SACRED BUT VULNERABLE: A CRITICAL EXAMINATION OF THE ADEQUACY OF THE CURRENT LEGAL FRAMEWORK FOR PROTECTION OF TRIBAL SACRED TRADITIONAL KNOWLEDGE

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Western intellectual property laws have come to dominate the global landscape in the age of commodification of information. The rights of indigenous persons and the sanctity of their traditions is one of the biggest casualties of granting proprietary rights to individual creators as envisaged by the current intellectual property regime. In article, we, shall attempt to explain the concept of sacred traditional knowledge through the prism of cultural relativism, emphasize the need for their protection, highlight the inadequacy of the current intellectual property regime so far as protection of these rights are concerned and explore the alternative approaches for affording protection to such knowledge. It is clarified that we do not provide any concrete working model for protection of such knowledge but only put forth the need to develop a sui generis system that would not confine itself to either the property rights or the commons approach and would integrate and amalgamate features from both whereby the community rights of indigenous persons and the knowledge that they hold dear and sacred will be recognized, revered and protected.

I. INTRODUCTION

"What kind of a civilization is it, what kind of humanism is it that plunders and destroys the sacred sites of power of traditional cultures due to its measureless hunger for resources and energy, that in its mania for progress literally walks over corpses, and everything that cannot be integrated and digested is shoved aside in blind ignorance and usually destroyed? Can such a humanism, can such a civilization truly speak about justice and human rights and praise all these high ideals without losing its credibility?"[1]

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Sacred traditional knowledge has been widely defined in a gamut of scholastic literature as an expression of traditional knowledge that symbolizes or pertains to religious and spiritual beliefs, practices or customs as opposed to profane or secular forms. However there is a conspicuous absence of any conclusive legal definition of this expression.

Several authors have propounded that the existing framework of intellectual property rights, albeit with some modifications is adequate for the protection of rights associated with sacred traditional knowledge. Another school of thought has challenged the basic underlying assumptions of this proposition by refusing to acknowledge that sacred traditional knowledge would constitute intellectual property.

There have been several instances where sacred spiritual symbols of native peoples have been used for commercial purposes in a manner inconsistent with their inherently sacrosanct nature. Such use has led steadily to the erosion of their significance both in mainstream society as well as within the communities themselves since present generations of such communities have been bred within an atmosphere of traditions which have been commercialized more than revered.

The present Intellectual Property regime is mainly based on a Western knowledge system which at best, does not subscribe to the framework in which property rights with respect to sacred traditional knowledge exist in native communities throughout the world. The approach of the use of the concept of Intellectual Property to allocate property rights with respect to sacred traditional knowledge mirrors the faulty and inadequate understanding of the framework in which it exists.

The jurisprudential history behind assignment of property rights has traditionally revolved around two dichotomous theories. The property rights theory on whose substratum intellectual property rights is based provides for protections accorded to creations based on individual labour, skill and innovation. This is comprehensively proscribed by the Commons theory which envisages communitarian ownership of resources, advocating a *res communes* conception of material resources. We affirm that protection accorded to sacred traditional knowledge should not be based on predominantly either of these approaches, since invoking either would be inconclusive to provide adequate protection to the former, given its unique nature and attributes. We consequently suggest a *sui generis* system of protection to be provided to sacred traditional knowledge which will incorporate elements of both approaches, and yet retain a distinct character of its own.

II. WHAT IS SACRED TRADITIONAL KNOWLEDGE?

Traditional knowledge is a multifaceted and multidimensional concept but the common thread running through all components of traditional knowledge is that it is created by the collective communitarian response to culture and surroundings and is not the creation of an individual. The term is used by WIPO to refer to 'tradition based' innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields.[2] WIPO uses traditional knowledge as a narrower version of 'heritage'. Heritage has been defined as: "Everything that belongs to the distinct identity of a people and which is theirs to share, if they wish, with other peoples. It includes all of those things which contemporary international law regards as the creative production of human thought and craftsmanship, such as songs, music, dance forms, literature, artwork, scientific research and knowledge. It also includes inheritance from the past and from nature, such as human remains, the natural features of the landscape, and naturally occurring species of plants and animals with which a people has long been connected."[3] The segment of heritage that would constitute traditional knowledge is composed of "tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and, all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields."[4]

Thus, while there is no concrete definition of traditional knowledge, it is an oft-discussed concept and what makes it significant in this paper is the qualifying word- 'sacred'. It is an interesting, elusive and relative idea. According to the dictionary, a sacred thing is that which is consecrated, devoted, set apart or dedicated to religious and spiritual use.. It is something on which no objective

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[2] "Tradition-based" refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and are constantly evolving in response to a changing environment. It should be emphasized, however, that a precise definition of traditional knowledge is not a crucial requisite for establishing a system for its protection. WIPO International Forum, *Intellectual Property and Traditional Knowledge: Our Identity, Our Future,* organized by WIPO and the Government of Sultanate of Oman, *available at* http://www.wipo.int/arab/en/meetings/2002/muscat_forum_ip/iptk_mct02_i3.htm#P45_1606 (last visited Sep. 23, 2007)

[3] *See* United Nations, Office of the High Commissioner for Human Rights, Working Group on Indigenous Population, Protection of the Heritage of Indigenous People, UN Office of the High Commissioner for Human Rights (1997), iii. *as cited in* the Daniel J. Gervais, *Spiritual but Not Intellectual? : The Protection of Sacred Intangible Traditional Knowledge,* 11 Cardozo J. Int'l & Comp. L. 467 (2003).

[4] WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders*. Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999) (2001), at 25 *available at* http:// www.wipo.int/globalissues/tk/report/final/pdf/part1.pdf, *as cited in* the Gervais, *supra* note 3.

price can be fixed and varies from community to community. Its significance lies in the fact that no object or thing is sacred unless a person or group of persons attach certain sanctity with it and revere and respect the same. The object or idea in itself is not sacred. A thing can be sacred only so long as it lasts and occupies a place of honour in the minds of those that consider and hail it as sacrosanct. The idea that we are trying to convey is that an object or practice or idea is sacred only because it is believed to be so by a particular segment of the society. It may not be considered sacred by another. This sacrosanct nature of the knowledge may be beyond the understanding of those that are not part of the community. There are some who propound the idea that either everything is sacred or nothing is. This is merely another way of emphasizing that sacred is a subjective concept and every tangible or intangible thing in the world may be sacred to someone or the other. According to Durkheim, religion revolves not around deity but around the distinction between sacred and profane[5] and that the sacred represents the interests of the group as opposed to individual concerns. In this article, we use the word in a narrower sense, that is, sacred is all that has been believed to be so by the indigenous[6] communities for generations.

The Native American Graves Protection and Repatriation act of 1990 (NAGPRA) defines 'sacred objects' as "specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents." The Declaration of Principles on the Rights of Indigenous Peoples ("DPRIP"), prepared by representatives of indigenous and tribal organizations for the United Nations Working Group on Indigenous Populations, states that the indigenous people continue to own and control their culture "including archaeological, historical and sacred sites, artifacts, designs, knowledge and works of art."[7] What is notable is that even the representatives of the indigenous people themselves have chosen not to conclusively and exhaustively define either traditional knowledge or sacred traditional knowledge perhaps because they realize that the content would differ from tribe to tribe or community to community. We affirm this viewpoint and cite an example to elucidate why sacred traditional knowledge should not be defined exhaustively and there should be a certain degree of flexibility with which the idea has to be conceptualized. For instance, Stephen Hansen and Justin W. Van Fleet offer a general definition of traditional knowledge as mental inventories of local

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[5] Emile Durkheim, *The Elementary Forms of the Religious Life,* http://en.wikipedia.org/wiki/Sacred (Last visited on September 23 2007).

[6] Dr. Martinez Cobo, who describes indigenous communities, peoples and nations as "those which, having historical continuity with pre-invasion and pre colonial societies that developed on their territories, consider themselves distinct from other sectors of the society now prevailing in those territories or parts of them", *Quoted in*, Michael Blakeney, *The Protection Of Traditional Knowledge Under Intellectual Property Law*, 22(6) Eur. Intellectual Property Rev. 251 (2000).

[7] Lauren E. Godshall, *Making Space For Indigenous Intellectual Property Rights Under Current International Environmental Law*,15 Georgetown International Environmental Law Review 497 (2003).

biological resources, animal breeds, and local plant, crop and tree species, . . . practices and technologies, such as seed treatment and storage methods and tools used for planting and harvesting, . . . belief systems that play a fundamental role in a people's livelihood, health maintenance, and environmental protection and replenishment.[8] Albeit comprehensive prima facie, this definition is based on categorization and consequently results in an undersirable static understanding of the concept. Traditional Knowledge, particularly sacred traditional knowledge, has to be understood through the prism of cultural relativism[9] and from the view of the communities concerned. Thus, we suggest the following broad framework whereby all ideas and beliefs and knowledge that is considered to be invaluable, sacrosanct, spiritual and inalienable by the community and is specific to the community would be viewed as sacred traditional knowledge.[10].

III. DO WE NEED TO PROTECT SACRED TRADITIONAL KNOWLEDGE?

Article 29 of the Indian Constitution recognizes that the citizens of different parts of India have a distinctive language, script or culture of their own and grants them the right to preserve the same. Thus, the highest law of the land recognizes the right of communities to preserve their culture and maintain the sanctity of ideas, objects or rituals that are peculiar to their community. Sacred traditional knowledge is part of the culture of indigenous persons and needs to be preserved and protected. At the risk of repetition it may be stated that the primary purpose for protecting sacred traditional knowledge is not merely to prevent the commercial exploitation of the knowledge whose rightful owner is the indigenous community on whole but also to persevere the sanctity of the tradition both within and without the tribe.. The people who embezzle or often legally steal what rightfully belongs to the indigenous group of people not only deprive the community of all commercial, proprietary and monetary rights but they also affront the culture of these people. The damage caused by the Western hegemony is such that quite often the new generation in the community fails to appreciate the sanctity of their own traditions, wisdom and culture. The end result is homogenization and imposition of the Western culture on these tribes.

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[8] Stephen A. Hansen & Justin W. VanFleet, American Association for the Advancement Science, Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity 3 (2003) as cited in Danielle-Conway Jones , *Safeguarding Hawaiian Traditional Knowledge and Cultural Heritage: Supporting the Right to Self-Determination and Preventing the Comodification of Culture*, 48, HOWARD L. J. 737 (2005).

[9] Cultural relativity is an attempt to understand the cultural development of societies and social groups on their own terms; that is, without trying to impose absolute ideas of moral value or trying to measure different cultural variations in terms of some form of absolute cultural standard. Sociology Central, *Cultural Relativity,* http://www.sociology.org.uk/p2d4.htm (last visited Sep. 18, 2007).

[10] However, it must be clarified at this juncture that the scope of this paper is limited to artistic creations and literary works that are based on such knowledge.

In the light of such a state of affairs the need to find an adequate protection mechanism for sacred traditional knowledge of indigenous people cannot be overemphasized and it is imperative that the existing legal framework be examined to see if it is adequate enough to protect the same.

IV. EXISTING FRAMEWORK FOR THE PROTECTION OF SACRED TRADITIONAL KNOWLEDGE UNDER THE INTELLECTUAL PROPERTY REGIME.

The Western model of Intellectual Property Rights although inadequate for the protection of sacred traditional knowledge, continues to be the primary vehicle for the protection of artistic works all over the world. To segregate indigenous interests from this international legal regime in this globalised world would essentially deny the indigenous peoples both a powerful legal shield and legal sword.[11] In this light it is essential to look into copyright under the framework of the Indian Copyright Act as a mode of protection for tribal sacred traditional knowledge.

According to the World Intellectual Property Organisation, Intellectual Property is divided into two categories: Industrial Property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs[12].Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.[13]

The original creators of works protected by copyright, and their heirs, have certain basic rights. They hold exclusive rights to use or authorize others to use the work on agreed terms. According to the World Intellectual Property Organization, the creator of a work can prohibit or authorize:

- Its reproduction in various forms, such as printed publication or sound recording;
- Its public performance, as in a play or musical work;

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[11] Megam M Carpenter, *Intellectual Property Law and Indigenous Peoples: Adapting Copyright Law to the Needs of a Global Community,* 7 Yale Human Right and Developmental L. J. 51 (2004).

[12] WIPO, *What is Intellectual Property?,* http://www.wipo.int/about-ip/en/ (last visited Nov. 21, 2007)

[13] *Id.*

- Recordings of it, for example, in the form of compact discs, cassettes or videotapes;
- Its broadcasting, by radio, cable or satellite;
- Its translation into other languages, or its adaptation, such as a novel into a screenplay.

These economic rights have a time limit of 50 years after the creator's death. National law may establish longer time-limits. This limit enables both creators and their heirs to benefit financially for a reasonable period of time..[14] Copyright protection also includes moral rights, which involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation.[15]

Authorship thus lies at the core of copyright. Protection under copyright law in India and abroad can be resorted to only if one can identify the author, the human creator of the work. This is because copyright arises out of the act of creating a work and authors have moral claims that neither corporate intermediaries nor consumer end-users can assert.[16] For instance, the Indian Copyright Act defines an author in relation to an artistic work (other than the photograph) as the artist; an author in relation to a musical work as the composer and an author in relation to a literary or dramatic work as the author of the work[17]. The author is the first owner of the copyright[18] unless it is assigned to another person[19]. Copyright lasts for a limited duration using the life of the author as the basis. According to the Indian Copyright Act, copyright shall subsist for sixty years after the death of the author.[20]

The construct of Authorship under the traditional Intellectual Property School is steeped in the notion of Romantic Individualism, which can run directly in contravention of authorship as it is conceived of by indigenous peoples.[21] The creation of rights such as authorship and ownership with respect to traditional

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[14] WIPO, *Copyright & Related Rights, available at* http://www.wipo.int/about-ip/en/copyright.html (last visited Nov. 21, 2007)

[15] Ibid.

[16] Jane C. Ginsburg**,** *The Concept of Authorship in Comparative Copyright Law*, Paper Number 03-51, Public Law and Legal Theory Research Group.

[17] Indian Copyright Act, 1957, Sec. 2(d).

[18] Indian Copyright Act, 1957. Sec. 17

[19] Indian Copyright Act, 1957. Sec. 18

[20] Indian Copyright Act, 1957. Sec. 23

[21] WIPO, *What is Intellectual Property?, supra* note 12.

knowledge further leads to alienation and exploitation.[22] For instance in aboriginal law, the right to create paintings and other artworks depicting creation and stories, and to use pre-existing designs and well recognized totems of the clan, resides in the traditional owners or custodians of the stories or images. If unauthorized reproduction of a story or imagery occurs, under Aboriginal law it is the responsibility of the traditional owners to take action to preserve the dreaming, and to punish those considered responsible for the breach.[23] Thus, although according to western law copyright might vest with the artist who is the creator, under aboriginal law the artist must not use an image or story in such as a way as to undermine the rights of the other members of the tribe, who have an interest whether direct or indirect in it. The author in other words can be said to be holding the image in trust for all the other members of the tribe.

Authorship in some instances may reside in a pre-historical creator or ancestors. Authorship is often replaced by a concept of interpretation through initiation.[24] The Wandjina paintings for instance are a vehicle for the transmission of myths.[25] They are believed to have been created by the spirits of ancestors who existed in the dreaming, a primordial state which is not confined to the past but stands outside time.[26] Wandjina images may be retouched and painted today provided that appropriate deference is given to the ancient spirit[27]. The Kimberley aborigines believe that inappropriate treatment of these images will cause death and devastation[28]. It thus becomes very difficult to determine the authorship of these paintings. Moreover, the antiquity of these images means that their authorship is unknown[29]. Although these images are sacred to the aboriginal people, there exists no remedy in the event of their misuse owing to the lack of an identifiable individual author.[30]

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[22] *See* Michael Blakeney, *Intellectual Property in the Dreamtime-Protecting the Cultural Creativity of Indigenous Peoples***,** Oxford Intellectual Property Research Centre, Research Seminar, November 9, 1999, Queen Mary Intellectual Property Research Institute, Queen Mary and Westfield College University of London, *available at* http://www.oiprc.ox.ac.uk/EJWP1199.pdf(last visited Nov. 21, 2007)[hereinafter Blakeney, *Intellectual Property in the Dreamtime-Protecting the Cultural Creativity of Indigenous Peoples*].

[23] Milpurrurru and Others v. Indofurn Pty Ltd and Others, 130 ALR 659.

[24] *Id*.

[25] Andreas Lommel, *The Wandjina Figures*, *Rock Painting Sites in the Kimberley Region*, http://www.bradshawfoundation.com/pdf/lommel5.pdf (last visited Nov. 21, 2007), at 26.

[26] *Id*..

[27] *See* Blakeney, *Intellectual Property in the Dreamtime-Protecting the Cultural Creativity of Indigenous Peoples, supra note* 22.

[28] *Id*.

[29] *Id*.

[30] WIPO, *What is Intellectual Property?, supra* note 21.

An important case decided by the Supreme Court of the Northern Territory is *Foster v. Montford*[31], which was in relation to a book entitled "Nomads of the Australian Desert". The author while engaged in an anthropological research undertook a field expedition into outback areas of Northern Territory inhabited by Aborigines who revealed to him tribal sites and objects possessing deep religious and cultural significance for them. This information was published by him in the above mentioned book. An action was brought against the author by the members of an unincorporated tribal body known as the Pitjantjara Council which claimed to represent all those aboriginal people inhabiting lands traditionally inhabited by aboriginal people. They asked for an interlocutory injunction restraining the publication of the book in the Northern Territory. The court held that information of deep religious and cultural significance to the aborigines, such that it could only have been imparted to the author in confidence, was depicted in the book and therefore amounted to a breach of confidence on the part of the author and granted the interlocutory injunction. This decision has gone a long way in recognizing the cultural and spiritual significance of aborigine rituals and designs which are not in the public domain.

Another important case in this regard is the Australian case of *Yumbulul v. Reserve Bank of Australia.*[32] The Reserve Bank of Australia issued a commemorative banknote which reproduced the design of the Morning Star Pole created by Terry Yambulul, an aboriginal artist. The Morning Star Pole occupies a central and significant role in aboriginal ceremonies commemorating the deaths of important persons and in inter-clan relationships.[33] According to the Australian copyright law, the pole was found to be the original artistic work of Mr. Yumbulul and the copyright in the artifact had been validly assigned. The court thus disposed of the artists claim for breach of copyright.[34] The copyright law of Australia thus failed to recognize the claims of the Aboriginal community to regulate the reproduction of works which are communal in origin.

The specific problem in the above case would have been dealt with differently under the Indian Copyright Act, owing to the existence of moral rights. According to Section 57 of the Indian Copyright Act, irrespective of assignment of the copyright, the author or the legal representative of the author will have the right to claim authorship over the work in the instance of any action in relation the said work which would be prejudicial to his honour or reputation or in respect of any distortion, mutilation or other modification of the said work. The concept of 'moral rights' in copyrighted works can be used to prevent their use in culturally and spiritually inappropriate contexts.

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[31] Foster v Mountford, 1976 WL 46225 (NTSC).

[32] (1991), 21 I.P.R. 481 (Austl.)

[33] Michael Blakeney, *Milpurrurru & Ors v Indofurn Pty Ltd & Ors - Protecting : Expressions of Aboriginal Folklore Under Copyright Law*, http://www.murdoch.edu.au/elaw/issues/v2n1/blakeney.txt.(last visited Nov. 21, 2007)[hereinafter Blakeney, *Milpurrurru & Ors v Indofurn Pty Ltd & Ors - Protecting : Expressions of Aboriginal Folklore Under Copyright Law*]

[34] *Id*.

Section 18 of the Indian Copyright Act provides for assignment of copyright by the owner either wholly or partially. The assignee of a copyright becomes entitled to any right comprised in the copyright and shall be treated as the owner of the copyright. But the option of assigning the copyright to the community by the artist who is the author of the work is not possible within the framework of the Indian Copyright Act.

As in most other legal systems, the Indian Copyright Act also requires that an artistic work must be original to be eligible for protection.[35] The act does not require that expression must be in an original or novel form, but that the work must not be copied from another work -that it should originate from the author.[36] To secure copyright for the product it is necessary that labour, skill and capital should be expended sufficiently to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material.[37] Some authors argue that this requirement presents problems for the protection of culturally significant artistic and literary works of indigenous peoples, because those works are often by their very nature not innovative, but rather derived from preexisting works in a "slow process of creative development".[38]

V. CONCLUSION: FINDING AN ALTERNATIVE

In the discussion in the last segment, we have focused on highlighting the inadequacy of the existing framework of according proprietary rights to individual creators through copyright to protect the community rights of the indigenous people. What then is the solution to this problem?

Some scholars would take resort to the commons theory and suggest that sacred traditional knowledge should be treated as a commons as the property rights theory, on whose substratum the intellectual rights theory is based, has clearly proved to be inadequate. Commons connote several things to several people. For instance the public streets are commons, parks are commons, Einstein's theory of relativity is a commons, writings in the public domain are a commons.[39] However, there is a single thread running through all these examples. They are all free resources. Free does not necessarily connote that no price is to be paid. When access to a resource is not condition upon someone else, irrespective of whether a price has to be paid for accessing it, the resource is said to be free. However, there is a difference between the various examples cited here – while some of these are rivalrous goods, others are non-rivalrous and the whole concept of tragedy of the commons depends upon this distinction. Hardin[40] stated that a rivalrous, non-

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[35] Indian Copyright Act, 1957, Sec.13

[36] Shyam Lal Paharia v. Gaya Prasad Gupta, AIR 1971 All.192 at 608.

[37] Macmillan v. Cooper, (1923) 40 T.L.R 136.

[38] *Supra* note 22.

[39] *See* Lawrence Lessig, The Future of Ideas 50 (2001)

[40] *See* Garret Hardin**,** *The Tragedy of the Commons,* 162 Science 1243-7, (1968).

excludable good, if used by several people would ultimately result in over-use of the resource such that the resource will be depleted to such an extent that it will be as good as destroyed. This can be explained by the theory that marginal costs of an individual actor using the common resource being very small, he will try to maximize his benefit and in the process increase the social costs to an extent that it culminates in a tragedy for all. The tragedy of the commons is often cited as another reason to follow the property rights approach, the logic being, each individual, if provided the right to exclude others from his property will have the incentive to preserve the same and this will ultimately lead to value-maximisation of the resource as well as social welfare. Sacred traditional knowledge, although not a rivalrous good in the traditional economic sense of the term; is in fact a resource whose value would be depleted, if not annihilated, by use by those who do not understand its significance. However, this is not sufficient reason to sanction the use of the intellectual property rights system that is riddled with follies, as already illustrated in the previous segment. On the other hand, it is our view that an attempt to find an adequate protection mechanism for the rights of indigenous people squarely within the confines of the commons theory shall not be successful as the use of the sacred traditional knowledge has to be with the consent of the native people in order to ensure that it does not culturally offend them and also to make certain that the commercial benefits arising out of such use accrues to these persons. Thus, the resource is not 'free' and consequently not a commons.

While community management of sacred traditional knowledge is an ideal and desirable goal, it is not practicable unless there is some concrete legal framework that recognizes the communitarian rights of these people over such knowledge. It is on the substratum of the failure of both the commons and the property rights approach that we would venture to suggest an alternative approach based on which protection of tribal sacred knowledge could be realized in future. It is emphasized however that the proposal is at best the germ of an idea, whose principles could be incorporated by subsequent legal systems in order to implement a concrete model for protection of indigenous traditional knowledge. We suggest a State sanctioned protection of traditional knowledge with suitable participation from representatives from those whom the system would sub serve. The system would therefore first involve the identification of relevant tribes within the national diaspora known to have sacred traditional practices through some form of State sponsored fact-finding: a census, data collection *et al*. Subsequent to this, a policy could be formulated for the grant of conglomerate property rights over such knowledge on a tribe-wide basis, the formulation of which would, of course be made by a body having suitable representation of the tribes in question, with due regard to their unique cultural mores. The enforcement of this policy would have to be made by a second body, constituted also under the aegis of the State which would monitor not only licensing and administrative aspects of such unique property rights, but also cases of disrespect, demeaning and misuse of such traditional knowledge once the rights have been granted.

We reiterate that the former is not a constructive model, but the seed of one, which could be realized once property law can reconcile itself with the idea

granting conglomerate property rights to a community as opposed to an individual. However, it is also noted that several international covenants enjoin upon its signatories the obligation to comply with certain norms without actually suggesting a concrete legal framework for the same, leaving the latter to the discretion of sovereign States.[41] Consequently we submit that since the need for State protection of tribal sacred knowledge has been clearly established, the former now has the onus to implement a suitable legal system for such protection based on the principles enumerated herein. And perhaps that would bode well for the need of the hour, which is to develop a *sui generis system* amalgamating the property rights and the commons approach to ensure that not only the sanctity of tribal traditional knowledge per se, but also that the world learnt to revere some of its oldest and most enriching cultural, literary and social resources.

[41] The Doha Declaration on Public Health for instance, inter alia, enjoins upon States to promote accessibility of all forms of drugs and pharmaceuticals, without actually providing a legal framework to do so.