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Globalization in the Protection of Traditional Knowledge

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ABSTRACT

This paper aims to assert that when the development of globalization is premised on adequate legal instruments and new technologies, it is quite possible to protect traditional knowledge and guarantee its reasonable and appropriate utilization. The process has enhanced the propagation of data in the global culture and hence has dangers like biopiracy and cultural imperialism. But it also comes with some benefits for enhancing the safeguard of Indigenous knowledge within the context of cooperation in the international arena legal norms and standards and innovative technological inventions like the blockchain and artificial intelligence. They can help in the way keeping cultural information and defending Indigenous people's rights from being infringed upon and satisfied that they do not need any recompense. This paper provides an analysis of how current international and national laws have failed to adequately protect traditional knowledge, which is communal and intergenerational, and suggests the need for more harmonized approaches. Finally, this paper calls for shaping the globalization process as a process of saving and implementing cultural and traditional knowledge into Globalisation as the occurrence which supports diversity and equal opportunities.

Keywords: *Traditional Knowledge, Globalization, Intellectual Property, Biopiracy, Indigenous Rights, Cultural Heritage.*

I. INTRODUCTION

Globalization has brought new prospects and risks for the maintenance and conservation of traditional knowledge, even though it is closely linked with the way of life of many global communities, especially those animated culturally diverse countries like India. It covers all fields of human endeavor, including medicine, agriculture, sciences, and arts among them; this makes traditional knowledge part of Indigenous heritage. While there are looming dangers of getting it wrong in globalization processes, for instance, potential misappropriation or dilution of traditional knowledge, there's equally immense opportunities for conserving, preserving, and developing this great cultural asset. Globalization is capable of acting as the force that is supporting cultural conservation as well as sustainable development through building a legal

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environment, creating fair systems of BE for indigenous people, and applying technical progress.²

This research seeks to answer several questions in relation to globalization and traditional knowledge. It looks at how globalization works to preserve and erode traditional knowledge and at the problems of preserving traditional knowledge within existing intellectual property rights systems. Also, the paper identifies the key international instruments that are currently in place to safeguard traditional knowledge today—the WIPO and the CBD, for example—and considers their drawbacks. A related area of interest in this study is based on how technology, in the form of blockchain and AI, can assist in the conservation of intellectual property assets. Last, the paper analyzes the successful and failed cases of traditional knowledge protection, which is done through the following cases.³

A review of the literature on this topic indicates that there are considerable challenges in establishing adequate legal instruments for safeguarding traditional knowledge. Munzer and Raustiala (2009)⁴, Paul (2023)⁵, and Fisher (2018)⁶ have observed various drawbacks of the current approaches, including failure to balance the rights of tangible and intangible property, failure to balance commercial and cultural value, failure to consider and value Indigenous peoples' cultural rights, and property rights. Moreover, extant IGLs do not adequately disrupt colonial power relations, and it appears that most of them do not have channels for genuine participation without inhibiting creativity. Munzer and Raustiala (2009) provide a critical perspective on the ways in which traditional knowledge can be protected by intellectual property rights. They underscore the danger of going to the extremes of proprietorship. It results in advocating a limitation to the rights that should otherwise foster and protect the public sphere. In a decolonial critique of WIPO and WTO frameworks, Paul (2023) posits that both the system of IPR's and sui generis systems fail on the protection of traditional knowledge as they continue to perpetuate colonial structures and marginalize Indigenous epistemologies. In the context of the rules of law, Fisher (2018) explains that the protection of traditional knowledge is a challenging subject around the world and requires legal frameworks for recognizing culture in relation to justice based on distribution and self-ownership. I have mentioned above his

² Stephen R Munzer and Kal Raustiala, 'The Uneasy Case for Intellectual Property Rights in Traditional Knowledge' (2009) 27 *Cardozo Arts & Ent LJ* 37.

³ Jacqueline Paul, 'Traditional Knowledge Protection and Digitization: A Critical Decolonial Discourse Analysis' (2023) 36 *International Journal for the Semiotics of Law*.

⁴ Munzer and Raustiala (n 1).

⁵ Paul (n 2).

⁶ William Fisher, 'Toward Global Protection for Traditional Knowledge' (*Centre for International Governance Innovation* November 2018) <<https://www.cigionline.org/sites/default/files/documents/Paper%20no.198.pdf>> accessed 11 September 2024.

suggestions for alternative means of rationalizing benefit sharing but not disturbing innovation. Altogether, these works point to the fact that there is an imperative for the construction of a unifying rubric that incorporates Indigenous voices, power relations embedded in colonialism, and benefit sharing.

Globalization presents the following main advantages for the safeguard of traditional knowledge: First, it enhances exposure and appreciation where traditional practices can go beyond regional practices by providing a scope and appreciation for their relevance. It can also enable the people within the community to protect its cultural heritage in line with their desire or wish. Second, globalization brings improved chances at receiving legal recognition at an international level. WIPO and the CBD also provide structures whereby Indigenous communities can be endowed with legal entities and receive reasonable remuneration, all of which go a long way in correctly placing the value and use of traditional knowledge. Also, new technology like blockchain and artificial intelligence has also enhanced protection measures. Traditional knowledge documented on a blockchain is protected against unauthorized use, and AI can be applied to monitoring and identifying cases of infringement of benefit-sharing agreements.

This paper maintains the view of openness of globalization as a positive force towards the conservation of ancillary indigenous knowledge and sustainable development. Based on the successful practices of successful cultural globalization, it is possible to coordinate with international cooperation, fair division of benefits, and the use of such technologies as blockchain and artificial intelligence. This approach to globalization study provides a way that combines the values and benefits of globalization while at the same time protecting the indigenous rights and their heritage.⁷

II. GLOBALIZATION: A DOUBLE-EDGED SWORD FOR TRADITIONAL KNOWLEDGE

Globalization has invariably impacted the world and affected how the flow of information in the sharing of ideas and characteristics in the global market. This integration also brings about several challenges as well as distinct possibilities in the preservation and perpetuation of traditional knowledge. In a way, globalization can result in traditional knowledge systems such as India's Ayurveda and Siddha being taken from the level of a regional practice and turned into international values since the peoples of the world become more open to the cultures of other countries. That change can create a demand for strong safeguards and appropriate remuneration to knowledge holders which in turn can transform traditional knowledge into

⁷ *Ibid.*

something desirable and essential in the global economy.⁸

Various Global IP laws and structures such as the Convention on Biological Diversity and activities under the WIPO support the custodian of the communal and intergenerational aspects of the traditional knowledge. However, both these frameworks have a scope for enhancements, they provide a solid ground on which the International Standards can be developed while preserving the Traditional Knowledge. The world's other frameworks outlined here may be enhanced and fortified, guaranteeing their proper and effective implementation to ensure that globalization benefits traditional knowledge and does not lead to biopiracy.

Hence the focus lies in establishing legal and ethical frameworks that address the fact that traditional knowledge occupies a special place within the international market system. It is only through such cooperative global processes that traditional knowledge can be saved, promoted, and fairly marketed in the global market without Indigenous peoples' rights further eroding and becoming just a voice to hardly be heard.⁹

III. TRADITIONAL KNOWLEDGE: SCOPE AND CHALLENGES

Traditional knowledge is the web of information primarily dealing with land usage for agriculture and other related practices, health, and other practices that are integral parts of indigenous and local communities' social structure. For instance, the act of healing with the aid of Neem leaves in India or the utilization of tribal weaving methodologies in areas of the same country are not only symbols of cultural differences but rather depict a rather active social existence and interaction between the people of such regions and the environments they live in.¹⁰

Traditionally shared knowledge is not particularly accommodated by legal protection mechanisms that work within the confines of conventional intellectual property rights that are meant to safeguard an invention for a limited time only. This means that there is a challenge in safeguarding shared or eternal information, such as traditional knowledge, which does not have documentation or a known and documented source and hence cannot easily fit into conventional IP systems.¹¹

⁸ Carlos M Correa, 'Traditional Knowledge and Intellectual Property' (Quaker United Nations Office 2001) 17.

⁹ William Fisher, 'Toward Global Protection for Traditional Knowledge' (*Centre for International Governance Innovation* November 2018) <<https://www.cigionline.org/sites/default/files/documents/Paper%20no.198.pdf>> accessed 11 September 2024.

¹⁰ Gargi Chakrabarti, 'Vulnerable Position of Traditional Knowledge Under IPR: Concern for Sustainable Development' (2014) 7(3) *OIDA International Journal of Sustainable Development* 67-94.

¹¹ A.K. Bhatt and S.K. Singh, 'Protection of Traditional Knowledge Under the Intellectual Property Rights Regime with Special Reference to India: An Analytical Study'.

From a cultural perspective, there is a challenge in documenting and putting traditional knowledge in written text since some of them are secret of the people and not meant for commercial use. Furthermore, cultures go global, and cultural information is taken out of its proper social and cultural context and sold commercially, thus having no inherent value or meaning.

These challenges are further accompanied by threats such as biopiracy, in which corporations seek to take ownership of natural resources or traditional wisdom without adequately compensating the owners. An infamous example of this effect is the one when the US attempted to patent turmeric's therapeutic properties, to which India has reacted, and this is one of the ways BIOL presently still battles to protect traditional knowledge.

These problems show how important it is to have good legal systems that can protect traditional knowledge in third-world countries without destroying the cultural values that these traditions are based on. There is a need to seek cooperation and compromise at the global level to put in place legal instruments that can protect traditional knowledge as a culture as well as an element of commerce.¹²

IV. INTERNATIONAL FRAMEWORKS AND AGREEMENTS

The current globalisation and tourism hence calls for sound international legal mechanisms that would help in combating loss of cultural heritage which includes Traditional Knowledge; two of the most significant global bodies are World Intellectual Property Organization and the Convention on Biological Diversity.

WIPO, particularly through the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, has been engaged in the elaboration of principles that respond to the invisibility of Traditional Knowledge to the system that was constructed based on a term-based, individual property. They became the desire to provoke the form of non-static and staged approaches that respect the diversity of the traditional knowledge systems.¹³

On the same note, the Convention on Biological Diversity is more concerned with the loss of biological diversity and proper use of genetic resource benefits. Its specific follow-up is the Nagoya Protocol, which deals with genetic resources and traditional knowledge and expounds

¹² Teshager Worku Dagne, Intellectual Property, *Traditional Knowledge and Biodiversity in the Global Economy: The Potential of Geographical Indications for Protecting Traditional Knowledge-Based Agricultural Products* (PhD thesis, 2012).

¹³ Nithin V Kumar, 'Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead' [2012] *SSRN Electronic Journal*.

on how the benefits shall be shared with consideration of the indigenous people.

Nevertheless, this progress is not put into operation because of disparities in the fulfillment of these agreements and the lack of these legislative frameworks on the national level. The question of intellectual property rights being global is one of those that can be considered as the major challenge to the protection of traditional knowledge, as such many multinational firms are located in different countries.

V. TECHNOLOGICAL SOLUTIONS FOR PROTECTION

When globalization increases the Level of spreading traditional knowledge to other countries and continents, new technologies become critical in protecting and verifying such knowledge. Of particular utility is the use of blockchain technology, a decentralized electronic system for recording and tracking the utilization of traditional knowledge. This could help to minimize cases of unauthorized exploitation and will go a long way in the implementation of international benefits-sharing agreements.

For instance, in sharing traditional knowledge, the knowledge can be put into blockchain to produce a registry of such knowledge with a timestamp. It is especially important in the determination of ownership or custodianship in consideration of the legal issues or when creating the frameworks for the protection of intellectual properties and such registries can act as the final proof of origin. Also, smart contracts that are coded on the blockchains could be used in enforcing standards of benefit-sharing where Indigenous people are paid every time their knowledge is monetized.¹⁴

Furthermore, tools like AI can be used to also keep track of the use and infringement of Traditional Knowledge rights. For instance, the use of artificial intelligence methods to analyse databases comprising patents from the rest of the world to identify those texts that have incorporated traditional knowledge without lawful permission.

In addition to improving the means of safeguarding traditional knowledge, these technologies also contribute to increasing the effectiveness and expediency of the work and reducing the influence of subjective factors. It gives a sound foundation from which all the necessary elements for the management of the delicate balance between the dissemination of knowledge for world improvement and its misuse can be derived.

¹⁴ R Seal and G Gargate, 'Role of Technology in the Preservation and Protection of Traditional Knowledge: Traditional Knowledge Management - The Way to Riches' (2024) Portland International Conference on Management of Engineering and Technology (PICMET), Portland, OR, USA, 1-9 <https://doi.org/10.23919/PICMET64035.2024.10653179>.

VI. CASE STUDIES

A review of tiered case studies that exemplify how and where indigenous knowledge has been preserved or violated provides a worthwhile understanding of globalization and the law. Some examples are given below, where the difficulty in protecting traditional knowledge makes it a complex issue.

1. **Neem Tree Case:** The neem tree, which grows in the Indian subcontinent, has been used for folk medicine, insecticides, and as manure. Though the traditional method of Neem oil extraction was in practice, a U.S. company was able to patent its method in the 1990s. With the support of INGOs, Indian NGOs challenged this patent at the European Patent Office, and the patent was revoked in the year 2000. This case labelled as biopiracy shows the difficulty of appreciating traditional communal knowledge against modern post-industrial new property rights regimes that disregard traditional knowledge.¹⁵
2. **Hoodia Case:** Hoodia, a plant that is similar to cactus, grow wild in the Kalahari Desert and the San people of Namibia have traditionally used it in order to curb appetite during lengthy hunting sessions. In the late 1900s, Organization claiming to have an appetite suppressing product found that the active ingredient was the stimulant and sold off the rights to a leading pharmaceutical company which sought patent protection for the stimulant. In the first place, there was no form of compensation for the San people but because of pressure, they adopted benefit-sharing. This case shows how Indigenous science pushed into the commercial domain does not receive the due credit or remuneration of Indigenous peoples, the necessity of legal structures doing so.¹⁶
3. **Turmeric Case:** Turmeric typically used in Indian food also has other health uses such as alleviating inflammation and promoting wound healing. In the early 1990, a university in the United States patented the use of turmeric powder for treatment of wounds which creates biopiracy issues among the Indian researchers. That is why Indian Council of Scientific and Industrial Research (CSIR) contested this patent, offering documentation that proved utilization of turmeric as medicine throughout centuries. The patent was subsequently McAfee, thus illustrating the need quality and preservation of traditional knowledge.¹⁷

¹⁵ Mangala Hirwade and Anil Hirwade, 'Traditional Knowledge Protection: An Indian Prospective' (2012) 32(3) *DESIDOC Journal of Library & Information Technology* 240-248.

¹⁶ Aman Gebru, 'Intellectual Property and Bioprospecting: A Model Legal Framework' (2018) 19 N.C. J. L. & Tech. 257 <https://scholarship.law.unc.edu/ncjolt/vol19/iss2/2>.

¹⁷ D.T. Kalbande and P.A. Suradkar, 'Traditional Knowledge Digital Library: A Magic Bullet in the War Against Biopiracy' (2021) 1(1) *Library Philosophy and Practice* 1-5.

4. Kava Case: Kava is a Pacific Island tree whose primary uses have largely been related to medicine and include contracting muscles, and anesthetic properties. In the early part of the twenty first century, most western pharmaceutical organizations began to file patents for extraction techniques and utilization of kava for nervous disorders and sleeplessness. But it raised issues of Indigenous knowledge protection and compensation, which show that there is a need for better legal protection of traditional knowledge.¹⁸

VII. CONCLUSION

In the area of globalization and fast sharing of information, preservation of traditional knowledge is highly significant and challenging, but not without options. International conventions and national laws offer an opportunity for the development of an exposure to, recognition of, and respect for traditional knowledge. As a result, systems such as the Convention on Biological Diversity and what WIPO has been offering remain feasible strategies, as is evident by the likes of Neem and Turmeric. Strengthening these legal instruments, as well as guaranteeing compliance, may turn globalization into a protective force. Emerging technologies include, among others, blockchain technologies and artificial intelligence, with solutions proffered ranging from using the blockchain technology to utilizing artificial intelligence. Blockchain can guarantee that safe documentation of traditional knowledge occurs, while AI can track its usage and make certain Indigenous men and women benefit as planned. If the author establishes these technologies in the context of globalization, it is possible to include traditional knowledge in the global economy and still retain the culture. Technological intervention, along with enhanced legal provisions, can therefore lead to the safeguarding as well as enhancement of traditional knowledge as an element of the global knowledge economy without compromising cultural sensitivity.

¹⁸ Kalbande and Suradkar (n 8) 8.