



CRITICAL ANALYSIS ON PROTECTION OF TRADITIONAL KNOWLEDGE BILL, 2022

Ms. Shusneha Sarkar^{1*}, Prof (Dr.) Manu Singh²

Abstract

Its capacity to safeguard traditional knowledge and traditional cultural expressions under the current intellectual property law regime is examined in this research paper, with particular emphasis on geographical indications (GI). Additionally, it emphasizes how GI must be registered in accordance with Indian GI legislation, paying particular attention to ancestor knowledge. The limitations of GI protection with regard to safeguarding traditional knowledge/traditional cultural expressions as a whole are also highlighted in the paper. The current legal system has made it difficult to protect traditional information, and this restriction has irreparably harmed this knowledge base. There have been attempts to conserve and safeguard traditional knowledge through IPR, however this strategy has had very little success. A unique strategy for safeguarding traditional knowledge has emerged as a result of TRIPS's lack of comprehensive protection of traditional knowledge.

A number of issues with the proposed Protection of Traditional Knowledge Bill 2022 could be raised, including the lack of synergy between protecting IPR and the notion that GI could be used as a method of protecting traditional knowledge. The indigenous and tribal peoples are encouraged to investigate the limited avenues of GI protection for their ancestor knowledge by reading this research paper, which lists some of the traditional knowledge that has been protected under the GI Act in India. It also helps lawmakers revisit several elements of the 2022 Protection of the Traditional Knowledge Bill.

Keywords: - Traditional Knowledge Bill, Traditional Cultural Expressions, Intellectual Property Rights, TRIPS, GI.

^{1*}Research Scholar, School of Law and Legal Affairs, at Noida International University

²Professor & Director, School of Law and Legal Affairs, at Noida International University

***Corresponding Author:** - Ms. Shusneha Sarkar

*Research Scholar, School of Law and Legal Affairs, at Noida International University

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INTRODUCTION

The cliché "knowledge is power" has been reassessed and accepted in modern times because "knowledge" is not only a source of power but also the main driver of wealth creation. The protection of intellectual property (IP), whether it was produced by an individual or a community, is justified by this special acknowledgment. Traditional knowledge is a priceless and sophisticated body of information that has been continuously created over millennia by tribal and rural people in many different parts of the world and passed down orally from one generation to the next. Traditional knowledge is the body of information, discoveries, and customs that originates from indigenous and local populations all over the world. This entails a blending of knowledge and experience with a cogent value system that is entirely based on biological resources.

Traditional knowledge refers to and incorporates knowledge of spirituality, philosophy, politics, technology, all forms of work for a living, social systems, customs, and relationships with the outside world among all forest inhabitants, whose way of life is greatly impacted by their own traditions.

Over the past century, there has been an extraordinary loss of indigenous and traditional knowledge. Traditional practises' reliance on ethical standards has been abandoned, with disastrous results for the environment. According to a 2003 survey that appeared in the journal *Nature*, only 10% of large ocean fish species are still alive. It is still unclear how much more will have been lost during the next 20 years. In less than 50 years, 60% of the wildlife has disappeared. The repercussions have been terrible for freshwater animals as well. Between 1970 and 2012, 81% of freshwater species went extinct. Since 1900, 64% of the world's wetlands have disappeared.

The remaining keepers of ancestor and traditional knowledge, including the ethics and ethos that helped nature preserve its goodness for life on earth, are tribal and indigenous peoples. Modern technology has advanced considerably, bringing us to a more advanced technical period devoid of ethical commitments for peaceful cooperation. The aforementioned facts are evidence of this highly advanced technological era. The cry for the preservation of conventional values has not gone unheard in recent years, far from it. The Havana Charter of 1948 was not accepted, and the Forest

Charter of 1217 was also disregarded, demonstrating this undermining.

Therefore, there is a need to conserve traditional and indigenous knowledge for which last storehouse, which comprised morals and ethos that supported the preservation of nature's goodness for life on earth are tribal and indigenous people. Modern science has advanced significantly, bringing us to a technologically advanced society devoid of ethical requirements for peaceful cooperation. The aforementioned facts are evidence of this highly advanced technological era.

RESEARCH METHODOLOGY

Understanding the preservation of traditional knowledge in India is the goal of the current study. The current research will mostly focus on doctrine. The study will review the body of knowledge on the subject and critically scrutinise decisions that the Indian Supreme Court and other foreign courts have ruled. The primary source may also be employed in addition to these and turned out to be important during the investigation. The Constitution of India and other laws are the main sources. Textbooks, the internet, case laws from the Supreme Court, the High Court, and foreign courts have all been used as secondary sources.

LITERATURE REVIEW

Traditional knowledge has been the subject of extensive inquiry, particularly in the disciplines of anthropology, ethnobotany, and ecology. Some of the primary findings of this study are:

1. Traditional knowledge's importance for conservation: - It has been determined that traditional knowledge is crucial for the preservation of biodiversity and natural resources. Indigenous groups have been discovered to have a lot of information about the animals and plants in their surroundings, which can be utilised to create sustainable management plans.
2. Traditional knowledge's significance in medicine: - It has been discovered that traditional knowledge can be a valuable source of knowledge for the creation of new medications. Many of the pharmaceuticals used in modern medicine today are derived from plants and other natural resources that have historically been used as medicines by indigenous societies.
3. Preservation of traditional knowledge: - Modernization and globalisation can pose a threat to traditional knowledge. The need of preserving indigenous populations' traditional knowledge and cultural legacy is becoming more widely acknowledged. Initiatives aiming

at recording and maintaining traditional knowledge have grown as a result of this.

4. Intellectual property rights: - There are worries that outsiders may abuse traditional knowledge. To safeguard their traditional knowledge and make sure they are fairly compensated for its usage, several indigenous groups have created intellectual property rights frameworks.

CRITICAL ANALYSIS

An initiative to protect and advance the rights of indigenous populations to their traditional knowledge is known as a "traditional knowledge bill." Traditional knowledge describes the ideas, inventions, and customs created by indigenous peoples over many years and verbally transmitted from one generation to the next.

The proposed legislation may aim to create legal safeguards against the theft and unauthorised use of traditional knowledge, such as community rights or intellectual property laws. Additionally, it may set up procedures for the recognition and defence of indigenous communities' cultural and intellectual property rights.

A bill like this is needed to guarantee that indigenous groups can continue to control their traditional knowledge and reap the rewards of any commercial or non-commercial usage of it. This is especially crucial in light of the historical appropriation and exploitation of indigenous knowledge by outside parties, which has caused harm to indigenous communities' economies and cultures.

Traditional knowledge bills have been introduced in a number of nations around the world, with variable degrees of success. Traditional knowledge protection legislation has already been passed in certain nations, including India and New Zealand, while it is still being drafted and debated in others.

BIOPIRACY AND INTELLECTUAL PROPERTY RIGHTS BOOM

There are numerous instances of biopiracy found in European and Western businesses where many well-known natural goods and byproducts have received patents. A major lack of centralised legal systems or enough legal protection in member states to address this issue was felt. There have been increasing efforts to include a broad rule, such as a patent or trade mark, to safeguard traditional knowledge. Despite the early surge of interest in creating an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, this never

happened. This led activists and professionals to look into alternate ways to include traditional knowledge /traditional cultural expressions in the scope of legal protection generally and IPR specifically.

With a few exceptions in the copyright and designs rules, every intellectual property domain (such as patent, copyright, and designs) was attempted to be expanded to include traditional knowledge with little success. Despite this setback, the strategy of looking for ways to safeguard traditional knowledge with the IPR system shifted attention to geographic indication, which has a potential future in protecting traditional knowledge in India.

GI AS AN EVOLVING LAW TO PROTECT TRADITIONAL KNOWLEDGE

Geographical Indications (G.I.) are legal requirements that have their roots in Europe. Through the WTO's TRIPS Agreement, which was signed in 1995, this rule was spread to all nations, including those in Asia. Despite a lack of awareness of the G.I. norms in place in Europe, the standards outlined in the TRIPS were generally accepted. India was required to execute the TRIPS Agreement at this time without using any precedent-setting domestic policies. As a result, attempts were made to comprehend the idea of G.I. and investigate potential applications for it inside our legal system. This effort resulted in the discovery of goods in European nations that resembled those protected by G.I. By that time, affluent Indians had access to Roquefort cheese or Champagne sparkling champagne. Darjeeling Tea appeared to be a perfect match in the domain of G.I.

As a result, the Geographical Indications of Goods (Registration & Protection Act, 1999) was passed in 2003, and the voyage of G.I. began in India with the registration of Darjeeling Tea in 2004–2005. Since then, the voyage has been fairly interesting. To learn more about G.I., you must first comprehend what it is. A G.I. code is an identification that links a product to a specific area. It is a label used to indicate something's quality, reputation, or other qualities that are mostly attributed to its place of origin. The specific adoption theory is best demonstrated in Section 2 (e) of the G.I. Act, which explains how this norm spread to Asian nations in general and India in particular.

“Geographical Indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured

goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”

LEGISLATIONS IN INDIA RELATING TO PROTECTING TRADITIONAL KNOWLEDGE

Indian laws are designed to encourage the maintenance and preservation of the country's traditional knowledge systems and to make sure that indigenous populations are acknowledged for their contributions to the cultural legacy of the nation and given fair compensation for such achievements. The following laws and initiatives taken by Indian government are stated below: -

1. **The Protection of Plant Varieties and Farmers' Rights Act, 2001:** This law allows for the registration of new plant varieties while also attempting to protect farmers' rights about their traditional knowledge of plant types. It also provides for the establishment of a National Gene Fund to support conservation efforts and facilitate equitable sharing of benefits arising out of the use of plant genetic resources.
2. **The Biological Diversity Act, 2002:** This Act recognises the rights of local communities and indigenous peoples over their traditional knowledge and resources and aims to conserve and use the nation's biological diversity responsibly.
3. **The Patent Act, 1970:** Traditional knowledge is protected from others patenting it under the restrictions of the Patent Act of 1970. Any invention that is based on conventional knowledge is prohibited from being patented, according to Section 3(p) of the Act.
4. The Indian government established the **Traditional Knowledge Digital Library** as a database to record and safeguard India's traditional knowledge systems, particularly those associated with Ayurveda, Unani, and Siddha medicine.
5. **Geographical Indications of Goods (Registration and Protection) Act, 1999:** This Act allows for the registration and preservation of geographical indications, which are labels that identify a product's place of origin, like Pashmina shawls or Darjeeling tea.

6. The Indian government established the **Traditional Knowledge Digital Resource Centre** to make it easier to share and disseminate traditional knowledge systems.
7. Since it doesn't cost anything, indigenous people can easily protect traditional knowledge as a **trade secret**. They only need to make a conscious effort to keep their knowledge to themselves. Traditional knowledge is typically solely held by community members; therefore, it can be protected as a trade secret. The drawback of this approach is that it does not lend itself to mass application and exploitation.
8. **The Designs Act, 2000:** - Certain designs that are not original or novel, or that have already been made public in tangible form before the filing date, are prohibited from being registered under this Act. This Act will be able to safeguard some types of conventional knowledge in this way.
9. **Indian Copyright Law** does not protect indigenous people's traditional knowledge or folklore, however Section 31A2 of that law, which protects unpublished Indian works, can be used to infer that they are protected in some way.

The following are some significant drawbacks of copyrighting traditional knowledge:

- **Authorship:** The owner or author of the work is protected by Indian copyright law. Traditional knowledge is knowledge that belongs to a community and is typically created and developed from generation to generation. Finding the traditional knowledge's creator in such a situation is not only challenging but also nearly impossible.
- **Protection for a Short Period of Time:** In India, copyright protection is time-limited and is only awarded for a period of 60 years. Traditional Knowledge must be protected, and it should not only receive temporary protection.
- **Fixed form:** The Indian Copyright Law stipulates that every work protected by a copyright must exist in a physical form. It is difficult to find conventional knowledge in a fixed form. Traditional knowledge is typically passed down through a community's generations in the form of stories. Rarely are these stories available in a set format.

Traditional knowledge does not follow the prerequisites for copyright protection, according to Indian copyright law. Therefore, traditional knowledge can easily lose its protection if it doesn't meet the fundamental criteria for copyright protection.

INTERNATIONAL LEGISLATIONS RELATED TO PROTECTION OF TRADITIONAL KNOWLEDGE

1. **United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP** is a statement of the rights of indigenous peoples. The UN General Assembly approved this declaration in 2007, and it lays forth a framework for the acknowledgment and defence of indigenous peoples' rights, including their ownership of traditional knowledge and intellectual property.
2. **The Convention on Biological Diversity (CBD)** is a global agreement with the goal of advancing the preservation and sustainable use of biological diversity. To conserve traditional knowledge and guarantee that indigenous communities are fairly rewarded for the use of their resources, it includes clauses on access to genetic resources and the equitable sharing of benefits resulting from their utilisation.
3. **International Treaty on Plant Genetic Resources for Food and Agriculture;** In accordance with the 2001-adopted International Treaty on Plant Genetic Resources for Food and Agriculture, traditional knowledge plays a significant role in the preservation and sustainable use of plant genetic resources for food and agriculture. It includes clauses on benefit-sharing and access that are meant to safeguard the rights of indigenous groups.
4. **Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore of the World Intellectual Property Organisation (WIPO):** This group was founded in 2000 to talk about matters pertaining to the preservation of folklore, genetic resources, and traditional knowledge. It has been striving to create global legal frameworks to safeguard these resources.
5. **The Nagoya Protocol to the Convention on Biological Diversity on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Therefrom:** A framework for the fair and equitable distribution of benefits resulting from the use of genetic resources, including traditional knowledge linked to those resources, is provided by this protocol, which was accepted in 2010.

In a nutshell, India and international laws both value the preservation and protection of traditional knowledge and have made tremendous progress in this direction. To make sure that traditional knowledge is appropriately maintained and that local communities receive the credit and benefits they deserve, however, there is still more work to be done.

SUGGESTIONS AND CONCLUSION

Indigenous and traditional knowledge must be safeguarded if communities are to maintain their cultural legacy and pass it on to future generations. The following ideas are provided for preserving indigenous and traditional knowledge.

1. Recognise and appreciate the significance of indigenous and traditional knowledge. It is crucial to respect and honour indigenous and traditional knowledge. Recognise the value of this information and its applications in numerous fields.
2. Raising public awareness can help to increase support for efforts to safeguard indigenous knowledge by educating people about its value and the need to preserve it. Campaigns for public outreach and education as well as media attention and advocacy are examples of this.
3. Governments can create legal and policy frameworks that acknowledge and defend the rights of indigenous groups and their knowledge. The protection of intellectual property rights, traditional knowledge, and cultural heritage can all be covered by laws and regulations.
4. Encourage cooperation with indigenous groups. Partnerships and cooperation between indigenous communities and external organisations can aid in the preservation of indigenous knowledge. To ensure that their knowledge is respected and safeguarded, indigenous tribes can be included in the knowledge-sharing and decision-making processes.
5. Use informed consent and benefit-sharing; Informed consent from the relevant communities should be obtained before to sharing or utilising indigenous knowledge. Indigenous groups who contributed the knowledge should receive a fair share of any benefits that come from using it.
6. Create guidelines for the ethical collection, archival, and use of indigenous and traditional knowledge. These policies should be created with community input and provide recommendations for knowledge sharing with proper credit.
7. Encourage neighbourhood- driven initiatives: Encourage neighbourhood-based programmes that work to maintain and preserve indigenous and traditional knowledge. This can involve providing funds for activities that help the community's attempts to preserve its knowledge, such as knowledge management programmes and cultural heritage projects.

We might infer from the reasoning above that the current legal framework is insufficient to address all facets of traditional knowledge. Laws have not yet fully operationalized and become effective in the area of protecting traditional knowledge.

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