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# **SAFEGUARDING INDIA'S TRADITIONAL KNOWLEDGE AND FOLKLORE: AN ANALYSIS OF IPR CHALLENGES, CASE STUDIES AND LEGAL FRAMEWORKS**

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## **I. ABSTRACT**

This research highlights the challenges of applying IPR laws to protect TK and folklore in India. This includes assessing current laws, and protection mechanisms against biopiracy and other threats. The research method used is doctrinal legal research methodology as it uses legal sources, statutes, case laws etc as primary and secondary resources. Frameworks and protection mechanisms present in other countries are compared to those of India. The study finds several challenges in the protection of TK and folklore, the gaps in the current framework of TK and folklore protection in India, and also provides solutions like the introduction of sui generis systems. According to research, it is necessary to adopt a holistic approach to safeguard TK and folklore in India. That is to say, reinforcing domestic regulations, devising sui generis schemes fit for the Indigenous communities, and joining the global initiatives to create a coherent global system. The analysis puts forward a mixture of legislative reforms, local initiatives, and global collaboration to ensure their sustainable protection.

## **II. KEYWORDS**

Intellectual property rights, Geographical indication tags, Traditional knowledge, Folklore, Ancient knowledge

## **III. INTRODUCTION**

Knowledge, innovations, skills and practices acquired by local communities over several generations are known as Traditional Knowledge

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(TK). Such knowledge is associated with conserving biodiversity, cultural practices, medicine and agriculture. Some notable examples of Indian TK include Ayurveda, Unani and Siddha in medicine, Madhubani Painting, Kutch embroidery, Blue pottery in handicrafts, ancient water harvesting systems like Aharpyne<sup>2</sup> from Bihar or Kund system<sup>3</sup> from Rajasthan, use of shenkhat<sup>4</sup>, panchagavya<sup>5</sup> or gandool khat<sup>6</sup> as natural fertilisers in agriculture, Banarasi silk, Pashmina Shawl and Paithani in traditional textiles.

On the other hand, folklore contains cultural expressions such as songs, dances, stories, rituals, art forms, ballads etc which have been passed down from one generation to the next within a community either orally or in any other form.

Safeguarding TK and folklore is crucial to preserve the rich cultural and intellectual heritage that India inherits. This protection not only maintains the diversity related to knowledge, traditions, culture, and practices among various communities but also enhances social cohesion among all such communities. The continuity of TK and folklore also ensures that the communities dependent on such activities are given their fair share, which will be discussed later in the research paper. By writing this research paper I aim to evaluate the efficacy of current provisions regarding the protection of TK and folklore in India and assess the need to enhance the system.

#### IV. RESEARCH OBJECTIVES

1. To assess the existing national and international legal frameworks safeguarding the Traditional Knowledge (TK) and folklore in India.
2. To evaluate how effective the IPR laws in India are in protecting the TK and folklore through the registration of patents, GI tags for traditional knowledge, and Copyrights for folklore.

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<sup>2</sup> a traditional irrigation system in South Bihar, India.

<sup>3</sup> a system of rainwater harvesting

<sup>4</sup> organic fertilizers made of cow dung, called as shenkhat in Maharashtra

<sup>5</sup> represents milk, urine, dung, ghee, and curd, derived from cow and serves medicinal purposes in Ayurveda

<sup>6</sup> organic fertilizers made from worms also called as vermicompost

3. To determine legal and functional voids in current IPR laws and challenges in protecting TK and folklore from various threats.

## **V. RESEARCH QUESTIONS**

1. What are the current legal provisions in India for protecting Traditional Knowledge (TK) and folklore under various Intellectual Property Laws?
2. What are the loopholes in protecting TK and folklore from unauthorized use?
3. How do international agreements like the CBD and Nagoya Protocol influence India's IPR policies on TK and folklore?

## **VI. RESEARCH HYPOTHESES**

1. There is a need for specific legal mechanisms beyond the current IPR framework to effectively safeguard TK and folklore.
2. Recognition and protection of TK and the folklore of India are crucial for the economic development as well as for preserving the cultural heritage.
3. India's obligations under international agreements like CBD and the Nagoya Protocol influence the domestic IPR regime for TK and folklore.

## **VII. RESEARCH METHODOLOGY**

This paper utilises a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

## VIII. LITERATURE REVIEW

The overlap between intellectual property rights (IPR) traditional knowledge (TK) and folklore has attracted a great deal of scholarly attention, facing the difficult legal, cultural, and moral challenges involved. The traditional IPR scheme mostly safeguarded personal rights and motivated advancements, is frequently not well-suited for the assembly and intergenerational nature of TK and folklore that are not easily placed within the notions of novelty, originality, and time-restricted protection.

Dutfield (2003) and Posey (1996) amongst others have defined the TK and folklore characteristics and their main aspects themselves, such as community ownership, their evolving nature, and the cultural identity they embody. This nature of TK and folklore thus poses challenges for its protection under the then-framework which focuses on ownership by a single entity. Therefore it suggests a different approach to protect TK and folklore. Studies by Chander and Sunder (2004) and Gervais (2009) highlighted the limitations of the IPR system resulting in the exploitation of the knowledge and resources as well as the communities of own them. Authors like Correa (2001) and Antons (2009) explained how sui generis systems can help TK and folklore protection. They prove to be more compatible preventing biopiracy and misappropriation. Greaves (1994) and Blakeney (2000) discussed the effectiveness of the CBD, WIPO and its efforts in protecting TK and folklore on a global scale.

The WIPO case study (2017) and authors like Taubman and Wager (2010) compared the different provisions of different countries related to the protection of TK and folklore. Thus these studies gave a wide range of approaches, strategies, defensive measures, databases etc.

All the researchers express that there is a need for such a system that is a good blend of legal reforms related to IPR and community-based initiatives.

## **IX. BACKGROUND AND CONTEXT**

### **Cultural, social, and economic importance of TK and folklore in India**

In India's rich and multicultural environment, traditional knowledge (TK) and folklore are an integral part of it. It reflects multiple communities and ethnic groups. This expertise (TK) includes various old medical practices, crafts, farming methods, and ecological wisdom that have taken several centuries to develop. The transmission of such know-how is necessary for the safety and continuity of cultural heritage. For example, Indian medicine has a long history and it includes Ayurveda, Unani, and Siddha. Obtaining herbal drugs from the TK has great economic value in India and around the world. In this case, the demand for herbal medicine and wellness products can be viewed as an opportunity to turn TK into a source of money.

On the other hand, Folklore, through stories, songs, dances, and rituals, has traditionally served as a medium for transferring local history and for expressing diverse beliefs and values, and thus these communities can keep their cultures and specific identities and survive among others. Rituals, festivals, and ceremonies are often based on stories from the past that serve moral purposes in communities and folklore reinforces the spiritual aspect. Also, folklore is usually spoken in local languages that are in danger of extinction, because many of them are quite old at present. Thus, by preserving these nonmaterial cultural heritages, they also protect linguistic diversity all over the country, and, therefore, curb language loss. These shared stories, customs, and rituals also serve to unify and socialize people. Traditional art and crafts, a few of them being Warli paintings from Maharashtra and blue pottery from Rajasthan, are based on traditional knowledge and folklore. These items contribute to the economy by providing many artisans with jobs and are also the most sought-after export items in India. Moreover, these traditional art forms have allured the tourism industry and have thus become a significant part of both domestic and international tourism.

In this way, we can say that the traditional knowledge and folklore of India hold a significant value in the social, cultural and economic landscapes of India.

## **X. Historical Overview towards its Management and Protection**

Traditionally, communal and customary practices have served as the primary means of managing and safeguarding Traditional Knowledge (TK) and folklore in India, instead of formal legal institutions. It was common for elders, spiritual guides, healers, and craftspeople to act as guardians of this information, guaranteeing its transmission orally. Because this information was common in nature, it belonged to the society as a whole, which was responsible for managing and safeguarding it from outsiders. The unwritten guidelines guiding the application, exchange, and dissemination of knowledge are known as customary laws. People who disobeyed these traditions—like disclosing sacred knowledge to strangers—were frequently punished by society. Temples, sacred woods, and other cultural sites were frequently connected. Temples, sacred woods, and other sites of cultural significance were frequently connected to particular folktales and customs. The safeguarding of these locations was linked to the preservation of Traditional Knowledge (TK), as they were regarded as storehouses of spiritual and cultural wisdom. TK and folklore were controlled and passed down via particular castes, social groupings, or clans in various areas. Traditionally, specific arts, crafts, or medical techniques were practised and preserved by specific castes or families. Later, Panchayats, village councils, or elder assemblies were in charge of settling conflicts, upholding customary laws, and making sure that knowledge was applied in a way that benefitted the community as a whole.

Keeping in mind the vitality of traditional ways of protecting and preserving the Indian TK and folklore we must also consider that the management and protection of it have faced new challenges such as biopiracy (particularly in the fields of biotechnology and pharmaceuticals), loss of

biodiversity, and the erosion of cultural practices as a result of modernisation and globalisation. Thus there is an increased need for a systematic legal framework such as intellectual property rights (IPR) and geographical indications (GI). We must adopt safeguarding practices that are a well-balanced combination of traditional and modern methods.

## **XI. LEGAL FRAMEWORK GOVERNING TK AND FOLKLORE**

- **The Biological Diversity Act, 2002**

It was enacted in India to comply with the Convention on Biological Diversity (CBD). The act was introduced to ensure that the benefits arising out of the use of biological resources of India should be equally and fairly shared by all. It also requires biodiversity and all its components to be used sustainably and conserve it.

1. Section 3 of the given act provides that a person a foreigner, a non-resident citizen of India, a corporate body, association or organisation (not incorporated or incorporated but controlled by a foreigner) would require prior approval by the National Biodiversity Authority (NBA) for accessing the biological resources of India. This was to ensure that the communities who own resources and knowledge are fairly compensated through the benefits-sharing mechanism.
2. Section 6 of the given act states that any entity seeking an IPR for inventions that are based on the traditional knowledge or based on biological resources of India must obtain approval from the NBA, to make sure that the communities holding such knowledge are safeguarded against exploitation by unauthorised entities.
3. Section 36 of this act gives the Central Government powers to take necessary measures for the protection of TK and to prevent the misuse or exploitation of biological resources and associated knowledge.

- **The Patents Act, 1970**



This act regulates the patenting of inventions in India. Traditional Knowledge and folklore, based on communal practices generally are not granted patent protection. Additionally, the Act includes provisions to prevent biopiracy.

1. Section 3(p): This section does not allow granting patents to inventions that are based on traditional knowledge or its components as they cannot be called as inventions as such. This helps prevent the misappropriation of traditional knowledge.
2. Section 10(4)(d)(ii)(D): To prevent biopiracy, this section states that when a person is applying for a patent that mentions a biological resource in the specification, its source and geographical origin must be disclosed by him/her, otherwise the patent might get rejected or revoked.
3. Other than the abovementioned statutory provisions laid down, the government in collaboration with the Council of Scientific and Industrial Research (CSIR) has established the Traditional Digital Library (TKDL) to document the TK. It is a step taken to prevent the flawed granting of patents based on Indian TK, especially in the pharmaceutical industry, as it can be accessed by patent examiners worldwide.

- **The Geographical Indications of Goods (Registration and Protection) Act, 1999**

Indian TK and folklore can also be protected through Geographical Indication (GI) tags as given under the Geographical Indications of Goods Act, 1999. The act mentions the procedure and conditions for the registration and protection of GIs in India, which is used to identify the goods that have specific quality, reputations or any other characteristics attributable to their geographical origin.

1. **Section 2(e):** This defines GI. It states that goods that obtained certain qualities or reputations due to their origin from a particular territory in India. It includes handicrafts, textiles, and agricultural products. Puneri Pagadi, Solapuri Chaddar, and Warli Painting as some examples of GIs from Maharashtra.
2. **Section 9:** It gives grounds based on which the registration of a GI tag may be refused or rejected. Any GI that might cause deception or confusion, or maybe

contrary to current laws, comprises obscene matter, may hurt the religious sentiments of a class or section of the society, and can be refused registration.

3. **Section 11:** This describes the procedure for the registration of GI tags, wherein it is necessary to prove the relation of the product with the geographical region in the historical and cultural aspect.
4. **Section 21:** It ensures that the GI tags are not misused by unauthorised users and that the benefits are only earned by the communities that produce these goods.
5. **Section 24:** Lastly, Section 24 offers a 10-year protection for the registrations of GI tags to protect the interest of the communities producing them.

- **The Copyright Act, 1957**

This act was enacted to protect literary, artistic, musical and other such creative works of India, although its scope for the protection of folklore and TCEs is limited and does not explicitly provide for the folklore and traditional cultural expressions (TCE) of India, it can still be invoked to safeguard folklore and TCEs of India.

1. **Section 13:** This section states that the folklore and TCEs may not directly be protected by copyrights but if its originality can be proved in a tangible form then it can be protected by copyrights.
2. **Section 57:** This section permits the authors to raise objections if there is any distortion, mutilation or modification of their work, hence this can also be used to protect the folklore and TCEs.

- **International Agreements and India's Obligations**

According to the Convention on Biological Diversity (CBD), India is committed to conserving its biological resources, and its sustainable use and promoting equitable and fair sharing of benefits with the local communities who control it. The Nagoya Protocol of 2010, similarly, creates an obligation on India to ensure biological resources can be accessed with prior consent and benefits be shared

fairly with the communities. Some of the initiatives of WIPO in which India takes active parts promote the protection of such TK and folklore by aligning its policies.

## **XII. CHALLENGES IN PROTECTING TK AND FOLKLORE**

TK and folklore, in most cases, have been in the form of oral traditions passed down from one generation to the next. This poses a great challenge in the documentation process. While converting it to written format some nuances, contextual meaning or cultural context may be missed. There being a large variety of communities and associated TK and folklore, documenting them is a lengthy process and might even lead to several errors. Another issue that arises due to its oral form is that fewer written proofs are required for copyright protection of particular folklore. Infringement of such artworks can't be defended easily due to conflict of ownership. Communities who control it may not have enough knowledge or resources for the documentation of TK and folklore. They may also not trust the entities being involved in the documentation process or fear that their knowledge might be misappropriated or in some cases, they might even not be incentivised fairly to share their knowledge.

Codifying it may lead to disruption in the traditional ways of practising, estranging the communities who own them whereas commercialisation may bring in the risk of devaluation of our heritage. Additionally, misappropriation or devaluation of such knowledge which is directly connected with the reputation and livelihood of such communities can be at risk. Present IP laws of India are majorly based on Western frameworks for protecting IP, these do not suit well to the Indian TK and folklore. Most of the current laws safeguard the works of an individual or companies that happen to be incompatible with the collective, communal nature of TK and folklore. Folklore, as discussed earlier, has majorly been passed down orally. There are hardly any customs, songs, or ballads that are in written form, due to which it cannot be protected. Thus, such

artworks and TK can be misused and exploited by third parties while the communities who inherit them lose control over them and miss the chance of earning from their commercialisation.

Viewing the above-mentioned concerns there is an increased need for alternative legal mechanisms - like sui generis systems which refer to systems that are specially designed to protect regimes outside the known frameworks - specifically for Indian TK and folklore.

### **XIII. Few cases of biopiracy and misappropriation**

#### **1) NEEM OIL:**

The U.S. Department of Agriculture and the multinational WR Grace were granted patents in the 1990s for using neem oil as a fungicide, a practice known and used by Indian farmers for centuries. An India-based NGO opposed the grant of the patent stating that it originated in India, resulting in the patent being revoked by the European Patent Officer in 2000.

#### **2) TURMERIC:**

A similar case occurred in 1995 when the US Patent and Trademark Office granted a patent to University of Mississippi Medical Centre for using turmeric as a medicine to heal wounds. This has been an age-old practice and part of traditional Indian Medicine of India. Thus in 1997, this patent was revoked.

#### **3) BASMATI RICE CASE:**

Another instance of withdrawing a patent claim arguing that it has been part of Indian TK is that of basmati rice. RiceTec, a US-based company, was granted a patent in 1997 on a specific kind of Basmati rice. It was intended to hamper the growing reputation and market of basmati rice grown in India and Pakistan.

Above mentioned are a few of the very famous cases of infringement of rights related to Indian TK and folklore, a few others are cases regarding the Yog Asanas, Jamun<sup>7</sup>, Karela<sup>8</sup>, Darjeeling Tea etc. In response to such cases, India has strengthened its IP laws and established the Traditional Knowledge Digital Library (TKDL) to prevent the granting of patents for such innovations that are based on Indian TK. Another step includes active participation in international forums like the World Trade Organisation (WTO) and the World Property Organisation (WIPO) to advocate against biopiracy.

#### **XIV. CULTURAL AND ETHICAL CONSIDERATIONS**

##### **A. Community Rights:**

We now know that TK and folklore in India are not owned by one individual or company but are collectively owned and managed by the indigenous communities over centuries. Therefore, it is necessary to create such a provision that will maintain the communities' control over their cultural heritage. The principle of community rights is such a provision, which states that the communities are the owners of the TK and folklore rather than any individual, thus protecting their interests.

##### **B. Prior Informed Consent (PIC):**

PIC principle asserts that any external party willing to use the TK or folklore must obtain permission for use from the communities who own them. This prevents any kind of misappropriation or biopiracy and also makes sure that the owners receive the well-deserved monetary benefits from its commercialisation.

##### **C. Benefit-Sharing Agreements:**

The Nagoya Protocol and the Convention On Biological Diversity (CBD) give special emphasis on benefit-sharing agreements, a mechanism that makes sure that the communities

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<sup>7</sup> *Syzygium cumini* commonly known as Malabar plum

<sup>8</sup> *Momordica charantia* commonly known as Bitter gourd

who own TK and folklore receive a fair share in the monetary as well as goodwill-related benefits.

### **D. Impact of Commercialization**

The commercialisation of TK and folklore results in the devaluation of the cultural heritage and loss of identity of the communities involved as the knowledge is transformed into a marketable product with the intention of profit maximisation thus reducing it to a mere product. Commercialisation also poses a risk of exploitation of resources, all the profits going to pockets of the external entities and no or little compensation to the owners of the TK and folklore. Over-exploitation of resources can also lead to loss of or threat to biodiversity and sustainable development. Not only does it lead to loss of identity of the owner-community but also results in reduced authenticity of the product that is based on TK and folklore and leads to dilution of the TK and folklore itself. Apart from the alteration in the way TK and folklore are presented, it may also offend the cultural sentiments of the communities holding it. Such is the case of Yog, the West has been claiming the trademarks on specific yoga asanas and even on the term 'YOG' itself. It has been overly commercialised there. For instance, the trademarking of the postures under 'Bikram Yoga' by Bikram Choudhury sparked a lot of debate. Trademarking yoga asanas also leads to over commodification due to which the spiritual context of yoga has been lost. Another effect of yoga being commercialised by the West is that there were many instances where concepts that were foreign to Indian traditions were introduced in it, and the reputation of the original Yog was, then, lost. Hence we can say that whenever an entity is using Indian TK and folklore as a basis for its product it must make sure that the values, principles and norms are respected well. Additionally, they must ensure that the context of the TK and folklore is not lost in the process.

## **XV. CASE STUDIES**

### **a) Indian Case Studies**

Having seen the cases of neem, turmeric, basmati rice and Yog earlier in this paper, let us look at other lesser-known cases where the TK and folklore of India were exploited.

## 1. Patenting of Ayurvedic Formulations - Case of Pushkarmool<sup>9</sup>

Pushkarmool has been used as a medicinal herb to cure cardiovascular and respiratory ailments for centuries in India. Its traces can be found in the ancient texts of Ayurveda. Patent claims were made in the early 2000s by Europe and the U.S. to cure various ailments. It attempted to use the medicinal qualities of the herb for personal gains essentially ignoring its presence in Indian TK present in the public domain. The patent grant would have affected the livelihood of communities depending on it also the herb would have lost its traditional context. Documents from TKDL were used to challenge the patent.

## 2. Appropriation of Traditional Crafts - Madhubani Painting

Madhubani painting is also known as Mithila painting, an art form made of various intricate patterns and vibrant colours and originates from Mithila, Bihar. It often depicts itihaas<sup>10</sup> and other stories. Several companies and designers sold home decor pieces, textiles and other products inspired by Madhubani design without giving due credit or share in profit to the artists and communities of India. This diluted the cultural significance of the art form as the designs were simplified or modified. As an effort to protect the Madhubani painting from getting infringed further, a GI tag was granted to it in 2007. Thus it is now worldwide known that it originates from Mithila, Bihar and the owners get their well-deserved recognition.

## 3. Biopiracy of Medicinal Plants - Kala Jeera<sup>11</sup>

Kala jeera is used as a plant medicinal plant in Ayurved as well as Unani to prevent and treat fungal infection, bacterial function and inflammation. It also reduces the heat or acidity in one's body. Foreign companies began filing patents specifically for their antifungal qualities. It was misunderstood to be novel despite being present in Indian medical practice for years. Documents mentioning kala jeera as a medicine in Ayurvedic texts and Unani were taken from the TKDL and proved to be beneficial for challenging the patent claim.

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<sup>9</sup> Inula Racemosa

<sup>10</sup> Itihaas is Hindi word for history. Here it refers to Ramayana and Mahabharat

<sup>11</sup> Nigella Sativa commonly known as black cumin seeds

#### **4. Misappropriation of Traditional Textiles - Banarasi Sarees**

Banarasi sarees originated from Banaras (present-day Varanasi) are sarees with detailed brocade designs. Indian cultural heritage is often used in weddings and other such ceremonies mostly in Uttar Pradesh. Cheap imitations produced locally as well as in China risked the livelihoods of the traditional craftsman of Varanasi. Due to these first copies being produced the value of the original craft was reduced. Foreign companies have attempted to patent designs and patterns based on Banarasi silk. In 2009, a GI tag was granted to Banaras sarees. Distinguishing between authentic and imitations is now easier.

#### **5. Bharatnatyam and Kathakali in commercial performances**

Kathakali and Bharatnatyam originating from South India are classical dance forms deeply rooted in India's culture as well as religion. Traditionally performed to celebrate festivals, enact religious tales or itihaas it involves classical music, rituals and a particular type of attire. Over commercialisation of these dance forms by Western and recently a few Indian performers and choreographers included elements of these dance forms without understanding the meaning or respecting the context. May it be classical dance steps, facial expressions, hand gestures, altering traditional attire or using inappropriate music. The spiritual, cultural and religious value of the dance forms has been reduced to merely being entertainment.

Many such notable cases can be found in the past few decades where a threat to Indian TK and folklore was created through IPR infringement like the case of Navara rice, Arogyapacha<sup>12</sup>, Kutch embroidery, Darjeeling tea, Enola beans etc. It is essential to compare cases from other countries regarding the protection of indigenous knowledge, to identify different solutions and approaches.

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<sup>12</sup> *Trichopus zeylanicus*



## **XVI. Comparative Analysis of TK and Folklore Protection of Other Countries**

### **i. Australia: Protection of Indigenous Knowledge**

Australia, to protect its TK, took steps like benefit-sharing agreements (ABS) and biocultural protocols. Focusing on Cultural and Heritage Laws proves to be a significant step. A case where such concern was raised was that of commercialising Kakadu plum which is rich in vitamin C and also known for its medicinal properties. It was ensured through ABS that the Aboriginal communities receive a fair share of the benefits. Another case involves Australia's dreamtime stories and art. Protection was given to it through copyright laws when unauthorised reproduction of such art had increased.

### **ii. New Zealand: Protection of Māori Knowledge and Mānuka Honey:**

Māori knowledge of New Zealand is protected by the Waitangi Tribunal<sup>13</sup>, the concept of kaitiakitanga<sup>14</sup> and the Māori land court. Wai 262 Claim is the landmark case that addressed the protection of Māori TK related to flora and fauna, thus the case is commonly known as the flora and fauna case. As the commercialisation of this expertise increased, the Māori tribes demanded rights to control this use of their TK. Another example is that of Mānuka Honey, a part of Māori TK, which held medicinal properties. It had been misappropriated by the non-Māori parties for monetary gains. Thus the government has sought to obtain a GI tag to avoid such misappropriation.

India, New Zealand and Australia each have developed their distinct way of protecting their TK and other such IPR. While India focuses on developing a centralised system of documentation of the Indian TK and folklore, on the other hand, New Zealand and Australia ensure the participation

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<sup>13</sup> a permanent commission of inquiry in New Zealand that investigates claims made by Māori people

<sup>14</sup> practice of protection and conservation of the environment and the resources within it, on which people depend

of the communities who own the TK and folklore by obtaining their consent. One thing we see common in all three is the ABS pattern of agreements.

## **XVII. PROPOSED SOLUTIONS AND LEGAL REFORMS**

### **i. New Laws for TK and Folklore Protection**

Although there are some laws like the Biodiversity Act of 2002 and Patent Laws of 2000 they are insufficient to protect Indian TK and folklore in all aspects. There is a need to introduce laws that would govern the unauthorised use of TK and folklore in India. This could include - obtaining the consent of the involved aboriginal communities before using their TK or folklore, enhancement of the current laws in an even stricter manner through robust filing systems, heavy fines etc, including a wide range of TK and folklore under the non-patentable matters.

### **ii. Alternative Protection Mechanisms**

Customary laws could be applied as they are more effective, empower local governance, community protocol documents that explain how the TK and resources should be used, in governing TK and folklore.

### **iii. Sui Generis Systems**

When a system or a legal framework is designed specially to safeguard a particular regime. Thus such a sui generis framework is needed to protect Indian TK and folklore. The sui generis regime of Peru was established by Law No. 27, 811 of 2000<sup>15</sup>

### **iv. International Cooperation and Harmonization**

Being part of several international agreements and protocols, like the CBD and the Nagoya Protocol, India can align Indian IPR laws and its access

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<sup>15</sup> WIPO. (n.d.). INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE. In Booklet No 2. [https://www.wipo.int/edocs/pubdocs/en/tk/920/wipo\\_pub\\_920.pdf](https://www.wipo.int/edocs/pubdocs/en/tk/920/wipo_pub_920.pdf)

mechanism with the initiatives and frameworks. Collaborating with other countries will also help in combating biopiracy, sharing benefits, preventing the exploitation of TK and folklore, creating a global database for documentation of patents and TK etc

## **XVIII. CONCLUSION**

The safeguarding of TK and folklore in India faces numerous adversities, with the principal ones being biopiracy, the unlawful use of genetic resources and the degradation of cultural identity because of commercialisation. These difficulties point out the insufficiencies of existing IPR systems which are mainly driven by the Western legal culture, and therefore, they do not fully embrace the communal and collective aspects of TK and folklore. Actions like the Biological Diversity Act, the creation of the Traditional Knowledge Digital Library (TKDL), and the Geographical Indications (GI) Act have been successful in the protection of these cultural resources to a certain degree. Nevertheless, there are still loopholes, particularly concerning the accurate registering of oral traditions, the enforcement of community rights, and the preservation of intangible cultural expressions that are not physical.

One of the approaches is the formulation of *sui generis* legal systems for TK and folklore, the adoption of PIC principles, and the signing of benefit-sharing agreements that will ensure the Indigenous people get a just return for the knowledge used. Furthermore, the enhancement of international relationships and the adjustment of internal laws to global terms have to be carried out to fulfil agreements such as the Convention of Biological Diversity (CBD) and the Nagoya Protocol. Apart from this, the ethical implications of commodifying TK and folklore, the effects of globalisation on culture and heritage and forming legal mechanisms to better suit the nature of TK and folklore are some areas where legal research and development are still lacking. On the flip side, stringent law enforcement and the extension of community rights will curb biopiracy.

The fundamental element is to find a balance of protection of Traditional Knowledge (TK) and folklore on the one hand, and innovation and preservation of

cultural art. Further, the legal frameworks are to firstly, protect these cultural assets from exploitation and secondly, promote their sustainable use in a way that respects the rights and traditions of indigenous communities. Balancing is the bottom line as it is needed to maintain the sustainability of TK and folklore which are dynamic parts of India's culture that not only lead to the growth of the economy but also provide the nation with a rich cultural heritage.

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