



### RESEARCH ARTICLE

## RESILIENCE MEASURES FOR FAIR AND EQUITABLE BENEFIT SHARING OF TRADITIONAL KNOWLEDGE

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#### Abstract

The Article is related to various forms of traditional knowledge belonging to indigenous communities in western ghats. Traditional knowledge includes innovations, expertise, know-how, medicinal properties, skills and various other components developed by various indigenous communities and passed from generations to generations. These communities are using these pieces of information as a part of their livelihood. When this traditional knowledge is exploited for commercial and industrial purposes, these communities have to be adequately compensated. They have to be consulted and have to ensure fair and equitable benefit sharing of traditional knowledge. Biopiracy is a serious emerging threat to this traditional knowledge and it is considerably affecting the rights and interests of indigenous community, who are developers and custodians of this traditional knowledge. There is misappropriation of traditional knowledge without giving benefit to the parties who had developed such a treasure of knowledge. Nagoya Protocol and Convention on Bio- Diversity mandates fair and equitable benefit sharing of traditional knowledge. The legal regime for protection as well as fair and equitable benefit sharing of traditional knowledge is still inadequate. Many forms of traditional knowledge are not yet documented. TKDL (Traditional Knowledge Digital Library) is having the database of documented information only. Therefore, here article tries to analyse existing legal mechanism for protection of traditional knowledge and will make recommendations for improvement of legal regime.

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#### Introduction:-

Traditional knowledge is a broad term which covers medical compositions, expertise, knowhow, traditional practices, skills and knowledge developed by indigenous communities. There are several innumerable traditional knowledge available in western ghats. The traditional knowledge is the knowledge of indigenous community and it is passed from generations to generations within a community. It is resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations.<sup>1</sup> Traditional knowledge widely includes

<sup>1</sup>[https://www.wipo.int/tk/en/tk/#:~:text=Traditional%20knowledge%20\(TK\)%20is%20knowledge,its%20cultural%20or%20spiritual%20identity.](https://www.wipo.int/tk/en/tk/#:~:text=Traditional%20knowledge%20(TK)%20is%20knowledge,its%20cultural%20or%20spiritual%20identity.)

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agricultural, scientific, technical, ecological and medicinal as well as biodiversity-related knowledge. Several innovations on the basis of traditional knowledge are gaining momentum as these are utilized by various Multi-National Corporations and pharmaceutical companies for preparation of different types of compounds and medicines. They are securing patent for their innovations, but the traditional knowledge exploited by them had their deep roots within the local community from ancient times. When these resources are exploited and commercialized, the indigenous community or the local people who had put their constant efforts to establish and preserve this traditional knowledge should be adequately benefitted. There are various issues relating to fair and equitable benefit sharing of this traditional knowledge. Biopiracy issues are evergreening as far as this traditional knowledge is concerned.

There should be fair and equitable benefit sharing of this traditional knowledge for the conservation and sustainable use of biological diversity and promote its wider application with the approval and involvement of the holders of such knowledge, innovations and practices. Whenever traditional knowledge is exploited by other sections of the society, which includes granting of patent to traditional knowledge or exploited by MNCs, the indigenous community who had developed traditional knowledge should be adequately compensated. Nagoya Protocol and Convention on Bio-Diversity mandates fair and equitable benefit sharing of traditional knowledge. Biological Diversity Act, 2002 is also having provisions relating to fair and equitable benefit sharing of traditional knowledge.

The proposed research article tries to find out resilience measures for ensuring fair and equitable benefit sharing of traditional knowledge within local communities. The issues related with bio piracy will be analysed. Further the study will suggest measures for safeguarding traditional knowledge and helps to promote sustainable development.

### **Types of Traditional Knowledge**

Traditional knowledge is passed from community to community and most of them were not documented and it is only within the knowledge of indigenous community. Use of hoodia cactus by san people to prevent hunger, use of plao-noi is used by Thai traditional healers to treat ulcers, Western Amazonian tribes prepared medicines by using Ayahuasca vine, sustainable irrigation through water systems were developed in Oman in the name of Aflaj and in the name of qanat in Iran. Kani tribe of South India had used arogyapachha (*trichapuszeylanicus*) as an antifatigue drug.<sup>2</sup> From their traditional knowledge, Jeevani drug had been produced. In South America, saliva of vampire bats was used in opening of clogged arteries. Various biopiracy issues are relating to traditional knowledge. Jeevani drug, neem, turmeric and basmati rice are different types of products developed from traditional knowledge and had got patent certification. Biopiracy is a serious threat to traditional knowledge. Conservation, development and sustainable use of traditional knowledge for its holders is highly warranted in this regard. Indigenous communities are living in India by practicing the traditional knowledge which has been passing from generation to generation. They are unaware of the value of their treasured culture, knowledge, practices, medicines, life style and even they are ignorant about the devastating effects of bio-piracy. TKDL (Traditional Knowledge Digital Library) consists of documented knowledge in public domain.

### **Relevant Literature Review:-**

#### **Bio-Piracy and Traditional Knowledge: A Discussion on Indian Legal Perspectives<sup>3</sup>**

Sadual (2015) were examining the significance of traditional knowledge in India. Various biopiracy issues relating to Jeevani drug, neem, turmeric and basmati rice had been discussed. The author is of the opinion that biopiracy is a serious threat to traditional knowledge. Conservation, development and sustainable use of traditional knowledge for its holders is highly warranted in this regard. Indigenous communities are living in India by practicing the traditional knowledge which has been passing from generation to generation. They are unaware of the value of their treasured culture, knowledge, practices, medicines, life style and even they are ignorant about the devastating effects of bio-piracy. Grey area identified is the need for a sui generis and comprehensive legislation to ensure legal protection of traditional knowledge.

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<sup>2</sup>[https://globinmed.com/policy\\_law\\_std\\_ipr/benefit-sharing-arrangements-jeevani-a-model-fo-105519/](https://globinmed.com/policy_law_std_ipr/benefit-sharing-arrangements-jeevani-a-model-fo-105519/)

<sup>3</sup>International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS)  
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### **Intellectual Property Rights: Bioprospecting, Biopiracy and Protection of Traditional Knowledge - An Indian Perspective<sup>4</sup>**

Baby and Suriyaprakash (2021) were discussing the issues pertaining to safeguarding of traditional knowledge and traditional cultural expressions. Defensive protection, positive protection of biopiracy and issues related to biopiracy is highlighted. Various national legislations are discussed and Nagoya Protocol mandating fair and equitable benefit sharing of resources as a part of implementation of Convention on Biological Diversity had been discussed. Need for a comprehensive legislation for protecting traditional knowledge can be considered as the grey area.

Grey area identified is the need for a sui generis and comprehensive legislation to ensure legal protection of traditional knowledge.

### **Protection of Traditional Knowledge in India**

Traditional knowledge is the living body of knowledge and had been developed from the past generations. It is having its own antiquity. It cannot be protected by the present intellectual property system easily. Current system is providing limited protection to inventions and original works by individuals and companies.<sup>5</sup> Protection of traditional knowledge includes combination of various ideas like human rights, conservation of resources, sustainable development, intellectual property rights and benefit sharing mechanism. Intellectual property provides positive protection and defensive protection to traditional knowledge. Positive protection includes granting of rights, which empower communities to protect their traditional knowledge. It results in control of uses and benefits from commercial exploitation. On the other hand, defensive protection is restricting people outside the community from acquiring intellectual property rights over traditional knowledge.<sup>6</sup> There is no specific legislation for the protection of traditional knowledge. Granting of patent to Neem, turmeric and basmati rice had resulted in severe challenges as it had been derived out of traditional knowledge, belonging to indigenous communities.

### **Proposed Strategy or Solution**

Non-Doctrinal research or empirical research can be adopted to study the research problem. It includes the analysis of various Intellectual Property legislations which are giving protection to traditional knowledge. Further data can be collected from the society with respect to traditional knowledge and its exploitation and commercialization. Data can be collected from South Indian tribe, kani community of western ghats.<sup>7</sup> These tribes are living in forest in Thiruvananthapuram district of Kerala. They were using arogyapacha as an anti-fatigue and anti-stress drug, from which Jeevani drug had been developed.<sup>8</sup> Tropical Botanic Garden and Research Institute (TBGRI) had adequately compensated kani community for their traditional knowledge and had established Kerala Kani Samudaya Kshema Trust for their development and well-being.<sup>9</sup> But before providing compensation, kanis were not consulted and their needs were not ascertained. Therefore, a legal regime can be initiated in a bilateral manner for accessing their needs as well as suggestions towards fair and equitable benefit sharing of traditional knowledge.<sup>10</sup>

### **Recommendations and Suggestions: -**

There is the dire need for a sui generis and comprehensive legislation to ensure legal protection of traditional knowledge. This is required because many people belonging to indigenous communities are depending on traditional knowledge for their livelihood. The outcome of the study will result in formulation of sui generis and comprehensive legislation for safeguarding the traditional knowledge of Western Ghats, particularly with stringent provisions for checking the issue of biopiracy. These legislations should be in conformity with National IP Policies, Digital India and Start Up India. Further indigenous or local sections of people should be made aware of their rights to access the benefits of traditional knowledge by way of fair and equitable benefit sharing. Campaigns at national level has to be conducted by the government so as to make them aware of their rights and economic value of their resources. This can be achieved by maintaining a balance between the interests of nature, that is by conserving the

<sup>4</sup>DOI: <http://dx.doi.org/10.5772/intechopen.99596>

<sup>5</sup><https://www.sconline.com/blog/post/2018/04/23/protecting-traditional-knowledge-the-india-story-till-date/>

<sup>6</sup>WIPO, Traditional Knowledge and Intellectual Property

<sup>7</sup> <https://www.wipo.int/ipadvantage/en/details.jsp?id=2599>

<sup>8</sup>[https://www.researchgate.net/figure/Kani-tribal-member-identifies-components-of-the-arogyapaacha-plant\\_fig5\\_5113452](https://www.researchgate.net/figure/Kani-tribal-member-identifies-components-of-the-arogyapaacha-plant_fig5_5113452)

<sup>9</sup><https://www.thehindu.com/news/national/kerala/jeevani-to-fetch-benefits-for-kani-tribe/article7718163.ece>

<sup>10</sup><chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.iimahd.ernet.in/publications/data/2002-08-02AnilKGupta.pdf>

environment and politico-economic expediency. Further there should be fair and equitable benefit sharing in the utilization of traditional knowledge and resilience measures will be suggested for checking biopiracy in the exploitation of traditional knowledge. A data base had to be maintained which includes repository of traditional age-old information, which is not yet authenticated.

### **Conclusion:-**

Traditional knowledge is the most valuable treasure of the indigenous community and it is passed from old generations to the current generation. It is their means of livelihood and had to be adequately protected. After collecting data from society, a comprehensive specific legislation can be enacted in consonance with the provisions of the Convention on Bio Diversity. The objectives of the Convention on Biological Diversity (CBD) can be followed while enacting legislation. It includes the conservation of biodiversity, its sustainable use, and the fair and equitable sharing of the benefits resulting from such use. Article 15(4) of the Convention on Biological Diversity (CBD) requires access to resources on terms, which are mutually agreed. Prior informed consent of the Contracting Parties while accessing biodiversity is required according to Article 15(5) of the Convention on Biological Diversity (CBD). Fair and equitable benefit sharing of traditional knowledge would be achieved after enacting a specific legislation on these lines, which can also curtail biopiracy issues. These initiatives are augmenting for achieving our sustainable development goals.

### **References:-**

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- <sup>10</sup><chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.iimahd.ernet.in/publications/data/2002-08-02AnilKGupta.pdf>.