



**Significance of Traditional Knowledge**  
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**Abstract:** Traditional Knowledge (TK) is integral to the identity of most local communities. It is a key constituent of a community's social and physical environment and, as such, its preservation is of paramount importance. Attempts to exploit TK for industrial or commercial benefit can lead to its misappropriation and can prejudice the interests of its rightful custodians. In the fact of such risks, there is a need to develop ways and means to protect and nurture TK for sustainable development in line with the interests of TK holders. The preservation, protection and promotion of the TK based innovations and practices of local communities are particularly important for developing countries.

**Introduction**

Traditional Knowledge (TK) is integral to the identity of most local communities. It is a key constituent of a community's social and physical environment and, as such, its preservation is of paramount importance. Attempts to exploit TK for industrial or commercial benefit can lead to its misappropriation and can prejudice the interests of its rightful custodians. In the fact of such risks, there is a need to develop ways and means to protect and nurture TK for sustainable development in line with the interests of TK holders. The preservation, protection and promotion of the TK based innovations and practices of local communities are particularly important for developing countries. The irrich endowment of TK and biodiversity plays a critical role in their health care, food security, culture, religion, identity, environment, trade and development. Yet, this valuable asset is under threat in many parts of the world. There are concerns that this knowledge is being used and patented by third parties without the prior informed consent of TK holders and that few, if

any, of the derived benefit are shared with the communities in which this knowledge originated and exists. Such concerns have pushed TK to the forefront of the international agenda, triggering lively debate about ways to preserve, protect, further develop and sustainably use TK. Documenting and digitizing TK related information in the form of a TKDL is proving to be an effective means of preserving TK and of preventing its miss-appropriation by third parties. India is a pioneer in this field. Indigenous peoples offer their own perspectives on the content and form of knowledge, and the worldwide academic community has joined in an effort with governments, business, nonprofit Indigenous and Traditional Knowledge and international organizations to explain, define, and comment on indigenous knowledge and Traditional Knowledge<sup>1</sup>. The expression indigenous

<sup>1</sup> "Folklore (Or Traditional And Popular Culture )Is The Totality Of Tradition-Based Creations Of A Cultural Community, Expressed By A Group Or Individuals And Recognized As Refiecting The Expectatins Of



knowledge is often equated with the expression Traditional Knowledge, and indeed they are regularly used interchangeably. The heritage of aindige no us people is not merely a collection of objects, stories and ceremonies, but a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity<sup>2</sup> Louise Grenier, a Canadian researcher, defines indigenous knowledge as the unique, traditional, local knowledge existing within and developed around the specific conditions of women and men Indigenous to a particular geographic area. A body of knowledge associated with the long-term occupancy of a certain place. This knowledge refers to traditional norms and social values, as well as to mental constructs that guide, organize and regulate the people's ways of living and making sense of their world. It is the sum of experience and knowledge of a given social group and forms the basis of decision making in the face of challenges both familiar and unfamiliar<sup>3</sup>.

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A Community In So Far As They Reflect Its Cultural And Social Identity; Its Standards And Values Are Transmitted Orally, By Imitation Or By Other Means. Its Forms Are, Among Others Language, Literature, Music, Dance, Games, Mythology, Rituals, Customs, Handicrafts, Architecture And Other Art" UNESCO Recommendation On The Safeguarding Of Traditional Culture And Folklore, (1989).

<sup>2</sup> The Expression "Traditional Knowledge" Is Used As A Shorter Form Of "Traditional Knowledge, Innovations And Practices", See E.G., The Convention On Biological Diversity, Art.9 (J).3 I.L.M, 5 June (1992). P818.

<sup>3</sup> Intellectual On Fact Finding Missions Property And Traditional Knowledge, Holders" Wipo Report On Intellectual On Fact Finding Missions

### **Traditional Ecological Knowledge in Environmental Science :**

American Indian and Native Alaskan Villages (AI/NAV) AINAV scientists need access to TEK and scientific resources and a process to ensure that procedures performed by their staff are culturally-appropriate, defensible and accurate. Additionally, developing core science competency and TEK programs in AINAV communities promotes self-sufficiency/determination (e.g., understanding data needs and developing data quality objectives).

### **Explanation of the Issue :**

Native people have been accumulating and valuing TEK for thousands of years. TEK can help confirm, support, or further define scientific research for the benefit of the environment and human health. Developing capacity and training for TEK is critical for tribal environmental decision and policy-making. Non-tribal members may need training in TEK for environmental decision making, but an important consideration in such training is the confidentiality and sensitivity of such information<sup>4</sup>.

According to the World Health Organization, up to 80 per cent of the world's population depends on traditional

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Property And Traditional Knowledge, Sourced From [Http://WWW.WIPO.INT/TK/ENTK/FTM/REPORT/FINAL/PDF/PART1.WIPO](http://WWW.WIPO.INT/TK/ENTK/FTM/REPORT/FINAL/PDF/PART1.WIPO)

ACKNOWLEDGES That A Singular And Exclusive Definition Of Traditional Knowledge Is Not Possible, This Is Merely A Working Definition, (1998-1999).

<sup>4</sup> Sutton, M.Q. And Anderson, E.N. Introduction To Cultural Ecology, (Walnut Creek, C.A.: Altamira Press, 2004) Pp 96-124.



medicine for its primary health needs<sup>5</sup>. If we just consider pharmaceuticals, while many companies invest in natural product research, such an approach competes with others such as combinatorial chemistry, rational drug design, genomics<sup>6</sup>proteomics<sup>7</sup> and RNA interference<sup>8</sup> that many in the industry consider to be more promising

#### **Traditional Ecological Knowledge :**

Traditional Knowledge as a body of knowledge built by a group of people living in close contact with nature. Traditional Ecological Knowledge, also called by other names including Indigenous Knowledge or Native Science, (hereafter, TEK) refers to the evolving knowledge acquired by indigenous and local peoples over hundreds or thousands of years through direct contact with the environment.

As well, the Plan of Implementation of the World Summit on Sustainable Development (WSSD) (paragraph 42(j) calls on countries to, subject to national legislation, recognize the Right of local and indigenous communities who are holders

of Traditional Knowledge, innovations and practices, and develop and implement benefit-sharing mechanisms on mutually agreed terms for the use of such knowledge, innovations and practices<sup>9</sup>. Conflicts have also arise in over the issue of generic drug production near the end of patent periods.

At the same time, the developing countries have become more aggressive in expressing their opinions and guarding their interests, particularly when strong global IDRs threaten public health or are used to capture indigenous knowledge<sup>10</sup>.

The bottom line seems to be this: the global (developed nation) corporate actors that have previously been very influential in the evolution of TRIPs will see their influence wane in future negotiation. Science and technology stated that the primitive man began designing tools and using them for his convenience and protection or for aggression.

The weapons of the hunter-gatherer, the harvesting of corn and its storage in earthen pots in kraals by the early agriculturist and the invention of the wheel and cart were achievements of the human intellect of no mean order<sup>11</sup>. The

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<sup>5</sup> Corrier, T &Pannizzon,M.,”Legal Perspectives On Traditional Knowledge: Of Traditional Ecological Knowledge (Tek) In Environmental Science , Policy And Decision-Making “,(2011).

<sup>6</sup> National EPA- Tribal Science Council, Tribal Science Priority –Final “Integration Of Traditional Ecological Knowledge (TEK)In Environmental Science Policy And Decision – Making “(2011)

<sup>7</sup> The Literature As Yet Does Not Examine Whetger Enlightenment Calues Or Constitutional Law Based Culture Can Also Be Considered Traditional Knowledge

<sup>8</sup> “OLD WIVES TALES”are still in common use.

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<sup>9</sup> Menzies. Charles. ”Traditional Ecological Knowledge And Natural Resources Management ‘Board Of Regents, University Of Nebraska(2006).

<sup>10</sup> Richard V. Adkisson.”Globliziing Intellectual Ptoperty Fihge “The Trips Agreement By Duncan Matthews Review ,Journal Of Econlmic Issues, Published By Association For Evolutionary Economics Stable Vol.37,No.3 (Sep.,2003),Pp836-838.

<sup>11</sup> N,H Antia, “Intellectual Property Right “ Economic And Political



Universal Declaration of Human Right, the International Covenant on Civil and Political Right,<sup>12</sup> Protocol 1 of the European Convention on Human Right<sup>13</sup> and the American Declaration of the Right and Duties of Man<sup>14</sup> all recognize the right to property as fundamental.

The protection of intellectual property Right has been considered as an engine of economic growth in developed and developing economies. The protection of the Intellectual Property Right (IPR) has been an integral component of economic growth both in developed and developing countries<sup>15</sup>.

Intellectual property protection carves out exclusive Right to an individual (either a natural person or a legal one) to exploit particular creations of human ingenuity. The Right deal with informational services which are

intangible not readily susceptible to either possession or delineation<sup>16</sup>.

Over the past decade or so, biotechnology<sup>17</sup>, pharmaceutical and human health care<sup>18</sup> industries have increased their interest in natural products<sup>19</sup> as sources of new biochemical compounds for drug, chemical and agro-products development<sup>20</sup>.

Traditional Knowledge study will also make a modest attempt to examine the mandate of WIPO in the global governance of intellectual property Right and existing standards of intellectual property protection as embodied in TRIPS, with specific focus on the protection of Traditional Knowledge,

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Weekly, Vol.27no.27(Jul.4, 1992) <Pp1374-1376.

<sup>12</sup> Intellectual Property Right (Ipr) As A Part Of The Dunkel Draft For The Uruguay Round Of Gatt Has Raised Considerable Apprehension, In The Minds Not Only Of Parliamentarians And The Bureaucracy But Also Among Professionals, Businessmen, Industrialists And The Public At Large.

<sup>13</sup> Rebecca „Nratspiesm” Law The New Discovery Doctrine :Some Thoughts On Property Right And Traditional Knowledge” Indian Law Review ,Symposium: Kabds, Liberties, And Legacies: Indigenous Peoples And International Law ,Vol.31, No.02, (University Of Oklahoma College Of Law, 2006/2007), Pp315-340.

<sup>14</sup> RAFI, 1994.

<sup>15</sup> G,B,Reddy ,Intellectual Property Right And The Law ,(1<sup>st</sup> Edition ,Gogia Law Publications, 2000), P.18.

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<sup>16</sup> A.S .Bhalla ,(Editor), “Introduction In Globalization ,Growth And Marginlization” I D R C,(1998)Pp1-12.

<sup>17</sup> Abdul Sattar and Tahir Mahmood,”Intellectual Property Right And Economic Growth: Evidences From High Middle And Low Income Countries” Pakistan Economic And Social Review ,Vol.49,(No.2 department Of Economics, University Of The Punjab, 2011) Pp163-186

<sup>18</sup> Batto, Robert J “Economic Growth In A Cross Section Of Countries “The Quarterly Journal Of Economic, Volume 106(20) ,(1991) ,PP 407-443.

<sup>19</sup> BENHABIB, J, And M.M. Spiegel “The Role Of Human Capital In Economic Development: Evidence From Aggregate Cross –Country Data “Journal Of Monetary Economics ,Volume 34(2),(1994), P 143-173. [Http://Dx.Doi.Org/10.1016/0304-3932\(94\)90047-7](http://Dx.Doi.Org/10.1016/0304-3932(94)90047-7)

<sup>20</sup> Cohen, W.M. And D.A. Levinthal,”Innovation And Learning: The Two Faces Of R&D “The Economic Journal ,Volume 99 (397),(1989), Pp 569-596. [Http://Www.Jator.Org/Stable/2233763](http://Www.Jator.Org/Stable/2233763)



taking into account the concerns of developing countries<sup>21</sup>

While much of the earlier efforts by developing countries were to prove the "prior art" of TK and hence preserve it from misappropriation. Today, it is increasingly being acknowledged that the framing of the legal question pertaining to TK, with its spiritual and non-commercial nuances, is far more complex<sup>22</sup>.

## 20. Protection of Traditional Knowledge :

The discourse concerning the protection of traditional, local or indigenous knowledge has been characterized by some scholars as a means of resistance of the worlds disempowered in the hierarchies of power and culture<sup>23</sup>.

Recent efforts to address the legal fragmentation in the debate on the protection of TCEs have led scholars<sup>24</sup> to urge an exploration of human Right to

supplement and offer a theoretical framework for the protection of traditional or indigenous knowledge<sup>25</sup> suggests that:

Human Right in its present state of development offers us at least a common vocabulary with which to begin this project, even if, for the time being, not a common language. The protections of TCEs are the 1948, Universal Declaration of Human Right (UDHR); the 1966, International Covenant on Civil and Political Right (ICCPR) and the 1966. International Covenant on Economic, Social and Political Right (ICESCR). With regard to the Right of indigenous communities, in the protection of their TCEs, the recently adopted 2007, UN Declaration on the Right of Indigenous People (DRIP) is also relevant

The UDHR, in Art 27(1), states that everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Furthermore, the UDHR also states that: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" [UDHR, Art27(2)].

Cultural Right are provided in the ICESCR [Art 15(1) (c)], which uses a literal reproduction of the text of Art 27(2) of the UDHR. According to a recent interpretation, Art 15(1) (c) of the ICESCR provides for a linkage between copyright and indigenous cultural expressions.

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<sup>21</sup> Syndham hulme "the history of the patent system under the prerogative and at common law" 12 L.O.R., (1989), p141.

<sup>22</sup> Commbe, Rosemary, protecting cultural industries to promote cultural diversity :dilemmas for international policy –making posed by the recognition of traditional knowledge" in Keith Maskus and Jerome Reichman (eds.) "international public goods and transfer of technology under a globalized intellectual property regime" (Cambridge:Cambridge university press,2005a).

<sup>23</sup> Syndham hulme "the history of the patent system under the prerogative and common law", 12 L.O.R. (1896), P.141.

<sup>24</sup> Jane C.Ginsberg, "International Copyright: From Bundle Of Copy Laws To A Super National Code ?" Journal Of The Copyright Society Of The Usa, Vol 47, (2000), Pp265-287.

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<sup>25</sup> Rajeev Dhavanet. AI , Conquest By Patents; The Paris Convention Revisited "32jili ( 1990), P,138.



Paragraph 32 of the General Comment No. 17 on Art 15(1) (c) of the ICESCR

#### **Indigenous People Right :**

There is no internationally accepted definition of the term 'indigenous' or the term 'tribal' which is sometimes used synonymously<sup>26</sup>. Furthermore, there is a long-standing debate whether indigenous groups are to be called 'communities', 'people', 'peoples' or 'populations'. The term "peoples" is associated with the right of complete self-determination, which governments often have no intention of according to indigenous groups residing within their national territory. However, the terms now seem to be used interchangeably<sup>27</sup>. According to the Independent Commission on International Humanitarian Issues (1987) the term 'indigenous' includes the four elements of pre-existence, non-dominance, cultural difference and self-identification.

#### **The Right to Indigenous Intellectual and Cultural Property :**

A trend similar to that which concerns tangible resources exists in relation to the knowledge and culture of indigenous people. Because of the nature of most knowledge of indigenous and local communities held collectively, evolved over time existing intellectual property

<sup>26</sup> Jan Engels Dan Leskien And Michael Filtner,"Intellectual Property Right And Plant Genetic Resources: Options For A Sui Generis System ,Traditional Resoutve Tighe "Issues In Genetic Resources No .6,June 1997.

<sup>27</sup> Pasey,D.And G,Dutfield"Beyond Intellectual Property Right.Toward Traditional Resource Right For Indigenous Peoples And Local Communities "IDRC, Ottawa, (1996).

regimes are largely inadequate for protecting or rewarding this knowledge<sup>28</sup>. Intellectual property legislation, like patent or copyright law, is basically designed to protect readily identifiable, differentiated contributions to existing, general knowledge. While due to its very nature indigenous knowledge is gradually built over decades of centuries<sup>29</sup> and is often Traditional Knowledge which due to its lack of novelty is, in particular, not protectable under patent law. Instead, modern thinking on IPR systems is what they are socially agreed upon systems of incentives to encourage innovation<sup>30</sup>. Over the past decade or so, biotechnology, pharmaceutical and human health care industries have increased their interest in natural products as sources of new biochemical compounds for drug, chemical and agro-products development. Of the 119 drugs developed from higher plants and on the world market today, it is estimated that 74% were discovered from a pool of traditional herbal medicine. In 1990 Posey estimated that the annual world market for medicines derived from medicinal plants discovered

<sup>28</sup> Axt, J,R,Et Al."Biotechnology, Indigemous Peoples ,And Intellectual Property Right Congressional Research Service"Report For The Congress Washington DC,Usa,(1993).

<sup>29</sup> Hitchcock ,r.k,colotado j, "international human righr the environment, and indigenous peoples"Colorado j.Int. Environ .Law And Policy ,(1994),pp1-22,at5.

<sup>30</sup> Lesser , W.H 'Attributes Of An Intellectual Property Right System For Landraces In Biodiversity: Politics And Law In The Ligne Of Sustainable Development "(Salazar,;Ja.Cabrera Medaglia And A Lopez Mora,Eds.)Fundacion AMBIO,San Jose ,Costa Rica (1994),Pp247-279.



from indigenous peoples amounted to US\$ 43 billion.

A report prepared by the Rural Advancement Fund International (RAFI) estimated that at the beginning of the 1990s, worldwide sales of pharmaceuticals amounted to more than US\$ 130,000 million annually<sup>31</sup>.

The natural Right theory would maintain that the creator is entitled to the intellectual fruits of his or her labor. A second theory, basic to Anglo/American law, would justify property Right on intangibles to encourage production of information through economic reward. These theories, natural Right and economic incentive, focus on the owner or creator as property owner.

But the right of ownership is not the only interest at stake in providing legal protection for intellectual property. When a third party infringes the Right of the intellectual property owner, another theory of protection comes into play. Infringement of intellectual property constitutes an act of unfair competition and falls under the general body of tort law.

Protection against unfair competition benefits not only the intellectual property owner but also the consumer. This interest arises particularly in trademark law that prohibits the sale of products or services bearing words, names, symbols, and devices that are confusingly similar to that of the trademark owner. The protection against

acts of unfair competition has been given recognition in international treaties and is embodied in Art 19 of the Paris Convention.

Globalization means different things to different people. The characterization of information has suggested serves as the foundation for his argument that intellectual property Right, specifically copyright, are outmoded and irrelevant in a digital age in fact, that everything you know about intellectual property is wrong.

Below has this to say about how he sees the nature of information: Information is an activity. Information is a life form, Information is a relationship. The origin of patents is mostly traced from the Europe. The initial form of patents in the form of open letter privileges could be seen from the first half of fourteenth century itself. This was mainly to promote industrial development in England that faced stagnation as compared to continental countries like France, Germany, Italy, Spain etc. In the 14<sup>th</sup> Century only, the first local manufacturing industry, i.e., textile industry was established in England, that too owing to the earnest efforts of the Crown.

For the growth of the textile industry, the Crown started giving various grants to foreign traders in return for establishment of industry in the Commonwealth and teaching the interested natives the art of weaving. It is also to be noted that there was no disclosure of the invention and the sole object of granting monopoly was promotion of industrial growth.

In the field of copyright also, the bilateral treaties created greater complexity due to the diversity of laws persisted.

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<sup>31</sup> CH"Commission On Human Right Sub – Commission On Prevention Of Discrimination And Protection Of Minorities, Intellectual Property Of Indigenous Peoples “,44<sup>th</sup> Session ,Concise Report Of The Secretary-General ,E/CN.4sub.21992/30,(1992).



The provisions were amended to increase the scope of author's Right. In addition to the translation Right originally recognized by Berne, more exclusive Right were added in the course of revision reflecting the technological developments during the period. With respect to the subject matter of copyright, the Berne does not articulate a standard of originality and leaves it to the possibility of national variations.

Accordingly, changes were made in the Bern allowing the developing countries to get greater access to copyright materials through the Stockholm Protocol, 1967. Paris Convention was also subject to revision in 1980, 1981, 1982 and 1984 due to the push from the developing countries for more liberalized provisions on compulsory licensing<sup>32</sup>.

### **Conclusion**

Intellectual property is the creation of human mind, human intellect and hence called "intellectual property". The intellectual property is created by incorporating information intangible objects capable of multiplying in an unlimited number of times at different locations anywhere in the world. The property is basically in the context, idea thought and thereafter in the actual product work or process etc.

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<sup>32</sup> Blakeney ,Michael,"trade related aspects of intellectual property rights"a concise guide to the trips agreement ,London sweet and Maxwell,(1996).