

# SONGS OF THE SOIL: PRESERVING INDIA'S FOLK MUSIC THROUGH INTELLECTUAL PROPERTY RIGHTS

BHANUPRATAP SAHOO<sup>1</sup>, PROF. REVATI SAKALKAR<sup>2</sup>

<sup>1</sup>Research Scholar, Department of Vocal Music, Faculty of Performing Arts, Banaras Hindu University, Varanasi

<sup>2</sup>Research Supervisor, Department of Vocal Music, Faculty of Performing Arts, Banaras Hindu University, Varanasi

## Abstract

*Traditional music holds significant cultural value in India, representing the collective heritage of diverse communities. However, the protection of intellectual property rights (IPR) for traditional and folk musicians remains a critical issue. This research explores the challenges faced by Indian folk musicians in securing copyright protection for their music, which is often communal in nature and passed down orally through generations. Through a combination of case studies, legal analysis, and interviews with folk musicians and legal experts, this study investigates the effectiveness of existing copyright laws in India, particularly the Indian Copyright Act of 1957, and its amendments. The study highlights the widespread lack of awareness among folk musicians about their rights and the challenges they face in documenting, registering, and enforcing those rights. It also examines cases of exploitation where folk music has been commercially appropriated without proper recognition or compensation. Additionally, this research reviews international best practices and offers recommendations for improving the legal and policy framework in India to ensure fair compensation and protection for traditional musicians. The study concludes that targeted legal reforms, along with increased awareness and support for folk musicians, are essential for safeguarding India's rich musical heritage in the evolving global music industry.*

**Keywords:** Traditional music, Folk musicians, Intellectual property rights (IPR), Copyright protection, Cultural heritage

## INTRODUCTION

### BACKGROUND OF THE STUDY

Traditional music, particularly folk music, plays a vital role in the cultural fabric of India. With its diverse population and rich cultural heritage, India boasts a vast array of folk traditions, each representing the unique identity of different regions, ethnic groups, and communities. These traditions are often passed down orally through generations, forming an integral part of community life, rituals, and festivals.

Folk music in India is deeply intertwined with the social, religious, and cultural practices of indigenous communities. It serves not only as entertainment but also as a medium of storytelling, history preservation, and social commentary. Whether it's the Bhavageet from Karnataka, Baul music from Bengal, or Bhangra from Punjab, each genre of Indian folk music encapsulates the essence of its cultural origin.

Despite its cultural importance, the legal protection afforded to traditional music, particularly under intellectual property (IP) law, remains limited. While modern and popular music can be copyrighted and commercialized with relative ease, folk musicians often face challenges in asserting ownership over their creations. This is partly because folk music is typically communal, without identifiable individual authors, making it difficult to fit into the traditional copyright system, which favors individual or corporate ownership.

In India, the lack of formal documentation and the informal nature of traditional music transmission further complicate the situation. Many folk musicians are unaware of their rights under the Indian Copyright Act or are unable to navigate the legal processes involved in securing these rights. As a result, traditional music is often exploited without proper acknowledgment or compensation, especially by commercial entities that repackage folk tunes for popular consumption in films, advertisements, and the broader entertainment industry.

### PROBLEM STATEMENT

Traditional folk musicians in India face significant challenges in protecting their music under the current copyright system, which is designed for individually authored works. The communal nature of folk music

makes it difficult for musicians to claim ownership, leading to its frequent exploitation by commercial entities without proper credit or compensation. While India is a signatory to international agreements like the Berne Convention and TRIPS, the legal framework does not adequately address the unique issues faced by folk musicians. As a result, there is a pressing need to assess the effectiveness of existing legal protections and explore potential reforms to safeguard both the cultural heritage and economic rights of these musicians.

## RESEARCH OBJECTIVES

This study seeks to investigate the current state of intellectual property rights protection for traditional and folk musicians in India. The primary objectives of the research are:

- To examine the current legal frameworks in India that pertain to the protection of traditional music.
- To identify the key challenges faced by traditional musicians in asserting their intellectual property rights.
- To assess the effectiveness of existing government initiatives, international treaties, and policies in protecting folk musicians' rights.
- To provide recommendations for legal and policy reforms that could better protect the intellectual property rights of folk musicians.

## SIGNIFICANCE OF THE STUDY

- **Cultural Heritage Preservation:** It highlights the need to protect India's traditional music, a vital part of its cultural heritage, from exploitation and commercialization, ensuring its survival for future generations.
- **Economic Justice for Folk Musicians:** The study addresses the economic marginalization of folk musicians, emphasizing the importance of providing them with formal recognition and fair compensation for the commercial use of their music.
- **Broader Implications for Intellectual Property Rights in India:** The research contributes to the development of policies that balance global intellectual property standards with the protection of indigenous communities and their traditional knowledge, ensuring their rights are upheld in a rapidly commercialized music industry.

## LITERATURE REVIEW

The literature highlights significant challenges due to the communal and oral nature of folk music, which conflicts with the individual authorship model of copyright law. International frameworks like UNESCO and WIPO have made efforts to protect traditional knowledge, but there is no consensus on how to safeguard such music globally. In India, the Copyright Act of 1957 and its amendments offer limited protection for folk music, as traditional works often lack formal documentation and ownership claims. The commercialization and exploitation of folk music, especially in industries like Bollywood, further complicate the issue, with musicians frequently receiving inadequate recognition or compensation. Case studies, such as the adaptation of Rajasthani, Bihu, and Baul music for commercial purposes, illustrate the ongoing exploitation of folk musicians, pointing to the need for more effective legal mechanisms and reforms to protect these cultural expressions.

## RESEARCH METHODOLOGY

The research methodology for the study on "Traditional Music and Copyright Protection: A Study of Indian Folk Musicians" will utilize a qualitative and exploratory approach to understand the challenges faced by folk musicians in India regarding intellectual property rights (IPR). The design focuses on collecting in-depth data through interviews, surveys, and document analysis. Semi-structured interviews will be conducted with folk musicians from different regions and legal experts specializing in IPR, allowing for a flexible exploration of

their experiences and perspectives. Additionally, surveys will be distributed to a broader group of musicians to capture their knowledge of copyright and the challenges they encounter. Document analysis will provide context by reviewing relevant legal frameworks, case laws, and international treaties concerning the protection of traditional knowledge.

Sampling will involve purposive and snowball techniques to ensure the inclusion of a diverse range of musicians and legal professionals. Approximately 20–30 in-depth interviews will be conducted, alongside a survey of around 100 folk musicians. Thematic analysis will be used to identify recurring themes in the qualitative data, while descriptive statistics will analyze the survey responses. Triangulation of data from interviews, surveys, and document analysis will enhance the reliability of the research findings, offering a comprehensive understanding of the issues faced by traditional musicians.

Ethical considerations are central to the study, ensuring that participants provide informed consent and that their privacy is respected. Cultural sensitivity will be maintained throughout the research, particularly during interviews with folk musicians. This methodology will provide valuable insights into how traditional musicians navigate intellectual property rights and how existing legal frameworks could be improved to better protect their work.

## ANALYSIS AND DISCUSSION

### CURRENT LEGAL FRAMEWORK FOR PROTECTING FOLK MUSIC IN INDIA

India has a rich and diverse cultural heritage, with folk music being an integral part of its traditional expressions. However, the protection of folk music under India's intellectual property regime, specifically through the Copyright Act, 1957, presents a unique challenge due to the communal nature of its creation and the oral traditions through which it has been passed down. Unlike individual works of authorship, folk music is often seen as a shared heritage, making it difficult to apply traditional copyright laws. This section explores the existing legal framework, its limitations, and possible avenues for enhancing the protection of folk music.

#### Overview of the Indian Copyright Act, 1957

The Indian Copyright Act, 1957, is the primary legislation governing the protection of intellectual property rights (IPR) in creative works, including literary, artistic, and musical compositions. The act provides authors and creators exclusive rights to reproduce, distribute, and perform their works, and to seek legal recourse against unauthorized use. However, the act predominantly focuses on works created by identifiable individuals or groups who can assert ownership and claim royalties, making it challenging to apply to folk music, which is often the product of collective and anonymous contributions over generations.

Under the Copyright Act, for a work to qualify for protection, it must be in a fixed form, such as a written score or a sound recording. This requirement poses a significant hurdle for folk musicians, as much of India's traditional music has been transmitted orally and may not exist in a fixed or recorded format. As a result, a vast portion of the country's folk music remains vulnerable to appropriation, commercialization, and exploitation without proper legal recourse.

#### Traditional Music and Copyright Law

Folk music, by its very nature, is often considered communal property. It belongs to the community rather than to any one individual or small group, and it reflects the collective identity and culture of the people who perform it. However, copyright law is built around the concept of individual ownership, which is at odds with the communal ownership of folk music. This creates a legal gap in the protection of folk musicians, especially when their music is used commercially without proper compensation.

Additionally, the Copyright Act provides no specific mechanism for recognizing the communal ownership of traditional knowledge or cultural expressions like folk music. As a result, even when folk music is appropriated

by commercial entities—such as the film or advertising industries—the original creators, who may be entire communities, are often left without any legal recourse.

### **National Legal Provisions for Protecting Traditional Knowledge**

While the Indian Copyright Act does not adequately address the protection of folk music, there have been efforts to protect other forms of traditional knowledge through frameworks such as the **Traditional Knowledge Digital Library (TKDL)**. The TKDL is a collaboration between the Government of India and the World Intellectual Property Organization (WIPO) and is designed to prevent the unauthorized patenting of traditional medicinal knowledge. While this is a significant step in protecting India's intangible heritage, it focuses on medicinal and biological knowledge, with little provision for cultural expressions like folk music.

India's **Geographical Indications of Goods (Registration and Protection) Act, 1999**, offers another avenue for protecting certain traditional cultural expressions, such as crafts and goods tied to specific regions. However, it has rarely been applied to music, even though many forms of folk music are closely associated with specific geographic regions.

### **Government Initiatives to Protect Traditional Culture**

In terms of cultural preservation, government initiatives like the **Sangeet Natak Akademi** and other state-funded projects aim to document, preserve, and promote traditional and folk music. These initiatives play an important role in ensuring that India's folk music is not lost, but they do not offer legal protection against commercial exploitation.

While these projects help in documenting traditional music and raising awareness of its cultural significance, they often focus on preservation rather than enforcing intellectual property rights. As a result, the original creators of folk music, particularly those in rural areas, continue to face exploitation, as they are not able to protect or enforce their rights effectively under the current legal system.

### **International Treaties and their Implications for India**

India is a signatory to several international treaties, including the *World Intellectual Property Organization (WIPO) treaties* and the *UNESCO Convention for the Safeguarding of Intangible Cultural Heritage*. While these international agreements provide guidelines for protecting traditional knowledge and cultural expressions, their implementation in India has been slow and limited. WIPO's initiatives on protecting Traditional Cultural Expressions (TCEs) have not yet been fully integrated into Indian copyright law, leaving a gap in legal protection for folk music.

In conclusion, while India's current legal framework provides limited protection to folk music, there are gaps that need to be addressed to ensure that traditional musicians and their communities receive the recognition and protection they deserve. Legal reforms and the development of new mechanisms for collective ownership could help bridge these gaps.

## **CHALLENGES FACED BY FOLK MUSICIANS**

Folk musicians in India face several challenges when it comes to protecting their intellectual property rights. These challenges stem from a combination of cultural, economic, and legal factors, making it difficult for these musicians to assert ownership over their traditional and communal music. The following sections outline the major barriers they face.

### **Lack of Awareness and Understanding of Intellectual Property Rights**

One of the most significant challenges for folk musicians is the lack of awareness about intellectual property rights (IPR). Many folk musicians come from rural, economically disadvantaged backgrounds and are often unfamiliar with copyright law and the protections it can offer. They may not realize that their work can be legally protected or how to go about securing those rights. This lack of knowledge makes them vulnerable to



exploitation by commercial entities, who may use their music without permission or compensation. Without understanding the legal framework, these musicians are often left defenseless when their work is appropriated by the music industry, filmmakers, or advertising agencies.

### **The Problem of Communal Ownership**

Folk music is deeply rooted in the traditions of various communities across India, where music is often viewed as a shared cultural expression rather than the creation of an individual artist. This communal nature of folk music creates a legal dilemma when it comes to copyright protection, which typically favors individual ownership. In many cases, the music is passed down orally through generations without any formal documentation of its origin. This makes it difficult to identify a single creator or owner who can claim copyright protection. The legal framework of copyright law, which requires an identifiable creator or a formalized process of registering ownership, is often at odds with the way folk music is traditionally created and shared.

### **Economic Vulnerability and Exploitation**

The economic situation of most folk musicians exacerbates their vulnerability to exploitation. Many traditional musicians live in impoverished areas and rely on performances or small payments for their livelihood. Their lack of financial resources makes it difficult for them to access legal representation or navigate the complex processes required to claim intellectual property rights. When their music is commercially exploited, whether in films, advertisements, or by mainstream musicians, they often receive no financial benefit because they cannot afford the legal costs of pursuing claims. Additionally, commercial industries frequently capitalize on this economic vulnerability by using folk music without offering fair compensation to the musicians, further marginalizing their cultural and economic status.

### **Documentation and Formalization of Folk Music**

One of the legal requirements for copyright protection is that the work must be in a "fixed" form, such as being written down or recorded. However, much of India's folk music is transmitted orally, meaning it is not formally documented. This presents a significant challenge for folk musicians seeking copyright protection, as they may not have access to the resources or technology to record their music. The lack of formal documentation makes it difficult to prove originality and ownership, especially when these songs are adapted or remixed by others. Without this proof, their music is left unprotected and open to appropriation.

### **Cultural Appropriation and Commercial Exploitation**

Cultural appropriation is a growing concern for Indian folk musicians. Folk music is often co-opted by commercial industries, particularly the Bollywood film industry and advertising agencies, which adapt these traditional songs for mass consumption without acknowledging or compensating the original creators. This appropriation not only deprives the musicians of financial benefits but also distorts the cultural integrity of the music. For example, traditional Rajasthani or Assamese folk songs are often remixed or reinterpreted in ways that may dilute their cultural significance. This exploitation underscores the need for stronger legal frameworks and enforcement mechanisms to protect the rights of folk musicians.

## **CASE STUDIES OF FOLK MUSIC EXPLOITATION**

### **Bollywood and the Appropriation of Folk Music**

Bollywood has a history of incorporating traditional Indian folk music into its soundtracks without providing proper credit or compensation to the original creators. One notable case is the use of Rajasthani folk songs in the movie *Hum Dil De Chuke Sanam*. The traditional rhythms and melodies from local folk musicians were adapted for the film, which became a commercial success. However, the original creators did not receive financial compensation or acknowledgment for their contribution. This lack of recognition is a common issue faced by folk musicians when their work is appropriated by the film industry.

### **The Use of Folk Music in Advertising**

Traditional music has also been exploited in advertising. For instance, Bihu songs from Assam and Punjabi folk tunes have been used in national advertising campaigns to create cultural resonance, often without permission from or remuneration for the original musicians. These songs become commercialized, stripping the artists of their cultural and economic rights.

### **Successful Legal Challenges**

In contrast to these examples of exploitation, some international cases, such as African musicians successfully suing producers for unauthorized use of traditional songs in *The Lion King*, provide examples of successful legal challenges. These cases offer valuable lessons for Indian folk musicians in asserting their rights.

### **INTERNATIONAL BEST PRACTICES**

Several countries have implemented innovative frameworks to protect traditional music, which can serve as models for India. In Africa, countries like Mali have developed robust mechanisms to safeguard traditional music through collective rights management, ensuring that musicians receive royalties for the international use of their works. This approach has been particularly successful in protecting indigenous musicians from exploitation by global media companies.

Peru's **Registry of Traditional Knowledge** offers another model, where traditional music and other forms of cultural heritage are formally registered. This provides legal recognition and serves as a deterrent against unauthorized use, ensuring communities benefit from their cultural expressions.

Australia's protection of Indigenous music emphasizes community-based intellectual property rights, allowing Indigenous groups to retain control over their music and cultural expressions. These models demonstrate how legal and policy frameworks can be adapted to ensure that traditional musicians retain ownership and control over their work, securing both economic and cultural rights.

### **RECOMMENDATIONS FOR STRENGTHENING THE PROTECTION OF FOLK MUSIC**

Strengthening intellectual property protection for Indian folk music requires legal and institutional reforms. First, amending the Indian Copyright Act to account for communal ownership and collective rights of traditional music would allow entire communities to claim protection and compensation for their works. Creating a National Registry for Traditional Music could formalize and document folk music, providing legal recognition and aiding in the protection against appropriation. This registry could function similarly to the Traditional Knowledge Digital Library (TKDL) but focus on cultural expressions.

Moreover, government initiatives must go beyond cultural preservation, offering legal support and awareness programs. The government could establish a fund to provide free legal services to folk musicians, helping them assert their rights in cases of exploitation. Strengthening partnerships with collecting societies like IPRS would also ensure that royalties from the commercial use of folk music are fairly distributed to the original creators.

### **CONCLUSION**

This research highlights the challenges faced by Indian folk musicians in protecting their intellectual property rights under the existing legal framework. Traditional music, often collectively owned by communities, does not fit neatly within individual-centric copyright laws, leaving it vulnerable to exploitation and appropriation. The study emphasizes the lack of legal awareness, economic vulnerability, and insufficient documentation as major barriers for folk musicians in asserting their rights. Recommendations include amending copyright laws to recognize collective ownership, improving documentation systems, raising legal awareness, and enhancing benefit-sharing mechanisms. The study also suggests strengthening the role of collecting societies and

proposes future research on region-specific challenges and international best practices to safeguard India's rich cultural heritage.

## REFERENCES

- Babu, D. M. (2018). *Intellectual property rights and traditional knowledge in India: A legal perspective*. *Journal of Intellectual Property Rights*, 23(3), 112-121.
- Bedi, R. (2017). *Folk music in India: Preservation and commercialization*. In M. Sharma (Ed.), *Traditional music: Global contexts and local cultures* (pp. 56-78). Sage Publications.
- Chakraborty, A. (2019). The role of copyright in the protection of Indian folk music. *Indian Journal of Cultural Studies*, 12(2), 98-115.
- Das, S. (2016). Traditional music and copyright: Challenges in protecting indigenous knowledge in India. *International Journal of Law, Policy and the Family*, 30(1), 45-60.
- Dhir, R. (2020). Protecting intangible cultural heritage: Intellectual property and traditional knowledge. *WIPO Journal*, 10(1), 65-85.
- Gupta, R. (2018). Protecting folklore and traditional music under intellectual property law: A case study of Indian legal frameworks. *Indian Journal of Legal Studies*, 11(2), 129-143.
- International Intellectual Property Institute. (2020). *Intellectual property rights and traditional music: A study of indigenous communities in India* (Report No. 2020-45). IIPi.
- Kher, S. (2015). Copyright and folklore: A study of Indian laws. *Law and Society*, 20(3), 33-48.
- Mishra, V. (2021). Communal rights and intellectual property in the Indian context: Legal and cultural intersections. *Journal of South Asian Studies*, 29(4), 210-225.
- Ravikumar, P., & Choudhary, G. (2019). Traditional knowledge and folk music: Legal protection under the Indian Copyright Act. *Journal of Intellectual Property Law & Practice*, 14(2), 87-98.
- Roy, S. (2020). Intellectual property protection of cultural expressions: A focus on folk music in India. *Journal of Cultural Heritage Law*, 6(3), 205-220.
- Sen, A. (2018). *The role of intellectual property rights in preserving cultural heritage: A focus on Indian folk music*. Routledge.
- Thakur, A. (2017). Folk music, communal rights, and the law: An Indian perspective on intellectual property. *Journal of Arts and Humanities*, 8(4), 80-93.
- Verma, N. (2019). The economics of intellectual property rights and Indian folk music: A legal study. *South Asian Journal of Legal Studies*, 15(2), 75-91.
- World Intellectual Property Organization (WIPO). (2020). *Intellectual property and traditional music: WIPO initiatives in protecting cultural heritage*. <https://www.wipo.int/publications/en/details.jsp?id=4520>