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# Protection of Traditional Knowledge under the Intellectual Property Rights Regime with Special Reference to India

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TANVI TRIVEDI<sup>1</sup>

## ABSTRACT

*To achieve its goal of becoming a major player on the international stage in the twenty-first century, India will need to adopt a strategy that is both fair and welcoming. The marginalized and vulnerable tribal populations, which make up around 10% of the enormous population and play an important role in this regard, number perhaps over 100,000. Their ancestors' wisdom can be researched and utilized to instill a sense of ethics in a variety of fields of study. This will most surely create the much-needed equilibrium in the pursuit of fulfilling the Sustainable Development Goals set by the United Nations. In a world where natural resources are being depleted at an alarming rate, the promotion of traditional knowledge (TK) could become an initiative for the regeneration of natural resource stocks in post-COVID-19 scenarios. In addition to restoring the rights of these indigenous tribes, taking this step would also make it easier for the country to reap the economic benefits of intellectual property by incorporating traditional knowledge into the legal framework governing intellectual property. If India were to take the lead in this initiative, it would be a stroke of genius. In this regard, substantial developments have already taken place in the Global North, and this would bring that region into a state of equilibrium with the rest of the world.*

**Keywords:** *Traditional Knowledge, Intellectual Property Rights, Traditional Knowledge Digital Library.*

## I. INTRODUCTION

*"Our traditional knowledge digital library is the only database which even the US admits can effectively prevent misappropriation of local wealth. Sharing it with the patent offices in other countries with all safeguards in place can protect our centuries-old heritage and knowledge".*

**- VK Gupta**

India is one of the world's most bio-diverse countries, with a population of over a billion people. India is a nationally recognized center for agricultural diversity and the custodian of various

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wild kinds of crops and their relatives. Because of its unique biodiversity and natural riches, India has accumulated a wealth of traditional knowledge on the qualities and use of these biological treasures. Indigenous and local communities may be found in the vast majority of naturally varied and abundant locations across the world. "Those who live in this natural setting consider it a way of life and an important component of their cultural heritage. Indigenous peoples are a treasure trove of traditional environmental knowledge and sustainable resource use practices". Traditional Knowledge is a critical component in achieving long-term development success. It has long been a treasure that was easily accessible, making it a target for theft and other forms of exploitation. From generation to generation, it is most often transmitted orally as oral perception.<sup>2</sup>

"Traditional knowledge is information that has been learned through time by members of an indigenous community, in one or more cultures, via experience and adaptation to the local culture and climate, and has been continually influenced by each generation's advancements and practices".<sup>3</sup>

"It is enormous and contains information about many different groups of things, including knowledge of plants and animals and their properties; knowledge of minerals and soils, as well as their properties; knowledge of organic and inorganic mixtures; medicinal knowledge; and folklore expressions in the form of music, dance, poetry, crafts and other forms of storytelling and art". When it comes to science, technology, ecology, medicine, agriculture, and biodiversity, traditional knowledge safeguards all intellectual inventions made by forefathers and steadily refined by succeeding generations in a traditional community. This encompasses everything from scientific breakthroughs to technical advancements to agricultural advancements. The use of traditional knowledge aims to preserve the people and its culture, as well as to safeguard the community's genetic capital. There has been an increase in recent years in demand for effective protection of traditional information, either through the establishment of a traditional intellectual property rights system or through the establishment of a modern sui generis system, such as traditional group rights or rights to group land. Additionally, cultures must be urged to use conventional conceptions in order to promote and strengthen their own growth and development.<sup>4</sup>

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<sup>2</sup>. Poorna, R. L., Mymoon, M., & Hariharan, A. (2014). Preservation and protection of traditional knowledge – diverse documentation initiatives across the globe. *Current Science*, 107(8), 1240–1246. <http://www.jstor.org/stable/24107164>. (hereinafter "Poorna")

<sup>3</sup>. Tang, R., & Gavin, M. C. (2016). A Classification of Threats to Traditional Ecological Knowledge and Conservation Responses. *Conservation and Society*, 14(1), 57–70. <http://www.jstor.org/stable/26393228>.

3. Id.

## II. UNDERSTANDING TRADITIONAL KNOWLEDGE

Traditional knowledge is information that has been accumulated through generations as a result of traditions. Furthermore, it often takes into consideration the expansion/adaptation of production from point to point in response to changing societal demands. "These innovations act as an extension of present consciousness as well as a shaping element of information transferred to the next generation, establishing the core of customary knowledge for the next generation as a whole". It can be seen from the foregoing that the essential elements of traditional knowledge are :

- a) The creation of a new approach or procedure to meet a need.
- b) By virtue of conventions, said procedure is passed down through generations.
- c) By virtue of its ideals, it is restricted to the specific community.

There are also some other definitions of "traditional knowledge" as laid down by various renowned jurists and scholars which are often referred to by judges in landmark case laws all over the world. They are as follows :

"Traditional Knowledge ["TK"] is a set of knowledge and beliefs about the relationships of living organisms (including humans) with one another and with their environment that has been passed down through generations via cultural transmission". Furthermore, TK is a characteristic of communities with a long history of resource use practices; these are often non-industrial or less technologically advanced societies, many of which are indigenous or tribal.<sup>5</sup>

Traditional environmental knowledge is a collection of beliefs and information passed down via oral tradition and firsthand experience. It consists of a categorization system, a collection of empirical data about the local environment, and a self-management system for resource management. The knowledge system's ecological features are inextricably linked to its social and spiritual dimensions. The amount and quality of TK vary by gender, age, social position, intellectual aptitude, and occupation among community members (hunter, spiritual leader, healer, etc.). With its roots in the past, TK is both cumulative and dynamic, drawing on the knowledge of previous generations while adjusting to current technological and social advances.<sup>6</sup>

Indigenous knowledge lies at the heart of Indigenous peoples' identities and worldviews.

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4. Dods, R. R. (2004). Knowing Ways/Ways of Knowing: Reconciling Science and Tradition. *World Archaeology*, 36(4), 547–557. <http://www.jstor.org/stable/4128287>.

5. Stevenson, M. G. (1996). Indigenous Knowledge in Environmental Assessment. *Arctic*, 49(3), 278–291. <http://www.jstor.org/stable/40512004>.

Indigenous peoples' traditional knowledge is their collective inheritance and patrimony. As a result, it is priceless to us, and its worth cannot be assessed for commercial purposes.<sup>7</sup>

Traditional knowledge refers to the knowledge, inventions, and customs of indigenous and local cultures all over the globe that have been passed down through generations. Traditional knowledge is passed down orally from generation to generation, having been developed through decades of experience and being tailored to the specifics of the region's culture and natural environment. Storytelling, songwriting, folklore, proverbs, cultural values, beliefs, and rituals are all examples of collectively owned knowledge. It also includes agricultural practices such as the development of plant species and animal breeds, as well as community laws and local languages, among other things. Traditional knowledge is mostly of a practical character, and it may be found in sectors such as agriculture, fishing, health, horticulture, and forestry, among others.<sup>8</sup>

"It was difficult to define traditional knowledge because there were so many different definitions. However, the central theme was that cultural beliefs and traditions were passed down from their forefathers to the present generation with the goal of surviving while still living in harmony with the environment. Traditional knowledge is something that is acquired throughout a lifetime and recognizes the interdependence of the trees, soil, and water in a community or region".<sup>9</sup>

"Traditional knowledge is defined as knowledge and values that have been learned through experience, observation, learning from the land, or learning through spiritual teachings, and passed down from one generation to another according to GNWT [Government of the Northwest Territories] policy."<sup>10</sup>

### III. PROTECTION OF TRADITIONAL KNOWLEDGE

The different meanings of the term "protection" have been provided, which may be used to justify a lack of clarity on the basis for protecting one's rights. Some people use this phrase in the context of intellectual property rights, where security often refers to preventing unlawful use by other parties. Another approach differentiates protection as a tool for safeguarding traditional knowledge against activities that might corrode it or have a negative impact on the

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6. Grasswick, H. E. (2010). Scientific and lay communities: earning epistemic trust through knowledge sharing. *Synthese*, 177(3), 387–409. <http://www.jstor.org/stable/40985710>.

7. Morris, B. (2010). INDIGENOUS KNOWLEDGE. *The Society of Malawi Journal*, 63(1), 1–9. <http://www.jstor.org/stable/29783605>.

8. Bryan, M. (2017). VALUING SACRED TRIBAL WATERS WITHIN PRIOR APPROPRIATION. *Natural Resources Journal*, 57(1), 139–182. <http://www.jstor.org/stable/26202190>.

9. Ellis, S. C. (2005). Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision Making. *Arctic*, 58(1), 66–77. <http://www.jstor.org/stable/40512668>.

lives or cultures of the communities that developed and implemented it. However, one of the most important justifications for giving Traditional Knowledge security is that<sup>11</sup>:

- a) Equity is taken into account.
- b) Questions regarding conservation are taken into account.
- c) Insurance of maintenance of traditional customs and community.
- d) Traditional Knowledge components can be kept out of the hands of trespassers.
- e) Encouraging its usage and importance in the development of society.

When it comes to the security of Traditional Knowledge, the basic view is founded on the consideration of equity in various instances. Because of the existing system of requisition and reparation, the value created by Traditional Knowledge is not appropriately recognized and remunerated by the government. As a result, it would be critical to preserve Traditional Knowledge in order to bring justice to what are mostly unjust and unequal relationships. An example of this kind of thinking may be seen in the case of inherited plant assets. Orthodox farmers both maintain and utilize the assets inherited from plants, according to tradition. When plants are used for planting, seed preparation, and the continual selection of well-matched farmer's varieties, the significance of inherited assets is maintained and expanded. Most of the time, these farmers contact with one another via barter or trade over the fence, which helps to spread their variety and encourages them to continue producing them. "Essentially, since breeders and seed firms are not charged a fee for the samples they get, traditional / local farmers are not compensated for the value they provide, nor is there any eventual payback or profit sharing with farmers".

The second prong of the argument for Traditional Knowledge security is concerned with the importance of such information in terms of preservation of historical records and archives. In this way, sustaining biological diversity in agricultural systems contributes to the creation of value for the whole world. IPRs may be utilized to generate income in order to keep businesses running that would otherwise be shut down if they were not. A catastrophic loss of biodiversity may result, for example, if traditional farmers abandoned the usage and development of farmers' varieties because of the increased revenue they could earn by planting contemporary kinds with better yields. Under this method, Traditional Knowledge safety contributes to the achievement of societal objectives including as environmental protection, sustainable agriculture, and food security.

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10. Id.

According to some, Traditional Knowledge security is a method for fostering the preservation of traditions and skills that are representative of traditional ways of life and living. The concept of "security" in this context is quite different from the concept of "security" used in the context of intellectual property rights.

The conservation of Traditional Knowledge (TK) is a fundamental component of the right to self-identification and a precondition for the continuous survival of local and traditional cultures. "It is also a fundamental piece of humanity's cultural inheritance. According to some estimates, the tragedy harming the world's various cultures and languages is much greater than the sorrow hurting the world's biological variety".

Bio-piracy should be avoided at all costs. The protection of traditional knowledge (TK) attempts, in certain situations, to prevent the unlawful appropriation ('bio-piracy') of conventional information and to guarantee the equitable distribution of rewards. "For example, the Government of India has proposed that a provision be put into the TRIPS Agreement to establish that patents that are inconsistent with Article 15 of the Convention on Biological Diversity ["CBD"] should not be awarded as a means of harmonizing the Agreement with the CBD". Improving the information available to patent offices for the examination of novelty and creative methods may help to avoid the award of patents that are too broad in coverage of traditional knowledge.<sup>12</sup>

Even in and of itself, encouraging the application of traditional knowledge is a crucial goal to pursue. The security of Traditional Knowledge necessitates the endorsement of the "wider appliance" of Traditional Knowledge in order to maintain its integrity. Protecting Traditional Knowledge (TK) against loss and theft, as well as providing payment to TK holders, may be regarded important fundamentals in encouraging the broader use of such information. It is possible that one of the most important reasons for conserving traditional knowledge from destruction and loss is to encourage development. TK is a resource that is underused throughout the setup process. Legal protection may aid in the development of goods and services that are based on traditional knowledge. It is possible that traditional knowledge might also serve as an important resource for fostering local creativity, which is essential for the rebirth of local cultures.<sup>13</sup>

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11. Reid, J. (2009). BIOPIRACY: THE STRUGGLE FOR TRADITIONAL KNOWLEDGE RIGHTS. *American Indian Law Review*, 34(1), 77–98. <http://www.jstor.org/stable/25684263>. (hereinafter "Reid, J.")

12. Id.

#### IV. INTERNATIONAL PERSPECTIVVE

The importance of preserving knowledge, uniqueness, and traditions of indigenous and local cultures is being more recognized around the globe. "In 1978, a joint initiative by the "World Intellectual Property Organization" ["WIPO"] and the "United Nations Educational, Scientific, and Cultural Organization" ["UNESCO"] made the first attempt to protect traditional knowledge under the intellectual property regime, which resulted in the further fortification of expressions of folklore against unlawful exploitation and other detrimental conducts in 1982. Having been established in 1992 by the "Convention on Biological Diversity", the preservation of conventional knowledge has grown in importance and is becoming more concentrated.

##### 1. World Health Organization (WHO)

The "World Health Organization" was established on April 7, 1948, as a specialized agency of the United Nations for health. WHO's contribution to traditional knowledge relates to the organization's traditional medicine activity. "It is the goal of WHO, as stated in its constitution, to achieve the highest possible standard of health for all citizens. As the economic and commercial value of traditional knowledge, particularly knowledge of traditional medicine and medicinal plants, has become increasingly recognized, more and more WHO member states are concerned about the need to protect it and ensure that any benefit derived from its use is distributed equitably".

The "WHO Traditional Medicine Strategy 2002-2005" is comprised of four major components, which are as follows<sup>14</sup>:

- (i) The integration of conventional pharmaceuticals as well as equivalent or alternative treatments into the national health system is a policy goal.
- (ii) Safeguarding competence and excellence in the workplace: Provide estimate, oversight, and assistance to ensure effective regulation.
- (iii) Ensure that traditional and complementary medicines as well as essential herbal pharmaceuticals are available and affordable.
- (iv) Suppliers and consumers should be encouraged to utilize traditional and complementary medicines in a medically sound manner.

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13. Mpinga, E. K., Kandolo, T., Verloo, H., Bukonda, N. K. Z., Kandala, N.-B., & Chastonay, P. (2013). Traditional/alternative medicines and the right to health: Key elements for a convention on global health. *Health and Human Rights*, 15(1), 44–57. <http://www.jstor.org/stable/healthumarigh.15.1.44>.

## 2. Convention on Biological Diversity (CBD)

The "Convention on Biological Diversity" ["CBD"] was signed and signed off on June 5, 1992. It was the product of discussions held in Rio de Janeiro in 1992 under the auspices of the "United Nations Environment Programme" ["UNEP"]. As governed by the UNEP, the CBD establishes standards for environmental conservation that are compatible with long-term economic growth. It places an emphasis on biodiversity conservation, sustainable use, and the equitable distribution of profits derived by human beings from the use of hereditary assets. CBD recognizes, as well as emphasizes, the importance of traditional usage of genetic assets in the long-term preservation of biological variety. It establishes the right to exploit biological transfer from poor nations and underlines that intellectual property rights should not be used to obstruct the protection and sustainable use of biodiversity. Similar clauses relating to promotion, establishment of commerce, and use of indigenous and traditional knowledge and machinery in accordance with the CBD's will have been included as part of the new treaty.<sup>15</sup>

## 3. World Intellectual Property Organization (WIPO)

The "World Intellectual Property Organization" ["WIPO"] work on traditional knowledge and folklore started in 1978 with the creation of the Sui generic model for national folklore protection in collaboration with UNESCO. In 1998, WIPO launched a new proposal, which included a fact-finding contact mission to 28 countries in the field of intellectual property and traditional knowledge, which resulted in a global study on the needs of intellectual property and the objectives of traditional knowledge holders.<sup>16</sup> The "Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore" ["IGC"] was established by the "WIPO General Assembly" during its 26th meeting. The organization has also done a commendable job of producing a remarkable variety of documents, including the model clauses for genetic resource contracts, the "Conventional Information Security" documentation toolkit, and an effort on the fundamentals of a potential sui generis scheme for the security of traditional knowledge, among others.

## V. INDIAN PERSPECTIVE

It is the goal of intellectual property rights to preserve "Research and Development" (R&D) investments while also encouraging innovation by giving the discoverer with incentive.

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14. McNeely, J. A., Rojas, M., & Martinet, C. (1995). The Convention on Biological Diversity: Promise and Frustration. *The Journal of Environment & Development*, 4(2), 33–53. <http://www.jstor.org/stable/44319130>.

15. Brian Noble. (2007). Justice, Transaction, Translation: Blackfoot Tipi Transfers and WIPO's Search for the Facts of Traditional Knowledge Exchange. *American Anthropologist*, 109(2), 338–349. <http://www.jstor.org/stable/4496647>.

However, the way Intellectual Property Rights ["IPR"] is being understood and constructed places a strong focus on influencing the willingness of others to participate. Private companies profit from our natural resources by using conventional knowledge and securing IPR for themselves. Because to bio piracy, rural farmers and tribal people have been dispossessed of their natural resources as well as their associated abilities. Given the high pricing that bio-pirating enterprises have imposed on these items, traditional knowledge-based goods are too costly for them. There have been various disagreements about the security of indigenous peoples' rights, long-term sustainability of local flora and fauna and global climate, and even the country's capacity to provide food security as a result of bio-piracy. However, the TRIPS agreement of the "World Trade Organization (WTO)" places a strong emphasis on patent rights, whereas the rights of conventional information holders are often overlooked. If it is feasible to interpret and develop intellectual property rights in an authentic and justifiable manner, they may be utilized as a tool to ensure the protection of traditional knowledge. "A number of essential principles may still be exploited in either direction, i.e., as a constructive security and/or defensive strategy to retain traditional information in spite of the numerous inadequacies of the new IPR regime". These include :

### **1. Biological Diversity Act of 2002**

India, as a signatory to the "Convention on Biological Diversity" (CBD), thought it acceptable to participate in the implementation of the convention's outcomes. It was then that India enacted the Biological Variety Act of 2002, which aimed to "promote the conservation of biological diversity, the sustainable use of its components, and the equitable sharing of revenues arising from the exploitation of natural resources".<sup>17</sup> These are the key concerns that are addressed by the regulation :

- (i) The right to make use of natural resources.
- (ii) The collection and usage of natural resources.
- (iii) It is also possible to divide the revenues generated by such an admission.
- (iv) Protection against bio-piracy is essential.

Local community organizations are encouraged to form, as provided by the "National Biodiversity Authority" ["NBA"] in Section 8, the "State Biodiversity Board" ["SBB"] in Section 22, and "Biodiversity Management Committees" ["BMCs"] in Section 23 of the Act. "Anyone seeking intellectual property rights in or outside India for any discovery made while

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16. Prathapan, K. D., & Rajan, P. D. (2009). Biological Diversity Act, 2002: threat to agricultural production and food security! *Current Science*, 97(5), 626–629. <http://www.jstor.org/stable/24112153>.

conducting research or gathering information on an Indian natural reserve must first receive prior authorization from the NBA". This includes applying for intellectual property rights in or outside India.<sup>18</sup> The legislation establishes a framework for property rights that aspires to be very strong on the question of access to biological resources located outside of the country. The Act also stipulates that the profit derived from the commercial use of TK should be shared among the individuals who were involved for its development, improvement, and usage, among other things.

## **2. The Patent Act of 1970**

The patent act comes into play to ensure the long-term viability of technical solutions that are scientifically relevant, universally novel, and need a period of creative development. "For example, patents on genetic resources and traditional knowledge (TK) for items that are inaccessible, synthesized or created from genetic structures, micro-organisms, plants or animals, or species that are found in the environment may be removed from the system". "Patent protection" is awarded for procedures related with the exercise and usage of such assets, as well as for methods that are known to indigenous peoples and that fulfill the same standards as those granted to non-indigenous people.

## **3. The Copyright Act of 1957**

The manner of speech and expression, rather than the ideas themselves, is protected by copyright laws. In accordance with Section 14 of the "Copyright Act, 1957", any of the activities specified in that section may be undertaken by the owner of the copyright. TK holders' inventive demonstrations, particularly those created by artists belonging to indigenous and indigenous communities, may be protected from illicit replication and abuse via the application of intellectual property rights (IP). "Specifically, moral rights are concerned with the link that exists between the creators/artists/authors and their work".<sup>19</sup>

## **4. Protection of Plant Varieties and Farmer's Rights Act, 2001**

The provisions of this legislation become effective in September 2001. This is the "sui generis" legislation that was written in order to comply with the requirements of the "TRIPS agreement" of the "World Trade Organization". Novel variety, current variety, principally derived variety, and cultivator's variety are the criteria used to determine which plant varieties are eligible for protection under the "Plant Variety Protection Act". Farmers and tribal groups maintain and

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17. Dhar, B., & C. Niranjan Rao. (2004). Third Amendment to 1970 Patent Act: An Analysis. *Economic and Political Weekly*, 39(52), 5568–5571. <http://www.jstor.org/stable/4415969>. (hereinafter "B. Dhar")

18. Id.

preserve a diverse variety of indigenous crops via the use of conventional agricultural techniques, which are widely available. "The core component of the legislation is the concept of an effective profit-sharing arrangement between the provider and the receiver of plant genetic resources". A "Plant Breeder's Right" ["PBR"] on a new variety may be obtained by the plant breeder if the new variety satisfies the essential characteristics of distinctness, stability, uniformity, and novelty. It is also possible to acquire PBR through conventional plant diversity.<sup>20</sup>

### **5. Geographical Indications of Goods (Registration and Protection) Act, 1999**

TK is held in common by a group of people, and geographic information is the most appropriate format for preserving it. The "Geographical Indications of Products (Regulation and Protection) Act" is a battle for the rights of a community in a specific location. GI security is valid for a period of ten years, but it may be renewed an unlimited number of times, allowing GI to be protected for an indefinite amount of time. Product production processes are developing with time in order to provide a higher level of quality to the final product. GIs may also be employed to protect conventional medicinal goods against contamination.<sup>21</sup>

### **6. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

"There are around 100 million forest residents in India, the most of them are tribal communities, according to official statistics". This is a little-publicized fact about India. The forests offer subsistence for them, yielding both wood and non-timber forest products, as well as a source of revenue. In essence, forest dwellers have amassed a wealth of information about the natural environment that surrounds their civilization throughout the course of their lives. In one sense, this society was fortunate in that it was kept distinct from the ways of contemporary man and was able to carry on the traditions of its forefathers. The woods and its people, taken as a whole, provide India with a plethora of knowledge regarding the traditional worth of a variety of different forest products. In the same way that intellectual property rights have been created to protect contemporary commerce, traditional knowledge will not be protected in the same manner. Traditional knowledge, for example, cannot be copyrighted because of the inherent lack of originality in such information, which results in the knowledge lacking creative characteristics. Traditional skill, rather than individual proprietors, is most often kept by communities as a whole rather than individually. "This traditional knowledge is information

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19. Das, A. M. (2016). India releases National Intellectual Property Rights Policy. *Current Science*, 111(7), 1140–1140. <http://www.jstor.org/stable/24909114>.

20. Id.

that has been passed down orally from generation to generation within a community or among families within a community in an oral form without being properly documented". This has resulted in the undervaluation and marginalization of traditional knowledge in society. In reality, one of the difficulties in these communities is that if the information were to be recorded, it would have been expropriated from the community, which would have been a loss to the community.<sup>22</sup>

### **7. The National Biotechnology Regulatory Act, 2008**

The National Biotechnology Regulatory Act of 2008 proposes to establish a national authority for biotechnology regulation in India, regulating biotechnology research, production, import, and usage. It looks at how biotechnology and genetically modified organisms affect health, agriculture, food production, environmental protection, climate change, and long-term development. Biotechnology and bioregions have a significant influence on society and the economy, according to the Act. As a result, the law aims to balance biotechnology operations with environmental and ethical concerns. Although the law does not specifically address TK issues, it will undoubtedly safeguard indigenous peoples' biogenetic resources and ensure that biotechnological activities and the release of genetically modified microorganisms do not have a negative impact on their health, environment, or interrelationship with nature.<sup>23</sup>

## **VI. AN ANALYSIS THROUGH CASE LAWS**

### **1. Neem case<sup>24</sup>**

The awarding of a patent to a business known as W.R Grace was the subject of a dispute that may be referred to as India's "first" and raised questions about the country's reportedly "tight" patent system. "Azadirachtin was chosen for its pesticide capabilities, and the firm was issued a patent in the United States and the European Union for a formulation that retained the active component in the neem plant in a safe storage environment". The company chose azadirachtin for its pesticide properties. Native American traditional medicine systems, such as Ayurveda and Unani, recognize the neem tree's antiviral and antibacterial properties, which are referred to in Sanskrit as the "curer of all ailments". These systems recommend using the neem tree for the treatment of skin diseases as well as a natural pesticide. When submitting the patent application, the applicant acknowledged that the pesticide applications of neem were well-

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21. B. Dhar, *supra* note 17, at 7.

23. Protection of Traditional Knowledge under Intellectual Property Rights, 2018, <http://hdl.handle.net/10603/266619>

23. Mishra, G., & Omkar. (2012). Neem, the wonder tree, under attack: a new major pest. *Current Science*, 102(7), 969–970. <http://www.jstor.org/stable/24084534>.

known, and he also noted that it is difficult to preserve azadirachtin for an extended length of time. "With the issuance of a specific invention patent in the United States, the applicant was only granted an exclusive right to employ azadirachtin in the specific storage solution described in the patent". In response to public uproar, the patent award was re-examined and challenged in post-grant opposition procedures before the "United States Patent and Trademark Office" ["USPTO"] and the "European Patent Office" ["EPO"].

"Despite the fact that the "United States Patent and Trademark Office" was unsuccessful, the European Patent Office (EPO) found in favor of the opposition, noting that the awarded patent lacked originality and was not an inventive approach".

## **2. Turmeric case<sup>25</sup>**

Turmeric is a tropical plant that is farmed in eastern India and is used to make curry. Turmeric powder is extensively used in India as a medicinal, as a culinary component, and as a color, to mention a few of its many applications. Among other things, it is used as a blood purifier to cure the common cold, and it is also used as an anti-parasitic to treat a variety of skin diseases. Furthermore, it is employed as a key element in a variety of Indian culinary dishes. The University of Mississippi Medical Center was awarded a patent for wound healing rights on turmeric in 1995 by the "United States Patent and Trademark Office". "Turmeric powder and its administration" for wound healing was the subject of the claimed subject matter, which included both oral and topically applied applications. It was granted the sole right to market and distribute its products.

The Indian Council for Science and Industrial Research ["CSIR"] had filed an opposition to the claim and presented the "United States Patent and Trademark Office" with documented documentation of previous art. While it is a well-established fact that turmeric has been used in every family in India for centuries, locating recorded information on the use of turmeric powder for wound healing via oral as well as topical routes has proven to be a monumental task. As a result of comprehensive investigation, there were 32 references in several languages, including Sanskrit, Urdu, and Hindi, among others. Therefore, the application was cancelled, with the USPTO finding that the claims in the patent were apparent and anticipated, and agreeing that the use of turmeric was an old skill of wound treatment that had been passed down through generations. As a result, in the Turmeric case, the traditional knowledge that belonged to India was protected.

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24. Reid, J., *supra* note 11, at 5.

### **3. Basmati Rice case<sup>26</sup>**

The patent issued by the "United States Patent and Trademark Office" for "Basmati rice lines and grains" to an American firm called RiceTec caused a lot of turmoil. Basmati rice is a fragrant kind of rice that has been farmed for centuries in India and Pakistan. In addition, the award of this invention triggered a slew of intellectual property concerns under patent law, including trademarks and geographical indications.

RiceTec was granted a patent for the development of hybrid rice lines that combine good Basmati rice grain characteristics with desired plant characteristics. It was owing to the poor quality of Basmati rice cultivated in the United States compared to the excellent quality of Basmati rice grown in northern India and Pakistan, and it would aid in the development of improved Basmati rice harvests in the western hemisphere, notably in the United States. RiceTec submitted a request for re-examination with testimonies from two scientists, as well as various Basmati rice papers and Indian rice studies, one of which convinced the USPTO that RiceTec's essential claims were not obvious. RiceTec did not appeal the USPTO's judgment, and three of its twenty claims were reduced to three.

Knowledge is a wealth of information, and traditional knowledge has a huge power to answer man's rising issues. Exploiting this data is tremendously beneficial, but it must be tempered with security, marketing, and profit sharing. Traditional knowledge is the most recent addition to the IP family. However, in addition to the (un)will of countries, judgments on how to deal with this kind must take into account a number of issues. "To put it another way, the informal sector knowledge system, i.e. traditional knowledge, is often oral and poorly recorded, making it indefensible".

India has made a step forward by creating a repository of its ancient data, which is growing in size on a regular basis, but the need for a legal instrument is becoming more essential on a global scale. The connection of old knowledge systems with a contemporary IPR system is the issue of significance.

### **4. Darjeeling Tea case<sup>27</sup>**

The plaintiff, Tea Board India, is a statutory entity established in 1953. The Plaintiff owns the certification trademarks in class 30, for tea. In the left hand of the woman holding two leaves and a bud is engraved the phrase "Darjeeling". The Trade Marks Act of 1999 grants Certification

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25. Parasecoli, F., & Tasaki, A. (2011). Shared Meals and Food Fights: Geographical Indications, Rural Development, and the Environment. *Environment & Society Environment & Society*, 2, 106–123. <http://www.jstor.org/stable/43296989>.

26. Tea Board of India v. ITC Ltd.. GA No. 3137 of 2010 CS No. 250 of 2010.

Marks to people who may confirm the origin, material, production or performance of products or services, quality, accuracy, or other attributes.

The Defendant contested the Plaintiff's allegations by arguing that GI registration only relates to commodities and allows the owner to sue anybody utilizing the GI in connection with those things. Thus, the GI Act does not allow the owner to sue for infringement against services or individuals associated with the initial GI registration.

The Court found no passing off or dilution of the Plaintiff's brand name by the Defendant after hearing the parties' arguments and reviewing the relevant statutes and circumstances. Concerning cross-category complaints (where products are registered but services are alleged to be infringed), the Hon'ble Judge stated a 'tentative opinion' without addressing the merits. The Court distinguished between the GI Act and the Trademarks Act in determining the Plaintiff's claim.

"A Certification Trademark may be registered in both goods and services under the Trademarks Act, and the owner or authorized user of the certification service mark can sue anybody who uses a mark that is identical or similar to the certification trademark". The owner or authorized user of a mark has the right to sue regardless of whether the certified mark is registered for goods and the contested mark is used for services. Thus, cross-category claims are unrestricted. A GI's circumstance may be different. The GI Act as it stands now only covers products and excludes services. A allegation of infringement would not be valid if the same GI was used for services. However, the Hon'ble Judge correctly examined the tenability of a cross category claim under Section 20(2) and 22(1)(b) of the GI Act.

Finally, regarding the Plaintiff's allegation of dilution of the trademark "Darjeeling", the Court said that even if there is little possibility of confusion, the mark's originality is protected. Accordingly, the court determined that the term "Darjeeling" has been widely used for some time, even before the Plaintiff's registrations, and thus his recent GI registration would not guarantee him the required exclusivity. While recognizing the value of Geographical Indication (GI), the Court declined to enjoin ITC Limited (the Defendant) from using the name "Darjeeling" for ITC Calcutta's lounge area.

## **5. Yoga case<sup>28</sup>**

For example, the applicant registered his copyright interest in the sequence of asanas book with the Copyright Office and subsequently submitted a supplementary registration in 2002, which

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27. Krishna Ravi Srinivas. (2007). Intellectual Property Rights and Traditional Knowledge: The Case of Yoga. *Economic and Political Weekly*, 42(27/28), 2866–2871. <http://www.jstor.org/stable/4419783>.

is the corrective action taken when the initial copyright registration is inaccurate or incomplete. In this case, "As stated in the additional registration, the applicant was not only claiming rights to the book itself, but also to the sequence of 26 asanas presented in the book". "This supplemental registration was challenged by a non-profit group called Open-Source Yoga Unity, which claims to be a non-profit collective to ensure the continued natural unfettered development of Yoga, and requested a declaratory judgment from the US District Court for the Northern District of California". However, in 2005, the Supreme Court ruled that the sequence may be protected as a compilation, therefore denying the claim. As a result of an inquiry to the Copyright Office regarding its position on this issue, the agency released its Policy Statement in June 2012, concluding that, except for choreography, no compilations containing exercises or movements could be protected under copyright law because they did not constitute compilations containing works protected under these other types of copyright law.

In December 2012, the "US District Court for the Central District of California" was confronted with a second Bikram Yoga case, and the Policy Statement was used as the foundation of the ruling. "When two yoga teachers in Buffalo, New York, passed the applicant's certification course and were authorized to teach the fundamental Yoga system by his organization, the controversy arose". Evolution Yoga LLC was created, and a succession of yoga schools were opened. However, the court awarded Evolution Yoga LLC a summary judgment, finding that as a matter of law, a sequence of yoga postures cannot be copyrighted as a matter of practice.

## VII. CONCLUSION

When it comes to intellectual property, indigenous people are at a crossroads. This view is based on a backward look at time, which shows that the people's ignorance of their rights and their desire to share their information caused exploitation and depletion of the knowledge. Third-party beneficiaries received unwarranted advantages. As a result of this discrepancy in wealth, the necessity to avoid abuse and vest rights has been stressed. WIPO, the United Nations and other international organizations seem to have been relied upon by indigenous communities.<sup>29</sup> Even yet, there has been a significant delay in the implementation of an effective system. Furthermore, the attempts made by these organizations in the form of Conventions and Declarations were ambiguous and inconsistent. Conventional ideas like "community rights" and "shared aims" were not examined. There was no recognition of indigenous property rights in

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28. Garcia, C., Marie-Vivien, D., Kushalappa, C. G., Chengappa, P. G., & Nanaya, K. M. (2007). Geographical Indications and Biodiversity in the Western Ghats, India: Can Labeling Benefit Producers and the Environment in a Mountain Agroforestry Landscape? *Mountain Research and Development*, 27(3), 206–210. <http://www.jstor.org/stable/25164123>.

intellectual property conventions like the Berne. There was an intense feeling of unjust treatment in the face of the TRIPS deadlines since no acceptable models or frameworks had emerged after more than a decade of study.

Native Americans saw this as a sign of a lack of enthusiasm and clarity in the project. They believe that if intellectual property rights had been in place at the time, they would have taken such inconsistencies more seriously. A circumstance in which the Berne Convention grants a privilege that TRIPS restricts cannot be imagined. In the context of conventional knowledge, there are several examples of conflict between Conventions and Declarations. A lack of faith in western-based systems led to total abandonment by indigenous people. The Bellagio and Suva Declarations are examples of this renunciation. The Coordinator of Indigenous Organizations of the Amazon River Basin ["COICA"] statement shows that they are willing to work with the current system, which is fantastic news.<sup>30</sup> This is a sign that the intellectual property regime is losing its grip on these individuals, and they may lose all confidence and hope in it in the near future. As a result, several fields of study and development may be hindered. For starters, "uniformity at any cost" is going to be hard to come by at the WTO. Countries should be concerned about this possibility because trade penalties would have little impact on these individuals if they formed a parallel system that the WTO could not smash. It may be some time before these demonstrations gain enough clout to be considered a serious threat.

The courts, however, are the only place that might have showed some empathy and attempted to find a middle ground between the two systems. When it comes to dealing with matters affecting indigenous people, even the courts in Australia seem to be significantly less sympathetic. The current intellectual property system seems to be becoming more popular. It's ridiculous when seen from the perspective of indigenous peoples. Similar to applying common law mindlessly to disagreements in a private international law issue involving participants from civil jurisdictions, this is what is happening here. Basic principles of the legal system are violated if a law and legal system from a different country or continent are applied to parties whose rights are protected.

Questions on how to safeguard TK against abuse or misappropriation are both policy and practical. In many societies, societal change and the feeling of historical dislocation may actually intensify the desire to preserve traditional knowledge for future generations.<sup>31</sup> The task is to guarantee that the intellectual and cultural contributions of traditional societies are properly

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29. Brown, M. F. (1998). Can Culture Be Copyrighted? *Current Anthropology*, 39(2), 193–222. <https://doi.org/10.1086/204721>.

30. Poorna, supra note 1, at 1.

acknowledged, just as the technical worth of traditional knowledge is increasingly recognized and its potential is exploited. Consider the needs and aspirations of traditional knowledge-holding groups as part of this process. Traditional knowledge may be used as a sustainable and suitable instrument for local development because of its traditional traits and frequent closeness to the natural environment. Developing nations, especially those in the least developed regions, may also profit from the knowledge economy as a result of this.

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