INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

 ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

 ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

 ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

 ISSN: 2582-6433

EVALUATING THE WIPO 2024 TREATY: STRENGTHENING LEGAL SAFEGUARDS FOR GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

AUTHORED BY - POORVAJA SUBRAMANIAN

ABSTRACT

The protection of genetic resources (GR) and associated traditional knowledge (ATK) has become a pressing issue as commercial corporations continue to exploit indigenous people without adequate acknowledgement or compensation. This article critically evaluates the WIPO 2024 Treaty on Genetic Resources and Associated Traditional Knowledge, assessing its ability to meet these problems. The study notes numerous challenges in the treaty, such as the restrictive "based on" disclosure requirement, which limits the scope of mandatory patent disclosures, and the provision allowing applicants to claim ignorance of the GR or ATK source, which undermines due diligence. Furthermore, the limitation on patent revocation for non-disclosure, unless fraudulent intent is shown, undermines compliance enforcement.

The report emphasises the treaty's failure to effectively address digital sequence information (DSI) and the disparities in national implementation that lead to uneven enforcement. While the treaty's requirements for patent disclosure and information system development are desirable, they fall short of providing comprehensive protection.

The paper proposes measures such as extending disclosure standards, establishing an independent compliance committee for monitoring, imposing tiered sanctions based on the severity of noncompliance, and developing a worldwide information system for validating disclosures. Defining "source" more clearly and include DSI in the treaty's scope are critical to avoiding compliance gaps.

Future goals include increasing transparency, protecting indigenous rights, and promoting equitable benefit sharing through collaborative international processes. Strengthening the treaty framework and encouraging robust international cooperation are critical to attaining

 ISSN: 2582-6433

real protection for traditional knowledge and genetic resources. This analysis indicates that, while the WIPO 2024 Treaty is a great beginning, it requires considerable revisions to effectively achieve its aims.

KEYWORDS: Genetic Resources (GR), Traditional Knowledge (TK), Associated Traditional Knowledge (ATK), WIPO 2024 Treaty, Intellectual Property Rights (IPR), Mandatory Disclosure Requirements, Access and Benefit-Sharing (ABS), Indigenous Rights, Digital Sequence Information (DSI), Equitable Benefit-Sharing

RESEARCH PROBLEM

Exploitation of genetic resources and related traditional knowledge by commercial enterprises without adequate acknowledgement or compensation for indigenous groups who have preserved and advanced this knowledge over millennia, frequently leads to legal and ethical issues in protecting their rights. There is a need to analyse if the latest WIPO 2024 treaty on Genetic resources and associated traditional knowledge offers a proper solution to this problem.

RESEARCH QUESTIONS

1. What are the legal ambiguities in the WIPO treaty in terms of the protection of traditional knowledge associated with genetic resources?
2. How may the WIPO treaty be improved or reformed to better safeguard traditional knowledge and protect the rights of indigenous communities that preserve them?

LITERATURE REVIEW

The article, "*Limitations and Exceptions in the WIPO Instrument on Genetic Resources and Associated Traditional Knowledge*,"[1] looks at current WIPO discussions on a treaty addressing intellectual property, genetic resources, and associated traditional knowledge. It focusses on the inclusion of limitations and exceptions to enable member states more flexibility in disclosing genetic resource usage. The study underscores the difficulties of balancing indigenous rights with the need for research and innovation by comparing the treaty to the CBD and Nagoya Protocol, which do not have such exceptions. It highlights a vacuum in practical implementation tactics and recommends deleting or modifying exceptions to protect

[1] Flynn, S. (2024). *Limitations and Exceptions in the WIPO Instrument on Genetic Resources and Associated Traditional Knowledge*.

 ISSN: 2582-6433

indigenous rights and encourage equitable benefit-sharing.

According to the paper, "*Sanctions for non-disclosure, as set out in Article 6 of the WIPO Basic Proposal on Intellectual Property, Genetic Resources and Traditional Knowledge, Should Include Possible Revocation of a Patent*"[2] by James Love, Cassedy, the sanctions for failing to disclose the origin of genetic resources or traditional knowledge in patent applications, as described in Article 6 of the WIPO Basic Proposal, are inadequate. It recommends that patent revocation should be a viable consequence, not dependant on fraudulent intent, to guarantee serious compliance with disclosure requirements. Drawing on the Bayh-Dole Act in the United States, the article discusses the effects of lax enforcement and recommends measures to increase compliance, such as third-party reporting and audits. However, it does not cover international enforcement or how to protect indigenous people beyond patent revocation.

Peter K. Yu's paper "*WIPO Negotiations on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge*"[3] covers the continuing WIPO negotiations for a legal tool to safeguard genetic resources and traditional knowledge (TK). It emphasises crucial aspects such as disclosure requirements for patent applicants and penalties for noncompliance, while also addressing the difficulties of combining Indigenous Peoples' rights with the interests of patent applicants. The author criticises the "three-step test" employed in IP treaties, doubting its effectiveness in protecting Indigenous rights. The study advocates for additional protections to protect TK and emphasises the importance of openness. However, it does not investigate realistic enforcement measures for Indigenous rights, particularly those involving sensitive information.

Frédéric Perron-Welch's work "*Striking a Balance Between Innovation and Tradition in the Global Patent System*"[4] examines the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge, which was adopted in May 2024. To improve transparency and preserve Indigenous rights, the treaty mandates the disclosure of patents for genetic resources (GR) and traditional knowledge (ATK). It also defines sanctions

[2] Love, J., & Cassedy, C. (2024). *Sanctions for Non-Disclosure, as Set Out in Article 6 of the WIPO Basic Proposal on Intellectual Property, Genetic Resources and Traditional Knowledge, Should Include Possible Revocation of a Patent.*
[3] Yu, P. K. (2024). *WIPO Negotiations on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*. Akron Law Review, 57, 23-71.
[4] Perron-Welch, F. (2024). Striking a balance between innovation and tradition in the global patent system. *Journal of Intellectual Property Law and Practice*, *19*(10), 747-749.

 ISSN: 2582-6433

for noncompliance in order to prevent erroneous patent issuance. While the paper emphasises the treaty's significance in balancing innovation and the protection of traditional knowledge, it fails to look into how disclosure requirements will interact with national laws or cross-jurisdictional enforcement problems.

In "*Balancing Competing Interests to a Landmark Achievement*"[5] by Letícia Piancastelli Siqueira Brina and Henry Philippe Ibanez de Novion, with an emphasis on the mandatory disclosure requirements for genetic resources (GR) and traditional knowledge (TK), the paper considers the difficulties in striking a balance between the interests of the Global North and South during the negotiations of the WIPO Treaty. In contrast to the more expansive "utilisation" trigger in the Nagoya Protocol, the article criticises the treaty's restrictive "based on" trigger for disclosure, which only applies if GR or TK was required for the invention. This may limit the treaty's efficacy, even though it is a step forward in transparency. It suggests incorporating digital sequence information (DSI) in upcoming revisions to bring it into line with access and benefit-sharing systems and urges future treaty assessments to close this gap.

A. INTRODUCTION

i. Background on Genetic Resources and Traditional Knowledge

Traditional Knowledge (TK) refers to a living body of knowledge that is developed, maintained, and passed down through generations within a community. It often plays a key role in the cultural or spiritual identity of that community. In simple terms, TK can be understood as:

- knowledge, know-how, skills, innovations or practices;
- that are passed between generations;
- in a traditional context; and
- that form part of the traditional lifestyle of indigenous and local communities who act as their guardian or custodian.

TK can be broadly divided into 2 categories –

1. Genetic Resources and associated traditional knowledge (GRATK) and
2. Traditional cultural expressions (TCEs).

[5] Piancastelli Siqueira Brina, L., & Philippe Ibanez de Novion, H. (2024). WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Balancing Competing Interests to a Landmark Achievement.

 ISSN: 2582-6433

Let us call TK associated with GR as 'GRATK' (GRs are defined in the Convention on Biological Diversity (CBD) as parts of biological materials that contain genetic information of value and are capable of reproducing or being reproduced.) GRATK refers to TK closely associated with genetic resources (GRs). Communities often use and conserve these resources over generations, and in modern scientific research, TK can help guide researchers in identifying valuable compounds within GRs.

Traditional Cultural Expressions (TCEs), on the other hand, are the ways in which a community's culture is expressed. This could include forms such as dances, songs, handicrafts, designs, ceremonies, stories, and other artistic or cultural expressions.

This paper shall focus on the protection of GRATK through Intellectual property law.

ii. Need for the protection of GRATK

Traditional knowledge is generally regarded under the conventional IP system as being in the public domain, meaning anyone can use them without restriction. However, in recent years, indigenous peoples, local communities, and governments—mainly in developing countries—have demanded IP protection for traditional knowledge. The "public domain" status of TK and TCEs exposes them to unwelcome appropriation and misuse. Hence, the demand for protection.[6]

Indigenous groups frequently have extensive knowledge of genetic resources that have been mastered over years of observation and research, such as the therapeutic qualities of plants or farming methods. When foreign organisations find a feature in a plant, microbe, or other natural resource that has commercial value, they patent it without considering the contributions or ownership rights of the communities that have been using the resource for many generations. By patenting these resources or the related knowledge, businesses or individuals essentially assert ownership without acknowledging or compensating the original knowledge holders. As a result, local communities are deprived of their rights.

This creates the need for protection of GRATK.

[6] World Intellectual property Organisation, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (2020).

 ISSN: 2582-6433

B. OVERVIEW OF INTERNATIONAL LEGAL FRAMEWORKS FOR PROTECTING GRATK

Genetic resources (GRs) are defined in the Convention on Biological Diversity, 1992 (CBD) as genetic material of plant, animal, microbial or other origin containing functional units of heredity that has actual or potential value.[7] Genetic resources as such, are not intellectual property (IP). They are not creations of the human mind and thus cannot be directly protected as IP. However, inventions based on or developed using GRs (and associated TK) are eligible for protection through the IP system, either through a patent or through other IP rights.[8] GRs are subject to international access and benefit-sharing (ABS) regulations.

The most prominent legal frameworks that directly relate to the protection of GRATK and establish access-benefit sharing mechanism, are the following:

i. The Convention on Biological Diversity

The CBD is an international agreement, which was signed by 150 governments at the 1992 Rio Earth Summit and to which India is also a signatory. This Convention is dedicated for promoting sustainable development and ensuring fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. It provides a mechanism to ensure conservation and sustainable use of biodiversity for the present as well as the future generations.[9]

ii. Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (ABS) to the Convention on Biological Diversity is a supplementary agreement to the Convention on Biological Diversity. It outlines a legal framework for the fair and equitable sharing of benefits arising out of the utilisation of genetic resources.[10]

iii. The International Treaty on Plant Genetic Resources for Food and Agriculture

This treaty was adopted by the Thirty-First Session of the Conference of the Food and

[7] Convention on biological diversity C.B.D. *Article 2* (WIPO 1992).
[8] World Intellectual property Organisation, Intellectual Property and Genetic Resource (2023).
[9] Ritu Lodha, Intellectual Property Rights, Biodiversity and Traditional Knowledge (2007).
[10] *The Nagoya Protocol on Access and Benefit-sharing*, The Convention on Biological Diversity https://www.cbd.int/abs/about/default.shtml.

 ISSN: 2582-6433

Agriculture Organisation of the United Nations on 3 November 2001. It has 3 primary objectives - recognising contribution of farmers to the diversity of crops; establishing a global system to provide farmers, plant breeders and scientists with access to plant genetic materials; and ensuring that recipients share benefits they derive from the use of these genetic materials.[11]

C. WIPO 2024 TREATY ON GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

i. An Introduction to the WIPO 2024 Treaty

Although WIPO does not specifically address the regulation of ABS of GRs, it does take into account IP issues that are directly related to GRs, and in doing so, it enhances the framework offered by the CBD, the Nagoya Protocol, the International Treaty, the PIP Framework, and other components of the global ABS regime. The particular IP management arrangements negotiated inside ABS agreements may have an impact on the overall outcomes of access to GRs.[12]

In the year 2000, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC) was created by the World Intellectual Property Organisation (WIPO) at its General Assembly to handle intellectual property matters pertaining to genetic resources, traditional knowledge (TK), and traditional cultural expressions (TCEs). At first, IGC concentrated on researching these problems. It then started text-based talks on an international instrument in this area in 2010. The agreement of WIPO members to have a diplomatic conference in July 2022 to finalise an International Legal Instrument Relating to Intellectual Property, Genetic Resources, and Traditional Knowledge Associated with Genetic Resources was ultimately made possible by these negotiations.

On May 24, 2024, at the Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge (DIPCON-GRTK), IGC finally adopted a Treaty on GR & TK. As per the provisions of the treaty (Section 17)[13], the treaty shall come into force once 17 members ratify it.

[11] *Overview*, Food and Agriculture Organization of the United Nations https:\www.cbd.int\abs\about\default.shtml
[12] Supra 8
[13] WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 17* (WIPO 2024).

 ISSN: 2582-6433

ii. Objectives and salient features of the Treaty

The Treaty aims to enhance the efficacy, transparency and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources (GRATK), and prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and associated TK.[14]

a. Mandatory Patent Disclosure Requirement:[15]

   The Treaty imposes a mandatory patent disclosure requirement, which requires patent applicants to disclose the country of origin of the genetic resources and/or the Indigenous Peoples or local community that provided the associated TK, if the claimed inventions are 'based on' genetic resources and/or associated TK. If this information is unknown, the origin of the genetic resources or linked TK should be revealed. If none of the information listed above is known, the patent applicant must declare it.

b. Information systems:[16]

   The Treaty recommends consulting with Indigenous Peoples, local communities, and other stakeholders to build information systems (databases) for genetic resources and associated traditional knowledge, taking into account their national circumstances. Patent offices should have access to information systems for searching and examining patent applications. Technical working groups might be formed to solve issues like accessibility to patent offices.

D. LEGAL AMBIGUITIES IN THE WIPO 2024 TREATY AND ITS IMPLICATIONS FOR INDIA

i. Challenges

Narrow requirement for disclosure

The treaty's Article 3 has a "based on" requirement for disclosure. This implies that to trigger mandatory disclosure requirements, an invention must have a direct, causal connection to the genetic resource (GR) or associated traditional knowledge (ATK) for it. This essentially means the GR or ATK must be an integral part of the invention's creation or formulation, not just tangentially related. The 'based on' requirement, is more stringent than the 'utilisation'

[14] *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024 - Informal Summary*, wipo.int https://www.wipo.int/edocs/mdocs/mdocs/en/gratk_dc/gratk_dc_exsum.pdf.
[15] WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 3* (WIPO 2024).
[16] WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 6* (WIPO 2024).

 ISSN: 2582-6433

requirement that is given under CBD and Nagoya protocol. 'Utilisation', covers any research and development using GRs, regardless of whether or not the GR forms an essential part of the final invention. The broader scope of "utilisation" thus mandates disclosure in cases where GRs have been used at any stage of innovation, even if their role is secondary or indirect in the final product. The shift from "utilisation" to "based on" in the treaty effectively narrows the disclosure obligations. By requiring the GR or ATK to be a central component of the invention, this criterion risks excluding inventions that, although developed with some use of GRs or ATK, do not have these elements as their foundation. This dilution could undermine the treaty's objectives, as it may allow inventors to circumvent disclosure by claiming that the GR or ATK used in research does not directly underpin the invention.[17]

Can claim ignorance of source

While the Treaty's mandate of worldwide disclosure standards is intended to provide legal certainty, it appears to be taking the wrong approach. For example, while Articles 3.1 and 3.2 of the Treaty require the disclosure of the country of origin and indigenous peoples or communities who provide traditional knowledge associated with the GR, Article 3.3 makes an exception and states that if the applicant does not know such information, he or she must provide a declaration about it. These provisions are problematic. It gives the parties a chance to avoid having to provide information. There are clear enforcement issues when declarations made under Article 3.3 without the required obligation of due diligence and without knowledge of the GR source are permitted.[18] [19]

Ambiguous language surrounding creation of national legislation.

The Treaty gives contracting parties the freedom to create national legislation that complies with the Treaty's provisions. In the lack of explicit and unambiguous language in the Treaty, the Contracting Parties will apply different standards for disclosure requirements. For example, the United States, which is not a party to the CBD, has a pro-innovation regime. In contrast, India has a rigorous policy in place to protect indigenous populations' GRs and ATK. Due to

[17] Suryansh Pandey, *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: A Step Forward, Miles to Go*, NLR Blog (Aug. 20, 2024), .https://nliulawreview.nliu.ac.in/blog/wipo-treaty-on-intellectual-property-genetic-resources-and-associated-traditional-knowledge-a-step-forward-miles-to-go-2/

[18] Ibid

[19] Dr. Anson C J, *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Concerns of India and Developing Nations- Part I*, Spicy IP (June 3, 2024), https://spicyip.com/2024/06/wipo-treaty-on-intellectual-property-genetic-resources-and-associated-traditional-knowledge-concerns-of-india-and-developing-nations.html.

 ISSN: 2582-6433

the Treaty's subjectivity, its implementation may result in varied disclosure requirements in different countries. The Treaty's primary goal is obscured by the discretion granted to nations in determining what actions are "appropriate, effective, and proportionate" under Article 6. Different nations' "goals," as mentioned above, will lead to uneven enforcement and ambiguity in the law.[20]

Inadequate sanctions

Article 5.3 of the treaty states that no Contracting Party shall revoke, cancel, or render unenforceable the acquired patent rights simply based on an applicant's failure to disclose the required information, unless there is fraudulent intent, as defined in Article 5.4. This means that, in the absence of fraudulent intent, patents are nonetheless valid even if the applicant fails to reveal critical information regarding genetic resources or associated conventional knowledge. This limitation has been criticised for potentially compromising the enforceability of disclosure requirements, as the possibility of patent revocation serves as a strong deterrent to noncompliance.[21]

Non-retroactivity

Significant inventions utilising genetic resources may be able to proceed without fulfilling disclosure requirements because patents lodged prior to the treaty's entry into force are excluded.[22]

Long Timeframe for Initial Review

The four-year initial review is lengthy, delaying necessary adaptations in response to early implementation challenges.[23]

DSI included or not?

Recent technological developments have made it easier and faster to define GRs using digital sequence information (DSI). Because DSI frequently has unclear geographic origins,

[20]Ashutosh Singh, *Unveiling the Critique of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024*, IP link (July 12, 2024), https://www.iplink-asia.com/article-detail.php?id=1170.

[21] Jocelyn Bosse, *We have a new treaty! Report on the conclusion of the WIPO Diplomatic Conference on Genetic Resources and Traditional Knowledge*, The IPKat (May 24, 2024), https://ipkitten.blogspot.com/2024/05/we-have-new-treaty-report-on-conclusion.html.

[22] WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 4* (WIPO 2024).

[23] WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 8* (WIPO 2024).

 ISSN: 2582-6433

compliance is made more difficult. Whether the treaty covers DSI of GRs is one point that remains unsolved. Earlier drafts of the Treaty required applicants to have access to the "physical samples" of GRs, even though "DSI" is not specifically mentioned in the text. Due to disagreements, this clause was eventually eliminated, leaving the matter unsolved. This uncertainty is most likely brought on by the fact that the WIPO may wait to align with the new mechanism and definition of DSI, as the Global Mechanism for Benefit-Sharing from the Use of DSI is now being reviewed in the wake of COP 15.

ii. Implications on India

What does it mean for India, if India does sign on the treaty?

India will have to weaken some of its most important protections against bad patents in order to comply with the WIPO provisions. Currently, Section 25(1)(j) of the Patent Act allows for the filing of a pre-grant objection to the failure to disclose the source of origin, and Section 64(1)(p) allows for the revocation of a granted patent for failure to disclose this information. According to Articles 3 and 5 of the current Treaty, these clauses would not be permitted because, according to their conjoint reading, the applicant may be allowed not to reveal the source of origin (if it is unknown to him) and a patent cannot be denied for this reason unless it is fraudulent!

Even though the treaty aims to address problems posed by erroneous patents based on genetic resources, if it is not properly executed, it may unintentionally encourage their proliferation. The treaty's legal framework may result in more patent declarations without sufficient review, making it difficult for developing countries like India to adequately monitor compliance and safeguard their genetic resources.[24]

E. RECOMMENDATIONS FOR STRENGTHENING THE WIPO 2024 TREATY

Refine Cross-Border Terminology

Define a collaborative disclosure strategy for resources that originate in more than one country. Like the following: “In cases where genetic resources are native to multiple countries, applicants shall disclose all relevant countries or utilise a regional biodiversity disclosure system recognised by the Assembly.”

[24] Supra 19

 ISSN: 2582-6433

Broader criteria for disclosure

Modify "based on" to incorporate genetic resources that have any discernible impact on the invention. "An invention shall be considered 'based on' genetic resources if any unique property of the genetic material contributes, directly or indirectly, to the functionality, novelty, or utility of the claimed invention," is one possible wording for the proposed clause. Require applicants to provide thorough documentation outlining how genetic resources contributed to the invention, even if only indirectly or partially.

Establish an Independent Monitoring Committee

A separate "Treaty Compliance Committee" may be established under WIPO to oversee compliance and implementation. To maintain transparency, this authority could conduct random audits and examine the yearly reports that contracting parties provide. Include clauses in the treaty allowing this committee to conduct periodic evaluations and recommend improvements or corrective measures to parties that are not complying.

Verification of Disclosure

Article 3.5 must be amended to mandate that patent offices cross-verify disclosures with a global genetic resource register or database. Partnerships with global conservation organisations or Indigenous knowledge repositories could be used to handle this. A uniform verification procedure can be created, that patent offices can use, which include, looking through databases and asking applicants for supporting documentation.

Implement Tiered Sanctions

Article 5.1 may be amended to define sanctions based on the severity of noncompliance, such as monetary penalties and mandatory correction for minor omissions. Suspension of patent rights until correction, for major omissions. Immediate termination of patent rights and a prohibition on future patent applications for a set length of time, in case of fraudulent non-disclosure. Also, provide clear guidance on what constitutes fraudulent non-disclosure, to avoid ambiguity.

Clarify "Source" Disclosure

"Source" must be more specifically defined, requiring applicants to track and report the original habitat or Indigenous community associated with the resource. That is, applicants must be required to disclose the entire chain of custody, including intermediaries and the original source

 ISSN: 2582-6433

of the genetic material or traditional knowledge. A checklist could be developed for patent applicants, to ensure full disclosure. In addition to this, applicants could be required to provide certification that the information provided is accurate to the best of their knowledge.

Implement a transition period

Include a clause for a transition period during which patents filed before to the treaty's entry into force may voluntarily update their disclosures. Reduced patent maintenance fees or patent term extensions could be offered as incentives. Contracting parties shall be required to examine previously granted patents in identified important sectors retrospectively, to ensure compliance with the spirit of the treaty.

Establish minimum standards for information systems

Develop baseline standards for information systems, such as standard data fields and security protocols, to ensure that all contractual parties have analogous and reliable databases. Contracting parties must be required to submit their information systems for an initial and periodic examination by the WIPO Compliance Committee.

Accelerate the Initial Review

The initial evaluation term may be set at two years instead of four, to allow for timely identification and rectification of initial implementation challenges.

F. CONCLUSION

i. Summary of Key Findings

This research has revealed substantial legal and practical inconsistencies in the WIPO 2024 Treaty on Genetic Resources and Associated Traditional Knowledge (GRATK). Notably, the "based on" requirement for disclosure limits the breadth of necessary disclosures, potentially allowing inventors to avoid critical transparency requirements. Allowing applicants to state ignorance of the source of genetic resources (GR) or associated traditional knowledge (ATK) puts at risk, the disclosure system's integrity by undermining due diligence. Furthermore, the treaty's provision prohibiting patent revocation for non-disclosure unless fraudulent purpose is proved, diminishes the enforceability of compliance.

The study also highlights the treaty's weaknesses in addressing the cross-border character of GRs, the variation in country legislative implementations, and the possible issues caused by

 ISSN: 2582-6433

the lack of digital sequence information (DSI). The lack of an impartial monitoring structure and consistent verification methods inhibits the treaty's effective implementation. In contrast, while the treaty includes the crucial component of mandatory patent disclosure and information systems to improve transparency, these measures are insufficient to assure effective protection of indigenous rights and prevent abuse.

ii. Future Directions for the Protection of Traditional Knowledge

To remedy these gaps, future efforts should centre on improving the treaty to ensure complete protection and equitable benefit-sharing for indigenous and local populations. Key areas for development include increasing the disclosure requirements to include any significant use of GRs or ATK, as well as imposing more stringent penalties for noncompliance. An independent compliance committee inside WIPO could be critical for monitoring implementation and performing periodic audits to assure compliance.

There is a need to define “source” more precisely and mandate complete disclosure of the chain of custody for genetic material and associated knowledge. The inclusion of DSI within the scope of the treaty must be specified in order to coincide with contemporary biotechnology breakthroughs and avoid compliance gaps. A unified, global information system with standardised processes can help to validate disclosures and ensure uniformity across jurisdictions.

Lastly, in order to serve as effective deterrents, treaty should have expedited review deadlines and the implementation of tiered sanctions. Promoting an equitable and transparent intellectual property system that values and preserves traditional knowledge would require cooperative international institutions that involve indigenous groups in decision-making procedures and protect their knowledge through participatory frameworks.

In summary, although the WIPO 2024 Treaty is a significant step in acknowledging the importance of genetic resources and related traditional knowledge in the international patent system, it still needs significant enhancements and strong international collaboration to effectively protect indigenous rights and encourage just benefit sharing.

 ISSN: 2582-6433

REFERENCES:

1. Flynn, S. (2024). *Limitations and Exceptions in the WIPO Instrument on Genetic Resources and Associated Traditional Knowledge*.
2. Love, J., & Cassedy, C. (2024). *Sanctions for Non-Disclosure, as Set Out in Article 6 of the WIPO Basic Proposal on Intellectual Property, Genetic Resources and Traditional Knowledge, Should Include Possible Revocation of a Patent.*
3. Yu, P. K. (2024). *WIPO Negotiations on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*. Akron Law Review, 57, 23-71.
4. Perron-Welch, F. (2024). Striking a balance between innovation and tradition in the global patent system. *Journal of Intellectual Property Law and Practice*, *19*(10), 747-749.
5. Piancastelli Siqueira Brina, L., & Philippe Ibanez de Novion, H. (2024). WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Balancing Competing Interests to a Landmark Achievement.
6. World Intellectual property Organisation, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (2020).
7. World Intellectual property Organisation, Intellectual Property and Genetic Resource (2023).
8. Ritu Lodha, Intellectual Property Rights, Biodiversity and Traditional Knowledge (2007).
9. *The Nagoya Protocol on Access and Benefit-sharing*, The Convention on Biological Diversity https://www.cbd.int/abs/about/default.shtml.
10. O*verview*, Food and Agriculture Organization of the United Nations https:\www.cbd.int\abs\about\default.shtml
11. *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024 Informal Summary*, wipo.int https://www.wipo.int/edocs/mdocs/mdocs/en/gratk_dc/gratk_dc_exsum.pdf.
12. Suryansh Pandey, *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: A Step Forward, Miles to Go*, NLR Blog (Aug. 20, 2024),.https://nliulawreview.nliu.ac.in/blog/wipo-treaty-on-intellectual-property-genetic-resources-and-associated-traditional-knowledge-a-step-forward-miles-to-go-2/
13. Dr. Anson C J, *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Concerns of India and Developing Nations- Part I*, Spicy IP (June 3, 2024), https://spicyip.com/2024/06/wipo-treaty-on-intellectual-property-genetic-resources-and-associated-traditional-knowledge-concerns-of-india-and-developing-nations.html.

 ISSN: 2582-6433

14. Ashutosh Singh, *Unveiling the Critique of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024*, IP link (July 12, 2024), https://www.iplink-asia.com/article-detail.php?id=1170.
15. Jocelyn Bosse, *We have a new treaty! Report on the conclusion of the WIPO Diplomatic Conference on Genetic Resources and Traditional Knowledge*, The IPKat (May 24, 2024),https://ipkitten.blogspot.com/2024/05/we-have-new-treaty-report-on-conclusion.html.
16. Article by Helena Tian in Jurist News titled "UN intellectual property agency approves first global treaty on intellectual property, genetic resources and traditional knowledge"
17. Article By Praharsh Gour on May 25, 2024 in spicyip.com "Finally, WIPO Adopts a Treaty on IP, Genetic Resources and Associated TK! But at What Cost?"
18. UNCTAD/DITC/TED/2004/14: Analysis of Options For Implementing Disclosure Of Origin Requirements In Intellectual Property Applications
19. Article by Prashant Reddy and Malathi Lakshmikumaran in National Library of Medicine in October 2015, titled "Protecting Traditional Knowledge Related to Biological Resources: Is Scientific Research Going to Become More Bureaucratized?"
20. Article by Bhushan Patwardhan in National Library of Medicine: "Traditional knowledge patents: New guidelines or deterrents?
21. WIPO Website: WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge
22. Article by Khurana and Khurana in Mondaq.com. "Patenting Of Plants: A Boon Or A Bane?"
23. Convention on biological diversity C.B.D. *Article 2* (WIPO 1992).
24. WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 3* (WIPO 2024).
25. WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 4* (WIPO 2024).
26. WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 6* (WIPO 2024).
27. WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 8* (WIPO 2024).
28. WIPO treaty on intellectual property, genetic resources and associated traditional knowledge *Article 17* (WIPO 2024).