of these indigenous crafts⁶. In the absence of robust IP laws or effective enforcement, these valuable cultural expressions are increasingly being copied and commercialized by larger, often global, corporations⁷. Without sufficient legal safeguards, artisans are left vulnerable, facing not only economic losses but also the erosion of their cultural heritage. This phenomenon. Though widespread, remains largely silent due to the low awareness and insufficient legal resources available to the communities⁸.

II. THE INDIAN LEGAL FRAMEWORK FOR IP PROTECTION

Overview of IP Laws in India

Intellectual Property (IP) rights are crucial tools for protecting creativity, innovation, and traditional knowledge. In India, several statutes govern different types of IP rights, including:

(a) Copyright Act, 1957

Original works of literature, art, music and theater are protected by the Copyright Act.. In the context of indigenous art, traditional paintings, folk songs, and other cultural expressions can be protected as "artistic works"⁹. However, protection is only granted to identifiable authors or artists, creating challenges for collective traditional expressions.

(b) Geographical Indications of Goods (Registration and Protection) Act, 1999

The GI Act recognizes products originating from a specific location, possessing qualities or reputation due to that origin. Famous examples include Kanjeevaram sarees and Madhubani paintings¹⁰. GIs help communities protect the commercial value of their cultural expressions collectively, without needing individual ownership.

(c) Trademarks Act, 1999

Trademarks protect brand identity, symbols, and logos used in commerce. Some artisan groups use collective trademarks or certification marks to distinguish authentic handmade

⁵ Ministry of Textiles, Government of India, *Handloom Census Report* (2019).

⁶ V.K. Ahuja, *Law Relating to Intellectual Property Rights in India* (3d ed. 2022).

⁷ Pranav Singh, *Global Corporations and the Appropriation of Traditional Indian Handicrafts*, 6 J. Intell. Prop. Stud. 45 (2021).

⁸ P. Balaram, *Invisible Losses: Indigenous Artisans and the Legal Void*, 6 Indian L. Rev. 88 (2022).

⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

¹⁰ The Copyright Act, No. 14 of 1957, §§ 2(c), 13, INDIA CODE (1957).

goods from mass-produced imitations¹¹. However, widespread illiteracy and lack of awareness among artisans often limit the effective use of trademark protection.

Application of IP Laws to Indigenous Art and Handloom

(a) Copyright Protection for Traditional Art

While traditional artworks like Warli paintings or Pattachitra can technically be protected under copyright laws, practical enforcement is limited. Often, traditional art forms are communal in nature, having evolved over generations. Indian copyright law does not adequately recognize collective ownership, making it difficult for artisan communities to assert rights¹².

(b) Geographical Indications for Handloom and Art

The GI Act has been somewhat successful in providing legal protection to indigenous arts. Products like Chanderi fabric, Banarasi sarees, and Madhubani paintings have been registered under the GI regime¹³. This prevents unauthorized use of the community's name by outsiders. However, registration alone does not guarantee market success or prevent misappropriation unless adequately enforced.

(c) Trademark Usage

Collective trademarks and certification marks offer a pathway for artisan groups to brand and market their goods. For instance, "Handloom Mark" and "India Handloom Brand" initiatives seek to promote authentic handloom products¹⁴. Nonetheless, many grassroots artisans find the process of registration and enforcement too complex and expensive.

Gaps in Current IP Protection Systems

(a) Inadequacy of Individual Ownership Models

Existing IP laws like copyright and trademark emphasize individual ownership, which does not suit the collective and evolving nature of indigenous art forms. Many tribal and rural communities create art communally, without a single "author" that can be easily identified¹⁵.

(b) Weak Enforcement Mechanisms

Despite registration under GI or trademarks, enforcement is weak. Many artisans cannot

¹¹ The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, § 11, INDIA CODE (1999).

¹² The Trade Marks Act, No. 47 of 1999, §§ 2(1)(zb), 2(1)(e), INDIA CODE (1999).

¹³ R. Chandra, *Traditional Knowledge and Intellectual Property Protection in India*, 23 J. Intell. Prop. Rts. 102 (2018).

¹⁴ Intellectual Property India, *GI Registry Official Database*, <https://ipindia.gov.in/gir.htm> (2023).

¹⁵ Ministry of Textiles, Government of India, *Handloom Mark Scheme Guidelines* (2022).

afford litigation or are unaware of infringement issues. This leaves them vulnerable to commercial exploitation by large companies who appropriate designs without authorization¹⁶.

(c) Lack of Awareness and Accessibility

A significant portion of indigenous artisans operate in rural and economically backward areas where legal literacy is low. They are often unaware of their rights under IP law or lack the resources to navigate complex registration processes¹⁷.

(d) International Misappropriation

Indian traditional knowledge and crafts are often appropriated by international brands without consent or benefit-sharing. Existing international IP frameworks like the TRIPS Agreement are inadequate in protecting community-held rights, putting indigenous cultures at further risk of exploitation¹⁸.

III. CASE STUDIES OF EXPLOITATION

Examples of Unauthorized Commercial Use

(a) Madhubani Inspired Paintings

The finest instance of Indian indigenous art are the Madhubani paintings, which come from the Mithila district from Bihar. Traditionally, women from the community practiced this art form as a mode of storytelling and ritual expression¹⁹. However, in recent decades, Madhubani motifs have been widely copied by commercial fashion brands, interior decorators, and souvenir manufacturers without involving or compensating the original artisans. Unauthorized reproduction not only undermines the authenticity of the artwork but also devalues its cultural significance. Major brands have incorporated Madhubani designs onto products like handbags, clothing, and home décor, often without any acknowledgment of the origin community²⁰.

(b) Kanjeevaram Silk Sarees

Kanjeevaram sarees, handwoven in Tamil Nadu, are known globally for their rich texture,

¹⁶ Graham Dutfield, *Protecting Traditional Knowledge: Pathways to the Future* (Int'l Ctr. for Trade & Sustainable Dev. [ICTSD], 2017).

¹⁷ P. Radhakrishnan, *Intellectual Property and the Protection of Traditional Knowledge*, 42 Econ. & Pol. Wkly. 4091 (2007).

¹⁸ World Intellectual Property Organization (WIPO), *Indigenous Intellectual Property: A Handbook for Cultural Institutions* (2020).

¹⁹ R. Jain, *Madhubani Painting: Its Roots and Revival*, 18 Indian J. Tradit. Knowledge 345 (2019).

²⁰ World Intellectual Property Organization (WIPO), *Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities* (2020).

vibrant colors, and intricate zari work²¹. Despite having a Geographical Indication (GI) registration, many companies produce machine-made imitations using cheaper materials, marketing them as "Kanjeevaram" sarees. These counterfeit products are often sold at lower prices, severely impacting the reputation and income of genuine weavers²². Since GI enforcement is weak at the ground level, artisans face an uphill battle in protecting their heritage from exploitation.

(c) Other Examples: Warli and Pattachitra

Warli paintings from Maharashtra and Pattachitra art from Odisha and West Bengal are frequently replicated by designers and multinational brands for commercial products, such as wall hangings, fashion accessories, and stationery items²³. These adaptations are often made without understanding the cultural context or without sharing any benefits with the originating communities.

Economic and Cultural Impact on Artisans and Communities

(a) Loss of Income and Economic Marginalization

Unauthorized commercial exploitation deprives artisans of a fair economic return for their skills and traditions. Artisans already operating on thin margins face competition from cheap mass-produced imitations. Consequently, many traditional artists are forced to abandon their craft for low-wage labor jobs, further weakening the cultural ecosystem²⁴.

(b) Erosion of Authenticity and Cultural Dilution

When traditional designs are replicated mechanically and without cultural understanding, their original significance and symbolic meanings are diluted. Cultural appropriation without context strips the art form of its historical identity, reducing it to mere "decoration" for commercial gain²⁵.

For instance, the religious and ritualistic importance of Madhubani motifs is often lost when used superficially on modern merchandise.

(c) Impact on Younger Generations

The economic instability and lack of recognition discourage younger generations from continuing traditional practices. Many youths migrate to urban areas in search of better

²¹ Ministry of Textiles, Government of India, *Handloom Census Report* (2021).

²² Intellectual Property India, *GI Registration Data*, <https://ipindia.gov.in/gir.htm> (2022).

²³ K. Basu, *The Commercialization of Warli Art: Risks and Opportunities*, 53 Econ. & Pol. Wkly. 62 (2018).

²⁴ A. Banerjee, *Economic Challenges Facing India's Traditional Artisans*, 48 Soc. Scientist 22 (2020).

²⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Safeguarding Intangible Cultural Heritage* (2018).

opportunities, leading to a gradual loss of traditional knowledge and skills²⁶. Over time, entire art forms risk disappearing if they are not economically viable for future artisans.

(d) Weakening of Community-Based Structures

Traditional art is not merely an individual practice but often a collective cultural identity. Exploitation weakens community structures that rely on shared practices, festivals, and rituals. As economic hardships mount, the community's ability to maintain collective cultural expressions also deteriorates²⁷.

IV. LEGAL GAPS AND CHALLENGES

Shortcomings of Indian IP Law in Protecting Traditional Art

(a) Inadequate Coverage under Copyright Law

Traditional art often falls outside the scope of India's Copyright Act, 1957, because copyright protects the rights of individual authors for a limited duration (usually the author's life plus 60 years)²⁸. Traditional knowledge and communal art forms, however, are collective in nature and have evolved over centuries, with no identifiable "author." Thus, many indigenous art forms like Warli, Pattachitra, or Madhubani lack ownership under current copyright frameworks, leaving them vulnerable to unauthorized commercial exploitation²⁹.

(b) Limitations of Geographical Indications (GI) Protection

While GI tags provide some recognition to traditional crafts, they are not a complete solution³⁰. GI registration protects the name and reputation of a product linked to a specific geography but does not automatically protect the design, pattern, or technique itself. Moreover, enforcement mechanisms for GIs in India are weak. Artisans lack the financial and legal capacity to monitor misuse or to initiate infringement actions, especially against powerful corporations or international entities³¹.

(c) Absence of Sui Generis Laws

India does not have a specific sui generis (standalone) legal framework tailored to protect traditional cultural expressions. Existing IP laws are built around Western notions of private property and originality, which are incompatible with the communal, intergenerational nature

²⁶ D. Sharma, *Migration and the Decline of Traditional Crafts in India*, 44 Indian Anthropologist 55 (2017).

²⁷ G. Subramanian, *Cultural Survival and Traditional Crafts* (Oxford Univ. Press 2016).

²⁸ The Copyright Act, No. 14 of 1957, INDIA CODE (1957).

²⁹ N. Sundar, *Whose Knowledge? Whose Rights? Protection of Traditional Knowledge under Indian Law*, 53 Econ. & Pol. Wkly. 23 (2018).

³⁰ The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, INDIA CODE (1999).

³¹ Intellectual Property India, *GI Annual Report* (2022), <https://ipindia.gov.in/gir.htm>.

of indigenous art³². Without special legal regimes recognizing community ownership, traditional artisans remain unprotected under mainstream IP systems.

(d) Lack of Awareness and Accessibility

Even when protections like GI are available, artisans often lack awareness about their rights and the procedures for registration or enforcement. Legal processes are costly, time-consuming, and intimidating for rural or illiterate artisans³³. Thus, systemic issues of access and awareness further alienate indigenous communities from benefitting under existing IP laws.

International IP Frameworks and Their Inadequacies for Indigenous Protection

(a) TRIPS Agreement and Its Limitations

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the WTO, sets minimum standards for IP protection worldwide³⁴. However, the protection of folklore, traditional folklore and collective art forms is not sufficiently addressed by TRIPS, which is primarily concerned with safeguarding individual, commercial rights. As a result, indigenous cultural expressions often remain outside the purview of international legal protection.

(b) WIPO Initiatives: Progress but Not Binding

The World Intellectual Property Organization (WIPO) has recognized the need to protect Traditional Cultural Expressions (TCEs) and Traditional Knowledge (TK) through its Intergovernmental Committee (IGC) discussions³⁵. However, these efforts are still in the negotiation phase and have not yet resulted in binding international treaties. Without enforceable obligations, indigenous communities continue to face exploitation in the global market.

(c) Case Study: Misuse of Traditional Designs Globally

International fashion brands have repeatedly been accused of appropriating traditional designs without authorization or benefit-sharing³⁶. For instance, indigenous motifs from Mexico,

³² World Intellectual Property Organization (WIPO), *Traditional Cultural Expressions: Policy and Legal Options* (2019).

³³ S. Sharma, *Access to Intellectual Property Protection for Rural Artisans in India*, 25 J. Intell. Prop. Rts. 118 (2020).

³⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

³⁵ World Intellectual Property Organization (WIPO), *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*, <https://www.wipo.int/tk/en/igc/> (last visited June 23, 2025).

³⁶ T. Lenzerini, *Indigenous Peoples' Cultural Rights and the Role of International Law*, 26 Int'l J. Cultural Prop.

India, and Africa have been used in luxury fashion collections, leading to controversy but rarely resulting in legal consequences due to lack of binding international protections.

(d) Absence of Global Recognition for Community Rights

Most global IP systems are based on the Western notion of individual or corporate ownership and economic incentives. In contrast, traditional arts are collectively owned, culturally significant, and often produced for community purposes rather than for profit³⁷. The lack of international frameworks recognizing collective ownership leaves indigenous artists disadvantaged in asserting claims over their heritage.

(e) Need for an International Sui Generis System

There is a growing consensus that a sui generis international framework is needed to effectively protect traditional cultural expressions. Such a system would go beyond current IP standards to recognize collective ownership, perpetual rights, benefit-sharing obligations, and culturally sensitive enforcement mechanisms. Without such a framework, indigenous communities around the world will continue to face cultural and economic exploitation.

V. RECOMMENDATIONS FOR REFORM

Proposals for Strengthening IP Protection

(a) Strengthening and Expanding the Scope of Geographical Indications (GI)

While the GI framework has been beneficial in recognizing certain crafts and handlooms, it needs to be strengthened and expanded. First, protection should not be limited only to the name but should extend to designs, motifs, and production methods associated with the product³⁸.

Second, post-registration support should be provided to artisan communities to monitor misuse, promote branding, and enforce their rights in domestic and international markets³⁹. Awareness campaigns and easy legal support mechanisms must be instituted to help rural and tribal artisans defend their GI rights more effectively.

(b) Introducing a Sui Generis Law for Traditional Cultural Expressions (TCEs)

India urgently needs a specialized, sui generis legal framework devoted to the preservation of Traditional Cultural Expressions (TCEs). This new law should recognize collective ownership

109 (2019).

³⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Safeguarding Intangible Cultural Heritage*, <https://ich.unesco.org/en/safeguarding-00012> (last visited June 23, 2025).

³⁸ The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, INDIA CODE (1999).

³⁹ Intellectual Property India, *GI Annual Report* (2022), <https://ipindia.gov.in/gir.htm>.

of communities over traditional arts, provide perpetual protection without requiring repeated renewal, and allow communities to authorize or prohibit commercial use⁴⁰. It should also include mandatory benefit-sharing mechanisms when third parties commercially exploit indigenous arts, thus ensuring economic justice for artisans⁴¹. Moreover, the law should be designed in consultation with indigenous communities, respecting their cultural protocols and values.

(c) Creation of a National Traditional Knowledge Digital Library (TKDL) for Arts

Following the success of the TKDL in preventing biopiracy of medicinal knowledge, a similar digital repository could be created for traditional arts⁴². This would involve cataloguing designs, patterns, techniques, and historical records associated with different art forms, and would serve two purposes:

- Preventing unauthorized patents and misappropriation.
- Providing evidence for enforcement of IP claims nationally and internationally.

Such documentation would empower communities with proof of their cultural legacy.

(d) Community Rights Management and Collective Licensing

Another major reform needed is the establishment of community rights management organizations (CRMOs) dedicated to traditional arts⁴³. CRMOs would represent artisan groups, negotiate licensing deals on their behalf, and distribute royalties fairly within the community.

This would not only ensure that artisans directly benefit from commercialization but also reduce the burden of individual enforcement and litigation.

(e) Simplifying Access to IP Protections

Procedures for GI registration and IP protections must be simplified, especially for communities from rural or tribal backgrounds. Setting up government-backed "IP Facilitation Centers" across the country could assist artisan groups in filing applications, maintaining records, managing legal costs, and pursuing infringement actions⁴⁴. Subsidized registration fees and priority examination for indigenous works should also be introduced.

⁴⁰ World Intellectual Property Organization (WIPO), *Traditional Cultural Expressions: Policy and Legal Options* (2019).

⁴¹ S. Mitra, *Towards a Sui Generis Law for Traditional Knowledge Protection in India*, 12 Indian J. Intell. Prop. L. 77 (2020).

⁴² Government of India, *Traditional Knowledge Digital Library (TKDL)* (2021), <https://www.tkdil.res.in>.

⁴³ K. Sharma, *Community IP Management: New Models for Collective Ownership*, 16 J. Intell. Prop. L. & Prac. 112 (2021).

⁴⁴ Ministry of Commerce & Industry, Government of India, *IP Facilitation Centres Initiative* (2022).

International Cooperation and Advocacy

(a) Advocating for Binding International Instruments

India should take a leadership role in advocating at WIPO and other international forums for a binding international treaty on the protection of traditional knowledge and traditional cultural expressions⁴⁵.

Such an agreement must recognize perpetual rights, collective ownership, and enforceable benefit-sharing standards. By building coalitions with other developing countries, India can push for global acceptance of community-centered IP protection frameworks.

(b) Bilateral and Multilateral Agreements

India should negotiate bilateral and multilateral trade agreements that incorporate specific clauses on the protection of traditional arts⁴⁶. For example, clauses can require that imported products must not infringe upon registered or well-documented traditional expressions originating from India.

Such proactive measures can create a stronger international legal shield around India's rich heritage.

(c) Global Awareness Campaigns

In addition to legal reforms, international advocacy through global awareness campaigns is crucial.

Partnerships with UNESCO, WIPO, and international NGOs can help create educational initiatives aimed at informing global consumers about ethical sourcing and the importance of respecting indigenous IP rights⁴⁷. Consumer pressure on companies can be a powerful tool for reducing cultural appropriation and promoting fair practices.

VI. CONCLUSION

The study highlights the alarming vulnerability of India's indigenous art and handloom traditions under the current intellectual property (IP) protection frameworks. While laws like the Copyright Act, the Geographical Indications (GI) Act, and the Trademark Act offer some level of safeguard, they are inadequate for protecting the collective, evolving, and community-

⁴⁵World Intellectual Property Organization (WIPO), *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*, <https://www.wipo.int/tk/en/igc/> (last visited June 23, 2025).

⁴⁶ S. Dey, *Mainstreaming Traditional Knowledge Protection in Trade Agreements*, 54 Econ. & Pol. Wkly. 19 (2019).

⁴⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Safeguarding Intangible Cultural Heritage* (2018).

owned nature of traditional art. Case studies such as Madhubani paintings and Kanjeevaram silk demonstrate how unauthorized commercial exploitation has eroded both the economic security and cultural identity of artisan communities. The issue is made worse by legal loopholes at the national and international levels, especially the lack of a sui generis legislation for Traditional Cultural Expressions (TCEs) and inefficient international enforcement systems. Without targeted reforms - including stronger GI regimes, community rights management, and international advocacy - indigenous artisans will continue to face exploitation. Protecting India's cultural heritage requires a comprehensive, community-centric, and proactive legal and policy approach.
