

IP Rights in Relation to Traditional Knowledge

Dr. Poonam Verma

Assistant Professor

School of Law Justice & Governance

Gautam Buddha University

Greater Noida

Email: pvrma279@gmail.com

Shruti

Research Scholar

School of Law Justice & Governance

Gautam Buddha University

Greater Noida

Email: shrutikatiyar08@gmail.com

Abstract

Rehearses have been made and handed down from one generation to the next in many different societies for a significant amount of time. Examples of such behaviors can be found in areas such as music, dance, research and invention, medicine, and other domains. The development of technology over the course of hundreds of years led to the evolution of a comparable process into what it is today: information that has been acquired over time, restricted to select groups of people, and transmitted as traditional knowledge. These activities intend to foster community ownership of such knowledge by establishing a fundamental social connection to a specific geographic site to that end. A significant number of these methods have recently begun exhibiting a pattern of being the origin of new breakthroughs. In contrast to the goal of patent law, which is to encourage individual syndication and benefit, the purpose of traditional knowledge is to advance local interests. This study's primary objective is to determine whether or not traditional knowledge can be protected by a patent as an intellectual property asset.

Keywords

Traditional knowledge, Traditional Knowledge Digital Library.

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**Dr. Poonam Verma,
Shruti**

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What is meant by the term “Traditional Knowledge”?

The knowledge base that is generated by an indigenous, local, or native community has been kept and passed on to generations, to the point that it constitutes the identity of such a group.¹ Traditional Knowledge can be found in different notions, such as the computation of time, food articles, the qualities of plants, the uses of spices, yoga practices, and so on. The most important aspect of TK is that it comes from ancient sources and is frequently transmitted orally.

Why it is important to safeguard traditional skills and knowledge?

As time has progressed, so has the importance of protecting traditional knowledge, particularly in order to prevent the illegal and exploitative exploitation of such knowledge for financial gain. It is essential to shield the native people from this kind of loss and to assist the native people in maintaining their traditional ways of life. The protection of TK should also include efforts to expand and improve its use.²

Protection of TK

The most challenging component of protecting TK is doing so effectively. There has been a lot of discussion about how to protect TK under intellectual property regimes, but this presents a lot of difficulties, such as the following: a) under what intellectual property TK can be protected? b) Given that every intellectual property protection is provided for a limited period, how can TK be protected in an ongoing manner? The challenge of biopiracy lies at the heart of the need to safeguard TK. It is considered an act of biopiracy when there is a commercial use of TK that does not have the appropriate authorization of indigenous or local people who are involved with such information.

How can we safeguard our TK?

Positive protection and defensive mechanisms are both viable options for safeguarding TK. For TK to be “positively protected,” measures including access and benefit sharing clauses, royalties, and legislation must be put in place. A defensive Mechanism refers to measures done to thwart the commercial appropriation of traditional knowledge systems.³

India, for example, has adopted a defensive mechanism to protect its traditional knowledge by establishing a Traditional Knowledge Digital Library (TKDL) in 2001 in collaboration between the Ministry of AYUSH and CSIR in response to the famous case of the USPTO, in which a patent was granted on the healing properties of turmeric and, with much difficulty, CSIR proved the prior existing knowledge of such properties of turmeric using numerous ancient scriptures and documents. This was done to preserve TK.

But is TKDL is adequate? Even though the digital library has a lot of documents, it has some problems. For example, there is a problem of translation, revealing TK as prior art is bad because it makes all TK public, which leads to fishing expeditions, and one of the most important things about TK is that it is usually passed down orally from one generation to another, because of this, a significant amount of TK does not have any documentary record, and the TKDL does not keep any records of oral TK.

How well traditional knowledge in India is protected by intellectual property laws?

However, other intellectual property acts contain provisions with respect to traditional knowledge, such as the Patents Act, 1970, Section 25 and Section 64, which give one of the grounds for revocation of a patent application on the basis of traditional knowledge. In contrast, India does not have a substantive act or law to protect traditional knowledge, whereas it does have laws protecting other categories of intellectual property rights. Copyright protection is for a limited time period and also requires certain criteria to be met, so under this IP as well as the protection of traditional knowledge, there is not much room for maneuver. However, Section 31A of the Copyright Act, of 1957, does provide for the protection of unpublished Indian works.

Over the course of the past several years, it has been observed that India has taken an active position in TK conventions and has made attempts to safeguard its TK on an international basis. Access to Indian TK can be obtained from the USPTO and the EPO, and the CSIR is continuously working to improve the effectiveness of the TK database.

Conventions on Traditional Knowledge that Are of international significance

At the international level, the CBD and the Nagoya Protocol of 2010 acknowledge and protect traditional knowledge. In accordance with the CBD's Article 8(j), parties are obligated to respect and maintain the traditional knowledge that is possessed by indigenous communities and to promote the wider application of TK on the basis of fair and equitable benefit-sharing. Article 16 recognizes traditional knowledge as a "key technology" for effective practices of conservation and sustainable use of biodiversity. Procedural conditions established in Article 15 for access to genetic resources, including those based on prior informed consent and mutually agreed-upon terms, are also outlined in this article. The Nagoya Protocol expands the provisions of the CBD that relate to access and benefit-sharing.⁴

Demand for sui generis protection and public awareness

Since IP protection comes with its own set of drawbacks, there has been a rise in the need for a sui generis system of protection for TK. Sui generis is a Latin phrase that translates to ‘of its own kind’.⁵To set up a legal framework for the protection of TK, the enforcement of the rights of indigenous people, the prevention of misuse and control of TK, the establishment of an ABS (access and benefit sharing) system, and other similar things, a sui generis instrument will be required.

In addition to the TKDL system, India can move towards a more active approach, the primary goal of which would be to raise awareness and comprehension among individuals who, to this day, are either completely uninformed of or have very little information regarding intellectual property rights as well as the term “traditional knowledge.”

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