

COPYRIGHT PROTECTION FOR FOLK SONGS, RURAL PERFORMANCES, AND CULTURAL EXPRESSIONS IN INDIA: LEGAL CHALLENGES, GAPS, AND THE ROAD TO A SUI GENERIS FRAMEWORK

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Every country has its own culture, tradition, arts, folk music, and tribal dance. India is a diverse country having different cultural, ritual, folk music, tribal dance, traditional arts. These cultural expressions considered being the property and they are transmitted from one generation to other generation collectively, because they are collectively created. The protections of these rights are very important, nowadays such types of rights are being commercialized. Protector or creator of these rights are rural community/society, they preserves these rights from generation to generation and some multinational company/industry exploited these rights without prior consent or gave any monetary benefit. Such types of practice is unethical and against the law. Under the law no one take the benefit of other at the cost of another. In this article we examine the law for the protection of such types of rights and in this respect we examine the International and national law, particularly the copyright because such types rights most appropriately protected under copyright and also challenged face in this respect and established the sui-generis system.

Introduction

For the protection of the folk song several attempts have been made not only national level but also International levels. This subject matter most debated, discussed and claims amongst the experts of this fields. Yet there is no concert solutions have been reached. In the recent years this expression achieve a significant importance and drafting specific provision for the protection have been made, because of the deeper understanding of the unique aspects of intangible property. In India, rural communities are the guardians of this rich heritage/culture. These are unique because they envisage their artistic significance and essential for the social identity, community cohesion, and local economics. However this cultural expression falls beyond the regimes of the archaic intellectual property rights because the

subject matter of the Indian copyrights required the works must done by the particular authors and must be tangible form. Copyright policy, like other areas of public policy, requires a solid anchoring in fundamental principles. That anchor can only be found through a clear understanding of the purpose of the copyright. Commercial exploitation of these traditional cultural expressions by the unauthorized entity is obvious because such types of rights are not registered and orally transmitted from one generation to another. Thus create a legal hiatus between the creator and explicator without giving any compensation or monetary benefit to original community. This condition required us to make stringent law, it required legal reform to protect rural cultural identity and encourage equitable development.

Traditional Cultural Expressions in Rural India: Significance and Value

Under the Convention of Biological Diversity, Article

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8(j) defines the terms – knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyle relevant for the conservation and sustainable use of biological diversity¹. It means that traditional cultural expression is the knowledge which is possessed by indigenous and tribal people and it includes different form which including, but not limited to- art, music, song, dance, medicine and folk culture.

The traditional cultural expressions are developed by the community and such expressions are deeply rooted in this community, often developed collectively over many generations. For instance, folk song performed in the village may have undergone centuries of evolution, refined by numerous contributors. The value of this expression lies in the fact that they contribute to rural development by boosting tourism, conveying cultural values, creating local jobs, and reinforcing community identity. However, lack of legal provision local community frequently deprives of economic and moral rights when these rights are being used in the films, song, music albums, or commercial performance without their permission.

Previous Attempts to Achieve Protection of Folklore at the International Levels

The Berne convention: The Berne convention was considered the first international treaty and its initials efforts to secure the folklore culture within the framework of international copyright law, especially through the Berne Convention for the Protection of Literary and artistic Works. All expression of folklore is not copyright works, in spite of the fact that it occurs in the literary and artistic domain. It is not surprising that Stockholm Revision conference of the Berne Convention, 1967 the expression folklore was first time discussed.

It is taking place after most former colonies had become independent states and states and had started to represents their own interest as developing countries. The folklore culture also prevalent in some developed countries like, New Zealand, Canada, and the USA, where the indigenous populations maintain traditional life, but it is particular important for the developing countries. It is importance lies in the fact that it is to be economically more important, in International relations, than the creation and export of contemporary works. Making a new treaty in the same subject matter, it is very difficult, it is appropriate to integrate the new subject matter into the existing international treaty; it would save the enormous effort of motivating a sufficient number of countries to join the treaty.

The fact that, expression folklore included in the Berne convention- an approach strongly supported by many developing countries delegations – this approach was not successful in the long term. In particular delegations were particularly cognizant of the fact that folklore differed from authors' works in various respects. Therefore, the proposal made by the Indian delegation to include the works of folklore in the non-exclusive list of literary and artistic works of article 2(1) of the Berne Convention did not adopt in the Berne Convention. In Instead, the working group was adopted as the new article 15(4) of the Berne Convention.

Models Laws

The measures to protect the folklore are not stop due to difficulties of define it. In the Berne Convention the problem of exact definition arises, different countries and International Convention not define the terms folklore because of several reason that is folklore is not usually not published and problem of authorship.

There are several efforts are made to protect the folklore. First, adoption of models laws at International level was chosen rather than elaboration of treaty. At international level, the committee of governmental experts of UNESO and WIPO adopted in 1976 the Tunis Model Law with a view to assisting developing countries to make model laws for the protection of their cultural expression²⁻³. Again, this matter was viewed narrow manner under the copyright law and not dealt with extensively. In spite of the fact that, the provision took into account number of the particulates of folklore, for the example defining the folklore, not requiring the fixation thereof and providing for a specific definition of folklore thereof as well as unlimited duration, but they not adopted the completely adopted to the specific features of folklore, in particular to its collective nature.

Limitations of the Copyright Act, 1957

Copyright Act protects the original works. Under section 14 copyright subsist only original literary, dramatic, artistic, musical work, cinematograph films and sound recording⁴. The folklore cultural expressions are not created by the particular author, it is created by the collective community, society, author of the works are not identifiable in such types of works. Indian copyright act give emphasis of the authorial works. Copyright owner have bundle of rights to reproduction, making of copy, adoption of work, broadcast, adoption of the work. The Act did not specify the meaning of the folklore and also there no specific law for the protection. Thus the Act no mentions the terms

the folklore or traditional cultural expression. The current legal provision fails to address the problem.

Commercial Exploitation and Ethical Issues

Recent times commercialisation of the folklore and culture expression becomes a practice it is being used in films, music albums, advertisements, and branding efforts. The communities who preserve such culture did not receive any compensation and financial benefits. This situation exemplifies cultural appropriation, where external parties benefit from indigenous identities. Often, these communities are unaware about their rights, and other parties take the benefits of this cultural heritage. Therefore, there should be awareness about their rights. Unethical practices are a major concern in this respect. This not only to hamper the financial losses but also undermines the dignity and cultural authenticity of the communities involved. If we talk about the International human rights law acknowledges the right of communities to protect their cultural identity, as highlighted in article 29 of the Universal Declaration of human Rights which advocates for the safeguarding of cultural participation and ownership⁵.

Need for a Sui Generis Legal Framework

The content and scope of protection have been designated in the law as “acts of misappropriation”. Different scope of protection has been proposed in respect of different kinds of folklore. After knowing the importance of such folklore, several countries come to understand that there should be sui generis framework because the current legal intellectual property falls short in addressing this problem. The African Model Law on the Protection of Cultural Rights acknowledges community ownership, offers perpetual protection, and includes benefits –sharing mechanisms⁶. Panama indigenous intellectual Property law provides communities with authority over the culture use and commercialization of their heritage⁷. Lower protection for non-registered or notified expression of folklore has been described as adequate and effective legal and practicable measures to ensure what might be called the paternity right, the right of integrity, protection against false attribution in the broadest sense in respect of folklore belonging to a particular community and a statutory right of remuneration or benefit sharing. Further, WIPO to solve

this problem create a specialized agency for the protection of the traditional cultural, and provides community ownership, benefits sharing, ensuring perpetual protection and mandating prior informed consent (PIC). A sui-generis framework establishes a better protection for the protection of the folklore cultural and recognition of the right of community ownership, and imposes a penalty to who misuse such rights.

Conclusion

The traditional cultural expression plays vital role to identify the dignity and community identification. In rural India, traditional cultural expression is the living life of the community. Yet, the existing National and International provisions for the protection of folklore and traditional expression are not adequate. There is need of stringent law, rural communities remain unprotected and vulnerable to exploitation and always there is a risk of losing cultural identity. Presently, India needs to implement a unique provision, in this respect takes the help of international body specialised in this area and also talks with the different stake holder who engaged with connected directly and indirectly with this cultural heritage. In this respect, collective right management plays very important role for the protection of folklore, cultural tradition. By improving the community rights, not only will cultural heritage be protected, but rural economics will also be bolstered, and cultural guardians will receive the recognition they deserve. □

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