


Chapter 13


Safeguarding Traditional Knowledge and Farmers' Rights: A Balanced Approach to IP Protection

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ABSTRACT

Traditional Knowledge and farmers rights are considered to be the backbone of the agriculture system that is responsible for preserving the biodiversity, cultural heritage and sustainable development practices. Intellectual Property Rights (IPRs) protection is inclined towards the protection of the commercial interest rather than the rights of the creators or individuals. A balanced approach towards the protection of traditional knowledge and IPRs is required that safeguards the rights of farmers as well. The inclusive policies that enable and ensure equitable benefit sharing, protect the rights of the community, harmonize the customary laws with the IPRs are crucial in the present time. By promoting and advocating for the participatory governance, this chapter analyses the rights of farmers that foster sustainability and protect traditional knowledge simultaneously. It also examines the international legal instruments that recognize the protection of traditional knowledge.

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INTRODUCTION

The conflict between the Intellectual Property Rights (IPR) regime and traditional knowledge systems has significantly turned to be a central point of discussion in the debate and arguments over global justice, biodiversity conservation and sustainable development. The mechanism of the IPRs framework is enshrined under various international instruments such as the TRIPS Agreement i.e. Trade Related Aspects of IPRs, that was an initiative by the World Trade Organization (WTO) and several industrialized nations for prioritizing the innovation, which later on eventually lead to the commercial exploitation of the culture, communities' collective knowledge and heritage. On the other hand, the traditional knowledge i.e., practised by indigenous people and small holder farmers in particular, are based on the custodianship of the communities, the intergenerational transmission and the socio-ecological integration of the locals (Brush, 2007; Dutchfield, 2011).

In context of the globalization of the IPRs, it has intensified the standardization and of the traditional knowledge systems. For example, the patenting of the genetically modified resources such as plant varieties, seeds and crops that have been developed by the communal farmers and indigenous people, has given a spark over the debate of biopiracy and its misappropriation (Shiva, 2001). Furthermore, the current IPR regime in force hardly recognizes the nature of traditional knowledge, its ownership and the governance over its practice. This practice of non-recognition brings a disconnect and undermines the rights of the local farmers (small holder farmers specifically) and threatens the biodiversity and ecology of the community. According to the Food and Agricultural Organization (FAO), more than 70% of the crop varieties have been lost and endangered in the beginning of the 20th century due to the incorporation and expansion of the genetically modified crops and plants protected under the IPR regime (FAO, 2019).

Farmers Rights, on the other hand, rise as a crucial and critical balance to these issues and limitations. As per Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), farmers' rights are encompassed around the right to participate in decision making processes, benefit sharing mechanism, protection of traditional knowledge and equitable access to resources (Anderson, 2005). In this context, farmers rights are considered to be an important variable in safeguarding the legal and moral imperatives for ensuring sustainability, food security and cultural continuity.

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