



Preservation and Protection of Indigenous Traditional Knowledge: Through Government Initiatives

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Abstract

Traditional knowledge (TK) is the knowledge that an indigenous community accumulates over generations of living. A part of this knowledge is recorded in local languages, a major portion is still not recorded, and remains confined to local communities. In the light of the prevalent loss and threatened future of TK, it is important to preserve it in a contemporary format that would be familiar to the future generation. Preservation also empowers the community/country to protect its knowledge from misuse and utilize it for better development. This study highlights some major documentation initiatives across the globe at the community and country levels that aim at preserving and safeguarding TK. the protection of indigenous traditional knowledge through laws and policies regarding the rights of indigenous people that also plays a vital role in sustainable development.

Keywords: Traditional Knowledge, Indigenous People, Policies, protection, preserving traditional knowledge, protecting traditional knowledge

Introduction

“A bird can only fly if it has feathers.” This statement defines the role of traditional knowledge is the same as the feathers. Traditional knowledge can be said as the knowledge of practice of the skills which have been developed or sustained and that which passed from generation to generation within a community, which forms a part of its cultural or spiritual identity often. It is an enabling component of development. Our cultural artifacts, our cultural fabric, rely on every single interlinking part of the fabric; our knowledge system is an integral part of traditional knowledge.

Indigenous peoples have developed a close and unique connection with the lands and environment in which they live. They have established distinct systems of knowledge, innovation and practices relating to the uses and management of biological diversity on these lands and environment, like many other initiatives in the area of popular participation, a favorable enabling environment is necessary to promote the use of traditional institutions and knowledge. Government provides such an environment through the passage of legislation and adoption of policies and various important initiatives.

The Term- “Traditional Knowledge” (TK) (or other continuous terms such as indigenous knowledge and local knowledge) generally refer to the long-standing information, wisdom, traditions and practices of certain indigenous peoples or local communities. In many cases, traditional knowledge has been orally passed for generations from person to person. Some forms of traditional knowledge are expressed through stories, legends, folklore, rituals, songs, art and even laws. Other forms of traditional knowledge are often expressed, through different means. One distinction that is often made between traditional knowledge and modern or western

knowledge is that unlike the latter, traditional knowledge does not separate “secular” or “rational” knowledge from spiritual knowledge, intuitions and wisdom. It is often embedded in a cosmology, and the distinction between “intangible” knowledge and physical things is often blurred. Indeed, holders of traditional knowledge often claim that their knowledge cannot be divorced from the natural and cultural content within which it has arisen, including their traditional lands and resources, and their kinship and community relations.

It is important to emphasize that traditional knowledge is not, as often perceived, a static phenomenon, but one that is constantly evolving with changes in the internal and external environment of the community concerned.

The International Council for Science (ICSU) defines traditional Knowledge as:

A cumulative body of knowledge knows- how, practices and representations maintained and developed by peoples with extended histories of interaction with the natural environment. These sophisticated sets of understandings, interpretations and means are part of a cultural complex that encompasses language, naming and classification systems, resource use practices, ritual, spirituality and worldview.ⁱ

Indigenous traditional knowledge generally means traditional practices and culture and the knowledge of plants and animals and of their methods of propagation. It includes:

- Expressions of cultural values
- Beliefs
- Rituals and community laws
- Knowledge regarding land and ecosystem managementⁱⁱ

The rights to Indigenous Traditional Knowledge are generally owned collectively by the Indigenous Community (or language group, or tribal group), as distinct from the individual. It may be a section of the community or, in certain circumstances, a particular person sanctioned by the community that is able to speak for a make decisions in relation to a particular instance of traditional knowledge.

It is more often unwritten and handed down orally from generation to generation, and it is transmitted and preserved in that way. Some of the knowledge is of a highly sacred and secret nature and therefore extremely sensitive, culturally significant, and not readily publicly available even to members of the particular group.

The maintenance and protection of indigenous traditional knowledge is crucial to the maintenance of indigenous culture. It is also valuable to development policy, operations, and the advancement of understanding of sustainability on a global scale.

Classes of threat to Indigenous Traditional Knowledge

The preservation of indigenous traditional knowledge is under threat. A report provided by the Australian Institute of Aboriginal and Torres Strait Islander Studies to the Secretariat of the Convention on Biological Diversity identified the following threats to Indigenous traditional knowledge:

1. Political pressures –the recognition and standing of indigenous traditional knowledge, including involvement in policy and legislative development
2. Cultural Integrity
3. Social and economic pressures- assimilation, poverty, education, marginalization of women, loss of language
4. Territorial pressures- deforestation, forced displacement and migration

5. Exploitation of traditional knowledge- bioprospecting, objectification
6. Development policy-agricultural and industrial development
7. Globalization and trade liberalizationⁱⁱⁱ

Protection of Indigenous Knowledge's

Opportunities to preserve and value indigenous, traditional knowledge are endangered by the range of problem within our environment and communities today. Avenues for the preservation of traditional knowledge are fading and are of risk of being lost altogether. Loss of traditional knowledge will result in a decline of Indigenous identity and a severe reduction in the recognition and understanding of an invaluable sustainable knowledge system.^{iv}

Indigenous peoples have the right to maintain control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions as well as the manifestations of their sciences technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect, and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. Thus, TK needs to be protected in addition to preserving it. WIPO clearly distinguishes preservation from protection-wherein preservation means identification, documentation, transmission, revitalization and promotion of cultural heritage to ensure its maintenance. However, protection of TK may mean the protection of TK against their misuse and misappropriation, such as copying, adaptation or use by unauthorized third parties.

Therefore, there are the initiatives taken by government for the protection of traditional knowledge:

- **Defensive Protection:** defensive protection refers to a set of strategies to ensure that third parties do not gain intelligence or unfound IP rights over TK.
- **Positive Protection**
 1. Acknowledging control of custodians (State/ community) over traditional knowledge
 2. Ability to deny/ authorize access and use
 3. Prevention of Misappropriation: Prior Informed Consent, including the conditions of use
 4. Benefit Sharing- Mutually Agreed Terms (monetary as well as non-monetary)
 5. Protection of TK needs to be inter-linked with GR and TCEs^v

Indian Initiatives

Legislative

- National Biological Diversity Act
- Patents Act (Section 3(p))
- Protection off Plant Varieties and Farmers Rights Act
- Geographical Indications Act
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Administrative

- TKDL- Traditional Knowledge Digital Library

- TKRC- Traditional Knowledge Resource Classification
- Inclusion of Indian Journal relating to TK in PCT minimum documentation
- State Level- TKIK
- Community Level databases- PBRs

International Instruments

There are major international instruments that recognize the right of Indigenous peoples to protect and enjoy their traditional knowledge because the indigenous traditional knowledge is relevant and should be incorporated into policies developed across each of the areas considered.

There are the major international instruments that recognize Indigenous peoples’ right to protect their traditional knowledge.

| International Instrument | Provision |
|--|----------------------------|
| 1. The Universal Declaration of Human Rights | Article 27 |
| 2. The International Covenant on Economic, Social and Cultural Rights | Article 15, paragraph 1(C) |
| 3. International Covenant on Civil and Political Rights | Article 27 |
| 4. The Convention on Biological Diversity | Article 8 (j) |
| 5. The International Labour Organisation Convention No. 169 concerning Indigenous and Tribal People in Independent Countries | Article 13, 15, 23 |
| 6. Agenda 21 | Paragraph 26.1 |
| 7. The Rio Declaration on Environment and Development | Principle 22 |
| 8. The Declaration on the Rights of Indigenous Peoples | Articles 11 and 31 |

The Declaration on the Rights of Indigenous Peoples draws on other major instruments to provide the most explicit recognition internationally of Indigenous people’s rights to their traditional knowledge.

Sources of Traditional Knowledge

- Existence of TK can be broadly divided into two categories- recorded and oral knowledge. Recorded knowledge is often referred as codified and is available mainly in the form of ancient texts and books. Contemporary books, journals and reports that focus on TK are also the sources of recorded knowledge.
- Another significant category of TK is the oral knowledge that is not recorded or codified anywhere. It is widely dispersed; remains confined to the local communities and are transferred only orally from generation to generation. Identifying and preserving oral knowledge needs utmost attention as it is the basis of livelihood for many indigenous communities and the threat is not only towards losing it but also because of its gross misuse by corporate and private parties.^{vi}

Preserving Codified Traditional Knowledge- Example

- **Traditional Knowledge Digital Library (TKDL)**

- India is one of the largest TK holding countries in the world. India's effort on revocation of patent on turmeric and neem led to the genesis of Traditional Knowledge Digital Library (TKDL), knowledge respiratory on the Indian traditional system of medicine including ayurveda, siddha, unani and yoga.
- TKDL is an initiative of several Indian Government agencies, proposes to document the disclosed traditional medicinal knowledge available in public domain by shifting and collating information on TK from the existing disclosed literature covering Ayurveda.
- The TKDL compiles the information in digitized format in five international languages, which are English, German, French, Japanese and Spanish. An interdisciplinary team of Ayurveda experts, a patent examiner, information technology experts, scientists and technical officers have worked for one and a half years for creating the TKDL of Ayurveda.
- TKDL seeks to give recognition and legitimacy to the existing TK and enable protection of such information from being patented.
- Traditional Knowledge Resource Classification (TKRC) is an innovative structured classification system for the purpose of systematic arrangement, dissemination and retrieval. This has been developed for about 5000 subgroups against one group in international patent classification.
- TKDL is a collaborative project between the Indian National Institute of Science Communication and Information Resources and the Department of Indian Systems of Medicine and Homeopathy, Ministry of Health and Family Welfare.
- Digitalization of the traditional medicinal knowledge- available in public domain in the form of existing literature related to codified systems of Ayurveda, Unani, Siddha and Yoga.
- Its objective- is to protect the ancient and traditional knowledge of the country from exploitation through bio-piracy and unethical patents.
- Access to around 3, 30,044 Traditional Medicinal Formulation is available to 10 Patent Offices in patent compatible format in five international languages under TKDL Access Agreement. (EPO, USPTO, JPO, CIPO, UKPTO, IP Australia, IPO, DPMA- German, Chile and Malaysia)
- Effective mechanism for defensive protection, facilitating the prior art search, bridging the language barrier
- Has the potential of misuse , by unauthorized access to information
- Contributions of local communities and holders of other codified, non- codified and undisclosed knowledge not protected.

Traditional Knowledge Digital Library (TKDL). www.tkdil.res.in

National IPR Policy- May 2016- Relevant Excerpts

- The ambit of Traditional Knowledge Digital Library (TKDL) should also be expanded to include other fields being Ayurveda, Yoga, Unani and Siddha.
- Public Research Institutions should be allowed access to TKDL for further R & D, while the possibility of using TKDL for further R & D by private sector may also be explored, provided necessary safeguards are in place to prevent misappropriation.
- Documentation oral traditional knowledge, taking care that the integrity of the said knowledge is preserved and traditional ways of life of communities are not compromised.
- Promote India's rich heritage of traditional knowledge with the effective involvement and participation of the holders of such knowledge. Traditional knowledge holders will be provided necessary support and incentives for furthering the knowledge systems that they have nurtured from the dawn of our civilization

A Framework for Protection

As per the identification, the current arrangements for protecting intellectual property rights are inadequate to protect indigenous knowledge's. With significant challenges such as climate change ahead, a national legislative regime is urgently required to enable the fullest possible for indigenous knowledge's.

A national legislative regime framework for the protection of Indigenous peoples in a changing climate will require

- An appropriate legislative framework
- National principles for engagement
- National principles for protection

(a) A Legislative framework that provide for:

- The full participation and engagement of Indigenous peoples in negotiations and agreements between parties

- The adoption of and compliance with the principle of free, prior and informed consent
- The protection of Indigenous interests, specifically access to our lands, waters and natural resources
- The protection of Indigenous areas of significance, biodiversity and cultural heritage
- The protection of Indigenous knowledge relevant to climate change adaptation and mitigation strategies
- Access and benefit-sharing through partnerships between the private sector and indigenous communities
- Non-discrimination and substantive equality

(b) National Principles for Engagement that includes:

- A Human Rights- Based Approach to Development
- All policies and progress relating to indigenous peoples and communities must be based on the principles of non-discrimination and equality, which recognize the cultural distinctiveness and diversity of indigenous peoples
- Governments should consider the introduction of constitutions and or legislative provisions recognizing indigenous rights
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives
- Such participation shall be based on the principle of free, prior and informed consent, which includes governments and the private sector providing information that is accurate, accessible and in a language the indigenous peoples can understand
- Mechanisms should exist for parties to resolve disputes, including access to independent systems of arbitration and conflict resolution.

(c) Mechanisms for representation and engagement

- Government and the private sector should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities
- Indigenous peoples and communities have the right to choose their representatives and the right to specify the decision- making structures through which they engage with other sectors of society.

Design, negotiation, implementation, monitoring and evaluation

- Frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes
- Indigenous peoples and communities should be invited to participate in identifying and prioritizing objectives, as well as in establishing (short and long-term) targets and benchmarks.
- There should be accurate and appropriate reporting by governments on progress in addressing agreed outcomes, with adequate data collection and disaggregation

- In engaging with indigenous communities, governments and the private sector should adopt a long-term approach to planning and funding that focuses on achieving sustainable outcomes and which is responsive to the human rights and changing needs and aspirations of indigenous communities.

Capacity- building

- There is a need for governments, the private sector, civil society and international organizations and aid agencies to support efforts to build the capacity of indigenous communities, including in the area of human rights so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them.
- Similarly, there is a need to build capacity of government officials the private sector and other non-governmental actors, which includes increasing their knowledge of indigenous peoples and awareness of the human rights based approach to development so that they are able to effectively engage with indigenous communities
- This should include campaigns to recruit and then support indigenous people into government, private and non-government sectors employment, as well as involve the training in capacity building and cultural awareness for civil servants.

(d) National Principles for Protection that:

- Undertake direct consultation with Indigenous peoples as to their customary law and other requirements
- Ensure compliance with Indigenous peoples customary law and other requirements
- Seek free, prior and informed consent for the use of any Indigenous traditional knowledge from the custodians of that traditional knowledge
- Seek free, prior and informed consent for access Indigenous lands and waters for any purposes, including collection
- Ensure ethical conduct in any consultation, collection, or other processes
- Ensure the use of agreements on mutually agreed terms with Indigenous peoples for all parts of the process
- Devise equitable benefit-sharing arrangements
- Formally acknowledge the contribution of Aboriginal peoples, including for example co-authorship ^{vii}

Conclusions

Preserving and safeguarding traditional knowledge has assumed great significance in the recent past and variety of initiatives are being made across the globe towards achieving. In view of wider misuse of traditional knowledge, preservation and protection should work hand- in- hand. Documenting non-codified knowledge is not very successful in a large perspective because of the variety of issues involved. However, urgent measures are required to preserve oral knowledge as it faces greater risk of loss and misappropriation.

In addition, documentation of medicinal knowledge has gained prominence in many countries in their fight against biopiracy. However, TK involves various sectors like

agriculture, environment, architecture, culture, heritage etc. that are interlinked and applied to daily living. All this knowledge needs to be preserved in order to achieve inclusive development.

References

ⁱ International Council for Science and Traditional Knowledge, Report from ICSU Study Group on Science and Traditional Knowledge, paper delivered to 27th General Assembly of ICSU, Rio De Janeiro, Brazil September 2002

ⁱⁱ United Nations Permanent Forum on Indigenous Issues, Report of the Secretariat on Indigenous Traditional Knowledge, UN Doc E/C.19/2007,10.

At:[http://daccessdas.un.org/doc/UNDOC/GEN/No7/277/15/PDF/No727715.pdf?](http://daccessdas.un.org/doc/UNDOC/GEN/No7/277/15/PDF/No727715.pdf?open=element) open element (viewed 24 December,2018)

ⁱⁱⁱ G. Kelly (AIATSIS), Report on threats to the Practice and Transmission of Traditional Knowledge Regional Report: Asia and Australia, Phase II of the Composite Report on the status of Trends Regarding the Knowledge, Innovation and Practices of Indigenous Peoples and Local Communities relevant to the Conservation and Sustainable use of Biodiversity,2005, UN DOC,UNEP/CBDWG8J/4, p/25

^{iv} Traditional Knowledge Revival Pathways.At:[http://tkrp.com.au/index.php?option=com_content & tasks=view &id=17&itemid=26](http://tkrp.com.au/index.php?option=com_content&tasks=view&id=17&itemid=26)(viewed 24 December,2018)

^v World Intellectual Property Organization(WIPO), (25 December, 2018); <http://www.wipo.int/>

^{vi} Traditional Knowledge Digital Library (TKDL). Bio-piracy of Traditional Knowledge, (25 December 2018),<http://www.tkdl.res.in>

^{vii} Report of the workshop on engaging with Indigenous communities, HREOC, Sydney, and United Nations, New York 2005. At:www.humanrights.gov.au/social_justice/ (viewed 26 December,2018)