

SHIELDING INDIA'S INDIGENOUS WISDOM

Augmenting towards a 'culture of innovation with indigenous knowledge'.¹ An oracle impinged on the bondage of traditional societies.

Unveiling the cultural traditions, the curtain veil has been pierced towards a more defensive protection of traditional knowledge. 'Symbolizing the essential fragrance'² of the possession of rich traditional knowledge 'punctuate the cultural landscape'³ Traditional societies have always consciously cared and interacted with 'mother nature' and accumulated pragmatic knowledge to manage their daily life. Man and nature are inseparable.⁴ The 'immense value of the traditional knowledge'⁵ possessed by tribal communities is crucial for preservation.⁶ Monopolization of traditional knowledge emboldened to strengthen and nurture the roots of traditional knowledge.⁷

Traditional knowledge permeates into the wide regime of human interest and hence preservation of indigenous and cultural knowledge provides self-identification. The indigenous people who exemplify the 'guardians of nature' are under siege.⁸ Lamenting on the concern of Amazon, it is pertinent to consider indigenous knowledge and the management practices especially for the communities living in undisturbed areas.⁹ 'Rainforests harbor rich biodiversity'¹⁰ and the protection for the same stands indispensable.

India is incredibly rich in indigenous and cultural diversity of practices and it is necessary to keep the blend of knowledge which survived through decades under the aegis of legal protection. The laudable initiatives mandated by India towards the protection of traditional knowledge deserves a laudable appraisal.

¹ Terri Janke, 'True Tracks: Create A Culture Of Innovation With Indigenous Knowledge' (TEDxJCUCairns, 2016).

² Navina Jafa, 'How Ancient India Preserved The Traditional Heritage of Water Resources' (*The Hindu*, 2019) <<https://www.thehindu.com/entertainment/art/drops-of-wisdom/article27298044.ece>> accessed 23 September 2019.

³ Navina Jafa, 'How Ancient India Preserved The Traditional Heritage of Water Resources' (*The Hindu*, 2019) <<https://www.thehindu.com/entertainment/art/drops-of-wisdom/article27298044.ece>> accessed 23 September 2019.

⁴ Navina Jafa, 'How Ancient India Preserved The Traditional Heritage of Water Resources' (*The Hindu*, 2019) <<https://www.thehindu.com/entertainment/art/drops-of-wisdom/article27298044.ece>> accessed 23 September 2019.

⁵ Ganesh Prabhu, 'Tribals Have Valuable Traditional Knowledge' (*The Hindu*, 2015) <<https://www.thehindu.com/news/national/karnataka/tribals-have-valuable-traditional-knowledge/article6904239.ece>> accessed 23 September 2019.

⁶ Home Aathira Perinchery, 'Why Scientists Are Teaming up with Tribal Elders to Conserve Species' (*The Hindu*, 2018) <<https://www.thehindu.com/sci-tech/energy-and-environment/why-scientists-are-teaming-up-with-tribal-elders-to-serve-species/article25452639.ece>> accessed 23 September 2019.

⁷ Kumar, Nithin V., 'Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead' (February 28, 2012) <<https://ssrn.com/abstract=2012724> or <http://dx.doi.org/10.2139/ssrn.2012724>> accessed 23rd September 2019.

⁸ 'Indigenous Peoples, 'Guardians of Nature', Under Siege: UN' (@businessline, 2019) <<https://www.thehindubusinessline.com/news/indigenous-peoples-guardians-of-nature-under-siege-un/article27057461.ece>> accessed 23 September 2019.

⁹ 'Indigenous Peoples, 'Guardians of Nature', Under Siege: UN' (@businessline, 2019) <<https://www.thehindubusinessline.com/news/indigenous-peoples-guardians-of-nature-under-siege-un/article27057461.ece>> accessed 23 September 2019.

¹⁰ 'Logged Out: On Protecting Amazon Rainforest' (*The Hindu*, 2019) <<https://www.thehindu.com/opinion/editorial/logged-out/article28775712.ece>> accessed 23 September 2019.

COMPREHENSIVE ANALYSIS OF THE EFFORTS INITIATED BY INDIA

Acquiring traditional knowledge is an impetus for research and innovation. In order to imbibe the gainful and fruitful preservation of knowledge, it is imperative to have a proper mechanism.¹¹ India's defensive approach undertook a palpable approach through the development of a digital database in the form of Traditional Knowledge Digital Library (TKDL).¹²

1) TRADITIONAL KNOWLEDGE DIGITAL LIBRARY

Traditional Knowledge Digital Library (TKDL) is a unique repository of India's traditional wisdom.¹³ In order to prevent the granting of erroneous patents, TKDL acts as a vital tool to all patent offices over the world to search for 'prior art' based on Indian TK.¹⁴ The idea to set up a TKDL database came into the big picture amidst India's efforts to revoke the patent granted by the US Patent and Trademark Office on the wound healing properties of turmeric and the patent granted by the European Patent Office on the antifungal properties of neem. Vanquishing every battle of language as a barrier, the TKDL conquered in bridging the gap in TK information. Access to the database helps the patent examiners root out those applications that clearly do not satisfy the novelty requirement of novelty from the inception itself.¹⁵ Commendably, TKDL works relates to the transcription of 35000 formulations employed in Ayurvedic system of medicines. The TKDL Access Agreement has been deployed to connect TK holders and patent examiners enabling the patent examiners for search and examination.¹⁶ This kind of defensive strategy is capable to curb the misappropriation and exploitation of traditional knowledge.¹⁷ Without a TKDL database, the process of revoking the patent can be time consuming and expensive.¹⁸ The access to information with the aid of TKDL has minimized the grant of patent to inventions which involved insignificant modifications.

¹¹ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

¹² 'Protection of Traditional Knowledge in India' (*Ris.org.in*, 2018)
<<http://www.ris.org.in/fitm/sites/default/files/Scooping%20Paper%20No%202.pdf>> accessed 24 September 2019.

¹³ 'Protecting India's Traditional Knowledge' (*Wipo.int*, 2011)
<https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html> accessed 24 September 2019

¹⁴ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

¹⁵ 'Protecting India's Traditional Knowledge' (*Wipo.int*, 2011)
<https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html> accessed 24 September 2019

¹⁶ 'Protecting India's Traditional Knowledge' (*Wipo.int*, 2011)
<https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html> accessed 24 September 2019

¹⁷ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

¹⁸ 'Protecting India's Traditional Knowledge' (*Wipo.int*, 2011)
<https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html> accessed 24 September 2019

2) PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS ACT, 2001

Rule give life to an Act. It is the blueprint implemented to discern the law.¹⁹ Effectuating a balance under Article 27(3) of the TRIPS agreement, India enacted a sui generis system in 2001 with the primary objective of protecting new varieties of plants. In conserving, improving and making available the plant genetic resources for the development of new plant varieties, the right of the farmers are to be shielded in the hands of the law making authorities.²⁰ Protection of Plant Varieties and Farmers Rights Act focuses on the rights of the farmers in a just, fair and reasonable manner.²¹ The purpose of the Act is to establish an effective strategy to encourage the development of new varieties of plants. Designed to accelerate the agricultural development in the country, it has stimulated investment for research and development both in the private and public sectors.²²

Breeder's rights, researcher's rights and farmer's rights have been incorporated in the Act. The Act facilitated the growth of seed industry assuring the availability of high quality seeds.²³

Recently, when the news pertaining to the fact that PepsiCo sued the small farmers in India for growing a potato variety that was used in lays chips popped up and gained the headlines, it turned out to be a wakeup call to the government to foster more legal provisions to promote seed sovereignty for the economic development of Indian farmers.²⁴

3) BIOLOGICAL DIVERSITY ACT, 2002

Biodiversity plays a crucial role to conserve economic stability involving the interests of people living close with nature. The Act intends to recognize the sovereign right of states to use the biological resources. One of the prominent aspect is the right of benefit sharing for the indigenous communities. The commercial use of the traditional knowledge has been apparent in the modern age. As a signatory to CBD, India has committed to the enactment of the said

¹⁹ ASHA KRISHNAKUMAR, 'For Farmers' Rights' (*Frontline.thehindu.com*, 2002)

<<https://frontline.thehindu.com/static/html/fl1904/19040800.htm>> accessed 24 September 2019.

²⁰ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

²¹ Elizabeth Varkey, Traditional Knowledge- The changing scenario in India 2007,

<<https://www.law.ed.ac.uk/ahrb/publications/online/varkey.html>> accessed 23 September 2019

²² Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 - INSIGHTS' (*INSIGHTS*, 2019)

<<https://www.insightsonindia.com/2019/04/25/protection-of-plant-varieties-and-farmers-rights-ppvfr-act-2001/>> accessed 24 September 2019.

²³ Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 - INSIGHTS' (*INSIGHTS*, 2019)

<<https://www.insightsonindia.com/2019/04/25/protection-of-plant-varieties-and-farmers-rights-ppvfr-act-2001/>> accessed 24 September 2019.

²⁴ Jebaraj Priscilla, 'Gujarat potato farmers case: Agriculture Ministry issues notice to PepsiCo' (*The Hindu*, 13 July 2019) <<https://www.thehindu.com/news/national/seed-rights-ministry-notice-to-pepsico/article28423565.ece>> accessed 24 September 2019.

legislation. The Act emphasizes on the need to protect indigenous knowledge.²⁵The benefit sharing agreement between JNTBGRI and Kani tribes can be claimed as an epitome of similar agreements fostering the creation of benefit sharing.²⁶

4) THE PATENT (AMENDMENT) ACT, 2005

The Act was amended in the year 2005 which made an addition under Section 3. It stated that an invention which is mere new use for a known substance and an invention which, in effect, is traditional knowledge or which is an aggregation or duplication or known properties of traditionally known substances will not be an invention.²⁷

5) NATIONAL BIO DIVERSITY AUTHORITY

A National Authority is established to facilitate the access of genetic resources by giving due regard to benefit sharing. It also empowers the Authority to oppose any application claiming intellectual property rights for any inventive step using the 'genetic resources or indigenous knowledge' obtained from the communities. Furthermore, it can recognize the existing forms of representative organizations of traditional community. When there are not representative bodies, the concerned state authorities should make an arrangement that would suffice the formation of representative organizations.²⁸

6) GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

The Act is a sui generis Act of the Parliament of India for the protection of geographical indications in India. Once granted GI, it conveys an assurance of quality and distinctiveness which is exclusively attributable to the place of its origin. It essentially provides authenticity to the product. The tag is valid for a period of ten years following which it can be renewed. Recently, 'Odisha Rasagola' was registered under the Geographical Indications of Goods (Registration and Protection) Act, 1999.²⁹

7) FOREST RIGHTS ACT

The Act was introduced as an instrument to deal with the rights of forest dwelling communities over land and other resources. It confers recognition to the rights of traditional

²⁵ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

²⁶ 'Using Traditional Knowledge to Revive the Body and a Community' (<https://www.wipo.int/ipadvantage/en/details.jsp?id=2599>, August 31 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2599>> accessed 24 September 2019.

²⁷ See Section 3(d) and 3(p) of the Patent Act

²⁸ Kumar, Nithin V., Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead (February 28, 2012). < <https://ssrn.com/abstract=2012724> > accessed 24th September 2019.

²⁹ Indiatodayin, 'Odisha Rasagola receives geographical indication tag: List of products which received GI tag this year' (*India Today*, 31 July 2019) <<https://www.indiatoday.in/education-today/gk-current-affairs/story/odisha-rasagola-geographical-indication-tag-list-of-products-1575710-2019-07-31>> accessed 25 September 2019.

forest dwelling communities. It also recognizes title rights, use rights and relief and development rights.³⁰

ADDITIONAL MEASURES

1) DRAFT BILL SUBMITTED IN THE PARLIAMENT

Spearheading the cause of Traditional Knowledge protection by taking up the recommendation of scientists from Kerala, MP Shashi Tharoor has submitted a private bill in the Parliament to protect TK and is under consideration. Once passed, it will be known as the Protection of Indian Traditional Knowledge Act.³¹

2) NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

The Policy which is in compliance with the World Trade Organization (WTO) agreement on TRIPS aims to push IPRs as marketable financial asset, promote innovations and entrepreneurship while protecting the interest of the public.³²

The Intellectual Property Rights Cell of Kerala Agricultural University has been selected for the National Intellectual Property Award 2019. The award constituted by the Indian Intellectual Property Office under the Union Ministry of Industry and Commerce is conferred on persons and organizations working in the field of patents, trademarks and Geographical Indications.

The KAU IPR Cell has been selected for the award in recognition of its contributions in facilitating registration of Geographical Indications (GI) and promotion of registered GI in the country.³³

3) INTELLECTUAL PROPERTY RIGHT POLICY OF KERALA, 2008

The policy seeks to commit all traditional knowledge to the domain of 'knowledge commons' and not to the public domain. The community or family custodian will have right to knowledge those belonging to them while the rest of the traditional knowledge belongs to the State.³⁴

³⁰ Insightsonindiacom, 'Forest Rights Act' (*Insightsonindiacom*, 31 July 2019) <<https://www.insightsonindia.com/2019/02/11/forest-rights-act/>> accessed 25 September 2019

³¹ Prasanna Laxmi, 'MP Shashi Tharoor submits Private Bill in Parliament to protect TK' Read more at: http://timesofindia.indiatimes.com/articleshow/55135261.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (*The Times of India*, 30 Oct 2016) <<https://timesofindia.indiatimes.com/city/thiruvananthapuram/Tharoor-pushes-for-traditional-knowledge-bill/articleshow/55150908.cms>> accessed 25 September 2019.

³² 'All you need to know about the new IPR Policy' (*The Hindu*, 14 May 2016) <<https://www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rights-policy/article8600530.ece>> accessed 25 September 2019

³³ T, 'National award for KAU IPR Cell' (*The Hindu*, 18 April 2019) <<https://www.thenational/keralhindu.com/news/a/national-award-for-kau-ipr-cell/article26879869.ece>> accessed 25 September 2019.

³⁴ IPR Policy of Kerala, 2008

CONCLUSION

The blatant misuse of Traditional Knowledge challenge the sole purpose of the interests of indigenous communities. India is a country rich in indigenous knowledge and the disparity between the knowledge holders and beneficiaries of that knowledge highlighted the need to protect the same. The issue relating to TK has no periphery and a single solution will not suffice the issue concerning TK. India has taken a lot of multiple measures which proved to be effective in a positive way. The measures initiated by India is laudable on the sustainable use of knowledge and benefit sharing which were the two elements which posed a serious discussion in the field of TK.

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