

Case Study

Policy Frameworks for the Protection of Cross Border Traditional Song-Baul: A Case Study

Manas Kumar Ganguli^{1*}, Laina Rafianti² and Sabuj Kumar Chaudhuri¹

¹*Department of Library and Information Science, University of Calcutta, Kolkata 700073, India*

²*Department of ICT and Intellectual Property, Faculty of Law, Universitas Padjadjaran, Jatinangor 45363, Indonesia*

ABSTRACT

Cross-border policy on Traditional Cultural Expressions (TCEs) particularly traditional songs is a complex issue to implement. The spirit to cooperate between states of cultural similarity is raised by United Nations Educational, Scientific and Cultural Organization (UNESCO) but in fact, the utilization of such song denies the economic rights of its custodian. Until now, less attention has been paid to questions concerning normative issues of protection of Baul song. This paper addresses two important questions on the normative level: a) How to protect Baul song as Traditional Cultural Expressions (TCEs) using existing suitable Intellectual Property Rights (IPR) tool? b) How to draw any alternate protection mechanisms in cross-border Baul song? From a methodological standpoint, this paper used both a legal approach and snowball sampling strategy in data collection. To conclude, firstly, it is potential to protect Baul song as Traditional Cultural Expressions (TCEs) using existing suitable Intellectual Property Rights (IPR) tool, particularly using Copyrights as long as *sui generis* system has not been established. Secondly, as an alternative protection

mechanism in cross-border Baul song, in the establishment of legal instruments must include political, historical, and economic issues. Those are some recommendations on how to deal with these normative aspects in well laid policy making processes: it is proposed that there is a need to give a boost to cross-border collaboration program such as inscription and documentation; creating more specific incentives for cross-border

ARTICLE INFO

Article history:

Received: 02 March 2019

Accepted: 23 July 2019

Published: 18 December 2019

E-mail addresses:

manasganguli81@gmail.com (Manas Kumar Ganguli)

laina@unpad.ac.id (Laina Rafianti)

sabujkchaudhuri@caluniv.ac.in (Sabuj Kumar Chaudhuri)

* Corresponding author

cooperation; strengthening a protection policy framework for copyright and related right landscape.

Keywords: Baul song, cross-border, cultural preservation, intellectual property rights (IPR), traditional cultural expressions (TCEs)

INTRODUCTION

India is certainly one of the most significant countries in the world in respect of the so-called Traditional Cultural Expressions (TCEs) India is a citadel of rich and diverse cultures and religions. It is a country of great contrasts where big cities, atomic power plants, sky scrapers, super computers, and hi-tech cities serve as a window to the tremendous potential for modern technology and co-exist peacefully with small village settlements and tribal communities (Kutty, 2002). Tribal culture is one of India's proudest symbols of heritage. The tribal communities in India are the primary source of folk culture and folk tradition. Rich folk such as literature and handicrafts, handlooms, and folk painting, contributed by these communities are significant components of the folklore of India. In the majority of cases, the works performed have very ancient origins, and their authors are either unknown or of questioning identity or have been living at a time when copyright protection did not exist. Principally, most of the traditional songs are orally transmitted which is why they disappear due to lack of protection and preservation policies. Hence, this tradition by developed countries has been classified as part of the so-called "public domain",

where these songs are freely utilized by everyone (Banerjee, 2018). On the contrary, developing countries categorized Traditional Cultural Expressions (TCEs) apart from the public domain. This different point of view builds a different policy framework at national and international level.

There is no provision to protect expressions of folklore in the intellectual property laws or in any other legislation in India. As such, exploitation of Baul folklore expressions without taking the permission of the communities and compensating the communities concerned is not illegal. The general outlook of those business interests which extensively borrow from the collection of the Baul folklore of the communities or settlements is that of exploitation of material available in public domain.

The protection of traditional songs is indeed essential for tradition which lies in two or more countries. As an example, Baul song lives in West Bengal-India and Bangladesh. The community of West Bengali and Bangladeshi often perform, represent, and co-modify this traditional Baul song. A new creation of Baul song is developing a cultural genre from both countries but on the other side, misappropriation, misuse, and commercial exploitation is the most talked issues.

LITERATURE REVIEW

There are two categories of studies on this topic: 1) The type of legal provisions concerning cultural rights; 2) alternate protection mechanism in cross-border

traditional music with special reference to Baul song. This study has focused on policy frameworks for the protection of Baul songs through different case studies.

Baul song was inscribed in United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2008 in the Representative List of Humanity of Bangladesh. It was a preliminary step to preserve Baul song by the inscription of UNESCO (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2008). Since Baul song was inscribed in the name of Bangladesh, India, notably West Bengali community was reluctant to accept this even though India was mentioned in the inscription with the declaration that “Bauls are mystic musicians living in rural Bangladesh and West Bengal, India” (S. Das, 2019). In traditional culture subject matters, moral rights, identity, and proprietary are important because the impact is the utilization and economic right of traditional music.

Otherwise, before 2008, Baul song is a living culture in Bangladesh. There were issues of infringing copyright, but the Copyright Act of Bangladesh was not suitable to traditional song. An example had come from a famous mystic poet-performer of Bangladesh, Baul Jalaluddin Tuntun Shah. His unrecorded songs are popular in Kushtia and other places of Bangladesh. He did not agree when Some Dhaka-based cassette producer proposed him to bring out cassettes of his songs. That producer has recorded his songs as the Baul songs by a truck driver without mentioning Tuntun

Shah as the real performer. Unfortunately, Tuntun Shah could do nothing against this Intellectual Property Rights (IPR) violation, though existing Copyright Act 2000 protects such violation (World Intellectual Property Organization [WIPO], 2006).

There is a lack of regulation on how to manage Traditional Cultural Expressions (TCEs) in the perspectives of intellectual property protection in India. The developments in United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Intellectual Property Organization (WIPO) that followed in the subsequent years resulted in the setting up of a Working Group, in 1980 to study a draft of Model Provisions intended for national legislations as well as international measures for the protection of works of folklore. The working groups deliberated on the relevant basic documents prepared by WIPO and UNESCO and came to some broad understanding on the following points: (i) It is desirable to offer adequate legal protection to folklore; (ii) Model provisions should be framed for promoting such legal protection at national levels; (iii) Such model provisions should be so elaborated as to be applicable for adoption in countries having no existing legislation for protection, as well as those where there is scope for development of existing laws; (iv) Such model provisions should allow for protection under copyright and neighboring rights wherever possible; (v) Model provisions for national laws, should lead to sub-regional, regional and, ultimately, international protection

of creations of folklore. Following the recommendations of the Working Group more elaborate discussions were arranged by United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Intellectual Property Organization (WIPO) through Expert Committees enabling threadbare discussion on a clause by clause basis of the Model Provisions. Although United Nations Educational, Scientific and Cultural Organization (UNESCO) has achieved a success with the inscription, the protection of its custodian from utilization such as creating a new derivative work then commercialize it by the third parties have still become legal issues. Moreover, the draft of IP and Traditional Cultural Expressions (TCEs) protection in the World Intellectual Property Organization has not been established as an international instrument as well.

At present, cross-border cultural collaboration represents an open casement for a new path to share development by building new relations based on common interest and requirements. It can be noted that all levels of Government have benefited through the protection policy of the Traditional Cultural Expressions (TCEs). National regulations that ensure of proper handling of Traditional Cultural Expressions (TCEs) would likely be the most effective move toward the addressing these issues. Nevertheless, such types of systems have not yet been implemented (Palar, 2010).

Based on the previous background, this current study has followed a set of objectives: to identify the rationale and challenge regarding Protection issues; to

protect cross-border traditional Baul song; to generate a policy framework in respect of protection of TCEs in the cross-border region; and finally to propose some alternate protection mechanisms in cross-border traditional music.

METHODS

Study Area

The study area (Figure 1) was a Baul cultural community encompassing the selected District and surrounds the rural town of West Bengal and Bangladesh where traditional Baul community exists.

Sampling Strategy

The study used non-probability sampling techniques, which are common in qualitative and cultural research, to study in greater depth a smaller number of cases that are particularly relevant to our study questions. We used a multistage, non-probability sampling design to choose interviewees. Ethnographic techniques were used to gain entrance into our community of study, and informal conversations about our research were initiated with rural stakeholders during visits to local gathering places, e.g., local festival like Melas, Baul workshop, Ashram and Akhras.

The map (Figure 1) shows distribution area of Baul traditional culture in West Bengal and Bangladesh. Those areas are traditionally the principal centers of Baul Culture. We used purposive sampling to choose the initial participants for in-depth interviews (Spradley, 1979).



Figure 1. Our study site is a rural Baul Community situated in the selected district of West Bengal and Bangladesh

Snowball sampling strategies were used where participants recommended other Baul folk custodians for participation (Pickard, 2007). This method is the best fitted for our research studies because it completed within a short duration of time and able to locate the appropriate study sample which is otherwise hidden.

There are two different types of data collection methodology used in this research, namely, Observation method and Interview method. The basic objects are that the requirement of the community and expectation as well as their standpoint regarding protection and preservation of Baul song as Traditional Cultural Expressions (TCEs).

QUALITATIVE DATA ANALYSIS AND RESULT

Interviews were recorded through Panasonic HC V160handycam tool and transcribed. Interviews lasted an average of 45 minutes and generally took place in participants'

homes or ashram. The 23 active Baul practitioners that were interviewed averaged 50 years old, ranging in age from 23 to 64. Maximum cases of household income were from farming activities. A hundred and twenty (120) interviewees were raised in rural areas and only 10 were from urban areas.

Figure 2 taken from questionnaire issues of Baul song on recognition, preservation, protection and commercialization spreads over 70 Baul Artists. Sixty-five (65) respondents strongly agreed that misrepresentation of Baul song and remixes the traditional songs and modern one occurred. Mostly, they strongly agreed that the lack of preservation policy, lack of awareness was high. Furthermore, the community found that sustainable development and the establishment of Baul resource centre was strongly needed.

It undertook extensive semi structured interviews of the Baul folk custodians, legal practitioners, and some resource

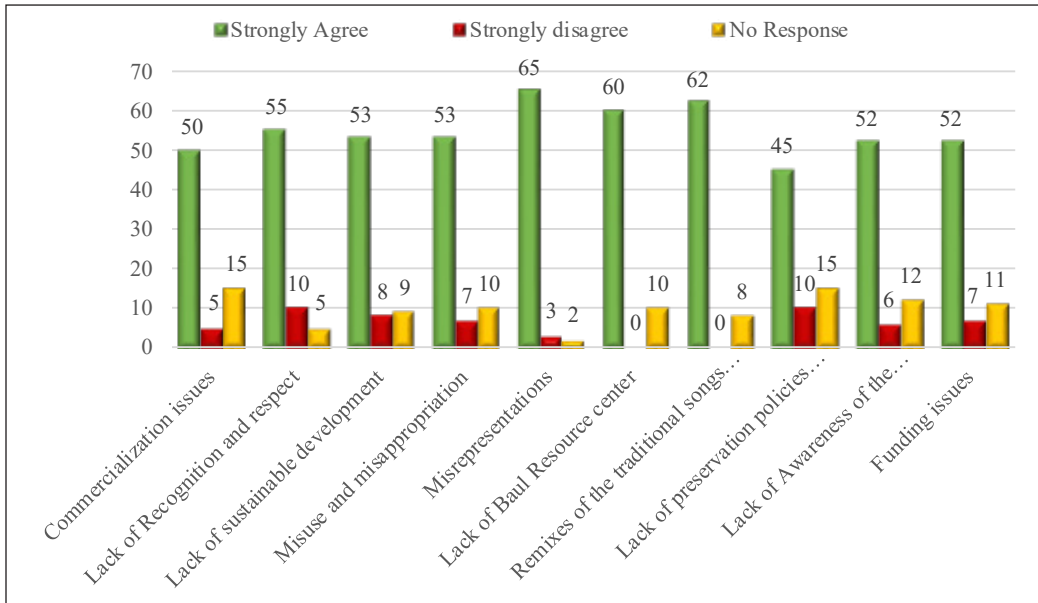


Figure 2. Expert opinion and references as led down by the prominent Baul practitioners (from 70 respondents)

persons. nationally and internationally. This paper used normative legal approach (Smits, 2009). The present study is based on information collected from primary and secondary sources, case studies, web-based survey, and fieldwork. The way to know the social function in the society is using information approach. Scope of the subject matter in this paper is limited to the Traditional Cultural Expressions (TCEs) mainly Baul song.

The study initially focused on primary data collection directly from the Baul community. The work was carried out with an interdisciplinary approach which resulted into an audio-visual documentation in addition with final report itself. The work of the paper had been carried out in the following three stages:

First Stage. Authors have studied the relevant literatures, regulations, Acts, and laws for Traditional Cultural Expressions (TCEs) and its protection mechanisms extensively.

Second Stage. The Authors have conducted field survey and personal interview with Baul custodian from the selected population for collecting qualitative data. We have studied 6 districts of West Bengal and 3 districts of Bangladesh which is known as principal centre of Baul culture (Our study locations along with samples incorporated in Table 1). Only those Baul custodians with a lot of experience (more than twenty years) were interviewed. We had selected a total of 70 Baul artists for interview.

Table 1
An overview of selected locations and samples

SL No	Name of the Districts	No of Respondents
1	Bankura	8
2	Burdwan	6
3	Birbhum	9
4	Medinipur	7
5	Nadia	9
6	Mursidabad	8
7	Chittagong	8
8	Sylhet	9
9	Mymensingh	6

Third Stage. Identification of the lacuna and exploration of possible scopes in the existing legal framework regarding the Traditional Cultural Expressions (TCEs).

After careful observation we propose alternate protection mechanisms of traditional Baul songs and find out the ways to protect the Baul root followers and their cultural practices. Recommendations were drawn for an improvement of the current situation and for a more appropriate protection of Baul song.

Themes for consultation were:

1. Need and expectations from the bearers' point of view related with protection of Baul song. Their protection is related to the promotion of creativity, enhanced cultural diversity and the preservation of cultural heritage.
2. Recommendations for an improvement of the current situation and for a more appropriate protection of Baul song.

Based on the consultation and recommendation from different angle, there is a need to create a policy framework for cross-border Baul traditional songs.

TRADITIONAL CULTURAL EXPRESSIONS AND BAUL SONG

Traditional Cultural Expressions (TCEs) are integral to the cultural and social identities of indigenous and local communities as they embody know-how and skills, and they transmit core values and beliefs. Copyright Law in most countries could protect TCEs derivative works though it has almost none saying on protection of TCEs itself. According to the forms of expression, the General Coordination gives examples of what "TCEs include"—, they can be subdivided into four groups (Busch, 2015):

- (I) "Verbal expressions" (expressions by words), "like folk tales, folk poetry, riddles etc";
- (II) "Musical expressions" (expressions by musical sounds), "like folk songs and/or traditional songs and traditional instrumental music";
- (III) "Expressions by action of the human body" (expressions by action) "like folkloric and/or traditional dances, plays and traditional rituals";
- (IV) "Expressions incorporated in material objects or tangible expressions like paintings, drawings, designs, sculptures, ceramics, terracotta, woodwork,

jewelry, basket weaving, needlework, carpets, costumes, textiles, musical instruments and architectural forms.”

Baul folk song can be categorized as musical expressions which are energetic, passionate and colorful. This kind of traditional music is reflecting the hardships of daily life. The author of Baul song is the unknown and unfixed form but Copyright law requires definite author and fixed form of the works.

CASE STUDY

This paper elaborates the case on the utilization of Baul song which exists in cross-borders area. Both India and Bangladesh are having the same rights based on their cultural rights, to use, maintain, and utilize Baul song since it was inscribed as UNESCO’s Intangible Cultural Heritage. On the other hand, in the Intellectual Property Rights (IPR), the utilization of Traditional Cultural Expressions is different from Intangible Cultural Heritage perspective. Traditional Cultural Expressions concerns the unique character as a state identity and the utilization will give impact on economic development of the community. Although Baul songs from India and Bangladesh come from one root, the utilization must be strict and the economic benefit must be gained by the person who put an effort to maintain and develop it.

India is a first-rate repository of diverse Traditional Cultural Expressions (TCEs) including artifacts, and performing arts.

Preservation of cultural heritage is ensuring intergenerational sustainability, where future generations remain capable of pursuing the source of revenue based on cultural capital (Ministry of Home Affairs, 2001). The renewed interest among the modern urban culture to appreciate and to enjoy the folk creations is a recent phenomenon. This factor is reflected not only in urban art centers and homes, but also in music, film and architectural industries. Costumes, jewelry and household appliances are designed after the ethnic models in order to address the unprecedented demand for such creations by the sophisticated urban societies. Many of the music companies specialize in folk music albums or portfolios. Film industries are also keen to incorporate folk dances, martial arts, and folk rites and rituals to enhance realism and add ethnic flavor to their products taking into account the popularity these elements have acquired of late. Irrespective of all these developments, it is unfortunate to note that there is as yet no legislation in India providing specific protection for folklore (Dwivedi & Saroha, 2005).

People of West Bengal and neighboring Bangladesh share their common cultural heritage and build policy frameworks to protect their art forms as well as disseminate to the user community. West Bengal and Bangladesh together form the historical and geographical region of Bengal, with common linguistic and ethnic backgrounds.

Joint initiatives can also be seen as an opportunity to re-establish socio-economic relations between West Bengal

and Bangladesh born traditional Baul custodian. The finest example is that in recent time, India and Bangladesh are creating a landmark in a cultural synergy between two countries- related films which belong to traditional Baul custodian and also a co-production.

Baul is originated from Bengali region and culture made up from Bengal soil which needs to be written down on digital preservation strategies and practiced more rather than securing their place in the museum of history. The name 'Akhra-Charja' might not be familiar but its works might be an inspiration for others who love Baul songs.

Originally, the district of Birbhum in West Bengal was the place of all Baul activities. Later, the Baul domain extended to Tripura in the north, Bangladesh in the east, and parts of Bihar and Orissa in the west and south correspondingly. In Bangladesh, the districts of Chittagong, Sylhet, Mymensingh, and Tangyl are well-known for Bauls. Bauls from the distant places come to participate in the Kenduli Mela and the Pous Mela, the two most important fairs held in West Bengal for Baul music. They are not only an intrinsic part of Bengal's music, but they are also in the mud and air of this land and the mind and blood of its people. The spirit of the Bauls is the spirit of Bengal and is flowing in its society and culture, literature and art, religion, and spirituality (T. Das, 2017).

Even though there are many exceptional Baul poets, Lalan Fakir was very popular in West Bengal and Bangladesh, and he has had

a high impact on Bengali literature as well as on that particular Baul tradition. Lalan declared that the songs that he composed were numerous and were believed to be the oldest dated songs. Besides, these songs form the basis of Baul ideology and the basis for scholarly discussion (UNESCO, 2008).

Eastern Zonal Cultural Centre (EZCC) of the Government of India Ministry of Culture between 2004 and 2008 greatly helped rejuvenating the songs with 272 artists of Nadia playing the lead role. Basic skill-building, advanced training, market promotion, exchange, and collaboration were undertaken to strengthen the artists' performance. By 2010, Baul music was resurrected with a discernible rise in the artists' income. During 2010 and 2011, more initiatives were undertaken with the support of the European Union (EU) to take Baul music to national and international platforms. These efforts paid off, and the music form gained enormous popularity across India and Bangladesh ("History of Baul," 2019).

Distribution area of Baul song community exists in West Bengal India and Bangladesh. In India, Baul song spreads in Bankura, Bardhaman, Birbhum, Medinipur, Nadia, and Murshidabad. Those areas are traditionally the principal centers of Baul Culture (Daricha Foundation, 2018). In Bangladesh, Baul Culture originated from Chittagong, Sylhet, and Mymensingh. Cross-border Baul culture lies in the district of Nadia, eastern India and Kusthia in Bangladesh. (Bengal-Bangladesh the border is demarcated through the Nadia district).

In Bengali literature and culture, the songs of the Baul have occupied a distinctive position. The majority of Hindu Bauls is located in the state of West Bengal in northeastern India and the majority of Muslim Bauls in Bangladesh. The songs are composed in simple colloquial Bengali and passed down orally from guru to disciple and from singer to singer.

Before the partition, Bangladesh was a part of India. The country of Bangladesh and the present Indian state of West Bengal were jointly known as Bengal. Baul music has greatly influenced the culture of the region, and it is reflected in the poetry and music composed by Nobel Laureate Rabindranath Tagore (Daricha Foundation, 2018).

Baul song is an extensively known and valued folk music of Bengal. It is, in

essence, a Bengali religious sect whose members call them Baul and their songs are called Baul songs. In Baul song, however, though songs of similar nature occur, they are thought of as allegories on the state of separation between the souls of men and holy ground. The Bauls have made no effort to record their practices, lives or beliefs, for they are reluctant to leave a trace behind (Rahaman, 2015).

RESULT AND DISCUSSION

Authors have identified the issues after the fieldwork study done. Based on observation from 70 respondents categorized all the issues in 10 major groups and majority respondents strongly agree with us (for details in Table 2).

Table 2
Issues of the Traditional Baul folk custodian and respondents

Situations	Strongly agree	Strongly disagree	No response	% of Strongly agree	% of Strongly disagree	% of No response
Commercialization issues	50	5	15	71.43	7.14	21.43
Lack of Recognition and respect	55	10	5	78.57	14.29	7.14
Lack of sustainable development	53	8	9	75.71	11.43	12.86
Misuse and misappropriation	53	7	10	75.71	10.00	14.29
Misrepresentations	65	3	2	92.86	4.29	2.86
Lack of Baul Resource center	60	0	10	85.71	0.00	14.29
Remixes of the traditional songs and lyrics	62	0	8	88.57	0.00	11.43
Lack of preservation policies and regulations	45	10	15	64.29	14.29	21.43
Lack of Awareness of the common people	52	6	12	74.29	8.57	17.14
Funding issues	52	7	11	74.29	10.00	15.71

The useful implementation of the copyright system and the introduction of a “Right of the Creators’ Collectivity” should be the focal point of the National Cultural Policy. However, the Ministry of Commerce is the central point to carry out the task efficiently; this also concerns the Ministries of Human Resources, Information & Broadcasting or even of initiatives and need to more effort and proper setting up.

Nowadays, protection of the original melodies and words of the folk songs has become essential in a new era. In the name of fusion, the urban singers are blamed of misleading the folk genres. The Ministry of Culture has scheduled to apply new plan schemes in the 11th five-year plan, incorporated safeguards for intangible cultural heritage, developed consciousness of works in the area of intellectual property rights and created national Intellectual Property Rights (IPR) group for artists and artisans. This effort is completed with such promotion actions, and dissemination of awareness about Indian cultural heritage.

The Ministry of Culture has prepared an arrangement titled “Scheme for Safeguarding the Intangible Heritage and Diverse Cultural Traditions of India.” The goal of this scheme is to strengthen and revitalize various stakeholders of the diversity of culture. Starting from individuals, groups, institutions, individuals, identified non-Ministry of culture institutions, non-governmental organizations, Authors and scholars may engage in activities for strengthening, protecting, preserving and promoting the intangible cultural heritage of India.

The Government is also considering to setting up a training center where the different art forms would be taught. The state backward classes’ welfare department is looking for land to build the Centre. Also, few NGOs (NGOs is an abbreviation for non-governmental organizations) and institutions, organizations take initiatives to preserve Traditional Baul songs.

The intellectual property law is an international agreement and applies nationally and may create ways to address some cross-border issues. In fact, in India, challenges on building a legal environment for creativity have always happened. In the environment of neighboring countries, the national treatment requirement shall provide in international treaties. In the existing Intellectual Property Rights (IPR) treaties, related rights are weaker than that granted for copyright in literary and artistic works. An advance investigation is needed regarding the use of national treatment on the indirect protection of traditional culture.

United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention 2003 and 2005 is the starting point in protecting traditional music in India. The inscription is useful as defensive protection. By establishing a national database for TCEs, such defensive protection is significant for substantive examination and re-declaration of rights (Palar et al., 2018). This kind of protection can prevent users outside the community from obtaining intellectual property rights over Traditional Cultural Expressions (TCEs) and using intellectual property principles and

values, and it can prevent unauthorized or inappropriate uses of TCEs by third parties (misuse and misappropriation). Ideally, to strengthen and to encourage communities to develop their TCEs, positive protection is also needed in granting their rights. It can control their uses by third parties and protect from their commercial exploitation.

Since in every developing country including India, the protection and preservation of traditional knowledge have been a matter of concern, in 1999, India began the activities of the creation of Traditional Knowledge Digital Library (TKDL). This project was initiated in 2001. A collaborative project between Council of Scientific and Industrial Research (CSIR), The Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy, abbreviated as AYUSH, Ministry of Health and Family Welfare, is being implemented at CSIR. The creation of Traditional Knowledge Digital Library (TKDL) was established by an interdisciplinary team of Traditional Medicine (Ayurveda, Unani, Siddha, and Yoga) experts, patent examiners, IT experts, scientists, and technical officers. They are involved in for Indian Systems of Medicine. This project requires documentation of the traditional knowledge available in the public domain in the form of existing literature related to Ayurveda, Unani, Siddha, and Yoga. Using five languages, English, German, French, Japanese and Spanish, TKDL has been digitized and accessible on its website.

The database of Traditional Knowledge Digital Library (TKDL) is growing gradually, with the prodigious appreciation

by developing as well as the developed countries. A similar TKDL project should be established in India for the documentation of TCEs including traditional songs (Hirwade, 2010). As TKDL of capable of preventing cases on bio-piracy under patent law, Traditional Cultural Expressions Digital Library are preventing cases on misappropriation of cultural heritage from derivative works which create new copyright works (Poorna et al., 2014).

INTELLECTUAL PROPERTY LANDSCAPE IN PROMOTING CROSS-BORDER TCEs

The vitality of intellectual property in promoting Baul song is emerging when commercialization is crawling to the utilization of this traditional music other than the use of Baul song as the living value of West Bengali and Bangladeshi custodian. Hrid Majahare Rakhbo, a song which was taken from the poetry of Baul Saint Avadhuta, Sri Nabani Das KhyapaBaul. In the name of Hindustan Records, in the 1960s, this song was first recorded. Before Bollywood is taking Purna Das Baul songs and tune without giving credit, he was the first party to record this song in his father's melody and words (T. Das, 2017).

As mentioned above, this paper aims to elaborate Intellectual Property protection concerning the promotion of the cultural resources through a series of collaborative activities, common musical works and creating a link between the communities in the cross-border region through the establishment of authorized institutions.

Protecting TCEs mainly traditional music is not only a local but a bilateral, regional and international issue. This subject matter expands into a political, socio-economical, and environmental topic, besides a legal problem itself (Busch, 2015). This part of paper is to analyze the intellectual property landscape in promoting cross-border TCEs in the national, regional, and international forum.

RECOMMENDATION FOR ALTERNATIVE PROTECTION MECHANISM

Baul songs as Traditional Cultural Expressions (TCEs), including but not limited to the rituals, practices, and practitioners lie in West Bengal and Bangladesh. The future cooperation within these two countries must comply with cross-border policies and programs for protection and promotion of TCEs. Since historically, India and Bangladesh used to be in one administrative area, the cross-border policy should consider an area before and after the integration with the different approaches. This cross-border cooperation program will be applied through schemes on a national and bilateral level. An alternative protection mechanism is identified.

These following steps would be precious to preserve and protect Baul song:

1. Inventorization of the Traditional Music and their Contexts

The most important goal for inventorying and collecting the data of traditional cultural expression is for documenting any kinds

of traditional cultural expression that must be protected. Documentation can prevent misappropriation from other party and can be defensive protection for TCEs community. Inventory can be done by TCEs custodian, government, non-governmental organization, public Libraries and university.

2. Identification of Music Regarded as Endangered

This identification is to prevent lost of Baul song in those areas in the next generation. Government and non-government bodies should encourage the use of this song in daily life.

3. Cross-border Access

The proposals will discourse the portability of and cross-border access to official traditional music. Music shares in a region with the same root language, religion, and culture must be treated differently from specific TCEs. Culture is dynamic; thus, law should adjust the possibility of the recreation of such works in a different area with particular uniqueness.

4. National, Regional, and International Legal Instruments

All legal instruments must determine limitation and exceptions for the use of cross-border works. The limitation is on the special circumstances such as endangered TCEs. The exception is such as research, educational purposes, museum and archives, and clarification of the rules for online dispute settlement in the copyright enforcement regime.

5. Cross-border Laws

These laws shall apply concerning TCEs which are owned across national borders. Cooperation is the central issue of maintaining TCEs owned by two or more countries. A bilateral and regional agreement is needed. To gain fairness between two or more countries interest, moral and economic rights of custodian should be guaranteed. If there is any commercial benefit from a re-created works based on Baul song, the benefit should also be shared.

6. Other Protection Mechanism

There is a need of some other protection mechanism such as copyright, trademark, geographical indication including appellation of origin, or sui generis protection. Many examples of protection of TCEs in the Intellectual Property landscape can further be considered by India and Bangladesh to protect Baul song. The similarity between TCEs and copyrighted subject matter makes it possible to cover traditional music as copyright. The reputation of Baul song as community traditional music could be regarded as protection of the trademark. Also, the appellation of origin is possible to protect music as certain 'product' of a particular area. Sui generis protection, which is still debatable in international fora, could also be another alternative. Panama has succeeded in protecting TCEs mainly craft product in a sui generis system.

7. The Establishment of a Cultural Institution for Managing Cross-border Traditional Music

This kind of institution is essential to balance between government and custodian's interest to preserve and promote culture. The more there are informants and volunteers, the more dynamic Baul music will be.

CONCLUSION

To conclude, it is proposed that there is a need to give a boost to cross-border collaboration program which is beneficial to traditional music practitioners as well as for their Traditional Cultural Expressions (TCEs), such as inscription and documentation. *Bona-fide* contribution to Baul song's custodian should be taken by creating more specific incentives for cross-border cooperation. In addition to that, there is also a need for some strategies for a protection policy framework for copyright and related right landscape such as series of collaborative activities, common musical works and for creating a link between the community in the cross-border region through the establishment of authorized institutions; and finally, to give some alternate protection mechanism in protecting cross-border traditional music. Moreover, it will integrate local knowledge in understanding the CBC (cross-border cooperation) role for bilateral, regional and international development.

ACKNOWLEDGEMENT

We would like to express our gratitude to Prof. Dr Arul George Scaria, Director of CIIPC at National Law University, Prof Josef Drexl, Director, Max Plank Institute for Innovation and Competition, Prof Dr. Silke Von Lewinski, Max Plank Institute who gave relevant suggestions to this paper. Also, Prof Ahmad M. Ramli and Miranda Risang Ayu Palar, PhD who suggested the particular protection on TCEs from a communal IP perspectives. Finally, we wish to express our sincere thanks to all Baul informants met in the field for their whole hearted cooperation and assistance in carrying out this study.

REFERENCES

- Banerjee, T. (2018). The wandering Bauls take music as their religion. Retrieved July 12, 2019, from <https://theculturetrip.com/asia/india/articles/the-wandering-bauls-take-music-as-their-religion>
- Busch, A. F. (2015). *Protection of Traditional Cultural Expressions in Latin America: A Legal and Anthropological Study*. Berlin, Germany: Springer. <https://doi.org/10.1007/978-3-662-46770-1>
- Daricha Foundation. (2018). Baul-Fakir [Blog post]. Retrieved May 20, 2019, from http://www.daricha.org/sub_genre.aspx?ID=52&Name=Baul-Fakir
- Das, S. (2019). The origin and history of the Bauls of Bengal wandering music cult. *Learn Religion*. Retrieved August 21, 2019, from <https://www.learnreligions.com/the-bauls-of-bengal-1769990>
- Das, T. (2017). Lineage Baul of Birbhum - Rural Indian folk Music Heritage. Retrieved April 6, 2018, from <https://indiafolkheritageofbengal.weebly.com/lineage-baul-of-birbhum.html>
- Dwivedi, A., & Saroha, M. (2005). Copyright laws as a means of extending protection to expressions of folklore. *Journal of Intellectual Property Rights*, 10(4), 308-314. Retrieved May 12, 2019, from <http://nopr.niscair.res.in/handle/123456789/3666>
- Hirwade, M. (2010). Protecting traditional knowledge digitally: A case study of TKDL. In *National Workshop on Digitization Initiatives & Applications in Indian Context*, DNC, Nagpur, India. Retrieved May 20, 2019, from <http://eprints.rclis.org/14020/>
- History of Baul. (2019). Retrieved May 12, 2019, from <http://bncmusical.co.in/genre.php?id=1>
- World Intellectual Property Organization. (2006). Customary law and practices of the indigenous communities of Bangladesh: The case of Garo Community (WIPO/GRTKF/IC/10). Retrieved May 23, 2019, from https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=190858
- Kutty, P. V. V. G. (2002). *National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Expressions: India, Indonesia and the Philippines*. Retrieved May 12, 2019, from http://www.wipo.int/edocs/pubdocs/en/tk/912/wipo_pub_912.pdf
- Ministry of Home Affairs. (2001). *No of villages by states & union territories (in 2001 and 1991 censuses)*. Retrieved February 7, 2019, from http://censusindia.gov.in/Data_Products/Library/Post_Enumeration_link/No_of_Villages_link/no_villages.html
- Palar, M. R. A. (2010). *Reforming "Public Domain" the role of public domain in Indonesia cultural community: The cases of Legong Keraton Peliatan Balinese Dance, Sumba Woven Clothes, and Ulin Kalimantan Timber*. Retrieved May 4, 2017, from http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_inf_5_b.pdf

- Palar, M. R. A., Sukarsa, D. E., & Ramli, A. M. (2018). Indonesian system of geographical indications to protect genetic resources, traditional knowledge and traditional cultural expressions. *Journal of Intellectual Property Rights*, 23, 174-193.
- Pickard, A. J. (2007). *Research methods in information* (2nd ed.). London, England: Facet Publishing.
- Poorna, R. L., Mymoon, M., & Hariharan, A. (2014). Preservation and protection of traditional knowledge - diverse documentation initiatives across the globe. *Current Science*, 107(8), 1240-1246. Retrieved May 23, 2019, from <https://www.currentscience.ac.in/cs/Volumes/107/08/1240.pdf>
- Rahaman, M. R. (2015). Protection of traditional knowledge and traditional cultural expressions in Bangladesh. *Journal of Intellectual Property Rights*, 20(3), 164-171. Retrieved May 23, 2019, from <http://nopr.niscair.res.in/bitstream/123456789/31588/1/JIPR20%283%29164-171.pdf>
- Smits, J. M. (2009). *Redefining normative legal science: Towards an argumentative discipline* (TICOM Working Paper No. 2009/7). Retrieved May 20, 2019, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411716
- Spradley, J. P. (1979). *The ethnographic interview*. New York, USA : Holt, Rinehart and Winston Corp.
- United Nations Educational, Scientific and Cultural Organization. (2008). Intangible Heritage Home - intangible heritage - Culture Sector - UNESCO. Retrieved March 31, 2018, from <http://www.unesco.org/culture/ich/index.php>