

Bridging the Chasm: Integrating India's Tribal Customary Practices into the Modern Intellectual Property Rights Regime

Archana Pandey¹, Akanksha Pandey²

¹LLM, Central University of Jharkhand

²MA, University of Allahabad

Abstract

India has one of the most extensive collections of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), maintained by tribal groups through traditional medicinal use, biodiversity, agriculture, art, oral traditions and cultural ritual. The existing Intellectual Property Rights (IPR) system only protects individual ownership and innovative ideas, and therefore fails to provide adequate protection to tribal communities with respect to collective ownership and intergenerational tribal knowledge. The research aims to reveal what gaps exist between tribal customs and the current IPR system and possible avenues for effective protection. The study uses qualitative and doctrinal approaches based on both primary and secondary sources, where the primary sources consist of national laws and treaties, while the secondary sources include books, government papers, and court decisions. This investigation seeks to assess the effect of biopiracy on tribal cultures as well as the effectiveness of present-day legal regimes while offering recommendation for a new sui generis intellectual property rule system to regulate intellectual property holdings by tribal communities, including community tribal ownership, equitable community-wide participation in benefit-sharing, and a sworn community commitment to the fair distribution of community resources to enhance the effectiveness of the administration of tribal IP in India.

Keywords: Traditional Knowledge, Intellectual Property Rights, Tribal Governance, Biopiracy, Traditional Cultural Expressions, Sui Generis Law.

Introduction

Governance, authority, and power have always been linked with knowledge. Governance of knowledge is therefore very important to public policy because knowledge is governed by institutions to determine what type of knowledge receives legal recognition and protection. Within contemporary legal systems, Intellectual Property Rights (IPR) provide a legal framework to protect, regulate and trade knowledge (Maskus, 2000).

India has a unique context because of its vast traditional culture and a rich tribal background. India has over 700 Scheduled Tribes. It also has great deal of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), like indigenous medicine, biodiversity conservation, sustainable farming practices, handicrafts, folklore, and cultural traditions (Ministry of Tribal

Affairs, 2024; WIPO, 2023). In contrast to the modern scientific knowledge, tribal knowledge is created, maintained and transmitted collectively through institutions. It is viewed as a collective resource rather than an individual property right (Berkes, 2012).

The present-day intellectual property system is defined according to the basic tenets of individual authorship, novelty, originality, and commercial use. Some forms of IP like patents, copyrights and trademarks do not protect traditional community knowledge due to the fact that much of the knowledge transfer happens orally or collectively and not formally documented (UNESCO 2003). This difference creates a number of legal and governance issues, which in turn leads to the vulnerability of tribal knowledge to misappropriation and biopiracy. The successful challenges made by India to the turmeric and neem patents are examples of these structural deficiencies in the current global intellectual property system (CSIR 2022).

The resulting disconnection between indigenous knowledge systems and today's IPR regulatory frameworks is referred to as a "governance chasm" in the paper. This paper will describe how tribal knowledge can be seen as more than just cultural heritage; instead, it serves as an alternative form of governance that enhances ecologically sound practices, improves social bonding and enhances the quality of life for individual members of the group. For there to be any effective legal reform, the future frameworks of protection should go beyond defensive protections to include an acceptance of the principles of joint ownership; equitable distribution of benefits derived from use; the participation of all members; and to respect Constitutionally based pluralism.

Literature Review

The connection between Traditional Knowledge (TK) and Intellectual Property Rights (IPR) has gained much focus in law, governance, anthropological, and environmental fields. It is worth noting that the World Intellectual Property Organization (WIPO, 2023) recognizes the fact that traditional IPR regime fails to address the collective and intergenerational nature of indigenous knowledge, whereas the UNESCO (2003) prioritizes protecting intangible culture heritage with little scope for proprietary protections or benefit sharing.

In India, the establishment of Traditional Knowledge Digital Library (TKDL) by the CSIR and Ministry of AYUSH is being recognized as one of the efficient defence measures to curb biopiracy by blocking the erroneous patents (CSIR, 2022). However, according to Reddy (2010), TKDL only protects the community from misappropriation, and there is no guarantee of any community rights or benefit-sharing arrangement. The literature on Geographical Indication (GI) reveals that the GI registration makes the tribal products gain more recognition in the markets, although financial gains do not reach the indigenous artisan (Government of India, 2023).

Critics present a wider perspective of the issue. Shiva (2001) asserts that commercialization of indigenous knowledge contributes to the exacerbation of inequities in global governance while Berkes (2012) sees TK as a living governance system in terms of its capacity to conserve

biodiversity and ensure sustainable resource management. Moreover, according to Maskus (2000), the existing IP regime is not equipped to address collective and oral knowledge systems.

Research gap

Despite much has already been written on the subject matter, critical gaps remain unaddressed. The existing literature, for example, has largely focused on the issue of TK from either legal, economic or anthropological angles without considering the integration of governance theory, constitutionalism, indigenous theories of knowledge, and institutional analysis. In this regard, the current research project seeks to fill this void by viewing the interface between tribal custom and the contemporary IPR system as one of governance.

Research Objectives

1. To investigate how the customary knowledge system of India's tribal community is compatible with the existing Intellectual Property Rights (IPR).
2. To study the difficulties of protecting TK and TCE from both the national and international perspective, under the existing legal regime.
3. To design a governance-focused sui generis mechanism for ensuring collective ownership and sharing of benefits for the protection of tribal knowledge.

Research Methodology

In this study, the qualitative, doctrinal and interpretive approach will be applied for examining the link between traditional knowledge and the intellectual property rights regime. Secondary sources will be utilized for this purpose that include Indian Constitution, statutes, judicial precedents, government policies, Traditional Knowledge Digital Library (TKDL) and international conventions including TRIPS, WIPO, UNESCO, UNDRIP and scholarly works. Comparative analysis method will be applied to compare and contrast indigenous systems of knowledge with modern IPR principles. In addition, a few case studies including that of turmeric and neem patents have been chosen for evaluating the legal problems faced by indigenous knowledge.

Discussion

Tribal Knowledge, Intellectual Property and the Governance Perspective

Traditional Knowledge encompasses much more than indigenous knowledge systems related to health care, farming, biodiversity, or cultural activities. It acts as a community-based governance system, whereby indigenous peoples govern natural resources, conserve cultural identity, balance ecology, and transfer social values to next generations (Berkes, 2012). In contrast to state governance systems operating through codification of laws, traditional societies operate on the basis of customary rules, collective decision-making, and inter-generational learning. Elders, healers, artisans, and customary institutions control access to forests, medicinal plants, water

bodies, and cultural activities, thus embodying the governance system grounded on stewardship rather than property ownership.

This perspective significantly contrasts with the principle upon which modern intellectual property rights operate. Modern systems of IPR were created in the industrial economies to stimulate innovation via exclusive rights granted to the inventor as an individual on the basis of novelty, originality, and practical value (Maskus, 2000). Thus, patents, copyrights, and trademarks regulate knowledge as an economic resource to be privately owned and traded in markets. Although this system proved to be effective in stimulating scientific innovation and technological advancement, it does not fully fit collective, oral, and cultural nature of indigenous knowledge.

The difference between these two systems results in the creation of a structural governance gap. Tribal knowledge is a cumulative system that is constantly evolving through communities from one generation to other, while on the other hand, intellectual property law needs individual authors, proof of ownership, and limited time protection. Thus, many traditional pieces of information are not protected under the existing system even though they are ecologically, culturally, and economically important (WIPO, 2023). The question is not just one of administration; it is a matter of concepts.

Table 1. Comparative Dimensions of the Intellectual Property and Tribal Knowledge Systems

Dimension	IP Regime	Tribal Knowledge
Ownership	Individual	Collective (WIPO, 2023)
Transmission	Written	Oral (UNESCO, 2003)
Duration	Limited	Intergenerational
Value	Economic	Cultural-Social
Authority	State/Legal	Customary Institutions

"As illustrated in Table 1, the structural differences between the two systems explain why existing intellectual property law often fails to accommodate indigenous knowledge. These differences ultimately contribute to biopiracy, inadequate legal recognition, and unequal distribution of benefits."

Structural Incompatibility, Biopiracy and Governance Failure

However, the gap between traditional knowledge systems and modern intellectual property rights is best highlighted in the phenomenon of biopiracy where biological products and related traditional knowledge are appropriated and traded in the markets without the consent of

communities and their proper remuneration (Shiva, 2001). With regard to governance, biopiracy does not represent a discrete issue under intellectual property laws; rather, it reflects an inherent deficiency of a legal framework that favours innovation over custody of knowledge. In the turmeric and neem patent cases, patents were first issued based on knowledge that had already been present in traditional Indian practices. While India was able to win against the patents by demonstrating the presence of prior knowledge, the task of securing traditional knowledge became the responsibility of the government instead of the concerned communities themselves. Most importantly, revoking patents did not acknowledge community ownership or compensate for losses (CSIR, 2022).

Furthermore, governance issues not only apply to medical knowledge but also relate to traditional agriculture, biodiversity management, craft, textiles, and expressions of culture, as all these practices have gained increasing commercial interest. Intellectual property laws normally require written proof, clear ownership, and originality, while tribal knowledge is orally transferred and collectively owned within customary frameworks (UNESCO, 2003). Thus, in spite of being the first owners of such knowledge, indigenous communities may still be left outside legal processes and economic gains. It is clearly seen that such structural issues prove that mere implementation improvements will not solve the problem at hand. The solution will be achieved through governance systems that will acknowledge collective ownership, respect customary authorities, guarantee FPIC, and implement equitable benefit-sharing.

Indian and International Legal Framework: Progress and Persistent Gaps

Various acts have been enacted in India to protect the TK & TCEs. Such enactments include the Geographical Indications of Goods (Registration and Protection) Act, 1999, Copyright Act, 1957, and Traditional Knowledge Digital Library (TKDL). Such enactments show the growing importance of the indigenous knowledge system in legislation; however, such enactments are fragmented and deal only with certain aspects of protection. GI Act has led to the registration of various tribal goods like Sohrai-Khoovar Paintings, Gond Paintings and various other tribal handicrafts (Government of India, 2023). However, the GI protection alone is not sufficient to make sure that economic gains go to the original tribal people as often enough, the traders end up benefiting from it. Further, there are many aspects of Traditional Knowledge which fall beyond GI protection including the medicinal knowledge, biodiversity conservation, oral traditions and customary governance systems.

Traditional Knowledge Digital Library (TKDL) which has been established by the Council of Scientific and Industrial Research (CSIR) and Ministry of Ayurveda Yoga & Naturopathy Unani Siddha Homoeopathy (AYUSH) is the largest effort made by India to prevent biopiracy (CSIR, 2022).

Nevertheless, its function is mainly defensive in nature. It fails to recognize community rights and also does not create any benefit-sharing mechanism, license, or participation of indigenous communities in decision-making. Moreover, a huge amount of tribal knowledge continues to

remain unrecorded due to linguistic diversity, remoteness of geographical location, and also because of the sensitivity of cultural practices.

In a similar vein, the Copyright Act, 1957 only provides partial protection to Traditional Cultural Expressions as it fails to protect the collectively generated culture of oral traditions like folklore, music, rituals, paintings, and weaving practices as they lack fixed form. These limitations clearly highlight the inadequacy of the current domestic regime, although valuable and essential in their own right, as far as a governance framework is concerned which could protect indigenous knowledge in totality.

The situation at an international level is no different in terms of legal regime. It has been repeatedly recognized by WIPO that the current intellectual property regime falls short of providing any protection to Traditional Knowledge. WIPO has continued its negotiations through its Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore. The absence of an international treaty has meant a fragmented international regime (WIPO, 2023). Similarly, UNESCO's 2003 Convention seeks the conservation of intangible cultural heritage through documentation and community participation but neither creates property rights nor any provisions for benefit sharing.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), on the other hand, serves as an essential normative foundation by granting indigenous peoples' rights on their cultural heritage, traditional knowledge, right to self-determination, and the principle of Free, Prior and Informed Consent (FPIC). However, due to its non-binding character, its efficacy is considerably reduced, and depends entirely on domestic legal regimes. Unlike the UNDRIP, the TRIPS Agreement of the World Trade Organization creates binding international standards regarding patents, copyright and trademarks but lacks any specific provision on Traditional Knowledge protection. It is based on the concepts of novelty, inventorship, and innovative markets, which makes it inappropriate for customary knowledge systems.

On the whole, domestic and international legal frameworks are being set up to recognize the importance of indigenous knowledge. Still, they suffer from institutional fragmentation and conceptual grounding in liberal individual property rights.

In general, the analysis reveals that the problem is not only about protection through law but also about the governance of knowledge itself. The knowledge of tribal communities needs to be seen not only as cultural heritage but as a system of governance which sustains environmental sustainability, culture, and well-being of the community. In order to bridge the governance gap, there needs to be a sui generis law framework that combines the values of constitutionality, custom-based governance, collective ownership, FPIC, and equal benefit sharing.

Core Findings

Based on the analysis of India's intellectual property framework, international legal instruments, and selected case studies, the study identifies the following key findings:

From the analysis of India's intellectual property regime, international legal instruments, and selected case studies, the study makes the following conclusions regarding key findings:

1. Structural Incompatibility between Tribal Knowledge and the IPR Regime:

The study concludes that the modern-day IPR system is characterized by principles of individual creation, novelty, and profit from the innovation. Contrary, Traditional Knowledge is based on collective innovation, transfer across generations, and governance systems. Such inconsistency explains limited legal protection offered to tribal knowledge because the problem is not procedural but structural (Maskus, 2000).

2. Existing Legal Mechanisms Provide Limited and Fragmented Protection:

India has implemented several mechanisms such as TKDL, the GI Act, and the Copyright Act for the protection of traditional knowledge, that have helped in reducing instances of biopiracy and increased visibility of some tribal products. However, they operate independently and fail to provide for collective ownership, benefit-sharing, and indigenous community participation, therefore, the current legal system remains fragmented and limited in protecting Traditional Knowledge (CSIR, 2022; Government of India, 2023).

3. Biopiracy Reflects a Broader Governance Failure:

Both of the cases above clearly show that biopiracy is not only an IP issue but also a result of institutional failure on a national and international level. Commercialization of traditional knowledge usually takes place in ignorance of the fact that it belongs to native people, which leads to epistemic injustices, unequal benefit sharing, and commoditization of indigenous cultural and biological resources (Shiva, 2001).

4. International Recognition Has Not Been Matched by Effective Enforcement:

Various international measures such as WIPO projects, the UNESCO Convention, and UNDRIP recognize the significance of TK protection and participation of indigenous communities, but due to the absence of legal obligations and enforcement measures, such recognition has failed to bring in any substantial change, leading to weak representation of indigenous communities in the international intellectual property governance (WIPO, 2023; UNESCO, 2003; UNDRIP, 2007).

5. Need for a Comprehensive Sui Generis Framework:

The cumulative analysis suggests that proper protection of Traditional Knowledge will require a sui generis framework which goes beyond mere protection against infringements and involves such aspects as recognition of collective rights, institutionalization of FPIC, ensuring benefit-sharing, increased community participation in decision-making and providing proper protection for TK and TCEs in line with Indian constitutional principles of cultural diversity and social justice.

Challenges

Although there are some commendable efforts in this regard, the current Indian legal regime for the protection of TK/TCEs still suffers from a number of structural impediments which impede the efficacy of the present intellectual property rights framework.

1. Structure Problem: Collective Knowledge and the Existing IPR Regime

The major problem pertains to the structural gap between indigenous systems of knowledge and modern intellectual property laws. The prevailing intellectual property rights framework assumes that knowledge is created by individuals or corporations; it should be novel, original and commercialized. On the other hand, tribal knowledge is created collectively and passed on through generations via customary institutions. Thus, the concept of community custodianship does not find any recognition in the prevailing system, rendering most forms of Traditional Knowledge outside the reach of protection. The structure problem also undermines the FPIC mechanism as there is no legal requirement in India for obtaining consent of the community before commercializing their traditional knowledge, as required under UNDRIP (2007).

2. Insufficiency in Benefit Sharing and Documentations Problems

Though efforts like Geographical Indications (GI) Act and Traditional Knowledge Digital Library (TKDL) have improved protections against biopiracies, yet they offer only partial protection. GI, despite aiding in raising the awareness level of tribal products, cannot ensure that economic gains go to the real owners of the knowledge. Thus, the TKDL only becomes a database for protection without recognition of community ownership rights or any benefit-sharing system (Government of India, 2023; CSIR, 2022). Moreover, the problem lies in reconciling the documentation-based IPR system of today with the oral tradition of indigenous knowledge. Much of the indigenous knowledge cannot be documented due to linguistic and geographical barriers along with cultural sensitivities (UNESCO, 2003).

3. Fragmentation in Institutional and International Governance

Another issue faced by indigenous peoples is the fragmentation of both national and international governance systems. Within India, GI Act, Copyright Act, TKDL, and various other measures dealing with biodiversity function separately without much institutional cooperation, which creates overlap and creates regulatory vacuum areas. On an international level, the efforts of TRIPS, WIPO, UNESCO, and UNDRIP are based on different goals, from trade and intellectual property laws to the cultural and indigenous peoples' rights; however, there is no coordinated enforcement mechanism. The result is that the rights of indigenous people are recognized but not protected.

4. Need for Governance-Oriented Reform

A common conclusion drawn from all of these considerations is that the main issue is not the lack of legal safeguarding but the lack of an overall governance approach that would be able to incorporate indigenous epistemologies. Meeting such a challenge demands that one goes beyond

the scope of existing intellectual property law frameworks to devise a new governance regime that would incorporate collective ownership, institutionalize FPIC, provide for benefit sharing, enhance cooperation between legal entities, and include indigenous peoples in decision-making processes.

Conclusion

The research examined the gap between the Indian tribal customary knowledge system and the modern intellectual property rights. This paper claims that the current intellectual property regime that is based on individual ownership, novelty, and market innovation is structurally unable to incorporate Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) that are collectively owned, intergenerational, and institutionalized. The findings show that the problem of the gap should be interpreted not only as the legal problem but as the governance issue that implies recognition, participation, authority, and distributive justice aspects.

This paper has proved that despite of introduction of various protective mechanisms like the Geographical Indications (GI) Act, the Traditional Knowledge Digital Library (TKDL) and the Copyright Act in India, and other mentioned mechanisms only provide for partial and fragmented protection. These mechanisms help prevent the biopiracy and promote cultural recognition but do not provide enough recognition of collective community ownership, institutionally relevant participation of indigenous people, and distributive of economic benefits.

Thus, the paper recommends that in future, reformations of the legal framework must adopt a holistic sui generis legal framework where collective ownership rights are protected, FPIC is institutionalized, benefit sharing is done equitably, protections for Traditional Knowledge and Traditional Cultural Expressions are there and in the long run indigenous communities play a greater role in decision making.

Conclusively, the protection of traditional knowledge does not only pertain to intellectual property but also involves issues related to constitutional values, cultural diversity, environmental sustainability, and inclusive governance. A more community based legal framework will be able to fill the gap in governance while at the same time ensure that indigenous communities remain custodians of their own knowledge.

References

- Berkes, F. (2012). *Sacred ecology* (3rd ed.). Routledge. <https://doi.org/10.4324/9780203123843>
- Council of Scientific and Industrial Research. (2022). *Traditional Knowledge Digital Library (TKDL)*. <https://www.tkdil.res.in>
- European Patent Office. (2005, March 8). T 0416/01 (*Method for controlling fungi on plants by the aid of a hydrophobic extracted neem oil*). <https://www.epo.org/en/boards-of-appeal/decisions/t010416eu1>



- Government of India. (2023). *Geographical Indications Registry*. HYPERLINK "https://search.ipindia.gov.in/GIRPublicSearch/"<https://search.ipindia.gov.in/GIRPublicSearch/>
- Hutchinson, T. (2015). *Researching and writing in law (4th ed.)*. Lawbook Co.
- Maskus, K. E. (2000). *Intellectual property rights in the global economy*. Institute for International Economics. <https://econpapers.repec.org/bookchap/ieepress/99.htm>
- Shiva, V. (2001). *Protect or plunder? Understanding intellectual property rights*. Zed Books.
- United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
- UNESCO. (2003). *Convention for the Safeguarding of the Intangible Cultural Heritage*. <https://ich.unesco.org/doc/src/15164-EN.pdf>
- United States Patent and Trademark Office. (1998). *Turmeric patent re-examination (U.S. Patent No. 5,401,504)*. <https://www.uspto.gov>
- World Intellectual Property Organization. (2023). *Traditional knowledge*. <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-1-en-traditional-knowledge-and-intellectual-property.pdf>
- World Trade Organization. (1994). *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*. https://www.wto.org/english/docs_e/legal_e/27-trips.pdf