Intellectual Property Rights and Traditional Knowledge - Indian Perspective

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The relationship between genetic resources, Traditional Knowledge (TK) and Intellectual Property Rights (IPRs) is among the most controversial agenda items in the negotiations of several international organisation. International debates about genetic resources and TK may have profound implications for indigenous and local communities. Yet, participation by local communities in the WTO and WIPO has been very limited. More than ever before, TK faces serious levels of erosion. As the peoples and communities holding TK themselves face a range of threats from outright annihilation to "assimilation" into "mainstream" society, the knowledge they hold also slips away. The purpose of the Protection of Indigenous Knowledge through Intellectual Policy is to argue for the protection of TK using the present system of Intellectual Property (IP). Thus, far, the IP has not been used to protect TK but has inn fact been used to usurp TK, without any benefit to the knowledge holders.

Introduction

Today possession of land, labor and capital are just not enough for a country to succeed. Creativity and innovation are the new drivers of the world economy. The term Intellectual Property (IP) reflects the idea that its subject matter is the product of the mind or the intellect. Intellectual Property Rights (IPRs) are provided as a protection and incentive to the creators, whose creativity could otherwise be freely used by others. The society expects the creators to make their work available in the market where this work can be bought and sold. But while the society wishes to encourage creativity, it does not want to help the grooming of harmful market power. And for this reason, certain limits are built in the rights granted to the creator, in terms of time and space, by the state. IPRs are granted for fixed period of time and protect only the fixation of creativity in material form. IPRs are being harmonised worldwide and will no longer be seen as distinct or self-contained domain, but rather as an important and effective policy instrument that would be relevant to a wider range of socio-economic, technological and political concerns. Intellectual property protection plays and important role in gaining advantageous position in the competitive game for economic growth. The policies adopted by a country shall determine the nationals well being. Development of a country's intellectual Capital is the most important task in these regards.

Traditional Knowledge (TK) has been used for centuries by indigenous and local communities under local laws, customs and traditions. It has been transmitted and evolved from generation to generation. TK has played, and still plays an important role in vital areas such as food security, the development of agriculture and medical treatment. However, Western societies have not, in general, recognised any significant value in TK nor any obligations associated to its use, and have passively

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consented to, or accelerated its loss through the destruction of the communities' living environment and cultural values.

Recently, Western science has become more interested in TK and realised that TK may help to find useful solutions to current problems, sometimes in combination with "modern" scientific and technological knowledge. Despite the growing recognition of TK as a valuable source of knowledge, it has generally been regarded under Western intellectual property laws as information in the "public domain", freely available for use by anybody. Moreover, in some cases, diverse forms of TK have been appropriated under IPRs by researchers and commercial enterprise, without any compensation to the knowledge's creators or possessors.

Importance of Traditional Knowledge

TK is a central component for the daily life of millions of people in developing countries. Traditional Medicine "™" serves the health needs of a vast majority of people in developing countries, where access to "modern" health care services and medicine is limited by economic an cultural reasons.

The use and continuous improvement of farmers' varieties (landraces) is essential in many agricultural systems. In many countries, seed supply fundamentally relies on the "informal" system of seed production which operates on the basis of the diffusion of the best seed available within a community, and on its movement, even over large distances during migration, or after disaster. Furthermore, TK is the origin of a great variety of artistic expression, including musical works and handicrafts.

The importance of TK for its creators and for the world community at large, and the need to foster, preserve and protect such knowledge, has gained growing recognition in international flora. Thus, in 1981 a WIPO-UNESCO Model Law on Folklore was adopted; in 1989 the concept of "Farmers Rights" was introduced in the FAO International Undertaking of Plant Genetic Resources; in 1992 the Convention on Biological Diversity (CBD) specifically addressed the issue (Article 8(j)). In 2000, an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established by the World Intellectual Property Organisation (WIPO) and it first met in April 2001.

Reasons for Protection of Traditional Knowledge in India

Third world countries are inherently incapable of protecting their TK. They have become aware of its value because of the scientific advancement in west. Most TK of the world is undocumented. Even in countries like India where it was partially committed to paper under colonial auspices, what is now the written word was not self-contained (Dutfiled, 1999). It was meant as an aid to a living oral tradition. In any case, ancient documents were not prepared to withstand the scrutiny of a modern-day patent attorney. Nations can be expected to plead their case in the Domestic Court of another country according to the law laid down by the latter.

Another important concern of the India is that the process of globalisation is threatening the appropriation of elements of the collective TK of societies into proprietary knowledge for the commercial profit of a few. We need a particular focus on community knowledge and community innovation. To encourage communities, it is necessary to scout, support, spawn and scale up the green grass

root innovation. Beside this India is one of the main countries where traditional medicines from plant sources are being used from ancient time.

Methods of protecting and conserving TK

Several proposals have been made, within and outside the IPRs system, to "protect" TK. Such proposals often fails to set out clearly the rationale for its protection. Any system of protection, however, is an instrument for achieving certain objectives. Therefore, a fundamental question, before considering how TK may be protected, is to define why it should be.

One reason for a lack of clarity about the rationale for protection systems from the different meanings given to the concept of protection. Some understand this concept in the contest of IPRs, where protection essentially means to exclude the unauthorised used by third parties. Others regard protection as a tool to preserve TK from uses that may erode it or negatively affect the life or culture of the communities that have developed and applied it. Protection here has a more positive role in supporting TK-based communities livelihoods and cultures, as proposed by the Organisation of African Unity's (OAU's) Model Law and its definition of community rights. Overall, however, the main arguments for granting protection to TK include equity consideration, conservation concerns, the preservation of traditional practices and culture, the prevention of appropriation by unauthorized parties of components of TK, and promotion of its use and its importance in development.

There are both ardent proponents and critics of extending IPRs to the knowledge of indigenous and traditional communities, including landraces. Those who Advocate the application of IPRs to TK find that there are many examples of TK that are or could be protected by the existing IP system, or by modifying certain aspects of the current forms of IPRs protection. Those who are reluctant or opposed to the idea of applying existing IPRs or creating a new form of IPRs to protect TK base their arguments on both practical reasons and principles, namely the essential incompatibility between the concepts of Western IPRs and the practices and cultures of local and indigenous communities.

In sum, a clear distinction should be made between the legal concept of protection (conferring rights over TK), with the more practical ideas of protecting TK from destruction/loss or promotion its use through non-IPRs mechanisms. The tools to be used will radically differ depending on the objectives pursued and on which of the two approaches to deal with the issue is adopted.

Limitation of IP system

There are essentially two main concerns with regard to the protection and commercialisation of TK in India using the intellectual property system:

The current IP system allows individuals to protect their inventions and IPRs, but does not allow communities to collectively protect their knowledge in all areas; and in those areas where collective IP registration is possible, communities are not exercising their rights. As a result, in both India and International, TK is not generally protected using the IP system. However, the IP system has been protecting TK using geographical indications in the area of wines and spirits exceedingly well.

Conclusion

India has the world's third largest scientific and technical manpower, an irrelevant fact because of its visibly dubious quality. Then also, India does not figure in the Top-10 list of IP generators in any category in WIPO's (World Patent Report, 2008). A prerequisite for climbing the value-chain is the ability to generate IP, protect it and commercialise it. It requires communities, scientist and industries to learn to do collaborative R&D, but a prerequisite for that is the existence of a group of outstanding research universities, something that our policy planners have never paid attention. Patent awareness in the country is poor. The world of IPR and commercialisation of scientific success is largely one-sided and Western-dominated at present. There as been some pressure to ensure that inputs into science and transformed into useful products in India. Scientists, particularly those in national laboratories are encouraged to patent before they publish. But, rest of scientist who are working in different corners of country and local communities have never been taken care of. India enjoys a large asset of R&D personnel and infrastructure facilities. Scientists and policy makers need information and facilities for protecting the products of intellectual power. In order to promote basic understanding of patents and other IPR-related issues among the Indian scientists, and to analyse issues in the area of patenting in research, government must initiate new steps for better understanding of IPR.

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