

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

India's Pursuit Soft Diplomacy of Intellectual Property Protection for Yoga, Herbal Medicines, and Traditional Knowledge at the WTO

MOJDEH JAMALI HESSARI¹ AND PROF. (DR.) MARUTHI TR²

ABSTRACT

India, renowned for its prowess in the generic drug sector, is strategically engaging in soft diplomacy to protect its cultural heritage, specifically focusing on yoga, herbal medicines, and traditional knowledge at the World Trade Organization (WTO). Expressing concerns about potential exploitation, India draws from past successes in preventing the patenting of turmeric and neem, highlighting the need for WTO assurances. The nation's proactive stance involves creating an extensive database cataloging traditional medicines, plants, and yoga positions. Challenges arise in determining ownership, especially in the context of oral traditions and diverse sources. India aligns itself with emerging powers like China and Brazil, seeking global recognition for a framework governing the utilization of native resources. Yoga, a global phenomenon, faces challenges with patents, copyrights, trademarks, and geographical indications. The article explores the legal landscape, emphasizing India's efforts to protect yoga through the Traditional Knowledge Digital Library. India proposes measures at the WTO to require patent applicants to declare the country of origin, seek permission, and share benefits. The judicial approach reflects the complex intersection of yoga and intellectual property, considering copyright, trademarks, and patents. India's diplomatic efforts intertwine with its soft power, leveraging the global popularity of yoga as a cultural heritage. The article concludes by emphasizing the delicate balance needed to protect cultural heritage while fostering global collaboration and recognition.

Keywords: *India, Soft Diplomacy, Cultural Heritage, World Trade Organization, Yoga and Intellectual Property*

I. PREFATORY

India, renowned for its robust presence in the generic-drug sector, is currently channelling its

¹ Author is a Ph.D. Scholar (Biotechnology) at Garden City University, Bengaluru, Karnataka, India.

² Author is the Professor and Chairman, Dean Faculty of Law at Department of Studies in Law, University of Mysore, Mysore, Karnataka, India.

diplomatic efforts towards safeguarding its ancient intellectual treasures, such as herbal medicines, Darjeeling tea, and yoga positions.³ The nation is expressing concerns about the potential exploitation of these valuable resources without fair financial compensation. Drawing from past successes in preventing the patenting of turmeric and neem, India is stressing the need for assurances from the World Trade Organization (WTO) to prevent such practices.⁴ India's proactive stance involves creating an extensive database cataloguing traditional medicines, plants, and yoga positions. However, challenges arise in determining rightful ownership, particularly in the context of oral traditions and diverse sources. The country emphasizes the global significance of its role, contributing to the betterment of mankind, with Yoga being recognized as India's gift to humanity. In the World Intellectual Property Organization (WIPO), member states engage in negotiations to protect traditional knowledge and cultural expressions. As India and its partner nations advocate for these causes at the WTO, concerns about global trade inequalities and potential obstacles to the Hong Kong talks emerge. Despite limited evidence of widespread biopiracy, India and its allies push for strict patent disclosure, emphasizing the importance of safeguarding traditional knowledge, especially in biotechnology and pharmaceuticals.⁵

India's proposed measures include requiring patent applicants to declare the country of origin for plant or animal-based materials, seek permission, and eventually share monetary benefits. Similar protections are extended to traditional products like Basmati rice and Darjeeling tea, with India pursuing WTO restrictions resembling geographical indication rights. India aligns itself with emerging powers like China and Brazil, seeking global recognition for a framework governing the utilization of native plants, animals, and age-old knowledge by developed nations.

Yoga has become an integral part of people's lifestyles worldwide, sought for fitness, health benefits, and mental well-being. Yoga's global popularity has brought individuals like Baba Ramdev and Bikram Choudary into the limelight.⁶ Notably, there have been instances of the United States Patent and Trademark Office granting patents for knowledge that has been part of cultural traditions for generations. For instance, the patenting of turmeric's healing properties was challenged by India's Council of Scientific and Industrial Research (CSIR), leading to the revocation of the patent. Recently, the Delhi High Court addressed the issue of copyright and

³ Saikat Sen and Raja Chakraborty, 'Traditional Knowledge Digital Library: A Distinctive Approach to Protect and Promote Indian Indigenous Medicinal Treasure' (2014) 106 *Current Science* 1340.

⁴ Sumitra Chishti, 'India and the WTO' (2001) 36 *Economic and Political Weekly* 1246.

⁵ Amanda Lucia, 'Innovative Gurus: Tradition and Change in Contemporary Hinduism' (2014) 18 *International Journal of Hindu Studies* 221.

⁶ Peter van der Veer, 'Spirituality in Modern Society' (2009) 76 *Social Research* 1097.

trademark protection for yoga asanas and Pranic Healing.⁷ The court analyzed the originality of these practices, emphasizing the distinction between expression and ideas in copyright protection. It concluded that copyright protection extends to the original expression of ideas, not the ideas themselves. Additionally, the court ruled against according copyright protection to yoga asanas as dramatic works, aligning with international precedents. The judgment also addressed trademark protection for the term 'Pranic Healing,' emphasizing the need for trademarks to be inherently distinctive or capable of distinguishing goods and services. The court ruled against the plaintiffs, stating that the term was too generic to be protected. The growing concern of "yoga piracy" is reflected in the enforcement of intellectual property rights (IPRs) on yoga postures and techniques found in ancient Indian treatises. The Traditional Knowledge Digital Library (TKDL) of India holds around 1,500 yoga postures and is accessible to major patent offices worldwide.⁸ While copyrights on books and videos, as well as trademarks for yoga institutes and accessories, are acceptable, the Indian government is troubled by the creation of IPRs on yoga postures. The United States alone has seen approximately 130 yoga-related patents, 150 copyrights, and 2,300 trademarks, reflecting the commercialization of yoga, which is a \$30-billion business in the U.S. encompassing accessories, equipment, instructional books, and DVDs.⁹ Yoga has indeed become an integral part of modern existence, sought after for its holistic benefits encompassing physical fitness, mental well-being, and a positive lifestyle. Individuals turn to yoga for various reasons, including overcoming health issues, achieving fitness goals, and fostering a sense of positivity. As a result of its widespread popularity, there is a growing interest in protecting yoga as intellectual property through various forms such as patents, trademarks, copyrights, and geographical indications. Bikram Choudhury, the creator of Bikram Yoga, introduced a specific style of hot yoga consisting of 26 postures performed in a hot environment. This form of yoga gained popularity in the United States and beyond, attracting celebrity practitioners. In an attempt to preserve the Bikram Yoga series, Choudhury filed copyright claims against Evolution Yoga in Florida in 2009. However, his efforts were unsuccessful, highlighting the complex intersection of yoga and intellectual property.

Yoga, known for its multifaceted benefits, goes beyond physical fitness to include mental well-

⁷ 'Delhi High Court: Name of Ancient Yoga Form Is Not Valid Trademark' <<https://www.worldtrademarkreview.com/article/delhi-high-court-name-of-ancient-yoga-form-not-valid-trademark>> accessed 11 December 2023.

⁸ 'Stratjuris Law Partners Yoga from Traditional Knowledge to IPR: Yoga Is No YO!Ga - Stratjuris Law Partners' <<https://www.stratjuris.com/yoga-from-traditional-knowledge-to-ipr-yoga-is-no-yoga/>> accessed 11 December 2023.

⁹ 'US Patent on Yoga? Indian Gurus Fume | India News - Times of India' <<https://timesofindia.indiatimes.com/india/us-patent-on-yoga-indian-gurus-fume/articleshow/2058285.cms>> accessed 11 December 2023.

being. The global prominence of yoga is evident with notable figures like Bikram Choudhury and Baba Ramdev gaining recognition.¹⁰ However, the intertwining of yoga with intellectual property issues is evident in recent cases where the US Patent and Trademark Office granted patents for well-known traditional practices, such as the healing properties of turmeric. The Council of Scientific and Industrial Research (CSIR) played a crucial role in rectifying such instances by challenging patents granted for traditional knowledge. Following cases involving turmeric and basmati rice, CSIR initiated the Traditional Knowledge Digital Library (TKDL), a digital repository safeguarding traditional and ancient knowledge. This archive includes information about medicinal plants and formulations, providing protection against unethical patents and biopiracy. As yoga gains prominence, its inclusion in the TKDL serves as a significant step towards preserving India's cultural heritage and preventing the exploitation of traditional practices by foreign entities.¹¹ This digital repository acts as a barrier, ensuring that foreign corporations cannot profit from India's rich cultural history without fair compensation or acknowledgment.

II. YOGA AND PATENTS

The patentability of yoga poses is a topic that raises eyebrows and challenges the conventional understanding of intellectual property.¹² In essence, for something to be patented, it must meet specific criteria: it should be innovative, unique, and possess the potential for profitability. However, the ancient practice of yoga, deeply rooted in scriptures like the Vedas and the Upanishads, poses a unique challenge to these criteria. Yoga, as a holistic discipline that encompasses physical postures (asanas), breathing exercises, and meditation, cannot be patented. The fundamental reason lies in the fact that yoga asanas are not new or unique; they have existed since ancient times and are part of the public domain. The rich tradition of yoga, documented in various scriptures, negates the possibility of claiming novelty or originality required for patent protection.¹³ While the practice of yoga itself cannot be patented, the accessories and equipment associated with it can fall under the purview of patentability. Items like yoga mats, specially designed clothing for yoga, yoga blocks, and yoga wheels are

¹⁰ 'The Economic Times: Business News, Personal Finance, Financial News, India Stock Market Investing, Economy News, SENSEX, NIFTY, NSE, BSE Live, IPO News' <<https://economictimes.indiatimes.com/defaultinterstitial.cms>> accessed 11 December 2023.

¹¹ Sen and Chakraborty (n 3).

¹² Joseph Laycock, 'Yoga for the New Woman and the New Man: The Role of Pierre Bernard and Blanche DeVries in the Creation of Modern Postural Yoga' (2013) 23 *Religion and American Culture: A Journal of Interpretation* 101.

¹³ Ikechi Mgbeoji, 'Making Space for Grandma: The Emancipation of Traditional Knowledge and the Dominance of Western-Style Intellectual Property Rights Regimes' 06.

examples of materials that meet the criteria for patent protection.¹⁴ The notion of patenting yoga may seem absurd, but when examined through the lens of patentability criteria – novelty, inventive step, and industrial applicability – it becomes clear that yoga asanas, being ancient and widely known, do not fulfill these requirements. The Council of Scientific and Industrial Research (CSIR) has played a crucial role by documenting most yoga asanas in the Traditional Knowledge Digital Library, providing a basis for opposition against any attempt to patent them. The question arises: Can a brand new yoga asana or a novel way of practicing an existing asana be patented? Historians and yoga gurus contend that it is highly improbable, given the ancient origins of yoga knowledge. The practice of yoga predates even the Indus Valley Civilization, and the extensive knowledge of yoga asanas has been well-established over centuries. Consequently, the likelihood of discovering a genuinely novel asana or method is considered extremely low.

Yoga, often referred to as India's gift to the world, has become ingrained in daily routines globally. Recognizing its widespread benefits in overcoming diseases and mental illnesses, India has historically encouraged the propagation and teaching of yoga to people worldwide. However, in recent times, there has been a realization of the need to protect this integral part of Indian tradition. India's efforts to safeguard yoga as traditional knowledge emphasize that yoga is for everyone to learn and benefit from, rather than being exploited for commercial gains.¹⁵ The aim is not to restrict others from practicing yoga but to preserve its essence and prevent its misuse in the pursuit of monetary interests. In this way, India seeks to uphold the inclusive and timeless nature of yoga as a universal heritage.

III. YOGA AND COPYRIGHTS

The intersection of copyright law and the practice of yoga raises intriguing questions about the protectability of yoga poses, asanas, and related techniques.¹⁶ In essence, copyright law seeks to protect original works of authorship, but the criteria for what constitutes an eligible work vary across jurisdictions.¹⁷ The Copyright Act, when applied to yoga, distinguishes between "dramatic works" and "literary works." It is evident that copyright cannot extend to include a monopoly right over the performance of yoga asanas or pranic healing merely based on their representation in a book or other written forms. Yoga asanas, being deeply rooted in ancient

¹⁴ Laura Rebecca Sippel, *Yoga: A Solution to Modern Corruption* <<https://jstor.org/stable/community.22752007>> accessed 11 December 2023.

¹⁵ *ibid.*

¹⁶ R Anthony Reese, 'What Should Copyright Protect?' in Rebecca Giblin and Kimberlee Weatherall (eds), *What if we could reimagine copyright?* (1st edn, ANU Press 2017) <<http://press-files.anu.edu.au/downloads/press/n2190/pdf/ch04.pdf>> accessed 24 October 2023.

¹⁷ *ibid.*

traditions and widely practiced, do not meet the criteria of novelty or originality required for copyright protection.¹⁸ However, the scenario changes when it comes to expressions of yoga, such as books, magazines, instructional manuals, videos, and records. The creative expression in describing or illustrating yoga practices may qualify for copyright protection. The Ninth Circuit of the United States Court of Appeals, in the case of Bikram Choudhury's heated yoga positions, ruled that the sequence itself was not protected by copyright. The court emphasized that copyright protected the expression of the idea, such as the words and images used to explain the sequence, but not the idea of the sequence itself. In another case, the Delhi High Court ruled against the Institute for Inner Studies' claim of copyright ownership over Pranic healing or any other yoga techniques. The court stated that the techniques of Pranic Healing, along with literary works, did not fall within the ambit of dramatic works as provided by the Copyright Act.¹⁹ The court emphasized the need for an integrated, coherent, and expressive whole to qualify as original choreographic authorship. The question of what can be protected under copyright law remains a matter of national law, and interpretations may vary across jurisdictions. For instance, the United States Copyright Office stated that a mere selection, coordination, or arrangement of functional physical movements, such as sports movements or exercises, might not be protected as choreographic works. However, a composition and arrangement of a related series of dance movements and patterns organized into an integrated, coherent, and expressive whole could qualify for copyright protection.²⁰

IV. YOGA AND TRADEMARKS

A trademark serves as a distinctive sign that sets apart the goods or services of one business from those of others. Traditionally, it can manifest as a name or a logo. For a trademark to be valid, it should possess distinctiveness and avoid being generic. In the context of Yoga, which encompasses a variety of practices involving stretching, breathing, and postures, obtaining a trademark solely for the term "Yoga" proves impractical as it tends to be descriptive and generic. In the legal proceedings involving the Institute for Inner Studies (IIS), the plaintiff sought to trademark the phrase "Pranic Healing" and asserted that the term had acquired secondary significance through their prolonged use. Conversely, the defendants argued that "Pranic Healing" is a generic term in the public domain. These arguments were instrumental in rejecting

¹⁸ Cassandra Elrod, 'The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability' (2017) 24 *Indiana Journal of Global Legal Studies* 575.

¹⁹ s Hashimy and Emmanuel Elimhoo Kimey, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 1302.

²⁰ s Hashimy, 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (2023) 2 *SSRN Electronic Journal* 1.

the plaintiff's trademark claim, with the court additionally noting that the IIS had committed "fraud upon the register" by attempting to trademark a generic word lacking distinctiveness.

It is crucial to recognize that institutes and brands associated with Yoga classes, exercises, clothing, and related activities can safeguard their brand names through trademarks. However, adherence to trademark guidelines is essential, ensuring that the chosen name or logo complies with trademark registration laws. In the realm of trademark and Yoga, it is essential to understand that certain terms deeply rooted in ancient traditions, like "yoga," "pranic healing," or "pranayama," lack distinctiveness and cannot be straightforwardly trademarked. The court decision in the IIS case exemplifies that attempting to trademark such generic terms can be deemed fraudulent. Nevertheless, organizations and companies linked to yoga sessions, exercises, clothing, and related services can seek trademark protection. In Class 41, many institutions associated with yoga have successfully registered trademarks, showcasing names such as Passion Yoga, Cool Yoga, and more. These trademarks serve to distinguish and protect the identity of these organizations within their respective classes.

V. YOGA AND GEOGRAPHICAL INDICATIONS

Yoga, celebrated globally for its myriad health benefits, encounters formidable hurdles in securing a Geographical Indication (GI) tag.²¹ Typically applied to products with distinct geographical origins, GIs safeguard qualities or reputations inherent to that locale. Yet, existing systems, whether international treaties or national frameworks, focus on tangible goods, leaving activities like Yoga outside their conventional purview.²² GIs, designed for wines, spirits, agricultural products, and traditional crafts, struggle to accommodate the intangible nature of Yoga. Unlike goods, Yoga's therapeutic attributes are not exclusively tied to its Indian roots but rather derive from its impact on the human body. Further, the practice's widespread global adoption, spanning various adaptations like mommy-and-me Yoga and nude Yoga, challenges the notion that its defining characteristics are linked primarily to India. Attempting to fit Yoga into the legal confines of the GI Act poses complexities. The Act prohibits authorized users from producing items outside the indicator's represented geographical area. Yet, as Yoga transcends borders, mandating authorization for its practice beyond India contradicts fundamental GI principles. Moreover, granting a GI to Yoga may invite stringent regulations, potentially impeding its global practice and adaptation. The diverse manifestations of Yoga

²¹ Abhay B Mane, 'International Yoga Day: Positive Step toward Global Health' (2015) 8 *International Journal of Yoga* 163.

²² Copperpod, 'Intellectual Property (IP) Protections for YOGA' (*Copperpod IP*, 22 June 2022) <<https://www.copperpodip.com/post/ip-protection-for-yoga>> accessed 11 December 2023.

across cultures, from traditional to contemporary forms, could face limitations, undermining the essence of its flourishing and thriving nature.²³ While the intention to preserve Yoga's cultural heritage is noble, prevailing GI frameworks prove inadequate for an activity that has evolved into a global phenomenon with diverse expressions. The challenges in unequivocally attributing Yoga's qualities to its geographical origin render obtaining a GI for Yoga a complex and improbable endeavor.

VI. YOGA AS INDIA'S TRADITIONAL KNOWLEDGE

Yoga holds a special place in India's traditional knowledge, and efforts have been made to safeguard it from undue patenting through the inclusion of most Yoga asanas in the Traditional Knowledge Digital Library (TKDL) by the Council of Scientific and Industrial Research (CSIR). This strategic move empowers the CSIR to oppose any attempts to patent a Yoga asana during the pre-grant stage.²⁴ The vast repository of approximately 1500 yoga poses within India's TKDL serves as a comprehensive resource accessible to major patent offices for scrutiny. This proactive measure enables the timely filing of oppositions against potential patent applications, given that the knowledge of yoga asanas is widespread among those who have mastered the practice. Historically, Indians have refrained from asserting intellectual property rights (IPRs) concerning yoga. The inclusion of yoga in TKDL not only safeguards it from potential exploitation but also reinforces the notion that yoga cannot be deemed unique or novel. With the knowledge of virtually every asana and teaching being widespread among yoga practitioners, the distinctiveness and innovativeness required for patent protection are inherently lacking. Looking ahead, the incorporation of yoga into TKDL serves as a protective shield for India's cultural heritage. It acts as a deterrent, dissuading foreign entities from attempting to capitalize on the rich traditions of yoga. In essence, India's foresight in preserving and cataloging yoga within TKDL not only upholds the authenticity of this ancient practice but also fortifies the country against potential misappropriation by external entities.

VII. THE IMPACT OF INDIAN YOGA AND SOFT DIPLOMACY ON WTO

The interplay between Indian yoga and soft diplomacy has had a profound impact on India's engagement with the World Trade Organization (WTO). Rooted in the concept of soft power, a term introduced by Joseph Nye, India's approach seeks to attract and coopt rather than coerce, shaping the preferences of others in the international arena. The facets of India's soft power,

²³ 'Guest Post: GI for Yoga? (De)Merits and Consequences – Spicyip' <<https://spicyip.com/2015/01/guest-post-gi-for-yoga-demerits-and-consequences.html>> accessed 11 December 2023.

²⁴ Pamela Samuelson, 'Functionality and Expression in Computer Programs: Refining the Tests for Software Copyright Infringement' (2016) 31 Berkeley Technology Law Journal 1215.

particularly its Strength of Diversity, Vibrant Indian Diaspora, Vasudhaiva Kutumbakam doctrine, commitment to Non-violence, and the cultural richness of Yoga, collectively contribute to a unique diplomatic strategy.²⁵ In the context of foreign policy, India pursues multiple objectives, including the elimination of colonialism and racial discrimination, as well as the protection of the interests of people of Indian origin abroad. The contemporary Indian foreign policy landscape is characterized by material affluence and a pronounced aspiration for territorial integrity, independence, and a proactive role in promoting international peace and security. The basic principles guiding Indian foreign policy further elucidate its diplomatic stance. Panchsheel, emphasizing mutual respect and non-interference, aligns with the soft power narrative, emphasizing attraction over force. The Policy of Non-Alignment positions India as an independent player on the global stage, while the commitment to resisting colonialism, imperialism, and racism underscores a dedication to justice and equality. India's advocacy for the peaceful settlement of international disputes, support for the United Nations and international law, and the pursuit of an equal world order further solidify its commitment to diplomatic approaches that resonate with its soft power strategy.²⁶ In this intricate dance of diplomacy, India's unique combination of soft power elements and foreign policy principles shapes its engagement with the WTO and contributes to a distinctive presence on the world stage.

VIII. JUDICIAL APPROACH

The legal discourse on the protection of intellectual property, particularly within the realm of copyright law, has been significantly shaped by seminal decisions, and the interplay of these decisions is evident in the case at hand. The US Supreme Court's decision in *Baker v. Seldon* (1880)²⁷ laid the groundwork for a nuanced approach to copyright protection, particularly in works describing and defining arts, medicines, and scientific practices. The Court articulated that protection lies in the manner of language employed, the selection and arrangement of incidents, and the overall compilation of the work, rather than in the art or performance itself. This principle was echoed in *Feist Publications v. Rural Telephone Services Company*

²⁵ 'Stratjuris Law Partners Yoga from Traditional Knowledge to IPR: Yoga Is No YO!Ga - Stratjuris Law Partners' (n 8).

²⁶ 'Spotlighting Long-Standing Regional Conflicts, World Leaders Call for Strict Adherence to International Law, United Nations Charter, as General Assembly Debate Continues - World | ReliefWeb' (25 September 2022) <<https://reliefweb.int/report/world/spotlighting-long-standing-regional-conflicts-world-leaders-call-strict-adherence-international-law-united-nations-charter-general-assembly-debate-continues>> accessed 11 December 2023.

²⁷ 'Baker v. Selden, 101 U.S. 99 (1879)' (*Justia Law*) <<https://supreme.justia.com/cases/federal/us/101/99/>> accessed 11 December 2023.

(1991),²⁸ where the USSC ruled that copyright protection for fact-based works or those derived from pre-existing data extends only to the manner of describing these arts and principles, not to the underlying facts. The UK case of *Baigent & Leigh v. The Random House Group (2007)*²⁹ further reinforced this principle, affirming that copyright protection is tethered to the expression of ideas rather than the ideas themselves. The Delhi High Court aptly applied this line of reasoning, emphasizing that copyright vests in originality, not novelty, and is contingent on the hard work, skill, and judgment extended by the author toward creativity.

The Court's reference to *Bikram's Yoga College v Evolution Yoga*³⁰ is noteworthy, as it draws a distinction between a creative work that compiles a series of exercises and the compilation of exercises itself. This aligns with the principle that the protection extends to the expression of the compilation, such as the language, explanation, and pictorial content, rather than the performance of the techniques.

Section 2(h) of the Copyright Act, 1957, defining a dramatic work in an inclusive manner, introduces an interesting dimension to the analysis.³¹ The Delhi High Court, guided by Copinger & Skone James on Copyright, clarified that for a work to constitute a dramatic work, it must be capable of physical performance,³² and there must be certainty of performance as conceived by the author. While yoga asanas could be seen as choreographic work, the Court, in alignment with *Bikram's Yoga College*, held that the simplicity of yoga sequences precludes them from meeting the requirements of a dramatic work. The primary concern revolves around the lack of clarity regarding what constitutes an original literary work, as Section 2(o) merely includes tables and compilations in its definition. Section 13 of the Copyright Act, 1957, establishes that original literary works are eligible for copyright protection. However, the absence of a precise definition for "literary work" raises questions about the scope and nature of the protection afforded to such works.³³ In light of this, it becomes imperative to address the ambiguity in the statute. The referenced case of *University of London Press Limited v. University Tutorial Press Limited (1916)* as discussed by J. Peterson, provides valuable insight into the

²⁸ 'FEIST PUBLICATIONS, INC., Petitioner v. RURAL TELEPHONE SERVICE COMPANY, INC.' (*LII / Legal Information Institute*) <<https://www.law.cornell.edu/supremecourt/text/499/340>> accessed 11 December 2023.

²⁹ 'Baigent & Anor v The Random House Group Ltd, [2007] EWCA Civ 247 | England and Wales Court of Appeal (Civil Division), Judgment, Law, Casemine.Com' (<https://www.casemine.com>) <<https://www.casemine.com/judgment/uk/5a8ff71660d03e7f57ea7521>> accessed 11 December 2023.

³⁰ 'Bikram's Yoga College v. Evolution Yoga - Stanford Copyright and Fair Use Center' <<https://fairuse.stanford.edu/case/bikrams-yoga-college-v-evolution-yoga/>> accessed 11 December 2023.

³¹ Hashimy, 'Copyright or Copyleft' (n 20).

³² 'India: Delhi High Court on Original Work under Section 13 of the Copyright Act' (*Lexology*, 4 June 2018) <<https://www.lexology.com/library/detail.aspx?g=27d7ce79-ba0d-4cf6-8a99-ce68ff0c367b>> accessed 11 December 2023.

³³ s Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' [2022] SSRN Electronic Journal.

interpretation of "original" in the context of copyright. Peterson's assertion that originality does not demand an expression of original or innovative thought but, rather, emphasizes that the manner of expression must originate from the author is a key principle. This opinion recognizes the importance of protecting a broad range of expressions and acknowledges that copyright protection is not contingent on the novelty of underlying ideas. The focus, as outlined in the legal precedent, is on safeguarding the author's unique manner of expression. However, it is recommended that the legislature takes cognizance of the existing ambiguity in the Copyright Act and consider providing a more explicit definition of "literary work." This would contribute to legal certainty and facilitate a more uniform application of copyright law. Additionally, judicial interpretation and guidance may be sought to clarify the parameters of original literary works and ensure a consistent and equitable application of copyright protection.

The legal landscape underwent further refinement in 2008 when the Supreme Court of India revisited the issue of originality in *Eastern Book Company v. D. B. Modak (2008)*. The court clarified that, while the standard for creativity in copyright does not necessitate novelty and non-obviousness, a minimal degree of creativity remains essential. This acknowledgment aligns with a global trend recognizing that originality, though not demanding groundbreaking innovation, requires a certain level of creative input. However, the court established a crucial criterion for a claim to be actionable under copyright law the alleged copy must be substantial and material. This recognition reinforces the principle that not all similarities between works warrant legal action; the elements copied must be of significant importance to constitute infringement upon the copyright. The Indian judiciary's attempt to distinguish between works lacking merit for protection and those embodying "expression of ideas where originality resides in the copyright sense" reflects a nuanced and discerning approach. This judicial stance aims to safeguard works where true originality is manifested in the expression of ideas, aligning with the fundamental principles of copyright law. It is noteworthy that the U.S. Supreme Court has been extensively engaged in addressing the idea-expression problem, contributing substantially to the global discourse on copyright issues. The Indian judiciary's recognition of the importance of a minimal degree of creativity and the significance of substantial similarity reflects a balanced and nuanced approach in copyright jurisprudence. This approach seeks to foster creativity while simultaneously guarding against undue infringement, embodying a commitment to maintaining a delicate equilibrium in the realm of intellectual property law.

IX. INDIA'S ADVOCACY FOR YOGA AND HERBAL MEDICINE

India's unwavering commitment to safeguarding its cultural heritage is vividly evident in its

active pursuit of intellectual property protection, spanning crucial elements like yoga, herbal medicines, and traditional knowledge. This dedicated endeavor is taking place on the global stage, primarily through diplomatic channels at the World Trade Organization (WTO). In an era marked by the potential misappropriation and commercial exploitation of cultural assets, India is working diligently to establish stringent safeguards to preserve the authenticity and essence of its invaluable contributions.

The global reach of yoga, deeply rooted in Indian philosophy, has transformed it into a widely embraced practice celebrated for its holistic benefits. Recognizing its universal appeal, India is leveraging diplomatic efforts at the WTO to implement intellectual property safeguards. The aim is to prevent misappropriation and ensure that the spiritual and cultural roots of yoga are respected on a global scale. This diplomatic initiative underscores India's commitment to preserving the essence of yoga as a shared cultural heritage that transcends borders.

India's traditional system of medicine relies heavily on herbal remedies, drawing upon the country's rich biodiversity. In response to the escalating global demand for natural healthcare solutions, India advocates for intellectual property protection for herbal medicines. The objective is to prevent unauthorized use, promote fair compensation for traditional knowledge holders, and foster sustainable practices in the global market.³⁴ This reflects a dual commitment to preserve cultural heritage and contribute to global well-being through ethical engagement.

The diverse cultural landscape of India is a repository of traditional knowledge passed down through generations, encompassing indigenous practices, folklore, and ancient wisdom. Recognizing the vulnerability of this knowledge to exploitation, India actively pushes for mechanisms at the WTO to protect it. The focus is on establishing a balanced approach that respects the rights of communities, fostering sustainability and development while preserving cultural identity. Globalization poses challenges, including unauthorized commercialization and the potential loss of cultural heritage. India, cognizant of these concerns, engages in diplomatic efforts at the WTO, seeking collaboration with other nations to create a harmonized framework.

The emphasis is on fostering a global environment that values and protects cultural heritage, ensuring that traditional knowledge is treated with the respect it deserves. India's pursuit of intellectual property protection is not about isolation but rather finding a delicate equilibrium between commercial interests and cultural heritage. Advocating for fair compensation,

³⁴ Sayed Qudrat Hashimy, 'An Analysis of Naked Licensing in the Case of Trademark Law in the U.S., U.K. And India' (3 January 2022) <<https://papers.ssrn.com/abstract=3999020>> accessed 11 December 2023.

transparency, and collaboration, India aims to create an environment where traditional knowledge can coexist harmoniously with global markets. The ultimate goal is to benefit both the custodians of this knowledge and the wider international community.

X. CONCLUSION

In a nutshell, India continues its commitment to protecting its cultural heritage and traditional knowledge by proposing stringent measures against the granting of patents to yoga and products derived from genetic resources at the World Trade Organisation (WTO) ministerial meeting. The proposed requirement for patent applicants to disclose any existing traditional knowledge associated with the sought-after patent reflects a proactive approach to prevent misappropriation. In the realm of intellectual property rights (IPRs), it is evident that while simple yoga routines may not meet the criteria for copyright protection, fitness-related brands can strategically leverage copyright and trademark protections. Films,³⁵ descriptions, and compilations of yoga movements can be safeguarded through copyright, and trademarks offer valuable opportunities for branding elements, allowing for monetization and protection through licensing and training programs. By navigating the landscape of IPR with mindfulness and strategic planning, yoga practitioners and exercise brands can ensure the protection of their creative expressions and brand identities. As yoga gains global popularity, it is imperative to approach this intersection with sensitivity and respect for its ancient origins and cultural significance. Upholding the essence of yoga and acknowledging its rich legacy will guarantee its continued thriving as a transformative practice for generations to come. Let us, as practitioners, instructors, and enthusiasts, celebrate and preserve the profound essence of yoga in harmony with its timeless traditions.

³⁵ Hashimy, 'The Doctrine of Copyright Exhaustion In Software Under Indian Copyright Act: A cursory Glance' [2022] SSRN Electronic Journal.

XI. REFERENCE

1. 'Baigent & Anor v The Random House Group Ltd, [2007] EWCA Civ 247 | England and Wales Court of Appeal (Civil Division), Judgment, Law, Casemine.Com' (<https://www.casemine.com>)
<<https://www.casemine.com/judgement/uk/5a8ff71660d03e7f57ea7521>> accessed 11 December 2023
2. 'Baker v. Selden, 101 U.S. 99 (1879)' (*Justia Law*)
<<https://supreme.justia.com/cases/federal/us/101/99/>> accessed 11 December 2023
3. 'Bikram's Yoga College v. Evolution Yoga - Stanford Copyright and Fair Use Center'
<<https://fairuse.stanford.edu/case/bikrams-yoga-college-v-evolution-yoga/>> accessed 11 December 2023
4. Chishti S, 'India and the WTO' (2001) 36 Economic and Political Weekly 1246
5. Copperpod, 'Intellectual Property (IP) Protections for YOGA' (*Copperpod IP*, 22 June 2022) <<https://www.copperpodip.com/post/ip-protection-for-yoga>> accessed 11 December 2023
6. 'Delhi High Court: Name of Ancient Yoga Form Is Not Valid Trademark'
<<https://www.worldtrademarkreview.com/article/delhi-high-court-name-of-ancient-yoga-form-not-valid-trademark>> accessed 11 December 2023
7. Elrod C, 'The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability' (2017) 24 Indiana Journal of Global Legal Studies 575
8. 'FEIST PUBLICATIONS, INC., Petitioner v. RURAL TELEPHONE SERVICE COMPANY, INC.' (*LII / Legal Information Institute*)
<<https://www.law.cornell.edu/supremecourt/text/499/340>> accessed 11 December 2023
9. 'Guest Post: GI for Yoga? (De)Merits and Consequences – Spicyip'
<<https://spicyip.com/2015/01/guest-post-gi-for-yoga-demerits-and-consequences.html>> accessed 11 December 2023
10. Hashimy s, 'Protection of Video Games under Indian and the United States of America Copyright Law' [2022] SSRN Electronic Journal

11. —, 'The Doctrine of Copyright Exhaustion In Software Under Indian Copyright Act: A cursory Glance' [2022] SSRN Electronic Journal
12. —, 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (2023) 2 SSRN Electronic Journal 1
13. Hashimy S and Kimey EE, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 1302
14. Hashimy SQ, 'An Analysis of Naked Licensing in the Case of Trademark Law in the U.S., U.K. And India' (3 January 2022) <<https://papers.ssrn.com/abstract=3999020>> accessed 11 December 2023
15. 'India: Delhi High Court on Original Work under Section 13 of the Copyright Act' (*Lexology*, 4 June 2018) <<https://www.lexology.com/library/detail.aspx?g=27d7ce79-ba0d-4cf6-8a99-ce68ff0c367b>> accessed 11 December 2023
16. Laycock J, 'Yoga for the New Woman and the New Man: The Role of Pierre Bernard and Blanche DeVries in the Creation of Modern Postural Yoga' (2013) 23 *Religion and American Culture: A Journal of Interpretation* 101
17. Lucia A, 'Innovative Gurus: Tradition and Change in Contemporary Hinduism' (2014) 18 *International Journal of Hindu Studies* 221
18. Mane AB, 'International Yoga Day: Positive Step toward Global Health' (2015) 8 *International Journal of Yoga* 163
19. Mgbeoji I, 'Making Space for Grandma: The Emancipation of Traditional Knowledge and the Dominance of Western-Style Intellectual Property Rights Regimes' 06
20. Reese RA, 'What Should Copyright Protect?' in Rebecca Giblin and Kimberlee Weatherall (eds), *What if we could reimagine copyright?* (1st edn, ANU Press 2017) <<http://press-files.anu.edu.au/downloads/press/n2190/pdf/ch04.pdf>> accessed 24 October 2023
21. Samuelson P, 'Functionality and Expression in Computer Programs: Refining the Tests for Software Copyright Infringement' (2016) 31 *Berkeley Technology Law Journal* 1215
22. Sen S and Chakraborty R, 'Traditional Knowledge Digital Library: A Distinctive Approach to Protect and Promote Indian Indigenous Medicinal Treasure' (2014) 106 *Current Science* 1340

23. Sippel LR, *Yoga: A Solution to Modern Corruption*
<<https://jstor.org/stable/community.22752007>> accessed 11 December 2023
24. ‘Spotlighting Long-Standing Regional Conflicts, World Leaders Call for Strict Adherence to International Law, United Nations Charter, as General Assembly Debate Continues - World | ReliefWeb’ (25 September 2022)
<<https://reliefweb.int/report/world/spotlighting-long-standing-regional-conflicts-world-leaders-call-strict-adherence-international-law-united-nations-charter-general-assembly-debate-continues>> accessed 11 December 2023
25. ‘Stratjuris Law Partners Yoga from Traditional Knowledge to IPR: Yoga Is No YO!Ga - Stratjuris Law Partners’ <<https://www.stratjuris.com/yoga-from-traditional-knowledge-to-ipr-yoga-is-no-yoga/>> accessed 11 December 2023
26. ‘The Economic Times: Business News, Personal Finance, Financial News, India Stock Market Investing, Economy News, SENSEX, NIFTY, NSE, BSE Live, IPO News’
<<https://economictimes.indiatimes.com/defaultinterstitial.cms>> accessed 11 December 2023
27. ‘US Patent on Yoga? Indian Gurus Fume | India News - Times of India’
<<https://timesofindia.indiatimes.com/india/us-patent-on-yoga-indian-gurus-fume/articleshow/2058285.cms>> accessed 11 December 2023
28. van der Veer P, ‘Spirituality in Modern Society’ (2009) 76 *Social Research* 1097