

ABSTRACT

Trademark law in India serves broader functions beyond the traditional purpose of distinguishing goods and services. One of its key roles is the protection of cultural heritage, particularly concerning traditional knowledge and indigenous symbols. This research explores how trademark law in India safeguards indigenous communities' cultural identity through geographical indications (GIs) and collective marks. The study examines how these legal mechanisms help prevent misuse, misappropriation, and unauthorized commercial exploitation by focusing on traditional knowledge and indigenous symbols. Additionally, the paper highlights the legal challenges and limitations in balancing intellectual property rights with cultural preservation. It also discusses the evolving role of trademark law in promoting ethical business practices, while ensuring that the benefits derived from the use of indigenous symbols and traditional knowledge are fairly shared with the original holders. This research contributes to the understanding of how Indian trademark law intersects with the protection of cultural heritage and indigenous rights.

TRADEMARK LAW, CULTURAL HERITAGE, TRADITIONAL KNOWLEDGE, INDIGENOUS SYMBOL, GEOGRAPHICAL INDICATION, INTELLECTUAL PROPERTY

INTRODUCTION

"Lock in Your Legacy with a Trademark!"

¹Trademark law plays a crucial role in distinguishing goods and services, and protecting brand identities through words, symbols, and logos. However, its scope extends beyond commercial purposes, encompassing the protection of cultural heritage, especially traditional knowledge and indigenous symbols. These cultural elements, deeply rooted in history and often integral to

¹The trade mark act of 1999

the identity of Indigenous communities, are vulnerable to exploitation and misappropriation without proper safeguards. In India, where traditional knowledge holds immense cultural significance, trademark law has the potential to protect such heritage, ensuring that indigenous symbols and practices are not used without acknowledgment or fair compensation.

This paper addresses the research question: **How does Indian trademark law protect cultural heritage, particularly concerning traditional knowledge and indigenous symbols?** It explores the evolving role of trademark law in safeguarding cultural heritage, the legal mechanisms in place, and the effectiveness of India's intellectual property framework in preserving indigenous rights. The paper further examines whether current legal structures need reform to better protect these invaluable cultural resources.

In Laxmikant Patel v. Chetanbhai Shah, 2002(24)

The law prohibits individuals from conducting their business in a manner that would mislead customers or clients into believing that the goods or services offered by one party belong to or are associated with another. There are two primary reasons for this restriction. First, honesty and fair play are fundamental principles that should govern business practices. Second, when a person adopts a name or mark already associated with another business, it can lead to confusion, diverting customers or clients from the original business and causing potential harm.

RESEARCH METHODOLOGY

This research paper is descriptive and is based on the secondary sources available online.

LITERATURE REVIEW

The Government of India has implemented several laws and legal measures to preserve and protect the country's cultural heritage.

Article 51A(f) asserts that it is the responsibility of every Indian citizen to honor and protect

the country's rich and diverse cultural heritage. Similarly, Article 49 mandates that the State preserve any monument, site, or item of historical or artistic significance, designated as nationally important through legislation by Parliament, and prevent its destruction, defacement, removal, export, or disposal.

Article 29(1) guarantees that any group within India or its territories, possessing a unique language, script, or culture, has the right to preserve it. Article 29(2) ensures that no citizen can be denied admission to a state-run educational institution or financial support on the grounds of race, religion, caste, language, or a combination of these factors. Article 30(1) grants minority communities the right to establish and manage their own educational institutions, with the State prohibited from discriminating in the allocation of aid based on whether the institutions are controlled by individuals of a particular religion or cultural group. These provisions are part of the Fundamental Rights, aimed at ensuring that minority communities are respected and their cultural traditions are maintained.

PERSPECTIVE JUDICIARY

The Supreme Court has highlighted the importance of these articles in protecting the rights of minorities and promoting their progress, thus fostering cultural tolerance. This has been underscored in cases such as *T.M.A. Pai Foundation & Ors vs. State of Karnataka & Ors* (2012) and *The Ahmedabad St. Xavier's College vs. State of Gujarat & Anr* (1974). Article 344 mentions a Committee and Commission for Official Language. Specifically, Article 344(4) refers to a Committee assigned with the responsibility of reviewing the Commission's recommendations and submitting its report to the President.²

In *Subhas Dutta vs UOI* (3.02.2015), a bench of Justices Adarsh Goel and T.S. Thakur held that historical objects preserved in various locations, particularly museums, fall within the scope of Article 49, making their preservation a constitutional obligation. The bench was hearing a Public Interest Litigation (PIL) filed by Subhas Dutta, which sought directions for

²Cultural Heritage law and judicial Activism in india , Naiyala Mobin Abbasi

enhanced security measures and a thorough investigation into incidents of theft and damage to these objects.

THE NEEM CASE

The Neem case raised a controversy that could be tagged as the "first" for India, and that raised doubts about an allegedly "strict" patent system, which was patent granting to a company W.R. Grace.³ In the United States and the European Union, the company was awarded a patent for a formulation that kept the active ingredient in the neem plant in the safe storage of azadirachtin; it decided to use azadirachtin for its pesticidal properties. Traditional medicine systems, such as Ayurveda and Unani, recognize neem tree antiviral and antibacterial properties also known as the "curer of all ailments" in Sanskrit, and recommend the same for the treatment of skin diseases and as a natural pesticide. In the patent application, the applicant acknowledged how the pesticide uses of neem were established and pointed out that it is difficult to store azadirachtin for a longer time. The granted US patent covered a restricted invention by which the applicant was only given the exclusive right to use azadirachtin in the unique storage solution mentioned in the patent.

The patent grant was followed by an outcry and questioned by re-examination and post-grant opposition proceedings before, respectively, the United States Patent and Trademark Office (USPTO) and the European Patent Office (EPO). While the USPTO did not succeed, the European Patent Office ruled in favor of the opposition stating the issued patent lacked innovation and imaginative move.

THE TURMERIC CASE

Turmeric is a tropical herb cultivated in eastern India. In India, turmeric powder is widely used as a medicine, a food ingredient, and a dye to name just a few of its uses. It is used as a blood purifier, for example, in the treatment of the common cold, and as an antiparasitic for many

³Bio -piracy of traditional knowledge

skin infections. It is also used as an important ingredient in many Indian cuisines. In 1995, the United States issued a patent for wound healing rights on turmeric to the University of Mississippi Medical Center. The asserted subject matter was the use of "turmeric powder and its administration" for wound healing, both oral and topical. It received an exclusive right to sell and distribute.

The Indian Council for Science and Industrial Research (CSIR) had objected to the granted patent and had provided USPTO with written proof of the prior art. While it was a well-established reality that turmeric usage has been recognized in every household in India for ages, finding documented knowledge on the use of turmeric powder through oral as well as topical routes for wound healing has been a herculean job. Because of extensive research, there were 32 references in various languages namely Sanskrit, Urdu, and Hindi. The USPTO, therefore, revoked the patent, stating that the claims in the patent were obvious and anticipated, and agreed that the use of turmeric was an ancient art of healing wounds.

Therefore, the TK that belonged to India was safeguarded in the Turmeric case.

THE BASMATI RICE CASE

In the Basmati rice case, RiceTec Inc., USA, was granted a US Patent (No. 5663484) entitled "Basmati Rice Lines and Grains" in 1997. New rice lines were produced by crossing semi-dwarf varieties from India and Pakistan, with 22 traditional basmati varieties. The patent application includes 20 arguments covering not only novel lines of rice grown from rice germplasm but also different varieties based on traditional farmers-bred varieties. In addition, Rice Tec also grabbed the name 'Basmati' and thus assumed exclusive control of new varieties based on traditional rice varieties nurtured by farmers' generations. The specific characteristics such as the fragrant aroma, long and slender grain, and distinct taste of Basmati are attributable to the geographic area (larger Punjab area divided between India and Pakistan) where it grows in.

This business was thus misleading the public against different and inferior goods, and thus adversely affected India and Pakistan's export market. Under pressure from Non-

Governmental Organizations (NGOs), the Government of India filed an application for re-examination in the year 2000 on the ground that the rice lines in question lacked inventiveness and innovation. In the year 2001, in response to the request, USPTO only allowed 5 claims (three independent claims 8, 9, 11 and their dependent claims 12 & 13)

out of 20, and the title of the invention was also changed from "Basmati Rice Lines and Grains 10 to "Rice Lines

GEOGRAPHICAL INDICATION

Difference between Geographical Indications and TradeMarks

Scotch Whisky, BMW, Darjeeling Tea, and Adidas are a few names known to people all across the globe. A common man would quite easily associate these names with famous brands. However, if we take a closer look, we will observe that these names don't belong to one category. BMW and Adidas are trademarks, while Scotch Whisky and Darjeeling Tea are geographical indicators. When it comes to trademarks and geographical indications (GIs), there has always been confusion in the minds of people. For a common man, both GI and trademark indicate the identity of the goods. So, where does the difference between the two terms lie?

Factors determining GI:

- 1) Indication to source
- 2) Appellations to origin

Indication of source refers to an indication of origin of the product from a place or a country.

Appellation of origin refers to a sign that indicates that a product originates in a specific geographical region only when the characteristics. Qualities of the product are due to the geographical environment, including natural and human factors as held At the international level, by Lizbon.Agreement.

INDIAN HISTORY

In India, GI tags are issued in accordance with the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which went into effect on September 15, 2003, by the Geographical Indication Registry, which is part of the Ministry of Commerce and Industry's Department of Industry Promotion and Internal Trade.

Any individual producer, association of persons, organisation, or authority established by or under the law may apply for a GI tag, and the application should be written in the proper format and submitted to the concerned authority along with the prescribed fee. A GI tag is only valid for ten years, but it can be renewed for another ten years at a time through each subsequent renewal.

Darjeeling Tea was the first product in India to receive a GI tag, which was issued between 2004 and 2005, and the number of registrations and applications has grown rapidly since then.

According to the Indian government, approximately 370 Geographical Indications of Goods (Registration and Protection) Act, 1999, GI tags have been assigned to various goods.

- A collective mark is a trademark owned by a group or association, allowing only its members to use it.
- The purpose of a collective mark is to differentiate the goods or services of the group from those of others.
- An example of a collective mark is the TATA trademark, which is exclusive to members of the TATA group of companies.

A geographical indication, on the other hand, is not a collective mark.

Geographical indications identify goods that originate from a specific location, emphasizing qualities or characteristics linked to that geographical area.

The quality and reputation of goods under geographical indications are influenced by both natural and human factors associated with their origin.

- Section 25 of the Act prohibits registering trademarks that include geographical indications for goods not originating from the indicated territory.
- The aim is to prevent misleading the public about the true origin of goods and to protect public property related to geographical indications.
- Section 26 serves as an exception to Section 25, allowing for the protection of trademarks that include geographical indications if they were applied for or registered in good faith
- Good faith usage of such trademarks is recognized if it occurred before the Geographical Indication Act commenced or before the application for the geographical indication registration was filed.

TRIPS AGREEMENT

Intellectual Property (IP) encompasses rights related to literary, artistic, scientific works, discoveries, trademarks, service marks, and protection against unfair competition, as outlined in Article 2 of the WIPO Convention. IP grants creators exclusive rights to their creations for a limited period, offering businesses a competitive advantage. These rights can be assigned, licensed, or transferred.

The TRIPS Agreement establishes three main features for intellectual property protection:

1. **Standards:** Member states must meet minimum criteria for IPR protection across various categories such as copyrights, trademarks, and patents.
2. **Enforcement:** It outlines rules for IPR enforcement, including civil, administrative, and criminal remedies to ensure creators' rights are upheld.

3. **Dispute Settlement:** Disputes between WTO members regarding TRIPS responsibilities are resolved through the WTO's dispute resolution processes.

Purpose of TRIPS:

- To reduce barriers to international trade.
- To ensure effective IPR protection.
- To prevent enforcement measures from hindering legitimate trade.

Case Example: In *Roche vs. Cipla (2012)*, the Delhi High Court ruled in favor of Cipla, allowing the production of a generic cancer drug despite Roche's patent, citing public policy and the high cost of Roche's drug.

WIPO AGREEMENT

Introduction

Founded on July 14, 1967, and headquartered in Geneva, Switzerland, WIPO is a specialized agency of the United Nations. It has 193 member states and focuses on promoting creative activity and the protection of intellectual property (IP) worldwide.⁴

Mission and Functions

WIPO aims to foster creativity and protect IP globally. It plays a key role in setting international IP standards, supporting global IP systems, and assisting in resolving IP disputes. WIPO is largely self-funded, with 95% of its income generated from service fees. For 2020-2021, WIPO projected an income of over 880 million Swiss francs.

LEGAL ISSUE

Misusing the traditional cultural heritage, knowledge, and expressions of indigenous peoples, even unintentionally, can lead to significant consequences for both brand owners and indigenous communities. Legally, brand owners may face claims from indigenous groups

⁴Intergovernmental committee on intellectual property and Genetic Resources ,Traditonal knowledge and folklore

related to intellectual property rights, unfair competition, trade practices, labeling laws, or national laws, where applicable. The reputational risks are considerable, as negative reactions can affect public perception, consumers, and shareholders, even if the company later issues a public apology. In today's fast-paced communication environment, any backlash can quickly spread globally, even if the misuse is limited in time or scope. Financially, negative publicity can harm a product or campaign, leading to decreased sales, costly corrective advertising, and even a drop in the company's stock value. Indigenous communities, unauthorized use and commercialization of their cultural heritage can have profound human consequences. It is often seen as a serious violation of their culture and traditions, potentially damaging both their cultural integrity and the community's ability to protect and control their heritage and knowledge.

POLICY AND CHANGES TO STRENGTHEN PROTECTION

I. POLICY OBJECTIVES

The protection of traditional knowledge should aim to:

1. **Recognize Value:** Acknowledge the broad value of traditional knowledge, including its social, economic, scientific, technological, and cultural significance, and its ongoing role in innovation.
2. **Promote Respect:** Respect the dignity, cultural integrity, and contributions of traditional knowledge holders to areas like environmental conservation, food security, and sustainable agriculture.
3. **Meet the Needs of Holders:** Ensure that the aspirations of traditional knowledge holders are met and that they benefit socially, culturally, and economically from their knowledge.

⁵Appropriating traditional culture ,Diane slive

4. **Empower Knowledge Holders:** Empower traditional knowledge holders with appropriate moral and economic rights, giving them authority over their knowledge.

5. **Support Systems:** Facilitate the ongoing use, development, and transmission of traditional knowledge and support customary custodianship.

6. **Safeguard Knowledge:** Contribute to the preservation and wider use of traditional knowledge for the benefit of its holders and humanity.

7. **Repress Misappropriation:** Prevent the misappropriation of traditional knowledge and unfair commercial activities.

8. **Promote Innovation:** Encourage and protect innovation based on traditional knowledge, particularly when desired by its holders.

9. **Promote Fair Benefit Sharing:** Ensure the fair distribution of benefits arising from the use of traditional knowledge, especially when linked to genetic resources.

10. **Enhance Transparency:** Foster transparency and mutual respect in the relationships between traditional knowledge holders and user

II. CORE PRINCIPLES

1. **Responsiveness to TK holders:** Protection should reflect the needs and expectations of traditional knowledge holders, respecting their customs, laws, and cultural context.

2. **Recognition of Rights:** Acknowledge the rights of traditional knowledge holders to protect their knowledge from misuse.

3. **Effectiveness and Accessibility:** Protection measures should be effective, understandable, and accessible to the intended beneficiaries.
4. **Flexibility and Comprehensiveness:** Protection should accommodate the diversity of traditional knowledge and allow flexibility for national authorities to adapt it within existing legal frameworks.
5. **Equity and Benefit-Sharing:** Protection should ensure fair and equitable sharing of benefits from the use of traditional knowledge, particularly when associated with genetic resources.

B. SPECIFIC SUBSTANTIVE PRINCIPLES

1. **Protection Against Misappropriation:** Traditional knowledge should be protected against unfair or illicit appropriation, including unauthorized commercial use.
2. **Unfair Competition:** Traditional knowledge holders should be protected against acts of unfair competition, such as false claims of involvement in products or services, or the commercial exploitation of their knowledge without proper compensation.
3. **Protection of Customary Use:** Customary practices for using and transmitting knowledge should be respected and protected, ensuring that traditional knowledge can continue to be passed down within communities.

This revised summary emphasizes the core objectives and guiding principles for protecting traditional knowledge while eliminating unnecessary details.

SUGGESTION

To effectively protect traditional knowledge (TK) and prevent its misuse, a unified global legal framework should be established, integrating TK protection within the existing intellectual property (IP) system. Countries could follow India's example with the Traditional Knowledge Digital Library (TKDL) to create accessible, secure repositories for TK documentation. The Berne Convention should be updated to address the evolving challenges posed by digital technology, particularly in the fields of biotechnology and genetic resources. Additionally, WIPO's initiatives should be strengthened to combat bio-piracy, ensuring mandatory patent disclosures on the origin of genetic materials and the proof of informed consent and fair benefit-sharing. Legal measures must be enhanced to prevent unauthorized use of TK and genetic resources, ensuring compliance with the Convention on Biological Diversity and establishing clear protocols for prior informed consent and equitable benefit-sharing. These steps will empower indigenous communities, safeguard their knowledge, and ensure its ethical use for sustainable development.

CONCLUSION

The protection of traditional knowledge is essential for preserving cultural heritage and promoting sustainable development. While efforts like the Berne Convention and WIPO's initiatives provide a framework, they need to be updated to address the challenges posed by technological advancements. The creation of global legal standards for TK protection, alongside better documentation and transparent benefit-sharing mechanisms, will empower Indigenous communities and ensure that their knowledge contributes to the greater good without exploitation. Enhanced legal protections and international cooperation will be key to achieving these goals

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