

Traditional Knowledge under Intellectual Property Rights Regime

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INTRODUCTION

Ours is a knowledge-based society where social foundation ultimately rests on knowledge. Traditional knowledge (TK) plays a very important part in our daily lives. The trajectory of traditional knowledge system (TKS) is very ancient. The importance of this ancient knowledge is immense and cannot be overlooked as it integrates the knowledge concentrated through ages of investigation and trial and error process. There is often a debate that whether the knowledge held by these people fall under the ambit of IP protection. As a result, the issue of TK has been brought to the forefront of general debate surrounding IP.

The author in this paper would lay emphasis on the notion of traditional knowledge, which includes the nature, and importance of TK. From here the author would draw an analysis regarding the protection that is granted to it under the international intellectual property regime and in India.

CONCEPT OF TRADITIONAL KNOWLEDGE

Traditional Knowledge system (TKS) also sometimes referred, as Indigenous Knowledge Systems are a body of knowledge, which is very antique and rooted deep in the system. TKS is a documentation of accomplishments of the holder of TK, which helps in understanding the difficulties of life and instills the ability of existence in humans. Traditional Knowledge (TK) is knowledge, which consists of skills and practices, which have been established, evolved and continued from one generation to another generation in a clan. This traditional knowledge becomes a part of cultural as well as spiritual identity of the local societies. TK incorporates not just the knowledge of the traditional people carried from one generation to the other but also traditional cultural expressions which includes signs and symbols.¹ It refers to the long-standing

traditions and practices of certain indigenous or local communities.

Further TK is stated as traditional in the sense that the creation of such knowledge and the use related to it is part of the cultural traditions of a community in which it has evolved. Because the word has a term “traditional” attached to it that does not mean that the knowledge has to be old, antique, historic or ancient. It is a knowledge that has developed and evolved over a period of time and has a stable foundation in that community.² The traditional knowledge holds a heritage in itself, which does not get old by time but enriches with the passing time. It becomes the identity of the people or the territory. The common heritage represents the cultural values of the people or the community through which it originated.³

Traditional knowledge carries on a legacy and holds a value in the eyes of the stakeholders or the owners of that knowledge. The development of this knowledge is not systematic. It took its own time to evolve and when found was transmitted among the stakeholders by the owners or the creators of such knowledge. Further, the traditional knowledge, which has evolved, is not stagnant. It is constantly evolving with the changing environment.

TK can be both collective known to a clan or a tribe and individual knowledge. For example: knowledge of individual farmer or specific medicine prepared by individual healer (*vaides*) using his knowledge etc. It is not produced systematically, but in accordance with the individual or collective creators responses to and interaction with their cultural environment.

¹ Available at: <http://www.wipo.int/tk/en/tk/#> (Accessed on 07 November 2024)

² Available at: http://www.wipo.int/pressroom/en/briefs/tk_ip.html (Accessed on 18 November 2024)

³ Burton Ong (ed.) *Intellectual Property and Biological Resources*, Marshall Cavendish Academic, 2004.

Two features of TK are:

- a. That the development of TK covers almost all aspects of life of the holders and is a means of subsistence that generate these systems.
- b. The nature of TK is both collective and individual.

There are two major sources through which the ancient traditional knowledge could be gained or accessed to.

1. Recorded Knowledge: Recorded knowledge means the knowledge that was recorded in ancient times in order to keep it safe and which could be used for the benefit of future generations. Such written knowledge is available in ancient languages and could be found in the ancient books and texts only. The reason for recording this knowledge was to maintain the sanctity and authenticity and further it could be used as a source for future reference. This meant that this knowledge is a part of great heritage of humankind, which needed to be preserved, documented and used for the benefit of the humanity at large.⁴
2. Oral Knowledge: Oral knowledge was not recorded or codified anywhere but travelled from individual to individual in the form of legacy. Such knowledge remained confined to the local communities to which it belonged. Because there was no written record of such knowledge two most important things that needed to be done were identification of the knowledge and further preservation as it was the foundation of livelihood for numerous indigenous groups.⁵

IMPORTANCE OF TRADITIONAL KNOWLEDGE

It is now a well documented fact that TK plays an important role in the national as well as global economy and is valuable not only to those who

depend on it in their daily lives but to the modern industry and agriculture. Traditional knowledge is the soul of millions of local people staying in different countries. It is the central component for the daily life of millions of people. Further TK has been tried and tested and carried forward to generations together with some modifications if required. There is no doubt on the authenticity of the knowledge of the local or tribal communities as they themselves follow it and the same knowledge has become a part of their life for decades or maybe centuries. They are highly dependent on it for their basic survival.

The benefit arising out of it is in natural form. Traditional medicine, for instance, serves the health needs of vast majority of people especially in the developing countries where access to modern health care services and medicine is limited by economic and cultural reasons.⁶ It also reflects the cultural heritage of the local or tribal communities. Their food, clothes, lifestyles, artisans, folk dances, musical work etc. all reflects the rich heritage owned by them. This cultural heritage has become their identity.

In the field of agriculture, the use of traditional techniques and continuous improvement in the farmers' varieties has travelled to various countries. It also includes useful technologies and adaptations to the local environments. They display aspects of multicultural science and pedagogy, which describes a rich and well- documented branch of indigenous science known to biologists and ecologists as traditional ecological knowledge.

Need to Protect the Traditional Knowledge

Significance of TK is very broad impacting many aspects of life. Its protection is important for communities in all countries, particularly developing and least developed. It plays an important role in the economic and social organization of the countries. Further it promotes a sense of national cohesion and identity. There are numerous relevant reasons that show the need to protect the traditional knowledge.

⁴ Amit Jha, Traditional knowledge in India, Atlantic Publishers & Distributors (P) Ltd. New Delhi, 2009, p. 11

⁵ R. Lakshmi Poorna, M. Mymoon and A. Hariharan, 'Preservation and Protection of Traditional Knowledge Diverse Documentation Initiatives across the Globe', Current Science, Vol. 107, No. 8, October 2014, p.1241

⁶ Rajshree Chandra, Knowledge as Property: Issues I the Moral Grounding of Intellectual Property Rights, Oxford University Press, New Delhi, 2010, p. 159

i. Improvement in the lives of the traditional holder and communities

Traditional knowledge is most valuable for the indigenous people or the local communities who are dependent on the traditional knowledge for their well-being. Thus, traditional knowledge has encouraged the local people to use it for the production of food and medicine, which has improved the lives of the millions of people.⁷ Further in the last few years there has been an upsurge in the use, manufacture and presence of Ayurvedic products in the market.

Traditional agricultural system has low cost input and is based on extensive and applied knowledge about the natural processes, which has helped millions of people for thousands of years to fulfill their demands. But juxtaposition to this many such techniques have become obsolete due to the introduction of various new technologies. Despite this, the traditional and original agricultural systems are still prevalent in various parts of the world and continue to be the roots of innovation. For example: production of various varieties of plants by the farmers, experimentation on farm with the traditional and the modern crop varieties.

ii. Beneficial for the National Economies

Protecting TK has the potential to improve the performance of many developing country economies by enabling greater commercial use of their biological wealth. Traditional communities are given credit for the discovery and preservation of various medicinal plants, various herbal formulas, agricultural and forest products, handicraft and artisans etc. Some traditional medicines are the base of new pharmaceutical medicines and some are used as inputs in the bio medical research. The handicrafts which when traded generate considerable economic value. For example: bhagalpuri print, which is a creation of a tribe in India, wood art, etc.

Traditional knowledge is treated as an input into modern industries such as pharmaceuticals, cosmetics, toiletries, agriculture and biological pesticides etc. In most of the cases, the firms based in the developed countries have advanced scientific,

technological and marketing capability, which is being used to exploit the natural products. This situation can be curbed by commercialization of natural resources and traditional knowledge by the developing countries, which shall add in their economic value.

It seems that by protecting TK, there is a potential to improve the performance of the developing countries that can prosper by increasing the commercial use of their biological wealth and increasing the exports of traditional knowledge related products. To harness TK for development and trade, developing countries need assistance to build national capacities national capacities in terms of raising awareness on the importance and potential of TK for development and trade; developing institutional and consultative mechanisms of TK protection and TK based innovation and facilitating the identification and marketing of TK based products.

iii. Conservation of the Environment.

The protection of TK is important for conservation and sustainable development of environment as much of the world's crop diversity has been conserved and preserved by indigenous people which has helped in conservation of biodiversity. The local communities or indigenous people have conserved the Biodiversity for long. Their knowledge is the reason for the conservation and preservation of the genetic resources and other biological resources. Most of the communities live in the areas where there is a vast variety of genetic resources. But due to grant of intellectual property rights and patents to various biological resources increasingly, a concern has been raised over the loss of habitat along with the loss of lifestyle and livelihood of indigenous communities who have taken care of these resources for generations. The concentration of the world has shifted more towards the development and less towards conservation. In order to maintain the food security of the world for later stages, there is a dire need to protect the traditional knowledge.

iv. Preservation of the traditional practices and cultures

There is a need to protect the traditional knowledge in order to preserve the traditional practices and culture which is diminishing with the time. The other developed countries are patenting the traditional knowledge. The economic needs of the

⁷ Graham Dutfield. "Protection of Traditional Knowledge: Pathways to the Future" *International Centre for Trade and Sustainable Development (ICTSD)*, Switzerland. April 2006. p.15

world are rising at a tremendous rate and the communities are not getting what they deserve. There is a lack of benefit sharing between the owners and the benefit earners. Thus the communities are shifting from the traditional practices to other economic trends in order to fulfill their economic requirements.

v. Prevention of Bio piracy

Bio- piracy is the acquisition of knowledge without the permission of the holder or the benefits of TK are not shared with the holder. This means that there is misappropriation and commercial exploitation of TK without permission. Bio piracy has emerged as the corporations of the developed countries are freely accessing the traditional knowledge, genetic resources and technologies of the developing countries. The basic reason for this is that the developing countries don't have any law regarding the protection of TK. Another reason for bio piracy is lack of knowledge regarding the traditional knowledge of a particular community or clan of a developing nation, which is located in one of the corners of the world. The recognition and respect of TK constitute essential tool for fighting bio- piracy.

The motive behind the protection of traditional knowledge is to preserve or to use it for the betterment of the environment. In order to do so, efforts are being made to provide a document dealing with the traditional knowledge. But there are concerns that if traditional knowledge is made easily and widely available for the general public, there are more chances of misappropriation or misuse, which is not intended by the traditional knowledge holder. But the documentation can help to provide reserved confidential record of traditional knowledge.

PROTECTION OF TRADITIONAL KNOWLEDGE IN INDIA

India is one of the 12 mega- biodiversity countries of the world rich in traditional and indigenous knowledge, both coded and informal. It does not have a TK specific regime so far. But India did feel a need for protecting Traditional knowledge that enabled the local communities and governments to take steps for the protection of the knowledge, which was being exploited, by the other countries throughout the globe. Recognizing the traditional forms of creativity and innovation under the intellectual property will brought a major change in the entire concept of protection of TK. By protecting

TK it would allow indigenous people, local communities and governments to protect their common heritage and extract their share of benefit from the profit earned by exploitation of their assets on the commercial level by most of the developed countries.

There was a need to enable communities to harness TK for their economic upliftment and growth. Consequently the demand for effective protection of TK gained momentum, either through the application of the traditional PR system or by means of a new sui generis system. It also emphasized that IP system is not about just property but about recognition of and respect for the contributions of identifiable, human creators. So India took certain steps for the protection traditional knowledge. The author has discussed the same in the next part.

THE PATENTS ACT, 1970

The Patents Act, 1970 protects the inventions which are novel, consists of an inventive step and is industrially applicable. The Patents Act, 1970 is capable to protect the rich common heritage of the country from being patented. The Act excluded patentability of living forms and the methods of horticulture and agriculture. Section 3(p) of the Patents Act, 1970 excludes specifically the patentability of 'an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.'⁸ Section 3(j) of the Act does not grant patent to the plant and seed varieties. The patent applicants have to disclose the source and geographical origin of the biological material used in the invention.⁹ Such non- disclosure shall be taken as a ground of opposition and would lead to revocation of the patent if granted.¹⁰

Section 25 of the Act specifically provides availability of a local knowledge directly relating to an invention shall be taken as a ground of opposition for the revocation of the patent in order to protect the traditional knowledge of the nation.

There are some major difficulties in affording patent protection to an invention based on TK, viz:

⁸ The Patents Act, 1970

⁹ Section-10 of the Patents Act, 1970

¹⁰ Section-25 and 64 of the Patents Act, 1970

- a. TK is collectively held and generated while patent law treats invention as an achievement of individuals. In this context TK is difficult to identify;
- b. Patent specification must be written in a technical language that examiners can understand, and it is difficult to do so with the TK;
- c. Applying for patents, maintain and enforcing them once they have been granted is an expensive affair. This may not be possible for traditional communities to do so on their own.

THE GEOGRAPHICAL INDICATION OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

The Act provides protection to the geographical indications registered and the users authorized to use the same. The Act mentions the people who can get the GI registered and especially this right is given to those who are representing the interest of the producers¹¹. The Act protects the place or region where the goods are produced by specifying the same in the application being made for the registration of the goods through geographical indications. The Act indirectly recognizes the traditional knowledge and the record of the same is maintained in the register specifying the goods classified as per the classification stated under the Act.

GI's may, in some cases, be a suitable means to enhance the value of agricultural products, handicrafts and other TK based products. They may be used to enhance the commercial value of natural, traditional and craft products, if their particular characteristics can be attributed to their geographical origin.

PROTECTION OF PLANT VARIETIES PROTECTION AND FARMER'S RIGHTS ACT, 2001

Various types of plant varieties also form the part of traditional knowledge and therefore protection is required for the same. Mostly these types of varieties form the part of state of art therefore one pertinent question is can protection be given to them under any Act relating to IPR's. With regards to the same a

¹¹ Section- 11(2)(a) of the Geographical Indication of Goods (Registration and Protection) Act, 1999

balance needs to be created between protection of rights and the access to the resources.

The TRIPS agreement does not provide protection of traditional knowledge or rights of the farmers over their share in the benefit arising out of the commercialization and sale of the crop varieties.¹² But it provides protection of plant varieties through the effective *sui generis system* or through grant of patent. India preferred to adopt this *sui generis* system wherein it enacted a legislation called the Plant Varieties Protection and Farmer's Rights Act, 2001. The Act is a progressive legislation. This Act protects the rights of the framers and breeders and motivates them to develop new varieties of plants.¹³

The main features of the Act are as follows:

1. Protection the plants of the biodiversity against extinction and wastage.
2. Protection of the rights of the farmer as a cultivator, conservator and the breeder of the plant varieties.
3. Protection of the rights of the breeders who produce new plant varieties by using the techniques of gene transfer or gene implant or various other traditional methods.

The Act though not directly related to protection of TK, has important provisions on benefit sharing and farmers rights. The Act allows four types of varieties to be registered under the Act i.e. New Variety, extant variety, essentially derived variety and farmer's variety.

Extant varieties are those plant varieties, which are reproduced by the private or public research centres, and are released by the Central or State government officially. The period of protection of such varieties is fifteen years from the date of release.¹⁴ Further, farmer's variety are usually developed and

¹² Daniel Gervais, "TRIPS, Doha and Traditional Knowledge", 6 *Journal on World Intellectual Property* 403, 2003.

¹³ Thomas Cottier, "The Protection of Genetic Resources and Traditional Knowledge: Towards More Specific Right and Obligations in the World Trade Law", 4 *Journal of International Economic Law* 561, 1998.

¹⁴ As notified under Section 5 of the Seeds Act, 1966

conserved individually or collectively by the community of farmers.¹⁵

According to the Act, a National Gene Fund is to be created to reward and recognize individual farmers and communities.¹⁶ It is an incentive to encourage and recognize those farmers and local communities, which are conserving the traditional varieties and wild species of the crop plants by rewarding them. To give effect to the rights of village or local communities and for the benefit sharing, the Central Government may devise one or more schemes as provided under the Act.¹⁷

The Biological Diversity Act, 2002

India ratified the Convention on Biological Diversity and in order to fulfill its international commitment for the protection of biological diversity enacted the Biological Diversity Act, 2002. The Convention states that a member country can use the genetic resources provided by the other parties of the Convention on mutually agreed terms but that access shall be permitted if prior informed consent for providing the resources has been obtained from the providing country. Equitable benefit sharing shall be implemented between the provider country and the user country on the basis of the benefit arising out of the traditional knowledge. Under these principles, the Biological Diversity Act, 2002 was passed for conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources.

The main purpose of the Act is to keep a check over and regulate the access over the biological or genetic resources by the foreigners, institutions or companies with the purpose of securing equitable sharing of benefits arising out of the use of these resources with the local people and to protect knowledge of local communities related to biodiversity. For this purpose, the Act has created the National Biodiversity Authority (NBA) at national level and State Biodiversity Authority (SBA) at State level. TK of people related to biodiversity shall be respected and protected by the

Government, through such measures as recommended by NBA.

The Act provides the local communities control over the use of resources and knowledge within their jurisdiction, and to charge fees from parties who want to use these resources and knowledge through the Biodiversity Management Committees.¹⁸ Section 36(5) of the Act also recognizes the need to protect traditional knowledge through a sui generis mechanism. It provides for setting up of institutions as repositories of biological resources. Moreover, biodiversity funds at the National, State and local level have been stipulated to support conservation and benefit sharing.

TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL)

A very innovative step taken by the Government of India is the setting up of a repository system with the basic aim of protecting the traditional knowledge which forms the part of common heritage of the country. The need to protect the traditional knowledge was felt after the Turmeric patent case came to light where the patent was granted in the year 1995 on the wound healing characteristic of turmeric to University of Mississippi by the U.S. Patent office which was revoked by India on the ground that the information forms the state of art and is anticipated. Further the patent was granted for the anti fungal properties of neem to the department of Agriculture, USA.

After witnessing various controversies and cases of infringement the government felt that there is a need to protect the traditional knowledge of the country. The main reason for infringement was that most of the traditional knowledge of India was not available in English language and further not easily accessible. It was difficult to check unscrupulous patenting of TK because of lack of documentation and validation. A documentation associated with TK could help in checking bio- piracy.

A database consisting of the record related to various types of traditional knowledge was made. It contained all the information regarding the knowledge present in India from ancient times but not protected under any law. The database is available in five different languages to the world.

¹⁵ Section 18 and 44 of the Protection of Plant Varieties Act, 2001

¹⁶ Section 45 of the Protection of Plant Varieties Act, 2001

¹⁷ Section 46 the Protection of Plant Varieties Act, 2001

¹⁸ Section 41 of the Biological Diversity Act, 2002

The database can be accessed to gather any information regarding traditional knowledge. It is a cost effective way to protect the traditional knowledge of the country.

The Traditional Knowledge Digital Library is a unique database where the traditional knowledge of India is kept safe from the hands of pirates. It is a collaborative project between Council of Scientific and Industrial Research, Ministry of Science and Technology and Department of AYUSH, Ministry of Health and Family Welfare. An inter- disciplinary team of traditional medicine experts, patent examiners, IT experts, scientists and technical officers were involved in creation of TKDL.

The traditional knowledge was available in various languages which were not so easy to understand and access. The difference of languages acted as a hindrance in the protection of the traditional knowledge. Now, the traditional knowledge is easily accessible in five international languages hence covering up the barrier of languages. It is a powerful shield created by the country to protect the traditional knowledge from being patented at the international level.

NEED TO CREATE THE TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL)

Traditional Knowledge is the identity of the local communities. This identity was in danger due to various patents being granted by various international patent offices who did not have the information regarding the presence of prior art somewhere on the globe. When any patent application is filled, it is filled on a claim that it is novel and not known to anyone before. The application is scrutinized by the patent officer where he goes through all the information available to him. If the information regarding the common heritage is not available by any means, the patent was granted. This patent protected the intellectual property right of the patent holder but declared the traditional knowledge holder as the infringer against the rights of the patent holder.

The great concern of the developing countries is the grant of erroneous patent related to traditional medicine which is either based on the traditional knowledge already existing in the developing countries or a few minor modifications are made to the same. A legal battle between India represented by the Council of Scientific and Industrial Research

and US Patent's office came up regarding the grant of U.S. patent to two Indian based scientists for the wound healing characteristics of turmeric led to the formation of the digital library. This was the first time where the patent granted on traditional knowledge of a developing country was challenged and was successfully revoked by the United States Patent office. The ground of revocation was that there was no novelty as such innovation is being in India for the same purpose for centuries. Another example is of neem which was granted patent on the basis of novelty to a U.S. based company named W.R.Grace Co. and the Department of Agriculture, United States by the European Patent Office. The patent was revoked on the similar grounds i.e. prior art.¹⁹

Experiencing wrongful patenting of traditional knowledge, in 2001, TKDL project was formally established through a memorandum of understanding between Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) and National Institute of Science Communication And Information Resources (NISCAIR) in order to prevent further misuse of traditional knowledge which has been disclosed and to assure that no wrong patent is granted for the same in future.

FEATURES OF TRADITIONAL DIGITAL LIBRARY

i. Tool for defensive protection:

TKDL serves as an easily accessible database which deals with traditional knowledge of India. When an application for grant of patent comes before the patent examiner, he has to search the available resources to find the appropriate non-patentable literature. Generally, patentable literature is recorded and kept in various databases and hence is easily accessible and retrieved. The non-patentable literature or the prior art may be scattered. TKDL serves as an easy access for the non-patentable database.

¹⁹ V.K.Gupta. "Traditional Knowledge Digital Library." *Sub-Regional Experts Meeting in Asia on Intangible Cultural Heritage: Safeguarding and Inventory-Making Methodologies*, Bangkok, Thailand. 13-16 December, 2005. Available at: http://www.accu.or.jp/ich/en/pdf/c2005subreg_Ind1.pdf (Accessed on 30 November 2024)

ii. Tool for Active Research:

The digital library has the potential database, which fills, up the gap between the modern science and traditional medicinal knowledge. It can be used to conduct research on international level on information available through traditional knowledge which can help in developing novel drugs for the betterment of the people at large.

iii. Compliments the Positive Protection:

The disclosure of traditional knowledge through TKDL attracts the positive protection of the traditional knowledge. This will provide benefit sharing to the traditional knowledge holder which is an adequate protection for them. Therefore, it was concluded that a positive legal protection should complement TKDL systems at the national and regional level in order to safeguard the interests of traditional knowledge holders. A sui generis protection framework is being worked out at national and regional level to protect traditional knowledge, whether disclosed or undisclosed, against misappropriation for commercial use without sharing the benefit. Since biopiracy studies have shown that most of the exploitation of Indian traditional knowledge occurs outside the region. The use of TKDL is being internationalized and need for sui generis protection is felt to be extended to international level.

Traditional Knowledge Digital Library is a successful tool created for the preserve, conserve and protect the common heritage of the culturally rich country. It has not only granted access to the world to the traditional treasure of our country but has also protected it from the mutilators. Various patent applications, which were based on the traditional knowledge or prior art, have been rejected that too in a cost effective manner. Otherwise, in order to get the patent revoked, the country had to spend a huge amount in order to protect and gain back the legacy of the traditional knowledge, which is taken by the intruders in a rightful manner. The call for objections by the third party had lessen the chances of granting of patent to a prior art relating to the Indian medicinal. The Traditional Knowledge Digital Library is a success in prevention of bio piracy and protection of the cultural heritage.

CONCLUSION

TK refers to the long-standing traditions and practices of indigenous/ local communities. It is the

treasure of the indigenous people. Such knowledge is a part of their lifestyle. They are incomplete without it. Its creation and use are part of the cultural traditions of communities; being created every day and continuously been evolved as a response of individuals and communities to the challenges posed by their social environment.

The Intellectual property is the property created out of the intellect of a human mind. The Traditional Knowledge is the work of the intellectual mind of the creator of the knowledge. The knowledge has transferred from generation to generation hence becoming the common heritage of the community. The stakeholders have the right over their traditional knowledge.

The traditional knowledge is valuable for the developing nation as well within whose territory it resides. It is the part of the common heritage of the nation and also grants an identity to the nation at the international level. It plays an important role in the global economy and is valuable not only to those who depend on it in their daily lives but to the modern industry and agriculture. Traditional Knowledge holds great importance in the eyes of the local communities who own it. It is their cultural and spiritual identity, which cannot be invaded. They are recognized by their traditions followed by them. Traditional Knowledge has evolved since ancient times but is not static in nature. The traditional knowledge is subject to modification if the local community feels so.

A need has been felt to protect the traditional knowledge of the local communities due to various reasons. Conservation and preservation of the traditional knowledge was the matter of concern as the TK was in danger due to misappropriation and free invasions by the huge corporate giants who were entering into the intangible territory of the local communities and exploiting the resources claiming it to be theirs. The rightful owner of the property was barred from using his own resources and related knowledge as the corporations were granted patent to use the same for their benefit under the intellectual property law. The private companies were getting protection under the western intellectual property rights system, which was biased towards the western intellectual property right regime. The present system is not sufficient to protect and adjust the traditional knowledge in its boundaries. Hence, the common heritage of the

developing countries is being invaded by the pirates and is being exploited to its maximum extent. The companies are solely utilizing the benefit arising out of the misuse. The true holders are in loss in totality as neither can they use their property nor do they get share in the benefit arising out of it.

There is a demand being made by the various developing countries to the World Intellectual Property Organization for issuing a legal document for the protection of the developing countries and the organization is working towards the formulation of the same. But for the time being, they are assisting the governments of the developing countries to protect the traditional knowledge in accordance with the present intellectual property laws system by following the sui generis system. They are promoting the developing countries to draft and enact their own national legislation to protect their traditional knowledge from invaders till the international legal instrument is under process.

With the International Law being incapable in providing protection to the traditional knowledge at international level, various countries have taken a step to draft their own national legislations in order to protect the common heritage of their country. Such an initiative is appreciable, as they need to protect the sovereignty of the State by keeping the intruders at bay.

India is progressing to strive in the area of intellectual property. The Indian government to protect the traditional knowledge from the exploiters has enacted various national legislations. India being a mixing pot of various cultures is the country, which has been a prey of bio piracy. The country has faced most of the violations of rights relating to traditional knowledge. The Indian law is sufficient to an extent to protect the common heritage of the country. Various domestic legislation deals with the aspect of the protection of traditional knowledge directly or indirectly.

One of the best initiatives taken by India in protection of its traditional knowledge is forming of the unique database i.e. the Traditional Knowledge Digital Library (TKDL). The library is a unique repository, which has a record of around one million TK found in India. The library was setup as a reaction towards the various controversies faced by the country where the patent was granted in other countries over the biological resources and related

knowledge which has been practiced in India since centuries. It shall bind the contracting parties to maintain the secrecy related to the information available on the database. The information available on the database is to be used for the examination of the patent applications in foreign patent offices so that a patent may not be granted for the invention which is not novel in nature and is already in existence in India. The database has been of great help to the Indian government as it is a cost effective way to deal with the violations relating to common heritage.

There is a pressing need for the enactment of the legislations at the national as well as international level for the protection of traditional knowledge at each particular stage as it is a rightful property of its true owner and no one can use or get access to it as per their own will. Following are some of the recommendations suggested:

- i. Traditional Knowledge is the cultural and spiritual identity of the local people dwelling in developing countries. The developing countries need to make stringent legislations in order to protect their common heritage.
- ii. The International Conventions and treaties play a vital role in implementation of any law relating to any issue, which is affecting the world. The present international conventions and treaties are insufficient in protecting the traditional knowledge of the developing countries. There is a need of an international legal instrument to safeguard the rights of the traditional knowledge holders. The international organizations should formulate conventions and treaties, which will deal directly with the protection of common heritage of the developing countries in order to provide a legal safeguard on the international level.
- iii. The Intellectual Property Laws are the one, which protects the rights of the creators. But the International Intellectual Property system is incapable of protecting the traditional knowledge of the developing countries as their biased towards the western intellectual property law regime. The Intellectual Property system should be flexible enough to accommodate the rights of the traditional knowledge holders at par with the other intellectual property rights holders.
- iv. Various countries have their own intellectual property regime under the patent law where they

follow the procedure of examination of the application by the examiner. Few countries have a step where the application is presented before the third parties for opposition.

- v. The concept of benefit sharing should be encouraged where the true owners of the traditional knowledge shall be given their due share over the biological resources. The traditional knowledge holders shall be recognized by their resources.

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- [16] Section 46 the Protection of Plant Varieties Act, 2001
- [17] Section 41 of the Biological Diversity Act, 2002
- [18] V.K.Gupta. "Traditional Knowledge Digital Library." *Sub-Regional Experts Meeting in Asia on Intangible Cultural Heritage: Safeguarding and Inventory-Making Methodologies*, Bangkok, Thailand. 13-16 December, 2005. Available at: http://www.accu.or.jp/ich/en/pdf/c2005subreg_Ind1.pdf (Accessed on 30 November 2024)