

From Registration to Recognition: A Doctrinal and Empirical Assessment of the Protection of Traditional Cultural Expressions in India after the WIPO GRATK Treaty, 2024

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ABSTRACT

India holds one of the world's most extensively documented reservoirs of traditional knowledge, yet no Indian statute defines or protects traditional cultural expressions (TCEs) as such. Existing scholarship makes the normative case for sui generis protection but offers little evidence of how India's current mechanisms actually perform. This paper asks whether India's statutory patchwork protects TCEs or only adjacent categories, and what its operating mechanisms reveal about the limits of product-based and codification-based protection. It combines doctrinal analysis of the Copyright Act 1957, the Geographical Indications Act 1999, the Biological Diversity Act 2002 and Section 3(p) of the Patents Act 1970 read with the Traditional Knowledge Digital Library (TKDL); a comparison with Kenya, Peru and the Pacific Model Law; and a trend analysis of official TKDL and GI Registry data. It finds that each Indian instrument reaches a TCE only by converting it into something else: an authored work, a geographically linked product, a biological resource or a patent claim. TKDL evidence has defeated close to 370 patent applications, and annual GI filings rose from 58 in 2020-21 to 275 in 2024-25, yet neither mechanism protects performative, symbolic or non-commercial expressions, as the 2025 Prada-Kolhapuri chappal episode shows. The 2024 WIPO GRATK Treaty, confined to genetic resources, repeats this gap, and India has neither signed nor acceded to it. The paper concludes that the gap is structural and recommends a community-vested TCE statute, with consent rules distinguishing customary from non-customary use, community standing to sue, and accession to the Treaty.

Keywords: Traditional cultural expressions; Geographical indications; Traditional Knowledge Digital Library; GRATK Treaty; Biological Diversity Act; Sui generis protection; India

INTRODUCTION

Traditional cultural expressions, meaning the songs, motifs, designs, rituals, oral narratives and symbols through which communities express cultural identity, sit uneasily within intellectual property systems built around individual authorship and terms limited in time.¹ India is an instructive jurisdiction for examining this misfit. It holds one of the world's largest documented traditional knowledge bases, it has built defensive protection tools of global reference value, and in May 2024 it took an active part in the adoption of the first binding WIPO instrument in this field.

¹ World Intellectual Property Organization, *Intellectual Property and Traditional Cultural Expressions/Folklore*, Booklet No 1, Publication No 913(E) (WIPO, Geneva), https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf (1 October 2026)

Two recent articles in the *Journal of Intellectual Property Rights* have made the doctrinal case for a sui generis TCE law in India: Acharya proposes a custodianship based framework,² and Anand and Mehrotra propose a SMART model for minimum uniform standards against misappropriation.³ This paper does not repeat that argument. It contributes three things those studies do not provide: official trend data showing how India's existing mechanisms actually perform, a comparison with three operating TCE regimes (Kenya, Peru and the Pacific Model Law), and an assessment of India's position after the 2024 WIPO Treaty, including the fact that India has not yet signed it.

Research Questions

RQ1. Does India's statutory patchwork, comprising the Copyright Act 1957, the GI Act 1999, the Biological Diversity Act 2002 as amended in 2023, and Section 3(p) of the Patents Act 1970 read with the TKDL, protect traditional cultural expressions, or only the adjacent categories of traditional knowledge (TK) and genetic resources?

RQ2. What do the trends in India's two operating mechanisms, the TKDL and the GI Registry, reveal about the limits of protection tied to a marketed product or a codified knowledge claim when applied to TCEs that are neither commercial nor product based?

A subsidiary question is whether the 2024 WIPO Treaty, and India's advocacy for it, changes the case for a domestic TCE regime, given that the Treaty does not extend to TCEs lacking genetic content.

LITERATURE REVIEW

The international literature establishes the foundational problem: TCEs are communally created, transmitted across generations without a fixed author and resistant to a public domain and limited term model, which makes them a poor fit for copyright.⁴ Antons argues that the multiplicity and inconsistency of national efforts has left cross border misappropriation largely unregulated, and proposes equitable benefit sharing as an organising principle.⁵ The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage has achieved wide ratification but creates no private rights, while the WIPO Intergovernmental Committee (IGC) has negotiated TCE text since 2000 without concluding a binding instrument.⁶

A distinct strand argues for sui generis law rather than adapting existing IP categories. Torsen draws on comparative precedent across indigenous jurisdictions to argue for a purpose built model,⁷ and Stoianoff and Wright show, through the Australian copyright system, that conventional IP fails to protect most TCEs and that a sui generis approach must also manage access and benefit sharing.⁸ Within this literature, a specific debate concerns tiered protection. Oguamanam argues that any classification of sacred, secret or widely diffused TCEs should rest on communities' own self determination and customary norms,⁹ whereas Vargas supports tiered protection in principle but finds current justifications too weak to survive negotiation.¹⁰

² Acharya A, Beyond copyright: Designing a sui generis framework for folklore and traditional knowledge protection in India, *Journal of Intellectual Property Rights*, 31(1) (2026) 77-86

³ Anand S & Mehrotra N, Appraisal of misappropriation of traditional cultural expressions: A SMART model approach, *Journal of Intellectual Property Rights*, 31(2) (2026) 181-195

⁴ Supra note 1.

⁵ Antons C, Asian borderlands and the legal protection of traditional knowledge and traditional cultural expressions, *Modern Asian Studies*, 47(4) (2013) 1403-1433

⁶ UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage* (United Nations Educational, Scientific and Cultural Organization, Paris), 2003

⁷ Torsen M, Anonymous, untitled, mixed media: Mixing intellectual property law with other legal philosophies to protect traditional cultural expressions, *American Journal of Comparative Law*, 54(1) (2006) 173-198

⁸ Stoianoff N P & Wright E, *Fair use and traditional cultural expressions*, In Corbett S & Lai J C (eds), *Making Copyright Work for the Asian Pacific: Juxtaposing Harmonisation with Flexibility* (ANU Press, Canberra), 2018, p 75-94

⁹ Oguamanam C, 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 (2019) 1-24

¹⁰ Vargas A, WIPO's proposed treatment of sacred traditional cultural expressions as a distinct form of intellectual property, *Chicago Journal of International Law*, 23(1) (2022) 235-271

India specific scholarship has grown since 2024. Fredriksson shows that the TKDL is a successful intervention in patent administration but does not, by design, reach knowledge that is neither medicinal nor textual.¹¹ Bath and Prasad find that the absence of statutory definitions of TK, TCEs and expressions of folklore impedes judicial clarity under the Copyright Act.¹² Acharya and Anand and Mehrotra, discussed above, supply the normative case for reform.¹³ Finally, a Delphi study of 37 international legal experts found that 33 considered a binding international TCE treaty necessary, with consensus on core definitional elements and on protection of unlimited duration.¹⁴ What the literature lacks is an India specific, data based account of what the existing patchwork achieves, tested against comparable foreign regimes and current to the 2024 Treaty. This paper addresses that gap.

RESEARCH METHODOLOGY

The paper combines doctrinal and empirical methods. The doctrinal component is a textual analysis of the four Indian statutes, the applicable case law and the TCE laws of Kenya, Peru and the Pacific Model Law, selected because they represent the three main legislative models: a dedicated national TCE statute, a regime tied to biological resources, and a regional model law. The empirical component is a secondary data trend analysis. Rather than generating primary data, it collects and cross checks figures published by government and institutional bodies to test the doctrinal findings against observable outcomes.

Legal sources, including the Biological Diversity Rules, 2024 and the access and benefit sharing Regulations, 2025, were taken from official publications. Case law was identified through a targeted search for decisions from 2023 to 2026 on Section 3(p) of the Patents Act and on GI enforcement. TKDL figures were drawn from the CSIR TKDL Unit and a Government of India factsheet and checked against a dated figure in peer reviewed literature. GI filing figures were drawn from the Annual Report 2024-25 of the Office of the Controller General of Patents, Designs and Trade Marks and checked against an independent academic count of registrations. Figures that could not be traced to an originating official source were excluded. No primary community data were collected, a limitation addressed in the discussion.

INDIA'S EXISTING LEGAL ARCHITECTURE: PROTECTING THE ADJACENT, NOT THE CORE Copyright Act, 1957

The Copyright Act protects original works of identifiable authors for a fixed term, both requirements structurally at odds with TCEs, which are communally created and, on the expert consensus noted above, call for protection without time limit.¹⁵ Section 31A allows the Central Government to authorise publication of certain unpublished Indian works whose author is unknown, but it facilitates publication rather than conferring community rights over an evolving tradition.¹⁶

GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

The GI Act is the closest existing regime for community linked heritage in Indian law.¹⁷ It protects, however, a product with a geographical link to quality or reputation, not the cultural expression itself. Rights vest in a registered proprietor, being an association of persons, producers, organisation or authority, rather than in the community, and the Act offers no mechanism for prior informed consent over non-commercial or sacred uses.

The Kolhapuri chappal episode of 2025 shows these limits in practice. The chappal has been a registered GI since 2019. On 22 June 2025 Prada showed sandals closely resembling it at its Milan menswear show, without reference to their origin, and acknowledged the Indian inspiration only after public criticism.¹⁸ A public interest petition seeking compensation for the artisans was dismissed by the Bombay High Court on 16 July 2025, on the ground that infringement is for the registered proprietors to pursue by civil suit under the GI Act, not for a writ court.¹⁹

¹¹ Fredriksson M, India's Traditional Knowledge Digital Library and the politics of patent classifications, *Law and Critique*, 34(1) (2023) 1-19

¹² Bath S & Prasad S, Legal protection of traditional knowledge and traditional cultural expressions under copyright laws, *Indian Journal of Traditional Knowledge*, 24(4) (2025) 384-394

¹³ Supra notes 2 and 3.

¹⁴ Benson S R, Ocepek M & Cheng S, Protecting Indigenous cultural heritage across borders: A Delphi study of international Traditional Cultural Expression laws, *IFLA Journal*, 52(2) (2026) 167-183

¹⁵ The Copyright Act, 1957 (Act No 14 of 1957)

¹⁶ Supra note 12.

¹⁷ The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act No 48 of 1999)

¹⁸ Business Standard, Prada admits Kolhapuri chappals inspired footwear collection after backlash (28 June 2025), https://www.business-standard.com/world-news/prada-kolhapuri-chappal-inspiration-2026-footwear-collection-maharashtra-125062800520_1.html (1 October 2026)

¹⁹ *Ganesh S Hingmire v PRADA Group* 2025 SCC OnLine Bom 2681 (Bom HC, 16 July 2025)

Whatever the merits of a future suit, the episode shows that a registered GI protects a name for goods and gives standing to a proprietor; it does not give the artisan community any right over the design as a cultural expression.

Biological Diversity Act, 2002 and the 2023 Amendment

The Biological Diversity Act, as amended with effect from 1 April 2024, regulates access to biological resources and associated knowledge through the National Biodiversity Authority.²⁰ The 2023 amendment decriminalised most offences and exempted codified traditional knowledge, cultivated medicinal plants and registered AYUSH practitioners from certain obligations, and the Rules of 2024 and Regulations of 2025 introduced online procedures and turnover based benefit sharing.²¹ The framework protects only knowledge associated with a biological resource and has no application to a TCE without biological content.

Patents Act, 1970, Section 3(p) and the TKDL

Section 3(p) excludes inventions that are in effect traditional knowledge or an aggregation or duplication of known properties of traditionally known components.²² Read with prior art from the TKDL, it is India's most measurable protective tool. In *The Zero Brand Zone Pvt Ltd v Controller of Patents and Designs*, the Madras High Court on 5 July 2024 upheld the refusal of a patent for a lamp made of cow dung, other cow products and neem, lemon and peepal leaves, because it merely combined the known properties of traditional ingredients.²³ This is defensive protection. It prevents a patent monopoly over known TK but confers no affirmative right on the originating community, and it operates only where a claim meets patent examination, a gate an expressive TCE never passes. The celebrated turmeric, neem and basmati cases were likewise defensive victories, establishing only that others could not claim novelty.²⁴

The Doctrinal Gap: Why TCEs Fall Through

Every operative Indian instrument protects a category adjacent to TCEs, being an authored work, a geographically linked product, knowledge linked to a biological resource, or a patentability bar, but none protects the TCE as a communally owned, evolving expression in its own right. The mismatch is not unique to India, but India is distinctive in combining a mature defensive infrastructure with the continued absence, in 2026, of any affirmative TCE statute.

Comparative Perspectives: Kenya, Peru and the Pacific Model Law

Three foreign models show what an affirmative regime can look like. Kenya's Protection of Traditional Knowledge and Cultural Expressions Act 2016, in force since 21 September 2016, vests rights in local and traditional communities as owners, prohibits specified uses of cultural expressions, including reproduction, performance, adaptation and commercial use, without the owners' prior informed consent, and protects cultural expressions against misappropriation for as long as they meet the protection criteria. County governments maintain registers, the national government maintains a digital repository, and unauthorised commercial use is an offence.²⁵ Kenya thus supplies exactly the elements absent in India: community ownership, prior informed consent over expressive uses and protection without time limit.

Peru's Law 27811 of 2002 takes the opposite course. It protects the collective knowledge of indigenous peoples connected with biological resources, through public, confidential and local registers, written licences and a development fund, and requires licences to provide at least 5 percent of gross sales of resulting products.²⁶ Its scope, like that of India's Biological Diversity Act, stops at biological resources, so it would not reach a song,

²⁰ The Biological Diversity Act, 2002 (Act No 18 of 2003), as amended by the Biological Diversity (Amendment) Act, 2023 (Act No 10 of 2023)

²¹ The Biological Diversity Rules, 2024 (notified 22 October 2024) and the Biological Diversity (Access to Biological Resources and Knowledge Associated thereto and Fair and Equitable Sharing of Benefits) Regulations, 2025 (notified 29 April 2025)

²² The Patents Act, 1970 (Act No 39 of 1970), s 3(p)

²³ *The Zero Brand Zone Pvt Ltd v Controller of Patents and Designs* 2024:MHC:2558 (Mad) (5 July 2024)

²⁴ Bawa A K, The devil claims jhumkas, and India cannot defend it! Why traditional cultural expressions need serious legal attention, *LiveLaw* (7 June 2026), <https://www.livelaw.in/articles/india-traditional-cultural-expressions-legal-framework-protection-need-537083> (1 October 2026)

²⁵ The Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (Act No 33 of 2016) (Kenya), ss 2, 8, 17, 18 and 37

²⁶ Law No 27811 Introducing the Protection Regime for the Collective Knowledge of Indigenous Peoples Derived from Biological Resources (Peru, 10 August 2002), arts 3, 15-24 and 27

motif or sandal design. The comparison shows that India's present approach mirrors a TK model rather than a TCE model, while Peru's minimum royalty also stands in contrast to India's turnover based benefit sharing rates. The Pacific Regional Framework of 2002, prepared by the Secretariat of the Pacific Community, offers a model law that vests traditional cultural rights in the group, clan or community entrusted with the expression under customary law, makes those rights perpetual, adds moral rights of attribution and against derogatory treatment, and provides a prior informed consent procedure through a Cultural Authority or by direct agreement with owners.²⁷ Its value for India lies in its design: it separates customary use, which remains free, from non-customary commercial use, which requires consent, a distinction that maps closely onto the tiered protection debate.

International Development: The WIPO GRATK Treaty, 2024, and India's Position

On 24 May 2024 WIPO member states adopted by consensus the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.²⁸ It requires patent applicants to disclose the country of origin or source of genetic resources, or the indigenous people or local community providing associated traditional knowledge, where the claimed invention is based on them, and it enters into force three months after fifteen ratifications or accessions.²⁹ India's Ministry of Commerce and Industry welcomed the Treaty as marking the start of the journey to achieve collective growth.³⁰ Yet according to WIPO's status record of 8 July 2026, India has neither signed nor ratified it. Forty-four states had signed, and only Malawi, Uganda, Albania and Peru had ratified or acceded, so the Treaty is not yet in force.³¹

Two qualifications follow. First, the Treaty covers genetic resources and associated TK, not TCEs without biological content, which remain on the separate IGC track. Its 52nd session, held from 4 to 13 March 2026, agreed only to continue work on the existing texts.³² Second, the Treaty is the product of two decades of negotiation under the same IGC mandate that covers TCEs, so a TCE instrument now has a demonstrated institutional pathway.³³

EMPIRICAL ANALYSIS

TKDL Based Defensive Protection: A Rising but Narrow Trend

Figure 1 shows cumulative patent applications worldwide rejected, withdrawn, set aside or amended on the strength of TKDL evidence: more than 200 by 2011,³⁴ 265 as of 25 March 2022,³⁵ and close to 370 as most recently reported by the CSIR TKDL Unit.³⁶ The rise is real and cheap. CSIR notes that revoking a few claims of a single Basmati rice patent cost the Agricultural and Processed Food Products Export Development Authority

²⁷ Secretariat of the Pacific Community, *Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture: Model Law for the Protection of Traditional Knowledge and Expressions of Culture* (SPC, Noumea), 2002, ss 4, 7, 9 and 13

²⁸ World Intellectual Property Organization, WIPO Member States adopt historic new treaty on intellectual property, genetic resources and associated traditional knowledge, Press Release (24 May 2024), https://www.wipo.int/pressroom/en/articles/2024/article_0007.html (1 October 2026)

²⁹ WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (adopted 24 May 2024, Geneva), Articles 3 and 17

³⁰ Press Information Bureau, Ministry of Commerce and Industry, Government of India, WIPO Treaty, a big win for India and Global South (26 May 2024), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2021716> (1 October 2026)

³¹ World Intellectual Property Organization, WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Status on 8 July 2026, <https://www.wipo.int/documents/d/treaties/docs-en-gratk.pdf> (1 October 2026)

³² World Intellectual Property Organization, IGC 52 Summary (4 to 13 March 2026), <https://www.wipo.int/en/web/igc/w/news/2026/igc-52-summary> (1 October 2026)

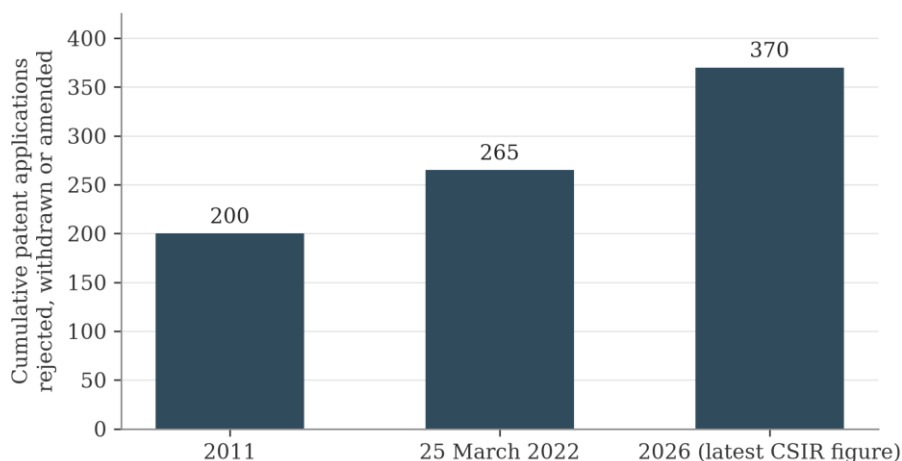
³³ Oguamanam C, The WIPO Treaty on genetic resources and associated traditional knowledge: A negotiating, contextual and conceptual appraisal, *Boston University International Law Journal*, 43(2) (2025) 321

³⁴ Gupta V K, as cited in Fredriksson M, India's Traditional Knowledge Digital Library and the politics of patent classifications, *Law and Critique*, 34(1) (2023) 1-19

³⁵ Press Information Bureau, Ministry of AYUSH, Government of India, Factsheet: Traditional Knowledge Digital Library (1 September 2022), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/sep/doc20229199001.pdf> (1 October 2026)

³⁶ Council of Scientific and Industrial Research, Traditional Knowledge Digital Library Unit (TKDL), <https://www.csir.res.in/en/documents/tkdl> (1 October 2026)

about seven crore rupees in legal fees, whereas TKDL intervention costs little and works quickly.³⁷ Every figure, however, concerns codified, textual medicinal knowledge that can serve as patent prior art. No equivalent database or gate exists for a performative or symbolic TCE, and no prior art mechanism could block commercial use of a sacred motif of the kind seen in the Zia Sun Symbol case.³⁸

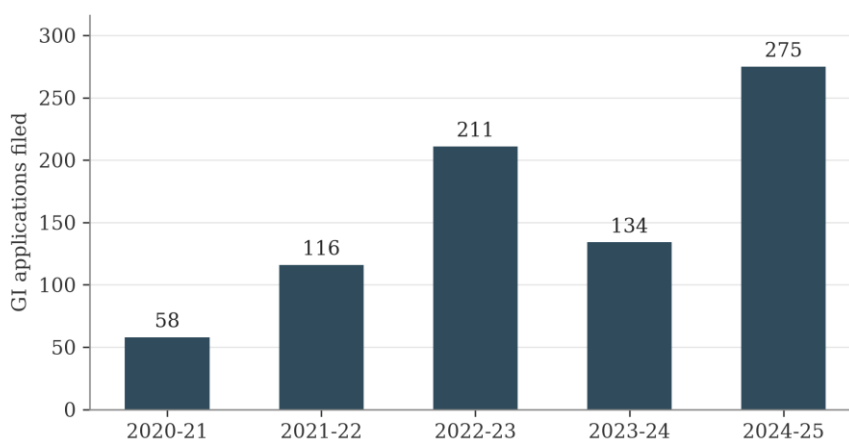


Sources: Gupta V K as cited in Fredriksson (2023); PIB TKDL factsheet (2022); CSIR TKDL Unit (accessed 2026)

Fig. 1 TKDL based defensive protection outcomes, cumulative, worldwide

GI Registry Growth and Its Limits as a TCE Proxy

Figure 2 shows annual GI applications filed: 58 in 2020-21, 116 in 2021-22, 211 in 2022-23, 134 in 2023-24 and 275 in 2024-25.³⁹ Filings rose nearly fivefold over the period, though not in a straight line. By July 2025, 696 GIs had been registered, with handicrafts, the category closest to TCEs, forming the largest share at 52.4 percent.⁴⁰ Yet, as the Kolhapuri episode shows, each of these registrations protects a product name held by a proprietor, not the expression and not the community.



Source: Office of the Controller General of Patents, Designs and Trade Marks, Annual Report 2024-25

Fig. 2 Annual GI applications filed in India, 2020-21 to 2024-25

³⁷ Ibid.

³⁸ Saez C, Indigenous knowledge misappropriation: The case of the Zia Sun Symbol explained at WIPO, *Intellectual Property Watch* (11 December 2018), <https://www.ip-watch.org/2018/12/11/indigenous-knowledge-misappropriation-case-zia-sun-symbol-explained-wipo/> (1 October 2026)

³⁹ Office of the Controller General of Patents, Designs and Trade Marks, *Annual Report 2024-25* (Department for Promotion of Industry and Internal Trade, Government of India, New Delhi), https://ipindia.gov.in/storage/uploads/media/English_Annual_Report_2024-25.pdf (1 October 2026)

⁴⁰ Goyal V K, Singh R & Singh G P, Geographical indications: Agricultural perspectives with special reference to rice genetic resources in India, *Journal of Cereal Research*, 17(2) (2025) 135-145

DISCUSSION AND ANALYSIS

The doctrinal, comparative and empirical findings point to one pattern. Each Indian instrument protects a category defined by something other than the TCE, namely authorship, geography, biological content or patentability, and each trend confirms that protection follows that adjacent category. Every statute capable of reaching a TCE reaches it only by first converting it into something else, a product, a resource or a claim. The comparison sharpens the point: Kenya and the Pacific Model Law protect the expression and the community directly, whereas India, like Peru, protects only what is attached to a resource or a market.

The pattern also explains why the tiered protection debate persists. The TKDL works because it relies on an externally administrable criterion, whether knowledge is codified enough to serve as prior art, and that same feature makes it incapable of reaching sacred or performative TCEs, which resist documentation. Any criterion precise enough for a registry or examiner will tend to exclude the TCEs least amenable to documentation, often those most in need of protection. The Pacific distinction between customary and non-customary use offers a way through, because it turns on how an expression is used rather than whether it has been recorded.

The 2024 Treaty sharpens rather than resolves the picture. India's advocacy shows institutional willingness to support multilateral protection, yet its failure even to sign the Treaty it championed counsels against assuming that a future TCE instrument would be promptly ratified and implemented.

One limitation must be acknowledged. The analysis relies on secondary institutional data and includes no consultation with the communities whose TCEs are at issue. The Delphi study found that indigenous interviewees preferred self determined terminology over externally imposed categories such as ownership, a finding this method cannot test against Indian community views. The conclusions should therefore be read as a legal and institutional diagnosis, not a substitute for community consultation.

Economic Rationale for a Dedicated TCE Regime

No Indian or WIPO body publishes a TCE specific valuation dataset, and that absence is itself significant. Three data grounded points nonetheless support reform. First, cost avoidance is measurable where knowledge is codified, as the APEDA and TKDL comparison shows, and a TCE registry could plausibly yield comparable savings. Second, GI data show that where an enforceable category exists, participation follows: filings rose nearly fivefold in four years. Third, India's recent legislation and its Treaty advocacy show that disclosure of origin and benefit sharing are live policy priorities for genetic resources and TK, so the absence of a parallel TCE track is better read as a legislative gap than a settled policy choice.

RECOMMENDATIONS

First, India should enact a sui generis Traditional Cultural Expressions Act that vests rights directly in originating communities, drawing on Kenya's community ownership and prior informed consent provisions and building on the frameworks proposed in the Journal of Intellectual Property Rights. Second, the Act should adopt the Pacific distinction between customary and non-customary use, with tiered consent for sacred or secret material determined by communities themselves rather than by external criteria. Third, the Act should give communities or their representative bodies standing to sue for misappropriation of an expression, closing the gap the Kolhapuri litigation exposed. Fourth, India should sign and ratify the GRATK Treaty, consistent with its own advocacy, and extend comparable disclosure and documentation infrastructure to TCEs that are not genetic in nature. Fifth, primary consultation with communities, and a documentation initiative parallel to the TKDL covering performative and symbolic expressions, should supply the data that this study and future valuation work require.

CONCLUSION

India's IP architecture protects the economic product of tradition considerably better than tradition's expressive core. The 2024 GRATK Treaty, which India helped negotiate but has neither signed nor ratified, extends the same pattern, protecting TK only where it touches a genetic resource. Where India has built a workable mechanism, measurable protection and community uptake have followed, and Kenya and the Pacific show that a mechanism for expressions themselves is legislatively feasible. The absence of such a mechanism in India reflects neither low demand nor infeasibility. It is an unfilled gap in an actively developing legal architecture, and one India is well placed to fill.

CONFLICT OF INTEREST

The authors declare that they have no conflict of interest in terms of authorship, funding, contribution or otherwise.

REFERENCES

1. Acharya A, Beyond copyright: Designing a sui generis framework for folklore and traditional knowledge protection in India, Journal of Intellectual Property Rights, 31(1) (2026) 77-86

2. Anand S & Mehrotra N, Appraisal of misappropriation of traditional cultural expressions: A SMART model approach, *Journal of Intellectual Property Rights*, 31(2) (2026) 181-195
3. Antons C, Asian borderlands and the legal protection of traditional knowledge and traditional cultural expressions, *Modern Asian Studies*, 47(4) (2013) 1403-1433
4. Bath S & Prasad S, Legal protection of traditional knowledge and traditional cultural expressions under copyright laws, *Indian Journal of Traditional Knowledge*, 24(4) (2025) 384-394
5. Bawa A K, The devil claims jhumkas, and India cannot defend it! Why traditional cultural expressions need serious legal attention, *LiveLaw* (7 June 2026), <https://www.livelaw.in/articles/india-traditional-cultural-expressions-legal-framework-protection-need-537083> (1 October 2026)
6. Benson S R, Ocepek M & Cheng S, Protecting Indigenous cultural heritage across borders: A Delphi study of international Traditional Cultural Expression laws, *IFLA Journal*, 52(2) (2026) 167-183
7. The Biological Diversity Act, 2002 (Act No 18 of 2003), as amended by the Biological Diversity (Amendment) Act, 2023 (Act No 10 of 2023)
8. The Biological Diversity Rules, 2024 (notified 22 October 2024) and the Biological Diversity (Access to Biological Resources and Knowledge Associated thereto and Fair and Equitable Sharing of Benefits) Regulations, 2025 (notified 29 April 2025)
9. Business Standard, Prada admits Kolhapuri chappals inspired footwear collection after backlash (28 June 2025), https://www.business-standard.com/world-news/prada-kolhapuri-chappal-inspiration-2026-footwear-collection-maharashtra-125062800520_1.html (1 October 2026)
10. The Copyright Act, 1957 (Act No 14 of 1957)
11. Council of Scientific and Industrial Research, Traditional Knowledge Digital Library Unit (TKDL), <https://www.csir.res.in/en/documents/tkdl> (1 October 2026)
12. Fredriksson M, India's Traditional Knowledge Digital Library and the politics of patent classifications, *Law and Critique*, 34(1) (2023) 1-19
13. Ganesh S Hingmire v PRADA Group 2025 SCC OnLine Bom 2681 (Bom HC, 16 July 2025)
14. The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act No 48 of 1999)
15. Goyal V K, Singh R & Singh G P, Geographical indications: Agricultural perspectives with special reference to rice genetic resources in India, *Journal of Cereal Research*, 17(2) (2025) 135-145
16. Gupta V K, as cited in Fredriksson M, India's Traditional Knowledge Digital Library and the politics of patent classifications, *Law and Critique*, 34(1) (2023) 1-19
17. Law No 27811 Introducing the Protection Regime for the Collective Knowledge of Indigenous Peoples Derived from Biological Resources (Peru, 10 August 2002), arts 3, 15-24 and 27
18. Office of the Controller General of Patents, Designs and Trade Marks, Annual Report 2024-25 (Department for Promotion of Industry and Internal Trade, Government of India, New Delhi), https://ipindia.gov.in/storage/uploads/media/English_Annual_Report_2024-25.pdf (1 October 2026)
19. Oguamanam C, The WIPO Treaty on genetic resources and associated traditional knowledge: A negotiating, contextual and conceptual appraisal, *Boston University International Law Journal*, 43(2) (2025) 321
20. Oguamanam C, 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 (2019) 1-24
21. The Patents Act, 1970 (Act No 39 of 1970), s 3(p)
22. Press Information Bureau, Ministry of AYUSH, Government of India, Factsheet: Traditional Knowledge Digital Library (1 September 2022), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/sep/doc20229199001.pdf> (1 October 2026)
23. Press Information Bureau, Ministry of Commerce and Industry, Government of India, WIPO Treaty, a big win for India and Global South (26 May 2024), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2021716> (1 October 2026)
24. The Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (Act No 33 of 2016) (Kenya), ss 2, 8, 17, 18 and 37
25. Saez C, Indigenous knowledge misappropriation: The case of the Zia Sun Symbol explained at WIPO, *Intellectual Property Watch* (11 December 2018), <https://www.ip-watch.org/2018/12/11/indigenous-knowledge-misappropriation-case-zia-sun-symbol-explained-wipo/> (1 October 2026)
26. Secretariat of the Pacific Community, Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture: Model Law for the Protection of Traditional Knowledge and Expressions of Culture (SPC, Noumea), 2002, ss 4, 7, 9 and 13
27. Stoianoff N P & Wright E, Fair use and traditional cultural expressions, In Corbett S & Lai J C (eds), *Making Copyright Work for the Asian Pacific: Juxtaposing Harmonisation with Flexibility* (ANU Press, Canberra), 2018, p 75-94

28. Torsen M, Anonymous, untitled, mixed media: Mixing intellectual property law with other legal philosophies to protect traditional cultural expressions, *American Journal of Comparative Law*, 54(1) (2006) 173-198
29. UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations Educational, Scientific and Cultural Organization, Paris), 2003
30. Vargas A, WIPO's proposed treatment of sacred traditional cultural expressions as a distinct form of intellectual property, *Chicago Journal of International Law*, 23(1) (2022) 235-271
31. WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (adopted 24 May 2024, Geneva), Articles 3 and 17
32. World Intellectual Property Organization, IGC 52 Summary (4 to 13 March 2026), <https://www.wipo.int/en/web/igc/w/news/2026/igc-52-summary> (1 October 2026)
33. World Intellectual Property Organization, Intellectual Property and Traditional Cultural Expressions/Folklore, Booklet No 1, Publication No 913(E) (WIPO, Geneva), https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf (1 October 2026)
34. World Intellectual Property Organization, WIPO Member States adopt historic new treaty on intellectual property, genetic resources and associated traditional knowledge, Press Release (24 May 2024), https://www.wipo.int/pressroom/en/articles/2024/article_0007.html (1 October 2026)
35. World Intellectual Property Organization, WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Status on 8 July 2026, <https://www.wipo.int/documents/d/treaties/docs-en-gratk.pdf> (1 October 2026)
36. The Zero Brand Zone Pvt Ltd v Controller of Patents and Designs 2024:MHC:2558 (Mad) (5 July 2024).