
Intellectual Property Rights and the Protection of Traditional and Indigenous Sports

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Abstract:

Traditional and indigenous sports in India, such as Kabaddi, Kho-Kho, and tribal archery, are integral to the nation's cultural heritage, reflecting centuries of community practices and identity. As globalization and commercialization reshape these sports, intellectual property rights (IPR)—including patents, copyrights, trademarks, and geographical indications—offer potential tools to protect them from exploitation and misappropriation. This paper examines the applicability of IPR to India's traditional sports, analyzing legal frameworks, cultural dynamics, and case examples. It highlights the tension between Western IPR models and India's collective traditions, proposing a hybrid approach that integrates sui generis protections and community-led initiatives. The findings emphasize the need for tailored strategies to preserve these sports while ensuring equitable benefits for indigenous and rural communities.

Keywords: Legal, Patents, India, Cultural, Tribal, Kho-Kho, Kabaddi, India, Traditional, Sports

Introduction

India's rich tapestry of traditional and indigenous sports spans urban games like Kabaddi to tribal practices like archery among the Santhal and Munda communities. These sports, often tied to festivals, rituals, and social bonding, embody the nation's diverse heritage. However, their growing popularity—evidenced by Kabaddi's inclusion in the Asian Games and the rise of professional leagues—has exposed them to commercialization, cultural dilution, and external appropriation.

Intellectual property rights (IPR), a legal system designed to protect creative and innovative

works, could safeguard these practices, yet its Western framework often clashes with India's communal ethos.

This paper explore show IPR can protect traditional and indigenous sports in India, addressing three key questions: (1) How can existing IPR mechanisms be applied to these sports? (2) What challenges arise from India's socio-cultural and legal context? (3) What reforms or alternative strategies can ensure their preservation and fair use? The study is significant given India's unique position as a global cultural hub and its ongoing efforts to balance tradition with modernity.

Literature Review

Traditional sports in India predate modern legal systems, with references to games like Kabaddi and Mallakhamb in ancient texts and folklore. Unlike Western sports, which emphasize standardized rules and individual achievement, Indian traditional sports often prioritize community participation and adaptability. The advent of IPR in India, influenced by colonial laws and later the TRIPS Agreement (1994), introduced mechanisms like patents, copyrights, and trademarks to protect innovation. However, these tools were designed for industrial and artistic outputs, not cultural practices rooted in oral traditions.

Scholars note that India's IPR framework has historically focused on economic growth, as seen in its robust pharmaceutical and software sectors. Yet, its application to traditional knowledge—including sports—remains under explored. The Protection of Traditional Knowledge Bill (proposed but not enacted) reflects India's recognition of this gap, though it lacks specificity for sports. Globally, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) advocates for indigenous control over cultural expressions, a principle India supports but struggles to implement domestically.

The commercialization of sports like Kabaddi, driven by the Pro Kabaddi League (PKL) since 2014, illustrates both opportunities and risks. While it has elevated the sport's profile, it has also shifted ownership from rural communities to corporate entities. This tension underscores the need for a framework that protects traditional sports without alienating their custodians.

Methodology This study employs a qualitative approach, integrating legal analysis, case studies, and cultural evaluation. Primary sources include India's IPR laws (e.g., Patents Act, 1970; Copyright Act, 1957; Geographical Indications Act, 1999) and international agreements (e.g., TRIPS). Secondary sources encompass government reports, academic articles, and media

coverage of traditional sports. Three case studies—Kabaddi, Kho-Kho, and tribal archery in Jharkhand—are analyzed to ground the discussion in real-world contexts. The methodology is descriptive and interpretive, focus on legal applicability and cultural implications rather than statistical data, given the topic’s conceptual nature.

Discussion

1. Applicability of IPR to Traditional and Indigenous Sports in India

India’s IPR system offers several mechanisms to protect traditional sports:

- **Patents:** Patents protect novel inventions, such as equipment or techniques. While traditional sports like Kho-Kho lack "new" innovations, modern adaptations (e.g., synthetic mats for Mallakhamb) could qualify. However, patenting risks excluding communities if filed by external entities.
- **Copyright:** This covers original works fixed in a tangible form. Rules, songs, or ceremonial aspects of sports could be copyrighted, but their oral transmission and collective evolution often disqualify them.
- **Trademarks:** Names, logos, or symbols (e.g., a tribal motif for archery) can be trademarked to prevent misuse. This is practical for branding but does not protect the sport’s essence.
- **Geographical Indications (GIs):** GIs link a practice to a region, as with Banarasi silk. Sports like Kalaripayattu (Kerala) or Thang-Ta (Manipur) could use GIs to assert authenticity and control commercialization.

Case Study: Kabaddi

Kabaddi, a contact sport with roots in rural India, has transitioned from village fields to global arenas. The PKL, launched by Star India, trademarked its logo and format, generating significant revenue. While this has popularized Kabaddi, rural players and traditional rule-makers have little stake in its success, raising questions about cultural ownership and benefit-sharing.

2. Challenges in Applying IPR in India

India’s socio-cultural and legal landscape presents unique obstacles:

- **Collective Ownership:** Traditional sports belong to communities, not individuals. IPR’s

focus on single creators complicates assigning rights, as seen with Kho-Kho's diverse regional variations.

- **Lack of Documentation:** Many sports, especially tribal ones, are orally transmitted, lacking the fixed form required for copyright or patents. This leaves them vulnerable to appropriation.
- **Commercialization vs. Tradition:** IPR encourages monetization, which may conflict with the non-commercial ethos of sports like tribal archery, often performed during festivals.
- **Resource Constraints:** Indigenous and rural communities lack the legal expertise or funds to pursue IPR claims or enforce them against corporate violators.
- **Global Influence:** TRIPS compliance pressures India to align with Western standards, sidelining local needs. For instance, foreign firms could patent equipment for Indian sports, bypassing community input.

Case Study: **Kho-Kho**

Kho-kho, a tag game popular in western India, remains largely uncommercialized but faces dilution as urban versions emerge. Efforts to trademark its name or patent its rules have been minimal, reflecting both its grassroots nature and the lack of a unified authority to claim IPR.

3. Cultural and Ethical Considerations

Applying IPR to India's traditional sports raises ethical dilemmas. Commercialization may erode their cultural significance—turning rituals into entertainment—while lack of protection allows outsiders to profit. For example, Kalaripayattu, a martial art from Kerala, has been adapted into fitness programs worldwide, often without crediting its origins. Benefit-sharing, where communities receive royalties or recognition, is a potential solution, but it requires mechanisms to identify legitimate stakeholders. India's diversity—spanning tribal, rural, and urban contexts—further complicates uniform application.

The Indian Constitution (Article 29) guarantees cultural preservation, aligning with UNDRIP's emphasis on indigenous consent. Any IPR strategy must prioritize community involvement, ensuring sports remain living traditions rather than commodified artifacts.

4. Alternative Strategies and Reforms

To address these challenges, a hybrid approach is proposed:

- **Sui Generis Protections:** India could enact a Traditional Sports Protection Act, recognizing collective ownership and perpetual rights. This would bypass IPR's novelty and fixation requirements, covering sports like tribal archery.
- **Community-Led Trademarks:** Local federations or cooperatives could trademark sports symbols, ensuring profits return to practitioners. For instance, a "Kabaddi Heritage" mark could distinguish authentic events.
- **Geographical Indications Expansion:** GI could be extended to sports, certify in g practices like Thang-Ta as Manipur's heritage, enhancing tourism while protecting identity.
- **Benefit-Sharing Models:** Licensing agreements could mandate that commercial entities (e.g., PKL) share revenue with rural leagues or fund grassroots training.
- **National Registry:** A government-maintained data base of traditional sports could document their origins and rules, aiding legal claims without requiring formal IPR.

Case Study: Tribal Archery in Jharkhand

Among the Santhal and Munda tribes, archery is a ritualistic sport tied to hunting and festivals. Commercial interest from tourism and sports brands has grown, but no IPR protections exist. A GI for "Santhal Archery" or *asuigeneris* law could preserve its authenticity, with proceeds supporting tribal welfare.

Conclusion

Intellectual property rights offer a partial framework for protecting India's traditional and indigenous sports, with trade marks and GIs showing particular promise. However, their Western bias and focus on individual ownership limit their fit for India's collective traditions. A hybrid model — combining *sui generis* laws, community-led initiatives, and expanded GIs—could balance preservation with equitable growth. India's unique cultural diversity and legal flexibility position it to pioneer such reforms, ensuring sports like Kabaddi, Kho-Kho, and tribal archery thrive as living heritage.

Future research should assess the feasibility of these proposals, perhaps through pilot projects in states like Kerala or Jharkhand. Policy makers must engage rural and indigenous stakeholders, Aligning legal tools with their needs. In this synthesis of tradition and modernity lies the potential to safeguard India's sporting legacy for generations to come.

Works Cited:

- Gupta, Anil K. "Traditional Knowledge and Intellectual Property Rights: The Indian Perspective". *Journal of Indian Law and Society*, vol. 5, no. 1, 2014, pp. 45-67.
- Kumar, Rajesh. "Kabaddi: From Rural Fields to Global Arenas". *Sports History Review*, vol. 12, no. 2, 2018, pp. 89-104.
- Nair, Sreeja. "Cultural Heritage and Legal Protection: The Case of Traditional Sports in India". *Indian Journal of Cultural Studies*, vol. 8, no. 3, 2020, pp. 123-140.
- Patel, Devang. "The Impact of Commercialization on Indigenous Sports: A Study of Kho-Kho and Mallakhamb". *Journal of Sports and Cultural Heritage*, vol. 15, no. 1, 2019, pp. 33-50.
- Raghavan, Priya. "Geographical Indications and Cultural Identity: Prospects for Traditional Practices in India". *Economic and Political Weekly*, vol. 49, no. 22, 31 May 2014, pp. 55-62.
- Saha, Tapas. "Tribal Archery in Jharkhand: A Cultural and Economic Analysis." *Anthropological Survey of India Journal*, vol. 67, no. 4, 2021, pp. 201-218.
- Singh, Manpreet. "Intellectual Property Rights in India: Challenges and Opportunities". *Indian Law Review*, vol. 10, no. 3, 2016, pp. 78-95.
- Verma, Ritu. "Kalaripayattu and Thang-Ta: Preserving India's Martial Arts Heritage". *Heritage and Society*, vol. 14, no. 2, 2022, pp. 67-83.