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Protection and preservation of traditional cultural expressions & traditional knowledge in handicraft industry: advocating the need for a global cultural policy framework

Proteção e preservação de expressões culturais tradicionais e conhecimentos tradicionais na indústria de artesanato: defendendo a necessidade de um quadro de política cultural global

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DIGITAL TRANSFORMATION OF MERCOSUR: INFLUENCE AND COOPERATION WITH THE EUROPEAN UNION

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Protection and preservation of traditional cultural expressions & traditional knowledge in handicraft industry: advocating the need for a global cultural policy framework*

Proteção e preservação de expressões culturais tradicionais e conhecimentos tradicionais na indústria de artesanato: defendendo a necessidade de um quadro de política cultural global

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Abstract

To protect cultural heritage, advance sustainable lives and economic growth, and promote environmental sustainability, traditional knowledge (TK) and traditional cultural expressions (TCE) in the handicraft industry must be protected. Additionally, the handicraft trade encourages cross-cultural dialogue and mutual respect, highlighting the importance of each community's distinctive contributions to the world's cultural heritage. The preservation of the cultural legacy and sustainable lifestyles of indigenous people become more important as the cross-border interchange of commodities and ideas grows. This study will focus exclusively on qualitative doctrinal analysis, examining handicrafts from various regions worldwide. It will employ a systematic approach to analyze relevant legal documents, legislation, case laws, and academic literature. The paper highlights the UN Declaration on the Rights of Indigenous Peoples' (UNDRIP) initiatives related to protecting TK and TCE within the framework of the United Nations Educational, Scientific and Cultural Organization's (UNESCO) policy and action on tangible and intangible cultural heritage. It further focuses on the limits of the present intellectual property systems in addressing the particular difficulties encountered by indigenous communities and craftspeople, especially in India. It promotes the need for a thorough global framework for a cultural policy that acknowledges these groups' collective rights to their TCE and TK and protects them from commercially motivated actors in the handicraft industry. The paper also explores the function of domestic, regional, and global legal frameworks in safeguarding TCE and TK, highlighting instances of effective sui generis systems and their potential advantages. The article concludes by advocating a comprehensive and inclusive global framework for cultural policy in order to successfully protect TCE and TK in the handicraft industry.

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Keywords: community rights; cultural heritage; handicraft industry; intellectual property rights; traditional cultural expression (TCE); traditional knowledge (TK).

Resumo

Para proteger o patrimônio cultural, promover vidas sustentáveis e crescimento econômico e promover a sustentabilidade ambiental, o conhecimento tradicional (TK) e as expressões culturais tradicionais (TCE) na indústria de artesanato devem ser protegidos. Além disso, o comércio de artesanato incentiva o diálogo intercultural e o respeito mútuo, destacando a importância das contribuições distintas de cada comunidade para o patrimônio cultural mundial. A preservação do legado cultural e dos estilos de vida sustentáveis dos povos indígenas torna-se mais importante à medida que cresce o intercâmbio transfronteiriço de mercadorias e ideias. Este estudo se concentrará exclusivamente na análise doutrinária qualitativa, examinando o artesanato de várias regiões do mundo. Ele empregará uma abordagem sistemática para analisar documentos legais relevantes, legislação, jurisprudência e literatura acadêmica. O documento destaca as iniciativas da Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas (UNDRIP) relacionadas à proteção de CT e TCE no âmbito da política e ação da Organização das Nações Unidas para a Educação, a Ciência e a Cultura (UNESCO) sobre o patrimônio cultural tangível e imaterial. Além disso, enfoca os limites dos atuais sistemas de propriedade intelectual em lidar com as dificuldades específicas encontradas pelas comunidades indígenas e artesãos, especialmente na Índia. Promove a necessidade de uma estrutura global completa para uma política cultural que reconheça os direitos coletivos desses grupos ao seu TCE e CT e os proteja de atores motivados comercialmente na indústria de artesanato. O documento também explora a função dos quadros jurídicos domésticos, regionais e globais na proteção de TCE e CT, destacando instâncias de sistemas *sui generis* eficazes e suas potenciais vantagens. O artigo conclui defendendo uma estrutura global abrangente e inclusiva para a política cultural, a fim de proteger com sucesso o TCE e o CT na indústria de artesanato.

Palavras-chave: direitos comunitários; patrimônio cultural; indústria do artesanato; direitos de propriedade

intelectual; expressão cultural tradicional (ECT); conhecimento tradicional (CT).

1 Introduction

The topic of multiculturalism, specifically in societies that have both indigenous and immigrant communities, raises concerns regarding cultural diversity. In order to achieve a balance between preserving cultural expressions and promoting the free exchange of cultural experiences, it is necessary to implement cultural regulations. This holds particular significance in nations where there exist both autochthonous and migrant populations. It is crucial to acknowledge the multifaceted nature and communal significance of customary resources and their transmission and to present an equitable, precise, and commensurate depiction of these resources and their cultural milieu within the legal system. The term Traditional Cultural Expression (TCE) encompasses various modes of artistic expression, such as music, dance, rituals, crafts, visual arts, and other cultural practices. These forms of creative expression are cultivated, preserved, and transmitted across successive generations within specific communities or societies. Traditional Knowledge (TK) encompasses the collective wisdom, inventive solutions, customary practices, and acquired expertise that have been cultivated and safeguarded by indigenous and local communities throughout generations. Both TCE and TK are integral components of the cultural and intellectual legacy of communities, serving as manifestations of their distinct viewpoints and contributions to society.

Traditional handicraft encompasses the creation of handcrafted items or crafts employing conventional methodologies, techniques, and proficiencies that have been transmitted across successive generations. These crafts frequently exhibit a strong connection to the cultural heritage of a specific community or region, serving as a platform for artisans to demonstrate their artistic expression, creativity, and craftsmanship. The utilization of TCE and TK holds great importance in the international handicraft industry, serving as a representation of the cultural legacy of numerous indigenous communities across the globe.¹ TCE encompasses both

¹ DRAHOS, Peter; FRANKEL, Susy. Indigenous peoples' innovation and intellectual property: the issues. *In*: DRAHOS, Peter;

material and immaterial manifestations of indigenous knowledge, including but not limited to visual arts, performing arts, handicrafts, oral traditions, and folklore, which have been transmitted across successive generations. Conversely, TK pertains to the erudition, advancements, and methodologies of these societies that are frequently linked with the utilization of environmental resources, such as therapeutic flora, farming, and manual dexterity in crafting. The practice of traditional craftsmanship requires the utilization of specialized and time-honored methodologies, proficiencies, and cognizance that have been transmitted across successive lineages. Therefore, the international handicraft industry has emerged as a crucial means of financial support for numerous societies that depend on TCE and TK as their primary source of sustenance. The commercialization of cultural expressions has elicited concerns regarding the potential misappropriation, misuse, and exploitation of indigenous intellectual property.²

Thus, it is imperative to safeguard and conserve TCE and TK while ensuring that the advantages derived from their commercial exploitation are justly distributed among the originating communities. This paper aims to identify proposals and solutions for the legal protection of TCE and TK in order to prevent their misuse, misappropriation, or any other form of illicit exploitation of traditional handicrafts. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, TK and Folklore (IGC) is presently engaged in discussions pertaining to the development of a sui generis international legal instrument aimed at safeguarding TCE and TK. The objective of these negotiations is to tackle the interconnections between the intellectual property framework and the interests of holders of TCE and TK. Several nations and territories have established their own sui generis frameworks to safeguard TCE and TK. The author posits that artisans and handicraft organizations can utilize extant intellectual property rights, including trademarks, geographical indications, copyright, industrial designs, and patents, to advance their objectives. This paper aims to conduct a comprehensive analysis of the current intellectual pro-

perty systems, with a specific focus on India, in order to identify and assess their limitations in effectively protecting TK and TCE within the handicraft industry. The scope of this study will not extensively encompass economic or market-based analyses of the handicraft sector. Instead, it will primarily focus on advocating for the necessity of a comprehensive and inclusive global cultural policy framework. The objective of this framework is to safeguard and maintain the intangible cultural heritage of indigenous people and artisans across the globe. The present study aims to explore feasible and readily available approaches, frequently rooted in local communities, for leveraging the extant intellectual property framework to achieve optimal acknowledgement, safeguarding, administration, promotion, and monetization of conventional artisanal products as valuable cultural and economic resources.³

2 Understanding the conceptual framework

2.1 Traditional knowledge (TK)

The concept of TK encompasses the cognitive, practical, and cultural expertise of various indigenous and local communities across the globe. Oral transmission is the primary means by which TK is transferred intergenerationally. Srinivas argues that this knowledge is derived from the accumulated wisdom of previous generations and is contextualized by the unique cultural and environmental factors of a given locality.⁴ He further adds that transmission of cultural knowledge has been traditionally conveyed through various forms of artistic expression, such as singing, dancing, painting, carving, chanting, and performance, resulting in an “oral tradition” that has been passed down from generation to generation. TK is highly valuable in various

FRANKEL, Susy (ed.). *Indigenous peoples' innovation: intellectual property pathways to development*. ANU Press, 2012. p. 1-28. Available at: <http://www.jstor.org/stable/j.ctt24hfgx.7>. Accessed on: 28 Apr. 2023.

² SUNDER, Madhavi. The invention of traditional knowledge. *Law and Contemporary Problems*, v. 70, n. 2, p. 97-124, 2007. Available at: <http://www.jstor.org/stable/27592181>. Accessed on: 28 Apr. 2023.

³ BRATSPIES, R. M. The new discovery doctrine: some thoughts on property rights and traditional knowledge. *American Indian Law Review*, v. 31, n. 2, p. 315-340, 2006. Available at: <https://doi.org/10.2307/20070790>. Accessed on: 29 Apr. 2023.

⁴ KRISHNA, Ravi Srinivas. Intellectual property rights and traditional knowledge: the case of yoga. *Economic and Political Weekly*, v. 42, n. 27/28, p. 2866-2871, 2007. Available at: <https://www.epw.in/journal/2007/27-28/commentary/intellectual-property-rights-and-traditional-knowledge.html>. Accessed on: 29 Apr. 2023.

domains such as agriculture, fishing, health, horticulture, forestry, and environmental management.⁵

Currently, there is a growing recognition of the value of historical knowledge. This information not only confers advantages to its daily users but also holds relevance in modern-day manufacturing and agriculture.⁶ The utilization of TK is exemplified by the production of medicinal and cosmetic products derived from plants, in addition to other health and beauty aids.⁷ TK is utilized to produce agricultural and non-timber forest products as well as handicrafts, which are highly valued commodities. The integration of traditional wisdom may prove advantageous for the advancement of sustainable development. Morgera, also adds that the majority of the global genetic resources are situated in areas where the native and regional communities hold sway.⁸ Numerous societies have engaged in the long-term cultivation and utilization of biological diversity for several centuries. The local biodiversity has experienced an increase, and ecosystem health has been sustained through a variety of activities undertaken by the concerned parties. Indigenous and local communities not only serve as natural resource managers but also play a crucial role in safeguarding biodiversity and promoting sustainable utilization. The expertise and methodologies of these professionals hold immense value for the international community, serving as a crucial resource for information and as a model for policies related to biodiversity. Moreover, indigenous populations and nearby communities are highly involved in conservation efforts and sustainable utilization due to their proximity and extensive understanding of the local ecosystems.⁹

⁵ KRISHNA, Ravi Srinivas. Intellectual property rights and traditional knowledge: the case of yoga. *Economic and Political Weekly*, v. 42, n. 27/28, p. 2866-2871, 2007. Available at: <https://www.epw.in/journal/2007/27-28/commentary/intellectual-property-rights-and-traditional-knowledge.html>. Accessed on: 29 Apr. 2023.

⁶ FOLKE, Carl. Traditional knowledge in social-ecological systems. *Ecology and Society*, v. 9, n. 3, 2004. Available at: <http://www.jstor.org/stable/26267675>. Accessed on: 29 Apr. 2023.

⁷ EILAND, Murray Lee. Patenting traditional medicine. In: EILAND, Murray (ed.). *Patenting traditional medicine*. Nomos Verlagsgesellschaft MbH & Co., 2018. p. 7-46. Available at: <http://www.jstor.org/stable/j.ctv941s7z.3>. Accessed on: 30 Apr. 2023.

⁸ MORGERA, Elisa; TSIOUMANI, Elsa; BUCK, Matthias. Access to traditional knowledge associated with genetic resources. In: MORGERA, Elisa; TSIOUMANI, Elsa; BUCK, Matthias (ed.). *Unraveling the Nagoya Protocol: a commentary on the Nagoya Protocol on access and benefit-sharing to the Convention on Biological Diversity*. Brill, 2015. p. 170-177. Available at: <http://www.jstor.org/stable/10.1163/j.ctt1w76vvq.14>. Accessed on: 30 Apr. 2023.

⁹ MORGERA, Elisa; TSIOUMANI, Elsa; BUCK, Matthias. Access to traditional knowledge associated with genetic resources. In: MORGERA, Elisa; TSIOUMANI, Elsa; BUCK, Matthias (ed.). *Unraveling the Nagoya Protocol: a commentary on the Nagoya Protocol on access and benefit-sharing to the Convention on Biological Diversity*. Brill, 2015. p. 170-177. Available at: <http://www.jstor.org/stable/10.1163/j.ctt1w76vvq.14>. Accessed on: 30 Apr. 2023.

2.2 Traditional cultural expression (TCE)

To define the extent of protection, it is imperative to scrutinize the categories of creations that could potentially be classified as TCE. As per the definition provided by the World Intellectual Property Organization (WIPO), TCE refers to the various forms of expression that are deeply rooted in the traditional culture of a particular community. These expressions are considered to be integral to the social and cultural identity and heritage of the local communities and are typically preserved and developed by the holders of such expressions. Furthermore, TCEs are known to be subject to ongoing change and evolution over time. TCEs are in two forms, tangible and intangible. These include:

- “Verbal expressions or symbols (stories, epics, legends, tales, riddles, etc.)
- Musical expressions (songs, instrumental music)
- Expressions by action (dance form, play, ritual, etc.)
- Tangible expressions (drawings, designs, paintings, body art, carvings, sculptures, pottery, terracotta, warli painting, mosaic, woodwork, rockwork, metal work, jewellery, basket, needlework, glassware, textiles, carpets, etc.)
- Intangible expressions reflecting traditional thought forms
- Architectural forms.”¹⁰

Christoph states that the ownership of TCEs is attributed to the community rather than an individual, and this attribution is based on established precedent. The initiator of a TCE frequently remains unidentified, and the TCE has attained the status of “Public Domain” through recurrent usage.¹¹ Nanda adds that In-

cess to traditional knowledge associated with genetic resources. In: MORGERA, Elisa; TSIOUMANI, Elsa; BUCK, Matthias (ed.). *Unraveling the Nagoya Protocol: a commentary on the Nagoya Protocol on access and benefit-sharing to the Convention on Biological Diversity*. Brill, 2015. p. 170-177. Available at: <http://www.jstor.org/stable/10.1163/j.ctt1w76vvq.14>. Accessed on: 30 Apr. 2023.

¹⁰ ANTONS, Christoph. Asian borderlands and the legal protection of traditional knowledge and traditional cultural expressions. *Modern Asian Studies*, v. 47, n. 4, p. 1403-1433, 2013. Available at: <http://www.jstor.org/stable/24494202>. Accessed on: 30 Apr. 2023.

¹¹ ANTONS, Christoph. Asian borderlands and the legal protec-

dia is characterized by a remarkable degree of diversity, encompassing a multitude of indigenous communities and cultural identities that are distinguished by unique features such as cuisine, clothing, language, and social structure. The handicraft industry is frequently associated with TCE and serves as a significant contributor to the preservation and propagation of cultural heritage, job creation, and economic growth in local communities.¹²

2.3 Traditional handicraft: whether a subject matter of protection under TK and TCE?

Handicrafts are commonly known as artisanal products, craft products, traditional creative crafts, or works of artistic or traditional craftsmanship. The incorporation of artistic elements into utilitarian activities, such as handicrafts, can indicate a society's cultural sophistication in everyday tasks and demonstrate the society's cultural sensitivity towards material transformations. Handicrafts are a means of preserving cultural heritage by incorporating regional and traditional motifs. The presence of artistic elements within a primarily functional pursuit, such as handicrafts, can indicate the level of cultural sophistication present in a society's everyday practices. This can serve as a reflection of society's cultural responsiveness to material shifts and highlights their sensitivity to such changes. Handicrafts are a means of preserving cultural heritage by incorporating regional and traditional motifs. The aesthetic value of handicrafts is not solely determined by their physical appearance or conceptual design. The artistic value and significance of the final object are derived from the entirety of its ultimate conception. The beauty of it arises from the synergy between both. The ancient craftsmen of India possessed a natural understanding of the utilization of diverse art elements, including design, color, and texture, as well as their interdependence. This is due to the fact that no individual art form exists in isolation from the impact of other forms. The Indian craftsmen's developed sense of abstraction can be traced back to their innate spirituality and religiosity. This

tion of traditional knowledge and traditional cultural expressions. *Modern Asian Studies*, v. 47, n. 4, p. 1403-1433, 2013. Available at: <http://www.jstor.org/stable/24494202>. Accessed on: 30 Apr. 2023.

¹² NANDA, S. K. Cultural nationalism in a multi-national context: the case of India. *Sociological Bulletin*, v. 55, n. 1, p. 24-44, 2006. Available at: <http://www.jstor.org/stable/23620521>. Accessed on: 2 May 2023.

is demonstrated by the notable surge in stone sculpture production during Emperor Ashoka's reign, where they were utilized to spread the teachings of Buddhism.

The term "handicrafts" lacks a universally accepted definition. However, certain shared characteristics can be discerned:

- Artisans create these products either entirely by hand or with the assistance of hand tools or machinery, as long as the artisan's direct manual input remains the primary element of the final product;
- They are emblematic expressions or representations of the culture from which the craftsman hails;
- Products manufactured from raw materials may be utilitarian, aesthetically pleasing, artistically innovative, culturally significant, aesthetically pleasing, aesthetically innovative, ornamental, useful, traditionally significant, or religiously and socially symbolic and important;
- There are no limits on the number that may be made, and each item is unique.¹³

Deepak, in his article, discusses that the practice of traditional craftsmanship necessitates the utilization of specialized and customary methodologies, aptitudes, and erudition, frequently of a significant age, which is passed down from one generation to the next.¹⁴ He further argues that handicrafts possess the potential to represent TCEs through their design, appearance, and style. Additionally, they may encapsulate TK in the form of the techniques and expertise employed in their creation. TK and TCEs, which encompass handicrafts, hold significant cultural, social, and historical value for the communities that preserve, practice, and enhance them.¹⁵ Additionally, they serve as economic assets that

¹³ WORLD INTELLECTUAL PROPERTY RIGHTS. *Intellectual Property and Traditional Handicrafts*. 2016. Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_5.pdf. Accessed on: 2 May 2023.

¹⁴ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

¹⁵ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: <https://nopr.niscpr.res.in/>

can be utilized, exchanged, or licensed to generate income and promote economic growth. Regrettably, conventional methodologies, along with the distinctiveness, prestige, and aesthetics linked to artisanal crafts, are susceptible to replication and unauthorized usage. There has been an increasing inclination towards artisanal and conventional commodities in various regions of the globe, and endeavours are being undertaken to endorse and sustain this sector. The preservation and promotion of local traditions and identities are significant aspects of cultural heritage, in which TCE and the Handicraft Industry hold a crucial position.¹⁶

The paper further delves into examining the challenges pertaining to Traditional Handicraft Industry and asserts its impact on indigenous communities. The handicraft industry encompasses a wide range of activities including the production, manufacturing, marketing, and commercialization of handicraft products. The stakeholders involved in this industry encompass a diverse range of individuals and entities, including artisans, craftsmen, designers, manufacturers, exporters, wholesalers, retailers, and consumers. The handicraft industry encompasses the complete range of activities within the value chain, starting from the procurement of raw materials to the production of crafts, their distribution, and subsequent sale in both domestic and international markets. The handicraft industry assumes a prominent role in the preservation of cultural traditions, the bolstering of local economies, the advocacy of sustainable practices, and the exhibition of the artistic heritage inherent to a particular region. The aforementioned activities play a significant role in fostering job creation, enhancing skill acquisition, and facilitating the advancement of cultural tourism. Handicrafts are frequently regarded as distinctive, genuine, and superior commodities that manifest the cultural essence and imaginative prowess of the artisans engaged in their creation.

bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf. Accessed on: 2 May 2023.

¹⁶ MATHUR, Ajeet. Who owns traditional knowledge? *Economic and Political Weekly*, v. 38, n. 42, p. 4471-4481, 2003. Available at: <https://www.epw.in/journal/2003/42/special-articles/who-owns-traditional-knowledge.html>. Accessed on: 2 May 2023.

3 UNESCO'S interpretation of cultural heritage and traditional handicraft

Prior to delving into the confluence of the two domains, it is imperative to acquire a comprehensive understanding of the notion of "Cultural Heritage". The cultural legacy of a group of individuals is comprised of their collective knowledge and skills in a particular domain, which is perpetuated through their routine application of said knowledge and skills in their daily activities, as well as their intentional and public display of this expertise through established symbols. The term "Tangible Cultural Heritage" pertains to material objects that are created, preserved, and passed down from one generation to another within a given society. The term encompasses a range of cultural artifacts, including works of art, architectural structures, and other tangible manifestations of human ingenuity that hold cultural value within a given community.¹⁷

Numerous international human rights treaties incorporate provisions that are closely intertwined or indirectly advocate for the preservation and promotion of cultural heritage. The inclusion of a broader entitlement to engage in the cultural activities of one's community was integrated into Article 27 of the Universal Declaration of Human Rights (UDHR) and later reaffirmed in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁸ The International Covenant on Civil and Political Rights (ICCPR) ensures the right to partake in one's own culture, as stated in Article 27.¹⁹ This provision specifically safeguards the rights of minority individuals to engage in their cultural practices, exercise their religious beliefs, and utilize their native language. The United Nations Declaration

¹⁷ BLUMENFIELD, Tami. Recognition and misrecognition: the politics of intangible cultural heritage in southwest China. In: MAAGS, Christina; SVENSSON, Marina (ed.). *Chinese heritage in the making: experiences, negotiations and contestations*. Amsterdam: University Press, 2018. p. 169-194. Available at: <https://doi.org/10.2307/j.ctt2204rz8.10>. Accessed on: 3 May 2023.

¹⁸ Article 27, which read as "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". UNITED NATIONS. *Universal Declaration of Human Rights*. 1948. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2027,scientific%20advancement%20and%20its%20benefits>. Accessed on: 5 Jul. 2023. *See also*, Article 15, UNITED NATIONS. *International Covenant on Economic, Social and Cultural Rights*.

¹⁹ Article 27, UNITED NATIONS. *International Covenant on Civil and Political Rights*.

on the Rights of Indigenous Peoples, along with the International Labour Organization's Convention No 169, commonly known as the Indigenous and Tribal Peoples Convention of 1989, provide explicit protection for these rights. This text encompasses a range of provisions pertaining to cultural rights in a general sense, while also placing emphasis on the promotion of cultural heritage in a more specific manner. The concept of cultural heritage is closely intertwined with fundamental human rights, including human dignity and identity. Moreover, it plays a significant role in upholding the right of individuals and communities to self-determination. The importance of education in promoting the appreciation of diverse cultural heritages and expressions cannot be overstated. Given that a significant portion of cultural heritage is intertwined with religious beliefs, the right to freedom of thought and religion is highly pertinent to ensuring access to and enjoyment of cultural heritage.²⁰ The summit meeting of the Council of Europe Heads of State in 1993 established a clear connection between cultural heritage and human rights. It is evident that the global community is placing growing emphasis on the significance of cultural heritage as a fundamental element of thriving cultural diversity, with particular relevance to human rights and a broader perspective on peace and stability.²¹

UNESCO introduced an initial draft of Article 15 of ICESCR, which primarily pertained to the safeguarding and advancement of tangible cultural heritage. UNESCO's preparatory documents for Article 15 embraced "folk arts, folklore and popular traditions in literature, religion, mythology, philosophy, architecture and the visual arts, music and dancing, drama, crafts, etc."²² The Universal Declaration on Cultural Diversity was adopted by the Member States at the UNESCO General Conference in November 2001. The aforementioned initiatives by UNESCO have taken into account the significance of culture, cultural policy, and cultural rights within the framework of the challenges posed by globalization, pluralism, and diversity. The establish-

ment of a comprehensive and specialized international agreement addressing the protection of intangible cultural heritage did not occur until October 2003. This significant milestone was achieved through the adoption of the International Convention on the Safeguarding of Intangible Cultural Heritage by the UNESCO General Conference.²³

Article 2 of the UNESCO's Convention for Safeguarding of the Intangible Cultural Heritage, 2003, defines "intangible cultural heritage" as "the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts, and cultural spaces associated therewith that communities, groups and, in some cases, individuals recognize as part of their cultural heritage."²⁴ Cultural heritage can manifest in tangible artifacts as well as intangible phenomena. Tangible heritage encompasses historical texts, objects, and structures, while intangible heritage comprises cultural practices, folktales, songs, and musical compositions. The definition also encompasses the notion that it should solely encompass intangible heritage that has endured over time, as indicated by the phrase "transmission from generation to generation."²⁵ Article 2 also incorporates the Turin recommendation, which emphasizes that the protection of intangible cultural heritage should adhere to the international human rights framework and should not be employed to promote intolerance or the destruction of other cultural heritages.²⁶ The pottery of Oaxaca represents a significant aspect of Mexico's cultural heritage that has been transmitted across successive generations. The artifacts are crafted utilizing conventional methodologies and patterns that mirror the cultural distinctiveness of the native societies responsible for their creation. Moroccan carpets represent a noteworthy instance of a palpable cultural legacy within the handicraft industry.²⁷ The Moroccan handwo-

²³ BROUDE, Tomer. Mapping the potential interactions between UNESCO's intangible cultural heritage regime and world trade law. *International Journal of Cultural Property*, v. 25, n. 4, p. 419-448, 2018.

²⁴ UNESCO. *2003 Convention for the Safeguarding of the Intangible Cultural Heritage*. 2011. Available at: <https://ich.unesco.org/doc/src/15164-EN.pdf>. Accessed on: 3 May 2023.

²⁵ UNITED NATIONS. *UNESCO Doc.CLT-2002/CONF.203/5*, p. 3, para. C.

²⁶ UNITED NATIONS. *UNESCO Doc.161 EX/15*, Annex, p. 3, para. 11.

²⁷ SACHASINH, Rachna. Mexico's 'pottery of the night' is perfect for day of the dead. *National Geographic*, 2021. Available at: <https://www.nationalgeographic.com/travel/article/artisans-are-reviving-oaxaca-ancient-pottery-of-the-night>. Accessed on: 3 May 2023.

²⁰ KIRCHMAIR, Lindo. A 100 years institutionalized cultural heritage protection: from the institutionalized international cooperation intellectuelle to the human right to the cultural heritage. *Revista de Direito Internacional*, v. 17, n. 3, p. 95-108, 2020. Available at: <https://doi.org/10.5102/rdi.v17i3.6952>. Accessed on: 5 Jul. 2023.

²¹ BLAKE, Janet. On defining the cultural heritage. *The International and Comparative Law Quarterly*, v. 49, n. 1, p. 61-85, 2000. Available at: <http://www.jstor.org/stable/761578>. Accessed on: 5 Jul. 2023.

²² UNITED NATIONS. *UNESCO Doc.CUA/42*, 9-10.

ven products are created utilizing conventional methods and patterns that are indicative of the country's cultural legacy.²⁸

The recognition of the significance of protecting intangible cultural heritage for the purpose of promoting cultural diversity played a crucial role in the development of the instrument, leading to its focus on fostering international collaboration (Part IV). It is recognized that the involvement of the local, national, and international levels is necessary for the promotion of awareness and appreciation.²⁹ The significance of the States' role persists, however, they are required to actively pursue the involvement of communities, groups, and pertinent non-governmental organizations, as stipulated in Article 11(b).³⁰ Furthermore, it is worth noting that under specific circumstances outlined in Article 33, self-governing groups within states have the ability to become parties to the convention.

Since its establishment, UNESCO has designated numerous cultural heritages from various countries as intangible cultural heritage for humanity. Examples of these include the traditional music known as "Baul Songs" and the traditional skill of Jamdani weaving from Bangladesh, the Mak Yong theatre from Malaysia, the skills of Chinese seal engraving, the sericulture and silk craftsmanship of China, and the traditional skills of carpet weaving in Fars from Iran, among others. Moreover, UNESCO has identified several intangible cultural heritages that require urgent safeguarding. These include the "Ala-kiyiz and Shyrdak" (Skills of Kyrgyz traditional felt carpets) of Kyrgyzstan, the "Earthenware pottery-making skills" of Botswana, the "Noken multifunctional knotted or woven bag" (Handicraft of the people of Papua)" of Indonesia, the "Al Sadu (Traditional weaving skills) of the United Arab Emirates, the "Traditional Li textile techniques: spinning, dyeing, weaving and embroidering" of China, and the "Black

pottery manufacturing process" of Portugal, among others.³¹

The two most prominent forms of intellectual property rights are economic property rights and copyright-based rights. Given their cognitive provenance, they are not amenable to tactile manipulation or grasp. Industrial property rights encompass patents, industrial designs, and trademarks, while copyright pertains to original creative works such as books, sculptures, films, and poetry. The examination of cultural heritage by means of the perspective of intellectual property (IP) is commonly approached through two perspectives: TCE and TK. The issue at hand pertains to the absence of a universally accepted characterization of TCE and TK at the international level. For a cultural element to be classified as a TCE, it is necessary for it to possess a defining characteristic of a tradition and to have endured as a living tradition within a community. The implementation of legal safeguards has been a long-standing aspiration among indigenous communities. This measure would enable them to derive economic benefits from the transmission of their TK across generations while also ensuring that unauthorized use of such knowledge is prevented.

Further, UNESCO/ITC International symposium on 'crafts and the international market' defined 'artisanal products' as follows:

Artisanal products are those produced by artisans, either completely by hand or with the help of hand-tools or even mechanical means, as long as the direct manual contribution of the artisan remains the most substantial component of the finished product. These are produced without restriction in terms of quantity and using raw materials from sustainable resources. The special nature of artisanal products derives from their distinctive features, which can be utilitarian, aesthetic, artistic, creative, culturally attached, decorative, functional, traditional, religiously and socially symbolic and significant.³²

However, here, Deepak argues that the definition elucidates the fundamental attributes that typify conventional handicrafts and the dialectical elements inhe-

²⁸ AFRIKESH. *The unique history of Moroccan rugs*. Available at: <https://afrikesh.com/the-unique-history-of-moroccan-rugs/>. Accessed on: 3 May 2023.

²⁹ UNITED NATIONS. *UNESCO Doc.CLT-2002/CONF.203/5*, paras. 9 and 10.

³⁰ GKANA, Alik. Peoples' heritage or states' heritage? sovereignty in the UNESCO mechanism for the safeguarding of intangible cultural heritage. *Revista de Direito Internacional*, v. 17, n. 3, p. 40-60, 2020. Available at: <https://doi.org/10.5102/rdi.v17i3.7192>. Accessed on: 5 Jul. 2023.

³¹ UNESCO. *Browse the Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. Available at: <https://ich.unesco.org/en/lists>. Accessed on: 5 Jul. 2023.

³² UNESCO. *International Symposium on Crafts and the International Market: trade and customs codification: final report*. Manila, 1997. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000111488_spa. Accessed on: 5 May 2023.

rent in ongoing discourse.³³ Specifically, it highlights the aesthetic representation that serves as a symbolic manifestation of the artisans' culture, as well as the distinct manual contribution that reflects individual innovation. He further believed that while there is a significant amount of literature discussing the interdependent and representative connection between customary crafts and culture, only a limited number of analysts have acknowledged the necessity of establishing a system of incentives that would acknowledge and encourage individual ingenuity and originality in a primarily communal pursuit.³⁴

4 Scope of UN Declaration on Rights of Indigenous People (UNDRIP) for protecting traditional handicrafts

Commercialization of handicrafts not only gives Indigenous Peoples a forum to promote and preserve their ancestral knowledge but also aids in their economic well-being. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) aims to preserve and defend Indigenous Peoples' rights, as well as their cultural legacy and TCE.³⁵ The focus of this section of the article is on the interaction between UNDRIP and TCE in the handicraft industry, illustrating the importance of protecting Indigenous Peoples' rights via illustrative instances. An international document that acknowledges the rights, dignity, and cultural identity of Indigenous Peoples across the globe is the UNDRIP adopted in 2007. It has 46 articles and covers a wide range of topics, including self-determination, land rights, rights to education, rights to health, and rights to culture. Articles 11 and 31 notably address the preservation of TCE, intellectual property, and the re-

turn of cultural heritage among its provisions.³⁶ These clauses support the acknowledgement, maintenance, and protection of TK and TCE of Indigenous Peoples, especially their handicrafts, which act as outward symbols of their cultural identity.

The Navajo community, an indigenous group residing in the Southwestern region of the United States, is renowned for its elaborate and vividly-hued woven fabrics, commonly referred to as Navajo rugs. The rugs in question possess considerable cultural and spiritual significance, serving as a representation of the weaver's expertise and commitment. The safeguarding and advancement of customary Navajo weaving methodologies are crucial in upholding the cultural legacy of the Navajo people.³⁷ The UNDRIP serves to acknowledge and safeguard customary practices, thereby guaranteeing the Navajo community's entitlement to their cultural manifestations. Further, the art of wood carving holds significant cultural value for the Maori people in New Zealand, as it serves as a means of representing ancestral ties and narratives through the use of intricate designs. Maori wood carvings are commonly employed in the construction of edifices, watercraft, and diverse forms of objects.³⁸ The Kuna ethnic group residing in Panama is renowned for their elaborate and vivid molas, which are textile works of art produced through a reverse appliqué methodology.³⁹ The Molas hold significant importance in the Kuna community as they serve as a crucial element of their cultural and personal identity. They are frequently utilized to embellish various articles such as clothing, bags, and other accessories. It is crucial to safeguard the rights of individuals to create and gain financial benefits from their customary handicrafts. The Ainu, an Indigenous community in Japan, possess a diverse heritage of textile art, encompassing embroidery and appliqué methods, which feature designs that symbolize fauna, flora, and natural occurrences. UNDRIP serves as a means for individuals belonging to indigenous communities to safeguard their TCE and conserve

³³ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

³⁴ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

³⁵ BIOCULTURAL HERITAGE. *UN Declaration on the Rights of Indigenous Peoples*. Available at: <https://biocultural.iiied.org/un-declaration-rights-indigenous-peoples>. Accessed on: 3 May 2023.

³⁶ UNITED NATIONS. *UN Doc. 61/295*. United Nations Declaration on the Rights of Indigenous Peoples. 13 Sep. 2007. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Accessed on: 3 May 2023.

³⁷ KENT, Kate Peck. *Navajo weaving: three centuries of change*. Santa Fe: School of American Research Press, 1985.

³⁸ NEICH, Roger. *Carved histories: Rotorua Ngāti Tarāwhai wood-carving*. Auckland: Auckland University Press, 2001.

³⁹ TICE, Karin E. *Kuna crafts, gender, and the global economy*. Austin: University of Texas Press, 1995.

their cultural legacy by promoting their entitlements to regulate and reap advantages from their customary textile craftsmanship. In India, there are notable examples of traditional art and handicraft forms that reflect the rich cultural heritage of the region. One such example is the intricate Phulkari embroidery from Punjab, which features vibrant and detailed patterns.⁴⁰ Another example is the Warli art, a tribal art form from Maharashtra, which is characterized by unique geometric designs that depict the daily life and culture of the Warli people.⁴¹

The UNDRIP is an essential tool for safeguarding the cultural legacy of Indigenous societies, encompassing the safeguarding of TCE within the handicraft industry. The recognition of the entitlements of Indigenous Peoples to uphold, govern, and benefit from their cultural manifestations, as stipulated in UNDRIP, serves to safeguard cultural distinctiveness and advance Indigenous wisdom. The acknowledgement of traditional handicrafts can have a positive impact on the economic prosperity of local communities by generating revenue, providing employment opportunities, and promoting cultural tourism. Article 31 of the UNDRIP contains provisions aimed at safeguarding intellectual property. These provisions serve to deter external entities from engaging in the unauthorized use or commercialization of traditional handicrafts.⁴² The utilization of Navajo weaving techniques, Maori wood carving, Kuna molas, and Ainu textile art exemplify the efficacy of the UNDRIP in safeguarding the rights of Indigenous Peoples. This ensures the preservation and flourishing of their diverse cultural heritage in the context of an increasingly interconnected world. Through the promotion and observance of the rights enshrined in the UNDRIP, the global community can cultivate increased recognition and comprehension of Indigenous cultures, as well as

provide backing for their endeavours to preserve their distinct customs and means of subsistence.⁴³

5 Exploitation of traditional handicrafts by commercial players: theoretical and consequential overview

The conventional handicraft industry, characterized by its abundant cultural legacy and distinct artistic manifestations, has been a crucial element of numerous Indigenous and regional societies for a considerable period. The phenomenon of globalization and the growing commodification of cultural products has resulted in the exploitation of the conventional handicraft industry by commercial entities.

In regard to the traditional handicraft industry, the term “commercialization” pertains to the conversion of customary crafts and artisanal goods into marketable commodities. The concept encompasses the implementation of corporate methodologies, promotional tactics, and efficient manufacturing processes with the aim of optimizing financial gains and expanding the scope of customer outreach. Conversely, within the traditional handicraft industry, the term “exploitation” pertains to the inequitable or unethical treatment of artisans and their crafts by commercial entities. This encompasses various issues such as the utilization of traditional layouts or techniques without appropriate acknowledgement or remuneration, inadequate wages or unjust trade practices, violation of intellectual property rights, and the prioritization of commercial interests over the cultural authenticity and long-term viability of traditional crafts.

This study seeks to provide a comprehensive examination of the theoretical and practical aspects surrounding the exploitation of traditional handicrafts by commercial entities. The primary objective is to analyze the adverse consequences and implications associated

⁴⁰ MASKIELL, Michelle. Embroidering the past: phulkari textiles and gendered work as ‘tradition’ and ‘heritage’ in colonial and contemporary punjab. *The Journal of Asian Studies*, v. 58, n. 2, p. 361-388, 1999. Available at: <https://doi.org/10.2307/2659401>. Accessed on: 28 May 2023.

⁴¹ PEREIRA, Winin. The sustainable lifestyle of the Warlis. *India International Centre Quarterly*, v. 19, n. 1/2, p. 188-204, 1992. Available at: <http://www.jstor.org/stable/23002229>. Accessed on: 28 May 2023.

⁴² UNITED NATIONS. *UN Doc. 61/295*. United Nations Declaration on the Rights of Indigenous Peoples. 13 Sep. 2007. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Accessed on: 3 May 2023.

⁴³ GARBER, Christoph B.; LAI, Jessica C. Indigenous cultural heritage and fair trade: voluntary certification standards in the light of WIPO and WTO law and policy-making. In: DRAHOS, Peter; FRANKEL, Susy (ed.). *Indigenous peoples' innovation: intellectual property pathways to development*. ANU Press, 2012. p. 95-120. Available at: <http://www.jstor.org/stable/j.ctt24hfgx.11>. Accessed on: 5 May 2023.

with these exploitative practices. This study investigates the socio-economic implications experienced by artisans, the gradual deterioration of cultural heritage, and the imperative to implement strategies that safeguard and empower traditional craftsmen in response to the influences of commercialization.

5.1 Overview of theoretical factors towards exploitation of indigenous communities by commercial entities

As multinational corporations and businesses continue to pursue financial gain through the utilization of Indigenous knowledge, cultural expressions, and natural resources, Indigenous communities frequently experience adverse effects. The objective of this segment of the paper is to establish a theoretical structure that facilitates comprehension of the aforementioned exploitation. This will be achieved by analyzing the fundamental power dynamics, market forces, and cultural dimensions that propel these interactions. It further endeavours to elucidate the mechanisms of exploitation and proffer potential solutions by scrutinizing the works of prominent scholars and theorists.

The phenomenon of commercial actors exploiting Indigenous communities can be analyzed from the perspectives of neo-colonialism and dependency theory. According to Kwame Nkrumah's definition, neo-colonialism pertains to the persistent hegemony of developed nations over developing nations, notwithstanding their formal attainment of political autonomy⁴⁴. The manifestation of dominance is evident through various means, such as economic, cultural, and political channels, which enable the extraction of resources and wealth from the periphery to the core. The theory of dependency, as posited by notable academics including Andre Gunder Frank and Immanuel Wallerstein, contends that the state of underdevelopment experienced by nations in the Global South is a consequence of imbalanced global economic structures and associations.⁴⁵

⁴⁴ NKUMAH, Kawame. *Neo-colonialism: the last stage of imperialism*. London: Thomas Nelson & Sons, 1965.

⁴⁵ FRANK, Andre Gunder. The development of underdevelopment. *Monthly Review*, v. 18, n. 4, p. 17-31, 1966. Available at: https://doi.org/10.14452/MR-018-04-1966-08_3. Accessed on: 5 May 2023. See also, WALLERSTEIN, Immanuel. *The modern World-System I: capitalist agriculture and the origins of the European world-economy in the sixteenth century*. Berkely; Los Angeles: University of California Press, 2011.

From this perspective, it can be argued that Indigenous communities are subject to marginalization and disempowerment, as their customary knowledge, resources, and cultural manifestations are co-opted and commercialized by business entities.

Capitalism is an economic system and mode of production that places emphasis on the acquisition of capital and the pursuit of profit. The commodification of Indigenous knowledge and cultural expressions is driven by market forces within this system, resulting in their transformation into commodities that are exchanged and consumed.⁴⁶ The process of commodification frequently leads to the distortion and depreciation of Indigenous cultures, whereby their customary practices and beliefs are condensed into marketable commodities.⁴⁷

The cultural aspects of the exploitation of Indigenous communities by commercial entities can be analyzed through the theoretical frameworks of Orientalism and cultural imperialism. According to Edward Said's definition, Orientalism pertains to the act of constructing and portraying the "Other" as being exotic, enigmatic, and of lower status.⁴⁸ The aforementioned process frequently entails the act of appropriating and fetishizing Indigenous cultures, whereby they are portrayed as captivating and consumable commodities for Western viewership. Herbert Schiller's discourse on cultural imperialism pertains to the phenomenon wherein a particular culture exercises dominance and impact over another culture, mainly by propagating and advocating its principles, convictions, and customs. According to Schiller, the facilitation of cultural domination is achieved through the control of mass media, communication systems, and cultural industries.⁴⁹ These entities frequently mirror the interests and viewpoints of dominant powers, particularly multinational corporations and Western nations. Cultural imperialism, within the framework of commercial exploitation of Indigenous communities, refers to the imposition of Western values and aesthetics onto Indigenous cultures.⁵⁰ Additio-

⁴⁶ HARVEY, David. *A brief history of neoliberalism*. Oxford: Oxford University Press, 2005.

⁴⁷ COMAROFF, John L.; COMAROFF, Jean. *Ethnicity, Inc*. Chicago: University of Chicago Press, 2009.

⁴⁸ SAID, Edward W. *Orientalism*. New York: Pantheon Books, 1978.

⁴⁹ SCHILLER, Herbert I. *Communication and cultural domination*. White Plains: International Arts and Sciences Press, 1976.

⁵⁰ SCHILLER, Herbert I. *Communication and cultural domination*. White Plains: International Arts and Sciences Press, 1976.

nally, it encompasses the commercialization and commodification of their TK, resources, and expressions. The process frequently entails the co-optation and misrepresentation of Indigenous cultures, whereby their customary practices and convictions are simplified into commodifiable goods that appeal to the predilections and inclinations of Western purchasers. The act of cultural imperialism not only results in the devaluation and erosion of Indigenous cultural heritage but also poses a threat to the self-determination and autonomy of Indigenous communities.⁵¹

This study has endeavoured to offer a comprehensive comprehension of the mechanisms of exploitation that impact Indigenous communities by utilizing these references and engaging with the presented theoretical perspectives. Collaboration among stakeholders is imperative to formulate effective strategies that enhance the agency of Indigenous communities and safeguard their entitlements, cultural legacy, and ecological habitats. The aforementioned actions may encompass the promotion of ethical business practices and fair trade, the advocacy for legal recognition of Indigenous intellectual property rights, and the cultivation of cross-cultural dialogue and comprehension. The resolution of the exploitation of Indigenous communities by commercial entities necessitates a multifaceted strategy that recognizes the intricate interplay of power, economy, and culture involved in these engagements.

5.2 Instances of exploitation of the traditional handicraft industry by commercial actors: a global outlook

Several commercial entities, including multinational corporations and clothing companies, have been engaging in the exploitation of the traditional handicraft industry through practices such as cultural appropriation, intellectual property infringement, and unfair labour practices. The act of exploiting traditional crafts frequently leads to the depreciation of such crafts, financial difficulties for the artisans involved, and the gradual erosion of their cultural identity.

The Shipibo-Conibo ethnic group residing in the Amazonian region of Peru boasts a culturally signifi-

cant artistic heritage, which is exemplified by their exquisite craftsmanship in the domain of elaborately designed ceramics.⁵² The past few years have witnessed an increasing fascination with Shipibo-Conibo pottery among both tourists and collectors, resulting in the commercialization of the designs for financial gain. According to Greene's (2009) findings, there have been numerous instances where Shipibo-Conibo patterns have been replicated without authorization and utilized in the production of various items, including clothing, accessories, and home décor.⁵³ These reproductions are frequently created outside of the community and without providing any form of remuneration to the original craftsmen.⁵⁴ The phenomenon of cultural appropriation has resulted in not only financial detriment for artisans belonging to the Shipibo-Conibo community but has also sparked apprehension regarding the potential erosion of their cultural legacy. Initiatives aimed at safeguarding the rights of Shipibo-Conibo artisans encompass educational programs targeting consumers to raise awareness about the significance of authenticity and equitable trade practices, alongside advocacy efforts to secure the protection of their intellectual property rights.⁵⁵

The Ban Chiang site, which has been recognized as a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site, is widely recognized for its unique pottery that is distinguished by its red and black painted patterns.⁵⁶ The extensive looting of archaeological sites due to the high commercial demand for Ban Chiang pottery has resulted in the loss of significant cultural heritage and has caused a disturbance in the conventional pottery industry, as per Joyce's research in 2013.⁵⁷ Additionally, dishonest actors

⁵² ROE, Peter G. *The cosmic syzygy: cosmology in the Amazon basin*. New Brunswick: Rutgers University Press, 1988.

⁵³ GREENE, Shane. *Customizing indigeneity: paths to a visionary politics in Peru*. Stanford: Stanford University Press, 2009.

⁵⁴ CHOCANO, Daniel Morales; BAQUERIZO, Ana Mujica; WEBER, Ronald L.; COLAIANNI, Sarah Welsh. Continuity and change among the Shipibo-Conibo: prehistory to modernity. *Fiel-diana. Anthropology*, n. 45, p. 9-20, 2016. Available at: <https://www.jstor.org/stable/44744607>. Accessed on: 5 May 2023.

⁵⁵ GREENE, Shane. *Customizing indigeneity: paths to a visionary politics in Peru*. Stanford: Stanford University Press, 2009.

⁵⁶ WHITE, Joyce C. *Ban Chiang: discovery of a lost Bronze Age*. Philadelphia: University of Pennsylvania Museum of Archaeology and Anthropology, 1982.

⁵⁷ WHITE, Joyce C.; HAMILTON, Elizabeth G. The metal age of Thailand and Ricardo's law of comparative advantage. *Archaeological Research in Asia*, v. 27, p. 1-23, 2021. Available at: <https://doi.org/10.20431/2349-0349.0905004>. Accessed on: 5 May 2023.

⁵¹ DASH, Manjusmita; MISHRA, Bidhu Bhusan. Problems of handicraft artisans: an overview. *International Journal of Managerial Studies and Research*, v. 9, n. 5, p. 29-38, 2021. Available at: <https://doi.org/10.20431/2349-0349.0905004>. Accessed on: 5 May 2023.

have created and sold imitation Ban Chiang pottery to unwary collectors, further devaluing the genuine art form. The implementation of national and international legislation to safeguard cultural assets, as well as the promotion of sustainable tourism and ethical collection procedures, are all efforts to stop the exploitation of Ban Chiang pottery.⁵⁸ According to Ross, Kente cloth, a fabric that is characterized by its vibrant hues and elaborate designs, holds significant cultural value for both the Akan people in Ghana and the Ewe people in Ghana and Togo.⁵⁹ The Kente cloth is a customary handcrafted textile that holds profound cultural importance, wherein each design conveys a distinct connotation. The act of commercial actors appropriating Kente cloth designs and replicating them on fabrics in large quantities, frequently without giving due credit to the cultural origins of the designs, has been observed.⁶⁰ The act of appropriation has caused a depreciation in the value of genuine Kente fabric and has also given rise to financial predicaments for customary weavers. In order to tackle this matter, measures such as the formation of the Ghana Kente Weavers and Sellers Association have been put in place to safeguard the entitlements of Kente weavers, advance the worth of genuine Kente fabric, and enlighten customers on the cultural implication of the patterns.⁶¹

The Wayuu community, an aboriginal population hailing from Colombia and Venezuela, are renowned for their distinctive mochila bags. These bags are meticulously crafted by hand, utilizing customary methods and featuring vibrant designs.⁶² The worldwide desire for Wayuu mochila bags has resulted in the exploitation of the artisans by commercial entities, who frequently offer inadequate compensation for the bags and subsequently vend them at significantly elevated prices in global markets.⁶³ The aforementioned exploitation has

led to adverse economic consequences for numerous Wayuu craftsmen, who encounter difficulties in obtaining equitable remuneration for their arduous labor. Efforts have been made to promote equitable compensation and improved working conditions for Wayuu artisans through the implementation of measures such as the creation of fair trade cooperatives and partnerships with ethical fashion brands.⁶⁴ Further, the Otavalo community in Ecuador has a rich tradition of textile production and weaving, characterized by the creation of vivid and intricate fabrics featuring elaborate designs. The increasing global demand for conventional textiles has led to the exploitation of Otavalo weavers by various commercial entities who have utilized their designs without authorization and produced low-cost replicas on a large scale, frequently in underpaid manufacturing facilities located in Asia.⁶⁵ The inability of consumers to distinguish between genuine and replicated Otavalo textiles has resulted in a depreciation of the former. Consequently, a considerable number of Otavalo artisans have encountered financial difficulties, endeavoring to contend with less expensive, factory-made replicas. Measures aimed at safeguarding the rights of the Otavalo weavers encompass the establishment of cooperatives and the advocacy of equitable trade practices to guarantee just remuneration for their labor.⁶⁶

It has also been observed in the case of the Banjara community of India, who are renowned for their meticulous embroidery craftsmanship. According to Lal, fast fashion companies have incorporated Banjara-style embroidery into their products, frequently subcontracting manufacturing to facilities with substandard labor practices and inadequate compensation.⁶⁷ The aforementioned phenomenon has resulted in the depreciation of customary craftsmanship and the mistreatment of skilled workers, who encounter difficulties in vying for market share. Upon analysis of these case studies,

org/10.1016/j.ara.2021.100305. Accessed on: 6 May 2023.

⁵⁸ UNESCO. *Ban Chiang Archaeological Site*. Available at: <https://whc.unesco.org/en/list/575/>. Accessed on: 6 May 2023.

⁵⁹ ROSS, Doran. *Wrapped in pride: Ghanaian Kente and african american identity*. Los Angeles: Fowler Museum at UCLA, 2001.

⁶⁰ HALE, Sjarief. Kente cloth of Ghana. *African Arts*, v. 3, n. 3, p. 26-29, 1970. Available at: <https://doi.org/10.2307/3334492>. Accessed on: 28 May 2023.

⁶¹ KRAAMER, Malika. Ghanaian interweaving in the nineteenth century: a new perspective on ewe and asante textile history. *African Arts*, v. 39, n. 4, p. 36-95, 2006.

⁶² SAAVEDRA, S. C. N. Wayuu culture and traditional weaving. *Journal of Arts and Design Studies*, v. 39, p. 35-37, 2016.

⁶³ ERAZO SANTANILLA, Laura. History in threads: exploring Wayuu Mochilas. *Textile Arts Center*, 18 Aug. 2017. Available at:

<https://textileartscenter.com/feature/history-in-threads-exploring-wayuu-mochilas/>. Accessed on: 28 May 2023.

⁶⁴ INDI ARTS. *The Wayuus artisans*. Available at: <https://www.indiartscollective.com/pages/the-wayus>. Accessed on: 7 May 2023.

⁶⁵ MEISCH, Lynn A. *Andean entrepreneurs: otavalo merchants and musicians in the global arena*. Austin: University of Texas Press, 2002.

⁶⁶ KOROVKIN, Tanya. Commodity production and ethnic culture: Otavalo, northern Ecuador. *Economic Development and Cultural Change*, v. 47, n. 1, p. 125-154, 1998. Available at: <https://doi.org/10.1086/452389>. Accessed on: 28 May 2023.

⁶⁷ LAL, B. Suresh. *Globalisation and adivasis an empirical study in Telangana*. New Delhi: Adhyayan Publishers & Distributors, 2022.

it is evident that commercial entities engage in diverse methods to exploit conventional handicraft industries, including but not limited to cultural appropriation, infringement of intellectual property rights, and unjust labor practices. The exploitative practices frequently result in adverse outcomes for the artisans and their communities, such as the depreciation of their crafts, financial difficulties, and the deterioration of their cultural heritage.

5.3 Evaluating the impact and consequences on the indigenous communities

The commercialization of traditional handicraft industries has noteworthy repercussions on indigenous communities, impacting diverse facets of their socio-economic and cultural existence. The subsequent discourse pertains to an in-depth analysis of the repercussions experienced by indigenous communities as a result of the aforementioned exploitation.

5.3.1 Economic implications

The economic challenges faced by local artisans due to the competition posed by mass-produced imitations and inexpensive reproductions often result in the exploitation of traditional handicraft industries.⁶⁸ The proliferation of inexpensive and substandard merchandise in the marketplace erodes the worth of genuine, artisanal goods, resulting in a decline in both the desire for and financial gain of skilled craftspeople. The aforementioned circumstance may lead to a deprivation of means of subsistence for numerous craftsmen, compelling them to pursue alternative avenues of revenue, frequently in positions that offer meagre compensation and lack job security.⁶⁹

⁶⁸ KASIH, Desak Putu Dewi *et al.* The exploitation of indigenous communities by commercial actors: traditional knowledge and traditional cultural expression. *Journal of Ethnic and Cultural Studies*, v. 8, n. 4, p. 91-108, 2021. Available at: <https://www.jstor.org/stable/48710096>. Accessed on: 7 May 2023.

⁶⁹ JOHANSSON, Daphne Zografos. The branding of traditional cultural expressions: to whose benefit? In: DRAHOS, Peter; FRANKEL, Susy (ed.). *Indigenous peoples' innovation: intellectual property pathways to development*. ANU Press, 2012. p. 147-164. Available at: <http://www.jstor.org/stable/j.ctt24hfgx.13>. Accessed on: 7 May 2023.

5.3.2 Loss of cultural identity

The act of taking over and commercializing customary handicrafts may lead to the weakening and gradual disappearance of cultural distinctiveness among indigenous societies. The act of commercial actors adopting traditional designs without recognition of their cultural significance results in the removal of handicrafts from their initial context, significance, and worth. The aforementioned phenomenon has the potential to result in a detachment between the craftsmen and their cultural legacy, alongside a decline in self-esteem and communal identification.⁷⁰

5.3.3 Environmental implications

The commercialization of traditional handicrafts through mass production can result in environmental degradation, as profit-driven entities prioritize economic gain over sustainable and environmentally conscious practices. The aforementioned phenomenon may lead to the depletion of natural resources, including but not limited to raw materials and water, and the production of waste and pollution. The adverse ecological consequences have the potential to influence the general welfare and health of nearby societies, in addition to the enduring viability of their customary artisanal sectors.⁷¹

5.3.4 Intellectual property violation

The unauthorized utilization of traditional handicraft industries frequently results in the infringement of intellectual property rights, as commercial entities employ customary designs, patterns, and methodologies without obtaining consent or remuneration.⁷² The aforementioned action not only has the potential to di-

⁷⁰ GEISMAR, Haidy. Copyright in context: carvings, carvers, and commodities in Vanuatu. *American Ethnologist*, v. 32, n. 3, p. 437-459, 2005. Available at: <http://www.jstor.org/stable/3805295>. Accessed on: 7 May 2023.

⁷¹ KASIH, Desak Putu Dewi *et al.* The exploitation of indigenous communities by commercial actors: traditional knowledge and traditional cultural expression. *Journal of Ethnic and Cultural Studies*, v. 8, n. 4, p. 91-108, 2021. Available at: <https://www.jstor.org/stable/48710096>. Accessed on: 7 May 2023.

⁷² KASIH, Desak Putu Dewi *et al.* The exploitation of indigenous communities by commercial actors: traditional knowledge and traditional cultural expression. *Journal of Ethnic and Cultural Studies*, v. 8, n. 4, p. 91-108, 2021. Available at: <https://www.jstor.org/stable/48710096>. Accessed on: 7 May 2023.

minish the entitlements of skilled craftsmen and indigenous societies but also diminishes the worth of their expertise and imaginative inputs. The absence of legal safeguards and acknowledgement for customary handicrafts exacerbates the problem, rendering craftsmen susceptible to exploitation and misappropriation.

5.3.5 Disruption of social structures

The utilization of customary handicraft industries has the potential to cause disturbance to social frameworks within indigenous communities. The challenges faced by artisans in sustaining their livelihoods through traditional crafts may necessitate their relocation to urban centers in pursuit of more favorable economic prospects, resulting in separation from their familial and communal ties. The potential consequence of this phenomenon is the disruption of customary social networks and support structures, alongside the forfeiture of significant expertise and wisdom that is transmitted intergenerationally.⁷³

5.3.6 Undermining community empowerment

The utilization of the conventional handicraft industry has the potential to impede endeavors towards enhancing the autonomy of indigenous communities and fostering self-governance. The perpetuation of systems of inequality and marginalization is observed when commercial actors benefit from the labor and creativity of artisans without offering fair compensation or recognition. The aforementioned circumstance may hinder the capacity of indigenous communities to exert authority over their cultural patrimony and financial assets, ultimately impacting their holistic welfare and advancement.⁷⁴

Local communities' economic, social, cultural, and environmental well-being are all negatively impacted when commercial players exploit traditional handicraft

industries. In order to protect the rights, respect, and long-term viability of artisans and their communities, it is crucial to take action in the form of governmental interventions, consumer education, and ethical corporate practices.

5.4 A close look at commercial exploitation of the traditional handicraft industry in India and its impact

Many indigenous communities in India rely on the traditional handicraft industry as a significant source of income to produce distinctive and culturally significant goods using the skills and knowledge that have been passed down through the generations. However, concerns have been raised about the potential harm that the commercial exploitation of these handicrafts could do to these communities' well-being, their cultural heritage, and their intellectual property rights. Artisans in India encounter numerous challenges in the realm of marketing. Due to limited financial resources and the relatively small scale of their operations, artisans are unable to engage in advertising and publicity activities. The Corporation ought to intervene in order to alleviate the artisans from the exploitative grasp of intermediaries, by procuring handicrafts directly from the artisans at fair prices and ensuring timely remuneration. One potential factor contributing to India's limited market share in the global handicraft industry is the insufficient practical application of government policies and initiatives towards supporting handicraft exporters.⁷⁵ A significant proportion of handicraft exporters exhibit limited awareness regarding government initiatives aimed at promoting the handicraft industry. The government has implemented various schemes and initiatives aimed at promoting the industry. However, these efforts have not been met with significant enthusiasm from exporters due to a lack of awareness among them. The level of export incentives provided by governments of various handicraft exporting nations is a significant factor contributing to the intense competition observed at the international level. The provision of subsidies in sectors such as power, transportation, raw materials, and duty drawbacks confers a competitive advantage upon India's

⁷³ PUTRA, N. H.; SUTARTO, J.; YUSUF, A. Influence of organizational climate towards polyglot Indonesia members intercultural communication skill mediated by self motivation. *Journal of Non-formal Education*, v. 7, n. 1, p. 14-22, 2021. Available at: <https://doi.org/10.15294/jne.v7i1.26790>. Accessed on: 8 May 2023.

⁷⁴ RIHAB, Ben Atiallah; LOTFI, Ben Jedidia. Socio-cultural heritage and financial decisions: an empirical study. *Educational Research*, v. 2, n. 11, p. 1685-1707, 2011. Available at: <https://www.interesjournals.org/articles/sociocultural-heritage-and-financial-decisions-an-empirical-study.pdf>. Accessed on: 8 May 2023.

⁷⁵ DATTA, D. B.; BHATTACHARYYA, Sankhadip. An analysis on problems and prospects of Indian handicraft sector. *Asian Journal of Management*, v. 7, n. 1, p. 5-16, 2016. Available at: <https://doi.org/10.5958/2321-5763.2016.00002.0>. Accessed on: 5 Jul. 2023.

rivals in their interactions with buyers. In comparison to the subsidies and incentives provided by governments of other competing nations, the Indian government's measures pertaining to incentives and subsidies on handicraft exports have not garnered as much satisfaction among handicraft exporters in comparison to their international counterparts.⁷⁶

For instance, Pashmina shawls, which have their origins in the Kashmir region of India, are renowned for their superior quality, intricate patterns, and delicate artistry. The increasing worldwide demand for Pashmina shawls has resulted in the proliferation of counterfeit and machine-produced shawls in the market, leading to substantial financial setbacks for conventional craftsmen.⁷⁷ Thus, not only was the traditional brand image of Kashmir Pashmina tarnished but the competitive edge that had been passed down to traditional items due to their distinctive character was also lost. The locally produced hand-woven pashmina couldn't compete with the internationally exported, mechanically manufactured pashmina sold under the brand name "Cashmere".⁷⁸ Painting in the Madhubani style, which is an indigenous art form that originated in the Mithila area of Bihar, India, has a long history and has been practiced by the female population for a number of decades, if not centuries. Traditional craftsmen are facing a variety of obstacles as a result of the spread of commercialization. These issues include, but are not limited to, the replication of their work by artists who are not indigenous to the area, restricted access to markets, and inadequate acknowledgement of the trade that they practice.⁷⁹ Similarly, the Banaras (Varanasi) region in Uttar Pradesh, India, is renowned for producing Banarasi silk sarees, which are distinguished by their elaborate patterns and exceptional artistry. Silk production in Varanasi dates back almost to the same time as the world's oldest con-

tinuously inhabited city. Over 2,500 years have passed since its inception, making it the oldest historic cottage enterprise in the world. The body of the Buddha is said to have been wrapped in fabric made in Kashi, which is now known as Varanasi, according to the scriptures of Buddhism. These sarees have become an iconic product of the region.⁸⁰ The introduction of mechanized looms and the importation of Chinese silk resulted in a decrease in demand for the handwoven products of the Banarasi weavers. Another contributor to the demise of this art form is the prevalence of unethical business activities. Many times, merchants would pass off sarees that were woven on a power loom as having been woven by hand. Because of the presence of intermediaries, the weavers sometimes do not get a fair price for their finished product. This led to the loss of traditional weaving techniques and an economic downturn within the community.⁸¹

The tribal communities residing in the eastern Indian states of West Bengal, Odisha, and Chhattisgarh have been engaging in the practice of Dokra, an ancient metal craft. In recent times, the Dokra craftsmen, renowned for their exceptional metal sculptures, have encountered several obstacles, such as inadequate market accessibility, scarcity of raw materials, and insufficient compensation for their labor.⁸² In order to tackle the aforementioned concerns, social enterprises such as Banglanatak Dot Com and Baowala have intervened to aid the Dokra artisans. This assistance includes provisions such as training, raw materials, and opportunities to access both domestic and international markets, thereby guaranteeing equitable compensation for their merchandise.⁸³ The aforementioned interventions have

⁷⁶ HASHMI, Syed Khalid. Market for Indian handicrafts. *Excel Journal of Engineering Technology and Management Science*, v. 1, n. 1, p. 1-7, 2012. Available at: https://warwick.ac.uk/fac/arts/history/ghcc/eac/oralhistoryproject/resources/bibliography/market_for_indian_handicrafts1.pdf. Accessed on: 5 Jul. 2023.

⁷⁷ BARKER, Aldred F. The textile industries of Kashmir. *Journal of the Royal Society of Arts*, v. 80, n. 4134, p. 309-326, 1932. Available at: <http://www.jstor.org/stable/41358971>. Accessed on: 28 May 2023.

⁷⁸ MIR, Yaseer Ahmad; DARZI, Mushtaq Ahmad. Kashmir Pashmina: a journey of standardization through geographical indication. *International Journal of Applied Research*, v. 3, n. 5, p. 1-12, 2017.

⁷⁹ NIRALA, Narendra Narayan Sinha. Madhubani: a contemporary history (1971-2011). *Proceedings of the Indian History Congress*, v. 71, p. 1243-1250, 2010. Available at: <http://www.jstor.org/stable/44147593>. Accessed on: 28 May 2023.

⁸⁰ SHUKLA, Pravina. Evaluating saris: social tension and aesthetic complexity in the textile of modern India. *Western Folklore*, v. 67, n. 2/3, p. 163-178, 2008. Available at: <http://www.jstor.org/stable/25474912>. Accessed on: 28 May 2023.

⁸¹ CHATTERJEE, Ashoke. India's handloom challenge: anatomy of a crisis. *Economic and Political Weekly*, v. 50, n. 32, p. 34-38, 2015. Available at: <http://www.jstor.org/stable/24482525>. Accessed on: 28 May 2023.

⁸² MUKHERJEE, Diya. Dokra art and artisans: an ethnoarchaeological study from Burdwan District, West Bengal. *Bulletin of the Deccan College Research Institute*, v. 74, p. 141-152, 2014. Available at: <http://www.jstor.org/stable/26264693>. Accessed on: 28 May 2023.

⁸³ MOHANTA, Aatreyee. Festival puts dokra, kantha and other Bengal folk arts in the spotlight. *Telegraph*, 2021. Available at: <https://www.telegraphindia.com/my-kolkata/lifestyle/ripples-festival-hosted-by-banglanatak-dot-com-and-british-council-celebrates-bengals-dokra-and-kantha-artisans/cid/1842883>. Accessed on: 28 May 2023.

effectively conserved the customary knowledge and competencies linked with Dokra metal craft while simultaneously augmenting the economic opportunities of the involved artisans. The aforementioned specific instances serve to elaborate on the influence of commercial exploitation on the conventional handicraft industry in India, as well as the diverse approaches utilized to tackle these obstacles. Through safeguarding the genuineness of customary handicrafts, extending assistance to craftsmen, and advancing the cultural importance of their creations, these measures make a valuable contribution towards establishing a handicraft industry in India that is both sustainable and impartial, thereby conserving the exceptional cultural legacy of native communities.

6 Protection available to traditional handicrafts under the existing IPR regime in India

TK and TCE are significant cultural and economic assets that may be used for profit. These innovations may inspire other inventors to create new technologies without benefiting the original community. Due to the aforementioned reasons, it has been deemed imperative to safeguard TK and TCE via various legal measures. Two paradigms have been utilized in the context of Intellectual Property Protection.⁸⁴

Firstly, the Positive Protection approach within the intellectual property system is formulated to provide holders with the ability to obtain intellectual property rights for their TK and TCE, should they choose to do so. In brief, positive protection refers to the provision of legal entitlements that empower communities and indigenous groups to advance their TK and TCE, regulate their utilization, forestall unauthorized usage by external parties, and derive economic gains from their commercialization. Secondly, the concept of defensive protection.⁸⁵ The objective of this particular approach

within the IP system is to impede the acquisition of intellectual property rights over TK by third parties who are not members of the community. This approach could potentially serve as a means of protecting culturally significant and traditional expressions, such as names, symbols, or words, from being subjected to trademark registration. This implies that a diverse range of intellectual property tools may be employed for safeguarding TK and TCE. Positive protection involves utilizing tools for their intended purposes, while defensive protection involves restricting access to these tools if it conflicts with the interests of TK and TCE holders.

6.1 Scope of protection under geographical indications of goods (Registration and Protection) Act, 1999

Geographical indications (GIs) are descriptors that serve to identify products that originate from a specific geographic region, where the product's quality, reputation, or other distinguishing characteristics are primarily linked to that region. GI serve as a mechanism for safeguarding the communal entitlements, often referred to as brand rights, pertaining to the shared heritage of a given community. Additionally, GIs function to ensure the protection of the interests of consumers. Do GIs confer any advantages or acknowledgments to an individual within the community who has made a noteworthy enhancement to an established product, such as handicrafts, that are subject to GI protection? Do GI prevent the coexistence of individual intellectual property rights, such as copyrights or industrial designs, in the context of traditional handicrafts? The GI Act of 1999, which was implemented on September 15th, 2003, establishes a framework for the registration of GI and defines the roles of authorized users and registered proprietors, who are both empowered to take legal action in cases of infringement.

The Geographical Indications Registry of India bestowed the GI designation upon the Kashmir Pashmina in 2006, thereby facilitating the differentiation of genuine handmade Pashmina shawls from spurious merchandise. The GI label has been instrumental in safeguarding the welfare of native craftsmen and conserving the customary expertise and techniques linked

⁸⁴ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

⁸⁵ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

with the manufacturing of Pashmina shawls.⁸⁶ Further, the Kancheepuram silk sarees, which have their origins in the Kancheepuram district of Tamil Nadu, India, are widely recognized for their opulent hues, elaborate patterns, and superior artistry. The rise in popularity of these sarees resulted in the proliferation of counterfeit merchandise, frequently produced utilizing substandard materials and methods, which had an adverse effect on the subsistence of conventional weavers.⁸⁷ The year 2005 marked the official recognition of Kancheepuram silk sarees with the GI tag, which conferred legal protection to the original handwoven sarees and prohibited the sale of spurious merchandise. The GI label has played a crucial role in preserving customary weaving methods and promoting the financial prosperity of the Kancheepuram weavers.⁸⁸

The presented case studies showcase the efficacy of focused interventions, such as the implementation of Geographical Indications and provision of support programs for artisans, in safeguarding the customary knowledge, expertise, and means of subsistence of native populations engaged in India's handicraft industry.

6.2 Protection provisions under the Designs Act, 2000 and Copyright Act, 1957

Design pertains to the visual or aesthetic features of a product, encompassing its form, patterns, contours, and hues, and can manifest in various artisanal commodities. Designs may be protected based on various aspects, such as the shape of a basket, the design of a necklace, or the ornamentation of a vase. The Designs Act of 2000 offers legal safeguarding for novel designs that are implemented to articles through indus-

trial procedures.⁸⁹ Through the registration of a design under this particular Act, artisans are able to inhibit the unauthorized replication and commercial utilization of their customary handicrafts. Further, the Copyright Act of 1957 provides safeguarding for innovative artistic creations, encompassing conventional handicrafts. Although TK is not explicitly addressed in the Act, artisans have the ability to utilize the Act's provisions to safeguard their handicrafts as unique artistic creations.⁹⁰

A primary obstacle encountered by artisans pertains to their insufficient knowledge regarding intellectual property rights and the legal avenues accessible to safeguard their customary handicrafts. A significant number of craftsmen face challenges in accessing the necessary expertise and materials to effectively navigate the intricate legal procedures associated with design registration and copyright safeguarding. Furthermore, conventional handicrafts frequently depend on techniques and designs that have been transmitted through generations for centuries. The task of proving the authenticity of their creations can pose a difficulty for craftsmen, which is a necessary condition for securing legal safeguards under the Designs Act and the Copyright Act. In addition, the inadequate recording of customary knowledge and methodologies poses a challenge for craftsmen to establish their proprietorship and pursue lawful safeguarding.⁹¹

Furthermore, it is possible that the focus on individual rights within the Designs Act and the Copyright Act may not sufficiently account for the distinctive requirements and considerations of conventional handicraft communities. In order to surmount these obstacles, it is imperative to enhance the knowledge and skill set of craftsmen and establish a legal structure that is more comprehensive and inclusive, catering to the dis-

⁸⁶ SRIVASTAVA, Suresh C. Geographical indications and legal framework in India. *Economic and Political Weekly*, v. 38, n. 38, p. 4022-4033, 2003. Available at: <http://www.jstor.org/stable/4414050>. Accessed on: 28 May 2023.

⁸⁷ J., Dinal; SUNDARAM, Asha. A study on the rural development potential of the Gi-Tagged products with special reference to Kanchipuram Silk Sarees. *Baltic Journal of Law & Politics*, v. 15, n. 4, p. 800-807, 2022. Available at: <https://versita.com/menuscrypt/index.php/Versita/article/download/875/954>. Accessed on: 30 May 2023.

⁸⁸ J., Dinal; SUNDARAM, Asha. A study on the rural development potential of the Gi-Tagged products with special reference to Kanchipuram Silk Sarees. *Baltic Journal of Law & Politics*, v. 15, n. 4, p. 800-807, 2022. Available at: <https://versita.com/menuscrypt/index.php/Versita/article/download/875/954>. Accessed on: 30 May 2023.

⁸⁹ GUPTA, Niloy Kumar. Overview of the Indian industrial design law and practice. *Journal of Intellectual Property Rights*, v. 4, p. 16-21, Jan. 1999. Available at: <https://nopr.niscpr.res.in/bitstream/123456789/19499/1/JIPR%204%281%29%2016-21.pdf>. Accessed on: 10 May 2023.

⁹⁰ THOMAS, Zakir. Overview of changes to the Indian copyright law. *Journal of Intellectual Property Rights*, v. 17, p. 324-334, Jul. 2012. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/14460/1/JIPR%2017\(4\)%20324-334.pdf](https://nopr.niscpr.res.in/bitstream/123456789/14460/1/JIPR%2017(4)%20324-334.pdf). Accessed on: 10 May 2023.

⁹¹ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

tinctive requirements and apprehensions of conventional handicraft societies.⁹²

6.3 Scope of protection under the Patent Act, 1970

The Patent Act of India provides a clear definition of the position of TK within the patent legal framework. It stipulates that TK is a type of information that has been in existence, whether documented or not, and has been transmitted across generations by diverse communities. Section 3 (p) of the Patents Act, 1970 states that “an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.”⁹³

This provision explicitly states that TK does not fall under the category of an invention or a novel concept as defined by the aforementioned legislation. The reasoning for this is that once the TK is recorded, it acquires the character of the prior art. The phrase “prior art” pertains to the complete range of information that is accessible to the general public prior to the submission date of an application for specific industrial property rights, such as patents, utility models, and industrial designs.⁹⁴ Inventions that involve TK are not granted patents if they lack novelty and inventive steps when compared to the relevant previous art. In-depth evaluation of applications for these property titles relies heavily on this identification of prior work. This means that once a TK is published on how to achieve prior art features, it is part of the public domain, and commercial use of this information is difficult to restrict or prevent.⁹⁵

Patents have the potential to offer ancillary safeguarding to handicrafts through the safeguarding of the tools or techniques employed in their creation. This is

particularly relevant in cases where an artisan has made significant enhancements to an existing process or has devised a novel technique that can be applied industrially.⁹⁶ Functional features of various items, including but not limited to woodworking tools, hand tools, brushes, paints, and musical instruments, may be eligible for patent protection. Similarly, significant functional enhancements to machines, looms, kilns, or furnaces utilized in the production of handicrafts may also be eligible for patent protection but for a limited period of not more than 20 years.

7 Arguing the need for sui generis protection to safeguard traditional handicrafts

The existing intellectual property rights framework is deemed inadequate and incapable of safeguarding TK due to several factors. The existing IPR legal framework facilitates the privatization of ownership by individuals or corporations, thereby promoting personal monopoly. Conversely, TK/TCEs are typically owned and held collectively by one or more communities. The concept of collective ownership rights remains unfamiliar to numerous intellectual property rights systems worldwide. Furthermore, it is worth noting that the safeguarding measures afforded by the extant intellectual property rights framework are frequently temporary in nature and must ultimately expire, whereas TK and TCEs are typically preserved indefinitely and transmitted intergenerationally. The intellectual property rights system has traditionally employed a narrow approach in its understanding of invention, requiring adherence to specific criteria such as novelty, industrial application, and inventive steps. Conversely, TK is characterized by its gradual, informal development over an extended period.

Repeatedly, discussions surrounding policy have emphasized the insufficiencies of current intellectual property regulations and the overarching legal framework that pertains to it, in fulfilling the needs and desires of those who possess TK and TCE. The issue

⁹² SIMON, Bradford S. Intellectual property and traditional knowledge: a psychological approach to conflicting claims of creativity in international law. *Berkeley Technology Law Journal*, v. 20, n. 4, p. 1613-1684, 2005. Available at: <http://www.jstor.org/stable/24117436>. Accessed on: 30 May 2023.

⁹³ Section 3 (p) of the Patents Act, 1970, INDIA.

⁹⁴ NARULS, Manish. Impact of Indian patent law on traditional knowledge. *International Journal of Advanced Research in Management and Social Science*, v. 3, n. 6, p. 46-58, Jun. 2014. Available at: <https://garph.co.uk/IJARMSS/June2014/6.pdf>. Accessed on: 10 May 2023.

⁹⁵ GUPTA, Achal. Intellectual property rights and protection of traditional knowledge: a general Indian perspective. *SCC Online Blog*, 2022. Available at: <https://www.sconline.com/blog/post/2020/06/22/intellectual-property-rights-and-protection-of-traditional-knowledge-a-general-indian-perspective/>. Accessed on: 10 May 2023.

⁹⁶ TARUNIKA, J.; TAMILSELVI, J. Traditional knowledge and patent issues in India. *International Journal of Applied Mathematics*, v. 119, n. 17, p. 1249-1263, 2018. Available at: <https://acadpubl.eu/hub/2018-119-17/2/105.pdf>. Accessed on: 10 May 2023.

at hand pertains to the challenge of achieving a nuanced equilibrium between safeguarding the interests of native populations and the advantages stemming from the commercial exploitation of innovations related to TK. Despite multiple attempts, this balance has proven elusive.⁹⁷ The present moment necessitates the implementation of specific adjustments or alterations to the existing intellectual property rights system in order to effectively address the concerns and requirements of holders of TK and TCE. It is evident that there exists a consensus among the global community regarding the urgent necessity to acknowledge and preserve TK and to approach the safeguarding of TK and TCE comprehensively.⁹⁸

The same has been observed in various instances. The legislation known as Law 20 of 2000 in Panama is a *sui generis* legal framework designed to safeguard the TK, innovations, and practices of indigenous communities, encompassing their customary handicrafts.⁹⁹ According to Ruiz, the legal system acknowledges the communal entitlements of indigenous societies with regard to their customary knowledge and establishes channels for the equitable distribution of profits arising from the commercial utilization of their traditional handicrafts.¹⁰⁰

Indonesia, a country renowned for its multifarious traditional handicrafts, has encountered obstacles in preserving its cultural manifestations within the confines of the current intellectual property rights framework. Indonesia has implemented a *sui generis* system in reaction to the issue at hand, which is outlined in Law No. 28/2017, commonly referred to as the Protec-

tion of Traditional Cultural Expressions (TCE) Law.¹⁰¹ The legal framework acknowledges the communal entitlements of indigenous and local communities to their customary cultural manifestations, such as handicrafts, and establishes a mechanism for the documentation and administration of these entitlements. In accordance with this legislation, the utilization of customary cultural expressions for commercial purposes necessitates the acquisition of authorization from the corresponding community and guaranteeing fair distribution of benefits.¹⁰²

Similarly, The nation of Peru boasts a diverse cultural legacy and a thriving traditional handicraft industry. In order to safeguard the collective knowledge of indigenous communities pertaining to biological resources, including handicrafts, Peru has established a *sui generis* system pursuant to Law No. 27811 (2002).¹⁰³ The aforementioned legislation acknowledges the communal entitlements of indigenous groups with regard to their customary knowledge and establishes procedures to impede unapproved commercial utilization while guaranteeing fair distribution of benefits.¹⁰⁴ The legislation additionally institutes the National Registry of TK, which functions as a repository for the purpose of recording and safeguarding the customary knowledge and artisanal products of indigenous communities.

The term “*sui generis*” denotes a unique set of measures and legal framework designed to provide exclusive protection and address the distinct characteristics of a particular subject matter. The distinctiveness of an IP system lies in its customization and configuration of features to cater effectively to unique attributes and particular policy demands. A specialized instrument that is unique and specific in nature should be established to

⁹⁷ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

⁹⁸ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

⁹⁹ ANTONS, Christoph. *Traditional knowledge, traditional cultural expressions, and intellectual property law in the Asia-Pacific region*. Netherlands: Kluwer Law International, 2009.

¹⁰⁰ OSEITUTU, Janewa J. A *sui generis* regime for traditional knowledge: the cultural divide in Intellectual Property Law. *Marquette Intellectual Property Law Review*, v. 15, n. 1, p. 149-215, 2011. Available at: <https://scholarship.law.marquette.edu/iplr/vol15/iss1/3/>. Accessed on: 10 May 2023.

¹⁰¹ HAPSARI, Dwi Ratna *et al.* Protection of traditional cultural expressions as intellectual property in Indonesia: a juridical sociological review. *Advances in Social Science, Education and Humanities Research*, v. 590, p. 84-88, 2021. Available at: <https://www.atlantis-press.com/proceedings/inclar-21/125962459>. Accessed on: 10 May 2023.

¹⁰² Law of the Republic of Indonesia Number 28 of 2014 on Copyrights.

¹⁰³ TOBIN, Brendan. Certificates of origin: a role for IPR regimes in securing prior informed consent. In: MUGABE, J. *et al.* (ed.). *Access to genetic resources: strategies for sharing benefits*. Nairobi: ACTS Press, 2004. p. 279-309.

¹⁰⁴ OSEITUTU, Janewa J. A *sui generis* regime for traditional knowledge: the cultural divide in Intellectual Property Law. *Marquette Intellectual Property Law Review*, v. 15, n. 1, p. 149-215, 2011. Available at: <https://scholarship.law.marquette.edu/iplr/vol15/iss1/3/>. Accessed on: 10 May 2023.

create a customized legal framework that will safeguard TK. This framework will also ensure that the rights of indigenous communities are upheld, thereby preventing any form of misuse or exploitation of TK. Ultimately, this will result in all the benefits of TK being accrued to the said community.

In contemporary times, India's economy is thriving and diversifying its growth prospects. However, it is noteworthy that the inherent potential of conventional handicrafts has not been comprehensively acknowledged. The crafts industry in India is a significant contributor to the country's economy, both in terms of foreign exchange earnings and employment. It is also the largest decentralized and unorganized sector in the country. The handicraft industry employs approximately 23 million individuals, positioning it as the second largest employment sector, following agriculture.¹⁰⁵ In India, cottage industries such as handicrafts have traditionally been utilized to mitigate poverty through the encouragement of rural entrepreneurship. The primary benefit lies in the fact that the artisanal industry has the lowest impact on cultural and social disparities.¹⁰⁶ The gradual displacement of conventional techniques in the production of handicrafts by swift mechanization necessitates the implementation of legal remedies and astute promotional strategies as the only viable means of preserving traditional methods. India has the potential to develop a more comprehensive strategy aimed at raising awareness and enhancing understanding among individuals who lack knowledge or have limited understanding of Intellectual Property Rights, TK, and the associated legal rights for traditional handicrafts.¹⁰⁷

¹⁰⁵ SOOD, Anubha. Crafts as sustainable livelihood option in rural India. *Asiainch*, 2002. Available at: <https://asiainch.org/article/crafts-as-sustainable-livelihood-option-in-rural-india/>. Accessed on: 10 May 2023.

¹⁰⁶ KUMARAPPA, J. C. Handicrafts and cottage industries. *The Annals of the American Academy of Political and Social Science*, v. 233, p. 106-112, 1944. Available at: <http://www.jstor.org/stable/1025828>. Accessed on: 30 May 2023.

¹⁰⁷ DEEPAK, Sai J. Protection of traditional handicrafts under Indian intellectual property laws. *Journal of Intellectual Property Rights*, v. 13, p. 197-207, May 2008. Available at: [https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013\(3\)%20\(2008\)%20197-207.pdf](https://nopr.niscpr.res.in/bitstream/123456789/1380/1/JIPR%2013(3)%20(2008)%20197-207.pdf). Accessed on: 2 May 2023.

8 Conclusion

The advent of the new millennium and the dynamic nature of our world presents formidable obstacles and complexities in addressing the issue of safeguarding the customary knowledge and cultural heritage of local and indigenous communities through the framework of intellectual property rights and establishing novel global legal benchmarks in this regard. The treatment of TK as part of the public domain has resulted in its exploitation without due regard for the indigenous communities who have consistently endeavored to safeguard and advance it.

The preservation of traditional craft skills, while aesthetically pleasing, necessitates meticulous adaptation, rigorous quality control, precise sizing, and accurate costing in order to attain and maintain a position in the market. While the GI system in India has proven to be effective in safeguarding traditional handicrafts, it has not effectively fostered innovation among indigenous group members. This is a crucial aspect to prevent stagnation of imagination and creativity within these groups and to make sure that traditional handicrafts stay competitive in the market. Therefore, it is imperative to establish a distinct form of property that can offer incentives for innovations in TCEs, as elaborated in this paper. It would be beneficial if the authorities devise appropriate mechanisms to harness the potential of contemporary descendants of conventional communities to preserve traditional art forms. The instances of Panama's Law 20 of 2000, Indonesia's Protection of Traditional Cultural Expressions Law, and Peru's Law on the Protection of Indigenous Peoples' Collective Knowledge serve as illustrations of the prospective advantages of sui generis systems in acknowledging collective rights, averting unapproved commercial exploitation, and guaranteeing equitable remuneration for craftsmen. The development and implementation of such systems have the potential to safeguard the cultural heritage and sustenance of indigenous communities across the globe.

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