

## Protection of Tribal Cultural Expressions from Misappropriation by the Fashion & Entertainment Industries

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### Abstract

Traditional Cultural Expressions (TCEs) represent the shared creativity, identity, and spiritual heritage of indigenous and tribal communities. In the Indian context, tribal art forms, textiles, music, dances, and symbolic practices increasingly come under pressure from the fashion and entertainment industries, which routinely commercialize these cultural elements without securing consent, attribution, or equitable benefit-sharing. This article conducts a doctrinal and comparative legal inquiry into the protection of tribal TCEs from such misappropriation, focusing on the structural shortcomings of prevailing intellectual property regimes. It examines how Indian copyright, design, trademark, geographical indication, and biodiversity laws respond—often inadequately—to the collective, intergenerational, and intangible character of tribal cultural heritage. By engaging with international normative frameworks, including the WIPO Intergovernmental Committee’s draft articles, UNESCO conventions, and the United Nations Declaration on the Rights of Indigenous Peoples, the study foregrounds principles of community authorship, prior informed consent, and cultural integrity. Drawing on global and Indian case studies from the fashion and entertainment sectors, the article exposes systemic legal gaps that allow cultural exploitation to persist under the guise of formal legality. It advances a hybrid doctrinal framework that combines intellectual property mechanisms with sui generis protections capable of recognizing collective ownership and perpetual rights. The article ultimately contends that the protection of tribal cultural expressions transcends conventional intellectual property concerns and instead demands a commitment to cultural justice through legal reforms that reconcile creative freedom with indigenous rights and fair benefit-sharing.

**Keywords-** Traditional Cultural Expressions, Cultural Misappropriation, Indigenous Intellectual Property, Fashion Law, Entertainment Law, Tribal Right

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### Introduction

Traditional cultural expressions (TCEs) form a core element of the cultural heritage of indigenous and tribal communities, as they embody shared creativity, collective identity, spirituality, and intergenerational knowledge. Through art, music, dance, rituals, textiles, symbols, and narrative traditions, these expressions operate not as static aesthetic forms but as living practices that convey social values, cosmologies, and historical continuity. In India, home to one of the world’s largest and most diverse tribal populations, TCEs sustain cultural pluralism while also supporting indigenous livelihoods. Yet, within the contemporary

global economy, these cultural forms have become increasingly vulnerable to misappropriation, particularly at the hands of the fashion and entertainment industries. The rapid growth of global fashion markets and mass media platforms has accelerated the extraction of cultural elements from marginalized communities for commercial use. Designers, producers, and media corporations routinely appropriate tribal motifs, embroidery techniques, jewellery styles, folk music, dances, and ceremonial imagery without engaging the originating communities or securing their consent, attribution, or participation. Although industries frequently justify such practices as “inspiration” or “cultural exchange,” they often function as mechanisms of cultural exploitation, generating economic value for dominant actors while excluding indigenous custodians

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from material benefits. This imbalance raises serious concerns regarding cultural dignity, economic justice, and the gradual erosion of indigenous identity.

These concerns manifest with particular intensity in the Indian context. Fashion houses, film industries, advertising agencies, and digital content platforms increasingly incorporate expressions such as Warli and Gond art, Toda embroidery, Naga textiles, Santhal music, and Adivasi dance forms into commercial productions. In doing so, they frequently strip these expressions of their socio-cultural and spiritual contexts and repackage them as marketable commodities. The resulting harms extend well beyond financial deprivation to include cultural distortion, stereotyping, and the progressive alienation of tribal youth from their own heritage. Despite constitutional commitments to tribal welfare and cultural protection, indigenous communities continue to exercise limited control over the commercial circulation of their cultural expressions. At the core of this problem lies the inability of existing intellectual property (IP) regimes to accommodate the distinctive characteristics of TCEs. Conventional IP frameworks such as copyright, design protection, trademarks, and geographical indications rest on assumptions of individual authorship, originality, fixation, and time-bound protection. Tribal cultural expressions, by contrast, emerge through collective creation, rely on oral transmission, evolve across generations, and remain inseparable from community identity rather than individual ownership. As a result, formal IP doctrine often classifies these expressions as part of the public domain, thereby permitting forms of appropriation that remain legally valid yet ethically troubling. This disjunction reveals a structural gap between legal protection and cultural reality.

Global recognition of this gap has driven sustained normative efforts to articulate alternative mechanisms for protecting traditional cultural expressions. Instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), UNESCO conventions on intangible cultural heritage, and the draft articles developed by the World Intellectual Property Organization's Intergovernmental Committee (WIPO-IGC) emphasize collective rights, prior informed consent, and equitable benefit-sharing. Several jurisdictions have responded by adopting *sui generis* regimes that acknowledge community ownership and perpetual protection. India, however, has not yet translated these principles into a comprehensive and enforceable domestic framework, particularly within sectors such as fashion and entertainment where misappropriation remains most visible.

Against this background, this study undertakes a critical examination of the misappropriation of tribal traditional cultural expressions by the fashion and entertainment industries in India. It explores the conceptual foundations of TCEs, maps recurring patterns of misappropriation through Indian and international case studies, and evaluates the capacity of existing legal mechanisms to address these harms. By situating Indian legal challenges within broader comparative and

international contexts, the article exposes systemic deficiencies and advances the case for a hybrid regulatory approach that combines intellectual property tools with *sui generis* protections and community-centred governance.

The article ultimately contends that effective protection of tribal cultural expressions requires moving beyond market-centric intellectual property paradigms toward a rights-based framework anchored in cultural justice, consent, and equitable benefit-sharing. Such a shift is essential not only to prevent exploitation but also to empower indigenous communities as active participants in cultural and economic development. In advancing this argument, the study contributes to contemporary debates on indigenous intellectual property, cultural appropriation, and the regulation of creative industries, while offering policy-oriented insights relevant to India and other pluralistic societies facing comparable challenges.

### Research Gap

Scholarly work on cultural appropriation and intellectual property has largely concentrated on ethical critiques or narrowly framed, sector-specific case studies, often approaching misappropriation as a moral or sociological concern rather than as a manifestation of structural legal failure. Although international scholarship has engaged extensively with indigenous cultural rights in Western and Latin American jurisdictions, it has paid comparatively little doctrinal attention to the interaction between Indian intellectual property laws and tribal traditional cultural expressions, particularly within the fashion and entertainment industries. Indian legal scholarship further tends to examine individual intellectual property statutes in isolation, overlooking their combined inability to accommodate the communal, oral, and evolving nature of indigenous cultural expression. This lack of an integrated analytical framework, one that connects domestic legal regimes with emerging international normative standards has produced a substantial gap in understanding how Indian law can meaningfully address contemporary forms of cultural exploitation.

### Contribution of the Study

This article makes four distinct contributions to existing scholarship. It first undertakes a detailed doctrinal analysis of Indian intellectual property regimes as they operate in relation to tribal cultural expressions, exposing persistent misalignments between statutory frameworks and indigenous cultural realities. It then connects domestic legal challenges to broader international normative developments by placing the Indian experience within evolving standards articulated under WIPO, UNESCO, and UNDRIP. The article also brings sustained attention to the fashion and entertainment industries as primary arenas of cultural misappropriation—an aspect that Indian legal literature has so far addressed only marginally. Finally, it develops a normative case for adopting a hybrid legal framework that integrates conventional intellectual property tools

with sui generis cultural protection, offering policy-oriented insights for legal reform that seek to safeguard indigenous heritage while facilitating ethical and respectful cultural exchange.

## 2.0 TRADITIONAL CULTURAL EXPRESSIONS (TCEs): THEORETICAL & LEGAL FOUNDATIONS

Traditional Cultural Expressions (TCEs) constitute the foundation of indigenous and tribal heritage, as they carry centuries of accumulated knowledge, creative practice, and collective identity. Within tribal communities particularly in India commercial actors in the fashion and entertainment sectors increasingly expose these expressions to misappropriation<sup>1</sup>. This section examines the conceptual foundations, defining characteristics, and legal dimensions of TCEs by engaging with international frameworks and by underscoring both their cultural significance and their structural vulnerabilities.

### 2.1 Conceptualising TCEs

The World Intellectual Property Organization (WIPO) conceptualizes Traditional Cultural Expressions, often referred to as “expressions of folklore” as the tangible

and intangible forms through which traditional culture and knowledge find expression and transmission. These manifestations include music, dance, visual art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts, and narrative traditions<sup>2</sup>. WIPO situates TCEs at the core of indigenous and local community identity, recognizing them as dynamic cultural practices that evolve across generations rather than as static relics of the past<sup>3</sup>.

Within tribal societies, TCEs appear across a wide range of expressive forms. Communities articulate<sup>4</sup> visual traditions through paintings, sculptures, and symbolic motifs; they transmit performative knowledge through music, dance, and ritual practices; and they embed cultural meaning in material forms such as textiles and handicrafts<sup>5</sup>. Indian tribal traditions offer illustrative examples: Warli artists from Maharashtra<sup>6</sup> render everyday life and ritual activity through minimalist geometric compositions; Gond communities in Madhya Pradesh employ intricate patterns of dots and lines to narrate mythological and natural themes; and the Toda community of Tamil Nadu preserves distinctive cultural symbolism through black-and-red geometric embroidery on ceremonial shawls.



[selvedge.org](http://selvedge.org)

<sup>1</sup> Lenjo, E. M. (2017). Inspiration Versus Exploitation: Traditional Cultural Expressions at the Hem of the Fashion Industry. *Marq. Intell. Prop. L. Rev.*, 21, 139.

<sup>2</sup> Vézina, B. (2019). Curbing cultural appropriation in the fashion industry.

<sup>3</sup> Prażmowska-Marcinowska, K. (2020). Misappropriation of Indigenous cultural heritage—intellectual property rights in the digital era. *Santander Art and Culture Law Review*, 6(2), 119-150.

<sup>4</sup> Steffe, L. E. (2023). Protection and prevention: The shortcomings of US copyright law in combatting

cultural appropriation in the fashion industry. *IP Theory*, 12(3), 4.

<sup>5</sup> Jojo, A. R. (2021). Protection against Cultural Misappropriation: Analysis of Intellectual Property Law in India and the International Scenario. *Issue 2 Int'l JL Mgmt. & Human.*, 4, 2968.

<sup>6</sup> Marques, B., Freeman, C., Carter, L., & Pedersen Zari, M. (2021). Conceptualising therapeutic environments through culture, indigenous knowledge and landscape for health and well-being. *Sustainability*, 13(16), 9125.



[etsy.com](https://www.etsy.com)



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rajni These expressions are not mere aesthetics but carriers of historical, spiritual, and social narratives, distinguishing them from conventional artistic works.

## 2.2 Characteristics of TCEs

Traditional Cultural Expressions exhibit characteristics that distinguish them fundamentally from conventional objects of intellectual property<sup>7</sup>. Tribal communities create and hold these expressions collectively, with cultural authority resting in communal custodianship rather than individual authorship<sup>8</sup>. This collective ownership reflects social structures in which communities, rather than discrete creators, assume responsibility for preserving and transmitting cultural knowledge.

Tribal communities primarily transmit TCEs through oral traditions, storytelling, apprenticeships, and participatory cultural practices<sup>9</sup>. These modes of transmission sustain continuity across generations, yet they also create challenges for documentation and legal recognition within formal intellectual property systems. Contrary to assumptions that traditional culture remains static, TCEs continuously evolve in response to changing social and cultural contexts<sup>10</sup>. Tribal dances, for instance, often integrate contemporary themes or influences while retaining their foundational symbolic and ritual significance.

Most importantly, TCEs function as core expressions of cultural identity, spirituality, and heritage. They operate as repositories of indigenous knowledge that connect past, present, and future generations while reinforcing worldviews rooted in land, ritual practice, and cosmology. In Indian tribal societies such as the Gond, Warli, and Santhal communities, cultural expressions remain inseparable from spiritual life and social cohesion.

## 2.3 Vulnerabilities of TCEs

Despite their cultural depth and resilience, Traditional Cultural Expressions face heightened vulnerability within a globalized economic order. Commercial actors increasingly commodify these expressions without seeking community consent, particularly in industries such as fashion, where designers replicate sacred motifs and traditional patterns for profit while ignoring their cultural origins.

Such practices strip TCEs of contextual meaning and reduce spiritually significant symbols to transient aesthetic trends. For example, fashion brands have widely appropriated Navajo geometric patterns designs embedded with ceremonial and spiritual significance

<sup>7</sup> Wei, Z., & Seo, Y. (2010). Trichloroethylene (TCE) adsorption using sustainable organic mulch. *Journal of Hazardous Materials*, 181(1-3), 147-153.

<sup>8</sup> Kouhail, Y., Dror, I., & Berkowitz, B. (2019). Current knowledge on transport and reactivity of technology-critical elements (TCEs) in soil and aquifer environments. *Environmental Chemistry*, 17(2), 118-132.

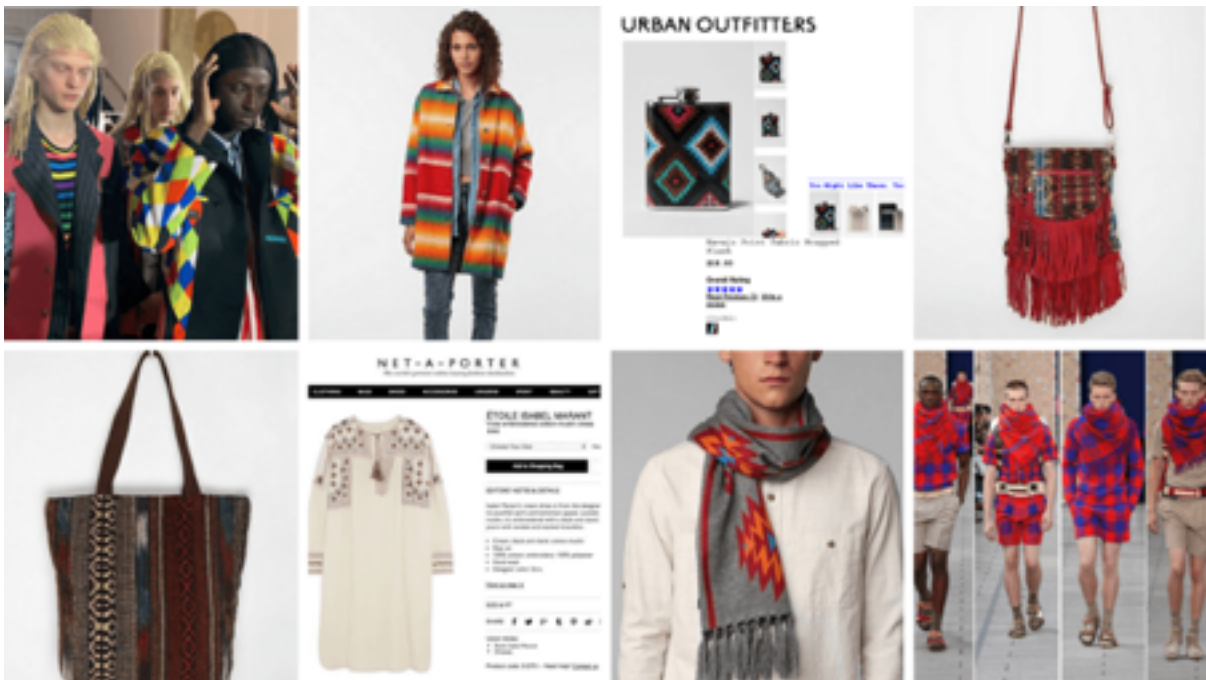
<sup>9</sup> Filella, M., & Rodríguez-Murillo, J. C. (2017). Less-studied TCE: are their environmental concentrations increasing due to their use in new technologies?. *Chemosphere*, 182, 605-616.

<sup>10</sup> Lin, J., Zhao, Q., Huang, H., Mao, H., Liu, Y., & Xiao, Y. (2021). Applications of low-temperature thermochemical energy storage systems for salt hydrates based on material classification: A review. *Solar Energy*, 214, 149-178.

within fast-fashion markets, thereby trivializing their cultural value and severing them from their original communal contexts.



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Stereotyping and exploitative practices continue to circulate damaging narratives about indigenous cultures, while the absence of systematic documentation largely a consequence of oral modes of transmission weakens the ability of communities to assert legal claims. Several global disputes illustrate how industries capitalize on

these vulnerabilities without engaging in benefit-sharing. Urban Outfitters' use of the "Navajo" name and associated designs, which resulted in a settlement in 2016 following trademark infringement allegations, exemplifies the commercial appropriation of indigenous

identity<sup>11</sup>. Similarly, Isabel Marant's reproduction of traditional Mixe (Tlahuitoltepec) blouse designs, although upheld by a French court on technical legal grounds, generated widespread ethical criticism and exposed the limitations of existing intellectual property frameworks in addressing communal cultural rights<sup>12</sup>. Indian designers have engaged in comparable practices by reproducing Warli or Madhubani motifs in commercial collections, often displacing authentic artisans and severing these expressions from their cultural origins.

### Chapter 3: Misappropriation by the Fashion Industry

As a global industry valued at trillions of dollars, fashion has long drawn upon diverse cultural sources to sustain creative innovation. When designers engage with tribal cultural expressions such as traditional patterns, motifs, textiles, jewellery, and narrative symbols this engagement frequently shifts from cultural<sup>13</sup> exchange to outright misappropriation. Indigenous and tribal communities hold these expressions as integral components of their identity, history, and spiritual life. Misappropriation arises when commercial actors extract and monetize these cultural elements without obtaining consent, providing attribution, or ensuring benefit-sharing, thereby transforming cultural heritage into a source of exploitation rather than respectful appreciation<sup>14</sup>. In examining the protection of tribal cultural expressions from misuse by the fashion and entertainment industries, this chapter concentrates on the fashion sector by analysing dominant modes of misappropriation, prominent international disputes, Indian examples, and the resulting impacts on indigenous communities<sup>15</sup>. Through this analysis, the chapter emphasizes the urgent need for legal frameworks capable of protecting indigenous intellectual property while enabling ethical and reciprocal collaboration.

### 3.1 Modes of Misappropriation

The fashion industry engages in misappropriation through multiple, often overlapping practices that obscure the boundary between inspiration and cultural theft. One of the most common modes involves the unauthorized replication of tribal patterns, motifs, and textile techniques. Designers routinely transpose intricate indigenous designs such as symbolic embroidery or geometric weaves onto mass-produced garments<sup>16</sup>, stripping them of their original cultural meaning. Sacred symbols that convey ancestral narratives or spiritual protection within tribal traditions frequently reappear as decorative elements in runway collections, marketed at premium prices while the originating communities receive no recognition or economic return. This practice not only erodes cultural value but also saturates markets with imitations that undermine the livelihoods of traditional artisans.

Fashion brands also appropriate tribal identities through branding strategies that deploy labels such as "Tribal Chic" or "Aztec Print." By trademarking such terms, corporations commodify entire cultural identities while simultaneously restricting indigenous communities from using their own descriptors in commercial contexts. These branding practices reinforce reductive stereotypes, presenting tribal cultures as exotic, primitive, or transient trends rather than as living and evolving traditions. Moreover, designers often treat cultural elements as seasonal fashions, detaching them from their ritual and symbolic foundations. A motif that signifies fertility, protection, or social belonging within a tribal ceremony may<sup>17</sup> appear briefly on an accessory or garment, only to disappear when market trends shift, reflecting a disposability that fundamentally conflicts with the enduring nature of these expressions.

The industry further exploits tribal bodies, stories, and visual imagery through marketing campaigns conducted without community consent. Advertisements and photoshoots frequently romanticize or exoticize<sup>18</sup> indigenous lifestyles by using tribal landscapes as

<sup>11</sup> Filella, M. (2020). TCEs and environmental research: is the TCEs concept scientifically fruitful?. *Environmental Science and Pollution Research*, 27(16), 20565-20570.

<sup>12</sup> Jiang, Z., Li, X., Peng, B., Huang, S., Zhang, X., & Ding, Y. (2024). A review on recent advances in oriented thermally conductive phase change composites: Preparation, characteristics and applications. *Materials Today Sustainability*, 28, 101026.

<sup>13</sup> Vézina, B. (2019). Curbing cultural appropriation in the fashion industry.

<sup>14</sup> Boča-Moisin, M. (2023). Cultural Fashion a Matter of Human Rights. Cultural Misappropriation as a Human Rights Violation. What is Wrong with the Fashion and Legal Systems and How Can We Make It Right? The Oma Ethnic Group of Nanam Village in Laos Have an Answer. In *Sustainability Challenges in the Fashion Industry: Civilization Crisis, Decolonization, Cultural Legacy, and Transitions* (pp. 91-109). Singapore: Springer Nature Singapore.

<sup>15</sup> Agarwal, P. (2023, November). Misappropriation as a Form of Business. In *Digital Economy Post COVID-19 Era: Proceedings of 8th Conference of Indian Academy of Management (INDAM2023), Mumbai, India 2023* (p. 275). Springer Nature.

<sup>16</sup> Steffe, L. E. (2023). Protection and prevention: The shortcomings of US copyright law in combatting cultural appropriation in the fashion industry. *IP Theory*, 12(3), 4.

<sup>17</sup> Poślusznny, B. (2020). Cultural appreciation or cultural appropriation. Traditional garments and textiles in the fashion industry.

<sup>18</sup> Sádaba, T., LaFata, V., & Torres, A. (2020, July). Cultural appropriation in the digital context: a comparative study between two fashion cases. In *International conference on human-computer interaction* (pp. 504-520). Cham: Springer International Publishing.

aesthetic backdrops or by dressing models as stylized “natives,” while disregarding the lived socio-economic realities of these communities. Such representations infringe both individual and collective rights and contribute to broader patterns of cultural colonialism, in which dominant industries extract symbolic and

economic value from marginalized cultures without reciprocity. Collectively, these modes of misappropriation expose a structural imbalance in existing intellectual property regimes, which continue to prioritize individual creativity while failing to protect the communal foundations of tribal cultural heritage.



### 3.2 High-Profile Global Cases

Across the global fashion industry, several high-profile controversies reveal how luxury brands repeatedly exploit tribal cultural expressions and then confront legal or public backlash. One of the most significant disputes arose in the United States between the Navajo Nation and Urban Outfitters<sup>19</sup>. In 2012, the Navajo Nation initiated trademark infringement proceedings after the retailer marketed products such as “Navajo Hipster Panties” and branded flasks that reproduced Navajo names and patterns without authorization. The tribe alleged violations of the Indian Arts and Crafts Act, which prohibits misleading representations of Native American–inspired goods. By the time of litigation, Urban Outfitters<sup>20</sup> had sold more than twenty products bearing the “Navajo” label, monetizing tribal identity while excluding Navajo artisans from any economic benefit. Although the parties settled the dispute in 2016

through a confidential agreement that included provisions for future collaboration, the case exposed the ease with which corporations commodify indigenous identity for commercial appeal.

Comparable dynamics emerged in France when Mexican indigenous communities accused designer Isabel Marant of cultural plagiarism in 2015. Marant’s Étoile Spring/Summer collection featured embroidered blouses that closely replicated designs traditionally produced by Mixe women from Santa María Tlahuitoltepec—designs that carry deep cultural and artisanal significance. Community representatives publicly condemned the collection, asserting that the garments reflected direct copying rather than abstract inspiration and that Marant sold them at prices far removed from the economic realities of the source community. Although Marant rejected the plagiarism claim, describing the designs as inspirational, the

<sup>19</sup> Sádaba, T., LaFata, V., & Torres, A. (2020, July). Cultural appropriation in the digital context: a comparative study between two fashion cases. In *International conference on human-computer interaction* (pp. 504-520). Cham: Springer International Publishing.

<sup>20</sup> Hogans, K., & McAndrews, L. (2022, September). “They Love the Culture, but Not the People”: A Content Analysis of Cultural Appropriation Claims Against Fashion Designers and Brands From 2013 to 2020. In *International Textile and Apparel Association Annual Conference Proceedings* (Vol. 78, No. 1). Iowa State University Digital Press.

controversy triggered global debate on cultural theft. A subsequent<sup>21</sup> French court ruling in a related dispute involving the brand Antik Batik concluded that the designs lacked copyright protection due to their traditional origin, thereby underscoring the inability of Western intellectual property regimes to safeguard communal cultural expressions.

In Europe, Christian Dior encountered similar criticism in 2017 after incorporating motifs from Romania's Bihor region into its pre-fall collection. The brand reproduced embroidered vests and coats that closely resembled traditional Bihor folk attire without providing attribution or acknowledgment<sup>22</sup>. Romanian artisans and media outlets publicly challenged the collection, pointing out the stark disparity between Dior's luxury pricing and the modest cost of authentic garments produced by local craftspeople. In response, a Romanian magazine launched the "Bihor Couture" initiative, which promoted genuine local designs online and redirected profits to the community. This intervention demonstrated how public scrutiny and grassroots mobilization can counter corporate cultural extraction.

Disputes involving Louis Vuitton and the Maasai people of East Africa further illustrate persistent struggles over indigenous cultural appropriation<sup>23</sup>. In 2012, Louis Vuitton incorporated Maasai-inspired beadwork and shuka textiles into its collections, prompting objections from the Maasai Intellectual Property Initiative (MIPI)<sup>24</sup>. The initiative alleged that more than one thousand companies—including major luxury brands—had generated billions of dollars by exploiting Maasai names and imagery without compensation. The Maasai community demanded licensing arrangements and benefit-sharing mechanisms, arguing that continued appropriation reinforced poverty rather than development. Although Vuitton itself did not face formal litigation, MIPI has since negotiated agreements<sup>25</sup> with other companies, signaling gradual movement toward recognition and compensation. Taken together, these cases reveal a recurring pattern in which fashion brands extract cultural value from indigenous communities while systemic legal reform remains elusive.

### 3.3 Indian Fashion Misappropriation Examples

Within India, where tribal communities form a substantial and culturally diverse segment of the

population, the fashion industry mirrors many of the global patterns of misappropriation. Designers frequently replicate indigenous motifs and techniques without attribution or consent, thereby severing cultural expressions from their original contexts<sup>26</sup>. Prominent designer Sabyasachi Mukherjee has faced criticism for incorporating Banjaran and Gond elements into his collections without clearly acknowledging their tribal origins. His *Wanderlust* line, which drew heavily from Sanganeri prints associated with tribal heritage, attracted allegations of cultural appropriation when the designs entered global markets without recognition or benefit-sharing for the original artisan communities. Such practices deprive tribal groups of economic opportunities while exposing sacred and symbolic motifs to dilution through mass production.

Other Indian designers have similarly faced accusations for reproducing Warli and Madhubani motifs in luxury apparel<sup>27</sup>. Warli art, known for its geometric representations of daily life and ritual practices, frequently appears as printed patterns on sarees and dresses without collaboration with Warli artists. Madhubani designs rooted in mythological storytelling and ritual expression have also migrated onto commercial fabrics, displacing hand-painted originals and eroding the authenticity of the tradition.

Commercial brands intensify these harms by imitating designs associated with tribes such as the Bhutia and Lepcha of Sikkim and the Toda community of the Nilgiris. Fast-fashion labels reproduce Bhutia and<sup>28</sup>Lepcha textile patterns, including dragon motifs and natural dye techniques, while mass-market accessories replicate Toda embroidery that traditionally symbolizes social bonds and community identity. These imitations saturate markets with low-cost alternatives and systematically undermine indigenous economies.

The widespread replication of Naga, Banjara, and Lambadi jewellery further illustrates the scale of domestic misappropriation. Designers routinely reproduce Naga beadwork rich in symbolic meaning without consent, prompting repeated objections from Naga cultural groups. Similarly, Banjara and Lambadi silver ornaments adorned with mirrors and coins frequently appear in Bollywood-inspired collections that exoticize nomadic tribal identities while excluding the communities themselves from economic participation. Collectively, these examples demonstrate that India's

<sup>21</sup> Lenjo, E. M. (2017). Inspiration Versus Exploitation: Traditional Cultural Expressions at the Hem of the Fashion Industry. *Marq. Intell. Prop. L. Rev.*, 21, 139.

<sup>22</sup> Lenjo, E. M. (2017). Inspiration Versus Exploitation: Traditional Cultural Expressions at the Hem of the Fashion Industry. *Marq. Intell. Prop. L. Rev.*, 21, 139.

<sup>23</sup> Nolan, M. (2023). Prada Bag or Fraud-A Bag: The Impacts of Knockoffs and Counterfeits on the Fashion Industry. *Louis ULJ*, 68, 215.

<sup>24</sup> Atkinson, V., & van Caenegem, W. (2019). The fashion sector: copyright, designs or unfair competition?. *Journal of Intellectual Property Law & Practice*, 14(3), 214-222.

<sup>25</sup> Boğa-Moisin, M. (2023). Cultural Fashion a Matter of Human. *Sustainability Challenges in the Fashion Industry: Civilization Crisis, Decolonization, Cultural Legacy, and Transitions*, 91.

<sup>26</sup> Pozzo, B. (2020). Fashion between inspiration and appropriation. *Laws*, 9(1), 5.

<sup>27</sup> Akanegbu, A. (2012). Fashion's Moral Dilemma: Exploring How a Lack of Moral Rights in the United States Disproportionately Harms Emerging Fashion Designers. *Available at SSRN 2054783*.

<sup>28</sup> Gebru, A. K. (2021). The Piracy Paradox and Indigenous Fashion. *Cardozo Arts & Ent. LJ*, 39, 607.

fashion industry reproduces the same extractive dynamics visible at the global level, reinforcing the need

for legal protections that respond specifically to the communal and cultural dimensions of tribal heritage.





### 3.4 Effects on Communities

Misappropriation affects tribal communities in ways that extend well beyond immediate financial loss and deeply

disrupt their social and cultural<sup>29</sup> fabric. At the economic level, mass-produced imitations displace authentic tribal products from the marketplace, depriving artisans of livelihoods and often pushing them toward poverty or precarious alternative employment. Cultural harm follows closely<sup>30</sup>, as commercial misuse trivializes sacred symbols and practices, weakening communal pride and eroding spiritual relationships embedded within these expressions. Over time, this process accelerates identity erosion, particularly among younger generations who may distance themselves from traditions reduced to commodified novelties<sup>31</sup>. Market exclusion further marginalizes indigenous creators, reinforcing entrenched inequalities and obstructing pathways to sustainable development. Addressing these layered harms requires robust legal reforms that prioritize equitable benefit-sharing, cultural integrity, and long-term community preservation.

#### Chapter 4: Misappropriation in the Entertainment Industry

The entertainment industry—including cinema, music, digital streaming platforms, and advertising—frequently draws upon cultural traditions to enhance narrative appeal and visual impact<sup>32</sup>. When creators engage with tribal cultural expressions such as indigenous dances, music, rituals, and symbols, however, this engagement often crosses into misappropriation. Producers and advertisers routinely deploy these elements without obtaining consent, providing acknowledgment, or offering compensation, transforming cultural representation into exploitation rather than respectful portrayal<sup>33</sup>. In India, where communities such as the Adivasis, Bhils, and numerous Northeastern tribes sustain rich and distinct cultural traditions, these practices not only commodify sacred heritage but also perpetuate distortion and misrepresentation. This chapter examines how misappropriation manifests across Bollywood and regional cinema, the music industry, OTT platforms, and advertising, while also assessing the broader consequences for tribal communities.

#### 4.1 Bollywood and Regional Cinema

Indian cinema, particularly Bollywood and regional film industries has long incorporated tribal motifs to enhance dramatic appeal or evoke exotic imagery<sup>34</sup>. Filmmakers often adopt these elements without consulting or crediting the communities from which they originate, thereby stripping cultural<sup>35</sup> expressions of their original meaning and context. This pattern amounts to cultural appropriation rather than meaningful representation.

A recurring practice involves the unauthorized use of tribal dances, costumes, and ritual elements in cinematic sequences. Directors frequently insert Adivasi or Gond dance forms into musical numbers and present them as generic “folk” performances, omitting any reference to their tribal origins or spiritual significance<sup>36</sup>. By excluding community elders and cultural custodians from the creative process, filmmakers erase the social and ritual meanings attached to these practices. Regional<sup>37</sup> film industries, including Tamil and Telugu cinema, similarly adapt indigenous rituals such as harvest celebrations into narrative devices that serve plot progression rather than cultural authenticity.

Cinema also commonly exoticizes the so-called “tribal look,” particularly through item songs designed for mass consumption. Actors appear in stylized approximations of tribal attire, embellished with feathers, beads, and body paint, while performances emphasize spectacle over substance. Such portrayals reduce complex cultural identities to visual props and frequently sexualize tribal women, presenting them as mysterious or alluring figures detached from lived realities. These representations reinforce objectification and cultural insensitivity.

In addition, films often reproduce harmful stereotypes by portraying tribal characters as primitive, superstitious, or antagonistic<sup>38</sup>. These depictions distort public understanding and further marginalize indigenous voices, as filmmakers rarely involve tribal communities in scripting or casting decisions. Even in visually striking productions such as *RRR*, where energetic dance sequences draw inspiration from regional traditions, the absence of clear attribution or contextual grounding

<sup>29</sup> Wang, X., Wu, W., Ao, G., Han, M., Liu, M., Yin, R., ... & Zhu, B. (2025). Minor effects of warming on soil microbial diversity, richness and community structure. *Global Change Biology*, 31(3), e70104.

<sup>30</sup> Pinto, P. F., Macinko, J., Silva, A. F., Lua, I., Jesus, G., Magno, L., ... & Rasella, D. (2023). The effect of primary health care on AIDS incidence and mortality: a cohort study of 3.4 million Brazilians. *medRxiv*.

<sup>31</sup> Dockery, D. W., & Pope, C. A. (1994). Acute respiratory effects of particulate air pollution.

<sup>32</sup> Morris, R. G. (2022). Selling out for a Song: "Artist Abuse" and Saving Creatives from Servitude and Economic Disadvantage in the Entertainment Industry. *SMU Sci. & Tech. L. Rev.*, 25, 145.

<sup>33</sup> Reid, D. J. (2018). Combating the enemy within: Regulating employee misappropriation of business information. *Vand. L. Rev.*, 71, 1033.

<sup>34</sup> Goodyear, M. P. (2020). Adapting Indian Copyright: Bollywood, Indian Cultural Adaptation, and the Path to Economic Development. *Vand. J. Ent. & Tech. L.*, 23, 517.

<sup>35</sup> Vasudevan, R. (2011). The meanings of ‘Bollywood’. *Beyond the boundaries of Bollywood: The many forms of Hindi cinema*, 3-29.

<sup>36</sup> Srivastava, S. (2022). Bollywood: The unexpected virtue of copying Hollywood. *Cornell Int'l LJ*, 55, 287.

<sup>37</sup> Dubey, S. (2020). Role of Intellectual Property Rights in Entertainment Industry. *Supremo Amicus*, 21, 126.

<sup>38</sup> Patra, S. P., & Dey, D. (2025). Entertainment: navigating legal challenges and opportunities in India compared to EU regulations. *International Review of Law, Computers & Technology*, 1-21.

highlights the fragile boundary between cultural inspiration and appropriation.



The Electrifying Joy of RRR's 'Naatu Naatu' Dance Scene

A scene from a Bollywood-inspired film illustrating the use of folk and tribal dance elements in cinema.

#### 4.2 Music Industry

The Indian music industry has increasingly drawn upon tribal and folk traditions to drive creative innovation, yet this engagement frequently disregards ethical and legal obligations<sup>39</sup>, resulting in the exploitation of indigenous musical heritage. Producers and artists often appropriate tribal sounds without recognising the communities that sustain them.

One of the most pervasive practices involves the unauthorized sampling of tribal music. Music producers routinely extract rhythms, melodies, and vocal patterns from recorded tribal performances—such as those associated with Santhal or Warli communities—and embed them into contemporary compositions<sup>40</sup>. Genres like hip-hop and electronic fusion frequently incorporate Indian folk elements into global soundscapes, yet artists rarely seek consent from the original performers or acknowledge collective ownership<sup>41</sup>. The controversy surrounding the 2004 track “*Let the Music Play*” by

Shamur illustrates this trend, as the song incorporated a raw folk vocal from an obscure source without adequate credit, reigniting debates over musical ownership and indigenous rights.

The industry also commercializes tribal music through large-scale recreations of folk songs. Record labels and film studios remix traditional tunes into albums and soundtracks, often presenting them as modern reinterpretations while omitting attribution to their tribal origins<sup>42</sup>. Indian courts, when confronted<sup>43</sup> with such disputes, have generally prioritised statutory copyright holders and narrow interpretations of authorship, thereby restricting fair use arguments that could otherwise protect communal cultural expressions. This legal imbalance enables corporations to convert orally transmitted songs—preserved collectively over generations—into profit-oriented commodities, stripping them of cultural context and weakening their communal significance.

<sup>39</sup> Chakraborty, A. (2017). *Copyright infringement in hindi and bengali film industry in India: A critical study of the role of indian law enforcement mechanism* (Doctoral dissertation, University of North Bengal).

<sup>40</sup> Scaria, A. G. (2014). *Piracy in the Indian film industry: Copyright and cultural consonance*. Cambridge University Press.

<sup>41</sup> Pal, S. (2020). *The monsoon crush: rethinking Indian cinema's art-commerce divide in the context of transnationalism, corporatisation and*

*liberalisation* (Doctoral dissertation, University of St Andrews).

<sup>42</sup> Sharma, R. (2019). *Royalty Predicament of the Authors of Musical Works in India: An Exploitative Business*. *MIPLC Master Thesis Series (2018/19)*.

<sup>43</sup> Mohandas, T. (2021). *Sampling India: examining cultural appropriation, intercultural exchange, and the Othering of Indian music in hip-hop and reggaeton* (Doctoral dissertation, Middlesex University).



An album cover incorporating elements of Indian folk and tribal music traditions.

#### 4.3 OTT Platforms and Advertising

The rapid growth of OTT platforms and digital advertising has intensified the use of tribal imagery as a commercial storytelling device<sup>44</sup>, often without fair agreements or respect for cultural boundaries. Content creators and brands increasingly deploy tribal symbols and communities to construct narratives of authenticity, resilience, or exotic appeal, while excluding indigenous groups from meaningful participation or benefit-sharing. In advertising campaigns, corporations frequently appropriate tribal motifs—such as Madhubani designs or textile patterns from Northeastern communities<sup>45</sup>—to market consumer products. Brands strategically use these visuals to signal tradition and cultural depth<sup>46</sup>, yet they rarely compensate the artisans or acknowledge the communities that sustain these artistic forms<sup>47</sup>. Several online retailers have faced public criticism for labeling Northeastern attire as “ethnic chic,” a practice that strips garments of their sacred, historical, and cultural significance and reduces them to lifestyle commodities. munities.

OTT productions and digital advertisements also raise serious concerns regarding the treatment of tribal individuals, particularly children and entire village communities. Production teams often recruit indigenous participants for shoots portraying rural or tribal life under the guise of inspirational or socially conscious storytelling<sup>48</sup>. However, these participants frequently receive inadequate compensation and limited information about how platforms will circulate, monetize, or repurpose their images<sup>49</sup>. Similar allegations have emerged against international brands that have incorporated Indian tribal artworks into global marketing campaigns without attribution, consent, or community engagement.

Together, these practices reflect a broader pattern of digital-era exploitation, where emerging media platforms amplify cultural extraction while<sup>50</sup> existing legal frameworks fail to ensure accountability, consent, or equitable benefit-sharing for indigenous com

<sup>44</sup> Debnath, T. (2021). The Rise of Content Commercialized on OTT Platforms and Copyright Laws: An Analysis. *Law Essentials J.*, 2, 110.

<sup>45</sup> Singh, A. (2022). Interplay of the Growing Digital Media and Entertainment Industry with Competition Laws. *Supremo Amicus*, 30, 502.

<sup>46</sup> Tyagi, P., & Kumar, N. (2024). Rise of OTT Platforms in India: A Case Study of Monetisation Models & Regulatory Concerns. *Global Media Journal*, 22(68), 1-7.

<sup>47</sup> Negi, M. S. OVER THE TOP (OTT PLATFORMS) VS TELEVISION: A REGULATORY IMBALANCE.

<sup>48</sup> Murali Someswara Rao, K. V., & Nagaraj, K. V. (2022). GROWTH OF OVER THE TOP PLATFORMS: NEW CHALLENGE FOR CONVENTIONAL ENTERTAINMENT AND ADVERTISING INDUSTRY-A CONCEPTUAL STUDY. *Journal of Positive School Psychology*, 6(2).

<sup>49</sup> Kudeshia, A., & Jain, S. (2022). Regulation of OTT Platforms: Need for a Separate Legislation. *Issue 6 Int'l JL Mgmt. & Human.*, 5, 1848.

<sup>50</sup> Tapkir, R. S. (2023). Privacy in Peril: Rise of Data Breaches in the Entertainment and Media Industries. *Jus Corpus LJ*, 4, 443.



Indian Tribal Art: A Legacy that Continues to Captivate!

An example of tribal art elements potentially used in commercial contexts.

#### 4

#### 4 Consequences

Misappropriation within the entertainment industry causes deep cultural, symbolic, and psychological harm to tribal communities and intensifies existing patterns of marginalization and identity erosion<sup>51</sup>. When producers alter sacred elements to suit commercial narratives, they distort cultural meanings and undermine efforts to preserve traditions in their authentic form. By repackaging living cultural practices<sup>52</sup> as consumable stereotypes, the industry reinforces cultural isolation and sustains discriminatory attitudes toward indigenous groups.

Media-driven commodification also weakens the symbolic value of tribal expressions. Repeated exposure to decontextualized representations erodes spiritual connections and encourages tribal youth to internalize inaccurate portrayals of their own heritage, often prompting disengagement from ancestral practices<sup>53</sup>. Beyond cultural loss, such portrayals generate serious psychological consequences. Persistent misrepresentation fosters feelings of alienation, anger, and diminished self-worth, which scholars have linked to higher vulnerabilities to trauma-related disorders, substance dependence, and self-harm within marginalized communities.

Collectively, these harms amount to a direct assault on cultural integrity and community continuity. While entertainment industries accumulate cultural and economic capital, tribal communities absorb the social and emotional costs, reinforcing entrenched power asymmetries and threatening the long-term survival of indigenous identities.

#### Chapter 5: Existing Legal Mechanisms: Are They Enough?

India's intellectual property framework provides multiple legal instruments that ostensibly protect tribal cultural expressions—such as dances, music, motifs, and traditional knowledge—from misappropriation by the fashion and entertainment industries. Legislators have embedded these protections across copyright law, design law, trademark regimes, geographical indications, biodiversity statutes, and folklore-related provisions<sup>54</sup>. Yet these mechanisms rarely function effectively for indigenous communities because they operate on assumptions that conflict with the communal, inherited, and intangible nature of tribal heritage. This chapter critically assesses the capacity of existing legal regimes to safeguard tribal cultural expressions. By examining statutory provisions, judicial interpretations, and

<sup>51</sup> Kapoor, G. (2024). Balancing Freedom of Expression & Regulation on OTT Platform. *Issue 3 Int'l JL Mgmt. & Human.*, 7, 4352.

<sup>52</sup> AL, R. S., & Chopra, S. (2024). Regulating Digital Era: A Comparative Analysis of Policy Perspectives on Media Entertainment. *Legal Issues Digit. Age*, 5, 97.

<sup>53</sup> Chaudhuri, A. D. (2021). Do OTT platforms deserve a separate regulation?. *Centre for Research & Analysis in Finance, Technology & Law*. <https://papers.ssrn.com/sol3/papers.cfm>.

<sup>54</sup> Chatterjee, M. D., Ghosh, A., & Dutta, S. A Legal Analysis of Content Regulation and Censorship of OTT Platforms in India.

comparative practices, it exposes structural deficiencies and evaluates whether current laws can prevent exploitation or whether India must adopt a sui generis framework grounded in collective rights and equitable benefit-sharing.

### 5.1 Copyright Law

The Indian Copyright Act, 1957, forms the primary legal basis for protecting artistic, musical, and performative works, and it can, in theory, extend to tribal expressions such as folk songs, dances, and visual art forms.<sup>55</sup> The Act grants economic rights, including reproduction, communication, and distribution, while Section 57<sup>56</sup> recognises moral rights that allow authors to assert attribution and resist distortion or mutilation. These provisions could potentially protect tribal music sampled in entertainment media or traditional designs reproduced in the fashion industry by ensuring acknowledgment and preserving artistic integrity.

In practice, however, copyright law aligns poorly with the realities of tribal cultural heritage. The statute insists on identifying an individual author, a requirement that conflicts directly with indigenous systems of collective creation and custodianship, where cultural expressions evolve across generations without a single identifiable originator. The originality threshold further excludes inherited motifs and traditional<sup>57</sup> patterns that courts often classify as part of the public domain. Additionally, copyright protection depends on fixation in tangible form, which excludes oral traditions such as storytelling, ritual performances, and ceremonial practices that lie at the heart of many tribal cultures. The limited duration of protection<sup>58</sup>—typically extending only to the author's lifetime plus sixty years—also renders ancient expressions vulnerable once the term expires, allowing

lawful yet exploitative appropriation. These constraints reveal the inadequacy of copyright law in addressing cultural expressions that demand perpetual and collective protection.

### 5.2 Design Law

The Designs Act, 2000, offers protection for visual features such as patterns, shapes, and ornamentation applied to articles, making it relevant for safeguarding tribal textile designs and craft motifs against industrial reproduction<sup>59</sup>. When registered, a design grants exclusive rights over novel aesthetic features used in products like garments, accessories, or furnishings—an important safeguard in the context of fashion-related misappropriation.

Despite this potential, the design law framework poses significant barriers for tribal communities. The registration process involves financial costs, procedural complexity, and legal awareness that many indigenous groups lack<sup>60</sup>, effectively excluding them from accessing protection. Even when registration succeeds, the law limits protection to ten years<sup>61</sup>, extendable to a maximum of fifteen, a timeframe wholly incompatible with cultural designs that hold enduring social and spiritual significance<sup>62</sup>. The interaction between the Designs Act and the Copyright Act further complicates matters. Section 15 of the Copyright Act withdraws copyright protection once a registrable design undergoes industrial reproduction beyond a prescribed threshold, forcing creators to choose between overlapping regimes<sup>63</sup>. This rigid structure disadvantages tribal artisans, as unregistered designs receive no statutory protection and remain exposed to widespread copying and piracy within the fashion industry.

<sup>55</sup> Thomas, Z. (2012). Overview of changes to the Indian Copyright Law.

<sup>56</sup> Dumka, S. (2025). Moral Rights of Authors under the Indian Copyright Act: Protection, Challenges, and Judicial Trends. *Challenges, and Judicial Trends (October 29, 2025)*.

<sup>57</sup> Raza, A., Alam, G., & Talib, A. (2023). Copyright law declared by the Supreme Court of India. *Journal of Intellectual Property Rights*, 28(1), 151-170.

<sup>58</sup> Bhagyamma, G. (2023). Protecting Creative Works: Exploring Copyright Protection Under Indian Copyright Law. *ILE International Law Review*, 1(1), 56-70.

<sup>59</sup> Sharma, R., Jaiswal, P., & Adlakha, A. (2011). Industrial design and its importance in success of a product with special reference to the design act, 2000. *Pragyaan: Journal of Law*, 1(1), 17-22.

<sup>60</sup> Sharma, R., Jaiswal, P., & Adlakha, A. (2011). Industrial design and its importance in success of a product with special reference to the design act, 2000. *Pragyaan: Journal of Law*, 1(1), 17-22.

<sup>61</sup> Sahny, P. (2012). The Designs Act, 2000: A Fashion Faux Pas. Available at SSRN 2185519.

<sup>62</sup> Chantia, S., & Singh, A. K. (2013). Copyright Law Protection for Fashion Design-Interfaces Between Copyright Act 1957 and Design Act 2000: An Appraisal. *The Anthropos*, 23.

<sup>63</sup> Allauddin, H., Majeed, T., & Zubair, M. (2024). THE EVOLUTION OF INDUSTRIAL DESIGNS PROTECTION IN PAKISTAN: COMPARATIVE ANALYSIS OF THE PATENTS AND DESIGNS ACT 1911 AND THE REGISTERED DESIGNS ORDINANCE 2000. *International Journal of Social Sciences Bulletin*, 2(4), 2555-2560.



Native American Geometric Patterns: Boho Textile Designs (PNG) - Etsy

An example of geometric patterns in tribal textile designs, highlighting elements often sought for legal protection.

### 5.3 Trademark Law

The Trade Marks Act, 1999 governs trademark law in India. This Act allows tribes to register certification marks and collective marks for their community products<sup>64</sup>. These marks enable tribes to control how names or symbols linked to their cultural expressions are used<sup>65</sup>. Such registration promotes community branding and helps prevent deceptive marketing practices in the fashion and entertainment industries.

However, trademark law offers only limited protection for cultural expressions<sup>66</sup>. It requires graphical representation and distinctiveness—qualities that many fluid or symbolic tribal elements do not possess. The law primarily addresses commercial deception, not cultural integrity. As a result, it provides little safeguard against non-misleading appropriations, such as stylized “tribal-inspired” designs.

Communities bear the responsibility to actively register and enforce their marks<sup>67</sup>. This requirement creates significant challenges for dispersed or resource-limited to spread widely.

tribal groups. Moreover, the Act does not automatically recognize communal ownership unless tribes form formal associations.

### 5.4 Geographical Indications (GI)

The Geographical Indications of Goods (Registration and Protection) Act, 1999 protects products that originate from specific regions. This law benefits tribal crafts such as Naga Shawls or Toda Embroidery<sup>68</sup>. It links the quality and reputation of these products to their geographic origin and prevents imitation. As a communal right, GI registration helps preserve heritage while increasing economic value for indigenous artisans. Despite these advantages, the law has important limitations. It focuses only on region-specific goods and does not cover<sup>69</sup> individual motifs or designs that can be detached and misused elsewhere. Enforcement remains weak because of inadequate monitoring and low legal awareness among communities, which allows counterfeit products

<sup>64</sup> Singh, H., & Khan, S. (2022). Concept of Distinctiveness: Trade Marks Act, 1999. *Issue 4 Indian JL & Legal Rsch.*, 4, 1.

<sup>65</sup> BENNETT, S. G., & CLASS, I. TRADE MARKS ACT 1994.

<sup>66</sup> Adams, M., & Scardamaglia, A. (2024). Non-Traditional Trade Marks: Reflections on the Trade Marks Act 2002. *New Zealand Law Review*, 2024(2), 237-259.

<sup>67</sup> Dikotla, R. M. (2022). *The deception provisions of sections 10 (12) and 10 (13) of the Trade Marks Act, 194*

*of 1993* (Master's thesis, University of Pretoria (South Africa)).

<sup>68</sup> Meghwal, M. L., Dhurve, L., Raj, S., Afreen, N., Tripathi, S., Maurya, D. K., & Kumar, A. (2023). A comprehensive review on the impacts of intellectual property rights on the global agricultural economy. *Asian Journal of Agricultural Extension, Economics & Sociology*, 41(12), 160-173.

<sup>69</sup> Hazra, A., & Das, S. (2025). How the health-benefit components of tea vary depending on the cultivar and season: The example of Darjeeling tea. In *Tea in Health and Disease Prevention* (pp. 185-199). Academic Press.

Registration demands proof of historical linkage, a requirement that may exclude evolving cultural expressions<sup>70</sup>. The system also faces difficulties when dealing with crafts that cross regional or state boundaries.



Naga shawl - Wikiwand

A traditional Naga shawl, an example of a GI-protected tribal craft in India.

### 5.5 Biological Diversity Act & ABS

The Biological Diversity Act, 2002, along with its Access and Benefit-Sharing (ABS) provisions, regulates how people access biological resources and the traditional knowledge linked to them. These rules directly affect tribal communities<sup>71</sup> that rely on herbal practices rooted in biodiversity. The Act mandates that anyone who commercially exploits these resources and associated knowledge must share the benefits<sup>72</sup> fairly and equitably. In practice, this mechanism could also apply to certain uses in fashion such as natural dyes or

plant-based materials and some entertainment contexts that draw on such knowledge.

However, the Act does not directly tackle misappropriation in fashion or entertainment. It focuses mainly on genetic resources and biological materials<sup>73</sup>, not on cultural expressions like dances, symbols, motifs, or other forms of intangible heritage. Implementation gaps further undermine its effectiveness for tribal communities<sup>74</sup>. Authorities often delay approvals, and benefit distribution remains uneven and inconsistent, leaving many indigenous groups without meaningful protection or compensation.

<sup>70</sup> Brahmi, P., & Tyagi, V. (2019). International and National Regulation Governing the Use of Plant Genetic Resources. *Training Manual on Plant Genetic Resources Management and Utilization, NAHEP-CAAST Sponsored Short Term Training Programme*, 35.

<sup>71</sup> Pauchard, N. (2017). Access and benefit sharing under the convention on biological diversity and its protocol: what can some numbers tell us about the effectiveness of the regulatory regime?. *Resources*, 6(1), 11.

<sup>72</sup> Richerzhagen, C. (2011). Effective governance of access and benefit-sharing under the Convention on Biological Diversity. *Biodiversity and Conservation*, 20(10), 2243-2261.

<sup>73</sup> Nelliyat, P., Pisupati, B., Laladhas, K. P., & Oommen, O. V. (2023). Convention on biological diversity, access and benefit sharing: A glance. In *Biodiversity conservation through Access and Benefit Sharing (ABS) Himalayas and Indian Sub-Continent* (pp. 3-16). Cham: Springer International Publishing.

<sup>74</sup> Nomani, M. Z. M. (2020). The access and benefit-sharing regime: An environmental justice perspective. *Environmental Policy and Law*, 49(4-5), 259-263.



Baiga Tribe Herbal Wisdom: Traditional Healing and Medicinal Plant Knowledge – Ayurvanca

Illustration of tribal communities utilizing herbal knowledge, linked to India's biodiversity laws.

### 5.6 Folk & Traditional Art Protection under Copyright Rules

The Copyright Act provides protections for folklore and traditional arts by recognizing performers' rights (Section 38) and offering moral safeguards that acknowledge<sup>75</sup> communal contributions. These provisions can deter unauthorized sampling of tribal music or replication of art in media.

However, enforcement remains minimal and largely ineffective. The rules lack clarity on collective ownership and oral traditions, making them more symbolic than practical. Without dedicated mechanisms, these provisions fail to prevent widespread misappropriation.

### 5.7 Judicial Perspective (Key Indian Cases)

Indian courts have gradually recognized cultural rights. In *Amar Nath Sehgal v. Union of India (2005)*, the Delhi High Court upheld moral rights<sup>76</sup> under Section 57 to protect a mural as cultural heritage, preventing its destruction and affirming perpetual integrity rights. This

case extends to tribal works, highlighting protection beyond purely economic interests.

International cases, like *Navajo Nation v. Urban Outfitters*, demonstrate how trademark law can address cultural appropriation<sup>77</sup>, providing persuasive examples for Indian courts. While courts acknowledge these harms, they often operate without strong statutory backing for tribal expressions, relying on interpretive approaches to fill the gaps.

### Chapter 6: International Frameworks & Their Relevance

Global efforts have developed to protect traditional cultural expressions (TCEs) from misappropriation, offering valuable guidance for countries like India that face similar challenges in fashion and entertainment<sup>78</sup>. These frameworks emphasize communal rights, consent mechanisms, and safeguards against commercial exploitation, recognizing indigenous heritage as living, collective, and intergenerational. Although not always legally binding, they influence domestic policy and reveal gaps<sup>79</sup> in conventional intellectual property

<sup>75</sup> Nomani, M. Z. M., Rahman, F., Rauf, M., & Khan, S. A. (2020). Access and benefit sharing models of biodiversity conservation in international and comparative Law perspective. *Advances in Natural and Applied Sciences*, 14(1), 1-14.

<sup>76</sup> Vij, S. (2021). *Amar Nath Sehgal vs Union of India (2005): How Moral Rights of an Artist Won the Battle of the Mural*. *Legal Lock J.*, 1, 50.

<sup>77</sup> Stockton, B. J. (2023). A Note on *Navajo Nation v. Urban Outfitters, Inc.* *American Indian Law Review*, 48(1), 93-113.

<sup>78</sup> Ghose, A., & Ali, S. M. (2023). Protection and Preservation of Traditional Cultural Expression & Traditional Knowledge in Handicraft Industry: Advocating the Need for a Global Cultural Policy Framework. *Braz. J. Int'l L.*, 20, 473.

<sup>79</sup> Bath, S., & Prasad, S. (2025). Legal protection of traditional knowledge and traditional cultural expressions under copyright laws: LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL

systems. This chapter explores key international models, including WIPO drafts, UNESCO conventions, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and select national approaches, concluding with lessons India can apply to strengthen protection for its tribal communities.

#### 6.1 WIPO IGC Draft Articles on TCEs

Since the early 2000s, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC) has developed draft articles to create a balanced<sup>80</sup> framework for safeguarding TCEs, such as tribal dances, motifs, and folklore. The drafts prioritize community moral rights, enabling indigenous groups to claim authorship and prevent derogatory<sup>81</sup> uses that could harm cultural integrity—especially in entertainment, where stereotypes often appear.

By incorporating living heritage principles, the articles treat TCEs as dynamic and evolving rather than static artifacts, allowing protections to adapt to ongoing cultural practices. They require prior informed consent from communities before commercial use, which could discourage unauthorized sampling of tribal<sup>82</sup> music or replication of designs in fashion. The articles also give communities rights against distortion and misuse, empowering them to challenge alterations that dilute sacred meanings, such as exoticized portrayals in films. Additionally, model licensing systems allow fair benefit-sharing, enabling tribes to negotiate terms for cultural reuse while retaining control. Although still under negotiation, these provisions offer a practical

blueprint for addressing misappropriation beyond traditional IP boundaries.

#### 6.2 UNESCO Conventions

UNESCO conventions provide complementary approaches to cultural preservation, emphasizing safeguarding over strict intellectual<sup>83</sup> property enforcement—an approach particularly relevant to India's diverse tribal heritage.

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage protects living traditions, including oral histories, rituals, and performing arts, through community-led initiatives. It focuses on safeguarding<sup>84</sup> rather than proprietary rights, promoting inventories, education, and transmission to ensure cultural practices thrive without commodification for fashion or entertainment. By requiring community participation in identification and management, the Convention empowers<sup>85</sup> Indian tribes to document and protect their expressions from misrepresentation. Over 180 states, including India, have ratified it, fostering international collaboration for at-risk heritage.

The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions complements this by advocating cultural equity in global trade. It recognizes that expressions hold both economic and cultural value and encourages policies that support diverse voices while preventing commercial domination. For India, this approach could help balance Bollywood's influence with authentic tribal representations, promoting equitable access and sustainable development.

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EXPRESSIONS. *Indian Journal of Traditional Knowledge (IJTK)*, 24(4), 384-394.

<sup>80</sup> Oguamanam, C. (2019). Towards a tiered or differentiated approach to protection of traditional knowledge (TK) and traditional cultural expressions (TCEs) in relation to the intellectual property system. *The African Journal of Information and Communication*, 23, 1-24.

<sup>81</sup> Wong, T., & Fernandini, C. (2011). Traditional cultural expressions: Preservation and innovation. *Intellectual property and human development: Current trends and future scenarios*, 175, 179-185.

<sup>82</sup> Li, X., Khair, M. H. M., & Ying, W. (2024). Exploration of Copyright Law Safeguards for

Traditional Cultural Expressions (TCEs). *International Journal of Criminal Justice Sciences*, 19(1), 117-134.

<sup>83</sup> Jagielska-Burduk, A., Pszczyński, M., & Stec, P. (2021). Cultural heritage education in UNESCO cultural conventions. *Sustainability*, 13(6), 3548.

<sup>84</sup> Lazaro Ortiz, S., & Jimenez de Madariaga, C. (2022). The UNESCO convention for the safeguarding of the intangible cultural heritage: a critical analysis. *International journal of cultural policy*, 28(3), 327-341.

<sup>85</sup> Cameron, C. (2020). The UNESCO imprimatur: creating global (in) significance. *International Journal of Heritage Studies*, 26(9), 845-856.

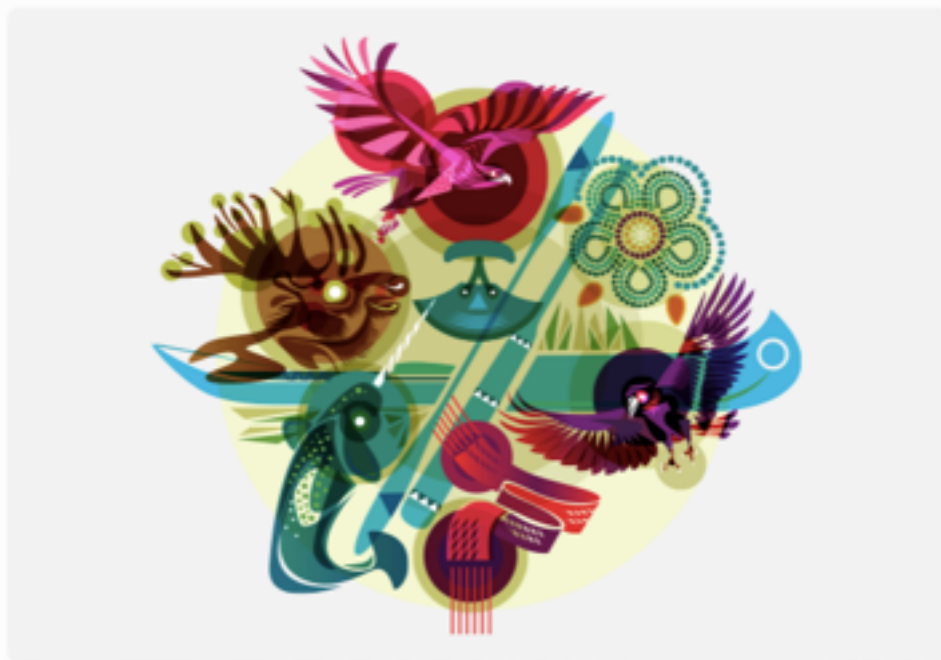


The emblem of UNESCO's 2003 Convention, symbolizing global efforts to preserve intangible heritage.

**6.3 UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples)**

Adopted in 2007, UNDRIP sets minimum standards for indigenous rights, including cultural protections that directly address India's tribal challenges. A key principle, Free, Prior, and Informed Consent (FPIC), requires authorities and project developers to consult indigenous communities before initiating any activity that affects their lands or heritage, such as filming rituals without permission.

UNDRIP recognizes cultural and spiritual rights, empowering indigenous peoples to safeguard their practices, languages, and knowledge from exploitation in fashion or media. It gives communities<sup>86</sup> control over their heritage and the right to seek restitution for misappropriated elements, tackling issues like unauthorized sampling of tribal songs. Although UNDRIP does not have binding legal force, it shapes national laws and, with India's endorsement, encourages stronger measures to prevent psychological harms stemming from cultural stereotypes.



Implementing the United Nations Declaration on the Rights of Indigenous People Act

<sup>86</sup> Champagne, D. (2013). UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples):

human, civil, and Indigenous rights. *Wicazo Sa Review*, 28(1), 9-22.

An illustrative depiction of UNDRIP, highlighting indigenous rights and self-determination.

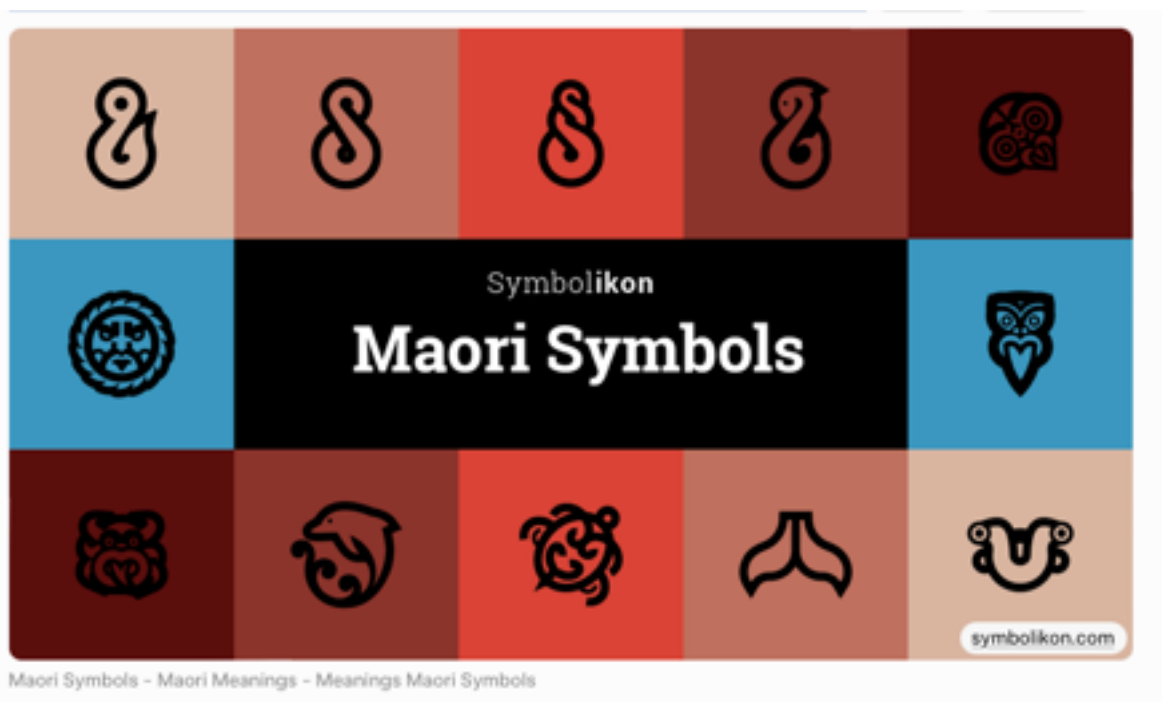
#### 6.4 Comparative Country Models

Several countries have implemented innovative frameworks to protect TCEs, offering models that India can adapt.

In Bolivia and Peru, indigenous collective rights laws combine constitutional guarantees with specific statutes<sup>87</sup>. Bolivia's 2009 Constitution recognizes plurinationalism, granting indigenous groups autonomy over their cultural practices and<sup>88</sup> ensuring they share in benefits derived from resources. Peru's Law No. 27811 (2002) protects collective knowledge linked to biodiversity, requiring consent for commercial uses, such as incorporating herbal motifs in fashion.

Panama established a sui generis IP regime through Law No. 20 (2000) that registers indigenous collective rights for TCEs<sup>89</sup>, including the Guna people's molas, and prohibits unauthorized reproduction. New Zealand protects Māori heritage<sup>90</sup> through trademarks like the Toi Iho mark and the Wai 262 claim, blending intellectual property with customary law to safeguard taonga (treasures).

The African Union's Swakopmund Protocol (2010) gives communities exclusive rights over traditional knowledge and folklore and establishes mechanisms for benefit-sharing and enforcement.



Traditional Māori symbols, exemplifying protected cultural heritage in New Zealand.

#### 6.5 Lessons for India

These international and comparative frameworks highlight<sup>91</sup> the need for India to adopt a hybrid rights

<sup>87</sup> Verbeke, A., & Kano, L. (2013). The transaction cost economics (TCE) theory of trading favors. *Asia Pacific Journal of Management*, 30(2), 409-431.

<sup>88</sup> Huang, H., Li, P., Jiang, H., Hong, J., & Lu, Y. (2024). Global trends and projections of occupational trichloroethylene (TCE) exposure-associated kidney cancer: insights of the global burden of disease (GBD) study 2021 from 1990 to 2021 and prediction to 2050. *Ecotoxicology and Environmental Safety*, 287, 117252.

<sup>89</sup> Janke, T., Curtis, L., Goulding, P., McNeill, S., Mundine, J., & Auld, R. (2021). Comparative study of existing Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) legislation and approaches with recommendations for best practice model national

policies and laws. *Commissioned by ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support Programme (AECSP)*, [https://aanzfta.asean.org/uploads/2021/10/Comparative-Study-GRTKTCE\\_Final-For-Public.pdf](https://aanzfta.asean.org/uploads/2021/10/Comparative-Study-GRTKTCE_Final-For-Public.pdf).

<sup>90</sup> Shikur, Z. H. (2022). The role of logistics performance in international trade: a developing country perspective. *World review of intermodal transportation research*, 11(1), 53-69.

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system that blends intellectual<sup>92</sup> property tools with sui generis protections specifically designed for tribal TCEs. Strengthening recognition of community authorship would address the gaps in copyright law, treating TCEs as collectively owned rather than individually authored. By mandating consent for cultural reuse<sup>93</sup>—drawing inspiration from FPIC and WIPO draft articles—India could prevent misappropriation in entertainment<sup>94</sup> and fashion through structured consultations and equitable contracts.<sup>95</sup> Adopting measures from models such as Panama’s registration system or New Zealand’s cultural marks could improve enforcement, ensure fair benefit-sharing, and foster respect for tribal heritage, ultimately bridging gaps in domestic legislation.

### Conclusion

The widespread misappropriation of tribal cultural expressions by India’s fashion and entertainment industries reveals a critical intersection of cultural heritage, economic exploitation, and legal inadequacy. This study examines the complex dimensions of the issue, from vivid instances of unauthorized use to the shortcomings of existing protections and lessons from global frameworks. The evidence makes it clear that safeguarding these expressions requires urgent, multifaceted reforms to uphold the rights and dignity of India’s indigenous communities.

### 10.1 Findings

India’s current intellectual property regime, while strong for conventional creations, fails to protect the collective and intangible nature of tribal cultural identity. Laws such as copyright, design protection, trademarks, and geographical indications prioritize individual authorship, fixation, and limited terms, leaving communal, oral, and inherited traditions vulnerable to exploitation without recourse.

The fashion and entertainment industries act as major drivers of this misappropriation, frequently commercializing tribal motifs, dances, music, and symbols without acknowledgment or benefit to source communities. From replicated indigenous textiles in high-street collections to exoticized portrayals in films and advertisements, these sectors profit from cultural elements while perpetuating stereotypes and eroding authenticity.

International frameworks, including WIPO draft articles, UNESCO conventions, and UNDRIP, offer valuable guidance through principles like prior informed consent and recognition of community rights. However, their non-binding nature and limited enforceability reduce their impact, making robust national implementation essential for meaningful protection.

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Tribal Beats and Steps in India

A vibrant traditional dance performance by an Indian tribal community, symbolizing the living heritage at risk of misappropriation.



Folk dance of tribe hi-res stock photography and images - Alamy

Tribal performers engaging in a folk dance, highlighting the cultural richness exploited in entertainment.



29 Traditional Crafts Of Indian States You Need To Experience

Indian tribal artisans crafting traditional textiles, representing the handmade heritage often copied in fashion.

### 10.2 Argument

To effectively prevent misappropriation, India must implement a combined legal and community-driven approach to protect tribal cultural expressions. This hybrid strategy would integrate sui generis legislation tailored to communal ownership, perpetual protection, and mandatory consent mechanisms with grassroots empowerment. Legal reforms could draw on international models by establishing dedicated registries, benefit-sharing protocols, and penalties for

distortion or unauthorized use. At the same time, community-led initiatives—such as tribal councils reviewing commercial projects and capacity-building programs for artisans—would ensure indigenous voices guide the process. This dual approach not only fills enforcement gaps but also promotes equitable partnerships between industries and tribes, transforming exploitation into collaboration and creating sustainable economic opportunities.



RIGHTS OF INDIGENOUS PEOPLE - Legal Vidhiya

An illustration representing the rights of indigenous peoples and the pursuit of cultural justice.

### 10.3 Final Thought

Protecting tribal cultural expressions goes beyond legal reform; it represents a profound commitment to cultural justice. In a diverse country like India, where tribal communities enrich the cultural fabric yet face marginalization, society must implement robust safeguards to preserve their dignity, reinforce their

identity, and secure sustainable livelihoods. By prioritizing these measures, we affirm that indigenous heritage is not a commodity for fleeting trends but a vital legacy deserving respect, autonomy, and shared prosperity. Upholding these commitments honors the resilience of tribal traditions and lays the foundation for a more inclusive future.



Native American Culture and Traditions | Indian Youth

Tribal elders and youth together, embodying the intergenerational transmission of cultural traditions.



Cultural Rights Concept Icon Stock Vector - illustration of interest, equality: 193230748

Symbolic depiction of diverse cultural symbols united in harmony, evoking dignity and human rights.

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