

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Legal Protection of Traditional Knowledge of Indigenous People in North East India: Issues and Challenges

DR. SAMIR BHADURY¹

ABSTRACT

Knowledge has been regarded as humanity's most precious asset since the dawn of time. Knowledge was once a source of greatness and prestige that was shared freely. But as civilizations developed, several changes took place that turned knowledge into possession and gave the owner of knowledge a host of new rights. For the benefit of the local community, traditional and indigenous knowledge must be preserved. These people's economic and social structures are greatly influenced by IK on one level, and at a higher level, it is important to place and make such information as their intellectual property rights. Due to global warming and the slow but steady loss of natural resources, traditional knowledge and innovations are being developed with great emphasis. Achieving the Sustainable Development Goals of the UN is another long-term objective, and in India, the traditional knowledge of the Northeast has long been associated with great cultural significance. This study examines the legal protection that Traditional Knowledge in North East India should receive from appropriate legal measures under sui generis legislation.

Keywords: *Traditional indigenous knowledge, Intellectual Property, North East India, legislation economic and social organization.*

I. INTRODUCTION

Traditional knowledge refers to the wisdom gained from elders, their skills, and medical knowledge, practices, and procedures that have been ingrained in the community for aeons and passed down from generation to generation, forming a spiritual and cultural link between them. Although traditional knowledge (TK) is defined as knowledge that transcends specific practices, procedures, and skills that culminate in an intellectual activity, it can also refer to knowledge that encompasses traditional elements such as expression, signs, and symbols. Since traditional knowledge (TK) is a living resource that has been passed down orally and informally from generation to generation, even though it is used in scientific, medical, and agricultural processes, it is not officially protected by the present intellectual property laws. In addition to sticking to

¹ Author is an Assistant Professor at Department of Law, Rajiv Gandhi University (A Central University), Arunachal Pradesh, India.

conventional wisdom, it also incorporates innovations and developments that have been made throughout the years as this knowledge has evolved. This information and traditional wisdom are developed under customary laws in North East India and are therefore regarded as confidential and sacred. In this region of the nation, the transfer of information from one generation to the next gives birth to rights and obligations that govern how it is used, how profits and benefits are shared, and how disputes resulting from the application of this knowledge are resolved. All of this is controlled by customary law and is not protected by any of the currently enacted laws. Hence there is a great need for law under the intellectual property regime for provisions to protect traditional knowledge.²

TK is a living body of knowledge that members of a specific community have passed down via numerous progenies. In India, Ayurveda is also regarded as an old form of knowledge, and the Traditional Knowledge Digital Library is a digital library dedicated to this subject.. China and Korea have their TK digital databases.³

Traditional knowledge is used in North East India for a variety of purposes, including farming, irrigation, sustainable practices, and related areas like healthy germination, natural ways to increase yield, water management, soil conservation, safeguarding crops from pests and diseases, and post-harvest storage and management.

Forms of Traditional Knowledge :

When TK has a subtle structure and is accessible in a tangible form—a recorded song, recipe book, printed book, movie, or documentary, for example—it is considered fixed. It qualifies as a documented TK as well. Not only may be documented TK provide it with legal protection, but it also serves as a vehicle for broader preservation and distribution. The majority of fixed TK is stated to be either written or spoken, like in a song, movie, or recipe book, as well as in the shape of a figure or work of art that subtly says something. Oral history is the only source of variable TK, as it is not available in any written or unwritten record. performances, music, healing skills and techniques are some variable TK.

The most difficult aspect of protecting traditional knowledge (TK) is the oral portion, as this type of knowledge is transmitted verbally, unlike written or documented TK, which is necessary

² Ravindra Singh , TRADITIONAL KNOWLEDGE IN NORTH EAST INDIA: A PERFECT CASE FOR SUI GENERIS LEGISLATION ,NLUA, Journal of Intellectual Property rights, Vol 1 Issue 1, July 2022,Page-186-200. <https://nluassam.ac.in/docs/Journals/IPR/vol1-issue-1/10.pdf>

³ Partha Sarothi Rakshit, Karobi Dihingia & Soumyadeep Chakraborti , A STUDY OF THE LEGAL PROTECTION OF TRADITIONAL INDIGENOUS KNOWLEDGE OF NORTHEAST INDIA: A Legal Approach, *Shimla Law Review*, Volume-IV (2021) , P- 152. <https://www.hpnlua.ac.in/PDF/650f052c-70ec-4a2e-b8e1-e3e9409867a6.pdf>

to establish patentability. The issue that emerges is whether or not the recorded TK can be abused. The problem that arises has two sides: it threatens the community's interest in oral tradition on the one hand, and it creates doubts about acknowledging traditional knowledge as previous art on the other. This is still a problem for upcoming conventions. Reserving the knowledge just for the relevant community is one method to protect and preserve it.

II. IMPORTANCE OF PROTECTING OF TRADITIONAL KNOWLEDGE

In relation to IPR difficulties in developing nations, TK is becoming more and more significant. TKs require strong protections in this area of biodiversity for the benefit of local communities and national viewpoints. The special focus however is on the Northeast perspectives on protection of TK.⁴

TK is the knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.⁵ Examples of TK include knowledge about the use of specific plants or parts and therefore identification of medicinal properties in plant harvesting practices (*e.g. Neem, Tea, Turmeric, Tamarind etc*).

North East India Indigenous People and their Traditional Knowledge Resources:

The majority of people in North East India, which makes up between 12 and 15 percent of all Indians, reside in the region's plains and hills and are primarily dependent on the flora and fauna of the isolated hills and forests that they have long considered to be their home. Native Indian medical techniques and botanicals, which have been used for millennia, are vital to the people of Northeast India. This is due to the incredibly high biodiversity that exists here in this region of the planet, where some species are unique. Traditional folk medicines, folk culture and dresses of muga silk, and jhum cultivation practised by hill farmers using all available natural resources to minimize risk and maximize output.⁶ Examples of sustainable farming that are less dangerous, more productive, and economical include Apatani's wetland rice production in Arunachal Pradesh; Zabo farming and Alder agriculture in Nagaland; vast cardamom plantations in Sikkim; and certain traditional mixed cropping.

III. THE NATIONAL AND INTERNATIONAL LEGAL PROTECTIVE MEASURES OF TRADITIONAL KNOWLEDGE FOR INDIGENOUS PEOPLE

⁴ G.B. Reddy, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 395, 396 (2010).

⁵ M.K. Bhandari, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS 290 (2015)

⁶ Journal of Pharmacognosy and Phytochemistry 549-556 (2021). L.C. De, "Traditional knowledge practices of North East India for Sustainable Agriculture", 10(1)

Nagoya Protocol⁷

Article 7 states that “In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.”⁸

UN Desertification Convention

It states that “parties shall protect, promote and use relevant traditional and local technology, know-how, and practices and, to that end, undertake to make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations” (Article 18.2(a)).

United Nations Declaration on the Rights of Indigenous Peoples

Article 31 of the Declaration stipulates that: “Indigenous peoples have the right to maintain, control, protect and develop their ... traditional knowledge (...), as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such (...) traditional knowledge (...)It further provides that “in conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.”⁹

Indian Legislations for the Protection of TK in India :

Patents Act 1970 (Amendments of 2002 & 2005) sections 3 (b), (c), (d), (f), (h), (i), (j) and (p) - The Act's primary flaw is how distant the concept of TK patenting is from reality. This could be as a result of the Act's very minimal emphasis on traditional knowledge, which was still a developing field in the intellectual property space at the time of its enactment. The legislature can now go back and make changes that will greatly benefit and safeguard traditional

⁷ IUCN, “UN Convention on Biological Diversity (CBD)”, available at: <https://www.iucn.org/theme/global-policy/our-work/convention-biological-diversity-cbd/nagoya-protocol>

⁸ Secretariat of the Convention on Biological Diversity Montreal, “The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity”, available at: <https://www.cbd.int/abs/>

⁹ United Nations Permanent Forum on Indigenous Issues, “Declaration on the Rights of Indigenous Peoples”, available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

knowledge (TK) through particular provisions in this Act that directly support the development of medicines utilising TK or various other forms of treatment or agricultural systems technologies;

Geographical Indications Act 1999 sections 11, 24 and 25 - The intellectual property policy in India is still in its infancy, and this field is constantly growing and changing. We may anticipate that TK will eventually be reinforced and safeguarded by robust laws;

Trademarks Act 1999 section 29 - Not all the marks used in development of TK can be registered as Trademarks as in case of major developed countries hence there is a need to revisit.

Biodiversity Act 2002 section 6(1) - requires extremely strict implementation in order to shield and assist TK. Even after the act was passed, not much has been done to ensure that it is strictly enforced in order to safeguard the fundamental purposes for which it was created. Strict enforcement of the law is required, since this will aid in protecting traditional knowledge (TK), from which many components of traditional medicine are derived.

Since many of the medications used in Northeast India have been known to the public for decades, their patentability is nullified on the basis of previous usage. Since novelty and non-obviousness are prerequisites for patent law, it considers it to be prior art. On the other hand, new discoveries and approaches to medical use that are developed over time may be patentable. In an invention protection system that is sui generis, such as Peruvian law, which specifies communal knowledge in article 2(b). Indigenous people's community rights are recognised in Panama based on their customary practices, methods, processes, and procedures.

The Peruvian¹⁴ law is one of the most comprehensively drafted laws on prior informed consent (PIC) which implies obtaining prior informed consent from the indigenous people possessing the traditional knowledge only for commercial, scientific and industrial application. The collective group or community will inform the traditional knowledge holders of the negotiations and keep the interest of the community a priority. Peruvian laws and Panama laws can be used by lawmakers and legislators for framing of legal framework for the protection of traditional knowledge of North East India.

(A) Issues and Challenges:

The only means of defending North East India's traditional knowledge is the sui generis system of industrial property protection against Western attempts to patent it. The fact that some TK in the sui generis system can be protected by current laws while others cannot, however, frequently presents a problem. The current intellectual property regime does not provide sufficient protection for traditional knowledge through existing legislative protections. Studying the

protection of some traditional knowledge under present intellectual property rules is necessary, as is creating legislative revisions for those that are not, in order to close any legal gaps. Even while it appears impossible given how quickly the world is changing and how much emphasis is being placed on intellectual property and its worth, it will soon become possible. Only when the legislation works to safeguard the rights of those who possess traditional knowledge will TK be conserved and shielded from corporate abuse. Native Americans are extremely uneducated, unaware of their legal rights or the ways to profit financially from the commercialization of their goods. Without awareness, outsiders misuse their expertise and use it for their personal gain.

IV. CONCLUSION

To develop suitable legal mechanisms for safeguarding the intellectual property rights (IPRs) of tribal peoples in the northern part, northeast, south-west, and other tribes on TK in India, there is an urgent need for dialogue between TK holders, tribal artists, TCE practitioners, library professionals, and central institutions. The US government has legislation '*Indian arts and crafts*' u/the IACA, 1935¹⁰ to shield and regulate art and crafts. As soon as possible, Develop India should enact laws like the '*Protection of Indian Traditional Knowledge Act*'.

TK is a significant source of inspiration for industrialised nations looking to develop and produce new goods. Every WTO member nation is working to meet the minimal standards of TRIPS while also attempting to include traditional knowledge into the purview of intellectual property law. The nations have implemented both proactive and defensive measures. Even though numerous IP laws have been used to protect traditional knowledge (TK), strict legislation must be passed to fully safeguard TK.

¹⁰ The Indian Arts and Crafts Act of 1935, (25 USC §. 305, 1994).

V. REFERENCES

- Ravindra Singh , TRADITIONAL KNOWLEDGE IN NORTH EAST INDIA: A PERFECT CASE FOR SUI GENERIS LEGISLATION ,NLUA, Journal of Intellectual Property rights, Vol 1 Issue 1, July 2022,Page-186-200. <https://nluassam.ac.in/docs/Journals/IPR/vol1-issue-1/10.pdf>
- Partha Sarothi Rakshit, Karobi Dihingia & Soumyadeep Chakraborti , A STUDY OF THE LEGAL PROTECTION OF TRADITIONAL INDIGENOUS KNOWLEDGE OF NORTHEAST INDIA: A Legal Approach, *Shimla Law Review*, Volume-IV (2021) , P-152. <https://www.hpnlua.ac.in/PDF/650f052c-70ec-4a2e-b8e1-e3e9409867a6.pdf>
- G.B. Reddy, INTELLECTUAL PROPERTY RIGHTS AND THE LAW 395, 396 (2010).
- M.K. Bhandari, LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS 290 (2015)
- Journal of Pharmacognosy and Phytochemistry 549-556 (2021). L.C. De, “Traditional knowledge practices of North East India for Sustainable Agriculture”, 10(1)
- Saikat Sen & Raja Chakraborty, *Traditional Knowledge Digital Library: a distinctive approach to promote Indian indigenous medical treasure* 106 (10) CURRENT SCIENCE, 1340-1343 (2014).
- Mohd Shoaib Ansari, *Evaluation of Role of Traditional Knowledge Digital Library and Traditional Chinese Medicine Database in Prevention of Traditional Medicine Knowledge* 36(2) DESIDOC JOURNAL OF LIBRARY & INFORMATION TECHNOLOGY, 73-78 (2016).
- Mr. Sha Zukang, *United Nations, Frequently Asked questions on Declaration on the Rights of Indigenous Peoples* (International Day of the World’s Indigenous People) UNPFII (Aug., 2007), available at: <https://www.un.org/esa/socdev/unpfii/documents/%20FAQsindigenousdeclaration.pdf>
- Aman Raj Khanna, *et. al., India’s IPR Regime: Reconciling Affordable Access with Patent Protection* 3(5) ICRIER, 1-69 (2015).
- The Indian Patent (Amendment) Act, 2005 (Act. No. 15 of 2005).

- Sudipto Chatterjee, *et.al.*, *Biodiversity Significance of North East India-for the study on National Resources, Water and Environment Nexus for Development and Growth in North Eastern India* 4 WWF-INDIA, 1-71 (2006) .
- The Indian Patent (Amendment) Act, 2005 (Act. No. 15 of 2005).
- The Biological Diversity Act, 2002 (Act. No. 18 of 2003).
- The Indian Arts and Crafts Act of 1935, (25 USC §. 305, 1994).
- Geographical Indication Act 1999.
