

**PROTECTION OF BODO TRADITIONAL KNOWLEDGE VIS – A VIS CUSTOMARY
LAW**

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Abstract:

Indigenous communities worldwide encounter various obstacles in safeguarding their cultural legacy, ancestral wisdom, and traditional lifestyle amidst the impact of globalization and modernization. Customary law, as an integral part of their identity and governance system, has been a vital tool for indigenous peoples to safeguard their rights and promote social justice. To address these challenges, the essay advocates for the enactment of comprehensive customary law for the Bodo tribe. This framework would offer legal acknowledgment and safeguards for their traditional knowledge, cultural manifestations, and land rights. Furthermore, it would grant the Bodo community the authority to engage in decision-making procedures that impact their well-being and guarantee the conservation of their cultural heritage. The relevance of UNDRIP to Bodo traditional knowledge is another crucial aspect discussed in the essay. The alignment between UNDRIP's acknowledgment of indigenous peoples' rights to self-determination, cultural preservation, and participation in decision-making for the Bodo tribe is evident.

Keywords: Customary law, traditional knowledge, traditional cultural expressions, protection, intellectual property laws, Bodo.

Introduction:

The Bodo community, an indigenous tribe inhabiting the Bodoland Territorial Region (B.T.R) of Assam, India, boasts a profound cultural heritage firmly grounded in their ancestral wisdom and cultural manifestations. For generations, the Bodo people have practiced unique customs, traditional weaving, healing techniques, and craftsmanship, forming an integral part of their cultural identity. These traditions have been passed down through the ages, shaping their social, economic, and spiritual lives.

However, in recent times, the preservation of Bodo traditional knowledge faces significant challenges. Modernization, globalization, and the impact of external influences have resulted in the erosion of their cultural practices. Factors such as the decline of traditional weaving due to the dominance of power loom products, the loss of medicinal plants and traditional healing practices, and the fading interest among the youth in their ancestral crafts pose threats to the existence of this invaluable knowledge.

The primary goal of this article is to examine the necessity of implementing a Bodo customary law to safeguard and uphold their traditional knowledge and cultural expressions. The discussion will delve into the potential of customary law to safeguard Bodo customs and practices, providing them with legal recognition and defense against unethical appropriation and misappropriation. Furthermore, it will assess how existing intellectual property laws and global instruments like WIPO's toolkit and the United Nations Declaration on the Rights of Indigenous People (UNDRIP) can be applied to safeguard Bodo traditional knowledge. The following sections will discuss the obstacles presented by the present legal framework and the shortcomings of intellectual property protection concerning traditional knowledge.

Review of Literature:

1. WIPO's Documentation Toolkit

The documentation toolkit is an extensive tool intended to support indigenous and local communities in recording their traditional knowledge (TK) and traditional cultural expressions (TCEs). It emphasizes the significance of preserving and safeguarding these forms of knowledge for future

generations and promoting their sustainable development. The toolkit offers practical guidance on how to undertake the documentation process, ensuring the active participation and consent obtained with the community members being well-informed.

2. WIPO's Booklet on Traditional Knowledge and Traditional Cultural Expressions

The booklet offers an overview of the correlation between traditional knowledge (TK), traditional cultural expressions (TCEs), and intellectual property rights. It acknowledges the importance of TK and TCEs in the cultural, social, and economic advancement of indigenous communities while recognizing the necessity for effective protection measures.

3. The Significance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Relation to Bodo Traditional Knowledge

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a comprehensive global document adopted by the United Nations General Assembly in 2007. Its purpose is to acknowledge and safeguard the rights of indigenous peoples, encompassing their cultural heritage, traditional knowledge, and expressions. UNDRIP holds particular relevance to the Bodo community, an indigenous group in India, as it acknowledges and protects the rights of indigenous peoples to preserve and pass down their cultural heritage, knowledge, and traditional practices.

4. The Significance of Nagoya Protocol, 2010.

This particular protocol is a supplementary agreement to the Convention of Biological Diversity, 1992 which obligates the member states to provide better mechanisms on access and benefit sharing for the resources that are developed from genetic resources. Nagoya protocol also highlights that every indigenous people should get a comprehensive legislation to protect and preserve those resources which are necessary for their lifestyles.

Objectives of the Study:

- i. To study the international conventions pertaining to traditional knowledge.
- ii. To check the applicability of international conventions in case of Bodo traditional weavers.
- iii. To study the need for comprehensive customary law.

Research Methodology:

The author has conducted non – empirical study for this paper. The researcher has collected data from secondary sources. Text books, Bare Acts, internet documents, articles, research papers, international covenants, and theses are referred. Analysis of the literature is conducted based on the data collected from the secondary sources.

Results and Discussion:

The safeguarding of traditional knowledge within indigenous communities, including the Bodo tribe in India, through existing intellectual property (IP) laws faces several limitations. These constraints stem from the distinctive characteristics of traditional knowledge and traditional cultural expressions (TCEs) within indigenous communities, which often differ significantly from the conventional interpretation of intellectual property. This article examines the key limitations of intellectual property protection for Bodo traditional knowledge.

Inadequate Recognition of Traditional Knowledge: One of the primary limitations is the inadequate recognition of traditional knowledge within existing IP laws. Traditional knowledge, which is collectively owned and transmitted through generations, does not fit neatly into the individualistic framework of conventional intellectual property. Consequently, traditional knowledge is frequently not granted the same level of protection as other forms of intellectual property.

Narrow Scope of Existing IP Laws: Existing IP laws, such as copyright, patent, and trademark laws, are primarily designed to protect individual creators and their creations. These laws may not adequately address the collective nature of traditional knowledge, where ownership and custodianship rest with the entire community. The narrow scope of existing IP laws may not cover the full range of traditional knowledge held by the Bodo tribe.

Difficulty in Identifying Rights holders: Traditional knowledge within indigenous communities often arises from collective endeavors and lacks individual authors or inventors. Identifying specific

rights holders for traditional knowledge can be challenging, as it is deeply rooted in communal practices and cultural heritage. This difficulty in identifying rights holders may hinder the application of existing IP laws.

Cultural Appropriation and Exploitation: The cultural expressions of the Bodo tribe, such as traditional art, music, and dances, are susceptible to cultural appropriation and exploitation. These cultural expressions hold deep spiritual and cultural significance for the Bodo community, making their unauthorized use highly offensive and exploitative. Existing IP laws may not effectively address the cultural dimensions of such exploitation.

Misappropriation and Unauthorized Use: Traditional knowledge is vulnerable to misappropriation and unauthorized use by external parties, including corporations and researchers. Due to the lack of legal protection, the Bodo tribe may find it challenging to prevent the exploitation of their traditional knowledge. Existing IP laws may not provide effective remedies for addressing misappropriation.

Conflict with Customary Laws: Customary laws and practices of the Bodo community may conflict with formal IP laws. The imposition of external IP laws on traditional knowledge may undermine indigenous customs and practices. Balancing the coexistence of customary and formal IP laws is a complex challenge that requires careful consideration of cultural values and traditions.

Difficulty in Proving Prior Art or Prior Use: In cases where the Bodo tribe seeks to assert prior art or prior use in the context of patent or trademark applications, they may face difficulties in providing the required evidence. Traditional knowledge is often transmitted orally, making it challenging to demonstrate prior use in a manner that conforms to the formal requirements of IP applications.

Limited Duration of Protection: Most IP laws protect for a limited duration, such as copyrights and patents having fixed terms. Traditional knowledge, which has been passed down through generations, may require perpetual or long-term protection to preserve its cultural and historical significance. Existing IP laws may not accommodate such extended durations of protection.

Lack of Awareness and Capacity: Many indigenous communities, including the Bodo tribe, may lack awareness of their rights under existing IP laws. Additionally, they may lack the capacity and resources to navigate the complex legal processes involved in protecting their traditional knowledge. This lack of awareness and capacity hinders their ability to assert their rights effectively.

International Recognition and Enforcement: Traditional knowledge is often shared across borders, and the Bodo tribe's traditional knowledge may not be confined to specific territories. Ensuring international recognition and enforcement of protection poses challenges due to varying legal systems and jurisdictional complexities.

Feasibility and Inadequacy of Geographical Indications and Sui Generis Protection: Geographical Indications (GIs) and Sui Generis Protection are two intellectual property mechanisms that have been explored as potential means to protect traditional knowledge, comprising the traditional knowledge of indigenous communities such as the Bodo tribe in India. While both systems have certain merits, they also face feasibility challenges and inadequacies when applied to the complex and context-specific nature of traditional knowledge.

Geographical Indications (GIs) are a type of intellectual property protection that designates products originating from a particular geographical region, possessing distinctive characteristics or reputations associated with that area. GIs can be beneficial for protecting traditional knowledge associated with specific products that have strong ties to a particular region.

To qualify for GI protection, the traditional knowledge must be closely linked to a specific geographical area. This can be feasible for certain products that are inherently tied to the local environment and traditional practices, such as indigenous crafts or agricultural products. GIs can enhance the market value of products by emphasizing their unique geographic origins, which may incentivize the preservation of traditional knowledge and craftsmanship.

While GIs offer some advantages, they have limitations that make them inadequate for protecting all aspects of traditional knowledge. GIs are designed to protect the geographical origin of products, not the underlying traditional knowledge or cultural expressions associated with those products. This leaves aspects of traditional knowledge that are not directly tied to specific products vulnerable to misappropriation.

GIs fail to encompass the wider cultural significance and spiritual aspects of traditional knowledge. They may fail to protect the knowledge from inappropriate use or exploitation that does not involve the actual product itself. GIs have a limited duration, typically lasting for a specific period, after which they require renewal. Traditional knowledge, on the other hand, is often passed down through generations and is considered to be a perpetual heritage. Time-limited protection may not adequately address the long-term preservation of traditional knowledge.

Findings:

The Need for Comprehensive Customary Law: Customary law is firmly grounded in the traditions and cultural customs of indigenous and local communities and has played a vital role in governing and preserving their way of life for generations. It reflects the collective wisdom and experiences of these communities and serves as the foundation of their governance, resource management, and social relations. However, with the advent of modern legal systems and globalization, customary law has faced challenges and Limitations in delivering all-encompassing protection for the rights and interests of indigenous peoples. This essay examines the need for comprehensive customary law, the significance of such a legal framework in promoting indigenous rights and social justice, and the ways it can be strengthened to address the evolving needs of these communities.

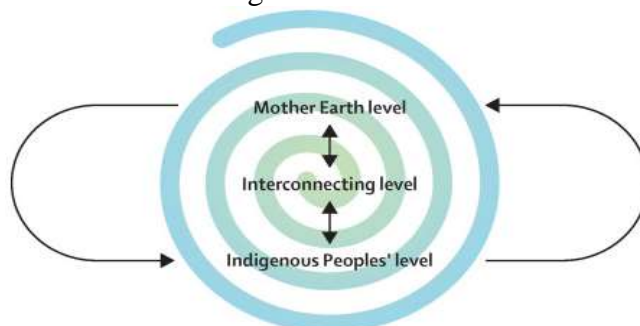


Fig. 1. The interconnectedness of the determinants of planetary health

Significance of Customary Law for Indigenous Peoples: Customary law is not merely a legal system but an embodiment of indigenous cultures, identities, and values. It includes a broad array of regulations and practices concerning land ownership and usage, resource management, dispute resolution, marriage and inheritance, and social organization. It is an integral part of the collective memory and heritage of indigenous communities, guiding their way of life and decision-making processes. Customary law ensures that indigenous peoples have autonomy over their traditional territories, resources, and cultural expressions, which are vital for their continued existence and well-being.

Addressing the Limitations of Modern Legal Systems: The formal legal systems of many states often fail to fully recognize and accommodate the unique needs and aspirations of indigenous peoples. Laws that prioritize individual property rights and economic development can conflict with customary practices that emphasize communal ownership and sustainable resource management. This disconnect can lead to land dispossession, environmental degradation, and the erosion of indigenous cultures.

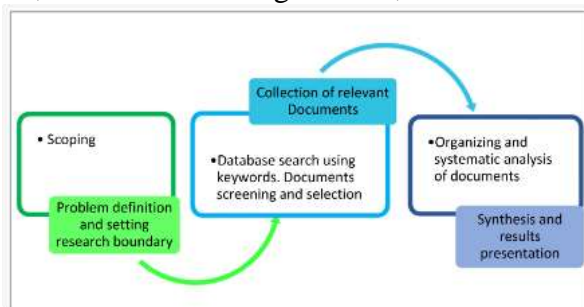


Fig. 2. The flow chart of the research method

Conclusion and Suggestions:

The conservation and safeguarding of indigenous rights have become utmost importance amidst the rapid process of globalization, modernization, and the challenges posed by formal legal systems. Throughout history, indigenous peoples have relied on their customary law as a means of self-

governance and preservation of their cultural heritage. However, the evolving landscape of legal frameworks, international conventions, and global trends has posed new challenges to the effectiveness of customary law in safeguarding indigenous rights and promoting social justice.

In this essay, the concept of customary law and its importance in the lives of indigenous and local communities, with special attention given to the Bodo tribe is examined. The objectives of enacting a comprehensive Bodo customary law is been discussed. The importance of tracing different customs and practices, and the need for economic and social justice through such legal provisions is felt. Additionally, the international approaches have been delved. Especially the initiatives carried out by the World Intellectual Property Organization (WIPO) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) play a significant role in protecting traditional knowledge and advocating for indigenous rights.

The analysis of WIPO's toolkit and booklet on documenting traditional knowledge highlighted the opportunities and challenges associated with such documentation efforts. While documentation can provide strategic tools for protection and recognition, Furthermore, it also brings attention to the susceptibility of traditional knowledge to misuse and misappropriation. Additionally, the essay examined WIPO's involvement in connecting intellectual property, traditional knowledge, and cultural expressions. The need for a balanced approach respecting indigenous rights and knowledge systems has been analyzed.

In addition, the significance of UNDRIP is explored concerning Bodo traditional knowledge. The rights of indigenous peoples to self-determination, cultural preservation, and involvement in decision-making processes are highlighted. UNDRIP's acknowledgment of the economic, social, and cultural rights of indigenous communities corresponds intending to enact comprehensive customary law to foster social justice and equity.

The difficulties in utilizing current intellectual property laws to protect traditional knowledge have been assessed. It points out the limitations of Geographical Indications and Sui Generis protection for the Bodo tribe. The implications of the public domain and documentation on traditional knowledge have also been considered, stressing the importance of balancing recognition and protection with the preservation of cultural integrity.

In light of these discussions, the need for comprehensive customary law for the Bodo tribe is evident. Customary law, as an essential aspect of their cultural identity and heritage, should be acknowledged, honored, and reinforced to safeguard their rights and interests. A comprehensive framework must be developed through collaboration between indigenous communities, legal experts, policymakers, and civil society organizations. Indigenous peoples' active participation in shaping their legal framework will ensure that their voices, perspectives, and traditional knowledge are heard and respected.

Customary law's significance in promoting economic and social justice for the Bodo tribe cannot be understated. It can serve as a tool for empowering indigenous communities to make decisions about their territories, resources, and traditional practices. By integrating customary law into national legal systems and international policies, governments can support the preservation of cultural heritage while addressing the challenges posed by modernization and globalization.

To conclude, the implementation of comprehensive customary law is crucial for safeguarding and empowering indigenous peoples. The Bodo tribe, as custodians of their traditional knowledge and cultural heritage, can benefit greatly from such a legal framework that upholds their rights, fosters sustainable development, and promotes social justice and equality. Embracing the principles of UNDRIP and collaborating with international organizations like WIPO will strengthen the legal framework for indigenous rights and contribute to Promoting a fair and inclusive society is vital. As we progress, it is essential to acknowledge the significance of customary law in conserving cultural diversity and securing the welfare of indigenous communities for future generations.

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