

GUARDIANS OF HERITAGE: EXPLORING THE INTERSECTION OF TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS IN INDIA

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Abstract

Traditional knowledge (TK) is developed through the experiences of indigenous communities over a prolonged period. It is primarily passed down orally from one generation to the next, which makes it vulnerable to exploitation and misuse. TK is vast in scope, encompassing knowledge related to various sectors such as the properties of plants and animals, soil and natural reserves, combinations of organic and inorganic substances, medicinal practices, and the cultural expressions found in music, dance, art, crafts, folklore, and storytelling. These intellectual contributions have been established and gradually refined through generations within a community, influencing areas like technology, science, ecology, medicine, agriculture, biodiversity, and the arts. TK plays a crucial role in preserving the culture and society of these communities, as well as maintaining genetic resources essential for their sustainable survival. In light of this, it is necessary to incorporate a sui generis framework within India's intellectual property rights (IPR) system to protect and preserve traditional knowledge in a manner that respects its unique cultural and legal context.

Keywords: *Traditional Knowledge, Indigenous Communities, Cultural Expressions, Bio Diversity, Sui generis, Intellectual Property Rights (IPR)*

Introduction-

India, recognized as one of the world's biodiversity hotspots, is home to a wealth of traditional knowledge (TK) linked to its diverse ecosystems, particularly among indigenous communities. This knowledge, passed down orally over generations, includes agricultural, medicinal, and biodiversity-related wisdom, as well as cultural expressions like music, dance, and art. However, TK is vulnerable to exploitation, especially through biopiracy, where companies use India's biological resources and TK without fair compensation to indigenous people. To combat this, India has implemented policies like the Traditional Knowledge Digital Library (TKDL) by CSIR to protect and authenticate TK. Despite increasing global recognition of TK's value, it remains largely treated as public domain under Western intellectual property laws, allowing exploitation without acknowledgment or compensation to its original custodians.

Intellectual Property Rights

Intellectual assets refer to the concept of intellectual creations that are granted exclusive rights to their owners through legal regulations. In the context of Indian law, Intellectual Property Rights (IPR) are considered a form of "intangible property." Over time, various legal theories governing IPR in India have developed. Intellectual Property includes: Copyright, Trademark, Patent, Geographical Indication, Industrial Designs, Trade Secrets, and Integrated Circuits. The underlying principle of intellectual property is that certain products of human intellect and creativity should be afforded the same legal protection as physical, tangible property. India, like many developed

economies, has established legal frameworks to protect both intangible and tangible assets, ensuring their owners' rights are safeguarded.

Traditional Knowledge

Traditional knowledge (TK) refers to the knowledge, innovations, practices, and cultural expressions developed by indigenous and local communities over generations, often passed down orally. It encompasses a wide range of fields, including agriculture, medicine, biodiversity, folklore, and craftsmanship. Rooted in the intimate relationship between these communities and their environment, TK is deeply connected to cultural identity and sustainable livelihoods. It plays a vital role in preserving biodiversity and addressing contemporary challenges, yet remains vulnerable to exploitation, particularly when it intersects with intellectual property rights.

Objectives-

1. To Examine the Role of Traditional Knowledge in India's Cultural Heritage.
2. To Analyse the Current Legal Framework for Protecting Traditional Knowledge in India.
3. To Identify Challenges in Protecting Traditional Knowledge under Current IPR Laws.
4. To Explore the Concept of Traditional Knowledge as Intellectual Property.
5. To Assess the Role of the Indian Government and International Institutions in Protecting Traditional Knowledge.
6. To Understand the Impact of Intellectual Property Protection on Indigenous Communities.

7. To Propose Strategies for Strengthening the Protection of Traditional Knowledge in India.
8. To Explore Case Studies of Traditional Knowledge Protection in India.

Review of Literature-

Bhat, N. (2017) in his study, "Intellectual Property and Traditional Knowledge: A Review of Global Efforts" highlights the tension between the traditional custodians of knowledge and the legal frameworks that fail to recognize or protect TK under conventional intellectual property laws. Bhat discusses how Western intellectual property systems are often incompatible with the communal, oral, and dynamic nature of TK.

Kapoor, S. (2016) in "Biopiracy and the Protection of Traditional Knowledge: Legal Perspectives from India" discusses the issue of biopiracy in India, giving examples of cases where global pharmaceutical and biotechnological companies have patented traditional plant-based medicinal knowledge without consent from the indigenous communities. Kapoor suggests the need for strengthening India's intellectual property laws to ensure that community's benefit from their contributions to science and industry.

Das, T. (2018) in "International Legal Challenges in Protecting Traditional Knowledge: An Indian Perspective" critically analyses the shortcomings of global legal frameworks in protecting TK. Das emphasizes that while international agreements like the CBD encourage the protection of indigenous knowledge, they do not fully consider the economic and cultural significance of TK to its holders.

Sharma, R. (2020) in "Towards a Sui Generis System for Protecting Traditional Knowledge in India" argues for the creation of a new, dedicated legal framework that would recognize the unique characteristics of TK. Sharma suggests that a sui generis system would allow indigenous communities to register and protect their knowledge while ensuring they are compensated fairly when their knowledge is used commercially.

Methodology

The research paper aims to focus on the intersection of Traditional Knowledge (TK) and Intellectual Property Rights (IPR) in India, is interdisciplinary, drawing from fields such as law, cultural studies, anthropology, and environmental science. The methodology for this study reflects the complexity of the subject and the need to explore both qualitative and quantitative aspects.

Data Collection – Data was collected from the following sources:

- Case studies of specific instances in India where TK was misappropriated or protected.
- Case law analysis to identify precedents where IPR laws were applied to TK-related disputes.
- Comparison of India's legal framework with other countries' laws, especially in relation to sui generis systems for protecting TK

IPR Protection in Traditional Knowledge

Intellectual Property Rights (IPR) are meant to encourage investment in research, innovation, and development by offering incentives to creators. However, IPR systems often enable private companies to exploit traditional knowledge, profiting from resources without compensating the indigenous communities that developed them. This process, known as biopiracy, leaves rural farmers and tribal groups without access to their natural resources and associated knowledge. Products derived from traditional knowledge are often too expensive for these communities due to the high prices set by companies engaged in biopiracy. The World Trade Organization's (WTO) Trade-Related Intellectual Property Rights (TRIPS) agreement emphasizes patent rights but largely overlooks the rights of traditional knowledge holders. Indigenous communities, who have developed a wealth of knowledge over generations, struggle to gain recognition and fair compensation for their contributions. The current IPR system largely benefits global corporations, particularly in the agricultural sector, which use it to control and profit from seed production worldwide, often at the expense of developing nations' indigenous populations.

Intellectual Property as a Tool for Securing Traditional Heritage

Despite the limitations of the current IPR system, certain aspects can be used to protect traditional knowledge either positively or defensively.

1. Biological Diversity Act, 2002

As a signatory of the "Convention on Biological Diversity" (CBD), India recognized the importance of implementing this convention. Therefore, the Biological Diversity Act, 2002 was enacted to promote the conservation of biological diversity, ensure its sustainable use, and facilitate the fair and equitable distribution of benefits arising from the use of biological resources. The Act addresses key issues such as:

- Access to biological resources
- Collection and use of biological resources
- Distribution of benefits from such use
- Protection against biopiracy

The Act also outlines procedures for safeguarding indigenous knowledge, particularly in Section 36. It establishes:

- Section 8 of the Biological Diversity Act: Powers and Responsibilities of the National Biodiversity Authority (NBA)
- State Biodiversity Boards (SBB) under Section 22

Before obtaining approval from the NBA, individuals cannot apply for intellectual property rights in India or abroad for innovations based on research or traditional knowledge. The NBA ensures that benefits are fairly distributed among the consent-givers, local communities, and claimants. These regulations aim to prevent unauthorized access to biological resources or knowledge, especially by foreign individuals and corporations, thereby protecting against biopiracy. The Act also requires the sharing of benefits derived from the commercial use of traditional knowledge with the communities responsible for its development under Section 21.

2. Patent Act, 1970

The Patent Act of 1970 presents challenges in protecting traditional knowledge due to its collective nature. However, it can be used defensively to prevent the misappropriation of such knowledge by industry groups, viewing it as a shared cultural asset. Provisions in the Act, such as Sections 25 and 64, allow for opposition and revocation of patents based on prior community knowledge, including oral traditions. Section 10 mandates disclosure of traditional knowledge used in innovations, ensuring the geographical origin is acknowledged. The Act also specifies that plant varieties and biological processes are non-patentable, protecting indigenous knowledge. While certain traditional methods can be patented, trademarks related to traditional knowledge can serve as prior art to prevent patenting by others.

3. Copyright Act, 1957

Copyright safeguards the way ideas are expressed, rather than the ideas themselves. Under the Copyright Act of 1957, copyright owners have exclusive rights to perform actions listed in Section 147. It can be used to protect the artistic works of indigenous artists, preventing unauthorized reproduction and exploitation. Moral rights, which focus on the connection between authors and their work, provide a useful way to safeguard the rights of indigenous communities over their traditional knowledge.

4. Plant Varieties and Farmer's Rights' 2001

The sui generis regulation is designed to meet the requirements of the TRIPS agreement of the World

Trade Organization. It protects plant varieties such as novel, extant, and farmer-developed varieties. The Act emphasizes fair benefit-sharing agreements between the supplier and the beneficiary of plant genetic resources. Payment to farmers depends on the scope, usage, and commercial success of their varieties. Plant breeders can obtain Plant Breeder's Rights (PBR) for new varieties if they are distinct, durable, stable, and innovative, and also for traditional varieties that are unique, uniform, and stable. Section 40 of the Act mandates the disclosure of genetic information from tribal or rural communities used in the development of plant varieties during registration.

5. Trademark Act, 1999

Trademarks play a crucial role in differentiating products and services in the market. They help native communities protect their traditional knowledge and benefit financially from it by preventing misuse. Collective and certification marks are particularly valuable for safeguarding indigenous handicrafts, ethnic items, and a wide range of goods and services, from food to tourism. Certification marks ensure that products meet specific standards, such as quality or origin. For example, marks like WOOLMARK and AGMARK guarantee product authenticity. These marks can help protect traditional products in international markets, ensuring they meet recognized standards and preserving cultural symbols and practices.

6. Geographical Indications of Goods

Geographical Indications (GIs) protect products that are tied to a specific location, reflecting the quality and reputation linked to their geographic origin. Examples include Darjeeling Tea, Alphonso Mango, and Kolhapuri Chappal. GIs safeguard traditional knowledge held by local communities and are granted for 10 years, with the option for renewal. GIs recognize the historical reputation and evolving quality of products, not just traditional manufacturing methods. They protect indigenous techniques and prevent others from exploiting their reputation. GIs can also protect traditional pharmaceutical products, ensuring their unique qualities are preserved.

7. Protection of TK through Industrial Designs

An industrial design is a type of intellectual property that focuses on the visual appearance of an object, including its shape and design. Items created by indigenous groups, such as furniture, clothing, boxes, and ceramics, can be protected as industrial designs.

Findings-

This research paper covers an important area of intellectual property, cultural heritage, and the protection of indigenous knowledge systems. Below are some findings that emerged during the research:

1. Inadequacy of Existing Intellectual Property Laws for Traditional Knowledge (TK)

Current intellectual property frameworks, such as patents, trademarks, and copyrights, are not fully compatible with the protection of traditional knowledge. This is because traditional knowledge is often collective, passed down through generations, and does not always meet the criteria of novelty or originality required for IP protection. In India, traditional medicines like Ayurveda and tribal herbal practices often face challenges in being recognized as intellectual property due to their long-standing existence in public domain knowledge.

2. Misappropriation and Biopiracy

There have been numerous instances of misappropriation or biopiracy where multinational corporations or researchers patent traditional knowledge without recognizing or compensating the original custodians.

Companies have patented herbal formulations based on indigenous knowledge from tribal communities in India, without due consent or benefit-sharing with the communities.

3. Traditional Knowledge Digital Library (TKDL) and Its Role

India has established the Traditional Knowledge Digital Library (TKDL) as an initiative to document and safeguard traditional knowledge, especially in relation to herbal medicine and biodiversity. This database helps prevent the patenting of traditional knowledge by foreigners.

The TKDL has been used to oppose patents on traditional knowledge, such as the case of the patenting of turmeric's healing properties by a foreign entity, which was successfully challenged by the Indian government.

4. Challenges in Documentation and Recognition

A major challenge is the lack of formal documentation of traditional knowledge, making it difficult to prove ownership and protect it under IP laws. Most traditional knowledge exists orally or in community practices, which complicates its legal recognition.

Practices such as traditional handlooms, art, and agricultural techniques may be difficult to protect due to a lack of written records.

5. Need for Custom Legal Frameworks

There is a growing consensus that traditional knowledge cannot be adequately protected under the current IP system alone. India may need to establish specific legal frameworks to protect traditional knowledge, focusing on cultural heritage and community ownership.

The Biological Diversity Act, 2002, and the Protection of Plant Varieties and Farmers' Rights Act, 2001, are steps in this direction, though gaps remain in terms of broader protection.

6. Role of Indigenous Communities as Guardians of Heritage

Indigenous communities and local practitioners play a crucial role as the "guardians" of heritage and traditional knowledge. Ensuring their participation in decision-making processes around intellectual property is essential.

Empowering communities through legal awareness and capacity-building can help them better navigate the IP system and defend their knowledge.

7. The Role of International Bodies and Agreements

International agreements, such as the Convention on Biological Diversity (CBD) and the World Intellectual Property Organization (WIPO) initiatives, provide frameworks for the protection of traditional knowledge. However, their implementation remains inconsistent across countries.

India's participation in WIPO's Traditional Knowledge Documentation (TKD) program reflects efforts to align national laws with international norms.

8. Cultural Sensitivity and Respect for Traditional Knowledge

The protection of traditional knowledge must go beyond legal frameworks to include cultural sensitivity, ensuring that the ethical considerations and social customs of indigenous communities are respected.

The importance of respecting indigenous rituals, storytelling traditions, and spiritual knowledge, rather than commercializing or commodifying them without understanding their significance.

Conclusion

In conclusion, the intersection of traditional knowledge and intellectual property rights in India presents both significant opportunities and challenges. While intellectual property laws offer some protection, they often fall short in addressing the unique nature of traditional knowledge, which is collective, passed down through generations, and deeply tied to cultural heritage. The misappropriation of such knowledge through

biopiracy and lack of formal recognition underscores the need for stronger, culturally sensitive legal frameworks. India's initiatives, such as the Traditional Knowledge Digital Library and the Biological Diversity Act, represent important steps toward safeguarding indigenous practices and ensuring fair benefit-sharing. However, to truly protect traditional knowledge, it is essential to empower local communities, enhance legal awareness, and develop models that balance the need for protection with the preservation of public domain access. Ultimately, a collaborative approach involving communities, policymakers, and international bodies is necessary to ensure that traditional knowledge is respected, protected, and passed on to future generations.

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