

A NEED FOR COMMUNITY INTELLECTUAL PROPERTY RIGHTS LAW FOR THE BODO TRIBE OF ASSAM, INDIA

ABSTRACT

Protecting intellectual property of indigenous community calls for an urgent consideration. Community intellectual property of *Bodo tribe* is rich in natural and cultural wealth. This urges for inclusive legal right to assist and respond to the needs of Bodo community through effective legal system. A new system of law will ensure better protection to *Bodo* tribe to protect the originality of their cultural based and traditional based products. Conventional IP laws of India are insufficient because the cultural based products and tradition based items lack in inventiveness, originality and all other technicalities of IP laws. These requirements cannot be met by the *Bodo* tribe because these properties are in existence since indefinite number of years. From the conventional IP systems point of view traditional knowledge (TK) and traditional cultural expressions (TCE) do not find a place. This is resulting into the commercial exploitation of the TK and TCE originated products. This is the point where community is losing its rights over their own derived products. Thus, it is important that IP rights of *Bodo* community should be established through rigid legal protections by complying with the binding international conventions.

KEY WORDS

Bodo community, Community Intellectual Property Rights, Traditional, Cultural, Commercial Exploitation, Legal Protection

1. INTRODUCTION

Intellectual property is all about human creativity, ingenuity and innovation. It is the result of application of mind in the execution of creative and innovative thoughts. Intellectual Property Rights are considered as reward for creative and skilful work in execution of ideas. In fact it is the knowledge and information which forms the core content of intellectual property. (Sreenivasulu 2013) Property is anything that is owned by someone. He has the right to claim and exercise over that thing. He has the right to exclude other individuals to interfere in his right. A person who owns that particular thing is regarded as the owner of that thing. The ownership of a thing is the right of one or more persons to possess and use it to the

exclusion of others. The thing of which there may be ownership is called “property. (Reddy 2015) For *Bodo* people intellectual property exist in forms of traditional knowledge and traditional cultural expressions. Thus, a single person does not hold the property but it is held by the entire community. The knowledge and cultural expressions are performed commonly by entire community.

1.1 Traditional Knowledge of *Bodo* Community

TK is a living body of knowledge that is developed, sustained and passed on from generation to generation within its community often forming part of its cultural or spiritual identity. (*Black’s Law Dictionary Free Online Legal Dictionary* 2013) The knowledge lives in the traditional knowledge is used to describe a body of knowledge that has been deeply ingrained in local, regional, or indigenous cultures for a long time. *Bodo* community has many traditional knowledge which are their intellectual property. TK of *Bodo* community exists in form of native medicine practitioners, knowledge in making beverages, plant breeders, etc. Some traditional knowledge holders uses genetic resources like plant varieties to practice the same.

1.2 Traditional Cultural Expressions of *Bodo* Community

Traditional cultural expressions are the forms in which the traditional culture is expressed. Some of the cultural expressions are dances, songs, handicrafts, designs, ceremonies, artistic expressions, handloom weaving, etc. (*Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* 2020) They are the integral part of cultural and social identities that reflects the core values and beliefs of the community. TCEs are also handed down from one generation to another. They are maintained and developed by the holders. They are constantly evolving, developing and being recreated. (*Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* 2020) TCEs may be either tangible, intangible, or, most usually, a combination of the two.

This paper enlightens that the conventional system of IP fails to protect cultural and traditional elements of indigenous people. So far the discussions to protect the *Bodo* community rights have been restricted to intellectual property laws mainly geographical indications. Thus, examining the need for an enacted *Bodo intellectual property law* is necessary to preserve the intellectual property of *Bodo* community by applying the international conventions. World Intellectual Property Organization (WIPO) points out that through positive and defensive approaches the *traditional knowledge* can be protected.

Protection using a defensive and positive approach can give holders recognition and exclusive rights. Knowledge holders may find it useful in carrying out specific tasks, such as defending themselves against unfair competition, creating fair remuneration plans, and defending their moral rights.

The UNDRIP (“UNDRIP” 2007) specifies that the richness of *traditional and cultural products* of indigenous people should be respected and protected without any discriminations. The indigenous knowledge, cultures and traditional practices should be respected for leading sustainable and equitable development of the community. The state must comply with these international instruments by bringing effective laws and policies for protecting human rights.

In the Indian Intellectual Property Law context the terms like traditional knowledge, cultural based products are not regulated. Protecting them as IPs is also a problematic tasks. Since their inventors are no longer recognizable and no longer possess authenticity, newness, or inventiveness. They are unable to benefit from the protection offered by the established traditional IP system. (Ayu Palar et al. 2023) Already the biopiracy of traditional products and misappropriation of cultural products have taken place. The unjust ways of community rights already existed. The Bodo community anyway cannot enjoy the IP benefits out of it. The existing IP system is unable to protect the cultural properties and tradition based products. Precisely it can be stated that inclusive legal right is the only answer to the shortcomings of intellectual property regime.

2. RESEARCH METHODOLOGY

This study is carried out on the *traditional knowledge and traditional cultural expressions* of the Bodo community of Assam, India. To carry out this research, the author has used both empirical and doctrinal method. The long practice of *traditional knowledge and traditional cultural expressions* are observed by the author. The current exploitation of TK and TCEs are studied in depth after observing the present situation of Bodoland region of Assam. Secondary sources of data have both been collected by the researcher. Textbooks, Bare Acts, online documents, articles, research papers, international conventions, theses, internet content, rulings, and research projects have been used as secondary sources for this paper. The researcher used descriptive analytical approach to analyze secondary data in order to verify the creation of new legal principles and laws.

3. RESULTS AND DISCUSSIONS

3.1 Community Traditional Resources and Intellectual Property

Traditional knowledge and traditional cultural expressions can be brought under community resources and intellectual property of the community. The conventional based IP systems require the identity of an author to grant exclusive protection to the creator or to the originator. This is the concern raised by the indigenous community. Similarly Bodo community also has objections. The individual ownership rights cannot be created over the traditional and cultural based items. The ownership rights should be created on entire community.

Furthermore, it is expected that the Bodo community and their sentiments should be put forward. The cultural and ethical values should be prioritized. Legal mechanisms should be there to hold the cultural spirit and control the exploiters from further recreation and cherishing them commercially. (Lixinski 2020) It is not always consistent with the lives of individuals who live out, practice, and perpetuate these customs. These are labor – intensive, skill – intensive processes, and it would be inaccurate to think of them as gifts to all of mankind, from whom the re creators expect nothing in return.

Conventional intellectual property is only focused in bringing commercial exploitation in the bigger market. Furthermore, it assumes normatively without even questioning them about their feelings that those communities, groups, and individuals want nothing. True, there are times when communities want to give those cultural practices to others, but there are also times when they want to keep them private because they are sacred. The preservation of traditional culture and the essential role it plays in people's lives depend on its regulation, and policies designed to protect.

3.2 Importance of Community Intellectual Property Law for Bodo Tribe

Granting community IP rights to the combined TK and TCEs has emerged as one of the key concerns for Bodo community. Community IP consists of several forms, including TK and TCEs. (Ayu Palar et al. 2023) The intellectual creativity of Bodo community has potentiality for trade and commerce. *Traditional knowledge and traditional cultural expressions* are frequently linked to genetic resources because of concerns about how researchers locate and use genetic resources that have been used by indigenous people without providing the locals with appropriate compensation.(Basil 2013) Additionally, to meet the needs of contemporary society in understanding the features of each component of the Community IP, the phrases GR, TK, and TCEs are typically addressed independently.

TK and TCE are not individual property because it is regarded as property of all members of particular community. Therefore conventional IP laws cannot grant protection to the TK and TCE of the respective community.

- i. Thus, the primary objective of community IP is to protect the community rights of Bodo tribe.
- ii. Secondly, to establish the principle of prior informed consent (“NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY” 2011) from the interested parties before utilizing the Bodo community rights.
- iii. Thirdly, it will also ensure that process of deriving the TK and TCE based products cannot be accessed arbitrarily.
- iv. Fourthly, the enacted Bodo community IP law can protect them in judiciary if any violation takes place.

Community IP law can be a tool for keeping the cultural and traditional practices in private which is not possible under conventional IP laws. Community IP laws can promote greater control over the heritage of a community and bring financial benefits to the Bodo tribe. Bodo traditionally derived items and culturally produced items are also capable of being marketed and commercially exploited.

3.3 Analyzing International Convention for Enacting Community Intellectual Property

Bodo people need their own community intellectual property law by applying the international conventions such as *WIPO* Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“IGC”) in order to grant positive and defensive protection. (*Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* 2020) Nagoya protocol which is a supplementary agreement to the Convention on Biological Diversity is one of the key instruments to the Bodo community. This protocol can obligate the community to conserve their resources for sustainable development. Complying with this protocol the principle of fair and equitable share of benefits arising out of traditionally derived products can be better regularized.

International Labour Organization Convention No. 169 is an international treaty to which India is a signatory member. This treaty addresses to protect the rights of indigenous people for their traditional knowledge and culture. This convention also aims in overcoming

the discriminatory practices that was prevailing since long time. Its purpose is to make the indigenous people participate in decision making process of the state for the effective development. Through this convention an effective policies and legal measures can be enacted for inclusive and sustainable development of Bodo community.

Discussions of TK and TCE focuses on traditions and cultural practice which is not covered under the conventional IP laws. Copyright, trademark, patent and designs have missed out on drawing inferences of customary practices of indigenous people. These factors that have been dropped off by the Indian IP laws can be compensated in the *Bodo* community IP laws. The law makers can avoid the technicalities of conventional IP laws and simply consider theoretical reasoning of the traditional practice which has been pertaining since long time alongside the relevance of international conventions. Regional law is the primary sources for protection of TK and TCE. Such law can defeat the future claims of originality and novelty from those who try to claim rights in future over those TK and TCE derived products. (Hansen 2017)

It is pertinent to state that strengthening the intellectual property increases economic competitiveness. Research also shows that increasing the protection of intellectual property rights (IPR) in developing nations will eventually increase the market power of developed nations. It will also raise the price of commodities exported from developed nations and negatively impact the welfare of developing nations. (Lin and Wu 2022) An effective community intellectual property law can also further improve the Indian IP system for its better enforcement. Such law will facilitate Bodo community to regulate itself and also develop through their unique representation. (Gibson, n.d.) Intellectual property was born from human intelligence and has role in providing legal protection for the ownership of intellectual property which is either communal or personal. (Disemadi 2022)

3.4 Community Ownership

A community is formed with a group of people who inhabit in a common place or territory including in village or town or even a city. Community ownership can be interpreted as the exclusive right of particular group of people of that community to use the right with a common objective. If such ownership is given to other persons then automatically the community loses its character. In the said concern the community rights cannot be inherited to the next generation by the elders. In this regard it is appropriate to exclusively have an enacted law to acquire the full ownership of the community rights to avoid unauthorized use of the community property by other party.

3.5 Legal Benefits of Bodo Intellectual Property Law

Bodo community intellectual property law will be a tool for defensive protection against illegal use of Bodo traditional and cultural resources. It will create inclusive rights of moral rights with economic value. The local government also will be motivated to actively include resources under the law for working in harmony with the community people in enhancing community IP rights. The law can also restrict the outsiders from holding the rights and make them prove their good faith for using the Bodo community IP rights. The law can provide a safe space to the community for sharing their fair and equitable benefits among its members. Government and judiciary can also use the law for purpose of mediating the problems that may arise between the members of community or with outsiders.

In light with the international conventions like *WIPO*, *United Nations Declaration for the Rights of Indigenous People (UNDRIP)*, *Nagoya Protocol* and *International Labour Organization Convention no. 169* the resources of Bodo community needs to be protected for the sustainability of the TK and TCE. The knowledge and culture can be alienated to the newer generation. Bodo community IP law can maintain the resources across generations. There is also a possibility for generation of income by commercially exploiting the TK and TCE based products. Under the conventional IP laws of India commercial advantages of patented items, geographically indicated items or items having trademark are taking place. Likewise Bodo intellectual property through the theoretically derived resources can be marketed for the economic growth of the Bodo community. However, as discussed above there should be a mechanism to control the share of fair and equitable share of economic benefits.

3.6 Law making Agencies for Bodo Community

Bodo tribe is one of the major tribes in North Eastern India which is primarily concentrated in Assam's Northern Brahmaputra Valley. As Indigenous People, they possess a variety of TK and TCE on the preparation of herbal medicine, handicrafts, social ceremonies, weaving, wood working, dancing, etc. These customs have been carried down from previous generations and are still in use now. This is something that the entire community does. The natural resources are crucial to their survival. To gather food, earn a living, and obtain other necessities for their survival, they rely on the flora, other plant kinds, and forest essentials. (Brahma and Subrahmanyam 2023)

For the protection of their socio, economic and political right the Constitution of India was amended in the year 2003 to form *Bodoland Territorial Council*. Through this amendment *para 3 B* (Constitution of India 1949) was inserted under sixth schedule which enabled Bodoland Territorial Council to make laws with regard to 40 subject matters. B.T.C. administration should implement this provision for securing the rights of *Bodo* community. Cultural affairs are one of the subject matters out of 40 subject matters in which B.T.C. administration can make laws. This can be blended along with the elements from the international conventions to make a strong legislative law to protect the *Bodo* community's traditional and cultural rights. To acquire a welfare state the government is required to not only protect the people safety and order, but also to actively take role in realizing social justice, public welfare, and people prosperity. (Gibson, n.d.)

Such law can also bring out measures for any such enterprises who are interested in converting the TKs and TCEs into a brand for the trade and commerce. Proper precautionary measures can be chalked out to control the affairs of such enterprises. Preventive and precautionary legal measures can control those enterprises which will also provide rights and recognitions to the community for originating those TKs and TCEs. Measures can include taking *free, prior and informed consent (FPIC)* ("NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY" 2011) through proper relevant source. Other instances can be provisions for sharing of equitable benefits with the community for using their TKs and TCEs.

POINTS TO BE CONSIDERED BY BODOLAND TERRITORIAL COUNCIL FOR ENACTING A BODO COMMUNITY PROPERTY LAW

- 1. Traditional Cultural Expression** – Copyright Law of India identifies literary and artistic works as its subject matters. Cultural expressions require literary and artistic work of an individual. In case of Bodo community the traditional art, craft, handloom works, etc. are made with the artistic skills and labour of Bodo people which is transmitted from past generation till the present. The basis for drafting Community intellectual property can be taken from conventional copyright law by implementing the provisions of positive and defensive protection from WIPO.
- 2. Traditional Knowledge** – Traditional knowledge of Bodo community is practiced widely in areas like making native medicines for healing diseases like jaundice,

typhoid, bone dislocation, and many others. Local beverages are made traditionally by using the native herbs. The basis for drafting community IP law be obtained from WIPO, UNDRIP and international labour convention no. 169 for the protection of Bodo traditional knowledge.

3. Genetic Resources – Traditional knowledge of Bodo community relies so much on genetic resources. Such as traditional weaving of Bodo people has close connection with the natural and genetic resources. Eri Silk is a raw material which is derived from the cocoon that grows in the castor leaves in form of a work. It is a natural and genetic resource which is been used traditionally since indefinite numbers of years. Thus, law making agencies can secure the TK of Bodo community by relying with the provisions of Nagoya protocol.

4. Potentiality of Geographical Indications – Geographical indication law can provide unique identification to the traditional and cultural products of Bodo community. GI protection can help the producers to get better market to sell their traditional and cultural based products. This can also avoid deceptive and duplicate products to be sold in the market. Buyers can identify the original Bodo traditional products with the help of the GI tag. Thus, BTC administration can consider these legal bases for enacting a community intellectual property law.

4. CONCLUSION AND SUGGESTIONS

This article shows that the conventional intellectual property law is unable to protect the traditional knowledge and traditional cultural expressions of the Bodo community. The community TK and TCEs are derived from the cultural heritage which is held by the entire community from time immemorial. The substantial problem of conventional IP is inability to provide optimal protection to the community based products due to the absence of newness, novelty, originality, and all other technicalities of IP system. Due to the lacunae of conventional IP systems to protect the TK and TCEs of Bodo community the Bodoland Council has the role to protect their rights through an enacted community IP laws by basing on the international conventions.

The aim of the *Bodoland Council* is to maintain peace, harmony and safety among the people of the territory. In this regard social justice should be manifested for the people of Bodoland. It can be done through just and fair treatment to the people for practicing traditional knowledge and cultural expressions. For the people of Bodoland, TK and TCE

form an integral part which can be manifested as property to strengthen the national economic system. The *Bodoland Council* should enact a Bodo community intellectual property law to strengthen the roots of TK and TCE. This may also further encourage establishments of *micro, small, medium enterprises (MSME)*.

These MSMEs after taking prior informed consent from the community and by following the law can create the TKs and TCEs in form of a brand. Through this brand an intellectual property can be created in favour of the entire Bodo community. In this manner brand will also get a legal protection and rights of Bodo community can also be secured. Legal awareness will be generated in the Bodo society. The importance of legal protection for TKs and TCEs will be highlighted among the people. This will also encourage newer generation in many other ways.

In the present era wherein creating economic concern is born, protecting IP rights is utmost important. Intellectual property is essential to compete and grow. It is helpful for businesses to understand intellectual property rights (IPRs) since doing so can prevent them from violating the law. (Dewi and Adhiya Garini Putri 2023) A stringent community IP law is important for the interest of Bodo community and sustainable development of the community.

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