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THE ABSENCE OF GENDER-SENSITIVE PROTECTION IN TRADITIONAL CULTURAL EXPRESSIONS UNDER INDIAN COPYRIGHT LAW¹

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ABSTRACT

This paper argues that Indian copyright law's failure to protect Traditional Cultural Expressions is not merely a structural problem but a fundamentally gendered exclusion. Copyright's requirements of originality, individual authorship and fixation systematically privilege forms of creative expression historically associated with male authority whilst rendering invisible the labour of women who maintain and transmit TCEs within communities. The Copyright Act, 1957 operates through formal equality that masks substantive inequalities in whose knowledge is recognised and valued. Women custodians of TCEs remain doubly marginalised: excluded as women whose reproductive cultural labour is devalued within patriarchal frameworks and excluded as members of communities whose collective and evolving expressions fall outside copyright's individualist paradigm. This paper integrates doctrinal analysis of copyright law with feminist scholarship to demonstrate that protecting TCEs requires recognising that the problem is neither accidental nor fixable through legislative amendment. What is needed instead is a sui generis framework that acknowledges collective ownership, community consent and gendered benefit-sharing. The paper establishes the case for reform whilst acknowledging that implementation raises complex questions about community identification, women's participation and enforcement capacity that demand deeper engagement with affected communities themselves.

Keywords: Traditional Cultural Expressions, Copyright Law, Gender, Indigenous Communities, Cultural Heritage, India.

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I. INTRODUCTION

Culture is an all-encompassing term that includes customs, beliefs, art, social organisation paradigm, etc. and is usually synonymous with one's way of life.² Heritage is the history, traditions, buildings and objects that a country or society has had for many years and they are considered an important part of its character and includes a person's ethnic or religious background amongst other things.³ Before understanding Traditional Cultural Expressions, it is pertinent to understand how these two terms impact and contribute to the field of Traditional Cultural Expressions. Since this in turn will lead to why conserving them is crucial in preserving the social fabric of the nation.⁴ As discussed, culture is at the root of one's existence and identity and is the shared experience of the community members it is specific to and heritage is usually attributed to a selection out of that culture that are recognized as having historical, social or 'passed-down' value.⁵ The expressions and multifarious manifestations of primarily that heritage and largely that culture are known as Traditional Cultural Expressions (henceforth TCEs).

TCEs as a term can be broadly attributed to music, dance, crafts, oral traditions, performances and many other expressions that are transmitted across generations within indigenous and local communities.⁶ They may or may not be merely artistic in nature but are definitively components of cultural identity and embody collective memory, shared social values and systems of knowledge that have sustained societies since time immemorial.⁷ The fact that their existence makes up one's identity or at least is a defining part of one's identity warrants enough reason to protect them.⁸ In the Indian society it is majorly done through a collection of

² Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 Am. Soc. Rev. 273 (1986).

³ The Heritage Council, *What is Heritage?*, <https://www.heritagecouncil.ie/about/what-is-heritage> (last visited Apr. 7, 2026).

⁴ *Id.*

⁵ Marya Axner, *Understanding Culture and Diversity in Building Communities*, ch. 27, § 1, Community Tool Box (Univ. of Kansas), <https://ctb.ku.edu/en/table-of-contents/culture/cultural-competence/culture-and-diversity/main>.

⁶ World Intellectual Property Organization (WIPO), *Traditional Cultural Expressions*, <https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index> (last visited Apr. 7, 2026).

⁷ United Nations Educ., Sci. & Cultural Org. (UNESCO), *Convention for the Safeguarding of the Intangible Cultural Heritage*, (2003); Stephen Hall, *What Is UNESCO's List of Intangible Cultural Heritage? And What's on It?*, World Econ. Forum (Feb. 8, 2023), <https://www.weforum.org/stories/2023/02/unesco-cultural-heritage-list/>; Mamadou Kane, *Cultural Identity: A Historical Perspective*, Educ. Afr. (UNESCO Reg'l Off. Educ. Afr.), No. 8, at 129–35 (1982), available at <https://unesdoc.unesco.org/ark:/48223/pf0000053835>.

⁸ The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 31(1) that Indigenous peoples have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions and the right to maintain, control, and protect their intellectual property over such heritage. G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

legislations and TCEs do not have a uniform, *sui-generis* model of protection aimed at protecting them and them alone.⁹ The subject matter (in part) of this paper will be the Copyright Act, 1957 which is one of the statutes governing the protection and regulation of Intellectual Property in India.¹⁰ The requirements of the Copyright Act¹¹ and judicial interpretations of said requirements create significant barriers to protection of TCEs.¹² This inadvertently leads to them being excluded from protection and relegated to public domain where they are subject to misuse and misappropriation.¹³

The WIPO has acknowledged that traditional knowledge and traditional cultural expressions do not fit neatly within fixed categories of intellectual property, highlighting that the needs and expectations of the custodians of such expressions are often unmet¹⁴ and they are left vulnerable to misappropriation, commercialisation and decontextualisation.¹⁵ The IP law paradigm is responsible for who gets to be the creator and in turn draw benefits from such title allocation¹⁶ as Copyright just like other Intellectual Property laws works on the concept of fixation.¹⁷ The matter is further complicated by feminist scholarship which consistently lays emphasis on the assertion that dominant legal and economic systems systematically marginalise TCEs produced and maintained by women, particularly within traditional and indigenous contexts.¹⁸ In many communities, women play a central role in the preservation and transmission of cultural expressions yet their contributions remain largely invisible within formal legal frameworks.¹⁹

This paper argues that the failure of Indian copyright law to protect Traditional Cultural

⁹ Khurana & Khurana, *Protection of Traditional Cultural Expressions as Intellectual Property* (Dec. 27, 2022), <https://www.khuranaandkhurana.com/2022/12/27/protection-of-traditional-cultural-expressions-as-intellectual-property>.

¹⁰ The Copyright Act, 1957, No. 14 of 1957; Hana Onderkova, *Copyright Protection in India – Overview and Recent Developments*, Eur. IP Helpdesk (Mar. 2, 2022), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/copyright-protection-india-overview-and-recent-developments-2022-03-02_en.

¹¹ The Copyright Act, 1957, §§ 13–14.

¹² *Eastern Book Company v. D.B. Modak*, (2008) 1 S.C.C. 1.

¹³ Debnita Mondal, *Protection of Traditional (Tribal) Cultural Expressions in India vis-à-vis Indian Copyright Regime*, (2024) ILI L. Rev. 111, 112–13.

¹⁴ World Intellectual Property Organization, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders* 5–7 (2001).

¹⁵ UNESCO, *Normative Framework for Economic Aspects in the Safeguarding of Intangible Cultural Heritage and Sustainable Development*, LHE/23/EXP THEMA-ECO/3 (Oct. 20, 2023).

¹⁶ Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* 1-2 (Yale Univ. Press 2012).

¹⁷ The Copyright Act, 1957, §§ 2(c), 2(ffa), 2(h), 13; *Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah*, AIR 2010 (NOC) 610 (Cal.); *Emergent Genetics India Pvt. Ltd. v. Shailendra Shivam*, (2011) 125 DRJ 173 (Del.).

¹⁸ Vandana Shiva, *Staying Alive: Women, Ecology and Development* (Zed Books 1989).

¹⁹ Raadhika Gupta, *Copyright v. Copyleft: A Feminist Perspective on Marginalization under Copyright Laws*, 4 NUJS L. Rev. 65, 69–70 (2011).

Expressions is not merely a structural issue arising from doctrinal incompatibility but also a gendered problem that reflects deeper inequalities in the recognition and valuation of cultural knowledge.²⁰ By integrating doctrinal analysis with feminist and social justice perspectives, this study seeks to demonstrate the need for a more inclusive and context-sensitive legal framework for the protection of TCEs.

II. RESEARCH QUESTIONS

This study is guided by the following primary research question:

To what extent does Indian copyright law fail to provide gender-sensitive protection to Traditional Cultural Expressions?

The analysis is further structured around the following sub-questions:

How do the doctrinal requirements of copyright law, particularly originality, authorship and fixation conflict with the nature of communal and ever evolving TCEs?

In what ways does the absence of collective ownership frameworks affect indigenous and local communities?

How does the lack of legal recognition disproportionately impact women as custodians of cultural knowledge and practices?

What legal or policy approaches can address the structural and gendered limitations of the existing framework?

III. LITERATURE REVIEW

The protection afforded to Traditional Cultural Expressions (TCEs) has been the subject matter of intellectual property scholarship in great depth, especially with regards to the structural inadequacies of existing legal frameworks. Scholars argue that TCEs have a collective nature and are continuously evolving. They are deeply rooted in community and thus pose challenges to the foundational assumptions inherent in intellectual property law including individual authorship, originality and fixation.²¹

The legal infrastructure in the international domain acknowledges that cultural expression is vital to one's identity and development and an important factor in preservation of social ethos

²⁰ Saumya Verma, *Analyzing Gender Gap in Recognition of IPRs of Women in the Indian Handloom Sector*, 14 *Christ U. L.J.* 43 (2025).

²¹ Tabassum Iqbal, *Exploring the Jurisprudence behind Traditional Cultural Expressions in India*, 4 *Int'l J. L.* 31, 31–33 (2018).

of communities. UNESCO has stated that though, intangible cultural heritage is an integral factor in sustainable development, it is also vulnerable to over-commercialization, misappropriation and decontextualization.²² Mamadou Kane concurs and states that cultural identity has maintained itself irrespective of historical changes and thus reinforces the view that TCEs have a collective and evolving nature.²³ Cultural theory further supports this understanding with Ann Swidler conceptualizing culture as a “tool kit” of practices and meanings that shape social action rather than fixed outputs.²⁴

Doctrinal and jurisprudential scholarship highlights the inability of intellectual property law to adequately address these characteristics. Debina Mondal argues that Indian copyright law fails to protect TCEs due to its emphasis on individual ownership and formal, rigid legal structures.²⁵ Similarly, broader legal analyses demonstrate that unfortunately, existing regimes enable the decontextualisation and broad misappropriation by myriad mediums and the systems designed to protect and preserve end up enabling their theft and abuse.²⁶

Feminist scholarship sharpens this critique by exposing the gendered foundations of intellectual property law. Vandana Shiva argues that dominant knowledge systems marginalize women’s contributions within traditional and community-based contexts.²⁷ Madhavi Sunder further highlights how intellectual property regimes shape cultural participation and reinforce inequalities in access and benefit sharing.²⁸

When observing the theory and statute of copyright from a feminist lens, demonstrations can be deduced that its core concepts reflect masculinist assumptions that exclude collective and informal forms of creativity.²⁹ Radhika Gupta critiques copyright law as structurally exclusionary and rooted in patriarchal values, particularly in its treatment of marginalized

²² UNESCO, *Normative Framework*, *supra* note 15; WIPO, *Intellectual Property Needs*, *supra* note 14; Secretariat of the Pacific Community et al., *Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture* (2002).

²³ Kane, *supra* note 7.

²⁴ Swidler, *supra* note 5, at 274.

²⁵ Mondal, *supra* note 6.

²⁶ WIPO, *Traditional Cultural Expressions*, *supra* note 6; WIPO, *Intellectual Property Needs*, *supra* note 14.

²⁷ Shiva, *supra* note 18.

²⁸ Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice*, *supra* note 16.

²⁹ Ann Bartow, *Feminist Methodologies and Intellectual Property*, in *Handbook on Intellectual Property Research* 47 (Irene Calboli & Maria Lilla Montagnani eds., Oxford Univ. Press 2021); Carys J. Craig, *Copyright and Gender: Feminist Philosophies and the Politics of Proof*, in *A Research Agenda for Intellectual Property and Gender* (Jessica Lai & Kathy Bowrey eds., Edward Elgar forthcoming 2025).

forms of expression.³⁰ Empirical and interdisciplinary studies further reveal that women's contributions to TCEs, particularly in craft and informal sectors, remain undervalued and unrecognized within legal frameworks.³¹

Despite extensive scholarship, there remains a critical gap in integrating doctrinal analysis with gendered and socio-economic perspectives. This paper addresses this gap by examining the intersection of copyright law, gender and Traditional Cultural Expressions.

IV. RESEARCH METHODOLOGY

The study adopts a qualitative analytical approach, combining doctrinal analysis with critical and feminist perspectives to examine the broader social and gendered implications of intellectual property law. This research is limited to doctrinal analysis and does not involve empirical or field-based methods. The primary sources of this study include the Copyright Act, 1957 and relevant judicial decisions interpreting key concepts such as originality, authorship, and ownership. The analysis also considers international perspectives on the protection of traditional knowledge and cultural expressions to contextualize the Indian legal framework. In addition to primary legal sources, the research draws upon secondary materials such as academic literature, journal articles and case studies on traditional cultural practices.

V. COPYRIGHT LAW AND TRADITIONAL CULTURAL EXPRESSIONS

A person may have a brilliant idea for a story or for a picture but if he communicates that idea to a different entity, which then results in a certain production, the copyright rests with the entity responsible for bringing the idea to fruition³² and this when juxtaposed with TCEs and their nature feels like forcing square blocks in round holes.³³ The framework of copyright law, as established under the Copyright Act, 1957 is premised on several foundational doctrinal requirements. These requirements, whilst internally coherent for the protection of individual literary and artistic works, create significant impediments to the protection of Traditional Cultural Expressions.³⁴

³⁰ Gupta, *supra* note 17.

³¹ Charlene Musiza, *Weaving Gender in Open Collaborative Innovation, Traditional Cultural Expressions, and Intellectual Property: The Case of the Tonga Baskets of Zambia*, 29 Int'l J. Cultural Prop. 45 (2022); Verma, *supra* note 20.

³² The age old Idea v Expression dichotomy see also B.L. Wadehra, *Law Relating to Intellectual Property* 273 (Hemant Kumar Pandey rev., 5th ed. 2016); *Donoghue v. Allied Newspapers, Ltd.*, (1937) 3 All ER 503.

³³ Ashreet Acharya, *Beyond Copyright: Designing a Sui Generis Framework for Folklore and Traditional Knowledge Protection in India*, 31 J. Intell. Prop. Rts. 77, 81–82 (2026).

³⁴ *Id.*, at 80, 82; Forum on Indian Traditional Medicine (FITM), *Protection of Traditional Cultural Expressions in*

A. Originality and the Problem of Continuity

The Copyright Act, 1957 does not expressly define originality yet the jurisprudence of Indian courts has consistently held that copyright protection requires that a work possess sufficient originality to warrant legal recognition.³⁵ This requirement reflects a Western conceptualization of creativity wherein the author is understood as a discrete, identifiable individual whose work is distinguished by novelty and personal innovation.³⁶

TCEs are not the product of an individual's intellectual labor directed toward producing something novel and rather, emerge from and are sustained within communities across generations.³⁷ The designs of a textile, the words of a folk song and the movements of a ritual dance (few of many examples) are typically transmitted, adapted and re-transmitted in forms that are recognizable yet contextually responsive.³⁸ The creator of a TCE is not understood as generating novelty but as participating in a continuum of cultural practice. To impose the originality standard upon TCEs is to misapply a metric derived from an entirely different understanding of creativity.³⁹

Consider the case of the Phulkari textiles of Punjab. A woman weaving a Phulkari employs patterns, symbols and techniques that have been transmitted through her family and community for centuries. Each iteration is both faithful to tradition and responsive to contemporary contexts⁴⁰. Yet under copyright law's originality requirement, it is precisely this fidelity to tradition that disqualifies the work from protection.⁴¹ The originality doctrine assumes that value lies in departure from the existing corpus of cultural expression. For TCEs, value inheres in their continuity, their embeddedness within a tradition, and their role in sustaining collective identity.⁴²

B. Authorship and the Fiction of Individual Ownership

Section 2(d) of the Copyright Act, 1957 defines an author as the person who creates the work.⁴³

India, Scoping Paper No. 3, at 6 (Feb. 2019).

³⁵ The Supreme Court affirmed that originality is a cornerstone of copyright protection. The Court held that a literary work must manifest the author's independent intellectual effort and creative spark. *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1.

³⁶ WIPO, *Intellectual Property Needs*, *supra* note 14, at 216-217.

³⁷ UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, *supra* note 7, at 4.

³⁸ Daphne Zografos, *Intellectual Property and Traditional Cultural Expressions* 4 (Edward Elgar Publ'g 2010).

³⁹ Iqbal, *supra* note 21, at 33.

⁴⁰ Punita Kapoor, *Handicraft Industry and Women's Struggle for Empowerment in Contemporary India: A Case Study of Phulkari as a Gendered Work*, 27 *Summerhill: IIAS Rev.* 61, 68 (2021); Musiza, *supra* note 31, at 58.

⁴¹ Craig, *supra* note 29, at 8.

⁴² UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, *supra* note 7, at 4; Madhavi Sunder, *The Invention of Traditional Knowledge*, 70 *Law & Contemp. Probs.* 97, 100 (2007).

⁴³ Copyright Act, 1957, §§ 2, 2(c), 2(d), 17; *Indian Performing Right Society Ltd. v. Eastern India Motion Pictures*

This definition presumes that creation is an individual act.⁴⁴ The statute provides no mechanism for collective authorship, though subsequent amendments have introduced limited recognition of joint authorship.⁴⁵ The copyright vests in the author and in the event of a work made for hire, in the employer or commissioning party.⁴⁶ This architecture of ownership is predicated on a property-rights model that assumes a singular nexus between creator and work.⁴⁷

Traditional Cultural Expressions are not generated by an identifiable individual author.⁴⁸ They are generated by communities, refined through generations and embedded in collective cultural memory. The authorship of a folk melody is diffuse and the composition of a tribal myth accrues not from a singular authorial act but from repeated narration, adaptation and transmission.⁴⁹ To identify the author of such expressions is not merely difficult but conceptually incoherent.⁵⁰ The notion that copyright should vest in a community rather than an individual is not accommodated within the Act's framework.⁵¹

This creates a practical paradox and consequently, if a TCE is documented or recorded by an outsider, that person as the creator of the fixed expression may claim authorship.⁵² The Biodiversity Act, 2002 and the Rules thereunder attempt to address this through prior informed consent provisions⁵³ but the Copyright Act contains no such requirement. Thus, indigenous knowledge documented without community consent can acquire copyright protection and that protection vests not in the originating community but in the documenter.⁵⁴ This inverts the structure of entitlement and renders the IP system inadvertently complicit in appropriation.⁵⁵

C. Fixation and the Problem of Intangibility

Throughout the statutory framework the Act presumes that the work exists in a tangible, reproducible form, hence protection is afforded to the expression of an idea and not the idea itself.⁵⁶ This idea-expression dichotomy reiterated in foundational cases, requires that the

Association, 1977 SCR (3) 206; *Academy of General Education, Manipal v. B. Malini Mallya*, 2009 (4) SCC 256.

⁴⁴Craig, *supra* note 29, at 9.

⁴⁵ Copyright Act, 1957, §§ 2(z); Khurana & Khurana, *supra* note 9.

⁴⁶ Copyright Act, 1957, § 17; *Indian Performing Right Society Ltd v. Eastern Indian Motion Pictures Association*, 1977 SCR (3) 206.

⁴⁷Craig, *supra* note 29, at 10.

⁴⁸ Zografos, *supra* note 38, at 4.

⁴⁹Iqbal, *supra* note 21, at 33.

⁵⁰ James & Yadav, *supra* note 34, at 6.

⁵¹ Acharya, *supra* note 33, at 79.

⁵² WIPO, *Intellectual Property Needs*, *supra* note 14, at 172.

⁵³ The Biological Diversity Act, No. 18 of 2002, §§ 3, 4, 6, 20, 21; Biological Diversity Rules, 2004.

⁵⁴Gupta, *supra* note 19, at 69.

⁵⁵ Ann Rose Jojo, *Protection Against Cultural Misappropriation: Analysis of Intellectual Property Law in India and the International Scenario*, 4 Int'l J. L. Mgmt. & Hum. 2968, 2970–71 (2021).

⁵⁶ Wadehra, *supra* note 32, at 273; *Donoghue v. Allied Newspapers, Ltd.*, (1937) 3 All ER 503.

expression be fixed in some medium that permits reproduction.⁵⁷ The Act extends no protection to expressions that exist only in ephemeral or oral form.⁵⁸

The fixation requirement also creates a temporal problem. Since, TCEs are not static and evolve across generations and copyright law, by fixing protection at the moment of first fixation in a material form, captures a single instantiation and grants perpetual protection to that version.⁵⁹ This framework is ill-suited to expressions that are meant to transform and adapt. The moment one version is documented and protected, the community's ability to evolve and adapt its own expression becomes circumscribed. Any variation of the protected expression risks infringement of the copyright in the documented version.⁶⁰

VI. GENDER AND STRUCTURAL EXCLUSION IN THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS

The failure of copyright law to protect Traditional Cultural Expressions is not a gender-neutral phenomenon.⁶¹ Integrating gender analysis reveals that this structural exclusion operates differentially, systematically marginalizing women as custodians, creators and transmitters of TCEs.⁶² Copyright's foundational assumptions, though formally gender-neutral embed masculinist values that reinforce existing hierarchies in creative labor, knowledge production and cultural valuation.⁶³

A. Women as Knowledge-Keepers and the Invisibility of Reproductive Labor

In many communities across India, women occupy a central role in the creation, maintenance and transmission of TCEs.⁶⁴ The Fourth All India Handloom Census (2019-2020) documents that women constitute approximately 72.29 percent of the total labor force in the handloom sector.⁶⁵ Yet despite this quantitative predominance, women's contributions remain systematically undervalued and frequently unrecognized. They engage in preparatory tasks, provide design ideas, execute technical work and participate in the creative process, yet income

⁵⁷ *R.G. Anand v Deluxe Films*, 1979 SCR (1) 218; *Humans of Bombay Stories (P) Ltd. v. POI Social Media (P) Ltd.*, 2023 SCC OnLine Del 6390.

⁵⁸ WIPO, *Intellectual Property Needs*, *supra* note 14, at 91; *Shree Venkatesh Films Pvt. Ltd vs Vipul Amrutlal Shah & Ors*, AIR 2010 (NOC) 610 (CAL.) The Court reiterated that reducing the idea to an expression is an essential of copyright, hence leaving out oral forms of expression.

⁵⁹ *Microfibres Inc. Vs. Girdhar & Co. & Anr.*, 2009 (40) PTC 519 (Del).

⁶⁰ UNESCO, *Normative Framework*, *supra* note 15.

⁶¹ Craig, *supra* note 29, at 1-2.

⁶² *Id*; Musiza, *supra* note 31, at 46-48.

⁶³ Gupta, *supra* note 19, at 76.

⁶⁴ Verma, *supra* note 20, at 68.

⁶⁵ *Id* at 45.

and attribution flow to male household heads or master weavers.⁶⁶

The gender dynamics of TCE transmission reveal a deeper pattern.⁶⁷ In ritual and ceremonial contexts, women maintain oral traditions, transmit songs and stories, preserve techniques and organize community knowledge.⁶⁸ In craft contexts, women are the custodians of technical knowledge, aesthetic judgment and innovation, though patriarchal social structures attribute creative authority to men.⁶⁹ This pattern is not incidental⁷⁰ and reflects a historical segregation⁷¹ wherein formal, documented, publicly-recognized forms of expression became associated with male authority⁷² whilst women's contributions were relegated to the domestic, informal and oral sphere.⁷³

The consequence is that women's creative labor, particularly in the form of TCE maintenance and transmission, is systematically categorized as reproductive rather than productive.⁷⁴ Reproductive labor refers to activities that sustain and reproduce social life and cultural continuity⁷⁵ and under capitalist IP frameworks, such labor is presumed to be performed for love, duty or familial obligation rather than for recognition or remuneration.⁷⁶ The Copyright Act contains no special provision recognizing the value of reproductive cultural labor, nor does it address the gendered dimensions of how creative contributions are attributed and valued.⁷⁷

B. The Masculinist Foundation of Copyright Doctrine

Historically, women were systematically excluded from the formal education, institutional patronage and public recognition⁷⁸ necessary to claim and document novel works.⁷⁹ Women's creative contributions occurred within familial and community contexts where attribution⁸⁰ and

⁶⁶ Pooja Yadav et al., *Behind the Seams: Reimagining Women's Work in the Textile Sector's Green Transition*, WRI India (June 27, 2025), <https://wri-india.org/perspectives/behind-seams-reimagining-womens-work-textile-sectors-green-transition>; *Id* at 45, 53.

⁶⁷ Musiza, *supra* note 31, at 45-46; Colette S. Houeto, *Women and Development: The Case of Benin*, in *Educafrica* No. 8, at 169, 169-70 (UNESCO Reg'l Off. for Educ. in Afr. 1982).

⁶⁸ *Id* at 46-48; *Id* at 171-173.

⁶⁹ Verma, *supra* note 20, at 68; Dan L. Burk, *Bridging the Gender Gap in Intellectual Property*, WIPO Mag. (Apr. 18, 2018), <https://www.wipo.int/en/web/wipo-magazine/articles/bridging-the-gender-gap-in-intellectual-property-40301>.

⁷⁰ *Id.*

⁷¹ Craig, *supra* note 29, at 5, 20.

⁷² Burk, *supra* note 69.

⁷³ Verma, *supra* note 20, at 63; Gupta, *supra* note 19, at 70.

⁷⁴ O. Onibokun, *Female Labour-Force Participation in Nigeria*, in *Case Studies: African Women and Development*, EDUCAFRICA (UNESCO Reg'l Office for Educ. in Afr.) 161, 161-162 (1982); Musiza, *supra* note 31, at 51.

⁷⁵ Houeto, *supra* note 67, at 173.

⁷⁶ Onibokun, *supra* note 74, at 161-62; Verma, *supra* note 20, at 63-64.

⁷⁷ *Id.*, at 46.

⁷⁸ Verma, *supra* note 20, at 44..

⁷⁹ Burk, *supra* note 69.

⁸⁰ Kate Mosse, *Why Are Women's Achievements So Easily Overlooked or Misattributed?*, Harper's Bazaar India

individual ownership were not the norm.⁸¹ Women's creativity often manifested in ephemeral, oral or practical forms which were not designed or intended for fixation or commodification.⁸² The author-figure in copyright discourse is presumed to be an individual who creates independently, owns their work absolutely and bears the burden of proof to establish originality.⁸³ This model depends upon and reinforces a particular form of autonomy and authority historically associated with masculinity and excludes collaborative, distributed forms of creation (or the blending of technical skill with creative vision which is characteristic of craft work)⁸⁴ and the understanding of creativity as participation in tradition rather than departure from it.⁸⁵

The practical consequence is that copyright protection accrues most readily to forms of expression historically dominated by men: literary works, musical compositions recorded by individual artists, films directed and formally credited to men.⁸⁶ Women's contributions to these same forms often remain unrecognized or are absorbed into male-credited works.⁸⁷ In TCEs, where women's role as maintainers and transmitters is substantial,⁸⁸ the absence of copyright protection combined with the doctrine of authorship means that women's creative labor is neither legally recognized nor economically remunerated.⁸⁹

VII. CONCLUSION

The analysis above establishes that copyright law's failure to protect Traditional Cultural Expressions is simultaneously a gendered failure. Copyright's foundational requirements of originality, individual authorship and fixation are structurally incompatible with TCEs as communal, evolving expressions. When combined with gendered creative labour, this incompatibility reveals a dual exclusion: women custodians remain unprotected both as women

(Mar.1,2023),<https://www.harpersbazaar.in/culture/story/why-are-womens-achievements-so-easily-overlooked-or-misattributed-565292-2023-03-01>; U.N. Educ., Sci. & Cultural Org. (UNESCO), *Gender Equality: Heritage and Creativity*, ch. 2 (Heritage), at 33–34 (2014).

⁸¹Craig, *supra* note 29, at 5; Bartow, *supra* note 29.

⁸²*Id* at 6; Gupta, *supra* note 19, at 70.

⁸³ Alexander Peukert, *Fictitious Commodities: A Theory of Intellectual Property Inspired by Karl Polanyi's "Great Transformation"*, 29 *Fordham Intell. Prop. Media & Ent. L.J.* 1151, 1195, 1198 (2019); *Sanjay Soya (P) Ltd. v. Narayani Trading Company*, 2021 SCC OnLine Bom 407.

⁸⁴ Craig, *supra* note 29, at 9,11-12; Musiza, *supra* note 31, at 50-51.

⁸⁵ Rae Earnshaw, Introduction, in Susan Liggett et al., *Creativity in Art, Design and Technology 3* (Springer 2023).

⁸⁶Burk, *supra* note 69.

⁸⁷ *Id.*

⁸⁸ U.N. Dep't of Econ. & Soc. Affs., *Buno Behen*, United Nations Sustainable Development Goals Partnerships Platform, <https://sdgs.un.org/partnerships/buno-behen>; Confederation of Indian Industry, *Traditional Crafts and Women's Empowerment: Preserving Heritage Through Self-Help Groups*, CII Blog (July 23, 2024), <https://ciiblog.in/traditional-crafts-and-womens-empowerment-preserving-heritage-through-self-help-groups/>.

⁸⁹Iqbal, *supra* note 21, at 32; Verma, *supra* note 20, at 46.

and as members of communities whose cultural knowledge falls outside copyright's scope.

Copyright's formal equality model masks substantive inequalities. The originality requirement rewards departure from tradition rather than participation in it. The authorship requirement presumes individual control rather than communal custodianship. The fixation requirement assumes tangible documentation rather than oral transmission. For women maintaining TCEs within informal and oral contexts, these requirements systematically exclude their labour from legal recognition and remuneration.

Reform in this context cannot proceed through copyright amendment alone as the incompatibility is fundamental and not procedural. What is required is a *sui generis* framework that recognises collective perpetual ownership of TCEs by originating communities, requires prior informed consent before external use and implements benefit-sharing mechanisms that address how women's contributions are valued and compensated with specific women led institutions, elder bodies and self-help groups at the helm of change.

India's Constitution commits to protecting cultural heritage of minorities and promoting scheduled castes, scheduled tribes and weaker sections. International commitments through the Convention on Biological Diversity and UNESCO instruments recognise indigenous rights over cultural heritage. The absence of gender-sensitive protection for TCEs represents failure in fulfilling these obligations.

Protection of TCEs must be understood not as copyright reform but as cultural and gender justice. Women's labour in maintaining cultural heritage deserves recognition, remuneration and control. Communities' autonomy over their cultural expressions must be affirmed. Until these principles are embedded in Indian law, TCEs remain vulnerable to appropriation and women's contributions remain invisible within formal legal frameworks.