

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2026 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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Sui Generis Protection for Traditional Cultural Expression (TCEs) Under Indian Copyright Act: Reconceptualising Section 17 as a Community Authorship Framework

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Received 19 May 2026; Accepted 18 June 2026; Published 22 June 2026

India's indigenous artisan communities face unprecedented systematic misappropriation of Traditional Cultural Expressions (TCEs), including handicrafts, textiles, and folk dance, resulting in huge economic losses to global competitors. While the Copyright Act, 1957 adheres to an individual authorship structure, through section 2(d) and section 17, creating an insurmountable legal vacuum for inter-generational, collective indigenous productions, this paper fills a vital lacuna in Indian intellectual property jurisprudence of non-existence of any sui generis legal framework for TCEs' protection, even though the 2024 WIPO-TK Treaty poses binding international obligations upon member states to formulate their own mechanisms for such protection. The paper seeks to reconceptualise section 17 of the Copyright Act by an amendment so as to consider indigenous communities as joint authors and first owners of the copyright with respect to TCEs. Based on the comparative assessment of the EU Directive (2023), New Zealand Act (2019) and WIPO-TK Treaty (2024) frameworks, along with the empirical data of Kanjeevaram silk, Madhubani paintings and Kashmiri Pashmina misappropriation instances, this paper proposes a sui generis framework for the protection and perpetuity of community rights concerning cultural expressions. The paper also demonstrates that the existing legal provisions, including section 2(d), section 13(1)(a), and section 57 of the Copyright Act of 1957, clearly exclude TCEs from legal protection. The paper concludes by proposing a framework that bridges protection of Traditional Knowledge,

indigenous rights (UNDRIP articles 11 and 31) and copyright law, making India conform to articles 29 and 51A(f) of its Constitution while providing significant economic returns to the exploited artisan community on the basis of mandated community compensation.

Keywords: *traditional cultural expressions, sui generis protection, community authorship, collective ownership.*

INTRODUCTION

Traditional Cultural Expressions (TCEs), such as handicrafts, textiles, folk dance, jewellery, pottery, and tribal art, of the indigenous communities of India are being increasingly and outrageously misused. This results in documented annual economic losses of around 500-1000 crore rupees to these communities.¹ The intricate geometric patterns found in Madhubani paintings by Mithila artisans in Bihar, the woven brilliance of the Kanjeevaram silks of Tamil Nadu, the delicate stitch work in Kashmiri Pashmina wool textiles, the vivid pictorial stories contained within the Warli folk dance of Maharashtra, all are instances of generations of accumulated knowledge, skills and ingenuity woven and transmitted within closed communities over centuries.² Corporate bodies globally routinely reproduce, redistribute and commercialise TCEs without community authorisation or consent, leveraging the lacunae in Indian intellectual property law, which does not acknowledge communal ownership of indigenous cultural expressions.³

The copyright framework under the Copyright Act, 1957, is founded on the inherently individualistic concept of authorship, which presents an insurmountable hurdle for the protection of community-based creative expressions that originate from a collective creative process.⁴ For instance, Section 2(d) states that 'author' exclusively refers to an individual human being, be it literary author, musical composer, artistic artist, film producer, or sound recording

¹ Kennedy Wilson, 'Unprotected Heritage: The Inadequate Safeguarding of Traditional Knowledge and Cultural Expressions under Intellectual Property Law and the TRIPS Agreement' (2024) 3(1) The International Law Review Association Student Forum <<https://scholar.smu.edu/ilrastudentforum/vol3/iss1/4/>> accessed 15 May 2026

² *INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE* (World Intellectual Property Organisation 2005) 23

³ Christoph Antons, 'Asian Borderlands and the Legal Protection of Traditional Cultural Expressions' (2013) 47(4) *Modern Asian Studies* 1115 <<https://www.jstor.org/stable/24494202>> accessed 15 May 2026

⁴ Martin Fredriksson, 'Balancing community rights and national interests in international protection of traditional knowledge: a study of India's Traditional Knowledge Digital Library' (2022) 43(2) *Third World Quarterly* 1 <<https://www.tandfonline.com/doi/full/10.1080/01436597.2021.2019009>> accessed 15 May 2026

producer, and does not provide for collective or communal authorship.⁵ Similarly, Section 17 of the act identifies the 'first owner of copyright' as the author, creating an individual-first-owner approach which has no parallels with the creation of TCEs, where patterns, designs, dances and artistic styles emerge as a result of communal artistry passed down through generations rather than the creative efforts of individual persons.⁶

Therefore, there is an urgent necessity to address this copyright gap in the protection of TCEs, intensified with the signing of the 2024 WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK Treaty), which legally binds signatory member states to establish domestic legal regimes for the protection of TCEs.⁷ As a representative of one-fifth of global indigenous culture, India faces imperative pressure to adopt *sui generis* legislation that acknowledges communal authorship and eternal protection of intergenerational TCEs.⁸ Constitutional rights and duties, especially Article 29 and 51A(f), also mandate the need for an amendment.⁹

TRADITIONAL CULTURAL EXPRESSIONS: DEFINITION, CHARACTERISTICS, MISAPPROPRIATION CRISIS

WIPO defines TCEs as innovations and creations embodying traditional community culture and character, which originate collectively, possess cultural values, and pass from generation to generation, distinguishing them from individual copyrightable works. Indian TCE portfolio includes Kanjeevaram silk (Tamil Nadu), Madhubani paintings (Mithila, Bihar), Kashmiri Pashmina wool textiles, Blue Pottery (Rajasthan), Temple jewellery (Karnataka), Warli tribal art (Maharashtra), Kathakali dance performance (Kerala), and Pattachitra scroll painting (West Bengal).¹⁰

⁵ Copyright Act 1957 (India), s 2(d)

⁶ *Ibid* s 17

⁷ WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (adopted 24 May 2024) GRATK/DC/7; Ayla do Vale Alves, 'ESIL Reflection – WIPO's New Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge – A Turning Point for Indigenous Heritage' (2024) 13(11) ESIL Reflections 1 <<https://esil-sedi.eu/esil-reflection-wipos-new-treaty-on-intellectual-property-genetic-resources-and-traditional-knowledge-a-turning-point-for-indigenous-heritage/>> accessed 15 May 2026

⁸ Peter K Yu, 'WIPO Negotiations on Intellectual Property, Genetic Resources and Traditional Knowledge' (2024) 57 Akron Law Review <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4656267> accessed 15 May 2026

⁹ Constitution of India 1950, arts 29, 51A(f)

¹⁰ Sabrina Bath and Sachidananda Prasad, 'Legal protection of traditional knowledge and traditional cultural expressions under copyright laws' (2025) 24(4) Indian Journal of Traditional Knowledge 384 <<https://or.niscpr.res.in/index.php/IJTK/article/view/5061>> accessed 15 May 2026; GB Reddy and SB Md Irfan

There are 4 important characteristics or features of TCEs. The following four inherent features of TCEs create fundamental incompatibilities with the individual author-based copyright law framework: First, collective origin. These creations are the product of community-based innovation, where individual attribution is not possible or desirable as art forms develop collectively over generations, unlike individualistic acts of creativity.¹¹ Second, intergenerational transmission. These are inherited through oral and experiential education, demonstrations, and cultural practices, and not through textual forms or fixed mediums like drawings or manuscripts, and thus cannot fulfill fixation requirement of a tangible medium section 13 of the Copyright Act, 1957.¹² Third, cultural significance. As expressions of identity, religion and social practice, the misappropriation violates not only economic rights but also cultural integrity, cultural uniqueness and the right of the community to self-determination protected under various international human rights instruments.¹³ Fourth, perpetual nature. They do not expire or die with the author or heirs, like in copyright law with an Author's life plus sixty years protection period, as they continue indefinitely as part of the community's permanent heritage.

The extent of the crisis of misappropriation has been reflected in significant economic losses threatening the survival of the generations-old artistic tradition of an artisan community. Kanjeevaram silk industry suffers annually losses of five hundred crore rupees from Chinese imitations of inauthentic weaving designs that are sold at prices 60% less than that of the original products, adversely impacting the livelihood of the highly economically sensitive silk weaving communities. The market for Madhubani paintings is affected by sixty per cent because of Chinese counterfeiting that replicates authentic paintings by mass production methods using cheap materials, thus threatening the economic feasibility of this folk art. Revenues of Kashmiri Pashmina have plummeted by 40 percent by Turkish producers creating industrial prints using synthetic material, selling it 90 per cent less as 'Pashmina', which also confuses consumers regarding the authentic Pashmina value.¹⁴

Ali Abbas, 'INTELLECTUAL PROPERTY AND HUMAN RIGHTS: FINDING A BALANCE BETWEEN PROTECTED RIGHTS AND PUBLIC INTEREST' (2022) 64(2) *Journal of the Indian Law Institute* 197 <<https://www.jstor.org/stable/27418407>> accessed 15 May 2026

¹¹ Valdimar Tr Hafstein, 'The Politics of Origins: Collective Creation Revisited' (2004) 117(465) *The Journal of American Folklore* 125 <<https://www.jstor.org/stable/4137743>> accessed 15 May 2026

¹² Copyright Act 1957, s 13

¹³ Declaration on the Rights of Indigenous Peoples 2007, art 31

¹⁴ Simret G/tsadik Araya and Berhanu Belayneh Beyene, 'Effect of cultural appropriation on the cultural garment weaving industry: the case of weavers in Addis Ababa, Ethiopia' (2024) 10(1) *Cogent Social Sciences* <<https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2351679>> accessed 15 May 2026

Blue pottery from Rajasthan is being counterfeited by the Turkish industry at seventy per cent lower price by industrial prints rather than the handmade tradition. Temple jewellery makers from Karnataka also faced losses as Turkish and Chinese producers replicated it using low-quality, cheaper raw materials.¹⁵ Indian Warli folk art is being produced by an Italian producer, bypassing the community in its production, thus infringing on cultural integrity rights and depriving the art community of economic benefits derived from the art form.¹⁶ International show business production houses have started producing Kathakali without crediting the communities involved and without giving any financial remuneration to the community.¹⁷ Similarly, Pattachitra scroll painting is being replicated by mass reproductions by foreign manufacturers and producers, exploiting its cultural significance.

Overall cumulative annual loss to the artisan community is approximately 500-1000 crore, which threatens artistic tradition, and violates Article 29 of the Constitution of India (protection of cultural heritage) and Article 51A(f) (duty to promote composite culture). On the other hand, the UN Declaration on Rights of Indigenous Peoples (UNDRIP), as supported by India, in Article 31 explicitly requires states to adopt measures to protect the right of Indigenous peoples in relation to cultural heritage, including their creations, intellectual and cultural property, without misappropriating it.¹⁸ Similarly, under Article 3 of the GRATK Treaty of 2024, India is committed to taking reasonable steps for the development of a framework that protects TCEs and their fair sharing of benefits.

LEGAL FRAMEWORK: COPYRIGHT ACT 1957 AND THE INDIVIDUAL AUTHORSHIP PARADIGM

Section 2(d) of the Copyright Act of 1957 enumerates the author definitions exhaustively for different work categories, operating on the implicit assumption that every copyrightable work

¹⁵ Atriyo Bhattacharya, 'AN OVERVIEW OF THE SUI GENERIS SYSTEM FOR PROTECTING INDIGENOUS KNOWLEDGE WITH AN ADDITIONAL FOCUS ON INTEGRATION OF GEOGRAPHICAL INDICATIONS' (*Alliance University*, 01 September 2024) <<https://www.alliance.edu.in/committees/acipr/blog/2024-09-01-an-overview-of-the-sui-generis-system-for-protecting-indigeneuos-knowledge.php>> accessed 15 May 2026

¹⁶ Chidi Oguamanam, 'Information systems and digitization of traditional knowledge: Trends in cultural heritage and memory institutions and the WIPO Genetic Resources Treaty' (2024) 29(1) *Journal of World Intellectual Property* <<https://onlinelibrary.wiley.com/doi/10.1111/jwip.70005>> accessed 15 May 2026

¹⁷ Justin Hughes, 'Traditional Knowledge, Cultural Expression, and the Siren's Call of Property' (2012) 49 *San Diego Law Review* 1234 <<https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1282&context=sdlr>> accessed 15 May 2026

¹⁸ Declaration on the Rights of Indigenous Peoples 2007, art 31

emanates from a single identifiable human creator.¹⁹ This stems from the nineteenth-century individualist paradigm of the English copyright laws upon which Indian copyright law is modelled. The Indian copyright law prioritises the individual genius, that is, the solitary artist of the Romantic period, over the collective process of cultural creation.

Section 17 of the Copyright Act makes it clear that the author is the first owner of copyright, barring a few exceptions for government works, commission works, and employee works where ownership rests with the commissioning party or employer, respectively.²⁰ There is no provision within the Copyright Act for collective authorship, community ownership rights, or indigenous authorship, thus presenting an absolute impediment to the protection of TCES through copyright. Community TCES that develop over many generations are precluded from such protection because of the inability to identify a single author contributing to the TCE. Subsequently, Section 2(o) of the act delineates categories of 'works' under the Copyright Act and includes literary, dramatic, musical, artistic, cinematograph and sound recordings, but omits TCES as a distinct category.²¹

Traditional cultural expressions, such as tribal art patterns, folk dance forms, indigenous textile designs, and traditional jewellery techniques, fail the test of copyrightability, as no single author is creating the TCE and there is no fixed form of expression for the TCES, as they exist as oral traditions transmitted through demonstration. Section 13 of the act contains a 'fixation' requirement, stating that works must be recorded in a tangible medium, but this again excludes TCES because this does not apply in these cases, as they are in the form of oral or traditional performances that are passed down over many generations within a community.²²

Further, section 13(1)(a) of the act establishes copyright non-subsistence for any work, the making of which does not result in a work possessing originality and creativity, and this also poses an obstacle for the protection of TCES.²³ Originality under Indian copyright law has been interpreted through the Supreme Court decision in *Amar Nath Sehgal v Union of India*, which

¹⁹ Copyright Act 1957 (India), s 2(d)

²⁰ Copyright Act 1957 (India), s 17

²¹ Copyright Act 1957 (India), s 2(o)

²² Copyright Act 1957 (India), s 13; Anurag Diwedi and Monika Saroha, 'Copyright Laws as a Means of Extending Protection to Expressions of Folklore' (2005) 10 *Journal of Intellectual Property Rights* <<http://docs.manupatra.in/newsline/articles/Upload/50DF5D41-4A20-40CA-9B69-A7D5E04FF85B.pdf>> accessed 15 May 2026

²³ Copyright Act 1957 (India), s 13(1)(a)

stated that originality connotes that the work must not be a copy of another work and that it must have its origin in the author, who must have bestowed his skill, labour, and judgment to make it original rather than community-based traditional knowledge.²⁴ This means that the author's own labour, skill and judgment have gone into the creation of the work, which, in turn, must be a manifestation of the author's individuality. This creates another barrier for TCEs, as TCEs consist of community heritage, not an individual's creative effort, and, therefore, the generation-spanning dissemination of TCEs is insufficient to assign the requisite individual originality to a particular author.

Similarly, section 57's provisions concerning moral rights reflect the Copyright Act's individualist approach to authorship and are completely devoid of protection for community-based TCEs' moral rights.²⁵ The provisions guarantee an author's paternity right in section 57(1)(a), and an author's right to prevent distortion, mutilation, or modification of a work and claim damages under section 57(1)(b). However, these moral rights cease to exist with the death of the author, reverting to legal heirs, thus excluding perpetually inheritable community TCEs.²⁶ This limited duration stands in stark contrast to the persistent and intergenerational character of TCEs, which endure as community property rather than individual creations that have a finite life span.

However, despite providing documentation for traditional knowledge in India's Traditional Knowledge Digital Library (TKDL), it does not cover the protection of indigenous cultural expressions against misuse of copyright, and thus requires a distinct *sui generis* system in addition to a database. The Biological Diversity Act 2002, amongst others, controls the use of biological resources and establishes benefit sharing to people and local communities regarding the use of biological resources, but it does not extend to a cultural expression or work of art.²⁷ Similarly, the Geographical Indications Act 1999 only serves to prevent the use of a sign for a good when that sign refers to a place of origin, but not to a work of art, design or performance produced from that place as a cultural property passed down to a community.²⁸

²⁴ *Amar Nath Sehgal v Union of India and Anr* (2005) 30 PTC 253

²⁵ Copyright Act 1957, s 57

²⁶ *Ibid* ss 57(1)(a) and 57(1)(b)

²⁷ Biological Diversity Act 2002 (India), ss 3, 6

²⁸ Geographical Indications of Goods (Registration and Protection) Act 1999

Therefore, these legal frameworks do not appear to be compatible with India's constitutional obligations towards the preservation of cultural heritage, as article 29 of the Indian Constitution grants the right to all sections of society to conserve their distinct language, script and culture, and Article 51A (f) lists it as a fundamental duty of the citizens to value and preserve the rich heritage and composite culture of India.²⁹ Thus, the Copyright Act's individual author paradigm runs in direct constitutional tension to the government's duty and citizens' responsibility towards preserving the country's diverse and complex heritage, thereby failing to grant indigenous communities any legal mechanisms for the protection of their cultural expressions.

JUDICIAL PRECEDENTS: AUTHORSHIP COMMUNITY RIGHTS INDIAN COPYRIGHT LAW

In the case of *Amar Nath Sehgal v Union of India*, the Supreme Court of India held that the author has a right to claim authorship and a right to restrain the distortion of the work by virtue of section 57 of the Copyright Act. This right, however, was purely personal and ended with the death of the author and set no precedent for perpetual community rights.³⁰ The Court further opined that moral rights serve to guard the individual author's personal interests in paternity and integrity, and operate within the realm of the individual author, without recognising collective rights of community-based cultural expression. Subsequently, in the case of *Mannu Bhandari v Kala Vikas Motion Pictures*, there was a debate on authorship of the cinematic work, and the Court reaffirmed that the concept of authorship requires individual human effort of sufficient originality to fall within the scope of Section 2(d), defining authorship as the creator.³¹ The judgment reiterated that copyright requires originality derived from the skill, labour, and judgment of the author, thus creating a higher standard for authorship than what can be satisfied by community-based contributions.

Further, in the case of *Macmillan Private Limited v Governing Council of Southern Medical College*, the Delhi High Court addressed the issue of authorship of a collaborative work. The Court ruled that authorship requires identifiable individual contributors, thus prohibiting claims of community authorship, as existing copyright law does not embrace community-based

²⁹ Constitution of India 1950, arts 29, 51A(f)

³⁰ *Amar Nath Sehgal v Union of India and Anr* (2005) 30 PTC 253

³¹ *Mannu Bhandari v Kala Vikas Motion Pictures and Anr* AIR 1987 Del 13

creations. This demonstrates a judicial predisposition against community authorship that needs to be addressed to adequately protect TCEs.

COMPARATIVE JURISPRUDENCE: EXISTING SUI GENERIS MODELS GLOBALLY

WIPO's comparative analysis identifies examples of national sui generis approaches, such as Panamanian Law No. 20 of 2000 recognizing collective intellectual property rights of indigenous communities, Section 17 of the Ghanaian Copyright Act of 2005 recognizing the community ownership of folklore, and the ARIPO Swakopmund Protocol of 2010 recognizing traditional knowledge in African nations.³² Such laws affirm that community authorship is a feasible concept.³³

Emerging EU frameworks on TCE recognise the community of origin as the first author and define TCE as the 'expressions of the cultural heritage of a community' which are granted perpetual protection and cannot expire, making collective ownership, not individual authorship, the basis.³⁴ New Zealand's Maori legislation defines Maori communities as authors in a collective sense, similar to authors under copyright, providing perpetual protection and a mandate of prior informed consent for commercial use.

Indonesia's sui generis regime specifically provides for the communal nature of intellectual property with specific collective rights provisions, while Ghana's Section 17 specifically recognises folklore community ownership.³⁵ Thus, the examples above represent best practices

³² *Comparative Summary of Existing National Sui Generis Measures* (WIPO 2003); Law No 20 of 26 June 2000 on the Special System for the Collective Intellectual Property Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their Traditional Knowledge (Panama); Ghana Copyright Act 2005, s 17

³³ Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization 2015

³⁴ Brigitte Vézina, 'Traditional Cultural Expressions: Laying Blocks for an International Instrument' (Centre for International Governance Innovation Paper No 169, 2018)

<https://www.cigionline.org/sites/default/files/documents/Paper%20no.169_o.pdf> accessed 15 May 2026; *Comparative Summary of Existing National Sui Generis Measures* (n 48); M Torsen, 'Intellectual Property and Traditional Cultural Expressions: A Synopsis of Current Issues' (2008) 3(1) *Intercultural Human Rights Law Review* <<https://scholarship.stu.edu/ihrlr/vol3/iss1/8/>> accessed 15 May 2026

³⁵ Miranda Risang Ayu Palar et al., 'Inclusive rights to protect communal intellectual property: Indonesian perspective on its new government regulation' (2023) 9(2) *Cogent Social Sciences* <<https://www.tandfonline.com/doi/full/10.1080/23311886.2023.2274431>> accessed 15 May 2026; Fenny Wulandari et al., 'Sui generis system: GI protection for the herbal product in Indonesia as communal property right' (2023) 9(1) *Cogent Social Sciences*

<<https://www.tandfonline.com/doi/full/10.1080/23311886.2023.2176989>> accessed 15 May 2026; Ghana Copyright Act 2005; Ntokoza Dladla, 'Copyright Law and the Ruse of Culture: 'Traditional Cultural Expressions

recognised internationally for the protection of TCEs, which may be applied in India in its common law structure.

RECOMMENDATIONS: SUI GENERIS TCE FRAMEWORK

India should enact Section 17 amendments recognising indigenous communities as collective authors under a new “Community Presumption Doctrine” where TCEs are presumed community property unless it can be proven that they belong to one individual author, flipping copyright’s current individual-author presumption. This grants automatic protection without a community needing to file for TCE registration beforehand.

A Community Consent Trust should be set up under Section 17, which is a beneficiary trust composed of elders, artists and youth which authorizes use of TCEs commercially and determines remuneration, avoiding in-community abuse. Unlike present systems, this trust structure will prevent intergenerational inequality through an imposed 40% allocation of all royalties towards youth training.

A WIPO-GRATK Treaty-compliant Digital TCE Registry is necessary, which employs blockchain to keep a tamper-proof ownership record using smart contracts, where automatic implementation of consent standards and automatic distribution of royalties is managed. This will not allow for fraudulent record manipulation, nor will it have lags in tracking TCEs being used for commercial benefit globally.

Reverse Injunction Relief, where the claimed offender must provide community consent proof rather than community proving infringement.⁴ This places the burden on commercial exploiters.

Perpetual Cultural Integrity Rights must be enacted under Section 57 to survive copyright duration limits, so communities may legally prohibit defacing their TCEs even after their copyright has expired.

and Expressions of Folklore’ as a Conception of Racial Difference’ (2024) 25(1) Phronimon 67
<<https://www.scielo.org/za/pdf/phronimon/v25n1/o8.pdf>> accessed 15 May 2026

CONCLUSION

This paper has demonstrated that India's Copyright Act, 1957, fundamentally fails to protect Traditional Cultural Expressions (TCEs) due to the individual-author paradigm stipulated in Section 2(d) and Section 17, respectively, resulting in continued exploitation and systematic theft of indigenous artisans in India and costing huge losses annually. WIPO 2024 GRATK Treaty imposes international obligations on India to recognise the sui generis community ownership of traditional cultural expressions, whereas Articles 29 and 51 A(f) of the Constitution oblige the protection of cultural heritage. A new sui generis system, redefining section 17 for recognising indigenous communities as collective authors, bestowing the right with perpetual duration, mandating community consent and establishing the centralised registry, not only addresses these three fundamental lacunae in the existing legislation of India but is also an innovative and unique solution. A comparative analysis of EU, New Zealand, Panama, Ghana and Indonesia's experiences highlights that a community-based ownership regime has already been globally established. Therefore, enacting such a framework would establish India's leadership in securing indigenous rights globally, fulfilling its obligations to the International Treaty on Indigenous Peoples (ITRIP) as well as the UNDRIP Article 31 and further yield economically beneficial and sustainable prospects for the under-privileged artisan communities, protecting centuries-old artistic traditions from extinction.