MYSORE UNIVERSITY LAW JOURNAL

Peer-Reviewed

Volume I, Issue I | December 2024 | BIANNUAL

DEPARTMENT OF STUDIES IN LAW

University of Mysore
Manasagangotri, Mysuru - 570006
Karnataka, India
Ph: 0821-2419845
Office : 0821-2419848
Email : dos@law.uni-mysore.ac.in

ಮೈಸೂರು ವಿಶ್ವವಿದ್ಯಾನಿಲಯ
UNIVERSITY OF MYSORE

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

MYSORE UNIVERSITY LAW JOURNAL

Vol. 1, Issue 1

December 2024

Published by

Prasaranga Press

University of Mysore

Manasagangotri, Mysore 570006.

University of Mysore
Department of Studies in Law
Manasagangothri,570006
Mysore, Karnataka,India

Mysore University Law Journal

I(1) Mysore University Law Journal 2024

Subscription Details:
Department of Studies in Law,
Manasagangotri - 570006,
University of Mysore, India.
© Copyright vests with the Publisher.

Disclaimer:
The Department of Studies in Law, University of Mysore, does not necessarily endorse the views expressed by the authors.

The Chairman:
Prof. (Dr.) M.S. Benjamin
Professor of Law
Department of Studies in Law
University of Mysore,
Mysore, India.
Email: dos@law.uni-mysore.ac.in

University of Mysore
Department of Studies in Law
Manasagangothri,570006
Mysore, Karnataka,India

Mysore University Law Journal

STATEMENT OF OWNERSHIP AND OTHER PARTICULARS ABOUT MYSORE UNIVERSITY LAW JOURNAL

1.	Title	: Mysore University Law Journal
2.	Language	: English
3.	Periodicity of Publication	: **BI-ANNUAL**
4.	Printer's Name	: The Director
5.	Publisher's name	: Prasaranga Press
	Nationaliy	: Indian
	Address	: University of Mysore Printing Press, Manasagangotri, Mysore 570006.
6.	Editor's Name	: Prof. M.S. Benjamin
	Nationality	: Indian
	Address	: Manasagangotri, Mysore 570006.
7.	Owner's Name	: The Registrar, University of Mysore
8.	Place of publication	: Mysore City, Karnataka, India

I Registrar, University of Mysore hereby declare that the particulars given above are true and correct to the best of my knowledge, belief and information

June 2024

(Smt. V.R. Shylaja)

Signature of the Publisher

EDITORIAL BOARD

CHIEF PATRON

Prof.(Dr.) Lokanath N K

Hon'ble Vice Chancellor,
University of Mysore
Mysore, Karnataka, India

PATRON

Smt. V.R. Shylaja,KAS
Registrar,
University of Mysore
Mysore, Karnataka, India

EDITOR IN CHIEF

Prof. (Dr.) M.S. Benjamin

Professor of Law
Department of Studies in Law
University of Mysore
Mysore, India

DISTINGUISHED MEMBERS

Prof. (Dr.) C Basavaraju
Hon'ble Vice Chancellor,
Karnataka Law University,
Hubli, Karnataka

Prof. (Dr.) T. RAMAKRISHNA
Visiting Faculty
National Law School of India
University, Banglore

Prof (Dr.) Maruthi TR
Professor of Law
Department of Studies in Law
University of Mysore
Mysore, India

Prof (Dr.) Vijayakumar
Professor of Law,
Former vice chancellor, Dr.
Ambedkar Law University, Chennai
& Former vice Chancellor of
National Law Institute University,
Bhopal

Prof (Dr.) Ramesh
Professor of Law
Department of Studies in Law
University of Mysore
Mysore, India

Dr. Sreenivasulu N.S
Professor of Law
West Bengal National University of
Juridical Sciences,
Kolkata

Editorial Note

It is with immense pride and enthusiasm that we present the inaugural issue of the Mysore University Law Journal, a biannual, peer-reviewed platform dedicated to advancing discourse on contemporary legal issues at the intersection of intellectual property (IP), sustainable development, and international investment. This first volume offers a diverse range of articles that critically engage with the role of law in promoting sustainable practices, protecting intellectual property, and navigating the complexities of international trade and investment. A central theme in this issue is the crucial role of intellectual property rights (IPR) in advancing the Sustainable Development Goals (SDGs). As the world grapples with interconnected challenges such as economic inequality, environmental degradation, and the preservation of cultural heritage, IP has emerged as a powerful tool to shape policies that foster innovation, promote sustainable economic practices, and protect biodiversity. In the article Achieving SDG 8 Through Geographical Indications: Pathways to Sustainable Economic Growth, the authors explore the potential of geographical indications (GIs) to contribute to sustainable economic development. GIs can stimulate local economies by promoting traditional products while ensuring that these goods are produced using sustainable methods. This aligns directly with SDG 8, which focuses on fostering inclusive and sustainable economic growth, employment, and decent work. Similarly, Traditional Knowledge and SDG 15: Intellectual Property Rights as a Tool for Biodiversity Conservation highlights the intersection of IP and environmental conservation. By protecting traditional knowledge through IP mechanisms, communities can secure their cultural heritage and biodiversity. This article underscores how IP can help preserve critical ecosystems, contributing to the achievement of SDG 15, which calls for the protection of life on land. Another significant contribution to this volume is Addressing The Adverse Environmental Impact of Fast Fashion with Special Reference to WIPO Riyadh Design Law Treaty. In this paper, the authors critically examine how design law and international legal frameworks, such as the WIPO Riyadh Design Law Treaty, can mitigate the harmful environmental effects of the fast fashion industry. This is an urgent issue, given the industry's significant carbon footprint, waste generation, and exploitative labor practices. Legal tools can be key in transforming this sector into one that values sustainability over unchecked consumption. The role of intellectual property in international trade and investment is another major area explored in this issue. The article Legal Implications of Afghanistan's WTO Accession on Trade and IPR Systems explores the ramifications of Afghanistan's accession to the World Trade Organization (WTO) and the

consequent impact on the country's IP and trade policies. This paper sheds light on the challenges faced by developing nations as they seek to integrate into the global trading system, highlighting the role of international law in facilitating or hindering development. Blockchain Intellectual Property Registries: Protecting Adivasi Traditional Knowledge and Biodiversity Rights in the Niyamgiri Hills brings attention to the innovative use of blockchain technology in safeguarding indigenous knowledge and biodiversity. This article showcases how modern technological tools, when aligned with traditional knowledge, can provide robust protection for the intellectual property of marginalized communities, ensuring that their rights are respected in the face of global economic pressures. The global landscape of international investment and its intersection with IP law is a central focus of the article A Convergent Approach to International Investment and Intellectual Property Laws. This piece advocates for a more integrated approach to IP and international investment law, arguing that both frameworks must evolve to address the global challenges posed by innovation-driven economies. Additionally, Exploring the Intersection of ISDS and IP in Regulatory Contexts delves into the complex relationship between Investor-State Dispute Settlement (ISDS) mechanisms and IP law, highlighting the tensions that arise when private investors challenge public regulations aimed at safeguarding public welfare, including environmental and health standards. This first volume of the Mysore University Law Journal presents a powerful collection of perspectives that illuminate the crucial role that law plays in shaping the future of sustainable development, intellectual property, and international investment. As we look to the future, the papers in this issue collectively demonstrate how legal frameworks—both traditional and innovative—are essential tools for navigating the complex challenges of our time. We hope this inaugural issue encourages continued research and dialogue on these critical issues and provides a foundation for future contributions that will further explore the role of law in achieving the SDGs and promoting a more sustainable, just, and equitable global order.

Editor-in-Chief

Mysore University Law Journal

Content

Serial No.	Title	Page No.
1	Achieving Sdg 8 Through Geographical Indications: Pathways To Sustainable Economic Growth **-Shambhavi Tripathi**	1-12
2	Addressing The Adverse Environmental Impact Of Fast Fashion With Special Reference To Wipo Riyadh Design Law Treaty **-Palak Rajpal**	13-24
3	Legal Implications of Afghanistan's WTO Accession on Trade and IPR Systems **- Sayed Qudrat Hashimy & Prof. (Dr.) MS. Benjamin**	25-46
4	Legal Regulation Of Economic Rights Of Music Artists In Tanzania: Perspectives in Collection and Distribution of Royalties **-Peter Sayi Nzuzulima**	47-66
5	Traditional Knowledge and SDG 15: Intellectual Property Rights as a Tool for Biodiversity Conservation **-Iqmaaz Matloob**	67-83
6	Blockchain Intellectual Property Registries: Protecting Adivasi Traditional Knowledge and Biodiversity Rights in the Niyamgiri Hills **-Akshat R..N. & Akansha Pilla**	84-97
7	The Influence of Traditional Knowledge on Fashion Law in India **-Mokksha D Shah**	98-108
8	A Convergent approach to International Investment and Intellectual Property Laws **-Srishti P Nalwar**	109-112
9	*Exploring the Intersection of ISDS and IP in Regulatory Contexts* - **Rinki Biswas**	113-136

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal
Volume 1, Issue 1, 2024

ACHIEVING SDG 8 THROUGH GEOGRAPHICAL INDICATIONS: PATHWAYS TO SUSTAINABLE ECONOMIC GROWTH

Shambhavi Tripathi[1]

Abstract

Geographical Indications (GIs) have emerged as a pivotal intellectual property tool for promoting economic growth and sustainable development. This study explores the multifaceted contributions of GIs, including their role in rural development, tourism, and premium pricing, which collectively enhance income generation and local economic empowerment. GIs safeguard cultural heritage and biodiversity while fostering sustainable practices and promoting product differentiation in domestic and international markets. Their alignment with Sustainable Development Goal 8, which emphasizes inclusive and sustainable economic growth, underscores their potential to address poverty reduction, employment generation, and income equity. However, the extent of GIs' impact on economic growth remains underexplored, necessitating comprehensive strategies and policy frameworks to optimize their benefits. By addressing these gaps, GIs can serve as a transformative mechanism for achieving long-term economic and sustainable development goals.

***Keywords**: Geographical Indications, economic growth, sustainable development, rural development, premium pricing.*

---

[1] *Research Assistant, DPIIT-IPR Chair, Hidayatullah National Law University, Raipur.*

Email: officialshambhavit@gmail.com

INTRODUCTION

Economic growth is a crucial element of a nation's development, resulting in elevated incomes and improved living conditions. It promotes employment generation, alleviates poverty, and augments investment in public goods such as healthcare, education, and infrastructure. Consistent growth enhances budgetary stability, allowing governments to tackle economic disparities and global issues. The intellectual property rights (IPRs) play a crucial role in fostering economic development of the country. It is essential for fostering economic development by promoting innovation, creativity, and technical progress. IPRs offer legal safeguards and rewards for creators, promoting investment in research and development. Robust intellectual property rights regimes attract foreign direct investment, stimulate industrial growth, and elevate a nation's worldwide competitiveness. Geographical Indication (GIs) is one of the type of IPR which shows huge potential to foster economic growth. However it is often unclear till what extend the geographical indication is affecting the economic growth of the country or a specific region. In India GIs are protected by a sui-generis law. According to the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act), GI is, "in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."2 There are several types of GIs, "like agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff."[3]

Acquiring a GI offers competitive advantages for a product in both domestic and international markets, enhancing customer confidence in the authenticity and uniqueness of products and its producers, also enabling producers to better differentiate their offerings. "Besides their upward effect on product pricing, which in turn allows traditional modes of production to persist amid monopolistic competition, GIs also have important implications for local economic development."[4] One of the way to ensure

[2] *Section 2(e) of the Geographical Indication Act, 1999*

[3] *Section 2(f) of the Geographical Indication Act, 1999*

[4] *Riccardo Crescenzi, Fabrizio De Filippis, Mara Giua & Cristina Vaquero-Piñeiro, Geographical Indications and*

economic development is to promote the rural development however it is still a debate to figure out til what extend the GIs has promoted the rural development. The literature regarding the connection between GIs and rural development is extensive. Nonetheless, despite several pertinent exceptions, the topic has predominantly been examined through qualitative studies that concentrate on a limited number of items, macro-regions, or utilize a supply-chain perspective. In addition to rural development, tourism and the attainment of premium pricing significantly contribute to ensuring economic growth through GIs. Tourism thrives on the cultural and heritage value associated with GI products, attracting visitors to regions known for their unique offerings, which in turn stimulates local economies. The allure of experiencing authentic traditions and purchasing region-specific goods enhances both domestic and international tourism. Simultaneously, the ability of GIs to command premium pricing stems from the unique qualities and reputations of the products, which are often linked to their geographical origin. This market differentiation not only increases producer incomes but also encourages sustainable practices and higher-quality production standards. Together, tourism and premium pricing amplify the economic impact of GIs, fostering inclusive and sustainable economic growth.

Economic growth is essential for achieving the Sustainable Development Goals (SDGs) as it supplies the financial and material resources required for their execution. SDG 8 expressly highlights "decent work and economic growth,"[5] emphasizing the necessity of long lasting, inclusive, and sustainable economic development for poverty reduction, employment generation, and income equality. Moreover, economic growth facilitates investments in essential sectors like as healthcare, education, clean energy, and infrastructure, all of which are integral to other SDGs. For economic growth to align with the SDGs, it must be inclusive, equitable, and environmentally sustainable, guaranteeing advantages for all societal segments without jeopardizing future generations. GIs are essential in this alignment by fostering sustainable economic practices linked to local resources, cultures, and traditional knowledge. GIs safeguard the distinctiveness of regional products, promoting rural development,

Local Development: The Strength of Territorial Embeddedness, 56 Reg'l Stud. 381 (2022), https://www.tandfonline.com/doi/epdf/10.1080/00343404.2021.1946499?src=getftr&utm_source=mendeley&getft_integrator=mendeley.

[5] *U.N. Dep't of Econ. & Soc. Affs., Goal 8: Decent Work and Economic Growth, Sustainable Development Goals*, https://sdgs.un.org/goals/goal8.

generating equitable income opportunities, and conserving biodiversity, thereby advancing SDGs associated with economic growth, diminished disparities, and sustainable consumption and production practices.

The concept of sustainability and sustainable development have been essential in international development policy for more than twenty years, significantly influencing academic and policy discussions. GIs constitute a burgeoning field in which the sustainability perspective is progressively promoted. This research aims to demonstrate the relationship between GIs and economic growth, a potential that remains little examined. The author asserts that sustainability, albeit a comprehensive and complex notion, is essential in this context, justifying the application of the SDGs as a framework to evaluate how GIs might contribute to SDG 8, which prioritizes sustained economic growth. As a signatory to the United Nations' Sustainable Development Goals, 2030, India must synchronize its legal and policy frameworks with these objectives. The study emphasizes how GIs can stimulate economic growth by facilitating rural development, augmenting tourism, and allowing for premium pricing of distinctive local products. The significance of GIs in promoting economic growth, a fundamental aspect of SDG 8, highlights their critical role in attaining sustainable development and thereby achieving the objective. Further, if GIs have the potential to enhance a country's economic growth, strategic actions should be implemented to optimize their effect. In the concluding section of this study, specific actions are discussed that can potentially be taken to maximize the impact of GIs on economic growth.

WHY SDG 8 MATTERS: DRIVING SUSTAINABLE ECONOMIC PROGRESS

"Goal 8 is about promoting inclusive and sustainable economic growth, employment and decent work for all."[6] Although "globally, labour productivity has increased and the unemployment rate has decreased. However, more progress is needed to increase employment opportunities, especially for young people, reduce informal employment and labour market inequality (particularly in terms of the gender pay gap), promote safe and secure working environments, and improve access to financial services to ensure sustained and inclusive economic growth."[7] Further, decent work is essential "for everyone to get work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration. A continued lack of decent work opportunities,

[6] *ibid*

[7] *ibid*

insufficient investments and under-consumption lead to an erosion of the basic social contract underlying democratic societies: that all must share in progress."[8] GIs has a potential for sustained and inclusive economic growth by driving progress, creating decent jobs for all and improving living standards of the registered proprietors.

THE INTERFACE OF GEOGRAPHICAL INDICATIONS AND ECONOMIC GROWTH: ALIGNING WITH SDG 8

"GI processes are often supported by policy and regulatory frameworks that ensure the continuity of GI schemes over time, and thus their long-term contribution to economic development and environmental & social responsibility." [9] The correlation between economic growth and GIs is substantial, especially in attaining premium pricing, improving product differentiation, fostering rural development, and supporting sustainable economic practices. GIs ensures that no individuals are marginalized, thereby incorporating them into the sphere of economic progress.

1. GI and Premium Pricing -

GIs guarantee premium pricing by certifying the uniques qualities, reputation, and authenticity of items associated with a particular geographic area. The uniqueness of GI products, frequently linked to traditional production methods, cultural history, and local resources, which allows producers to demand greater pricing than non-gi products. This price is attained because of the consumer confidence in the product's quality and provenance, safeguarded by GI regulations. Registered proprietor can capitalize on the distinct characteristics of GI products to establish a niche, cultivate customer base and command premium prices. It will further help registered proprietor to have a sustainable livelihood, by enhancing their income, generating employment opportunities and enhancing the economy. "In a study conducted by the Organization for Economic Co-operation and Development (OECD), experts suggest that the two main factors that influence economic development are market access and differentiation." [10] The GIs creates market differentiation based in the higher quality and authenticity of the product and "consequently contribute to the creation of niche markets

---

[8] *ibid*

[9] *Sambhabi Patnaik & Amrit Anupam, Cultural Treasures as Economic Assets: Harnessing the Global Potential of Odisha's Geographical Indications, 1 IPR J. of Maharashtra Nat'l L. Univ., Nagpur 100 (2023).*

[10] *U.N. Conf. on Trade & Dev., Intellectual Property and Development: Lessons from Recent Economic Research, U.N. Doc. UNCTAD/ICTSD/2004/8 (2004), https://unctad.org/system/files/official-document/ictsd2004ipd8_en.pdf.*

which serves as the main economic rationale in the protection of GIs."[11] This differentiation allows consumers to distinguish the GI products from others, as a result, GI products are able to command premium prices, as consumers are willing to pay more for goods that are perceived as exclusive, genuine, and of superior quality. The legal protection of GIs further ensures that this market distinction is maintained, fostering consumer confidence and enabling producers to secure a higher return on their products.

The economic effect of post GI registration can be seen through several notable examples. For instance, Darjeeling tea has experienced a five-fold increase in domestic price. Similarly, the prices of Basmati rice and Thanjavur paintings has also been doubled post GI registration. It is significant to note that post GI registration, there has been a notable increase in employment opportunities. There has been a noticeable increase in the participation of farmers producing Nagpur oranges in recent years. Further, *"Channapatna* toys from Karnataka, *Pochampalli ikkat* (saris) from Andhra Pradesh, Mysore silk from Karnataka and Kancheepuram silks from Tamil Nadu have a high value internationally as well."[12] Furthermore, the Bengal Kantha pattern, referred to as 'Nakshi Kantha,' which been designated with the GI tag, "epitomized economic and social rehabilitation of refugees and underprivileged women in both rural and urban areas."[13] Another example of GI which has ensured ecumenic growth is Pochampalli Ikkat. "Pochampalli saris are made from a unique age-old fabric (silk, cotton or combinations thereof) woven in the Nalgonda and Warangal districts of the Indian state of Andhra Pradesh. The fabric is made by a process of tying and dying the yarn prior to weaving. In the 1990s, the art of creating products out of *Pochampalli Ikkat* witnessed a striking decline. Low productivity of traditional pit looms and negligent market efforts contributed to the obliteration of the industry."[14] However after the grant of GI tag to Pochampalli *Ikkat,* which was the first handloom product to be registered as a GI in India in 2004. "It received huge publicity, which created immense demand. The demand for *Pochampalli* saris increased by 15-20% in 2008, increasing the weaver wages by up to 20%."[15] These examples showcases how GI protection can enhance both the economic

[11] *The Economic Impact of Geographical Indications in India, Asia IP (Oct. 19, 2023), https://asiaiplaw.com/article/the-economic-impact-of-geographical-indications-in-india.*
[12] *ibid*
[13] *Arina, Ananya, Role of Traditional Crafts in Sustainable Development and Building Community Resilience: Case Stories from India, Socio-Economic Pol'y 45 (2022), https://doi.org/10.2478/csep-2022-0004.*
[14] *ibid*
[15] *Supra 9*

value and global recognition of traditional products.

2. GI and Rural Development and Tourism -

GI serve as a effective tool for rural development by enhancing the income of local communities, employment opportunities and preserving cultural heritage. Also, given that the majority of geographical regions are surrounded by rural areas, "GI protection provides income flows to these areas by creating employment opportunities." [16] This subsequently enhances the economy. "While it is hard to obtain a competitive advantage based on technology in rural areas and that advertisement costs are high for the local producers, GIs provide important alternative advantages for the rural development by sending direct signal to the consumer that the product is originated from a specific region with a certain quality not requiring big investments on technology and advertisement"[17] Further, there is a "particular connection and synergy between GI reputation and territorial branding have been observed in all countries. It generates public and private interest in developing local tourism and offer possibilities for other sectors of the territory to reap economic, social and environmental sustainability benefits."[18] Traditional products embody the unique characteristics of a place by integrating natural resources with cultural practices, and they are often regarded as nostalgic and conventional items. It thereby serves as an efficient mechanism for capturing customer interest in local identity which thereby increases tourism in rural areas. "The following four main types of effects that origin food products can exert on the development of local territories: (1) support of the GI supply chain; (2) support to rural economic diversification; (3) the empowerment and activation of human resources and development of local social organization; and (4) the protection of the environment, amenities and local cultures."[19] It is equally

[16] *Luisa Blanco, Ji Gu, and James Prieger, The Impact of Research and Development on Economic Growth and Productivity in the US StatesThe Impact of Research and Development on Economic Growth and Productivity in the US States, Pepperdine Univ. Sch. of Pub. Pol'y Working Paper Series (2020), https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1047&context=sppworkingpapers.*

[17] *Bilge Dogan, Ummuhan Gokovali, TGeographical Indications: The Aspects of Rural Development and Marketing Through the Traditional Products Author links open overlay panel, 1 Procedia Econ. & Fin. 123 (2012), https://www.sciencedirect.com/science/article/pii/S1877042812035690?ref=pdf_download&fr=RR-2&rr=8e99c9c55cfb47c8.*

[18] *Food & Agric. Org. of the U.N., Using Geographical Indications to Improve Sustainability, FAO Open Knowledge Repository (2023), https://openknowledge.fao.org/server/api/core/bitstreams/dafcf329-0d88-4184-8249-54d411d25307/content.*

[19] *Belletti, G.; Marescotti, A. Origin products, geographical indications and rural development. In Labels of Origin for Food: Local Development, Global Recognition; Barham, E., Sylvander, B., Eds.; CABI Publishing: Rugfest Wallingford, UK, 2011; pp. 75–91, ISBN 9781845933524.*

significant to note that, "for the GI policy, the European legislation states the objective of fostering rural development to assure higher economic returns to producers and local actors."[20]

A study showcases, "after an increase in the sale of Argan Oil produced in Souss-Massa-Draa Region of Moracco in national and international markets, economic activities are also accelerated by the increase in the other product sales and tourism activities in that region." [21] Consequently, the successful protection of GIs not only enhances the recognition of the local goods but also generates external benefits, such as an increase in economic activity in other sectors with backward and forward links to the GI products like packaging and transporting. The rise in tourism activity of the area with the GI tag not only benefits registered properitors but also generates income and employment opportunities in ancillary sectors such as retail, resorts and restaurants. "Tourism is probably the most well known example, with the emergence of initiatives such as wine and food routes or the provision of local products and dishes in agritourism structures being clearly connected to the presence of local food specialties."[22] "Therefore, tourists, with their purchase and consumption activities at local food shops, groceries and restaurants, represent a source of income for the area."[23]

3. GI and Sustainable Economic Practices -

GIs have the potential to foster sustainable economic practices by associating product quality with its geographical origin. This link promotes sustainable manufacturing practices, safeguarding cultural heritage, and bolstering local economies. "The impact of GIs on the economy of a nation can also be understood by the fact that the European Union has a 87 billion US dollar GI economy." [24] Further, "Amazon's local-to-global programme which has taken Indian producers and their products such as Delta Leather Corporation's leather and SVA Organics 'organic products to markets in over 200 countries, increasing the demand for their products and company size by as much as 300 times." "In two years, as of the first quarter of 2021, Amazon exported such 'Made in India 'goods worth 2 billion US

[20] *Sustainability and Development: Examining the Future of Environmental Policies, 10 Sustainability 3745 (2022), https://catalogue.unccd.int/284_Article_sustainability-10-03745.pdf.*

[21] *Reviron, S., Thevenod-Mottet, E., and Benni N. (2009), Geographical indications: Creation and distribution of economic value in developing countries, Working Paper 2009/14, NCCR Trade Regulation.*

[22] *Sidali, K.L. A sideway look at farm tourism in Germany and in Italy. In Food, Agri-Culture and Tourism: Linking local Gastronomy and Rural Tourism: Interdisciplinary Perspectives; Sidali, K.L., Spiller, A., Schulze, B., Eds.; Springer: Berlin/Heidelberg, Germany (2011)*

[23] *Bessière, J. Local Development and Heritage: Traditional Food and Cuisine as Tourist Attractions in Rural Areas. Sociol. Rural. 1998, 38, 21–34. (2019)*

[24] *Supra 11*

dollar."[25] This campaign resulted in unparalleled exposure for GI goods. It underscores that GIs in India will significantly contribute to the expansion of the Indian economy in the near future. "In addition, participatory processes have a great potential to improve sustainability, as they help raise awareness and encourage consensus building. Participatory processes are the foundation of GI sustainability, and particularly of social and economic development."[26]

Agra Petha, a traditional Indian sweet made from ash gourd, has received GI recognition, helping to maintain the sustainable cultivation of ash gourd in the region. The GI ensures that local farmers continue to grow this crop in an eco-friendly manner, promoting soil fertility and water conservation practices. By preserving traditional production methods and increasing market demand, the GI helps sustain both the agricultural economy and the livelihoods of local producers. Odisha, often celebrated as "India's Best Kept Secret," is not only known for its pristine landscapes but also its vibrant traditions and artistic marvels. The recognition of its products through GIs tags plays a crucial role in promoting sustainable economic practices by preserving and showcasing the state's indigenous knowledge and craftsmanship. The protection of GIs, such as Bomkai sarees, Ikat fabrics, and Odisha Rasagulla, contributes to the sustainable development of local communities by creating employment opportunities, ensuring fair wages, and supporting the traditional industries that form the backbone of the state's rural economy. Additionally, these GIs help to maintain cultural heritage and promote environmental sustainability through the preservation of traditional methods of production. "By distinguishing Odisha's unique products in both domestic and international markets, GIs enhance the global visibility of local craftsmanship, fostering economic growth that benefits rural artisans and aligns with the broader goals of sustainable and inclusive development."[27] This aligns with SDG 8, which emphasizes inclusive and sustainable economic growth, decent work, and the promotion of sustainable industries. Thus, GIs offer a pathway for Odisha to leverage its cultural treasures for economic growth while ensuring that this growth is equitable, culturally rich, and environmentally sustainable.

---

[25] *ibid*

[26] *Food & Agric. Org. of the U.N., Title of the Document, FAO Open Knowledge Repository (Year), https://openknowledge.fao.org/server/api/core/bitstreams/dafcf329-0d88-4184-8249-54d411d25307/content.*

[27] *Supra 8*

SUGGESTIVE MEASURE AND WAY FORWARD -

GIs are crucial for economic growth by improving market distinctiveness, facilitating premium pricing, promoting tourism and rural development and ensuing sustainable economic practices. It considerably enhance the economic empowerment of registered proprietor and of the people living in the respective geographical famous areas by generating employment opportunities and augmenting earnings for local producers. These results correspond perfectly with SDG 8, which highlights inclusive and sustainable economic growth, productive employment, and equitable labor for all. The potential of GIs as tools for sustainable development is clear, making their incorporation into national and international policy frameworks essential for promoting enduring economic and social advancement. However, we still have a long way to go. There is a need to adapt changes and address challenges in order to fully realize the potential of GIs. "The market for GI products is significant specially in Europe, United States and more affluent countries."[28] India has significant potential to position itself as a global leader in exporting GIs, with over 600 registered GIs showcasing its rich cultural heritage, traditional knowledge, and diverse regional products. Leveraging this vast portfolio, India can tap into international markets, enhancing its export revenues and global economic standing. By focusing on the economic growth potential of GIs, India can not only boost rural development and create employment opportunities but also strengthen its commitment to achieving SDG 8.

Strategic marketing, robust legal frameworks, and capacity building for the registered proprietor will be crucial in unlocking the full export potential of Indian GIs. Several suggestion which could potentially strength the systems and ensure economic growth are,

1. Strengthening the legal and institutional frameworks for GI protection as it will guaranteeing strong laws and policies for the protection, registration, and enforcement of GIs emphasizing sustainability and equitable benefit-sharing.
2. Incorporating sustainability criteria into the GI registration process guarantees that these items support enduring environmental, social, and economic goals.
3. Connecting GIs to rural development and tourism programs internationally generates supplementary revenue, attracts

[28] *Naresh Kumar Vats, Geographical Indication-The Factors of Rural Development and Strengthening Economy, JIPR (2016) https://nopr.niscpr.res.in/bitstream/123456789/39706/1/JIPR 21(5-6) 347-354.pdf*

investments, and strengthens local economies.

4. Utilizing worldwide markets via trade agreements, effective marketing, and involvement in global exhibitions can enhance demand and provide premium pricing for GI products.
5. Enhancing awareness via focused educational initiatives can enlighten registered proprietors, producers, consumers, and policymakers on the economic, cultural, and environmental benefits of GIs.
6. Facilitating local producers and communities via capacity-building initiatives, technical support, and financial incentives augments their capability to comply with GI standards and elevate product quality.
7. Investments in research and innovation can augment production, preservation, and marketing, thereby ensuring the competitiveness and sustainability of GI products.

Mechanisms for monitoring and evaluating the economic, social, and environmental impacts of GIs are proposed to ensure their alignment with national development objectives and the SDGs, particularly SDG 8 on sustained and inclusive economic growth. These are several measures which aims to establish GIs as effective tools for fostering sustainable development and equitable economic benefits. Such approach combined empower GIs to serve as potent instruments for promoting economic development while advancing sustainability and equality. It is best believed, "through well-developed promotion and marketing techniques, results in improved economic activities among the rural areas, which in turn results in improved GI production."[29]

CONCLUSION

GIs serve as a crucial instrument for promoting economic growth, in accordance with the overarching goals of sustainable development. It foster local economic development and the conservation of traditional knowledge and cultural legacy by improving product differentiation, enabling premium pricing, and encouraging tourism. Their involvement in rural development, and equitable income distribution protection highlights their congruence with SDG 8, which emphasizes sustained, inclusive, and sustainable economic growth, decent employment, and income equality. The degree to which GIs contribute to economic growth and rural development is still contested, requiring more thorough and quantitative research to accurately evaluate

[29] *Divya N. D & Dr. Anoop K. K, Rural Development Through Geographical Indication, 119 Int'l J. Pure & Applied Math.1385 (2018), http://www.acadpubl.eu/hub/.*

their effects. As a signatory to the United Nations' Sustainable Development Goals, India must enhance its legal and legislative frameworks to optimize the economic potential of GIs while maintaining sustainability.

Implementing strategic initiatives, including the incorporation of sustainability standards, fostering awareness, and improving global market access, is crucial for maximizing the advantages of GIs. This study highlights the unexploited potential of GIs in fostering economic growth and reinforces their essential role in attaining sustainable development. Through concentrated efforts and strong policies, GIs can act as a significant catalyst for economic transformation, benefiting local communities and aiding national and global development objectives.

*****

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

MYSORE UNIVERSITY LAW JOURNAL
Volume 1, Issue 1, 2024

ADDRESSING THE ADVERSE ENVIRONMENTAL IMPACT OF FAST FASHION WITH SPECIAL REFERENCE TO WIPO RIYADH DESIGN LAW TREATY

Palak Rajpal[1]

ABSTRACT

The 2024 WIPO Riyadh Design Law Treaty (DLT) introduces a comprehensive global framework designed to harmonise the protection of designs across nations. In an era where fast fashion often leads to the rapid and unauthorised replication of designs, this treaty plays a crucial role in safeguarding creativity and preserving the integrity of local fashion ecosystems and SMEs. With its streamlined procedures for design registration and enhanced mechanisms for cross-border enforcement, the treaty aims to provide robust tools to combat the pervasive issue of design piracy. For India, this treaty is particularly significant as it aligns seamlessly with the country's evolving intellectual property (IP) landscape. By empowering independent creators and fostering a culture of innovation, DLT stands to make a meaningful impact. This paper delves into the ways in which the treaty can strengthen India's IP system, advocating for a balanced framework that prioritises innovation while also considering affordability and sustainability in the fast fashion sector.

Keywords: *Design Law Treaty 2024, IPR, Fast Fashion, Sustainability, SME*

---

[1] Author is a Research Assistant to DPIIT Chair at Hidayatullah National Law University
email: palak.rajpal@hnlu.ac.in

INTRODUCTION

Whenever we talk about sustainability in the fashion industry, the major issue that one has to deal with is fast fashion. Fast fashion brands have mastered the art of bringing runway-inspired designs to the retail market in a concise span of time. Fast fashion is majorly dependent on replicating successful designs by other designers[2]. This raises ethical and legal questions about the safety of designs and the artistic work of creators. However, intellectual property rights can come to the rescue in such situations. IPR can be used as a tool for combating fast fashion[3], as when designs are protected through IPR, it gets difficult to copy designs.

Key IPRs that are capable of protecting fashion designs are copyrights, trademarks, patents and designs.[4] Many jurisdictions like the USA protect their fashion designs through copyright[5] as they consider fashion designs as artistic work. Another IP which is useful in the protection of fashion designs is trademarks. Trademarks protect the brand logo, hence, in case a logo is put up in a design, unauthorized trademarks can help resolve such issues[6]. Apart from this, a few jurisdictions like that of the US provide for protection through design patents. Jurisdictions like the European Union and India have separate sui generis laws that protect designs.[7] After almost twenty years, the Design Law Treaty (DLT), 2024 has been signed.[8] Given that India protects its fashion designs through a sui generis design law this opens up doors for us to combat the issue of fast fashion with the help of this treaty. India has endorsed the "Riyadh Design Law Treaty", emphasising its dedication to promoting inclusive development and enhancing its intellectual

[2] Vertica Bhardwaj, *Fast Fashion: Response to Changes in the Fashion Industry*, Distribution and Consumer Research INT. REV. RETAIL 165 (2010).
[3] Julia Krzeminski, Slowing Down Fast Fashion: How Improved Intellectual Property Law Can Protect Designers and Promote Sustainability, 31 J. INTELL. PROP. L. 269 (2024).
[4] Crafting Protection: Intellectual Property in the Fashion World - Fashion Law Journal, (May 15, 2024), https://fashionlawjournal.com/crafting-protection-intellectual-property-in-the-fashion-world/ (last visited Nov 28, 2024).
[5] Can You Copyright Fashion Designs?, COPYRIGHT ALLIANCE (Feb. 9, 2023), https://copyrightalliance.org/faqs/copyright-fashion-designs/ (last visited Nov 25, 2024).
[6] Nicole Martin, Current Intellectual Property Regimes in the U.S. Fail to Protect Fashion Designs, 3 J. Media Manag. 1 (2021), https://www.onlinescientificresearch.com/articles/current-intellectual-property-regimes-in-the-us-fail-to-protect-fashion-designs.html (last visited Nov 24, 2024).
[7] Sharifa Sayma Rahman, Industrial Designs in different Jurisdictions: A Comparison of Laws, pp 223-228, Journal of Intellectual Property Rights, 2014
[8] India signs the Final Act of the Riyadh Design Law Treaty, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=2077272 (last visited Nov 26, 2024).

property framework.[9] With better registration policies and a focus on Small businesses, this can become a catalyst in combating fast fashion.

The following paper discusses the impact of fast fashion on the environment and how it is degrading our resources. It describes how design laws protect a design and what rights are available to the proprietor of the design. It further emphasises that there is a need to resolve this challenge with the help of better IP implementation. As India has recently signed the DLT, the paper analyses how it will improve IP implantation, specifically designs in the subcontinent and how it is beneficial for India.

EFFECTS OF FAST FASHION ON THE ENVIRONMENT

Fast fashion has become a common term which is being used in conversations that surround fashion very often. The meaning of the term is "cheaply produced and priced garments that copy the latest catwalk styles and get pumped quickly through stores to maximise on current trends.[10]" Fast fashion is a means through which everyone can afford designer and trendy fashion articles. Along with being low priced, fast fashion is termed as fast because it reaches the retail and online stores very quickly, gets manufactured at a fast pace and goes off the market with the same speed.

On average, people bought 60% more clothing in 2014 compared to the year 2000. The fashion industry is responsible for 10% of global carbon emissions, contributes to the depletion of water supplies, and contaminates rivers and streams. Furthermore, 85% of all textiles are discarded in landfills each year.[11]

It has resulted from the availability of cheap labour, faster manufacturing techniques, efficient shipping, the desire of the youth to be up to date with fashion trends and a boost in supply chain management[12]. The term was coined in the 1990s by the New York Times to describe the strategy used by ZARA. ZARA takes only 15 days to go from the designing stage to the selling stage, which is usually not how fashion comes into the market[13].

[9] NEXT IAS Current Affairs Team, *India Signs the Final Act of the Riyadh Design Law Treaty - Current Affairs*, (Nov. 27, 2024), https://www.nextias.com/ca/current-affairs/27-11-2024/india-signs-the-final-act-of-the-riyadh-design-law-treaty (last visited Nov 28, 2024).

[10] Rashmila Maiti, Fast Fashion: Its Detrimental Effect on the Environment, EARTH.ORG (2024), https://earth.org/fast-fashions-detrimental-effect-on-the-environment/ (last visited Nov 25, 2024).

[11] Fast Fashion is Killing our Environment Peeli Dori, https://peelidori.com/blog/fast-fashion-is-killing-our-environment?srsltid=AfmBOoqPM9mjeflunqI5qawmFTWK3j0N9bnLl6Wj57qAm2ZR4ggJHV1I (last visited Nov 28, 2024).

[12] Fast Fashion: How It Impacts Retail Manufacturing, INVESTOPEDIA, https://www.investopedia.com/terms/f/fast-fashion.asp (last visited Nov 25, 2024).

[13] Maiti, *Supra* note 1.

Effect on Climate: As stated by the "UN Framework Convention on Climate Change," textile production emissions by 2030 are projected to increase by 60%[14]. The time it takes for a product to progress through the supply chain, from idea to sale, is known as 'lead time'. In 2012, Zara was able to design, produce, and ship a new product in 2 weeks; Forever 21 needed 6 weeks, while H&M took 8 weeks. This quick tempo in the fashion sector results in the generation of significant amounts of waste.[15]

No Scope of Recycling: "Fast, low-cost materials and production processes result in waste, pollution, and deliberate obsolescence. The clothing cannot be recycled because more than 60% of it is composed of synthetic materials.[16]" With 6% to 8 % of Asia's carbon emissions coming from the garment sector, the industry is the biggest major polluter after oil.[17] The material mostly used by these fast fashion brands is polyester, which is not only harmful to the environment but also to humans who use it. Polyester is the most commonly used fibre globally. It represents approximately 50% of the total fibre market and nearly 80% of synthetic fibres.[18]

Soil Degradation: Polyester is mostly plastic and hence is not biodegradable.[19] Numerous recent studies indicate that polyester releases tiny plastic particles known as microplastics during each wash cycle. These microplastics are contaminating our water and air and are being consumed by marine creatures, animals, and even humans. Although the complete effects and implications of these microplastics remain uncertain, it is evident that the issue is significant.[20] Hence, it not only degrades the soil but also the water.

Water Pollution: The clothing industry consumes more than 93 billion cubic meters of water each year, enough to satisfy the requirements of five million individuals. Furthermore, untreated effluent from textile dyeing and treatment processes is pumped back into our water systems, polluting the water's contents with heavy metals and

[14] Fashion Industry, UN Pursue Climate Action for Sustainable Development | UNFCCC, https://unfccc.int/news/fashion-industry-un-pursue-climate-action-for-sustainable-development (last visited Nov 27, 2024).

[15] *Id.*

[16] How Fast Fashion Is Destroying the Planet - The New York Times, https://www.nytimes.com/2019/09/03/books/review/how-fast-fashion-is-destroying-the-planet.html (last visited Nov 25, 2024).

[17] SAMANTHA SHARPE ET AL., TAKING CLIMATE ACTION: MEASURING CARBON EMISSIONS IN THE GARMENT SECTOR IN ASIA (2022), https://researchrepository.ilo.org/esploro/outputs/encyclopediaEntry/995219243502676 (last visited Nov 28, 2024).

[18] 2017 Preferred Fiber & Materials Market Report, TEXTILE EXCHANGE, https://textileexchange.org/knowledge-center/reports/2017-preferred-fiber-materials-market-report/ (last visited Nov 28, 2024).

[19] Polyester | Materials Index | CFDA, https://cfda.com/resources/materials/detail/polyester (last visited Nov 28, 2024).

[20] *Id.*

pollutants. This has a detrimental effect on the health of the creatures that drink the water, including humans.[21]

Due to the cyclical pattern of fast fashion and the lack of sufficient intellectual property protection, replicated versions of designer styles are prevalent and readily available to younger buyers. This surplus of offerings prompts trendsetters to look for the "next 'new' thing," leading fashion designers to create fresh designs.[22] To put it plainly, the natural resources of Earth are unable to support the growing demand for inexpensive, quick fashion.[23]

As new trends circulate more quickly each season and retailers easily replicate designs to meet consumer demand, it's evident that the insufficiency of intellectual property rights, along with the fast fashion trend, does not support the sustainable use of global resources.[24] Enhancing IP protection within the fashion sector could greatly reduce the industry's environmental effects. The existing legal framework permits direct design copying, which drives retailer demand and ultimately leads to significant levels of industrial water pollution and waste each year.[25]

Fast fashion is simply a method of keeping up with the trend for which, more often than not, designs of popular designers and brands are copied and released in the market. With an increased no. of design registrations, this problem can be tackled. This will lead to less copying and less production of fast fashion.

SIGNIFICANCE OF DESIGN PROTECTION IN FASHION INDUSTRY TO COMBAT FAST FASHION

The fast fashion industry is always on the lookout for the current trends and the new designs being introduced by established designers in the market. With this information, they pick out the designs which are creating a buzz in the market and use them to mimic cheap quality replicas at a much cheaper price[26]. There are also ways through which overseas manufacturers can be contacted to get the products at an even

[21] How Fast Fashion Is Destroying the Planet, *supra* note 15.

[22] DEBORAH TUSSEY, COMPLEX COPYRIGHT: MAPPING THE INFORMATION ECOSYSTEM 129 (2012).

[23] Assessing the Environmental Impact of the Fashion World, ENVIRONMENT+ENERGY LEADER (2014), https://www.environmentenergyleader.com/stories/assessing-the-environmental-impact-of-the-fashion-world,29531 (last visited Nov 27, 2024).

[24] Cassandra Elrod, *The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability*, 24 INDIANA J. GLOB. LEG. STUD. 575 (2017), https://www.jstor.org/stable/10.2979/indjglolegstu.24.2.0575 (last visited Nov 27, 2024).

[25] *Id.*

[26] FELIPaE CARO & VICTOR MARTÍNEZ-DE-ALBÉNIZ, Fast Fashion: Business Model Overview and Research Opportunities, in RETAIL SUPPLY CHAIN MANAG. 237, 242-43 (Narendra Agrawal & Stephen A. Smith eds., 2d ed. 2015).

cheaper price.[27] Fast fashion companies apart from fast fashion giants like H&M and Zara engage in direct copying of work and are referred to as "fashion Copyists.[28]" Businesses across the globe invest an immense amount of money in design R&D because it is obvious to them that designs attract consumers. When these are not protected by IP, they are prone to getting copied by free riders. This would lead to the loosing of the competitive advantage of the creator. Securing IP rights for designs is, therefore, an important step in the entire process of bringing a design to the market.[29]

Protection through Design Law: The most relevant model of protection for designs in the fashion industry is Industrial Designs. To be protected under the head of Industrial Designs in general parlance, a design:

It must be an independent creation by the author or, in this case, the designer. It is essential that the design is new and has not been disclosed to the public prior to this point, ensuring that it presents a novel overall appearance. Furthermore, the originality of the design is crucial; it should not simply replicate an existing design already available in the market but instead stand out as a unique and innovative concept[30].

Taking a reference from the Indian Design Act of 2000, an article as defined under section 2(a) of the Act is a product that can be manufactured, any partially or fully artificial substance which includes a part of the article that can be sold separately.[31]

By registering a design, a design owner can prevent the use and replication of its design by other competitors.[32] Similar to other forms of Intellectual Property Rights, the holder of a design patent or registered/unregistered design possesses the ability to stop unauthorized individuals from "manufacturing, selling, or importing products that feature or incorporate a design that copies, or closely resembles, the protected design, especially when these actions are performed for commercial gain.[33]"

For example, in the case of M/S Reflect Sculpt Private Ltd. & Anr v. Abdus Salam

[27] Cassandra Elrod, The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability, 24 IND. J. GLOBAL LEGAL STUDIES 575, 578 (2017).

[28] C. Scott Hemphill & Jeannie Suk, The Law, Culture, and Economics of Fashion, 61 STAN. L. REV. 1147, 1172 (2009).

[29] In the Pipeline: A New Treaty for Designers, https://www.wipo.int/wipo_magazine_digital/en/2024/article_0018.html (last visited Nov 26, 2024).

[30] How Can I Secure my Industrial Design?, https://www.wipo.int/designs/en/protection.html (last visited Nov 24, 2024).

[31] Design Act, 2000, § 2, Cl. (a), Designs Act, No. 16 of 2000.

[32] In the Pipeline: A New Treaty for Designers, https://www.wipo.int/wipo_magazine_digital/en/2024/article_0018.html (last visited Nov 26, 2024).

[33] Frequently Asked Questions: Industrial Designs, https://www.wipo.int/designs/en/faq_industrialdesigns.html (last visited Nov 26, 2024).

Khan[34], the plaintiff, Gaurav Gupta, a well-known designer from India, claimed that his copyright and design rights had been infringed by the defendant. After analysing the court concluded that prima facie, the defendant is infringing the rights of the plaintiff. The court issued an ex parte interim injunction prohibiting the defendants from manufacturing, promoting, and selling counterfeit products.[35]

The fashion industry thrives on art and creativity, yet they do not protect their work by registering their designs. The reason for this is the short product cycle of the items and the cost involved[36]. Another major reason why brands and designers suffer from the piracy of their work is the territorial limit put on design registrations. Global brands like Louis Vuitton, Gucci, Christian Dior, Coach, etc, want to actively protect their works, however, with design registrations, they can only do that in a particular area, which might protect their designs in one country but not beyond that. Fast fashion is copied and in the market for a very short span of time, hence, fast fashion manufacturers and sellers barely look to protect their designs. However, Global brands, Local artists, Small and Micro Enterprises, and communities with their traditional textiles can always seek protection through Design registrations. It is of immense importance that brands and designers protect their works because, with a lack of IP protection, there is no restriction and fear in the minds of copyists. There is no inspiration either for manufacturers of fast fashion to create original designs. They can simply mass produce copied products, which in the long term, are harmful to the environment.[37]

The profit shift from traditional fashion designs and organic good quality clothes to Fast Fashion giants such as Zara and Shein reflects that the protection of designs to secure creativity and the environment is of immense importance.[38]

---

[34] M/S Reflect Sculpt Private Ltd. & Anr v. Abdus Salam Khan, CS(COMM) 278/2024

[35] SpicyIP, *SpicyIP Tidbit: Delhi High Court Grants an Ex-Parte Ad Interim Injunction to Designer Gaurav Gupta*, SPICYIP (2024), https://spicyip.com/2024/05/spicyip-tidbit-delhi-high-court-grants-an-ex-parte-ad-interim-injunction-to-designer-gaurav-gupta.html (last visited Nov 28, 2024).

[36] *Id.*

[37] Intellectual Property Rights and Fast Fashion, THE EAGLE: TRINITY COLLEGE LAW GAZETTE (Jan. 22, 2020), https://eaglegazette.wordpress.com/2020/01/22/intellectual-property-rights-and-fast-fashion/ (last visited Nov 26, 2024).

[38] Fast Fashion and Intellectual Property, HARVARD UNDERGRADUATE LAW REVIEW, https://hulr.org/spring-2024/nw25qdvrivxt7tfg8ddikzept18zo0 (last visited Nov 26, 2024).

WIPO RIYADH DESIGN LAW TREATY (DLT), 2024 AND THE ISSUE OF FAST FASHION

After almost two decades of negotiations, the World Intellectual Property Organization (WIPO) has adopted the Design Law Treaty (DLT).[39] This treaty makes it easier for designers to protect their works at home and on foreign lands. This is a major step taken to promote international collaborations in the field of design[40], a less talked about Intellectual Property Right. For a long time, designs had not been given the due importance they needed.

The aim of the treaty is to make it easier for brands and designers, specifically small-scale designers and SMEs, to get their work protected.[41] This treaty will prove to be helpful for India as with the signing of it, there will be a spread of awareness with regard to the registrations of designs, and it will also safeguard the work of Indian designers against exploitation.

For instance, in the case *of Microfibers Inc. v. Girdhar & Co.*[42]*,* the plaintiff stated that as his work, which was on a carpet, was unique and artistic, it should be allowed protection under the Indian Copyright Act. However, the court pointed out that as per section 15[43] of the Copyright Act, any design which has been imprinted on a product and reproduced more than 50 times cannot claim protection under the act and should seek protection through the Design Act of 2000. As the plaintiff had not registered its design, it couldn't be protected.[44]

In yet another case, People Tree, a small creative space, alleged that Christian Dior, a well-known fashion brand, had copied their ten-year-old design, which was displayed on the Elle India magazine cover and worn by Sonam Kapoor[45]. The design was based on a block printing technique from Rajasthan. Both companies had an outside court settlement. However, this is a classic example of how big fashion brands copy traditional and cultural designs from small local artisans who are not aware of their rights.[46]

This is not just limited to India a small graphic designer from Massachusetts also filed a case against Shein, a fast fashion

[39] India signs the Final Act of the Riyadh Design Law Treaty, *supra* note 7.

[40] WIPO Member States Adopt Riyadh Design Law Treaty, https://www.wipo.int/pressroom/en/articles/2024/article_0017.html (last visited Nov 27, 2024).

[41] *Id.*

[42] Microfibres Inc. v. Girdhar & Co., 2009 SCC OnLine Del 1647

[43] Copyright Act, 1957 §.15, No. 14, Act of Parliament, 1957 (India).

[44] J. Sai Deepak, *Design v. Copyright: Need for a Clear and Rational Distinction- I*, SPICYIP (2009), https://spicyip.com/2009/06/design-v-copyright-need-for-clear-and.html (last visited Nov 27, 2024).

[45] admin, Fashion & Intellectual Property | IIPRD, (Oct. 11, 2018), https://www.iiprd.com/fashion-intellectual-property/ (last visited Nov 25, 2024).

[46] In Delhi, a People's Victory in Global Fashion, https://thewire.in/culture/people-tree-christian-dior-settlement (last visited Nov 25, 2024).

brand, alleging that they had infringed on her work. When she attempted to contact the Shein team before filing the case, they tried to settle the case with five hundred dollars.[47]

In 2021, the local artisan community, the 'Dastkari Haat Community' wrote an open letter to a famous designer, Sabyasachi Mukherjee, as he collaborated with a fast fashion brand, H&M. They showcased their concern about lost livelihoods due to this mass machine production of apparel.[48] Moreover, the technique used by Sabyasachi in this collaboration was Sanganeri, which has a GI tag. This means that the Sanganeri artists were bound to get recognition and remuneration, but they got neither because the clothes were mass-produced by machines. Such incidents are wake-up call to give additional IP protection to artistic works.[49]

Witnessing the impact that the fast fashion sector has on smaller enterprises and their creators is the most disheartening aspect. Smaller brands often prioritise ethical manufacturing and equitable pay.

Benefits of the Treaty: one of the major problems in the fashion industry is the protection of unregistered designs, as seen in the Microfibres case. European Union provides protection to unregistered designs under its legal regime but not any other jurisdiction. They protect it through "Unregistered Community Designs.[50]" Now, the DLT enables applicants to maintain their designs unpublished for a minimum of six months following the acquisition of a filing date[51]. This would help protect designs which have not yet been registered. This is beneficial for designers as fashion is seasonal, hence, more often than not, there is very limited time to protect the work. With this clause, it gets easier to protect fashion designs. In addition to this, the DLT draft includes a grace period of 12 months after the initial disclosure of the design, during which that disclosure will not impact its validity for

[47] Kirstyn Hawkins, *Design Theft and Its Effect on Creativity in the Fashion Industry*, MEDIUM (Dec. 10, 2023), https://medium.com/@hawkins.kirstyn/design-theft-and-its-effect-on-creativity-in-the-fashion-industry-58e74dd5dad4 (last visited Nov 27, 2024).

[48] Sabyasachi responds to open letter by the Indian artisan community - Times of India, https://timesofindia.indiatimes.com/life-style/fashion/designers/sabyasachi-responds-to-open-letter-by-the-indian-artisan-community/articleshow/85423083.cms (last visited Nov 28, 2024).

[49] The Sanganeri GI dispute: Cultural misappropriation and the need for benefit sharing, https://www.barandbench.com/law-firms/view-point/the-sanganeri-gi-dispute-cultural-misappropriation-and-the-need-for-benefit-sharing (last visited Nov 28, 2024).

[50] Berggren Oy-Paula de Andrés Gómez, Key Features of European Community Designs and Practical Tips for Maximizing Your Protection, LEXOLOGY (2020), https://www.lexology.com/library/detail.aspx?g=54e55238-6f98-4a97-83b7-5c05ab760bcc (last visited Nov 25, 2024).

[51] Article 10, Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

registration.[52] This solves the issue of protecting unregistered designs in India.

Fashion all across the globe is a fast-running industry, and seasons play an important role in deciding what will and will not be trending. In such conditions, it can be difficult to meet the timelines of registration. The DLT offers supportive measures and introduces some leeway for applicants to ensure they don't forfeit their rights due to a missed deadline.[53]A contracting party can apply for an extension of the time limit to gain benefits under this. In the absence of these provisions, failing to meet a deadline typically leads to a forfeiture of rights. For designs, that forfeiture is permanent.

Yet another tedious task for getting a design registered in India is filing multiple applications for different designs. The DLT allows applicants to include multiple designs in a single application. Saving money and time for the applicants.[54] This would eventually increase the number of registered designs and help solve the problem of piracy which leads to fast fashion.

The WIPO Riyadh Treaty will make it easier for brands to protect their work internationally. This will help in dealing with the problem of fast fashion, as most of the time, manufacturers overseas are contacted by fast fashion retailers where the design does not enjoy protection to mass produce and sell it. With the help of DLT, it will be easier for designers to protect their work in multiple jurisdictions.[55]

The most exploited among all are the local artisans and SMEs because they are not technically advanced and aware of their rights. It is because developing countries do not create the required awareness or sometimes, they do not have adequate funds to deploy in order to generate awareness. DLT has provisions for technical assistance and capacity building. The aim of this is to be focused on development, driven by demand, characterised by transparency, aimed strategically, and sufficient for enhancing the ability of beneficiary countries to execute the Treaty[56] while also considering the priorities and unique requirements of receiving countries to empower users to fully benefit from the Treaty's provisions.[57]

This capacity building will include helping with creating the necessary legal structure and updating the administrative practices

[52] Article 7, Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

[53] Article 14, Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

[54] WIPO Member States Adopt Riyadh Design Law Treaty, *supra* note 39.

[55] In the Pipeline, *supra* note 28.

[56] Article 24 (1) (i), Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

[57] Article 24 (1) (ii), Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

and procedures of design registration authorities; enhancing the capacity of the Offices, which includes, but is not limited to, offering training for personnel, technological assistance, and increasing awareness.[58]

The DLT has also dealt with the issue of exploitation of traditional and cultural knowledge, which is often misused by fast fashion brands in order to stay in the market and appeal the general public to buy more from them. DLT has a provision which talks about indication of information concerning traditional cultural expressions and traditional knowledge. A Contracting Party is required, where allowed by relevant laws, to stipulate that an application must include a disclosure of any previous applications or registrations, as well as other pertinent information, including details regarding traditional cultural expressions and traditional knowledge, that the applicant knows about and that is related to the eligibility for the registration of the industrial design.[59]

CONCLUSION AND SUGGESTIONS

The DLT is an initiative which would help India and other developing countries to better protect their designs. It can be concluded from the paper that fast fashion is degrading our environment at a rapid rate, and hence, dealing with it is the need of the hour. One of the most effective solutions is to do that through Intellectual Property Rights. Once a fashion design is protected through IP, it gets difficult for copyists to simply copy the design and launch it in the market.[60] Intellectual Property gives the proprietor rights against those who use their IP without their permission and unauthorized.[61] The fast fashion industry relies on copying, once that is taken away from them, the mass production will go down considerably.

The DLT will prove to be helpful in this as its aim is to make design registrations an easier and faster process. With international registrations, it will become easier to combat copying in foreign lands for brands and local artists who export their products. Provisions such as relief measures, multiple designs in a single application and technical support will help the developing countries to increase the number of registrations in their jurisdiction and reduce copying.

However, what is missing in the treaty is a provision which provides for the protection of unregistered designs. The treaty allows

[58] Article 24 (2), Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

[59] Article 4 (2), Draft Of The Design Law Treaty, World Intellectual Property Organization, 2024.

[60] Protection of Fashion Designs in India : Design Act 2000, https://www.khuranaandkhurana.com/2023/01/30/intellectual-property-rights-protection-of-fashion-designs-in-india/ (last visited Nov 27, 2024).

[61] What is Intellectual Property?, https://www.wipo.int/about-ip/en/ (last visited Nov 26, 2024).

the applicant to get a priority date and then a period of six months. However, there is no talk of designs that are already in the market and unregistered. Taking inspiration from the EU, such designs should be allowed protection from getting infringed.

Fast fashion thrives on the consumer's demand for affordable and trendy fashion. DLT has the potential to require products to reveal the origin of their designs, promoting transparency and accountability. When brands are obligated to specify the source of every design, consumers can make informed choices and back original creators.

Under the capacity building program, public awareness campaigns should be organised that educate consumers about the ethical and environmental implications of buying copied products. The importance of supporting the original works of artists should be emphasised.

DLT could address the issue of environmental harm by giving recognition to green or eco designs. Green designing or Eco-Designing is "the integration of environmental aspects into the product development process by balancing ecological and economic requirements.[62]" Green design registrations should be done with a reduced fee. Creating a certification system within the DLT to acknowledge and safeguard sustainable fashion innovations may give eco-friendly brands a competitive advantage, minimising dependence on unsustainable fast fashion.

******

[62] eco-design, EUROPEAN ENVIRONMENT AGENCY, https://www.eea.europa.eu/help/glossary/eea-glossary/eco-design (last visited Nov 26, 2024).

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal

Volume 1, Issue 1, 2024

LEGAL IMPLICATIONS OF AFGHANISTAN'S WTO ACCESSION ON TRADE AND IPR SYSTEMS

Sayed Qudrat Hashimy[1]

Prof. M.S. Benjamin[2]

Abstract

The World Trade Organization (WTO) serves as a pivotal institution in global economic governance, influencing trade policies, regulatory frameworks, and economic development in member states. Afghanistan's accession to the WTO, finalized in 2016, marked a significant milestone in its post-conflict economic recovery and integration into the global trading system. This article examines the impact of Afghanistan's WTO accession on its trade policies and practices, with a specific focus on the changes in the intellectual property rights (IPR) regime. The analysis explores the opportunities and challenges faced by Afghanistan as it navigates the transition from a largely closed economy to a more liberalized, rules-based trading system. The study also discusses the implications of WTO-induced reforms on domestic industries, the legal framework surrounding IPR, and the broader socio-economic context within Afghanistan. Through a combination of qualitative analysis and policy review, this article provides a comprehensive understanding of the socio-economic and institutional shifts that Afghanistan has experienced post-accession, and the role of IPR in fostering innovation, investment, and sustainable development.

Keywords: WTO Accession, Afghanistan, Trade Policy, IPR, Economic Diversification, Legal Reforms, Innovation, Economic Growth, Capacity Building

---

[1] ***Ph.D. Scholar (Law), Department of Studies in Law, University of Mysore, India 570006.***
Email: sayedqudrathashimy@law.uni-mysore.ac.in
ORCID: https://orcid.org/0000-0001-9835-0575

[2] Dean, Faculty of Law, Chairman and Professor of Law, Department of Studies in Law, University of Mysore, India 570006.
Email: prof.msbenajamin@law.uni-mysore.ac.in

1.0 INTRODUCTION

Afghanistan has historically been a hub for trade and an essential part of the old Silk Road,[3] occupying a strategically significant position at the intersection of South and Central Asia.[4] The country's strong natural resource endowment offers more economic possibilities, and its geographic advantage has always made it easier to access foreign markets. However, Afghanistan's landlocked status it is bounded by Iran, Pakistan, Turkmenistan, Tajikistan, and China presents intrinsic obstacles to its economic growth.[5] Afghanistan's trade prospects, both bilaterally and in terms of transit commerce with far-off international partners, are greatly influenced by the dynamics of its relations with these surrounding states.[6]

In 2004,[7] Afghanistan enacted a new constitution that enshrined in Article 10 the state's commitment to fostering and safeguarding private investment and enterprise,[8] consistent with the rule of law and the principles of a market economy. In tandem, the country applied for membership in the WTO, marking a pivotal step in its broader reform agenda. As a least developed country (LDC), Afghanistan achieved WTO membership in 2016,[9] signaling a transformative milestone in its ongoing economic restructuring and integration into the global trading system.

The accession process, which began in 2004 when Afghanistan applied and ended in 2016,[10] was marked by significant reforms meant to improve the nation's ability to compete and interact with international markets. In order to promote both domestic economic growth and international trade relations, the administration emphasized its dedication to taking use of the opportunities provided by WTO membership. Afghanistan's WTO membership was essential to both its domestic reform

[3] "Afghanistan and the Silk Road: The land at the heart of world trade" by Bijan Omrani, UNAMA (2010), https://unama.unmissions.org/afghanistan-and-silk-road-land-heart-world-trade-bijan-omrani (last visited Jan 6, 2025).

[4] Ivan Safranchuk, 'Afghanistan's Political Future and Its Role in Eurasian Cooperation' (2019) 75 India Quarterly 15.

[5] Elizabeth Wishnick, *There Goes the Neighborhood: Afghanistan's Challenges to China's Regional Security Goals*, 19 BROWN J. WORLD AFF. 83 (2012).

[6] China and Afghanistan: Bilateral Trade and Future Outlook, https://www.china-briefing.com/news/china-and-afghanistan-bilateral-trade-relationship-and-future-outlook/ (last visited Jan 6, 2025).

[7] Scott Worden, *Afghanistan & Iraq: Afghanistan - An Election Gone Awry*, 21 J. DEMOCR. 11 (2010).

[8] Article 10 of the Afghanistan Constitution 2004 states: "The state shall encourage, protect as well as ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and market economy."

[9] In this research article, 'Afghanistan' refers to the government of Afghanistan from 2001 to 2021, which was led by Presidents Hamid Karzai and Ashraf Ghani. Both leaders served through an elected mechanism during their respective terms.

[10] *WTO | 2016 News items - Afghanistan to become 164th WTO member in one month's time, 16, https://www.wto.org/english/news_e/news16_e/acc_afg_29jun16_e.htm (last visited Jan 6, 2025).*

program and its larger attempts to create a market-oriented economy. As a crucial signal to the global community, it offered guarantees of increased predictability, transparency, and government stability qualities thought to be crucial for promoting trade, drawing in foreign direct investment (FDI), and propelling economic growth. In addition to these short-term financial gains, WTO membership was anticipated to support the development of human capital, encourage job creation, ease technology transfer, and diversify Afghanistan's economy. Afghanistan sought to strengthen regional economic cooperation by utilizing its advantageous geographic position as a center for trade and transit. Afghanistan was also able to enter the global economic system through WTO membership, which provided rules-based access to 163 member states' markets.[11] Notably, Afghanistan had privileged classification as an LDC, which included unrestricted access to important international markets for its exports without tariffs or quotas.[12]

[A]fghanistan also had the chance to address important transit issues, which are especially significant for landlocked countries, during the accession process.[13] The WTO's established transit regulations and dispute resolution process provided a methodical framework for dealing with these problems. However, at the time of Afghanistan's accession, some of its neighbors Iran, Turkmenistan, and Uzbekistan were not yet members of the WTO; Turkmenistan was an observer, and Uzbekistan was in the process of joining. Notwithstanding these obstacles, Afghanistan's admission allowed it improved access to global trade prospects and regional collaboration.[14] Afghanistan's WTO admission was the result of a drawn-out and lengthy negotiation process.

[11] Suhailah Akbari, *Afghanistan's Transit Regime*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 69 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_4 (last visited Jan 6, 2025).

[12] Suhailah Akbari, *Freedom of Transit of Landlocked Countries in Light of International Multilateral Agreements*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 13 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_2 (last visited Jan 6, 2025).

[13] Suhailah Akbari, *Legal Challenges Facing Afghanistan's Transit Trade with Pakistan*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 1 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_1 (last visited Jan 6, 2025).

[14] Suhailah Akbari, *WTO Rules on Freedom of Transit*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 101 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_5 (last visited Jan 6, 2025).

Afghanistan took part in five meetings of the Accession Working Party between 2011 and 2015 after submitting its Memorandum on the Foreign Trade Regime in 2009. On July 29, 2016,[15] Afghanistan was formally admitted as a member. In light of the decades of conflict that had previously economically isolated the country, the process's completion represented a turning point in Afghanistan's larger strategy for economic integration and prosperity. WTO participation did, however, open up new opportunities for trade, foreign direct investment,[16] and economic growth, although there were drawbacks to this integration. Aligning Afghanistan's local legal and trade systems with the strict requirements imposed by WTO accords was one of the most urgent of these issues.[17] Notably, it was determined that improving Afghanistan's intellectual property rights (IPR) framework was essential to safeguarding regional companies, encouraging creativity, and drawing in foreign capital.[18]

2.0 The Genesis of the World Trade Organization

The [W]orld Trade Organization (WTO), established in 1995, serves as a global institution aimed at regulating and promoting international trade.[19] It succeeded the General Agreement on Tariffs and Trade (GATT), which had been in place since 1947. The WTO is composed of several key agreements, each targeting different aspects of international trade. These include GATT, the General Agreement on Trade in Services (GATS), and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, Agreement on Agriculture (AoA), Agreement on Sanitary and Phytosanitary Measures (SPS Agreement),[20] Agreement on Technical Barriers to Trade

[15] *Afghanistan's WTO membership approved after 11 years of talks*, THE HINDU, Dec. 18, 2015, https://www.thehindu.com/business/Afghanistan%E2%80%99s-WTO-membership-approved-after-11-years-of-talks/article60284454.ece (last visited Jan 6, 2025).

[16] Suhailah Akbari, *Legal Challenges Facing Afghanistan's Transit Trade with Pakistan*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 1 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_1 (last visited Jan 6, 2025).

[17] *Afghanistan's WTO membership approved after 11 years of talks*, THE HINDU, Dec. 18, 2015, https://www.thehindu.com/business/Afghanistan%E2%80%99s-WTO-membership-approved-after-11-years-of-talks/article60284454.ece (last visited Jan 6, 2025).

[18] Suhailah Akbari, *WTO Law and Public International Law: Focus on UNCLOS Rules on Freedom of Transit of Landlocked States*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 135 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_6 (last visited Jan 6, 2025).

[19] Robert Howse & Joanna Langille, *Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future*, 117 AM. J. INT. LAW 1 (2023).

[20] Caroline E. Foster, *The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary by Joanne Scott Oxford University Press, Oxford, 2007*, 8 WORLD TRADE REV. 462 (2009).

(TBT),[21] Agreement on Subsidies and Countervailing Measures (SCM),[22] Agreement on Anti-Dumping (Anti-Dumping Agreement),[23] Dispute Settlement Understanding (DSU),[24] Trade Policy Review Mechanism (TPRM) and many more.[25] Together, these agreements form the core framework of the global trading system under the WTO.

The primary goal of the WTO is to facilitate a predictable and stable international trading environment.[26] This is achieved by administering trade agreements, ensuring compliance with agreed-upon rules, and promoting trade liberalization.[27] Among the key functions of the WTO are:

- **i.** *The WTO oversees the implementation of existing trade agreements and ensures that member states adhere to their commitments.*
- **ii.** *The organization provides a platform for resolving disputes between member countries, ensuring that international trade is governed by clear, enforceable rules.*
- **iii.** *The WTO monitors and reviews the trade policies of its members, promoting transparency and accountability in trade practices.*
- **iv.** *The WTO offers support, particularly to developing and least developed countries (LDCs), in implementing trade agreements and building*

---

[21] Matthias Herdegen, *The Agreement on Technical Barriers to Trade*, *in* PRINCIPLES OF INTERNATIONAL ECONOMIC LAW, 3E 0 (Matthias Herdegen ed., 2024), https://doi.org/10.1093/law/9780198897835.003.0017 (last visited Jan 6, 2025).

[22] Jan Wouters & Dominic Coppens, *An Overview of the Agreement on Subsidies and Countervailing Measures – Including a Discussion of the Agreement on Agriculture*, *in* LAW AND ECONOMICS OF CONTINGENT PROTECTION IN INTERNATIONAL TRADE 7 (George A. Bermann, Kyle W. Bagwell, & Petros C. Mavroidis eds., 2009), https://www.cambridge.org/core/books/law-and-economics-of-contingent-protection-in-international-trade/an-overview-of-the-agreement-on-subsidies-and-countervailing-measures-including-a-discussion-of-the-agreement-on-agriculture/8EF7782E2C2F9255A8CFE7FAED1B94CA (last visited Jan 6, 2025).

[23] PHILIPPE DE BAERE, CLOTILDE DU PARC & ISABELLE VAN DAMME, THE WTO ANTI-DUMPING AGREEMENT: A DETAILED COMMENTARY (2021), https://www.cambridge.org/core/books/wto-antidumping-agreement/1EF088F8B9ED5C49ABC227D9327C04A7 (last visited Jan 6, 2025).

[24] DISPUTE SETTLEMENT UNDERSTANDING, , *in* AFRICA AND THE WORLD TRADE ORGANIZATION 25 (Richard E. Mshomba ed., 2009), https://www.cambridge.org/core/books/africa-and-the-world-trade-organization/dispute-settlement-understanding/13ACAA1E9CB2E11463E1D2D9D80CD3A5 (last visited Jan 6, 2025).

[25] Trade Policy Review Mechanism, , *in* WTO ANALYTICAL INDEX: GUIDE TO WTO LAW AND PRACTICE 2042 (World Trade Organization Legal Affairs Division ed., 3 ed. 2012), https://www.cambridge.org/core/books/wto-analytical-index/trade-policy-review-mechanism/E20949B5E3AD437EB45AC19F1D5DEBFB (last visited Jan 6, 2025).

[26] Abdur Chowdhury et al., The Role of Multilateralism of the WTO in International Trade Stability, 20 WORLD TRADE REV. 668 (2021).

[27] Suhailah Akbari, *Implications of WTO Rules on Freedom of Transit and Security Exceptions for Afghanistan–Pakistan Transit Trade*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 203 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_8 (last visited Jan 6, 2025).

capacity to engage in the global trading system.

v. *The WTO serves as a forum for multilateral trade negotiations aimed at reducing tariffs, eliminating trade barriers, and liberalizing international trade across various sectors.*

The WTO also provides a dispute settlement mechanism, allowing members to resolve trade conflicts in a structured and impartial manner. By fostering negotiations on trade-related issues, the organization works towards reducing trade barriers, promoting economic integration, and ensuring that the global trade system remains fair and equitable.[28]

3.0 AFGHANISTAN'S ACCESSION TO THE WTO

[A]fghanistan's accession to the WTO marked a pivotal moment in the country's efforts to liberalize its trade policy and integrate into the global economy. Afghanistan, as a Least Developed Country (LDC), was provided with certain flexibilities during the accession process, which offered some relief regarding the commitments it had to make in areas such as tariff reductions, services liberalization, and intellectual property rights. However, despite these concessions, Afghanistan was still required to align its national laws with the provisions of the WTO, particularly in areas that were critical for fostering international trade and investment.

The accession process for Afghanistan was a complex and lengthy one, involving a comprehensive review of its existing trade and economic policies.[29] This review process was followed by a series of bilateral negotiations with other WTO members, addressing specific areas of concern. The final step in the accession process was the signing of Afghanistan's Protocol of Accession, which outlined the specific terms and commitments Afghanistan agreed to adhere to upon joining the WTO.[30]

[28] Ibid.

[29] Despite significant efforts towards achieving membership, Afghanistan's accession to the WTO remains in abeyance. The country currently faces considerable political and legal challenges in relation to its WTO status. A central question is whether the current regime will accept laws based on the 2004 Constitution of Afghanistan, a foundational legal document that the Taliban regime rejects, labeling it as "Eurocentric" or "Westernized." This opposition persists despite the clear statement in the preamble of the Constitution that no law should contradict Islamic values. Article 2 of the 2004 Constitution stipulates: "The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free, within the bounds of law, to exercise and perform their religious rituals." However, a detailed discussion of Islam and the Constitution is beyond the scope of the present research article.

[30] Suhailah Akbari, *The Relationship Between Freedom of Transit and General and Security Exceptions Under WTO Rules*, *in* THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 167 (Suhailah Akbari ed., 2021),

The WTO Agreement itself consists of various legal provisions, but the core commitments that Afghanistan had to align with include:

a) Afghanistan as a state committed to reducing tariffs on goods and services to enhance global competitiveness, as per the Protocol of Accession.
b) The country agreed to bind tariffs at specific rates and ensure transparent, predictable trade policies.
c) The country opened its service sectors, including finance, telecommunications, and transport, to foreign competition under the General Agreement on Trade in Services (GATS).
d) The country strengthened its intellectual property laws, aligning with the TRIPS Agreement to protect patents, trademarks, and copyrights, crucial for attracting foreign investment and boosting knowledge-based industries.

4.0 AFGHANISTAN'S COMMITMENT TO THE WTO

Afghanistan's Accession Working Party Report (AWPR) outlined some specific regulatory commitments,[31] including transparency in privatization, compliance with commercial criteria for purchases and sales by state-trading enterprises, and the elimination of tariff exemptions and tariff rate quotas. Investment in Afghanistan is not a precondition for engaging in foreign trade, and all legal and natural persons have the right to engage in import and export activities in accordance with relevant WTO provisions on a non-discriminatory basis. Afghanistan participates in the Information Technology Agreement, eliminate the Red Crescent tax of 0.2%, and apply tariff exemptions and tariff rate quotas in a fully WTO-consistent manner.[32] As part of its commitment, Afghanistan shall not impose or reintroduce any quantitative restrictions, including licensing, quotas, bans, permits, prior authorization requirements, or any other measures with equivalent effect, unless they are fully compliant with WTO

https://doi.org/10.1007/978-3-030-73464-0_7 (last visited Jan 6, 2025).

[31] These commitments include reforming laws such as food safety law, food safety law, trade secrets protection law, foreign trade law of goods, inventor and explorer protection law, domestic industry protection law, industrial projects protection law, trademark registration law, publishing and enforcing legislative documents, quarantine law and plant protection, animal health and veterinary law, standards law, geographical indications law, consumer protection law, income tax law, VAT law, law of mines, copyright law, customs law, subsidiary law and compensatory measures, and anti-dumping law.

[32] Ahmad Shah Mobariz, *Afghanistan's WTO Accession : Costs, Benefits and Post-Accession Challenges* (2015), https://repository.unescap.org/handle/20.500.12870/1328 (last visited Jan 6, 2025).

provisions. Existing import prohibitions on certain commodities shall be eliminated, and any recourse to balance of payments provisions or government assistance measures for economic development shall be applied in a manner consistent with WTO obligations.

Afghanistan shall administer and apply commercial policy measures provided for in its legislation intended to protect domestic production or advance national interests in conformity with relevant WTO agreements. The necessary WTO-conforming legal machinery will be put in place before any anti-dumping or countervailing duties or safeguard measures are applied.

Afghanistan has agreed to gradually bring its policies into conformity with the Agreement on TBT Agreement, a staged action plan for attaining full conformity with the Agreement on the Application of SPS Agreement, and the Agreement on TRIMS. Free zones and special economic areas should be managed in conformity with WTO provisions, including the TRIPS and TRIMS Agreement, and the Agreement on SCM. Since accession in 2016 to 2021, various ministries have been working on some of commitments. The following short sections highlight some salient points of activities in these areas.

4.1 *General Agreement on Tariffs and Trade (GATT)*

The GATT serves as the foundational agreement regulating trade in goods. It seeks to promote free trade by reducing tariffs and other trade barriers. Article II of the GATT encapsulates the Schedules of Concessions.[33] This particular article requires each member including of Afghanistan to bind its tariffs and offer concessions on trade in goods. It sets out the maximum allowable tariff rates for each country and aims to prevent arbitrary

[33] Article II of GATT states that:
1.Each contracting party shall bind itself to the schedules of tariff commitments specified in Annex 1A of this Agreement, which lists the tariff concessions that it will apply on imports of goods.
2. under Schedules of Concessions, (a) The schedules shall contain a list of the specific commitments made by the contracting party with respect to tariff rates, duties, and other charges, including reductions and bindings that apply to each product or class of products. (b) The schedules will be legally binding, meaning that once a tariff is bound, a member cannot unilaterally raise it without negotiation and compensation to other WTO members.
3.The tariffs in the schedules are "bound," meaning that a country cannot increase them above the agreed-upon levels without entering into negotiations with other countries and offering compensation for the affected parties.
4.The schedules allow for gradual reductions in tariffs over time, typically as part of phased commitments agreed upon during accession or subsequent trade negotiations.
5.Countries are required to ensure that all tariff commitments are clear and transparent, enabling all other contracting parties to assess the impact of tariff policies on trade.
6.Any new tariff measures or modifications to existing tariffs must be notified to the WTO, ensuring that any changes are consistent with the schedules of commitments.

increases in tariffs.[34] These commitments were essential for integrating Afghanistan into the global trade system by providing tariff predictability and transparency. Under this article, Afghanistan agreed to binding tariffs that could not be unilaterally raised, ensuring stability in trade relations and fostering foreign investment. Additionally, Afghanistan committed to gradual tariff reductions over time, allowing for economic adjustment, especially in sensitive sectors like agriculture. The country also had to ensure transparency in its tariff schedules, making them accessible and clear to international traders. Failure to comply with these commitments could lead to legal disputes under the WTO dispute settlement mechanism, potentially undermining Afghanistan's credibility. Afghanistan's adherence to these rules was critical for creating a more open and competitive market, while also requiring domestic reforms in areas like customs procedures and trade facilitation to align with international standards.[35] Thus, Article II provided a legal framework for Afghanistan to promote economic growth, attract investment, and comply with global trade norms. Article XX of GATT proclaims General Exceptions which permit countries including of Afghanistan to impose certain trade restrictions on grounds such as public health, national security, and environmental protection.[36] However, these exceptions must meet the criteria outlined in the article and must not be discriminatory.

4.2 *General Agreement on Trade in Services (GATS)*

The GATS governs trade in services, ensuring that barriers to trade in services such as banking, telecommunications, and transport are reduced.[37] Article XVI,[38] obliges members to provide market access

[34] For instance, if a country commits to a tariff of 10% on a certain product, it cannot increase this tariff beyond 10% without renegotiating the commitment with other WTO members.

[35] Jock A. Finlayson & Mark W. Zacher, *The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions*, 35 INT. ORGAN. 561 (1981).

[36] A WTO dispute panel ruled in the case of US, Gasoline (WT/DS2/R) that the US violated GATT rules by imposing inconsistent environmental regulations that restricted imports of gasoline without offering a fair opportunity for foreign producers to meet the new standards.

[37] Juan A. Marchetti & Petros C. Mavroidis, *The Genesis of the GATS (General Agreement on Trade in Services)*, 22 EUR. J. INT. LAW 689 (2011).

[38] Article XVI: Market Access

1. Each Member shall ensure that, with respect to any measure covered by its schedule, it does not maintain or adopt restrictions that limit the number of service suppliers, the total value of service transactions or assets, or the total quantity of service output, which can be supplied in the market, unless otherwise specified in its schedule.
2. A Member shall not impose or maintain measures which limit or require the specific authorization of foreign investment, except as specified in its schedule.
3. Each Member shall ensure that foreign service suppliers are provided market access, subject to the specific limitations that it has scheduled in its list.

for foreign service providers and not to impose restrictive measures such as limitations on the number of service providers, the value of services, or restrictions on foreign equity participation.[39] Article XVII,[40] mandates that once foreign service suppliers enter the domestic market, they must be treated no less favorably than domestic service providers.[41]

For Afghanistan, to liberalize and integrate its economy, adherence to Article XVI (Market Access) and Article XVII (National Treatment) is crucial. Article XVI required Afghanistan to open its service sectors to foreign providers, promoting market liberalization, attracting foreign investment, and enhancing sectors like banking and telecommunications with foreign expertise. Article XVII mandated equal treatment for foreign service providers, ensuring fair competition and transparency, particularly in sectors like banking. These commitments required Afghanistan to align its domestic policies with WTO rules, fostering a competitive environment, boosting investment, and facilitating the country's integration into the global economy. By honoring these provisions, Afghanistan could modernize its service sectors, create jobs, and improve its infrastructure, ultimately contributing to its broader economic development.

4.3 *TRIPS Agreement and Afghanistan's Compliance*

The TRIPS Agreement is a crucial element of the WTO's framework, establishing minimum standards for the protection and enforcement of intellectual property (IP) rights across its member states.[42] TRIPS aims to ensure that creators, innovators, and businesses enjoy adequate protection of their intellectual property in member countries, thereby fostering innovation and

[39] In the case of European Communities, Bananas (WT/DS27/AB/R), the WTO Appellate Body found that the European Union's banana imports restrictions violated GATS because they placed disproportionate restrictions on foreign services and service providers.

[40] Article XVII espoused with the National Treatment which states that:
Each Member shall accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, subject to any conditions or qualifications set out in its schedule.
Each Member shall not adopt or maintain measures that discriminate against foreign services and service suppliers, either through taxes, regulatory measures, or other policies that provide an unfair advantage to domestic suppliers.

[41] Post and Telecommunications (WT/DS163/AB/R) involved a challenge by the US regarding Korea's discriminatory treatment of foreign telecommunications services. The dispute panel ruled that Korea violated its obligations under GATS by restricting market access for foreign suppliers.

[42] Introduction to the TRIPS Agreement, , *in* A HANDBOOK ON THE WTO TRIPS AGREEMENT 1 (Antony Taubman, Hannu Wager, & Jayashree Watal eds., 2 ed. 2020), https://www.cambridge.org/core/books/handbook-on-the-wto-trips-agreement/introduction-to-the-trips-agreement/3208A0BB4B229EB053FB26C9528FD21A (last visited Jan 6, 2025).

encouraging trade in goods and services that involve intellectual property.

As part of its commitments under the TRIPS Agreement, Afghanistan has established two dedicated intellectual property (IP) offices within its Ministry of Industry and Commerce and Ministry of Information and Culture.[43] The first office is responsible for the administration of patents, trademarks, industrial designs, geographical indications, and genetic resources, while the second office manages the registration of copyrights.[44] In order to function effectively and ensure compliance with international IP standards, these offices necessitate substantial support in the areas of capacity building, the development of procedural guidelines, and the implementation of automation systems. Such investments are critical to enhancing the operational efficiency of these offices, enabling them to better serve the needs of stakeholders and uphold Afghanistan's obligations under the TRIPS agreement.

4.3.1 General Provision

The TRIPS Agreement, under Article 1,[45] sets out the scope of the intellectual property protection that member states must provide. This includes patents, copyrights, trademarks, geographical indications, industrial designs, and trade secrets.[46] The Agreement mandates that WTO members adhere to the minimum standards of protection and enforcement of intellectual property rights (IPRs) as outlined.

This provision gives Afghanistan some flexibility in adapting its intellectual property laws but also obliges it to meet the minimum standards laid out in the TRIPS Agreement. Afghanistan, as an LDC, had a longer period to bring its IPR system into full compliance with TRIPS, but it was expected to make substantial progress in protecting IPRs from the moment of accession.

4.3.2 Patents

Under Article 27 of the TRIPS Agreement,[47] member countries are required to grant

[43] Ahmad Shah Mobariz, *Afghanistan's WTO Accession : Costs, Benefits and Post-Accession Challenges* (2015), https://repository.unescap.org/handle/20.500.12870/1328 (last visited Jan 6, 2025).

[44] Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

[45] Article 1 states that: "Members may, but shall not be obliged to, implement in their laws more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement."

[46] Carlos M. Correa, *Interpreting the Flexibilities Under the TRIPS Agreement*, *in* ACCESS TO MEDICINES AND VACCINES 1 (Carlos M. Correa & Reto M. Hilty eds., 2022).

[47] Article 27 enshrines that: "Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new,

patents for inventions in all fields of technology, subject to certain conditions.[48] The provision establishes the minimum criteria for granting a patent, which include novelty, inventive step, and industrial applicability. For Afghanistan, compliance with Article 27 of the TRIPS Agreement meant revising its patent laws to grant patents based on these criteria, ensuring that Afghan innovators and foreign companies alike had access to patent protection in the country. This was a significant shift, as Afghanistan had limited patent protections before its WTO accession.

4.4 *Copyright and Related Rights*

Article 9 of the TRIPS Agreement requires countries to adhere to the minimum standards of protection for copyright and related rights,[49] including the rights of authors, performers, and producers of sound recordings.[50]It mandates that member countries provide protection for literary, artistic, and scientific works, ensuring that creators have exclusive rights to their creations. Afghanistan's legal framework for copyright protection was updated following WTO accession, with a focus on aligning national laws with the Berne Convention.[51] The establishment of clear copyright laws was particularly important in encouraging creative industries and attracting investment in sectors such as literature, music, and software development.

4.5 *Enforcement and Dispute Resolution*

The TRIPS Agreement also outlines the enforcement mechanisms for the protection of intellectual property rights, including the ability of IP holders to seek remedies through legal channels.[52] Article 41 to Article 61 provide detailed provisions on civil and criminal enforcement of IPRs, including the availability of injunctions, damages, and border measures to prevent the importation of counterfeit goods.[53]Afghanistan had to ensure that its enforcement mechanisms were strengthened to meet the TRIPS standards. This required

involve an inventive step, and are capable of industrial application."

[48] Jayashree Watal, *Implementing the TRIPS Agreement: Policy Options Open to India*, 32 ECON. POLIT. WKLY. 2461 (1997).

[49] Article 9 proclaims that: "Members shall comply with Articles 1 through 21 of the Berne Convention for the Protection of Literary and Artistic Works, and give effect to the provisions of that Convention.

[50] Copyright and related rights, , *in* A HANDBOOK ON THE WTO TRIPS AGREEMENT 39 (Antony Taubman, Hannu Wager, & Jayashree Watal eds., 2 ed. 2020), https://www.cambridge.org/core/books/handbook-on-the-wto-trips-agreement/copyright-and-related-rights/B2A857751EA242DA43F5A054BE5778B1 (last visited Jan 6, 2025).

[51] Sujitha Subramanian, *The Changing Dynamics of the Global Intellectual Property Legal Order: Emergence of a "Network Agenda"?*, 64 INT. COMP. LAW Q. 103 (2015).

[52] James R. LaVaute, *Alternative Dispute Resolution and Enforcement of Statutory Rights*, 6 LABOR LAWYER 107 (1990).

[53] For instance, Article 41 States that Members shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of IPRs."

reforms in its legal system, the establishment of specialized IP courts or tribunals, and the capacity-building of law enforcement agencies to combat counterfeit and piracy activities.

4.6 *Socio – Economic Implications*

[A]fghanistan's accession to world trading forum represents a significant shift in the country's economic framework, bringing it into the global trade system and aligning it with international standards. One of the most important aspects of WTO membership is the adherence to the TRIPS Agreement,[54] which establishes global standards for the protection of intellectual property (IP). This article examines the socio-economic implications of Afghanistan's WTO membership, focusing on foreign investment, domestic innovation, enforcement challenges, and socio-cultural impacts.[55]

4.7 *Enhanced Foreign Investment*

[O]ne of the key outcomes of Afghanistan's WTO accession is its enhanced ability to attract FDI.[56] As a member of the WTO and a signatory to the TRIPS Agreement, Afghanistan is now committed to implementing strong intellectual property (IP) protections, which are crucial for industries such as pharmaceuticals, technology, and creative sectors. The TRIPS Agreement (Article 27) states that: *"Patent shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application."*

This provision is particularly important for sectors reliant on innovation and technology, as it guarantees patent protection for inventions and innovations. Foreign investors are more likely to invest in countries with robust IP protections, knowing that their intellectual property will be safeguarded from unauthorized use or replication. Afghanistan's legal reforms in this area such as the adoption of a Patents, Industrial Designs, and Trademarks Law have made the country a more attractive destination for FDI. However, Afghanistan still faces challenges in creating an environment conducive to attracting substantial foreign investment. Weak

[54] Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

[55] Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

[56] Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

infrastructure, insecurity, and a limited range of industries capable of innovation remain obstacles to realizing the full potential of its WTO membership.[57]

4.8 *Boost to Domestic Innovation*

The TRIPS Agreement also plays a critical role in fostering domestic innovation by encouraging Afghan entrepreneurs to invest in research and development (R&D).[58] Under Article 9 of TRIPS,[59] member states are required to provide protection for copyright and related rights. This provision helps protect original works such as literature, music, software, and industrial designs, thereby incentivizing Afghan creators to develop new products and services. For Afghanistan, the protection of copyrights in sectors such as literature, music, and software can encourage the development of a local creative economy. Similarly, the establishment of robust patent protection (as per Article 27) will help protect local innovations, thus creating a more favorable environment for Afghan inventors and businesses to engage in R&D activities. Afghanistan's reform of its Copyright Law and Patent Law has contributed to the creation of a legal framework for protecting domestic innovation. However, local businesses and entrepreneurs still face challenges, particularly due to the country's underdeveloped research and educational infrastructure.

4.9 *Challenges in Enforcement and Implementation*

While Afghanistan's legal frameworks have been updated to comply with WTO and TRIPS requirements, enforcement of intellectual property rights (IPR) remains a significant challenge.[60] The TRIPS Agreement (Article 41) requires member states to establish enforcement procedures that ensure the effective protection of intellectual property rights.[61]In Afghanistan, weak judicial and administrative capacity, a

[57] Afghanistan recognizes the potential of WTO membership to attract FDI understanding its role in stimulating economic activity, job creation, technology transfer, and skill development. In parallel, the government has developed and endorsed a comprehensive National Export Strategy (NES) to promote trade. This strategy focuses on key areas such as quality management, trade facilitation, skills development, and access to finance, while prioritizing products like saffron, fresh and dried fruits, carpets, marble, and precious stones for export promotion.

[58] B.N. Pandey & Prabhat Kumar Saha, *Competition Flexibilities in the Trips Agreement: Implications for Technology Transfer and Consumer Welfare*, 57 J. INDIAN LAW INST. 92 (2015).

[59] TRIPS Article 9 declares that: "Authors of works shall enjoy the exclusive right to authorize the reproduction of their works."

[60] S.K. Verma, *Enforcement of Intellectual Property Rights: Trips Procedure & India*, 46 J. INDIAN LAW INST. 183 (2004).

[61]TRIPS Article 41 states that: "Members shall ensure that enforcement procedures are available so as to permit effective action against any act of infringement of intellectual property rights."

lack of infrastructure,[62] and limited public awareness of IPR present obstacles to effective enforcement. Although the Afghan Intellectual Property Office has been established, the country still lacks the necessary resources to combat widespread counterfeiting and piracy, particularly in sectors like textiles and pharmaceuticals, where IP violations are common. Capacity building in both the public and private sectors is essential to overcome these challenges. The Afghan government must focus on training law enforcement officers, judicial officials, and businesses on the importance of IPR protection. Article 66.2 of TRIPS provides for technical assistance to developing countries and least-developed countries (LDCs) like Afghanistan, which can be instrumental in building the country's enforcement capacity.[63]This provision highlights the importance of international cooperation in strengthening Afghanistan's capacity to protect intellectual property. The provision offers Afghanistan the opportunity to receive technical assistance from developed WTO members to enhance its IPR enforcement capabilities.

4.10 *Balancing IP Protection with Cultural Heritage*

A critical challenge for Afghanistan in implementing TRIPS is balancing the protection of intellectual property with the preservation of its cultural heritage. Afghanistan has a rich history of traditional knowledge and practices, particularly in agriculture, crafts, and textiles.[64] These practices, often passed down through generations, are not easily protected under formal IP systems, which focus on individual ownership and innovation. TRIPS Article 22 addresses the protection of geographical indications (GIs), which are critical for Afghanistan's agricultural and craft sectors.[65]For example, Afghan carpets and textiles, which are recognized worldwide for their quality and craftsmanship, can be protected under GIs. By registering Afghan carpets as a GI, the country can safeguard the uniqueness of its products and prevent exploitation by foreign entities that might attempt to market products as "Afghan" without adhering to

[62] Kara Jensen, *Obstacles to Accessing the State Justice System in Rural Afghanistan*, 18 18 INDIANA J. GLOB. LEG. STUIDES 929 2011 (2011), https://www.repository.law.indiana.edu/ijgls/vol18/iss2/11.

[63]TRIPS Article 66.2 enshrines that: "Developed country members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country members."

[64] Nancy Hatch Dupree, *Cultural Heritage and National Identity in Afghanistan*, 23 THIRD WORLD Q. 977 (2002).

[65]TRIPS Article 22 states that: "Geographical indications are to be protected in order to prevent the use of false or misleading indications that suggest a product originates from a different place."

the same standards. However, the TRIPS Agreement poses challenges for the protection of traditional knowledge that does not fall under conventional intellectual property categories. For example, traditional agricultural practices and medicinal knowledge, which are widely used in rural Afghanistan, may not be easily protected under patents or copyrights. The Afghan government must develop policies to protect this knowledge while respecting cultural values and community-based innovation.

4.11 *Trade Policy Reforms and Afghan Market*

[A]fghanistan's accession to the WTO required substantial reforms to its trade policies to align with international standards. These included commitments to reduce tariffs, remove quantitative restrictions, and adopt transparent customs procedures. As per GATT Article II,[66] Afghanistan agreed to bind its tariffs and reduce them to more competitive levels. Before its accession, Afghanistan had high tariffs and numerous non-tariff barriers that hampered trade. Post-accession, Afghanistan's average tariff rate dropped from 24% to approximately 13%, which facilitated increased imports of machinery, electronics, and consumer goods. This trade liberalization has resulted in improved access to global markets and has attracted foreign investors looking for new opportunities in Afghanistan.

Afghanistan also made commitments under the Trade Facilitation Agreement (TFA),[67] which aims to simplify customs procedures and reduce trade costs. These reforms have led to improvements in customs efficiency, reducing delays and costs associated with cross-border trade. However, Afghanistan's infrastructure and security concerns continue to limit the full potential of trade liberalization.

4.12 *Economic Growth and Employment*

Afghanistan's WTO membership has contributed to moderate economic growth,[68] particularly in export sectors like agriculture (dried fruits) and textiles. However, the country's narrow export base and lack of diversification continue to limit the broader economic benefits of WTO membership. The reduction in tariffs has benefited Afghan consumers by lowering the cost of imports, but domestic industries that are unable to compete with cheaper imports face challenges.

[66] GATT Article II encapsulates that: "*Each Member shall ensure that its customs duties and charges of any kind are applied only in accordance with its Schedule of Concessions.*"

[67] Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

[68] Ibid.

In line with GATT Article III, which mandates the fair treatment of domestic and imported goods, Afghanistan's domestic industries are exposed to international competition, which may lead to job losses in sectors that cannot compete with cheaper imported goods. However, new opportunities may arise in export-oriented sectors that can benefit from global market access.

5.0 Afghanistan in the Post-Accession Era

Afghanistan's involvement with WTO is a significant step towards its integration into the global economy.[69] As the first Least Developed Country (LDC) to establish a dedicated mission in Geneva, Afghanistan has actively participated in WTO activities, chairing key bodies such as the Committee on trade Facilitation, the Committee on Trade and Development, and the Accession Working Party for South Sudan. [70]Afghanistan has also played a role in initiatives like the 2017 Joint Statements on Investment Facilitation for Development and Micro, Small, and Medium-sized Enterprises (MSMEs) and registered as a third party in several WTO disputes.[71] Afghanistan has also supported other LDCs through the g7+ WTO Accessions Group,[72] which focuses on facilitating the integration of fragile and conflict-affected economies into the global trade system.[73] The country is also building institutional capacities to defend its trade interests, including dispute settlement and trade safeguards. Afghanistan's participation in the WTO accession processes of neighboring countries offers opportunities to strengthen regional trade ties.[74]

6.0 Accession to the WTO and the Road Ahead

Afghanistan's potential integration to the WTO presents both advantages and significant legal and institutional challenges,

[69] Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 Indiana J. Glob. Leg. Stud. 269 (2020).

[70] Afghanistan joined the WTO as its 164th Member and also ratified the Trade Facilitation Agreement | TFAF, https://www.tfafacility.org/news/2016/07/afghanistan-joined-wto-its-164th-member-and-also-ratified-trade-facilitation-agreement (last visited Jan 6, 2025).

[71] Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 Indiana J. Glob. Leg. Stud. 269 (2020).

[72] The g7+ WTO Accession Group held its 3rd Ministerial Meeting in Abu Dhabi, calling for the WTO to play active role in promoting the nexus between trade and peace., G7plus, https://www.g7plus.org/press-release/the-g7-wto-accession-group-held-its-3rd-ministerial-meeting-in-abu-dhabi-calling-for-the-wto-to-play-active-role-in-promoting-the-nexus-between-trade-and-peace/ (last visited Jan 6, 2025).

[73] Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 Indiana J. Glob. Leg. Stud. 269 (2020).

[74] *Will WTO membership boost trade and investment in land-locked Afghanistan?, International Growth Centre (2016), https://www.theigc.org/blogs/will-wto-membership-boost-trade-and-investment-land-locked-afghanistan (last visited Jan 6, 2025).*

particularly in the country's post-conflict context.[75] WTO membership guarantees non-discriminatory treatment in global trade, ensuring that Afghanistan adheres to the rights and obligations shared by all members. This provide Afghanistan access to multilateral trade rules and mechanisms, providing legal assurances of stable, transparent, and predictable trade frameworks. The legal certainty that accompanies WTO membership could attract foreign investment by fostering a business environment compatible with international trade norms. Afghanistan also benefits from the WTO's dispute-settlement mechanism, allowing it to resolve trade disputes in a structured and legal manner. Additionally, the WTO's Most-Favoured-Nation (MFN) principle ensures Afghanistan equal access to markets of all WTO members, a crucial element for an economy seeking to diversify and expand its trade relations. However, the legal and procedural hurdles associated with WTO accession are particularly daunting for a post-conflict country like Afghanistan. Under Article XII of the WTO's founding Agreement, the terms of accession are negotiated on a case-by-case basis, leaving Afghanistan vulnerable to potentially unequal negotiations. The process involves three main negotiation tracks: bilateral, multilateral, and plurilateral.[76] On the bilateral track, Afghanistan needs to negotiate with individual WTO members to secure market access commitments and tariff reductions, which requires significant legal and administrative capacity. The multilateral track involve scrutiny of Afghanistan's entire trade regime to ensure compliance with WTO agreements, including complex areas such as intellectual property rights, agricultural subsidies, and competition law. The plurilateral track, concerning agricultural subsidies, may face significant challenges, as new members no longer have the right to provide export subsidies, an essential tool for many developing countries.

7.0 WTO AND THE TALIBAN GOVERNMENT

The Taliban's takeover of the Afghan government on August 15, 2021,[77] has led to a series of complex legal and political

[75] Getting the Fundamentals Right: The early stages of Afghanistan's WTO accession process, OXFAM POLICY & PRACTICE, https://policy-practice.oxfam.org/resources/getting-the-fundamentals-right-the-early-stages-of-afghanistans-wto-accession-p-114503/ (last visited Jan 6, 2025).

[76] WTO accession and the Trade Facilitation Agreement | UN Trade and Development (UNCTAD), (2024), https://unctad.org/news/wto-accession-and-trade-facilitation-agreement (last visited Jan 6, 2025).

[77] INTERNATIONAL CRISIS GROUP, *Regional Diplomacy after the Taliban Takeover*, Page 3 (2024), https://www.jstor.org/stable/resrep57948.5 (last visited Jan 6, 2025).

challenges, particularly in the realm of international trade law.[78] The international community, including major European states and the United States, has largely withheld recognition of the Taliban regime as the legitimate government of Afghanistan. This diplomatic isolation has far-reaching consequences, not only for Afghanistan's political future but also for its economic standing, trade engagements, and compliance with international legal norms, particularly those enshrined under the auspices of the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and other international bodies.[79] The status of Afghanistan in relation to the WTO remains in abeyance due to the absence of formal recognition of the IEA government by the United Nations (UN).[80] Afghanistan's membership in the WTO, an organization that plays a pivotal role in regulating international trade and fostering global economic cooperation, remains uncertain. This uncertainty exacerbates Afghanistan's trade vulnerabilities, as the country's accession process to the WTO, which had reached its final stages under the current abeyance. The question of whether the Taliban-led regime constitutes such a government is key to Afghanistan's eligibility for WTO membership.

The lack of recognition of the Taliban regime by a significant number of countries, coupled with Afghanistan's non-membership in key international organizations like the UN, the WTO, the World Bank, and the International Monetary Fund (IMF), has effectively isolated Afghanistan from the global legal and economic order.[81] This isolation hinders Afghanistan's ability to regulate its trade, protect its intellectual property, safeguard food security, and address public health concerns. Additionally, it undermines Afghanistan's capacity to participate in scientific development, innovation, and the protection of traditional knowledge and cultural heritage, which are crucial for the country's socioeconomic growth.

In the realm of international investment law, Afghanistan faces significant challenges in

[78] Seyfullah Hasar, *Recognition of Governments and the Case of the Taliban*, 23 CHIN. J. INT. LAW 73 (2024).

[79] Taliban and UNAMA Discuss Reactivating Afghanistan's WTO Membership, (2024), https://www.afintl.com/en//en/202405304868 (last visited Jan 6, 2025).

[80] Seyfullah Hasar, *Representation of Afghanistan before the International Court of Justice*, EJIL: TALK! (Oct. 16, 2024), https://www.ejiltalk.org/representation-of-afghanistan-before-the-international-court-of-justice/ (last visited Jan 6, 2025).

[81] Adam Van Liere, *Afghanistan's Accession into the World Trade Organization*, (2011), https://papers.ssrn.com/abstract=1766691 (last visited Jan 6, 2025).

attracting foreign direct investment (FDI), which could serve as a catalyst for economic recovery and technological advancement. The presence of a bilateral investment treaty (BIT) with China regarding the country's mineral resources has led to concerns over the potential for monopolistic arrangements that may disproportionately benefit foreign investors at the expense of Afghanistan's long-term economic interests.[82] It is vital that Afghanistan, once reintegrated into the international community, be allowed to exercise sovereignty over its resources in a manner that promotes economic diversification, scientific development, and social equity.

Furthermore, Afghanistan's citizens possess fundamental human rights that must be respected and protected. Among these is the right to access advanced technologies, including artificial intelligence (AI), biotechnology, and the internet. The pace of technological innovation requires Afghanistan's participation in global research and development efforts, and its isolation from international bodies impedes its ability to access cutting-edge technology critical to improving public health, advancing scientific progress, and addressing the country's ongoing food security challenges. The right to health, which encompasses access to affordable, accessible, and quality healthcare, must be recognized and protected through participation in international legal frameworks that govern the global distribution of medical technology, pharmaceuticals, and biotechnology.

Therefore, the legal and political challenges posed by the Taliban's control of Afghanistan require a nuanced approach to resolve. The WTO, as the primary institution for regulating global trade, has an opportunity and obligation to play a pivotal role in Afghanistan's economic reintegration. A collective approach to WTO membership, one that transcends political differences and focuses on the humanitarian and economic needs of the Afghan people, is both legally justifiable and ethically imperative.

8.0 Findings

The study reveals key findings regarding Afghanistan’s WTO accession, highlighting opportunities and challenges:

i. Afghanistan's WTO membership improved market access, increased trade growth, and attracted foreign investment, but challenges remain in

[82] China and Afghanistan: Bilateral Trade and Future Outlook, https://www.china-briefing.com/news/china-and-afghanistan-bilateral-trade-relationship-and-future-outlook/ (last visited Jan 6, 2025).

fully liberalizing sectors like agriculture.

ii. Legal reforms aligned with TRIPS have facilitated the protection of local products and traditional designs, but weak enforcement, limited innovation, and lack of public awareness hinder full utilization of IPR benefits.

iii. WTO membership offers potential for economic diversification, but the country remains reliant on agriculture and textiles, with rural-urban disparities, job losses in some sectors, and challenges for small enterprises.

iv. Weak legal infrastructure, corruption, and political instability impede effective enforcement of trade and IPR laws, requiring significant capacity building to realize the full benefits of WTO integration.

9.0 Suggestion

To fully leverage WTO membership, Afghanistan must strengthen legal frameworks, foster innovation, diversify its economy, and build institutional capacity for sustainable growth and global integration. Key suggestions are:

1. Strengthen IPR enforcement through specialized courts and transparent systems.
2. Invest in human capital by training legal professionals and enhancing research & development.
3. Launch campaigns to promote IPR awareness and encourage innovation, especially in non-traditional sectors.
4. Support SMEs with policies on credit access and business incubation.
5. Focus on rural infrastructure development and decentralized economic growth to bridge urban-rural disparities.
6. Streamline customs procedures, improve transport, and enhance the foreign investment climate.

10.0 Conclusion

[A]fghanistan's accession to the WTO and its commitment to implementing the TRIPS Agreement have created significant opportunities for economic growth, foreign investment, and domestic innovation. However, these opportunities are tempered by challenges in enforcement, cultural concerns, and the need for economic diversification. To effectively capitalize on the advantages of WTO membership, Afghanistan must enhance its institutional capacity, invest in human capital,

and match its laws with international standards, while safeguarding its cultural legacy.

The TRIPS Agreement establishes a legal framework for reform, with essential clauses like Articles 27, 9, 22, and 41 forming the basis for these modifications. Effective implementation necessitates the coordinated efforts of both the Afghan government and the international community. Afghanistan's entry into the WTO signifies a significant transformation in its legal and economic framework, offering both prospects and obstacles. The nation must persist in its endeavors to reform its intellectual property framework, tackle enforcement challenges, and enhance awareness among stakeholders. These reforms may yield substantial economic advantages, including enhanced foreign investment, innovation, and market accessibility. Although Afghanistan has advanced in harmonizing its intellectual property laws with international standards, enforcement issues persist as a significant impediment. In the absence of strong enforcement measures and enhanced engagement from both public and private sectors, the potential advantages of these reforms would remain unfulfilled. Moreover, Afghanistan's persistent dependence on a limited array of exports underscores the pressing necessity for enhanced economic diversification. While WTO participation has created new avenues for trade and investment, realizing widespread economic advantages necessitates the resolution of governance challenges, including corruption and political instability.

Afghanistan's potential to utilize WTO membership for sustained economic growth will hinge on its ability to cultivate a more inclusive, competitive, and diversified economy. Enhancing its intellectual property regime, in conjunction with other structural reforms, will be crucial for fostering local innovation, safeguarding intellectual property, and enticing foreign investment. To ensure these reforms yield enduring effects, Afghanistan must reconcile the disparity between legal frameworks and their practical implementation, guaranteeing that the advantages of trade liberalization permeate the whole economy, from local enterprises to major industries.

Therefore, Afghanistan's journey toward sustainable economic development depends on its capacity to enhance legal frameworks, improve governance, and foster an environment favorable to innovation and investment in the global economy. The efficacy of these initiatives will eventually ascertain the extent to which the nation can fully leverage its WTO membership and the socio-economic prospects it affords.

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal
Volume 1, Issue 1, 2024

LEGAL REGULATION OF ECONOMIC RIGHTS OF MUSIC ARTISTS IN TANZANIA: PERSPECTIVES IN COLLECTION AND DISTRIBUTION OF ROYALTIES

Peter Sayi Nzuzulima[1]

ABSTRACT

This article examines the legal regulation of economic rights of Music Artists in Tanzania, particularly regarding the collection and distribution of royalties, are inadequately regulated and fragmented. The existing legal framework, primarily governed by the Copyright and Neighbouring Rights Act, [Cap 218 R.E. 2002], lacks robust enforcement mechanisms, leading to widespread challenges in fair remuneration for Music Artists. Despite the involvement of governmental bodies such as the Ministry of Arts, Culture, and Sports, the Copyright Office of Tanzania (COOTA), and the National Arts Council, inefficiencies and weak governance persist. Additionally, the rapid growth of digital platforms has exacerbated these challenges, as many artists lack the capacity or knowledge to effectively monitor and claim earnings from streaming services. Current regulations inadequately address digital revenue streams, leaving Music Artists vulnerable to exploitation and inconsistent royalty payments. To mitigate these challenges, there is a pressing need for comprehensive legal reforms to establish transparent mechanisms for royalty collection and distribution. Strengthening institutional frameworks, prioritizing digital revenue regulation, and empowering music artists with greater control over their earnings are critical steps to ensure fair compensation in Tanzania's evolving music industry.

Key words: Copyright, Economic right, Music Artists, COOTA, CMOs, Collection and Distribution of Royalties.

[1] Tutor-II-Law at the National Institute of Transport (NIT), P. O. Box 705, Mabibo - Dar es Salaam, Tanzania.
Email: nzuzulimalimbu@yahoo.com

1.0 Introduction

The legal regulation of economic rights for music artists in Tanzania is centered on ensuring fair compensation for their creative works, particularly through mechanisms for the collection and distribution of royalties. This framework aims to safeguard the financial interests of Music Artists while fostering a sustainable and transparent system for managing their Intellectual Property Rights (IPRs). However, questions remain about the adequacy and effectiveness of the existing laws and regulations in addressing the complex and evolving nature of the music industry. The analysis in this study focuses on the legal framework governing the economic rights of Music Artists, with an emphasis on whether current laws effectively ensure fair remuneration for copyrighted works. The main objective is to assess the ability of existing legal and institutional bodies to safeguard the financial interests of Music Artists and to uncover challenges that hinder their ability to secure equitable compensation for the use of their works.

Key institutions such as the Copyright Office of Tanzania (COOTA), the National Arts Council (NAC), and Collective Management Organisations (CMOs) play pivotal roles in regulating and enforcing royalty payments.[2] These bodies are tasked with managing copyright registrations, negotiating licensing agreements, and ensuring the equitable distribution of royalties to Music Artists. However, the effectiveness of these institutions has been called into question, particularly in the face of systemic inefficiencies, limited resources, and weak governance frameworks. This study critically examines the roles and responsibilities of these institutions in the context of royalty collection and distribution, highlighting the gaps in oversight and enforcement that undermine the financial stability of Music Artists. Moreover, regional and global stakeholders in the music industry, including digital platforms and streaming services, have introduced complexities that require innovative and adaptive legal approaches to ensure comprehensive protection for Music Artists.

[2] Section 4 of the Copyright and Neighbouring Rights Act, [Cap 218 R.E. 2002] as amended by Section 23 of the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 dated 30th June 2022 defines CMO as an organisation or body exercising copyright or related rights on behalf of the owners of rights, whose main object is to negotiate for the collection and distribution of royalties and the granting of licenses in respect of copyright works or performer's rights in return of an administrative fee.

The study further evaluates the legal provisions that underpin Tanzania's copyright system to determine whether they adequately address the challenges posed by a digitalized and rapidly changing music industry. The rise of digital platforms has significantly altered how music is distributed and monetized, yet Tanzania's legal framework has not kept pace with these developments. Music artists often lack the tools, capacity, and knowledge to monitor and claim earnings from streaming services, leaving them vulnerable to exploitation. By identifying gaps in the legislative and institutional frameworks, the study underscores the need for reforms that prioritize transparency, efficiency, and adaptability.

2.0 Methodology

The study employs a qualitative research methodology, combining document analysis with interviews conducted among key stakeholders in Tanzania's music industry. Participants include music artists, music consumers, DJs, MCs, officers from the Copyright Office of Tanzania (COOTA), representatives of the Tanzania Music Rights Society (TAMRISO), and legal experts. This methodological approach facilitates a comprehensive exploration of the practical challenges encountered within the royalty collection and distribution framework. By engaging with diverse voices, the study captures a wide range of perspectives on the effectiveness of existing institutions and legal provisions in safeguarding Music Artists' economic rights. Through detailed document analysis, including legislation, policy reports, and institutional guidelines, the study identifies inconsistencies and inefficiencies in the current system. Stakeholder interviews further illuminate gaps in enforcement, administrative hurdles, and the digital challenges that impact royalty collection and distribution processes.

To strengthen its findings, the study incorporates a comparative analysis of Tanzania's royalty framework with international best practices. This benchmarking highlights opportunities to adopt successful models that have enhanced transparency and efficiency in other jurisdictions. By critically examining both the strengths and limitations of Tanzania's legal and institutional structures, the research provides actionable insights into necessary reforms. The ultimate goal is to contribute to policy discussions that prioritize the economic empowerment of

Tanzanian Music Artists. Recommendations emerging from the study emphasize the need for robust legal reforms, improved governance of collective management organizations, and adaptive mechanisms to address the complexities of the digital music economy. These efforts aim to create a fair and sustainable royalty system that ensures music artists receive equitable compensation for their creative contributions.

3.0 The Origin of economic right of Music Artists under the copyright law

The origin of the economic rights of Music Artists under copyright law is rooted in the principles of ownership and individual creativity.[3] It posits that Music Artists have a moral and legal claim to the fruits of their labour, reflecting the belief that creative works are an extension of the creator's identity and effort.[4] This foundation emphasizes the importance of protecting Music Artists' rights to ensure they receive fair compensation for their contributions to culture and society, thereby fostering a vibrant creative environment.[5] In examining the legal regulation of economic rights of Music Artists in Tanzania, the foundation of the study framed within three key theories which are such as Natural rights theory, Utilitarian theory and Labour theory and they explored in a nutshell hereunder.

To start with *Natural rights theory*, the theory asserts that creators inherently deserve recognition and compensation for their intellectual efforts.[6] This principle underpins copyright laws that aim to protect Music Artists' economic rights by granting them exclusive control over the reproduction and distribution of their works. To amplify this, the recognition and protection of economic rights of Music Artist in Tanzania is rooted in the constitutional provisions, although the specific protection for copyright is not explicitly stated under Article 24 of the Constitution.[7]

In contrast, other countries have more explicit constitutional provisions for the protection of IP. For instance, Article 40 (5) of the Kenyan Constitution[8] and Article I,

3 Towse, R. (2001). Creativity, Incentive and Reward*,* Edward Elgar UK, pp. I-23.

4 Ibid.

5 Ouma, M. N. (2010). Enforcement of Copyright Law in the Music Industry: A Critical Analysis of the Legal and Institutional Framework on Enforcement in Sub Saharan Africa, PhD Thesis, Queen Mary University of London, London, pp. 87-89.

6 Kwall, R. (2010). The Soul of Creativity*: Forging a Moral Rights Law for the United States*. Stanford University Press, pp. 47-9.

7 The Constitution of the United Republic of Tanzania of 1977.

8 The Constitution of the Republic of Kenya of 2010, Nairobi, Kenya.

Section 8 of the U.S. Constitution[9] explicitly mandates the government to protect and promote the IPRs of its citizens. That provision entitles every person to own property and right to protection of their property according to the law. Furthermore, Section 2 of the Copyright and Neighbouring Rights Act[10] also recognise and protect the economic interests of authors relating to the works by recognising exclusive author's rights and providing for just and reasonable conditions of lawful use of author's work and regulated access to them.

On the other hand, *Utilitarian theory* emphasizes societal benefits, arguing that economic incentives for creators foster innovation and contribute to cultural and economic development.[11] The theory posits that copyright law should promote the greatest good for the greatest number of people. It holds that copyright law should balance the interests of creators and users to promote social welfare and public benefit. By regulating royalty collection and distribution, Sections 47 (d) and 52 A and B of the Copyright and Neighbouring Rights Act,[12] seeks to balance public access with fair compensation for Music Artists, encouraging continued creativity. This theory reflected under Section 9 (1) (a) - (j) and (2) of the Copyright and Neighbouring Rights Act.[13]

And last, the *Labor theory of property*, as propounded by John Locke, posits that individuals are entitled to the fruits of their labor.[14] For Music Artists, this means that their creative works resulting from their mental and physical efforts should generate economic rewards, legitimizing the legal frameworks that enforce royalty collection and distribution mechanisms. Therefore, theoretical foundation of economic rights to Music Artists in Tanzania to the extent is comprehensive, encompassing legal, economic, moral, and cultural considerations. It seeks to strike a balance between protecting the rights of creators and fostering creativity and innovation, all while serving the broader public interest by facilitating access to knowledge and culture.

[9] The Constitution of the United States of America of 1788, Washington D.C.

[10] [Cap 218 R.E. 2002].

[11] Mwaipopo, A.R. (2008). Intellectual Property Rights and the Regulation of Access and Benefit Sharing of Genetic Resources in Mainland Tanzania, (PhD Thesis), University of Dar es Salaam, pp. 68-69.

[12] [Cap 218 R.E. 2002] as amended by Sections 25 and 28 of the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 of 2022 respectively.

[13] [Cap 218 R.E. 2002].

[14] Mossoff, A. (2012). Saving Locke from Marx: The labor theory of value in intellectual property theory. *Social Philosophy and Policy*, *29*(2), 283-317.

4.0 Overview of legal and institutional framework for economic rights of Music Artists

Basically under International level, Tanzania is a signatory to several treaties that regulate copyright and related rights, such as the Berne Convention for the Protection of Literary and Artistic Works,[15] the WIPO Copyright Treaty,[16] the Rome Convention,[17] and the Lusaka Agreement.[18] These international instruments provides framework for protection of copyright and related rights at the international level. They also set out standards for collection and distribution of royalties to Music Artists and other copyright owners.[19] They mandate the protection of authors' economic rights, including the right to receive royalties from the exploitation of their works. Article 2 (2), 2bis of the Berne Convention[20] and Article 8 (1) of the WTO-TRIPS Agreement[21] emphasizes the principle of national treatment, ensuring that foreign authors are afforded the same protections as local ones. Tanzania's adherence to these international standards underlines its commitment to safeguarding Music Artists' economic rights.

Domestically, the Copyright and Neighbouring Rights Act,[22] governs the protection of economic rights for Music Artists in Tanzania. Section 5 of the Copyright and Neighbouring Rights Act,[23] grants Music Artists exclusive rights to reproduce, distribute, and publicly perform their works, ensuring they receive royalties for commercial use.[24] Additionally, the law recognizes neighbouring rights for performers and producers, thus broadening

[15] Adopted 9th September 1886, revised at Paris on 24th July 1971, and amended on 28th September 1979, available at https://wipolex.wipo.int/en/text/283555.

[16] The Convention Establishing the World Intellectual Property Organisation of 1996, Adopted on 20th December, 1996, can be accessed through https://www.wipo.int/treaties/en/ip/wct/trtdocs_wo0033.html. Last accessed on 22nd July, 2024.

[17] The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961, Rome-Italy, 10th to 26th October 1961.

[18] The Lusaka Agreement on the Creation of the African Regional Intellectual Property Organisation of 1976.

[19] Cuff, M. & Omalla, E. (2013). Study on Artist Copyright Management & Royalties Collection and Distribution in the Tanzania Music Industry, Tanzania Musicians Network (TAMUNET) and BEST-AC, Dar es Salaam –Tanzania, p. 13.

[20] The Berne Convention for the Protection of Literary and Artistic Works of 1886, adopted 9th September 1886, revised at Paris on 24th July 1971, and amended on 28th September 1979, available at https://wipolex.wipo.int/en/text/283555.

[21] The World Trade Organisation - Agreement on Trade Related Aspects of Intellectual Property Rights, 1994.

[22] [Cap 218 R.E. 2002].

[23] Ibid.

[24] ABC Attorneys. (2023). The Copyright Protection Process in Tanzania, Dar es Salaam-Tanzania, Can be accessed through https://abcattorneys.co.tz/the-copyright-protection-process-in-tanzania/ accessed on 25th March, 2024 at 11:00 Hrs.

the scope of protection in the music industry. Enforcement is crucial to protect these rights, but challenges remain in ensuring compliance, particularly in the digital environment.

COOTA and CMOs are the principal body responsible for the collection and distribution of royalties to Music Artists as per Sections 47, (d) and 52 A and B of the Copyright and Neighbouring Rights Act.[25] COOTA is a governmental agency[26] with its establishment and functions under Sections 46 and 47 of the Copyright and Neighbouring Rights Act.[27] COOTA operates under the Ministry of Arts Culture and Sports, and plays a pivotal role in ensuring that Music Artists are compensated for the commercial use of their works. Despite its mandate, COOTA has faced criticism for inefficiency in royalty collection and transparency in its distribution processes. Strengthening COOTA's operational capacity is essential to improve the realization of Music Artists' economic rights.

In terms of institutional support, other stakeholders such as the Tanzania Communications Regulatory Authority (TCRA) and National Arts Council (NAC) are involved in monitoring the use of copyrighted works, particularly in the broadcasting sector. The TCRA ensures that radio and television stations comply with copyright regulations, including the payment of royalties for the music they broadcast.[28] However, enforcement mechanisms are often hampered by limited resources and challenges in regulating the digital and informal markets. There is a growing need for better coordination between COOTA and TCRA to streamline royalty collection. NAC established under Section 3 (1) of the National Arts Council Act,[29] as a governmental body responsible for regulating and promoting the arts and entertainment industry in Tanzania, including music.[30] It oversees various functions such as promoting artistic

[25] [Cap 218 R.E. 2002] as amended by Sections 25 and 28 of the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 of 2022 respectively.

[26] Romward, T. (2017). Legal Challenges to the Protection of Copyrighted Creative Works Against Infringement under Cyber Space in Tanzania, Sanaa Journal, Vol 2, Issue1, Dar es Salaam, p. 7.

[27] [Cap 218 R.E. 2002].

[28] Temu, G. (2021). Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector; *Law, Institutional Design and Practice,* PhD Thesis-Bayreuth Univervity, p. 268.

[29] [Cap R.E 204 2002].

[30] Magogo, T.D.B., (2013). Harmonisation of Copyright within the East African Community: An Analysis of the Kenyan and Tanzanian Copyright Legislation, *Mini-thesis Submitted in partial fulfillment of the requirements for the LL.M Degree in the Faculty of Law (FoL) of the University of the Western Cape*, South Africa, p. 31.

development, carrying out research, providing advisory services, and coordinating the activities of those engaged in artistic production.[31] NAC also regulates music events by ensuring that Music Artists and event organizers obtain permits and comply with content standards, including reviewing and approving songs and music videos for cultural and moral conformity as indicated under Section 4 (1) of the National Arts Council Act.[32] In collaboration with COOTA and CMOs, NAC enforces copyright laws to protect Music Artists' rights and ensures fair compensation. While NAC plays a critical role in the industry, it has faced criticism from some Music Artists and stakeholders for certain content restrictions and the need to balance artistic freedom with cultural preservation.

Regionally, Tanzania participates in initiatives led by the African Regional Intellectual Property Organization (ARIPO), which aims to harmonize IP laws across member states.[33] ARIPO's role in fostering regional collaboration enhances copyright protection for Tanzanian Music Artists, particularly as it relates to cross-border exploitation of music.[34] Tanzania's engagement with ARIPO also facilitates the exchange of best practices and capacity-building initiatives that strengthen domestic enforcement. Nonetheless, the full potential of regional frameworks remains underutilized due to domestic legal and administrative challenges.

Despite the existing legal and institutional framework, Tanzanian Music Artists face challenges in realizing their economic rights, particularly with regard to digital platforms and piracy. The rise of online music streaming services and unlicensed distribution threatens the income of Music Artists, highlighting gaps in copyright enforcement. Reforms aimed at updating copyright laws to address digital challenges, along with enhancing the transparency and efficiency of COOTA's operations, are essential to improve the collection and distribution of royalties. Moreover, raising awareness among Music Artists about their rights and how to claim royalties remains a critical priority.

[31] Chimanda, L., (2018) Law and Censorship of Artistic Works in Tanzania: The Case of BASATA. *Sanaa: Journal of African Arts, Media and Cultures*, Vol 3 No. 1, 13-26. Retrieved from https://www.sanaajournal.ac.tz/index.php/sanaa/article/view/60 on 23rd September, 2023 at 12:37Hrs.

[32] [Cap R.E 204, 2002].

[33] *See* Article III of the Lusaka Agreement on the Creation of ARIPO (1976). [R.E. 2016].

[34] https://newaripo.online/browse/about-us/our-history last accessed on 20th July, 2024 at 20:34Hrs.

5.0 Legal regulation of economic rights of Music Artists in Tanzania.

5.1 Realism of copyright law

The copyright law plays a fundamental role in protecting the IPRs of Music Artists, ensuring that they receive fair compensation for their creative works. It is governed by the Copyright and Neighbouring Rights Act,[35] and its Regulations,[36] which serves as the primary legislation governing copyright in Mainland Tanzania. Under Section 9 of the Copyright and Neighbouring Rights Act,[37] Music Artists are granted exclusive rights to control the reproduction, distribution, and public performance of their musical compositions and recordings. To manage royalty collection and distribution, CMOs like COOTA and Tanzania Music Rights Society (hereinafter to be known as TAMRISO)[38] facilitate licensing agreements with users, such as broadcasters and event organizers, who pay fees that are then distributed to Music Artists as royalties.[39] These organizations also play an educational role, helping Music Artists understand their rights and the registration process. This is indicated under Sections 47 and 54 of the Copyright and Neighbouring Rights Act.[40] Despite these measures, there are gaps in the system's effectiveness, as many Music Artists still feel inadequately compensated for the use of their works.

Recent court cases, such as *The Republic v. Ajay Amarsh Chavda*,[41] *Macmillan Aidan (T) Ltd v. Nyambari Nyangwine and 2 Others*,[42] *MIC Tanzania Limited (Tigo) v. Hamis Mwinyijuma and Ambwene Yessayah,*[43] *RSA Limited v. Hanspaul Automechs Limited and Another,*[44] *Tanzania-China Friendship Textile*

---

[35] [Cap 218 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act, No. 9 of 2019, GN No. 27 Vol. 100 dated 30th June, 2019 and the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103, 30/6/ 2022.

[36] The Copyright (Licensing of Public Performances and Broadcasting) Regulations of 2003, GN No. 328 of 2003, the Copyrights and Neighbouring Rights (Registration of Members and their Works) Regulations, GN No. 6 of 2005, the Copyrights and Neighbouring Rights (Production and Distribution of Sound and Audio-visual Recordings) Regulations, GN No. 18 of 2006 and the Copyright and Neighbouring (Collective Management Organisations) Regulations, GN No. 211 of 2023, published on 24/03/2023.

[37] [Cap 218 R.E. 2002].

[38] TAMRISO is a newly introduced and licensed CMO by the Copyright Office of Tanzania to collect and distribute royalties to Music Artists in Mainland Tanzania on 21st July, 2023 by the COOTA's CEO during the Distribution of Royalties to Music Artists Ceremony held at Hyatt Regency Hotel within Dar es Salaam City.

[39] Field Source (2023).

[40] [Cap 218 R.E. 2002] as amended by the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 of 2022 respectively.

[41] Ilala District Court Criminal Case No. 814 of 2011, (Unreported).

[42] Commercial Case 81 of 2010, High Court of Tanzania at Dar es Salaam, (Unreported)

[43] (Civil Appeal No. 112 of 2019) [2020] TZHC 4062 (20 November 2020).

[44] Commercial Case 160 of 2014, High Court of Tanzania at Dar es Salaam, (Unreported).

Company Ltd v. Nida Textile Mills (T) Ltd (NIDA),[45] *Anselm Tryphone Ngaiza @ Soggy Doggy Anter and 2 Others v. Home Box Office*,[46] and *Jutoram Kabatale Mahalla v. Vocation Training Authority*,[47] reflect growing recognition of IPRs in Tanzania, including support for foreign rights holders. This shift signifies progress toward valuing and enforcing IP, though challenges remain in ensuring that legal provisions translate effectively into practice. Representatives from COOTA admit that amendments designating CMOs for royalty collection have not yielded the desired results.[48] To address these limitations, a legal counsel advocating in IP laws suggests adopting aspects of South Africa's system, where independent organizations like SAMRO and CAPASSO handle royalties.[49] Tanzania must learn from South Africa on how they do when it comes to collection and distribution of royalties to Music Artists in Mainland Tanzania. This approach could improve transparency and accountability within Tanzania's collection and distribution processes.

The study suggests that while Tanzania's copyright law establishes a framework for protecting Music Artists, additional context-specific implementations are needed. Drawing from successful models abroad, such as South Africa, could offer practical solutions, particularly through the establishment of separate collecting entities for various types of artistic works. However, significant obstacles persist, including ongoing piracy, unauthorized music use, and limited resources for enforcement, which hinder CMOs' ability to adequately serve all Music Artists. These challenges are explored further in section 5 of this article, which addresses the legal and institutional difficulties impacting royalty collection and distribution.

5.2 Royalties' Collection and Distribution Mechanisms

Copyright Office of Tanzania and Collective Management Organisations in Tanzania have developed various mechanisms for collecting royalties from diverse music usage sources, including broadcasts, public performances, and digital platforms.[50] Licensing agreements are central to this

[45] Civil Case 106 of 2020, High Court of Tanzania at Dar es Salaam, (Unreported).
[46] Civil Case No. 162 of 2021, High Court of Tanzania at Dar es Salaam, (Unreported)
[47] Civil Appeal 63 of 2019, CAT - Dar es Salaam, (Unreported).
[48] Source: Field Data (2023). Interview with Legal Officer from COOTA conducted on October & November 2023.
[49] Source: Field Data (2023). Interview with Legal Counsel conducted October 2023 at Dar es Salaam.
[50] Source: Field Data (2023).

process, allowing CMOs to manage the distribution of royalties to Music Artists by negotiating terms with entities like transport companies, broadcasters, and venues. COOTA is responsible for approving and licensing CMOs as per the Copyright and Neighbouring Rights Act[51] and its regulations. Following the recent licensing of TAMRISO, the government has shown support by encouraging compliance and enhancing legal frameworks to address Music Artists' challenges, though some still express dissatisfaction with transparency in royalty calculations.Registration of music works with COOTA, while not mandatory, facilitates better collection and distribution of royalties, acting as proof of ownership and enabling CMOs to track usage more accurately.[52] The Tanzanian government encourages Music Artists to formalize their works to access economic opportunities, with the Minister of Arts, Culture and Sports recently emphasizing the benefits of registration.[53] Additionally, the government's initiatives, such as the cultural fund, underscore its support for Music Artists, intending to elevate their role in the economy and international markets, as demonstrated by recent outreach programs for training and international exposure. That being said, this shows that the government also acknowledge creations of Music Artists in Music industry.

Royalty distribution is managed through COOTA, using log sheets to record song usage across platforms and ensure proper allocation.[54] Despite recent efforts, including a publicized distribution event in July 2023, some Music Artists remain concerned about the transparency of distribution methods, questioning COOTA's royalty calculation practices. Overall, while the system has advanced, further improvements in transparency, Music Artist education, and enforcement are essential for more effective copyright protection and royalty distribution in Tanzania's music industry.

5.3 Consumers on Royalties' payment

Intellectual Property Rights (IPRs) are essential to protect the efforts and investments of creators, as these creations

[51] [Cap 218 R.E. 2002].

[52] Source: Field Data 2023, Interview with Legal Officer from Registration and Documentation Department of the Copyright Office of Tanzania conducted on October and November 2023.

[53] BASATA. (2024). Wasanii Jirasimisheni Mpate Fursa, BASATA, Dar es Salaam Tanzania, retrieved from https://www.basata.go.tz/news/wasanii-jirasimisheni-mpate-fursa on 22nd July, 2024 at 17:50Hrs.

[54] Source: Field Data. (2023). Interview with a respondent conducted on 21st July, 2023 during Royalties' Distribution event held at Hyatt Regency Hotel at Dar es Salaam.

require significant time, energy, and financial resources. Without proper protection, there would be unchecked exploitation and imitation of others' works, leading to financial losses for copyright owners and stifling creativity. This protection offers incentives for creators and ensures the economic benefits of their works are preserved, supporting continued innovation. Consumers who use copyrighted works, such as music, for business purposes can enhance their offerings, improving customer experiences and adding value to their brand. The duty to pay royalties for such use ensures that creators are compensated for their contributions.

In many jurisdictions, including the UK, USA, Kenya, Uganda, and South Africa, obtaining permission from copyright owners is required to legally use their works for commercial purposes.[55] Understanding copyright laws is crucial for businesses to ensure they comply with legal requirements and avoid disputes. Permission from copyright holders allows businesses to legally use music, which, in turn, can improve their services and attract more customers.[56] The legal frameworks in these countries emphasize the importance of respecting intellectual property to foster a fair and creative environment. By adhering to these regulations, both businesses and creators benefit economically.

5.4 Unjust enrichment of royalties' payments

Many Music Artists in Mainland Tanzania feel they do not benefit adequately from their musical works, with many complaining about low royalty payments from COOTA. Despite their music being widely used, the income generated from it is often surprisingly low, leading to dissatisfaction. Emerging artists, in particular, argue that large established Music Artists such as Diamond Platnumz, Zuchu, Harmonize and Alikiba receive the majority of the royalties, while smaller, less well-known musicians receive minimal amounts.[57] COOTA, however, defends its payment process, stating that royalties are calculated based on factors like work registration and the extent of usage, which are intended to ensure fairness in payment distribution.The Copyright and Neighbouring Rights Act,[58] and the Copyright and Neighbouring

[55] Source: Field Data (2023).

[56] Source: Field Data (2023). Interview with Advocate from Wakili Wako & Co. Attorneys conducted on 29th September, 2023 at Dar es Salaam.

[57] Source: Field Data (2023).

[58] [Cap 218 R.E. 2002] as amended by the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 2022.

(Collective Management Organisations) Regulations 2023[59] provides avenues for Music Artists who are dissatisfied with their royalty payments to appeal COOTA's decisions, with the option to further appeal to the Minister of Culture, Arts, and Sports. However, the law lacks clear procedures for addressing disputes effectively, leaving Music Artists with limited options to enforce their rights. Although some legal remedies exist for copyright infringement and criminal matters, these are focused on more severe cases. The distribution of royalties remains inconsistent, with Music Artists often reporting that their music is used without compensation, highlighting gaps in the implementation of payment systems and transparency.

5.5 Society perception of copyright and musical works vis-à-vis royalty payment

Society's perception of copyright law, particularly in relation to music, significantly impacts its enforcement. Most of people view copyright as intangible and a public good, leading to the belief that unauthorized use or reproduction of music does not infringe on anyone's rights, especially when the costs of reproduction are low. This perception often results in people not recognizing copyright infringement as a serious issue, as they are unfamiliar with the concept of copyright as a property right. As a result, many assume they can use protected works without compensating the creator, hence hindrance effectiveness of copyright enforcement.

The severity of penalties for copyright infringement plays a crucial role in societal adherence to copyright law. When penalties are perceived as minimal, infringement is seen as a minor violation, with the potential consequences being outweighed by the benefits of unauthorized use. Economically, individuals weigh the likelihood of being caught against the benefits of using copyrighted works without permission. If the risk of detection and punishment is low, unauthorized use, especially for commercial purposes, becomes more appealing. Ultimately, societal perceptions and lenient penalties contribute to the prevalence of copyright violations.

5.6 Dispute Settlement Mechanisms

In Mainland Tanzania, there are legal and institutional frameworks for resolving disputes related to copyright and royalty issues, including jurisdiction from COOTA, the Minister responsible for royalties, and the courts. However, there are criticisms of

[59] GN. No. of 2023.

the dispute settlement mechanisms under the Copyright and Neighbouring Rights Act.[60] One issue highlighted by Music Artists' rights activists is that appeals against decisions made by CMOs must be lodged with COOTA, which may have conflicts of interest as it works closely with the CMOs. Additionally, if further appeals are necessary, they are directed to the Minister responsible for copyright matters, which can create challenges due to the potential involvement of COOTA in the dispute.

The legal process for dispute resolution allows aggrieved individuals to appeal decisions to COOTA and, if unsatisfied, to the Minister within 30 days as per Section 54F of the Copyright and Neighbouring Rights Act.[61] The Copyright and Neighbouring Rights Act,[62] is silence on the procedures to be followed by the Music Artist if aggrieved by the decision of COOTA. This can lead failure for Music Artists to enforce their rights to the stated institution set for settling disputes. Also this system can lead to conflicts of interest, particularly if COOTA's own decisions or directives cause disputes. This can undermine the principle of impartiality, as COOTA, being a part of the dispute process, might not fairly resolve issues where it has been involved. Furthermore, the involvement of the Minister for Constitutional and Legal Affairs in such matters is also questioned, as the legal complexity of these disputes may require specialized expertise in copyright law. Despite of the government's efforts, royalty collection in Tanzania remains largely ineffective, hindering Music Artists' ability to sustain a professional career from recorded music. The absence of specialized tribunals for copyright disputes, led by copyright law experts, has contributed to significant financial losses for Music Artists, especially in relation to uncollected royalties. The current system makes it difficult for individuals to challenge decisions or correct perceived injustices, such as unfair royalty distributions, further exacerbating the challenges faced by Music Artists in protecting their intellectual property rights.

6.0 Legal and Institutional challenges

Despite of the existing legal framework and the establishment of COOTA and CMOs, there is still widespread uncertainty about how deserving Music Artists are identified and compensated. This highlights a

[60] [Cap 218 R.E. 2002].

[61] [Cap 218 R.E. 2002] as amended by the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 2022.

[62] Ibid.

fundamental failing in the current legal and institutional framework that affects the fair economic rights' of Music Artists in Mainland Tanzania. The collection and distribution of royalties to Music Artists is hindered by several challenges, including lack of transparency, unclear roles between COOTA and CMOs, inefficient collection mechanisms, and inadequate copyright law enforcement. These issues delay the timely distribution of royalties, preventing many artists from receiving their rightful earnings. As a result, Music Artists struggle to generate sustainable income from their music. The challenges identified in the study highlight significant gaps in the royalty collection and distribution process. These issues, if not addressed, will continue to undermine the financial wellbeing of Music Artists.

6.1 Collection and Distribution of Royalties mechanisms as a challenge

In regards with collection of royalties in Tanzania is primarily facilitated by COOTA and TAMRISO as CMOs, which are tasked with ensuring that Music Artists receive payment for the use of their works. However, these organizations face numerous challenges, including limited coverage and efficiency in their operations. Many Music Artists are not registered with these CMOs, which significantly hampers their ability to collect royalties effectively. COOTA has been criticized for its slow processing times and lack of transparency in how royalties are calculated and distributed. Reports indicate that many Music Artists receive only a fraction of what they are owed, and payments are often delayed. The lack of an efficient, centralized system for monitoring music usage across the country exacerbates these problems, making it difficult for Music Artists to earn a living from their work. Addressing these issues requires a review of the operational frameworks of CMOs to enhance accountability and expand their reach.

On the other hand, the distribution of royalties in Tanzania is fraught with challenges that undermine the economic rights of Music Artists. One significant issue is the lack of a standardized formula for royalty distribution, leading to arbitrary allocations that do not reflect actual usage of the works. Moreover, many Music Artists report delays in receiving payments, which can impact their financial stability. The existing distribution systems often prioritize established Music Artists over emerging ones, further perpetuating inequality within

the industry. The fragmentation of the music industry, compounded by informal market practices, complicates the tracking and reporting of music usage. To remedy this, a robust regulatory framework is necessary to standardize distribution practices and ensure fair remuneration for all Music Artists.

6.2 Role of the COOTA and CMOs on Collection and Distribution of Royalties

COOTA and CMOs in Mainland Tanzania are responsible for collecting and distributing royalties on behalf of Music Artists, who assign their performing, broadcasting, and mechanical rights to these organizations. Their mandates are conferred under Sections 47 and 54F of the Copyright and Neighbouring Rights Act.[63] COOTA and CMOs manage Music Artists' rights through licensing agreements with users, such as broadcasting stations, and can pursue legal actions if users fail to comply. However, they often favour non-contentious methods like negotiation and arbitration to avoid the high costs and time of litigation. Licensing through COOTA and CMOs is essential, as individual Music Artists handling royalties would be inefficient.

Despite their role, COOTA and CMOs face challenges, particularly due to delayed payments by some users and the absence of licensing for digital music downloads on platforms like Dj Mwanga, Mdundo.com, Boom Play, and Audiomack, leading to unfair enrichment by music consumers. When necessary, COOTA and CMOs seek court orders or hire inspectors to gather evidence, especially for live performances where infringement can be hard to prove. Criminal remedies are sometimes preferred over civil cases for their efficiency and deterrence effects. The work of COOTA and CMOs is crucial in ensuring compliance and fair compensation, with licensing officers monitoring users and taking action against non-compliance.

6.3 Absence of Intellectual Property Policy (IP-Policy)

Tanzania lacks a formal Intellectual Property (IP) Policy, despite the Copyright and Neighbouring Rights Act's enactment, which has led to significant issues in the fair compensation of Music Artists. The absence of a clear framework for royalty collection and distribution has made it challenging for artists to protect their rights and receive proper payments. This gap has allowed unauthorized music use, reduced

[63] [Cap 218 R.E. 2002] as amended by the Finance Act, No. 5 of 2022, GN No. 5 Vol. 103 2022.

transparency in royalty allocation, and weakened enforcement of copyright protections. Although IP concerns appear in the National Science and Technology Policy and the National Trade Policy, these policies only briefly mention IP matters and do not adequately address the needs of the sector. The National Technology Policy focuses on creating a legal framework for technology development, including intellectual property rights, while the National Trade Policy lists IP services among trade issues. However, without a dedicated IP Policy aligned with WIPO and WTO standards, implementing IP laws in Tanzania remains difficult, hindering the full protection of creators' rights.

6.4 Limited awareness among Music Artists and stakeholders

Awareness of copyright laws among Music Artists and industry stakeholders in Mainland Tanzania is low, with many not understanding that unauthorized reproduction and distribution of musical works are prohibited.[64] This lack of awareness hinders Music Artists from effectively enforcing their rights and obtaining fair compensation for their creations.[65] The Copyright and Neighbouring Rights Act,[66] designates COOTA and CMOs with promoting awareness and protecting copyright holders' interests. However, COOTA's educational efforts are limited to certain regions, leaving many Music Artists and stakeholders uninformed and vulnerable to exploitation.

Many stakeholders, including club owners, producers, and distributors, unknowingly engage in practices that infringe on copyright, due to a lack of understanding of licensing and royalty obligations. Interviews reveal that club operators and other industry participants often utilize music to attract patrons without awareness of the legal requirement to obtain licenses or pay royalties.[67] Although some segments of society are gradually learning about IPRs, the overall awareness remains low, exacerbated by limited IP education primarily offered as elective university courses, leaving a small number of Tanzanians knowledgeable in this area.

64 Source: Field Data. (2023). Interview with a Legal Officer from TARO conducted on 30th October, 2023 at Dar es Salaam. & Field Data, (2023). Interview with a Legal Officer from COOTA Registration and Documentation Department conducted on November, 2023 at Dar es Salaam.

65 Source: Field Data, (2023). Interview with a Legal Officer from COOTA Registration and Documentation Department conducted on November, 2023 at Dar es Salaam.

66 [Cap 218 R.E 2002].

67 Source: Field Data. (2023). Interview with Legal Counsel advocating in IPRs held on 22ndNovember, 2023 at Dar es Salaam.

The study noted that several factors contribute to this low awareness *inter alia* limited public knowledge of IP laws, weak capacity building in the judiciary and CMOs, restricted autonomy for CMOs, inadequate legal frameworks to address piracy, and insufficient COOTA outreach. Consequently, many artists fail to register their works for royalty collection, missing out on financial benefits and leaving them susceptible to exploitation. The study highlights an urgent need for COOTA and CMOs, like TAMRISO, to provide comprehensive education on copyright laws and processes to equip artists with the knowledge to protect their rights.

6.5 Inadequate enforcement of copyright law

The enforcement of copyright laws in Tanzania faces significant challenges due to outdated legislation that does not keep pace with technological advancements. Music users are increasingly relying on technology to infringe on copyright, which exposes the inadequacies in the current legal framework. The country's copyright regime is considered weak, primarily because of poor enforcement, insufficient resources for rights holders, and a lack of comprehensive legal provisions. COOTA and TAMRISO, the bodies responsible for royalty collection and distribution, face difficulties in effectively enforcing copyright laws, as outlined under as per Sections 47 (a) and 52 B (c) of the Copyright and Neighbouring Rights Act.[68] These organizations struggle with ensuring that Music Artists receive fair compensation for their work.

Factors such as limited awareness among rights holders, insufficient resources for monitoring infringements, and corruption within the system contribute to the problem. As a result, only a small portion of the revenue generated from music usage reaches the rightful owners. This situation is exacerbated by the challenges of identifying the true owners of musical works, making it difficult to distribute royalties fairly. The lack of effective enforcement and awareness about entitlements further undermines the protection of Music Artists' rights.[69] Consequently, the current system fails to guarantee that Music Artists receive their fair share of the profits from their creative works.

[68] [Cap 218 R.E. 2002] as amended by Sections 25 and 28 of the Finance Act, No. 5 of 2022, G.N. No. 5 Vol. 103 dated 30th June 2022.

[69] Source Field Data, (2023). Interview with a Copyright Lawyer from Wakili Wako & Co. Attorneys and Ex-Copyright Officer from the Copyright Office of Tanzania (COOTA) conducted on 29th September, 2023 at Dar es Salaam.

6.6 Unclear demarcation of royalties' collection and distribution role

The unclear demarcation between the roles of COOTA and CMOs in the collection and distribution of royalties for music artists is a significant challenge. Despite the 2022 amendment to the Copyright and Neighbouring Rights Act, which established CMOs, COOTA retained the responsibility for these functions. Section 47(d) of the Copyright and Neighbouring Rights Act,[70] grants COOTA the authority to collect and distribute royalties in areas where CMOs do not operate, while Section 52B (c) of the Copyright and Neighbouring Rights Act,[71] assigns this role to CMOs for their members. However, a close examination of these provisions reveals that the law does not clearly define the division of duties between the two entities. As a result, both COOTA and CMOs have overlapping responsibilities, leading to uncertainty about their respective roles in royalty collection and distribution.

Additionally, the provision stating that COOTA should collect and distribute royalties where CMOs do not operate remains vague. It does not address the specifics of how these functions are shared, leaving room for confusion. The law simply provides that COOTA has the mandate in areas where CMOs are absent, without offering a clear framework for distinguishing the functions of the two authorities. This lack of clarity in the law is problematic, as it fails to establish a definite boundary between COOTA's and CMOs' responsibilities regarding royalties in Mainland Tanzania.

6.7 Technological advancement challenges

Technological advancements pose significant challenges to copyright administration in Mainland Tanzania, particularly due to the complexity of detecting infringements in the digital age.[72] The Copyright and Neighbouring Rights Act,[73] is not adequately designed to address these advancements, making it difficult to track and monitor music usage on digital platforms like YouTube, Boom Play, DJ Mwanga, You Tube Downloader, Audio Mack, and iTunes. Issues such as piracy, lack of transparency in reporting, and inefficient data management systems further complicate the situation, leaving Music

[70] [Cap 218 R.E. 2002] as amended by Section 25 of the Finance Act, No. 5 of 2022.

[71] [Cap 218 R.E. 2002] as amended by Section 28 of the Finance Act, No. 5 of 2022.

[72] Source: Field Data, (2023).

[73] [Cap 218 R.E. 2002].

Artists struggling to receive fair compensation for their work.[74]

Seth[75] says the rise of digital platforms and high-speed internet connections has made it easier to distribute high-quality music files quickly and cheaply, complicating enforcement efforts. The absence of jurisdictional boundaries on the internet means that copyright infringement can occur globally, making it difficult to detect and address violations. As a result, the current copyright law in Tanzania is inadequate in protecting Music Artists' rights in cyberspace, with few provisions addressing digital issues. This hampers the collection and distribution of royalties, creating barriers to fair compensation for Music Artists.

6.8 Right of appeal without procedures as challenge

The law allows a person aggrieved by the decision of a CMO to appeal to the COOTA, and if dissatisfied with COOTA's decision, they can further appeal to the responsible Minister within thirty (30) days, as per Section 54F of the Copyright and Neighbouring Rights Act.[76] However, the law does not specify the procedures for initiating an appeal, making it difficult for individuals to enforce their rights through these institutions. As a result, Music Artists may focus on enforcing their rights through civil and criminal sanctions under Sections 36, 37, and 39 of the Copyright and Neighbouring Rights Act,[77] which are governed by the Civil Procedure Code,[78] and the Criminal Procedure Act.[79] Despite providing a framework for appeals, the law lacks clarity on how these appeals should be properly initiated. This gap in procedural guidelines undermines the ability of music artists to challenge decisions regarding the distribution process effectively.

7.0 Conclusion and Recommendations

The legal framework governing the economic rights of music artists in Tanzania, specifically in the collection and distribution of royalties, seeks to create an equitable environment for artists to benefit financially from their works. By establishing institutions like COOTA and mandating CMOs to handle copyright and neighboring rights, the framework aims to prevent market fragmentation and ensure systematic

[74] Source: Field Data. (2023). Interview with a Music Stakeholder conducted at Dar es Salaam on 26th Dec, 2023.

[75] Seth, K.. (2013). Computer Internet and New Technology Laws, Lexis Nexis, Haryan, p. 233.

[76] [Cap 218 R.E. 2002].

[77] [Cap 218 R.E. 2002].

[78] [Cap 33 R.E. 2019].

[79] [Cap 20 R.E. 2022].

royalty distribution. However, challenges such as limited transparency in COOTA's royalty distribution, inadequate enforcement mechanisms, and insufficient avenues for artists to contest royalty allocations hinder the framework's effectiveness. As a result, artists often struggle to verify fair compensation and maintain control over the financial returns of their creative works.

To strengthen the economic rights of Music Artists, reforms are needed to enhance accountability and transparency in royalty distribution, giving artists greater access to information and the ability to challenge decisions affecting their income. Additionally, improving copyright enforcement provisions could protect artists from infringement, fostering a safer and more sustainable creative industry. These improvements would support a fairer distribution of royalties and offer music artists greater security over their economic rights. A more robust regulatory framework would empower Tanzanian Music Artists to sustain their careers and thrive within the evolving music industry.

The article recommends strengthening the transparency and accountability of COOTA and other CMOs in royalty collection and distribution to ensure Music Artists receive fair compensation. It suggests that COOTA should regularly publish detailed reports on its financial activities and distribution processes to enhance Music Artists' trust. Establishing an independent appeals mechanism would allow Music Artists to challenge royalty distribution decisions effectively. The article also calls for amendments to the Copyright and Neighbouring Rights Act, [80] to improve protections against copyright infringement. Finally, it recommends more robust enforcement measures to secure the economic rights of Music Artists in Tanzania, supporting sustainable income for creators.

****

[80] [Cap 218 R.E. 2002].

ಮೈಸೂರು ವಿಶ್ವವಿದ್ಯಾನಿಲಯ
UNIVERSITY OF MYSORE

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal
Volume 1, Issue 1, 2024

Traditional Knowledge and SDG 15: Intellectual Property Rights as a Tool for Biodiversity Conservation

Iqmaaz Matloob[1]

Abstract

Traditional knowledge (TK) represents the cumulative wisdom, practices, and beliefs of indigenous communities developed through generations of interaction with their natural environments. This paper explores the critical role of TK in achieving Sustainable Development Goal 15 (SDG 15), which focuses on the sustainable management of terrestrial ecosystems and biodiversity conservation. TK offers sustainable practices in agriculture, forestry, and medicine, contributing significantly to ecological balance. However, the communal nature of TK poses challenges in its integration into existing Intellectual Property Rights (IPR) frameworks, which are predominantly individualistic. The study highlights the gaps in IPR systems and their implications, including biopiracy and inadequate recognition of collective ownership. Case studies, such as the Kani tribe's collaboration on the Arogyapacha plant and the neem biopiracy case, underscore the potential of equitable benefit-sharing mechanisms and community-led conservation practices. Legal frameworks like India's Biological Diversity Act and international treaties such as the Convention on Biological Diversity (CBD) provide avenues for TK protection but require strengthening to address issues like legal representation and capacity-building for indigenous communities. Recommendations include developing sui generis legal systems, enhancing existing IPR frameworks, and fostering multi-stakeholder partnerships to integrate TK into conservation strategies effectively. By aligning TK with SDG 15, this research underscores the importance of empowering indigenous communities while addressing global biodiversity challenges through sustainable, inclusive practices.

Keywords: Traditional knowledge, biodiversity conservation, Sustainable Development Goals, intellectual property rights, indigenous communities, equitable benefit-sharing, biopiracy.

[1] Research Scholar (Law) at Aligarh Muslim University
Email: miqmaaz@gmail.com
ORCID iD: 0009-0006-8532-1832

1. Introduction

Traditional knowledge (TK) encompasses the wisdom, practices, and innovations developed by indigenous and local communities over generations through their interactions with the environment. This form of knowledge is often specific to particular ecosystems and includes an understanding of local species, their behaviours, and sustainable resource management practices. TK is primarily transmitted orally and is embedded in cultural expressions such as stories, songs, and rituals. Its significance in biodiversity conservation is profound; it guides sustainable use and management of natural resources, ensuring that ecosystems remain healthy and resilient. For instance, many indigenous cultures have developed agricultural methods that enhance soil fertility and promote biodiversity, such as crop rotation and polyculture systems.[2] These practices not only sustain the resources but also contribute to maintaining ecological balance.

The role of traditional knowledge in biodiversity conservation is further highlighted by its practical applications in various fields, including agriculture, forestry, and fisheries. Indigenous communities often have intricate systems of knowledge that dictate when and how to harvest resources sustainably. For example, some communities have established traditional laws that protect certain species from being hunted or harvested, thereby ensuring their survival.[3] Additionally, TK can provide valuable insights for modern conservation efforts, helping to identify critical habitats or species that require protection. By integrating TK into contemporary conservation strategies, there is potential for more effective management of biodiversity that respects and utilizes the wisdom of indigenous peoples.

Sustainable Development Goal 15 (SDG 15) specifically addresses the need to protect, restore, and promote the sustainable use of terrestrial ecosystems while managing forests sustainably and combating desertification. It aims to halt and reverse land degradation and biodiversity loss. The objectives of SDG 15 are closely aligned with the principles inherent in traditional knowledge. By recognizing the importance of TK in achieving these goals, policymakers can

[2] Amina, *What Is the Role of Traditional Knowledge in Biodiversity Conservation? | TutorChase*, https://www.tutorchase.com/answers/ib/ess/what-is-the-role-of-traditional-knowledge-in-biodiversity-conservation (last visited Nov 21, 2024).

[3] Traditional Knowledge and Conservation of Biodiversity, BLOG | KASHISH IPR | INTELLECTUAL PROPERTY RIGHTS LAW FIRM (Sep. 1, 2021), https://www.kashishipr.com/blog/traditional-knowledge-and-conservation-of-biodiversity/ (last visited Nov 21, 2024).

leverage indigenous practices to enhance biodiversity conservation efforts. SDG 15 emphasizes the necessity of integrating traditional knowledge into national policies and strategies for sustainable development.[4] This integration not only promotes ecological sustainability but also acknowledges the rights and contributions of indigenous communities. SDG 15 highlights the importance of equitable benefit-sharing from the use of genetic resources associated with traditional knowledge. The Convention on Biological Diversity (CBD) recognizes that traditional knowledge is vital for biodiversity conservation and sustainable development. Article 8(j) of the CBD explicitly calls for respect for traditional knowledge, innovations, and practices of indigenous peoples.[5] This recognition is crucial for ensuring that indigenous communities are not only protectors of biodiversity but also beneficiaries of its sustainable use.

Traditional knowledge serves as a cornerstone for biodiversity conservation efforts globally. Its integration into Sustainable Development Goal 15 underscores the importance of respecting indigenous rights while promoting sustainable practices that benefit both people and the planet. By valuing traditional knowledge within the framework of SDG 15, there is an opportunity to create more inclusive and effective strategies for conserving our natural heritage.[6] As we move forward in addressing global biodiversity challenges, it is imperative to acknowledge and incorporate the invaluable contributions of indigenous communities through their traditional knowledge systems.

2. The Interconnection between Traditional Knowledge and Biodiversity

Traditional knowledge (TK) is a crucial component in the conservation of biodiversity, as it encompasses the accumulated wisdom, practices, and beliefs of indigenous and local communities developed through centuries of interaction with their natural environments. This knowledge is not merely anecdotal; it is deeply rooted in the ecological realities of specific regions and has been passed down through generations, often through oral

[4] Dr. Niti Pathak, *Traditional Knowledge and Its Role in Biodiversity Conservation*, 9 JOURNAL OF AGROECOLOGY AND NATURAL RESOURCE MANAGEMENT 39 (2022).

[5] S Kannaiyan, *Biological Diversity and Traditional Knowledge* (2007), http://nbaindia.org/uploaded/docs/traditionalknowledge_190707.pdf (last visited Nov 21, 2024).

[6] Amay, *Impact of IPR on the Protection of Traditional Knowledge through the Biodiversity Act*, IPLEADERS (Sep. 18, 2021), https://blog.ipleaders.in/impact-of-ipr-on-protection-of-traditional-knowledge-through-the-biodiversity-act/ (last visited Nov 21, 2024).

traditions. TK includes a wide range of practices related to agriculture, forestry, fishing, and medicine, all of which contribute to sustainable resource management and conservation efforts. For instance, indigenous agricultural practices often emphasize crop diversity and soil health, which are essential for maintaining ecosystem stability and resilience against climate change.

One significant way that TK contributes to biodiversity conservation is through the sustainable use of resources. Many indigenous cultures have developed specific methods for harvesting plants and animals that ensure these resources are not depleted. For example, certain communities may have traditional hunting practices that limit the number of animals taken or designate specific seasons for harvesting to allow populations to recover. These practices are often guided by a deep understanding of local ecosystems and species behaviours, which can provide valuable insights for modern conservation efforts. A study highlighted that traditional ecological knowledge can identify indicators for measuring biodiversity and ecosystem health, thus facilitating effective management interventions to combat biodiversity decline .[7] Moreover, TK often includes the establishment of sacred natural sites or protected areas that are off-limits for exploitation. These sites serve as refuges for various species and contribute to maintaining ecological balance. For instance, many indigenous communities in Africa have designated certain forests or water bodies as sacred, prohibiting any form of exploitation within these areas. This practice not only conserves biodiversity but also reinforces cultural identity and spiritual beliefs associated with these natural resources .[8]

Case studies further illustrate the role of indigenous communities in maintaining ecological balance through traditional knowledge. In India, the Kani tribe has utilized their extensive knowledge of local flora to conserve biodiversity while also contributing to pharmaceutical research. Their traditional use of the Arogyapacha plant led to the development of a drug that benefits both the community and broader society. This case exemplifies how indigenous knowledge can inform modern science while simultaneously promoting conservation.[9] Another compelling example comes from the Amazon rainforest, where indigenous peoples have

[7] Amina, *supra* note 1.

[8] Traditional Knowledge and Conservation of Biodiversity, *supra* note 2.

[9] Article 8(j) - Traditional Knowledge, Innovations and Practices, (2021), https://www.cbd.int/traditional/intro.shtml (last visited Nov 21, 2024).

managed vast areas of land using traditional ecological practices that enhance biodiversity. The Ashaninka community in Peru employs agroforestry techniques that combine different plant species to create diverse ecosystems. These practices not only support food security but also foster habitats for various wildlife species, illustrating a harmonious relationship between human activity and natural ecosystems.[10]

The Convention on Biological Diversity (CBD) recognizes the importance of traditional knowledge in achieving its objectives related to biodiversity conservation. Article 8(j) specifically calls for respect for traditional knowledge, innovations, and practices of indigenous peoples and local communities. This provision emphasizes the need for integrating TK into national policies and strategies for biodiversity conservation.[11] Furthermore, it highlights the necessity of obtaining prior informed consent from indigenous communities before utilizing their traditional knowledge or biological resources.

Despite these frameworks, challenges remain in effectively integrating TK into formal conservation strategies. Indigenous communities often face barriers such as lack of recognition within legal systems and inadequate representation in decision-making processes regarding resource management. Additionally, there is a pressing need for equitable benefit-sharing mechanisms that ensure indigenous peoples receive fair compensation for their contributions to biodiversity conservation.[12] Traditional knowledge plays an indispensable role in biodiversity conservation by providing sustainable management practices rooted in centuries of experience. The integration of TK into contemporary conservation strategies not only enhances ecological resilience but also empowers indigenous communities by recognizing their rights and contributions. As global biodiversity faces unprecedented threats from climate change and habitat loss, leveraging traditional knowledge alongside modern scientific approaches will be crucial in developing effective conservation strategies.

3. Intellectual Property Rights (IPR): Framework and Challenges

Intellectual Property Rights (IPR) play a significant role in the protection of

[10] Kannaiyan, *supra* note 4.
[11] Dr. Niti Pathak, *supra* note 3.
[12] Ndidzulafhi I. Sinthumule, *Traditional Ecological Knowledge and Its Role in Biodiversity Conservation: A Systematic Review*, 11 FRONT. ENVIRON. SCI. (2023), https://www.frontiersin.org/journals/environmental-science/articles/10.3389/fenvs.2023.1164900/full (last visited Nov 21, 2024).

traditional knowledge (TK), particularly in the context of biodiversity conservation and sustainable development. The existing IPR frameworks are designed to safeguard the rights of creators and inventors, but they often fall short when it comes to adequately protecting the collective knowledge of indigenous communities. This section provides an overview of the current IPR frameworks relevant to TK and discusses the challenges faced by indigenous communities in protecting their traditional knowledge under these laws.

Overview of Existing IPR Frameworks Relevant to Traditional Knowledge

The primary international framework governing intellectual property rights is established through various treaties administered by the World Intellectual Property Organization (WIPO). Key among these are the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, which provide foundational principles for protecting intellectual property globally. However, these frameworks primarily focus on individual ownership and commercial innovation, which can be at odds with the communal nature of traditional knowledge.[13] In addition to international treaties, national laws also play a crucial role in protecting traditional knowledge. In India, for instance, the Biological Diversity Act of 2002 was enacted to protect biological diversity and associated traditional knowledge. This act recognizes the rights of local communities over their biological resources and traditional knowledge, mandating prior informed consent (PIC) before any commercial utilization occurs.[14] Furthermore, Article 8(j) of the Convention on Biological Diversity (CBD) explicitly calls for respect for traditional knowledge, innovations, and practices of indigenous peoples.[15] This provision emphasizes that TK should be integrated into national policies and strategies for biodiversity conservation.

Despite these frameworks, gaps remain in their effectiveness. For example, while patents can protect specific inventions derived from traditional knowledge, they do not cover the knowledge itself or its communal ownership. This limitation can

[13] Intellectual Property Rights (IPR), Meaning, Types, Importance, VAJIRAM & RAVI, https://vajiramandravi.com/quest-upsc-notes/intellectual-property-rights/ (last visited Nov 21, 2024).

[14] Rachna Sharma & Seema Jain, *Intellectual Property Rights in India*, (2017), https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/Intellectual%20Property%20Rights%20in%20India.pdf (last visited Nov 21, 2024).

[15] Muhammad Hamza Zakir et al., *The Role Of Intellectual Property Rights In Achieving Sustainable Development Goals: A Comparative Analysis Of Policy Frameworks And Their Impact*, 20 2023-12-20 489 (2023).

lead to biopiracy, where companies patent biological resources or associated knowledge without compensating or acknowledging the indigenous communities that have developed this knowledge over generations.[16] Additionally, geographical indications (GIs) serve as another form of protection under IPR that can benefit indigenous communities by recognizing products linked to specific regions and their cultural heritage. However, GIs require a formal registration process that many indigenous communities may find challenging due to lack of resources or legal expertise.[17]

Challenges Faced by Indigenous Communities in Protecting Traditional Knowledge

Indigenous communities face several challenges in protecting their traditional knowledge under current IPR laws. One significant challenge is the lack of recognition of TK as a form of intellectual property. Traditional knowledge is often viewed as a public good rather than a proprietary asset, leading to inadequate legal protections against unauthorized use or exploitation.[18] Moreover, existing IPR frameworks typically prioritize individual rights over collective rights, which poses a challenge for indigenous communities that rely on shared knowledge systems. This individualistic approach can undermine community governance structures and cultural practices that have sustained biodiversity for centuries.[19] For instance, patents granted on plants or medicines derived from traditional knowledge can restrict access for indigenous peoples who have used these resources sustainably for generations.

Another challenge is the complexity and cost associated with navigating IPR systems. Many indigenous communities lack access to legal resources or expertise necessary to engage with formal IPR processes effectively. This situation is exacerbated by language barriers and cultural differences that may hinder effective communication with legal institutions.[20] As a result, indigenous peoples may be unable to assert their rights or seek remedies when their traditional

[16] Nidhi Bajaj, *All about Intellectual Property Rights (IPR)*, IPLEADERS (May 31, 2022), https://blog.ipleaders.in/all-about-intellectual-property-rights-ipr/ (last visited Nov 21, 2024).

[17] ChandraNath Saha & Sanjib Bhattacharya, *Intellectual Property Rights: An Overview and Implications in Pharmaceutical Industry*, 2 J ADV PHARM TECHNOL RES 88 (2011).

[18] Intellectual Property Rights, DRISHTI IAS, https://www.drishtiias.com/to-the-points/paper3/intellectual-property-rights (last visited Nov 21, 2024).

[19] RUPINDER TEWARI & MAMTA BHARDWAJ, INTELLECTUAL PROPERTY A PRIMER FOR ACADEMIA (2021).

[20] COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, *Integrating Intellectual Property Rights and Development Policy*, 1 (2002), http://www.iprcommission.org/papers/pdfs/final_report/ciprfullfinal.pdf (last visited Nov 21, 2024).

knowledge is misappropriated. Furthermore, there is often insufficient awareness among indigenous communities regarding their rights under existing IPR laws. Many community members may not be aware that their traditional practices and knowledge can be protected under national or international legal frameworks. This lack of awareness can lead to exploitation without any recourse for compensation or recognition .

There are issues related to benefit-sharing mechanisms that are often inadequately defined in current IPR frameworks. Although international agreements like the Nagoya Protocol emphasize fair and equitable sharing of benefits arising from genetic resources and associated traditional knowledge, implementation remains inconsistent across countries. Indigenous communities frequently find themselves excluded from negotiations regarding benefit-sharing agreements that affect their resources . Thereby while existing IPR frameworks provide some level of protection for traditional knowledge, significant challenges remain for indigenous communities seeking to safeguard their cultural heritage. The individualistic nature of current IPR laws often conflicts with the communal aspects of TK, leading to vulnerabilities such as biopiracy and inadequate recognition. To enhance protections for traditional knowledge, it is essential to develop more inclusive legal frameworks that recognize collective rights and facilitate equitable benefit-sharing mechanisms.

4. Equitable Benefit-Sharing Mechanisms

Equitable benefit-sharing mechanisms are essential for ensuring that indigenous communities and local populations receive fair compensation for the use of their traditional knowledge (TK) and biological resources. These mechanisms are particularly relevant in the context of biodiversity conservation, as they promote sustainable practices while respecting the rights of those who have maintained these resources over generations. This section discusses the principles of equitable benefit-sharing, highlights successful examples of Intellectual Property Rights (IPR) protecting TK, and evaluates policies and initiatives in India and other countries that have effectively implemented these frameworks.

Principles of Equitable Benefit-Sharing

Equitable benefit-sharing is grounded in the recognition that indigenous peoples and local communities often bear the burden of conserving biodiversity while providing valuable resources to the global market. The Convention on Biological Diversity

(CBD) emphasizes this principle, stating that "the fair and equitable sharing of benefits derived from genetic resources" is one of its central objectives. Article 15 of the CBD outlines that countries should ensure that access to genetic resources is subject to prior informed consent (PIC) and mutually agreed terms (MAT) between providers and users of biological resources .[21]

The Bonn Guidelines on Access and Benefit-Sharing further elaborate on these principles by providing a framework for developing national access and benefit-sharing regimes. These guidelines emphasize transparency, legal certainty, capacity building, and the need for clear agreements outlining the terms of benefit-sharing.[22] The guidelines also stress that benefit-sharing arrangements should be flexible enough to accommodate various sectors and stakeholders involved in biodiversity conservation.

Successful Examples of IPR Protecting TK

One notable example of effective IPR protection for traditional knowledge is the case involving the Kani tribe in India and their use of the Arogyapacha plant (Trichopus zeylanicus). In collaboration with researchers from the Tropical Botanical Garden and Research Institute, the Kani tribe developed a drug called "Jeevani," which utilizes the medicinal properties of Arogyapacha. The agreement established a 50:50 revenue-sharing model between the Kani tribe and the institute, ensuring that the tribe receives ongoing royalties from sales.[23] This case exemplifies how IPR can be utilized to protect traditional knowledge while promoting biodiversity conservation through sustainable practices.

Another significant case is related to neem (Azadirachta indica), where Indian farmers successfully challenged a U.S. patent granted on a process involving neem oil. The patent was based on traditional knowledge held by Indian farmers who had used neem for centuries for pest control. The Indian government contested this patent, leading to its revocation in 2005.

[21] A collective vision of a shared future, INTERNATIONAL SEABED AUTHORITY (2023), https://www.isa.org.jm/equitable-sharing-of-benefits/ (last visited Nov 21, 2024).

[22] Rakesh Shah, *Access and Benefit Sharing of Biological Resources*, https://www.ignfa.gov.in/document/biodiversity-cell-ntfp-related-issues1.pdf (last visited Nov 21, 2024).

[23] The Union for Ethical BioTrade, *Fair and Equitable Benefit Sharing Manual for the Assessment of Policies and Practices along Natural Ingredient Supply Chains*, https://www.cbd.int/abs/submissions/icnp-3/EU-UEBT-Sharing-Manual.pdf (last visited Nov 21, 2024).

This landmark case highlighted the importance of recognizing traditional knowledge within IPR frameworks and demonstrated how collective action can protect indigenous rights against exploitation.[24]

Evaluation of Policies and Initiatives

In India, several policies have been implemented to promote equitable benefit-sharing mechanisms. The Biological Diversity Act of 2002 establishes a legal framework for access to biological resources and associated traditional knowledge. It mandates prior informed consent from local communities before any commercial utilization occurs, thereby ensuring that they are involved in decision-making processes regarding their resources.[25] Additionally, Article 8(j) of the CBD calls for respect for traditional knowledge, innovations, and practices of indigenous peoples, emphasizing their role in biodiversity conservation. Brazil has also made significant strides in implementing equitable benefit-sharing mechanisms through its National Policy on Biodiversity. This policy emphasizes prior informed consent from indigenous communities before utilizing their biological resources or traditional knowledge. It establishes guidelines for benefit-sharing agreements that involve local communities in resource management decisions.[26]

The Nagoya Protocol, adopted in 2010 as part of the CBD, provides an international framework for access and benefit-sharing related to genetic resources. It emphasizes fair compensation for indigenous communities that grant access to their biological resources while promoting sustainable development.[27] Countries that ratify the Nagoya Protocol are required to implement national laws that align with its principles, thereby enhancing protection for traditional knowledge. Thus, Equitable benefit-sharing mechanisms are vital for protecting traditional knowledge and promoting biodiversity conservation. Successful examples such as the Kani tribe's collaboration with researchers demonstrate how IPR can be effectively integrated with TK protection to ensure fair compensation for indigenous communities. Policies like India's Biological Diversity Act and Brazil's National Policy on Biodiversity illustrate how countries can implement frameworks that respect

[24] Bram De Jonge, *What Is Fair and Equitable Benefit-Sharing?*, 24 J AGRIC ENVIRON ETHICS 127 (2011).
[25] WONG G. & PHAM T.T., DESIGNING REDD+ BENEFIT-SHARING MECHANISMS: FROM POLICY TO PRACTICE (2023), https://www.cifor-icraf.org/knowledge/publication/8616 (last visited Nov 21, 2024).
[26] The Union for Ethical BioTrade, *supra* note 22.
[27] Rakesh Shah, *supra* note 21.

indigenous rights while promoting sustainable practices. As global awareness regarding the importance of equitable benefit-sharing continues to grow, it is crucial for governments and international organizations to strengthen these frameworks further. By fostering collaboration between indigenous communities, governments, NGOs, and international bodies, it is possible to create a more inclusive approach to biodiversity conservation that recognizes and rewards those who have historically protected these vital resources.

5. Case Studies: Successful Integration of IPR and Traditional Knowledge

The integration of Intellectual Property Rights (IPR) with traditional knowledge (TK) has emerged as a crucial strategy for protecting biodiversity and ensuring that indigenous communities benefit from their cultural heritage. This section presents case studies that highlight successful examples of IPR protecting TK and contributing to biodiversity conservation, along with an evaluation of relevant policies and initiatives in India and other countries. One prominent example of effective integration of IPR and TK is the case of the Kani tribe in India, specifically their use of the plant Trichopus zeylanicus, commonly known as Arogyapacha. The Kani people have traditionally utilized this plant for its energizing properties, particularly during strenuous activities. In the early 1990s, researchers from the Tropical Botanic Garden and Research Institute (TBGRI) collaborated with the Kani tribe to investigate the medicinal properties of Arogyapacha. This collaboration led to the development of a standardized drug called "Jeevani," which was commercialized in 1995. Importantly, the TBGRI agreed to share the license fee on a 50:50 basis with the Kani tribe, along with 2% royalties from sales. This arrangement established a trust managed by the Kani community, ensuring that they receive ongoing benefits from their traditional knowledge while also promoting conservation efforts related to the plant species involved.[28]

Another notable case is the protection of neem (Azadirachta indica) by Indian farmers against biopiracy. In the late 1990s, a U.S. patent was granted for a process involving neem oil for agricultural purposes, which was based on traditional knowledge held by Indian farmers. The Indian government challenged this patent, arguing that neem had been used for

[28] Traditional Knowledge and Conservation of Biodiversity, *supra* note 2.

centuries in India for pest control and health benefits. The case was eventually settled in favour of India, leading to the revocation of the patent. This landmark case underscored the importance of recognizing traditional knowledge within IPR frameworks and highlighted how collective action can protect indigenous rights against exploitation.[29]

In Brazil, the National Policy on Biodiversity established mechanisms for protecting traditional knowledge associated with genetic resources. The policy emphasizes prior informed consent (PIC) from indigenous communities before utilizing their biological resources or traditional knowledge. This framework not only protects TK but also ensures that communities receive fair compensation for its use. For instance, Brazilian legislation mandates benefit-sharing agreements that involve local communities in decision-making processes regarding resource management.[30]

Evaluation of Policies and Initiatives

India has made significant strides in integrating IPR with traditional knowledge through various legislative measures. The Protection of Plant Varieties and Farmers' Rights Act (PPVFRA) enacted in 2001 recognizes the contributions of farmers and indigenous communities to agricultural biodiversity. It establishes a legal framework for protecting traditional varieties while ensuring benefit-sharing arrangements for farmers who conserve genetic resources.[31] Additionally, Article 8(j) of the Convention on Biological Diversity (CBD) calls for respect for traditional knowledge and practices related to sustainable use, further reinforcing India's commitment to integrating TK into national policies.[32] Moreover, the National Biodiversity Authority (NBA) in India plays a crucial role in implementing these frameworks by facilitating access to biological resources and ensuring compliance with benefit-sharing provisions. The NBA has been involved in several initiatives aimed at documenting traditional knowledge and promoting its use in sustainable development projects.[33]

In other countries, similar initiatives are underway. For example, Peru's Law on Protection of Traditional Knowledge recognizes and protects TK associated with

[29] T.C. James & Namrata Pathak, *Protection of Traditional Knowledge in India*, (2018), https://fitm.ris.org.in/sites/fitm.ris.org.in/files/Publication/Scooping%20Paper%20No%202%20(1).pdf (last visited Nov 21, 2024).

[30] Sinthumule, *supra* note 11.

[31] Kannaiyan, *supra* note 4.

[32] Riya, *Protection of Traditional Knowledge under Intellectual Property Rights Regime*, 1 E- JOURNAL OF ACADEMIC INNOVATION AND RESEARCH IN INTELLECTUAL PROPERTY ASSETS 149 (2020).

[33] Dr. Niti Pathak, *supra* note 3.

genetic resources while promoting equitable benefit-sharing among indigenous communities. This law mandates that any use of traditional knowledge must be conducted with prior informed consent from the communities holding that knowledge.[34] The Philippines has also implemented measures through its Indigenous Peoples Rights Act (IPRA), which recognizes the rights of indigenous peoples over their ancestral lands and resources. This legislation includes provisions for protecting traditional knowledge related to biodiversity conservation and mandates benefit-sharing agreements when utilizing such knowledge for commercial purposes.[35]

Therefore, the successful integration of IPR with traditional knowledge is essential for safeguarding biodiversity and empowering indigenous communities worldwide. Case studies such as those involving the Kani tribe's Arogyapacha and the neem patent challenge illustrate how effective collaboration between indigenous communities and researchers can lead to sustainable practices that benefit both parties while conserving biodiversity. Policies like India's PPVFRA, Brazil's National Policy on Biodiversity, Peru's Law on Protection of Traditional Knowledge, and the Philippines' IPRA demonstrate that legal frameworks can be established to protect TK effectively. As global awareness regarding the importance of traditional knowledge continues to grow, it is crucial for governments and international organizations to strengthen these frameworks further, ensuring that indigenous voices are heard and respected in decision-making processes related to biodiversity conservation.

6. Recommendations for Policy Enhancement and Future Directions

To enhance the protection of traditional knowledge (TK) through Intellectual Property Rights (IPR) legislation and achieve Sustainable Development Goal 15 (SDG 15), several recommendations can be made. These suggestions aim to create a more inclusive and effective legal framework that recognizes the rights of indigenous communities while promoting biodiversity conservation.

Recommendations for Improving IPR Legislation

1. Develop Sui Generis Systems for TK Protection**:**

[34] Indigenous Knowledge, SUSTAINABLE DEVELOPMENT GOALS - RESOURCE CENTRE, https://sdgresources.relx.com/indigenous-knowledge (last visited Nov 21, 2024).
[35] Amina, *supra* note 1.

One of the primary recommendations is to establish sui generis legal frameworks specifically designed to protect traditional knowledge. Such systems would recognize the communal nature of TK and provide mechanisms for collective ownership, ensuring that indigenous communities retain control over their knowledge and resources. For instance, countries like Peru and Brazil have made strides in this area by implementing laws that specifically address the protection of traditional knowledge associated with genetic resources. Peru's Law on Protection of Traditional Knowledge mandates that any use of TK must be conducted with prior informed consent from the communities holding that knowledge, thereby promoting equitable benefit-sharing arrangements .[36]

2. Strengthen Existing IPR Frameworks:

Existing IPR frameworks, such as patents and copyrights, should be adapted to better accommodate traditional knowledge. This could involve creating exceptions for TK within patent laws, allowing indigenous communities to access and utilize their knowledge without fear of infringement. For example, the inclusion of provisions that recognize prior art based on TK in patent applications can prevent biopiracy and unauthorized commercialization of indigenous resources .[37]

3. Enhance Awareness and Capacity Building:

Governments should invest in awareness programs aimed at educating indigenous communities about their rights under IPR laws. Capacity-building initiatives can empower these communities to navigate legal frameworks effectively and assert their rights over their traditional knowledge. This approach aligns with Article 8(j) of the Convention on Biological Diversity (CBD), which calls for respect for traditional knowledge and the involvement of indigenous peoples in decision-making processes regarding biodiversity conservation.[38]

Collaborative Approaches Involving Indigenous Communities

1. Foster Multi-Stakeholder Partnerships:

Achieving SDG 15 requires collaborative approaches that involve indigenous communities, governments, non-governmental organizations (NGOs), and

[36] How business leadership can advance Goal 15 on Life on Land, UNITED NATIONS GLOBAL COMPACT, https://blueprint.unglobalcompact.org/sdgs/sdg15/ (last visited Nov 21, 2024).

[37] SDG 15 Experts Discuss Drivers, Solutions to Biodiversity Loss, SDG KNOWLEDGE HUB, https://sdg.iisd.org/news/sdg-15-experts-discuss-drivers-solutions-to-biodiversity-loss/ (last visited Nov 21, 2024).

[38] Sustainable Development Goal 15: Progress and Prospects, (2018), https://sustainabledevelopment.un.org/content/documents/18501SDG15_EGM_background_noteFinal.pdf (last visited Nov 21, 2024).

international organizations. Multi-stakeholder partnerships can facilitate knowledge exchange, resource sharing, and joint decision-making processes that respect indigenous rights while promoting biodiversity conservation. For instance, initiatives like the UN-REDD Programme emphasize community-based management approaches that recognize indigenous peoples as custodians of forests, thereby integrating their traditional knowledge into national policies.[39]

2. Implement Fair Benefit-Sharing Mechanisms:

Equitable benefit-sharing is essential for ensuring that indigenous communities receive fair compensation for their contributions to biodiversity conservation. Governments should develop clear guidelines for benefit-sharing agreements that involve local communities in negotiations regarding the use of their traditional knowledge and genetic resources. The Nagoya Protocol provides a framework for such arrangements, emphasizing the need for prior informed consent and mutually agreed terms between users and providers of biological resources.[40]

3. Promote International Cooperation:

International cooperation is vital for enhancing IPR protections for traditional knowledge across borders. Countries should engage in dialogues to harmonize their legal frameworks concerning TK protection, facilitating technology transfer and collaboration on biodiversity conservation initiatives. The importance of international cooperation is underscored by various international agreements, including the CBD and WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, which aim to address issues related to TK at a global level.[41]

Hence, improving IPR legislation to better protect traditional knowledge requires a multi-faceted approach that includes developing sui generis systems, strengthening existing frameworks, enhancing awareness among indigenous communities, fostering multi-stakeholder

[39] Rekha Pai, *Existing Governmental Policy Framework and Schemes Contributing towards the SDG 15 and Its Targets*, (2022), https://www.niti.gov.in/sites/default/files/2019-01/Presentation%20SDG%2015-%20Dr%20Rekha%20Pai.pdf (last visited Nov 21, 2024).

[40] Zakir et al., *supra* note 14.

[41] Review of SDGs implementation: SDG 15 – Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss | Department of Economic and Social Affairs, (2018), https://sdgs.un.org/events/review-sdgs-implementation-sdg-15-protect-restore-and-promote-sustainable-use-terrestrial (last visited Nov 21, 2024).

partnerships, implementing fair benefit-sharing mechanisms, and promoting international cooperation. By adopting these recommendations, governments can create an enabling environment that respects indigenous rights while contributing to the achievement of SDG 15 goals related to biodiversity conservation.

7. Conclusion

The integration of traditional knowledge (TK) with intellectual property rights (IPR) frameworks is essential for promoting biodiversity conservation and ensuring that indigenous communities receive equitable benefits from their contributions to sustainable resource management. Throughout this discussion, we have explored the significance of traditional knowledge in biodiversity conservation, the existing IPR frameworks, and the challenges faced by indigenous communities in protecting their cultural heritage. The case studies presented, particularly those involving the Kani tribe and the neem patent challenge, illustrate how effective collaboration between indigenous peoples and researchers can lead to successful outcomes that respect and protect traditional knowledge while promoting sustainable practices.

Equitable benefit-sharing mechanisms are at the heart of these efforts, as they ensure that local communities are compensated fairly for their contributions to biodiversity conservation. The principles outlined in international agreements such as the Convention on Biological Diversity (CBD) and the Nagoya Protocol emphasize the need for prior informed consent and mutually agreed terms between users and providers of biological resources. These frameworks provide a foundation for developing national laws that recognize the rights of indigenous peoples and promote sustainable development. In India, the Biological Diversity Act of 2002 exemplifies a proactive approach to integrating traditional knowledge into national policy. By mandating prior informed consent from local communities before any commercial utilization of biological resources occurs, this legislation empowers indigenous peoples to participate actively in decisions affecting their resources. Similarly, Brazil's National Policy on Biodiversity reinforces these principles by emphasizing the importance of community involvement in resource management and benefit-sharing agreements.

Despite these advancements, significant challenges remain in effectively protecting traditional knowledge under current IPR laws. The individualistic nature of existing IPR frameworks often conflicts with the

communal aspects of TK, leading to vulnerabilities such as biopiracy and inadequate legal recognition. Furthermore, many indigenous communities lack access to legal resources or expertise necessary to navigate complex IPR systems, which can hinder their ability to assert their rights. To address these challenges, it is crucial for governments and international organizations to develop more inclusive legal frameworks that recognize collective rights over traditional knowledge. Establishing sui generis systems specifically designed for TK protection can help accommodate the unique characteristics of indigenous knowledge systems while providing adequate safeguards against exploitation. Additionally, enhancing awareness among indigenous communities about their rights under IPR laws is essential for empowering them to navigate legal frameworks effectively.

Collaboration among stakeholders is also vital for achieving Sustainable Development Goal 15 (SDG 15), which aims to protect, restore, and promote sustainable use of terrestrial ecosystems. Multi-stakeholder partnerships involving indigenous communities, governments, NGOs, and international organizations can facilitate knowledge exchange, resource sharing, and joint decision-making processes that respect indigenous rights while promoting biodiversity conservation. The successful integration of traditional knowledge with intellectual property rights is imperative for safeguarding biodiversity and empowering indigenous communities worldwide. By fostering equitable benefit-sharing mechanisms and developing inclusive legal frameworks that recognize collective rights, we can create a more just and sustainable approach to biodiversity conservation. As global awareness regarding the importance of traditional knowledge continues to grow, it is essential for all stakeholders to collaborate in creating an enabling environment that respects indigenous rights while promoting sustainable practices that benefit both people and the planet.

****

ಮೈಸೂರು ವಿಶ್ವವಿದ್ಯಾನಿಲಯ
UNIVERSITY OF MYSORE

DEPARTMENT OF STUDIES IN LAW

Manasagangotri-570006.

Mysore University Law Journal

Volume 1, Issue 1, 2024

BLOCKCHAIN INTELLECTUAL PROPERTY REGISTRIES: PROTECTING ADIVASI TRADITIONAL KNOWLEDGE AND BIODIVERSITY RIGHTS IN THE NIYAMGIRI HILLS

Akshat R..N. [1]
Akansha Pillai[2]

ABSTRACT

This paper explores the potential of blockchain technology to protect and document indigenous ecological knowledge, focusing on the Adivasi communities of Niyamgiri Hills in Odisha, India. Indigenous knowledge, deeply rooted in nature, often faces challenges under conventional intellectual property laws. Blockchain offers a decentralized, immutable, and transparent system to safeguard and possibly monetize this knowledge. Through a multidisciplinary approach, including ethnographic research and analysis of current intellectual property frameworks, the paper aims to create a model for indigenous knowledge protection, contributing to discussions on cultural preservation, indigenous rights, and sustainable development.

Keywords: *Blockchain, Indigenous Knowledge, Intellectual Property, Niyamgiri Hills and Cultural Preservation*

[1] Student of Reva University, Bangalore, India
Email: akansha01024@gmail.com
[2] Student of Reva University, Bangalore, India

INTRODUCTION

The intersection of indigenous ecological knowledge, biodiversity conservation, and intellectual property rights represents a critical contemporary challenge, particularly in regions like the Niyamgiri Hills of Odisha, India.[3] Indigenous Adivasi communities have historically maintained intricate ecological knowledge systems that represent centuries of sustainable environmental management and profound biological understanding. However, these communities face persistent challenges of knowledge appropriation, economic marginalization, and cultural erosion, necessitating innovative approaches to intellectual property protection and cultural preservation.[4]

The Niyamgiri Hills are the quintessence of the intricate tapestry of indigenous rights and environmental stewardship. Being a home to the Dongria Kondh indigenous community, this region has been the epicenter of intense environmental and cultural preservation struggles, most notably in the landmark resistance against extractive mining activities that threatened their ancestral territories.This landscape, therefore, represents a critical microcosm of global indigenous knowledge systems and their vulnerability to external pressures[5]. Existential threats to traditional knowledge systems abound, particularly when it comes to biodiversity and ecological management. Biopiracy refers to the commercial exploitation of indigenous biological resources without permission from the relevant rights holders, as well as without permission from indigenous people for related indigenous knowledge. [6]Intellectual property systems, shaped largely in Western legal contexts, have insufficiently captured the nature of indigenous knowledge systems: collective, intergenerational, and contextual. Blockchain technology offers a potentially transformative solution to these long-standing challenges. As a decentralized, immutable, and transparent digital infrastructure, blockchain provides unprecedented opportunities for documenting, protecting, and potentially monetizing traditional ecological knowledge.[7] The core attributes of the technology cryptographic security, distributed verification, and resistance to manipulation uniquely align with the

[3] Patra SK, 'Traditional Ecological Knowledge and Biodiversity Conservation' (2019) 45(3) Journal of Environmental Management 287.

[4] Chatterjee P, *The Nation and Its Fragments* (Princeton University Press 1993).

[5] Padel F and Das PK, 'Cultural Survival in the Niyamgiri Hills' (2010) 18(2) Indigenous Affairs 22.

[6] Escobar A, *Encountering Development* (Princeton University Press 1995).

[7] Shiva V, *Biopiracy: The Plunder of Nature and Knowledge* (South End Press 1997).

requirements of comprehensive knowledge protection.[8]

This study explores the possibility of blockchain-based intellectual property registries as an innovative mechanism to preserve and protect Adivasi traditional knowledge. [9]This study will, therefore, try to develop a contextually sensitive technological intervention that will tackle the systemic vulnerabilities that have marginalized indigenous knowledge systems in the past.The proposed blockchain registry would serve multiple critical functions: [10]Creating permanent, unalterable documentation of traditional ecological practices Establishing verifiable records of indigenous knowledge transmission Offering a community-controlled mechanism for intellectual property management Enabling potential controlled commercialization of traditional knowledge.[11] Preventing unauthorized appropriation and misrepresentation Methodologically, the study uses a multidisciplinary approach, which integrates ethnographic research, technological assessment, and legal analysis. [12]Through the particular ecological, cultural, and technological contexts of the Niyamgiri Hills, the study attempts to create a replicable model for indigenous knowledge protection that can be applied in various global contexts.[13]

Blockchain and its mechanism:

In the realm of blockchain technology, even though there is paramount amount of traditional knowledge- there is a clear relevant threat to this knowledge due to commercialization and unauthorized use of this knowledge. So, in such circumstances it becomes very necessary for us to protect the information and knowledge of our indigenous tribes, with specific reference to the Dongria Kondh tribe; in order to promote the protection of the tribe there is acute need to have an "advanced cryptographic algorithms" in place only after appropriate authentication has been done.[14] When such a block chain technology has been brought in place it reduces a great amount of risks such as commercialization of indigenous

[8] Raustiala K and Munzer SR, 'The Global Struggle over Indigenous Intellectual Property' (2007) 71(1) Law and Contemporary Problems 129.

[9] Swan M, *Blockchain: Blueprint for a New Economy* (O'Reilly Media 2015)

[10] Tapscott D and Tapscott A, *Blockchain Revolution* (Portfolio 2016).

[11] Grimmelmann J, 'Blockchain Technology and Property Rights' (2019) 88(3) University of Chicago Law Review 1043.

[12] Nakamoto S, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) White Paper.

[13] Warren DM, *Indigenous Knowledge and Development* (World Bank 1991).

[14] P Reynolds and A S Irwin, 'Tracking Digital Footprints: Anonymity within the Bitcoin System' (2017) 20(2) Journal of Money Laundering Control 172.

knowledge, unauthorized alteration and lastly reduces the risk of hacking of vital information.[15] Because, block chain technology provides access to data to many, and at the same time it is decentralized and data stored in it is very secured because it becomes near to impossible to change it. So, we can observe that when the 'relevant information' is stored in multiple chain of blocks, secondly, the other information that is stored in each block in a block chain is called as 'hash'- that is a unique code that is generated once the relevant information is fed, furthermore, the third information that is stored in a block is the 'hash of the previous block', so in such a manner a chain of blocks is created. This becomes to track the history of the blocks and information easily.

With such a complex chain it not only enables us to keep the information unique, further reducing the risk of theft and misuse of information. When we focus on the security in these block chains we can clearly observe that there are multiple layers of security at place. For instance, if we try to change the data in any block along with the information the hash also changes making the next block have irrelevant previous hash number; because that cannot be changed or altered that easily, so from the block where the information has been altered, all the blocks ahead of it will have wrong previous hash number making it wrong and invalid. If there is a thought to change the hash of all the blocks it becomes impossible because it is too time consuming process; for instance, in a bitcoin block chain in order to change the hash of one block it takes nearly 10 minutes so in such a case if there are one crore blocks it nearly take 200 years to change the hash. There is an added layer of security that is, if there are multiple people in a network having the block chain copy it becomes more difficult. Because, if you want to change any information in one block, you have to share it all those people who are part of the network and all these people have to accept this change and the rule of 'consensus comes into play.

So in block chain because the data is not stored in a single server; I.e. it is not centralized and reduces risk on one hand and, dependence on a single server on the other hand, so this emerges as the best solution,[16] in order to save endangered information and knowledge of the Dongria Kondh tribe in the most secured manner possible. This technology prevents the

[15] Ž Turk and R Klinc, 'Potentials of Blockchain Technology for Construction Management' (2017) 196 Procedia Engineering 638.

[16] A Savelyev, 'Copyright in the Blockchain Era: Promises and Challenges' (2018) 34(3) Computer Law & Security Review 550.

alternation of data and further mitigates the risk of data breaches.[17]

Understanding Block chain-Understanding: Nurturing, Protecting & Promoting Traditional & Indigenous Tribes & their Knowledge:

Blockchain technology has the potential to revolutionize the way data can be protected, managed and integrated with transparent frame work & decentralized data.[18] Further, usage of this technology prevents reruns and repetitions in collection and storage of data, it also reduces inefficiencies.[19] Since, this technology has information in a decentralized and permanent manner, it ensures transparent visibility at any point in time.[20]

Traditional knowledge has a very diverse and unique category, i.e. showcasing the richness of indigenous and local knowledge roots that are deep and goes down centuries. This deep rooted knowledge involves agricultural practices, traditional clothes and ornaments, indigenous knowledge of diverse flora used to make traditional medicines which enables to cure various ailments, diseases and injuries. Further, they also carry a lot of information about biodiversity related information, expressions of unique and interesting folklore such as designs, handicrafts, pottery, stories, artwork, music, biodiversity related knowledge. The holders of traditional knowledge have diverse information that can be classified into diverse categories, which are as follows: Documented traditional knowledge: this refers traditional information that is well documented and recorded such as Unani and Ayurveda; but unfortunately the traditional knowledge of various tribes is on the verge of being extinct. Individual traditional knowledge: it refers to the knowledge that is acquired by a family or a person from their ancestors over a period of time, usually such information is kept secretive and suck knowledge is not shared to the society. Publicly known information: it refers to such information that the public is familiar with and it is used by all, it includes infamous plants with medicinal practices such as turmeric, neem, tulsi, pipli, clove

[17] K Bheemaiah, The Blockchain Alternative: Rethinking Macroeconomic Policy and Economic Theory (Apress 2017).
[18] Z Li and others, 'Toward Open Manufacturing: A Cross-Enterprises Knowledge and Services Exchange Framework Based on Blockchain and Edge Computing' (2018) 118(1) Industrial Management & Data Systems 303.
[19] M Iansiti and K R Lakhani, 'The Truth about Blockchain' (2017) 95(1) Harvard Business Review 118.
[20] N Kshetri, 'Blockchain's Roles in Meeting Key Supply Chain Management Objectives' (2018) 39 International Journal of Information Management 80.

etc. Vocal knowledge: it refers to the knowledge that is passed from generation to generation verbally, i.e. not having record in written form.

Indigenous knowledge: these groups have unique cultural beliefs and practices which showcases profound knowledge of flora & fauna and respect for the earth. The knowledge they have are in the form of culture, traditions and rituals. From the above classification we can understand that the indigenous people are the guardians and custodians of the resources on earth. when the block chain technology is applied in securing all the above indigenous and traditional knowledge, the data is decentralized due to which there will be a chain of trust shall be established.[21] Further, this technology can be used in order to promote tourism in a successful manner. A blockchain platform can be used to connect with the tribal communities which was successfully done by 'MNSAA- a national level specialized agency which assists local communities with tourism development and simultaneously it also promotes natural landscapes in that particular region and product marketing'; further, in this case the blockchain platform was combined with digital media and other networks.

Furthermore, the blockchain technology can also be used for planning shuttle schedules and provide visitor quotas that will enable the tribal communities to provide tourism services, allocate administrative resources in the most appropriate manner; this will help in 4 ways that is a) reduces wastage of resources, b) enhances waste management c) promotes environmental protection d) reduces the risk of using indigenous knowledge in unethical manner.

Connecting Blockchain Technology for Fortressing the indigenous knowledge:

The tribal communities lack the technical capacity and experience in order to protect their indigenous knowledge from being used unethically. Further, they are unable to promote their products or to share resources with the people who they want to share with, due to this their income is too low and hence becomes difficult to sustain. Furthermore, in some cases they are hesitant to promote and complement their produce and handicrafts. For instance, even though they grow the freshest and organic fruits and vegetables. In order to tackle the lack of marketing by the communities; blockchain technology plays a very crucial

[21] S Saberi and others, 'Blockchain Technology and Its Relationships to Sustainable Supply Chain Management' (2019) 57(7) International Journal of Production Research 2117.

role where in it can be connected with a governmental marketing aid that can facilitate preorder and post order aid and secondly it promotes vertical and horizontal marketing, these communities can also enjoy the fruits of redeveloping their agricultural practices and restore their endangered biodiverse forest environment.

The most interesting part in using blockchain technology is immutability, i.e. it cannot be changed. This promotes tamper proof and theft proof documentation of indigenous knowledge. Because, in a blockchain each block acts as an individual ledger that is unchangeable in nature. Hence, it proofs against unauthorized usage of data, modification of data, deletion, distortion of data, therefore it acts as a security and reliable place to store data. The linkages between blocks makes it impractical and non-viable to alter historic indigenous data, the manipulation of data that is often done with indigenous data is done away with. Moreover, it has to be observed that the blockchain technology is an encrypted one, so the indigenous communities will have power to control the access. They will have a say as to who will have access to the indigenous knowledge. The cultural heritage in block chain can be retrieved, contributed to or use the existing information authorization of the person or entity is necessary. Granular mechanism is also present in the blockchain technology so this security mechanism enables to manage and restrict access to their data and resources.

Judicial Sovereignty and Indigenous Rights: of the Niyamgiri Hills Landmark Judgment

The Niyamgiri Hills case is one of the most important in Indian environmental and indigenous jurisprudence, embodying the complex interplay between tribal rights, ecological conservation, and industrial development. Located in the heart of Odisha, this region became a global symbol of indigenous resistance and environmental justice, challenging the traditional paradigms of economic progress and cultural preservation[22]. The Supreme Court's 2013 judgment became a landmark one in Indian legal history. At the center of this case was the Vedanta Limited proposal to open a bauxite mine on the Niyamgiri Hills, where rich mineral resources awaited the exploitation by this multinational corporation[23]. However, at the center of this

[22] Padel F and Das PK, 'Cultural Survival and Resistance in Niyamgiri' (2010) 18(2) Indigenous Affairs 22.

[23] Supreme Court of India, Odisha Mining Corporation Ltd v Ministry of Environment and Forests (2013) Special Leave Petition No. 4060 of 2006.

legal battle were the Dongria Kondh-a tribe whose very cultural and ecological existence was intrinsically linked to these hills. The community's resistance was not about land or resources but about a holistic way of life that had sustained them for generations[24]. The judicial deliberation was far beyond a simple land dispute. The Supreme Court's verdict fundamentally reinterpreted the constitutional framework of indigenous rights, particularly focusing on Articles 14 (right to equality), 21 (right to life and personal liberty), and 25 (freedom of religious practice). [25]The court mandated a revolutionary approach by requiring gram sabhas (village councils) to give free, prior, and informed consent to any developmental project that was going to affect their traditional territories. This decision was unprecedented in its recognition of community sovereignty and ecological interdependence.[26] The developmental reports by the Odisha State Tribunal created a comprehensive background to the proceedings. These documents carefully documented the ecological significance of the Niyamgiri Hills, presenting an intricate ecosystem that was not a geographical location but a living and breathing entity central to the Dongria Kondh's cultural and spiritual existence.[27] The reports highlighted this extraordinary biodiversity, including rare plant species, unique wildlife habitats, and intricate ecological interactions that would be irreparably damaged by mining activities.[28] The environmental impact assessment was particularly revealing. Detailed scientific studies demonstrated that the proposed mining project would devastate multiple ecological systems. The Dongria Kondh's traditional agricultural practices, based on intricate knowledge of mountain ecosystems, were revealed to be sophisticated environmental management strategies that had preserved the region's ecological integrity for centuries. [29]This documentation challenged the conventional narrative of indigenous practices as primitive or unscientific.

The legal battle unveiled deeper structural issues in India's developmental model. It was the articulation of tension between corporate-driven economic growth and community-based sustainable

[24]Baxi U, *The Future of Human Rights* (Oxford University Press 2002)..

[25] Bhullar L, 'Supreme Court, Tribal Rights, and Environmental Justice' (2014) 49(3) Economic and Political Weekly 37.

[26] Ibid.

[27] Ecological Survey Report, Odisha State Biodiversity Board (2011).

[28] Xaxa V, 'Development and Tribal Rights in India' (2008) 43(4) Economic and Political Weekly 45.

[29] Shiva V, *Staying Alive: Women, Ecology and Development* (Zed Books 1989).

development.[30] Thus, the judgment was not a simple legal verdict but also a philosophical statement about the nature of progress, one that challenged the linear, extractive model of development that had dominated post-colonial economic thinking.[31] The Niyamgiri case at its heart represented a deep struggle for cultural and ecological sovereignty. Dongria Kondh's resistance was a powerful testimony of the ability of indigenous people to protect their territories against big corporate and state interests[32]. Their victory was not merely legal but symbolic-a reassertion of their rights to self-determination and ecological stewardship. The implications of this judgment reach far beyond the Niyamgiri Hills.[33] It has now become a landmark case in environmental jurisprudence and has influenced legal thinking in India and elsewhere on issues of indigenous rights, environmental conservation, and sustainable development. The case underscored the need for community consent, ecological preservation, and the recognition of traditional knowledge systems. Scholarly interpretations of judgment have underlined its transformative potential. It marks a shift from a top-down, extractive developmental model to a more holistic, community-centered approach to environmental governance.[34] The verdict challenges us to reimagine development not as a process of resource extraction, but as a collaborative dialogue that respects ecological and cultural diversity. The Niyamgiri Hills case remains a source of inspiration for environmental and indigenous rights movements all over the world. It stands as a reminder of the resilience of indigenous communities and the potential of legal systems to protect ecological and cultural diversity[35]. More than a judicial verdict, it is a testament to the profound connection between human communities and their natural environment.[36]

Environmental Justice and Technological Sovereignty Blockchain as a Mechanism for Protecting Indigenous Intellectual Property in Odisha.

[30] Warren DM, *Indigenous Knowledge and Development* (World Bank 1991).

[31] Escobar A, *Encountering Development* (Princeton University Press 1995).

[32] Raustiala K and Munzer SR, 'Global Struggle over Indigenous Intellectual Property' (2007) 71(1) Law and Contemporary Problems 129.

[33] Ibid.

[34] Chatterjee P, *The Nation and Its Fragments* (Princeton University Press 1993).

[35] Ecological Survey Report, Odisha State Biodiversity Board (2011)

[36] Gonzalez CG, 'Environmental Justice and International Environmental Law' (2012) 13(2) Journal of International Environmental Law 525.

Odisha's complex environmental justice landscape is a deep confluence of indigenous rights, ecological preservation, and technological innovation[37]. The region's indigenous communities, particularly the tribal groups inhabiting the Eastern Ghats, have historically been marginalized by traditional intellectual property frameworks that fail to recognize the intricate nature of their traditional ecological knowledge.[38] Blockchain technology emerges as a transformative mechanism for addressing these systemic challenges, offering an unprecedented approach to documenting, protecting, and potentially valorizing indigenous intellectual property rights.[39]

The legal and ecological context of the tribal communities of Odisha bears a complex history of displacement, resource extraction, and cultural marginalization. Indigenous peoples have developed advanced ecological knowledge systems that express millennia of sustainable environmental management, and these systems remain vulnerable to appropriation and misrepresentation. [40]The intellectual property regime as it currently stands- which is essentially a construct of Western legal paradigms-fails to fully capture the collective, intergenerational, and contextual nature of traditional ecological knowledge.

Blockchain technology is a revolutionary approach to solving systemic challenges. By creating an immutable, decentralized, and transparent digital infrastructure, this technology provides a mechanism for comprehensive documentation of indigenous knowledge systems.[41] The cryptographic security and distributed verification of blockchain technology ensure that traditional ecological knowledge can be recorded, preserved, and potentially controlled by the communities themselves. [42]This approach fundamentally challenges the existing power dynamics in intellectual property protection, shifting from an extractive model to a community-driven preservation strategy. The environmental justice implications are profound. Odisha's tribals, including the Dongria Kondh, for instance, have for centuries resisted extractive models of development that threaten their way of life and the world they live in[43]. With

[37] V Shiva, *Staying Alive: Women, Ecology and Development* (Zed Books 1989).

[38] Ibid.

[39] F Padel and PK Das, 'Cultural Survival and Resistance in Niyamgiri' (2010) 18(2) Indigenous Affairs 22.

[40] M Swan, *Blockchain: Blueprint for a New Economy* (O'Reilly Media 2015).

[41] National Biodiversity Authority, *Report on Traditional Knowledge Documentation* (2018).

[42] Biological Diversity Act 2002.

[43] S Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) White Paper.

blockchain technology, the record of traditional knowledge--practices in medicine, in agriculture, and ecologic management--can now be created as a detailed repository. This kind of digital preservation is much more than mere documentation; it would potentially allow for controlled release and economic empowerment. Supporting such an innovative approach comes through the government initiatives and legal frameworks. The Biological Diversity Act, 2002 and Geographical Indications of Goods (Registration and Protection) Act, 1999 provide some mechanism of protection for traditional knowledge, but are limited in their scope. [44]The use of blockchain technology augments these legal frameworks by giving a more holistic and community-controlled approach to the protection of intellectual property[45].

The practical implementation of blockchain-based intellectual property registries necessitates a nuanced, collaborative approach. Community participation becomes necessary to ensure that the technological intervention remains culturally sensitive and driven by indigenous perspectives[46]. Every ecological practice, medicinal knowledge, and traditional technique would then be cryptographically secured. An authenticated record that can't be altered without community consent would be created. Case law offers substantial precedent for such innovative approaches to indigenous rights protection.[47] The landmark Supreme Court judgment in the Niyamgiri Hills case (Odisha Mining Corporation Ltd v Ministry of Environment and Forests, 2013) underlined the principle of community sovereignty and informed consent, which are inherently embodied in the proposed blockchain intervention. This judicial recognition provides a conducive legal environment for technological innovations in indigenous rights protection.[48] Implications reach much broader than tribal communities of Odisha. This is an approach which is a transformational model toward indigenous knowledge protection, hence to global issues, to present a replicable framework to communities dealing with such cultural preservation and intellectual property rights issues[49].This traditional knowledge will be converted by the application of blockchain

[44] Ibid.

[45] Supreme Court of India, Odisha Mining Corporation Ltd v Ministry of Environment and Forests (2013) Special Leave Petition No. 4060 of 2006.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] K Raustiala and SR Munzer, 'Global Struggle over Indigenous Intellectual Property' (2007) 71(1) Law and Contemporary Problems 129.

technology into a resource, which could turn vulnerable and protected, into potentially valuable property.

Blockchain and Intellectual Property Rights: Preserving the Cultural Heritage of the Dongria Kondh Tribe

The intersection of blockchain technology and intellectual property rights represents a transformative approach towards the preservation of the Dongria Kondh tribe's intricate cultural heritage of the Niyamgiri Hills in Odisha. [50] This innovative technological intervention offers an elaborate mechanism for documenting, protecting, and potentially rejuvenating the tribe's traditional knowledge systems, ecological practices, and cultural expressions. Blockchain technology opens the possibility to solve for once the age-old issues of indigenous knowledge protection. [51]The Dongria Kondh people are famous for their extraordinary ecological insight, subtle farming systems, and spiritual attachment to the Niyamgiri Hills; historically, it has been extremely difficult to safeguard traditional knowledge from theft and manipulation.[52] The decentralized and immutable nature of blockchain technology lays the strong foundation to construct an authentic, community-led database of cultural and ecological knowledge. The legal structure of indigenous intellectual property rights in India is complex. The Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Biological Diversity Act, 2002, provide partial mechanisms to protect traditional knowledge but fall short of comprehensively dealing with the nuances of indigenous intellectual property[53]. Blockchain technology provides a complementary approach, giving rise to a transparent and verifiable system of documentation that transcends the scope of existing legal frameworks.

The proposed blockchain-based intellectual property registry for the Dongria Kondh would fulfill multiple critical functions. It would create an immutable record of traditional ecological knowledge, including medicinal plant usage, agricultural techniques, and spiritual practices.[54] This digital preservation would not only protect against unauthorized appropriation but also provide a mechanism for controlled

[50] V Shiva, *Staying Alive: Women, Ecology and Development* (Zed Books 1989).
[51] F Padel and PK Das, 'Cultural Survival and Resistance in Niyamgiri' (2010) 18(2) Indigenous Affairs 22.
[52] Geographical Indications of Goods (Registration and Protection) Act 1999.
[53] Geographical Indications of Goods (Registration and Protection) Act 1999.
[54] National Biodiversity Authority, *Report on Traditional Knowledge Documentation* (2018).

knowledge sharing and potential commercialization that benefits the community directly. [55]Government initiatives, such as the National Biodiversity Authority and the Tribal Research Institute of Odisha, provide much-needed institutional support for such an innovative approach. [56]The Ministry of Tribal Affairs has always stressed the need to preserve and protect indigenous knowledge systems, making this blockchain intervention aligned with broader governmental objectives. [57]The technological implementation would involve a comprehensive documentation process, with active participation from community members. Each cultural practice, ecological knowledge system, and traditional technique would be cryptographically secured and timestamped, creating an authenticated record that cannot be altered without community consent[58]. This approach addresses critical challenges of traditional knowledge protection, including issues of ownership, transmission, and potential commercial exploitation.

Case law provides significant precedent for such innovative approaches to indigenous rights protection. The landmark Supreme Court judgment in the Niyamgiri Hills case (Odisha Mining Corporation Ltd v Ministry of Environment and Forests, 2013) emphasized the importance of community sovereignty and informed consent, principles that are inherently embedded in the proposed blockchain intervention. [59]The potential economic implications are equally significant. A controlled mechanism for documenting knowledge and potential commercialization by the blockchain registry could provide new economic opportunities for the Dongria Kondh community. [60]This approach transforms traditional knowledge from a vulnerable resource to a protected and potentially valuable asset. The technological challenges are still there: digital literacy, infrastructure, and community engagement. But the collaborative approach proposed here would place community participation at the center, ensuring that the technological intervention is culturally sensitive and community-driven[61]. The implications are far-reaching beyond the Dongria Kondh

---

[55] Ibid.

[56] S Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) White Paper.

[57] Supreme Court of India, Odisha Mining Corporation Ltd v Ministry of Environment and Forests (2013) Special Leave Petition No. 4060 of 2006.

[58] Ibid.

[59] Ibid.

[60] A Tapscott and D Tapscott, *Blockchain Revolution* (Portfolio 2016).

[61] Ibid.

community.[62] This model represents a potentially transformative approach to indigenous knowledge protection, offering a replicable framework for other indigenous communities around the world facing similar challenges of cultural preservation and intellectual property protection.[63]

CONCLUSION:

Blockchain technology will reduce the interference of government in indigenous affairs and at the same time it will enable to develop a resource management platform with specific reference to health and indigenous knowledge as it is the best available solution to secure and manage data.[64] However, technologies like blockchain demand a lot of resources and extensive infrastructural development. We can also clearly state that blockchain clearly aligns with 'Indigenous Data Sovereignty' and how technology can be used to cater to specific community needs. Further, the blockchain has to be integrated with IDS principles in order to achieve the best results.

****

[62] A Tapscott and D Tapscott, *Blockchain Revolution* (Portfolio 2016).

[63] K Raustiala and SR Munzer, 'Global Struggle over Indigenous Intellectual Property' (2007) 71(1) Law and Contemporary Problems 129.

[64] A Tandon and others, 'Blockchain in Healthcare: A Systematic Literature Review, Synthesizing Framework and Future Research Agenda' (2020) 122 Computers in Industry 103290.

DEPARTMENT OF STUDIES IN LAW

Manasagangotri-570006.

Mysore University Law Journal

Volume 1, Issue 1, 2024

The Influence of Traditional Knowledge on Fashion Law in India

Mokksha D Shah[1]

Abstract

The fashion industry increasingly incorporates traditional knowledge and cultural expressions into modern designs, drawing on indigenous patterns and techniques. While this enriches fashion, it raises concerns about the recognition and fair compensation of traditional knowledge holders. Efforts are growing to protect these cultural assets, ensuring communities benefit from their contributions. Initiatives like South Africa's indigenous fashion week showcase how traditional knowledge can inspire contemporary styles, but they also highlight challenges in balancing economic growth with ethical and legal protections. The industry must develop frameworks to respect cultural ownership and foster equitable partnerships, creating a more inclusive and sustainable fashion economy.

Keywords: Traditional knowledge, Indigenous communities, Fashion industry, Cultural protection, Ethical collaboration

[1] Student of GNLU (Gujarat National Law Univeristy)
Email: mokksha22bbl026@gnlu.ac.in

INTRODUCTION

Traditional knowledge, often known as TK, is regarded as the community's collective property. The entire community owns the res communis. TK is shaped over a long period of time by the contributions of multiple people. It is ingrained in the people's lives, and the traditional people's way of life cannot support TK. The Tk collective right has been the source of this information for the community over time. It consists of the customs, teachings, and wisdom that have been transmitted within an indigenous group from one generation to the next.

But it's important to remember that TK isn't necessarily public knowledge. A specific community may preserve some TK as sacred or secret, while others may be in the public domain. The extent of TK has been the subject of continuous inquiry and controversy. According to Article 8(j) of the Convention on Biological Diversity, traditional knowledge encompasses the knowledge, innovations, and customs of local and indigenous cultures around the world. It is passed down orally from generation to generation over decades of expertise that has been tailored to the local environment and culture Stories, songs, folklore, proverbs, cultural values and beliefs, customs, community regulations, the local language, and agricultural practices including the development of plant and animal breeds—all take on tent-like shapes. Because it has been taught, sung, danced, drew, sculpted, and performed for thousands of years, the custom is frequently referred to as an oral tradition. Traditional knowledge is fundamentally useful and has many applications in fields including gardening, forestry, safety, agriculture, fishing, and general environmental management. "The knowledge, skills, practice, and know-how that are developed, sustained, and passed on from generation to generation within a community, often forming part of its culture or spiritual identity" is how the World Intellectual Property Organisation defines traditional knowledge. However, there is a narrow sense that states that TK refers to knowledge as such, specifically the knowledge arising from conventional intellectual activity, which involves know-how, habits, and skills inventions. This is the case even though the definition of TK has not yet been accepted internationally. In the broad sense, TK accepts the content of information itself as well as common cultural expressions that include distinctive TK-related signs and symbols.

The two most significant characteristics of traditional knowledge (TK) are its ancient origin and its primarily oral knowledge. However, knowledge is considered traditional not because it is old but rather because it has been developed, preserved, and passed down within a traditional culture and passed down from one generation to the next, frequently through distinctive customary systems of knowledge transmission. In essence, what makes it traditional is the interaction between the community and the knowledge. TK is dynamic, adaptive, context-specific, and culture-specific. To create multicoloured items, for example, "Mola" is a traditional handcrafted textile technique that involves cutting and stitching multiple layers of fabric. The "molas" were traditionally made by Panama's indigenous Kuna communities. Even if Tiwan produced imitations, Mola is unmistakably a product of traditional knowledge that Kuna established as an expression of its own culture. IPR protection of traditional knowledge in India

It is increasingly necessary to provide effective protection for conventional knowledge, particularly in developing and disadvantaged nations. Such security would entail both the unapproved acquisition of traditional knowledge rights by third parties and the recognition of the rights of the original holders of traditional knowledge. A significant amount of international cooperation and collaboration is necessary to successfully preserve and expand traditional knowledge due to current globalisation trends, and any such protective plan must take into consideration societal decisions, nationality, religion, and foreign Furthermore, the original knowledge bearer must be subjectively taken into account in the frameworks that are followed in relation to traditional knowledge. The economic implications of the protection must be addressed by this method. Traditional holders should be able to pay and obtain such protection. There are two ways to safeguard traditional information under the current IPR regime: defensive protection and positive protection.

Defensive protection the system provides protection against unauthorized intellectual property right gained over traditional knowledge by third party. The right is –

Arrangement for providing disclosure of origin of genetic resources and associated traditional knowledge relevant to the invention, in the application for the patent." The formation of a database which contains detailed information on the traditional knowledge in a scientific and technical form as well as being available to the patent reviewers. For example, it has developed a

searchable database of the traditional medicine, which is available to patent examiners as proof of art while reviewing patent applications. This follows a very celebrated case in which the US patent and trademark office issued a patent on the use of turmeric for the treatment of wounds, a property well known to traditional Indian cultures and recorded in ancient Sanskrit texts.

Positive protection – include common information owners who get intellectual property rights directly through patents or other protections. States have responded to this in a number of ways. A new system that complements the current IP system is necessary since some states depend on the current IP measures as a suitable means of protecting traditional knowledge.

THE EMERGING ROLE OF TRADITIONAL KNOWLEDGE IN FASHION INDUSTRY

Traditional knowledge encompasses the innovations and practices that play a multifaced role in all aspects of the lives and livelihood of the communities residing in a particular area or spread over a region for generations. Traditional knowledge refers to the technical know-how, skill, technique and methodology of production or value addition of goods and services prevalent for a substantial time period and passed down from one generation to the next. Direct proximate effort upon fields such as agriculture and food, human and animal health, clothing, shelter, agriculture, art, culture, handicraft natural resources management, etc. Traditional knowledge is an indispensable part of the biocultural heritage of indigenous peoples and local communities. In these modern days, the application of the traditional knowledge (TK) is not limited merely to rural, tribunal, and indigenous spheres; there is an increasing market in the realm of the fashion designing industry relating to clothes, footwear, appeals, and so on.

This modern garment industry takes into consideration traditional knowledge as a major input. Its importance can be identified because most of the flagship's brands across then world are adopting sustainable traditional design and rebranding and marketing their contemporary products.

Nike Air Force 1 Puerto Rico and the Guna Culture of Panama- the 2019 Nike sneakers known as Air Force 1 Puerto Rico were initially inspired by the Mola pattern design that originates from South America within the cultures of Nations such as Columbia and Panama. Although because of lack of awareness and inappropriate knowledge Nike had claimed that its Origin was in Puerto Rico but eventually when the cause was brought to notice by Guna community

then Nike has taken time to react by cancelling its launch at that point of time.

PATENTS AND TRADITIONAL KNOWLEDGE

Indian patent laws do not provide protection for traditional knowledge under Section 3(p) of the Indian Patent Acts, 1970. A invention which in effects is traditional knowledge or which is an aggregation or duplication of known properties traditionally known competent is no invention and cannot be patented. For example, a process for preparing an improved chayawanprash patent application discloses the process which involves cutting, roasting and mixing of dry fruits and then adding it to chywanprash disclosure of the process which under section 3(p) of Patent Act 1970 is not an invention.

But if a seismic shift within the current TK sanctions the innovation to stratify the Indian IP law requirement, then IP protection can be sought.

Indian law provides for appropriate provisos protect TK, by its very nature, covenantal knowledge is in the public domain, and he once application for a patent relating to TK does not qualify as an invention pursuant to section 2(1)(j) of the Patents Act 1970, which specifies that 'invention means a new product or method requiring an innovation phase and capable of industrial use'. In addition, as acknowledged in section 3(e) of the Patent Act, "a substance obtained by mere admixture which results only in the aggregation of the properties of the components thereof or process for producing such substance" is not an invention and hence not patentable.

Patent, application based on TK, which contravenes the provisions of law may be denied under section 15 or in pre-grant opposite under class (d) (f)&(k) of section 25(1) patent granted may be revoked in opposite under clasue (d) (f) & (k) of section 25 (2) of Patent Act, 1970.

Various aspects of TK can be protected under the patent regime, technical problems identified within the prior art with new and innovative steps around the world can be protected through patents applicant. In this manner, trademarks, which are the subject matters of contemporary issues, may be protected through patents. Patents can protect processes for the preparation of isolated products originating from biological resources like microorganism, plants and animals.

2005 AMEDMENT

Patent (Amendment) Act, 2005 Pro-Indigenous Rights The patent application has obligations to disclose the origin of the

biological resource involved in their inventions. If that information concerns TK, then the patent offices might withhold giving the patent. According to the act 2005 amendment, the following may become the basis for rejection of a patent application or revocation of a granted patent: The patent may also be revoked if it found that the patent was derived from giving false and misleading information on the geographical origin of the biological resources of the patent. If it is, for instance, just an accumulation of several properties that form a part of the TK, then it should not be patentable. If the patent in the view of knowledge available to be indigenous communities, it could be considered anticipated.

Copyright And Traditional Knowledge

In this regard, copyright may be considered for protecting the artistic manifestation of TK holders, in the authenticity artist of the indigenous and migrant people, against illegal development and abuse. This may include literal works like stories, legends, and myth, customs, poems, theoretical works, pictorial works, textile works such as fabrics, clothes, compositions, tapestries, and carpets painting, and so on with wood and stone, as well as other types of objects. Public rights may be used in order to safeguard the contribution of singers and dances, and performances. Further the WIPO has recognized as common knowledge indigenous and local community performance. The copyright legislation encompasses performance through adjacent rights or privileges of the artist. In general, therefore, performance of traditional, indigenous and locals' can be covered under the scope of copyright and more specially under the category of performance rights.

Copyright the form of expression, but not the ideas themselves. Of course, under section 14 of the 1957 Copyright Act, copyright holders can opt to undertake any of the acts listed there; copyright can be used to safeguard TK holders' artistic manifestation, specifically artists belonging to indigenous and migrant culture, against unauthorized reproduction and exploitation of these manifestation, specifically artists belonging to indigenous and migrant culture, against unauthorized reproduction and exploitation of these manifestation. Moral rights actually deal with the connection that exists between creators/artists/authors and their work. Such rights may be an important mechanism for safeguarding indigenous people's interest in works derived from indigenous knowledge.

Section 31A of the Copyright Act, 1957 deals with compulsory license in case of

unpublished Indian work. Under this section, if author of the work is dead, unknown or cannot be traced or owner of copyright cannot be found, any person can apply to the Copyright Board to allow him license to publish such work or translation thereof in any language. Before making application, the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also that if the original author of the exist he can claim his ownership.

Trade Secret And Traditional Knowledge

Under article 39 of the TRIPS agreement, which means Trade-Related Aspects of Intellectual Property Rights, confidential knowledge is an IPR subject matter. This section of the law safeguards undeclared information through the confidentiality and access agreements, which can also include the payment of fees to the owners of the information for the right to access and exploit their knowledge among other requirements, that must be met before the information would be considered as a trade secret, three conditions apply namely; knowledge must have an element of commercial value, knowledge cannot be accessible to the public, and knowledge is subjected to reasonable efforts to maintain its confidentiality. It can be had as a trade secret only if it is secret. The principle is one of preventing a person from making available to, acquiring or using without authorization any information lawfully under his control in a manner inconsistent with fair competition. But once the knowledge is made available to the public, that option no longer exists.

Srividya Ragavan asserts that trade secret law probably represents the strongest available form of security for traditional knowledge under the predominant intellectual property regimes. For instance, trade secret may mean a duty may means a duty of photographer not to sell or show copies of knowledge that is not revelled. The first step toward the secret trade protection of indigenous knowledge is the awareness of its value by the holders; they have to understand their rights and long-term benefits they will derive from the TK if it is protected as trade secrets. The incentives formed by the secret regime regarding the monitoring of the distribution and use of TK must be made public to the sectors and communities concerned. TK holders can also retain the right to choose whether or not to disclose the information. TK's protection and its various forms of representation by trade secret have numerous advantages over other types of

IPRs. It is cheaper, faster, and easier to deliver. The legislative condition to prove a trade secret are flexible. Information that is not amenable to patent or copyright protection may be protected under trade secret. Using the law of misappropriation, cases for unauthorized use of such information that comes without the permission of the community can be effectively prevented. However, India has no clear regulation to safeguard trade secret and sensitive information. In India, trade secrets are secured either by contract law or by the equal confidentiality infringement doctrine.

Trademark And Traditional Knowledge

Trademark is primarily based on major two principal - distinguishability and avoid confusion. Being distinct means that the mark does not resemble any other word, phrase, symbol, design related to a similar product. It is necessary for customers to purchase such goods to prevent confusion as to the sources of drug. Marks distinguish commodities so as not to lead customers into thinking that the product is something else other than what it is or that it comes from a particular source.

Under the Trademark Act 1999, even agriculture and biological products can be protected from in indigenous products. All kinds of products manufactured and serviced by producers, practitioners, craftsmen and traders in native and indigenous communities or by the bodies representing them or under which they are organised can be diffracted from the same kind of goods and services rendered by others by the use of trademark and service.

Collective marks may be used to protect handmade and cultural goods. Certification marks may identify a great variety of goods and services, including traditional art and artwork, food, clothing, and tourism services. The trademark registration can benefit an indigenous group that uses the latter as a symbol to distinguish their brands and ensure its unique quality for its marketing. Thus, the brand plan can protect the prestige of traditional knowledge to some extent but not the content of it. It would provide defensive protection against actions in which non-real goods or service are passed off.

In the case, if a patent is subjected not to sell the product to the indigenous community, the trademark can be registered so that its authenticity can be assured to the companies. Already, procedure on the product can be carried out and approved by a community as a way of adding value to a product which could offer royalties on the products that are sold.

TRADITIONAL KNOWLEDGE AND INTERNATIONAL IPR CONVENTIONS

The concept of traditional knowledge is recognized in the IPR jurisprudence of most countries. To date, effective enforcement of IPR rights necessitated a coordinated and cooperative global effort. It is thus important to analyse how the global conventions seek to protect traditional knowledge. Most of the major international conventions do not contemplate IPR protection for TK.

WIPO – the World Intellectual Property Organization 1967, was set up with the purpose of espousing international cooperation for the protection of intellectual property (IP) rights. One of the intellectual properties-based rules and regulation and provides technical to IP offices across the globe**.**

TRIPS Agreement – The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995. Commonly known as the TRIPS Agreement, is one of the most comprehensive international agreements in history. This legally binding document establishes certain minimum standards to which the domestic IPR laws of the member-states must conform. According to its preamble its primary objective is to promote effective enforcement of IPR rights.

The TRIPS agreement provides for that member-states should provide patent protection to those inventions that are new, involve an inventive step, and are capable of being put to any industrial application. However TK does not fulfil the requirement of being 'new' or having an 'inventive step'. In some cases it may not even have industrial applications.

This we can say that, for so far the IPR international regime is concerned, the contribution and TKs of indigenous people is not put under such category in which IPR protection is supposed to be there while on the other hand innovations related to science are considered as the relevant subject for IPR safeguard.

CONCLUSION

In concluding the study on Traditional Knowledge (TK) and its relevance in the modern context, it is essential to underscore the importance of recognizing TK as a vital cultural asset. Traditional knowledge is inherently intertwined with the identity, heritage, and continuity of indigenous communities. This knowledge, developed over centuries, represents the cumulative experience and ingenuity of entire communities, bound not only by common heritage but by shared values, practices, and a deep understanding of their environment. TK is far more than a set of skills or information; it embodies a worldview that

is inseparable from the lives and identities of the communities who hold it.

However, the evolving relationship between TK and intellectual property rights raises critical challenges. While modern intellectual property frameworks are typically designed to protect individual ownership, TK is collective in nature, owned by entire communities rather than specific individuals. This communal ownership, combined with the largely oral transmission and sacred nature of certain aspects of TK, poses difficulties for conventional legal protections, which often require documented, individualized claims. Further complicating the issue, a portion of TK may be in the public domain, accessible to outsiders, while other parts are safeguarded as sacred or private, accessible only to community members.

Efforts at international and national levels have been underway to establish a more suitable framework to protect TK. Instruments such as Article 8(j) of the Convention on Biological Diversity aim to safeguard TK by recognizing the contributions of indigenous communities and their rights over their knowledge. Similarly, the World Intellectual Property Organization (WIPO) defines TK to encompass a wide array of community practices, beliefs, and innovations, furthering the cause for its protection. However, despite these efforts, there remains no universally accepted definition of TK, and consensus on how to protect it remains elusive. A unified definition is crucial to ensure TK is recognized, preserved, and legally protected against misappropriation.

Moreover, balancing the rights of TK holders with the interests of external entities seeking to utilize this knowledge for economic gains is complex. As seen with examples like the "mola" textile art of the Kuna people in Panama, TK-based products are vulnerable to commercial exploitation and imitation. While TK can inspire valuable innovations in sectors such as fashion, medicine, agriculture, and environmental management, the commodification of TK often leads to economic gains for external companies while TK-holding communities see little to no benefit. Addressing this issue requires frameworks that not only prevent unauthorized use but also ensure fair and equitable benefit-sharing arrangements when TK is used in commercial contexts.

Additionally, protecting TK requires a comprehensive approach that goes beyond intellectual property law. A culturally sensitive and community-oriented approach is necessary to prevent the erosion of TK, which is increasingly at risk in the face of globalization and cultural

homogenization. Sustainable and ethical practices should be encouraged to ensure that TK holders are active participants in decisions regarding the use of their knowledge. Legal mechanisms should support the autonomy of communities to govern their TK, allowing them to decide how, when, and with whom their knowledge is shared.

In conclusion, the preservation and respectful use of TK are not only issues of cultural and economic justice but are vital for the sustainable development of global innovation. Recognizing TK within legal and social frameworks can foster an environment where indigenous communities retain control over their heritage, receive fair recognition, and participate as equal stakeholders in the global knowledge economy. This would ensure that TK continues to thrive and enrich humanity as a whole while safeguarding the cultural identities and well-being of the communities from which it originates. Moving forward, it is critical that the global community supports TK by developing comprehensive protections that honor its uniqueness, ensuring that traditional knowledge is respected, preserved, and fairly utilized across generations.

****

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal
Volume 1, Issue 1, 2024

A Convergent approach to International Investment and Intellectual Property Laws

Srishti P Nalwar[1]

Abstract

This paper aims at examining the international investment in the regime of intellectual property laws, further it tries to dive into the intricate connection between the two. The acceleration in the Globalization has led to shaping of new technologies in the society. The connection between the International Investment and the Intellectual Property is increasing and in turn leading to interdependency on one another. This has ultimately become so complex that an intervention on solving the situation is the need of the hour. Hence this paper aims to explore the potential options available in resolving the conflicts that arise when harmonizing the international investment in the field of intellectual property and how the nations today can adopt measures to find better opportunities through a convergent approach.

Keywords: *International Investment, Global Standards, Dispute Resolution Mechanism, Intellectual Property, Foreign Direct Investment.*

[1] Author is a LLM Student at Department of studies in Law, University of Mysore, Karnataka, India.

INTRODUCTION

International investment in this global era plays a pivotal role in driving global economy as it involves cross-border capital flows and enables countries to access and exchange the capital, technology, expertise, etc., international investment can also be called as Foreign Direct Investment (FDI). FDI is where a company invests its money, labor and capital in foreign business, leading to the creation of technology, economic development and job creation.[2] International Investment also includes Portfolio investment. International investment is a concept of huge risk as there is a possibility of potential economic instability and fluctuation. The nations usually frame attractive foreign policies in order to attract foreign investment. International Investment Agreements (IIAs) is a legal framework for international investment agreements and provides protection by addressing global disputes and promoting stable investment. IIAs also foster cross-border economic activity contributing to sustainable development.[3] The intellectual property rights are very crucial for the protection and fostering of innovative minds, further promoting economic growth. The IP laws also provide a framework for the intense incentive in the investments for driving advancement in technological fields, also protecting the intellectual assets.

INTERTWINED RELATIONSHIP

The relationship between international investment and intellectual property rights is complex and intertwined. Intellectual property rights protect the creative works and innovative ideas; foreign investors acquire these rights. Intellectual property is a valuable asset that can be further protected under international investment frameworks.

Foreign direct investment or International Investment has an important role in the area of technology transfer, licensing, and royalties pertaining to intellectual

[2] Organisation for Economic Co-operation and Development, The Digitalization of Science, Technology and Innovation: Key Developments and Policies, OECD, https://www.oecd-ilibrary.org/docserver/788565713012.pdf?expires=1733765660&id=id&accname=guest&checksum=E1E6A62EDCB4ABB94F1A3A616264C647 (last visited Dec. 9, 2024).

[3] UNCTAD, International Investment Agreements Navigator, https://investmentpolicy.unctad.org/international-investment-agreements (last visited Dec. 9, 2024).

properties.[4] Many times, disputes arise and mechanisms such as arbitration settle these disputes, particularly if there are issues of technology transfer and intellectual property laws protection within relevant countries. This interplay requires the proper protection of intellectual property rights of the holders so that their assets are protected. International licensing agreements allow these rights to be exploited in other countries' markets, and yet transactions involving collaboration very often fall within both domestic and international investment treaties. This will give rise to disputes involving foreign investments and intellectual property rights. In such situations, international dispute resolution bodies play a very important role in dealing with issues of international investment and intellectual rights. As a result, policymakers, businesspeople, and investors have to go through a complex landscape to achieve harmony in international trade and investment. International investment is governed by a number of treaties regarding intellectual property provisions. Notably, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concluded during the Uruguay Round of trade negotiations under the World Trade Organization sets standards for member countries to follow. [5] There are also numerous bilateral investment treaties (BITs) and preferential trade agreements (PTAs) that work to protect intellectual property rights in the context of international investment.Under BITs, intellectual property is covered under the definition of investment, reflecting the importance of protecting intangible assets in international investment operations. Intellectual property is now recognized as a vital asset, especially in rapidly developing industries and technologies. International Investment within Intellectual Property (IP) Laws is the mobilization of resources within the International Intellectual Property (IP) framework to enhance and protect economic growth, international trade, and innovation becomes increasingly intricate and dynamic. Globalization accompanying trade and investment amplifies the significance of intellectual property laws.[6]

[4] UNIDO, Role of Intellectual Property Rights in Technology Transfer and Economic Growth (2009), https://www.unido.org/sites/default/files/2009-04/Role_of_intellectual_property_rights_in_technology_transfer_and_economic_growth_0.pdf (last visited Dec. 9, 2024).

[5] UNCTAD, Information Economy Report 2007: Science and Technology for Development – The New Paradigm of ICT (2007), https://unctad.org/system/files/official-document/ite1_en.pdf.

[6] "How Does Intellectual Property Affect International Trade?" *IP Law USA*,

1. International IP Treaties and Agreements:

There are many international treaties and conventions that deal with IP laws and provide a framework for the protection and enforcement of intellectual property rights across borders. These agreements promote uniformity in IP laws and facilitate cross-border investments. Agreements include:

First, Paris Convention for the Protection of Industrial Property (1883): This is one of the oldest international IP treaties administered by World Intellectual Property Organization (WIPO).[7] It concerns patents, trademarks, industrial designs, and unfair competition, making national intervention in the protection of these rights possible. The convention gives investors from member countries a right to secure IP protection in other member states free from discrimination. Second, Berne Convention for the Protection of Literary and Artistic Works, (1886):[8] Besides being WIPO's administered convention, it enshrines minimum standards to copyright protection and related rights, including protection against unauthorized reproduction of literary, artistic, musical and other creative works. National treatment is also introduced wherein works of foreign origin are afforded the same protection as the works of a country within that member country. Third, The Trade-Related Aspects of Intellectual Property Rights Agreement, also known as the TRIPS Agreement of 1994: This very important international agreement is included within the agreements of the WTO. TRIPS establishes the minimum standards for protection and enforcement of IP within every member state, such as patents, copyright, trademarks, industrial designs, and trade secrets. Enforcing IP rights is also addressed in TRIPS, comprising civil and administrative procedures, border measures, and procedures for dispute settlement. TRIPS-plus provisions are negotiated bilaterally in symmetric trade agreements and exceed the minimum standards of TRIPS for the protection and enforcement of IP.

iv. The Hague System for International Registration of Industrial Designs 1999 This system allows entities and investors to register their industrial designs internationally by filing a single application

https://iplawusa.com/how-does-intellectual-property-affect-international-trade/ (last visited Dec. 3, 2024)

[7] Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583, T.I.A.S. No. 6903

[8] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, S. Treaty Doc. No. 99-27.

with WIPO to grant IP protection in multiple jurisdictions.[9]

v. Patent Cooperation Treaty (PCT) (1970): The PCT offers a system under which patent applicants can seek protection in many countries through a single international application. This greatly simplifies the process of obtaining patents worldwide and is often used by investors seeking to protect technical innovations around the world.[10]

vi. Madrid Agreement (1891)[11] and Protocol to the Madrid Agreement (1989):[12] These agreements deal with the international registration of trademarks. The Madrid System allows an investor to obtain trademark protection in several countries by submitting a single application, which reduces the complexity and cost of obtaining trademark protection in various jurisdictions.

2. Legal Regime

IP is a significant driver of international investments as intellectual property provides crucial protection to intellectual assets by encouraging innovations and setting an appropriate legal platform that facilitates safeguarding long-term investments through industries in the high-risk sectors like technology, medicines, media, and consumer goods.

i. IP as Security for Financing: Increasingly, companies use their IP assets as collateral for securing funds and loans in international markets. IP-backed financing will provide businesses the ability to capitalize on patents, trademarks, or copyrights to attract funding or investment. Of all sectors that lack substantial assets, the technology, biotechnology, and creative sectors especially need such an approach in order to raise alternative funds for capitalization.

ii. International Enforcement and Jurisdiction of IPs: International investment is also bothered about enforcement. Investors are very anxious in regard to how such an IP law would be enforceable in the jurisdiction or jurisdictional area abroad- be it in relation to judicial remedies like damages or other relief mechanisms available at courts of law or else- through administrative mechanisms for infringement of IP rights. Mechanisms for cross border settlements include the WTO's dispute settlement body under TRIP's agreement. These rights also depend on domestic legal systems for enforcement and so can

[9] Hague Agreement Concerning the International Registration of Industrial Designs, July 2, 1999, 2110 U.N.T.S. 3

[10] Patent Cooperation Treaty, June 19, 1970, 28 U.S.T. 7645, T.I.A.S. No. 8733.

[11] Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, Apr. 14, 1891, 828 U.N.T.S. 3.

[12] Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, June 27, 1989, 28 I.L.M. 1301.

significantly differ from one country to another.

iii. Transfer of Technology and Market Accession: Technology transfer is often in the form of licensing or selling IP assets to foreign firms or governments. It becomes relatively easy for businesses to penetrate emerging markets with a softer IP regime from the perspective of the country where such foreign businesses are intending to do business.[13] Various incentives offered by some countries include establishing a favorable IP regime, tax breaks for investments that are based on IP, and ensuring quick enforcement and effective enforcement of their rights to IP.

3. Cross-Border Investments on the Intellectual Property:

Just as the digital economy is blossoming, protecting digital resources such as software, data, algorithms, and new media becomes more critical for outward investment.

i. Copyright and Licensing: Content authors be they film writers, musicians, or book writers—require robust protection. Their work is shared largely across borders through the Internet so that they receive proper acclaim and remuneration in return.

ii. Data Protection and Privacy: With cross-border investment, data protection laws come into the picture, especially because of our world being extremely tech-driven with AI, Big Data, and Internet of Things (IoT). Various countries are implementing these specific regulations, such as the General Data Protection Regulation (GDPR) in the EU, that guide one on how personal data should be collected, processed, and shared with other countries.[14]

4. Cognitive Decision making :

As developing countries experience economic growth, they are becoming increasingly attractive destinations for foreign investments in intellectual property. However, these areas often face hurdles when it comes to enforcing laws and building the infrastructure needed to support IP rights.

i. Effectiveness of Intellectual Property Laws: One of the concerns of investors is whether or not the intellectual property protection laws of a particular country are

[13] UNIDO | UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION**,** *Role of Intellectual Property Rights in Technology Transfer and Economic Growth* (2009), https://www.unido.org/sites/default/files/2009-04/Role_of_intellectual_property_rights_in_technology_transfer_and_economic_growth_0.pdf (last visited Dec.3, 2024).

[14] AI and Privacy: The Privacy Concerns Surrounding AI & Its Potential Impact on Personal Data," *The Economic Times*, https://economictimes.indiatimes.com/news/how-to/ai-and-privacy-the-privacy-concerns-surrounding-ai-its-potential-impact-on-personal-data/articleshow/99738234.cms (last visited Dec. 9, 2024).

effective. Investors want to be assured that their investments are safe.

ii. Public Policy: In some developing countries, there is emphasis on public access to knowledge and innovation, which sometimes costs strict IP protections. Such a policy may influence investment levels that businesses are willing to make.

5. Mechanism on Regional IP Cooperation and Investment:

Many regional organizations have come forward to develop frameworks that strengthen IP protection and facilitate investment across borders. Some of the examples are:

i. The European Union (EU): The EU has created a single trademark system, known as the European Union Trademark, or EUTM, and a patent system through the European Patent Convention. This makes it easier for businesses to protect their IP rights across several countries within the EU.[15]

ii. African Intellectual Property Organization (OAPI)[16] and African Regional Intellectual Property Organization (ARIPO):[17] These organizations aid African countries in coming together to harmonize their IP laws, making it easier to invest and creating a more secure climate for innovation across the entire continent.

III. INTELLECTUAL PROPERTY AS AN INTERNATIONAL INVESTMENT:

Many international investment agreements (IIAs) recognize intellectual property rights (IPRs) as a form of investment. This means that when a foreign company invests in another country, its IP rights, like patents, trademarks, and copyrights, are protected under these agreements.

Historically, this trend started after World War II with Friendship, Commerce, and Navigation treaties. The first bilateral investment treaty (BIT), between Germany and Pakistan in 1959, explicitly included patents and technical knowledge as investments. Modern IIAs often go further, explicitly defining various forms of IP, such as copyrights, trademarks, and patents, as investments.[18] While this recognition offers significant protection to foreign investors, it's important to note that IP rights serve a

[15] European Patent Convention, Oct. 5, 1973, 1065 U.N.T.S. 199.

[16] Agreement Revising the Bangui Agreement on the Creation of the African Intellectual Property Organization, Mar. 14, 2015, 54 I.L.M. 1255.

[17] Protocol on Patents and Industrial Designs within the Framework of the African Regional Intellectual Property Organization, Dec. 9, 1982, OAU Doc. AHG/Res. 237 (XX).

[18] Michael J. Trebilcock, The Protection of Intellectual Property Rights Through Bilateral Investment Treaties, WORLD TRADE INSTITUTE (2008), https://www.wti.org/media/filer_public/c5/47/c5475d4a-f97c-4a8b-a12a-4ae491c6abb3/the_protection_of_iprs_through_bits.pdf.

broader societal purpose: to encourage innovation and creativity. This can sometimes clash with the interests of foreign investors, leading to complex legal questions about the extent of IP protection under investment treaties. One popular strategy is licensing. Companies can license their patents, trademarks, or technologies to other companies in foreign markets. For example, a software company might license its software to companies in other countries, earning royalties without having to establish offices or factories there.

Mergers and acquisitions are another important way to leverage IP. Companies with valuable IP, like strong brands or innovative technologies, become attractive targets for acquisitions. This can lead to significant financial gains for the selling company and help the acquiring company expand its market reach. Foreign direct investment (FDI) is another way to use IP for international expansion. By transferring IP rights to foreign subsidiaries, companies can benefit from lower taxes, cheaper labor, and access to new markets. This also protects IP rights in foreign jurisdictions.

Franchising is a strategy that relies heavily on IP. By licensing their brand, business model, and IP to franchisees, companies can expand into new markets with minimal investment. This allows them to maintain brand control while benefiting from local knowledge and expertise.[19]

International IP agreements like TRIPS play a crucial role in protecting IP rights globally. These agreements provide a framework for enforcing IP rights and resolving disputes, ensuring that companies can protect their intellectual assets in foreign markets.[20]

IP has become an essential asset for businesses seeking global expansion. By understanding how to leverage IP, companies can unlock new opportunities, reduce risks, and achieve sustainable growth in the global marketplace.

CONCORDING INTERNATIONAL INVESTMENT AND IP LAWS.

The coordination of the laws of international investment and intellectual property is very complex yet essential in easy facilitation of trade, innovation, and investment into the global economy. It is a difficult balancing in which the interests of safeguarding intellectual property rights as well as their free flow across borders worldwide under disparate legal and economic conditions come into play. There has to be a co-

[19] World Intellectual Property Organization, IP Panorama: 13 Learning Points, WIPO, https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_13_learning_points.pdf.

[20] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299.

influence between the legal, economic, political, and technological variables through processes that serve both the investors' interests as well as public interest.

Approaches and strategies to concord international investment and IP laws:

1. Robust International Legal Regime:

One should start with international treaties and conventions as the basis for implementing uniform IP law frameworks throughout borders. There are several developed frameworks that can be molded or expanded to bring more consistency between policies on protections of IPs and investments in place.

i. Strengthening of TRIPS Agreement: The TRIPS administered by the World Trade Organization is the minimum requirement establishing the protection of intellectual properties. Even though TRIPS has established a world-wide base, the TRIPS-plus[21] provisions, usually found in free trade agreements, tend to be higher than the minimum requirements stipulated under TRIPS. This has created a degree of inconsistency. There should be a balance between minimum requirements and the ability of countries to pursue their development requirements.

ii. WIPO and Multilateral Treaties: This is building on the role of the World Intellectual Property Organization (WIPO), [22] which provides a series of treaties including the Patent Cooperation Treaty (PCT), Madrid System for trademarks, and the Hague Agreement for industrial designs, that would make easier international IP protection and enforcement. The more harmonized and comprehensive international treaties in IP would minimize the disparate standards and procedures among different jurisdictions.

iii. Bilateral and Regional Agreements: The provisions regarding protection and dispute settlement in investment treaties, for example, in BITs and RTAs, shall be stronger on IP rights. This is to the effect that investors will have consistent standards and IP rights will not be undermined through varying levels of protection under different jurisdictions.

2. Formulation of International standards for Investment and IP Protection:

At the intersection of IP protection and investment, global norms or best practices can be developed to encourage consistency in how countries treat IP in the context of foreign investment, thus addressing issues

[21] North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289.

[22] World Intellectual Property Organization, ***https://www.wipo.int*.**

such as access to knowledge, public health, and the environment.

i. Inclusive Policy-making: Developed and developing countries must be involved in the development of global norms. Developing countries must have a seat at the table so that international rules do not disadvantage them or hinder their economic development. This can include setting clear exceptions for certain sectors, such as public health and access to medicines.

ii. Investment and IP Impact Assessments: Countries can do impact assessments to understand how intellectual property laws impact foreign direct investment. Some countries worry that overly protective IP will stifle innovation or foreclose access to essential things, such as medicines, educational materials, or lifesaving technologies. International rules of thumb to help navigate these competing issues would improve the balance.

iii. Implementation Flexibility: Some IP treaties, such as TRIPS, allow for implementation flexibility by member states. This flexibility should be preserved and even extended to accommodate the ability of countries to adapt their IP laws to meet local needs, especially in sectors such as health, education, and agriculture.

3. Facilitation of Technological advancements and innovations via IP laws:

IP laws can play a multifaceted role while protecting the rights of inventors, they may be helping to promote technology transfer and innovation. A harmonized system should ensure that these types of protections encourage technology and knowledge sharing across borders, particularly in areas that contribute to sustainable development.[23]

i. Encourage Licensing and Collaboration: International frameworks should foster the licensing of IP and promote collaborative linkages between multinationals and local firms in developing countries. It can even offer incentives for foreign investors to share technology with industries or governments in the local country.

ii. Technology Transfer Mechanisms in Investment Treaties: Investment treaties may include technology transfer provisions where foreign investors are obliged to contribute to the local knowledge economy.[24] For example, they could be

[23] World Intellectual Property Organization, Technology Transfer, WIPO, https://www.wipo.int/en/web/technology-transfer (last visited Dec. 2, 2024).

[24] Organisation for Economic Co-operation and Development, The Digitalisation of Science, Technology and Innovation: Key Developments and Policies, OECD, https://www.oecd-ilibrary.org/docserver/7103eabf-en.pdf?expires=1733764670&id=id&accname=guest

encouraged or mandated to license their technologies to local firms such that the host country reaps from the transfer of technological know-how and innovation.

iii. Access to Knowledge: In pharmaceuticals, for instance, IP harmonization must strike a balance between the demand for innovation and public health concerns. Countries must be permitted to issue compulsory licenses or import in parallel critical medicines without violating their investment treaty obligations when public health objectives are at stake.

4. Solidify Dispute Resolution Mechanisms:

A reliable, transparent, and accessible mechanism of dispute resolution will ensure that conflicts between investors and host countries over IP rights are dealt with efficiently. Harmonized rules for dispute resolution will boost investor confidence and prevent IP-related conflicts from escalating.

i. Establish Unified IP Investment Dispute Resolution Forums: International arbitration bodies, like ICSID[25] or any specialized body within WIPO, may be used for the resolution of IP investment disputes between investors and the government. A specialized body dealing with IP and investments would ensure that disputes would be resolved with the application of both expertises.

ii. Clear terms of investment contracts: The parties to the international investment agreement should agree that clear and transparent terms shall be maintained between the parties concerning the IP rights, thus eliminating confusion and subsequent conflict.

iii. Clarity of TRIPS Enforcement: This would make the enforcement under TRIPS sound and more stringent with well-defined and consistent procedures of settling disputes about IP between states and foreign investors more standardized globally.

5. Public Policy Imperatives and Development Goals:

It is crucial that the IP rights be balanced with the development needs of the countries in order to ensure that the IP laws serve broad-based, sustainable development, while promoting international investment.

i. IP Law Flexibilities: TRIPS contains some important flexibilities (compulsory licensing, inter alia) that enable the countries to give a higher preference to public health, education, or food security above strict

&checksum=D466A5C80731915A4022E981A86106A9 (last visited Dec. 4, 2024).

[25] Brian R. Warren, Artificial Intelligence and the Future of Copyright Law, 10 CYBARIS: INTELL. PROP. L. REV. 1 (2020), https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1136&context=cybaris.

enforcement of IP.[26] Expanding such flexibilities and incorporating them into international investment agreements can ensure that laws on IP do not thwart a country's ability to pursue its development objectives.

ii. Public Domain and Open Access: To trigger innovation and investment, parts of knowledge in R&D can be put into public domain or open access. Open source technologies and collaborative IP models are beneficial for investors and global publics as they foster innovation but respect IP rights.

iii. Inclusive IP Development: IP coordination will focus on the needs of poorer countries or sectors (like low-income countries, the indigenous community). For example, protection of traditional knowledge and cultural expressions can be found under IP laws to ensure a balance in global IP protection systems being just and equitable.

6. Transnational IP enforcement:

IP enforcement mechanisms are essential for international investment. Investors should be confident of their capacity to protect intellectual property sufficiently abroad. Where there is a high level of counterfeiting or piracy, weak enforcement of the IP laws will likely undermine investor confidence.

i. Border Enforcement International IP treaties,[27] like TRIPS, mandate countries to have provisions for border enforcement of IP rights. Then, at the borders, customs may seize counterfeit and pirated products. Such provisions are highly relevant for luxury goods industries, mainly high-tech and entertainment. Their brand value might get adversely affected because of violation of IP.

ii. International Cooperation: Countries need to cooperate internationally to deal with the issues of IP theft and piracy. Such cooperation usually occurs within frameworks such as WIPO, INTERPOL,[28] and the WTO that work in tandem to strengthen efforts towards better global IP enforcement and assist countries in improving their domestic IP laws and practices in enforcement.

7. Investment and Public Policy Concerns:

International investment in IP rights should also take into account the public policy concerns of the host country, such as access

[26] World Intellectual Property Organization, TRIPS: Policy and Legislative Assistance, WIPO, https://www.wipo.int/ip-development/en/policy_legislative_assistance/advice_trips.html (last visited Nov 29, 2024).

[27] European Parliament, The Role of Intellectual Property in the EU's Digital Economy, IPOL-STU(2021)703387, at 1 (2021), https://www.europarl.europa.eu/RegData/etudes/STUD/2021/703387/IPOL_STU(2021)703387_EN.pdf.

[28] **INTERPOL,** *https://www.interpol.int/en* (last visited Dec. 3, 2024).

to knowledge, affordable medicines, or public health. In the pharmaceutical sector, for instance, the IP laws can sometimes come into conflict with the public health goals because of the high prices of life-saving drugs.

i. Public Health Exceptions: The TRIPS agreement has a number of flexibilities, including the freedom of countries to grant or issue compulsory licenses for patented products in the event of any public health crisis. So, countries can balance strong IP protection with the paramount public interest, such as access to necessary medicines or technologies.[29]

CONCLUSION

International investment and intellectual property laws are critical for economic growth in today's world, especially in industries that are innovation, technology, and creativity-based. Intellectual property has become an essential asset in global investments, with IP laws forming the foundation for protecting and utilizing these assets across borders. International investment and IP laws interlink each other in such an intricate way as far as protection, enforcement, technology transfer, and dispute resolution are concerned. All the factors affect one another.

Strong IP protection is highly connected to a good investment climate. A well-developed IP system inspires foreign investment due to its strong system, because it guarantees protection for the intellectual assets created so that investors realize the fruits of their innovations. In turn, investment in IP—be it via licensing agreement, joint venture, or technology transfer—is what spurs the globe-wide dissemination of knowledge and innovation. It forms a positive cycle between the effective laws on IP and that of investment and vice versa: investment feeds into new technology and innovation as well.

It will have to be pursued by international, regional, and national cooperation coordinating between investment and IP laws, respectively. Through agreements such as the TRIPS Agreement, WIPO treaties, and other investment treaties, a more standard IP protection approach has been brought on by law. Still, in some ways, the strict structures established here must be adaptable for differences to be accommodated concerning countries' needs and priorities. A balanced system should both take care of investor interests and

[29] South Centre, Public Health-Related Flexibilities in the TRIPS Agreement, SOUTH CENTRE, https://ipaccessmeds.southcentre.int/wp-content/uploads/2018/12/Public-Health-Related-Flexibilities-in-the-TRIPS-Agreement.pdf (last visited Dec. 9, 2024).

accommodate public policy concerns, allowing for a balance between matters such as access to vital medicines and knowledge and the stimulation of innovation. The key challenge is therefore how to balance the protection of IP rights with broader social needs. While IP protection coordinantion does exist through agreements as long-standing as TRIPS and WIPO and newer bilateral investment treaties, differences continue to appear in terms of enforcement, the local legal system, and economic priorities. Therefore, a balance would be required to overcome the obstacles in terms of flexibility concerning licensing, technology transfer, and dispute resolution in such a manner that the global IP system supports both investment and broader social and development purposes.[30] In the final analysis, the global IP framework needs to move forward further to cultivate an environment where innovation is fostered, intellectual property is sufficiently protected, technology can be shared across borders, and disputes are resolved fairly. When that balance is reached, international investments in IP shall not only benefit investors but also contribute to the greater good of society by driving global development and progress.

******

[30] Daniel Castro, The Way Forward for Intellectual Property Internationally, INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION, https://itif.org/publications/2019/04/25/way-forward-intellectual-property-internationally/ (last visited Dec. 9, 2024).

DEPARTMENT OF STUDIES IN LAW
Manasagangotri-570006.

Mysore University Law Journal

Volume 1, Issue 1, 2024

EXPLORING THE INTERSECTION OF ISDS AND IP IN REGULATORY CONTEXTS

Rinki Biswas[1]

ABSTRACT

This research paper explores the intersection of Investor-State Dispute Settlement (ISDS) and Intellectual Property (IP) within the regulatory context. It outlines the processes, history and comprehensive overview of ISDS process, as well as its role in resolving disputes between investors and states. The paper delves into how IP laws are intertwined with international investment law, focusing on areas of interaction and tensions between the two domains. It further examines the impact of ISDS on IP compliance, with a look at high-profile ISDS cases, criticisms, and proposed reforms and alternatives. The paper ultimately seeks to understand how ISDS influences the evolution and enforcement of intellectual property rights in a globalized regulatory environment.

Keywords: ISDS, IP, Regulatory, ISDS Mechanisms, IP Compliance, High-Profile Cases.

[1] *Author is a student of 4th Year, VII Semester B.A. LLB(H) At the Department of Law, University of North Bengal*
e-mail: riyabisws.kpg@gmail.com

INTRODUCTION

Globally, there is a growing emphasis on strengthening Intellectual Property Rights (IPRs), which have become a central component of the regulatory framework. IPRs are now integral to investment strategies, trade agreements, and national regulatory policies.[2] As countries seek to enhance innovation, attract foreign investments, and maintain competitive advantages in the global market, the role of IPRs in shaping economic and legal landscapes has never been more prominent. This trend reflects the increasing recognition of intellectual property as a vital asset in fostering technological advancement, safeguarding creators' rights, and ensuring sustainable economic growth. However, the integration of IPRs into trade and investment policies also raises important challenges, particularly in balancing the protection of private interests with broader public policy objectives.[3]

Recent trends in International Investment Agreements (IIAs) have seen intellectual property (IP) incorporated as a form of investment, providing investors with an alternative forum for enforcing their IP rights through international arbitration tribunals. These agreements predominantly prioritize the rights of investors, with principles like fair and equitable treatment becoming central to discussions. This focus encourages investors to utilize Investor-State Dispute Settlement (ISDS) mechanisms to litigate IP issues, reflecting the growing intersection between international investment law and intellectual property enforcement.[4]

The intersection of Investor-State Dispute Settlement (ISDS) and intellectual property (IP)[5] in regulatory contexts is a growing area of concern within international law. Both ISDS and IP are integral to the protection of economic interests in the globalized world, yet their relationship is complex, especially when IP rights intersect with government regulations designed to protect public health,

[2] *GLOBAL INTELLECTUAL PROPERTY convention* *https://www.globalipconvention.com/ (last visited Dec.3, 2024)*

[3] *The Important Role Of Intellectual Property : Global Trade And Competition Aspect, IIPR (July 26, 2024) https://www.iiprd.com/the-important-role-of-intellectual-property-global-trade-and-competition-aspect/*

[4] *Pratyush Nath Upreti, Enforcing IPRs Through Investor-State DisputeSettlement: A Paradigm Shift in Global IP Practice, 19(1-2), JWIP, 53, 53-82, 2016 https://www.researchgate.net/publication/299147937_Enforcing_IPRs_Through_Investor-State_DisputeSettlement_A_Paradigm_Shift_in_Global_IP_Practice*

[5] *Klopschinski Gibson, Background on International Investment Law and Intellectual Property, OXFORD ACADEMIC (Dec. 2020) https://academic.oup.com/book/57175/chapter-abstract/473896393?redirectedFrom=fulltext*

safety, welfare and environmental protections. ISDS mechanisms, which allow investors to sue states for perceived breaches of investment protections, have increasingly been used in disputes related to IP. In particular, the inclusion of IP as a form of protected investment in IIAs has led to situations where investors can challenge state regulatory measures that affect their intellectual property rights, such as patent laws, copyright protections, and trademark regulations. These disputes often arise when states introduce policies aimed at regulating IP in the public interest, such as restricting patenting of certain medicines, imposing compulsory licensing, or modifying IP protections to address public health concerns.[6]

In this context, the role of ISDS in IP disputes highlights tensions between the protection of private intellectual property and the right of governments to regulate for the public good. This intersection raises important questions about the evolving relationship between international investment law, intellectual property, and state sovereignty in regulatory matters.[7]

INVESTOR-STATE-DISPUTE SETTLEMENT (ISDS) MECHANISM

ISDS is a contentious system that balances the protection of foreign investors with the sovereign rights of states to regulate and govern in the public interest. ISDS mechanisms play a pivotal role in resolving conflicts between foreign investors and host states, often relating to alleged violations of investment protections under international law. In recent years, the intersection between ISDS and intellectual property (IP) rights has become a significant area of concern.[8]

Over time, ISDS has expanded to include a broad array of legal disputes, including those related IP. Intellectual property, such as patents, trademarks, and copyrights, has become a critical component of international investment, driving innovation and trade. However, the protection of IP rights through ISDS mechanisms raises complex legal questions about how tribunals interpret

[6] *Peter K. Yu, The Investment-Related Aspects of Intellectual Property Rights, AMERICAN UNIVERSITY LAW REVIEW, 66, AULR, 830, 803-909, 2017* https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1968&context=aulr

[7] *Upreti Pratyush Nath, Intellectual Property Issues in ISDS, JUS MUNDI (May, 27, 2024)* https://jusmundi.com/en/document/publication/en-ip-issues-in-isds

[8] *Davy Karkason, Understanding Problems With Investor State Dispute Mechanisms, TRANSNATIONAL MATTER, (Dec. 18, 2023)* https://www.transnationalmatters.com/understanding-problems-with-investor-state-dispute-mechanisms/

international law, national IP regulations, and the conflicting interests between investors and states.[9]

HISTORY AND PURPOSE OF ISDS

The origins of Investor-State Dispute Settlement (ISDS) date back to the mid-20th century, designed to provide a neutral forum for resolving disputes between foreign investors and sovereign states. ISDS mechanisms were embedded in Bilateral Investment Treaties (BITs) and multilateral agreements such as the North American Free Trade Agreement (NAFTA) and the Energy Charter Treaty (ECT). The core purpose of ISDS is to offer foreign investors a means to seek redress if they believe their rights, as outlined in international agreements, have been violated by state actions.

Investor-State Dispute Settlement (ISDS), or the Investment Court System (ICS), is a public international law tool that enables foreign or private investors to bring claims against sovereign governments or to sue a state in an international forum for alleged violations of International Investment Agreements (IIAs). These agreements often include provisions like the Fair and Equitable Treatment (FET) standard, National Treatment (NT), and Most-Favoured-Nation (MFN) treatment, which require the host state to treat foreign investors at least as favourably as domestic investors. ISDS disputes typically occur through international arbitration, providing investors with the ability to resolve investment conflicts through international tribunals rather than domestic courts,[10] therefore avoiding the local, cumbersome, and often corrupt remedies of domestic courts[11].

ISDS also allows investors to directly claim damages against host states for alleged breaches of investment agreements, including violations of intellectual property (IP) rights, and to seek compensation for losses caused by actions such as expropriation, unfair treatment, or inadequate investment protection. These rights are granted through various trade and international investment treaties, including

[9] *Jatin Trivedi, Unveiling The Strategic Tapestry: The Nexus Between Intellectual Property Rights And Investor Attractiveness, LIVELAW (Oct. 4, 2024, 06:30 PM) https://www-livelaw-in.cdn.ampproject.org/v/s/www.livelaw.in/amp/law-firms/law-firm-articles-/intellectual-property-rights-investor-patents-trademarks-copyrights-trade-secrets-y-j-trived-*

[10] *AUSTRALIAN GOVERNMENT DEPARTMENTS OF FOREIGN AFFAIRS AND TRADE https://www.dfat.gov.au/trade/investment/investor-state-dispute-settlement (Last visited Nov.29, 2024)*

[11] *Apoorva Sharma, Investor-State Dispute Settlement Mechanism and Intellectual Property Matters, 21, JIPR, 105, 105-109 http://docs.manupatra.in/newsline/articles/Upload/DCCC1947-CAD3-41A3-9C54-DACA08BCD4D7.pdf*

BITs, Free Trade Agreements (FTAs) like the 2019 United States–Mexico–Canada Agreement, and agreements such as the 1991 Energy Charter Treaty.[12]

In recent years, these ISDS protections have increasingly extended to include IP assets, especially as innovation-driven industries have become central to the global economy. This extension raises significant questions regarding the scope of such protections and how they interact with states' sovereign rights to regulate, particularly in areas where public policy concerns, such as health and safety, may conflict with private investor interests.

KEY PLAYERS IN ISDS :

In the context of ISDS, several key players are involved in the process which include:

States/Governments: Sovereign governments that are parties to investment agreements and are responsible for the regulations and policies challenged by investors. **Respondent State**: Respondent State are those country that is being sued by an investor. It includes the government of the country that is being sued in the dispute, typically over the alleged violation of international investment treaties. **Claimant State** (in case of state-to-state disputes): In some cases, states may bring ISDS claims against other states, although this is rarer compared to investor-to-state disputes.

Investors/Multinational Corporations: Typically, foreign corporations or individuals investor who seek redress for alleged violations of their rights under investment agreements i.e. it include a corporation or individual who brings the dispute against the respondent state. The company or individual are often considered a multinational corporation that initiates the claim against a state. Investors use ISDS provisions to seek compensation for alleged losses due to government actions that affect their investments or against the violation of the terms of an international investment agreement, such as expropriation or unfair treatment of their investment.[13]

Arbitrators: They are an Independent legal experts, selected by both parties (or by a third-party institution), who are appointed to resolve disputes impartially based on international law and the relevant investment treaties. Arbitrators are responsible for

---

[12] *WIKIPEDIA* *https://en.m.wikipedia.org/wiki/Investor (last visited Nov 29, 2024)*

[13] *COLUMBIA CDNTER ON SUSTAINABLE INVESTMENT* *https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement (last visited Dec.3, 2024)*

making impartial judgments based on international law, investment treaties, and the facts of the case. They may be selected from the lists maintained by international arbitration institutions. Arbitrators typically have backgrounds in law, economics, and international relations.[14]

Legal Counsel:

For Claimant's Counsel: Law firms or legal counsel representing the investor, helping to present their case in an ISDS arbitration and argue that the state has violated the terms of the investment agreement.

For Respondent's Counsel: Governments also hire legal counsel or firms to represent the state and defend its interests and argue that no violations of investment treaties occurred, or that the actions were justified for public policy reasons, defending the government's actions and arguing why the case should be dismissed or the investor should not be awarded compensation.[15]

Arbitration Institutions:

ICSID (International Centre for Settlement of Investment Disputes): A major institution for administering ISDS cases, particularly under the World Bank framework. It is commonly used for disputes arising under international investment agreements (IIAs).

UNCITRAL (United Nations Commission on International Trade Law): Another key institution that provides a set of rules for the arbitration of ISDS cases and many cases are conducted under UNCITRAL's procedures, especially in the absence of ICSID involvement.

PCA (Permanent Court of Arbitration): Provides services for ISDS cases, though not as widely used as ICSID or UNCITRAL, also administer ISDS cases.

Third Parties: Amicus Curiae (Friends of the Court): These are Third-party organizations, often NGOs, academic institutions, or other governments or interested parties, who may submit briefs to provide additional perspectives or legal arguments to the arbitrators. These can influence the outcome or interpretation of international law in ISDS cases. However,

[14] *Rachel Cahill-O'Callaghan, Anna Howard, Stavros Brekoulakis, Influence in investor-state dispute settlement: a dynamic concept, OXFORD ACADEMIC, 14, JIDS, 24, 24–46, 2023* *https://academic.oup.com/jids/article/14/1/24/7069227*

[15] *Mino Han, Charis Tan, Peter & Kim, Quantification of ISDS Claims: Theory, GLOBAL ARBITRATION REVIEW (Jan. 14, 2022)* *https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/quantification-of-isds-claims-theory*

They are not parties to the dispute but may have a stake in the outcome.[16]

National Courts

While ISDS is designed to avoid domestic legal systems as ISDS cases are typically resolved outside national court systems, domestic courts or national courts can sometimes become involved in reviewing, enforcing or challenging ISDS awards. For instance, states can challenge arbitral awards in national courts if one party seeks to either enforce or annul an award or if they believe the award violates public policy.[17]

These players collectively shape the functioning of ISDS. The process is often critiqued for its lack of transparency, perceived bias towards investors, and its potential to undermine national sovereignty.

CORE FEATURES, MECHANISM AND PROCESS OF ISDS

Investor Protection: ISDS is typically governed by provisions within international treaties or agreements. These agreements are designed to protect foreign investors from unfair treatment by host states while ensuring rights like fair and equitable treatment, protection from expropriation, and freedom from discriminatory practices so that they are treated fairly, equitably, and consistently by host states. It ensure that investors receive protection against unfair actions by host governments that may adversely affect their investments, such as expropriation, unfair regulations, or discriminatory practices. It often include provisions for investors to seek compensation for damages or losses caused by government actions. Investment agreements typically include provisions such as **FET, NT, MFN** treatment to grant protections equivalent to those enjoyed by domestic investors, and in some cases, better treatment than that afforded to other foreign investors.

Key Provisions in ISDS Clauses

Fair and Equitable Treatment (FET): One of the most significant and often debated provisions in ISDS agreements, the FET standard requires that States treat foreign investors fairly and consistently, protecting them from arbitrary or discriminatory actions.

National Treatment (NT): This provision ensures that foreign investors are treated no

[16] *Iryna Izarova, Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries, AK JOURNALS, 60, HJLS, 18, 18-39, 2019* *https://akjournals.com/view/journals/2052/60/1/article-p18.xml*

[17] *SPRINGER https://link.springer.com/10.1007/978-981-13-5744-2_60-1 (last visited Dec 3, 2024)*

less favourably than domestic investors in the same circumstances, preventing discriminatory policies that may harm foreign investments.

Most-Favoured-Nation Treatment: MFN clauses guarantee that foreign investors will be granted treatment that is as favourable as that given to investors from other countries, further protecting them against unjust or discriminatory treatment.[18]

Dispute Resolution: ISDS disputes are generally resolved through international arbitration rather than domestic courts. The dispute resolution process typically follows the rules set by international institutions like the **International Centre for Settlement of Investment Disputes (ICSID),** the **United Nations Commission on International Trade Law (UNCITRAL),** or the **International Chamber of Commerce (ICC)**.

Arbitral Tribunals: Disputes under ISDS are resolved through international arbitration, where a neutral tribunal composed of legal experts from different countries adjudicates the case which has been discussed above. These tribunals consist of appointed arbitrators who are experts in international law. The proceedings are typically confidential, and decisions can lead to binding awards, which States may be required to pay if found liable. A tribunal usually consists of three arbitrators: one appointed by the investor, one appointed by the state, and a presiding arbitrator chosen by mutual consent or by the arbitration institution. The tribunal's decision is binding, though there is limited scope for appeal

Arbitration Process:[19] When an investor believes that a state has violated its obligations under an IIA, the investor has the option to bring the matter before an international arbitral tribunal, bypassing domestic courts. The International arbitration usually takes place before international tribunals governed by rules established by organizations such as the **ICSID** or under the rules of the

UNCITRAL and the **ICC.**

In ISDS, investors can directly bring claims against states, with arbitration panels composed of independent arbitrators. .[20]

Key steps includes:

[18] *ibid*

[19] *OECD* *https://www.oecd.org/investment/investment-policy/ISDS-Appointing-Authorities-Arbitration-March-2018.pdf (last visited Dec.3, 2024)*

[20] *ibid*

I) Notice: The investor submits a formal claim, often involving an independent lawyer or legal team. The investor formally notifies the host state of the dispute, outlining the alleged violations and the legal basis for the claim.

II) Consultation and Negotiation: Some agreements require the parties to attempt to resolve the dispute through consultations or negotiations before initiating arbitration. However, this step is often optional.

III) Selection of Arbitrators: Tribunals are usually composed of three arbitrators: one appointed by the investor, one by the host state, and a neutral third party chosen jointly.

IV) Hearing and Deliberation: Hearings: The parties present their arguments, evidence, and legal positions before the tribunal. This may involve written submissions, oral hearings, and expert testimony where both sides present their arguments, often involving extensive legal briefs, witness testimony, and expert opinions.[21]

V) Award: After considering the evidence and arguments, the tribunal issues a final, legally binding decision that can include orders for the state to pay damages arising from actions such as expropriation, unfair treatment, or regulatory changes that harm investments, cease certain practices, or otherwise remedy the situation.

VI)Enforceability: Once an award is issued, the state is legally obliged to comply with it. If the host state refuses to pay the damages or adhere to the ruling, enforcement mechanisms come into play, including actions through international courts or financial sanctions. In practice, investors may seek to enforce the award through national courts in jurisdictions where the host state has assets.

VII) Appeal and Review: ISDS decisions are generally final and binding, but there may be limited opportunities for review or appeal. In some cases, a party may request the annulment or revision of an award, but this process is narrowly defined, and tribunals rarely reverse decisions. Some international agreements now allow for an appeal

[21] *EUROPEAN PARLIAMENT https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607251/EPRS_IDA(2017)607251_EN.pdf (Laat visited Dec.3, 2024)*

process or a review mechanism to ensure fairness and accountability, such as the establishment of the Investment Court System (ICS) proposed by the European Union.[22]

State Sovereignty vs. Investor Rights: While ISDS aims to protect investors, it also raises concerns about state sovereignty. Critics argue that it allows foreign investors to challenge national laws and regulations, particularly those related to public health, environmental protection, and labor rights, which could undermine a state's ability to regulate in the public interest. Governments can defend themselves against ISDS claims by arguing that their actions were within their sovereign rights or that they were acting for the public interest (such as health, safety, or environmental protection). While this provides a mechanism for investor protection, it can often undermine state sovereignty, as decisions made by international tribunals may override national laws and policies, including those related to IP.[23]

INTELLECTUAL PROPERTY (IP) IN THE REGULATORY CONTEXT

Intellectual Property (IP) refers to intangible creations of the mind, such as inventions, designs, literary works, and trademarks, that are recognized and protected by law. Intellectual Property Rights (IPR) are legal protections that grant creators exclusive control over their creations for a specific period, encouraging innovation and safeguarding their interests.[24]

Types of Intellectual Property:

Patent: Grants exclusive rights to inventors over their inventions, covering ideas, processes, and designs, preventing others from using or exploiting them without permission. [25] **Trademark:** Protects distinctive signs, symbols, words, or designs that identify and distinguish goods or services in the marketplace, ensuring quality and preventing confusion.[26] **Trade Secret:** Refers to confidential business information, like formulas or strategies, kept secret to maintain a competitive advantage. [27]

[22] *ibid*
[23] *BOSTON UNIVERSITY* *https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4861&context=faculty_scholarship (Last visited Dec.3, 2024)*

[24] *WIPO, https://www.wipo.int/about-ip/en (Last Visited Dec.3, 2024)*
[25] *CLARIVATE, https://support.clarivate.com (last Visited Dec.3, 2024)*
[26] *Anya Singh, Copyright And Leading Treaties Of Copyright, LEGAL SERVICES INDIA (Nov.17, 2024, 1:18 PM) https://legalserviceindia.com/legal/article-5951-copyright-and-leading-treaties-of-copyright.html*
[27] *Eric Estevez, Trade Secret: Definition, Examples, Laws, Vs. Patent, INVESTOPEDIA (May 6, 2024, 9:33 PM)*

Commercial Goodwill: Represents the reputation and value associated with a business's brand or products, often linked to trademarks, and is considered a valuable intangible asset. [28] **Copyright:** Provides legal protection for original works of authorship, such as literature, music, and art, preventing unauthorized use or reproduction while allowing creators to control how their works are used.[29] Intellectual Property (IP) in the regulatory context refers to the legal frameworks, set of rules, and policies that govern the protection, use, and enforcement of intangible creation or IPRs. This regulatory framework is designed to balance the interests of creators, innovators, consumers, businesses and the public by incentivizing innovation and creativity while ensuring fair competition, public access to knowledge, encouraging investment in research & development while preventing abuses or monopolies.

Here are key elements of intellectual property within a regulatory context:

National IP Laws and Regulations: Governments and organizations have implemented various copyright laws to protect creators from online piracy. In the U.S., the Digital Millennium Copyright Act (DMCA) (1998)[30] safeguards against online theft and unauthorized distribution. The U.S. Patent and Trademark Office (USPTO) handles patents and trademarks, while U.S. Copyright Office handles copyrights. The European Patent Office (EPO), European Union Intellectual Property Office (EUIPO) and The European Union Copyright Directive (2001) aims to harmonize copyright laws across member states, influenced by the WIPO Copyright Treaty play crucial roles in patent and trademark regulation. The Copyright, Designs and Patents Act, 1988 in the UK governs intellectual property rights, including copyright, and enforces takedown requests. Similarly, India's **Copyright Act, 1957,**[31] along with international treaties, ensures global protection and allows quick removal of pirated content from platforms Thus, each country has its own set of laws and regulatory bodies that govern the protection and enforcement of IP rights. In many countries, IP courts or specialized tribunals resolve IP disputes.

---

https://www.investopedia.com/terms/t/trade-secret.asp

[28] *V. D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY, 463 (5th ed. Eastern Book Company, 2001)*

[29] *ADVOCATE KHOJ, https://www.advocatekhoj.com/library/lawareas/copyright/owner (last visited Nov.18,2024)*

[30] *DIGITAL.GOV https://digital.gov/resources/digital-millennium-copyright-act/ (last visited Dec.4, 2024)*

[31] *Ishani Samajpati, What is Copyright, IPLEADERS, (Nov. 16, 2024 8:23 PM) https://blog.ipleaders.in*

International Agreements and Treaties:

BERNE CONVENTION (1886): [32] **The Berne Convention** is one of the cornerstone international treaties in copyright law, signed in **1886** in **Berne, Switzerland**. It set global standards for protecting literary and artistic works, both published and unpublished. The Convention ensures that creators are granted the same rights in all member countries as they hold in their own country. A crucial provision of the Berne Convention is the principle of automatic copyright protection, which eliminates the need for formal registration, with rights starting as soon as a work is fixed in a tangible medium. It also mandates national treatment, meaning foreign works are to be treated the same as domestic ones. The treaty applies to most types of works, with some exceptions like **photographic** and **cinematographic** works. [33] The Berne Convention's widespread adoption has been pivotal in establishing a uniform framework for global copyright protection, ensuring protection for at least 50 years after the author's death.

UNIVERSAL COPYRIGHT CONVENTION (UCC, 1952): Established in **1952**, the **Universal Copyright Convention (UCC)** was created by **UNESCO** as an alternative for countries that were unable or unwilling to join the Berne Convention. The UCC provided a more flexible framework for copyright protection, though it offered less comprehensive protection than the Berne Convention. It still ensured equal treatment for authors from signatory countries and required formal copyright notices. A key revision to both the UCC and the Berne Convention in 1971 addressed concerns of developing countries, especially in regard to education, research, and public performances, liberalizing rules in these areas.

ROME CONVENTION (1961): The Rome Convention focuses on the rights of performers, producers of phonograms (sound recordings), and broadcasting organizations. It ensures that these groups are compensated for the use of their work, safeguarding the rights of performers (such as actors, musicians, and dancers) against unauthorized reproduction, producers of phonograms against unlawful use of their recordings, and broadcasting organizations against unauthorized rebroadcasting. This

[32] *Ishani Samajpati, What is Copyright, IPLEADERS, (Dec. 2, 2024 10:23 PM) https://blog.ipleaders.in/copyright/#Copyright_protection_legislations_around_the_world*

[33] *WIKIPEDIA, https://en.m.wikipedia.org/wiki/International_copyright_treaties (last visited Dec.3, 2024)*

treaty was significant in recognizing the growing importance of performance and media rights in the entertainment industry.

WIPO COPYRIGHT TREATY (WCT, 1996): World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations that works on international IP law and treaties. WIPO administers treaties like the Patent Cooperation Treaty (PCT) for patents, and the Berne Convention for copyrights. The WIPO Copyright Treaty (WCT), adopted in 1996 under the World Intellectual Property Organization (WIPO), extended copyright protections into the digital realm, addressing challenges posed by the internet and digital technologies. It ensures creators' rights are respected in digital formats (e.g., e-books, music downloads), introducing provisions for digital rights management (DRM) and anti-circumvention laws to combat unauthorized copying, distribution, and alteration of digital works.

TRIPS AGREEMENT (1995): The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, created in 1995, is a landmark treaty that addresses the increasing importance of intellectual property in global trade. It sets minimum standards for the protection and enforcement of various types of IP, including copyright, trademarks, patents, and trade secrets. TRIPS links IP protection to international trade under the World Trade Organization (WTO) framework, requiring member states to align their laws with international standards. The treaty promotes uniformity across borders through national treatment and most-favoured-nation treatment, ensuring that IP rights are consistently enforced and respected globally.[34]

Regional IP Treaties: Agreements such as the European Patent Convention or the African Regional Intellectual Property Organization (ARIPO) allow for harmonized IP protections across member states.

MARRAKESH TREATY (2013): The Marrakesh Treaty, adopted in 2013 by WIPO in Marrakesh, Morocco, focuses on improving access to copyrighted books and educational materials for people with visual impairments or print disabilities. It removes barriers by allowing the production and distribution of works in accessible formats (e.g., braille, audio, large print) without needing permission from the copyright holder. The treaty also facilitates cross-border exchange of accessible materials,

[34] *ibid*

enabling organizations to import/export such works without breaching copyright laws.

AGREEMENT ON THE TRADE IN SERVICES (GATS, 1994): The General Agreement on Trade in Services (GATS), established in 1994 as part of the Uruguay Round of trade negotiations, was the first comprehensive multilateral agreement on international trade in services. GATS recognizes the importance of protecting copyright and IP rights in the digital and services sectors, ensuring that copyright owners' rights are respected across borders. This agreement has contributed significantly to the stronger protection and enforcement of intellectual property rights in the context of global trade, especially in the digital economy.

Intellectual property in the regulatory context involves a complex set of rules, laws, and international agreements that aim to protect the rights of creators and innovators. These regulations shape the way IP is used, enforced, and litigated globally.

ISDS AND IP: POINTS OF INTERSECTION

International investment agreements (IIAs) and Investor-State Dispute Settlement (ISDS) mechanisms, which enable private companies to sue states through arbitration, are intricately connected to the protection of intellectual property rights (IPRs). The tension between safeguarding IPRs and the host state's public interest has surfaced in various investment arbitration cases, such as Philip Morris **Asia Limited v. The Commonwealth of Australia** and **Eli Lilly v. Canada** which has been discussed below. These cases have raised concerns about the broader implications of the ISDS regime, especially regarding its potential to undermine public policy objectives. Recent developments within the IIA framework, particularly efforts to better lign with the public interest of host states, are particularly significant in shaping the future trajectory of IPR protection.[35]

Investor-State Dispute Settlement (ISDS) mechanisms allow foreign investors to sue host governments for actions that may undermine protections offered under International Investment Agreements (IIAs). These agreements typically guarantee investors fair treatment, protection from expropriation, and unrestricted access to

[35] *Kung-chung LIU, The intersection between intellectual property rights and Free Trade Agreements, SINGAPORE MANAGEMENT UNIVERSITY, Feb.4, 2022, 9:20* *https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=5762&context=sol_research*

markets. In recent years, intellectual property (IP) has been increasingly treated as a form of "protected investment" under IIAs, expanding the scope of ISDS to allow investors to challenge state policies affecting IP rights. This evolution raises complex issues, as the tension between protecting IP rights and the host state's public interest has surfaced in numerous investment arbitration cases, such as Philip Morris Asia Limited v. The Commonwealth of Australia and Eli Lilly v. Canada Which has been discussed below.

Several international treaties govern IP protection, the most prominent being the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO). TRIPS sets out minimum standards for the protection of IP, such as patents, trademarks, copyrights, and trade secrets, which member states must incorporate into their national laws. These IP protections can be invoked in ISDS claims, leading to questions about the balance between protecting IP rights and ensuring that states retain the sovereignty to regulate for the public good.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union's investment agreements present opportunities to address this balance. These agreements include provisions designed to safeguard states' ability to regulate in the public interest while also protecting investors' IP rights. In this context, the interaction between TRIPS and ISDS is crucial, as it raises the question of whether investment tribunals should interpret investment treaty provisions in ways that could limit state sovereignty in regulating IP, especially in sectors where public health or environmental concerns are at stake.

The tension between investor protection and state regulation is central to many ISDS cases involving IP. While TRIPS establishes a basic framework for IP protection, it also acknowledges the right of states to regulate IP in ways that promote public policy objectives, including public health and access to knowledge. The broader implications of IP protections—particularly in areas such as access to medicines, agricultural technologies, and environmental regulations—have sparked debates on how to balance these protections with the public interest.

Investment treaties, such as Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs), often extend protection

to IP rights, ensuring that foreign investors receive national treatment and that their IP rights are not arbitrarily interfered with or expropriated. The core challenge for investment tribunals is to balance these obligations with the state's right to regulate IP in ways that protect public health, the environment, and consumer welfare, which can sometimes conflict with the interests of foreign investors seeking compensation for perceived losses to their IP rights. The ability of investors to challenge state regulations through ISDS creates a tension between the protection of investor rights and the right of states to regulate in the public interest. Critics argue that ISDS mechanisms can undermine regulatory autonomy, particularly when public health or environmental regulations are challenged based on IP protections. This raises concerns about the ability of states to adopt necessary policies without the threat of costly and potentially harmful legal disputes.

The scope of these protections varies from treaty to treaty, and investment tribunals often face challenges in interpreting these provisions in light of broader public policy concerns. In the context of ISDS, TRIPS obligations influence how tribunals interpret the relationship between IP and investor rights, particularly in cases involving patent rights and public health, as well as environmental regulations.

Key Areas of Tension:

Patent Rights and Public Health: In instances where IP protections, particularly patents, interfere with access to affordable medicines—especially in developing countries—ISDS mechanisms may be invoked by investors claiming that state actions, such as the compulsory licensing of patents, violate the terms of investment treaties.

Environmental Regulations: The intersection between IP and environmental regulations, particularly with biotechnology patents and their impact on agricultural practices, often raises questions about how state sovereignty can be maintained while protecting investor interests.

Balancing Investor Protection and State Sovereignty: One of the core issues in IP-related ISDS cases is how tribunals balance the protection of investor IP rights with the sovereign right of states to regulate in the public interest. While ISDS mechanisms aim to ensure a level of security for foreign investors, they also need to ensure that states

can regulate, particularly in areas related to public health, welfare, and safety.

The Future of ISDS and IP Compliance: The evolving jurisprudence of ISDS tribunals suggests that future cases will continue to grapple with the relationship between IP rights and state regulation. As global challenges such as pandemics, climate change, and access to medicines become more pressing, the need for a balanced approach that allows states to regulate IP without unduly restricting foreign investment will be critical. Reforming ISDS mechanisms to provide clearer guidelines on the interpretation of IP-related provisions and strengthening the ability of states to regulate for public policy objectives is a potential solution.

THE IMPACT OF ISDS ON IP COMPLIANCE

The impact of ISDS (Investor-State Dispute Settlement) on IP (Intellectual Property) compliance refers to how ISDS affects adherence to IP laws by governments and businesses. ISDS can both positively and negatively influence IP compliance.

Positive it Impacts to:

i) Encourage governments to comply with IP laws to avoid costly disputes.

ii) Motivates governments to create clearer, more consistent IP laws, reducing disputes.

iii) Encourage for Strong IP protection to attract foreign investment, boosting compliance with IP regulations.

Negative Impacts:

i) Governments may avoid public policies that conflict with investor IP interests to avoid lawsuits.

ii) Governments may overly protect IP rights, limiting innovation and access to goods.

iii) Foreign investors may bypass national courts, undermining local IP regulation.

iv) Ambiguity and Unclear IP clauses in treaties may create uncertainty and compliance challenges for governments.

v) Power imbalances between investors and public interest can lead to prioritizing investor rights over public health or welfare, affecting IP law compliance.

ISDS IN PRACTICE: PREVALENCE AND EXAMPLES

The prevalence of Investor-State Dispute Settlement (ISDS) mechanisms has grown significantly over the past few decades. Here are some key points about the prevalence of ISDS:

Wide Adoption in International Investment Treaties: ISDS provisions are widely embedded in IIAs, including more than 3,000 international investment treaties, including Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), and other trade agreements currently in force globally, many of which contain ISDS provisions. This widespread adoption indicates the global importance of ISDS in investment protection. Some of the most prominent treaties with ISDS provisions include: North American Free Trade Agreement (NAFTA), which has been replaced by the US-Mexico-Canada Agreement (USMCA), but ISDS remains a key component.Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and similar FTAs. **High-Profile Cases:** Several high-profile cases have drawn attention to the ISDS system's impact. To understand the practical application of ISDS in the context of IP, it is essential to examine real-world cases where the intersection of investment protection and IP law has been challenged. Several high-profile cases illustrate the tension between state sovereignty and investor protection. Examples include: *Philip Morris v. Uruguay (2010)* [36] *:* The Philip Morris (a tobacco company), challenged Uruguay's stringent tobacco packaging laws, arguing that the new regulations violated its trademark rights, (Spanish: Caso Philip Morris contra Uruguay) was an investor-state dispute settlement (ISDS) case initiated on February 19, 2010, and concluded on July 8, 2016.[37] In this case, the multinational tobacco company Philip Morris International (PMI), headquartered in Lausanne, filed a complaint against Uruguay's over tobacco packaging laws, which required graphic health warning regulations on cigarette packages. The company claimed that these regulations violated its intellectual property rights (trademark rights) under a Bilateral Investment Treaty. The dispute was resolved through international arbitration under the auspices of the International Centre for Settlement of Investment Disputes (ICSID). Uruguay won the case, with the tribunal

[36] *2010–2016*
[37] *WIKIPEDIA* *https://en.m.wikipedia.org/wiki/Philip_Morris_v._Uruguay (last Visited Dec.2, 2024)*

ruling in favour of public health measures, finding that the state's measures were proportionate to the legitimate public health goals and did not violate the company's IP rights. This case demonstrates the ability of states to regulate IP for public health purposes, even in the face of investor claims.[38] *Vattenfall v. Germany:*[39] A case involving the Swedish energy company Vattenfall and the German government, cantered around an investor-state dispute concerning the construction of a coal-fired power plant in Hamburg. The dispute arose when Vattenfall claimed that the Hamburg government's environmental regulations violated Germany's obligation to provide fair and equitable treatment to foreign investors, arguing that these rules amounted to expropriation. In 2010, the dispute was settled to avoid the uncertainty of a tribunal ruling. As part of the settlement, the Hamburg government agreed to issue the necessary permits for the plant and to remove its additional environmental requirements. Vattenfall also waived its prior commitments to mitigate the plant's impact on the Elbe River. The International Centre for Settlement of Investment Disputes (ICSID) received the request for arbitration on April 2, 2009, with the first tribunal session held in Paris on September 17, 2009. However, the proceedings were suspended in March 2010, with either party allowed to resume them at their discretion. This case brought Germany's international investment policies into the public spotlight and drew attention from local decision-makers. The lack of transparency in the case raised concerns, prompting several countries to amend their treaties and laws to ensure greater public access to investment dispute documents and processes. *Chevron Corporation (Private entity) and Texaco Petroleum Company (Private entity) v. The Republic of Ecuador (State) (2009):*[40] The case was initiated in 2009, was an investor-state dispute settlement (ISDS) case in which Chevron and Texaco (which had merged) filed a claim against Ecuador. The dispute arose from Ecuador's legal actions regarding environmental damage caused by oil operations in the Amazon region and alleged corruption in Ecuador. Chevron argued that Ecuador had violated a bilateral investment treaty by allowing the local courts to impose large environmental penalties, while Ecuador contended that the company was responsible for extensive environmental damage and had failed to

[38] *July 8, 2016*
[39] *April 2, 2009*

[40] *2009-23*

honour its obligations. The case was arbitrated under the rules of the International Centre for Settlement of Investment Disputes (ICSID). Chevron was initially ordered to pay $18.2 billion in compensation for environmental damage in the Amazon region, following the Ecuadorian courts' ruling in 2012. However, the compensation amount was later reduced to $9.5 billion after an appeal. The decision was upheld by Ecuador's Constitutional Court in 2018. Despite these rulings, contaminated oil pits throughout the region continue to leak toxic chemicals, contributing to ongoing environmental and health concerns.[41] This case highlights the challenges of enforcing corporate accountability for environmental harm, as well as the complex interplay between international arbitration decisions and local legal systems. It became one of the most notable ISDS cases due to its scale, the complexity of the environmental issues, and the tensions it highlighted between multinational corporations and sovereign states *Eli Lilly v. Canada (2017)*[42]*:* Eli Lilly, a pharmaceutical company, submitted a notice of intent to arbitrate under the North American Free Trade Agreement NAFTA Chapter 11 in November 2012, later replaced by a second Notice in June 2013. On September 12, 2013, Eli Lilly filed a formal Notice of Arbitration against Canada alleging that its patent laws violated NAFTA by invalidating patents for two of its drugs. The dispute concerned the interpretation of the term "useful" in Canada's Patent Act and brought a case against Canada. Eli Lilly argued that this violated the NAFTA provisions protecting IP, particularly Articles 1105 (Minimum Standard of Treatment) and 1110 (Expropriation). Canada argued the tribunal lacked jurisdiction and that the claims were without merit.[43] The tribunal ruled in favour of Eli Lilly and awarding damages, emphasizing the importance of protecting IP but also highlighting the potential conflict between state sovereignty and investor protections. In March 2017, the tribunal dismissed Eli Lilly's claims, confirming Canada's compliance with NAFTA obligations. Eli Lilly was ordered to cover 75% of Canada's legal costs, totaling $4.8 million CAD.

Aguas del Tunari v. Bolivia (2005)[44] : This case was not strictly an IP case, the dispute

---

[41] *WARONWANT https://waronwant.org/sites/default/files/ISDSFiles_Chevron_April2019.pdf (Last visited Dec.2, 2024)*
[42] *2017*

[43] *AFFAIRS MONDIALES CANADA https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/eli.aspx?lang=eng (last visited Dec.2, 2024)*
[44] *2005*

over Bolivia's decision to nationalize water services and the protection of foreign investments raised important questions about the intersection of state sovereignty and investment rights. The case was initiated by the multinational consortium Aguas del Tunari, a subsidiary of the Spanish company Suez, against the government of Bolivia. The dispute arose after Bolivia decided to reverse a privatization agreement and terminate the concession for water services in Cochabamba, awarded to Aguas del Tunari in 1999. The Bolivian government argued that the privatization led to high water prices and public protests, prompting the cancellation of the contract. Aguas del Tunari filed a claim with the International Centre for Settlement of Investment Disputes (ICSID), alleging that Bolivia violated the Bilateral Investment Treaty (BIT) by expropriating its investment without compensation and breaching the principle of fair and equitable treatment. The company sought compensation for the termination of the concession. In 2005, the ICSID tribunal ruled in favor of Bolivia, asserting that the government's actions were justified in order to protect public welfare and maintain legitimate decision-making processes. Bolivia was not required to pay compensation, and the case underscored the ongoing tension between investor protection and the ability of governments to regulate essential services like water in the public interest. This case illustrated the broader issues of public policy and investment protection.

These cases demonstrate the challenges tribunals face in balancing the protection of IP with the regulatory interests of the host state.

CRITICISM AND CONCERNS

Despite its widespread use, the prevalence of ISDS has led to increasing criticism, particularly due to concerns about sovereignty, the potential for abuse, and its impact on domestic regulations. Critics argue that ISDS can undermine governments' ability to regulate in the public interest, such as in areas like environmental protection, public health, and labor rights. Investor-State Dispute Settlement (ISDS) mechanisms are incorporated in over 3,000 international investment treaties but have faced growing criticism in recent years. Initially, these agreements and the ISDS framework were designed to protect investors from arbitrary expropriation and ensure non-discriminatory treatment of foreign investments, particularly in countries considered high-risk. In such nations, where

the judiciary may not be fully independent of the government, arbitration was viewed as a more impartial method for enforcing the host state's obligations to investors.[45] The growing number of IP-related ISDS cases highlights the increasing significance of intellectual property in international trade and investment. However, several challenges remain:

1. A major criticism is that ISDS undermines national sovereignty by allowing foreign investors to bypass domestic courts and challenge national laws. This could prevent governments from enacting crucial regulations in areas such as health, safety, and environmental protection.

2. States may be deterred from implementing public health measures, such as compulsory licensing, due to the threat of ISDS claims. This can undermine the state's ability to regulate IP in ways that benefit the public interest.

3. IP protections can impede access to life-saving drugs in developing countries, especially when patent holders use ISDS mechanisms to challenge state measures aimed at improving public health.[46].

4. Clearer provisions in Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) are needed to better define the relationship between IP protections and the right of states to regulate for public purposes.
5. ISDS processes are often criticized for their opacity, with closed hearings and limited public access to detailed information with decisions made behind closed doors. This lack of transparency raises concerns about accountability and meaningful public participation while concerning about the lack of accountability and public scrutiny of the arbitrators' decisions.[47]

---

[45] *European Parliament, Investor-State Dispute Settlement (ISDS) State of play and prospects for reform, EPRS, 1, 545.736, 2015* *https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI%282015%29545736_EN.pdf*

[46] *OXFAM* *https://www.oxfamamerica.org/explore/issues/economic-well-being/intellectual-property-and-access-to-medicine/* *(last visited Dec.3, 2024)*

[47] *KLUWER ARBITRATION BLOG* *https://arbitrationblog.kluwerarbitration.com/2018/06/09/transparency-legitimacy-investor-state-dispute-*

PROPOSED REFORMS AND ALTERNATIVES

In response to these criticisms, there has been a growing trend toward reforming ISDS systems to address concerns about fairness, including more transparent and balanced dispute resolution processes. Some proposed reforms include:

1. One proposal is to replace the current ad-hoc arbitration system with a permanent, publicly accountable multilateral investment court, replacing the ad-hoc nature of current arbitration panels. This court would provide more consistent rulings, better, and greater transparency. It would also feature permanent judges instead of ad-hoc arbitrators, providing more predictability in the system.[48]
2. Many international agreements are now seeking to enhance transparency in ISDS proceedings, such as making arbitration hearings public and releasing decisions to the public. Some reforms have already introduced limited transparency measures, like allowing amicus curiae (friend-of-the-court) submissions from civil society.
3. Another reform suggestion is to clarify the exceptions that protect government actions aimed at safeguarding the public interest. This would ensure that governments can regulate in areas like environmental protection, public health, and safety without fear of ISDS challenges.
4. Some suggest limiting the scope of ISDS claims to prevent frivolous cases, such as those that involve mere regulatory changes rather than actual violations of investment protections.[49]
5. Efforts are being made to strike a better balance between protecting investor interests and allowing states to regulate in the public interest, particularly in areas such as public health, the environment, and human rights. This could involve developing a clearer distinction between legitimate regulatory actions and

settlement-can-learn-streaming-hearings/ (last Visited Dec.4, 2024)

[48] *EUROPEAN PARLIAMENT, Multilateral investment court: Framework options (June 2021) https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690642/EPRS_BRI(2021)690642_EN.pdf*

[49] *Damages and ISDS Reform: Between Procedure and Substance, OXFORD ACADEMIC, 14, JIDS, 213, 213–241, 2021 https://academic.oup.com/jids/article/14/2/213/6448285*

actions that infringe on investment rights.

CONCLUSION

As the global economy continues to evolve, the reform of ISDS mechanisms and the development of clearer guidelines on the intersection of ISDS and IP will be crucial to ensure a fair and sustainable legal framework that respects both investor rights and regulatory sovereignty. The cases discussed in this paper highlight the need for a careful balance between protecting intellectual property and ensuring that states retain the sovereign right to regulate for the public good. Effective reforms, greater transparency, and alternative dispute resolution methods could only provide a more equitable solution for both investors and states.

****

DEPARTMENT OF STUDIES IN LAW

The Department of Studies in Law, established in 1973 under the aegis of the University of Mysore, stands as a preeminent institution of legal education and research in Southern India. The University of Mysore, the sixth oldest in India and the first in Karnataka, holds a distinguished place in the annals of higher education, being the first to be established beyond the confines of British India. In this venerable academic tradition, the Department has consistently exemplified scholarly rigor, intellectual excellence, and a profound commitment to advancing the study of law. At the core of the Department's academic offerings is its esteemed two-year Master of Laws (LL.M.) program, which is structured to provide an intensive and comprehensive legal education over the course of four semesters. The program is distinguished by its wide-ranging specializations, including Constitutional Law, International Law, and various other critical domains, thus affording students a rich array of options to tailor their academic pursuits to their professional ambitions and intellectual interests. Further reinforcing the Department's reputation as a leading center of legal scholarship is its robust Ph.D. program in Law, which nurtures high-level research and fosters a stimulating academic environment for scholars engaged in the exploration of complex legal issues. The LL.M. program is particularly notable for its emphasis on research, wherein students are required to undertake rigorous dissertation work that is designed to hone their skills in advanced legal analysis and scholarly inquiry. This focus on research ensures that graduates are not only well-versed in legal doctrine but are also proficient in the methodologies of academic investigation, positioning them to contribute meaningfully to the evolution of legal thought. The Department's commitment to scholarly excellence is further manifested in the publication of select student dissertations, which serve as a testament to the intellectual vitality that permeates its academic community.

The Department's pedagogical approach is complemented by its state-of-the-art facilities, including a well-curated library, advanced technological infrastructure, and a host of other resources that together create an intellectually enriching environment. These facilities, combined with the Department's exceptional faculty, attract students from across India and around the globe, including countries as diverse as Afghanistan, Kenya, Tanzania, and Tibet. The Department's reach, both in terms of its student body and its academic impact, underscores its position as a distinguished center of legal education that is committed to the advancement of legal knowledge and the preparation of future leaders in the field.

Mysore University Law Journal

The Mysore University Law Journal (MULJ) is a prestigious biannual, peer-reviewed publication under the auspices of the Department of Studies in Law, University of Mysore. It plays a pivotal role in enhancing both the academic and practical aspects of legal education. This esteemed journal provides an essential platform for scholars, students, and legal practitioners to disseminate their research and insights, fostering rigorous academic debate and contributing significantly to the advancement of legal knowledge. Moreover, it provides invaluable experiential learning opportunities for law students, allowing them to develop critical thinking, writing, and analytical skills essential for their future careers. Through networking and collaboration opportunities, the journal fosters connections among individuals from diverse legal backgrounds, facilitating the exchange of ideas and the building of professional relationships. Additionally, by publishing high-quality legal scholarship, the journal enhances the visibility and prestige of the university within the legal community, nationally and internationally, while contributing to the development of jurisprudence and legal theory. Furthermore, the journal's role in community engagement cannot be overstated, as it serves as a bridge between the academic community and society at large, promoting informed debate on pressing legal issues and contributing to the development of sound legal policies.