



ORIGINAL RESEARCH PAPER

Law

TRADITIONAL KNOWLEDGE VIS-Ŕ-VIS TRIBAL RIGHTS

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Introduction:

Advancement of science and technology has resulted into the radical changes in lives of human beings. Till recently the richest man was oil worker now he is knowledge worker .In our country since ancient times almost all the rulers adored the knowledgeable persons with all comforts. In the present day scenario the knowledge is not only source of power but also primary source of property. Knowledge available through centuries to communities regarding all aspects of life is called the traditional knowledge in simple acrimony it is called as T.K. The traditional knowledge in other words called as indigenous knowledge or local community knowledge. Traditional Knowledge largely reflects community interests and much of communities in the world depend upon traditional knowledge for their survival.

Meaning and Definition of Traditional Knowledge:

There is no universally accepted definition available for the traditional knowledge. We can in other words say that it is lacking a definition. Not only in the world there is no accurate definition is available and same is in India. But some how an internationally accepted definition is framed by the World Intellectual Property Organisation (WIPO) which defines it as follows:

“tradition based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

The WIPO after prolong discussions has adopted the above definition for the traditional knowledge. The definition encompasses every aspect tradition based activities. The question arises in our mind what is meant by tradition. As per the Merriam Webster Dictionary tradition it means a way of thinking, behaving, or doing something that has been used by the people in a particular group, family, society, etc. for a long time. And as per Wikipedia, the tradition is a belief or behaviour passed down within a group or society with symbolic meaning or special significance with origin in the past. By observing and understanding we can come to a conclusion that traditional knowledge is a knowledge which is passing from generation to generation from ancient times.

Tribes in India:

India is the home to large number of tribal or indigenous people, who are still untouched by the lifestyle of the modern world. With more than 84.4 million, India has the largest population of the tribal people in the world. These tribal people also known as the adivasi's are the poorest in the country, who are still dependent on haunting, agriculture and fishing. Some of the major tribal groups in India include Gonds, Santhals, Khasis, Angamis, Bhils, Bhutias and Great Andamanese. All these tribal people have their own culture, tradition, language and lifestyle.

In our country there are 84 million tribal people are inhabiting they belong to 550 tribal communities and each tribal community is possessing one or other sort of traditional knowledge Traditional knowledge of tribal range from agricultural practices, plant practices, medicinal practices etc. They have possessing these kind of knowledge since centuries.

Traditional Knowledge of tribes on medicinal plants:

Medicinal properties of plants have been recognized and practiced by tribal communities as a tradition for thousands of years. Knowledge on some common medicinal plants of their locality is available with all the members of the community. However, the elderly members possess a great deal of knowledge of medicinal plants as well as on medicines for curing certain life threatening diseases. Tribal people use plants solely or in combination. Same plant may be used for different disorders: for example Calotropis gigantea is used as vermicide and for chest pain, Centella asiatica used for gynecological problems and for jaundice, Dodonaea viscosa used for headache, stomach pain and piles, Wrightia tinctoria for treating mumps and as lactagogue. In certain cases a combination of different plants are used in the treatment for e.g. Albizia lebbec together with Cassia fistula and Euphorbia hirta is used for urinary disorder. And Capparis zeylanica with Pongamia pinnata, Cissus quadrangularis and Toddalia asiatica is used for venereal disease. Each tribe has its own method of collecting the plants as well as the preparation of medicines. Dosage and duration of medication depends on the age of the patient and the intensity of disease. The tribes collect the plant part used for medicine at a particular time like, either before flowering or fruiting, or in a particular season. Medicinal knowledge of “Khasi” tribes of North Eastern India led to development of a sport drug named “Jeevani” which an anti-stress and anti-fatigue agents based on herbal medicinal plant “Arogyapaacha”.

Traditional Knowledge in Agriculture:

The knowledge of tribal people in traditional agriculture is very great. Their farming practices are truly sustainable in many ways. Tribal communities namely Irulas, Malayalis and Muthuvas inhabiting Tamil Nadu have been cultivating the traditional cultivars viz. paddy, millets, pulses and vegetable crops. Their subsistence life style, local diet habits and dependence on rain fed irrigation have influenced them to cultivate and conserve the traditional cultivars or land races. Many crops such as Panicum miliaceum, Echinocloa colona, Paspalum scrobiculatum and Setaria italica are now cultivated and conserved only by the tribal people in many parts of southern India.

Traditional knowledge methods of storing seeds:

Seed material for sowing and the grains for consumption, are preserved in traditional granaries. These granaries are made of bamboo and coated with red soil. The roof is conical which is thatched with local grass. There is a free flow of air in the granaries, which may be one of the reasons that the seeds could remain viable till it is used next time. Another method of storing is that the seeds are stored in earthen pots covered with a cotton cloth. This indigenous practice has saved many varieties of cereals, millets and legumes over many generations in Tamil Nadu. This practice has enabled them to maintain, preserve and conserve the genetic strains from extinction. Leaves of Neem (Azadirachta indica) and Vitex (Vitex negundo) are used in the granaries as insect and pest repellents.

Protection of Traditional Knowledge under Indian Law:

India is having intellectual property protection since British days. The liberation of country lead to enactment of modern intellectual property regime in India like the Trade Marks Act of 1940, 1958 and latest by 1999, the Patent Law in 1911 latest by 1970, the Copy Right Act in 1957 In our country, after the neem patent controversy, the need to protect the traditional knowledge of India has gained importance. India has taken an initiative through

Traditional Knowledge Digital Library (TKDL), a collaborative project of Council of Scientific and Industrial Research (CSIR) of India and Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) which helps the examiners of Patent Offices to search for any information regarding substance or practice while granting patents and they can dismiss the grant of patent, if the substance or practice is already there in the TKDL list as Indian traditional knowledge. Critics have stated that this documentation could itself lead to misappropriation of India's traditional knowledge.

With the rise in need to protect Traditional Knowledge and to prevent its misappropriation the main question that has to be answered is: Can Intellectual Property protects Traditional Knowledge? However, the main criticism of protecting traditional knowledge with IPR is that IPR leads to the commodification of knowledge; it treats knowledge as a commodity with economic value, which is far way different from the perspective of Indigenous People, who treat their knowledge as pious and sacred.

Analysing IP Protection for Traditional Knowledge

While analysing IP protection for Traditional Knowledge, it is important to determine as to under which category of IPR this traditional knowledge can be protected.

Protecting traditional knowledge under Indian Copyright Law

Indian Copyright Law, as such do not provide for protection of expression of folklore or protection of traditional knowledge of indigenous people, however an inference can be drawn from Section 31A² of the Indian Copyright law, which protects the unpublished Indian work. The Question that arises is if granted, whether copyright law would be sufficient for the protection of traditional knowledge?

Some of the major drawbacks in protecting traditional knowledge with copyright are as follows:

- i. **Authorship:** Under the Indian Copyright Law, protection is given to the author or owner of the work. Traditional Knowledge is community owned knowledge and is generally developed and evolved through generations to generation. In such case tracing the author of the traditional knowledge is not only difficult but almost impossible.
- ii. **Protection for Limited Time:** Indian copyright protection is time confined for period of 60 years. Traditional Knowledge is imperative and it should have perpetual protection rather than limited protection.
- iii. **Fixed form:** To protect any work with Copyright under the Indian Copyright Law it is required that the work must be present in a tangible form. Fixed form of traditional knowledge is hard to find. In most of the cases, traditional knowledge is passed over generations in a community in form of stories. These stories are rarely available in fixed form.

As per Indian Copyright law traditional knowledge fails to adhere the requirements that are precedent to copyright protection. Hence, the protection can not be accorded to traditional knowledge under the copy right law.

Protecting traditional knowledge as Patents under the Indian Patents Law:

- i. In India, patents are given to an individual for his invention. Traditional Knowledge is community owned knowledge and not by any individual. Moreover, critics are of the view that traditional knowledge is naturally owned knowledge and not an invention, therefore no patent protection can be granted to it.
- ii. Patents are granted to invention that is invented by a single act of invention whereas traditional knowledge is evolved and developed over generations, that too over the point of time.
- iii. Indian patents are cost bound and their registration and maintenance cost a lot, which is an impossible take on the part of indigenous people as they lack financial assets.

iv. Moreover, it is quite difficult on the part of indigenous people to engage themselves in the legality and technicality of patents.

By above discussion we can say that the traditional knowledge does not fall under the patent protection in any way.

Protecting Traditional Knowledge as Trade Secrets

Protecting traditional knowledge as trade secrets is quite possible for the indigenous people as it does not require any cost. All they need is a conscious effort on their part to keep their knowledge as secret. Generally, traditional knowledge is intact with the community members only and therefore, can be protected as trade secret.

Traditional Knowledge and Bio Diversity:

The Government of India on par with international obligations such as Convention on Biological Diversity (CBD) 1993, has enacted Indian Biodiversity Act 2002, which view to protection of knowledge of local people relating to bi-diversity through measures such as registration of such knowledge, and development of a sui generis system. In order to ensure equitable sharing of benefits arising from the use of biological resources and associated knowledge. The provisions of the Act clearly stipulates that approval of National Bio Diversity Authority for access of knowledge, the National Bio Diversity Authority while granting permission has authority to impose any kinds for protection of traditional knowledge. Section 18(iv) of Biological Diversity Act 2002, the National Biological Authority is to take measures to oppose the grant of intellectual property rights or revoke patent rights if already granted to any country outside of India on any biological resources obtained from India or knowledge associated with such biological resources. Conclusions and Suggestions:

From the above discussion it is clearly evident that India has quite rich and flourishing traditional knowledge and this knowledge can be used in various ways in different sectors like pharmaceuticals, agriculture etc., but somehow Indian Intellectual Property laws fail to provide effective protection to it. To check the misappropriation of this rich knowledge, some alternative measures like sui generis system and benefit-sharing schemes can be taken up. The concept of benefit-sharing must be encouraged when any research on Indian traditional knowledge is done so as to benefit the indigenous people as well. However, through various declarations by the indigenous groups, it is seen that they do not demand IP protection instead they just ask for few rights to control and manage their knowledge and surrounding

For protecting the traditional knowledge we should amend the intellectual property laws to accommodate interest of tribal communities over the traditional knowledge.

We should take strict measures for scrupulous application of Indian Bio Diversity Act 2002 to protect the traditional knowledge should not go beyond the hands of tribal communities.

The Government of India through various health agencies like AYUSH should provide liberal grants for tribal communities to develop and protect their traditional knowledge so that it can reach every common man.

The Government of India should give liberal funding for Traditional Knowledge Digital Library (TKDL) and further strengthen it.

The Government of India and respective state governments should take steps for creation of awareness among tribals to reassert their rights over the traditional knowledge.

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