



Protection of Traditional Knowledge under IPR

KEYWORDS

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ABSTRACT

Intellectual Property is an offspring of human knowledge. Innovation is the natural instinct of human being, protection of such Innovation is the prime obligation of society. To recall Albert Einstein "Imagination is more important than knowledge, for knowledge is limited while imagination embraces the entire world. The preservation, protection, and promotion of the traditional knowledge, innovations, and practices are key importance for developing countries. Their rich endowment of Traditional Knowledge plays a critical role in their health care, food security, culture, religion, identity, environment, sustainable development, and trade. It is particularly crucial for the most vulnerable segments of their societies and for indigenous peoples worldwide. But this valuable asset is at risk in many parts of the world, with few or none of the benefits being shared with the original Traditional Knowledge holders, and without their prior informed consent.

Geographical Indications Act: Overview

It is evident from the Geographical Indications Act of India that it is not possible to fully address the effective protection of Traditional Knowledge within the framework of these laws. This is the reason for the demand for a separate legal framework both internationally and nationally for the effective protection of traditional knowledge from misappropriation. The efforts taken by the WIPO in developing minimum legal standards to protect traditional knowledge from misappropriation are worth pursuing. There must be more concerted effort from both developing and developed countries to carry forward the initiatives of WIPO. The focus of this protection must be to provide the actual holders of traditional knowledge with the full authority to control their knowledge systems without adversely affecting the larger interests to society for access to this knowledge.

The protection of Traditional Knowledge raises a number of policy issues, notably the objectives and modalities of such protection, and its impact and implications for its intended beneficiaries. Such issues are extremely complex, since there are broad differences about the definition of the subject matter, the rationale for protection, and the means for achieving its purposes. The issues relating to TK should be addressed in a holistic manner, including ethical, environmental, and socio-economic concerns. Intellectual Property Rights may be one of the tools to be used, but their limits and implications should be clearly understood. In particular, a balance should be obtained between the protection and the promotion of the use of such knowledge. It is unclear the extent to which the various proposals made for the protection of Traditional Knowledge reflect the aims and cultural values of the traditional and indigenous communities they intend to serve. There is a risk of transferring to such community's concepts and paradigms which are not suited to their realities, or which may prove ineffective to solve the problems. The consideration of Traditional Knowledge protection should not overshadow the fact that the preservation and use of Traditional Knowledge requires above all ensuring the survival and improvement of living conditions, in their environment and cultural milieu, of such communities. Given the lack of clarity about the objectives, nature, scope, and implications of possible Intellectual Property Rights-based regimes for Traditional Knowledge protection, it seems premature to promote the development of international standards in the framework of WTO. A possible intermediate approach, until the outstanding issues are clarified, may be to develop global rules to

prevent the misappropriation of Traditional Knowledge.

SUGGESTIONS

A World wide movement of citizens is emerging to stop biopiracy and to protect biodiversity. India is a vast country with its being preserved and used by the tribal communities for their own well-being and used by the tribal communities for their own well-being and also for the welfare of the people at large. It is time to initiate steps to protect and preserve this rich heritage from the clutches of the new international law regime, which is adverse to the interest of not only the tribal communities but also the national economy and the environment. Following suggestions are new avenue for protection to the Geographical Indication and Traditional Knowledge,

- a) Promoting the development, at the national level, of an holistic approach towards the protection of Traditional Knowledge, including the resolution of underlying issues such as land rights and the need to respect and maintain the lifestyles of local and indigenous communities;
- b) Considering the differing needs for the protection and promotion of Traditional Knowledge in different areas, such as Traditional Medicine and plant genetic resources;
- c) Implementing Farmers Rights at the national level;
- d) Moving towards, in the short term, the establishment of a misappropriation regime;
- e) Continuing work in WIPO, UNCTAD, WTO and in other platform in order to clarify the possible role, scope, and content of systems of protection for Traditional Knowledge;
- f) Ensuring a broad and effective participation of representatives from local and indigenous communities in the definition and implementation of any system for the protection of Traditional Knowledge
- g) Prior informed consent of knowledge holders must be obtained before their knowledge can be used by others.
- h) There should be active involvement of indigenous and local communities in applying their knowledge to the development of new products.
- i) Steps should be taken to record and document the information pertaining to the traditional knowledge, as a national property.
- j) All forms of traditional knowledge, including folk science and technology, must be included within the scope of the law.
- k) The law must protect and preserve this valuable traditional knowledge of India, available in the public domain,

from being commercially exploited without authorization.

- l) The exclusive right to manage the knowledge base must be primarily with the representatives of the local and village communities, along with representatives of the people, government, experts, etc., in the form of "Trusts".
- m) Considering the diverse nature of this knowledge and the fact that a lot of it has lost its community identity, the right of management must be vested with Trusts at different levels--from Community Trust to National Trust.
- n) Each Trust must have a Management committee and must be composed in such a manner that it will have continuity and will have the benefit of people from outside the community to assist them in the management, particularly in giving prior informed consent and determining the question of the terms and conditions of prior informed consent to use the folklore/traditional knowledge or new products based on this knowledge for commercial exploitation.
- o) The legislation must aim at the local communities preserving the traditional knowledge/folklore and using the same for the social, cultural, and economic growth of the communities by starting appropriate institutions for achieving that purpose.
- p) The legislation must facilitate the interaction of traditional knowledge with such modern technological developments as biotechnology and digital technology so that the new knowledge developed can be adopted and used by the communities for their social, cultural, and economic development.
- q) There must be Dispute Settlement Committees associated with the Trusts, and disputes regarding the right to management must be settled by them with a provision for appeal to a Statutory Board/Tribunal and then to the Supreme Court.
- r) There must be civil and criminal remedies for unauthorized use of traditional knowledge for commercial exploitation.

In addition, following suggestions have been advanced in India to extend protection to traditional knowledge.

- i) Documentation of TK;
- ii) Registration and innovations patent system; and
- iii) Development of a sui generis system.

It is sometimes believed that proper documentation of associated TK could help in checking bio-piracy. Documentation could be a double-edged sword. It is assumed that if the material/ knowledge is documented, it can be made available to patent examiners the world over so that prior art in the case of inventions based on such materials/knowledge are readily available to them. It is also hoped that such documentation would facilitate tracing of indigenous communities with who benefits of commercialization of such materials/ knowledge has to be shared.

Documentation of traditional knowledge is also acknowledged as a means of giving due recognition to the traditional knowledge holders. This particular aspect of documenting formulations in the Ayurvedic system of medicine in India in the shape of Traditional Knowledge Digital Library (TKDL) is already on. The scope of the TKDL work relates to the transcription of 35,000 formulations used in Ayurvedic system of medicines. These details are being converted into Patent Application Format and will include description, method on the preparation, claim, and the usage of the bibliography. The retrieval will be based on the Traditional Knowledge Resource Classification (TKRC) and International Patent Classification (IPC). The original Sanskrit text is translated and presented in French, German, English, Japanese, Spanish, and Hindi through unit code technology that is language independent. The total number of pages in each language will be 1, 40,000. The local names of plants are converted into botanical names and Ayurvedic descriptions of diseases into modern medical terminology. The TKDL will eventually cover other indigenous system like Unani, Siddha, Naturopathy, folklore etc. In India, preparation of village-wise Community Biodiversity Registers (CBRs) for documenting all knowledge, innovations, and practices has been under taken in a few States.

Indian Government may take following initiative for effective protection and conservation of biodiversity and traditional Knowledge.

- A) Establishing agricultural research programmes and centers for ex situ and in situ conservation of plant varieties plant genetic resources and for development new plant varieties by making use of the knowledge and innovations of local farming communities and transferring good practices and varieties throughout the country.
- B) Setting up or promoting herbal gardens of traditional medicinal plants.
- C) Ensuring adequate income to the community healers expects on Traditional Knowledge.
- D) Incorporating traditional knowledge as part of the curriculum for schools, colleges, universities, and research centers.
- E) Recognizing leaders, experts, and innovations in Traditional Knowledge in various fields by providing incentives.

However, Development of a comprehensive legislation to protect these forms of knowledge is the only way to prevent their unauthorized exploitation, particularly by foreign corporations, for commercial gain.

The foregoing research work shows that human communities have always generated, refined, and passed on knowledge from generation to generation. Such tradition knowledge is very often an important part of their cultural identity and has been playing a pivotal role in the daily lives of the vast majority of the people. Traditional Knowledge is essential to the food security and heals of millions of people in the developing world.

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