



Copyright and Traditional Cultural Expression in *Ponniyin Selvan II*: A Study of A. R. Rahman's Music

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The article specifically focuses on the overlap between Indian copyright law and protection of Traditional Cultural Expressions (TCEs) in modern Indian cinema, and with particular reference to the musical compositions of *Ponniyin Selvan II* by A. R. Rahman. Although the Copyright Act, 1957, protects authorship and originality, it still lacks sufficient capacity to tackle the challenges of adapting and commercialising culturally connoted traditional forms. The author of this research primarily focuses on the grey area, namely, the lack of a clear legal criterion for determining when the introduction of TCEs in film music constitutes a lawful creative adaptation rather than cultural appropriation or misappropriation. Although current literature addresses copyright protection and traditional cultural folklore, there is a notable gap in the study of their intersection in cinematic works within the Indian context. This paper doctrinally situates TCEs within the frameworks of originality protection, fair dealing, and moral rights. It also examines international mechanisms, including the ongoing negotiations at the World Intellectual Property Organization (WIPO) concerning TCE protection. Using the musical score of *Ponniyin Selvan II* as a case study, the paper demonstrates how A.R. Rahman's compositions are influenced by classical Tamil music and devotional themes, raising critical questions about possession, attribution, and communal rights.

Keywords: Artificial Intelligence, Cultural Heritage, Fair Dealing Principle, Musical Authorship, Originality

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1. Introduction

Recent years have seen a distinct revival of historical and epic films in Indian cinema, alongside a broader cultural revivalism that seeks to reconnect with civilisational memory, regional histories, and indigenous artistic traditions. Cinema based on literary classics, royal families, and mytho-historical narratives has not only become commercially viable but also serves as a significant cultural script through which identity, heritage, and collective memory are reconfigured. This revival is especially notable in South Indian cinema, where historic adaptations have been increasingly foregrounded through linguistic, musical, and ritual traditions as indicators of cultural authenticity. In this dynamic landscape, *Ponniyin Selvan II*¹ becomes a compelling site of cultural redefinition. The film is based on the renowned Tamil novel by Kalki Krishnamurthy, which recreates the Chola dynasty through a rich weave of visual, narrative, and sonic elements. Although the film's cinematography and narrative scope are widely debated, its musical dimension, which mediates cultural memory, remains underexplored. The music is not merely a soundtrack that follows the story; rather, it is an interpretive film score that draws on traditional Tamil musical idioms, devotional themes, and classical ragas to evoke the ethos of a historically specific culture. To this extent, TCEs will be analysed to understand how TCEs are ingrained, adapted, and recontextualised in contemporary film production.²

A. R. Rahman's score for *Ponniyin Selvan II* is a striking manifestation of a subtle blend of classical and cinematic traditions. Rahman's musical style is defined by the use of Carnatic patterns, influences of temple music, and folk tonalities, which are reconstructed through modern orchestration and digital recreation. Such a combination of the traditional and the modern raises interesting legal and conceptual issues: to what extent do these compositions qualify as original works under copyright law, and when do they involve collective ownership entrenched in TCEs? Rahman's work can therefore be seen as a critical prism through which the conflicts between individual authorship and community-based cultural heritage can be analysed. Against this background, the current study focuses on film music as a unique form of TCE adaptation, rather than conducting a comprehensive analysis of the film as a unit. This limitation is deliberate because the paper examines film music as the core cultural and legal site, rather than treating the entire film as a single undifferentiated object. Film music has a special place in the copyright debate; it is both a creative work in its own right and part of a larger audio-visual work. More to the point, music is one of the main modes of transmission and transformation of traditional cultural expressions,

¹ Kalki Krishnamurthy, *Ponniyin Selvan* (1950-1954).

² *Id.*

which often harbours embedded histories, ritual meanings, and communal authorship that transcend the person of the identifiable composer. The article aims to provide a more focused and consistent analysis of how TCEs are adapted, changed, and commercialised in modern copyright systems by concentrating exclusively on the musical works of *Ponniyin Selvan II*. This focused investigation will allow a more nuanced examination of the doctrinal issues involving originality, authorship, fair dealing, and moral rights without the conceptual dilutions that arise when examining a variety of cinematic attributes at once. Ultimately, this segment forms the basis for analysing whether the current copyright legislation used in India is sufficiently prepared to deal with the intricacies that may emerge from the convergence between creative authorship and cultural heritage in film music. The methodology primarily employs a doctrinal approach.

1.1. Concept of Traditional Cultural Expressions

TCE encompass folklore and customs intrinsic to a community's identity, including art and music that are vital for cultural continuity. United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO's 1976 Tunis Model Law³ on Copyright marked an early effort to protect TCEs under copyright, with various approaches by countries like China and the U.S. However, existing international frameworks like the Berne Convention, 1886⁴ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994⁵ inadequately safeguard TCEs, often overlooking shared ownership and cultural contexts, leading to vulnerabilities against unauthorised exploitation. While some intellectual property mechanisms, such as copyrights and trademarks, can offer protection, they often fall short as TCEs can outlast standard copyright durations. The rise of digital technology presents further complexities, raises cultural appropriation issues and challenges traditional copyright structures, which focus on individual rights rather than the communal nature of TCEs. This creates dilemmas in determining rights enforcement and benefit sharing, as TCEs often enter the public domain, leaving them exposed to misuse and commercial exploitation.⁶⁷

³ World Intellectual Property Organization & UNESCO, Tunis Model Law on Copyright for Developing Countries (1976).

⁴ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris July 24, 1971, and amended Sept. 28, 1979, 828 U.N.T.S. 221.

⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

⁶ World Intellectual Property Organization, The Protection of Traditional Cultural Expressions: Draft Articles, WIPO/GRTKF/IC/47/5 (2023).

⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.

1.2. Significance of *Ponniyin Selvan I & II* as a Cultural-Musical Masterpiece

The *Ponniyin Selvan* film series, adapted from Kalki Krishnamurthy's historical novel, reflects the rich cultural landscape of Indian history, specifically focusing on the Chola dynasty and Tamil civilisation. Central to its adaptation is A.R. Rahman's musical score, which skilfully incorporates traditional elements such as Carnatic ragas, folk rhythms, and temple music, while employing modern orchestration techniques. Rahman's approach not only reinvents these sounds but also preserves their cultural significance, distinguishing between inspiration and mere appropriation. The soundtrack exemplifies how traditional cultural expressions can evolve into contemporary forms while respecting their historical roots. Moreover, *Ponniyin Selvan* serves as a model for ethical cultural practices in the AI-generated music, emphasising the essential role of human creativity and the nuanced understanding of culture, in contrast to AI's reliance on pattern recognition. Thus, it underscores the importance of creativity, interpretive depth, and ethical considerations when engaging with culturally significant content.⁸⁹

Ponniyin Selvan II opens with a soulful song inspired by the history of the Cholas. Thota Tharani has used Chola temples as models for Chola-era architectural replication, which is reflected in his production designs. According to Thota Tharani, temples are among the best references that can be used for recreating the Chola visual world. The complexities were also idealised in settings, whereby the movie engulfs the audience in its architectural marvel. Thus, music, dance and architecture from the Cholas' past are all recalled.¹⁰

1.3. Research Problem

The use of TCE in modern creative industries, such as the Indian film industry and Indian musical compositions of *Ponniyin Selvan II* by A. R. Rahman, presents a great deal of legal challenges, notably in relation to copyright law. The Copyright Act, 1957¹¹ focuses on authorship and novelty by individuals, but TCEs are trans-generational and jointly owned, posing a dilemma between cultural misappropriation and fair use adaptation. This conflict of personal rights and social property provokes the question of the genuineness of copyright protection of film music with elements of tradition. Regrettably, the law is still unclear about what is acceptable as use

⁸ Kalki Krishnamurthy, *Ponniyin Selvan* (1950-1954).

⁹ *Ponniyin Selvan: II* (Madras Talkies & Lyca Productions 2023).

¹⁰ Behind the Sets of PS-1 Ft. Thota Tharani (Madras Talkies, 2022), at 0:56.

¹¹ Copyright Act, No. 14 of 1957, Acts of Parliament, 1957 (India).

or misappropriation, since current standards are insufficient in dealing with issues of cultural creativity. In addition, the overlap between traditional folklore protection and copyright law is under-investigated. This gap in research is intended to be filled in this paper, by suggesting a new model for balancing creative freedom with collective rights in relation to TCEs, which will add to the discussion on law, cultural exploitation and integration of global media.

2. Conceptual Framework: Copyright Doctrine vs Traditional Cultural Expressions in Film Music

The interplay between copyright and TCEs means that a thoughtful conceptual map is required to reconcile the doctrinal anomalies of the two radically different philosophical histories. Whereas the copyright law is based on the premise of individual authorship, originality and economic exploitation, TCEs are based on collective creation, intergenerational transmission and cultural continuity. Lack of a systematic analysis system has frequently caused conceptual confusion in research, especially in assessing more modern artistic expressions like film music. In this section, four fundamental pillars of the doctrine of originality and authorship, the nature of TCEs, fair dealing and transformative use, and moral rights with cultural attribution are examined to systematise a complete framework through which the musical compositions of *Ponniyin Selvan II* by A. R. Rahman, can be analysed.¹²

2.1. The nature and Legal Characterisation of Traditional Cultural Expressions (TCEs)

WIPO conceptualises a form of TCEs that encompasses both tangible and intangible expressions of traditional knowledge and cultural heritage, including music, dances, rituals, symbols and oral traditions. TCEs, in contrast to traditional copyrighted works, are not attributed to any particular identifiable author; rather, they are produced and maintained by communities of various generations. They are characterised by shared ownership, transmission across generations and a strong embeddedness within a culture, frequently associated with a particular social, religious or ritual environment. For instance, such TCEs in the Indian context are ragas, temple music traditions, and devotional music, which are more rooted in community practice than in individual innovation. As an example, the Carnatic ragas in film music are frequently founded on centuries-old musical patterns that cannot be violated and misused. But the lack of explicit sui generis legal frameworks regarding TCEs in India implies that

¹² World Intellectual Property Organization, The Protection of Traditional Cultural Expressions: Draft Articles, WIPO/GRTKF/IC/47/5 (2023).

these are indirectly and often poorly safeguarded by the existing intellectual property laws. It expresses a structural weakness where culturally important expressions may be commercialised without acknowledging or sharing profit with the communities that created them.¹³

2.2. Originality and authorship: Re-evaluating the Individualistic Paradigm

The concept of originality is a basic requirement for copyright protection in the majority of legal systems. It not only marks the line about the requirements of acquiring legal protection, but also about the persons being authors. In the era of generative artificial intelligence, where works can be generated by algorithms fuelled by massive amounts of data, the traditional emphasis on human creativity as the exclusive foundation of originality is in danger. The following section discusses how Indian juridical thought and international legal systems conceptualise originality and how these then-accepted standards are being challenged by the developments of autonomous creative technologies.

2.2.1. The Modak Doctrine: Originality and Minimal Creativity

In Indian law, the concept of originality has developed through judicial interpretation rather than official statutory definition. The case in point is *Eastern Book Company v. D.B. Modak*¹⁴, in which the Supreme Court considered the copyrightability of editorial alterations in law reports. The Court broke from the conventional 'sweat of the brow' approach under which effort and toil alone were considered sufficient to gain copyright protection, and adopted a test requiring some minimal quantum of creativity.

The Court held:

To qualify as a copyright, there must be a certain amount of creativity. A derivative work is more than mere reproduction of a work; it is an exercise of originality.¹⁵ This reasoning puts India's position in conformity with the 'modicum of creativity' test laid down by the U.S. Supreme Court in the case of *Feist Publications, Inc. v. Rural Telephone Service Co.*,¹⁶ wherein it was held that effort or money spent is not enough; the work must at least have a scintilla of creativity. In the context of this paper, the point is relevant because it shows

¹³ World Intellectual Property Organization, The Protection of Traditional Cultural Expressions: Draft Articles, WIPO/GRTKF/IC/47/5 (2023).

¹⁴ *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India).

¹⁵ *Copyright Protection in India: Doctrine of Originality – Boudhik IP*, <https://www.boudhikip.com/copyright-protection-in-india-doctrine-of-originality/> (last visited Apr. 21, 2025).

¹⁶ *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

that a composer may own the creative arrangement of traditional material, while the underlying raga, devotional idiom or community-based musical vocabulary should not be treated as individually owned. The implications of this shift are profound- originality is now an activity that engages intellectual contribution and human judgment, not mechanical change. Decisions about editing, rewording of text, and organisational decisions can all withstand this test when they are carried out under human intention.

While this standard is relatively flexible, its application to derivative works incorporating TCEs raises complex questions. When a composer such as Rahman adapts traditional ragas or folk melodies into a cinematic composition, the resulting work may satisfy the threshold of creativity through orchestration, arrangement, or fusion techniques. However, this does not negate the fact that the foundational elements are drawn from pre-existing cultural material. The law, in its current form, tends to recognise only the final expression as “original,” thereby privileging the individual author while overlooking the collective cultural contributions embedded within the work.

This tension exposes the limitations of the originality doctrine in addressing culturally derivative works. It necessitates a more nuanced understanding of authorship that acknowledges both individual creativity and cultural continuity, particularly in contexts where the line between inspiration and appropriation is inherently blurred.

2.3. The Indian Copyright Act, 1957 and the Fair Dealing Principle

As opposed to the general and flexible fair use rule that has developed in the United States, Indian copyright law is guided by a more restrictive rule known as ‘fair dealing.’ The regulation is codified in Section 52¹⁷ of the Copyright Act of 1957 and enumerates acts that lie outside the purview of infringement. Unlike the Indian model, fair dealing in the United States is not a general defense, but a specific exception reserved for only certain classes of use, like Private or personal uses, such as research, and Appraisal or evaluation.

In the case of *Civic Chandran v. Ammini Amma*¹⁸, the Kerala High Court acknowledged that the doctrine of fair dealing entails a measure of flexibility and may vary based on the specificity and facts of each case; however, it emphasised strict interpretation of statutory exceptions. Similarly, in *The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services*¹⁹, the Delhi High Court emphasised education and the

¹⁷ Copyright Act, No. 14 of 1957, § 52, Acts of Parliament, 1957 (India).

¹⁸ *Civic Chandran v. C. Ammini Amma*, 1996 S.C.C. OnLine Ker. 63 (India).

¹⁹ *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, 2016 S.C.C. OnLine Del. 5128 (India).

right to know in the Indian context, permitting copying of copyrighted work for educational purposes. In contrast to the United States, the Indian judiciary does not consider whether the use is transformative in a similar way, and there is no equivalent to the long list of permitted purposes as set out in Section 107 of the US Copyright Act, 1976²⁰. These cases validate the argument by showing that Indian fair dealing is purpose-based and fact-sensitive, but still confined to statutory exceptions. Therefore, it is not fully capable of resolving commercial uses of TCEs in film music.

However, the applicability of fair dealing to the use of TCEs in commercial film music remains highly limited. The use of traditional cultural elements in film compositions is not intended to comment, but rather to enhance aesthetics and appeal to the market, unlike parody or criticism. As such, these uses are not within the traditional definition of fair dealing. Besides, the doctrine fails to support the ethical and cultural aspect of using community-owned expressions because it mainly focuses on the rights of individual copyright owners.

Transformative use is a concept that is more advanced in other jurisdictions, including the United States, but has not been formally captured in Indian law. However, Indian courts have sometimes dealt with the concept in substance, as in the case of *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*²¹, where the court considered the question of whether there was an addition of new meaning or expression to the copyrighted material. The application of this argument to TCEs brings about some serious concerns- can the rebranding of traditional music into a contemporary film object warrant exclusive rights to it, or does it simply appear as a rebranding of cultural heritage? The lack of distinct doctrinal guidance on this matter supports the shortcomings of the current exceptions in addressing the TCE-related issues. The case is relevant here because it shows that context and purpose matter while assessing a later use, but it also demonstrates the limitation of ordinary copyright analysis when the source material is a culturally shared tradition rather than a single protected work.²²

2.3.1. Ownership Requirement

The copyright law of absolute ownership does not align with customary laws and community protocols, such as rules on who may perform sacred songs, who may reproduce ceremonial images, and how a lineage, gharana or ritual tradition may be represented, particularly where the indigenous authors are involved, because they might be subjected to the communal

²⁰ Copyright Act, No. 14 of 1957, *supra* note 14, § 52.

²¹ *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, 2012 S.C.C. OnLine Del. 4299 (India).

²² *Id.*

regulations in relation to the handling of cultural contents. In the Australian case of *Milpurrurru v. Indofurn Pty Ltd*²³, it is observed that, although the copyright can belong to an artist, he/she should not infringe any rights of the community because he/she represents his/her group culturally. This conflict has its practical consequences in the area of licensing- even though one can license his/her copyright under the copyright law, a customary obligation might not allow it to be done by an indigenous copyright owner. The issue of copyright and customary law is not however, always incompatible, since copyright only allows the holder of the rights to restrict the actions of others, and not to act in a manner that is contrary to the customary duties. Article 17²⁴ of the Berne Convention underlines how national laws can determine the exercise of rights, implying a framework in which the copyright and customary laws would be at the same level without necessarily contradicting each other.²⁵

2.3.2. The Fixation Requirement

The safeguarding of copyright applies to oral and written works in accordance with the general international principles under the Berne Convention. Article 2(1) of the Berne Convention, 1886²⁶ offers that the types of works which are covered by the copyright are lectures, addresses, sermons and other works of such nature. The fact that the terms of the same nature could limit the scope of the oral works that could be subject to protection to those that are similar to lectures, addresses and sermons does not imply that the national laws are not obligated, as Article 2(2)²⁷ of the Convention expressly writes that fixation is not required to be a protection prerequisite. However, this is the case with many national laws due to the fixation showing the existence of the work and securing a clearer and more definite base of rights. But, as stated above, this is not a treaty requirement, and states may take this advantage and safeguard so-called unfixed expressions, too, in their own interest. TCEs are alive and are constantly adapted and recreated. The necessity to have some sort of prior documentation and/or registration is against the oral, intangible and living nature of TCEs. In the draft policy considered by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), it is contended that inventories and databases, including cultural contents, may, of course, be of

²³ *Milpurrurru v. Indofurn Pty Ltd.* (1994) 54 F.C.R. 240 (Austl.).

²⁴ Berne Convention for the Protection of Literary and Artistic Works art. 17, Sept. 9, 1886, as revised at Paris July 24, 1971, and amended Sept. 28, 1979, 828 U.N.T.S. 221.

²⁵ *Id.*

²⁶ Berne Convention for the Protection of Literary and Artistic Works arts. 2(1), 2(2), Sept. 9, 1886, as revised at Paris July 24, 1971, 828 U.N.T.S. 221.

²⁷ *Id.* art. 2(2).

use in the identification, protection, and promotion of their use as cultural heritage programmes. TCEs' recording or documentation, however, should not be viewed as an independent way of protection. It is interesting to note that the copyright law of other countries like Spain, France and Germany is not specific on fixation as far as traditional cultural expression is concerned. This conclusion follows from the nature of TCEs as living and orally transmitted expressions, rather than from a single authorial act fixed at one moment.²⁸

2.3.3. Moral Rights and Cultural Attribution

Moral rights provide a bridge between individual copyright and cultural attribution. Section 57 of the Copyright Act, 1957²⁹ protects an author's right of paternity and integrity, but TCEs require a broader attribution ethic because the source may be a community, lineage, gharana or ritual tradition rather than a single author. A TCE-sensitive approach should therefore require acknowledgement of identifiable source traditions when film music substantially relies on them.³⁰

3. Artificial Intelligence and Musical Creativity

The incorporation of Artificial Intelligence (AI) into music creation is a major change in the process of conceptualisation, production, and distribution of music. Previously seen as the exclusive sphere of humans, which has been formed by cultural experience, emotional intuition, and artistic judgment, is now increasingly mediated by algorithmic processes. Although AI offers new ways of composing and sound design, it also questions the legal, cultural, and ethical ideas of creativity. This section explores the topic of AI-generated musical creativity, although it focuses specifically on the consequences of the latter, concerning TCE. It examines the technological underpinnings of AI music systems, what algorithmic creativity entails and what the dangers are in the replication of culturally embedded music forms through data.

3.1. Evolution of AI in Music Creation

The use of computational methodologies of music is not a modern factor. Early development of algorithmic composition was supported by rule-based designs that conformed to earlier-defined musical patterns. Conversely, modern artificial intelligence systems (in particular, those based on machine learning and deep neural networks) operate through other mechanisms.

²⁸ World Intellectual Property Organization, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO/GRTKF/IC/47/5 (2023).

²⁹ Copyright Act, No. 14 of 1957, *supra* note 14, § 57

³⁰ World Intellectual Property Organization, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO/GRTKF/IC/47/5 (2023).

These systems learn by means of vast stores of extant music, identifying patterns in melody, harmony, rhythm and timbre, and therefore, synthesise new pieces of music. With the advancement of computational power and the proliferation of data sets, AI has progressed to a new stage of development, leaving behind primitive automation and giving rise to generative creativity. The modern AI objects can now generate provisional scores, imitate the style rules of particular genres and facilitate orchestration and acoustic synthesis. Artificial intelligence has been placed in the music production industry as something that complements and does not substitute human creativity. Yet, increasing reliance on AI systems makes it hard to establish the definition of authorship and restrict the scope of creative agency.

3.2. AI Training Data and Cultural Embeddedness

The origin of AI-created music lies in its training data. Artificial intelligence systems do not create good music *ex nihilo*, but they develop generative ability by studying the existing musical oeuvre.

When traditional, folk or native music is incorporated into these corpora, it results in the assimilation of stylistic features that are inherent in the cultural milieu. Even though such a learning process may be considered value-neutral on a purely technical basis, it is normatively problematic, both legally and ethically. TCEs can be found in digital archives, ethnographic records, and other publicly accessible materials, which do not expressly protect them. The authors of AI systems may find such material a free source of information, ignoring its cultural importance and the traditional laws that regulate its usage. Consequently, culturally specific musical elements are taken out of context and recreated in AI-generated works without receiving credits or consent. This cultural expropriation is the opposite of the adaptation created by human beings. Interpretive practice and lived experience mediate the interface between human composers and cultural artefacts, and artificial intelligence systems work using statistical abstraction. The attendant risk is that AI-generated music tends to imitate the superficial aesthetics of cultural manifestations while disregarding their meanings and functions in society.

3.3. Music Artificial Intelligence and the Issue of Creativity

Human qualities that have traditionally been associated with creative agency are intention, emotion, and subjective thinking. The musical compositions created with the help of AI challenge this paradigm by presenting the results that might be aesthetically engaging but without a conscious intention. Legally, this situation raises the question of whether AI-generated music meets the copyright doctrine of being considered creative. The prevalence of copyright systems, Indian law being one example, implicitly assumes that authorship is human. Artificial intelligence systems have no juridical personality and cannot bear any rights or responsibilities. In line with

this, AI-generated music is often attributed to the developer, the user, or the operators of the platform, depending on the extent of human input. However, this attribution does not contain any substantive issue about cultural ownership in cases where the said music is based on TCE. Also, there is a lack of human intentionality, which complicates the process of evaluation of morals still more. Having a human composer, it is possible to blame him/her in being culturally insensitive or misrepresenting the culture, but with artificial intelligence systems, the issue is spread among multiple actors- programmers, data curators, and end-users. The resultant scattering is one of the factors that cause a sense of lack of accountability, which in some cases can be disastrous to societies that have been absorbed into the cultural performance.³¹

3.4. Effect of AI on Traditional Cultural Expressions

Artificial Intelligence has unique challenges to the protection of TCE. AI allows the creation of music that closely replicates the traditional styles without copying any particular piece of music by allowing the repetition of patterns within a broad scope. The feature allows AI-produced products to avoid the traditional infringement indicators, but they also extensively use cultural substrates. Commercialisation of such outputs will tend to marginalise community artists and undermine musical practices. The music composed by AI can be created in large amounts and distributed globally, thus it competes with human musicians who rely on cultural authenticity and contextual music performance practice. Also, the scarcity of attribution or benefit-sharing models contributes to economic and cultural inequalities. Another issue that artificial intelligence brings about is cultural dilution and homogenisation. By means of the integration of heterogeneous cultural manifestations into training corpora, the AI systems can produce new hybridised outputs and blur cultural boundaries. Although hybridity is not necessarily bad, its algorithmic origin without the cultural background threatens to destroy the specifics and the diversity of traditional music.³²

3.5. AI in Musical Creativity: Ethical Aspects of AI

In addition to juridical issues, the implementation of AI in music raises serious ethical issues. Top among these issues is consent. Societies whose culture is represented in AI training data sets are rarely consulted or informed, which negates cultural autonomy and self-determination principles. The other ethical dilemma is attribution. Music created by AI often obscures its culture

³¹ Ko Aung et al., *AI Creativity in Art and Music: Perspectives, Realities, and Future Implications*, 25 INTERNATIONAL JOURNAL OF COMPUTER SCIENCE AND NETWORK SECURITY 197 (2025).

³² Jan Mycka & Jacek Mańdziuk, *Artificial Intelligence in Music: Recent Trends and Challenges*, 37 Neural Computing & Applications 801 (2025).

of origin, offering the work as something new with no connection to the original. Such invisibility strips communities of recognition and reinforces discourses that view technological superiority as more important than established epistemologies. Lastly, the problem of cultural dignity should be mentioned. Some of these musical expressions have religious or ritual meaning and are not formulated to be commercialised. Avoiding such expressions in the absence of cultural discernment might subject artificial intelligence systems to using them in the wrong context, causing cultural harm that cannot be corrected by traditional legal means.³³

3.6. Human Creativity v. Algorithmic Replication

The difference between human creativity and the reproduction by algorithms is one of the common patterns in the literature on AI and music. Human composers are involved with music as the medium of cultural communication, which is informed by emotion, memory, and socio-cultural context. Their artistic choices represent moral considerations, religious devotion, and explanatory subtlety. Artificial intelligence systems, on the other hand, operate through pattern recognition and probabilistic synthesis. On the one hand, they can generate outputs which replicate stylistic traits; on the other hand, they cannot share the cultural meanings which are internalised in the traits. This difference is critical when evaluating where AI can be applied in the situation when TCE are at work. As already indicated in the study of culturally based compositions, human creativity promotes a respectful transformation and situation modification. The replication of algorithms, deprived of such understanding, is in danger of making culture into mere data. This differentiation is an essential element to consider when developing the legal and policy frameworks to manage the use of AI in culturally sensitive fields.

3.7. *Ponniyin Selvan* as a Case Study on Culturally Sensitive Musical Adaptation

Concrete examples of culture are inseparable in explaining abstract legal and ethical principles in today's discussion on artificial intelligence, copyright, and TCE. The series of films on *Ponniyin Selvan* and especially its musical score by A. R. Rahman is a convincing case study that can show how traditional cultural contents can be re-created into a modern work of creativity without losing cultural content.

³³ World Intellectual Property Organization, The Protection of Traditional Cultural Expressions: Draft Articles, WIPO/GRTKF/IC/47/5 (2023).

3.8. Cultural and Historical Situation of *Ponniyin Selvan*

The book *Ponniyin Selvan*, authored by Kalki Krishnamurthy, intertwines historical fiction with the socio-political and cultural legacy of the Chola kingdom, specifically focusing on Tamil identity and collective memory. Its film adaptation necessitated a careful balance between historical fidelity and contemporary cinematic expectations. Within South Indian culture, music is deeply embedded in historical contexts, leading to a soundtrack that transcends conventional film music and engages in the discourse surrounding TCE. Composed by A. R. Rahman, the soundtrack employs traditional South Indian musical elements, featuring Carnatic ragas and folk rhythms, while integrating modern orchestral techniques. This approach not only celebrates tradition as a dynamic resource, but also ensures that the traditional sounds enhance the film's narrative and character development, avoiding exoticisation or commercialisation. The result is a model of respectful cultural adaptation that emphasises integration over mere appropriation. For a foreign reader, the relevant cultural expressions include Carnatic ragas, temple percussion patterns, devotional chants, Tamil poetic invocations and folk rhythmic idioms. These elements carry associations of kingship, bhakti, temple ritual and regional identity, so their use in film music has cultural meaning beyond general aesthetics.³⁴³⁵

3.9. Human Creativity, Skill and Cultural Judgment

The role of human creativity and judgment is one of the most important differences between the *Ponniyin Selvan* soundtrack and AI-generated music. This informs the compositional decisions of Rahman brought about by his knowledge of cultural symbolism, emotional appeal, and context of the story, making it necessarily entail interpretive judgments that cannot be mediated to pattern recognition or statistical probability. In copyright terms, such intervention by humans meets the doctrinal demands of originality and authorship; the originality of the work lies not in the novelty of the components of the work, but in the creative arrangement, transformation and contextualisation of traditional elements. This is in line with judicial views of originality, which focus on skill, labour and judgment. Conversely, AI-generated music has no intention or cultural responsibility. Although AI systems can reproduce the stylistic characteristics of traditional music, they do so without knowledge of the cultural meaning or ethical limitations. The case of *Ponniyin Selvan*, therefore, suggests the qualitative distinction between human-directed adaptation and algorithmic replication.

³⁴ Kalki Krishnamurthy, *Ponniyin Selvan* (1950-1954).

³⁵ *Ponniyin Selvan: II* (Madras Talkies & Lyca Productions 2023).

4. Judicial Analysis of *Ponniyin Selvan II*: Copyright Clash in Classical Music

The musical works of *Ponniyin Selvan II*, as created by A. R. Rahman, offer an important site to study the interplay between TCEs and present-day copyright laws. The soundtrack does not simply work as an aesthetic accompaniment but as a cultural text that actively re-creates the sonic identity of the Chola period. By skilfully integrating Carnatic ragas, devotional idioms, and temple music traditions, the compositions by Rahman interact on the one hand with the musical forms historically fixed and, on the other, with their new cinematic consumption. This section examines selected musical features to assess whether they amount to transformative creativity, culturally sensitive borrowing, or a mixture of both, while also addressing attribution and commercialisation.³⁶

One of the salient characteristics of the soundtrack is that it employs the Carnatic musical structures as the basis for various compositions. The application of ragas, which are defined in terms of melodic patterns and emotional connotations, is used to create a sense of authenticity in terms of time and culture. As an example, settings based on ragas that are traditionally linked to devotion or heroism are used to support narrative motifs of heroism, spirituality and royal splendour. Yet, these ragas are not performed in their classical unaltered forms but are re-expressed through orchestral overlay, digital sound production, and a hybrid mix of local and world music influences. This is an example of the creative transformation, when traditional elements are recontextualised in the new medium of art. A concrete example is the devotional and classical atmosphere surrounding ‘Veera Raja Veera,’ which has become central to the copyright and attribution debate arising from *Ponniyin Selvan II*.³⁷

Meanwhile, there is an added complexity in the integration of the tradition of devotional and temple music. The compositions incorporate elements like chant-like refrains, rhythmic patterns that can be traced to temple percussion, as well as lyrical invocations of the Tamil devotional literature to make the compositions immersive in terms of cultural atmosphere. All these are historically and culturally important, and they are usually linked to ritualistic activities and shared religious experiences. The fact that they were adapted into a commercial film soundtrack poses a critical question on the limits between respectful cultural representation and the commodification of the sacred traditions.³⁸

³⁶ *Ponniyin Selvan: II* (Madras Talkies & Lyca Productions 2023).

³⁷ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors.*, CS(COMM) 773/2023, order dated Apr. 25, 2025 (Delhi High Court).

³⁸ *Division Bench Vacates Interim Injunction in Classical Music Copyright Dispute - Lexology*, <https://www.lexology.com/library/detail.aspx?g=54fa4062-2a74-4aa8-b3f5-809fe2f56db5> (last visited Apr. 17, 2026).

The key legal and conceptual question that arises out of the analysis is whether the compositions made by Rahman qualify as transformative works that satisfy the requirement of originality, or as a kind of cultural borrowing that does not pay sufficient attention to the underlying TCEs. In copyright terms, the arrangements, orchestration, and combination of various musical elements can be said to meet the modicum of creativity test laid down in Indian jurisprudence. The works are not simply recreations of the existing pieces, but feature a significant level of creativity in terms of form, instrumentation, and theme development. The Modak test supports protection for the new arrangement, but it does not justify monopolising the underlying traditional musical vocabulary.³⁹⁴⁰

Nevertheless, this conclusion is not a complete resolution of the tension. Although the transformative elements are important, they are established on a substratum of the cultural material that is shared and transmitted historically. Lack of legal means to acknowledge this underlying layer creates a kind of asymmetrical ownership, with the composer being given exclusive rights to the final work, and the source communities being legally obscured. This is especially troublesome when the cultural components have spiritual or communal connotations other than aesthetic value.⁴¹

Attribution and commercialisation are other problems that complicate this dynamic. Under the existing system of copyright, the attribution is focused on the individual composer and the related creators, with minimal or no mention of the cultural sources from which the work is informed. Although film credits may mention linguistic or literary influences, the use of traditional musical forms and communities that perpetuate them is not formally required. This denial of attribution not only hides the sources of the cultural material, but also the principle of cultural justice.⁴²

The Dagar-Rahman litigation makes this issue concrete. In *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman*⁴³, the dispute concerned whether the song 'Veera Raja Veera' used the Dagar family composition 'Shiva Stuti' without

³⁹ Eastern Book Co. v. D.B. Modak, (2008) 1 S.C.C. 1 (India).

⁴⁰ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors.*, CS(COMM) 773/2023, order dated Apr. 25, 2025 (Delhi High Court).

⁴¹ (PDF) *Knowledge Sharing and Fostering Collaborative Business Culture*, https://www.researchgate.net/publication/390089397_Knowledge_Sharing_and_Fostering_Collaborative_Business_Culture#read (last visited Apr. 17, 2026).

⁴² (PDF) *A Reflection on the Aesthetics of Indian Music, With Special Reference to Hindustani Raga-Sangita*, RESEARCHGATE, https://www.researchgate.net/publication/310660946_A_Reflection_on_the_Aesthetics_of_Indian_Music_With_Special_Reference_to_Hindustani_Raga-Sangita (last visited Apr. 17, 2026).

⁴³ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors.*, CS(COMM) 773/2023, order dated Apr. 25, 2025 (Delhi High Court).

adequate permission or attribution. The Delhi High Court treated the matter as raising serious questions of originality, infringement and moral rights in a work rooted in Indian classical music. The Supreme Court order of February 20, 2026 further shows the practical importance of attribution, as Rahman agreed to acknowledge the Dagar brothers in the song credits. This case is directly relevant because it arises from *Ponniyin Selvan II* itself and demonstrates that culturally rooted film music can generate both copyright and moral-rights claims.⁴⁴

*Saregama India Ltd. v. Balaji Motion Pictures Ltd.*⁴⁵ is also relevant because the Delhi High Court dealt with unauthorised use of a copyrighted song in a film context. The case shows that Indian courts take licensing and copying of musical works seriously when an identifiable owner and work exist. Its limitation for TCEs is equally important: many traditional musical forms have no single rights-holder who can bring such a claim. This contrast supports the paper's argument that TCEs need attribution and benefit-sharing mechanisms beyond ordinary infringement actions.⁴⁶

These issues are aggravated by commercialisation. The *Ponniyin Selvan II* soundtrack is distributed on several platforms, which bring in revenues and make the film reach a global audience. However, the economic gains that come as a result of the application of TCEs do not trickle down to the communities that give birth to these expressions. This brings up normative issues regarding fair benefit-allocation and the moral obligations of creators who work in areas of cultural richness and legal under-protection.⁴⁷

In the consideration of the music in *Ponniyin Selvan II*, it can be seen that the question of the contradiction of transformative creativity and cultural borrowing cannot be easily established through the current legal system. The compositions by Rahman clearly show artistic creativity and technical excellence, but also reflect the inability of the copyright law to cover the collective aspects of cultural production. The case study, therefore, highlights the importance of having a more nuanced legal response, that is, one that does not simply acknowledge individual creativity, but also takes into consideration the cultural ecosystems out of which that very creativity develops.

⁴⁴ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman*, Civil Appeal arising out of SLP (C) No. 4742 of 2026, order dated Feb. 20, 2026 (Supreme Court of India).

⁴⁵ *Saregama India Ltd. v. Balaji Motion Pictures Ltd.*, CS(COMM) 492/2019, order dated Sept. 13, 2019 (Delhi High Court).

⁴⁶ *Saregama India Ltd. v. Balaji Motion Pictures Ltd.*, CS(COMM) 492/2019, order dated Sept. 13, 2019 (Delhi High Court).

⁴⁷ *Protecting Traditional Music: A Legal Analysis Of The Dagar Brothers' Copyright Case*, (May 29, 2025).

5. Comparative Analysis

To establish a solid insight into the legal aspects of TCEs in film music, one has to look into Indian judicial precedents as well as changing international trends. Although Indian courts have dealt with issues of originality, fair dealing, and transformative use in traditional copyright cases, the three concepts have not been formally applied to culturally embedded works. At the same time, the global legal discourse, especially the one related to artificial intelligence and cultural heritage, can provide valuable analogies that help to see the gaps in current frameworks. This section therefore places the issue within a broader legal framework by examining Indian case law and comparative developments from other jurisdictions.

5.1. The Modak Doctrine: Originality and Minimal Creativity

In this section, the Modak doctrine is not repeated as a general rule of originality; rather, it is applied specifically to TCE-based film music. *Eastern Book Company v. D.B. Modak*⁴⁸ is relevant because it protects a derivative work only where the author adds skill, judgment and a minimal degree of creativity. In the context of *Ponniyin Selvan II*, this means that Rahman may claim rights over arrangement, orchestration and recording, but the traditional raga structures and devotional idioms remain part of shared cultural heritage.

This is especially true when it comes to film music that uses TCEs because it reduces the bar of originality, allowing composers to patent copyright on works that require little creative input. Although this makes the protection of derivative works easier, it also brings up the issue of excessive appropriation of cultural content since even minor alterations of classic forms of expression can be enough to prove originality. The judgement thus, unwittingly supports an individualistic understanding of authorship that fails to properly consider the contributions of a culture as a whole.

In *Civic Chandran v. Ammini Amma*⁴⁹, the Kerala High Court discussed the extent of fair dealing in Indian law and acknowledged that parody was an acceptable type of use. The court stressed that transformative use of an existing work, especially with the intent of commenting on it or criticising it, could be included in the fair dealing. Despite the fact that the case did not concern TCEs, its justification brings into the limelight the factor of transformative purpose as a pertinent factor. Nevertheless, this doctrine does not apply to film music too much. In contrast to parody, the application of classical musical elements in the musical films is not aimed at criticising or commenting on the original form, but to increase aesthetic and cultural

⁴⁸ *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India).

⁴⁹ *Civic Chandran v. C. Ammini Amma*, 1996 S.C.C. OnLine Ker. 63 (India).

genuineness. These applications are therefore not within the traditional scope of fair dealing, and there is a loophole in the doctrine of dealing with culturally derivative works. This case is relevant because it demonstrates that the purpose of use matters: parody or criticism may justify borrowing, whereas the use of classical musical elements in a commercial film score requires a different inquiry into attribution, cultural context and benefit-sharing.⁵⁰

5.2. International Developments

The case of *Getty Images v. Stability AI*⁵¹ has attracted fresh interest at the international level, as the problem of data appropriation and unauthorised use of protected content has been highlighted. Even though the case emerges within the framework of artificial intelligence and utilises copyrighted images as training data to train generative models, its principles provide a valuable analogy to issues concerning TCE. The main question of the controversy is whether the utilisation of huge datasets, which are frequently used without permission or mention, is infringement or within the fair use. This reflects the issues around TCEs, whereby cultural content is frequently used in new compositions without reference to its source. The case points out the insufficiency of the current copyright laws in dealing with situations whereby value is generated based on already existing content not specifically secured or owned. The analogy to TCEs is important because AI systems may draw value from cultural recordings without reproducing a complete protected work, thereby leaving attribution and consent unresolved.⁵²

No less important is the continuing discussion in the WIPO Intergovernmental Committee (IGC)⁵³ on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. These debates are indicative of an emerging global agreement on the necessity of sui generis protection of TCEs due to their distinctive features and the shortcomings of traditional intellectual property regimes. Major suggestions that are under consideration are prior informed consent requirements, benefit-sharing terms, and obligatory attribution of the source communities. Though these talks have not yet resulted in a binding global tool, they are an important positive change in normative direction towards acknowledging the collective rights of cultural communities.⁵⁴

⁵⁰ *Id.*

⁵¹ *Getty Images (US), Inc. v. Stability AI Ltd.*, [2025] EWHC 2863 (Ch) (Eng.).

⁵² *Id.*

⁵³ World Intellectual Property Organization, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO/GRTKF/IC/47/5 (2023).

⁵⁴ *Id.*

Comparatively, these international developments highlight the structural limitation of the current copyright doctrines in the application to culturally embedded works. Although Indian case law offers a means to examine the concepts of originality and transformation, it is mostly silent on the question of cultural ownership and rights to the community. Conversely, international rhetoric, especially in WIPO, explicitly recognises these issues and tries to resolve them by developing specific legal systems.⁵⁵

Recent comparative cases from other jurisdictions strengthen this point. In *Pelham GmbH v. Hütter*⁵⁶, the Court of Justice of the European Union held that even a short sound sample could infringe if it remained recognisable to the ear. In *Andy Warhol Foundation v. Goldsmith*⁵⁷, the U.S. Supreme Court warned that a broad claim of transformation cannot automatically defeat copyright where the later use is commercial. These cases are relevant because they require attention to recognisability, purpose and market effect, which are also important when film music draws from culturally embedded traditions.⁵⁸

The comparative and judicial analysis demonstrates a huge asymmetry in the doctrines. Indian courts have worked out advanced principles of judging creativity and allowable usage, but these principles are based on the individualistic paradigm, which fails to sufficiently consider the collectivity of TCEs. International trends, though yet to develop, are also moving towards a more inclusive process that brings together the cultural, ethical, and economic factors. It is important to bridge this divide and come up with a coherent legal system that can meet the complexities pointed out by the music of *Ponniyin Selvan II*.

6. Critical Analysis

The above discussion indicates a systemic anomaly between Indian copyright law and safeguarding TCEs, especially film music such as A. R. Rahman's score for *Ponniyin Selvan II*. A concrete cultural marker is the temple-linked and devotional atmosphere of 'Veera Raja Veera,' which evokes Chola sacred kingship and Tamil bhakti traditions. The Copyright Act, 1957⁵⁹, is founded, in its most basic form, on the paradigm of individual authorship, originality and proprietary control, which is simply ill-equipped to respond to the cultural expressions of a collective, intergenerational and communally maintained nature.⁶⁰

⁵⁵ World Intellectual Property Organization, The Protection of Traditional Cultural Expressions: Draft Articles, WIPO/GRTKF/IC/47/5 (2023).

⁵⁶ *Pelham GmbH v. Hütter*, Case C-476/17, ECLI:EU:C:2019:624 (C.J.E.U.).

⁵⁷ *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023).

⁵⁸ *Id.*

⁵⁹ Copyright Act, No. 14 of 1957, *supra* note 14.

⁶⁰ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors.*, CS(COMM) 773/2023, order dated Apr. 25, 2025 (Delhi High Court).

Lack of acknowledgement of community authorship is one of the greatest restraints. TCEs like Carnatic ragas, devotional chants and traditions of temple music are not the creation of one specific individual but the result of centuries of culture making. But there is no mechanism to recognise such collective ownership in the legal framework. As such, once these elements have been included in film music, the law only recognises the composer as the author, thus annihilating the efforts of the communities that gave birth to them. This leads to a kind of legal invisibility, in which communities that perpetuate and pass cultural expressions are left out of recognition and economic gain.

Intimately connected with this is the excessive dependence on the doctrine of personal originality, as expressed in *Eastern Book Company v. D.B. Modak*⁶¹. Although the modicum of creativity criterion is meant to promote innovation, when applied in culturally derivative environments, it permits cultural appropriation, whereby the traditional content is appropriated and transformed in minimally altered ways. The creative orchestration and fusion techniques, such as in the case of the compositions of Rahman, can meet the legal requirement of originality, but again, they are constructed based on other musical structures that are not subject to protection by law. This causes an imbalance whereby the incremental creativity of individuals is given precedence over basic cultural knowledge, resulting in unequal rights distribution.⁶²

These limitations in doctrines produce two risks that are interrelated. First, there is the increasing trend towards cultural commodification, whereby sacred or culturally important manifestations are repackaged into commercial goods. In *Ponniyin Selvan II*, the cultural aspect of devotion and temple music turned into a soundtrack film, increasing aesthetic validity and at the same time commodifying culturally embedded practices. This process can erode the original cultural meaning and decontextualise the expressions.

Second, economies of scale in the form of benefit-sharing are lacking and contribute to economic inequities. The commercialisation of film soundtracks brings enormous revenues in terms of streaming services, performances, and licensing deals. No part of these benefits, however, goes to the communities, whose cultural expressions are the foundation of these works. This brings in normative issues of fairness and distributive justice, especially in a nation such as India, where most of the traditional art forms are held by the marginalised communities. This is an unrecognised system of asymmetrical exploitation because of the absence of legalisation of their contributions.

⁶¹ *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India).

⁶² *Id.*

7. Conclusion

In this analysis, it has been revealed that even the existing Indian copyright laws are not sufficient to address the challenges of integrating Traditional Cultural Expressions into film productions, such as in the case of the music of *Ponniyin Selvan II*. Though the law is quite effective in safeguarding individual creativity and in enabling commercial exploitation, it does not acknowledge the collectivist aspect of cultural production, which creates gaps in doctrine and normative inconsistencies.

The main issue is how to reconcile creative freedom with cultural justice. On the one hand, filmmakers and composers should be given the liberty to use cultural traditions as sources of inspiration that would facilitate the further development and spread of the artistic forms. Conversely, this freedom should be accomplished in a context that does not oppress the rights and interests of the communities that uphold these traditions. To balance this, there must be a transformation in how an individualistic concept of authorship is understood to one that is more inclusive, which considers collective cultural ownership and responsibility. In the future, these problems will probably be even more salient when it comes to AI-generated cultural content. The threats of unauthorised appropriation and commodification on a large scale will increase as the use of artificial intelligence systems is increasingly based on large datasets to which traditional music and folklore, as well as other means of cultural expression, belong. The issues expressed in cases like *Getty Images vs Stability AI*⁶³ explain why current legal systems are unable to enforce the use of already existing content in technologically developed situations. These issues assume a new dimension when put on TCEs, since the content of the same is not only informational, but highly cultural, contributing to identity creation.

To sum up, the safeguarding of TCEs in copyright laws is not only a legal matter that is technologically challenging, but a matter of cultural fairness, moral duty and legal imagination. The example of *Ponniyin Selvan II* highlights the necessity of immediate changes that will help in closing the gap between law and cultural realities. With the combination of artistic creativity and policy change, India has a chance to lead by example that will not only help in maintaining its rich culture but also contribute to a fairer and more inclusive creative economy.

⁶³ Getty Images (US), Inc., *supra* note 57.