



# Contemporary Issues Of Indigenous Community In Protection Of Biodiversity And Their Intellectual Property Rights

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## Abstract.

Since the time immemorial indigenous and local communities are treasure of traditional knowledge around the world. Indigenous knowledge has gained over centuries and is part of local culture and environment and it transmitted orally from generation to generation. In the context of biodiversity traditional knowledge refers to the know-how, skills and practices evolved and adopted by local and traditional communities over centuries regarding maintenance and use of natural resources. It covers medicinal and other properties of plants and animals, the manner of using them for healthcare and other essential needs. Indigenous and local communities are real natural resource managers and contribute to nation in conservation and sustainable use of biodiversity resource. They helps to regulate human interactions with the natural environment and secure intergenerational equity. Their skills and techniques provide valuable information to the global community and a useful model for biodiversity policies. Indigenous people identifies natural resources in biodiversity which contains medicinal values through skill and techniques which is useful for our society. Such skills and techniques should be protected under intellectual property law. Present intellectual property law has not recognised intellectual property rights of indigenous community. Hence this research article will discuss contemporary legal as well as policy issues in protecting intellectual property rights of indigenous and local community.

## Introduction:

Man is by nature is a social animal. He may be in the culture of indigenous community or in non-indigenous culture but surrounded by biological diversity. Biodiversity is therefore the natural biological capital for our life support system. Our survival depends on the web of life created by the interactions of the millions of different animals, plants, fungi, and other microscopic organisms that share the Earth with us. Biological diversity renders invaluable services for human well-being. Our ecosystems services, particularly the ones that provide food, fiber, freshwater, pollination of crops, livelihoods, protection from natural disasters and significantly contribute to human health. Over 1,00,690 species of fauna and 47,480 species of

flora have been documented in the 10 BZs of the country. This diversity is hosted by many types of terrestrial and aquatic systems namely forests, wetlands, grasslands, deserts, coastal, and marine ecosystems.

There is an infinite emotional bonding between Indigenous community and biodiversity since time immemorial. Some plants and trees have greatest significance in tribal culture. The life of non-tribal or life of our modern society is also associated with biodiversity which has different bio- geographical areas. However, the local communities particularly, members of tribal sections largely depends on these natural resources for their day-to-day living, they protect the biological resources with their traditional knowledge and their own sustainable development strategy.

In contradiction, present day's biodiversity is under great pressure because of our neo-modern life style, rampant urbanization, technological and industrial developments, proliferation of environment-unfriendly economic activities such as inappropriate mining, appropriation of wetlands for construction etc., are indeed the main reasons that damage the sustainability of such ecosystem services and degradation of environmental and natural resources which ultimately impacts on life of indigenous habitats. Thus, this article will enlighten on contemporary issues on traditional knowledge of tribal community and their Intellectual Property Rights.

### **Who are Indigenous Tribes?**

Inhabitants or indigenous of forest or hill areas are identified as tribal. They are also known as Adivasi (adi means first, original and vasi means dweller, inhabitant). They have been also given self-identity with the modern concept of indigenous people. In the Asian context, the term "indigenous peoples" is generally understood to refer to distinct cultural groups, such as "Adivasis", "tribal peoples", "hill tribes" or "scheduled tribes", while some indigenous peoples in Africa are referred to as "pastoralists", "vulnerable groups" or "hunter-gatherers"<sup>1</sup>

### **Traditional knowledge of tribal inhabitants:**

Traditional knowledge is the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over centuries and adapted to the local culture and environment, it is transmitted orally from generation to generation. Traditional Knowledge (TK) in the context of biodiversity refers to the know-how, skills and practices evolved and adopted by local and traditional communities over centuries regarding maintenance and use of natural resources. The range of this knowledge is vast. It covers medicinal and other properties of plants and animals, the manner of using them for healthcare and other essential needs, insights into the intrinsic value of biodiversity for environmental and human purposes and manner of conservation and sustainable use of the elements of biodiversity. Its ethical norms help regulate human interactions with the natural environment and secure intergenerational equity.

Traditional knowledge can make a significant contribution to sustainable development. Most indigenous and local communities are situated in areas where the vast majority of the world's genetic resources are found. Many of them have cultivated and used biodiversity in a sustainable way for thousands of years. The contribution of indigenous and local communities to the conservation and sustainable use of

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights [OHCHR], 2013, p.7

biodiversity goes far beyond their role as natural resource managers. Their skills and techniques provide valuable information to the global community and a useful model for biodiversity policies.

### **Convention on Biological Diversity:**

An international initiative comes into light in the form of convention with objective that to encourage actions which will lead to a sustainable future. Convention on Biological Diversity (CBD) Opened for signature at the Earth Summit in Rio de Janeiro in 1992, and entering into force in December 1993. With 196 Parties, the Convention has near universal participation among countries. The Convention on Biological Diversity (CBD) is an international legally-binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; and the fair and equitable sharing of the benefits arising from the use of genetic resources.

### **The Convention and indigenous and local communities**

The international community has recognized the close and traditional dependence of many indigenous and local communities on biological resources, through the preamble to the Convention on Biological Diversity. Traditional knowledge is considered as a "cross-cutting" issue that affects many aspects of biological diversity.

The Parties to the Convention on Biological Diversity recognize the crucial importance of traditional knowledge. Parties are committed to the effective participation of indigenous and local communities and to facilitate this process they have established a voluntary fund to assist indigenous and local community representatives to participate in Convention meetings and processes.

Article 8(j)<sup>2</sup>: Subject to its 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;

Convention recognizes the need to exchange information in conjunction with technology transferred pursuant to Article 16, Paragraph (1).

The status of "indigenous and local communities traditional knowledge" is also affirmed by preambular paragraph 9 to Decision III/14 of the Conference of the Parties regarding the implementation of Article 8, Paragraph (j).

The CBD also contains three other provisions besides Article 8(j) which deal with the interests of indigenous and local communities. These are Articles 10(c), Article 15.5, Article 17.2, and Article 18.4

### **Other international initiatives on Traditional Knowledge**

In addition to the Convention, a number of international bodies, instruments and initiatives are of particular relevance to traditional knowledge. They include as following:

Agenda 21: Principle 22 of the main document that came out of the 1992 Earth Summit in Rio de Janeiro recognizes that indigenous peoples have a vital role to play in environmental management and development because of their traditional knowledge and practices;

<sup>2</sup> Convention on Biological Diversity 1992

The International Labour Organization's Convention 169 on Indigenous and Tribal Peoples: This Convention calls for action to protect the rights of indigenous peoples;

The Declaration on the Rights of Indigenous Peoples:

The Inter-American Development Bank and its Strategy and Policy on Indigenous Peoples: approved by the IDB in 2006;

The Inter-American Draft Declaration on the Rights of Indigenous Peoples:

The United Nations Permanent Forum on Indigenous Issues:

The World Intellectual Property Organization:

The United Nations Education, Scientific and cultural Organization:

The European Bank for Reconstruction and Development, the Asian Development Bank and the African Development Bank: These Banks are committed to ensuring that the development process promotes indigenous peoples' participation;

United Nations Development Programme (UNDP) and the World Bank Both organizations have launched programmes to promote indigenous peoples' development and to ensure that the development process fosters the full respect for the dignity, human rights and uniqueness of indigenous peoples;

United Nations Conference on Trade and Development (UNCTAD): Protecting and Promoting Traditional Knowledge: Systems, National Experiences and International Dimensions.

According to the North American indigenous peoples "organization, the Four Directions Council (1996), 'indigenous peoples possess their own locally-specific systems of jurisprudence with respect to the classification of different types of knowledge, proper procedures for acquiring and sharing knowledge, and the rights and responsibilities which attach to possessing knowledge, all of which are embedded uniquely in each culture and its language '

Article 26 of the United Nations Draft Declaration on the Rights of Indigenous People, 1994, has clearly mentioned that „indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights (United Nations High Commissioner for Human Rights [UNHCHR]).

**Ethnic and indigenous people of the World**

S.No.	Country	Indigenous Tribe
1	Australia	Aborigines
2	Artic Nation	Eskimos
3	Bangladesh	Hill Tribes
4	Brazil	Apinaye Indians
5	Botswan	Bushmen San
6	Central Africa	Bororo People
7	Western Africa	Pygmy Culture
8	Costa Rica	Red Indians
9	Colombia	Kogi, Paez and Guambiano Indians
10	Chile	Mapuche Indians
11	Ecuador	Amerindians
12	Greenland	Eskimos
13	Guatemala	Moyan Indians
14	India	Scheduled Tribe
15	Indonesia	Kenyah
16	Mexico	Kanak People
17	Malaysia	Kayan, Kenrah and Punah
18	Mali	Tuares Nomad
19	Nicaragua	Miskito Indians
20	New Zeyland	Maoris
21	New Caledonia	Kanak People
22	Namibia	Bushmen San
23	Niger	Tuanag Nomad
24	Kenya	Maasai and Samburu people
25	Philippines	Manobo, Bangsa and Moro people
26	Peru	Yagua Indians and Amuesha Indians
27	Paraguay	Ache Indians
28	Panama	Guaymi Indians and Kume Indians
29	Spain	Canib Indians
30	Sweden	Lapps

## Biological Diversity Act, 2002

In India the Traditional Knowledge has been recognised under Biological Diversity Act, 2002. The objective of the act is to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

Sec 2(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention.

The General functions of the Authority is take steps to build up data base and to create information and documentation system for biological resources and associated traditional knowledge through bio-diversity registers and electronics data bases, to ensure effective management, promotion and sustainable uses<sup>4</sup>.

### Constitution of Biodiversity Management Committee.

(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity<sup>5</sup>.

(2) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee<sup>6</sup>.

As per Rule 21 of Karnataka Biological Diversity Rules, 2005 (1) every local body shall constitute a Biodiversity Management Committee (BMCs) within its area of jurisdiction.

(2) The Biodiversity Management Committee as constituted under subrule (1) shall consist of a Chairperson and not more than six persons nominated by the local body, of which not less than one third should be women and not less than 18% should belong to the Scheduled Castes/Scheduled tribes.

(7) The Main function of the Biodiversity Management Committee is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them<sup>7</sup>.

### The Measures for identifying and documenting TK

Nearly, 6800 People's Biodiversity Registers have been prepared by Biodiversity Management Committees so far. The National Innovation Foundation India (NIF) 2010, an autonomous organisation under the Department of Science and Technology, Government of India is engaged in documenting and

<sup>3</sup> Anon. (1991) Atlas of Environment. WWP. Oxford Publication. Oxford, London.

<sup>4</sup> Biological Diversity Rules, 2004, Rule 12

<sup>5</sup> Sec 41(1) of the BDA 2002

<sup>6</sup> Sec 41(2) of the BDA 2002

<sup>7</sup> Karnataka Biological Diversity Rules, 2005 Rule 21(1), (2), (7)

promoting grassroots knowledge, innovations, value addition and protection including through IPRs of the traditional and local knowledge documented by it and its field organizations. Honey Bee Network associated with NIF has documented more than 1,00,000 ideas, innovations and TK practices.

### **Intellectual Property Rights and Traditional Knowledge**

The Traditional Knowledge Digital Library (TKDL) is pioneering initiative in India under the joint collaboration of Council of Scientific and Industrial Research (CSIR) and ministry of Ayush, to prevent exploitation and to protect Indian Traditional Knowledge at the 14 Patent offices worldwide. The access of the database is given to patent offices worldwide that have signed non-disclosure access agreements with CSIR. The CSIR-TKDL unit also files third party observations and Pre-grant oppositions on patent applications related to Indian traditional Knowledge based on the TKDL evidences. So far 265 Patent applications have been either withdrawn/deemed withdrawn or amended or set aside on the basis of TKDL evidences. The People Biodiversity Register (PBR) is a tool for formal recording and maintenance of comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use. The CSIR-TKDL Unit has signed a Non-Disclosure Agreement with NBA of PBR information. The above initiatives of government not clear in recognising TK holders under patent regime and to provide exclusive economic benefits. The contribution of TK to global pharmaceutical industry is infinite but TK holders are not recognised so far.

### **Concluding remarks:**

Indigenous community traditional knowledge has ancient roots and an integral to the identity of tribal community and its preservation is paramount importance for their social and physical existence. This knowledge is an outcome of their emotional connection with their local biodiversity that is plants, fungi, animals, and other endemic biological resources. They are conservers and reservoirs of TK and its discoveries, development, and preservation of wide variety of medicinal plants and healthy herbal formulations. As such TK plays important role in global economy. Hence, the rights and interests of the holders of traditional knowledge who provide source for their Patents must also be respected. Existing legal framework relating to IPR should be flexible in recognising and rewarding all stakeholders. Proactive legal and policy initiatives are in need at present days in protecting the economic rights of indigenous people traditional knowledge and their skills and techniques.