



Protection of Traditional Knowledge by International Legal Instruments: A Review from Legal Perspective

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Abstract

Traditional Knowledge (TK), sometimes referred to as Indigenous Knowledge (IK), has drawn interest from all around the world in the past 20 years. The importance of traditional knowledge (TK) in biodiversity protection and the everyday lives of many people, the swift loss of TK and cultural diversity, and the exploitation of TK without sufficient benefit sharing are the reasons for this increased focus. These concerns are being addressed at different scales by nations and cultures around the world. In developing countries, over to 80% of people rely on traditional medicines, making TK an essential element of many indigenous communities' identities and essential to their health and food security. TK also plays a vital role in industrial research and development as well as modern medicine. It improves knowledge of ecological and social variety and helps form locally relevant, sustainable poverty reduction methods. TK and biodiversity have been exploited through attempts at biopiracy, which highlights the need for protective measures due to the economic importance of biological diversity.

Keywords: - Indigenous Knowledge, Biodiversity Conservation, Biopiracy, Traditional Knowledge Digital Library (TKDL), Convention on Biological Diversity, TRIPs, International Labour Organization (ILO)

I. INTRODUCTION

The worldwide agenda has given Traditional Knowledge, also known as Indigenous Knowledge (TK or IK), more attention throughout the last 20 years or so. It has gained increasing attention practically everywhere in the world. There are several factors that contribute to this, including the understanding of the importance of traditional knowledge (TK) in the lives of most people on the planet and the biodiversity conservation; worries about the swift extinction of TK and the losing global cultural diversity; apprehension about illegal, unauthorized and inappropriate TK patenting and use, with little to no benefit sharing with the original owner of the TK and the growing potential for TK businesses to generate substantial foreign exchange. Around the world, many nations and societies are thinking about how to handle this problem on a national, regional, and global scale. This knowledge has become a weapon of these people's cultural and political identity and the aboriginal, the Traditional people have become important partners and players on the national and global scene. For the majority of indigenous tribes, the essential component of their identity is now their traditional knowledge. The great majority of people still depend heavily on traditional knowledge in their daily lives. Millions of individuals in the developing nations depend on it for their health and food security. In many nations, the only reasonably priced treatment accessible to the impoverishment is traditional medicine.

For their medical needs, up to 80% of people in poor nations rely on traditional medicines. In today's world, among the most important sources of contemporary medicine is traditional knowledge. It has utilized extensively to usefully understand the general functioning and interrelationships of ecological systems. This data has been crucial to industrial research and development initiatives and has contributed to production in the modern economy.

TK may help improve development strategies in a number of ways, including by assisting in the identification of sustainable and affordable methods of reducing poverty that are manageable and significant locally, by improving comprehension of the ecological and social diversity of sustainable development and by assisting in the discovery of novel approaches to sustainable human development. For the development of latest products, TK has been and continues to be utilized in a variety of industries. Growing recognition of the economic worth of biological diversity has led to corporations attempting to use bio piracy to take advantage of traditional knowledge and biodiversity.

II. LEGAL PROTECTION OF TRADITIONAL KNOWLEDGE (TK) IN INDIA

Recently greater attention has been given by international communities for preserving the knowledge, innovations and practices of indigenous and local populations. They now recognise the importance of traditional knowledge. This is because of a number of factors. To begin with, now it is acknowledged that TK is essential for the biodiversity conservation and sustainable utilisation. This is emphasised by both the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization's (FAO) International Undertaking on Plant Genetic Resources.

Second, a major portion of the population in many developing and Least Developed Countries (LDCs) depend on T.K based activities and goods for their food, healthcare and income. However, as local ecosystems deteriorate and traditional groups become more incorporated into civilization at large, this T.K is quickly disappearing.

Furthermore, the least developed and developing nations possess a significant amount of traditional knowledge. Both developed and developing nation's businesses and scientific research facilities can significantly gain by reaching and accessing these resources and traditional knowledge. Multinational organizations and unauthorized individuals frequently steal and pirate this customary knowledge. The real owner of the knowledge is not compensated. Finally, the long-term socio-economic sustainability of indigenous and local communities may be improved through the marketing of products based on TK, which could also open up new trade routes for developing nations.

These are few primary causes behind the global recognition of the significance of TK's legal protection. Traditional knowledge is not specifically protected by any sui generis laws in India. The Patent Act of 1970, the Copy Right Act of 1957 and the Designs Act of 2000, however, all contain different provisions. The Protection of Plant Varieties and Farmers Rights Act of 2001, the Biological Diversity Act of 2002, the Trade Marks Act of 1999, and the Geographical Indications of Goods (Registration and Protection) Act of 1999 all acknowledge traditional knowledge and help to avoid its exploitation in our nation. The Traditional Knowledge Digital Library (TKDL) is also crucial in thwarting bio piracy in India.

Both defensive and positive protection are available for TK. There are advantages and disadvantages to both the defensive and positive safeguards. Naturally, each nation has the final say in the matter. However, TK protection cannot be achieved just by defensive or positive protection. Positive and defensive protection must be viewed as either face of the same coin in a full protection strategy. These two methods ought to be viewed as supplemental and complementary to one another. To provide robust protection for traditional knowledge and its holders, both of these tools must be employed.

III. INTERNATIONAL LEGAL DEVELOPMENTS TO PROTECT TK

For a long time, the global community was not interested in traditional knowledge or indigenous knowledge. There were multiple reasons for this. Initially, it was regarded as knowledge that was not scientific, sophisticated, or useful for business. (Cullet, 2005). Second, the current property rights accords make it extremely difficult to protect traditional knowledge. Third, efforts by traditional people to establish intellectual property rights over traditional knowledge have long been unsuccessful. (Cullet, 2005). They made no attempt to market their expertise. Those with traditional expertise did not get worldwide awareness.

A few of them even questioned the legitimacy of structured legal framework and the current IPR framework for protecting their knowledge base. The potential significance of TK has only recently been recognised by the traditional and global communities realized the potential significance of TK. In 1957, the International Labor Organization (ILO) held a conference on the protection of Indigenous and other tribal and semi-tribal populations in independent countries marking the beginning of the first international effort to defend the rights of indigenous people in the second half of the 20th century. ([International Labour Organization \[ILO\], 1957](#)). Numerous International organizations have emerged after this treaty and acknowledged the significance of TK.

The following, however, are the international legal advancements for the preservation and protection of Traditional Knowledge:

- International Labor Organization – convention No. 107 (The Indigenous and Tribal populations convention and Recommendation 1957);
- Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement;
- Convention on Biological Diversity (CBD);
- WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC);
- The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous peoples, 1993;
- Kari – Oca Declaration [The World Conference of Indigenous Peoples on Territory, Environment and Development (25th – 30th May, 1992)]-1992;

- Universal Declaration of Human Rights 10th Dec, 1948;
- International Covenant on Economic, Social and Cultural Rights 1966;
- International Covenant on Civil and Political Rights 1966;
- Vienna Declaration and Programme of Action 1993;
- United Nations Declaration on the Rights of Indigenous Peoples – 2007;
- International Treaty on Plant Genetic Resources for Food and Agriculture 1983;
- Tunis Model Law on Copyright for Developing Countries 1976;
- Rio Declaration on Environment and Development 1992;
- UNESCO Convention on the preservation of Intangible Genetic Data- (29th Sept.-17th Oct.2003);
- Berne Convention for the Protection of Literary and Artistic works;
- World Health Organization's Traditional Medicine Strategy 2002 – 2005;
- WIPO Performances and Phonograms Treaty (WPPT) 1996 and WIPO Copyright Treaty 1996(WCT);
- The Johannesburg Declaration on Biopiracy, Biodiversity and Community Rights – 26th August to 4th September, 2002;

However, a handful of the aforementioned crucial legal instruments are discussed below:

3.1 The Indigenous and Tribal Populations Convention and Recommendation, 1957 (Convention no. 107)

Their expertise was not intended for commercialization. Conventional knowledge holders were unable to attract global focus. A few of them didn't even think that the official legal system and the current IPR framework would keep their knowledge base intact. TK's potential significance was only recently acknowledged globally and by the traditional communities. When the International Labour Organization (ILO) gathered a conference meeting in 1957 to discuss the protection and preservation of Indigenous and other tribal and semi-tribal communities in independent nations, it made the first global attempt to defend the rights of indigenous people in the second half of the 20th century.

The treaty acknowledges that indigenous and tribal peoples are entitled to the complete spectrum of human rights and fundamental freedoms, free from hindrance or discrimination (International Labour Organization [ILO], 1989, Art. 3(1)).

Environment, labor culture, property, institutions, and indigenous and tribal peoples must all be protected. (International Labour Organization [ILO], 1989, Art. 4(1)).

Officials from every country owe duty to the indigenous communities that live in and around their territories to honor their religious and cultural practices. The government will ensure the support and encouragement of these activities with their help and when needed. (International Labour Organization [ILO], 1989, Art. 13).

In order to ensure that traditional and indigenous communities are well-informed about their rights and responsibilities regarding labor, economic opportunities, education, health, social issues, and the conventions provisions, the government must adhere to cultural norms and practices. (International Labour Organization [ILO], 1989, Article 30[1]).

Therefore, the government should take the appropriate steps to safeguard the rights of indigenous and tribal population beyond their conventional and traditional knowledge.

3.2 Trade Related Aspects of Intellectual Property rights (TRIPs) Agreement

The 1948 establishment of the General Agreement on Tariffs and Trade (GATT) by primarily industrialized nations lays out the rules governing trade among its members. By permitting tariff protection to be negotiated, reduced, or eliminated, the GATT seeks to advance free trade. After the Uruguay Round of GATT negotiations in 1994, the World Trade Organization was established to act as the GATT body in charge of administration and rights to intellectual property were included. The new World Trade Organization replaced the World Trade Organization General Agreement on Tariffs and Trade (GATT) on January 1, 1995, with a backing of 85 founding members including India. The TRIPs agreement is one of the several WTO records. The agreement covering Trade-Related Aspects of Intellectual Property Rights (TRIPs) consists of seven parts and 73 provisions. According to the TRIPs agreement's preamble, intellectual property rights are private property. Nonetheless, an international system of guidelines, regulations, and fields with regard to intellectual property rights is required. Under the 1994 WTO Agreement, the TRIPs were developed under multilateral talks for the first time. However, the first IPR convention was not TRIPs. The Paris Convention for the protection and safeguarding of industrial property, the Berne Convention for the protection and safeguarding of literary and artistic works and a few other additional treaties are all based on it.

The TRIPs Agreement is designed to achieve two goals. Promoting adequate and effective IPR protection is one goal, the other is to make sure that policies and processes for enforcing IPR don't end up impeding lawful trade. All participants to this agreement are obliged to provide basic requirements for IPR protection. Regarding all the signatory nations, the agreement makes these minimal requirements universal. However, instead of aiming for identical national IP laws, the agreement establishes minimum conditions for member nations to follow.

The World Trade Organization requires all of its member nations to establish basic criteria for intellectual property rights and procedures for upholding them. According to the agreement, parties must also give right holders access to fair, efficient legal processes and remedies in the event that their rights are violated or infringement occurs. (World Trade Organization [WTO], 1994, Articles 42–49). Parties should observe the principle of national treatment and most – favored nation with respect to IPR (World Trade Organization [WTO], 1994, Articles 3–4). In order for a person knowledgeable in the

art to copy an innovation, WTO members must mandate that patent applications disclose it. ([World Trade Organization \[WTO\], 1994, Article 29](#)). Article 31 places various restrictions on the scenarios, in which a government may allow the use of a patent against the wishes of the patent owner, subject to proper compensation. Article 27(1) suggests that patents are accessible for all inventions, whether they are processes or products, in all areas of technology, so long as they are novel, incorporate an inventive step and possess the potential for industrial utility. This is with regard to the provisions of paragraphs 2 and 3. Regardless of where the invention occurred, the technology or whether a product is made locally or imported, patents must be accessible and patent rights must be enjoyed. As per Article 27(2), "Members may exclude from patentability inventions, the prevention of commercial exploitation within their territory of which is necessary to protect Order Public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made simply because the exploitation is prohibited by their law."

3.3 Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) was the inaugural global accord concerning the conservation and sustainable utilization of biological diversity, it is primary global instrument pertaining to the utilization and conservation of biodiversity. It was signed at the Earth Summit 1992. 176 nations, including the European Community, have ratified this comprehensive pact. National pledges to preserving the global ecological foundation as people work to accelerate economic development are outlined in the CBD. The convention lays out three primary objectives. The conservation of biological variety and the sustainable utilization of its components are the first two.

The just and equal distribution of benefits that come from use of the genetic resources. Considering all of these guidelines and objectives, governments work to preserve and responsibly utilize biodiversity. They must create national action plans and approach for biodiversity and include them into larger national plans for development and the environment. The convention's decision-making body is the Conference of the Parties (COPs). It convenes frequently to assess how the convention is being implemented and to choose work plans to accomplish its goal. In order to monitor adherence to PIC, the Guidelines additionally suggest that the location of origin of the genetic resource be included in the patent application. The purpose of the voluntary Bonn principles is to provide the model for governments, when they draft laws and policies and also for contracting parties when they draft agreements concerning the technology transfer, the handling of biotechnology, sharing its advantages, the utility of traditional knowledge and the customary utility and accessibility to biological resources. In particular, CBD Articles 8(j), 10(c), 15, 16, and 19 are included in the guidelines.

The goals are intended to offer direction, create an open framework, enhance biological variety conservation and promote technological transfer. States ought to establish focal points at national level, who will serve as national biodiversity experts and be in charge of ensuring that stakeholders participate effectively, granting and upholding agreements for benefit sharing and access, monitoring and evaluating these agreements and conserving and using resources sustainably. The suggested mechanism emphasises that states are entitled to control their resources. According to Article 8(j) of the CBD, each contracting party is required to: respect, preserve, and maintain the knowledge, innovations, and practices of indigenous and local communities that embody traditional lifestyles relevant for the conservation and sustainable use of biological diversity; encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations, and practices; and promote their wider application with the consent and involvement of the holders of such knowledge, innovations, and practices. This is all subject to national legislation. ([Convention on Biological Diversity \[CBD\], 1992, Article 8\[j\]](#)). Biodiversity has become one of the great concerns in the last 20 years, This is due to extinction of many species of plant from the world and also due to its growing recognition of its determine access to genetic resources rests with the national governments and is subject to national legislation ([Convention on Biological Diversity \[CBD\], 1992, Article 15\[1\]](#)). This article's provisions represent a significant shift in global biological resource policy. It introduces the concept of national sovereignty over genetic resources and represents a substantial break from industrial norms and practices. It represents the importance of national sovereignty to the CBD and access regime. National governments have the power to decide who has accessibility towards the genetic resources, and national laws govern this decision. Countries now have the power to carry out control who has access to their bioresources and associated knowledge and also to decide on benefit sharing agreements. Article 10(c) says that "each contracting party shall, as far as possible and as appropriate, protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. ([Convention on Biological Diversity \[CBD\], 1992, Article 10\[c\]](#))". Thus, the past utilisation of biological resources in keeping with cultural traditions has been addressed in this text. Article 16 of the CBD addresses technological transfer and access. According to Article 16.1, among other things, a state party acknowledges that technology includes biotechnology and that access to and transfer of technology among contracting parties are crucial to achieving the goals of this convention. Accordingly, the state party agrees, subject to the provisions of this Article, to provide and/or facilitate access to and transfer to other contracting party's technologies that are relevant to the conservation and sustainable use of biological diversity or that utilize genetic resources without harming the environment significantly. ([Convention on Biological Diversity \[CBD\], 1992, Article 16\[1\]](#)).

Therefore, in the light of aforementioned CBD requirements, it may be concluded that CBD guarantees nations the chance to profit from their genetic and biological resources. Therefore, in order to take advantage of their unique possibilities and advantages, state parties are encouraged to implement integrated policies, strategies and legal frameworks. Many nations around the world, including Brazil, Malaysia, India, the Philippines and Costa Rica, have enacted legislation governing the utility and accessibility of genetic components and biological resources.

3.4 WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

The WIPO Intergovernmental Committee created by The WIPO General Assembly, on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in October 2000 as a global forum for discussion and exchanging the views on the relationship between IP and Traditional Knowledge (TK), Genetic Resources and Traditional Cultural Expressions (TCEs/Folklore). The group has made great progress in addressing the policy and practical links between the IP system and the demands and the concerns of TK holders and traditional culture guardians.

To provide the foundation for international policy discussions, the Secretariat under the committee's direction, has conducted a number of in-depth analytical studies on the basis of an extensive analysis of experiences in this field at the national level. Additionally, the Secretariat has developed practical instruments to strengthen the TK and genetic resource holder's intellectual property interest. Currently, a large number of possible recipients of intellectual property protection have to be disregarded and marginalized in the era of globalization and new technology because there is insufficient protection and the present mechanisms are not tailored to the unique features of indigenous and local communities' knowledge, innovations, and practices.

Today, local and indigenous culture's knowledge, innovations and practices are in jeopardy. For conventional knowledge and related innovations and practices, an intellectual property system would aim to accomplish the following: ([World Intellectual Property Organization \[WIPO\], 2001, Annex 1, p. 3](#)):

- Innovations and traditional knowledge should be respected and protected;
- Fair and equitable distribution of knowledge's benefits;
- Use the knowledge and innovations for humanity's benefit;
- Administration of knowledge should be arranged and organized;
- Establish legal and economic systems that will permit sustainable development of communities that possess that knowledge;
- Maintain traditional conservation schemes for biodiversity;

The purpose of the Inter-Governmental Committee (IGC) is to encourage consensus over the protection and safeguarding such knowledge and resources, given that TK, TCEs, and genetic resources touch on a broad range of subjects, including biodiversity, cultural diversity, environmental preservation and fundamental human rights. In a 2000 meeting, WIPO made it clear that it would support the continuation of Member state consultations, working along with other pertinent international organizations, by conducting relevant legal and technical studies and by establishing a suitable forum within WIPO for further cooperation. As a result, IGC was created.

IV. CONCLUSION

To safeguard TK, India urgently has to pass sui generis laws. Today, numerous international multinational corporations and other criminals steal TK. Sui Generis legislation, however, will not be the solution to every issue pertaining to TK theft, even if it is passed. A single tool or mechanism wouldn't be enough to address the issue. TK cannot be protected by the Sui Generis law in India, TKDL, the current IP laws, PIC or ABS mechanisms alone.

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Additionally, such a framework ought to promote the flow of bio prospecting advantages to local and indigenous populations. The adoption of a long-term vision and the formulation of specific, achievable goals must be predicated on a well-informed assessment of what is required and practical. When addressing the issue, it is crucial to remember the harsh reality that indigenous populations and TK holder's face, which includes severe poverty, poor health, unemployment, restricted access to land and basic resources, and human rights abuses.

Their needs should come first in order to safeguard their interests. The issues surrounding unauthorized or irregular access to the traditional knowledge of India's indigenous people cannot be resolved by a single method, such as disclosure of origin, TKDL, or another sui generis legislation. To offer robust protection for traditional knowledge of indigenous population, both defensive and positive techniques should be employed. The evolution and progression of international regulations for the preservation and advancement of traditional knowledge might not be sufficiently facilitated by a single international institution.

It is essential that the interested nations and numerous international organizations work together on this project. The only way to solve this issue is to work together, both domestically and globally. Because bio piracy is a worldwide issue that typically entails obtaining materials in one nation while pursuing a patent in another. This indicates that addressing the issue of bio piracy just through governmental actions is insufficient.

Therefore, a positive and mandatory obligation must be placed on WTO member countries to mandate the patent applicants to reveal the nation of origin and source of biological resources and/or traditional knowledge (TK) incorporated into domestic inventions. This will make sure that the contemplated obligations on the applicants are effective. Either by properly revising the current rules or by adding a new article to the TRIPs Agreement, such a positive and mandatory requirement could be added. Therefore, to protect TK and TCEs, a concerted effort at the national and global levels is crucial.

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