

**Traditional Knowledge and its protection as Intellectual Property:****A socio –Legal study**

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**Abstract:**

India is a land of Traditions and we have gathered knowledge over centuries unknown. Our Traditional knowledge is a vital part of our cultural identity as it is the sole means of livelihood in rural areas. It takes generations and involves communities for the development and utilization of traditional knowledge. Traditional knowledge covers all field of human endeavour ranging from Agriculture, medicinal, and science to socio cultural knowledge. Protection of the Traditional Knowledge of the local and indigenous communities seems to be one of the most contentious and complicated issues. The protection under Intellectual Property Rights (IPRs) of traditional and indigenous knowledge has received growing attention since the adoption of the Convention on Biological Diversity (CBD) in 1992.

World Health Organization (WHO) has stated that 80% of the world's population depends on traditional medicine for its primary health care and traditional knowledge is indispensable for its survival. The traditional usage of 'Neem (Azadirachta Indica)' and 'turmeric' in first aid, curing rashes, cosmetics is known to all. The rich and diverse Traditional Knowledge(TK) of tribes in north east states of India are undocumented, unprotected and unregistered for Intellectual Rights Protection(IPRs). The turmeric that is grown in the state of Meghalaya known as "Lekadong" has the highest curcumin level in the world. But due to issues like illiteracy, ignorance and poverty have handicapped indigenous communities to combat misappropriation of their traditional knowledge by third parties. The North East India comprises of Arunachal Pradesh, Assam, Manipur, Mehalaya, Mizoram, Nagaland, Tripura and Sikkim. However diverse and rich the cultural assets of Northeast may be, the underlining reality indicates that Traditional Knowledge are unprotected under present mechanism of IPRs(i.e. Intellectual Property Rights)There are no studies to analyze and highlight the importance of Traditional Knowledge of North east India.

**Key Words:** Intellectual, Property, Knowledge, Protection, Tradition,

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Understand the claims of IPRs by tribal communities in North Eastern India. Today a tribal community faces potential loss and misappropriation of traditional knowledge is due to lack of Traditional Knowledge documentation. This problem is further compounded by rapid loss of elder members within the indigenous communities who are the repository of traditional knowledge. Therefore there is urgent need for dialogue between the TK holders, tribal artists, TCEs (i.e. Traditional Cultural Expressions) practitioners, library professionals and the States institutions for evolving appropriate legal mechanism for protecting the IPRs of tribal communities in North East India.

### **Introduction:**

There are various practices and beliefs which local people have been practicing since time immemorial. In layman's language, traditional knowledge could be understood as knowledge which has been gathered or accumulated by a community through years of experience.

In other words Traditional Knowledge 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.<sup>1</sup>The people in older times were more spiritual, Religious, God-fearing and believing in virtuous livelihood. They believed that their living will be happy and prosperous if they work in a systematic manner with certain beliefs and practices. Such beliefs of a locality bear fruits for their existence. The north-east India is one of the most ethnically and linguistically diverse regions in India. The region has a high concentration of tribal population. Each tribe has its own distinct tradition of art, culture, dance, music and lifestyles. Anthropologist Johnson defines traditional knowledge as a body of knowledge built by a group of people living in close contact with nature.

### **SOURCES OF TRADITIONAL KNOWLEDGE**

If we look around in our surroundings, we will find out numerous sources of traditional knowledge hidden in our villages, countryside, community etc. The main sources are: farmers, community leaders, elder persons, folklore, song and poetry, ancient records, NGOs, published materials of different languages.

### **REASONS FOR PROTECTION OF TRADITIONAL KNOWLEDGE**

Traditional Knowledge is a central component for the daily life of millions of people in developing countries. Traditional Medicine serves the health needs of a vast majority of people

in developing countries where access to modern health care services and medicines is limited by economic and cultural reasons. According to the World Health Organization, upto 80% of the world's population depend on traditional medicine for its primary health needs. There are numerous reasons which depict the need to protect the Indigenous Traditional Knowledge in North –East India:-

1. *To improve the livelihoods of TK holders and communities:*-TK (i.e. traditional knowledge) is a valuable asset to indigenous and local communities who depend on TK for their livelihood as well as to manage and exploit their local ecosystem in sustainable manner.

2. *To benefit national economy:*-Most of industries look for the time tested traditional knowledge information for developing novel products having commercial acceptability. Hence, protecting TK has the potential to improve the economy of many developing countries by greater commercial use of their biological wealth and increasing exports of TK related products.

3. *To conserve the environment:*-The traditional communities are intelligent and have made agriculture sustainable through their different agricultural practices. They create a balance between the environment and requirement.

4. *To prevent biopiracy:*-Biopiracy refers to the unauthorized extraction of biological resources and associated TK without compensate the TK holders for inventions based on such knowledge or resources.

## **TWO APPROACHES TO PROTECT TRADITIONAL KNOWLEDGE**

The Intellectual Property Rights can be approached from two different angles to ensure protection of traditional knowledge. These two approaches are generally referred to as positive and defensive protection.

Under the first approach i.e. positive protection, the IP (i.e. Intellectual Property) systems are designed to prevent unwanted, unauthorized or inappropriate uses and exploitation of traditional knowledge commercially by third parties. In other words positive protection is the granting of rights that empower communities to promote their traditional knowledge, control their uses by third parties and benefit from their commercial exploitation. For example handicrafts and hand woven shawls may be positively protected as part of community trading enterprise and against imitations or fake production.

The second approach i.e. defensive protection, the IP systems is designed to prevent the illegitimate acquisition of IP rights by third parties. Defensive protection aims to stop people outside the community from acquiring IP rights over traditional knowledge. Defensive strategies might be used to protect sacred manifestations, such as sacred symbols or words from being registered as trademarks. For example tribal community's sacred burial chants may be defensively protected.

### **CHALLENGES FACED BY INDIGENOUS PEOPLE OF NORTH - EAST INDIA**

1. *Economic Under Development*:-The most dangerous challenge posing against the indigenous people of north-eastern region is economic underdevelopment. The region is rich in minerals and natural resources; people were also hard working but unbelievably poor. The society is modernised only in consumption and luxury not in production. This disparity between income and aspiration leads to many psychological, moral, social and political problems.

2. *Globalization*:-Next, the most gigantic challenge threatening the existence of indigenous people is the phenomenon called globalization. Experts claim all countries gain something from this process. But globalization is going to be a curse to the north-eastern region. It is impossible for us to successfully compete with MNCs and foreign entrepreneurs in business and trade. So, globalization is not going to be an opportunity for us as it been for other countries.

3. *Indiscriminate Or Unsustainable Exploitation Of Natural Resources*:-Regarding economic development, another dangerous challenge is the indiscriminate mining and excessive exploitation of the natural resources in the region. The people of the region face threat to their survival on account of development projects undertaken by the government in collaboration with MNCs and International Financial Institutions like the World Bank and the Asian Development Bank. For example, in Meghalaya large expanse of land is now unusable after open-pit coal mining. Uranium mining is most damaging to the environment. Uranium mining is most damaging to the environment is also being carried out in the state.

4. *Policy Paralysis*:-Both formal and informal education systems in the north-eastern region are failed miserably. Losing hope in the effectiveness of education system, well-to-do-families send out their children to some Indian mainland cities for education. It gives a big economic blow to the society. On the other hand, it is a brain drain from our society, as good students get

employment opportunities there and do not return home. At home there is no employment opportunity. Thus, education system failure is big problem.

*5. Fragmentation Of Population:-*One of the biggest challenges posing against the indigenous people of the region is the fragmentation of the population along ethnic lines. If this issue cannot be addressed successfully by local leadership, hostilities will continue compromising the real political strength of the region. If the region is not amalgamated into a unified political entity future of North East India is bleak.

## **TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS PROTECTION**

The protection under Intellectual Property Rights(IPR's) of traditional and indigenous knowledge has received growing attention since the adoption of the Convention on Biological Diversity(CBD) in 1992.Traditional Knowledge in North-East India are heritage, and therefore, in recent years have assumed significance for its protection. North-East India comprises of states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim and Few of the indigenous people in North-Eastern India would include Chakma, Bodo, Garo, Karbi, Naga, Koch, Rajbongshi etc North-East India comprises of states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim. Use of folk medicine and indigenous folk culture and dresses for example Muga Silk and indigenous cultivation for example Jhum Cultivation is still vital in this north-eastern region.

The communities living in this region are very much familiar with the knowledge of plant species in their ecosystems and also have a proper understanding of the ecological interactions of the various components of their resources. Their understanding and dependence on nature have been reflected in their traditional culture, local beliefs, folklores and valuable knowledge of ethno-botanical importance. Globally there are .two distinct and potentially conflicting knowledge systems. The knowledge produced in the formal sector and the informal sector. In the formal sector knowledge systems are recorded, well documented and are defended through national and international laws whereas the knowledge systems of the informal sectors are often oral, not documented and thus non-defendable. The IP rights of the former category are recognized by national and international laws whereas there is practically no protection for undocumented traditional knowledge.

Unfortunately traditional knowledge and traditional cultural expressions are not considered as formal knowledge because these knowledge and practices are unwritten, undocumented and uncodified and transmitted from generation to generation orally. Thus it is imperative to identify and manage the knowledge of tribal community by documenting with the technical assistance from the library and informational professionals. Traditional Knowledge is collective knowledge of the whole community and a single individual cannot claim a right over it. Thus it is imperative to identify and manage the knowledge of tribal community by documenting with the technical assistance from the library and informational professionals. Traditional Knowledge is collective knowledge of the whole community and a single individual cannot claim a right over it. Traditional Knowledge is collective knowledge of the whole community and a single individual cannot claim a right over it. The traditional communities lack proper documentations and do not know how to safeguard their intellectual capital. In modern times, traditional knowledge is kept in public domain and thus free for anyone to use and so is easily accessible and is more susceptible to misappropriation. The public domain status of TK (i.e. Traditional Knowledge) and TCEs (i.e. Traditional Cultural Expressions) must be rejected as that this exposes to unwanted misappropriation and misuse. For example, genetic resources or medicinal properties of plants and herbs can be misappropriated by a pharmaceutical company and the resulting invention patented by that company. Tribal textile designs and color patterns can be adapted and copyrighted without sharing any of the benefits arising from commercializing the textile design.

**Conclusion:** The existing IP regime fails to address this collective authorship with appropriate provisions. The western model of IP primarily focuses on issues related to individual creativity and authorship. Traditional Knowledge from North-Eastern India includes knowledge about traditional medicines, traditional hunting or fishing techniques, knowledge on soil and water management, knowledge of handicraft etc. Therefore there is urgent need to tap this huge reservoir of untapped knowledge especially in environment, traditional medicine and cultural values by developing appropriate Knowledge Management System. Thus preserving their unique identities, systematic gathering, recording, documentation has become ever more imperative. The rational justification for legal protection and preservation of traditional knowledge lies in preserving the tradition as a part of culture. For example the textile knowledge of the Chakhesang Nagas on “Chi Pi Khwu/Shawl” is very distinct both in appearance and in symbolism. The shawl represents the ultimate symbol of honour and privilege. This shawl was not to be worn by common people in the olden days.

Till today it is regarded as a symbol of distinguished achievement. Such knowledge should be documented for protecting their unique cultural identity and as a source of commercial gain. Tribal Traditional Cultural Expressions (ITCEs) are product of intergenerational social and communal creative process that reflect and identify a community's history, cultures, social identity and values. Traditional Cultural Expressions include folk tales, riddles, signs, symbols, folk songs, folk dance, pottery, weaving, costumes, needlework etc. Traditional Cultural Expressions (TCEs) are seen as integral to the cultural and social identities and heritage of tribal groups in North-East reflecting their core values and beliefs. For example the Wancho tribe is found in Arunachal Pradesh, the men practiced headhunters. When the enemy was successfully eliminated, the Wancho men were honoured and adorned with the thun hu (i.e. facial tattoo). Women were also tattooed to display their status within the tribe. Tattooing is integral to the cultural and social identities among the Wancho tribe. Moreover the Sherdukpen tribes of Arunachal Pradesh, practice several dance forms like the Yak dance, the Deer dance and Ajilamu dance. All these TCEs (i.e. Traditional Cultural Expressions) need to be documenting by library professional to ensure that the Wancho and Sherdukpen holds the IPRs to these customs and practices.

In 2000, WIPO (i.e. World Intellectual Property Organization) members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and in 2009 they agreed to develop an international legal instrument that would give traditional knowledge, genetic resources and traditional cultural expressions effective protection. Traditional Knowledge is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. As such, it is not easily protected by the current intellectual property system which typically grants protection for a limited period to inventions. However traditional knowledge as such knowledge that has ancient roots and is often informal and oral and therefore is not protected by conventional intellectual property systems. This has prompted some countries to develop their own sui generis (i.e. specific, special) systems for protecting traditional knowledge. Documenting and digitizing TK-related information in the form of a TKDL (i.e. Traditional Knowledge Digital Library) is proving to be an effective means of preserving Traditional Knowledge and of preventing its misappropriation by third parties. TKDL was set up in 2001. India is a pioneer in this field.

The idea to establish a TKDL came to the forefront due to India's efforts to revoke the patent granted by the United States Patent and Trademark Office (USPTO) on the wound healing properties of turmeric and basmati rice and the patent granted by the European Patent Office (EPO) on neem in the late 1990s. Protecting traditional knowledge as trade secrets is quite possible for the indigenous people as it does not require any cost. All they need is a conscious effort on their part to keep their knowledge as secret. India has quite rich and flourishing traditional knowledge and this knowledge can be used in various ways in different sectors like pharmaceuticals, agriculture etc, but somehow Indian Intellectual Property laws fail to provide effective protection to it. To check the misappropriation of this rich knowledge, some alternative measures like sui generis system and benefit-sharing must be encouraged when any research on Indian traditional knowledge is done so as to benefit the indigenous people as well.

The North-East India is one of the most ethnically and linguistically diverse regions in India. The region has a high concentration of tribal population. Each tribe has its own distinct tradition of art, culture, dance, music and lifestyles. The tribal communities living in North-East India see traditional knowledge as their cultural and spiritual identity. Local communities in the North-East India rely on traditional knowledge for their cultural and economic value. Existing IP law based on western norms of intellectual activity is very often inadequate in recognizing such values in the same way it would for other conventional forms of knowledge that fit into its framework. Therefore the sui-generis protection of traditional knowledge in North-East India is the only way if the region is to protect its resources and heritage from misappropriation by third parties. No one can achieve success by forgetting their roots. It should not be forgotten that a tree becomes strong only if its root is strong. Similarly, no matter how technologically advanced we might become the traditional knowledge always have a pivotal role to play and that should not be ignored. The tribal communities living in North-east India see traditional knowledge as their cultural and spiritual identity. The traditional communities lack proper documentations and do not know how to safeguard their intellectual capital. In modern times, traditional knowledge is kept in public domain and so it is easily accessible and so is more susceptible to misappropriation. Therefore the sui generis protection of traditional knowledge in North-East India is the only way if the region is to protect its resources and heritage from misappropriation by third parties.

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