



LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE IN INDIA

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“It is our duty to proceed from what is near to what is distant, from what is known to what is less known, to gather the traditions from those who have reported them, to correct them as much as possible and to leave the rest as it is, in order to make our work help anyone who seeks the truth and loves wisdom.”

- **Abu'l-Rayan Muhammed al-Biruni, 973-1050AD²**

Around the world various local communities possess knowledge, innovations and peculiar practice developed from experience gained over centuries and adapted to the local culture and environment. Broadly, for the purpose of recognition such knowledge is categorized as traditional knowledge. Traditional 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.

As per the official definition published by the World Intellectual Property Organization (WIPO), traditional knowledge is defined as, “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.”

In light of the above definition, it can be inferred that traditional knowledge is vast enough to encompass indigenous knowledge related to various categories like agriculture knowledge, medicinal knowledge, biodiversity-related knowledge, and expression of folklore in the form of music, dance, song, handicraft, designs, stories and artwork.

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² Jordaan B. (2001), The Protection of Indigenous Medical Knowledge: A Critical Analysis. A report submitted in Masters Degree in Faculty of Humanities at University of Pretoria, USA.

First Nations (Communities) use the term traditional knowledge to describe information passed from generation-to-generation. This information may be rooted in:

- storytelling;
- ceremonies;
- traditions;
- ideologies;
- medicines;
- dances;
- arts and crafts; or
- A combination of all these.

Everyone in a community or culture holds traditional knowledge because it is collective. Traditional knowledge is determined by a First Nation's (Communities) land, environment, region, culture and language. The World Health Organization (WHO) defines traditional medicine, which forms part of traditional knowledge, as follows: Traditional knowledge is shared through ways of exchanging cultural and traditional information, such as storytelling. People such as Elders and healers usually share this knowledge with others in the community.

Traditional knowledge has played, and still plays, an important role in vital areas such as food security, the development of agriculture and medical treatment.

Recently, Western science has become more interested in Traditional knowledge and realized that Traditional knowledge may help to find useful solutions to current problems, sometimes in combination with "modern" scientific and technological knowledge. Despite the growing recognition of Traditional knowledge as a valuable source of knowledge, it has generally been regarded under Western intellectual property laws as information in the "public domain", freely available for use by anybody.

Categories and embodiments of traditional knowledge

Posey and Dutfield³ have summarized a range of categories and embodiments of Traditional Knowledge and folklore. It is noteworthy that most of these are related to the environment:

1. knowledge of current use, previous use, or potential use of plant and animal species, as well as soils and minerals;
2. Knowledge of preparation, processing, or storage of useful species;
3. Knowledge of formulations involving more than one ingredient;
4. Knowledge of individual species (planting methods, care, selection criteria, etc.);
5. Knowledge of ecosystem conservation (methods of protecting or preserving a resource that may be found to have commercial value, although not specifically used for that purpose or other practical purposes by the local community or the culture); and
6. Classification systems of knowledge, such as traditional plant taxonomies.

³ Posey, D.A., and G. Dutfield (1996), *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*, Ottawa: International Development Research Centre, at 12-13.

7. Renewable biological resources (e.g., plants, animals, and other organisms) that originate (or originated) in indigenous lands and territories;
8. Cultural landscapes, including sacred sites;
9. Nonrenewable resources (e.g., rocks and minerals);
10. Handicrafts, works of art, and performances;
11. Traces of past cultures (e.g., ancient ruins, manufactured objects, human remains);
12. Images perceived as ‘exotic’, such as the appearance of indigenous people, their homes and villages, and the landscape; and
13. Cultural property (i.e., culturally or spiritually significant material culture, such as important cultural artifacts, that may be deemed sacred and, therefore, not co modifiable by the local people.

The scope of Traditional Knowledge

Traditional Knowledge encompasses very different types of knowledge. These may be distinguished by the elements involved, the knowledge’s potential or actual applications, the level of codification, the individual or collective form of possession, and its legal status.

A great part of Traditional Knowledge, however, is non-codified or tacit, such as, “folk”, “tribal” or “indigenous” medicine, which is based on traditional beliefs, norms and practices accumulated during centuries old experiences of trial and error, successes and failures at the household level, and passed to successive generations through oral tradition.

Traditional Knowledge may be possessed by individuals (e.g. healing practices and rituals), by some members of a group, or be available to all the members of a group (“common knowledge”), for example with knowledge on herbal-home remedies which is held by millions of women and elders. When its application, and in particular the delivery of Traditional Knowledge-based products, can be made through commercial channels Traditional Knowledge may be of commercial value.

While some Traditional Knowledge can be used and understood outside its local/traditional/communal context, this is not always the case. There are often spiritual components in the Traditional Knowledge peculiar to each community. Knowledge that cannot be utilized beyond its communal context has little or no commercial value, despite the value that such knowledge may have for the life of the originating community.

To summarize, Traditional Knowledge includes information of different kinds and functions, developed in ancestral times but subject to contemporary improvement and adaptation. It is expressed in various documented and non documented forms, and may possess commercial value depending on its potential or actual use.

Protection of Traditional Knowledge

Several proposals have been made, within and outside the IPRs system, to “protect” Traditional Knowledge. Such proposals often fail to set out clearly the rationale for its protection. Any system of protection, however, is an instrument for achieving certain objectives. Therefore, a fundamental

question, before considering how Traditional Knowledge may be protected, is to define why it should be.

Reasons for protection

One reason for a lack of clarity about the rationale for protection stems from the different meanings given to the concept of protection. Some understand this concept in the context of Intellectual Property Rights, where protection essentially means to exclude the unauthorized use by third parties⁴. Others regard protection as a tool to preserve traditional knowledge from uses that may erode it or negatively affect the life or culture of the communities that have developed and applied it⁵. Protection here has a more positive role in supporting Traditional Knowledge-based communities' livelihoods and cultures, as proposed by the Organization of African Unity's (OAU's) Model Law and its definition of community rights.

Overall, however, the main arguments for granting protection to Traditional Knowledge include:

- Equity considerations,
- Conservation concerns,
- The preservation of traditional practices and culture,
- The prevention of appropriation by unauthorized parties of components of Traditional Knowledge, and
- Promotion of its use and its importance in development.

Protection of Traditional Knowledge in India

In India, patenting traditional knowledge is not allowed under the patent law. According to section 3 (p) of The Indian Patent Act, "an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known components or components", is not considered an invention under the Act.

However, for protecting traditional knowledge, India has taken several measures. India is a party to CBD (Convention on Biological Diversity). India has already enacted an Act to provide for protection of biological diversity, sustainable use of its components and equitable benefit sharing arising out of the use of the biological resources. It addresses the basic concerns of access to, collection and utilization of biological resources and knowledge by foreigners and sharing of benefits arising out of such access. The legislation also provides for a National Authority, which will grant approvals for access, subject to conditions, which ensure equitable sharing of benefits. The main intent of this legislation is to protect India's biodiversity and associated knowledge against their use by individual/organizations without sharing the benefits arising out of such use and also to check bio-piracy.

Additionally, India has initiated an attempt to document traditional knowledge in a written as well as electronic form by means of People's Diversity Registrar (PBR) and the Traditional Knowledge Digital Library (TKDL).

⁴ Downes D 1997, Using Intellectual Property as a tool to Protect Traditional Knowledge: Recommendations for Next steps". Centre for International Environment Law, Washington DC.

⁵ Simpson T 1997, Indigenous Heritage and Self-determination: The Cultural and Intellectual Property Rights of Indigenous Peoples, International work Group for Indigenous Affairs, Copenhagen.

The Indian legislation for the Protection of Plant Varieties and Farmer's Right Act 2001 also acknowledge that the conservation, exploration, collection, characterization.

People's Diversity Registrar (PBR) is the initiative of the Foundation for Revitalization of Local Health Traditions (FRLHT) and supported by the Centre for Ecological Sciences (CES). The objective of the People's Diversity Registrar (PBR) is to build an open and transparent information system on biodiversity resources from the village level upwards. The registrar can be used to promote the sustainable management of biodiversity resources.

People's Diversity Registrar (PBR) is serve as a tool to (a) document, monitor and provide information for sustainable management of local biodiversity resources; (b) establish claims of individual and local communities over knowledge of usage of biodiversity resources and to bring to them an equitable share of benefits flowing from the use of such knowledge and such resources; (c) perpetuate and promote the development of practical ecological knowledge of local communities and of traditional "slow" sciences such as Ayurveda and Unani medicine.

Traditional Knowledge Digital Library (TKDL) is navigating online repository of traditional knowledge of the country. Traditional Knowledge Digital Library has been developed jointly by Controller General of Patents, Design and Trade Marks; Council for Scientific and Industrial Research (CSIR) through its National Institute of Science Communication and Information Resources (NISCAIR); and Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) and is a proprietary and original database.

Ministry of Human Resources Development (MHRD), Government of India and Anthropological Survey of India (ASI) recently start a joint project on Traditional Knowledge of Tribes living in our country. They are trying to find out some important traditional knowledge of tribes of India and collect for Traditional Knowledge Digital Library (TKDL). Ministry of Human Resource Development and Anthropological Survey of India complete this work in total 5 years and they made 500 crore rupees budget for it. In January 2010 they have started their work from Shahabad, District – BARAN (Rajasthan).

CONCLUSION

Traditional Knowledge is often historical, as it is knowledge through man's interaction with the environment. Compared to scientific knowledge, Traditional Knowledge focuses on connections between entire systems, and modifications over time. Different forms of Traditional Knowledge require different kinds of protection. This is to say, Traditional Knowledge related to natural resources or technology requires a different type of protection from Traditional Knowledge related to cultural arts.

Moreover, Traditional Knowledge is not static, but dynamic, constantly changing with the times. While protecting Traditional Knowledge is important, so too is protecting the innovations of indigenous peoples. For example, if inventions based on Traditional Knowledge meet the requirements of novelty, inventive step, and industrially applicability, patent protection for these inventions is appropriate. If the

protection is not individual, it emphasizes protection of national or local resources, while ignoring the fruits of individuals' labor⁶. Holistic protection alone is inadequate.

Database protection is an important way to protect Traditional Knowledge. Still, it is important for the database operator to allow the Traditional Knowledge holder to control access to such Traditional Knowledge. Providing indigenous peoples and societies more opportunities to control access to Traditional Knowledge through database protection is important, as this helps in further developing: the concept of trust through practical initiatives with a view to providing indigenous and local communities with increased opportunities to exercise control over their Traditional Knowledge held in databases may warrant further consideration. Collaborative efforts with research institutions, national authorities, Non-Government Organizations, etc., as well the establishment of database trusts by local communities, and indigenous peoples, may offer innovative means for both promoting and protecting Traditional Knowledge⁷.

As for defensive protection of Traditional Knowledge, when needing to disclose confidential information, one must make every effort to protect Traditional Knowledge under the Intellectual Property system from misappropriation or from unauthorized use. In the long term, a defensive protection system may prove to be a more cost-effective system of protection of Traditional Knowledge, avoiding the frequent question of patent infringement and the excessive costs of patent examination⁸.

As for Intellectual Property protection of Traditional Knowledge, Intellectual Property Protection of Traditional Knowledge almost invariably results in fragmentary protection of Traditional Knowledge, but without more comprehensive rights for the protection of Traditional Knowledge, Intellectual Property protection still remains an important method of protection of Traditional Knowledge.

In summary, Traditional Knowledge protection still has many areas that require investigation. Currently, this investigation is very preliminary. More research toward finding the best way to provide Traditional Knowledge more thorough protection is needed.

⁶ Gupta, A.K. 2004 Rewarding Traditional Knowledge and Contemporary Grassroots Creativity: The Role of Intellectual Property Protection. http://sustsci.harvard.edu/ists/TWAS_0202/gupta_0500.pdf

⁷ Tobin, B. 2004 The Role of Registers and Databases in the Protection of Traditional Knowledge: A Comparative Analysis. United Nations University / Institute of Advanced Studies (UNU/IAS), Tokyo. p. 39, <http://www.ias.unu.edu/publications/details.cfm/articleID/459>.

⁸ Tobin, B. 2004 The Role of Registers and Databases in the Protection of Traditional Knowledge: A Comparative Analysis. United Nations University / Institute of Advanced Studies (UNU/IAS), Tokyo. p. 30, <http://www.ias.unu.edu/publications/details.cfm/articleID/459>.