
IS TKDL A DEFENSIVE SHIELD OR A COMPLETE PROTECTION MECHANISM? A CRITICAL ANALYSIS WITH REFERENCE TO SIDDHA TRADITIONAL KNOWLEDGE

Deepikaa N, VIT School of Law, VIT Chennai

Mukesh Kumar S R, VIT School of Law, VIT Chennai

ABSTRACT

Traditional Knowledge has been threatened due to its misappropriation and its unauthorised commercial exploitation, especially through global intellectual property systems. India established the Traditional Knowledge Digital Library (TKDL) to safeguard traditional medicinal knowledge such as yoga, siddha, ayurveda, and unani against Biopiracy and wrongful patenting. However, whether TKDL is a complete preventive measure remains an open question. This article attempts to determine whether TKDL is merely a defensive tool against exploitation or whether it provides effective protection to Siddha traditional knowledge. This paper seeks to understand the role of TKDL in protecting traditional knowledge within the intellectual property framework and its shortcomings in addressing issues such as benefit sharing, community involvement and control over the use of traditional knowledge. According to the article, documentation is not comprehensive protection, even if the TKDL has done considerable work to provide strong defensive protection by preventing any illegal patenting and creating prior art. The paper contributes to the existing discussions regarding the governance of traditional knowledge in India through a critical analysis of the distinction between documentation and protection. The study concludes that although TKDL is crucial for preventing Bio-piracy of Siddha Knowledge, further measures must be developed to strengthen the protection of traditional knowledge systems.

Keywords: Biopiracy, Intellectual Property Rights, Prior Art, Siddha Traditional Knowledge, Traditional Knowledge, Traditional Knowledge Digital Library (TKDL).

INTRODUCTION

The term Traditional Knowledge (TK) refers to innovations, practices, and knowledge that are created by a community and passed down through generations. Traditional knowledge is often kept collectively and perpetuated by regular use and cultural transmission rather than individual ownership, in contrast to the conventional forms of intellectual property. This depicts that the present system of intellectual property laws, which is primarily framed to recognise the identities of specific inventors, authors, and artists, which causes challenges for traditional knowledge.

There are various examples of traditional knowledge in India, especially in the field of medicine. Siddha is one of the most renowned traditional medical practices since it has a long history in Tamil Nadu and numerous medical procedures and practices have been documented in books and manuscripts. However, the issue of misappropriation and unauthorised commercial exploitation of traditional medicinal knowledge by third parties have significantly increased due to its economic importance.

The Traditional Knowledge Digital Library (TKDL), an online library was established in India to document the traditional medical knowledge of the systems of Unani, Siddha, Ayurveda and Yoga as a result of this issue. The primary goal of TKDL is to serve as a defence mechanism by ensuring that documented traditional knowledge can be easily accessed by patent examiners and no patent could be awarded for already existing traditional knowledge.¹ Though, the effectiveness of the TKDL in preventing biopiracy has been widely recognised, the extent to which it safeguards traditional knowledge is still a topic of discussion. This paper examines whether the TKDL provides complete protection and safeguard for Siddha traditional knowledge or does it merely serve as a safeguard against misappropriation.

THE TRADITIONAL KNOWLEDGE DIGITAL LIBRARY AND ITS ROLE IN PROTECTING SIDDHA KNOWLEDGE

The necessity to protect traditional knowledge has become significantly important due to issues such as biopiracy and the dilemma of granting patents on knowledge that was already existing

¹ V.K. Gupta, Traditional Knowledge Digital Library – A Powerful Tool for Preventing Misappropriation and Biopiracy WIPO. Available at : https://www.wipo.int/export/sites/www/meetings/en/2011/wipo_tkdl_del_11/pdf/tkdl_gupta.pdf

within indigenous communities for generations. There were instances where certain medical procedures that were recorded in the local languages and in old texts were not acknowledged by the patent examiners. The Traditional Knowledge Digital Library (TKDL) was an initiative of Ministry of AYUSH and CSIR. The creation of the TKDL was influenced by controversies involving the patenting of traditional knowledge, particularly the *Turmeric* and *Neem* patent disputes. Earlier, patent examiners did not have access to traditional medicinal practices and procedures, which ultimately led to the grant of patents for something which was not novel and already existing.

The TKDL acts as a repository of medical knowledge from systems like Ayurveda, Siddha, Unani and Yoga. As per the official TKDL framework, the database converts and categorises traditional knowledge into formats that could easily be comprehended and used by international patent offices. The creation of Traditional Knowledge Resource Classification (TKRC) eased the process of finding prior art while evaluation of patent applications are reviewed by patent officers.² Thus, knowledge which was inaccessible due to linguistic and structural barriers have now been made available and thorough investigation could easily be made.

The significance of TKDL could be better understood through its capacity to prevent misuse and misappropriation of traditional medical knowledge. The TKDL had developed into a defensive tactic which safeguards traditional knowledge by making it available during patent search, as pointed out by various academicians. By preventing third parties from obtaining exclusive rights over pre-existing traditional knowledge, the TKDL has frequently been regarded as an effective defensive mechanism.³ In this manner, Siddha knowledge has been regarded as prior art and is provided protection under the intellectual property frameworks.

Nevertheless, having a comprehensive and equipped database will not always address every issue regarding the preservation of traditional knowledge.⁴ Thus, it becomes essential to take in account the question whether recording and storing of traditional knowledge is equivalent to protecting it, although TKDL does play a crucial role in protecting from issues of biopiracy. This is particularly relevant when considering the safeguarding of broader interests associated

² Javed Ahmad, *Traditional Knowledge Digital Library (TKDL)*, WIPO Interregional Workshop on Intellectual Property and Traditional Knowledge. Available at:

<https://www.wipo.int/edocs/mdocs/tk/en/wipo_iprk_ge_2_16/wipo_iprk_ge_2_16_presentation_12javed.pdf>

³ Traditional Knowledge Digital Library Unit (TKDL), CSIR. Available at : <<https://www.csir.res.in/en/documents/tkdl>>

⁴ Martin Fredriksson, *India's Traditional Knowledge Digital Library and the Politics of Patent Classifications*, NIH (2021). Available at: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9999701/>>

with traditional Siddha knowledge.

LIMITATIONS OF TKDL IN PROTECTING SIDDHA TRADITIONAL KNOWLEDGE

TKDL's contribution in preventing the misuse of traditional knowledge cannot be undervalued. However, it is difficult to claim that complete protection of Siddha traditional knowledge is guaranteed. A significant achievement of this initiative is protection against biopiracy and false patents, but creation of prior art alone does not always protect traditional knowledge. In case of Siddha traditional knowledge, benefit sharing, community participation and at times ownership remain to be among the main issues. Therefore, evaluating the effectiveness of TKDL solely on the basis of patent protection would not lead to accurate results.

I. The Documentation of Siddha Knowledge Does Not Grant Proprietary Rights:

The TKDL's approach of recording Siddha medicinal knowledge rather than establishing proprietary rights over it is one of the major drawbacks. Siddha formulations, treatments and medicinal practices were stored as prior art so that patent examiners could detect existing information and reject unsuitable patent applications. Documenting Siddha traditional knowledge within the TKDL does not provide exclusive ownership rights because it is collectively conserved and typically regarded as a part of the public domain. The TKDL does not grant any positive legal rights to communities similar to patents or copyrights although it prohibits external parties from exercising exclusive intellectual rights over the pre existing knowledge of Siddha. Consequently, documentation cannot be considered a complete safeguard of Siddha traditional knowledge on its own, even though it plays a significant defensive role.⁵

II. Lack of Benefit-Sharing Mechanisms for Siddha Knowledge Holders:

TKDL lacks a clear benefit sharing framework, which is yet another major drawback. Siddha system offers various commercial potentials in the areas of health care, pharmaceuticals and wellness. The TKDL ensures that these formulations are not monopolised through patents but it does not guarantee the custodians their rightful profit gained from the use of their knowledge. There is an increasing consensus in contemporary discussions on access and benefit sharing

⁵ *Ibid*

(ABS), that the communities which protect traditional knowledge must share the advantages arising out of the use of that knowledge.⁶ While Biological Diversity Act, 2002 ensures ABS mechanisms, TKDL functions as an administrative repository thereby lacking direct digital interface. However, the existing TKDL framework does not address the issue of benefit sharing, instead it solely focuses on documentation and patent-prevention procedure.

III. Limited Participation of Siddha Practitioners in Knowledge Governance:

Participation from the relevant communities is a necessary step for the preservation of traditional knowledge. The Siddha community has only limited control over how the knowledge is recorded and categorised, despite the fact that Siddha knowledge is crucial to the TKDL database. Almost the entire process, starting from documentation to access-related procedures are handled by Government and other such parties making this an entirely institutional process which is state-led. Thus, it appears that the communities which are actually in charge of conserving the Siddha medicinal knowledge have very limited to almost no control over its future use. Therefore, it is unclear that whether the interest of Siddha knowledge holders are adequately met in the present situation. Thus, even though TKDL protects and conserves Siddha knowledge, participatory method is not yet offered for its preservation.

IV. Limited Scope of Protection Beyond Patent Law:

The TKDL mainly restricts its level of protection to the patenting procedure. The TKDL was primarily established to address issues regarding false patent applications in light of existing prior art. This however significantly reduces the likelihood of products being falsely or improperly patented but it does not address the concern of Siddha traditional knowledge being exploited outside the patent processing regime. For instance, there are possibilities where traditional medical formulations and processes can be used commercially and they could even be incorporated into products without claiming patents. The TKDL database was not designed with this purpose in mind, thus the defensive function will be more challenging in these situations. Thus the protection provided by TKDL is focused on a specific area - patents, which raises serious concerns regarding its exploitation outside the purview of TKDL.

⁶ T.S. Pavan et al., *Safeguarding Traditional Medical Knowledge: An Evaluation Of The Traditional Knowledge Digital Library (TKDL) As A Legal Instrument*, VI IJLLR (2021). Available at : <<https://www.ijllr.com/post/safeguarding-traditional-medical-knowledge-an-evaluation-of-the-traditional-knowledge-digital-libra>>

TOWARDS A MORE INCLUSIVE PROTECTION FRAMEWORK FOR SIDDHA KNOWLEDGE

The limitations regarding TKDL imply that just documentation procedure and the stopping of patenting are insufficient to safeguard traditional Siddha medicinal knowledge. Despite the success of TKDL in identifying prior art, the issues discussed earlier continue to remain prevalent. Several scholars have observed that protection of traditional knowledge must be more than just a defensive approach. In the context of Siddha medicine, a better mechanism for access and benefit sharing, participation of relevant communities in knowledge management and being a part of governance would enhance the efficiency of TKDL. This would not be a substitute for TKDL but would rather supplement the current roles of TKDL to ensure that protection is not limited only to patents. Thus, this strategy might be a better way to strike a balance between the need for protection of Siddha traditional knowledge and its accessibility. This TKDL mechanism needs to be elevated to a *Sui Generis* protection model which will ensure that protection is not limited to patent related issues.

CONCLUSION

The Traditional Knowledge Digital Library (TKDL) has been very crucial in preventing biopiracy and false patenting of Siddha traditional knowledge. By recognising it as a prior art and documenting conventional medicinal practices and procedures, the TKDL has enabled patent examiners to easily examine prior knowledge. Thus, when it comes to intellectual property, TKDL is a great defensive and protective instrument. However, the scope of protection that is being offered by TKDL is restricted. While it has effectively addressed problems relating to biopiracy, it has not been able to address contemporary questions regarding access and benefit sharing, community involvement etc. Thus, the preservation of Siddha's traditional knowledge must go beyond patent protection and documentation. Therefore, it cannot be concluded that the TKDL provides a complete protection mechanism, even though it acts as an effective barrier against risks to Siddha traditional knowledge.