



Original Article

# Protection of Traditional Knowledge under Intellectual Property Law in India: Challenges and Legal Perspectives

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## Abstract

Traditional knowledge (TK) is the cultural and intellectual heritage of indigenous and local communities that has been developed over the generations through collective experience and practice. In India, safeguarding such knowledge has become significant as there are fears that such information might be misused and the people might become victims of bi-piracy and misappropriation. The paper is a critical analysis of the legal mechanisms that are available in safeguarding traditional knowledge under the intellectual property law. It examines how statutes, including the Patents Act, 1970 and international agreements, such as the TRIPS Agreement, have dealt with these issues. The paper also assesses institutional efforts like the Traditional Knowledge Digital Library (TKDL) and points to the weaknesses of traditional IPR regimes to protect knowledge systems owned by more than one party. It posits that, though India has been making proactive efforts, it needs a more sui generis system to achieve effective and equitable protection of traditional knowledge.

**Keywords:** Traditional Knowledge, Intellectual Property, Bio-piracy, TKDL, India

## Introduction

Traditional knowledge (TK) is an extremely important part of the cultural and intellectual tradition of India, representing centuries of shared wisdom of indigenous and local communities. It covers a broad scope of practices and innovations in agriculture, traditional medicine, conservation of biodiversity, handicrafts and ecological management. Systems like Ayurveda, yoga, and other folk healing systems can show the richness and variety of this knowledge, which has been preserved and transmitted through generations by customary practices and oral traditions. TK in contrast to formal scientific knowledge is deeply embedded in the social and cultural fabric of communities and is closely tied with their identity, livelihood, and sustainable way of life.

But these very features which make traditional knowledge special make it hard to safeguard within traditional intellectual property systems. The modern intellectual property law is mainly modelled with the aim of identifying individual authorship, novelty and fixed forms of expression. On the contrary, traditional knowledge is shared, and is developed over time, and most of it is not documented. Consequently, it often lies beyond the protection scope provided by the current legal systems, such as the Patents Act, 1970, where newness and innovative step are taken as the major protection criteria.

The ineffectiveness of traditional intellectual property regimes has resulted in cases of misappropriation, often called bio-piracy, where traditional knowledge has been patented or commercially exploited without the permission or advantage of the communities which gave rise to the traditional knowledge. These cases have drawn national and international attention and have raised the issue of equity, cultural preservation and the necessity of laws to protect them. India has responded by a number of steps to defend traditional knowledge, such as defensive mechanisms and legislative interventions. However, there are still many loopholes in the process of providing full-scale and efficient protection. It is against this backdrop that this paper aims to critically analyze the current state of law in India and assess its effectiveness in the protection of traditional knowledge, and also to explore the necessity of a more appropriate and inclusive approach to the law.

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### Concept and Nature of Traditional Knowledge

The traditional knowledge means:

- Native practices and innovations.
- Biodiversity and medicinal system knowledge.

Cultural expressions and knowledge that are community based.

### Characteristics:

- Collective ownership
- Intergenerational transmission
- Absence of official records.
- Intimately associated with cultural identity.

### Traditional Knowledge/Intellectual Property Law interface

The intellectual property laws are made to safeguard:

- Individual creators
- Novel inventions
- Fixed expressions

Nevertheless, traditional knowledge does not readily fall into these categories as:

- It is not new in the traditional meaning.
- It does not have recognizable authors.
- It is frequently already publicly available.

This discrepancy poses major legal difficulties.

### Legal Framework in India

#### 1. Patent Law

Patents Act, 1970 under Section 3(p), which excludes inventions based on traditional knowledge, prevents the patenting of traditional knowledge.

#### 2. Biodiversity Law

India has taken steps of safeguarding biological resources and other knowledge in such a way that the benefits that come as a result of utilizing the same is shared with the local communities.

#### 4.3 Traditional Knowledge Digital Library (TKDL)

To preserve traditional knowledge and to avoid wrongful claims of patent, India has developed a database to record traditional knowledge and to provide evidence of prior art.

### International Perspective

The TRIPS Agreement fails to provide sufficient protection to traditional knowledge as the agreement mainly considers the rights of individuals.

The international community is increasingly appreciating the need to come up with systems of safeguarding the systems of indigenous knowledge.

### Challenges in Protecting Traditional Knowledge

Protection of traditional knowledge (TK) is fraught with various legal and practical problems, mostly because the current intellectual property regimes were not intended to address its distinct features. Even though India has tried to protect TK, there are still a number of long-term problems that are preventing successful protection.

#### 1. Bio-piracy

Bio-piracy can be defined as the unauthorized use, patenting, or commercial exploitation of traditional

knowledge and biological resources by individuals, corporations or foreign entities without proper compensation or recognition to the communities in which they originated. They tend to be related to the extraction of knowledge about medicinal plants, agricultural practices, or genetic materials and their transformation into proprietary products. The weakness of traditional knowledge systems is brought into the limelight with notable cases, including patents granted on products based on turmeric and neem. These incidents illuminated how knowledge that has been long practiced by Indian communities could be said to have been a novel invention under foreign patent regimes. Even though India was able to oppose such patents, such incidences highlighted the necessity to have more preventive and defensive mechanisms. Besides causing economic loss, bio-piracy also has ethical ramifications relating to cultural appropriation and injustice.

#### 2. Weakness in Intellectual Property Framework

The traditional intellectual property laws like the Patents Act, 1970, are fundamentally based on the concepts of individual ownership, novelty and limited duration of rights. Knowledge of the traditional type is, however:

- The properties of communities
- Developed over generations
- Frequently already publicly available

Consequently, TK fails to comply with the normative standards of patent protection, and does not fit well into the copyright or trademark protection framework. The result of this disparity results in a legal gap wherein traditional knowledge is not adequately safeguarded. Although some of them, including exclusions to patent law, provide defensive protection, they do not grant positive rights and ownership to communities.

#### 3. Documentation Issues

In India, a large chunk of traditional knowledge is an oral tradition and is not documented. This unofficial recording presents two significant issues:

1. The challenge of proving prior art: It is difficult to prove prior art, because there is not written evidence to support the prior art argument.
2. Risk of loss: With the aging demographic and lifestyle changes, there is a risk of loss as valuable knowledge is lost forever.

Despite efforts by some of these bodies to capture and codify such knowledge such as the Traditional Knowledge Digital Library (TKDL), such coverage has so far been incomplete, especially when it comes to localized and community-specific practices.

#### 4. Lack of Awareness

The other pressing issue is the lack of awareness of the indigenous and local communities about their legal rights and the possible value of their knowledge. Most communities lack information on:

- Intellectual property protections
- Benefit-sharing mechanisms
- Legal redress to exploitation.

This ignorance renders them susceptible to exploitation by business organizations and middlemen. Also, socio-economic factors, lack of access to legal resources, and language barriers also limit their right to claim rights and to seek redress.

### **Need for a Sui Generis System**

A special legal system is needed to:

- Recognize community ownership
- Ensure benefit-sharing
- Prevent misappropriation
- Preserve cultural heritage

### **Critical Analysis**

The Indian model of protection of traditional knowledge (TK) is a combination of defense legal strategies and policy measures to prevent misappropriation. The establishment of the Traditional Knowledge Digital Library (TKDL), which records and codifies traditional knowledge about medicine in a format that is readable and understandable by patent examiners across the world, has been one of the most important actions in this regard. The TKDL has been successful in deterring the unjust awarding of patents on the basis of previously known information. Also, the statutory provisions like Sub-clause 3(p) of the Patents Act, 1970 exclude inventions based on traditional knowledge as patents, thus providing some form of defensive protection.

Nevertheless, as much as these measures have been effective in eliminating misappropriation, they do not accord the communities that produce and maintain traditional knowledge any positive legal rights. The current structure is mainly concerned with the rejection of unreasonable claims, instead of the affirmation of ownership, control, or benefit-sharing rights. This forms a structural unbalance whereby the traditional knowledge is safeguarded against outside exploitation to some degree but the originating communities are not empowered as they should be within the legal system.

Moreover, there is intrinsic limitation in relying on the documentation-based protection mechanisms like TKDL. Not every kind of traditional knowledge is recorded, especially that which is localized, developing, or culturally sensitive. This introduces wide tolerations of protection and points out the possibility of leaving undocumented knowledge systems out of the protection ambit. The other burning question is tension between protection and innovation. When traditional knowledge is over-regulated, this may impede research and development, especially in areas like pharmaceuticals and biotechnology, where traditional knowledge can often be a good starting point in innovation. On the other hand, lack of protection can result to exploitation and erosion of community rights. Thus, there should be a delicate balance to make sure that innovation will be promoted and that the interests and contributions of the holders of traditional knowledge will not be neglected.

Considering all these factors it is clear that the current strategy of India, even though progressive in some aspects, is still incomplete. It is urgently needed that a holistic and sui generis legal framework be developed that recognizes community ownership, benefits sharing that is equitable, and the inclusion of traditional knowledge in the larger intellectual property system without compromising its unique characteristics.

### **Conclusion**

Traditional knowledge (TK) protection poses a unique challenge to intellectual property law because TK does not fit the traditional definitions associated with property (such as ownership, novelty or individual authorship). India has accomplished a great deal in protecting TK through a combination of legislative, policy, and institutional efforts. Examples of this include prohibiting TK from being patentable under the Patents Act, 1970; and the development of a Traditional Knowledge Digital Library to help protect TK from outside misappropriation. These examples illustrate the Indian government's proactive approach to protecting its rich cultural and intellectual heritage.

However, despite these efforts, the current legal framework continues to focus on protecting TK from misappropriation, and is thus primarily defensive in nature, rather than granting substantive rights to the traditional knowledge holders (communities that have preserved TK), or granting them recognition, ownership, and equitable benefit-sharing of their TK.

In addition, the many forms and types of TK (without being recognised), the continuous evolution of TK over time (i.e. TK is dynamic), and that most TK is not documented, or when documented it is usually community-specific, creates additional challenges to including TK into existing legal definitions of ownership and property.

The issues surrounding TK protection involve ethical issues as well as socio-economic issues, including: More efforts must focus on moving from fragmented and reactive approaches toward a holistic and inclusive approach. For this reason, it is necessary to establish a sui generis legal framework that will allow for community involvement, acknowledge the collective nature of traditional knowledge, and provide a means for fairly compensating the community as well as retaining control over its use.

Along with developing this sui generis legal framework, transnational intellectual property and bio-resource usage also require international cooperation. Recognition of traditional knowledge rights and harmonization of legal standards on a worldwide basis will help prevent cross-border exploitation of traditional knowledge and allow for equitable sharing of benefits.

In summary, while India has taken significant steps to protect traditional knowledge, there needs to be greater development of a comprehensive, rights-based, and globally coordinated legal regime to ensure that those who have stored and cared for traditional



knowledge receive appropriate recognition, protection, and financial benefit.

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#### **Conflicts of interest**

The authors declare that there are no conflicts of interest regarding the publication of this paper.

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