

NEED FOR PROTECTION OF TRADITIONAL KNOWLEDGE

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Abstract

Traditional Knowledge [TK] is knowledge held by indigenous community of a region for their sustainability with the environment. Traditional Knowledge reveals their traditional life style which maintains bio diversity in the environment. TK most of the time is misappropriated by third parties without giving benefit sharing to the TK holders. Rampant misappropriation by other parties is a threat to conservation of bio diversity which results into weakening of sustainable development process. TK based products are also in demand throughout the whole world. Hence TK should be protected from getting misappropriation and misuse. TK protection will ultimately give economic benefit to the nation.

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INTRODUCTION

Intellectual Property Rights give protection to creations of the mind such as inventions, designs, literary and artistic works, performances, plant varieties, and names, signs and symbols. In recent years, indigenous peoples, local communities, and governments, mainly in developing countries have demanded IP protection for traditional forms of creativity and innovation, which is known as TK [Traditional Knowledge] though it falls under public domain as it is free for anyone to use. Indigenous peoples, local communities and many countries reject a “public domain” status of TK and argue that this opens them up to unwanted misappropriation and misuse by third parties.

Traditional knowledge is a valuable source of knowledge developed over generation by indigenous and local communities in various parts of the globe. The indigenous and local people who are custodian of TK preserve and conserve the knowledge over thousands of years. However, TK is under current threat of misappropriation by others without accruing any benefits to the original holders of TK which is called bio piracy. Traditional Knowledge is the integral part of indigenous communities around the whole world. Lack of legal protection has led to patenting of many TK based products in foreign countries. These activities adversely affect the livelihoods of TK holding societies and also cause serious threats to the biodiversity. There should be complete protection system to protect TK from misappropriation by third parties. It is necessary to protect TK holder's right which is getting hampered by third parties where benefit sharing method is not following by patent holders of TK based products. Giving proper protection to TK holders will ultimately flourished the TK based industries without hampering sustainable development process. TK plays an important role in the conservation of biodiversity and its traditional uses. The new technological developments clearly demonstrate the usefulness of TK for the development of new product of commercial importance.

NEED TO PROTECT TRADITIONAL KNOWLEDGE

Apart from treaties and emerging international norms, which imply both legal and moral imperatives for protecting traditional knowledge, there are a number of reasons why developing countries may feel motivated to protect TK. These are set out below:

To improve the livelihoods of traditional knowledge holders and communities

Some indigenous and local communities depend on TK for their livelihoods and well-being, as

well as to sustainably manage and exploit their local ecosystems. According to the World Health Organization, up to 80 per cent of the world's population depends on traditional medicine for its primary health needs. For those comprising the poorest segments of developing-country societies, traditional knowledge is indispensable for survival (United Nations Conference on Trade and Development (UNCTAD, 2000). Increasingly, TK is being accepted as an important source of useful information in the achievement of sustainable development and poverty alleviation. Many multilateral and bilateral donor agencies, including the World Bank; United Nations agencies such as the FAO, UNESCO and UNEP; and several of the International Agricultural Research Centre now recognize and actively promote the role of traditional knowledge in sustainable rural development programmes (Warren, 1995).¹

To benefit national economies

TK based product boosts national economy. Such TK based products as handicrafts; medicinal plants, agricultural products, and non-wood forest products (NWFPs) are traded in both domestic and international markets and can provide substantial benefits for exporter countries. TK is also used as an input into modern industries such as pharmaceuticals, botanical medicines, cosmetics and toiletries, agriculture and biological pesticides. The contribution of TK, particularly biodiversity-related TK, to modern industry and agriculture is huge.²

To preserve of traditional lifestyles

The preservation of TK is not only a key component of the right to self-identification and a condition for the continuous existence of indigenous and traditional peoples; it is also a central element of the cultural heritage of humanity. The possibility of economic returns for the use of that knowledge by third parties acts as a further incentive for community members to respect their knowledge and continue to engage in practices in which that knowledge is used and generated.³

To conserve the environment

The protection of traditional knowledge can provide significant environmental benefits. For example, in many forest areas, members of traditional societies plant forest gardens and manage

¹ Graham Dutfield, *Intellectual Property, Biogenetic Resources and Traditional Knowledge*, (Earthscan, 2004)

² *Ibid*

³ Available at: <https://blog.ipleaders.in/history-development-intellectual-property-protection-traditional-cultural-expressions/>

the regeneration of bush fallows in ways that take advantage of natural processes and mimic the biodiversity of natural forests. Researchers are increasingly aware of the extent to which traditional natural resource management can enhance biodiversity.⁴

To avoid “bio-piracy”

The protection of TK aims to prevent the unauthorized appropriation by third party that is called bio-piracy of traditional knowledge and to ensure benefit sharing – as provided for under articles 8 (j), 15, 16 and 19 of the CBD.⁵

To protect Cultural Heritage

It is not surprising that intellectual property law is inadequate to protect all forms of traditional knowledge. Although some intangible cultural goods can be protected under intellectual property law, and copyright law in particular, the protection of intangible cultural goods and classical intellectual property have different objectives and serve fundamentally different purposes.⁶ One seeks to protect cultural heritage, while the other seeks to promote creativity, innovation, efficiency and commercialization.⁷ Control over cultural goods, heritage, and expressions is not considered to be the primary objective of intellectual property protection.⁸ Rather, at this time, the predominant rationale for intellectual property rights is to stimulate innovation and creativity.⁹

To promote Value and Respect

⁴ Graham Dutfield, *Intellectual Property, Biogenetic Resources and Traditional Knowledge*, (Earthscan, 2004)

⁵ *Ibid*

⁶ Since copyright protects literary artistic works, it could be said to protect intangible cultural goods to the extent that these creations are considered cultural property. For example, certain cultural songs, paintings, or books may be subject to copyright protection. Geographical indications may be a form of intellectual property that can be used to protect elements of culture.

⁷ Various scholars have observed the inconsistency between the objective of protecting cultural property and the goals of intellectual property policy. See, Susan Scafidi, *Who owns culture?: Appropriation and authenticity in American Law* (2005) 17–19 (stating that the utilitarian policy objective of enriching the public domain is among the greatest barriers to the protection of cultural products); Christine H. Farley, *Protecting Folklore of Indigenous Peoples: Is Intellectual Property the Answer?*, (1997) 30 CONN. L. REV. 1 (pointing out that, with respect to copyright law, what some traditional knowledge advocates seek is contrary to the goal of disseminating of information that copyright law seeks to encourage, and that it runs the risk of diminishing the public domain).

⁸ Whether intellectual property law has slowly been taking on a new role may be worthy of further consideration. See Barton Beebe, *Intellectual Property Law and the Sumptuary Code*, (2010) 123 HARV. L. REV. 810, 816–17 (arguing that intellectual property rights are increasingly used as an indication of authenticity).

⁹ J. Janewa OseiTutu ‘An International Instrument to Protect Traditional Knowledge: Is Perpetual Protection a Good Idea?’ (2010) 50 FIULSR 702

Policy objectives for the protection of traditional knowledge include aims such as recognizing the value of traditional knowledge and promoting respect for such knowledge. In addition, traditional knowledge holders aim to repress unfair and inequitable uses, safeguard the knowledge, and promote community development. It is immediately apparent that some of the objectives of traditional knowledge protection are based on a desire to promote respect for the traditional knowledge source communities and the development of such communities. Similar value promoting objectives are found in the 2003 UNESCO International Convention for the Safeguarding of the Intangible Cultural Heritage¹⁰ (“UNESCO Convention”)

Other objectives

In addition to the above objectives, there may be other goals for the protection of TK. To preserve TK is a component of a strategy for sustainable human development. There is also a human rights dimension to the protection of TK. The establishment of property or other rights is only a means and the protection of TK does not necessarily require the recognition of property rights. Protection may also have non-economic purposes, such as a moral recognition of the authorship. Authors are entitled to both economic and moral rights under authors’ rights systems. The TRIPS Agreement, however, allows Members not to comply with article 6 *bis* of the Berne Convention which provides for the protection of moral rights. Moral rights have been enforced in some common-law countries as well. In the UK, for instance, moral rights were introduced in the 1988 Copyright Act. In the USA, copyright is classified as “personal” property and the authors enjoy personality protection, such as the rights of first publication. Moral rights have been provided in India.¹¹ This kind of protection would provide traditional and indigenous communities with legal means to prevent any acts that distort.¹²

CONCLUSION

Traditional and indigenous knowledge (TK) has been used for centuries by indigenous and local communities under local laws, customs and traditions. It has been transmitted and evolved from generation to generation.¹³ TK plays an important role in the conservation of biodiversity and its traditional uses. The new technological developments clearly demonstrate the usefulness of TK

¹⁰ U.N. EDUC. SCI. & CULTURAL ORG. (UNESCO), Convention for the Safeguarding of the Intangible Cultural Heritage (2003) Available at: http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹¹ Section 57 of the Copyright Act 1957

¹² Carlos M Correa, “Traditional Knowledge and intellectual property” (QUNO, 2001)

¹³ *Ibid*

for the development of new product of commercial importance. The protection of TK is not an end by itself; it may provide a means to achieve different objectives, the definition of which is essential to determine the need for protection. Recently TK has become a burning topic for discussion under IPRs Law. The commercialization of TK based products by obtaining patent by people other than the original holders of TK, has necessitated adequate protection of TK from such kind of misappropriation. The issues relating to intellectual property protection of TK emerged when multinational companies and foreign entities obtained commercial benefits from knowledge that was predominantly within local control for multiple generations, and was long presumed to be in the public domain of the respective indigenous and local communities. Growing demand for bio products in the current globalised trade regime leads to commercialization of Traditional Knowledge associated with the bio resources unprecedentedly. These activities adversely affect the livelihoods of TK holding societies and also cause serious threats to the biodiversity. There should be complete protection system to protect TK from misappropriation by third parties. It is necessary to protect TK holder's right which is getting hampered by third parties where benefit sharing method is not following by patent holders of TK based products. Giving proper protection to TK holders will ultimately flourished the TK based industries without hampering sustainable development process.