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ASSESSING THE EFFICACY OF LEGAL FRAMEWORK ASSOCIATED WITH THE PROTECTION OF TRADITIONAL KNOWLEDGE IN INDIA

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I. ABSTRACT

Traditional Knowledge encompasses skills, technical know-how, practices regarding use of biological resources etc. accumulated and possessed by Indigenous communities since time immemorial. The unbridled globalization driven by technological advancements have intensified the risk of exploitation of traditional knowledge, wherein the corporate entities misappropriate traditional Knowledge for monetary gains without offering compensation to and obtaining consent of holders of Traditional Knowledge. The present research endeavour seeks to assess the efficacy of relevant domestic laws applicable to protection of traditional knowledge. It shall further discuss the challenges confronting protection of traditional knowledge with special reference to unethical practice of Biopiracy. It shall also shed light upon the recent judgement of the Hon'ble High Court of Uttarakhand in *Divya Pharmacy v Union of India*. Lastly, the author shall summarize the key research findings arrived at the end of research endeavour.

II. KEYWORDS :

Intellectual Property, Traditional Knowledge, the Bio-diversity Act, 2002.

III. INTRODUCTION

Intellectual Property is a property which stems from the cognitive faculties of human beings. It covers a comprehensive array of intangible assets namely but not limited to inventions, original literary and artistic works, symbols capable of being represented

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graphically, designs and the list follows. Traditional knowledge encompasses a wide range of knowledge, practices, skills, and innovations that have been passed down through generations within indigenous and local communities. From medicinal remedies and agricultural techniques to folklore and artistic expressions, traditional knowledge forms the cornerstone of cultural identity and resilience for many communities worldwide.

The juxtaposition of intellectual property and traditional knowledge reveals both opportunities and challenges. On one hand, the principles of intellectual property can potentially offer a framework for protecting and preserving traditional knowledge, ensuring that indigenous and local communities receive recognition and benefit from their cultural heritage. On the other hand, the application of traditional intellectual property regimes to traditional knowledge raises complex ethical, legal, and practical questions.

IV. MEANING & CONCEPT OF TRADITIONAL KNOWLEDGE.

The domain of Traditional knowledge is broad and comprehensive. "Traditional Knowledge" is a conjunction of two words namely- "*Traditional*" and "*Knowledge*." The word "Traditional" signifies any custom or belief that has been followed by society since times immemorial. "*Knowledge*" signifies information and understanding about something. Hence, T.K. can be defined as Information and understanding about any practice, skill, belief or custom practiced by society since ancient times.

According to *W.I.P.O.*, "Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity."³

Several Key aspects of this definition are presented as below:

³ (WIPO, Intellectual Property and Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions, 2020).

- It accepts that Traditional Knowledge includes various forms of knowledge, including information, practical skills, and know-how. This dynamic nature reflects the diverse ways in which communities accumulate and transmit knowledge over time.
- It emphasizes intergenerational transfer of knowledge within a community. TK is dynamic and evolves as it is disseminated down from one generation to the next. This transfer of knowledge occurs verbally and observations.
- TK is deeply rooted in the lived experiences, traditions, and value of these communities, shaping their cultural and spiritual identities.
- TK also includes elements of cultural and spiritual significance.
- Sustainability and continuity are another essential feature of traditional features.

Overall, this definition provides a comprehensive understanding of TK, emphasizing its dynamic, community-based, and culturally embedded nature, while also acknowledging its role in shaping identities and fostering intergenerational continuity within communities.

V. EXAMPLES OF TRADITIONAL KNOWLEDGE -

- Usage of antiseptic and skin enhancing properties of Neem & Turmeric by Indian households is no secret. Foreign innovators had also tried to obtain patent on these properties, but the Indian authorities convincingly thwarted their attempt.
- The Plant of **Tulsi** holds immense significance in the lives of Indian households, particularly Hindus. It can be found on the residential premises of nearly all Hindu people. It is holy, and Tulsi leaves are utilized in religious ceremonies and rituals. It also possesses medicinal attributes. It is utilized in traditional Ayurvedic medicine to treat various ailments and health issues.

The bitter fruit of Amla or Indian gooseberry is revered worldwide for its nutritional and medicinal attributes. It is basically act as a rejuvenator and

boost overall immune system of the body. Amla based preparations are employed to diagnose a variety of ailments ranging from respiratory to digestive issues.

VI. CHARACTERISTICS OF TRADITIONAL KNOWLEDGE.

- 1) **Generated within Communities:** - The very primary characteristic of Traditional Knowledge is that it is generated within communities. It is woven intricately through the collective experiences, practices, and wisdom passed down from generation to generation. Each member of the community contributes to this collective reservoir of knowledge, enriching it with their unique perspectives, skills, and insights, thus ensuring its resilience and relevance across generations.
- 2) **It is dynamic and changing in nature:** - Traditional Knowledge is not merely acquired but is a living entity which evolves continuously evolving in response to changing circumstances and sustain within the communities through ages.
- 3) **Location & Culturally Specific:** - Another significant feature of traditional knowledge is its location and culturally specific. It will continue to remain culturally specific but rampant globalization has extended the reach of traditional knowledge to the outside world. Neem, a tree native to Indian subcontinent, is used by Indian households for its medicinal properties. Now the neem-based products are exported to the outside world.
- 4) **Not systematically documented:** Traditional Knowledge is not systematically documented as it is passed down orally between the members of Indigenous community. The elders of the community act as custodians of the Traditional Knowledge through storytelling, ceremonies, and interpersonal interactions. The lack of systematic documentation poses significant challenges in preserving and safeguarding Traditional Knowledge for future generations. It is vulnerable to loss or distortion over time, especially in the face of modernization and cultural homogenization.

VII. LEGAL LANDSCAPE OF TRADITIONAL KNOWLEDGE-

A. Domestic Legislation:

This section of this chapter presents the analysis of present Indian laws aimed at safeguarding Traditional Knowledge in various forms. By scrutinizing this national legislation, researcher can identify gaps in traditional knowledge governance at the domestic level.

- **The Patents Act, 1970**

This piece of legislation regulates the grant of patents within India. The content of the Act is heavily influenced by the recommendations of the **Justice N. Rajagopala Ayyangar** committee. The act has undergone amendment's numerous times with most recent one in the year 2005.

Section 3(p) of the Act excludes inventions from being patented which in essence is traditional knowledge. Beside this, it is mandatory for the applicant to disclose the source and geographical origin of the biological material incorporated in the invention.

The Patent Act disqualifies "*Inventions*" based on Traditional Knowledge, but it does not confer any substantial rights on the holders of Traditional Knowledge. Apart from this, there's a possibility of bypassing the provisions of the Act through indirect patenting. This involves framing the invention in a way that obscures its roots in Traditional Knowledge, making it appear sufficiently novel and non-obvious to pass patentability requirements. Another pertinent issue is that Legal mechanisms and resources for identifying, challenging, and prosecuting patent applications based on Traditional Knowledge may be insufficient, allowing some patents to slip through without scrutiny.

- **The Geographical Indications of Goods Act, 1999.**

In our nation, Geographical Indications are regulated and safeguarded by the G.I. Act of 1999 which was enacted to meet the goals and standards established by TRIPS. The act provides registration mechanism for Goods having significant geographic importance. Beside this it provides legal remedies to parties in case of infringement of their rights guaranteed by the G.I. Act.

Drawbacks:

1) Protection under G.I. Act is only available to “products” of specific origin, However the domain of Traditional Knowledge is comprehensive and includes usage of medicinal properties of herbs, legends, folklores, songs etc. which cannot be labelled as “products”, and so cannot avail the protection provided by the G.I. Act, 1999.

2) The second major drawback is that in order to avail protection under the Act, a coherent link needs to be established between the product’s characteristics and its geographic origin. This can be quite challenging because Traditional Knowledge is mostly passed orally between generations and lacks documentary evidence to

3) In order to avail protection of G.I. Act, the applicants need to navigate through complex legal frameworks which can be expensive and time draining especially for indigenous communities who lacks adequate resources and legal intelligence. This can restrict communities from availing G.I. protection or accessing legal remedies in case of infringement of their rights.

- **The Biodiversity Act, 2002.**

Biodiversity refers to varieties of flora and fauna, and diverse ecosystem of which they are part. India is one of the biodiversity hotspots of the world. The biodiversity which is present in India is unique and rich. To extend protection to the rich biodiversity in India and to fulfil the obligations undertaken by our country under the Convention on Biological Diversity, The BDA, 2002 was enacted.

The object behind the enactment of Biological Diversity Act, 2002 was threefold: namely

- (a) Conservation of Biological Diversity (Both in-situ and ex-situ).
- (b) To ensure sustainable management practices regarding use of Biological Components.
- (c) Adequate fair use of biological resources.

The provisions of the BDA, 2002 applicable to the domain of Traditional Knowledge are present under Chapter 2 of the Act.

Section 3⁴ of the Act, mandates certain categories of person to obtain approval of National Biodiversity Authority. Before carrying out Biodiversity related activities.

Section 4⁵ bars certain categories of person from sharing of outcomes of Research associated with biological resources. In such a case prior approval of National Biodiversity Authority.

Section 6⁶ is very significant provision with regard to protection of Traditional Knowledge. It mandates the prior approval of National Biodiversity before seeking IPR protection.

Section 7⁷ calls for prior intimation to State Bio-diversity Board for accessing biological resources for certain purpose.

VIII. CONCLUSION

After meticulously studying and analysing these domestic legislations in the context of Traditional Knowledge, the researcher found out these laws provide protection to T.K. and its stakeholders in “bits and pieces” which is not adequate considering the broad spectrum of T.K. Attempts have been made in the past to provide protection to T.K. through legislative measures; However, those legislative bills haven’t seen the light of day yet

Biopiracy poses a serious threat to traditional knowledge and undermines the rights of Indigenous communities over the biological resources of their local ecosystem. Corporate houses extract biological resources and associated traditional knowledge from local communities without their informed consent or fair compensation. Then they utilize knowledge acquired in developing

⁴ § 3 of the Biodiversity Act, 2002.

⁵ § 4 of the Biodiversity Act, 2002.

⁶ § 6 of the Biodiversity Act, 2002.

⁷ § 7 of the Biodiversity Act, 2002.

various products (pharmaceuticals, cosmetics, agricultural products etc.) and aim to secure Intellectual Property rights over them. Once IPR is acquired over the concerned product, then product is commercially exploited to generate profits.

Thus, A sui generis system is the need of the hour to address these legislative gaps and challenges posed by unethical practice of Biopiracy.

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