

Book Review: Legal Protection for Traditional Knowledge: Towards A New Law for Indigenous Intellectual Property by Anindya Bhukta

In Legal Protection for Traditional Knowledge: Towards A New Law for Indigenous Intellectual Property, Anindya Bhukta underscores the value of traditional knowledge and argues that legal systems need to ensure better protection of this knowledge, with a particular focus on India. This book is an ideal primer for readers looking to find out more about the laws concerning traditional knowledge, writes Gayathri D Naik, and Bhukta's proposals for a new legal approach embody his in-depth research and knowledge of the subject.

Legal Protection for Traditional Knowledge: Towards A New Law for Indigenous Intellectual Property.
Anindya Bhukta. Emerald Publishing. 2020.

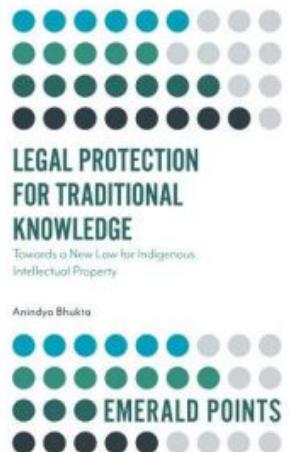
No one forgets the story of early humans who discovered fire by banging flint stones together. This was the first revolution in human civilisation. Since then, humans have processed the information, discoveries and inventions of their predecessors that have inspired every generation to better their potential. We have also inherited extensive information from our ancestors on medicinal plants, songs, music and traditional arts, amongst others. This 'traditional knowledge' has been passed along generations, mostly through oral transmission. However, once components of this traditional knowledge are regarded as 'merchandise' over which rights can be claimed, particularly by big multinational corporations (MNCs), the rights of many communities, including indigenous people, are threatened.

Through his book *Legal Protection for Traditional Knowledge: Towards A New Law for Indigenous Intellectual Property*, Anindya Bhukta discusses traditional knowledge and argues for its adequate legal protection. Traditional knowledge (hereinafter TK) – collective community-based knowledge – can include anything with transgenerational characteristics that has passed along generations verbally. It may be either tangible or intangible, ranging from cultural expressions to medicines.

TK has been a subject of bio-piracy discourse for quite a long time. Bio-piracy, as Bhukta explains, is the unauthorised use of the bio-resources of a country either by the individuals, institutions or companies of other countries. Bhukta points out that even though TK has been in existence for many centuries, it was after the development of patent regimes, concerns over bio-piracy and the rights of biodiverse countries over their natural resources that TK has gained greater attention.

This book is based on the premise that since TK is multidimensional and region-specific, it demands its own legal framework for its governance. The book takes the reader through the issues of bio-piracy, existing international treaties and domestic laws referring to TK and its drawbacks, access and benefit-sharing mechanisms, its lacunae and the need for new comprehensive legal protection. The author suggests a model law based on the premise he has adopted. However, although the author points to several loopholes and criticisms regarding inadequate protection of TK in international treaties and domestic laws, the book only offers a descriptive compendium of existing treaties and laws and lacks a critical approach in its analysis.

Had the author approached treaty provisions and definitions through a more critical angle, it would have made this book more attractive to an advanced audience already familiar with the subject matter. Instead, the book's audience is likely to be non-specialists and lay readers. Yet, this book will appeal to readers due to its coherent arguments and detailed analysis of all legal provisions on TK; this would make this book an ideal primer for readers looking to find out about laws on TK.



The author is



successful in convincing the reader to support his arguments for the legal protection of TK. Illustrating the benefits that such protection bestows on medicine, scientific development, environmental conservation, biodiversity protection and the cultural identity of a nation, he discusses various current international conventions and their provisions applicable to TK. Throughout the book, Bhukta tries to highlight the influence of MNCs, lobbyists and pressure groups from rich countries like the US on international treaty-making and domestic law-making processes. Additionally, the book presents several instances of bio-piracy and attempts to patent TK in the US and Europe that have been vehemently opposed by developing countries: for instance, the famous cases of [Turmeric](#) and [Neem Patent](#).

In 1995, the use of turmeric in wound healing was patented in the US following an application from two researchers at the Mississippi Medical Centre. This was challenged by the Government of India, which contested the novelty of the invention and successfully defended its case. Similarly, the European Patent Office patented a neem-based product following an application from a US MNC. Here too, the Government of India was successful in its application to revoke this patent. In both cases, submission of evidence of the use of these natural resources as TK, as inscribed in many traditional documents in Sanskrit and Ayurveda, helped India to defend its traditional knowledge from bio-piracy. Unfortunately, there are many other examples of TK around the world without written sources that are being misused by MNCs, demanding effective legal interventions from governments to prevent such instances.

The rights of indigenous communities and biodiverse developing countries, from where mother species or seeds are transported, are typically sidelined in most international treaties whose provision instead supports MNCs and economically stronger countries. Highlighting this discriminatory approach and pointing to some notable benefit-sharing agreements like *Jeevani*, *Hoodia* and *InBio-Merck*, the author argues for recognition of the rights of indigenous communities in preserving TK. To give one example, [the Jeevani agreement](#) is considered the most renowned example of benefit-sharing in India, signed between the Tropical Botanical Garden and Research Institute and the Kerala Kani Samudaya Kshema Trust. By this agreement, signed in the 1990s and the first of its kind in the world, it was agreed that royalties would be shared with the Kani Tribe for use of a TK owned by the Kani Tribe concerning 'arogyapacha', which was used to make an energy drink called *Jeevani*.

By focusing on bio-piracy, the author also examines various provisions of intellectual property rights (IPR) that could be extended to TK. Protective measures where TK-holders enjoy rights to act against the misuse of TK and defensive measures that safeguard and prevent its illegal use by others are discussed. Here, efforts in different countries, including the Traditional Knowledge Digital Library, the Traditional Chinese Medicine Database and the Korean Traditional Knowledge Portal, are introduced to the reader.

After discussing international legal mechanisms on IPR, which constitute the major legal protection used across the world, the book moves to analyse domestic regulations. IPR is insufficient to extend coverage to all biological resources. Hence, the World Trade Organisation (WTO) promotes the adoption of protection for plant variety, necessitating domestic measures customised to its local conditions. The chapter on initiatives to protect TK thus provides a discussion of various provisions of domestic laws on TK. This chapter confines its major discussion to India, though it provides a glimpse of three other nations or regions: the Philippines, Panama and Africa. Unfortunately, the author does not provide reasons for choosing these particular jurisdictions, leaving this question unanswered for readers. This is also applicable to its title, which seems general, but in most chapters the discussions are based on India.

These uncertainties extend to the chapter analysing the limitations of existing legal provisions. Here, the author examines Indian laws, but on certain occasions his arguments are mixed with international treaties without emphasising statutes. Nevertheless, the author has put considerable effort into providing a detailed analysis of the insufficiency of present legal frameworks on IPR, which leads to the conclusion that there is a need for a new law for TK.

In this regard, the book mainly focuses on the need for new framework legislation in India. The author comprehends all characteristics of TK to draft a model law. The uniqueness of this book lies in this draft law, through which Bhukta argues that since TK is transgenerational, oral and community-owned, the main focus of the recognition of rights-holders should be the community, and the duration of protection should be beyond what is currently provided by IPR laws. He also calls upon the establishment of a trust upon which these rights and duties to protect can be entrusted. The model law is based on the principle of the registration of TK and benefit-sharing based on prior informed consent between TK-holders and other stakeholders. Inspired by international legal principles and incorporating these values, this model law is an embodiment of the author's in-depth research and knowledge of TK and his passion for the subject.

In *Legal Protection for Traditional Knowledge*, Bhukta has successfully illustrated the need for comprehensive protection of TK that crosses the boundaries of IPR and laws on patents, Geographical Indicators (GIs), trademarks and copyrights. The book shows how TK is significant in human life and history, and how it is extracted from richly biodiverse countries of the Global South. However, the discussions in this book are more descriptive than critical, which makes it useful as a short handbook rather than as a reference book. Yet, through the simplicity of the analysis, this book will be helpful to students of law and other related subjects as well as general readers, providing the first stepping stone to understanding TK and the relevance of its protection.

Note: This review gives the views of the author, and not the position of the LSE Review of Books blog, or of the London School of Economics.

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