



# Beyond Copyright: Rethinking the Protection of Bhil Art and Indigenous Cultural Expressions in India


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## Abstract

Bhil Art is a cultural and traditional expression of Bhil community. It is one of the largest tribal groups, mainly from Madhya Pradesh, Rajasthan, Gujarat, and Maharashtra. The art is an expression of their culture through depicting Scenes from their daily life, myths, rituals and beliefs by using vibrant colours and dots.

This art form is a living indigenous knowledge and traditional cultural expression (TCEs). However, the existing intellectual property framework is ill-equipped, primarily the Copyright Act in safeguarding such community-based rights and inter- generational creative tradition. The individual claim for protection of the paintings by the artists based upon the motifs, cultural symbol and stories shared by the whole community fall outside of the purview of legal ownership. This led to misappropriation, commercialization and violation of the rights of the Bhil community without acknowledging or providing equitable share of profit to them. For instance, when fashion brands or commercial painters copy tribal designs without consent, the community loses recognition and livelihood. Moreover, in India there is no sui generis legislation for the protection of rights of Traditional Knowledge (TK) and TCEs.

From “*beyond copyright*,” the paper argues that the copyright law is not in itself enough to protect indigenous art forms like Bhil art. Instead, it requires for a broader, inclusive framework that respects customs and encourages documentation of traditional practices of the community. This paper analyses the conceptual and structural limitations of the Copyright Act in order to deal with collective authorship. It also focuses on how the legal recognition of community custodianship and also incorporation of the principles such as Free, Prior and Informed Consent (FPIC) for bridging the gaps between traditional knowledge system and the existing IP protection.

**Keywords:** Bhil Art, Copyright, India, IP, TCEs and TK.



## Introduction

India is the most populous country in the world, home to thousands of cultural traditions, indigenous communities, and artistic practices that have been preserved for centuries through oral transmission, rituals, and shared heritage. Among these the Bhil community is one of India's largest indigenous groups, known for their vibrant art, deep forest-based traditions, and rich folklore heritage spread across Madhya Pradesh, Rajasthan, Gujarat and Maharashtra. Bhil Art is one of the examples of a living cultural expression rooted deeply in the identity of this community. This unique style of painting is not only form of aesthetic expression but it shows views on cosmology, relationship with nature, world view and other realities.

In era of commercialization, rise of aesthetic fashion and in mass market production Bhil Art have been placed in vulnerable position. Fashion brands, home décor companies, tourism brands, and even contemporary artists use Bhil motifs without seeking permission or offering recognition or economic benefits to the community. This cultural misappropriation always happens when there is unauthorized use of cultural knowledge belonging to marginalized community.

In such situation, copyright law is expected to act as protective mechanism. But when it comes to safeguard traditional art forms such as Bhil paintings or Bhil Art, this law becomes insufficient. Copyright law is designed for individual creator or author with originality and fixed expression and not for those art forms which belongs to whole community, which has been passed from generation to generation as cultural heritage collectively.

This paper shows the face of current legal system which has failed to protect indigenous art like Bhil Art and explores emerging discussion around indigenous rights, Traditional Cultural Expression (TCEs), and cultural protection frameworks. This paper identifies structural limitations of copyright laws and examines real life case study of cultural misappropriation. It also shows the urgent need of such laws which must be more inclusive more sensitive towards culture and it must safeguard indigenous cultural expressions in India.

## Understanding Bhil Art as Indigenous Knowledge

It has been said that Bhil traces their ancestry to Eklavya, the archer from Mahabharata while some scholars even believe that Valmiki, who authored Ramayana, was a Bhil<sup>2</sup>. The term 'Bhil' has been explained in different ways by scholars. Some believe it comes from a Dravidian word meaning "bow," while others say it may have come from the Tamil word "bhilawar," which means "bowman" or archer. Since many tribal communities used bows for hunting and protection, the word 'Bhil' gradually started being used in a broader sense. Because of this, the unique identity, customs, and differences among various tribal groups were sometimes ignored or not fully understood.<sup>3</sup>

Al-Biruni, in his book Kitab-ul-Hind, mentioned different tribal groups living in India. He described them as skilled hunter-gatherers who lived closely with nature and depended on forests for their survival. According to his observations, their life was simple and peaceful, and their art often showed hunting scenes, animals, forests, and daily life connected with nature. In a similar way, Ibn Battuta also referred to the Bhils in his travel writings. He described them as a strong and resilient community, although he did not give much detail about their artistic traditions or cultural practices.<sup>4</sup> Bhil Art is not modern invention or design trend. It is a centuries old tradition deeply tied to the social, cultural and spiritual life of the Bhil people.



When we discuss about modern art where authorship can be traced easily, but in Bhil art there is nothing as such. It belongs to entire community. Its motifs have been passed down from elder to younger generations over centuries. The Bhil Art reflects ecological relationships with forests and animals, animistic and ritual cosmologies, customary norms governing artistic practices. Through this we can say that Bhil Art qualify as Traditional Knowledge (TK) and TCEs under global standards such as the WIPO Intergovernmental Committee (IGC) Drafts Articles on the protection of TCEs<sup>5</sup>.

In copyright terms, this challenges originality; authorship; ownership. The art form of Indigenous culture is traditional; it has been passed down from one generation to other. No one can identify a single creator because the custodian is with the whole community and not with the individual. So, in conclusion, copyright law mainly recognizes individual ownership and claims, whereas the Bhil community believes that knowledge is collectively owned and shared by the community.

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<sup>2</sup> Amorette Lyngwa, (2017) Bhil Art- How a tribe uses dots to make their story come alive, Expressions.

<sup>3</sup> Twinkle Rastogi, (2024) Bhil Art- A critical literature review on traditions, expressions and cultural preservation, Eduphoria.

<sup>4</sup> Sagarika (2024) Bhil Art – Where Dots tell Stories, oaklores.com.

<sup>5</sup> WIPO, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), Draft Articles on the Protection of Traditional Cultural Expressions (2023).

### **Copyright Law and Its Limitations Case Studies of Misappropriation**

The case studies where the misappropriation of Bhil art is seen mentioned below:

#### 1. Fashion Industry:

This industry Copy Bhil motifs without providing credit to the Bhil community. Several mainstream clothing brands have produced garments featuring dot patterns, tree-of-life imagery, and tribal animal figures inspired by Bhil Art. These designs are often marketed as “ethnic” or “tribal,” but the brands rarely credit the Bhil community or share profits. It provides the following impact:

- Bhil artists remain economically disadvantaged.
- Cultural symbols lose their sacred or contextual meaning.
- The community loses recognition and cultural identity.

#### 2. Digitisation and Online Market Exploitation:

Platforms such as Amazon, Etsy, and Instagram host sellers who mass-produce tribal art replicas. These sellers often use:

- machine-printed “tribal-themed” canvases
- AI-generated Bhil-style art
- digital wallpapers mimicking Bhil motifs

3. Hotels and tourism departments in Rajasthan, Madhya Pradesh, and Gujarat frequently use Bhil murals to create an “authentic tribal ambiance.” These murals are often copied by commercial artists hired by hotels, rather than painted by actual Bhil artists.

It provides the following impact:



- Authentic Bhil artists are bypassed.
- Economic benefits flow to contractors, not to the community.
- Cultural expressions are commodified and detached from their cultural roots.

#### 4. Misuse in Commercial Products

Bhil designs appear on Handbags, Bedsheets, Cushion covers, Jewellery, Phone cases, Stationery, shirts<sup>6</sup> etc. represent misuse of the Bhil art which is an inherent lineage of the community.

In almost all such cases, the Bhil community receives no benefits. Companies justify this by saying the motifs are “public domain,” highlighting the lack of legal recognition for indigenous communities.

#### Structural Issues in Indian IP Law

After the examination of India’s IP system mainly Copyright law, it reveals certain gaps that directly affect the protection of the Bhil Art and other Indigenous Cultural Expressions. It is important to understand that what are the issues in the Indian IP Law? And why this misappropriation happening? This is happening because there are no prevalent laws in India to deal with the rights of the community with TK or TCEs like the Bhil communities facing same issues in order to protect their Bhil art which belongs to their indigenous heritage. This problem is due to the following fundamental issues:

- Absence of Recognition of Collective or Community Rights:

The system continues to operate individual model of authorship neglecting collective art made by Indigenous societies. Amongst the IP laws neither the Copyright Act nor any other IP law recognises the communities like Bhil as a collective right-holders for non-commercial TCEs<sup>7</sup>. Due to this the indigenous groups of Bhil have no right over IP claims.

- Lack of Sui Generis Legislation:

In India, there is vast population of indigenous population, still there is no any laws for the protection of TCEs, TK, folklore and community custodianship so far.

- Inadequate Documentation of TCEs:

There is lack of a national-level repository documentation of TCEs for visual, performative, or oral cultural traditions, other than TKDL, which only deals with medicinal knowledge so far<sup>8</sup>. Due to absence of systematic documentation, it is quite

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<sup>6</sup> The house of rule zero, <https://www.thehouseofrulezero.com/collections/bhil-hand-painted-shirt-collector-s-edition?srsltid=AfmBOorBAXYfBTKT-2m9hblaT5hemG7nh16THWWJOjnrVrJ2eK66MckR> (last visited on 19<sup>th</sup> Nov. 2025).

<sup>7</sup> The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India Code (1999).

<sup>8</sup> Council of Scientific and Industrial Research (CSIR), Traditional Knowledge Digital Library (TKDL), Government of India.

difficult to counter misappropriation or in order to prove tradition-based authorship copied by outsiders.



- No Connection between Customary and State Law:

Indigenous communities follow customary governance system in order ascertain who may paint certain symbol, when and in what context. However, due to lack of documentation and any laws determining the right of such indigenous community, this creates a legal vacuum as Indian courts not recognises customary norms which encourages outsiders to exploit motifs, indigenous knowledge becomes part of public domain and communities not able to enforce customary restriction due to lack of protection in India<sup>9</sup>.

### Need for Sui Generis Protection

The protection Bhil art become difficult within the existing copyright law of India as the foundation of the Copyright law is not aligned with the creation, preservation and valuation of the indigenous cultural expressions. The copyright law is an old law from the time of Independence which only identifies the creativity as an individual act, attached to personal authorship with limited boundaries. This framework might work well for the modern artists but it fails to recognise and protect the right of collective and inter-generational character of tribal artistic traditions. Bhil art is one of the examples of indigenous cultural expressions which does not originate from single artist, rather, it grown due to accumulation of wisdom, beliefs, and practiced ritual of the entire Bhil community. Each motif of the community whether dotted deer, mother goddess any many more derives it's meaning from stories and histories shared over years. When copyright put forward one basic requirement of 'first owner' in order to provide protection under the act itself, it excluded or created barrier for cultural expressions that require protection the most.

Another limitation lies on the requirement of 'originality' to get protected under copyright law. The courts generally look for novelty but traditional communities persevere their motif in inherited form as a matter of respect towards their culture, tradition and their ancestors. For the Bhil artists, each motif is not act of copying although for them it is a continuation of cultural lineage. Yet, the copyright recognises such continuation as a lack of originality. Although the painting made by the Bhil painters can get the protection under the copyright act on the murals

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<sup>9</sup> Riju Prasad Sarma v. State of Assam, (2015) 9 SCC 461 (on validity of customary law unless contrary to constitutional principles).



created by them but the underlying motif which is heritage of the community passed down by the generations cannot get protected. This shows a legal contradiction where the most important part of artwork remains unprotected, and provide no IP claim over such artwork.

Furthermore, there are Bhil expression which created on walls or floors which are temporary in nature, any individual out of the community get the protection over it even if they not belong to the Bhil community. This also creates one limitation of the Copyright Act. One of the major limitations under the act is that it provides protection for the life time plus sixty years which is not suitable for the protection of artworks of Bhil community which is not suitable for traditions that are centuries old and meant to be preserved indefinitely. Indigenous cultural heritage does not die; it belongs to future generations who inherit its custodianship. These structural limitation under Copyright law and the urgent need for Sui Generis Protection.

### **FPIC and Community Custodianship**

The protection of Bhil community is incomplete without giving the community power of decision making, therefore the Free, Prior and Informed consent (FPIC) of the community is an essential pillar for withholding rights to them, for access of full and accurate information, the requirement for consultation before cultural, artistic and commercial access from the community and for recognising the terms of negotiation for the same. Although FPIC has gained international importance but in India it is limited to environmental and land governance. The Supreme Court in the case of *Samatha v. State of Andhra Pradesh*<sup>10</sup> affirmed that the state action was affecting Adivasi's land and recognised the prior consent from the Adivasis before using their land for protecting tribal autonomy. The cultural expressions which is foundation of the tribal communities still lack similar safeguard. The FPIC would require the external users like researchers, designers, corporations etc. to consult from recognised institution dealing with Bhil art and not from the individual artist from the community. The International Labour Organisation (ILO) under the convention 169<sup>11</sup> emphasises the indigenous community to have right over cultural practices and for preventing distortion or misuse against it. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>12</sup> also emphasizes for right

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<sup>10</sup> *Samatha v. State of Andhra Pradesh*, (1997) 8 S.C.C. 191 (India).

<sup>11</sup> International Labour Organization (ILO), Convention No. 169 Concerning Indigenous and Tribal Peoples, June 27, 1989, 28 I.L.M. 1382.

<sup>12</sup> G.A. Res. 61/295, U.N. Doc. A/RES/61/295, United Nations Declaration on the Rights of Indigenous Peoples, art. 31 (Sept. 13, 2007).



to maintain, control, protect, and develop the cultural heritage, traditional knowledge, and traditional cultural expressions of indigenous people.

The FPIC is connected with the model of community custodianship in which the rights are collectively held but the artistic practice remains distributed amongst individual creators. This helps to preserve the cultural coherence, respect for sacred symbol and prevent from fragmentation of the heritage along with its commercialization. It also helps in internal management like resolving of disputes and continuation of the culture of community. Both FPIC and community custodianship play an important role in preserving the living cultural inheritance.

### **Policy Recommendations**

For safeguarding Bhil art, the present Copyright law is not sufficient, therefore, the following recommendation are as follows for providing roadmap for comprehensive protection:

- It is a requirement of enactment of national law for TCEs protection providing legal status for indigenous communities as collective entities, perpetual or long-term protection, penalties for commercial misappropriation and a national registry of TCEs, similar to TKDL. The FPIC is also a mandatory requirement for protection of the Bhil art.
- Integration of customary law in IP governance is required for recognising of customary norms in order to use, reproduce and description of traditional motifs, specially which are temporary in existence.
- There is need to establishment of indigenous Rights Committees in order to deal with licences, negotiate commercial agreements, manage benefit-sharing and for settlement of intra-community disputes.
- Community based documentation is also necessary for protecting motif dictionaries and oral history recordings.
- In order of maintain ethical commercial collaboration, the government along with NGOs should assist communities by creating fair-trade platforms, training in digital marketing, enabling collaborations with museums and galleries along with providing IP literacy programs.

### **Conclusion**

Bhil art is more than a collection of motifs or commercial commodity; it is one of the most vibrant examples of the cultural heritage of India. Each motif represents and carries the story, culture, belief, wild life and history of their community. In spite of richness of their culture, Indian law is unable to protect these expressions in the manner which they deserve as copyright law mainly provide emphasis on individual authorship, originality, and limited duration. It has been repeatedly noted by the scholar that IP laws are based on western ideas of ownership, innovation and commodification which is incompatible with TCEs<sup>13</sup>. Protecting Bhil art, therefore require moving beyond copyright, a sui generis law for the protection of TCEs is required for acknowledging primary custodian of the community, incorporating customary laws, mandating FPIC, necessary documentation and for ensuring perpetual or long-term protection to empowering the community's heritage.

<sup>13</sup> Lawrence Lessig, *Free Culture: The Nature and Future of Creativity* (2004); Madhavi Sunder, *IP Laws and the Politics of Global Culture*, 59 *Stan. L. Rev.* 101 (2006).