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"PROTECTION OF TRADITIONAL KNOWLEDGE UNDER INTELLECTUAL PROPERTY RIGHTS REGIME"

(RESEARCH PAPER)

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ABSTRACT

The traditional knowledge (TK), which indigenous communities have developed and maintained throughout the generations, is critical to the biodiversity conservation and sustainable development. Since India stands highly in biological and cultural diversity, it has a tremendous source of this knowledge especially in medicine, agriculture, and ecology. Nonetheless, the growing commercialization of the traditional knowledge has created some grave issues, including but not limited to misappropriation and biopiracy, commonly because of the incapacity of the current Intellectual Property Rights (IPR) framework. This paper discusses why it is so difficult to safeguard the traditional knowledge within the current IPR regime. It examines key legislations in India including the Biological Diversity Act, 2002, the Patents Act, 1970 and the Geographical Indications Act, 1999 as well as international standards including the TRIPS Agreement, the Convention on Biological Diversity (CBD) and the World Intellectual Property Organization (WIPO) initiatives. Such landmark case studies as neem, turmeric and basmati, are also addressed in the paper in order to point out misuse of traditional knowledge. The paper promotes the creation of sui generis regime specifically aimed at safeguarding the traditional knowledge and insists on the necessity of the establishment of fair systems of sharing benefits. It makes the conclusion that the protection and sustainable use of traditional knowledge should be guaranteed with the help of the balanced approach of legal reforms, community involvement, and effective policy implementation.

KEYWORDS: Traditional Knowledge (TK), Intellectual Property Rights (IPR), Biopiracy, Genetic Resources, TKDL, and Biodiversity.

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1. INTRODUCTION

India has been ranked as one of the richest biodiversity countries in the world and in fact it boasts of a vast repository of traditional knowledge that has been preserved and nurtured through the generations of local and indigenous communities. This is an insight into the major fields such as medicine, agriculture and ecological sustainability, which involves demonstrating how human beings utilize biological resources in their day-to-day lives.Traditional Knowledge (TK) is transmitted in one generation to the other, and it is closely related to the cultural identity and daily activities of peoples.

Due to this, safeguarding of traditional knowledge has become a burning international problem. Although existing intellectual property regulations can help to protect TK to a certain extent, I believe that there is increasing pressure on the creation of a tailor-made (sui generis) framework that will address the issue of collective ownership and cultural significance of TK. The paper examines the ability of IPR to protect traditional knowledge and emphasizes on the necessity to change the law and official policy to ensure successful protection of traditional knowledge. The thrust towards the satisfactory defence of traditional information has taken place, either by the adoption of the traditional IPR, or because of a new sui generis system, either the traditional group rights or the traditional group land rights.

The following are some of the examples of traditional knowledge: -

a) A plao- noi by the traditional healers of the Thais when healing ulcers.

b) Utilizing hoodia cactus by San people to keep hungry whilst outhunting.

c) Sustainability in irrigation using irrigation networks like fluvial aquifers like the afloat in Oman and Yamen and the qanat in Iran.

2. Eligibility Requirements to be Traditional Knowledge

Traditional knowledge simply involves knowledge acquired over a long period of centuries due to traditions. It furthermore usually factors in the expansion/adaptability of manufacture between point and point, in keeping with the changing needs of the societal level. Such innovations do not only act as an enhancement to existing awareness but also as a determinant to things of the information relayed to the next age group hence characterizing the spirit of conventional wisdom to the next age group as a whole. Based on this above, it can be observed that the basic basics of Traditional Knowledge are:

a) Building of a novel act/process of satisfying a need.

b) The process/ method will be transmitted by generations as a result of traditions.

c) Bound with the group/community in a certain group/community due to its values.

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A perfect example of what can be called TK is the one concerning the neem, in which the neem tree was a subject to which a wide variety of applications were applied in India. It was stated in Indian texts dated more than 2000 years ago and utilized, throughout centuries, in agriculture, human and veterinary medicine, and in toiletries and cosmetics and as a repellent of insect and pests.

3. Reason behind the protection of the traditional knowledge

The word protection has been defined in many ways and this is one of the rationalizations that explain why clarification regarding the justification of protection should be not clear. A few interpret this term to refer to the IPRs, in which security typically implies the lack of third parties in the unauthorized usage. Other people differentiate protection as a tool of safeguarding the conventional information under an exercise which tends to destroy it or affect the lives or cultures of the societies in which it have been created and put to use. Nevertheless, the important justifications why TK has to be given security would be:

a) Consideration of equity.

b) Conservation questions.

c) Preservation of ancient traditions and society.

d) Protection against stealing of elements of TK by unauthorized internal and external persons.

e) Nurturing its applications and its relevance in development.

Equity: In some of the instruments of the security of TK, the opinion grounded in the consideration of equity is the basic one. The scheme of requisition and reparation that exists nowadays causes TK to create value that is not being fully realized and rewarded. Hence, securing an audience of TK would be significant to bring fairness to mostly undeserved and unequal relationships. An example of such grounds is plant-inherited assets. Orthodox farmers not only conserve hereditary resources of plants but they also make use of them. The significance of the plant-wrought assets is preserved and increased through planting, seeds processing and constantly choosing the best-suited types of farmers. These farmers normally trade within one another through the fence utilizing barter or trade and thus promote the division and further reproduction of their varieties. The main argument underlying this appraisal is that since breeders and seed companies do not pay a fee on the Farmers sent the samples, they do not pay Tom farmers the price they put on the table or share in the future profit with farmers.

Conservation: The second aspect that explains TK security argument dwells on the potential of this kind of information as an object of preservation. As such, the aesthetic of preservation of biological assortment within the agricultural systems generates a value to the universal region. IPRs can be utilized to generate income to carry on with operations which would have been scrapped. As an example, in the case where traditional farmers abandoned the cultivation and

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reproduction of farmers varieties due to their attraction by the higher revenue which can be gained by planting of modern varieties with better yields, this can result in a drastic loss of biodiversity. In this approach, TK safety assists in supporting the greater environmental conservancy, sustainable farming, and food security of the society.

Conservation of the Traditional ways of life:

Some watch TK security as a continuation of traditions and skills, in particular, those distinctive lifestyles that were conveyed across generations. Security in this context has a different meaning than that commonly found in the intellectual-property vibe. It is merely a matter of giving people the right to define themselves and conserve their cultures so as to not simply fade away. Indeed, even the death of biodiversity cannot be considered a greater tragedy than the loss of cultural diversity and languages, as some statistics point out.

Avoiding Bio Piracy:

The TK itself, as the concept of its protection, is to prevent people who sneak abstracting (bio-piracy) of traditional knowledge and then profitable off it. Follow the example of India: they are striving to align TRIPS Agreement with the Convention on Biological Diversity (CBD). As an example, they are urging the ban on a clause that prevents patents that contradict Article 15 of the CBD. Patent offices would prevent the unfair granting of patents that are based on TK should they have more information regarding novelty and known information.

Encouraging utilization and construction:

TK security requires that the knowledge should actually be used more extensively. Making it difficult to lose or steal and even pay compensation to those who are holding can force individuals to utilize this information further. The inhibition of TK destruction is a spur to growth. TK is a resource that is under-utilized in the start-up stage. Products and services offered on TK can be unlocked by means of legal protection. Moreover, TK has a chance to enhance local innovation, which is crucial in terms of communities to recover and prosper.

In addition to the role of intellectual property rights in preservation of traditional knowledge, the authors claim that these rights serve a further function in the preservation of traditional patterns and practices, thereby strengthening cultural and social unity.<|human|>Other than the role of intellectual property right in preserving traditional knowledge, the authors argue that the rights also have an added role in preserving traditional patterns and practices which in turn promotes cultural and social cohesiveness.

4. ROLE OF INTELLECTUAL PROPERTY RIGHTS IN PROTECTION OF TRADITIONAL KNOWLEDGE

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However, the current manner in which IPRs are being influenced is That is basically leaving native communities out of the fruits and gains of their traditional knowledge and that is a serious problem.The corporations take the traditional knowledge, along with their earnings, through IPR, leaving the farmers and tribal communities without their natural resources and knowledge bases due to bio-piracy. Increasing up prices by these businesses makes the goods unaffordable, which leads to controversy on indigenous rights, ecosystem sustainability, and other aspects of climate and even national food security.

WTO TRIPS agreement is concerned with patents only but rights of the people possessing traditional information are not respected. In the event that we are able to redefine and twist IPRs with honesty, it may turn into TK protection. Even with the gaps in the current IPR system, there are still some fundamental points that can be used as constructive security measure or as defensive ones to conserve this knowledge. More powerful national laws and international agreements are required to safeguard indigenous people, their biotic resources, and other data.

A. Biological Diversity Act, 2002

As a member of the CBD, India was now ready to take action and fulfill its obligations. The Biological Diversity Act 2002 was adopted so as to protect the biological diversity, achieve a sustainable exploitation of the constituents of it and fair share of profits that natural resources accord. This regulation addresses the fundamentals:

- Right to use natural assets
- Physicality: Negotiating rights of encountering and use of natural resources.
- Sharing of the earnings that are made through such resources
- Conservation against bio-piracy

Both at the local level, the law provide the National Biodiversity Authority (NBA) in section 8, State Biodiversity Boards (SBB) in section 22 and Biodiversity Management Committees (BMCs). Without the approval of NBA, no one can make IP claims to any discovery relating to an Indian natural reserve. The act has defined and established a strong system of accessing biological resources beyond India and an arrangement of profit sharing among those who develop, improve or commercialize TK.

B. The Patents Act, 1970

To cover guarding technology that is actually new and innovative, and then the Patents Act comes into play. Say, patenting genetic resources and TK cannot be applied to the production of goods that are either secret, synthesized or that based on genetic frameworks, microorganisms,

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vegetation, fauna or organism ecosystems. The Act safeguards procedures concerning the utilization of such assets such as the native practices that comply with the same aspects.

C. The Copyright Act, 1957

Copyright guarded the modes of expression, and not ideas. Section 14 has granted the holder the right to engage in such measures as licensing or enforcement to protect indigenous people against illegal copying and misuse of their knowledge particularly in the case of the artists. The moral rights include the relationship that exists between the creators, artists, and authors and their work.

D. Protection of plant varieties and farmers rights act, 2001

This legislation became effective in September 2001 and it was written to conform to the WTO TRIPS agreement. It safeguards new, existing, derived and cultivator versions. The farmers and tribal communities continue to practice traditional ways of cultivating and storing a large variety of crops and the act promotes fair distribution of profit among the provider of the genetic materials of the plants and their user. A breeder of plant (PBR) is granted over a new variety as being different, a single, uniform and new; conventional diversity may be as well.

E. Geographical Indications of Goods (Registration and Protection) Act, 1999

TK is jointly held by local people, and GI is the most suitable form for safeguarding of Traditional Knowledge. A community in an exact locality is waged by the Geographical Indications of Products (Regulations and protection) Act. GI security is valid for 10 years, but it can be extended any number of times in order to safeguard GI for an infinite period of time. The methods of manufacturing products are evolving with time in order to give a better quality to the product. GIs can be used to shield traditional therapeutic products as well.

5. Traditional knowledge International regime of protection of traditional knowledge

Preservation of information, originality and traditions of indigenous and local people, is increasingly being appreciated globally. In essence, in 1978 WIPO partnered with UNESCO, under the IP regime, in order to safeguard traditional knowledge which then added folklore, even more formidable against unlawful use of trademarks and other Attack of the matter in 1982. The media interest in the security of traditional information then with the CBD in 1992 merely intensified the interest.

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1. World Health Organization (WHO)

The WHO is a UN health agency that was established on April 7, 1948. It has been getting some Significant work on Traditional Knowledge with its specialization on traditional medicine. In essence, the constitution of WHO states that they desire optimum health among all and as people are discovering the economic and commercial importance of traditional knowledge particularly traditional medicine and medicinal plants then, more and more member states are demanding to preserve it and ensure that any gains are divided equally.

The Traditional Medicine Strategy 2002-2005 of WHO contains four main components such as:

- **Policy:** Inclusion of traditional and appropriate drugs or alternative drugs into the national health system.
- **Safety, competence and excellence:** Estimation, supervision and support to succeed regulation.
- **Access:** Accessibility and affordability of TM/ CAM, along with critical herbal drugs.
- **Rational use:** Promote suppliers and customers in the use of TM/CAM in a therapeutically sound manner.

2. Convention on Biological Diversity (CBD)

By 5th June 1992, the Convention on Biological Diversity (CBD) had been finalized. It was a product of the bargaining within the United Nations Environment Programme (UNEP) at Rio de Janeiro in the year 1992. The CBD, which is led by the UNEP, forms guidelines of conserving the environment and at the same time maintaining economic growth, with a focus being laid on biodiversity conservation, sustainable use, and the fair distribution of the benefits of the utilization of the genetic materials.

The CBD also recognizes the importance of the traditional utilization of genetic resources in sustainable conservation of the biological diversity. It determines the right of the transfer of biology of developing nations and notes that the conservation and sustainable use of biodiversity shall not be prejudiced through IPRs. As well; the provisions of promotion, creation of trade and use of indigenous and traditional information and machinery to will of the CBD are also incorporated.

3. World Intellectual Property Organization (WIPO)

The expediency of WIPO regarding TK and folklore started as early as 1978, when WIPO developed the sui-generis model of national protection of folklore in co-operation with UNESCO.

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Later in 1998, WIPO initiated a fresh proposal, with fact-finding contact mission to 28 countries in IP and TK, which created a global study on the requirement of IP and goals of the TK holders. During its 26th meeting, the WIPO General Assembly established the IGC.

6. INADEQUACY OF THE LEGAL SYSTEM THAT ADDRESSES TRADITIONAL KNOWLEDGE

A. GENERAL matter involving the safeguarding of traditional Knowledge

The conventional information is very susceptible to bio-piracy by devolution, encroachment, bio-prospecting rush, lack of proper legal framework and a conflict system to the systems amongst others. TK can be transformed into commercial interest with the provision of procedure /indications of the useful methods and processes of the benefits of human beings. The reward obtained by such TK should be given to its developers or holders. There are countries that contain specific acts that guard such body of knowledge, and other countries consider that such knowledge is guarded by their existing IPR regime. Currently, India lacks a precise Sui generis to safeguard such TK and folklore; however, is presently putting together such statute.

Neem: A neem is a tree, which is famous in India and which is used as bio-pesticide and medicine over a hundred years. Neem as a source of medicinal healing has been referred to in the ancient treatises of Ayurveda Indian medicine. The European patent office (EPO) revoked its designation 436257 to the United States of America and to the global business W. R. Grace on the Neem tree insecticide creamed using the seed. Though Neem has an ancient history, recently, more than 12 US patents were withdrawn on Neem based emulsions and solutions.

Turmeric: In 1993, the University of Mississippi Medical Centre was granted patent privileges in the U.S. PTO, to treat a wound by applying turmeric to a wound-inflicted individual. A re-examination of the granted patent was sought in application, and almost 2 dozen mentions were applied, which led to preliminary success.

Rice: This was another case that brought about a lot of havoc as a patent was issued by the USPTO to a US company by the name Rice Tec on the grains of rice “Basmati rice grains” under the company. Basmati rice is a fragrant type of rice that is normally cultivated in India and Pakistan. The grant of this patent generated multitude IP problems in addition to those in the patent law i.e. under the trademarks and geographical indication. Two scientists having made the proclamations, many periodicals available on Basmati rice and study conducted on rice in India made a re-examination request, one of which compelled the USPTO to realize that the basic claims of Rice Tec were not obvious.

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B. CONSENT AND BENEFIT SHARING

The traditional information is often used without the permission of the indigenous peoples as well as the societies which originally created it and have legal authority over it and without a just distribution of the gains being made out of such an application. The modern IPR system is to be studied trying to use its potential more productively to preserve the traditional knowledge of the local people and communities.

7. Strategies of protection of Traditional Knowledge

In the current Intellectual Property Rights (IPR) context, the traditional information can be secured in two major ways, namely constructive protection and protective protection. The borders between the defensive and affirmative intellectual property protection are not absolute; it follows that the use of either method will not be sufficient in the maintenance of traditional information.

Constructive Protection:

Empower the owners of traditional knowledge (TK) to take legal action against misappropriation and seek relevant remedies:-

- Formally recognizes and approves traditional informational systems.
- Conforms to the true interest of TK holders
- Intended to ensure the avoidance of abuse of traditional knowledge and other unfair actions
- Favors blending of the old foundations with newer innovation and creativity
- Supports the rights of the owners of traditional knowledge and protection of the traditional informational systems
- Enhances fair sharing of profits as a result of using traditional information
- Promotes a bottom-up growth strategy based on professional respect

Protective Protection:

Defends against unlawful encroachment of intellectual property rights by third parties on traditional information

- Imposes on traditional knowledge that criteria of relevancy of prior art be applied

Promotes systems that will make the traditional knowledge that is considered as prior art a part of the knowledge that will be accessible to search authorities

- It is advisable to use the two techniques together, which will be a holistic approach to protecting the traditional information.

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The Government has made some activities to preserve the traditional knowledge and they include:

BeeJ Bachao Movement: in 1995 the NGO Kalpavriksh began a movement with the residents of the Tehri Garhwal district in Uttar Pradesh to record the diversity of local seeds and their methods of conservation used by the local village.

Honey Bee Network: The Honey Bee Network under the management of SRISTI (Society for the Study and Initiatives to Sustainable Technology and Institutions, Ahmadabad) is the largest database of grassroots innovations in the world. Its goals include encouraging popular innovation, protecting the intellectual property rights of small innovators, and also ensuring that original innovators and information suppliers share in generated profits.

National Innovation Foundation (NIF): Founded by the Honey Bee Network in collaborating with the Department of Science and Technology of the Government of India in February 2000, the NIF is based in Ahmadabad. It has a mission of having the institutional support in the recognition, development, protection and scaling of grass-root technologies and extraordinary traditional knowledge, and in helping such innovations to develop into self-sufficient business.

Gujarat Grassroots Innovations Augmentation Network (GIAN): GIAN performs market surveillance by choosing discoveries in the Honey Bee Network catalogue, find connections with institutions to design, research, and disseminate structural designs, and aim to improve the technical effectiveness of originality. It helps in testing of products and developing market launch plans hence rewarding grassroots technical innovators and traditional knowledge possessors.

8. Recommendations to make sure that there is an effective protection of the traditional knowledge.

- The intellectual property system needs to be operationalizes in terms of national and international regulatory frameworks that need to be developed to protect the legal access to hereditary resources and conventional knowledge.
- Political and legal flexibility in the existing systems of international relationships has to be maintained and extended and conciliation to design and implement positive and protective measures ensuring conventional information has to be established.
- There should be a broad and successful involvement of the indigenous and local communities in any deliberations and agreements of genetic resources and any cultural information.

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9. CONCLUSION

Conclusively, traditional knowledge is an extremely useful intellectual and cultural resource that does actually drive sustainable development and conservation of the biodiversity. However, the current Intellectual Property Rights system is not quite ready to address the specificities of traditional knowledge, particularly, its communal property and the intergenerational character of traditional knowledge.

Despite some gains achieved by India by enacting laws like the Biological Diversity Act of 2002 and by other programs like the Traditional Knowledge Digital Library (TKDL), issues such as biopiracy and unequal distribution of benefit continues to emerge. This demonstrates that we desperately require a strong, committed sui generis framework of safeguarding traditional knowledge.

Therefore, a balanced approach combining legal reforms, community participation, and international cooperation is essential to ensure effective protection of traditional knowledge.

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