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### *Evolution of geographical indications and traditional knowledge in international sphere and in India*

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## 1. Introduction

The international evolution of geographical indication consists of international convention treaties, and agreements promoting and improving the protection of geographical indication at the international level. The evolution is nothing but accumulated practices than a set of fixed rules. Like other forms of intellectual property, geographical indication also began as ‘monopoly privileges doled out by kings to fund wars or other pursuits’.<sup>1</sup> Originally, geographical indications were protected in accordance with national and local laws with geographical scope. The earlier law protecting geographical indication can be traced as early as 14<sup>th</sup> and 15<sup>th</sup> century in France, Portugal and Tuscany. They were primarily enacted for fiscal reasons.<sup>2</sup> Over a period of time simple geographical indications were protected through various laws on misrepresentation, later during the first half of the 20<sup>th</sup> century the protection was extended beyond simple geographical indications.

France was the first country to enact comprehensive system for protection of geographical indications<sup>3</sup> that influence the making of both national laws and international treaties. In France the protection of wines developed initially in the year 1824 through law against false designation.<sup>4</sup> Later, the law of 1824 imposed criminal penalties upon persons who with fraudulent intention indicated the origin of their goods as that of actual manufacturers. Under the law of 1824 there was no obligation to actually label a product.<sup>5</sup> But if any trader choose to speak about the origin of their product, what they said had to be true. The goal of this law was transparently to assure that the goods be labelled so that the consumer can understand who made them and where they were produced.<sup>6</sup> Later in 1905 through Grande Loi du leraout, further protection was afforded, focusing on the protection of private rights especially the

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<sup>1</sup> Peter Drahos and John Braith Waite, *Information Feudalism: Who Owns the Knowledge Economy?* IPLR. 2002, p. 29.

<sup>2</sup> Norbert Olszak, *Les Appellations d'origine et Indications de Provenance*, (2001)51. Quoted in Oskari Rovame, *Monopolising Names? The Protection of Geographical Indications in the European Community*, Helsinki University, Project, *Globalization International Law and IPR*, August 2006.

<sup>3</sup> L.Berard and P. Marchednay, *Tradition, Regulation and Intellectual Property, Local Agricultural Product and Food Stuff in France*, in S.B. Brush and D. Stabinsky, *valuing Local Knowledge: Indigenous People and IPR*, Ed. 1996, pp. 230.

<sup>4</sup> N.S. Gopalakrishnan, *Explaining the Relationship Between Geographical Indication and Traditional Knowledge*, Working Paper ICTSD Program of IPRs and Sustainable Development, August 2007, p. 10.

<sup>5</sup> Parl Rubier, *Le Droit de la indistriell*, vol. II 1954, pp.722 &753. Quoted in Oskari Rovame, *Monopolising Names? The Protection of Geographical Indications in the European Community*, Helsinki University, Project, *Globalisation International Law and IPR*, August 2006.

<sup>6</sup> Louis C. Lenzen, *Bacchus in the Hinterlands: A Study of Denominations of Origin in French and American Wine-Labeling Laws*, 58 TMR 1968, pp. 145-187 at p.148

protection of consumers and victims of contract fraud.<sup>7</sup> These laws constituted together the concept of ‘indication of source’ (indication de provenance).<sup>8</sup>

Like all intellectual property protection even for geographical indication, national protection needed widening as products were often imitated outside the country of origin.

The legal measures proved to be insufficient since in order to protect quality, criteria intrinsic to production and every other element would be needed to be defined. The delimitation was suspended pending reforms which did not occur till the end of First World War, later on for the protection of wine and spirit the provisions related to geographical indications was included in Art. 275 of the Treaty of Peace with Germany (Treaty of Versailles) of 28<sup>th</sup> June 1919. It soon became obvious that international co-operation was required to ensure that these Geographical indications were protected internationally and that there was reciprocity in the level of protection between States. The journey of geographical indication from indication of source to appellation of origin and finally to geographical indication is the result of various international instruments. The universal international convention, treaties agreements and regional agreements relevant in this context are the following:

- A. Paris Convention for the protection of Industrial Property 1883.<sup>9</sup>
- B. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891.<sup>10</sup>
- C. The Madrid Agreement Concerning the International Registration of Marks of 1891.<sup>11</sup>
- D. The Stresa Cheese Convention of 1951.<sup>12</sup>

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<sup>7</sup> Lori E. Simon, *Appellations of Origin: The Continuing Controversy*, IPLR 1984, vol. 16, pp.337-359.

<sup>8</sup> Louis C. Lenzen, *op. cit.*, p. 148.

<sup>9</sup> The Paris Convention for the Protection of Industrial Property was agreed in 1883 and complemented by the Madrid Protocol of 1891. It was revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967) and amended on 1979. As on 8<sup>th</sup> March 2020, the Paris Convention had 177 Signatory States. See on <http://www.wipo.org>.

<sup>10</sup> Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods was adopted in 1891 and revised at Washington (1911), The Hague (1925), London (1934) and Lisbon (1958). It was supplemented by the Additional Act of Stockholm (1967) and had a membership of 33 Signatory States as of 25<sup>th</sup> November 200. In the last twenty years (1982 - 2002) only four new States became party to the Madrid Agreement: Czech Republic (1993), Republic of Moldova (2001), Slovakia (1993) and Yugoslavia (2000). See on <http://www.wipo.org>.

<sup>11</sup> The Madrid Agreement Concerning the International Registration of Marks of 14<sup>th</sup> April 1891, as revised at Brussels on 14<sup>th</sup> December 1900, at Washington on 2<sup>nd</sup> June 1934, at Nice on 15<sup>th</sup> June 1957 and at Stockholm on 14<sup>th</sup> July 1967, and as amended on 28<sup>th</sup> September 1979. See on <http://www.wipo.org>.

<sup>12</sup> In 1951 an International Convention on the Naming and Composition requirements of particular varieties of Cheese was signed in the Italian city of Stresa. It came into force in 1953.

- E. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958).<sup>13</sup>
- F. The Draft Treaty on the Protection of Geographical Indication (1975).<sup>14</sup>
- G. Protocol relating to the Madrid Agreement Concerning the International Registration of Marks which also provides for International Registration of Certification Marks 1989.<sup>15</sup>
- H. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)<sup>16</sup>

## 2. Regional agreements:

- I. The North American Free Trade Agreement (NAFTA)<sup>17</sup>
- J. European Union Regulation 1151/2012 – Quality scheme for agricultural products and foodstuffs.

### 2.1. Paris convention for the protection of industrial property 1883:

The Paris Convention is one of the pillars of the industrial property system as it is known today. It applies to industrial property in the widest sense, including inventions, marks, industrial designs, utility models, and trade names, geographical indications (indication of source and appellation of origin) and repression of unfair competition.<sup>18</sup>

The Paris Convention has been revised from time to time after 1883. A great majority of the countries are now party to the latest Act, that of Stockholm, in the year 1967. The Paris Convention addressed for the first time the issue of international protection of geographical indication.<sup>19</sup> But the term ‘geographical indications’ was not used and the protection was very limited.<sup>20</sup> The Appellation of Origin and Indication of Source are used instead of geographical

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<sup>13</sup> The Agreement for Protection of Appellations of Origin and their International Registration was concluded in Lisbon on 31<sup>st</sup> October 1958. It was revised at Stockholm in 1967 and amended in 1979. Any member of the Paris Convention may accede to this Agreement. As of 25<sup>th</sup> November 2002, there were 20 States as members to the Agreement. See on <http://www.wipo.org>.

<sup>14</sup> Convention establishing the World Intellectual Property Organization was signed at Stockholm on 14<sup>th</sup> July 1967 and entered into force in 1970, it was amended on 28<sup>th</sup> September 1979.

<sup>15</sup> The Agreement was signed at Madrid on 28<sup>th</sup> June 1989. See <http://www.wipo.org>.

<sup>16</sup> Resource Book on TRIPS and Development, UNCTAD – ICTSD, Cambridge Publication, p.272.

<sup>17</sup> See the text of NAFTA on <http://www.nafta-sec-alena.org>.

<sup>18</sup> Philippe Zylberg, Geographical Indications V. Trademarks: The Lisbon Agreement: A Violation of TRIPS? 11 University of Baltimore Intellectual Property Law Journal, 1, 2003, p. 12.

<sup>19</sup> Jinghua Zou, Rice, Cheese, Anyone? The Fight Over TRIPS Geographical Indications Continues, vol. 30, Brooklyn Journal of International Law, 2005, p.34.

<sup>20</sup> Ibid.

indications and hasn't defined neither of the term.<sup>21</sup> With regard to protection against misleading use of appellation of origin and indication of source, Art. 10 of Paris Convention apply in cases of direct and indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant. The obligation to protect indication of source is specifically provided for in Art. 10 of the Convention, but there are no special provisions therein for the protection of appellation of origin since each appellation of origin by definition constitute an indication of source under the said convention.

### **2.1.1. Unfair competition under Paris Convention:**

The Paris Conventions' general approach to the protection of indication of source is based upon the concept of unfair competition.<sup>22</sup> In addition to Art. 10 in combination with Arts. 9 and 10ter, the member states of the Paris Convention are obliged, under Art. 10bis, to grant "effective protection against unfair competition". Although Art. 10bis (3), in its list of examples of acts of unfair competition, does not expressly refer to the case of misleading in respect of geographical origin of a product, such a practice may be considered as an act of unfair competition under the general provisions of Art. 10bis (2). Accordingly, any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The Art. 10bis is specifically incorporated as a foundation for protection of geographical indication in Art. 22(2) (b) of TRIPS Agreement.

### **2.1.2. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891<sup>23</sup>:**

A special union under the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods was established by the countries which had greater interest in an improved international protection of indications of source. The original text did not provide for the prevention of the use of false indications per se, but only where such use occurred in connection with the use of a false trade name.<sup>24</sup> The Agreement, concluded in 1891, was revised

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<sup>21</sup> Jinghua Zou, op. cit., p.34.

<sup>22</sup> Philippe Zylberg, *Geographical Indications v Trademarks: The Lisbon Agreement: A Violation of TRIPS?* 11 University of Baltimore Intellectual Property Law Journal, LJ 1, 2003, p.69.

<sup>23</sup> This Treaty is not to be confused with the Madrid Agreement Concerning the International Registration of Marks of 15<sup>th</sup> July 1892, as last revised at Stockholm 1967, which provides an International Registration System.

<sup>24</sup> WIPO Docu., SCT/8/4, pp. 12-13, para 46.

at Washington on 1911, at Hague on 1925, at London on 1934, at Lisbon on 1958 and at Stockholm on 1967. Unlike Paris Convention, which is a general treaty that provides protection for a broad range of different categories of industrial property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on goods is specific to indications of source.<sup>25</sup> However, the term “indication of source” is not defined in the treaty.<sup>26</sup>

The Madrid Agreement was the International Agreement to provide specific rules for the Repression of False and Deceptive Indications of Source. The difference between “false” and “deceptive” is that a deceptive indication of source can be true name of the place where the goods originate from. The said Agreement does not add much to the protection already given by the Paris Convention. It extends protection to deceptive indications of source in addition to false indications.

It does not protect “generic” appellations and contains only a special provision by which Courts of each country can decide what indication of source do not fall within the provisions of the Agreement, because of their generic character.<sup>27</sup>

Art. 4 of the Madrid Agreement on indication of source contains special provision for regional appellations concerning the source of products of the vine; which constitute exceptions to the rule that, in application of the Agreement, the Courts are free to decide whether or not given indication of source is generic term.<sup>28</sup>

### **2.1.2.3. Amendment of the Madrid agreement:**

Art. 3bis, which prohibits the use of false representations on the product itself and in advertising or other forms of public announcements.<sup>29</sup> It obliges the State party to the Madrid Agreement

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<sup>25</sup> Bernard O Connor, op.cit., p. 24.

<sup>26</sup> ICTSD, 2007, op.cit., pp. 12-14.

<sup>27</sup> Members having signed this agreement agree mainly to implement border measures and prevent the dilution of geographical indications into generic terms. Generic terms are terms that do not possess any distinctive character. In other words, such terms are not capable of distinguishing goods from different source or to indicate a specific origin of goods. A sign may be considered generic because it describes the kind of goods to which it is applied, or because it has lost over time its distinctive character.

<sup>28</sup> WIPO Docu., SCT/8/4, Para 49.

<sup>29</sup> Jose Manuel Cortes Martin, TRIPS Agreement: Towards a better Protection for Geographical Indications, vol. 30, Brooklyn Journal of International Law, 2007, p.117 at 124

to prohibit the use, in connection with the sale or display or offering for sale of any goods of all indications capable of deceiving the public as to the source of goods.<sup>30</sup>

### **2.1.3. The Madrid agreement concerning the international registration of marks of 1891:**

Geographical indications could be protected under the Madrid Agreement as collective marks, certification marks or guarantee marks. This means an international registration system for Trademarks, such as the Madrid Agreement concerning the International Registration of Marks, 1891. It is the largest special union under the Paris Convention and not received wide spread acceptance. The United States is not a member. The objections to the Madrid Agreement focus primarily on its treatment of appellations which have become generic.

If a geographic denomination becomes so associated with a product that customers regard it as the name of the product, regardless of its true geographic origin, then the term has become the generic name of the product.

The criterion for such determination is public usage. Under this Agreement, each country may decide whether appellations have become generic except for products of the vine.<sup>31</sup>

### **2.1.4. The Stresa cheese convention of 1951:**

The positive regulation of geographical indications, defined according to their dual identity of appellations of origin and indications of source was introduced into International Law. On 1<sup>st</sup> June 1951, an International Convention on the use of Appellations of Origin and Denominations of Cheeses (known as Stresa Convention) was signed in the northern Italian town of Stresa.<sup>32</sup> It concerns the use of designations of origin and the name of cheeses. The signatory countries<sup>33</sup> committed themselves to prohibiting the use of the false designations of origin on their territory and take all necessary measures to ensure the application of the Stresa Convention. It establishes

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<sup>30</sup> Carlos M Correa, *TRIPS: A Commentary on the TRIPS Agreement*, OUP, New York, Ed. 2007, p.215.

Article 3 of Madrid Agreement authorizes a vendor to indicate his name or address on goods coming from a country other than that in which the sale takes place, but obliges him, if he does so, to have his name or address accompanied by exact indication in clear characters of the country or place or manufacture or production, or by some other indication sufficient to avoid any error as to the true source of the wares,

<sup>31</sup> Art. 4 of the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods

<sup>32</sup> *Monographs in Trade Law*, O' Connor and Company, Brussels, 2003, p. 27.

<sup>33</sup> In conformity with Africa the Convention entered into force, 1<sup>st</sup> September 1953. The Stresa Convention was ratified by Austria on 12/06/1953, Denmark on 02/08/1953, France on 20/05/1952, Italy on 10/03/1953, Netherlands on 29/10/1955, Norway on 31/08/1951, Sweden on 27/01/1951 and Switzerland 05/06/1951.

the highest degree of protection for the four geographical indications considered as appellations d' origin – Gorgonzola, Parmigiano Romano, Pecorino Romano, Roquefort.<sup>34</sup> It also prohibits the use of some denominations like Camembert, Danablu, Edam, Emmental, Gruyera and Samsøe<sup>35</sup> for products which do not meet the requirements provided by the interested contracting party, referring “mainly to the shape, weight, size, type and colour of the rind and curd as well as to the content of the cheese”.<sup>36</sup> However, the names can be used if the requirements are met. Due to small number of signatories, the Stresa Convention was not very successful. The idea of protection of the use of appellations of origin and denominations of products was confirmed in 1958 by the signature of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

### **2.1.5. The Lisbon agreement for the protection of appellations of origin and their international registration (1958):**

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration concluded on 31<sup>st</sup> October 1958, was revised at Stockholm on July 1967, and amended on 28<sup>th</sup> September 1978.<sup>37</sup> The first countries to ratify the Agreement were Cuba, Haiti, France, Israel, Mexico and Portugal on 25<sup>th</sup> September 1966. According to Art.14 of Lisbon Agreement,<sup>38</sup> it entered into force three months after the deposit of the fifth ratification instrument on 25<sup>th</sup> December 1966. It was a further attempt to provide greater protection for appellations of origin.<sup>39</sup> The aim of this Agreement was to provide for the protection of appellations of origin. It has been characterised as a radical departure from the schemes of the Paris Convention and the Madrid Agreement.<sup>40</sup> In this Agreement, “appellations of origin” means “the geographical denominations of a country, region or locality which serves to designate a product originating therein, the quality or characteristics of which or due exclusively

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<sup>34</sup> They are listed in Annexure A of the Convention.

<sup>35</sup> They are listed in Annexure B of the Convention.

<sup>36</sup> Art 4.2 of the Stresa Convention reads as “The characteristics of the cheeses to which these denominations are applied are defined by the interested Contracting Parties and shall refer mainly to the shape, weight, size, type and colour of the rind and curd as well as to the content of the cheese”

<sup>37</sup> The Agreement for the Protection of Appellation of Origin and their International Registration was concluded in Lisbon on 31<sup>st</sup> October 1958 was revised at Stockholm in July 1967, and amended on 28<sup>th</sup> September 1978. Any member of the Paris Convention may accede to this Agreement. As of May 2015, 30 States are party to the Convention and 1000 Appellations of Origin has been registered. See on <http://www.wipo.org>.

<sup>38</sup> Art.14(5)(a) of Lisbon Agreement reads as “With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument”

<sup>39</sup> J. Thomas McCarthy and Veronica Colby Devitt, op. cit., p. 205.

<sup>40</sup> Robert W. Benson, op. cit., p. 132.



or essentially to the geographical environment, including natural and human factors”.<sup>41</sup> The first element of the definition is that the appellation must be the geographical name of a country, region or locality. The second element of the definition is that there must be due exclusively or essentially to the geographical environment. If the qualitative link is insufficient, that is, if the characteristics or qualities are not due essentially, but only to a small extent, to the geographical environment, the name is not an appellation of origin but merely an indication of source. As for the geographical environment, it includes natural factors, such as soil or climate and human factors such as the special professional traditions of the producers established in the geographical area concerned. It provides for an international system of registration and protection of appellation of origin.<sup>42</sup> By its own terms it is supplemental to the Paris Convention, the Madrid Agreement and national legislation or court decisions.<sup>43</sup>

It prescribes use of an appellation even if the true origin of the product is indicated or the appellation is modified by terms like “kind”, “type”, etc.<sup>44</sup> Thus, absolute protection of registered appellations of origin is achieved, regardless of whether another’s use is liable to mislead or not. The only issue is whether there was in fact use of the registered appellation by someone authorized to use it.<sup>45</sup>

### **2.1.6. The draft treaty on the protection of geographical indication (1975):**

In 1974 the World Intellectual Property Organization started work on the preparation of a new international treaty for the protection of appellation of origin and indication of source with the intention of revising the 1883 Paris Convention. In 1975 the Draft Treaty incorporated many of

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<sup>41</sup> Art. 2(1) of the Lisbon Agreement. The French definition of appellation of origin was adopted

<sup>42</sup> Art 1(2) of Lisbon Agreement reads as “they undertake to protect on their territories in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of special union, recognised and protected as such in the country of origin and registered at the International Bureau of Intellectual Property.....referred to in the Convention establishing The World Intellectual Property Organisation.....” and Art 5(1) of Lisbon Agreement reads as “The registration of appellations of origin shall be effected with the International Bureau, at the request of the authorities of the countries of the Special Union, in the name of any natural persons or legal entities public or private having, according to their national legislation, the right to use appellation. ”

<sup>43</sup> Art. 4 of Lisbon Agreement reads as “Protection by virtue of other texts – the provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the special union by virtue of other International instruments such as the Paris Convention of 20<sup>th</sup> March 1883, for the Protection of Industrial Property and its subsequent revisions and the Madrid Agreement of 14<sup>th</sup> April 1891, for their repression of false or deceptive indications of source of goods and its subsequent revisions, or by virtue of national legislation on court decisions”

<sup>44</sup> Art.3 in the Lisbon Agreement provided a proper definition of appellation of origin and extended the protection which reads as “content of protection – Protection shall be answered against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as ‘kind’, ‘type’, ‘make’, ‘imitation’ or the ‘like’.”

<sup>45</sup> J. Thomas McCarthy and Veronica Colby Devitt, op. cit., p. 205.

the provisions of both the Madrid and Lisbon Agreement. The WIPO Draft Treaty intended to establish a new definition of geographical indications for the purposes of a system of international registration. The new definition was broader than the definition of appellation of origin under the Lisbon Agreement.<sup>46</sup> It goes beyond the Lisbon Agreements' protection of appellations of origin to also protect "geographical indications" which include both indications of source and appellation of origin. Unlike the Lisbon Agreement which requires that the appellation of origin must be protected as such in its country of origin, the Draft Treaty requires only an official statement from the country of origin that the geographical indications refers to that country. Otherwise, it would retain most of the features of the Lisbon Agreement.

The Lisbon Agreement, under the WIPO Draft Treaty, Trademarks, registration of indications of source would be absolutely prohibited.<sup>47</sup> Under the Draft Treaty, previous users under certain circumstances would have upto five years to cease use of the term.<sup>48</sup> When preparations for the revision of the Paris Convention started late in the late 1970s it became apparent that those preparations also dealt with possible revision of the provisions of the Paris Convention that deal with geographical indications, work on the Draft Treaty was not continued.

### **2.1.7. Protocol relating to the Madrid agreement concerning the international registration of marks which also provides for international registration of certification marks 1989:**

The Madrid System of International Registration of Marks is governed by two treaties, the Madrid Agreement Concerning the International Registration of Marks which dates from 1891 and the Protocol relating to the Madrid Agreement, which was adopted in 1989, entered into force on 1<sup>st</sup> December 1995 and came into operation on 1<sup>st</sup> April 1996. Common Regulations under the Agreement and Protocol also came into force that last date. The system is administered by the International Bureau of WIPO, which maintains the International Register.

In some countries, geographical indications could be only protected as trademarks. Therefore, the Madrid System for the International Registration of Marks as collective marks, certification

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<sup>46</sup> WIPO Docu., TAO/II/2 (25<sup>th</sup> August 1975), para 65.

<sup>47</sup> Art. 9(3) of the Draft Treaty, reads as "The provisions of this Article shall apply even where the registered denomination is used in translation, or with an indication of the true source of the product, or with the addition of terms such as "kind", 'type', 'make', 'imitation'" or the 'like' or in another grammatical form or in a modified form in so far as the risk of confusion remains despite the modification."

<sup>48</sup> J. Thomas McCarthy and Veronica Colby Devitt, op. cit., p. 209

marks or guarantee marks is of relevance to the protection of geographical indications.<sup>49</sup> This means that an international registration system for trademarks, established by the Madrid Agreement of 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989,<sup>50</sup> can also serve as a means of protection of geographical indications internationally. However, this system can only be used by those countries that protect geographical indications via certification trademark regime and do not have specific (*sui generis*) rules on the protection of geographical indications. The Madrid System of International Registration of Marks is applicable among the countries which are party to the Madrid Agreement or the Madrid Protocol.<sup>51</sup> This system gives a trademark owner the possibility of having his mark protected in several countries by simply filing one application with a single Trademark office, in one language, with one set of fees in one currency.

### **2.1.8. Trade Related aspects of Intellectual Property Rights 1995:**

The TRIPS Agreement together with the 1967 Stockholm Conference that adopted the revised Berne and Paris Conventions can be termed as the most significant milestone in the development of intellectual property rights.

It gave protection to all the areas already protected by the existing agreement. It also made provisions to cover up for failed treaties and even those rights which did not benefit from any multilateral protection before.<sup>52</sup> The structure of sec. 3 of the Agreement is simple and clear and encompasses five main categories of issues: (a) definition and scope of a geographical indication (b) minimum standards and common protection provided for geographical indication corresponding to all kinds of products (c) additional protection for geographical indications for wines and spirits (d) negotiation and review of sec.3 on geographical indication and (e) exceptions to the protection of geographical indication. The protection provided under the Agreement has to be available to right holders from WTO members without discrimination as

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<sup>49</sup> Bernard O Connor, Geographical Indications and TRIPS: 10 Years Later .... A Roadmap for EU Geographical Indication Holders to Gain Protection in Other WTO Members, views taken from the report commissioned and financed by the Commission of the European Communities, 2005, p. 5.

<sup>50</sup> The Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks as signed at Madrid on 28<sup>th</sup> June 1989, see on <http://www.wipo.org/>.

<sup>51</sup> As of September 2009 there are 59 countries party to the Agreement and 71 countries party to the Protocol.

<sup>52</sup> For example, protection to geographical indication. Before TRIPS Agreement, indirect protection to geographical indications were available in the form of appellation of origin and indication of source in different multilateral and bilateral treaties but first time the TRIPS Agreement, the right was first recognised.

to their nationality.<sup>53</sup> The Art. 22 (1) of the TRIPS Agreement defines the term “geographical indication”, Art. 22(2) speaks about substantive standard of protection, Art. 22(3) provides protection of geographical indications over trademarks, Art. 22(4) is about homonymous indications, Art.23 says about additional protection for geographical indication for wines and spirits and Art. 24 addresses the limitations and exceptions to the general standards set forth in Arts.23 and 23 and also emphasizes that future negotiations are a fundamental part of TRIPS member’s countries’ commitment under the Agreement.

### **2.2.1. The North American Free Trade Agreement (NAFTA) 1993:**

This regional treaty was a Free Trade Agreement concluded in December 1993 among the Governments of Canada, the United Mexican States of America. One of the areas covered by the treaty is ‘Intellectual Property’, which is defined to mean Copyrights and related rights, Trademarks, Patents, Layout Designs of semiconductor integrated circuits, Trade Secrets, Plant Breeders’ rights, rights in Geographical Indications and Industrial Design Rights. The definition of ‘Geographical Indications’ and substantive provisions of protection under the treaty virtually identical to those in the TRIPS Agreement. Art.1712 (2) of the treaty defines Geographical Indications as follows

**“..... any indications that identifies a good as originating in the territory of a party or a region or locality in that territory, where a particular quality, reputation or other characteristics of the good is essentially attributed to its geographical origin”<sup>54</sup>**

This article provides limited protection for geographical indications similar to the revisions of Art.22 of the TRIPS Agreement. For example, a party may continue using a particular geographical indication of another party in connection with goods or services providing that they do so in good faith and have done so for at least 10 years before the date of signature of NAFTA. Trademarks containing or consisting of geographical indications with respect to goods that do not originate in the indicated territory, may be refused (or their registration may be invalidated if already granted), only if use of this indication is of such a nature as to mislead the public as to the geographical origin. It has become customary to incorporate provisions for the

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<sup>53</sup> The provisions that lay down these obligations are contained in Arts. 3 and 4 of the TRIPS Agreement. Australia and the United States initiated dispute settlement procedures against the European Community for its non-compliance with these obligations. See the panel reports contained in WTO Documents WT/DS174/R and WT/DS290/R.

<sup>54</sup> See the text of NAFTA on <http://www.nafta-sec-alena.org>.

protection of geographical indications in Free Trade Agreement.<sup>55</sup> This is the case in the North America Free Trade Agreement between the United States, Canada and Mexico, the free trade between Mexico and Chile,<sup>56</sup> between Canada and Mexico,<sup>57</sup> between Bolivia and Mexico, between Canada and Chile, between EC and Mexico, EC and Chile

### **2.2.2. European union regulation 1151/2012 – quality scheme for agricultural products and foodstuffs:**

This Regulation aims to help producers of agricultural products and food stuffs to communicate the product characteristics and farming attributes of those products and food stuffs to buyers and consumers, ensuring, fair competition for farmers and producers of agricultural products and food stuffs having value –adding characteristics and attributes and the availability to consumers of reliable information pertaining to such products.<sup>58</sup> Europe has always recognised the need to preserve and maintain high quality in such origin-specific goods.

The Regulation recognizes that GIs give a competitive advantage to producers and enable consumers to make more informed choices by providing clear information on origin-specific products and their characteristics. To preserve this consumer trust, the European law mandates:

- (i) Effective verification and controls at multiple levels in the supply chain, ensuring compliance with product specification before placing it in the market
- (ii) Market monitoring of the use of the names to ensure legal compliance.

### **2.3. Geographical Indications in India:**

The evolution of Geographical Indications in India is divided in two phases

- A. Before the implementation of Geographical Indications of Goods (Registration and Protection) Act, 1999

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<sup>55</sup> See full list of Free Trade Agreement on <http://www.sice.oas.org>.

<sup>56</sup> Free Trade Agreement between the Government of the Republic of Chile and the Government of the United Mexican State, entered into force on 1<sup>st</sup> August 1999, see on <http://www.sice.oas.org>. Chile has undertaken to recognise “Tequila” and “Mezcal” and Mexico- “Pisco”, “Pajarete”, “Vino Asoleado” (the only legally recognised Chilean Geographical Indications).

<sup>57</sup> NAFTA was signed on 17<sup>th</sup> December 1993 and came into force on 1<sup>st</sup> January 1994

<sup>58</sup> <https://www.ecolex.org/details/legislation/regulation-eu-no-11512012-of-the-european-parliament-and-of-the-council-on-quality-schemes-for-agricultural-products-and-foodstuffs-lex-faoc118307/>

B. After the implementation of Geographical Indications of Goods (Registration and Protection) Act, 1999

### **2.3.1. Before the implementation of Geographical Indications of goods (registration and protection) act, 1999:**

In India GIs is governed by common law principles before implementation of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Prior to the Act, the Indian Judiciary applied the principle of passing off to protect geographical indications. They have entertained petitions in cases of infringement of geographical indications that misleads the consumer as to the place of origin or constitute unfair competition. In such cases they have granted relief including grant of injunction restraining the defendant to use such indications.<sup>59</sup>

There have been several decisions by the various High Courts as well as the Trademark Office in India, refusing to register trademarks containing geographical indications as well as trademarks suggestive of famous geographical indications thereby upholding the rights in geographical indications. Interestingly, most of these pertain to the protection of the geographical indication 'Scotch whisky'.

#### **2.3.1.1. Scotch Whisky Association v. Dyer Meakin Breweries<sup>60</sup>:**

The genesis of this case was an application filed by Dyer Meakin Breweries, the defendant company, to register the mark 'Highland Chief' in respect of a product described as 'malted whisky'. The trademark also contained the device of the head and shoulders of a Scottish gentleman wearing feather bonnet and plaid and tartan edging. Highland is the region in Scotland most famous for Scotch whisky. The said application was opposed by the SWA which is a non-trading body consisting of producers and sellers of Scotch whisky and established with the principal aim to protect the interests of these producers and sellers in the name Scotch whisky.

It was contended by the association that the description Scotch whisky was not generic but related solely to the geographical origin of the product and meant whisky distilled in Scotland. Further the words 'Highland Chief' when used in relation to malted whisky would be assumed

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<sup>59</sup> Suresh C. Srivastava, Geographical Indications under TRIPs Agreement and Legal Framework in India, Vol.9, (March 2004) Journal of Intellectual Property Rights, pp 105-117.

<sup>60</sup> AIR 1980 Del 125.

by purchasers to relate to a product of Scotland since the Highlands of Scotland are an area world famous for the production of whisky. It was also stated that the impression created by the words 'Highland Chief' was further reinforced as the label bore prominently the device of the head and shoulders of a gentleman dressed in Scottish Highland costume wearing, inter alia, feather bonnet and plaid edged with tartan a well-known symbol of Scottish origin. It was submitted that the mark in question was likely to deceive or cause confusion as to origin and source. In its defence, Dyer Meakin Breweries conceded that the expression 'Scotch whisky' meant whisky distilled in Scotland and that it could only be used in relation to a product wholly distilled in Scotland. They argued that, however, the label bore the name and place of manufacture and bottling in bold letters and set forth that it was indeed a product of India and therefore, there could not be any confusion and deception. The Assistant Registrar of Trademarks rejected the opposition on the ground that there was no evidence to indicate that the purchasing public in India associated the words 'Highland Chief' with whisky produced in Scotland. However, SWA's appeal against the decision before the single judge of the High court of Delhi was accepted and the application filed by Dyer Meakin was dismissed. Dyer Meakin appealed to the Appellate Bench of the High Court of Delhi. By a detailed order, the Appellate Bench upheld the order of the Single Judge and held that: "It would thus follow inferentially that the words 'Highland Chief' by themselves or because of the presence of pictorial representation of the Highlands on being used a trademark in respect of the applicant's whisky, which admittedly is not Scotch whisky, would be likely to deceive or confuse unwary purchasers in thinking that the whisky is Scotch whisky".

The Appellate Bench further went on to hold the use of Highland Chief as a case of false trade description within the meaning of the Indian Trade and Merchandise Marks Act 1958. Under the Act, 'false trade description' means *inter alia*, a trade description which is untrue or misleading in a material respect as regards the goods to which it is applied. The expression 'trade description' is further defined to mean description as to the place or country in which any goods are made or produced. The device being a well-known symbol of Scottish origin would enhance the impression made by the words 'Highland Chief' having some nexus with Scotch whisky produced in Scotland. Highlanders being Scottish soldier are well-known in history and literature and the Highlands are well-known as the best region of Scotland producing Scotch whisky. It was held that the trademark would, therefore, be a false trade description disentitled to protection under the Act.

### **2.3.1.2. Scotch Whisky Association & Anor v. Parvara Sahakar =Sshakar Karkhana Ltd<sup>61</sup>:**

This was a passing off action initiated the SWA along with a producer of Scotch whisky against the defendants for a declaration that their use of the device of the Scottish Drummer wearing a kilt or the tartan band or the word 'Scotch' coupled with the description 'Blended with Scotch' on their Indian whisky sold under the marks 'Drum Beater' and 'Gold Tycoon' would amount to passing off its whisky as Scotch whisky, thereby misleading other trades and customers and damaging the reputation and goodwill of Scotch whisky on these fact the Bombay High Court held:

- (i) The plaintiff has sufficient interest and locus standi to prevent passing off of Indian whisky manufactured by defendant as 'Scotch whisky' and to prevent damage to reputation and goodwill of Scotch whisky.
- (ii) The plaintiffs have made out a strong case that the defendants are passing off their goods as Blended Scotch whisky or goods closely and substantially associated with Blended Scotch whisky when in fact they are not. The plaintiffs have therefore made out a case for grant of an interim injunction on merits of the case.
- (iii) Even unintentional misrepresentation is also actionable is unfortunate in the sense that the defendants have resorted to unfair means by using the words 'Blended with Scotch' and indulged in colour imitation and unfair trading in an attempt to appropriate the plaintiffs' goodwill in Scotch whisky trade.
- (iv) The defendant is restrained from advertising or offering sale or distributing in any country whisky which is not Scotch whisky with the description 'Blended with Scotch whisky', 'Blended Scotch, whisky or 'Blended with six-year-old Scotch' or 'Blended with six-year-old vatted malt Scotch' or the Scotch or the impugned labels or the impugned carton with the mark 'Gold Tycoon' containing the word 'Scotch' description 'Blended Scotch' whisky or 'Blended with six years'.

From the aforesaid decision it is evident that the Judiciary in India is affording adequate protection to geographical indications even in the absence of any legislation in force. It is significant to note that such protection was afforded much before the TRIPs Agreement came into force.

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<sup>61</sup> AIR 1992 Bom. 295.



### **2.3.1.3. Imperial Tobacco Co. of India Ltd v. Registrar of Trade Marks & Anr<sup>62</sup>:**

Can geographical name without any relevance to the trade be registered as a trademark? This issue was raised in this case. The Imperial Tobacco Company of India applied to Registrar of Trademarks for registration. The trademark registration is a label, used as wrapper of packets of cigar bearing the device of snow clad hills in outline with the ‘Simla’ written prominently in various panels of the label small inscription that the content is a product of the appellat company. The registrar rejected the application for registration. There upon the company filed an appeal before the Calcutta High Court. The Calcutta High Court while disallowing the appeal laid down the following principles:

- (i) No trademark should be allowed to be registered which may hamper or embarrass the traders or trade now or in future in respect of the place or country which is proposed to be registered.
- (ii) In view of the imprint of snow clad hills in outline in the trade ‘Simla’ the ordinary or geographical significations obvious and has no reference to the quality or place of origin of the goods. Also ‘Simla’ is too prominent city, the capital of Himachal Pradesh, well-known in the country and abroad and in its ordinary or geographical significance it is inherently neither distinctive nor adapted to distinguishing the goods of the appellat as a particular trader from those of others, and is also hit by the provisions of Sec.9 subsection (1), cl (d) of the Trade and Merchandise Marks Act, 1958.

### **2.3.1.4. Khoday Distilleries Ltd v. Scotch Whisky Association and Anr<sup>63</sup>:**

This case was an appeal before a single judge of the High Court of Madras against an order passed by the Assistant Registrar of Trademarks in a rectification, expunging the trademark ‘Peter Scot’ registered in the name of Khoday Distilleries. The rectification application was filed by the Scotch Whisky Association on the basis that the words ‘Peter Scot’ were likely to deceive or cause confusion as to origin. Aggrieved by the order, Khoday Distilleries, the defendant/appellant filed this appeal. The rectification action was filed against the appellat’s mark ‘Peter Scot’ used in respect of whisky manufactured in India. Besides the rectification action, the respondents had also filed a passing off suit before the High Court of Bombay alleging that the whisky sold by the appellat under the name ‘Peter Scot had resulted in the passing off the goods of the appellat as that of the manufacturer of Scotch whisky in Scotland

<sup>62</sup> AIR 1997 Cal 413.

<sup>63</sup> AIR 1999 Mad 274.

who are well known for the Scotch whisky manufactured by them and which is universally known as Scotch whisky. In view of the rectification action, the proceedings in a suit were kept in abeyance. In the rectification proceedings, the respondents filed an affidavit by one Peter Jeffery Warren who along with this father was in the employment of the appellants for some time. During that period Mr. Warren and his father Peter Warren had helped the appellant set up their distillery. Mr. Warren stated in his affidavit that the trade name 'Peter Scot' might have been coined with his father in mind, i.e., using his first name 'Peter' and his nationality 'Scot'. The appellants did not dispute the contents of this affidavit.

Based on this affidavit and other evidence, the respondent, the SWA argued that the use of the word 'Scot' was likely to result in deception and confusion as to the customers were likely to be misled into thinking that the use of the name 'Scot' as part of the mark under which the whisky is sold would indicate that the whisky was of Scottish origin. It was submitted that the word 'Scott' formed part of the names of most distilleries in Scotland.

In their defence, the appellants argued that there was delay and acquiescence in bringing the action since they had been using this marks since 1970. Further, the likelihood of deception was nil since in the bars and restaurants, Peter Scot was listed under Indian whiskies and never as a Scotch whisky.

The cases discussed above are the most prominent ones upholding the rights in geographical indications even before the implementation of Geographical Indications of Goods Act, 1999. There are many more reported cases where courts and tribunals have upheld the rights in famous geographical indications, such as Champagne and Scotch whisky through passing off actions, trademark opposition proceedings and trademark cancellation action.

### **2.3.2. After the implementation of Geographical Indications of goods (registration and protection) act, 1999:**

India enacted its legislations for geographical indications to put in place the national intellectual property laws in compliance with India's obligations under TRIPS Agreement. Under the purview of the Geographical Indications of Goods (Registration and Protection) Act (hereinafter GIGA), which came into force, along with the Rules, with effect from 15<sup>th</sup> September 2003, the Central Government has established the Geographical Indications Registry with all India jurisdiction, at Chennai, where right holders can register their geographical

indications. Yet it is interesting to note that till the enactment of GIGA there was no separate law in India offering specific protection to geographical indications.<sup>64</sup>

The rationale behind a States' choice in dealing with a geographical indication through its trademark laws was the British Legacy which included inter-alia, the attitude that the name of a place is a part of the common language in its ordinary significance; the need to avoid a monopoly over trade and the requirement that the name be distinctive in order to qualify for registration. In fact there were three alternative ways in which the then existing legal system of the country could have been utilized for preventing misuse of geographical indications.,<sup>65</sup> (ie) Consumer Protection Act, 1986, passing off action in Courts, Trade Marks Act, 1999. The GIGA enables the rightful user to prevent the misuse of such products by a third party who describes the products of having a specific origin and unique qualities.<sup>66</sup> It is a different form of Intellectual Property wherein the rights possessed by a community cannot be transmitted or assigned to any other community.

## **2.4. Evolution of Traditional Knowledge in international sphere:**

Over the last 80 years, the status of indigenous people and of the TK they owe has found recognition at the international level. This recognition has led to a various landscape of treaties, declarations and charters. It will be argued that such evolution is certainly useful and encouraging, however it is still insufficient in order to constitute a convincing international legal-frame for the protection of TK. As a matter of fact, even if the concept of TK is now well present in different fields of international law, a protective system for it, both through IP or sui generis, is missing.

### **2.4.1. ILO convention no. 107:**

In 1952 the International Labour Organization (ILO),<sup>67</sup> together with other UN agencies, initiated the Andean Indian Programme for the development of South American native

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<sup>64</sup> Dr.Sudhir Aravindan and Ms. Arya Mathew, The Protection of Geographical Indication in India – Case Study on Darjeeling Tea, available at <http://www.altacit.com/wp-content/uploads/2015/03/The-Protection-of-Geographical-Indication-in-india-Case-Study-on-Darjeeling-Tea.pdf>

<sup>65</sup> Kasturi Das, International Protection of India's Geographical Indications with Special Reference to "Darjeeling Tea", *Journal of World Intellectual Property*, 08/2006, vol 9(5), pp. 459-495 at 465

<sup>66</sup> <https://www.gitagged.com/gi-act-of-india/>

<sup>67</sup> An international organization created by the Versailles Treaty and affiliated with the League of

Indians. Later, in 1957, the same agency adopted the “Convention concerning the Protection and the Integration of Indigenous and other Tribal and Semi-tribal Populations in Independent Countries” (“ILO Convention No. 107”) that recognises the right of ownership for the populations over their traditional territories.<sup>68</sup> However, the underlying rationale of the Convention was still to promote the integration of the indigenous people inside the broader social order and not to preserve strictly the uniqueness of these societies. In this sense it followed the most popular line of that period according to which the indigenous had to be assimilated into the majority population.<sup>69</sup>

#### **2.4.2. ILO convention no 169 (convention concerning indigenous and tribal peoples in independent countries):**

The ILO Convention No. 107 has been rejected as it was too “integrationist” and replaced in 1989 by the “Convention Concerning Indigenous and Tribal Peoples in Independent Countries” (“ILO Convention No. 169”).<sup>70</sup> This Convention recognises in its Preamble “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live (...).” This treaty did not explicitly mention about Traditional Knowledge and Traditional Cultural Expression but still there are relevant provisions. Firstly, the Art. 23(1) provides that “Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. (...).” Secondly, Art 13(1) stresses the importance of the land and of indigenous’ rights on it and states that “Governments shall respect the special importance

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Nations. In 1946 the ILO became a special agency of the United Nations with headquarters in Geneva.

<sup>68</sup> Convention concerning the Protection and the Integration of Indigenous and other Tribal and Semi-tribal Populations in Independent Countries (adopted 26 June 1957, into force 2 June 1959) 328 UNTS 247 (ILO Convention 107/1957).

<sup>69</sup> Stoll and von Hahn in von Lewinski (n 5) 9-10.

<sup>70</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, into force 5 September 1991).

<[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)>.

for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories”. Thirdly, Art. 15(1) provides that “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”

### **2.4.3. International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>71</sup>**

#### **And International Covenant on Civil and Political Rights (ICCPR)<sup>72</sup>:**

The two treaties share a common provision which is inscribed in the Art. 1(2) which says that “all people may, for their own ends, freely dispose of their natural wealth and resources.” This provision is considered to be inapplicable to indigenous people,<sup>73</sup> however, some scholars do not exclude that it could become relevant in the context of the recognition and protection of TK and indigenous resources in general.<sup>74</sup>

### **2.4.4. The Convention on Biological Diversity (CBD):**

The CBD, signed in Rio de Janeiro on 5 June 1992, is an international treaty aimed at developing strategies for the conservation of biodiversity and of the sustainable use and fair sharing of biologic resources.<sup>75</sup> The cornerstone of such system is represented by the principle, enshrined in art 3, that a State has the sovereign right to exploit the genetic resources present on its territory pursuant to its environmental policies. This reversed the pre-existing idea that genetic resources were the “heritage of mankind” and, therefore, freely

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<sup>71</sup> International Covenant on Economic, Social and Cultural Rights (adopted 19 December 1966, into force 3 January 1977) 993 UNTS 3 (ICESCR).

<sup>72</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, into force 23 March 1976) 999 UNTS 171 (ICCPR). For a detailed analysis of this treaty, see Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (2<sup>nd</sup> Edition, Kehl 2005).

<sup>73</sup> This has been decided in UN Human Rights Committee (HRC) ‘Chief Bernard Ominayak and Lubicon Lake Band v. Canada’ (26 March 1990) CCPR/C/38/D/167/1984 <<http://www.refworld.org/docid/4721c5b42.html>>.

<sup>74</sup> Stoll and Von Hahn in Von Lewinski (n 5) 23.

<sup>75</sup> This position was stated, for instance, in art 1 of the International Undertaking on Plants and Genetic Resources adopted by the Food and Agriculture Organization of the United Nations in 1983. Twenty years later this principle was rejected by the international community and the undertaking was revised in 2004 with the adoption of the International Treaty on Plant and Genetic Resources for Food and Agriculture (ITPGRFA).

accessible. Art. 8(j) of the Convention important both from a substantive and terminological point of view. For the first time, it is explicitly recognises that local communities are the depositaries of a body of knowledge manifested through their traditional lifestyle that can be important for the protection and conservation of biodiversity and environment.<sup>76</sup> TK is further mentioned in art 10(c) according to which Contracting Parties shall: “Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. However, the actual meaning of these provisions must not be misunderstood. The CBD does not consider TK protection as an end but as a mean. The wording of art 8(j) makes clear that TK has to be protected only if it is relevant to the conservation and sustainable use of biodiversity. In addition, the “equitable sharing of the benefits” is not described as a mandatory goal of the Convention, rather it is only “recommended”.<sup>77</sup> Also art 10(c) takes into consideration TK only as long as it is “compatible with conservation or sustainable use requirements”. Any other forms of TK that are not useful to the achievement of these goals, and of the abovementioned goals of the Convention, are not taken into consideration. Therefore, the CBD can be considered neither an instrument to protect TK specifically, either through IP or in a sui generis way,<sup>78</sup> nor the codification of an international rule as TK protection remains subject to domestic legislations. A counterproof of the fact that the CBD is not the appropriate forum to discuss TK protection through IP is that albeit the Conference of the Parties to the CBD has focused on art 8(j) and its implementation at least since 1996,<sup>79</sup> no real development has occurred. Although different countries have been looking at the CBD in order to find a way to protect TK especially through IP, they have never been able to find any guidance in this area.<sup>80</sup>

In conclusion, the CBD is important as it recognises that biological resources are not freely accessible by everyone but they belong to the territory where they can be found. It also

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<sup>76</sup> Loli Frater, *Protecting Indigenous Knowledge: The Role of the Convention on Biodiversity and Intellectual Property Rights* (The Centre for Business Relationships, Accountability, Sustainability and Society, Working Paper Series No. 52, 2009) 16

<sup>77</sup> For a critical analysis of art 8(j) CBD see Gregory F Maggio, ‘Recognizing the Vital Role of Local Communities in International Legal Instruments for Conserving Biodiversity’ 1998 16 *UCLA J of Environmental L & Policy* 179, 211-213.

<sup>78</sup> Nuno Pires de Carvalho, ‘From the Shaman’s Hut to the Patent Office: A Road under Construction’ in Charles Mc Manis Edition, *Biodiversity and the Law: Intellectual Property, Biotechnology & Traditional Knowledge* (Earthscan 2007) 262.

<sup>79</sup> For a recount of the discussions see, Stoll and Von Hahn in Von Lewinski (n 5) 38-40.

<sup>80</sup> Pires de Carvalho (n 24) 262.

explicitly confirms the existence of a body of traditional knowledge related with biodiversity and strictly linked to the land. However, it does not create a mandatory rule prescribing the protection of TK per se. In addition, the CBD Conference has proved not to be a good forum where to address these issues. Nevertheless, the language of the Convention has been historically important as it has inspired the drafting of other international treaties, dealing with different subjects that have taken the concept of TK into account.

#### **2.4.5. International Treaty on Plant and Genetic Resources for Food and Agriculture:**

FAO conference passed the International Treaty on Plant and Genetic Resources for Food and Agriculture (“ITPGRFA” popularly known as the International Seed Treaty).<sup>81</sup> Such treaty has been drafted, in harmony with the Convention on Biological Diversity, as comprehensive international agreement which aims at guaranteeing food security through the conservation, exchange and sustainable use of the world's Plant Genetic Resources for Food and Agriculture (PGRFA), as well as the fair and equitable benefit sharing arising from its use.<sup>82</sup> The treaty makes various reference, albeit often indirectly, to agricultural TK.<sup>83</sup> For instance, under art 5(c) Contracting Parties bind themselves to: “Promote or support, as appropriate, farmers and local communities’ efforts to manage and conserve on---farm their plant genetic resources for food and agriculture”. Another indirect reference to TK is made under art 5(d) according to which Contracting Parties have to: “Promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities”. Finally, art 9, dedicated to farmer’s rights recognises, at paragraph 1, the crucial importance of farmer’s local communities to conserve and develop plant genetic resources,<sup>84</sup> while at paragraph 2(a) it binds Contracting Parties to take measures to protect and promote the “protection of

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<sup>81</sup> International Treaty on Plant and Genetic Resources for Food and Agriculture (adopted 3 November 2001, into force 29 June 2004) ITPGRAFA<<ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf>>.

<sup>82</sup> ITPGRFA art 1.

<sup>83</sup> For a commentary see Gerald Moore and Witold Tymowski, Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture (IUCN 2005).

<sup>84</sup> ITPGRFA art 9(1) “The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.”

traditional knowledge relevant to plant genetic resources for food and agriculture.” This latter provision, art 9(2) (a) ITPGRFA, is quite explicit while mentioning TK. Once again, however, its extent must be read correctly. It does not protect TK *per se* but only when related to genetic resources for food and agriculture. Therefore it is even more restrictive than art 8(j) CBD that, at least, encompasses a wider variety of GRs.<sup>85</sup> this is neither a nascent IPR nor an order to create it at international level since the means of protection are left to the free choice of Contracting Parties.<sup>86</sup> However, the provision is important as it recognises the existence of a food-related TK the protection of which is a farmers’ right.

#### **2.4.6. Convention for the Safeguarding of the Intangible Cultural Heritage (“CSICH”):**

This Convention was adopted by the UNESCO General Conference in 2003 and into force from April 2006<sup>87</sup> and recognised the Traditional Cultural Expression. The parallelism between the concepts of TK and Intangible Cultural Heritage (“ICH”) is made clear by the definition of the latter provided by the Convention:

Intangible Cultural Heritage means the practices, representations, expressions, knowledge, and skills (...) that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. It has to be noticed that because the cultural heritage is defined as “intangible”, it is natural to think of it as a natural object for IP or IP-like protection.

#### **2.4.7. United Nation Convention to Combat Desertification (UNCCD)<sup>88</sup>:**

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<sup>85</sup> Moore and Tymowski (n 29) 72.

<sup>86</sup> Stoll and von Hahn in von Lewinski (n 5) 43.

<sup>87</sup> UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage  
<<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>>.

<sup>88</sup> United Nation Convention to Combat Desertification (adopted 12 September 1994) A/AC.241/27 (UNCCD).



This treaty provides, under art 16(g), that the parties shall ensure adequate protection for TK as well as provide appropriate return for it. Art 17(c) states that financial benefits descending from the exploitation of TK has to be attributed to the owners of such knowledge. It is, therefore, crucial to notice that TK holders are vested in ownership. Finally, under art 18, TK has to be collected into databases and the content of these is the actual object of ownership. Pires de Carvalho has interestingly pointed out that the UNCCD seems to contain a miniature of a *sui generis* TK protection system. Such miniature is, however, insufficient because the scope of the convention is too narrow and it does not provide for a national treatment clause to avoid discriminatory treatment of foreigners.<sup>89</sup> In addition, it can be noticed that the idea of creating an artificial right of ownership around an intangible manifestation of culture strongly reminds an IP model of protection.

#### **2.4.8. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>90</sup>:**

The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. This non-binding document sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations."<sup>91</sup> Many articles of the Declaration mention TK and TCEs in various forms, however, the wider is art 31(1) according to which: Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the

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<sup>89</sup> Pires de Carvalho (n 24) 263-264.

<sup>90</sup> Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) A/RES/621/295 (UNDRIP) <[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)>.

<sup>91</sup> UN Permanent Forum on Indigenous Issues, 'FAQs on the Declaration on the Rights of Indigenous People' <[http://www.un.org/esa/socdev/unpfii/documents/faq\\_drips\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf)>.

right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

The paragraph is very interesting for at least four reasons. First, it shows how the terminology “traditional knowledge” has become standard in international law; second, it mentions TK and TCEs together, emphasizing the continuity and the proximity, rather than the clear distinction, between the two concepts; third, it gives numerous examples of different manifestations of the two concepts, thus emphasizing their complexity and width; fourth and final, it explicitly recognises that TK can be object of IP protection.

It is relevant to notice how the right to control and protection of TK and TCEs mentioned in art 31 is firmly linked to the land.<sup>92</sup> For this reason, under art 32(1)(2), indigenous peoples have the right to determine their priorities and strategies and the States have to cooperate with and provide information to local populations before starting any project that will affect the territories.

## **2.5. Role of World Intellectual Property Organization:**

### **2.5.1. WIPO/UNESCO model provisions for national laws on the protection of folklore against illicit exploitation and other prejudicial action:**

During the late 70’s and early 80’s WIPO worked on the issue of folklore together with the United Nations Educational, Scientific and Cultural Organization (“UNESCO”). The result was the successful WIPO/UNESCO Model Provisions for National Laws on the Protection of Folklore against Illicit Exploitation and other Prejudicial Action. It was adopted in 1982 and used as a model by numerous Member States looking for a sui generis protection of folklore.<sup>93</sup>

### **2.5.2. Intergovernmental committee on Intellectual Property and Genetic**

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<sup>92</sup> Stoll and von Hahn in von Lewinski (n 5) 28.

<sup>93</sup> Stoll and Von Hahn in Von Lewinski (n 5) 36.

## **Resource, Traditional Knowledge and Folklore (IGC):**

In the field of TK, WIPO carries out an important work through the IGC. Such organ started operating in 2001 on the basis of the results of fact-finding missions conducted in 1998 and 1999.<sup>94</sup> It focuses on TK, TCEs and GRs in order to develop improved mechanisms of protection and other papers. In the past biennium the IGC has received mandate for conducting text-based negotiations with the goal of reaching agreement on a text(s) of an international legal instrument(s) that will ensure the effective protection of GRs, TK and TCEs.<sup>95</sup> The 25<sup>th</sup> session of the works of the IGC, held in Geneva (Switzerland) from 15 to 24 July 2013, has discussed, among the others, two draft articles, one on the protection of TK and another on the protection of TCEs. In addition, it has presented a “Consolidated Document Relating to Intellectual Property and Genetic Resources”.<sup>96</sup> Apparently, the further development of these three documents will represent the core of IGC’s activity for the next biennium.<sup>97</sup>

### **2.6. Evolution of Traditional Knowledge in India:**

India is a country, which has been nurturing a tradition of civilization over a period of about 5,000 years. India’s ancient scriptures consist of the four Veda, 108 Upanishads, 2 epics, Bhagavad-Gita, Brahma sutras, eighteen Puranas, Manusmriti, Kautilya Shastra and smritis. Biologically speaking, India is one of the 12 most biodiversity countries of the world.

With only 2.4 percent of the world’s land area, India accounts for 7 to 8 percent of the recorded species of the world. India’s diversified agro-climatic nature is a blessing. The whole world has

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<sup>94</sup> See Antons (n 2) 47-48 and WIPO, Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999) (WIPO 2001). <sup>45</sup> Assemblies of Member States of WIPO (20<sup>th</sup> ordinary session, 26 September – 5 October 2011), ‘Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore’ <[http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_mandate\\_1213.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_1213.pdf)>.

<sup>95</sup> Assemblies of Member States of WIPO (20<sup>th</sup> ordinary session, 26 September – 5 October 2011), ‘Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore’ <[http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_mandate\\_1213.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_1213.pdf)>.

<sup>96</sup> All meeting documents can be found here.

<[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=29683&lang=EN#docs](http://www.wipo.int/meetings/en/details.jsp?meeting_id=29683&lang=EN#docs)>.

<sup>97</sup> WIPO, ‘Report of the Proposals Made by Delegations Regarding Future Work of the IGC, Following the Review and Stock-taking Conducted under Agenda Item 7, as at the Close of the Session on July 24, 2013’ (24 July 2013) WIPO/GRTKF/IC/25/REF/.

26 agro-climatic zones and India alone has 16 agro-climatic zones. India's diversified agro-climatic zones start from the Trans-Himalayan region to the coastal areas of Kerala, Andaman and Nicobar, which are home to a varied range of medicinal plants like herbs, shrubs, tubers, mangroves and rhizomes. The Botanical Survey of India and the Zoological Survey of India have recorded over 47,000 species of plants and 81,000 species of animals.<sup>98</sup>This multitude of natural wealth has created a renewed interest in the traditional medicinal system, which includes the Unani, Yoga, Ayurveda, Homeopathy and Siddha systems. The Ayurveda is the oldest and most effective of these alternative systems of medicine. The ancient scriptures of the Ayurveda are full of instances where herbs with medicinal properties were used not only for curative purposes but also for increasing physical and mental efficiency. In 2000, CSIR found that almost 80 per cent of the 4,896 references to individual plant based medicinal patents in the United States Patents Office that year related to just seven medicinal plants of Indian origin. Three years later, there were almost 15,000 patents on such medicines spread over the United States, UK, and other registers of patent offices. In 2005 this number had grown to 35,000, which clearly demonstrates the interest of developed world in the knowledge of the developing countries. Conveniently, none of the patent examiners are from developing countries, allowing a virtual free pass to stealing indigenous knowledge from the Old World.<sup>99</sup> In India, Traditional Knowledge is protected not by separate legislation but indirectly through different legislations.

### **2.6.1. Traditional Knowledge in Indian constitution:**

The Constitution of India does not directly address the issue of protection of traditional knowledge. Article 48(A) of the Constitution refers to the State's obligation to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51 (A)(g) Imposes a duty upon the citizens of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife.

As regards protection of TCEs, Article 29 of the Constitution recognizes as a "Fundamental Right" (Part III) the protection of the culture of minorities. According to Article 29, "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." It is possible to protect

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<sup>98</sup> Simone Tonina "Indigenous Traditional Knowledge and the IPRs" available at [www.parl.gc.ca/information/library/PRBpubs](http://www.parl.gc.ca/information/library/PRBpubs).

<sup>99</sup> Martin van Ameijde, "Biopiracy: The need for a protective solution?" available at <http://www.jur.lu.se/Internet/Utbildning/kurser/JCA803.nsf/43e828219552/>.

the folklore of the distinct groups in India based on this provision. However, the majority of the TCEs existing and misused now in India belong to small communities who do not come under the scope of the aforementioned Constitutional provision.<sup>100</sup>

The only other general provision in the Constitution that can be identified as a source to protect TCEs is Article 51 A (f) of the Constitution. It is the fundamental duty of every citizen of India "to value and preserve the rich heritage of our composite culture. "Furthermore, considering the special cultural identity of the tribal population in India, the Constitution envisages special protection of the indigenous communities. The areas where there are only tribal communities, as per Article 371 read with the Schedule VI of the Constitution, are permitted to have separate Autonomous Councils for self-governance in accordance with their customary laws.<sup>101</sup>

### **2.6.1.1. Patent Law:**

Patent Law Amendment, 2002 reflects concern for traditional knowledge. The following provisions are supportive to the protection of traditional knowledge.

1. Innovations based on traditional knowledge or aggregation or duplication of known properties of traditional knowledge is not patentable.<sup>102</sup>
2. It is compulsory for patent applicant to disclose source and geographical origin of biological material used in invention.<sup>103</sup>
3. Failure to disclose source and geographical origin of biological material used in invention would be good ground for opposing patent application.

### **2.6.1.2. Bio-Diversity act, 2000:**

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<sup>100</sup> P.V.Kutty, G.Valsala, "National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Experiences: India, Indonesia and the Philippines", (2002), available at <http://www.wipo.int/tk/en/studies/cultural/expressions/study/kutty.pdf>.

<sup>101</sup> The normal Laws of the land are applicable only if accepted by the community and the Council has the power to make laws even to protect their social customs. For other parts of the country, as per Schedule V of the Constitution, the government has the power to create scheduled areas to protect the interests of the tribes. The application of the normal laws, if they are in conflict with their customs, can be prohibited by the head of the State. The tribes not falling in the above categories are subjected to the normal laws of the land (Kutty 2002: 19). To some extent while there may be some recognition of customary rules of use within communities, such as at religious and spiritual occasions like marriages, birth and death rituals etc., there exists no law in India presently that directly prohibit outsiders from misappropriating their folk arts and practices.

<sup>102</sup> See Sec. 3 (p), Patent Act.

<sup>103</sup> Ibid. Sec. 10(4d) (d).

The main objective of biodiversity legislation is “to provide for conservation of biological diversity, sustainable use of its component and equitable sharing of the benefits arising out the use of biological resources and for matters connected therewith or incidental there to”. National Biodiversity Authority (NBA) is constituted under this Act and empowered to check bio-piracy and to regulate transfer the result of any research.<sup>104</sup> Section 4 of the Biodiversity Act provides, no person shall without previous approval of the NBA transfer the results of any research relating to any biological resources occurring or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management. Sec. 6 of the Act provides, “No person shall apply for any intellectual property right by whatever name called in or outside India for any invention based on any research or information on biological resource obtained from India without previous approval of National Biodiversity Authority”. Act seeks to constitute State Biodiversity Board (SBB) to promote and protect biodiversity.<sup>105</sup> No Indian citizen or person or body corporate is allowed to obtain biological resource for commercial utilization without obtaining prior intimation of S.B.B. However, this recognizes traditional knowledge of the local people and communities like Hakism practising indigenous medicine. They are kept out of intimation restriction. The Act also provides post-intimation strategy. The S.B.B, is empowered to prohibit and restrict if it is of opinion that such activity detrimental or contrary to the objectives of conservation and sustainable use of biodiversity and sharing benefits. Instead of intimation strategy there should have prior approval arrangement. The time gap between intimation and post-intimation enquiry is wide enough. The large quantity of bio diversities will be easily removed if the time gap between intimation and prohibition order is wide.

### **2.6.1.3. Plant Variety and Farmer’s Right act, 2001:**

This is very important legislation enacted by the Parliament to honour India’s obligation in TRIPs. This is sui generis law with respect of plant variety and farmer’s right. The breeding activities move around genetic resources. The Act covers interplay of breeding, genetic resources and traditional knowledge. The Act has the following important provisions for recognizing traditional knowledge.

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<sup>104</sup> Biodiversity Act of 2000, Chapter 3, III, IV and V.

<sup>105</sup> Biodiversity Act of 2000, Chapter VI.

1. The Act recognized concept of benefit sharing between provider and recipient of the plant genetic resources
2. The Applicant seeking registration of variety must disclose geographical location from where genetic material has been taken while evolving new variety.
3. If the applicant fails to disclose contribution of farming community, his application would be rejected.

#### **2.6.1.4. Traditional Knowledge Digital Library (TKDL):**

It all started in June 1999, at the third plenary session of the Standing Committee on Information Technology of World Intellectual Property Organization under the chairmanship of Dr. R.A. Mashelkar, the then Director General of Council of Scientific and Industrial Research. This Committee recognised the need to create database of traditional knowledge and cultural expressions was felt.<sup>106</sup> The Planning Commission set up a task force headed by Dr. D. N Tiwari, its member for science and technology, and directions were issued to the Department of Indian Systems of Medicine and Homoeopathy (ISMH) to take measures towards the protection of Indian traditional knowledge in general and Ayurvedic in particular. The TKDL project was approved by the Cabinet Committee of Economic Affairs in January 2001; and in June 2001 a memorandum of understanding was signed between the Department of ISMH (later re-christened as the department of Ayurveda, Unani, Siddha and Homoeopathy (or department

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<sup>106</sup> According to Prof. Samir Brahmechhari, CSIR Director General, on an average, it takes five to seven years to Oppose a patent internationally and costs one to three crore rupees. See, 'Yoga Piracy: India shows whose guru By Kounteya Sinha, in the Times of India, New Delhi, 22 February, 2009. What is TKDL? It is a database with a tool to understand the codified knowledge existing for the Indian Systems of Medicine including Ayurveda, Siddha, Unani and existing for the Indian Systems of Medicine Including Ayurveda and Yoga as prior art. Not a diagnostic or usage database. TKDL is also not the prior art in itself; the Books on Indian Systems of Medicine are the prior art which act as the source of information for TKDL. However, TKDL contains the Scanned images of medicinal formulations from the original books. TKDL covers over two lakh formulations Which have been taken from original books. TKDL does not contain the entire information existing in the Indian Systems of Medicine. Rather than comprehensive, TKDL is a dynamic database, where formulations Will be continuously added and continuously updated according to the inputs from the users of the database. The information on traditional medicines appears in a standard format in TKDL. For example, formulations on Indian Systems of Medicine appear in the form of a text, which comprises the following main components: Name of the drug, Origin of the knowledge, Constituents of the drug with their parts used and their quantity, Method of preparation of the drug and usage of the drugs, and Bibliographic details. TKDL, gives modern names to plants (e.g. Curcuma longa for Turmeric), diseases (e.g., fever for jwar), or processes, mentioned in the literature related to Indian Systems of Medicine, and establishes relationship between traditional knowledge and modern knowledge.

of AYUSH) and the National Institute of Science Communication (or, NISCOM; later renamed as National Institute of Science Communication and Information Resources: NISCAIR).<sup>107</sup>

The Department of AYUSH and NISCAIR started in August 2005 the project on TKDL Siddha. In January 2008 the CSIR, the department of AYUSH and MDNIY<sup>108</sup> initiated the work for creating TKDL yoga. In July 2008 the APIC<sup>109</sup> met to discuss the clarifications sought by EPO<sup>110</sup> and gave clearance for signing of Access Agreement. The CSIR, in July 2008 itself, came out with TKDL database. The CSIR entered in to an Access Agreement with EPO on February 03, 2009. By February 2009, yoga about 600 postures like asanas etc had been digitized. According to the website of TKDL, the digital library has 91,720 traditional medicine formulations transcribed from 75 books on Ayurveda; 1, 29,520 from ten books on Unani; 15374 from fifty books on Siddha; and 1325 from fifteen books on Yoga. Thus the TKDL database presently contains 2,37,939 traditional medicine formulations transcribed from 150 books in these four systems of traditional Indian medicine. It is spread over about 35 million A-4 size pages in its printable form.

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<sup>107</sup> National Institute of Science Communication and Information Resources (NISCAIR) came into existence on 30<sup>th</sup> September 2002 with the merger of National Institute of Science Communication (NISCOM) and Indian National Scientific Documentation Centre (INSDOC). Both NISDOC, the two premier institutes of the Council of Scientific and Industrial Research (CSIR), were devoted to dissemination and documentation of S&T information. NISCOM had been in existence for the last six decades (first as two Publication Units of CSIR, which were merged to form the Publications Division, which was later renamed as Publications & Information Directorate and in 1996, as NISCOM). Over the years, NISCOM diversified its activities, and through a host of its information products, comprising research and popular science journals, encyclopaedic publications, monographs, books, and information services, it had been reaching out to researchers, students, Entrepreneurs, Industrialists, Agriculturists, Policy Planners and also the common man. INSDOC came into being in 1952 and was engaged in providing S&T information and documentation services through myriad activities such as abstracting and indexing, design and development of databases, translation, library automation, providing access to international information sources, human resource development, consultancy Services in setting up modern library-cum-information centres. INSDOC was also host to the National Science Library and the SAARC Documentation Centre. Now, with the formation of NISCAIR, all the above multi-facilities have been amalgamated, making NISCAIR, an institute capable of serving the society using modern IT infrastructure in a more effective manner and taking up new ventures in the field of science communication, dissemination and S&T information management systems and services. Broadly the core activity of NISCAIR will be to collect/store, publish and disseminate S&T information through a mix of traditional and modern means, which will benefit different segments of society.

<sup>108</sup> Morarji Desai National Institute on Yoga (MDNIY), New Delhi. It is collaborating with CSIR, Department of AYSUH and NISCAIR in the TKDL Project. Available at <http://mdniy.nic.in/>. Eight other well-known yoga institutions are also helping in the documentation of yoga for the TKDL.

<sup>109</sup> In August 2002, the Access policy Issue Committee (APIC) was constituted to (i) frame policies on accessing TKDL database, (ii) decide matters relating to dissemination of TKDL, and (iii) to meet defensive and positive objectives of TKDL.

<sup>110</sup> Mr. Gupta, the then Director of NISCOM, made in February 2001 a presentation at the International Patent Classification (IPC) Union on Traditional Knowledge Resource Classification (TKRC) to get established a WIPO-TK Task Force Consisting of USPTO, EPO, IPO, China and India.