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Volume 11 Issue 8 | March 2020

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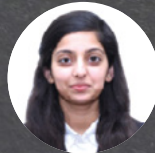


Sachin Gupta
Sr. Partner,
Dhir & Dhir
Associates



Amir Bavani
Principal Associate,
Dhir & Dhir
Associates

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Aishwarya Chaturvedi
Associate, Singh &
Singh Law Firm LLP

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Niraj Singh
Partner,
RNS Associates

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Shilpa Gamnani
Associate,
TMT Law Practice
LLP



Atmaja Tripathy
Associate,
TMT Law Practice
LLP

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Smita Paliwal
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King Stubb & Kasiva,
Advocates &
Attorneys



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King Stubb & Kasiva,
Advocates &
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Sim & San
Attorneys At Law



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S. Jalan & Co.



Titash Mukherjee
Principal Associate,
S. Jalan & Co.

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Ashu Kansal
Partner,
Adhita Advisors



Milan Negi
Sr. Associate,
Adhita Advisors

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Lucy Rana
Partner,
SS Rana & Co.



Meril Mathew Joy
Associate
Advocate,
SS Rana & Co.

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Sr. Partner,
Law Senate

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President,
SILF & BAI



Jayashree Shukla Dasgupta
Partner, Dhir & Dhir Associates



Saloni Chowdhry
Sr. Associate, Dhir &
Dhir Associates



Swati Sharma
Sr. Associate, Dhir &
Dhir Associates

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Traditional Knowledge and Contemporary Trends

■ **Aishwarya Chaturvedi**

Knowledge is wealth, and India possesses a treasure trove of traditional knowledge, which contributes to the rich cultural heritage of the country. India has 705

officially recognized ethnic groups¹ residing in different parts of the country. Besides the 705 official recognized groups, there are several more that are not officially recognized, undoubtedly raising the total figure to more than 705. Each of these groups have a vast repository of traditional knowledge in the form of music, art, folklore, traditional medicines, to name a few.

Traditional knowledge is extremely integral in forming the cultural development of societies, as such knowledge encompasses systems of classification, rituals, folklore, folk music and dance, languages, resource use practices, etc. Such knowledge plays a profound role in the society and helps in defining and shaping its basic existence as well as provides the fundamental foundation for traditional practices and beliefs of a society. Therefore, protecting the rich endowment of traditional knowledge is of utmost importance to prevent its misappropriation.

However, it is imperative to understand that Traditional Knowledge

is not just about biodiversity, agriculture or health but also includes traditional cultural expressions/expressions of folklore i.e. cultural manifestations such as music, art, designs, symbols and performances, and genetic resources i.e. genetic material of actual or potential value found in plants, animals and micro-organisms.

The concept and branch of Traditional Knowledge emanated and sprung on the global platform with the conclusion of the Convention on Biological Diversity (CBD) in the year 1992.

An explanation of the concept of traditional knowledge is provided under Article 8(j) of the Convention on Biological Diversity, which reads as follows:

“Traditional knowledge refers to the 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. Sometimes it is referred to as



C-139, Defence Colony
New Delhi - 110024, India
T: +91 11 - 4987 6099
T: +91 11 - 4982 6000 to 6099
E: email@singhandsingh.com



an oral traditional for it is practiced, sung, danced, painted, carved, chanted and performed down through millennia. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, forestry and environmental management in general.”

World Intellectual Property Organization (WIPO) has defined Traditional Knowledge as follows –

“Traditional knowledge is not so-called because of its antiquity. It 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.”²

Traditional knowledge is often informal and passed on from one generation to another orally, and forms a branch of the established intellectual property regime. However, there have been several debates and discussions since the past few years on the protection of Traditional knowledge as Intellectual Property. It is mainly because Traditional Knowledge is not easily protected by the present intellectual property regime, which essentially grants protection for a limited period of time to inventions and original works by named/identifiable individuals or companies. This has impelled several nations including India, to develop a system to protect the huge repository of Traditional Knowledge possessed by the indigenous communities in order to avert

commercial misappropriation of such knowledge.

Understanding what constitutes misappropriation is essential in order to protect the age-old practices, traditional culture and heritage. Today, various forms of traditional knowledge have gained recognition globally for their uniqueness. People across the world have started taking inspiration from it and have adapted it in different languages and forms. Most often, the creator gives credit to their inspiration, which helps in promotion of such knowledge. Such use does not constitute misappropriation. However, more often than not the creator uses various forms of traditional knowledge without making any substantial changes to the existing

work or without giving credit to the community to which it belongs, for personal gains and such use may amount to misappropriation.

There are essentially two types of misappropriation –

1. Commercial exploitation of traditional knowledge

2. Exploitation that interrupts the exclusivity, sanctity, aesthetics, and cultural sensitivity

In 2000, WIPO members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), and in 2009 they agreed to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection.³

The following two types of Intellectual Property protection is sought for traditional knowledge:

(i) Defensive protection which aims to stop people outside the community from acquiring intellectual property rights over traditional knowledge. India, for example, has compiled a searchable database of traditional medicine that can be used as evidence of prior art by patent examiners when assessing patent applications. Defensive strategies might also be used to protect sacred cultural manifestations, such as sacred symbols or words from being registered as trademarks⁴.

(ii) Positive protection under which there is granting of rights that empower

communities to promote their traditional knowledge, control its uses and benefit from its commercial exploitation. Some uses of traditional knowledge can be protected through the existing intellectual property system, and a number of countries have also developed specific legislation⁵.

In India, the project Traditional Knowledge Digital Library (TKDL) was initiated in 2001. It is a collaboration between the Council of Scientific and Industrial Research (CSIR), Ministry of Science and Technology, and the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Ministry of Health and Family Welfare, of India. It is being implemented at the CSIR. The inter-disciplinary team involved in the creation of the TKDL for Indian Systems of Medicine included traditional medicine experts (Ayurveda, Unani, Siddha and Yoga), patent examiners, IT experts, scientists and technical officers.⁶ This initiative helps Patent Offices to search for any practice or substance when granting patents and can dismiss it if found in the TKDL list of Indian Traditional Knowledge.

Indubitably it has, to a certain extent helped in protection of Traditional Knowledge of the indigenous communities of India from being misused/misappropriated. However, Indian traditional knowledge is not just limited to traditional medicine; it is much beyond it. The protection of folklore, traditional music, etc., which constitutes traditional cultural expression is also important. It should be noted that contemporary adaptations of famous folklore are copyrightable, while performances of traditional songs and music may come under the WIPO

Performances and Phonograms Treaty. However, including it in the existing copyright system can help in providing better protection.

Like other countries, India as well has developed a copyright system to protect the rights of artists, musicians, authors, etc. Usually, works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.⁷ However, traditional knowledge is not governed by the copyright law.

The prevalent copyright system adopts a particular approach towards the creative process, which excludes traditional knowledge because it is considered to be in the public domain and hence, essentially a common pool of works/ resources for the community at large to exploit. The Indian Copyright Act, 1957, as well does not have any provision for protection of folklore, traditional music or traditional knowledge as a whole.

In the present scenario, there isn't much scope for inclusion of Traditional knowledge in the existing copyright regime. However, like some countries that have special legislation for the protection of folklore, India as well can frame such legislation to protect the age-old traditional knowledge. For instance, Panama has established a registration system for traditional cultural expressions, while the Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture gives "traditional owners" the right to authorize or prevent use of protected folklore and receive a share of the benefits from any commercial exploitation.



The fundamental issue that prevents Traditional Knowledge to form a part of the copyright regime is that copyright in a work whether published or unpublished, is traced to an identifiable person and/or organisation while the same cannot be done in the case of traditional knowledge. For instance, in *Academy of General Education, Manipal And Another v. B. Malini Mallya*⁸, the Hon'ble Supreme Court acknowledged that Dr. Kota Shivarama Karanth a Jnanapeeth awardee, who was a Novelist, Play Writer, Essayist, Encyclopediationist, Cultural Anthropologist, Artist, Writer of Science, Environmentalist, developed a new form of the traditional ballet dance form "Yakshagana" in the form of "Yaksha Ranga" inasmuch as the

same was a creative extension of the traditional Yakshagana" and Dr. Karanth had also developed seven prasangas involving the same and since, the said work was creative extension, the same came under the purview of "dramatic work" under Copyright law. Therefore, it is lucid that unless there are significant changes and extensions made to the core form of the Traditional Knowledge concerned, the same shall not fall under the ambit of copyright law.

Additionally, a system like Geographical Indication (GI), which identifies a product with its uniqueness specific to a region or a method of traditional production and provides protection from being misused, should

be developed to protect the age-old knowledge possessed by the indigenous communities from being commercially exploited without due acknowledgement and monetary remuneration being given to them. The development of GI acts as a tool for regional promotion that will help in protecting our heritage. It can create value for local rural communities in developing countries through products that are deeply rooted in tradition, culture and geography. Likewise, a formal system should be developed to ensure protection and promotion of traditional knowledge in the form of art, music, folklore etc., so that the communities from which the respective traditional knowledge originates is given due recognition and also, awarded with



a share of the aids from any commercial exploitation.

Also, Trademark law has the concept of “Collective Trademarks”, which essentially refers to a trademark distinguishing the goods or services of members of an association of persons. In case of a Collective Trademark, the owner may be either an association of which the enterprises using the collective mark are members or any other entity, including a public institution or a cooperative and similarly, associations and groups can be formed either at regional level, state level or national level to protect the interest of the indigenous communities. Having such associations or groups will not only help prevent commercial exploitation of knowledge of indigenous communities but will also help in promotion the

age-old culture and traditions of these communities. The objective behind the institution of such groups and/or organisations is not to restrain the use and exploitation of such knowledge but to promote it further and more extensively in such a manner that it duly benefits the communities from which such knowledge stems and the history and heritage associated with such knowledge is appropriately attributed to the respective regions/communities.. It is imperative to appreciate that Traditional Knowledge forms the substratum of our culture and heritage and thus, deserves due positive protection so that our tales of heroism, nationalism and patriotism and celebration of our great victories and festivals in the form of folk dances and music are not strayed and cloaked under the face of commercialisation and contemporary trends. [W](#)



Aishwarya is currently working with Singh & Singh Law Firm as an associate and her practice areas include Copyright and Trademark litigation. She has authored the book “The Unheard Predicament: Social and Legal Perspective on Women and Child Rights in India.” She also has a keen interest in women and child empowerment and runs an NGO by the name Nirman.

¹<https://www.iwgia.org/en/india>, ²https://www.wipo.int/pressroom/en/briefs/tk_ip.html, ³https://www.wipo.int/pressroom/en/briefs/tk_ip.html
⁴http://www.wipo.int/pressroom/en/briefs/tk_ip.html, ⁵*Ibid*, ⁶https://www.wipo.int/meetings/en/2011/wipo_tkdl_del_11/about_tkdl.html
⁷<https://www.wipo.int/copyright/en/>, 8(2009) 4 SCC 256