

Indigenous Peoples--Recognition as well as Protection of Their Traditional Knowledge-base and Economic Benefits out of it for Their Sustainable Livelihood

Dr. R.K. BANDYOPADHYAY

Deputy Secretary (Retd.), Govt. of India

E-mail: rankuban@yahoo.com

Abstract:

In this Article, the term 'TKs' is dealt with as three primary components viz. Traditional knowledge (TK), Genetic resources (GRs) and associated Traditional knowledge, and Cultural heritage (TCE)/ Expressions of Folklore. Potential of the TKs of the Indigenous peoples are immense. Their knowledge-base was not recognised as a source of Intellectual Property in the national and international arena. Therefore, these people could not enjoy economic rights and moral rights out of their assets. After a long wait, the WIPO IGC Treaty on Intellectual Property, Genetic Resources and associated Traditional knowledge (i.e. GRATK Treaty, 2024) has come up to address the interfaces between Intellectual Property, and Genetic Resources and associated Traditional knowledge, including provisions specifically for Indigenous peoples and communities. Anyway, certain doubts have been raised from various corners about efficacy of this Treaty and mode of its implementation at the international and national level. It has been insisted that active and continued involvement of the Indigenous peoples are absolutely necessary for accrual of the intended benefits to them. Efforts are also needed to bring in *Sui generis* legislation for the purpose. The Government of India is to initiate fresh efforts to convince the WIPO to recognise the remaining components of the TKs so that an overall socio-economic benefit can be conveyed to the Indigenous peoples through the process of benefit-sharing, along with moral rights over their assets. The government is to consult the Indigenous peoples and their organisations in this regard and then move ahead for implementation of the GRATK Treaty.

Key Words: World Intellectual Property Organisation; Indigenous peoples and communities; *Sui generis* legislation; Traditional Knowledge and Cultural heritage; GRATK Treaty; and Bio-piracy.

I. Introduction

In this Article, the term TKs have been discussed as three primary components: Traditional Knowledge (TK); Genetic Resources (GRs) and associated TK; and Traditional Cultural Heritage (TCE) or Expressions of Folklore (EoF). Traditional Knowledge (TK) encompasses various knowledge systems maintained by the Indigenous and traditional communities. Genetic Resources refer to the biological materials present within a specific ecosystem that are utilised in

agriculture and medicine, and have close connection and coexistence with TK. This codified knowledge system has reached its present form over centuries through coevolution and coexistence of Indigenous cultures and practices of sustainable resource-use, being passed down through generations. It emerges from the observations, interactions, and experimentations of these communities with their social, cultural, and natural environments. As an integral part of their existence, it reflects their skills and innovations, while embodying a repository of wisdom and collective resourcefulness.

According to established definitions, Traditional Cultural Expressions (TCEs) refer to the creative works of Indigenous peoples and communities. TCEs represent a form of knowledge rooted in the land, while encompassing the ecological, social, and political insights of the community. In addition to their economic potential, they serve as a source of (i) innovation (ii) creativity (iii) education, and (iv) entertainment. Amongst Indigenous groups over the globe, folklore is generally referred to as a shared sense of responsibility, identity and custodianship rather than simple ownership of Folklore. The entertainment aspect of Folklore, along with its societal messages and philosophical insights, resonates with the people. All these elements originate from the society, and they function as vital sources of education and entertainment. Consequently, fair use and protection of TKs are crucial for harnessing benefit of these communities¹

The intellectual endeavours of Indigenous and traditional communities, sustained over a long period, have led to the development of the concept of IP out of TKs. According to the Indian perspective, the primary aim of granting IP protection to the TKs is to avert their unauthorised use, and to guarantee moral rights and economic benefits for the communities that have cultivated and advanced this knowledge-base. Consequently, it is crucial to integrate suitable provisions (similar to those granted to the GRs and associated TK) within the protective framework covering all the components of TKs. Economic rights will facilitate sustainable livelihood of these communities and further enhance their capacity building, conservation efforts, and the positive evolution of TKs^{2 and 3}.

II. WIPO Treaty of May, 2024

Following the adoption of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge in May 2024, the WIPO IGC is now focused on implementing its mandatory patent disclosure requirements, which compel applicants to disclose the origin of genetic resources and the associated Traditional knowledge (ATK) of Indigenous peoples. The

treaty aims to prevent erroneous patents, improve transparency, and support fair and equitable benefit-sharing. Key points surrounding the post-GRATK treaty adoption include ⁴.

- **Indigenous Recognition:** For the first time, a WIPO treaty explicitly recognises Indigenous peoples and local communities, facilitating potential benefit-sharing;
- **Mandatory Disclosure of Origin:** Patent applicants must now disclose the country of origin or the specific Indigenous peoples/local community that provided the Traditional knowledge if the invention is based on it;
- **Focus on Preventing bio-piracy:** The treaty provides a framework to combat the misappropriation of Traditional knowledge and ensure that Intellectual Property systems do not grant patents for inventions that are not truly novel due to existing Traditional knowledge;
- **Continued Negotiations:** The IGC continues its work, focusing on text-based negotiations to define further legal protections for Traditional knowledge and Traditional cultural expressions, aiming to strengthen the foundation of the 2024 treaty;
- **Indigenous Participation:** The treaty recognises the rights of Indigenous peoples and local communities in managing their resources and includes them in the process of implementation and governance; and
- **Information Systems:** The treaty enables development of databases and information systems containing TKs to aid patent offices in searching for prior art, and preventing improper grant of patent.

III. WIPO Treaty and a critical review

The WIPO GRATK Treaty is a landmark; albeit compromised instrument. It mandates patent applicants to disclose the source of genetic resources and associated Traditional knowledge, aiming to prevent bio-piracy. Critiques highlight certain loopholes as are mentioned below ^{5-12 op. cit.:}

- **Weak Enforcement & Loopholes:**
 - **'Based on' Threshold:** Critics argue that limiting disclosure to inventions 'based on' the GRATK Treaty allows applicants to avoid reporting if they can argue the connection is tenuous;
 - **Lack of Due Diligence:** The treaty permits applicants to claim ignorance of the source, potentially undermining the obligation if not supported by mandatory rigorous searches.
- **Implementation Challenges:** The treaty relies heavily on national implementation, which could lead to inconsistent international standards. It also lacks specific binding mechanisms

to handle the cross-border nature of many genetic resources; and

- **Information Systems:** The treaty promotes databases of Traditional knowledge for patent examiners to check for novelty; but these databases risk exposing sensitive knowledge if not managed properly.

The GRATK Treaty is regarded as a carefully balanced compromise rather than a definitive solution to misappropriation. Its effectiveness in protecting Indigenous rights remains a subject as to how the countries do strictly implement its disclosure provisions. The treaty has also initiated the following significant progress (after May, 2024) towards recognising the IP content of TKs ⁵⁻¹²

op cit .:

- **WIPO GRATK Treaty Resource Centre:** WIPO established a dedicated online resource centre to highlight and document the decades of work, dialogue, and collaboration leading to the treaty's adoption, providing access to background materials and FAQs regarding its procedural and legal aspects;
- **Continued Negotiations and IGC Sessions:** WIPO has maintained its momentum, with the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) resuming in late 2024 to take stock of the treaty and continue work on other areas;
- **Increased Focus on Indigenous Participation:** The 2024 negotiations and subsequent sessions (viz. IGC 48 and IGC 49) involved active participation from the Indigenous Conclave, which developed text proposals and worked closely with the WIPO Secretariat, ensuring that implementation of the treaty reflects the needs of the Indigenous peoples;
- **Implementation Focus:** Several nations have begun reviewing their patent laws to align with the treaty's mandatory disclosure requirements, with an aim to prevent misappropriation. The next phase is to move from adoption to national implementation, through legal frameworks to enforce the mandatory disclosure requirements;
- **Broader Scope:** WIPO continues to negotiate separate instruments to protect Traditional knowledge beyond its association with genetic resources (e.g., traditional ecological knowledge, crafts) and traditional cultural expressions (e.g., dances, rituals); and
- **Challenges:** Some concerns have been raised regarding the lack of on-ground implementation and that non-disclosure is not grounds for patent revocation in some perspectives.

IV. Concern of the Indigenous communities and various organisations working for their

welfare

While Indigenous communities hailed the treaty as a ‘first step’ towards ensuring transparent access to their resources, following key concerns have been expressed (by these communities and welfare organisations working for them) regarding its effectiveness, scope and enforcement^{13 and 14.}

- **Weak Sanctions for non-Compliance:** A primary concern is the weak sanctions regime, which fails to provide strong deterrents against bio-piracy. The treaty prohibits patent revocation solely for failure to disclose, unless fraudulent intent is proven, which involves a high legal threshold;
- **Exclusion of Digital Sequence Information (DSI):** The treaty does not explicitly include digital sequence information of genetic resources, which is a crucial area of modern biotechnology where geographical origins are often obscured. This omission is viewed as a significant gap, allowing for potential misappropriation;
- **Non-Retroactivity Clause:** The treaty does not apply to patent applications filed before its adoption and thus, leaving previously granted patents, that may have resulted from bio-piracy, untouched;
- **Lack of Positive Rights:** Indigenous groups expressed that the treaty only provides a ‘defensive’ mechanism (preventing wrong patents) rather than proactive and positive protection that recognises TKs as the Intellectual Property of these groups which would give them rights over the commercial use of their knowledge;
- **No Protection for Cultural Expressions:** The treaty is restricted to Traditional knowledge linked to genetic resources. It does not cover other intangible cultural heritage, i.e. traditional cultural expressions—including dance, songs, art, and handicrafts, which remain vulnerable to appropriation; and
- **Potential to undilute Stronger National Laws:** For countries like India, which already have strong disclosure requirements in their patent laws (e.g., potential revocation of patents), the treaty’s lower international standards could, if implemented incorrectly, weaken existing domestic protections.

After decades of discussions and negotiations, WIPO’s new treaty comes as a first, long-awaited, IP-based legal response to those claims. In that way, the new treaty has a significant symbolic value as it shows the ability and willingness of international organisations, such as WIPO, to listen and respond to Indigenous peoples’ claims and concerns, which may pave the

way for more change in the Intellectual Property framework making it fairer for Indigenous groups. It appears that the new treaty does represent a very positive development in the international safeguard of Indigenous heritage and, more broadly, in inter-national IP laws. Ultimately, the new treaty's capacity to generate concrete changes in how the Intellectual Property system deals with Indigenous heritage, will depend on some factors. Without active participation of the Indigenous peoples and their inclusion in decision-making, the new treaty could be limited to its symbolic value, as it is not capable enough in responding to the long-standing claims of those stakeholders.

Despite the connections between TK and GRs, not all GRs are necessarily associated with TK. A Multi-national Company (MNC) might receive authorisation from a government to explore the flora of a certain region (to access GRs of plants in that area). In the process of exploring the area, the MNC's representatives may learn about the Traditional knowledge of the local community regarding use of a different other local plant in preventing or treating a particular disease. In that case, the earlier authorisation to access the GRs (from the local plants) in that area, does not necessarily allow authorisation to it to use the TK of the community involving medicinal properties of the different plant to create new products.

Actually, there should be distinct rules in this regard so as to stop any bio-piracy in the process. Practices like bio-piracy and misappropriation of Indigenous heritage reflect the historic misconception of the Western cultural superiority in relation to Indigenous peoples in colonies. Since no legal framework for safeguard of Indigenous traditional heritage and culturally adequate protection for their TK was put in place, cases of access and appropriation of TK by third parties for using the same in patentable creations without the consent of the community consent, could not be dealt with in an appropriate manner. While some flexibility and balancing of interests might have been essential for consensus in the adoption of the new treaty, the framing of the disclosure requirement and the language used to enable that flexibility should not jeopardise the potential impact on the requirements of the treaty.

Despite these limitations, the treaty is recognised for finally bringing Indigenous voices into the WIPO's framework. Necessary consultations with these people in the creation of national databases signal a shift towards recognising Indigenous rights. At the same time, the involvement of various organisations working for welfare of these peoples is very much important. The authorities at the national and international levels are to consult all the aspects with them and the Indigenous peoples. One such organisation is the International Work Group

for Indigenous Affairs and it is a global human rights organisation dedicated to promoting and defending Indigenous peoples' rights. It protects and defends the collective and individual rights of the Indigenous peoples and also the right to freely pursue their self-determined economic, social and cultural development. In close cooperation with these peoples, it coordinates, enhances and leads advocacy efforts at national, regional and international levels in pursuit of common objectives through dialogue, mutual trust, respect and cooperation. Therefore, organisations like the IWGIA with effective network are to be tapped in this regard for conveying benefits to the Indigenous peoples¹⁵⁻²³.

V. Sui Generis legislation and related points

According to developing countries, a *Sui generis* mode would be appropriate to protect the TKs; but it is apprehended that a single *Sui generis* regime of protection for TKs etc. may create problems, because it may be too specific and not flexible enough to accommodate local needs. It is quite reasonable to take care of both the aspects of moral and economic rights in respect of the TKs. WIPO IGC developed a series of studies on analysis of the elements of a *Sui generis* TK-system. These documents included details of national *Sui generis* laws for protection of TKs. Practical experiences reflect that existing IP laws and *Sui generis* measures are complementary to each other. A comprehensive approach suggests that the boundaries between these two options are not rigid and one should go well alongside the other.

The Rajiv Gandhi National Institute of Intellectual Property Management in the D/o. Promotion of Industry and Industrial Trade, M/o. Commerce and Industry, Govt. of India is to (i) have a national consensus about IP elements present in all the components of TKs and (ii) take necessary steps in the international forum after consultations with the Indigenous peoples and their organisations. The RGNIIPM, Nagpur may set up a High-Power Committee (with members out of various domain experts and Indigenous peoples along with the organisations working for their welfare) in this regard, through regular meetings, seminars, interactive sessions, workshops and group discussions so as to firm up a national stand, and then look into the case of implementation of the GRATK Treaty in India²⁴.

VI. Conclusion

Products identified by a GI tag are often the result of traditional processes and knowledge carried forward by a community in a particular region from time immemorial. Moreover, products identified by a GI tag do embody characteristic elements of the traditional artistic heritage developed in a given region, known as 'traditional cultural expressions' and

this is particularly true for tangible products viz. handicrafts, etc. It is a fact that the TKs carried forward by a community in a particular region from time immemorial enables grant of GI tag and this point is to be emphasised in the proposal for recognition of IP-content of all components of TKs. TKs have enough potential to ensure sustainable livelihood for the Indigenous peoples. At the same time, the aspect of honouring the moral rights of these people on their intangible assets may also be taken care of. As mentioned, all the stakeholders are to be listened to before arriving at a consensus decision. Therefore, recognition of the TKs by the WIPO will fulfil the aspirations, and ensure sustainable development of these people and communities through government support, institutional guidance and liberal financing. Therefore, the Government of India is to highlight all these while approaching the WIPO for its consideration^{25, 26 and 27}.

REFERENCES

1. **Anonymous. (2017). Text books of Intellectual Property Rights: MIP-105(1)-Basics of Copyright; MIP-106(4)-Protection of Traditional Knowledge; and MIP-7(3)- IP and Protection of TCE. PGDIPR-IGNOU. New Delhi [accessed on 8.4.26]**
2. **Posey, D. A. (Ed.). (1999). Cultural and spiritual values of biodiversity: A complementary contribution to the global biodiversity assessment. Intermediate Technology Publications.**
3. **Posey, D. A., & Dutfield, G. (1996). Beyond intellectual property: Toward traditional resource rights for indigenous peoples and local communities. International Development Research Centre.**
4. <https://www.google.com/search?q=decision+taken+by+the+WIPO+IGC+about+IP+cotent+of+the+Traditional+Knowledge+of+the+Indigenous+people+after+the+adoption+of+the+GRATK+Treaty+of+May>. [accessed on 8.4.26]
5. **Convention on Biological Diversity. (1992). Convention on Biological Diversity. United Nations Environment Programme. <https://www.cbd.int/convention/>**
6. **Convention on Biological Diversity. (2011). Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization. Secretariat of the Convention on Biological Diversity: <https://www.cbd.int/abs/>**
7. **Convention on Biological Diversity. (2022). Kunming-Montreal Global Biodiversity Framework. Secretariat of the Convention on Biological Diversity: <https://www.cbd.int/gbf>**
8. **Food and Agriculture Organization of the United Nations. (2017). Voluntary guidelines for sustainable soil management. FAO: <https://www.fao.org/3/bl813e/bl813e.pdf>**
10. **Food and Agriculture Organization of the United Nations. (2024). Access and benefit-sharing and genetic resources for food and agriculture: Typology of country measures. FAO. <https://doi.org/10.4060/cd0790en>**

11. **Food and Agriculture Organization of the United Nations. (2026).** ESS8: Indigenous Peoples. FAO. <https://www.fao.org/environmental-socialsafeguards/standards/ess8/en>
12. **International Labour Organization. (1989).** Indigenous and tribal people's convention, 1989 (No. 169). International Labour Organization. <https://www.ilo.org/>
13. **International Union for Conservation of Nature. (2016).** Indigenous peoples, local communities and areas of high biodiversity conservation importance. IUCN. <https://www.iucn.org/>
14. **Shiva, V. (1997).** Bio piracy: The plunder of nature and knowledge. South End Press.
15. **United Nations. (2007).** United Nations Declaration on the Rights of Indigenous Peoples. United Nations. International Journal of Dynamic Educational Research Society July to September -2026: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rightsof-indigenous-peoples.html>
16. **United Nations Permanent Forum on Indigenous Issues. (2026).** Bio-cultural community protocols and access and benefit-sharing of genetic resources. United Nations.
17. **World Intellectual Property Organization.(2001).** Intellectual property needs and expectations of traditional knowledge holders: WIPO report on fact-finding missions on intellectual property and traditional knowledge (1998–1999). WIPO.
18. **World Intellectual Property Organization. (2017).** the protection of traditional knowledge: Draft articles. WIPO.
19. **World Intellectual Property Organization. (2020).** Traditional knowledge and Intellectual property. WIPO: <https://www.wipo.int/tk/en/>
20. **World Intellectual Property Organization. (2024).** Traditional knowledge, traditional cultural expressions and genetic resources. WIPO. <https://www.wipo.int/tk/en/>
21. [https://www.google.com/search?num=12&rlz=1C1VDKB_enIN947IN947&sca_esv=b81e1b9584c528ab&sxsrf=ANbL-n7u6ZUaMf16izbu9rV_Mx7OQdpeRw:1776322533888&q=critical+assessment+of+the+wipo+igc+gratk+treaty+of+ may+,2024+about+ip+content ..\[accessed on 8.4.26\]](https://www.google.com/search?num=12&rlz=1C1VDKB_enIN947IN947&sca_esv=b81e1b9584c528ab&sxsrf=ANbL-n7u6ZUaMf16izbu9rV_Mx7OQdpeRw:1776322533888&q=critical+assessment+of+the+wipo+igc+gratk+treaty+of+ may+,2024+about+ip+content ..[accessed on 8.4.26])
22. [https://www.google.com/search?num=12&sca_esv=b81e1b9584c528ab&rlz=1C1VDKB_enIN947IN947&sxsrf=ANbL-n4ImVKjcdi2UofrPWp8NdIpMilMg:1776322326699&q=progress+achieved+by+WIPO+in+ moving+..\[accessed on 8.4.26\]](https://www.google.com/search?num=12&sca_esv=b81e1b9584c528ab&rlz=1C1VDKB_enIN947IN947&sxsrf=ANbL-n4ImVKjcdi2UofrPWp8NdIpMilMg:1776322326699&q=progress+achieved+by+WIPO+in+ moving+..[accessed on 8.4.26])
23. <https://www.google.com/search?q=concerns+expressed+by+the+Indigenous+community+and+organisations+working+for+thei+welfare+about+the+GRATK+Treaty+of+WIPO+adopted+in+May+....//https://onlinelibrary.wiley.com/doi/10.1111/jwip.12359/////Journal of Intellectual>

Property-Intellectual property at a crossroads: The knowledge and resources of indigenous peoples and local communities: Jessica C. Lai, Evana Wright, Jordana R. Goodman, 09.6.2025. <https://doi.org/10.1111/jwip.12359>/// <https://iwgia.org/en/> [all accessed on 8.4.26]

24. <https://www.ijlrr.com/post/traditional-knowledge-and-ipr-a-sui-generis-system-of-ip-protection-for-traditional-knowledge//chrome-extension://efaidnbmnnnibpcajpcglclefindmka> [accessed on 8.4.26]

25. World Bank. (2015). **Indigenous peoples and sustainable development**: The role of Indigenous Peoples in achieving sustainable development. World Bank.

26. United Nations. (2015). **Transforming our world**: The 2030 agenda for sustainable development. United Nations. <https://sdgs.un.org/2030agenda>

27. United Nations Department of Economic and Social Affairs. (2021). **State of the world's Indigenous Peoples: Rights to lands, territories and resources**. United Nations.

