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Who Owns a Story that belongs to Everyone?: The Patachitra Dilemma

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ABSTRACT

The centuries-old Bengali storytelling custom known as patachitra, which blends music and art, is at a juncture where contemporary copyright law and cultural heritage collide. These colourful scroll stories, which have been passed down through Patua artist generations, capture lived experience, folklore, and collective memory. However, such Traditional Cultural Expressions (TCEs) are legally vulnerable due to Indian copyright law, which is based on individual authorship. Businesses profit from Patachitra motifs while denying credit or income to the original communities. The protection against widespread cultural misappropriation is still insufficient, even after gaining Geographical Indication status in 2018. This article makes the case for a collective copyright framework in India by drawing comparisons to the Milpurrurru case in Australia and the Māori cultural protections in New Zealand. In order to protect oral traditions, broaden the scope of GI, and implement benefit-sharing arrangements, it suggests legislative reform. The voices of Patachitra run the risk of becoming ornamental anonymity if collective authorship is not legally acknowledged. Who owns a story shared by all remains the unanswered dilemma in India's cultural IP landscape.

Keywords: Patachitra, Copyright, Traditional Cultural Expressions, Folklore, IP Protection.

I. THE TALE AS OLD AS THE SCROLLS THEMSELVES

The art performance takes place in Pingla and Naya villages of West Bengal through brushwork strokes that bring each narrative to life. The Patuas as Bengal's folk musicians have practised Patachitra (পটচিত্র in Bengali) storytelling hand in hand with their song performances for numerous generations.³ All these stories which portray gods, revolutions and human experiences and tragedies maintain their status as authentic historical accounts that form a fundamental part of a community.

When the global commercialization process encompasses traditional cultural elements the artists originally responsible for preserving these storeys now face elimination from the

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³ Sudipta Mitra, *Folk Art of Bengal: The Patuas and Their Paintings* (Niyogi Books 2012) 23.

system. Private commercial enterprises exploit Patachitra art designs by reducing them to mass-produced books and consumer goods featuring their stories which they sell as high-end decorative items yet deny any recognition or payment to the artists whose families practised the tradition for generations.⁴ Individual Patua artists acquire legal rights to their particular creations through collective artistic knowledge but aesthetic forms lack legal protection according to Indian copyright legislation. Who possesses the rightful ownership of storeys that belong to entire communities continues to be an open inquiry.⁵ The question remains: when a story belongs to an entire community, who truly owns it?

II. THE LEGAL VOID: HOW INDIAN COPYRIGHT LAW FAILS TRADITIONAL ARTISTS

According to the 1957 Copyright Act of India exclusive rights extend only to individuals and legal entities while indigenous communities who cooperatively create art do not benefit from this protection.⁶ The legal framework of copyright operates based on individual creativity and tangible expression requirements to grant rights protection.⁷ Yet oral cultural heritage and communal artistic expression do not fit in the definitions.⁸

The Patachitra artists face two critical outcomes because of the new copyright regulations. First, their work is mass-reproduced by commercial entities, often with slight modifications, allowing companies to claim the designs as their own.⁹ Second, academics and publishers who document Patachitra songs and stories legally own the copyright over those transcriptions, even though the knowledge has been orally passed down for centuries.¹⁰ This creates an ironic legal paradox: the communities who have preserved these stories for generations have no ownership over them, while those who merely document them do.

The legal vulnerability of Patachitra artists is not unique. A similar issue arose in *Milpurrurru v Indofurn Pty Ltd*, where Aboriginal artists sued a company for unauthorised reproduction of their artworks on carpets.¹¹ While the Australian courts recognised the artists' rights, Patachitra artists lack even this minimal safeguard.

⁴ Amita Sharma, 'Traditional Indian Folk Arts: The Struggle Between Preservation and Commercialisation' (2021) 8(2) Journal of South Asian Studies 67.

⁵ Copyright Act 1957 (India), s 2(d).

⁶ *Ibid.*

⁷ *Ibid.* s 13.

⁸ World Intellectual Property Organization (WIPO), 'Traditional Cultural Expressions' (2021) <https://www.wipo.int/tce/en/> accessed 09 February 2025.

⁹ Tania Venkatesh, 'Indian Folk Art: The Misuse of Madhubani, Warli and Patachitra in the Global Market' (2023) 12(3) Journal of Intellectual Property Studies 45.

¹⁰ Lionel Bently and Brad Sherman, Intellectual Property Law (5th edn, OUP 2018) 237.

¹¹ *Milpurrurru v Indofurn Pty Ltd* [1994] FCA 1556, Federal Court of Australia (holding that Aboriginal artworks copied onto carpets constituted copyright infringement but failing to protect community rights).

III. THE FIGHT FOR RECOGNITION: WHAT HAS BEEN DONE SO FAR?

The Patachitra scroll creators from Chitrakar community in Bengal initiated actions to protect their unique artwork against unauthorised reproductions. The Patachitra achieved protection status through Geographical Indication (GI) in 2018 which established West Bengal as the authentic origin but failed to grant intellectual property rights for Patachitra representations.¹² The GI status protects authentic Patachitra art made by designated artists but it lacks the ability to stop generic commercial use of Patachitra motifs or grant ownership rights to the entire Indian artistic tradition.¹³

The case of *Milpururru v Indofurn Pty Ltd* demonstrated a similar problem in which Aboriginal artworks were used on carpets without proper authorization.¹⁴ The Australian judicial system determined artists received copyright ownership yet did not protect the collective artwork style. India faces similar issues with Patachitra and Madhubani and Warli paintings since their commercial use remains unregulated.¹⁵

IV. LESSONS FROM THE MĀORI: HOW NEW ZEALAND GOT IT RIGHT

The solution exists across the Indian Ocean in the country of New Zealand. The traditional symbols and storeys belonging to the Māori people of New Zealand became subject to commercial exploitation similar to India. The New Zealand government protected Māori cultural expressions through special laws which defined these elements as property belonging to their collective indigenous group.¹⁶

Traditional Māori haka performances appeared in numerous advertisements through commercial use even though the practise lacked proper cultural respect. The government of New Zealand established enhanced indigenous IP protection that mandated companies wishing to use Māori customs to gain community endorsement and revenue distribution agreements.¹⁷

The adoption of this approach by India would result in Patachitra artists obtaining shared copyright ownership rights to their narrative storytelling traditions. Such measures would

¹² Geographical Indications of Goods (Registration and Protection) Act 1999 (India), s 2(e).

¹³ Praveen Raj, 'The Limitations of GI Tags: Why They Do Not Offer Complete Protection to India's Folk Art' (The Wire, 1 October 2020) <https://thewire.in/law/limitations-of-geographical-indications> accessed 11 February 2025.

¹⁴ *See id.* at 9.

¹⁵ B Thomas, 'Warli, Gond, and Madhubani: The Legal Gaps in Protecting India's Tribal Art from Cultural Appropriation' (2022) 5(1) Indian Journal of Law and Society 88.

¹⁶ Waitangi Tribunal, Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262, 2011).

¹⁷ Te Ture Whenua Māori Act 1993 (NZ) s 26.

block unauthorised commercial transformations of Patachitra while protecting the financial rewards stemming from its growing international demand within the community.¹⁸

V. WHAT NEEDS TO CHANGE? A LEGAL ROADMAP FOR PROTECTING PATACHITRA

To safeguard Indian intangible cultural heritage seriously the government must proceed beyond symbolic displays into actual investment in legal protection policies. Here's what must be done.

A Traditional Cultural Expressions (TCE) Protection Law should become legal in India since this framework functions on similar principles as New Zealand's Māori IP model and WIPO TCE framework.¹⁹ The law must protect traditional community intellectual property through collective author rights and ban unauthorised profit-sharing from cultural traditions.

The scope of Geographical Indication (GI) protection needs expansion to encompass artistic and narrative elements beyond traditional geographical product origins. Companies can use traditional folk storeys for their own commercial benefit under the present GI structure so indigenous narratives remain unprotected.²⁰

Third, there needs to be framework creation for benefit sharing. India needs to establish a mechanism that requires businesses using Patachitra themes to pay artist communities through share agreements or royalty payments.²¹ UNESCO already proposed these models.²²

The Copyright Act, 1957 requires amendment to include Community Copyrights which will preserve folk traditions independently of individual ownership rights. India maintains obsolete legal standards regarding intangible cultural heritage since its statutes fall short of addressing complex factors of oral traditions and collective artistry.²³

VI. CONCLUSION: WILL THE SCROLLS KEEP SPEAKING?

Patachitra exists as more than a visual art since it represents a storytelling tradition that spans across generations. These original stories risk being taken away by claimants who sell them

¹⁸ Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (Harvard University Press 2005) 91.

¹⁹ WIPO, 'Report on the Protection of Traditional Knowledge and Traditional Cultural Expressions' (2018) <https://www.wipo.int/publications/en/details.jsp?id=4362> accessed 15 February 2025.

²⁰ Geographical Indications of Goods (Registration and Protection) Act 1999 (India), s 21.

²¹ UNESCO, 'Operational Directives for the Implementation of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage' (2020) <https://ich.unesco.org/en/directives> accessed 19 February 2025.

²² *Ibid.*

²³ Ramesh Bhatia, 'Copyright and Community Ownership: A Case for Revisiting India's Intellectual Property Regime' (2021) 14(2) NUJS Law Review 112.

and reduce their value while artists only hold faded manuscripts.²⁴ Indian legislations possess adequate mechanisms to prevent theft but the nation needs to take committed action.

Under current laws Patachitra faces extinction as it will exist primarily in museums as decorative artefacts alongside historical footnotes.²⁵ The question is: who will speak for the scrolls before it is too late?

²⁴ *Ibid.*

²⁵ *See id.* at 19.