

provided the client is willing to pay his fee and the lawyer is not otherwise engaged⁹.

9. A resolution of the Bar that no member of the Bar will appear for a particular accused, is against all norms of the Constitution, the statute and professional ethics. It is also against great traditions of the Bar which took cases where persons were accused of treason and other serious offences.

10. Democracy and the rule of law can be maintained only by providing access to justice through legal profession and no person shall be denied of the right to be

defended by a lawyer. In a historic reference to Ramayana, we have the instance of King Ravana sentencing Hanuman to death for his refusal to leave the Lankan territory. *Rama's* brother made appearance for Hanuman and questioned the validity of the sentence as opposed to Dharma Sastras and got the sentence revoked.

11. The Supreme Court's decision upholding the right of a person to be defended by a lawyer and corresponding duty of the lawyer to defend strengthen, not only the cause of legal profession but also strengthens the rule of law and democracy in the country.

NEW VISTAS IN INTELLECTUAL PROPERTY RIGHTS – TRADITIONAL KNOWLEDGE

By

—Dr. JETLING YELLOSA,
B.Com., L.L.M., Ph.D in Patent Law,
Head, Department of Law,
Telangana University, Nizamabad,
A.P., Email: jatling99@gmail.com
Mobile: 9440328009

“Knowledge is power” — Helen Keller, (June 27 – June 1, 1969)
American Author, Political Activist and Lecturer.

1. Introduction:

Due to advancement of science and technology there is a radical changes have been ushered in the way of living of human beings, till recently richest man was oil worker now he is knowledge worker. Always the knowledge is considered as source of power. In our country since ancient times almost all the kings were adored the knowledgeable persons in their courts by providing them with all comforts. But due to changing times now knowledge is not only the source of power but also primary source of property.

9. Supra. Para 32

2. Meaning:

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 also called the indigenous knowledge or local community knowledge¹. Traditional knowledge can also reflect a community's interests. Some communities depend on their traditional knowledge for their own survival. Traditional Knowledge does not only mean that knowledge is ancient

1. [www.en.wikipedia.org/Article/traditional knowledge](http://www.en.wikipedia.org/Article/traditional%20knowledge)

or inert but it is a vital, dynamic part of contemporary lives of many communities. The existence of traditional knowledge is dates back to starting of human race itself.

There is no universally accepted definition available for the traditional knowledge. The World Intellectual Property Organisation (WIPO) defined 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”².

3. Examples of traditional knowledge:

In our country there are 53 million tribal people are inhabiting in across breadth of the country and they belong to 550 tribal communities and each tribal community is possessing one or other sort of traditional knowledge. As on today there is no accurate information available what kind of medicinal and other wonders which they have possessing. Medicinal knowledge of KASI tribes of South India led to development of a sport drug named JEEVANI which an anti-stress and anti-fatigue agents based on herbal medicinal plant – AROGYAPAACHA. The YANADI tribes of South India is experts in snake catching, they use 22 wild species as antidotes for snake bites and they often sell the roots/rhizomes of plants as antidotes along with other medicinal herbs. In other countries like Thailand the Thai traditional healers use PLAONOI to treat ulcers. The SAN people use HOODIA CACTUS to stave off hunger. In West Asia particularly in Oman and Yemen the sustainable irrigation is maintained by system maintained through traditional water systems such as AFLAJ in Oman and Yemen, the QANAT in Iran.

4. Economic Importance of Traditional Knowledge:

It is amazing to mention that our country is having 8% of bio diversifiable and traditional knowledge resources which are available in the world. In international market share the medicinal plant related trade is at US \$60 billion per year and which is growing 7% annually. Increase of trade in medicinal plants from developing countries is not resulting much benefit to the source countries and their communities where traditional knowledge is available but the much of income is being annexed by the developed countries though they have not contributing much traditional knowledge. The multinational companies though they have not directly contributing to the traditional knowledge but they have holding much of the hold over the traditional knowledge business in the world. In 1995 total trade in herbal medicines and botanics in the world was over US\$ 56 billion³.

5. Challenges before the Traditional Knowledge::

Because of rapid advancement and growth of science and technology the very survival of traditional knowledge is at stake. The localized knowledge which communities have possessing since time immemorial have facing tremendous strain in hands of multinational companies. The cultural survival of communities is under threat as our local languages and cultures have been greatly affected. We also observe that there is lack of respect and appreciation for such knowledge *e.g.* for disease of jaundice, we get localised effective and curable treatment, but the people give scant regard to this type of treatment even though they very well know that using the allopathic medicine may not completely cure it and also it is expensive.

2. www.wipo.int

3. Dr. Reddy G.B. Intellectual Property Rights and the Law. Asia Law House, Hyderabad. 2008

6. *International endeavours for protection of Traditional Knowledge:*

The protection of Traditional Knowledge is important for all countries particularly to developing and least developed countries, whose communities have possessing tremendous rich resources in form of traditional knowledge. Traditional Knowledge plays very important and significant role in economic and social development of these countries.

The traditional knowledge is very much apparent in almost all aspects of the life activities particularly in the Agriculture and Breeders matters and to protect the traditional knowledge in these sectors the world countries have signed the Convention for the Protection of New Varieties of Plants 1961. This international agreement protects new varieties of plants, development of agriculture and safeguarding interests of breeders and their local traditional knowledge in it.

With regard to the environment, the United Nations Conference on Environment and Development held in 1992 at Rio de Janeiro, Brazil, concluded in accepting the Convention on Biological Diversity (1993). The Convention of Biological Diversity imposes an obligation on member States to preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for conservation. Article 8 of convention States that sovereign States shall have right over their natural resources. And Article 15 of CBD embodies that state has the power to regulate access to genetic resources and their use by foreign organisations and corporations.

The United Nations Conference on Desertification (UNCCD) 1977 clearly stated that the member States to initiate steps for the protection of traditional knowledge in the ecological environment. In 1978, the World Health Organisation, for the first time recognized the relevance of traditional

medicine as the source of primary health care in the Primary Health Care Declaration of Alma Ata.

In 1995 the world countries have accepted Trade Related Aspects of Intellectual Property Rights (TRIPS) covenants under the General Agreement of Trade and Tariff regime and in which there is indirect mention of traditional knowledge. Under Article 15(7) of the TRIPS embodies that State shall take steps for sharing of commercial utilization of genetic resources and under Article 27(3)(b) members exclude from patentability of plants and animals other than micro-organisms and essentially biological process for their production of plants and animals other than non-biological and microbiological process. In 2001 Doha WTO ministerial conference instructed the TRIPS council to examine *inter alia* the protection of T.K. and folklore. In 2000 the World Intellectual Property Organisation has established inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to bring harmonization of T.K. throughout the world.

In 2000 the United Nations Conference on Development in its Plan of Action stressed the importance of studying ways to protect traditional knowledge, innovations and practices of local and indigenous communities and enhance cooperation of research and development on technologies associated with sustainable use of biological resources.

7. *Traditional knowledge and Indian Laws:*

In spite of all these above international steps, the western companies for getting commercial gains have started stealing of traditional knowledge resources from the developing countries, 1990s have seen the rapid increase of such happenings which we have termed as the bio-piracy. The Basmati, Turmeric, Tamarind, Chamakura, Gomuttram, Ginger, Amla *etc*, have been successfully patented in the western patent offices. India

has waging a heroic battle for de patenting such products. By expending a lot of time and money, the Council of Scientific and Industrial Research (CSIR) and public spirited non-Governmental organizations have succeeded in cancellation of patenting of Basmati, Turmeric, Amla from hands of western companies, still some of valuable traditional knowledge components have been patented by western companies for sheer commercial exploitation.

In our country the Patent Act of 1970, Section 3(p) clearly prohibits an invention which in effect is traditional knowledge or an aggregation or duplication of known properties of traditionally known components cannot be patented. Section 10(D) Patents Act amended in 2002 stipulates that the applicant must disclose the source and geographical origin of any biological material developed in lieu of description. Section 25(1)(j) amended in 2002 – opposition to grant of patent allows for opposition to file on the ground that the complete specification does not disclose or wrongly mentions the source of geographical origin of biological material used for the invention.

In addition to the above the Designs Act 2000, the Trade Marks Act of 1999, the Copyright Act 1957 prohibits claiming of rights over the traditional knowledge. The Geographical Indications of Goods (Registration and Protection) Act 1999 also prohibits unauthorized persons from misusing geographical indications and to protect the consumer from deception and also protect the traditional knowledge in that area. The Biological Diversity Act 2002 provides that without obtaining prior approval from National Biodiversity Authority no person can apply for any intellectual property right in or outside India, for any invention based on research or information on biological resource obtained from India. The Protection of Plant Varieties and Farmers

Right Act 2001 also protect the farmers of their traditional rights like rights to save, share or sell his farm produce.

In spite of these above legal protective mechanisms in our country our traditional knowledge is easily stolen by western commercial companies as in those countries the Intellectual Property legislation is mostly liberal and allows such stealing.

8. Traditional Knowledge and its protection in India:

Our country has awoken lately to protect the valuable traditional knowledge resources after western countries have starting patenting of it. The Government of India has initiated the project called the Traditional Knowledge Digital Library (TKDL) is the result of a US\$ 2 million joint project between five Indian Government Organisations, including the Council of Scientific and Industrial Research (CSIR) and the National Institute of Science Communication and Informative Resources (NISCAIR). More than 150 experts in traditional knowledge areas spend the past ten years arranging and classifying the TKDL. By their collective endeavours they have digitalized 54 authoritative textbooks on Ayurvedic medicine, nearly 1,50,000 Ayurvedic, Unani and Siddha medicinal properties and over 1,500 physical exercises and postures in Yoga which are more than 5000 years back⁴.

9. Conclusions and Suggestions:

We have seen 1990 is an era of bio-piracy where our traditional resources have been pirated by the western companies by way of patenting. India has lately awoken to and waging heroic battle to de patent such patented articles in hands of western companies. India should take collective steps with other developing countries to put pressure on western Governments to take stringent Intellectual Property Laws rather than

4. <http://www.epo.org/news-issues/issues/traditional.html>

existing softer legislations available in those countries. In our country as on today there is no exclusive and specific law is available to tackle the issues of traditional knowledge and it is right time to frame a separate and comprehensive enactment for the protection of traditional knowledge.

After reporting events of bio-piracy in western countries, the Government of India has embarked on digitalization of data of traditional knowledge, the Government should allot liberal funding to such projects which are not only protects our traditional knowledge resources but also act great treasure for traditional knowledge in years to come.

The digital libraries of traditional knowledge should be linked with every Patent offices in the world to avoid unauthorized persons shall be prevented to exploit valuable traditional knowledge commercially. When individuals or companies exploit the traditional knowledge in such scenario a share profits are to be allotted to communities whose traditional knowledge is exploited. In addition to above steps for monitoring the traditional knowledge matters a separate cell is to be constituted at every intellectual property offices. If we are not going to initiate proper and right steps we are miserably failing in duty of passing our traditional knowledge to our future generations.

DOMESTIC VIOLENCE IN INDIA: CAUSES, CONSEQUENCES AND REMEDIES

By

**—L. KAMALA, Advocate,
Abhyudaya Nagar Colony,
Chintalkunta, L.B. Nagar
Hyderabad, A.P.**

Introduction

Women and children are often in great danger in the place where they should be safest: within their families. For many, 'home' is where they face a regime of terror and violence at the hands of somebody close to them – somebody they should be able to trust. Those victimized suffer physically and psychologically. They are unable to make their own decisions, voice their own opinions or protect themselves and their children for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence

: Verbal abuse

Verbal abuse is a form of emotionally abusive behaviour involving the use of

language. Verbal abuse can also be referred to as the act of threatening. Through threatening a person can blatantly say they will harm you in any way and will also be considered as abuse it may include profanity but can occur with or without the use of expletives¹

Verbal abuse may include aggressive actions such as name-calling, blaming, ridicule, disrespect, and criticism, but there are also less obviously aggressive forms of verbal abuse. Statements that may seem benign on the surface can be thinly veiled attempts to humiliate; falsely accuse; or manipulate others to submit to undesirable behaviour, make others feel unwanted and unloved, threaten others economically, or isolate victims from support systems.