



## Crossroads of Traditional Knowledge and Intellectual Property in India and Thailand

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Traditional knowledge is gaining momentum. The concept came as an inherent one with the grand demand from the global south on benefit sharing, which is connected with intellectual property. However, traditional knowledge has its own independent standing as well. Biologically rich countries have started taking steps at the national level to strengthen and reap the benefits of traditional knowledge. This has resulted in interesting situations, like the protection of traditional knowledge through intellectual property. The scenario as to the protection of traditional knowledge through intellectual property prevailing in India and Thailand has been discussed in this article to trace the crossroads between intellectual property and traditional knowledge. The paper reviews the said scenario in India and Thailand, and the same may allow the reader to ascertain the possible juncture and technical gaps.

**Keywords:** Intellectual Property, Traditional Knowledge, Geographical Indication, Plant Variety protection, Copyright, Trade Secret

The demand from the global south to bridge the gap between the Convention on Biological Diversity and Trade-Related Aspects of Intellectual Property<sup>1</sup> was sent to the World Intellectual Property Organization where the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore is being debated since the year 2000.<sup>2</sup> This committee is working to secure a legal text for the protection of traditional knowledge, among other terms, acknowledging traditional knowledge as one of the cornerstones. However, the aforementioned committee has not yet reached a consensus.

Nations like India and Thailand have deployed various steps at the national level to have a robust regime for the protection of traditional knowledge. The said regime is still in its nascent stage due to the varying nature of traditional knowledge and the lack of text defining traditional knowledge in any international instrument or in any national legislation. It is also appearing to be in the nascent stage when understood from a mature concept point of view in today's complex knowledge society. The paper portrays the prevailing scenario in the said two countries/nations. This may provide relevant takeaways for the reader in the context of the

crossroads of intellectual property and traditional knowledge from the prism of the protection of intellectual property. The said takeaways may assist the readers in foreseeing the stand and scope of traditional knowledge.

In this paper, the protection of traditional knowledge in context with geographical indications, trade secrets, plant variety protection, and copyright law is carried out. Along with that, sui generis ways are also discussed where intellectual property may also be utilized.

It is pertinent to mention that protection of traditional knowledge through intellectual property is happening, mainly because intellectual property provides venues for the appropriation of traditional knowledge. This appropriation somehow turned into an argument for the viable economic outcome of traditional knowledge. Neither intellectual property was established to cater for traditional knowledge nor is traditional knowledge established to cater for intellectual property. Both are at a crossroads.

Moreover, the paper does not advocate that intellectual property, as stated, may play a major role in the protection of traditional knowledge. For instance, in the case of geographical indications, traditional knowledge is protected indirectly. The ineffective legal framework of the Intellectual property system contrasts with the absence of

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mechanisms for the protection of traditional knowledge.<sup>3</sup> Although, it is not certain up to what extent intellectual property rights can protect traditional knowledge, debate should keep going in the hope of finding some valuable inputs.

The topic of traditional knowledge is so inherent in the culture of local communities and indigenous communities that it produces fascinating and strong junctures when it interacts with intellectual property. Generally speaking, sometimes the juncture comes under the legal umbrella, and sometimes it does not. When it is not under the legal umbrella, the cultural aspect plays a strong role.<sup>4</sup> However, it appears that economic potential often plays a major role.

### Exploring Traditional Knowledge

The World Intellectual Property Organization defines traditional knowledge as “knowledge, know-how, skills, and practices that are developed, sustained, and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.”<sup>5</sup>

This definition suggests that traditional knowledge is knowledge, skills, and practices; that this knowledge is sustained, developed, and passed from one generation to another; that this knowledge is passed from one generation to another within a community; and that this knowledge forms part of the culture and spiritual identity of said community. Hence, traditional knowledge includes skills, practices, and knowledge of things passed from generation to generation within a community. However, some traditional knowledge is being used in multi-community, for example, traditional knowledge related to the benefits of neem and turmeric. The use of Turmeric and Neem in India is already famous. The use of Neem<sup>6</sup> and Turmeric<sup>7</sup> is also conventional in Thailand. The reason is either exchange or replication of the knowledge, or the raw material being indigenous to both India and Thailand. However, a legal definition of traditional knowledge is required at the international level, as its protection has become a requirement.<sup>8</sup>

When seen from the perspective of protection, traditional knowledge may be relevant for the following reasons:

(i) Traditional knowledge allows one to reap the potential of biological resources. This led the appropriators of biological resources to earn a fortune in several instances. It is not wrong to say

that geographical indications are often the result of the biological resources of a particular geography, for example, soil, bacteria, and so on.

- ii) It has become a culture for the communities that possess and exercise traditional knowledge. Such issues contrast with cultural appropriation and misappropriation.
- iii) Traditional knowledge has tremendous potential, which ranges from an economic perspective to the conservation and preservation of biological diversity. Through traditional knowledge, people have sustained sustainable water harvesting<sup>9</sup>, sustainable ways of rearing animals while maintaining land masses<sup>10</sup>, and many more. Such activity results in economics and also results in the dissemination of traditional knowledge, resulting in its protection.
- iv) Understanding traditional knowledge leads us to the intricacies of sociology. The value system that traditional knowledge has incorporated into it is tremendous. It is a way of life. Because this knowledge is entangled with a way of living or with day-to-day life, it has become cultural and sacred<sup>11</sup> as well.
- v) It has the potential to provide a living for many people. For instance, vaidas and hakims (local healers) have earnings from traditional practices and activities.<sup>12</sup>

The notion of India allowing subscription-based access to its traditional knowledge digital library seeks to ensure that industries and businesses benefit from traditional knowledge.<sup>13</sup>

Traditional knowledge got the limelight when access and benefit sharing were put into the debate at the international level. Apart from this, traditional knowledge also pertains to indigenous communities and local communities because they have protected traditional knowledge and because of the economic potential and value of traditional knowledge.<sup>14</sup>

Undoubtedly, traditional knowledge has become an asset not only for developing countries but for developed countries as well, but it is not generating much revenue for its holders<sup>15</sup> since they can use it in very limited ways. This is due to various reasons, like a lack of resources, expertise, commercial thought processes, and the like.

### Crossroads of Intellectual Property and Traditional Knowledge

Like India, Thailand is also one of the other biologically diverse countries with vast and rich

traditional knowledge.<sup>16</sup> The rich traditional knowledge of Thailand is sustained and carried on from one generation to another. Traditional knowledge, as already stated, has become a way of life and is intermingled with culture, faith, and so on. This knowledge is indispensable for health care, food security, biological diversity, and healthy practices. It would not be an exaggeration to say that traditional knowledge is the identity of a particular country.

It is pertinent to mention that not every traditional knowledge is cultural, like water harvesting techniques and the rearing of animals. Traditional knowledge has many facets.

Thailand and India have no specific legal regulatory framework for the protection of traditional knowledge. The protection of traditional knowledge through the systems provided by intellectual property regimes like geographical indications, trade secrets, copyright, and plant variety protection seems to be very viable, but not absolutely.

As is clear from the discussion, the main reason of selecting India and Thailand for the study is that both are megadiverse countries. Discussion in the paper clearly talks that both India and Thailand are pro-traditional knowledge.<sup>17</sup> Both nations are finding ways to protect traditional knowledge, which is clear from the discussion in the paper.

Moreover, both are developing countries that face similar socio-economic conditions, and both have economic and commercial relations.<sup>18</sup> Thailand views India as the gateway to South Asia and beyond.<sup>19</sup>

India and Thailand are debated in the context of intellectual property and are put forward as lessons for Cambodia.<sup>20</sup> The free trade agreement between India and Thailand talks of intellectual property cooperation; however, traditional knowledge is not mentioned.<sup>21</sup> The mention of traditional knowledge may bring both nations closer for collaborations to protect traditional knowledge.

## Geographical Indications

### Thailand

Geographical indications are the tags or signs assigned to the products that have a specific affiliation with the geography. The product is known because of the geography in which it originates. The product has a reputation or qualities because of geography alone. One of the objectives of the geographical indication law in Thailand is to protect traditional knowledge and strengthen local and indigenous communities. For instance, the protection of a traditional Thai

dessert known as Kanom Sali Suphan, Kanom Mo Kaeng Mueang Phetchaburi.<sup>22</sup>

Section 3 of the Protection of Geographical Indication Act in Thailand allows agricultural products, handicrafts, and industrial products to get geographical indication protection.

Two requirements are there to get geographical indication protection. The first requirement is that there should be a symbol, name, or something else that can indicate the product's origin in the respective geography. The second requirement is that there should be a relationship between the reputation, quality, or relevant characteristics of the product and its geographical origin.<sup>23</sup>

Since geographical indications are community rights, they cannot be transferred or sold. This makes it a good deal when it comes to the protection of traditional knowledge. Once the geographical indication is secured, then the prices and economic potential of such products go up. It provides sufficient economic benefit to the community. Several geographical indications have been granted in Thailand.<sup>24</sup>

It is said in the way of life of indigenous people in Thailand that "when the farming season has gone, women weave cloth, and men strike iron."<sup>25</sup> Almost every household weaves clothes, and this knowledge or wisdom of weaving has been passed from one generation to another. One such example is "Lamphun Brocade Thai Silk," which is a complex method.<sup>26</sup>

Since these activities provide economic benefits, they have been preserved. If the economic benefit becomes very small or the lifestyle of these people changes, then such knowledge would be gone. It may be argued that this is just a method of weaving, but looking holistically, traditional knowledge also provides medicines and other indispensable knowledge.

The major drawback, or it would be correct to say limitation, of a geographical indication is that the product and geography shall have a link. Unless that link is there, protection would not be granted. Traditional knowledge is much more than just linking products with geographical indications. For instance, the Tomyum Kung<sup>27</sup> dish is traditional knowledge, but since it cannot be linked to a particular geography, it cannot be protected.

As per the case study released by the World Intellectual Property Organization<sup>28</sup>, Thailand leads in the registration of geographical indications among ASEAN countries. Geographical indications are

generating approximately 40,000 million baht (THB) per year for the communities. Geographical indications are expected to bring economic benefits and can check the issue of migration as well.

Thailand is created sales opportunities and market opportunities through events like ThaiFex during May 23–27, 2023.<sup>29</sup> Such events help create the market for geographical indication. Such activities make it clear that geographical indication can protect one facet of traditional knowledge. This facet can utilize geographical indication when it is at a crossroads with geographical indication.

#### India

In 1999, India enacted the Geographical Indications of Goods (Registration and Protection) Act. This act does not talk about traditional knowledge, but the subject matter of geographical indication incorporates traditional knowledge. India may also mention traditional knowledge, like Thailand. Although it appears Thailand has not done justice to protect the traditional knowledge, India could do so by creating a sub category to protect goods that may not be famous by geographical names.<sup>30</sup> Certain logos or marks should be assigned to the sub category to differentiate them from typical geographical indications.

Traditional knowledge is the knowledge that has been passed from one generation to another, generally in verbal form. This pertains to a lot of activities that we do on a routine basis. Geographical indication pertains to manufacturing as well. Even if something is grown at a particular place and thereby acquires certain characteristics, future generations will learn how to grow and maintain it. This is the knowledge that is transferred from generation to generation and becomes traditional knowledge. A few examples available on the Geographical Indication page of the office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) are Mysore Silk, Kangra Tea, Mysore Sandalwood Oil, and Kashmir Pashmina. CGPDTM is generally known as the Indian Patent Office and is an agency working under the Department for Promotion of Industry and Internal Trade.<sup>31</sup>

As of now, there is no minimum duration or term required for a product to get a geographical indication tag. One of the alternatives from the draft articles for the protection of traditional knowledge, prepared by the secretariat and submitted during the 46th Session held from February 27 to March 3, 2023, at World

Intellectual Property Organization's Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), provides that if knowledge is transferred from one generation to another for 5 generations, then it would be considered traditional knowledge.<sup>32</sup>

In that case, any new practice associated with geography in the sense of geographical indication may get a geographical indication tag once it becomes traditional knowledge, which is debatable. To get a geographical indication, the practice being traditional knowledge, is not a requirement. Hence, such definitions would keep the intellectual property regime open for the protection of traditional knowledge through intellectual property.

Even in the absence of such a definition, there is no age limit for a practice to become traditional knowledge, and there is no age limit for a product to be in existence to secure geographical indication. Hence, novel traditional knowledge can get a geographical indication tag. However, the examination trend at the geographical indication's registry is quite different. The number of applications is refused because the geographical indication registry found the claimed geographical indication tag to be a coined one.<sup>33</sup>

Geographical indications may be created. Suppose, through various means, particular geography is made to have a particular, unique product. It would be an injustice if such a product were not granted geographical indication protection. However, in this case, the practice may become traditional knowledge later on, and it is protected beforehand.

Traditional knowledge also pertains to the community, and so is a geographical indication. That's why a geographical indication cannot be assigned. As per Section 24 of the Goods (Registration and Protection) Act, 1999, a geographical indication cannot be assigned, transmitted, licensed, pledged, and mortgaged, and so on.

Nevertheless, Section 25 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, prohibits the use of a geographical indication as a trademark, but if such a mark is being used before the respective mark is sought to be registered as a geographical indication, the trademark may survive. If marks have been used as trademarks before the commencement of the geographical indication act, then a trademark can also be sustained.

It is not wrong to interpret that trademarks may be a viable tool to protect traditional knowledge in this

sense. Since trademarks are not included in the paper, the instance may be taken as an incidental one. The example of "Chirimoya Cumbe" from Peru, which is registered as a collective trademark, may be taken as an analogy and acceptable instance. This fruit may have been registered as a geographical Indication but it was registered as a collective trademark. The main reason was that the government possess the geographical indication rights and local people were not in favour of this.<sup>34</sup> This is the main reason for including this instance. Moreover, using collective marks may assist local people in adding value to their products.<sup>35</sup>

It may be a skeptical argument that for one product, geographical indications as well as collective marks may be taken. Since the association of people or groups uses collective marks and geographical indications, more than one association of people may market a single product from a specific geography.

Nevertheless, from early on, the protection of traditional knowledge through existing intellectual property models was studied, and the geographical indication was found to be a viable tool to secure and commercialize traditional knowledge.<sup>36</sup>

However, a geographical indication can only act as a tool, and it is not the only tool to protect traditional knowledge. It has certain limitations, like:

- (i) Geographical indications protect the "indicators," suggesting an association with the specific geography. If traditional knowledge has become generic, then it loses its significance in terms of protection under geographical indication.
- (ii) Intangible traditional knowledge, unless it becomes tangible, cannot become a geographical indication.
- (iii) If the product is not appealing to consumers or there is no demand for the said product, the protection would not generate any outcome.
- (iv) To get a geographical indication tag in India, reputation is the stand-alone factor to be proved through historical record.<sup>37</sup> The work of handicrafts practiced since time immemorial falls into the domain of traditional knowledge. This connection is actually an implied one, and faces the issue that a geographical indication is given to the name of a place. In contrast, the name of goods is also registered, along with a geographical indication, like 'shawl' in Kullu Shawl and the word 'Embroidery' in Kasuti

Embroidery. Both are registered geographical indications in India.<sup>38</sup>

Moreover, in the case Darjeeling Tea, the indigenous and local people possess traditional knowledge as to the cultivation of tea.<sup>39</sup> The potential of geographical indications to protect traditional knowledge is ongoing<sup>40</sup> and is acknowledged as well.<sup>41</sup>

However, harmonization in Indian law between geographical indications and traditional knowledge is required. As of now, the geographical indication tag covers traditional knowledge, but the law does not incorporate any mandate covering traditional knowledge. This development is debated and requires further development.<sup>42</sup>

Recently, India gave geographical indication protection to 33 products in one day.<sup>43</sup> Moreover, Kangra tea geographical indication has got geographical indication protection in the European Union.<sup>44</sup> is an example of the commercialization of traditional knowledge overseas. The Indian Government has approved INR 75 crores to create awareness regarding geographical indication.<sup>45</sup>

A study<sup>46</sup> revealed that the average income of craftsmen dealing in five geographical indication crafts in Uttar Pradesh, India, has increased by INR 3,553/- monthly. The study was done over five crafts, namely Banaras Gulabi Meenakari craft, Mirzapur Handmade Dari, Varanasi Soft Stone Jali Works, Banaras Metal Repousse Craft, and Varanasi Wooden Lacquerware and Toys.

Banrasi Gulabi Meenakari Craft and Varanasi Wooden Lacquerware and Toys secured maximum monthly hikes with INR 6,640/- and INR 6,325/-, respectively. However, Mirzapur Handmade Dari and Varanasi Soft Stone Jali Works secured minimum monthly increments of INR 400 and INR 600, respectively. Banaras Metal Repousse Craft received a monthly increase of INR 3,800/.

The average was secured after subtracting the average monthly income post-geographical indication tag and before the geographical indication tag.

Undoubtedly, traditional practices generate huge revenue, and the application of intellectual property would add to the value of the product. It is not wrong to say that intellectual property is in itself a brand.

It is estimated that India can create approximately 200 million jobs through geographical indication.<sup>47</sup>

## Trade Secrets

### Thailand

Trade secrets, also known as undisclosed information, come under the purview of intellectual property. Thailand has a regulatory framework for trade secrets, i.e., the Trade Secrets Act B.E. 2545 (2002).<sup>48</sup> This act provides for the protection of facts and information about trade if they meet the following criteria:

- (i) Confidentiality;
- (ii) Commercial outcome from maintaining secrecy or confidentiality; and
- (iii) Efforts are taken to keep it secret.

The list of information covers instances of techniques, formulas, patterns, methods, compilation, processes, and the like.

If the traditional knowledge of the relevant community satisfies the requirements, it might qualify for trade secret protection. Moreover, automatic protection is there for trade secrets since there is no requirement of registration to secure the trade secret.<sup>48</sup>

As to protection through trade secrets, the following points may be of essence:

- (i) When it comes to the community at large, maintaining trade secrets is a challenge in itself.
- (ii) Traditional knowledge is already known to other communities in many cases.<sup>49</sup>
- (iii) Traditional knowledge is discovered by foreign entities or outsiders, making it common knowledge.
- (iv) The commercial notions and expertise of the respective community play a significant role in securing benefits from traditional knowledge. The intersection of trade secrets and traditional knowledge cannot be assumed in light of the argument that secret traditional knowledge with cultural and spiritual value may not be commercialized.

### India

There is no specific legislation in India for the protection of trade secrets. Trade secrets, being something confidential or undisclosed between parties, may pertain to a breach of trust or another similar remedy.

When it comes to traditional knowledge, a trade secret may play a significant role.

The people have experimented with traditional knowledge, and it is also evolving. If someone, through such an experiment, does something and gets a product with economic viability, then he can use it.

The author is of the view that local and indigenous people should be educated and trained about commercial notions of traditional knowledge. An economic ecology for traditional knowledge is very much required.

If "A" secures some knowledge from "X" verbally or through portals like a traditional knowledge digital library about the use of particular biological resources that may be available as commonly used commodities, he then refines it. He may use it as a trade secret. However, such activity has the potential to attract biopiracy or a violation of benefit sharing if the trade secret is leaked.

Trade secrets are not always in tangible form, and neither is traditional knowledge.<sup>50</sup> It may be argued that tracing and finding traditional knowledge for codification also involves gathering secret traditional knowledge, usually by persuasion. One example is from Maharashtra, India, where Vaidha and Hakim were not revealing their traditional knowledge, but through a couple of public meetings, they were persuaded, and certificates were awarded to them to carry on their practices.<sup>51</sup> Usually, they keep on experimenting and keep their knowledge secret.

Suppose any university or industry hires these local healers and uses their knowledge. Through research and development, they may develop some products and keep them as trade secrets.

Since such information is kept secret, it is very difficult to learn about their origin, development, and so on.

## Traditional Knowledge and Plant Variety Rights

### Thailand

The Plant Variety Protection Act 1999<sup>52</sup> is the sui generis system<sup>53</sup> adopted by Thailand. The purpose is almost the same as any other country enacting a sui generis system for plant varieties, that is,

- (i) To encourage novel plant breeding methods,
- (ii) To protect and use the knowledge of farmers about plant genetic resources regarding the preservation and improvement of plant varieties (this knowledge, it is not wrong to say, is traditional knowledge),
- (iii) To protect the rights of the local and indigenous communities, and
- (iv) To protect the rights of farmers.

The act protects plant varieties, which are classified into the following four groups:

- (i) Local domestic plant variety;
- (ii) New plant variety;
- (iii) Wild plant variety; and
- (iv) Domestic plant variety.

Two kinds of protection are available in Thailand, which are as given below:

- (i) New plant varieties and local domestic plant varieties would get protection after registration under the act.
- (ii) Wild plant varieties and general domestic plant (section 52)<sup>54</sup> varieties would get automatic protection. This was established to give force to the rights of local and indigenous people and the rights of farmers.

The Plant Variety Act seeks to pave the way for local farmers to develop and register plant varieties, but there are hardly any instances of the registration of such varieties since they do not fulfil the eligibility criteria.<sup>53</sup> It raises the concern that local farmers and breeders are, as such, not benefiting from it.

The abovementioned situation may be contrasted with the ThaiFlex event, where Thailand is creating a market for the development of geographical indications. In the case of plant variety, it may be difficult to provide training or knowledge to local farmers to pursue commercial benefits through the plant variety act due to infrastructural and technical issues. It may be a matter of debate whether such activities should be taken up or not.

Moreover, it may be argued that universities and higher education institutes may take up projects inclusive of farmers and help them gain commercial benefits. Such a setup may encourage farmers to develop local varieties.<sup>55</sup> The instance of the wild food plants in the Lawa and Karen communities.<sup>55</sup> These wild plants are significant from a food security point of view, and these wild food plants are significant not only for traditional dishes but also from a medicinal point of view. A project may be taken up to have the notion achieved.

#### India

India has enacted the Protection of Plant Varieties and Farmers Rights Act, 2001. The said act does not specifically incorporate the term "traditional knowledge." However, the mention of certain terms gives a clear notion of traditional knowledge, such as:

- (i) The terms "cultivation" and "evolution" under Section 2(1)(i) of the said act, which pertain to traditional knowledge.

- (ii) The terms "traditional varieties" and "selection and identification" under Section 2(k)(iii) of the said act pertain to traditional knowledge.

It is pertinent to mention that farmers do experiments, that nature and fields are their laboratories<sup>56</sup>, and that their experience, knowledge, maturity, and understanding are their degrees.

In annual year 2021-22, 128 certificates were issued for farmers' variety.<sup>57</sup> However a lot still needs to be done so that farmers can make maximum use of new varieties. The amount of money, though considered to be nominal at one point, is high for many farmers. Moreover, the details to be provided for registration are technical, and hence, it becomes difficult for farmers to get the new variety registered.<sup>58</sup>

Furthermore, spending on awareness programmes and providing aid to farmers may be taken up as a priority in light of the balance statement given in the recent annual report from the registry.<sup>57</sup> In contrast, the purpose of the sui generis system instead of the patent regime was to opt for the protection of farmers.

Traditional knowledge is a very vast topic. It is very difficult to have an exclusive definition. Only an inclusive definition of traditional knowledge can work. Traditional knowledge can be protected by different laws to the extent that these laws pertain to traditional knowledge and vice versa.

### Copyrights

#### Thailand

Copyrights are given to original expressions. Original expressions of traditional knowledge may be copyrighted. For example, a compilation, book, or research paper describing traditional knowledge in some original expression. There may be paintings explaining, suggesting, commenting on, or exploring traditional knowledge. However, copyright protection does not require registration. Hence, with copyright infringement cases covering arguments of traditional knowledge, the jurisprudence attracting crossroads of copyright and traditional knowledge may be developed.

As of now, no model for providing community copyrights is available. Copyright protects individual interests.<sup>59</sup> Every intellectual property has a different scope and coverage. Geographical indication provides community rights, but not all intellectual property does so.

Copyright requires identification of the author, but when it comes to traditional knowledge, it is very

difficult to identify the author. Protection of traditional knowledge is one point, and generating economic value out of traditional knowledge is another point. Both may go together or not. The above instance, in the sense of copyright, shows that copyright may not play a significant role in generating an economy for communities.

Moreover, any person can use traditional forms of exercise and earn from them. Similarly, activities like meditation can be used for commercial purposes. Such activities are happening, but the point is that with modifications, one can make it better, and copyright may be the umbrella for protection. Similarly, much other traditional knowledge may be used.<sup>60</sup>

Intellectual property is in the spotlight as it allows appropriation of traditional knowledge<sup>61</sup>, and hence, intellectual property could be used to seek the maximum benefit out of traditional knowledge. Such crossroads should be used for the development of both traditional knowledge and intellectual property.

#### India

The Indian copyright law does not mention traditional knowledge. However, copyright protects original expression, abridgements, and compilations, which are the subject matter of protection.

If some traditional knowledge is compiled or abridged, then it would not be a violation. But it depends on what kind of knowledge is being compiled, abridged, or expressed through original expressions. If it is sacred traditional knowledge or secret traditional knowledge, then there may be further situations.

Moreover, the opening line of the International Journal of Hinduism & Philosophy under the aegis of the 'Bhagavad Gita Research Foundation' allows authors to retain copyright in original material.<sup>62</sup> The copyright record of Srila Prabhupada's Bhagavad-Gita was used by fake means by an imposter organization as claimed by the website content.<sup>63</sup> It becomes clear that copyright, apart from being a channel of protection for traditional knowledge, can also be a channel of its dissemination on a broader platform. However, minus speculation as just made, copyright seems to be a viable channel like other intellectual property, but as of now, it appears that very few adventures are there.

The *Bhaktivedanta Book Trust v Thomson Press (India) Ltd.*, SUIT (L) NO. 78 of 2017, decided on 08.02.2017, the court granted interim injunction to the

plaintiff, stating that the plaintiff's copyright in the translated version of the Bhagavad Gita is violated by the defendant.

In *Hafiz P.H. Abdul v Abdurrahman*<sup>68</sup> the high court of Kerala, India, stopped the defendants from copying the version of the Quran and said that the plaintiff has instilled labour and skill, hence drawing originality.

It could be argued that such books, as aforesaid, may not be a subject matter of traditional knowledge. According to the World Intellectual Property Organization's definition of traditional knowledge, this knowledge includes knowledge that defines cultural and spiritual identity. These books have knowledge constituting cultural and spiritual identity.

In one of the interesting cases, *Institute for Inner Studies v Charlotte Anderson* (CS(OS)--2252/201), the court denied copyright protection to pranayoga poses published by the party and also noted that pranayoga poses are traditional knowledge that does not impart originality under copyright.

In *Bikram Choudhury v Evolution Yoga, LLC*, D.C. No. 2:11-cv-05506-ODW-SS Court said that the copyright over yoga poses falls under the idea-expression dichotomy and is not capable of being registered.

Both matters took place in the United States but were not appreciated in India, and concerns were raised. Yoga is a traditional knowledge of India.

Moreover, yoga is a multi-billion-dollar industry, and that way it may be protected and carried on while generating economics, but copyright may not provide many adventures. However, even if such expressions of yoga, as discussed in the aforesaid two cases, may not generate original expressions or may not get copyright, any description, any movie, or any compilation of such traditional knowledge may qualify for copyright protection.<sup>65</sup>

It seems that copyright protects traditional knowledge in its very inherent notion of revolutionizing the arts, literature, music, and the like. However, it is difficult to imagine what kind of community rights may be available to protect traditional knowledge for folk music<sup>66</sup> and other traditional knowledge under the domain of copyright.

#### *Sui-Generis* Ways

These sui generis ways may protect traditional knowledge, which may or may not be at a crossroads with intellectual property. However, by applying such methods, we may have a subject matter that can

invoke relevant intellectual property. In such a scenario, we may have intellectual property and traditional knowledge at a crossroads.

#### Thailand

Two pieces of legislation from Thailand are worth discussing here. The first is the Protection and Promotion of Traditional Thai Medicinal Intelligence Act B.E. 2542 (1999), and the second is The Promotion and Conservation of Intangible Cultural Heritage Act, B.E. 2559 (2016).

A. Protection and Promotion of Traditional Thai Medicinal Intelligence Act B.E. 2542 (1999):

This Act covers traditional knowledge and protects medicine, texts, and drugs wherein personal formulas can be registered.<sup>67</sup> It provides intellectual property rights over national, personal, or general text or formula of traditional Thai drugs, medicines, and documents.

It is pertinent to mention that any such compilation or expression may become a subject matter of copyright, providing protection and visibility for its potential.

Thailand is integrating traditional medicine into the public health system, and people are also inclined towards such medical practices. It was also found that traditional healers possess good ethno-pharmacological knowledge.<sup>68</sup>

The treatment of serious diseases like cancer can be done in traditional ways, and studies show a positive result, encouraging healers to apply local wisdom.<sup>69</sup>

B) The Promotion and Conservation of Intangible Cultural Heritage Act, B.E. 2559 (2016):

The subject matter of this act is traditional knowledge, which covers folk literature, performing arts, rituals, and practices concerning nature and the universe from which communities can get benefit.<sup>70</sup>

It has resulted in the protection of stone-polished bronzeware, Mon recipes and costumes, Surin textiles, and natural processes. However, lack of proper participation from the community and the system, lack of belongingness to one's cultural practices, and non-happening of cultural awareness in everyday life are some of the challenges, among others.<sup>71</sup>

The reasons above will always be there in one way or another because change is inevitable. However, such laws and activities add to the protection regime and open up further economic potential.

#### India

On the other hand, India has focused on documenting traditional knowledge in the early stages

as part of defensive protection through traditional knowledge digital libraries. Various other initiatives have been used to document and get the most out of Ayurveda and other traditional medicinal systems.

A few instances are as follows:

i) National Innovation Foundation<sup>72</sup>:

The National Innovation Foundation works to strengthen technological innovations at the grassroots level and strengthen outstanding traditional knowledge. It works at the grass-roots level, covering traditional knowledge, to make India into a creative and knowledge-based society. Institutional space and policy would be expanded to achieve technological innovations at the grassroots level. Innovations to make the processing of walnuts easy and efficient<sup>73</sup> and to develop water-saving techniques like "dryland agroforestry"<sup>74</sup> are a few examples.

ii) National Medicinal Plants Board (NMPB), Ministry of AYUSH, and Government of India<sup>75</sup>:

NMPB is established to coordinate matters related to medicinal plants, programmes for the growth of the medicinal plant sector, policy support thereof, and to provide growth for export, trade, and cultivation. It provides a lot of information about herbs like *Tinospora cordifolia* and Guduchi.<sup>76</sup> Innovative ways of extending and generating awareness through comic books are being used.<sup>77</sup>

iii) Scheme for Safeguarding the Intangible Cultural Heritage<sup>78</sup>:

To revitalize and revive cultural heritage, various groups, institutions, non-governmental organizations, researchers, and scholars are engaged in projects to strengthen, preserve, protect, and promote the rich intangible heritage of India. A scheme for safeguarding intangible cultural heritage was initiated.

Similarly, there are many other schemes like the Kalakshetra Foundation, Sahitya Akademi, and Lalit Kala Akademi.<sup>79</sup>

At the same time, challenges and issues like an inadequate legislative framework, relevant expertise, a lack of understanding of "heritage values," a lack of public awareness, a lack of sense of responsibility, and a lack of skills, training, and know-how<sup>80</sup> create hurdles. Still, much is to be done to utilize intellectual property.

Moreover, the changing pattern due to globalization and modernization has its way of going, and the protection of traditional knowledge and ways has its way of going. The measures have been taken, but there is still much work to be done. Ways to have a

balanced, inclusive approach where both modern and traditional notions co-exist are required. The contrast between modern and traditional<sup>81</sup> is not within the scope of this paper. However, intellectual property can be applied in sui generis ways.<sup>82</sup>

The initiative of protecting traditional knowledge may be seen as flawed now, but once businesses and industries start cultivating traditional knowledge, once the application of technology over traditional knowledge is achieved, and once economic ecology for traditional knowledge becomes a common pattern, then, most probably, traditional knowledge may have a different stance as to its stand and scope.

### **Protecting Traditional Knowledge: Discussing the Crossroads**

**Traditional Knowledge could be very well protected by the application of the intellectual property model**

It should also be understood that the protection of traditional knowledge is being sought in different ways and means. That does not mean one concept becomes dependent on another, just as traditional knowledge cannot be dependent on intellectual property for its protection.

Intellectual property brought traditional knowledge to the limelight and provided ways and means when it comes to the protection of traditional knowledge.

It appears that the nature and characteristics of traditional knowledge, apparent from the discussion in the paper, show that though not every aspect of traditional knowledge pertains to intellectual property, intellectual property can be very effectively used to protect and develop traditional knowledge.

**Traditional knowledge can generate economic benefits for communities through Intellectual Property:**

There is no doubt that traditional knowledge can generate economic benefits for communities. There are a lot of different kinds of traditional knowledge<sup>45</sup>, and because it's not very useful for making money because of things like international prices<sup>83</sup> it needs to be protected by a number of different intellectual property models.

**It can check the issue of migration**

The main reason for migration is economics. In search of employment, people move out, and that leads to further issues. Through the application of intellectual property, the problem of migration may be addressed. One instance that becomes relevant is the development agenda of the world intellectual property organization for commercial tourism by using

intellectual property with specific reference to culinary traditions.<sup>58</sup> Initial pilot studies also show positive results.<sup>57</sup> Such activities would boost the economic capacity of local and indigenous people at various tourist locations. They may stand along with other players in the market.

India and Thailand may also become parties to this and start pilot studies on a large scale with extensive efforts. It would help preserve culture and traditional knowledge while generating economic activity. Such activities would solve the problem of migration for not just one generation but for coming generations as well.

The initiative of 'One District One Product' by the Ministry of Food Processing Industries in India could be an example. The scheme allows firms to get the food product registered.<sup>84</sup> Such projects have the potential to cover culinary dishes as well as geographical indications.<sup>85</sup>

Thailand initiated 'one province one Geographical Indication' almost a decade ago and has secured 171 geographical indications from all of its 77 provinces. Thailand is reaping the benefits of such activities.<sup>86</sup>

Moreover, similar projects may be deployed for other kinds of products.

Such projects can check migration issues. If people get employment in their hometown, there will be no motivation to migrate. It is claimed that around 20 lakh people produce geographical indications of eastern Uttar Pradesh, India, generating a massive economy of INR 25,500 crore.<sup>87</sup>

**Application of Intellectual Property Add to the Protection of Traditional Knowledge**

The instance of generating benefits for the tourism industry using intellectual property is one of the examples of the application of intellectual property over traditional knowledge. Protecting theatre performances and creative aesthetic expressions is another example where intellectual property tools can play a role.<sup>82</sup> India and Thailand may have such instances, which would provide positive results and add to already existing efforts.

The initiative of intellectual property and tourism, as aforesaid, by the World Intellectual Property Organization's development agenda project<sup>88</sup> shows how intellectual property can be used to promote heritage and culture. The project studies cover culinary traditions. An example of a development agenda project by the World Property Organization

has four countries working on pilot studies. Neither Thailand nor India is among those four countries. Both India and Thailand may become parties to such agendas.

#### **Specific Legislation to Protect Traditional Knowledge is Missing**

There is no specific legislation protecting traditional knowledge, and it is very difficult to have one. There could only be an open-ended definition. Case laws and studies may further develop it.

#### **The Interface between Traditional Knowledge and Intellectual Property**

Traditional knowledge and intellectual property seem to be complementary and supplementary to each other. Although intellectual property provides venues for the appropriation of traditional knowledge, it could be said that traditional knowledge seeks intellectual property for its protection and development. The main reason was the interface of two concepts, where one was backed by mature justification, theories, and legislation, and the other was not that mature and not backed by effective legislation.

Anyhow, as stated, both seem to be complementary and supplementary to each other, and this may be used effectively by generating new ways and means, like universities having projects with farmers to enhance their capacity building. This may give the university extensive publicity, and the university may claim good funding as well. Alternatively, universities may agree with farmers to use their land for scientific cultivation. This may allow a win-win situation for all parties. Moreover, the money payable under corporate social responsibility may be diverted to universities for such projects.

#### **Similarities in Protecting Traditional Knowledge in India and Thailand**

India and Thailand almost sail the same boat and face similar issues and challenges. However, it depends on tackling the situation, finding new ways, and the like. For instance, Thailand is leading the way in using geographical indications, whereas India is not that equipped when it comes to making optimal use of geographical indications.<sup>89</sup> India may have to learn from Thailand. But recently, 33 geographical indications got protection, as stated earlier in the paper, which may give momentum.

On the other hand, as discussed earlier, India is also trying to make much out of traditional knowledge

through codification and its plans to make it available on subscription to allow industries and businesses to cash in on traditional knowledge. Thailand may have to learn from that.

India is to establish a global south centre<sup>90</sup>, and through that, the topic of traditional knowledge may be developed either by making a consortium of nations or otherwise. Here, nations will share their issues, challenges, and success stories. The global south may create markets for itself in the field of traditional knowledge using intellectual property.

#### **Such Activities may Check Threats to Traditional Knowledge**

Common threats to traditional knowledge are related to commercial exploitation, social problems like poverty, and a low level of industrialization. These threats may be well-checked by doing more and by learning from each other. The steps taken by India and Thailand may result in the development of traditional knowledge while removing or diluting the above-mentioned threats.

It seems that India and Thailand are doing well, with results visible in some cases but not in others. However, developing and protecting traditional knowledge with the initiatives discussed may generate viable results.

#### **Conclusion**

In the current scenario, the protection of traditional knowledge is dependent on the assistance of other legislation and sui generis methods and models. Traditional knowledge would keep evolving. It is required to be explored with much intensity.

Initiatives for its exploitation in legal ways should be taken. The basic nature, characteristics, and origins of traditional knowledge sometimes become an issue and a challenge. India and Thailand are doing a good job of addressing these problems and challenges, but there is still much to do. Learning from each other and coming together in the field of traditional knowledge may produce effective tools and platforms. There are milestones to be achieved for the protection of traditional knowledge.

Intellectual property appears to be one of the best tools for the protection and development of traditional knowledge. It appears that much planned and scientific application of intellectual property over traditional knowledge would be of help. It may allow crossroads of intellectual property and traditional knowledge to generate positive results while acting supplementary and complimentary to each other. This

may also be beneficial for the development<sup>91</sup> of both concepts.

It appears that the lack of definition and adaptation of traditional knowledge to intellectual property is struggling, but at the same time, it is delivering results. The discussion in the paper may portray the cross roads of traditional knowledge and intellectual property, over which the reader may further delve.

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