

“Geographical Indication as a Tool for Protecting Traditional Knowledge”***Rajesh B.L.*****Bangalore Institute of Legal Studies,
Bangalore*******Anagha S. Beedu*****Bangalore Institute of Legal Studies,
Bangalore********Varsha S.*****Bangalore Institute of Legal Studies,
Bangalore*****Abstract:**

Knowledge that has been passed on by generations of different communities in the field of art, literature, cultural practices etc can be termed as Traditional Knowledge of that particular community. There exists a definite need to protect and preserve this knowledge, as once it is lost it shall be impossible to regain the same. Hence, it is the need of the hour to protect and also educate the future generations of such traditional knowledge.

One of the best solutions to protect and promote such Traditional Knowledge lies in the Intellectual Property Laws. In the past few decades there has been extensive efforts from around the world for the protection, promotion and preservation of the same. World Intellectual Property Organisation (WIPO) plays a prominent role in this regard. Under the realm of Intellectual Property Laws, granting of Geographical Indications has been found be the best possible solution. Geographical Indications and Traditional Knowledge go hand in hand, as Traditional knowledge means the knowledge of a particular community passed on from generation to generation and Geographical Indications refer to recognizing the art and culture practiced by a particular community residing in that region.

Geographical Indications acts as a tool in protecting Traditional Knowledge and encourages the communities with such knowledge to continue to practice and promote the same to their future generations. It helps to bridge the gap between the older generations of the society and the upcoming generations.

When a knowledgeable old person dies, a whole library disappears.

- African Proverb

Introduction:

Intellectual Property Rights are the rights that govern the creations of the mind which have both commercial and moral values. The term ‘Creation of Human Minds’ refers to the inventions, literary and artistic works, symbols, industrial and fashion designs, food stuff, etc. These properties are intangible making it difficult to protect them which led to the origin of the Intellectual Property Laws. These laws regulate the use, creation and exploitation of the mental and creative labour. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is an international legal agreement which is signed by all the 164¹ member nations of the World Trade Organisation (WTO). This agreement classifies Intellectual Property Rights into – Patents, Industrial Designs, Trade Marks, Copyrights, Geographical Indications, Layout Designs of Integrated Circuits and Protection of Undisclosed Information/ Trade Secrets.

Intellectual Property Rights in general refers to innovations and creations of the mind but, certain Intellectual Property Rights such as Geographical Indications aims at recognizing the art and tradition of a particular community belonging to a certain region. WIPO focuses at protecting such cultural, literary and other forms of Traditional Knowledge through the use of Geographical Indications so as to encourage the entire world to embrace their Traditional Knowledge and lite the path for its growth.

Traditional Knowledge and reasons for its protection:

The term Traditional Knowledge has not been mentioned as a classification under the TRIPs Agreement but it refers to the wide range of knowledge that is embedded in the cultural traditions of a community or a religion. There are a number of definitions for traditional knowledge that have been put forward, but there is no widely accepted definition. The knowledge that has been generated by the human communities have been refined and passed on from generation to generation within a community. Traditional Knowledge includes the know-how, practices, skills and innovations in the field of agriculture, cookery, scientific, ecological, technical, medicinal and biodiversity related knowledge.

In the past three decades, the world’s attention has turned towards the preservation, protection and promotion of the traditional knowledge by utilizing the services of the

1. As on 05 September 2018.

intellectual property laws that already exist. There exists some confusion among nations about what is exactly meant by ‘protection’ of Traditional Knowledge. The World Intellectual Property Organisation (WIPO), held that it should certainly not be equated directly with the use of the word ‘protection’ in its IP sense.

WIPO put forth concerns of the traditional knowledge holders in a series of reports on fact-finding missions stating that the Traditional Knowledge Holders express their concern over the loss of traditional lifestyles and lack of respect for traditional knowledge and also the reluctance to carry forward traditional practices among the youth. In addition, they are concerned about the misappropriation of traditional knowledge and its usage in a derogatory manner. They also expressed their concern regarding the urgent need to promote and preserve the further use of traditional knowledge. Similarly, there are a few other sources mentioning protection of traditional knowledge to be the need of the hour, by expressing various other concerns.

A single solution cannot pave a way to the multiple issues faced by the traditional knowledge holders. The solution to these concerns will almost certainly be complimentary measures, many of which might not be within the scope of Intellectual Property. However, we could find solutions to these multiple issues in the established field of Intellectual Property Laws. Many International Organisations and a large number of bodies including WIPO, CBD, UNCTAD and WTO have been considering whether the present intellectual property system has a large role to play in the protection of Traditional Knowledge. They have rightfully focused on analysing the concerns in relation to the protection and promotion of traditional knowledge rather than on developing international norms for the same. Therefore, an ideal solution for protection of traditional knowledge would be greater practical knowledge and deeper understanding at a national or a regional level. As it is not possible for a single organisation to resolve the concerns, it is essential that all the above-mentioned organisations and agencies work together to avoid unnecessary duplication and find a variety of different solutions to the various concerns that exist. All the organisations have to invest their expertise and resources to handle the aspect of developing ideas by using intellectual property rights as a tool to protect, preserve and promote traditional knowledge.²

2. Minutes of the Commission on Intellectual Property Rights Workshop on Traditional Knowledge, 24 January 2002.

Protection and Promotion of Traditional Knowledge by making use of the existing IP System:

Some countries which are of an opinion that the existing intellectual property system alone cannot adequately protect traditional knowledge have enacted or are in the process of enacting sui generis systems for the protection and promotion of traditional knowledge. The Philippines is one of the very few nations that has already enacted a legislation for providing the indigenous communities of the nation a right over their traditional knowledge. The rights in the legislation also extend to controlling the access to ancestral land, access to all biological and genetic resources and to the indigenous knowledge in relation to these resources. Access to other parties are granted based on the Prior Information Consent (PIC) of the community and any benefits that arise from the associated knowledge will be equally shared.³

However, there also exists a number of ideas illustrating as to how the existing intellectual property system can be utilized to preserve, promote and prevent the misuse of traditional knowledge.⁴ A few examples to illustrate the usage of intellectual property system are as follows:

- a) The Australian patent authorities are granting national certificate trademarks to the aboriginal artists, as the trademark certification mark acts as a label of authenticity helping promote the marketing of the aboriginal art and cultural products and also to deter the sale of unauthentic products claiming to be of aboriginal origin.
- b) Canada utilises the services of copyrights for protecting the tradition-based creations such as totem poles, masks and sound recording of aboriginal artists.
- c) Kazakhstan grants industrial designs to protect the physical appearance of carpets and head dresses.
- d) The countries of Venezuela and Vietnam utilise the concept of geographical indications for protecting many traditional products such as liquors, teas and sauces.

The advantage of granting geographical indications is that they can provide protection to traditional knowledge, traditional products or crafts when particular characteristics of such knowledge or product or craft can be attributed to a particular geographical origin. Like any other form of intellectual property rights, such as trademarks or trade secrets, neither Geographical indications nor Traditional Knowledge require novelty.

3. The Indigenous Peoples Rights Act of 1997, Republican Act No. 8371.

4. WIPO Reviews of Existing Intellectual Property Protection of TK (WIPO Document No. WIPO/GRTKF/IC/3/7) 25 March 2002.

Geographical Indications and its use in protecting Traditional Knowledge:

Geographical Indications have a wide application under Intellectual Property Laws. In a few countries it constitutes one of the most important categories of intellectual property laws and the same is reflected in the TRIPS Agreement. The TRIPS Agreement defines Geographical Indications as “indications which identify a good as originating in the territory of a member nation, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

In other words Geographical Indications in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Geographical indications are particularly suitable for the protection of traditional knowledge. They intend to reward members of an established community or group adhering to traditional practices belonging to the culture of that community or group. Unlike other Intellectual Property Rights, Geographical Indications does not pertain to innovations. A geographical indication identifies a good based on a particular territory it originates from. The essential basis of geographical origin is the quality, reputation, or other characteristic of the good.

Even though most of the systems of intellectual property protection are individualised, some intellectual property rights, such as trademarks and geographical indications are based on the concept of collective rights. Intellectual properties like copyright and patent are devised to reward investments in innovation while geographical indications reward producers who invest in developing and building the reputation of a product. Geographical Indications generates economic rewards and monetary gains for producers who employ traditional methods in the region or area where the product has been traditionally produced.

Communities work upon collective traditions and a collective decision-making process and this makes Geographical Indications a very suitable form of Intellectual Property. In addition, they protect and reward traditions while allowing them to evolve and improvise. They are designed to reward for the reputation and goodwill that has been built from many decades or even centuries. They also reward every investor who maintains the traditional high standard of quality which has been set from generations. Geographical Indications never confer an exclusive monopolistic right over the employment of certain information, but lays prohibition over the class of people who can use a certain symbol. They are not transferable at any cost from one owner to another but are recognised until the collective tradition is maintained by that community. Geographical Indications have to be periodically renewed which in turn help in ensuring that the quality of the product is maintained. The commercial and monetary values of natural, traditional and craft products of all kinds can be increased if their particular characteristics may be attributed to their geographical origin.

The traditional processes and the community knowledge implemented by one or more communities in a given region are the reason for the origination of a number of products. The special and attractive characteristics of the products manufactured using traditional processes and the community knowledge are appreciated by the public and may also be symbolised by the indication of source used to identify the products. Improvised promotion and exploitation of the concept of geographical indications would make it possible to afford better protection for the economic and cultural interests of the communities and groups with traditional knowledge. Geographical indications are also useful when supply happens through small scale production and products that are marketed directly to consumers. They also help enhancing their reputations and sell the products directly to the end users. They also enhance in competing against large corporations.

Limitations of Geographical Indications for the protection of Traditional Knowledge:

The usage of Geographical indication as a tool to protect traditional knowledge has a few limitations that prohibit it from being used as the extensive tool to protect traditional knowledge.

Firstly, geographical indication can be used to protect only certain kinds of traditional knowledge. As only goods are identified under the definition of Geographical Indication, it is implied that all intangible forms of traditional knowledge such as methods of medical treatment, techniques for dyeing cloth, folk music, and dances cannot be protected. However, if this traditional knowledge results in a medicine or dye or in a recorded version of songs and dances, geographical indication can be obtained.

Secondly, geographical indications cannot constitute a tool to protect the underlying knowledge of the community or group but can only be used to protect an indication as to where it originated from. Also, the geographical indications that are deemed to have become generic and common, lose their usefulness from the point of view of traditional knowledge protection.

Thirdly, geographical indication protection can be used as a tool only where the knowledge is associated with a defined geographical area. Thus, if the knowledge is scattered it is difficult to protect the knowledge under geographical indications. For example, the Ayurvedic system of medicine does not have any specific geographical area to which it belongs and hence a geographical indication cannot be used.

Fourthly, geographical indication only signifies the original source of the good, and if such a source is not important to the consumer, the protection of such goods by means of a geographical indication is immaterial. Therefore, it becomes an obligation that the good must possess and enjoy a good commercial reputation to use geographical indication as a tool of protection.

Lastly, the effectiveness of the protection for traditional knowledge of communities and groups may further require the setting up of many more specific safeguards to meet the complete demand of protection that is required to protect traditional knowledge.

Conclusion:

Geographical Indication provides for the protection of various types of traditional knowledge that has been deeply embedded within the culture of a community or a group of people that have been in the possession of this knowledge for many decades or even centuries.

Overall, it should be noted that geographical indication as a concept is aimed at protecting the names of goods, and not knowledge as such meaning that they provide some scope to protect traditional knowledge but the protection remains limited insofar as these indications are employed for marketing but not to protect the knowledge related to the product. However, geographical Indications could play a complementary role in assisting the protecting of traditional products, but it is not realistically possible to protect all forms of traditional knowledge just by using this single form of intellectual property alone under isolation.