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# **“PRESERVING THE PAST: COPYRIGHT PROTECTION AS A SAFEGUARD FOR CULTURAL HERITAGE”**

AUTHORED BY - SHRUTI SHREE<sup>1</sup>

*Cultural heritage is the cornerstone of a nation’s identity, reflecting diverse traditions, art forms, and historical narratives. Preserving this heritage is crucial for maintaining a connection with the past and fostering a sense of cultural continuity. Copyright as a legal framework offers a unique avenue for safeguarding and promoting cultural heritage. The paper delves into the role of copyright as a legal mechanism for safeguarding and promoting India’s cultural heritage. Beginning with an exploration of the historical context and challenges faced by the country’s cultural legacy, the paper navigates through the intricacies of India’s copyright laws. It examines the benefits that copyright affords in terms of protecting traditional art forms, encouraging documentation, and ensuring fair compensation for traditional artists. Overall, the paper encapsulates the multifaceted exploration of how copyright can serve as a catalyst for the sustainable safeguarding of India’s cultural legacy.*

**Keywords:** Artists, Copyright, Cultural, Expression, Framework, Heritage, Historical, Traditional Knowledge

## **INTRODUCTION**

“Our rich and varied cultural heritage has a profound power to help build our nation”

- Nelson Mandela

Cultural heritage, the mosaic of traditions, artifacts, and narratives that define the identity of a society stands as an invaluable legacy passed down through generations. In the globalized and rapidly evolving nation of the 21st century, the safeguarding of this heritage becomes an imperative task. As nations grapple with the dual challenge of technological advancement and cultural globalization, the role of legal frameworks, particularly copyright, emerges as a critical factor in keeping cultural heritage intact. Every culture has unique characteristics, and each group's essence is embodied in a specific persona. The Omaha tribal dance in America, the Norwegian Bygdedans, the Totem and

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Shamanic folklore of native Europeans, the Indian culture and traditional expressions like Deepawali, Holi, and Navratri celebrations, or any other variety of traditional science, art, music, dance, and folklore are all examples of civilizations. The fundamental principles of the civilization are these deeply ingrained customs and cultural manifestations.<sup>2</sup>

In this complexity, copyright emerges as a tool with the potential to strike a delicate balance between preservation and adaptation. It is traditionally designed to protect the intellectual property of creators and its application in the realm of cultural heritage is particularly intriguing, as it holds the promise of offering legal protection to traditional art forms. India boasts a diverse range of cultural practices, ranging from Kathak and Bharatnatyam dance styles to the ancient temples of Khajuraho temples.<sup>3</sup> Preserving cultural heritage is not merely a nostalgic endeavor but a crucial element in the future. It fosters a sense of identity, belonging and continuity offering a bridge between the past, present, and future. Various communities face the challenges of rapid urbanization, cultural homogenization, and the risk of losing traditional knowledge, and the need to proactively safeguard cultural heritage becomes more pronounced. Cultural knowledge is the fundamental allure of cultural interchange and a significant component of our identity is our shared cultural knowledge and customs. Our lives are made happier and more meaningful by the different tastes and cultures we encounter; these individuals have an inalienable right to protection. So, understanding the critical role that intellectual property rights play in safeguarding the diversity and depth of regional cultures across the globe is essential.

Cultural heritage is more than a mere collection of antiquated artifacts or customs; it represents a legacy shaped by a continuous process of selection where individuals and societies decide what should be preserved for future generations, often influenced by both political and cultural factors. Every individual contributes to the global culture, emphasizing the importance of safeguarding all forms of cultural heritage through international agreements and national legislation. When cultural artifacts are illegally trafficked, archaeological sites are looted, or historic structures and monuments are destroyed, a nation's cultural heritage suffers irreversible damage. In 1954, UNESCO ratified international agreements to promote cross-cultural understanding and

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<sup>2</sup> Rohith Sharma, Culture & Tradition at the Horizon of Intellectual Property with special Emphasis on India, THE IP PRESS, (Nov 16, 2022),

<https://www.theippress.com/2022/11/16/culture-tradition-at-the-horizon-of-intellectual-property-with-special-emphasis-on-india/>

<sup>3</sup> Khajuraho Group of monuments, UNESCO WORLD HERITAGE CONVENTION, (last visited Nov 8, 2023), <https://whc.unesco.org/en/list/240/>

emphasize the value of global cooperation in preserving cultural heritage. The protection of cultural property has been a longstanding issue, involving a delicate balance between individual rights and the interests of the community, highlighting the recurring challenge of finding harmony between the private and public spheres in cultural heritage preservation.<sup>4</sup> Therefore, it is very important to protect and promote cultural heritage in India and other countries as it is a valuable and irreplaceable resource of the world. It also contributes to the social and economic development of communities, as it generates income, employment, and tourism. Moreover, it fosters creativity, innovation, and diversity which are essential for the advancement of humanity.<sup>5</sup>

## OVERVIEW OF CULTURAL HERITAGE

India, one of the oldest civilizations on Earth, is incredibly diverse and has a rich cultural history. In general, socioeconomic conditions have improved since gaining independence. India, the seventh-largest country in the world, is unique among Asian nations due to its topography, which is molded by the sea and mountains. The Great Himalayas border it on the north, and the Tropic of Cancer marks the southern tip where it tapers down into the Indian Ocean between the Arabian Sea on the west and the Bay of Bengal on the east.<sup>6</sup> Cultural heritage is the result of generational inheritance which exists in different forms such as artifacts, structures, music, folklore, customs, and traditions. Intellectual property (IP) laws play a crucial role in providing the necessary legal protection for all of these. For their continued existence, expansion, and transmission, the protection of cultural heritage and the enforcement of intellectual property rights (IPRs) have a lot to offer to each other for their subsistence, growth, and dissemination. Cultural heritage is an invaluable and multifaceted aspect of human civilization that encompasses the traditions, knowledge, art, and artifacts passed down through generations. It reflects the collective identity of a society, providing a window into its history, values, and aspirations. Cultural heritage is a treasure trove of knowledge and creativity, serving as a bridge between the past and the future.<sup>7</sup>

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<sup>4</sup> Michael Di Giovine, UNESCO's World Heritage Program: The Challenges and Ethics of Community Participation, (last visited Nov 8, 2023), <https://books.openedition.org/gup/213?lang=en>

<sup>5</sup> Shaping the Global Narrative for Inclusive Growth, G20 CULTURE, (last visited Nov 8, 2023), [https://www.g20.org/content/dam/gtwenty/gtwenty\\_new/document/G20\\_Thematic\\_Webinars\\_Report\\_2023\\_India\\_REVISED.pdf](https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20_Thematic_Webinars_Report_2023_India_REVISED.pdf)

<sup>6</sup> Culture & Heritage, KNOWINDIA, (last visited Nov 9, 2023), <https://knowindia.india.gov.in/photo-gallery/culture-and-heritage.php>

<sup>7</sup> Safeguarding Cultural Heritage Through Intellectual Property Rights, KIPG, (last visited Nov 9, 2023), <https://www.kashishworld.com/blog/safeguarding-cultural-heritage-through-intellectual-property-rights/#:~:text=Cultural%20heritage%20is%20the%20offspring,come%20into%20a%20definitive%20picture.>

Cultural heritage is at the heart of our collective identity. It connects people to their roots, fostering a sense of belonging and pride in their cultural heritage. Whether it's through music, art, language, or traditional practices, cultural heritage binds communities and individuals together, reinforcing their shared history and values. Cultural heritage offers us a window into the past. Museums, historical sites, and archives house artifacts and records that allow us to trace the development of societies, their achievements, struggles, and evolution. It enables us to learn from the past and make informed decisions for the future. The world is a rich tapestry of diverse cultures. Cultural heritage preserves this diversity, preventing homogenization and fostering appreciation for different ways of life. It helps to create a world that values pluralism, tolerance, and understanding, ultimately contributing to global peace and harmony. Cultural heritage is a wellspring of artistic and creative expression. From classical music and literature to indigenous crafts and folklore, it is a source of inspiration and innovation for artists and creators. It continually influences and informs contemporary artistic endeavors.<sup>8</sup> Cultural heritage is defined by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) as "Cultural heritage is the legacy of physical artifacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present, and bestowed for the benefit of future generations. It includes tangible culture (such as buildings, monuments, landscapes, books, works of art, and artifacts), as well as intangible culture (such as folklore, traditions, language, and knowledge)"<sup>9</sup>. As UNESCO's definition of cultural heritage emphasizes its intergenerational significance and the need to preserve it for future generations, it plays a critical role in the preservation and protection of cultural heritage worldwide.

Preserving cultural heritage requires concerted efforts in conservation and restoration. This involves maintaining historical sites, protecting artifacts from deterioration, and safeguarding manuscripts and documents. Conservation experts, archaeologists, and historians play crucial roles in preservation. Cultural heritage can be a powerful tool for diplomacy and international relations. It can facilitate cross-cultural understanding and dialogue, promoting peace and cooperation. Cultural exchanges and collaborations can strengthen international ties and foster mutual respect. Preserved cultural heritage sites often become tourist attractions, contributing to

<sup>8</sup> Eleni Polymenopoulou, *Indigenous Cultural Heritage and Artistic Expressions: "Localizing" Intellectual Property Rights and UNESCO Claims*, ResearchGate (June, 2017)

<sup>9</sup> Cultural Heritage, UNESCO INSTITUTE FOR STATISTICS, (last visited Nov 9, 2023), <https://uis.unesco.org/en/glossary-term/cultural-heritage#>

local economies. Sustainable tourism can help fund the maintenance and conservation of these sites, ensuring their long-term preservation while providing economic opportunities to local communities.<sup>10</sup> Cultural heritage is a precious legacy that enriches our lives, deepens our understanding of the past, and guides us toward the future. Its preservation is an ethical duty that transcends national borders, and its promotion fosters a sense of unity among humanity. By valuing and protecting our cultural heritage, we ensure that the wisdom and creativity of our ancestors continue to inspire and inform our journey into the future.

## HISTORICAL BACKGROUND

India's cultural heritage isn't limited to physical artifacts and structures; it also includes a wealth of intangible heritage, such as classical music, dance forms, folk traditions, cuisine, and language diversity. Practices like yoga, Ayurveda, and traditional crafts are also integral to the country's cultural identity. India is home to numerous UNESCO World Heritage Sites, including the Qutub Minar, Red Fort, and Jantar Mantar in Delhi; the historic city of Jaipur; the temples of Khajuraho; and the Western Ghats, among many others. These sites are recognized for their cultural and historical significance.

- **Ancient Indus Valley Civilization (3300 - 1300 BCE)<sup>11</sup>**

The artifacts and archaeological remains of the Indus Valley Civilization, one of the oldest urban civilizations in the world, contain the earliest indications of cultural heritage in the Indian subcontinent. Advanced urban planning, trade, and artistic expression as evidenced by their seals, jewelry, and pottery are characteristics of this era.

- **Vedic Period (1500 - 600 BCE)<sup>12</sup>**

The Vedic period saw the emergence of the sacred texts known as the Vedas, which continue to be a foundational aspect of India's cultural and spiritual heritage. The period also gave rise to various philosophical and religious traditions, including Hinduism and early forms of Buddhism and Jainism.

- **Maurya and Gupta Empires ( 4th century - 6th century)<sup>13</sup>**

<sup>10</sup> Sustainable Tourism: Empowering Communities & Preserving Cultures | Halal In Travel Global Summit 2023, THE WORLD'S LEADING AUTHORITY ON HALAL TRAVEL, (last visited Nov 9, 2023), <https://www.crescentrating.com/magazine/all/4121/sustainable-tourism-development-preserving-local-cultures-and-empowering-communities.html>

<sup>11</sup> Indian Culture and Heritage, EGYANKOSH, (last visited Nov 10, 2023), <https://egyankosh.ac.in/bitstream/123456789/79211/1/UNIT%201.pdf>

<sup>12</sup> Id.

<sup>13</sup> Id.

The Maurya and Gupta empires were pivotal in the development of Indian art, architecture, and literature. The famous Ashoka Pillars and the caves of Ajanta and Ellora are examples of their architectural and artistic contributions.

- **Medieval Period (7th century - 18th century)<sup>14</sup>**

This period witnessed the influence of various rulers and dynasties, including the Mughals, the Delhi Sultanate, and various regional kingdoms. Islamic art and architecture, such as the Taj Mahal, and the fusion of Indian and Persian cultures left a lasting impact on the cultural heritage of India.

- **Colonial Era (17th century - mid-20th century)<sup>15</sup>**

British colonial rule had a profound impact on India's cultural heritage. While it led to the preservation and documentation of many cultural aspects, it also saw the plunder and loss of artifacts. The Indian struggle for independence during this period became a significant part of the country's cultural heritage.

- **Post-Independence (1947 onwards)<sup>16</sup>**

After gaining independence from British rule in 1947, India indeed placed significant emphasis on the preservation and promotion of its cultural heritage. The Indian government took various measures to protect and showcase the nation's diverse and culturally rich heritage. This included the establishment of cultural institutions, museums, and the conservation of archaeological sites. These efforts aimed to not only protect India's heritage but also make it more accessible to its citizens and the international community. India's cultural heritage is incredibly diverse, with a rich history of art, architecture, traditions, and customs, and the preservation of these elements is of great importance to the country.

## **COPYRIGHT AND CULTURAL HERITAGE**

Copyright laws play a role in protecting cultural heritage by providing legal mechanisms to safeguard and preserve creative and intellectual expressions that are part of a nation's cultural heritage. Copyright laws protect artistic works, including music, literature, and visual art by ensuring that these works are protected, preserved, and restored. Cultural heritage institutions,

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Museum Movement in India from 1947, E PATHSHALA, (last visited Nov 10, 2023), [http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S000829IC/P001546/M021988/ET/1504074720P15-M06-MuseummovementinIndiafrom1947-ET.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000829IC/P001546/M021988/ET/1504074720P15-M06-MuseummovementinIndiafrom1947-ET.pdf)

such as museums and libraries, can digitize and maintain copyrighted materials, allowing for their long-term preservation. Copyright laws provide creators with economic incentives to produce new works. When artists, authors, and creators are fairly compensated for their work, they are more likely to continue producing content that contributes to the cultural heritage of a society. It protects original documentation, such as photographs, manuscripts, and recordings of cultural events and traditions. These documents are essential for the preservation of intangible cultural heritage and can be instrumental in documenting and sharing cultural practices. Copyright laws allow rights holders to control how their works are used. This can help prevent the unauthorized use or misappropriation of cultural expressions, ensuring that they are used in ways that respect and honor their cultural significance. It is used to protect traditional knowledge and indigenous cultural expressions. For example, traditional songs, stories, and art may be protected by copyright, preventing their unauthorized use or exploitation. It promotes the growth of cultural industries, such as music, film, and literature. These industries can be vital for preserving and promoting cultural heritage by providing a platform for cultural expression. Copyright laws in some countries include moral rights, which protect the integrity of a work and the reputation of the creator. These rights can help ensure that cultural works are not distorted or used inappropriately. These laws, when properly balanced, can facilitate the exchange of cultural works between nations. International agreements, such as the Berne Convention, help to harmonize copyright laws globally and promote the exchange of cultural content.<sup>17</sup>

In India, copyright law has been used to protect and promote cultural heritage in various ways.

- **Traditional art forms:** Various traditional art forms in India, such as Madhubani painting, Pattachitra, and Warli art, have been protected through copyright. Artists and art cooperatives have registered their traditional designs to prevent unauthorized commercial exploitation. Copyright protection helps these artists preserve their cultural heritage and earn a livelihood.<sup>18</sup>
- **Baul Music:** Baul music is a traditional folk music genre from West Bengal. Musicians and cultural organizations have used copyright to protect their songs and compositions. By asserting copyright over their musical works, they have controlled how these are used,

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<sup>17</sup> Gede Agus Kurniawan, *The Existence of Copyrights on Traditional Cultural Expressions Held by the State: Implications and Orientations*, INTECHOPEN, (May 15, 2023), <https://www.intechopen.com/chapters/1130457> <sup>18</sup> Prasad Sunil Nikumbh et.al, *A Magnificent Form of Indian Folk Art: Warli, Madhubani and Pattachitra*, IIKOGRETIN ONLINE, Vol 20, 3000, 3008 (2021)

preventing unauthorized use and ensuring that the cultural heritage of Baul's music is respected and preserved.<sup>19</sup>

- **Yoga:** While not directly related to copyright, India has sought to protect its traditional knowledge and cultural heritage through intellectual property laws, including geographical indications. Yoga, for example, has been recognized as an important part of India's cultural heritage. Certain yoga postures and practices have been acknowledged as geographical indications, which can be considered a form of protection that safeguards traditional knowledge.<sup>20</sup>
- **Textile designs:** India's diverse textile traditions, such as Kalamkari, Banarasi silk, and Ikat, have been protected through copyright and other intellectual property mechanisms. Artisans and weavers have sought to preserve and promote these traditional designs while ensuring they benefit economically from their work.<sup>21</sup>
- **Folklore and Oral Traditions Documentation:** Folklore and oral traditions, including folk songs and stories, have been documented and protected under copyright. Cultural heritage institutions, researchers, and folklore collectors have digitized and archived these materials, asserting copyright to control how they are used and distributed while ensuring their preservation.<sup>22</sup>
- **Traditional Dance Forms:** Classical dance forms like Bharatanatyam and Kathak have been preserved and promoted through copyright. Dancers, choreographers, and dance schools have registered their compositions and performances to protect and promote these cultural practices.<sup>23</sup>
- **Navajo Nation and Rug Weaving Designs:** The Navajo Nation has used copyright to protect its traditional rug weaving designs. By asserting copyright over these designs, they have been able to control their use and prevent unauthorized reproductions. This has

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<sup>19</sup> Baul Songs, UNESCO INTANGIBLE CULTURAL HERITAGE, (last visited Nov 10, 2023), <https://ich.unesco.org/en/RL/baul-songs-00107>

<sup>20</sup> Benjamin Beck & Konstatin Von Werder, Yoga and Copyright, WIPO MAGAZINE, (last visited Nov 10, 2023), [https://www.wipo.int/wipo\\_magazine/en/2017/03/article\\_0008.html](https://www.wipo.int/wipo_magazine/en/2017/03/article_0008.html)

<sup>21</sup> Literature & Folklore, MINISTRY OF CULTURE, (last visited Nov 10, 2023), <https://indiaculture.gov.in/literature-folklore>

<sup>22</sup> Id.

<sup>23</sup> Id.

helped preserve their cultural heritage and ensure that the art form remains economically viable.<sup>24</sup>

- **Maasai Intellectual Property and Cultural Heritage Protection:** The Maasai people in East Africa have taken steps to protect their cultural heritage through copyright and intellectual property laws. They have asserted copyright over their traditional beadwork designs, artwork, and cultural expressions to prevent unauthorized commercial exploitation. This has allowed them to protect and promote their heritage and generate income for their community.<sup>25</sup>
- **Estonian Folklore Archives and Copyright Protection:** Estonia has a rich tradition of oral folklore, including songs, stories, and traditions. The Estonian Folklore Archives, which holds a vast collection of these materials, has actively used copyright to protect and preserve the country's cultural heritage. They have digitized and documented folklore materials, and by asserting copyright, they control how these materials are used, ensuring their cultural and ethical use.<sup>26</sup>

These case studies demonstrate how copyright has been employed in India to safeguard various aspects of cultural heritage, including traditional arts, music, knowledge, and craftsmanship. Copyright can help protect the interests of artists and artisans, ensuring the continued transmission and recognition of India's rich and diverse cultural heritage. However, it's important to strike a balance between copyright protection and the broader goal of preserving and sharing cultural heritage for the benefit of society.

## NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS

The creative expressions of Traditional Knowledge holders, such as migrant and indigenous artists, can be shielded against exploitation with the help of copyright. Any of the activities listed in Section 14 may be performed by the copyright holder. While Section 31A protects unpublished Indian works, the Copyright Act of 1957 makes no mention of protecting traditional cultural, literary, artistic, or folklore works. The scope of traditional knowledge protection under this intellectual property is limited because copyright protection is time-limited and subject to

<sup>24</sup> The Craft and Beauty of Navajo Weaving, PERMANENT STYLE, (July 9, 2021), <https://www.permanentstyle.com/2021/07/the-craft-history-and-beauty-of-navajo-blankets.html>

<sup>25</sup> The Maasai are protecting their intellectual property rights, what of others like India's Warlis?, DOWN TO EARTH, (March 15, 2018), <https://www.downtoearth.org.in/blog/economy/protecting-a-tribe-s-brand-59857>

<sup>26</sup> Risto Jarv, Estonian Folklore Archives, ORAL TRADITION, 28/2 (2013), 291, 298, [https://journal.oraltradition.org/wp-content/uploads/files/articles/28ii/14\\_28.2.pdf](https://journal.oraltradition.org/wp-content/uploads/files/articles/28ii/14_28.2.pdf)

certain requirements. Section 57, of the copyright act is used to protect traditional knowledge holders, and innovative demonstrations, particularly those of indigenous and indigenous artists against unauthorized replication and usage. The relationship between authors, artists, and creators and their works is governed by moral rights. These national and international legal frameworks provide the basis for the protection of cultural heritage through copyright laws and related intellectual property rights. They seek to balance the rights of creators and the preservation of cultural heritage for the benefit of society as a whole.

- **Traditional Knowledge and Folklore Laws:** Some nations have enacted laws that specifically address the protection of traditional knowledge and folklore. These laws can help preserve and protect traditional cultural expressions.
- **Digital Repositories and Documentation:** National cultural heritage institutions, libraries, and museums often have a legal mandate to digitize and document cultural materials. These institutions navigate copyright laws to manage and provide access to digitized cultural heritage.
- The **Berne Convention for the Protection of Literary and Artistic Works** is a fundamental international treaty in copyright. It sets forth essential standards for protecting intellectual property across different countries, including literary and artistic works. A key principle of the Berne Convention is "national treatment," meaning that foreign works and creators are granted the same level of protection in a member country as that country affords its own domestic works. This principle promotes the equal treatment of works and authors, fostering international cooperation and harmonizing copyright laws. The Berne Convention has played a pivotal role in developing copyright protection globally, making it a cornerstone of the international copyright system.
- The **WIPO Copyright Treaty, established by the World Intellectual Property Organization (WIPO)**, is an international agreement that focuses on addressing the evolving challenges of copyright in the digital age. This treaty extends copyright protection to digital works, including those distributed over the internet, and aims to harmonize copyright laws across different countries. It includes provisions that safeguard the rights of authors, creators, and copyright holders in the digital realm, ensuring that their works are protected from unauthorized reproduction, distribution, and other forms of infringement. The WIPO Copyright Treaty reflects the need to adapt copyright laws to the digital era and provides a framework for international cooperation in the protection of intellectual property rights in the digital context. It extends copyright protection to digital works and includes provisions for safeguarding the rights of authors and creators.<sup>27</sup>

- The **UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage** is an international agreement that is distinct from copyright but plays a crucial role in preserving intangible cultural heritage. It places emphasis on safeguarding traditional expressions, practices, and living cultural traditions that are passed down from one generation to another. Intangible cultural heritage includes oral traditions, performing arts, social practices, rituals, festive events, knowledge systems, and more. This convention acknowledges the value of these elements in promoting cultural diversity and fostering a sense of identity and continuity within communities. It aims to protect and promote these cultural practices and expressions, ensuring their vitality and relevance in contemporary society. While it is not directly related to intellectual property or copyright, it underscores the significance of preserving and respecting cultural traditions and knowledge that are essential to the identity and well-being of communities around the world.
- **The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization** is an international agreement that operates under the Convention on Biological Diversity. This protocol focuses on regulating access to genetic resources and aims to ensure fair and equitable sharing of the benefits that result from their utilization. In addition to genetic resources, it also extends to traditional knowledge associated with these resources. The Nagoya Protocol is designed to protect traditional knowledge and prevent its exploitation, especially by external entities. It emphasizes the importance of recognizing the rights of indigenous and local communities and promoting sustainable and mutually beneficial relationships between those who access genetic resources and the countries and communities that provide them. The protocol seeks to strike a balance between scientific research,

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<sup>27</sup> Summary of the WIPO Copyright Treaty (WCT) (1996), WIPO, (Last visited Nov. 10, 2023), [https://www.wipo.int/treaties/en/ip/wct/summary\\_wct.html](https://www.wipo.int/treaties/en/ip/wct/summary_wct.html)

commercial interests, and the preservation of biodiversity while respecting the rights and interests of the providers of genetic resources and traditional knowledge.<sup>28</sup>

- **Trade-Related Aspects of Intellectual Property Rights (TRIPS):** TRIPS is a part of the World Trade Organization (WTO) agreements and sets minimum standards for intellectual property protection, including copyright. It requires member countries to provide copyright protection but allows flexibility for the protection of traditional knowledge.<sup>29</sup>
- **Ancient Monuments Preservation Act, 1904:** Under Lord Curzon, British India passed the Ancient Monuments Preservation Act, 1904, which prohibited over-excavation in some areas and provided for the purchase, acquisition, and preservation of Ancient Monuments as well as artifacts of historical, archeological, or artistic significance.<sup>30</sup>
- **The Ancient Monuments and Archaeological Sites and Remains Act (AMASR Act)** was enacted in 1958 with the primary objectives of protecting and preserving sculptures, carvings, and related artifacts, along with ancient and historically significant monuments, archaeological sites, and remains of national importance. This legislation was instrumental in regulating archaeological excavations and research, ensuring that these valuable historical and cultural assets are safeguarded for future generations and that their study and conservation are carried out in a responsible and organized manner. The AMASR Act reflects the government's commitment to the preservation and understanding of India's rich archaeological and cultural heritage.<sup>31</sup>
- **The Antiquities and Art Treasures Act of 1972** was enacted in India to protect and preserve the nation's artistic heritage. This legislation aimed to provide the government with comprehensive control over movable cultural property, specifically antiquities. Antiquities were defined as items with historical and cultural significance, such as manuscripts, records, or documents that have been in existence for over 75 years, as well as coins, sculptures, paintings, epigraphs, and other works of art and craftsmanship that have been in existence for 100 years or more. The Act's purpose was to regulate the

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<sup>28</sup> *The Nagoya Protocol on Access and Benefit Sharing*, CONVENTION ON BIOLOGICAL DIVERSITY, (Last visited Nov. 10, 2023) [Text of the Nagoya Protocol \(cbd.int\)](#)

<sup>29</sup> Overview: The TRIPS Agreement, WORLD TRADE ORGANIZATION, (Last visited Nov 10, 2023), [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)

<sup>30</sup> G B Krishna Rao, *Legislation On Conservation Of Ancient Monuments And Archaeological Sites And Ruins: A Critical Appraisal*, JOURNAL OF THE INDIAN LAW INSTITUTE, Vol. 22, 108, 133, (Jan - Mar, 1980)

<sup>31</sup> Id.

acquisition, export, and transfer of such artifacts to prevent their loss or illegal trade and to ensure their conservation for future generations, reflecting the government's commitment to safeguarding India's rich cultural heritage.<sup>32</sup>

## LANDMARK JUDGEMENTS TO SAFEGUARD OUR CULTURAL HERITAGE

- **M.C. Mehta v. Union of India, (1986) 2 SCC 176**

The Taj Trapezium Case is a significant legal landmark in India's cultural heritage preservation efforts, focusing on safeguarding the iconic Taj Mahal and its surrounding region from environmental degradation. Initiated through a public interest litigation in 1983, the case defined the Taj Trapezium Zone and established a series of stringent regulations to combat pollution and industrial activities that posed a threat to the Taj Mahal's integrity. It also emphasized the critical connection between environmental conservation and the preservation of cultural heritage. Ongoing efforts, including the formation of the Taj Trapezium Monitoring Committee, ensure the continuous protection and maintenance of this UNESCO World Heritage Site, underscoring the importance of balancing cultural significance with environmental stewardship.<sup>33</sup>

- The case **Her Majesty vs. Lord Shiva (1982)** is a significant example of India's efforts to repatriate cultural heritage items that were taken from the country during the colonial period. It demonstrates the importance India places on the preservation and return of its cultural artifacts and heritage. In this case, "Her Majesty" represents the British government, and "Lord Shiva" refers to the Nataraja idol, which is a significant religious and cultural symbol in Hinduism. The idol, like many other cultural artifacts, was taken from India during the colonial era and ended up in the possession of museums and private collectors in the United Kingdom and other parts of the world. The legal battle to reclaim such artifacts typically involves arguments related to issues of ownership, cultural heritage, and ethical considerations. These cases often highlight the need for restitution and repatriation of cultural artifacts to their countries of origin. India, along with many

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<sup>32</sup> Atreya Mathur, *An Excursion into the Antiquities Law of India*, CENTRE FOR ART OF LAW, (last visited Nov 10, 2023), <https://itsartlaw.org/2020/06/01/an-excursion-into-the-antiquities-law-of-india/>

<sup>33</sup> Yukta Chordia, Case Analysis, VIDHI NAMA, (last visited Nov 10, 2023), <https://vidhinama.com/case-analysis-m-c-mehta-v-union-of-india-1987-scc-1-395/>

other countries, has been actively engaged in efforts to repatriate cultural items that were taken during colonial or historical periods.<sup>34</sup>

- **The Padmanabhaswamy Temple Case (2011):** It is a significant legal and cultural heritage case in India. It revolves around the Sree Padmanabhaswamy Temple, a Hindu temple located in Thiruvananthapuram, Kerala, which is one of the richest and most sacred temples in the country. The temple is dedicated to Lord Padmanabhaswamy (a form of Lord Vishnu) and is renowned for its architectural and religious significance. The case gained national and international attention due to the discovery of a vast treasure trove within the temple's vaults. The temple's underground chambers had not been opened for many years, and the discovery of immense wealth, including gold, silver, precious gemstones, and antique artifacts, was made by a team appointed by the Supreme Court of India. The estimated value of the treasure was in the billions of dollars. The legal proceedings that followed emphasized the need to protect and preserve the cultural heritage contained within religious sites.<sup>35</sup>
- **Indian Performing Rights Society (IPRS) vs. Sanjay Dalia (2015):** This case pertained to the rights of authors and copyright holders in the context of music and artistic performances. It underscored the importance of copyright laws in protecting the intellectual property of artists and cultural expressions.<sup>36</sup>
- **Copyright Dispute over Tagore's Works:** Several legal cases have revolved around the copyright of Rabindranath Tagore's literary and artistic works. These cases have clarified the copyright status of Tagore's works, which are a vital part of India's cultural heritage.<sup>37</sup>

These landmark judgments and legal actions in India reflect the country's commitment to preserving its rich cultural and historical heritage. They have addressed issues related to the

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<sup>34</sup> Ramesh Chandran, Indian Government Wins Stolen Nataraja Idol Case in British Court, INDIA TODAY, (last visited Nov. 10, 2023),

<https://www.indiatoday.in/magazine/international/story/19880315-indian-government-wins-stolen-nataraja-idol-case-in-british-court-797028-1988-03-14>

<sup>35</sup> Apurva Vishwanath, Explained: Padmanabhaswamy Temple Case, and What Verdict Means for Travancore Royal Family, INDIAN EXPRESS, (July. 16, 2020),

<https://indianexpress.com/article/explained/explained-the-padmanabhaswamy-temple-case-and-what-verdict-means-for-travancore-royal-family-6503543/>

<sup>36</sup> Arun C Mohan, *Guest Post: Shedding Light on IPRS v. Sanjay Dalia*, SPICY IP, (Last visited Nov. 10, 2023), <https://spicyip.com/2015/07/guest-post-shedding-light-on-iprs-v-sanjay-dalia.html>

<sup>37</sup> Debamitra Mitra, Visva Bharati has been Clumsy with Copyright, TIMES OF INDIA, (Dec. 29, 2001), <https://timesofindia.indiatimes.com/city/kolkata/visva-bharati-has-been-clumsy-with-copyright/articleshow/1509738636.cms>

protection of religious artifacts, historical sites, and intellectual property, ensuring that India's cultural treasures are safeguarded and respected.

## **HARMONIZATION OF COPYRIGHT LAWS WITH CULTURAL HERITAGE PRESERVATION**

Harmonizing copyright laws with cultural heritage preservation presents numerous intricate challenges. One of the primary hurdles lies in defining the ownership and control of cultural heritage items. Copyright laws typically grant rights to individual creators or their heirs, but traditional cultural expressions are often the collective heritage of communities. Striking a balance between individual creators' rights and collective ownership can be complex and requires careful consideration. Furthermore, the duration of copyright protection, which can extend for many decades, may far exceed the preservation needs of cultural heritage items, which may be much older. This incongruity necessitates a thoughtful approach to ensure that cultural heritage is not needlessly locked behind copyright restrictions. Additionally, access to and reproduction of cultural heritage can be impeded by stringent copyright regulations, limiting the ability to engage in essential research, education, and public engagement. The challenge of orphan works, where the copyright holder is unknown or untraceable, poses further obstacles to the efficient management and use of cultural heritage materials. Lastly, as cultural heritage often transcends national borders, navigating the differing copyright laws and international treaties of various nations can create complexities when preserving and sharing heritage across borders.<sup>38</sup>

While challenges exist, there are also significant opportunities to harmonize copyright laws with cultural heritage preservation. Fair use and fair dealing exceptions, which allow the restricted use of copyrighted content for purposes like research, criticism, and education, are frequently included in copyright laws. These exclusions can be used to support cultural heritage access and preservation in an ethical manner. International agreements, such as the Berne Convention and the WIPO Copyright Treaty, provide a framework for harmonizing copyright laws on a global scale, addressing cross-border challenges in preserving cultural heritage. Advances in technology have made it possible to digitize and preserve cultural heritage items, enabling the creation of digital copies that can be stored and made available to the public, all while respecting copyright restrictions. Collaboration between copyright owners and cultural heritage institutions through

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<sup>38</sup> Wallace, *Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments*, SPRINGER LINK, 823, 855, (July. 28, 2020), <https://link.springer.com/article/10.1007/s40319-020-00961-8>

licensing agreements can further enable the digitization, preservation, and responsible public access of works. Ethical considerations, community engagement, and the protection of traditional knowledge also offer opportunities for addressing the delicate balance between copyright protection and the preservation of cultural heritage. These aspects can lead to more inclusive, culturally sensitive solutions and promote the responsible safeguarding of valuable cultural assets.

Several initiatives have been taken globally to harmonize copyright laws with the conservation and preservation of cultural heritage. These initiatives aim to strike a balance between the protection of intellectual property rights and the broader societal goal of safeguarding and promoting cultural heritage.

- **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (2013):** This international treaty, administered by the World Intellectual Property Organization (WIPO), promotes access to copyrighted works for persons with print disabilities. It emphasizes the importance of making cultural and educational materials accessible to those who might otherwise be excluded due to copyright restrictions.<sup>39</sup>
- **Creative Commons Licensing:** The Creative Commons organization provides a set of copyright licenses that allow creators to retain certain rights while granting others the freedom to use, share, and adapt their works. These licenses enable cultural heritage institutions, educators, and creators to share content more flexibly while respecting copyright.
- **Open Access Initiatives:** Many cultural heritage institutions and research organizations have adopted open access policies for scholarly and cultural heritage materials. Open access encourages the sharing of research, historical documents, and cultural artifacts, allowing wider access to these resources.
- **National and International Copyright Exceptions:** Some countries have enacted or expanded copyright exceptions for purposes like education, research, and preservation of

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<sup>39</sup> Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, WIPO, (Last visited Nov. 10, 2023), <https://www.wipo.int/treaties/en/ip/marrakesh/>

cultural heritage. International agreements, such as the Berne Convention and the TRIPS Agreement, provide the flexibility for countries to introduce copyright exceptions.

- **Public-Private Partnerships:** Collaborative efforts between public and private entities, such as cultural heritage institutions and technology companies, aim to digitize and make cultural heritage materials accessible. These partnerships often involve copyright arrangements that balance access and protection.
- **Orphan Works Legislation:** Various countries have introduced or considered legislation to address orphan works, allowing cultural institutions to digitize and provide access to works for which copyright holders are unknown or untraceable.
- **Cultural Heritage Preservation Laws:** Specific laws or provisions in some countries address the preservation of cultural heritage materials, even if copyrighted. These laws may allow institutions to copy and preserve materials for the public interest.
- **Extended Collective Licensing:** In some countries, extended collective licensing agreements facilitate the use of copyrighted works for purposes like education, research, and preservation. These agreements offer a practical way to manage copyright in the context of cultural heritage. These initiatives reflect the growing recognition of the importance of balancing copyright protection with the preservation and accessibility of cultural heritage. They provide mechanisms and legal frameworks to ensure that cultural heritage materials are not unduly restricted by copyright but remain accessible for research, education, and public appreciation. Different countries have different approaches for protecting cultural heritage through copyright laws.
- **USA:** In the United States, copyright laws are designed to maintain cultural heritage while safeguarding intellectual property rights. The acknowledgement of works in the public domain, which can be freely used for the preservation of cultural heritage, and fair use, which permits the restricted use of copyrighted materials for purposes like research and preservation, are important features and tenets of U.S. copyright law. Libraries and archives are granted exceptions under provisions such as Section 108 of the U.S. Copyright Act, which permits them to make copies for lending, research, and preservation. Copyright exemptions tailored to libraries and museums acknowledge the significance of safeguarding and providing access to cultural heritage materials. Additionally, copyright provisions permit the digital preservation of copyrighted

materials, enabling the long-term accessibility of cultural heritage items. Understanding copyright notice, duration, and exemptions for digital preservation, as outlined in the Copyright Act, is essential for cultural heritage institutions. Furthermore, U.S. copyright law allows for the destruction of copyright-infringing materials to protect the rights and integrity of cultural heritage items. These legal measures and principles are fundamental to preserving and sharing the United States' rich cultural heritage.<sup>40</sup>

- **EUROPEAN UNION:** European countries have undertaken a range of initiatives to preserve their cultural heritage through copyright law and related measures. One notable approach is the implementation of Extended Collective Licensing (ECL) systems, employed by countries such as Finland, Sweden, and Norway. ECL permits cultural heritage institutions to digitize copyrighted works for preservation and research purposes, even in cases where obtaining individual copyright holders' permission is challenging. Orphan Works Legislation is another key development, with countries like the UK and France introducing laws to address the use of orphaned work for which the copyright owner cannot be identified or located. These legal provisions facilitate the digitization and preservation of cultural heritage materials, crucial for ensuring access to these valuable resources. In addition, a lot of European countries have special copyright exceptions that allow archives and libraries to duplicate copyrighted content for public access, research, and preservation. These exclusions recognize how crucial it is to support cultural heritage organizations in their efforts to preserve and make important historical materials accessible. To assist in determining the copyright status of works, some countries have developed public domain calculators. These online tools are invaluable resources for cultural heritage institutions and researchers seeking to ascertain whether a work is in the public domain and can be used without copyright restrictions. At the European Union level, the EU Directive on Orphan Works harmonizes orphan works legislation across member states. This directive permits cultural heritage institutions to use orphan works for specific purposes, promoting the preservation of cultural heritage on a broader scale. National and regional digitization initiatives are prevalent throughout Europe, involving collaboration between cultural institutions, government bodies, and

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<sup>40</sup> Copyright Law of the United States, BYTESCARE, (Last visited Nov 10, 2023), <https://bytescare.com/blog/copyright-law-of-the-united-states/>

copyright stakeholders. These projects are aimed at digitizing and providing access to cultural heritage materials, ensuring that they are preserved and accessible to the public. In addition to legislative measures, several European countries have developed cultural heritage copyright guidelines and best practices. These resources help cultural heritage institutions navigate copyright issues while preserving and providing access to their heritage materials, maintaining a delicate balance between copyright protection and public access. Cross-border collaboration is common among European countries, with collaborative projects that aim to preserve and promote shared cultural heritage. These initiatives often involve discussions and agreements on copyright matters related to digitization and access. Lastly, many European countries periodically update their copyright laws, incorporating reforms and modernization efforts to adapt to the digital age and address issues related to cultural heritage preservation. These reforms are essential in ensuring that copyright laws remain in harmony with the preservation and accessibility of Europe's rich cultural heritage.<sup>41</sup>

- **SINGAPORE:** Singapore has implemented a range of initiatives to preserve its cultural heritage through copyright law. These measures include copyright exceptions for cultural institutions, enabling libraries, archives, and museums to make copies of copyrighted materials for preservation and research. Digitization projects conducted by the National Library Board aim to preserve and provide online access to historical resources, contributing to cultural heritage preservation. Orphan works legislation allows institutions to utilize works with uncertain copyright ownership. Collaborative efforts with cultural institutions, public domain calculators, public engagement and education, and the use of digital rights management and licensing arrangements are all part of Singapore's multifaceted approach. These initiatives showcase Singapore's commitment to maintaining its cultural heritage while respecting copyright laws and intellectual property rights, ensuring that cultural materials are both safeguarded and accessible to the public.<sup>42</sup>

<sup>41</sup> Mapping of Cultural Heritage Actions in European Union Policies, Programmes and Activities, EUROPEAN COMMISSION, (last visited Nov. 10, 2023),

[https://dc5k4hhhkzdp.cloudfront.net/media/Mapping\\_of\\_Cultural\\_Heritage\\_actions\\_in\\_European\\_Union\\_policies\\_programmes\\_and\\_activities.pdf](https://dc5k4hhhkzdp.cloudfront.net/media/Mapping_of_Cultural_Heritage_actions_in_European_Union_policies_programmes_and_activities.pdf)

<sup>42</sup> Gavin Foo, Singapore's biggest copyright reform in 30 years, WIPO MAGAZINE, (Aug, 2019), [https://www.wipo.int/wipo\\_magazine/en/2019/04/article\\_0003.html?gclid=CjwKCAiAxreqBhAxEiwAFgfdCtyngAiclxzvfX-tmGyDeFynXPsoI8\\_nkT67WK8zivNnAbfn-vx-BoCf0wOAvD\\_BwE](https://www.wipo.int/wipo_magazine/en/2019/04/article_0003.html?gclid=CjwKCAiAxreqBhAxEiwAFgfdCtyngAiclxzvfX-tmGyDeFynXPsoI8_nkT67WK8zivNnAbfn-vx-BoCf0wOAvD_BwE)

## 5.1 CONCLUSION AND SUGGESTIONS

To enhance the preservation of cultural heritage through copyright laws in India, firstly, there is a need to strengthen copyright exceptions and limitations, ensuring that they explicitly cover digital preservation, access, and educational uses of heritage materials. This step would facilitate the work of cultural institutions in preserving and providing access to valuable cultural assets. Secondly, India should take a proactive approach to protect traditional knowledge and expressions through copyright laws. Collaborating closely with indigenous communities and acknowledging their rights in this context is of paramount importance. It is essential to ensure that traditional knowledge remains within the control and benefit of the communities from which it originates. Additionally, supporting digitization and preservation initiatives is crucial. Providing cultural institutions with the necessary funding and resources will enable them to preserve and make accessible their valuable heritage assets, ensuring their longevity for future generations. Promoting public awareness and education about the significance of cultural heritage preservation and the role of copyright laws is another key recommendation. Conducting public campaigns, workshops, and educational programs can help instill a sense of pride and responsibility among citizens in preserving their cultural legacy. Lastly, India should actively engage in international forums and agreements that address the harmonization of copyright laws for cultural heritage preservation. Collaborative efforts with other countries can lead to effective solutions for preserving heritage materials across borders.

Protecting cultural heritage through copyright laws in India is a multifaceted challenge that demands a thoughtful and balanced approach. The recommendations provided offer a path forward for India to strengthen its efforts in safeguarding its rich cultural heritage. By implementing these measures, India can not only preserve its historical and traditional knowledge but also foster a sense of cultural pride, understanding, and shared identity among its diverse population. Striking the right equilibrium between copyright protection and heritage preservation is essential to ensure that India's cultural legacy continues to inspire, educate, and unite generations to come.

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