



CUSTOMARY TRADITIONAL KNOWLEDGE – NEED OF PROTECTION

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KEYWORDS

The Charter of the United Nations annexes the Statute of the ICJ, Article 38-which requires it, when deciding disputes in accordance with international law, to apply "international custom, as one of the evidence of a general practice accepted." It has been put forward that there are or should be linkages or overlap between customary international law and the customary law of indigenous peoples and local communities.

Experiences have been reported concerning the role of customary law in relation to intangible property, and rights and obligations relating to intangible property such as cultural expressions, traditional knowledge (TK), and other connected material as well as the tangible form of expressions such as handicrafts, medicines and forms of dress.

Article 8(j) of the CBD made a reference to protection of traditional knowledge at the international level¹ stating very categorically that nations should protect traditional knowledge and help the real stake holders to reap the harvest of their labour through the concept of equitable sharing.

A key priority was felt to learn from the diverse experiences and concerns of indigenous peoples and local communities that have developed customary laws and practices. This is clearly an important step in understanding the status and potential role of such laws and practices. Such an approach underwrote the original fact-finding consultations with the holders of TK and TCEs in 1998 and 1999². The debate explained that the approach taken in many cases is to document or record the customary laws and practices of indigenous peoples and local communities, and to extend their application in the context of formal interactions with the wider legal and policy environment. Recognition, promotion and protection of customary laws and practices is increasingly an element of national, regional and international policies and programs concerning the interests of indigenous peoples and local communities, including policies and programs promoting the appropriate use and protection of TK is an element of sustainable development of indigenous peoples and local communities.³

The ongoing WIPO discussions on traditional knowledge 2015 expressed apprehensions and many members wanted to continue conducting policymaking with the aim of delivering one or several treaties protecting genetic resources (grs), traditional knowledge (tk), and traditional cultural expressions (tces) against misappropriation.

Developing countries, the demanders of the protection, sought to continue negotiations on legally binding rules and to try to reach a common understanding on core issues, "including definition of misappropriation, beneficiaries, subject matter, objectives, and what tk/tces subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain." Finally WIPO decided to convene a meeting in 2017 to draft a treaty on this matter of traditional knowledge and misappropriation and other related matters.⁴

Thus it is important for a country like India to gird up its data base evidenced by surveys and recommendations to put forward a

strong plan of action at International level for the protection of traditional heritage indigenous but with wide variants to accommodate different nations and their culture, which symbolizes their identity anywhere and everywhere. This would protect our Indian heritage.

¹Article8(j) - Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

²See WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999) "Intellectual Property Needs and Expectations of Traditional Knowledge Holders" (WIPO publication no. 768(E)).

³Customary law, traditional knowledge and intellectual property: an outline of the issues, wipo 2013, www.wipo.int.

⁴The WIPO release states: "Agreed to convene a diplomatic conference for the adoption of a design law treaty to develop simplified standards for industrial design registration procedures in the first half of 2017 subject to the completion at the 34th and 35th sessions of the Standing Committee on the Law of Trade-marks, Industrial Designs and Geographical Indications (SCT) of discussions on technical assistance and a possible disclosure requirement aiming at the protection of traditional assets from misappropriation."

POSSIBLE OUTCOME-

Drawing parallels with the customary law protection for traditional knowledge by WIPO in the ongoing negotiations will be considered. WIPO explores the idea of "customary law" as something that concerns the laws, practices and customs of indigenous peoples and local communities. It refers to these laws as something intricate to that tribe without the protection of which their identity is in crisis. Customary law is, by definition, intrinsic to the life and custom of indigenous peoples and local communities. What has the status of "custom" and what amounts to "customary law" as such will depend very much on how indigenous peoples and local communities themselves perceive these questions, and on how they function as indigenous peoples and local communities. "customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws" sometimes they may give it more importance to it that referring to it as customary law disturbs them. So that makes it very important. It is with emphasis to this theme of WIPO that the region of Attapady is focused for this study. These tribes reside on small hills and to get to their hamlets is possible only through travel on rough terrain in jeeps. They have a closed life style wherein intruders are looked at with doubt. Government has tried to invade into their privacy to regulate their standard of living but not with much success. The

elders in the community have an upper hand in their day to day life such as family life, law regarding marriage, property, fights, disputes, medical treatment etc.

Irular, Mudugar, Kurumbar are the three tribal groups inhabiting this area. Irular are predominantly in the plains while the other two tribes are spread in and around the hills. These people have their own diet and treatment methods. They have medicines made of the flora and fauna found in and around them. They have their "natural birthing" method of unassisted childbirth which is now gaining momentum in the west. The impact of traditional food on their lifestyle – Ragi and wild spinach kept them healthier enough to climb the hills even though they had only one regular meal a day. With the ration rice and sugar which is not part of their traditional foods, their health is bound to be affected like in the case of other Keralites. Government seems to be doing a lot for these people but is it on the right track is the question. The study plans to focus on Kurumbar tribe though the final decision on which tribe to concentrate will be decided as study starts at the grass root level depending on the availability of case studies.

The Kurumbar hamlets are located in the northeast part of Attappady Valley adjoining to Silent valley National Park, which constitutes the Southern part Nilgiris. There are 10 Kurumbar hamlets in Attappadi. The language of Kurumbar is 'I'amil and Malayalam mixed but is said to have more or less strong influence of Kannada. Kurumbar are practitioners of medicine called *vaidhayakkaran* and *madhukkaran* capable of treating an array of diseases. The Kurumbar hamlets are located deep inside the forests. There exist no jeepable road links between majority of Kurumbar hamlets. Steep climbs are characteristic of footpaths leading to the hamlets. They cultivate mixed crops. which include *ragi*, *thena*, *chamn*, red gram. Majority of the Kurumbar families have small-scale ganja cultivation plots around their homesteads. Such families argue that they cultivate are for personal use and they had the right to cultivate ganja for using it as medicine. They collect dammar resin, ginger, honey, bee wax, gooseberry and soapnut from the forests. The Kurumbar rear cattle for milk products. They seldom drink milk. They prefer to drink black tea instead of milk added tea. Curd, buttermilk and ghee are prepared and consumed.

Certain practices-

During pregnancy the expectant mother delivers the child in squatting position. Two women will stand on her side to give her gentle massage on her back and sides. The Kurumbar believe that the presence of women nearby gives courage to the mother and ease out the labour pain. They give her soothing words until the expulsion of after birth. The woman in confinement herself cuts the umbilical cord with a line, reed splint or with a sharpened knife used for reaping ragi. Among the Kurumbar about 5 traditional herbalists were identified. This includes men and women practitioners. The Kurumbar herbalists use large number of plants in therapeutic recipes. They treat diseases such as cancer, asthma, piles, kidney stones and similar other debilitating conditions. The Kurumbar herbalists are highly secretive and show utmost reluctance in revealing the ingredients of the recipes to outsiders. They have earned reputation as effective healers.

The above stated material was developed from a typed literature way back. There is hardly any written literature in this subject. Therefore discovery of any literature needs to be done; the elders need to be convinced to interface with us and divulge their secrets. As of now there is no protection for this knowledge under available legislation on medicine like for Allopathic and other branches of medicine. The customary law hardly gives any protection, therefore the tribal department needs to formulate methods of protection for this branch of medicine which has been of immense relief to many patients where Allopathic and other branches of medicine has failed.

The identification of the amount of traditional medicines itself is of social utility as it has its own merits especially in an era where 'organic' is the market. And the need to protect it and its proper ownership can be further enhanced to develop this branch of tribal medicine like Ayurveda and homeopathic. A study into the

Attappady region and find out the areas where there is traditional knowledge and focus the study on any one tribe and see the availability of resources among them and how it is preserved by them and any available written material. How is it transferred to the generations and how much has become extinct due to no adequate means of preserving and recording and to the extent to which and the areas in which there has been misappropriation of their knowledge and the methods to be planned in consensus with them regarding ownership in terms of holder of the traditional knowledge and possible ways of blocking leakage of traditional knowledge.

The amount of pressure which comes from the developed nations and the multinationals shows the amount of tension and sensitivity in this branch which needs to be catered at local, state and national level. The support needed to this branch of tribal medicine has to be dealt with utmost care and proper legislation. A separate policy may be framed to bring all these tribal medicine under one umbrella. That will develop this branch and also give abundance of employment to tribal people, who can work in hospitals. This will give impetus to this branch. More of these studies can cover all such areas under individual states. It is important that this knowledge is harnessed before it is fully misappropriated by the Pharma's.