TRADITIONAL KNOWLEDGE: THREATS AND ITS PROTECTION

By Dr. Pooja Jain
Guest Faculty at Faculty of Law,
Jai Narayan Vyas University, Jodhpur (Rajasthan)

ABSTRACT
Traditional knowledge (tk), indigenous knowledge (ik) and local knowledge generally refer to the matured long-standing traditions and practices of certain regional, indigenous or local communities. The recognition of TK stemmed from studies into the origins, behaviour and the development of humanism both primitive and modern societies. The adoptions by international development organisations lead to worldwide appreciation and recognition of traditional knowledge. The united nations was one of the first international development organisations that advocated the importance of traditional knowledge.1 However, opponents argue that the integration of TK into public policy is dangerous. The basis for this position is the fact that TK has a spiritual component which would be difficult to prove through scientific reasoning. Thus, there is a risk that traditional knowledge can be used to justify any activity. Traditional owners on the other hand are reluctant to disclose their indigenous wisdom due to fear and abuse by others and may only divulge such knowledge if there is an assurance of protection of their rights and interests. There arose a dilemma of what appropriate measures should be adopted to offer such protection. Certain matters need to be considered when determining suitable legal mechanisms to protect traditional knowledge.2

These include the need to prior informed consent of traditional owners; the fair and equal sharing of benefits derived from any transactions involving TK and expressions of culture; its protection from abuse particularly in commercial transactions; and continual respect for customary law and practices.


Introduction: -

What is Traditional/Indigenous Knowledge?
Though difficult to define, TK3 is generally understood to encompass four types of

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2 Niraj Gurdayal Singh, Legal and Practical Perspective on Sui Generis options(Draft April 22, 1999)

3 A cumulative and dynamic body of knowledge that builds upon the historic experiences of a people and
creative works: Verbal expressions (stories, epics, legends, folktales, poetry, riddles, etc.),

Musical expressions (folk songs and instrumental music),
Expressions by action (dances, plays, ceremonies, rituals, and other performances),
Tangible expressions, that must be fixed on a permanent material (drawings, designs, paintings, body-paintings, carvings, sculptures, pottery, mosaics, jewellery, basket work, textiles, carpets, costumes, etc.). Tk is used interchangeably with the term traditional cultural expressions (TCE’s)\(^4\), they embody knowledge and skills, and transmit core values and beliefs.

Attempts to define traditional knowledge have been numerous. The PIFS\(^5\) model law defines TK as knowledge generally created, acquired or inspired for traditional, economic, spiritual, ritual, narrative, decorative or recreational purposes. It is capable of being transmitted from generation to generation and is regarded as pertaining to a particular traditional group, clan or community and is collectively originated and held.

A better description of TK is given by Stephen Hansen and Justin Van Fleet\(^6\)- they describe TK as the information that people in a given community, based on experience and adaptation to a local culture and environment, have developed over time, and continue to develop. This knowledge is used to sustain the community and its culture and to maintain the generic resources necessary for its continual survival.

The discussion of Tk as a subject of IP protection continues to take centre stage at different forms. It is particularly relevant for developing and least developing countries whose Tk mechanisms continue to be exploited without accruing any benefits. The most convenient way to protect Tk is to fit it into existing IP system. This is difficult to realise.

When a knowledgeable old person dies, a whole library disappears\(^7\). Tk is “Information about the cultural world from generations of observations by native people who could be killed if they acted on wrong information. With this in mind there is a strong tendency for Tk to lean toward the truth\(^8\). Ellen Bielawski, has said simply that Tk is: “Practical Strategies; what’s worked and what hasn’t.”\(^9\)

Tk is the information that people in a given community, based on experience and adaptation to a local culture and environment, have developed overtime, and continue to develop. This knowledge is used to sustain the community and its culture and to maintain the genetic resources necessary for the continued survival of the community. It includes mental inventories of local biological resources.

adapt to social, economic, environmental, spiritual and political change.
\(^4\) Traditional cultural expressions are integral to the cultural and social identities of indigenous and local communities.
\(^5\) Pacific Islands forum secretariat model law.

\(^6\) In Tk & IP: a handbook on issues and options for Tk holders in protecting their IP, and maintaining biological diversity.
\(^7\) An African proverb.
\(^8\) Tom Albert, Biologist for Alaska’s North Slope Borough.
\(^9\) Anthropologist and former Director of keeper of the treasures, Alaska.
The term “tradition” used in describing this knowledge does not imply that this knowledge is old or unethical in nature, but ‘tradition based’. It is traditional because it is created in a manner that reflects the traditions of the communities, therefore not relating to the nature of the knowledge itself, but to the way in which that knowledge is created, preserved and disseminated.\(^{10}\) Tk is collective in nature and is often considered the property of the entire community, and not belonging to any single individual within the community. It is transmitted through specific cultural and traditional information exchange mechanisms, maintained and transmitted orally through elders or specialists (breeders, healers, etc.) and often to only a selected few people within the community. To summarise, Tk 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. The difficulties of defining Tk should not, however, impede further work on it at the national or international level.

Is a precise definition of Tk a precondition for any International negotiation on its possible protection or promotion? The different nature and forms of expression of the information embraced by Tk can make it difficult to agree on a legally and scientifically acceptable definition. WIPO currently uses the term to refer to tradition-based literary, artistic or scientific works; performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other innovations and creations resulting from intellectual activity in the industrial, literary or artistic fields.\(^{11}\)

**Threats to TK:-**

Traditional knowledge holders face various difficulties. In some cases, the very survival of the knowledge\(^{12}\) is at stake, as the cultural survival of communities is under threat. External social and environmental pressures, migration, the encroachment of modern lifestyles and the disruption of traditional ways of life can all weaken the traditional means of maintaining or passing knowledge on to future generations. There may be a risk of losing the very language that gives the primary voice to a knowledge tradition and the spiritual world-view that sustains this tradition.

Either through acceleration or diffusion, many traditional practices and associated beliefs and knowledge has been irretrievably lost. Thus, a primary need is to preserve the knowledge that is held by elders and communities throughout the world. Another difficulty facing traditional knowledge holders is the lack of respect and appreciation for such knowledge. The way in which a protection system is shaped and defined will depend to a large extent on the objectives it is intended to serve. Protection of Tk, like protection of IP in general, is not undertaken

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\(^{12}\) The fact or condition of knowing something with familiarity gained through experience or association.
as an end in itself, but as a means to broader policy goals.

India like any other ancient civilisation has numerous TK systems, for eg. Ayurveda, Yoga, Meditation systems, etc. these knowledge systems were forgotten, only to be remembered when the west started showing interest in them. Because of this negligence, we have had cases of foreigners seeking patents for existing knowledge systems. This has opened up a debate about traditional knowledge systems and their protection. Reason is lack of awareness, urbanisation. Proper steps need to be taken for the protection of TK.

The current IPR system cannot protect TK for three reasons.

Firstly: the current system seeks to privatize ownership and is designed to be held by individuals corporations, whereas Tk has collective ownership.

Secondly: This protection is time bound, whereas Tk is held in perpetuity from generation to generation.

Thirdly: it adopts a restricted interpretation of invention which should satisfy the criteria of novelty and be capable of industrial application, whereas traditional innovation is incremental, informal and occurs over time. The development of new technology and the new use of Tk based products today is the major threat to the survival of many of these communities. The modern cultural industries as well as the manufacturing industries now commercially exploit the Tk based products using new technology without the permission and sharing of profits with the communities. No single definition and no form of legal protection system can replace the complex social and legal systems that sustain Tk within the application of laws to prevent unauthorised or inappropriate use of Tk by third parties beyond the traditional circle.

**PROTECTION OF TRADITIONAL KNOWLEDGE**

The way in which a protection system is shaped and defined will depend to a large extent on the objectives it is intended to serve. Protection of TK, like protection of IP in general is not undertaken as an end in itself, but as a means to broader policy goals. The kind of objectives that Tk protection is intended to serve include:

- Recognition of value and promotion of respect for traditional knowledge systems.
- Responsiveness to the actual needs of holders of Tk
- Repression of misappropriation of Tk and other unfair and inequitable uses.
- Protection of tradition-based creativity and innovation.
- Support of Tk systems and empowerment of Tk holders.
- Promotion of equitable benefit-sharing from use of Tk.
- Promotion for the use of Tk for a bottom-up approach to development.

**Resources for protecting and respecting Indigenous Traditional Knowledge**

Along with the increased recognition of the potential offered by ITK systems, there is increasing recognition of the need to ensure the ethical protection and respect of ITK.

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13 The protection of indigenous traditional knowledge through the intellectual property system and

Intellectual property law amendment bill(2008)

www.thedti.gov.za
Related work is progressing through international intergovernmental bodies such as the CBD, WIPO, FAO, WTO, UNCTAD, WHO, UNESCO. Many domestic governments are also engaging similar issues at the federal, state and tribal levels through the development and negotiation of agreements, legislations and guidelines that protect and respect indigenous traditional knowledge.

Each of these policies and initiatives focuses on a similar set of themes. They each tend to focus on the equitable sharing of any benefits derived from the projects; the need for informed consent of participants; and the need to ensure that all participants have meaningful input and consultation in projects that use ITK. The following list of the elements of an ITK strategy:

- Awareness and Advocacy;
- Aboriginal Languages;
- Education;
- Healing;
- Research and
- Removing Barriers.14

In the recent past, there have been several cases of bio-piracy of TK from India. For preventing such instances in future there is a need for developing digital databases of prior art related to herbs already in public domain. In India, an exercise has been initiated to prepare easily navigable computerised database of documented Tk relating to use of medicinal and other plants (which are already in public domain) known as ‘Traditional Knowledge Digital Library’ (TKDL). Such digital database would enable Patent offices all over the world to search and examine any prevalent use/prior art, and thereby prevent grant of such un-scrupulous patenting of indigenous herbal medicinal formulations15 and bio-piracy. Proper documentation of traditional/indigenous knowledge is one means of giving recognition to knowledge holders. The huge corpus of knowledge lying outside books will come under a roof, and will become easier to pass from one generation to another.

India has taken up to the task of protecting her traditional knowledge from patent bio-piracy. The TKDL, serve as a useful reference point for research workers. The awareness that such a library would help the cause of preventing extinction of rare species.

Reasons for protecting Tk is three-tier16

A. Economic Reasons
B. Ecological Reasons
C. Psychological Reasons.

Apart from all this A sui-generis, or Alternative law, is therefore necessary to protect traditional knowledge. Education and scientific study will enhance the efforts of the protection of Tk.

CONCLUSION:

Tk refers to a body of knowledge developed over generations by indigenous peoples

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14 Aggie Brockman in her article “When All Peoples have the same story, humans will cease to exist”.

15 C.P Thakur, the minister of health and family welfare.

16 Article by Bansal Ipshita and Srivastava Jaya: safeguarding Traditional Indian Knowledge systems: Rationale and Responses p.94-100. A book by Shastri Siddharth: IPR; The emerging issues for industry, Navjeevan Publications-2004
living in a close contact with nature. It is a practical common sense based on teachings and experiences passed on from one generation to another. It covers knowledge of the environment and the relationships between things. It is knowing the country. It is holistic, cannot be compartmentalised and separated from the people who hold it. It is rooted in the spiritual health, culture, and language of the people. It is a way of life. Tk is an authority system. It sets out the rules governing the use of resources-respect, an obligation to share. It is dynamic, cumulative and stable. It is truth. It is using the heart and the head together. It comes from the spirit in order to survive. Above all it gives credibility to the people.

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