

Protection of traditional knowledge And It`s Reason

Utilizing intellectual property techniques, two protective paradigms have been used to safeguard traditional knowledge:

The first protective paradigm attempts to prevent others from exploiting traditional knowledge or acquiring intellectual property rights over it. In order to combat alleged abuses such as biopiracy, several communities have built traditional knowledge databases to document their traditional knowledge as prior art. Different communities have their own traditional or customary laws governing the use of traditional knowledge, which may differ significantly from their national or international system of intellectual property rights. This information may breach these customs.

The second protective paradigm (commonly referred to as “positive protection”) aims to achieve legal protection for traditional knowledge. This is accomplished by utilizing either the current laws or legislative procedures to enact new laws of their own kind.

Others differentiate protection as a tool for safeguarding traditional information against activities that may destroy it or have a negative impact on the lives or cultures of the civilizations that created and implemented it. Furthermore, the primary reasons for protecting Traditional Knowledge include:

Equity: The primary premise underlying the protection of Traditional Knowledge is equity. Traditional Knowledge generates value that is insufficiently acknowledged and compensated under the current funding and reward system. Therefore, the protection of Traditional Knowledge is crucial for bringing equality to largely unjust and unequal relationships.

Conservation: The significance of such knowledge for conservation is also a major factor in the protection of Traditional Knowledge. Maintaining biological diversity in agriculture benefits the global community. IPRs could be used to generate revenue to support operations that would otherwise be abandoned. Under this perspective, the protection of Traditional Knowledge contributes to the achievement of society's macro-objectives for environmental conservation, sustainable agriculture, and food security.

Preservation Of Traditional Practices & Culture: The conservation of Traditional Knowledge promotes the preservation of traditional practices, culture, and knowledge. In this respect, the concept of ‘protection’ under IPRs is quite distinct from the concept of ‘protection’ under common law. Traditional knowledge is not only a critical component of the right to self-identification and a prerequisite for the continued existence of traditional peoples and indigenous communities, but it is also an important part of humanity's cultural history. The issue affecting the varied cultures and languages of the world is significantly more severe than the biodiversity crisis. Approximately ninety percent of the roughly 6,000 languages and civilizations now in use may become extinct during the next century.

IPR Acts and Laws for Protection of Traditional Knowledge And Culture

No statute or regulation in India specifically protects traditional knowledge as Intellectual Property. However, there are laws pertaining to Traditional Knowledge in other IP statutes.

The Patent Act, 1970

The patent statute ensures the safety of technological solutions that are scientifically relevant, uniformly novel, and involve an inventive step. Patent protection is provided for procedures related to the exercise and usage of such assets, as well as for indigenous techniques that meet the same standards.

Traditional knowledge is one of the reasons for revoking a [patent application](#) under [Section 25](#) and [Section 64](#). It also contains provisions requiring the disclosure of Traditional Knowledge and is the source of the in-issue invention. [Section 10\(4\)\(ii\)\(D\)](#) of the Act requires that the source and geographical origin of all biological material employed in the invention be disclosed in the specification.

Copyright Act, 1957

[Copyright](#) can be utilized to protect the artistic expressions of Traditional Knowledgeholders, including indigenous and migrant artists, against unauthorized development and exploitation. The holder of the [copyright](#) is permitted to carry out any of the actions stated in [Section 14](#). There is no mention of safeguarding traditional cultural, literary, or artistic works or folklore in the Copyright Act of 1957, although [Section 31A](#) protects unpublished Indian works. However, copyright protection is for a limited time period and requires the fulfilment of specified criteria; hence, under this IP, protection of traditional knowledge has a restricted scope.

Under [Section 57](#), [Copyright](#) can be used to protect Traditional Knowledgeholders' innovative demonstrations, particularly those of indigenous and indigenous artists, against unauthorized replication and usage. Moral rights govern the connection between creators, artists, and authors and their works.

Geographical Indications of Products (Regulations and Protection) Act, 1999

Traditional Knowledge is collectively held by the local populace, and GI is the most ideal form for preserving Traditional Knowledge. The Geographical Indications of Products (Regulations and Protection) Act protects a community in a certain geographical area. GI security is valid for 10 years, but it can be extended an infinite number of times to protect GI indefinitely. In order to improve the quality of the final product, manufacturing processes are advancing over time. GIs may also be employed to safeguard conventional therapeutic medicines.

Trade Secrets

Indigenous peoples are perfectly capable of protecting traditional knowledge as trade secrets without incurring any expenses. They only need to make a conscious effort to keep their knowledge concealed. In most cases, traditional knowledge is held exclusively by community members and can therefore be protected as a trade secret.

Traditional Knowledge Digital Library

These instances were a wake-up call, and they prompted the Indian government to establish the *Traditional Knowledge Digital Library (TKDL)* and to incorporate traditional knowledge into the [International Patent Clarification System](#). TKDL is an attempt by India to digitize and document knowledge existing in the public domain in order to enable the arrangement, diffusion, and retrieval of information in a systematic manner.

Important cases

The Neem Case: A well-known tree in India has been used as a bio-insecticide and medicine for centuries. In ancient Indian Ayurveda literature, the Neem tree and its medicinal curative powers are noted. The European Patent Office (EPO) revoked patent number 436257 given to the United States of America and the multinational corporation W.R. Grace for the Neem tree pesticide produced from the seed. Despite Neem's ancient history, over 12 US patents have been issued for Neem-based emulsions and solutions in recent years.

Turmeric Patent: Two US-based Indians, Suman K. Das, and Hari Har P. Cohly were given a patent on the use of turmeric in wound healing on March 28, 1995. The patent has been assigned to the University of Mississippi Medical Centre in the United States. This patent claimed the local and oral administration of a sufficient amount of turmeric to accelerate wound healing, a novel discovery. Before a patent is granted, it must satisfy the fundamental conditions of invention, non-obviousness, and utility. Thus, if the claims are covered by the relevant prior art, the invention is invalid. Council for Scientific and Industrial Research (CSIR) was able to unearth 32 references, some of which were over a century old and written in Sanskrit, Urdu, and Hindi, indicating that this discovery was well-known in India before the filing of this patent. CSIR submitted a formal request for re-examination of the patent with the USPTO on 28.10.1996. On 20.11.1997, the examiner once again dismissed all claims as evident and predictable. On 21.04.1998, a re-examination certificate was given for this case, concluding the re-examination processes.

The Following Things Should Be Actively Conducted In The Future:

A comprehensive national development strategy aimed at bolstering the protection of Traditional Knowledge, including the resolution of key issues such as land rights and the need to respect and preserve the way of life of the local and indigenous community (LICs).

Indigenous and other local populations' participation in all talks and agreements on genetic resources and cultural information must be extensive and fruitful.

Recognizing the diverse needs for the preservation and promotion of Traditional Knowledge in several sectors, such as trademarks and plant genetic resources, among others.

Taking care of the rights of farmers on a national level.

A *sui generis law* is commonly proposed as a method to better protect traditional knowledge, however before such a law is established, policies and proposals such as the National IP Policy, Digital India, and Start-up India will save the structure of

traditional knowledge, which is rapidly degrading. To safeguard the future of species and civilization, it would not be wrong to state that the current generation will need to assist preserve the valuable information of a dying generation.

Conclusion

Traditional wisdom has a huge capacity to resolve man's new issues. This information is incredibly useful, but its use must be balanced with security, promotion, and benefit distribution. Traditional knowledge is the most recent addition to the IP family. Therefore, without prejudice to the rights of the indigenous people and with regard to the cultural history of India, commercial entities should gradually dip into the enormous ocean of Traditional Knowledge to supply the expanding needs of the people in this country. In addition, with the current laws providing for the promotion of both community rights and an environment conducive to patenting, the benefit-sharing agreement should be encouraged strategically to preserve the balance between Traditional Knowledge holders and innovators.