ROLE OF STATE IN THE PROTECTION OF TRADITIONAL KNOWLEDGE ASSOCIATED BIOLOGICAL RESOURCES ININDIA

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Abstract

The protection of traditional knowledge (TK) is still protracted subject matter in globalised context. As one of the mega bio diverse country like India is still identifying an appropriate method for protection of TK. Even today, a large number of local and indigenous communities rely on goods that are largely based on their traditional knowledge for their survival. However, this equation has been challenged by the technological advancements in particular.The field of biotechnology clearly reveals the significance of TK in the research and development of new commercial product. Probably, this has enabled industries get protection for these products through the formal architecture of Intellectual Property (IP). However, the same technological advancement had a negative impact on the TK-holding societies' means of survival and jeopardized biodiversity. Without protection, there is a risk that TK will vanish as the custodians who are holding it. In this context, the chapter is going to look at the behaviour of State in the protection of TK which are associated with biological resources (BRs) in the neo-liberal context.

Key words: Protection, Ownership, Identification of communities, traceability issues

Introduction

Globalisation also influenced various countries to be more open towards the introduction of Intellectual Property Rights' (IPR) laws in their domestic legal systems. It should also be noted that technological advances through intellectual property rights have led to the misuse of Traditional Knowledge (TK) and the chances of its potential use being translated into commercial benefits without proper authorization and benefit sharing has increased drastically. The misappropriation of valuable knowledge, with the support of technology saves time, money and investment, especially for the modern biotech companies and other industries. This has adversely affected the TK owners' rights and led a call for the protection of TK through an international mechanism. Although the international community has failed to reach an international consensus on the same, this led to many more deliberations on this topic.

Changing Role of the State and Its Impact on the Protection of Traditional Knowledge

In earlier societies, TK associated with biological resources were considered as a collective resource that was held in common, shared, cultivated, and maintained by communities. But the introduction of the modern market systems and intellectual property into this 'common and shared property' of the communities invariably disturbed the existing traditional modes of economic and social activities and reshaped economic power relations is a consequence of the neo-liberalist policies. Similarly, due to their TRIPs and CBD commitments, States were under an obligation to promote IPR-related laws, which led not only to the commoditization of knowledge but also "integration of knowledge and intellectual labour into production the appearance of severe social costs has undermined the attempt to present IPRs as a neutral and technical market solution, allowing the reassertion of a politics of IPRs". This needs to be understood in the context of broader changes that occurred during the 1970s and 1980s that brought about a more intense regime of valorisation and competition in global markets, leading many developing States including India to view the biodiversity within their territories as a resource whose use would enhance their income and as a key component of their growth regimes. Realising this potential allowed India to become a new focus for biotechnology expertise and a globally competitive nation with a superior ability to turn genetic resources into income. For instance, India insisted during the CBD negotiations on both moving towards a property regime based on the principle of national sovereignty over genetic resources and making access to them dependent on the transfer of biotechnologies developed in frontier economies in order to support India's developing modern biotech sector. This has attracted the attention of policymakers from all political backgrounds who view it as a potent enabling technology that will not only revolutionise India's agriculture but also help the country become a knowledge superpower in the world. It is interesting to note that India emerged as a major proponent of itself for the new growth regime, either through the establishment of suitable property laws or investing in high-tech clusters and biotechnology R&D, which is not necessarily advantageous to the holders of TK. Apart from this, the complexity of TK protection is further increased by technical problems like the issue of collective ownership and the methods of right enforcement.

Holders of TK

Land and related knowledge have historically had a strong connection to indigenous identity, and they are characterised by a communal relationship to resources, as well as to social and spiritual well-being. It can be difficult to define what constitutes an indigenous person, whose prior informed consent should be sought, and with whom.

Due to its diversity, identifying the legitimate owner of TK in the Indian context is still challenging.

Hansen and Van Fleet have thus classified the knowledge claims in this context as: known and used by an individual; known and used by a group of people or a community; or diffused widely and in the public domain. Traditional knowledge can be seen in India in the following forms:

• Knowledge that is practised and preserved by particular communities, particularly tribal groups, institutions, or families frequently found in particular territories of the country. Different traditional techniques are used to transmit this knowledge from one generation to the next.

• Knowledge that has no particular community, institution, or family acting as its custodian but is used to support the livelihoods of numerous people dispersed throughout India.

Following above classification, traditional knowledge in India falls into the categories such as secret, sacred, narrowly diffused, and widely diffused. But India still faces difficulties in identifying the owners of above said knowledge because the term "indigenous people" as a whole is not recognised. The term "local communities" has been used by India in place of "indigenous" in its legislative framework. The word "Indigenous," were backed by India in the 1957 ILO Convention on Indigenous and Tribal Population. But in the ILO convention of 1989, the rights associated with land and their right to "self-determination," which were deemed unacceptable in the Indian context, the term has now come to be rejected and remains with the 1957 Convention. Given that so many indigenous populations in India are not recognised as scheduled tribes, the process is actually "more political than legal. Additionally, it should be noted that without these rights, communities are unable to enforce Prior informed Consent (PIC) and assert control over GR on their property. It has been reported that this government attitude is contrary to the true spirit of the CBD and Nagoya agreements, which made clear that the indigenous peoples are owners of such resources. But Indigenous perspectives are thus rarely heard in the Indian debate over TK. Lack of knowledge owners' identification may result in a number of issues. First, the role of national legislation in protecting TK owners may be diminished; second, the healthy exploitation, dissemination, the growth of the cultural treasures in TK could be hindered and third, during the exercise procedure, unnecessary transaction fees could be incurred, enforcing, and TK rights transactions, especially when consumers (buyers) and suppliers (sellers) of TK come from different nations. Fourth, when it comes to prior informed consent and benefit sharing, distributive justice may be compromised, resulting in disputes between unidentified right holders.

Traceability and Related Benefit Sharing Concerns

The natural distribution of resources, like that of basmati and turmeric, spans multiple nations, making the TK associated with these resources common. This brings up the question of who should gain from the agreement. Due to a lack of traceability on the origin of accessed biological resources, several State Biodiversity Boards are currently struggling to distribute benefits to the communities and BMCs even though users have shared the benefits with them.[1]. Due to the emergence of new technologies like combinatorial chemistry and synthetic biology, actual access to biological substance is currently less significant than it formerly was.[2] It is interesting to note that so few commercial ABS agreements have been reached in India, which points to GRs among potential customers, as well as onerous rules, as causes of the disappointing performance. According to the scientific community, conservation biologists and taxonomists, a vanishingly small constituency, have little clout in the legislative process because their agendas, while well-intentioned but not prioritising science, get tangled up.[3] As a result, there is now national legislation that severely restricts research. Additionally, it contends that international cooperation and national regulations that were implemented in many countries with the anticipation of commercial benefits have stifled domestic scientific research on biodiversity. The argument goes on to say that the burden frequently necessitates substantial financial and human resources in typically drawn-out approvals processes and the inability to acquire approval, as researchers have noted, for example, in India and Indonesia.[4]It is clear from the discussion above that ownership ambiguity and disputes regarding biodiversity and TK make the system complex and reckless. Therefore, it is urgent to amend the Act in light of recent developments so that the legal barrier that has separated scientists from national policy-making bodies regarding biodiversity can be lifted. This will help to strike a balance between the need for regulation and the need for innovation.

Conclusion

From the analysis above, it can be concluded that states are currently having a difficulty in protecting TK as a result of pressure from numerous stakeholders. The result was incomplete international restraint mechanisms, hazy protection systems, and imperfect legislation. As a result, in India, the State makes decisions, manages resources, and grants PIC for resource access. As there is no systematic data on how much and to what extent TK exists widely within a country or across borders, it may not be possible to identify any, or even all, of the potential TK holders in this situation.It has been suggested that rather than focusing solely on individual property rights, a sui generis system should consider on biological diversity, human rights, community rights, and cultural heritage. The preservation of TK should be founded

on community property rights which have been supported by government for the future generations.

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