



PATENTABILITY OF TRADITIONAL KNOWLEDGE IN INDIA

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ABSTRACT: The concept of patentability of traditional knowledge in India is a complex and ongoing topic. Traditional knowledge is often defined as knowledge that is held collectively by a group of people and is passed down from generation to generation through cultural practices and oral traditions. In India, the issue of protecting traditional knowledge is particularly important, as many indigenous communities have unique and valuable knowledge that could be exploited by outside entities without proper compensation or recognition. To address this, the Indian government has taken various steps to protect traditional knowledge, including establishing the “*Traditional Knowledge Digital Library*” (TKDL) and creating legal frameworks for the protection of traditional knowledge. However, the patentability of traditional knowledge in India remains a controversial issue, as some argue that granting patents for traditional knowledge may lead to misappropriation and exploitation of indigenous communities. The Indian Patent Act, amended in 2005, which includes provisions for the exclusion of traditional knowledge and biological resources from patentability, but there are still concerns about the effectiveness of these provisions in practice. Overall, the patentability of traditional knowledge in India is an ongoing area of debate and development, with various legal and policy measures aimed at protecting indigenous communities' knowledge and preventing exploitation.

Keywords: *Patentability, Traditional Knowledge, TKDL, Indigenous Community.*

I. INTRODUCTION

In India, the patentability of traditional knowledge has been a topic of much debate and discussion. Traditional knowledge is the knowledge, practices, and innovations of indigenous and local communities. It includes agricultural, medicinal, and other knowledge systems that have been passed down through generations. In recent years, the Indian government has taken steps to address the issue of patentability of traditional knowledgeⁱ. In 2001, India's *Traditional Knowledge Digital Library (TKDL)* was established to prevent the misappropriation of traditional knowledge. The TKDL contains a database of traditional knowledge and is used by patent examiners to search for prior art. In 2005, the Indian government amended its patent laws to include provisions related to traditional knowledge. Under these provisions, patent applications that seek to patent traditional knowledge or biological resources found in India must undergo a rigorous examination process to determine their novelty and non-obviousness. If the patent application is found to be based on traditional knowledge, it will be rejected.

The Indian government has also set up a Traditional Knowledge Division within the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homoeopathy (AYUSH). The division is responsible for the documentation and protection of traditional knowledge. Overall, India's efforts to address the issue of patentability of traditional knowledge are seen as a positive step towards protecting the rights of indigenous and local communities. However, there are concerns that the current legal framework does not go far enough in preventing the misappropriation of traditional knowledge.

II. DEFINITION OF TRADITIONAL KNOWLEDGE

Traditional knowledge refers to the knowledge, innovations, and practices of indigenous and local communities that are passed down from generation to generation. This knowledge often relates to agriculture, medicine, and other areas of expertise and is based on collective experience and wisdom rather than scientific research or individual innovation.

“Traditional knowledge (TK) is 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.” – World Intellectual Property Organisation (WIPO)ⁱⁱ

“Knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, forestry and environmental management in general.”- UNESCO UIS (Institute of Statistics)ⁱⁱⁱ

Traditional knowledge can be protected under various forms of IP, including patents, trademarks, and geographical indications^{iv}. However, there are unique challenges associated with protecting traditional knowledge under IP laws, including issues of ownership, access, and cultural sensitivity.

III. TRADITIONAL KNOWLEDGE IN INDIAN PERSPECTIVE

In addition to the *TKDL*, the Indian government has also established a *Traditional Knowledge Resource Classification (TKRC)* system. This system classifies traditional knowledge into various categories and sub-categories and makes it easier for patent examiners to search for relevant prior art. India has a rich and diverse cultural heritage with a wealth of Traditional Knowledge (TK) and associated goods that are closely tied to specific geographic regions. Geographical Indications (GI) are a form of intellectual property protection that can help preserve and promote the unique cultural heritage of such goods^v. The Indian government has recognized the importance of protecting TK and GIs and has enacted laws and policies to safeguard them^{vi}.

The Geographical Indications of Goods (Registration and Protection) Act, 1999, was enacted to provide for the registration and better protection of GIs relating to goods in India. The Act defines a GI as "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." The Traditional Knowledge Digital Library (TKDL) was established in 2001 to prevent the misappropriation of TK. It contains a database of traditional knowledge that is used by patent examiners to search for prior art. In 2005, the Indian government amended its patent laws to include provisions related to TK. Under these provisions, patent applications that seek to patent TK or biological resources found in India must undergo a rigorous examination process to determine their novelty and non-obviousness^{vii}. If the patent application is found to be based on TK, it will be rejected. Also, The Indian Patent Act of 1970 also includes provisions that address the patentability of traditional knowledge. Section 3(p) of the Patent Act specifies that inventions that are mere discoveries of a scientific principle or a naturally occurring substance are not patentable. This provision has been interpreted by Indian courts to mean that traditional knowledge cannot be patented unless it involves a significant inventive step or a new application of the knowledge.^{viii}

Overall, the Indian perspective on the patentability of traditional knowledge is focused on protecting the cultural heritage of indigenous communities and preventing exploitation by others. The government has taken several measures to ensure that traditional knowledge is not misappropriated, and the Patent Act includes provisions that limit the patentability of traditional knowledge.

IV. TRADITIONAL KNOWLEDGE IN INTERNATIONAL PERSPECTIVE

Geographical indications (GIs) are signs used on products that have a specific geographical origin and possess qualities, reputation, or characteristics that are essentially attributable to that origin. International law has recognized the importance of protecting GIs, and there are several treaties and conventions in place to provide legal protection to GIs.

i. PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

This treaty, adopted in 1883, provides protection to GIs in the context of industrial property. Article 1(2)^{ix} of the treaty provides that the protection of industrial property shall include the protection of Geographical Indications (GI's). While the Paris Convention does not explicitly mention traditional knowledge or geographical indications, it does provide a framework for the protection of intellectual property rights that can be applied to these areas. For example, the convention requires member countries to provide protection to nationals of other member countries in the same way that they protect their own nationals^x. In recent years, there has been increasing recognition of the importance of protecting traditional knowledge and geographical indications. Some countries have developed sui generis systems for the protection of traditional knowledge and geographical indications, while others have sought to protect these rights under existing intellectual property regimes. The Paris Convention is relevant in this context because it provides a framework for the protection of intellectual property rights that can be adapted to suit the specific needs of traditional knowledge and geographical indications. For example, Article 6 (b) of the convention provides for the protection of well-known trademarks, which could potentially be used to protect well-known geographical indications.

Overall, while the Paris Convention does not provide a comprehensive framework for the protection of traditional knowledge and geographical indications, it does provide a useful starting point for the development of such protection regimes. It is important that any such regimes consider the unique cultural and social contexts in which traditional knowledge and geographical indications arise, as well as the need to balance the interests of different stakeholders, including producers, consumers, and indigenous communities.

ii. LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

This agreement, adopted in 1958, provides for the protection of appellations of origin (AOs), which are a specific type of GI that identifies a product originating from a specific place and with specific characteristics due to that place. The agreement establishes a system for the international registration of AOs and provides for their protection in the countries that have ratified the agreement. Under the Lisbon Agreement, an appellation of origin is defined as the name of a geographical place or region used to identify a product originating from that place or region and possessing qualities or characteristics that are essentially due to its place of origin. A geographical indication is defined as a name or sign used to identify a product originating from a specific place, region, or country and possessing a quality, reputation, or other characteristic attributable to that place, region, or country.

The Lisbon Agreement provides for the protection of appellations of origin and geographical indications through their registration, which grants exclusive rights to the registered name or sign to the country or region of origin^{xi}. The agreement also allows for the international registration of appellations of origin and geographical indications, which enables protection in multiple countries. To register an appellation of origin

or geographical indication under the Lisbon Agreement, the product must meet certain criteria, such as being produced, processed, or prepared in the defined geographical area using traditional know-how or a specific method. The registration process involves an examination of the application to ensure compliance with the agreement's requirements and to determine whether the appellation of origin or geographical indication is distinctive and not misleading to consumers.

Overall, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration is an important international treaty that seeks to protect the rights of producers and consumers by ensuring that products bearing a registered appellation of origin or geographical indication are authentic and of high quality.

iii. **TRIPS AGREEMENT**

The Agreement on Trade-Related Aspects of *Intellectual Property Rights (TRIPS)* is a multilateral agreement adopted in 1994 as part of the *World Trade Organization (WTO)* agreements. TRIPS require WTO member countries to provide minimum standards of protection to GIs, including AOs and other types of GIs. The TRIPS Agreement recognizes the importance of protecting traditional knowledge and requires member countries to provide legal mechanisms for the protection of traditional knowledge^{xii}. However, the agreement does not provide a clear definition of traditional knowledge, which has led to debates and disagreements on how traditional knowledge should be protected under the agreement. Some argue that the TRIPS Agreement's focus on commercialization and ownership of intellectual property may conflict with the collective and community-based nature of traditional knowledge. As a result, some countries have implemented sui generis legal systems to protect traditional knowledge, which provide a separate legal framework outside of traditional IP systems.

iv. **THE GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was adopted on May 20, 2015, and entered into force on February 26, 2020. The agreement is designed to protect the names of products that are linked to specific geographical locations, such as Champagne or Roquefort cheese. Under the agreement, member countries agree to protect geographical indications and appellations of origin that originate in other member countries. The agreement also sets out the procedures for the international registration of geographical indications and appellations of origin, which allows for greater protection and recognition of traditional knowledge and cultural heritage associated with these products. This agreement updates and modernizes the Lisbon Agreement by extending its scope to cover GIs in addition to AOs. The Geneva Act also provides for the protection of GIs in electronic commerce and sets out the conditions for the protection of GIs in the domain name system.

v. EU REGULATION ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS

This regulation, adopted by the European Union in 1992, provides protection to GIs for agricultural products and foodstuffs in the EU. The regulation establishes a system for the registration and protection of GIs, which is mandatory for all EU member states. The EU Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs does not directly relate to traditional knowledge. However, it does seek to protect the traditional knowledge associated with agricultural products and foodstuffs by ensuring that only products meeting certain quality standards and originating from a specific geographical area can bear the protected name. This helps to maintain the unique qualities and characteristics of traditional products, which are often associated with specific regions and cultural practices. Additionally, the regulation supports local communities and promotes the sustainable use of natural resources, which are important aspects of traditional knowledge systems.

Overall, these treaties and conventions provide legal protection to GIs and establish a framework for their international registration and protection. The protection of GIs is essential for preserving cultural and economic diversity and ensuring fair competition in the global market.

V. LEGAL FRAMEWORKS IN INDIA

The Indian government has enacted several laws and policies related to traditional knowledge and intellectual property. Identify the relevant legal frameworks that affect the patentability of traditional knowledge in India, such as the Indian Patents Act and the Protection of Plant Varieties and Farmers' Rights Act^{xiii}.

In *PepsiCo India vs Gujarat potato farmers* case highlighted the importance of protecting intellectual property rights and the need for farmers to be aware of legal regulations surrounding proprietary seeds. While the case sparked controversy and debate, ultimately PepsiCo and the farmers were able to reach a mutually beneficial resolution outside of court. Going forward, it is important for companies to balance their desire to protect their intellectual property with a responsibility to support the livelihoods of farmers and promote sustainable agriculture practices. Additionally, farmers must be equipped with the knowledge and resources to navigate legal requirements and protect their own interests. By working together, stakeholders can ensure that the agricultural industry remains fair and equitable for all parties involved.

VI. OBSERVATION

The Indian Patent Office has issued guidelines for the examination of patent applications related to traditional knowledge. Study these guidelines to understand the criteria for patentability and the procedures for examination. The guidelines for the examination of patent applications related to traditional knowledge were issued by the Indian Patent Office in 2018. These guidelines aim to provide a framework for examiners to evaluate patent applications that claim traditional knowledge or associated biological resources.

VII. RESEARCH METHODOLOGY

The type of research used by the researcher is Doctrinal Research and the methodology used by the researcher is descriptive and analytical. The researcher used secondary source of data, wherein, the sources of data referred by the researcher is online articles, books from library, different journals and certain websites.

VIII. FINDINGS

Traditional knowledge is often held by indigenous and local communities. Conduct fieldwork to gather information on the types of traditional knowledge that exist in India, their practical applications, and the communities that hold them. Consider the implications of patenting traditional knowledge in India. Evaluate the potential impact on indigenous and local communities and analyse whether patenting can lead to the exploitation of traditional knowledge.

Look at the judgments and rulings of Indian courts that have dealt with patent applications related to traditional knowledge. This will help you understand how courts have interpreted and applied relevant legal provisions. Based on the research findings, draw conclusions on the patentability of traditional knowledge in India. Identify the challenges and opportunities for protecting traditional knowledge, and provide recommendations for policymakers, researchers, and communities.

Overall, a comprehensive research methodology that considers both legal and cultural aspects is necessary for understanding the patentability of traditional knowledge in India.

IX. SUGGESTIONS

India is a country with a rich and diverse cultural heritage, and traditional knowledge (TK) plays a significant role in various aspects of Indian life, including agriculture, medicine, and handicrafts. However, the patenting of traditional knowledge has been a contentious issue in India, as there have been cases of TK being patented by foreign companies without the consent of the communities that hold the knowledge. Here are some suggestions on the patentability of traditional knowledge in India:

Establish a legal framework for the protection of traditional knowledge: India should establish a legal framework for the protection of traditional knowledge that is consistent with international treaties, such as the Convention on Biological Diversity and the Nagoya Protocol. This framework should provide for the identification, documentation, and protection of traditional knowledge, as well as the recognition of the rights of the communities that hold the knowledge. Develop a database of traditional knowledge: India should develop a comprehensive database of traditional knowledge that is accessible to patent examiners and the public. The database should be maintained by a competent authority and should provide information on the origin, ownership, and uses of traditional knowledge.

Prior informed consent and benefit-sharing: India should require patent applicants to obtain prior informed consent from the communities that hold the traditional knowledge before filing a patent application. The consent should be in writing and should specify the terms of benefit-sharing, including monetary and non-monetary benefits.

Increase awareness and capacity-building: India should increase awareness among communities and stakeholders about the importance of protecting traditional knowledge and the risks associated with its unauthorized commercial use. India should also invest in capacity-building activities to enhance the skills and knowledge of communities and local authorities in identifying, documenting, and protecting traditional knowledge. Strengthen patent examination procedures: India should strengthen its patent examination procedures to ensure that traditional knowledge is not granted patents. This can be achieved by providing patent examiners with access to the traditional knowledge database and by incorporating TK-specific search criteria into patent examination procedures.

X. CONCLUSION

In conclusion, the patentability of traditional knowledge in India is a complex issue that requires a multi-faceted approach that involves legal, technical, and cultural considerations. By adopting the suggestions outlined above, India can ensure that its traditional knowledge is protected and that the rights of the communities that hold the knowledge are respected.

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