



# A Study on Need For Legal Protection To Traditional Knowledge

## KEYWORDS

Traditional Knowledge, Indigenous People, Legal Protection

### Adarsha M.N

Guest Lecturer and Research Scholar Dept of PG Studies and Research in Law Kuvempu University, Jnana Sahyadri Shankaraghatta- 577451

### Dr.A.Mohanram

Guide/ Research Supervisor, Dept of PG Studies and Research in Law, Kuvempu University, Jnana Sahyadri Shankaraghatta- 577451

## ABSTRACT

*The concept of Traditional Knowledge protection is one of the most neglected area by the Law makers. Majority of the Traditional Knowledge Holders are either Indigenous people or illiterate villagers, they are not aware of the importance of its protection and also the legal rights of them on that knowledge. Hence it has been misused by many of the Multinational Companies and also developed countries by illegally acquiring the knowledge from real holders without any consideration and minting the money by producing the medicinal product in the market. This can be stopped by introducing a strong legislation in protection of traditional knowledge and recognizing the real people involved in it. Many countries are came out with their own laws in it but India which is the treasure of Biological diversity and Versatility in Traditional knowledge still lacking in this aspect.*

## Introduction:

Human communities have always generated, refined and passed on knowledge from generation to generation. Such "traditional" knowledge" is often an important part of their cultural identities. Traditional knowledge has played, and still plays, a vital role in the daily lives of the vast majority of people. Traditional knowledge is essential to the food security and health of millions of people in the developing world. In many countries, traditional medicines provide the only affordable treatment available to poor people. In developing countries, up to 80% of the population depends on traditional medicines to help meet their healthcare needs. In addition, knowledge of the healing properties of plants has been the source of many modern medicines.

The knowledge has been generated, refined and passed by human communities from generation to generation. That knowledge which is passed on from ancestors called as traditional knowledge was a part of their cultural identities. A vital role has been playing by traditional knowledge even now also where majority of the people are dependent for their daily livelihood. For Millions of people of the third world nation's traditional knowledge is essential to the food security and health. As traditional medicine is very much affordable compare to other kind of medicinal system about 80% of the world population is dependent on it to meet their healthcare needs. In addition, knowledge of the healing properties of plants has been the source of many modern medicines<sup>1</sup>.

Evolution of mankind is integrated with development of indigenous technologies to meet their needs by informal experimentations <sup>2</sup>. India is known for rich repository of biological wealth having more than 17,500 wild plant species, and of these 4,000 species have medicinal values<sup>3</sup>. Use of plants as medicine is not of recent origin, as above 1,200 herbal plants are mentioned in ancient Indian texts<sup>4</sup>. The earliest mention of the medicinal use of plants has been found in " Rig Veda" which was written between 4000 and 1600 B.C. In the Atherva Vedha, I find the more varied use of drugs. It is in the " Ayurveda", which is considered as an "Upaveda", that define properties of drugs and their use have been given in great details" Charaka Samhita" is another earliest treatise in "Ayurveda"(600 B.C.) which lists

a total number of 341 plants and plants products for use in health management. "Susruta samhita" also dealt with plants related to medicine.<sup>5</sup>

## Meaning:

Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Sometimes it is referred to as an oral traditional for it is practiced, sung, danced, painted, carved, chanted and performed down through millennia. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, forestry and environmental management in general.<sup>6</sup>

## Traditional medicine:

Traditional medicine is the sum total of the knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness<sup>7</sup>.

## Rationale behind Protection:

Concern about the loss of traditional life styles and of traditional knowledge, and the reluctance of the younger members of the communities to carry forward traditional practices.

Concern about the lack of respect for traditional knowledge and holders of traditional knowledge.

Concern about the misappropriation of traditional knowledge including use of traditional knowledge without any benefit sharing, or use in a derogatory manner.

Lack of recognition of the need to preserve and promote

the further use of traditional knowledge.<sup>8</sup>

#### International debate on traditional knowledge:

A large number of bodies including WIPO, the CBD, UNCTAD and WTO are discussing the protection of traditional knowledge. These debates have rightfully focused on understanding the issue rather than on developing international norms. Only with a deeper understanding and greater practical experience at national or regional level would it be realistic to develop an international system of protection for traditional knowledge.

It is essential that all the agencies considering the issue work together to avoid unnecessary duplication and to ensure that the debate includes as many different views as possible. In this respect it has been suggested that an organization such as WIPO, which deals exclusively with intellectual property matters, may not be the most appropriate Forum to consider traditional knowledge in all its aspects.<sup>9</sup>

#### Traditional knowledge protection by different countries:

Some countries have already decided that the existing intellectual property system is not, on its own, adequate to protect traditional knowledge. A number of these have enacted or are process of enacting sui generis system of protection.

The Philippines has enacted legislation and is considering further provisions giving indigenous communities right over their traditional knowledge, Philippines Traditional and Alternative Medicine Act, 1997. These rights extend to controlling access to ancestral lands access to biological and genetic resources and to indigenous knowledge related to these resources. Any benefit arising from genetic resources or associated knowledge will be equitably shared.<sup>10</sup>

Guatemalan law also seeks to preserve and promote the wider use of its traditional knowledge by placing expressions of national culture, including for example medical knowledge and music, under the protection of the state. Such expressions cannot be under the law is sold or be subject of any remuneration.

Organizations such as the African Union are considering sui generis legislation that provides community based right over biological resources and associated traditional knowledge and are seeking to give increased recognition to the cultural and customary practices and communities. Burkina Faso, Tanzania, Brazil are having their own sui generis laws. Asian countries like Thailand have Thai Traditional Medicine Act, 1999, Sri Lanka Draft Access to Traditional Knowledge relating to the Use of Medicinal Plants Act, 2000. Bangladesh Draft Biodiversity and Community Knowledge Protection Act, 1998, Draft Plant Varieties Act, 1998, Draft Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development. China Regulation Concerning the Management and Protection of Wild Herbal Resources, 1987, Regulation Concerning Protection of Wild Plants, 1997, Regulation of the People's Republic of China on the Protection of New Varieties of Plants, 1999, Patent Law. Indonesia Health Act, Plant Variety Protection Bill, Act on Spatial Use Management, 1992, Plant Cultivation Act, 1992. Nepal Draft Policy on Access to Genetic Resources and Benefit Sharing, 2002, Draft Access to Genetic Resources and Ben-

efit Sharing Act, 2002, Local Self Governance Act, 1998, Plant Protection Act, 1973

In India also there has been a process going on for the legal protection to Traditional Knowledge as The Constitution of India does not directly address the issue of protection of traditional knowledge. Article 48(A) of the Constitution refers to the State's obligation to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51 (A)(g), Imposes a duty upon the citizens of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife. As regards protection of TCEs, Article 29 of the Constitution recognizes as a "Fundamental Right" (Part III) the protection of the culture of minorities. According to Article 29, "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." It is possible to protect the folklore of the distinct groups in India based on this provision. However, the majority of the TCEs existing and misused now in India belong to small communities who do not come under the scope of the aforementioned constitutional provision (Kutty 2002). The only other general provision in the Constitution that can be identified as a source to protect TCEs is Article 51A (f) of the Constitution. It is the fundamental duty of every citizen of India "to value and preserve the rich heritage of our composite culture." Furthermore, considering the special cultural identity of the tribal population in India, the Constitution envisages special protection of the indigenous communities. The areas where there are only tribal communities, as per Article 371 read with the Schedule VI of the Constitution, are permitted to have separate Autonomous Councils for self-governance in accordance with their customary laws.

Other legislation like Patent (Second Amendment) Act, 2002, The Protection of Plant Varieties and Farmers' Rights Act, 2001, Biological Diversity Act, 2002, Draft Kerala Tribal Intellectual Property Rights Bill, 1996, Draft Karnataka Community Intellectual Rights Bill, 1994,

But there is a lack of international legislation which could have common characteristics to protect traditional knowledge.<sup>11</sup>

#### Conclusions and Suggestions:

With the immense increase in the use of traditional medicines worldwide, protection of traditional medicinal knowledge has become an important concern. With the increase in demand for medicinal plants, exploitation of resources by the multinationals and absence of an effective system of protection, the urgent need for regulating access and benefit sharing has arisen. Here are some of the suggestions for the protection of Traditional Medicinal Knowledge of Indigenous people:

Equity considerations – the custodians of traditional knowledge should receive fair compensation if the traditional knowledge leads to commercial gain.

Conservation concerns – the protection of traditional knowledge contributes to the wider objective of conserving the environment, bio-diversity and sustainable agricultural practices.

Preservation of traditional practices and culture – protec-

tion of traditional knowledge would be used to raise the profile of the knowledge and the people entrusted with it both within and outside communities.

Prevention of appropriation by un authorized parties or avoiding "bio piracy"

Promotion of its use and its importance to development.

India is a most important resource collection centre for plants and traditional knowledge of system of medicines like Ayurveda, Siddha and Unani. Legislation can be enacted taking into account the various regional differences in the matter, customary laws of various communities etc. Besides, we should give more priority to collective or community rights instead of individual rights. That way it will become more profitable to the communities to commercialize their knowledge. The traditional medicinal knowledge which is not yet in the public domain can be protected as trade secrets. But the most essential thing which is needed is to protect the interest of the Traditional knowledge holders who are poor, illiterate, socially and economically backward. Protection of their interest is more essential to achieve the constitutional goals.

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