



TRADITIONAL MUSIC AND FOLKLORE: CAN INDIGENOUS SOUNDS BE COPYRIGHTED?

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ABSTRACT

India is home to a rich and diverse musical tradition. From classical forms like Hindustani Music and Carnatic music to folk styles like Baul, Lavani, and tribal songs, these sounds are deeply tied to the culture and identity of different communities. Most of these musical forms have been passed down through generations by word of mouth, without being written or recorded. In today's world, where music is easily shared, sold, and reused through digital platforms, a big question comes up: can traditional Indian music be protected through copyright? This article looks into whether current copyright laws in India can really protect our classical and folk music. According to the Copyright Act, 1957, a work must be original, have a known author, and be in a fixed form (like a recording or written notation) to get protection. But many traditional music forms don't meet these requirements because they belong to entire communities, not individuals, and often change over time. Using examples like the use of Rajasthani and Punjabi folk songs in Bollywood, or the growing commercialisation of Baul music, the article shows how communities often don't get credit or benefits from their traditions. It also discusses how other countries and international bodies like WIPO and UNESCO are trying to protect traditional cultural expressions in better ways. Ultimately, the paper argues that India urgently needs a robust, culturally sensitive legal framework that goes beyond conventional copyright law. By recognising community ownership, enabling fair benefit-sharing, and preserving oral traditions through legal innovation, India can ensure that its musical heritage is both protected and respected in the modern world.

Keywords: Traditional Cultural Expressions, Copyright Act, 1957, Community Ownership, Folk and Classical Music, Legal Protection of Oral Traditions.

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INTRODUCTION

India has a long and diverse musical heritage. From classical traditions like Hindustani and Carnatic music to a wide variety of folk music found in different regions, music in India has always played an important cultural role. These musical forms are often passed down from one generation to the next, not through written records, but by oral teaching and community practice.

Classical music in India follows well-established systems and is often taught through the guru-shishya tradition. It includes detailed rules about ragas, talas, and performance methods. Folk music, on the other hand, is more flexible and informal. It is closely linked to the daily lives, customs, festivals, and emotions of people in villages and tribal areas. Each state and often each district has its local songs and styles, such as Baul in Bengal, Lavani in Maharashtra, and Bihu in Assam.

What makes much of this music different from modern songs is that it is usually created and shared by communities, rather than by individual artists. It often changes over time and may not have a fixed or officially recorded version. This becomes a challenge when we think about protecting this music under current copyright laws, which are mainly designed for individual creators who produce original, fixed works like written lyrics or recorded songs.¹

Today, traditional Indian music is increasingly being used in films, advertisements, stage performances, and online content. Sometimes this happens without proper credit or permission from the communities that have kept these traditions alive. This raises important questions: Can traditional music be protected under copyright law? If not, what other steps can be taken to prevent its misuse or to ensure fair recognition and benefit-sharing?

As traditional music finds its way into modern spaces, whether in films, on streaming platforms, or through global collaborations, it enters systems that were not built for it. Legal frameworks like copyright, which focus on individual creativity, originality, and fixed formats, often do not align with how traditional music actually exists: as shared, evolving, and deeply rooted in oral and collective traditions. This mismatch raises important questions about how cultural heritage should be valued and protected in today's world. It also calls for a closer look

¹ Aindrila Chakrabarti, 'Folklore and Copyright Law in India: Issues and Challenges' (2016) 58(2) JILI 218.

at whether current laws are enough, or if there's a need to think differently when it comes to preserving and respecting community-owned artistic knowledge.

UNDERSTANDING INDIAN TRADITIONAL MUSIC

India's traditional music is incredibly diverse, with two broad categories that often overlap but have distinct features: classical music and folk music. Both are deeply tied to Indian culture, but they differ in how they are created, performed, taught, and preserved.

Classical music in India, such as Hindustani in the North and Carnatic in the South, follows a well-developed and structured system. These musical forms are based on detailed rules of ragas (melodic frameworks) and talas (rhythmic cycles). The music is often spiritual or philosophical, and performances are highly refined and expressive. Learning classical music requires formal training, often over many years, through the traditional guru-shishya parampara, where a student learns directly from a teacher. Within classical music, forms like Dhrupad and Khayal in Hindustani or Kritis in Carnatic music represent some of the most respected and technical styles. These forms are typically performed in concerts, temples, or court settings and require disciplined practice and a deep understanding of musical theory.²

On the other hand, folk music is far more informal and varies greatly across different regions of India. It is usually not written down or taught in a structured way. Instead, people learn folk songs by hearing and singing them in community spaces during festivals, harvest celebrations, weddings, or religious ceremonies. Styles like Baul songs from Bengal reflect spiritual wandering and simple living, while Lavani from Maharashtra is known for its bold rhythms and powerful expressions of love, struggle, and celebration. Other examples include Bhavageet in Karnataka and tribal songs in states like Jharkhand, Chhattisgarh, and Odisha, which are often closely linked to nature, seasonal cycles, and traditional rituals.

What makes both classical and folk music special is that they are often passed down orally, not written in books or formally recorded until very recently. This means that the knowledge survives through memory, repetition, and community practice. In classical music, even though there is some written notation now, much of the emotional depth, interpretation, and improvisation is still taught orally. In folk traditions, written versions are rare. Songs evolve, with different villages or generations adding their verses or slightly changing the melody.

² T M Krishna, *A Southern Music: The Karnatik Story* (HarperCollins India 2013).

Because of this, many traditional songs don't have a single, known composer. They are the result of collective creation over many years and belong to the community as a whole. No one person claims ownership, and no one version is considered the final or original one. This makes traditional music fluid and living, always open to change and reinterpretation, but also vulnerable to being copied or misused by those outside the community.³

Understanding this oral and communal nature of Indian traditional music is important because it helps explain why these art forms don't easily fit into modern systems of copyright, which are designed for fixed, original works by identifiable individuals. When music is shared by a whole community and passed down through generations without written documentation, it becomes difficult to protect it under existing intellectual property laws. Yet, these songs and styles are deeply meaningful to the communities that preserve them, and many feel strongly about the need to protect them from exploitation or loss.

THE COPYRIGHT FRAMEWORK IN INDIA

The main law that deals with protecting creative works in India is the Copyright Act, 1957. This Act gives legal rights to the creators of original works such as books, music, films, paintings, and software. In the case of music, it protects three main elements:

- The lyrics or words (literary work),
- The musical composition (musical work), and
- The sound recording (when the music is recorded).

Once a piece of music is created and fixed in a tangible form like written notation or a recorded track, it becomes eligible for copyright protection. The law allows the creator to control how their work is used. This includes the right to reproduce the work, perform it in public, sell copies, or allow others to use it through licensing. The copyright usually lasts for the lifetime of the creator plus 60 years after their death.⁴

However, this system works well only when the creator is an individual or a small group that can be identified, and the work itself is new, original, and fixed. This is where the challenges

³ Sahapedia, 'The Gharanas of Hindustani Classical Music' (2020) <https://www.sahapedia.org/gharanas-hindustani-music>

⁴ Saregama Archive, Songs of the Soil: A History of Indian Folk Music (Saregama 2018)

begin when we look at traditional Indian music, especially folk and some classical compositions that have been passed down through oral traditions.

Many traditional songs do not have a single known composer. They are often the result of collective contribution over generations, with no written or recorded version for most of their history. For example, a Baul song or a tribal chant may have changed slightly in every village or region, with different people adding or modifying lines. So, under current copyright law, it becomes very hard to decide who owns the song or which version should be protected.

Another issue is that the law focuses on originality, something that is created for the first time. But in traditional music, originality looks different. The beauty of these traditions lies not in being “new,” but in being preserved and performed faithfully over time. They are often recreations rather than new inventions. The law does not fully recognise this kind of cultural continuity as worthy of protection.

There are also practical challenges. Most communities that preserve traditional music may not have access to legal knowledge, resources, or the means to formally register their work. Even if someone from the community tries to claim copyright, it can lead to internal disputes, for example, which singer, village, or family gets the rights? And if an outsider records or publishes the music without giving credit to the community, the law may not provide a strong or quick remedy.

While the Copyright Act⁵ does include a provision under Section 31A, which allows the government to issue licenses for works where the author is unknown or cannot be found, it doesn't give clear recognition to community ownership. It still follows a system designed for individual creators in modern creative industries, not for collective and evolving traditions like folk music.

Traditional music, by its nature, was not created with the aim of ownership or profit. But in today's context, where folk melodies are being sampled, modified, and commercialised, communities are beginning to realise the importance of recognition and control. Understanding how copyright law currently works, and where it falls short, is a necessary step toward exploring better, more inclusive systems for protecting cultural heritage.

⁵ The Copyright Act 1957 (India), No. 14 of 1957

LIMITATIONS OF CURRENT LEGAL PROTECTION

One of the biggest challenges in protecting traditional music under current copyright law is the difference between collective and individual authorship. The law is built around the idea that a creative work belongs to a single person or a small group who can be identified and credited. But in the case of traditional music, especially folk songs and chants, authorship is often collective, anonymous, and spread across generations. Many of these songs have been created, shaped, and passed down by communities over hundreds of years, with no single person responsible for their creation. Even when a particular version of a song is associated with a certain performer, it is usually understood within the community that the song is a shared expression, not someone's personal property.

Another limitation is the requirement that a work must be "fixed" in a tangible form, such as a written score or a sound recording, to qualify for copyright. This is difficult for traditional music, which has mostly been preserved through oral transmission. For centuries, these songs have been taught by listening and repeating, not by writing them down or recording them. In many communities, music is closely tied to daily life and seasonal events, and formal documentation was never considered necessary or appropriate. This makes it hard to meet the legal requirement of fixation. Even when attempts are made to record or transcribe these songs today, it raises further issues, such as who gets the rights to the recording: the singer, the collector, or the community?

A more complex limitation is the cultural and spiritual significance attached to many forms of traditional music. In some tribal and rural communities, certain songs are not just artistic expressions; they are linked to rituals, healing, or sacred practices. They may only be performed on special occasions, by specific people, or for particular purposes. In such cases, even if legal protection were available, the community might not want the music to be commercialised, recorded, or widely shared. Copyright law⁶ does not take such sensitivities into account. It is primarily concerned with economic rights like reproduction, distribution, and profit and not with respecting cultural norms or traditional values.

These limitations highlight a gap between what the law is designed to protect and what traditional communities value in their music. The law looks for originality, fixed form, and clear authorship, while traditional music often represents continuity, collective memory, and

⁶ Registrar of Copyrights, Handbook of Copyright Law in India (2023) <https://copyright.gov.in>

sacred meaning. As a result, even when traditional songs are copied or reused without permission, communities may find that they have little legal ground to demand recognition or control.

CASE STUDIES AND REAL-WORLD EXAMPLES

The gap between traditional music and modern copyright protection becomes more visible when we look at real-life examples of how Indian folk and classical traditions have been used, or in some cases, misused in popular media and commercial settings.

A common example is the use of folk songs in Bollywood music. Over the years, many popular film songs have drawn heavily from Punjabi, Rajasthani, and other regional folk tunes. Songs like “Ghoomar” in *Padmaavat*, inspired by Rajasthani folk, or the many upbeat Punjabi tracks in films that borrow dhol rhythms and lyrics from traditional village songs, are often presented in polished, modern versions. While these songs become commercially successful, the original communities or artists rarely receive credit or compensation. In many cases, the original folk song is treated as “public domain” simply because it has been around for a long time and lacks formal copyright registration. But this overlooks the fact that the music continues to live within communities that have preserved and performed it for generations.⁷

The Bauls of Bengal offer another important case. Bauls are a group of mystic minstrels known for their simple living, spiritual songs, and distinctive style of singing and dress. Their music is deeply personal and philosophical, often focusing on human connection, devotion, and inner freedom. In recent decades, however, Baul songs have been increasingly performed at cultural festivals, recorded by commercial music labels, and even used in fusion music and films. While some Baul artists have benefited from this exposure, others feel that their tradition is being diluted or misrepresented.⁸ Some performers now dress like Bauls but lack a connection to the tradition. The commercialisation has raised concerns about whether spiritual music is being turned into mere entertainment without proper understanding or respect.⁹

Another lesser-known but important example comes from the tribal drumming traditions of Jharkhand and Chhattisgarh. Drums like the Mandar, Nagara, and Dhol are not just musical

⁷ Scroll.in, ‘How Bollywood Uses Folk Songs Without Giving Credit’ (2019) <https://scroll.in/reel/909184>

⁸ The Wire Staff, ‘The Bauls Are Losing Their Identity’ (The Wire, 14 Feb 2018) <https://thewire.in/culture/baul-singers-commercialisation>

⁹ UNESCO, ‘Baul Songs of Bengal’ <https://ich.unesco.org/en/RL/baul-songs-of-bengal-00004>

instruments but are used in sacred ceremonies, community gatherings, and seasonal rituals. These rhythms are unique to specific tribes and often carry cultural meanings that outsiders may not fully grasp. In recent years, there have been cases where these tribal beats have been recorded and used in dance tracks or background scores without acknowledging the source or meaning. Since most of this music is undocumented and unregistered, tribal communities have no legal tools to object or claim ownership.

The web series *Bandish Bandits* (2020) offers a balanced and thoughtful portrayal of the tension between tradition and modernity in Indian music. The show tells the story of a young classical vocalist from a conservative gharana and a pop singer trying to find her voice. While the plot is fictional, it reflects a real cultural debate: how do traditional forms like Dhrupad or Khayal survive in a world dominated by commercial music? The show brings Hindustani classical music to a younger audience but also hints at the risk of traditional styles being simplified for mass appeal. It raises questions about artistic purity, innovation, and respect for legacy, which are very relevant when discussing the legal and cultural protection of traditional music in India today.

These examples show that traditional music is not a thing of the past; it's very much alive, constantly interacting with modern media. But without proper legal recognition, the communities that have carried these traditions may be left out of the conversation, even as their songs reach new audiences. This makes it important to think about how to balance access, creativity, and fairness in a way that respects the roots of the music.

COMMUNITY RIGHTS AND CULTURAL OWNERSHIP

In modern law, ownership usually refers to having individual control or exclusive rights over something like a song, a book, or a film. But in the world of folk and classical Indian music, ownership doesn't always mean legal control. Instead, it often refers to cultural belonging, a shared understanding within a community or tradition that the music is part of their identity, history, and way of life.

In folk music, songs are usually passed down through generations within villages or tribal groups. These songs are not created by one person alone. They evolve slowly, with each generation possibly adding new verses or changing the tune slightly. So, no one claims the song as their own in a legal sense, but everyone recognises it as "ours" within the community. This shared ownership is informal, but very real. When these songs are used in films, commercials,

or pop music without crediting the original culture, it often leads to a sense of loss or disrespect, even if no copyright law has been broken.

In Indian classical music, the idea of cultural ownership is closely linked to the tradition of gharanas. A gharana is a school or style of classical music, usually passed down through families or close teacher-student lineages. Each gharana has its way of presenting ragas, its preferred tempos, ornamentations, and even its choice of bandishes (compositions). These gharanas are not just about style—they represent decades, even centuries, of carefully preserved musical identity.

In Hindustani music, some of the most well-known gharanas include-¹⁰

Gwalior Gharana: One of the oldest, known for its structured and balanced presentation of Khayal and clear enunciation of words.

Kirana Gharana: Famous for its slow, emotional elaboration of ragas and a strong focus on voice culture and tonal purity.

Jaipur-Atrauli Gharana: Known for its use of complex and rare ragas, and a strong, intricate style of singing.

Patiala Gharana: Recognised for its rich ornamentation, fast taans (rapid note patterns), and blend of classical and light classical forms.

Agra Gharana: Strong in rhythm and layakari (rhythmic play), often incorporating elements from Dhrupad.

Banaras Gharana: Prominent in both vocal and instrumental traditions, especially in thumri, dadra, and tabla.

Each gharana preserves its unique style and philosophy. While students may learn compositions that are widely known, the way they present them reflects their lineage and training. Students are expected to honour the stylistic rules of the gharana, even as they grow and perform individually. In this way, the music becomes a form of cultural inheritance, where knowledge is handed down with great care and respect.

¹⁰ Sahapedia, 'The Gharanas of Hindustani Classical Music' (2020) <https://www.sahapedia.org/gharanas-hindustani-music>

The guru-shishya parampara (teacher-student tradition) plays a key role here. In this relationship, the student doesn't just learn musical notes and techniques, but absorbs a whole worldview about music, discipline, and values. Often, the knowledge is not written but transmitted orally and through close practice over the years. Gurus act as both teachers and guardians of the tradition, and students carry the responsibility of maintaining the gharana's identity.

Even in performance, classical musicians rarely claim personal authorship of a bandish unless it is newly composed. Instead, many compositions are credited to historical figures like Sadarang, Adarang, or Tansen, and are treated as part of a larger shared legacy. So, while classical music can sometimes fit within modern copyright systems, the true sense of ownership lies in tradition, respect, and continuity, not in legal titles.¹¹

Understanding these aspects of cultural ownership helps us see why simply applying copyright laws is not enough to protect traditional music. What matters more to these communities is not just who legally “owns” a song, but who preserves it, understands it, and uses it with care and respect.

INTERNATIONAL APPROACHES TO TRADITIONAL MUSIC PROTECTION

Many countries across the world face the same challenges as India when it comes to protecting traditional music, especially when that music has been passed down orally, created collectively, and is deeply tied to community identity. Since existing copyright laws were designed mostly for individual creators and commercial art, international organisations and some national governments have been working toward developing alternative approaches that better suit traditional cultural expressions (TCEs), including music.

UNESCO's Intangible Cultural Heritage (ICH): One of the most important global efforts in this area comes from UNESCO, through its Convention for the Safeguarding of the Intangible Cultural Heritage (2003). Unlike copyright laws, which focus on ownership and economic rights, UNESCO's approach is about recognising, documenting, and safeguarding traditional knowledge and practices that are passed on from generation to generation.

UNESCO defines intangible cultural heritage as things like oral traditions, performing arts, rituals, festivals, and traditional craftsmanship. Many musical forms fall under this category.

¹¹ Chaitanya Kunte, 'Bandish: A Case for Musical Copyright Reform' (2021)

The goal is not to restrict access to these traditions, but to protect their cultural meaning and support the communities that keep them alive.

India has several musical traditions on UNESCO's ICH list, such as:

- The Koodiyattam Sanskrit theatre of Kerala,
- The Baul songs of Bengal, and
- The Vedic chanting tradition.

Being recognised by UNESCO helps bring attention to these art forms and may encourage governments to support them financially or culturally. However, this system is non-binding—it doesn't offer legal protection or economic rights the way copyright does. It focuses more on preservation and promotion than on stopping misuse.¹²

Surprisingly, India's classical music traditions, both Hindustani and Carnatic, are not yet inscribed in UNESCO's list of Intangible Cultural Heritage (ICH), even though they are among the most sophisticated and ancient musical systems in the world. While individual art forms like Baul songs of Bengal and Vedic chanting have been recognised, the larger classical systems have not received this international cultural status. One reason for this is that UNESCO's ICH nominations must come from the national government, and each country can only nominate a limited number of traditions per cycle. With such a vast and diverse cultural landscape, India has tended to prioritise lesser-known or endangered traditions in its nominations. Another reason may be the assumption that classical music is already well-established and doesn't require "safeguarding" since it is performed in cities, taught in music academies, and has international audiences. However, this overlooks the fact that even classical music faces challenges today, including fading gharanas, declining interest among the youth, and pressure to adapt to modern formats. Recognition by UNESCO could help strengthen preservation efforts, support transmission of oral traditions, and bring more international visibility to India's classical heritage, not because it is at risk of extinction, but because it represents a living and evolving legacy that deserves formal global recognition.

WIPO and Traditional Cultural Expressions (TCEs): Another international body working on this issue is WIPO (World Intellectual Property Organisation), which deals specifically with

¹² UNESCO, 'Convention for the Safeguarding of the Intangible Cultural Heritage 2003

intellectual property rights. WIPO recognises that traditional cultural expressions like songs, dances, stories, and designs often fall outside the scope of regular copyright law.¹³

To address this, WIPO has created draft frameworks and guidelines that suggest a “sui generis” (unique) legal system for traditional knowledge and TCEs. These systems are based on the idea that:

- Communities should have control over how their traditions are used,
- Consent should be taken before commercial use.
- Benefits (such as profits or credit) should be shared with the community,
- The traditions should be acknowledged as collective and evolving, not individual and fixed.

WIPO’s work is still in progress, and there is no binding international treaty yet. But its discussions have helped bring global attention to the need for legal systems that respect the cultural logic of traditional communities, instead of forcing them to fit into existing IP laws.¹⁴

Lessons from Australia, Africa, and Latin America: Some countries have started experimenting with their approaches to protecting traditional music and knowledge.

In Australia, efforts have been made to recognise the cultural rights of Aboriginal communities, especially when it comes to sacred songs and ceremonial music. While Australian copyright law is still limited in this area, cultural protocols have been developed to guide researchers, artists, and institutions on how to work respectfully with Indigenous traditions. For example, some Aboriginal groups require community permission before songs can be recorded, shared, or adapted, even if the law does not strictly enforce it.

In many African countries, such as Ghana and Nigeria, traditional music is an important part of national identity. Some of these nations have introduced special legal protections that give communities rights over their folklore, even if the original creators are unknown. These laws often prevent outsiders from using traditional songs without government approval, though enforcement can still be a challenge in practice.

¹³ WIPO, ‘Intellectual Property and Traditional Cultural Expressions

¹⁴ WIPO, ‘Draft Provisions on the Protection of TCEs’ (2022)

In parts of Latin America, especially in countries with strong Indigenous movements like Bolivia and Peru, cultural rights are protected under the constitution. In some cases, collective intellectual property rights are recognised for Indigenous peoples, which allows them to safeguard their traditional music, dances, and symbols. These countries have also pushed for fair benefit-sharing whenever their cultural expressions are used in tourism, fashion, or media.

These global examples show that while copyright laws may not always work for traditional music, alternative approaches are possible. Whether through cultural protocols, new legislation, or community-based systems, there are ways to respect and protect music that has been nurtured over generations. India can learn from these models to think about more inclusive and culturally sensitive policies that support both legal protection and ethical recognition of traditional music.

INDIA'S MISSED OPPORTUNITY: NO SUI GENERIS LAW YET

India is known globally for its diverse and vibrant cultural traditions, ranging from classical music and folk songs to tribal chants, temple art, and oral storytelling. Yet, despite this richness, India does not have a specific legal framework to protect traditional cultural expressions (TCEs) like music, dance, and rituals. This is a significant gap, especially as other countries are moving towards building sui generis (special or unique) laws that are designed to protect Indigenous and traditional knowledge in a way that respects their collective and evolving nature.

The current laws in India, such as the Copyright Act, 1957, were not created with traditional music or folklore in mind. As discussed earlier, this law expects creative works to be original, attributed to a known individual, and fixed in a physical form like a written score or recording. These criteria exclude much of India's oral and community-based music traditions, which are passed down informally through generations and often do not have a clear "author." As a result, communities that have preserved and practised these forms for centuries are often unable to claim legal ownership, royalties, or control over their use, especially when such traditions are commercialised by others.¹⁵

India has also not yet developed a dedicated law to recognise community rights over cultural heritage. Unlike some African or Latin American countries that have created specific folklore

¹⁵ Ritwick Dutta, 'IPR and Protection of Indigenous Knowledge' (2003)

laws or constitutional protections for Indigenous cultural expressions, India's approach remains fragmented. While tools like Geographical Indications (GI) exist, for example, to protect Basmati rice or Pochampally Ikat textiles, they do not apply to musical or performance traditions. There is also no formal system in place for registering, documenting, or licensing traditional music as a collective community asset.

This lack of a *sui generis* law also means there are no clear processes for seeking community consent before traditional music is used in commercial projects like films, advertisements, or international performances. Nor is there any requirement for benefit-sharing, where profits earned from such uses are returned in part to the originating community. As a result, traditional performers are often left without recognition, support, or compensation—even when their music is being heard by millions.¹⁶

The need for a *sui generis* law becomes even more important in today's digital age, where music can be recorded, remixed, and uploaded globally in seconds. Without strong legal safeguards, traditional knowledge becomes easy to exploit and difficult to trace. A well-designed *sui generis* law for India could help solve this by:

- Recognising community authorship,
- Creating systems for collective ownership and licensing,
- Ensuring free, prior, and informed consent,
- And supporting benefit-sharing with communities.

Such a framework would need to go beyond legal rights and also include support for documentation, cultural education, and archiving, especially for communities that are losing traditional knowledge due to migration, urbanisation, or generational gaps.

Despite its deep cultural wealth, India has not yet taken strong steps in this direction. Developing a homegrown, culturally sensitive legal model would not only help protect India's traditions but could also set an example for other countries facing similar challenges. It is a missed opportunity, but one that can still be acted upon with the right policy focus and political will.

¹⁶ Shubha Ghosh, 'Traditional Knowledge, Patents, and the New Mercantilism (Part II)' (2003) 85 JPTOS 885.

ALTERNATIVE SOLUTIONS: WHAT CAN BE DONE NOW?

While legal reforms like introducing a sui generis law may take time, several practical steps can be taken right now to better protect traditional music and ensure communities have a voice in how their cultural expressions are used. These solutions may not solve all the legal problems immediately, but they can help build systems of respect, recognition, and fair use that are culturally appropriate and community-driven.

One of the most effective starting points is to create community archives and registries. These would involve recording, documenting, and cataloguing traditional music with the help and consent of the communities that practice it. Many traditional songs are still passed down orally and have never been formally written or recorded, which makes them vulnerable to being lost or misused. Creating local archives, possibly in collaboration with universities, cultural institutions, or even digital platforms, can help preserve these traditions while ensuring that the source community remains visible and involved. Importantly, these archives should not just be top-down collections; they must be co-created with the communities themselves, allowing them to decide what should be shared, what should remain private, and how their traditions are described.¹⁷

Another useful tool is cultural mapping, which involves identifying and documenting where specific musical or artistic traditions come from and how they are practised. This can be linked to Geographical Indications (GI), a legal mechanism already used in India to protect local products like Darjeeling tea or Banarasi sarees. While GI has mostly been applied to handicrafts and food items, there is growing interest in exploring whether music and performance styles can also be geographically tagged. For example, could Bhavageet be registered as a cultural asset of Karnataka, or Bihu songs as part of Assam's musical heritage? While the GI system wasn't originally designed for music, adapting it creatively could help link songs to regions and communities, giving them a form of cultural identity and protection even without formal copyright.¹⁸

A third and increasingly important solution is the idea of community licensing and benefit-sharing. Right now, when folk or tribal songs are used in films or albums, there's usually no system to ensure that the community gets a share of the recognition or income. A community

¹⁷ National Commission for Scheduled Tribes, 'Preserving Cultural Heritage' (2022)

¹⁸ National Commission for Scheduled Tribes, 'Preserving Cultural Heritage' (2022)

licensing model would allow collectives such as cultural councils, tribal groups, or music cooperatives to issue licences for the use of their traditional music. This would give artists, filmmakers, and music producers a clear and ethical path to using traditional content. In return, part of the revenue or recognition could go back to the community, either directly or through cultural funds, scholarships, or support for traditional performers. This idea already exists in environmental law and Indigenous rights in some countries, and it could be adapted for cultural work in India.

These alternative solutions rely not only on legal reform but also on policy support, funding, community leadership, and public awareness. Government bodies, educational institutions, NGOs, and even private tech platforms can all play a role in making these systems work. At the heart of these efforts should be a simple but powerful idea: traditional music is not “free to use” just because it is old or oral. It is a living form of knowledge, and it deserves the same respect and protection as any modern creation.

CONCLUSION

India’s musical heritage, both classical and folk, is one of its richest cultural assets. It reflects centuries of collective creativity, spiritual expression, and social memory. Yet, in the eyes of modern law, much of this heritage remains unprotected, unrecognised, and at risk. The traditional systems through which music is created and passed on through oral teachings, community practices, and shared performance do not align neatly with legal frameworks built for fixed, individual, and commercial works.

This creates a clear tension between preserving tradition and operating within the structures of intellectual property law. On one hand, there is a need to honour the collective and evolving nature of traditional music. On the other hand, there is a growing demand for clear legal rights, especially in a world where traditional songs are increasingly used in global media, digital platforms, and the entertainment industry. Striking a balance between these two requires more than just small legal changes; it calls for a shift in perspective, where culture is seen not just as a resource to be used, but as a heritage to be nurtured.¹⁹

The urgency to act is real. Many musical traditions in India are already under threat due to migration, loss of language, lack of institutional support, and the influence of mass culture. As

¹⁹ Madhavi Sunder, ‘IP³’ (2006) 59(1) Stan L Rev 257

elders pass away and younger generations move away from traditional arts, entire styles and repertoires may disappear without proper documentation or transmission. At the same time, as folk and classical forms are adapted into mainstream music, there is a risk that they will be commercialised without context, losing their depth, meaning, and connection to the communities that created them.²⁰

Protecting traditional music is not just a legal task; it is a cultural responsibility. Whether through new laws, community archives, ethical licensing models, or global recognition, efforts must be made to ensure that the people who have carried these traditions for centuries continue to have agency, respect, and voice. In doing so, we don't just preserve melodies—we preserve the stories, values, and identities that make up the soul of Indian culture.²¹

At the same time, this moment presents an opportunity. As conversations around cultural rights, Indigenous knowledge, and ethical artistic practices grow louder globally, India has the chance to lead by example. With its long history of oral traditions, diverse musical ecosystems, and deep-rooted value systems like guru-shishya Parampara,²² India is uniquely positioned to design legal and cultural frameworks that are both respectful of tradition and responsive to the modern world. By involving artists, scholars, lawmakers, and communities in the process, we can move toward a future where tradition and innovation go hand in hand and where no community feels left behind when its music is heard beyond its borders.

²⁰ Anil K Gupta, 'Rewarding Traditional Knowledge and Grassroots Creativity' (2002) 11(1) Int J Cult Prop 35

²¹ Shubha Ghosh, 'Traditional Knowledge, Patents, and the New Mercantilism (Part II)' (2003) 85 JPTOS 885

²² Chaitanya Kunte, 'Bandish: A Case for Musical Copyright Reform' (2021)