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A PORTRAIT OF INDIAN TRADITIONAL KNOWLEDGE AND IPR

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Abstract: Indigenous groups' evaluations are used to build traditional understanding, which is developed over time. Conventional knowledge (TK) is vulnerable to misuse due to a weak element that is mostly transmitted verbally from one age to the next. The amount of traditional knowledge that exists can be very large and includes knowledge about a wide range of industries, such as information about plants, animals, and their characteristics, about reserves and soils, about combinations of natural and inorganic substances, about medicinal knowledge, and about folklore terminology in relation to music, dance, stories, and art work. All of those lofty ideas, "within the area of technological, technology, ecology, medication, agriculture, biodiversity; artwork and literature also come under the scope of traditional information," have been connected and have gradually grown more attractive over generations of a network. TK is used to preserve the society, its customs, and the genetic reserves necessary for the network's long-term survival. As such, it is imperative that the state-of-the-art IPR device incorporate a sui generis element.

Keywords: Traditional Knowledge, Biopiracy, Conventional Knowledge.

1.0 Introduction:

India is among the top 12 countries in the world for biodiversity. India is recognized as a center for agricultural diversity and the custodian of several wild crop varieties. India's unique biodiversity and abundance of natural resources have led to a rich conventional understanding of the homes and applications of those organic qualities. Most naturally varied and wealthy locations are home to neighboring and indigenous communities. For them, living in these natural settings is a way of life and a part of their culture. Over time, traditional knowledge has expanded and is based on the experiences and knowledge of "indigenous people." It is often passed down verbally from one generation to the next, and this is seen as one of the vulnerable factors that makes traditional know-how (TK) vulnerable to exploitation. Conventional data provides useful recommendations that save time and money for research. Transnational corporations so benefit from biological resources and the associated expertise. The majority of these resources are expanded by indigenous people outside of the mainstream of knowledge, but they are neither recognized nor given a say in how multinational businesses profit from their work. This results in biopiracy incidents in India and other countries as well. A number of regulations had been put in place to protect traditional knowledge. The "Traditional Knowledge Digital Library" has proven invaluable in preserving traditional understanding. The "Council for Scientific and Industrial Research" is making a strong effort to validate traditional knowledge in TKDL. Developing some sui generis additives for the contemporary IPR device is vital. Western science has recently developed a stronger interest in traditional knowledge (TK) and realized that, when combined with "cutting-edge medical and technological knowledge," TK may help find useful answers to problems that are at the forefront of science. Despite the fact that TK is becoming more and more valued as a source of knowledge. It has often been seen under western intellectual property rules as information that is in the "Public Domain," which means that anybody can use it at no cost. Furthermore, in several cases, researchers and commercial companies have helped appropriate certain TK bureaucracy under IPRs, without paying the creators or possessors of the know-how any remuneration.

Some of the examples of conventional information includes: -

a) Use of plao- noi by using the Thai traditional healers to deal with ulcer.
b) Use of hoodia cactus by means of San humans to stave off hunger while outhunting.
c) Sustainable irrigation via water structures including the aflaj in Oman and Yamen and the qanat in Iran.

2.0 Intellectual Property Rights

The term "intellectual assets" refers to the idea of the intelligence that monopolies attempt to regulate their owners with. One type of property known as "intangible property" is intellectual property rights. Over time, several criminal conceptions governing intellectual property rights have evolved. Included under intellectual property are:

- Copy right

- Trademark
- Patent
- Geographical Indication
- Industrial Designs
- Trade Secrets
- Integrated Circuits

The idea that certain products of the human mind should be granted the same protections and rights as physical property, often known as tangible property, is reflected in the concept of intellectual property. The majority of developed economies have legislative mechanisms in place to safeguard both types of assets.

3.0 What Is Traditional Knowledge

The traditional knowledge associated with "organic assets" is an intangible part of the source. It mostly traveled in the form of verbal comprehension from one generation to the next. Traditional knowledge is a body of information that is produced, preserved, and expanded upon in a similar way within a culture throughout time, and typically becomes an integral part of that civilization's social or religious identity. The current intellectual property system does not provide it with virtual protection, as it often only shields changes and works that are authentic for a limited period of time. The preservation of the natural environment and society, of which the "conventional understanding" is a crucial component, is imperative.

3.1 Traditional Knowledge's Significance: TK plays a vital role in both the traditional uses of biodiversity and its protection. The new technological characteristics truly demonstrate how beneficial TK is for the production of novel products with significant economic value. In developing and least developed nations, it is crucial for the food security and well-being of countless numbers of people.

3.2 Healthcare: Numerous medications and cosmetics with a phytochemical basis are developed from the knowledge of positive vegetation homes. Indian Ayurveda and Unani medicine rely on a variety of biological resources and associated conventional knowledge for their medicinal therapies. The most efficient and affordable method of treating medical conditions in developing nations is through traditional medicine. Traditional medical drugs (TM) are defined by the World Health Organization (WHO) as:

"The totality of all knowledge and methods, whether comprehensible or not, applied in the diagnosis, treatment, and elimination of physical, mental, or social imbalance and solely depending on reasonable experience and observations transmitted from technology to technology, either orally or in writing." Despite living in many wealthy nations, between 70 and 80 percent of people practice alternative treatment (such as acupuncture). The conventional medical system is vital because it provides treatment options for age-related and degenerative diseases, such as rheumatism, for which there are no effective alternatives. The health care industry is dependent on conventional medical knowledge since the goods that come from this expertise are environmentally benign and have little to no negative effects. This knowledge benefits the health care industry's financial structure since customers choose herbal products.

3.3 Agriculture: In developing nations, plant varieties that are continuously improved, pest management techniques, selection tactics, farmer-bred livestock, and livestock keepers' development of domesticated animals all play important roles in agricultural systems. Local communities enhanced and maintained the diversity of flora and wildlife via their traditional farming methods and practices.

3.4 Wild biodiversity: Neighboring groups have preserved natural regions, especially herbal ecosystems, via cultural values and customs. By following these procedures, ecological stability is preserved.

3.5 Need for protection of Traditional Knowledge: Traditional communities and knowledge are in danger of disappearing. The factors that present a risk are the following: the increased demand for the commercialization of traditional knowledge and biodiversity; and the disruption of the relationships between TK mills and their assets as a result of the bio-alternative industry.

When we talk about innovation, we usually talk about the kind of invention that is carried out in academic institutions, private R&D facilities, and so forth. The technological advancements made possible by farmers, tribes, craftspeople, and other grassroots innovators were frequently beyond our comprehension. In fact, a great deal of indigenous communities have developed intricate systems of knowledge unique to themselves in a variety of fields, including geology, ecology, botany, agriculture, physiology, zoology, and health. A vast reservoir of traditional knowledge has been produced by these traditional inventors. Thus, such conventional inventors should receive the appropriate recognition and compensation. Traditional knowledge (TK) is seen as knowledge that is in

the public domain and may be used for free, with no acknowledgment or consideration given to the efforts made by indigenous communities to own and market TK. The development of new technology has made it easier to create new, useful products by utilizing traditional knowledge. Large organizations employ those technologies to create the greatest sources and related information, disregarding the local groups' attempts to preserve the same. An further barrier to the commercialization and preservation of such understanding is a lack of admiration and regard for TK. The true cost of TK is often overlooked because relevant scientific and technological characteristics are viewed via a limited cultural lens. Since the facts were not developed under aseptic conditions using clinical techniques, they are regarded as "inferior" in the context of modern technical approaches. The erosion of traditional knowledge and customs is often caused by the younger generations' indifference in carrying on with old activities and the invasion of modern lives.

Bio-prospecting and biopiracy pose serious risks to biodiversity and the customary knowledge that goes along with it. Bio-prospecting is the process of investigating organic resources that may have commercial value. It is the search for advantageous natural substances found in fungus, flowers, and microbes that grow in harsh conditions such warm springs, deserts, and rainforests. The process of investigating and evaluating biological resources for novel commercial applications is equally critical to global economic and social advancement. However, conflict emerges when various industries (textile, handicraft, seed, etc.), pharmaceutical companies, and ethnobotanists extract the most biological sources and associated conventional know-how without obtaining consent or sharing profits with the legitimate holders of TK, i.e., biopiracy. The pharmaceutical firms leverage the ethno-biological knowledge of native communities, and therefore, they are the most straightforward to benefit from the promotion, sale, and production of the drug. Additionally, bioprospecting contributes to environmental unsustainability by unsustainable techniques such excessively gathering organic samples from their habitat. This would jeopardize the continued survival of that particular species.

Biopiracy is the practice of acquiring intellectual property rights (usually patents) in order to obtain a monopoly over conventional knowledge-based business products or organic resources without the consent, popularity, or proper compensation of the rightful owners of the associated understanding and organic resources. Biopiracy can results from faulty and non-technical documentation or from a lack of documentation of conventional knowledge. Therefore, having this knowledge is essential to provide equity concerns to TK holders and preventing unauthorized parties from misusing organic sources and related knowledge.

3.6 Strategies for Preserving Traditional Knowledge: Conventional data in the state-of-the-art Intellectual Property Rights (IPR) apparatus can be protected using the following techniques:

3.6.1 Positive Protection: With this level of security, the possessor of conventional knowledge can get an intellectual property right (IPR) or any other trade right provided by the sui generis machine. They have the ability to take action against the abuse or exploitation of data. Positive protection focuses on the liberation of traditional knowledge bearers and provides them with genuine needs.

3.6.2 Defensive Protection: This kind of security provides defenses against unauthorized use of intellectual property obtained through a variety of third parties during traditional expertise.

Traditional Knowledge Digital Library (TKDL): To protect its "Traditional Knowledge" and maintain control over biopiracy, the Indian government established a long-standing device known as the "Traditional Knowledge Digital Library." Additionally, this curriculum uses conventional knowledge to encourage creativity and innovation

4.0 IPR Protection In Traditional Knowledge

By providing an incentive to the author, intellectual property rights are meant to protect the capitalization of research, progress, and innovation promotion. The manner in which IPR has deduced, elevated, and allocated importance to transforming diverse individuals' capacities to engage. Private organizations steal this common knowledge and utilize intellectual property rights to generate income from our sources. These are refining the process of taking credit for someone else's work. Due to biopiracy, rural farmers and indigenous groups are left without access to their herbal resources and associated knowledge. Products that are mostly based on conventional knowledge are usually too expensive for them since biopirating companies charge outrageous charges for them.

Trade-Related Intellectual Property Rights (TRIPS) and the World Trade Organization (WTO) accord highlight the rights of patent holders, but they notably neglect the rights of owners of conventional knowledge. The traditional knowledge carriers who are exceptional and have contributed to the development of a vast body of knowledge that has long benefited humanity are looking for recognition and compensation for their creative and inventive work. International locations get legal control over those sources and related knowledge that they have appropriated from the indigenous populations of nations that are still expanding by using the World Trade

Organization (WTO) as an enforcing authority. The international seed organizations' revenue strategies, which aim to control agricultural manufacturing worldwide, are well-suited for the present IPR apparatus.

5.0 Applying IPR To Preserve Traditional Knowledge

Despite many limitations, many parts of the contemporary IPR apparatus can be used in any way, for example, as defensive volume or positive protection for conventional information.

5.1 Biological diversity act, 2002: India, a signatory to the "Convention of Biological Diversity" (CBD), discovered that it is imperative to give this convention effect. As a result, India passed the Biological Diversity Act of 2002 to encourage the preservation of biological diversity, the equitable use of its elements, and the equitable sharing of benefits resulting from the use of organic sources. The law addresses the following crucial subjects:

- Gaining access to biological sources
- Compilation and use of biological resources
- Distribution of advantages happening out of such get right of entry to
- Safeguarding from biopiracy

The procedures to be carried for the safeguarding of knowledge of indigenous people are stated in Section 36 of the Act. The regulation offers for the introduction of –

- National Biodiversity Authority (NBA) under Section eight
- State Biodiversity Board (SBB) under Section 22

No one may upload software for any intellectual property within or outside of India for any invention based on research or expertise without first receiving consent from the NB. When granting authorization, the NBA will ensure that the parties requesting consent, the neighborhood groups engaged, and the claimants of advantage are all fairly distributed in scenarios that are equitably accepted. In order to prohibit access, particularly by foreign nationals and businesses, to organic resources or related know-how, stringent rules are in place to monitor biopiracy. Additionally, under Section 21 of the Act, the plan of benefit accruing from the industrial application of traditional knowledge is to be shared among the people responsible for producing, processing, and using this knowledge.

5.2 Patent Act 1970: Intellectual Property Rights is focused on the idea of individual property rights, whereas traditional knowledge (TK) is jointly preserved via the use of an indigenous network. Because of its entirely unique character, protecting traditional knowledge beneath the present IPR mechanism is a project. In addition to being used as a barrier against the theft of traditional knowledge, patents can be used. The most important gain of the protecting method of safeguarding is that it precludes all controls on biological resources and related conventional understanding by means of industry groups. This method views biodiversity and associated traditional knowledge as part of ordinary social culture that should not be subordinated to private monopolies. Provisions under Sections 25[1(k), 2(k)] and 64 [1(q)]5 of the Act have been used to prevent traditional knowledge from being patented. One of the most crucial requirements for each pre-provide and put up-grant opposition as well as for revocation of the patent is anticipation of advent via the accessible neighborhood conventional know-how, including verbal know-how. Provisions of the Patent Act of 1970 include the disclosure of traditional knowledge, which forms the basis of invention in the face of hardship. The Act's Section 10 mandates the regional supply and disclosure of assistance for any fabric that is organic and used for innovation within the specification. Under Section 3 of the Patent Act of 1970, inventions that might not be patentable are listed. According to section three of the Act, plant varieties or essentially organic procedures are not patentable. The clause (p) of section three, which is provided below, may strengthen the position of the indigenous network since it prohibits the acquisition of proper over conventional information by patent. Different aspects of traditional knowledge should be protected by a patent mechanism. Methodological issues found in earlier work are receiving creative and progressive solutions on a global scale, and software for manufacturing can be protected by patents. For example, trademarks, which include modern trademark issues, are presumably protected by patents. Patents provide protection for the process of separating goods from living resources such as microbes, plants, and mammals. The classified trademark does not meet the criterion for originality; hence it cannot be covered by patents. But it can prevent other people from obtaining patents by employing classed trademark statistics as prior art.

5.3 Copyright Act, 1957: One way that copyright protects something is as a "form of expression and not the ideas itself." Any act listed in section 147 of the Copyright Act, 1957, may be carried out by a copyright owner. In addition to preventing unauthorized replication and exploitation of such artistic manifestations, copyright may also be utilized to safeguard the artistic expressions of persons who possess traditional knowledge, especially artists who are members of indigenous communities. The relationship between writers and their works is the main

subject of moral rights. When it comes to protecting the rights of indigenous groups that stem from their traditional knowledge, these rights can offer an effective solution.

5.4 Trade Secret: An approach for a "chemical compound, a method of manufacturing, treating, or preserving substances, a pattern for a gadget or different device," or a check-in of buyers might all be considered exchange secrets. It's the kind of knowledge that gains financial benefit when it's not considered normally recognized by people or unexpectedly discoverable. There is no longer a specific statute protecting trade secrets and confidential information in India. In India, trade secrets and methods are protected by contractual regulation or the "breach of confidentiality" concept. The methods, tactics, and rituals carried out or practiced by traditional therapists may be protected as trade secrets. Records play a critical role in determining the safety of alternate secrets associated with a trademark. Sometimes, traditional knowledge is treated by a small, exclusive group of highly skilled conventional therapists and is passed down from generation to generation. As a result, the knowledge may not always be acknowledged and may instead be concealed as a change secret.

5.5 Plant Varieties and Farmer's Rights' 2001:

This rule, known as sui generis, aims to comply with the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement of the "World Trade Organization." The Act allows for the protection of the following plant varieties: "novel range, extant range basically derived variety, farmer range." A key component of the Act is the concept of an effective gain-sharing agreement between the provider and the recipient of plant genetic reserves. The amount of money to be given to the farmers depends on the extent and application of their inherited substance as well as the range's industrial performance. If the plant breeder's proper (PBR) is exceptional, long-lasting, consistent, and forward-thinking, they can obtain it on a new range. PBR can be obtained on a traditional plant variety as well. Protecting traditional types and verifying biopiracy are the goals. Since you purchased Plant breeder's rights (PBR), the conventional range should be unique, consistent, and balanced (novelty norms aren't necessary here). Section 40 of the Act has the requirement for the revelation of the genetic information saved via any tribal or rural organizations used inside the farming or development of range in the request for registration.

5.6 Trademark Act 1999: All types of commodities manufacturing, as well as the services offered by producers, artisans, and dealers in local and indigenous communities, as well as through the organizations that represent them or classify them, may be distinguished from similar products and services offered by third parties by using logos and service marks.

In the nation and abroad, trademarks play a significant role in commercial advertising of goods and services. The native groups will be made aware of the fact that they may utilize the Trademark to profit financially from their traditional knowledge and protect it from irrational commercial misuse by people through awareness structures. "Collective marks" can be widely applied to ethnic and defensive handicrafts. Marks of certification are employed to differentiate a wide range of specific products and services, including traditional art and artwork, culinary commodities, apparel, and travel-related services are employed to distinguish a wide range of specific goods and services, from traditional paintings and art to food, apparel, and tourist services. Certification logos that employed certain marks, ensured that the goods or services were lawful by utilizing that were created from a specific raw material, manufacturing process, cost, accuracy, or source. Humans or an organization that complies with the exact requirements can be used to represent this. Such as WOOLMARK and AGMARK. It is possible to use certification and collective markings to ensure the security of logos. An organization may utilize certification marks to safeguard trademarks if it is established to "certify" that pharmaceutical products adhere to accepted guidelines. This is helpful in legal cases when botanicals must be gathered, treated, or cleaned in accordance with precise specifications before being shipped to outside markets. Customers in these international marketplaces may be convinced to purchase goods that have licenses protecting pharmaceutical goods, such as botanicals that they gather and which offer consistent high-grade recommendations or high-quality or efficacy. Trademark registration provides a helpful and legitimate security for the cultural symbols, signs, and portraits of the local people.

5.7 Geographical Indications of goods: Goods that are made in a country's location, territory, or locale inside that particular area. The distinct qualities, reputation, or other attributes bestowed onto such things essentially stem from their place of origin. GI examples are Agra Petha, Goa Feni, Kolhapuri Chappal, Alphanso Mango, Nagpur Orange, Bikaneri Bhujia, and Darjeeling Tea from Kanchipuram Silk. Native Americans maintain the integrity of traditional knowledge, and GI provides a suitable level of protection for this information. Geographical Indications of Goods (Regulations and safety) Act: This law provides incentives to a network inside a certain area. GI safety is applicable for ten years and may be renewed once more, allowing for GI protection to last indefinitely. The methods of producing items are periodically changed to bring new and enjoyable aspects to the process. Over the course of decades or centuries, the commodities accumulate goodwill. GIs compensate for the reputation of the product that is delivered, and they allow for innovation in addition to exclusive manufacturing techniques. For

ages, the native businesses have continued to use and have developed their traditional methods of associating certain characteristics with their products. GIs acknowledge the hard work that goes into their employment and prohibit anyone from undermining their reputation. Traditional pharmaceutical items that can be linked to the physiological properties of botanicals may be protected by GI.

5.8 Protection of TK through Industrial Designs: A commercial design is a type of intellectual property in which the focus of the design process is on the aspect of an object that can be seen from its visual outside. The design and arrangement of clothing, containers, wooden, leather, pottery, and many other materials. Native American-prepared designs may be protected as industrial designs.

6.0 Conclusion

There is a requirement to standardize the outline of previous artwork on a worldwide basis. There are a few shortcomings within the fashionable IPR device which becomes quite tough to supply full safety to conventional knowledge and its proprietors. When a little of conventional knowledge is developed and uniqueness is produced within a limited scope, novelty may be satisfied and the owner of the copyrighted property will not be required to share any profits made with the exclusive proprietors of that knowledge. Due to these limitations, traditional medical knowledge that is connected to highbrow property rights is difficult to completely safeguard. Sui generis additives are taken into consideration as a necessary condition for the protection of traditional knowledge when incorporating them into traditional IPRs. To protect green identity and rights safety, this system might act as a link between the local community, the national level, and the global criminal structure. It can offer guidance on flexibility in emerging structures related to record management, the use of biological sources, and the distribution of gains from reserve falsification. "Safety of indigenous hobbies" must be a key policy objective for the IPR machine. IPRs cannot be utilized as tools to safeguard the nation's traditional knowledge and culture until then. Native American-owned companies lack awareness of their legal rights over organic resources and associated matters. Given the level of expertise, time, and money required for IPR registration, it is truly amazing that those indigenous people were able to complete this process and give up their place in the field for the third birthday celebration in order to obtain rights over their resources and related knowledge. Hence, in order to make the IPR machine more affordable and accessible to traditional groups, the registration process for intellectual property rights, rates, and criminal procedure should be shortened. It is required by the rule that some firms be designated to handle the registration, IPR prosecution processes, advancement of insignia, and advertising of the registered things for local organizations. Recognition programs should be implemented to educate traditional civilizations about intellectual property rights, biopiracy, advantage sharing, and TK preservation.

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