



Analyzing Gender Gap in Recognition of IPRs of Women in the Indian Handloom Sector

Saumya Verma*

Abstract

The 1948 Universal Declaration of Human Rights covers intellectual property rights in Article 27. It says people may protect their scientific, literary, and creative achievements. Handicrafts provide income for women, particularly in rural regions with few economic options. Women make up 16.2% of inventors worldwide in 2023, while males make up 83.8%. The United States of America has progressed as there is a considerable rise in women author registrations. The percentage of women writers registered in 2020 was above 38%, up from 28% in 1978. However, women are underrepresented in intellectual production and face prejudice, bias, and stereotypes. Arts, crafts, literature, and the handloom sector might struggle to establish intellectual property rights owing to their perceived lack of originality or marketability for legal reasons. Traditional civilizations stigmatize women who engage in these pursuits, making it hard to copyright their artistic creations. It is often observed that men have patented women's innovations and creativity under their names. This paper advocates recognition of IPR for handloom women craftsmen. It encourages creative freedom beyond gender prejudice, fair recompense for women craftsmen.

Keywords: Artistic freedom, Copyright Act 1957, Geographical Indications, The Designs Act 2000, Traditional Cultural Expressions

* Presidency University, Bangalore, Karnataka, India; saumya.verma@presidency-university.in

1. Introduction

There is a significant gender disparity in the domain of intellectual property, particularly when it comes to the involvement of female innovators compared to their male counterparts. This gap is evident in the data and statistics available. Though, there has been a notable rise in the contribution of women in the innovation sector throughout the 20th century in comparison to previous times.¹ There is a persistent lack of female representation in key areas of the innovation sector, as seen by data provided by prominent organizations which show that women have a significantly low share of IP filings.² These overlooked areas encompass patents, copyrights, industrial designs, and more. Based on the data and information available, it appears that women are not keeping pace with men in the field of innovative and creative industries.³

Artworks created by women are often sold at lower prices compared to those by men. It is worth noting that, despite women being the subject-matter for roughly half of the top 25 paintings, only two works by women have ever made it into the top 100 auction sales for paintings.⁴ Understanding the roots of this inequality is relatively straightforward, considering that women faced significant barriers in pursuing artistic careers and education until the 1870s.⁵ Various factors have been suggested as potential causes for disparities in gallery representation, cultural biases in art

¹ Chirantan Chatterjee & Swapnika Ramu, *Gender and Its Rising Role in Modern Indian Innovation and Entrepreneurship*, 30 *Iimb Management Review* 62,72 (2017).

² Jozefina Cutura, *Challenges for Women Inventors and Innovators in Using the IP System – A Review of Literature*, (2021), https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_inn_ge_21/wipo_ip_inn_ge_21_ppt_1.pdf (last visited Feb 10, 2025).

³ WIPO, *Innovation, Creativity and the Gender Gap*, (2018), https://www.wipo.int/ipoutreach/en/ipday/2018/innovation_creativity_gender_gap.html (last visited Feb 10, 2025).

⁴ Taylor Whitten Brown, *Why Is Work by Female Artists Still Valued Less Than Work by Male Artists?*, (2019), <https://www.artsy.net/article/artsy-editorial-work-female-artists-valued-work-male-artists> (last visited Feb 10, 2025).

⁵ Linda Nochlin, *From 1971: Why Have There Been No Great Women Artists?*, (2015), <https://www.artnews.com/art-news/retrospective/why-have-there-been-no-great-women-artists-4201/> (last visited Feb 10, 2025).

interpretation, the perpetuation of the stereotypes in the art world, the challenges faced by aging female artists, the unequal burden of parenthood, the underrepresentation of women in curatorial, collector, and gallery representative roles, and the lack of assertiveness among female artists. It is likely that all of these factors are correct, at least to some degree. These mechanisms work together to create a Matthew effect, where advantages build upon each other and starting anew is not feasible.⁶

Handloom craftsmanship has provided women with a platform to assert their independence. It has helped them to showcase their talent and, discover a realm for personal growth.⁷ It has created an avenue for women to demonstrate their abilities and gifts, particularly in cultures where their efforts were not given due recognition or attention. According to the fourth handloom census, women make up approximately 72.29% of the total labor force in the handloom sector.⁸ Despite the significant participation of women in handloom weaving, they often earn little income and mostly stay unrecognized as ghost workers. Women mostly engage in preparatory tasks before to weaving and seldom earn financial remuneration. Even when women obtain compensation, entrenched patriarchal traditions within weaving communities often restrict their control over income and power to decide.

Intellectual Property Rights are essential for protecting creativity and labour; yet, women in the handloom sector have considerable obstacles in securing acknowledgement for their creative contributions under existing IP legislation. India's legal system, including the Copyright Act of 1957 and the Patents Act of 1970, acknowledges authors and inventors; however, it often neglects the specific requirements of women in creative sectors. The Designs Act of 2000 acknowledges the rights of creator for the original and novel

⁶ Matjaž Perc, The Matthew Effect in Empirical Data, 11 Journal of Royal Society Interface (2014), <http://doi.org/10.1098/rsif.2014.0378> (last visited Feb 10, 2025).

⁷ D. Srinivasa Rao, Bommisetti Ravi Kumar & N. Sreedhar, Involvement of Women in Handloom Segment: An Empirical Study with Reference to Krishna District, Andhra Pradesh, 3 American Economic & Social Review 1,11 (2018).

⁸ Ministry of Textiles, Government of India, Fourth All India Handloom Census 2019-2020, (2019), <https://handlooms.nic.in/assets/img/Statistics/3736.pdf> (last visited Feb 10, 2025).

designs; yet, there exists a substantial disparity in its implementation, especially concerning female creators. The Geographical Indications of Goods (Registration and Protection) Act, 1999 recognizes and protects the rights of producers and artisans. However, it protects such rights in a collective manner only, rather than recognizing the individual labour of producers and artisans.⁹

India's implementation of international agreements such as the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights (ICESCR) is insufficient, especially in traditional areas like the handloom sector. The Geographical Indications of Goods Act, 1999 safeguards traditional crafts; however, the efforts of women craftsmen lack appropriate recognition and remuneration.¹⁰ Labour legislation such as the Equal Remuneration Act of 1976 and The Maternity Benefit Act of 1961 aims to safeguard women's rights in the labour sector. Nevertheless, these provisions are often overlooked in informal industries, such as handloom weaving.¹¹ Women's earnings are often seen as supplementary to those of males and female contributions to production are frequently limited to preparatory activities, thus, perpetuating gender inequity. In addition to labour laws, the current Indian IPR regime for instance Copyright Law, 1957; Designs Law, 2000 and GI Act, 1999 fail to recognize the IPRs of women artisans in handloom sector. India's new effort 'Enhancing Women's Participation in Innovation & IPR' underscores the government's dedication in augmenting women's involvement in intellectual property. Nonetheless, women persistently encounter obstacles in obtaining legal safeguards for

⁹ Meghna Banerjee & Susanah Nausahd, Grant of Geographical Indication Designation To Tirupati Laddu: Commercialization Of Faith?, 3 Nujs Law Review 107 (2010).

¹⁰ Nidhi Buch & Hetvi Trivedi, Geographical Indications of Indian Handlooms Between Legal Right and Real Right (1st Edition ed. 2021).

¹¹ Kirandeep Kaur, Rights of Women Laborers in the Indian Legal System: A Critical Analysis, 26 Journal of International Women's Studies (2024).

their intellectual and labour rights, particularly within the handloom sector.¹²

Socio-economic and cultural obstacles often hinder women from asserting ownership or benefiting from the above-mentioned safeguards. The marginalized position of women in the handloom industry, characterized by devalued and sometimes underpaid labour, intensifies the problem. Notwithstanding their significant contributions, several women in this field encounter breaches of labour regulations and insufficient acknowledgement of their intellectual property rights.¹³ The lack of adequate implementation and assistance for women artisans underscores the need for more comprehensive policies to guarantee that their rights are not just acknowledged on paper but also actively safeguarded and enforced in reality. Women are marginalized in public jobs and often prefer to stay at home and focus on domestic duties.¹⁴ The house frequently becomes a workplace for many women, redefining the boundaries between home and outside. The research by Shram Shakti for the National Commission on Self-Employed Women and Women in the Informal Sector, suggests a reduced workforce, with women working in families and small industrial units.¹⁵

This research examines the legal acknowledgement of women's intellectual property rights within India's handloom industry. Notwithstanding their substantial contributions, these rights are often disregarded or underestimated. Insufficient information, restricted access to resources, and poor legal assistance impede

¹² Amrita Mishra et al., *Issues and Challenges of the Indian Handloom Sector: A Legal Perspective*, 14 *Rupkatha Journal* (2022), https://www.researchgate.net/publication/364941658_Issues_and_Challenges_of_the_Indian_Handloom_Sector_A_Legal_Perspective (last visited Feb 10, 2025).

¹³ FRIEDRICH EBERT FOUNDATION, *Women Textile Workers Demand Justice: On the Situation of the Textile and Garment Industry in the Countries of the South* (1992).

¹⁴ Punita Kapoor, *Handicraft Industry and Women's Struggle for Empowerment in Contemporary India: A Case Study of Phulkari as a Gendered Work*, 27 *SUMMERHILL: IIAS REVIEW* 61 (2021).

¹⁵ Punita Kapoor, *Handicraft Industry and Women's Struggle for Empowerment in Contemporary India: A Case Study of Phulkari as a Gendered Work*, 27 *SUMMERHILL: IIAS REVIEW* 61,68 (2021).

women's ability to assert ownership of their labour. The paper advocates for a comprehensive legal framework that acknowledges intellectual property while enforcing labour safeguards to provide equitable remuneration and dignity for women craftsmen. It advocates for improvements in India's intellectual property and labour laws to address gender inequities and empower women with the legal instruments necessary to safeguard their innovation and economic interests.

2. Historical Evidence of Gender Discrimination in Recognition of IPRs of Women

The role of women's labour in industry and the economy has historically been neglected, devalued, and underestimated. Feminist scholars have analysed this marginalisation through several theoretical frameworks, including intellectual property. Shulamith Firestone, in her seminal 1970 work 'The Dialectic of Sex: The Case for Feminist Revolution', offers an early feminist perspective on the relationship between women, culture, and intellectual property.¹⁶ In her work, she has examined the relationship among women, culture, and the construction of knowledge.¹⁷ She has argued that contemporary society perceives the feminine as inferior to the male, significantly influencing several facets of human existence, such as interpersonal relationships, culture, and science. This erasure is not only theoretical but also apparent in the little recognition of women's innovations and intellectual accomplishments. Farag Moussa's 1991 study underscores the frequently neglected accomplishments of female innovators acknowledged by the World Intellectual Property Organisation (WIPO), emphasising the essential yet undervalued contribution of women to scientific and technical progress. Olympia Gonzales is a prominent scientist in food science, recognised for her innovative contributions to enhancing coconut-based goods via rigorous research and development. Her extensive scholarly publications and the accolades she has garnered testament to her

¹⁶ Debora Halbert, *Feminist Interpretations of Intellectual Property*, 14 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW (2006).

¹⁷ Shulamith Firestone, *The Dialectic Of Sex: The Case For Feminist Revolution* (1st edn. ed. 1970).

substantial contributions to the subject. Kapinga Mikalu, a teacher from Zaire, is another significant pioneer who developed a technique for identifying germs with only saliva and a basic microscope. Her methodology integrates fundamental scientific concepts with an appreciation for ancient healing traditions, garnering her acknowledgement from her nation's Higher Education and Scientific Research Department as both an adept healer and a committed herbalist.¹⁸ Sybilla Masters introduced a notable breakthrough in 1715 by devising a technique for processing Indian maize; nevertheless, the patent for her invention was awarded to her husband.¹⁹

Linda Nochlin's 1971 article, 'Why Have There Been No Great Women Artists?' acted as a spark for women in the art world seeking recognition.²⁰ The main issue was not the lack of outstanding female artists, but their historical obscurity, insufficient acknowledgement, and under-representation when compared to male artists. This inequality may be ascribed to intentional obstacles in education, patronage, and possibilities for exhibiting artwork. In February 2019, the US Patent and Trademark Office (PTO) published a study detailing the patterns and characteristics of female inventors in the United States, based on patents awarded from 1976 to 2016. This research indicates that, while the total number of patents featuring at least one female inventor rose, the growth was irregular across time. The quantity of patents featuring at least one female inventor tripled from 1978 to 1997, although only rose from 15% to 21% between 1998 and 2016. According to a report published by the World Intellectual Property Organisation (WIPO), just 17.7% of inventors identified in international patent applications in 2023 were women. Given the present pace of advancement, complete gender parity in patents seems improbable before 2077. A report released in 2023 by Women in Informal Employment: Globalizing and

¹⁸ Terra L. Gearhart-Sema, Women's Work, Women's Knowing: Intellectual Property and the Recognition of Women's Traditional Knowledge, 21 YALE JOURNAL OF LAW AND FEMINISM 372.

¹⁹ Mary Bellis, Sybilla Masters Gained an English Patent in 1715 for a Mill to Grind Corn., <https://theinventors.org/library/inventros/blmasters.htm#:~:text=Sybilla%20Masters's%20innovation%20allowed%20the,no%20rights%20to%20own%20patents>. (last visited Feb 10, 2025).

²⁰ *supra* note 5.

Organizing (WIEGO), a global network, indicates that women in developing nations frequently engage in home-based and small-scale enterprises, especially in crafts, textiles, and food production. These sectors may get advantages from trademark rights and geographical indicators. Nonetheless, the majority of female entrepreneurs remain excluded from the legal intellectual property system, constraining their company growth. Incorporating these women into the intellectual property system may yield enduring economic advantages and mitigate market volatility.

The insufficient credit to women's involvement in the innovation framework of intellectual property protection with respect to the handloom industry has detrimental effects, since they bring novel methods and ideas to traditional knowledge and are attempting to compete with male colleagues who have historically controlled this industry. However, the majority of women with competence are unable to occupy the innovator role owing to patriarchal cultural norms and restricted access to educational opportunities for innovation and research positions in several areas. Despite the fortification of intellectual property systems via Trade Related Aspects of Intellectual Property Rights (TRIPS) and other measures such as WIPO Development Agenda (2007), WIPO's Technology and Innovation Support Centers (TISCs), WIPO GREEN, Global Innovation Index (GII) etc., several impoverished countries continue to lack robust institutions for IP enforcement. Both men and women have difficulties in acquiring intellectual property rights, with female innovators experiencing severe obstacles due to biases within local institutions.

3. History of Art and Activism in India

Feminist art in India has followed a distinctive path, shaped by indigenous women's movements since the 1800s, often overshadowed by their male counterparts.²¹ Prominent female artists include Mangalabai Thampuratti, Sunayani Devi, Ambika Dhurandhar, and Amrita Sher-Gil.²² Dhurandhar was a modernist

²¹ Birbal Saha, *Feminism in Society, Art and Literature: An Introspection*, 7 GALORE INTERNATIONAL JOURNAL OF APPLIED SCIENCES AND HUMANITIES.

²² Sugandhaa Pandey, *Mangala Bai: A True Matriarch Among The Women Artists Of Travancore* | #IndianWomenInHistory, (2020),

painter who graduated from Sir JJ School of Art in Mumbai, receiving accolades in Indian art society competitions and exhibiting in salons.²³ Sher-Gil, an Indo-Hungarian artist, altered her style to embody Indian artistic traditions and portrayed rural women engaged in labour, confinement, and seclusion.²⁴

3.1. Position of Women in the Indian Handloom Sector

According to the Fourth All India Handloom Census, 2019–20 nearly 72% of handloom weavers are women. ²⁵ India has around 38 million women weavers.²⁶ Most of them belong to traditional Indian handloom weavers' families and have been doing pre-weaving labor since they were young girls, including preparing yarn and looms, dyeing and/or tying yarn and cloth, and hand-embroidering outfits.²⁷ Women will naturally be part of the allied workforce even if they don't weave since it includes the whole family. The principal weaver needs three auxiliary workers, usually women from the same family, for handloom work. Kumaoni weavers, Chikankari needlework, Kanyakumari bamboo baskets, Rajasthani Zari work, Meenakari, Madhubani wall paintings, and Bhil paintings are crafted by women homeworkers from villages or local craft centers for small and major businesses.

<https://feminisminindia.com/2020/04/14/mangala-bayi-matriarch-women-artists-travancore/> (last visited Feb 10, 2025); MAPACADEMY, *Feminism in Indian Art*, (2023), <https://mapacademy.io/article/feminism-in-indian-art/> (last visited Feb 10, 2025).

²³ Asia Society, *M.V. Dhurandhar: An Unexplored History*, (2018), <https://asiasociety.org/india/events/mv-dhurandhar-unexplored-history> (last visited Feb 10, 2025).

²⁴ Tariro Mzezewa, *Overlooked No More: Amrita Sher-Gil, a Pioneer of Indian Art*, THE NEW YORK TIMES, 2018, <https://www.nytimes.com/2018/06/20/obituaries/amrita-shergil-dead.html> (last visited Feb 10, 2025).

²⁵ Ministry of Textiles, Government of India, *Fourth All India Handloom Census 2019-2020*, (2019), <https://handlooms.nic.in/assets/img/Statistics/3736.pdf> (last visited Feb 10, 2025).

²⁶ Anuprerna, *The State of Women Weavers in Handloom Sector*, <https://blog.anuprema.com/blog-details/the-state-of-women-weavers-in-handloom-sector/80993> (last visited Feb 10, 2025).

²⁷ Debaroopaa Bhattacharya, *Female Artisans: Unsung Heroes of the Handloom Industry*, NEWS18, 2023, <https://www.news18.com/opinion/opinion-female-artisans-unsung-heroes-of-the-handloom-industry-8584743.html> (last visited Feb 10, 2025).

Women's role in the handicraft business is typically overlooked, and they confront issues like non-recognition of intellectual property, low earnings, market access, and poor working conditions.²⁸ According to a survey conducted by NITI Aayog's Women Entrepreneurship Platform, approximately 45% of central initiatives provide financial access assistance, whilst 27% concentrate on training and skill development for handloom workers.²⁹ State programs provide assistance for financial access and business support services as well. However, it has been found that just 7% of all governmental initiatives specifically focus on women.³⁰ Though in lesser number, the existing government schemes have failed in addressing the non-recognition of women handloom workers. The reasons include non-registration of women as the creator of a handicraft item as women have not registered handicrafts in their own names, they fail to get the advantage of the existing schemes.³¹ For instance, as per a report of Press Bureau of India (PIB), under Base Line Survey & Mobilization of Artisans, Ambedkar Hastshilp Vikas Yojana, only 1,09,180 women got benefitted out of total 3,11,983 artisans covered under the scheme in the year 2019.³² The existing government initiatives have remained inadequate reflected from the data of fourth handloom census which reveals that a majority of handloom workers about 67% are earning less than Rs. 5000 per month.³³

Further, handloom weavers qualify for Micro Units Development and Refinance Agency (MUDRA) loans, a scheme

²⁸ Tayyaba Rafique Makhdoom, Dr. Syed Abdul Sattar Shah & Khalil-ur-Rehman Bhatti, *Women's Home-Based Handicraft Industry and Economic Wellbeing: A Case Study of Badin Pakistan*, 8 THE WOMEN RESEARCH JOURNAL 40, 55 (2016).

²⁹ NITI Aayog, *DECODING GOVERNMENT SUPPORT TO WOMEN ENTREPRENEURS IN INDIA*, (2022), <https://www.niti.gov.in/sites/default/files/2023-03/Decoding-Government-Support-to-Women-Entrepreneurs-in-India.pdf> (last visited Feb 10, 2025).

³⁰ *Id.*

³¹ Anuttama Ghose & S M Aamir Ali, *Protection and Preservation of Traditional Cultural Expressions & Traditional Knowledge in Handicraft Industry: Advocating the Need for a Global Cultural Policy Framework*, 20(2) REVISTA DE DIREITO INTERNACIONAL (2023). <https://doi.org/10.5102/rdi.v20i2.9109>

³² Ministry of Textiles, *Women-Empowerment Schemes of Ministry of Textiles*, PIB DELHI, <https://pib.gov.in/PressReleasePage.aspx?PRID=1568138> (last visited Feb 10, 2025).

³³ *supra* note 8.

under the Pradhan Mantri MUDRA Yojana (PMMY). A significant number of weavers are unable to avail these loans, since the plan is designed as a direct cash transfer to the beneficiaries' bank accounts.³⁴ According to the fourth handloom census, less than one-fourth of the 26.73 lakh weavers surveyed have bank accounts, and just around four percent were insured.³⁵ Approximately 3.4 percent of weaver families had incurred debt or loans.³⁶ Moreover, the study lacks year-on-year statistics about the gender distribution of weavers who have benefited from MUDRA loans.

The government's claim about the empowerment of women involved in handloom weaving is questionable. The industry directly promotes women's empowerment by including approximately 2.3 million female weavers and associated workers.³⁷ Fieldwork and other researchers indicate that women are significantly engaged in handloom weaving, although they get little compensation and operate as unrecognized labourers. Research by Dr. B R Ambedkar School of Economics, Bengaluru, reveals that women are significantly engaged in handloom weaving, although their incomes are insufficient, and they operate as invisible ghost workers by doing pre-weaving duties.³⁸ This results in debt dependency for the most vulnerable segment involved in the industry.

A new study conducted by the Centre for Research on Multinational Corporations (SOMO) and the India Committee of the Netherlands (ICN) reveals that employees in the export-driven Southern Indian textile sector endure deplorable labour conditions that constitute forced labour.³⁹ Women and children employed in

³⁴ Manas Ranjan Bhowmik, *Fourth Handloom Census: Government's Claims Belie Ground Reality*, 54(49) ECONOMIC AND POLITICAL WEEKLY (2019).

³⁵ *supra* note 8.

³⁶ Ministry of Textiles, Women-Empowerment Schemes of Ministry of Textiles, PIB DELHI, <https://pib.gov.in/PressReleasePage.aspx?PRID=1568138> (last visited Feb 10, 2025).

³⁷ Manas Ranjan Bhowmik, *supra* note 41.

³⁸ ANAMIKA SINGH & NOYONIKA CHATTERJEE, *Work, Earning, And Indebtedness: Three-Pronged Crisis In The Handloom Textile Sector In India*, (2024).

³⁹ Centre for Research on Multinational Corporations (SOMO) & India Committee of the Netherlands (ICN), *Flawed Fabric – The Abuse of Girls and Women Workers in*

spinning mills in Tamil Nadu, some as young as 15, are mostly sourced from marginalized Dalit populations in poor rural regions.⁴⁰ They are compelled to work extended hours for little remuneration, live in rudimentary company-operated accommodations, and are seldom permitted to leave the business premises. The study depicts the conditions at five spinning mills in Tamil Nadu that manufacture cotton yarn and textiles for further processing in the Indian garment sector and for export, especially to Bangladesh.⁴¹ Adolescent females and young women have reported to researchers that they were enticed from their home villages with appealing promises of respectable employment and lucrative compensation, but they find themselves labouring under deplorable circumstances that constitute modern-day slavery and the most egregious types of child labour.⁴² Employees lack contracts and payslips, have no avenues to voice their problems, and there are no trade unions or effective complaint systems inside the mills.

3.2. Factors Contributing to Gender Gap

Since 1980's, reducing gender inequities has been a priority for development programs, as shown in the third Millennium Development Goal aimed at promoting gender equality and empowering women.⁴³ This has altered the socio-economic standing of women globally. Nearly half of the global population is female, however the ratio of women to men in the workforce is low.⁴⁴ A significant obstacle faced by researchers studying the effectiveness

the South Indian Textile Industry, (2014), <https://www.somo.nl/flawed-fabric-the-abuse-of-girls-and-women-workers-in-the-south-indian-textile-industry/>.

⁴⁰ *Id.*

⁴¹ Centre for Research on Multinational Corporations (SOMO) & India Committee of the Netherlands (ICN), *Flawed Fabric – The Abuse of Girls and Women Workers in the South Indian Textile Industry*, (2014), <https://www.somo.nl/flawed-fabric-the-abuse-of-girls-and-women-workers-in-the-south-indian-textile-industry/>

⁴² *Id.*

⁴³ UN WOMEN, *World Survey on The Role of Women in Development 2014 Gender Equality and Sustainable Development*, (2014), https://sustainabledevelopment.un.org/content/documents/1900unwomen_surveyreport_advance_16oct.pdf (last visited Feb 10, 2025).

⁴⁴ The gender gap in employment: What's holding women back?, (2017), <https://www.ilo.org/infostories/en-GB/Stories/Employment/barriers-women#intro> (last visited Feb 10, 2025).

of the IP system in serving women globally is the scarcity of data.⁴⁵ Assessing the gender gap for intellectual property rights, such as copyright, which may not always be registered, can be particularly challenging. The contribution and involvement of women in the IP system is a complex issue. On one hand, there has been a lack of focus and support in promoting women's role in innovation and creativity from a policy perspective. On the other hand, in developing and least developed countries, women often lack awareness of their rights and how they can benefit from the IP system to enhance their business competitiveness, promote their products and services, and contribute to regional economic development. The 2019 United Nations Conference on Trade and Development (UNCTAD) Least Developed nations (LDC) Report identifies 47 nations as LDCs.⁴⁶ The majority of these nations are in Africa, with some in Asia and the Pacific, a few in Latin America, and the Middle East. Most of these nations score low or near the bottom of the UNDP's Gender Inequality Index (GII). This index evaluates gender gap in three key areas: empowerment, labor market participation, and reproductive health.⁴⁷

It has been observed that a significant number of Indian males hold customary beliefs when it comes to females. They refuse to offer education to women and insist on relegating them to the home to care for the family.⁴⁸ As a consequence, a significant portion of the population is deprived of access to education. The restrictions placed on women or girls by their male guardians impede the progress of cognitive development. They fail to maintain their curiosity, powers of observation, and initiative, all of which are crucial for the

⁴⁵ Kanchana Kariyawasam, *Women and IP Commercialisation in the Asian Region: Case Study of Sri Lanka*, (2018), https://www.wipo.int/export/sites/www/women-and-ip/en/docs/women_and_ip_commercialisation_asian_region_sri_lanka.pdf (last visited Feb 10, 2025).

⁴⁶ THE PRESENT AND FUTURE OF EXTERNAL DEVELOPMENT FINANCE - OLD DEPENDENCE, NEW CHALLENGES (2019), https://unctad.org/system/files/official-document/ldcr2019_en.pdf. (last visited May 19, 2025).

⁴⁷ UNDP, *Gender Inequality Index (GII)*, (2020), <https://hdr.undp.org/data-center/thematic-composite-indices/gender-inequality-index#/indicies/GII> (last visited Feb 10, 2025).

⁴⁸ Uthara Soman, *Patriarchy: Theoretical Postulates and Empirical Findings*, 58 SOCIOLOGICAL BULLETIN 253, 272 (2009).

advancement of women's education. On the whole, there is a significant disparity in educational attainment between men and women. In terms of education, it is worth noting that a significant disparity exists between the genders. A staggering 62% of women have not had the opportunity to receive any formal schooling, in stark contrast to the 31% of men in the same situation.⁴⁹ Furthermore, women experience a decline in cognitive abilities later in life.⁵⁰ The difference in cognitive abilities between men and women becomes more noticeable at lower levels of education. This greatly contributes to the underrepresentation of women in the innovation and creativity-driven IP sector.

The lopsided distribution of home labor is increasingly the norm. According to a few studies on gender inequalities in housework imply that women's identity is tied to domesticity.⁵¹ Rural women and their contribution to the economy have been undervalued as unpaid family or wage workers. Despite completing tremendous obligations that lead to socio-economic well-being, India has one of the lowest female labor force participation rates in the world, the figures also reveal that the growth rate of women labour is stagnant.⁵² Women's behavior, position, and status appear to be governed by socio-cultural norms.⁵³ India's 57th position on the

⁴⁹ National Institute on Aging, *Education and Gender Inequality May Explain Why India's Women Have Worse Late-Life Cognition*, NIH, <https://www.nia.nih.gov/news/education-and-gender-inequality-may-explain-why-indias-women-have-worse-late-life-cognition> (last visited Feb 10, 2025).

⁵⁰ *supra* note 49

⁵¹ Emily W. Kane & Laura Sanchez, *Family Status and Criticism of Gender Inequality at Home and at Work*, 72 SOCIAL FORCES 1079, 1102 (1994); Natascha Nisic & Miriam Trübner, *Doing Housework in Context: Dyadic Analyses of the Division of Domestic Labor in Contemporary Couples*, JOURNAL OF FAMILY ISSUES 1378 (2023).

⁵² Dhruvika Dhamija & Akshi Chawla, *Growth in Female Labour Force Participation in India Now Seems to Be Stagnating*, THE WIRE, 2023, <https://thewire.in/women> <https://thewire.in/women/women-labour-force-india-growth> (last visited Feb 10, 2025).

⁵³ Naznin Tabassum & Bhabani Shankar Nayak, *Gender Stereotypes and Their Impact on Women's Career Progressions from a Managerial Perspective*, 10 IIM KOZHIKODE SOCIETY & MANAGEMENT REVIEW 192, 208 (2021).

Mastercard Index of Women Entrepreneurs suggests there is still a long way to go.⁵⁴

According to Indian customs, married women must carefully balance their professional and personal responsibilities. The responsibilities that women have towards their families and personal lives can often pose significant challenges when pursuing a career in entrepreneurship and business.⁵⁵ It is a challenge for many women to effectively balance their home and business responsibilities, as they must allocate their time wisely. Even in the current times, there is still a prevalent desire among families for their daughters to pursue careers that offer flexible working hours and are traditionally associated with femininity, such as teaching or nursing. It is not surprising that even in modern times, there is still a preference for a daughter-in-law who is seen as traditional and dedicated to her domestic duties, often at the expense of her own aspirations. Lack of awareness about rights and misappropriation of their art are other reasons which prevent women from attaining recognition under IP Laws.

4. Locating Rights of Women Artisans within Indian IPR Regime: A Critique

According to Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), individuals have the right to participate in all aspects of cultural life, while Article 19 of the International Covenant on Civil and Political Right (ICCPR) guarantees the right to free expression and opinion without interference.⁵⁶ Article 6 of the 1980 UNESCO Recommendation on the Status of the Artist emphasizes freedom of artistic expression,

⁵⁴ MICROSAVE CONSULTING, *Decoding Government Support to Women Entrepreneurs in India*, (2022), <https://www.niti.gov.in/sites/default/files/2023-03/Decoding-Government-Support-to-Women-Entrepreneurs-in-India.pdf> (last visited Feb 10, 2025).

⁵⁵ Fabio Parasecoli, *The Gender of Geographical Indications: Women, Place, and the Marketing of Identities*, 10(6) CULTURAL STUDIES <=> CRITICAL METHODOLOGIES 467 (2010).

⁵⁶ General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*, (1966); *International Covenant on Civil and Political Rights*, (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Feb 10, 2025).

while Article 8 mandates Member States to support the development of artistic talents for all individuals, regardless of gender.⁵⁷ In addition, Article 7 of the 2005 UNESCO Convention on Cultural Diversity highlights the significance of creative expressions and acknowledges women's unique demands.⁵⁸ Specific gender-based mechanisms, such as SDG 5, support women and girls' empowerment and enhance laws for gender equality.⁵⁹ Although international human rights legislation establishes freedom of speech and gender equality, its implementation and acceptability at national and local levels, especially by women, are limited.

4.1. Combined Interpretation of Indian Copyright Act, 1957 and Designs Act, 2000

The Copyright Act, 1957 was enforced on January 21, 1958 introducing copyright protection from unauthorised use of original work..⁶⁰ The Copyright Amendment Act, 2012 further expanded copyright protection given to the creators of the artistic works by codifying their right to receive royalties, particularly for their digital distribution.⁶¹ The artistic works under Copyright law encompasses paintings, sculptures, drawings, engravings, photographs, architecture, and various forms of artistic craftsmanship.⁶² Copyright law safeguards traditional handicrafts and artistic creations of individuals, as outlined in section 2(c) of the Copyright Act, 1957. This protection guarantees that copyright law effectively secures both literary and artistic works. Section 14(c) of the Copyright Act, 1957 permits the owner of an artistic work to

⁵⁷ The 1980 UNESCO Recommendation concerning the Status of the Artist, (1980), CL/4078.

⁵⁸ The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, (2005), CLT-2016/WS/7.

⁵⁹ SDG 5: Achieve Gender Equality and Empower All Women and Girls, UN Women, <https://www.unwomen.org/en/node/36060> (last visited Feb. 10, 2025).

⁶⁰ The Copyright Act, 1957, ACT NO. 14 OF 1957.

⁶¹ Abhai Pandey, The Indian Copyright (Amendment) Act, 2012 And It's Functioning So Far, Intellectual Property Watch (2014), <https://www.ip-watch.org/2014/10/23/the-indian-copyright-amendment-act-2012-and-its-functioning-so-far/> (last visited Feb 10, 2025).

⁶² The Copyright Act, 1957, *supra* note 75, § 2(c) (1957).

reproduce it in various material forms.⁶³ This includes storage, three-dimensional representations of two-dimensional works, public communication, copying, inclusion in cinematograph films, adaptation, and other related acts. This section delineates the exclusive right to reproduce a two-dimensional work in three dimensions. The legislation permits the owner to incorporate the work into any cinematographic film, create adaptations, and execute any actions associated with the adaptation.

The Copyright Act, 1957 seeks to distinguish between pure artistic works and those having practical or potential industrial uses. Section 14(c) provides exclusive economic to the creators/ authors of the artistic work to communicate their work to public. Sec. 14(c)(i)(B) grants the copyright owner of an artistic work, the exclusive right to depict their art in two dimensional or three-dimensional object as a form of reproduction.⁶⁴ According to the subject clause, it would not be considered infringement of their copyright. Section 52 (1)(w) of the Act supersedes Section 14, permits the creation of a three-dimensional article from a two-dimensional creative work, such as a technical sketch, for the industrial application of any solely functional component of a useful technology.⁶⁵ This clause intends to prevent copyright claims from obstructing or hindering the reconstruction of structures that were previously lawfully erected. Section 52(1)(v) guarantees that artists may reference their creations by permitting the use of moulds, castings, drawings, plans, models, or studies they have produced for their prior works, even when they no longer own the copyright to those earlier works.⁶⁶

The attempt to distinguish commerce from creativity is evident throughout the whole of the Copyright Act, 1957. Section 16 of the legislation apparently restricts copyright protection to the statute itself, but Section 15 delineates original works of fine art from commercial designs.⁶⁷ The boundaries between business and creativity are notably permeable, and copyright law sometimes fails

⁶³ The Copyright Act, No.14 of 1957, § 14 (c) (1957).

⁶⁴ The Copyright Act, No.14 of 1957, § 14 (c)(i)(B) (1957).

⁶⁵ The Copyright Act, No.14 of 1957, § 52 (1)(w) (1957).

⁶⁶ The Copyright Act, No.14 of 1957, § 52 (1)(v) (1957).

⁶⁷ Nandita Saikia, *Art and Indian Copyright Law: A Statutory Reading* (2015).

to maintain a distinction between the two, particularly for limited editions of works that blur the borders between art and aesthetically appealing mass-produced items. Section 16 of the 1957 Copyright Act stipulates that copyright exists only as delineated within the act.⁶⁸ The section is vague, since it is unclear what rights analogous to copyright in works refers to and if both published and unpublished copyrightable works would be treated equally. Section 16 of the Copyright Act seems to undermine the stipulation in its first clause by asserting that nothing in this Section shall be interpreted as nullifying any right or jurisdiction to prevent a breach of trust or confidence.⁶⁹ This exception is essential since curbing a violation of trust or confidence often requires using the Civil Procedure Code, 1908 and the Section already permits measures in line with the law. Section 16 may exclude not just custom but also any non-statutory legislation, save in cases of breaches of trust or confidence. The latter aim, if it exists, is not substantiated by the wording of the clause.

The exemption only pertains to violations of trust or confidence, indicating that an injunction may be secured in the event of a potential breach, but no remedy under tort law is available for an actual breach. A breach of trust may constitute a violation of criminal law, thereby enabling the pursuit of a remedy under *Bhartiya Nyaya Sanhita* (BNS) after such a breach. Section 16 of the 1957 Copyright Act, pertaining to works, is ambiguous and may result in conjecture.⁷⁰ Section 15 of the Act also restricts the statute's application to works that have not been and cannot be registered as designs.

The Designs Act, 2000 characterizes a design as the attributes of shape, configuration, pattern, ornamentation, or arrangement of lines or colours applied to any article, whether in two-dimensional or three-dimensional forms, through any industrial process or other methods, whether manual, mechanical, or chemical, individually or in combination.⁷¹ This definition excludes any mode or principle of

⁶⁸ The Copyright Act, No.14 of 1957, § 16 (1957).

⁶⁹ *Id.*

⁷⁰ The Copyright Act, No.14 of 1957, § 16 (1957).

⁷¹ The Designs Act, No. 16 of 2000, § 2(d) (2000).

construction, any purely mechanical device, trademarks as defined in clause 2(1)(v) of the Trade and Merchandise Marks Act, 1958, and artistic works as defined in sec 2(c) of the Copyright Act, 1957.⁷² The Designs Act, 2000 does not exclude works of art from design law protection; it only excludes those works classified as ‘artistic works’ under the 1957 Copyright Act.⁷³ The legal distinction between ‘fine art’ and ‘decorative art’ is most evident in design law, where the concept of a design explicitly includes the ornamentation of an object, among other criteria. However, the demarcation between the cessation of copyright protection and the commencement of design law protection is sometimes ambiguous.⁷⁴ An ordinary handcrafted box is generally not eligible for copyright protection; but, if it has a copyrightable image and less than fifty copies are manufactured, it would likely qualify for copyright protection.⁷⁵ However, if such boxes were mass-produced with identical patterns printed on over fifty units, issues would emerge over the applicability of design protection.

The critical determinant in this scenario would be the technique used to apply the design onto the box: for the mass-produced box, printing renders the box-and-image combination eligible for design protection. But the Designs Act does not mandate that a design be implemented via an industrial process; it just requires that a design be applied. This creates a direct clash with the Copyright Act 1957, which anticipates implementation by industrial methods.⁷⁶ Had the design been painted rather than printed on over fifty boxes, one could argue that copyright protection for the box-and-picture as an ‘artistic work’ remain intact, and since artistic works are distinct from designs, the box-and-picture composite would not have been eligible for protection under the Designs Act, 2000. The Copyright

⁷² Id.

⁷³ Design v. Copyright- Need for a Clear and Rational Distinction- III, Spicy IP (2009), <https://spicyip.com/2009/07/design-v-copyright-need-for-clear-and-2.html>.

⁷⁴ Abhinav Bhalla, From Art to Industry: Decoding the Clash between Copyright and Design in Indian Law..., SCC Online Times (2024), <https://www.sconline.com/blog/post/2024/10/16/from-art-to-industry-decoding-the-clash-between-copyright-and-design-in-indian-law/>.

⁷⁵ NANDITA SAIKIA, *supra* note 67.

⁷⁶ Abhinav Bhalla, *supra* note 74.

Act, 1957 attempts to distinguish 'art' from aesthetically pleasing goods, as seen by limitations under Sections 15 and 16 of Copyright Act, 1957 along with provisions permitting the creation of three-dimensional works from two-dimensional ones without the copyright owners' consent.⁷⁷ The amendment of 2012 to the Copyright Act, 1957 included a clause permitting the unlawful importation of copies of any literary or artistic work that is related to the legitimate importation of other commodities or products.⁷⁸ This rule prevents copyright claims from undermining the international exhaustion concept in trademark law, allowing items sold with the copyright owner's approval to be resold globally without their consent.

Traditional cultural expressions (TCEs) have difficulties in safeguarding their copyright in an art owing to the absence of identification and verification of the original producers.⁷⁹ A multitude of handicrafts are collaboratively produced by a community and disseminated, leading to a range of handicrafts that exhibit minor variations in technique while maintaining a consistent pattern accessible in the market concurrently. WIPO has observed that identifying rights holders and beneficiaries of traditional cultural expressions (TCEs) poses a considerable problem in safeguarding their intellectual property rights, particularly in the realm of copyright protection.⁸⁰ Safeguarding TCEs poses difficulties for original artisans, who often derive their income from the production and sale of traditional handicrafts, while their families typically reside in rural regions. In India, many indigenous families perceive higher education as a means for the subsequent generation to overcome the obstacles associated with underdeveloped regions. The pursuit of education is intended to

⁷⁷ Hansika Bajaj, *The Intersection of Industrial Design and Copyright Law*, KHURANA AND KHURANA IP ATTORNEYS (2024), <https://www.khuranaandkhurana.com/2024/10/09/the-intersection-of-industrial-design-and-copyright-law/>.

⁷⁸ Abhai Pandey, *supra* note 61.

⁷⁹ Caitlyn Herlihy, *Protecting Traditional Cultural Expressions in the United States and Mexico*, 56(1/2) CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 569 (2024).

⁸⁰ MOLLY TORSÉN & JANE ANDERSON, *INTELLECTUAL PROPERTY AND THE SAFEGUARDING OF TRADITIONAL CULTURES: LEGAL ISSUES AND PRACTICAL OPTIONS FOR MUSEUMS, LIBRARIES AND ARCHIVES* (2010).

generate enhanced opportunities and elevate living standards.⁸¹ Furthermore, many lack the awareness to use legal protections for their handcrafted masterpieces or to comprehend the notion of ownership of their works.

Artistic endeavours like needlework, knitting, and cooking, mostly undertaken by women have been regarded as fine art and not been protected by copyright. In India, 'women's art' is not eligible for copyright protection unless it fits into one of the legally specified categories of protected works.⁸² However, it is conceivable that gender is not the only influencing issue, since the methodology of food preparation may hold equal significance to the aesthetic of the finished result, and methodologies are often not safeguarded by copyright legislation.

The absence of copyright protection for artworks mostly created by women highlights the patriarchal framework of the law, since copyright rules have historically prioritized the preservation of artistic endeavours largely attributed to males. Despite the presence of several acknowledged women artists today, art history must be revised in contemporary times to rectify the significant omission of women from the discipline, while gender imbalances and injustices continue to be addressed through deliberate efforts. Historical natural law views about copyright mostly emphasizes the rights of males above those of women.⁸³ According to Carole Pateman's reinterpretation of Social Contract Theory, the Sexual Contract, a foundational component that either precedes or coexists with the Social Contract, elucidates the establishment and perpetuation of patriarchy within the framework of political and social order. Pateman contends that the Social Contract neglects the intrinsic male supremacy over women, emphasising the necessity for a more

⁸¹ Laeek Ahemad Siddiqui & Namrata Shokeen, *Women and Intergenerational Mobility in Education: A Micro-Level Study from Weavers' Community of Varanasi, India*, 172 SOCIAL INDICATORS RESEARCH, SPRINGER NATURE 219 (2024).

⁸² Raadhika Gupta, *Copyright V. Copyleft: A Feminist Perspective on Marginalization Under Copyright Laws*, MANUPATRA (2011), <https://docs.manupatra.in/newsline/articles/Upload/FEDC91E9-88EA-408C-848D-EE6E11761D98.pdf>.

⁸³ Biplab Kumar Lenin, *Natural Copyright v. Positive Copyright*, MANUPATRA, <https://www.manupatra.com/roundup/318/Articles/Natural%20copyright.pdf> (last visited May 19, 2025).

sophisticated comprehension of gender dynamics.⁸⁴ The society envisioned by the Social Contract could not have emerged without males having dominion over women via the Sexual Contract, which conferred such privileges onto them. Rooted in the Sexual Contract, this embedded power structure shaped political and social institutions as well as entered the legal and financial spheres—especially with regard to intellectual Property Rights. The historical undervaluation of women's work, particularly in commercial and creative settings, is one of the most obvious expressions of this impact. For instance, copyright protection for women's creative endeavours was not consistently afforded, particularly in utility arts such as culinary and textile design.⁸⁵ Even if a woman produces a protectable work often attributed to a male, it does not guarantee her protection as an author, especially in Western contexts. Women's labour was often not seen as autonomous work deserving of compensation, since their property may be integrated into their husband's wealth.⁸⁶ Copyright law persistently fails to safeguard extensive segments of work that do not conform to the categories envisioned by the legislation. This is not just attributable to copyright law being a colonial construct with its framework profoundly embedded in Indian legislation. Nonetheless, only a limited range of human creations qualifies as 'art' under copyright law protection.

The safeguarding of women's collective knowledge, pertaining to both technological and handicraft objects, presents an additional problem. The concept of private property ownership is often unfamiliar to those of indigenous descent, and the principle of shared rights is generally absent from conventional Western legal frameworks.⁸⁷ In nations such as India, collective intellectual property rights may function more effectively, since several

⁸⁴ CAROLE PATEMAN, *THE SEXUAL CONTRACT* (2018).

⁸⁵ Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law*, 14(3) AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY & THE LA 551 (2006).

⁸⁶ Thais Guerrero Padrón, Ljubinka Kovačević, & M^a Isabel Ribes Moreno, *Labour Law and Gender*, in IN: VUJADINOVIĆ, D., FRÖHLICH, M., GIEGERICH, T. (EDS) GENDER-COMPETENT LEGAL EDUCATION. SPRINGER TEXTBOOKS IN LAW. 583 (2023).

⁸⁷ Gregory Alexander & Charles Donahue, *Property Law and the Western Concept of Private Property*, BRITANNICA (Mar. 14, 2025), <https://www.britannica.com/topic/property-law>. (last visited May 19, 2025).

traditional handicrafts like Kanchipuram Silk Sarees, Banarasi Sarees etc. have secured Geographical Indications based on regional attributes and achieved robust intellectual property protection that the author explains in the next section.

4.2. Interpretation of Geographical Indications of Goods (Registration and Protection) Act, 1999

Geographical indications (GIs) are identifiers that denote items originating from a particular geographical region, while safeguarding community rights and consumer interests. Geographical Indications safeguard the collective history of a community and inhibit the cohabitation of individual intellectual property rights, such as copyrights or industrial designs, in traditional trades. The GI Act of 1999, implemented in 2003, creates a framework for the registration of Geographical Indications and delineates the responsibilities of authorized users. In Sec 2(f), under the definition of 'Goods', it recognizes handicraft, as:⁸⁸ 'goods' means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff.

Under Sec. 2(k), the word producer has been explained in its clause (iii) as person who makes or manufactures, trades or deals, produces and exploits the goods (handicrafts as mentioned earlier in 2(f)), stated in the Act as:⁸⁹ 'if such goods are handicraft or industrial goods, makes or manufactures the goods, and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the good.'

Section 11 stipulates that a geographical indication may be registered by any association of individuals, producers, or any legally established organisation or authority that represents the interests of the relevant producers. Applicants are required to submit a written application to the Registrar using the prescribed form and manner, along with the necessary fees, for the registration

⁸⁸ The Geographical Indications of Goods (Registration and Protection) Act, No. 48 OF 1999, § 2(f) (1999).

⁸⁹ The Geographical Indications of Goods (Registration and Protection) Act, NO. 48 OF 1999, § 2(k) (1999).

of the geographical indication pertaining to specific goods.⁹⁰ Therefore, by providing for the registration of producers of handicrafts, Section 11 empowers not only a single person but the whole artisan community.

As a member of the World Trade Organization (WTO), India enacted the Geographical Indications of Goods Registration & Protection Act, 1999, which has registered over 200 Geographical Indications, including several GIs for handicrafts.⁹¹ This has resulted in advantages for craftsmen and local communities, along with economic value linked to their craftsmanship. The GI protection for Banarasi silk has elevated its price and authenticity, thus attracting greater number of customers, which enhances the income and living standards of weavers.⁹² The Indian government has actively facilitated the export of GI-tagged handicrafts, enhancing the income of craftsmen and regional economies.

GI tags function as a quality assurance mark, differentiating authentic handicrafts from counterfeits.⁹³ This guarantee of authenticity appeals to customers, connoisseurs, and collectors, resulting in heightened demand, elevated pricing, and enhanced earnings for artists and craftspeople. They tags prevent counterfeit and inferior replicas from posing as genuine handicrafts, so protecting the reputation and livelihoods of artists and preserving the cultural and historical importance of these crafts.⁹⁴ While the handloom GIs' case studies like Banarasi saree from Uttar Pradesh, Sambalpuri Bandha saree from Odisha etc. demonstrate the

⁹⁰ The Geographical Indications of Goods (Registration and Protection) Act, NO. 48 OF 1999, § 11 (1999).

⁹¹ Registration Details of Geographical Indications, IP INDIA (Apr. 26, 2024), https://ipindia.gov.in/IPIndiaAdmin/writereaddata/Portal/Images/pdf/Year_wise_GI_Application_Register_-_26-04-2024.pdf (last visited Feb 10, 2025).

⁹² AMIT BASOLE, Authenticity, Innovation, and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari, 18(3-4) THE JOURNAL OF WORLD INTELLECTUAL PROPERTY 127 (2015).

⁹³ V.K. Ahuja, Protection of Geographical Indications: National and International Perspective, 46(2) JOURNAL OF THE INDIAN LAW INSTITUTE 269 (2004).

⁹⁴ N. Lalitha & Soumya Vinayan, Working Paper No. 256: Infringements in GI Protected Products: How Do We Protect the Producers and the Consumers?, GUJARAT INSTITUTE OF DEVELOPMENT RESEARCH (Apr., 2019), <https://gidr.ac.in/pdf/wp-256-3248.pdf> (last visited Jul 23, 2024).

effectiveness of targeted interventions, such as the introduction of Geographical Indications⁹⁵ and support programs for artisans, in preserving the traditional knowledge, skills, and livelihoods of indigenous communities involved in India's handicraft sector, there have been inadequacies under the existing law as well.⁹⁶

For instance, a GI cannot resolve the structural issues confronting artisanal sectors today, including extensive subcontracting chains, imbalanced relationships between dominant merchants and subordinate artisan-workers, insufficient marketing and legal expertise, credit limitations, precarious employment conditions, inadequate infrastructure, and insufficient governmental support following GI registration. Geographical Indications may provide incentives to master-manufacturers who successfully manoeuvre through the GI bureaucracy and get legal registration; but, their influence on artisan-workers in the informal and unorganized sector is contingent upon the power dynamics between merchants and craftspeople.⁹⁷

Geographical Indications cannot effectively protect traditional art, since distinguishing artisanal production from the broader informal manufacturing sector becomes more challenging.⁹⁸ Geographical Indications just safeguard the product's name and do not extend protection to handicrafts, where traditional knowledge is integral to the manufacturing process and the resultant quality. The information associated with the geographical indicator is unprotected and accessible to the public. The WIPO differentiates traditional knowledge and invention into secret and non-secret categories, enabling beneficiaries to prohibit unauthorized disclosure, use, or exploitation.⁹⁹

⁹⁵ Gokulrajaun M, Reviving Traditional Skills and Empowering Artisans: The Impact of GI on Odisha's Handloom Industry, FIBRE2FASHION (2023)

⁹⁶ Amit Basole, *supra* note 102.

⁹⁷ Mir Farhatul-Aen, *Desirability of Handicrafts of Kashmir as Geographical Indications A Socio Legal Study*, UNIVERSITY OF KASHMIR (2015).

⁹⁸ Nitya Nanda & Indrani Barpujari, *Traditional Knowledge and Limits to GI*, TERI (2012), <https://www.teriin.org/opinion/traditional-knowledge-and-limits-gi>.

⁹⁹ WIPO Secretariat, The Protection of Traditional Knowledge: Updated Draft Gap Analysis, in INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (2018).

Traditional handicrafts inherently need the safeguarding of collective knowledge, including both technological and physical product protection, presenting a significant challenge to preservation efforts. However, the concept of shared rights is often omitted from Indian Copyright Law and Designs Law, as has been previously illustrated. Currently, the only viable protective measure identified in existing court practice is geographical indications. However, the question arises whether there is any recognition to women's creations within such collectively recognized artisanal communities.

The passing down of these cultural traditions and the art of handicraft creation is predominantly the responsibility of women in India.¹⁰⁰ Madhubani paintings, a traditional Indian art form typically produced by Mithila women, are celebrated for their detailed designs, frequently illustrating folklore and elements of nature.¹⁰¹ Nonetheless, these artworks are frequently credited to male intermediaries or groups, resulting in bias, restricted market opportunities, and insufficient acknowledgement. Women hold an essential position in the Pashmina wool industry; however, they frequently find themselves sidelined in decision-making roles and encounter obstacles when trying to access more lucrative supply chains.¹⁰² In the Channapatna toy industry, it is observed that women frequently receive lower wages compared to their male counterparts and encounter restricted prospects for leadership roles and market expansion.¹⁰³ In the Kollam coir sector, women play a crucial role as labour force members, yet they encounter restricted opportunities for advancement, inadequate authority over their

¹⁰⁰ *supra* note 18.

¹⁰¹ Akanksha Jumde & Nishant Kumar, *Protection of Traditional Art Forms under Geographical Indications Law: A Case Study of Madhubani and Sujini Art Forms of Bihar, India*, 15(12) JOURNAL OF INTELLECTUAL PROPERTY LAW & PRACTICE (2020).

¹⁰² Muzamil Bhat, "I Work for Days and Earn Nothing" Women Who Spin Thread for Pashmina Products Earn Very Little for This Highly Skilled Work. A Traditional Occupation, It Now Has Few Takers among the Younger Generation, (2023), <https://ruralindiaonline.org/en/articles/i-work-for-days-and-earn-nothing/> (last visited Feb 10, 2025).

¹⁰³ Sowmya.D.N & P Paramashivaiah, *Influence of GI Tag on Development of Channapatna Toys* (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3652017 (last visited Feb 10, 2025).

wages, and a lack of acknowledgement within cooperatives.¹⁰⁴ Men are more likely to attain leadership positions, while women face structural obstacles in training, resources, and market access.¹⁰⁵

The expropriation of traditional communities' intellectual property, including garments and textiles crafted by rural women using kantha stitching, is profoundly ingrained in the legislative framework of Geographical Indications and its historical evolution.¹⁰⁶ This theft in India arises from insufficient safeguards established by copyright legislation. Rural ladies delineate designs with black chain stitch and then complete them with running thread in a contrasting hue. The stitching patterns and embroidery techniques of kantha weavers in Bangladesh and West Bengal remain very distinctive and recognizable, showcasing the intricacy of the art form. Nevertheless, women have relinquished authority over the art of kantha, which has progressively evolved into a business dominated by urban designers and dealers who dictate almost every aspect, from designs and colour palettes to marketing strategies.¹⁰⁷

The fundamental issue is that the women who create the items do not sign their work, making it difficult to safeguard the rights of these creators under the current copyright framework. Consequently, kantha artists are relegated to being just skilled weavers creating custom-made items. Ultimately, it seems that even with the protection of intellectual property rights for traditional cultural expressions (TCEs), the traditional knowledge and cultural manifestations of women would continue to be unrecognized.

Therefore, it can be observed by the above-mentioned instances that reluctance to implement international standards on freedom of artistic expression and women's rights, along with societal and patriarchal norms, has led to restrictions on cultural participation. The execution of laws relating to protection of IPRs of artisans in India encounters several obstacles, including as economic and

¹⁰⁴ Afzal N, *Threads of Change: Empowering Women in Kerala's Coir Industry*, CPPR (2023), <https://www.cppr.in/articles/coir-kerala-ylf> (last visited Feb 10, 2025).

¹⁰⁵ supra note 104

¹⁰⁶ Nandita Saikia, *Art and Indian Copyright Law: A Statutory Reading* (2015).

¹⁰⁷ supra note 106

commercial pressures, limitations within the legal framework, the digital divide, and concerns related to documentation.

5. Conclusion

The existing intellectual property rights framework is considered insufficient for protecting Traditional Knowledge and Traditional Cultural Expressions (TCEs). The existing paradigm encourages private ownership, but Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) are generally owned and maintained cooperatively by communities. The protection measures provided under the current Indian IPR regime is often provisional and expires sixty years after creator's death under copyright law. However, TK or TCEs are perennial and keep on passing from generation to generation. Current intellectual property rights legislation adopts a narrow perspective on artistic expression, mandating adherence to strict criteria such as originality or industrial applicability, which frequently marginalises traditional and community-based art forms. The main challenge lies in balancing the rights of indigenous communities dependent on TK for their livelihood with the benefits derived from the economic harnessing of TK related advances. The existing IPR laws requires targeted amendments to adequately meet the needs of handloom artisans, particularly women within the traditional communities. For instance, Law 20 of 2000 in Panama is a trailblazing piece of legislation designed especially to safeguard the IPRs of indigenous people. Unlike conventional IP Laws that concentrate on personal ownership, this law recognizes the communal character of traditional knowledge and cultural expressions including handicrafts, textiles, music, and folklore. It guarantees that these societies have the legal power to regulate the use, reproduction, or commercialisation of their cultural products as well as to stop illegal third-party exploitation. This legal framework is particularly important in preserving traditional handicrafts so that communities may keep cultural integrity while profiting economically from their traditional knowledge.¹⁰⁸ Similarly, Indonesia has brought a *sui generis* system for the protection of handicrafts as per implementation of the Traditional Cultural

¹⁰⁸ Anuttama Ghose and S M Aamir Ali, *supra* note 38.

Expression (TCE) Protection based on Article 38 Law Number 28 of 2014.¹⁰⁹

This Act creates a framework for the recording and management of these rights, necessitating approval from the relevant community and ensuring equitable distribution of benefits. Peru has implemented a *sui generis* system under Law No. 27811 (2002) to protect the collective knowledge of indigenous people about biological resources, including handicrafts.¹¹⁰ The Act recognizes the collective rights of indigenous people to their traditional knowledge and lays out measures to prevent unauthorized commercial exploitation, while ensuring equitable benefit sharing. The National Registry of TK is created to document and protect the traditional knowledge and artisanal products of indigenous populations.

The crafts sector in India plays a crucial role in the economy, contributing to foreign currency revenue and job creation. Handicrafts have historically served to alleviate poverty via rural entrepreneurship, exerting little influence on cultural and socioeconomic differences. The growing replacement of traditional handcraft processes by rapid mechanization requires the adoption of regulatory measures and efficient promotional initiatives to safeguard these ways. India has the capacity to formulate a more extensive approach focused on increasing awareness and improving comprehension among persons who are uninformed or have a limited grasp of Intellectual Property Rights, Traditional Knowledge, and the related legal rights concerning traditional handicrafts. Creating a unique property framework that incentivizes advances in Traditional Cultural Expressions (TCEs) is essential to avert stagnation of creativity among indigenous group members and to maintain the market competitiveness of traditional handicrafts. 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 exemplify the potential benefits of *sui generis* systems in recognizing collective rights,

¹⁰⁹ Meghna Banerjee & Susanah Nausahd, *Grant of Geographical Indication Designation To Tirupati Laddu: Commercialization Of Faith?*, 3 NUJS LAW REVIEW 107 (2010).

¹¹⁰ *Id.*

preventing unauthorized commercial exploitation, and ensuring fair compensation for artisans.

Gender equality should be promoted by linking women with one other to inform them about industrial job opportunities. Schemes like Skill Upgradation & Mahila Coir Yojna and Pradhan Mantri Kaushal Vikas Yojana (PMKVY) should be implemented well so as to promote skill development among women artisans. Private foundations and not-for-profit organizations are instrumental in supporting skill development and addressing the unique challenges faced by women weavers, including the establishment of market connections. The 'Himadri Hans Handloom program', through its specific measures and programs, is connecting the handloom industry to the global market that may give women weavers and entrepreneurs new economic prospects.¹¹¹ E-commerce platforms and partnerships with online marketplaces will allow women weavers to sell their creations internationally. For example, Hyderabad based 'PickMyCloth' startup let the women artisans to decide the price and sell their products to consumers without the interference of any middlemen.¹¹² Similarly, 'Amazon Karigar' is a digital campaign which organises 'Karigar Mela' and allows the artisans to sell their products to global audience.¹¹³ Export promotion programs and expositions will help women weavers create networks with foreign customers and distributors.

Women weavers may access new markets and creative concepts by working with international designers and companies. Cultural exchange programs and residencies abroad will help women weavers learn about various cultures, adapt skills, and follow worldwide trends. For example, the global sourcing expo which was

¹¹¹ Sharwari Kale, *This Unique Company In Uttarakhand Is Empowering Women Through Handloom Weaving*, HOMEGROWN (2021), <https://homegrown.co.in/homegrown-explore/this-unique-company-in-uttarakhand-is-empowering-women-through-handloom-weaving>. (last visited 19 May, 2025)

¹¹² Apurva P, *This Startup Enables Weavers and Artisans to Directly Connect and Sell Their Products to Customers*, YOUR STORY (2020), <https://yourstory.com/2020/12/ecommerce-startup-pickmycloth-weavers-artisans-handloom>. (last visited 19 May, 2025).

¹¹³ *Karigar: Empowering Weavers and Artisans for Selling Online*, AMAZON (Oct. 17, 2022), <https://www.aboutamazon.in/news/small-business/karigar-empowering-weavers-and-artisans-for-selling-online>. (last visited 19 May, 2025).

organized in Australia in 2023, showcased the handicrafts made by local artisans to connect with global audience. To develop women-led handloom firms globally, government incentives, financial assistance, export subsidies, and focused training programs are needed. Packaging and branding boost the handloom items' perceived value, attracting worldwide purchasers. Eco-conscious customers worldwide may be drawn to handloom manufacturing that is ethical and sustainable. These techniques may connect the handloom industry to the global market, giving women weavers and entrepreneurs several commercial prospects. This empowers women and helps in preserving traditional crafts and culture worldwide.