

FRAMEWORK FOR PROTECTION OF TRADITIONAL
KNOWLEDGE AND FOLKLORE IN INDIA: A CASE STUDY OF THE
ETHNIC GROUPS OF ASSAM

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Submitted by:

Prinjee Baruah

UID: SF0220023

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Supervised by:

Dr Thangzakhup Tombing

Assistant Professor of Law



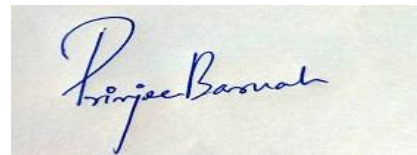
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NAME OF THE CANDIDATE

UID: SF0220023

National Law University and
Judicial Academy, Assam

SUPERVISOR'S CERTIFICATE

This is to certify that MISS PRINJEE BARUAH has completed his/her dissertation titled "FRAMEWORK FOR PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE IN INDIA: A CASE STUDY OF THE ETHNIC GROUPS OF ASSAM" under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.



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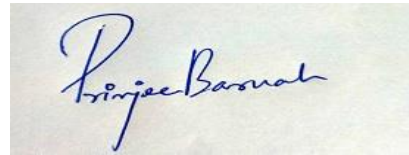
Name of the Supervisor: Dr. Thangzakhup Tombing

Designation: Assistant Professor of Law

National Law University and Judicial Academy, Assam

DECLARATION

I, PRINJEE BARUAH, do hereby declare that the dissertation titled “FRAMEWORK FOR PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE IN INDIA: A CASE STUDY OF THE ETHNIC GROUPS OF ASSAM” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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Date: 16.7.2021

NAME OF THE CANDIDATE

UID: SF0220023

National Law University and Judicial
Academy, Assam

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7. 1872 - The Indian Evidence Act
8. 1970 - The Patents Act
9. 2001 - The Protection of Plant varieties and Farmers Rights Act

Table of Abbreviations

1.	ASTECC	Assam Science And Technology and Environmental Council
2.	BDA	Biological Diversity Act
3.	CBD	Convention on Biological Diversity
4.	CSIR	Council of Scientific and Industrial Research
5.	EPA	Environmental Protection Agency
6.	EPO	European Patent Office
7.	IEA	Indian Evidence Act
8.	IFA	Indian Forest Act
9.	IGC	Intergovernmental Committee
10.	ILO	International Labour Organisation
11.	IP	Intellectual Property
12.	IPR	Intellectual Property Rights
13.	NE	North East
14.	SC	Schedule Caste
15.	ST	Schedule Tribe
16.	TK	Traditional Knowledge

17.	TKDL	Traditional Knowledge Digital Library
18.	TBS	Trabecular Bone Score
19.	TRIPS	Trade Related Aspects of Intellectual Property Rights
20.	UN	United Nations
21.	USDA	United States Department of Agriculture
22.	USPTO	United States Patent and Trade Mark Office
23.	WIPO	World Intellectual Property Organisation

Chapter 1: Introduction

1.1 Research Background

The significance and importance of traditional knowledge held by indigenous groups is increasingly recognised all around the world. The loss of traditional knowledge jeopardises the survival of geo-heritage locations, thus it is critical to conserve this information at all costs. India has a plethora of traditional knowledge about the characteristics and uses of biological resources due to its extraordinary biodiversity and natural richness. Traditional knowledge is the bedrock of cultural heritage. The bulk of local and indigenous communities may be located in most biodiverse and diverse locations. The natural world is a way of life for them, as well as an important component of their cultural identity.¹

Assam has always been a meeting site for people of many races, sheltering waves of people bearing different cultures and civilisation tendencies. Austroasiatic, Negritos, Alpines, Dravidians, Indo-Mongoloids, Tibeto-Burmese, and Aryans all entered Assam through diverse routes at different times, contributing to the unique blending of a new community that subsequently became known as Assamese. The region's composite culture owes its origins to a variety of sources, resulting in a distinct regional culture. The region's dress styles, eating habits, belief system, material culture, rituals, and festivals bear witness to this fact.²

In the interest of humanity as a whole, a meaningful study of traditional knowledge is necessary, but the study must also be capable of providing legal protection mechanisms for the knowledge that belongs to these communities.

¹ Rachit Garg, 'IPR vis-a-vis traditional knowledge' <<https://blog.ipleaders.in/ipr-vis-vis-traditional-knowledge/>> accessed 13 May 2021

² Dr. Subhra Devi, 'Documentation of Traditional Knowledge with respect to Preservation of Manuscripts of Assam, India: Problems and Prospects' <http://cidoc.mini.icom.museum/wp-content/uploads/sites/6/2018/12/CIDOC_paper_SUBHRA_DEVI_Assam_India_.pdf> accessed 14 May, 2021

1.2 Statement of problems

Importance of traditional knowledge can be understood from both the economic and monetary value as well as from the social and cultural perspective.

Also, the Traditional cultural expressions (folklore) are considered as essential to indigenous and local groups' cultural and social identities, embodying skills and know-how, imparting basic beliefs and values. Protecting folklore promotes overall economic growth, supports cultural variety, and aids in the preservation of cultural heritage.

Protecting them is both the responsibility of the state as well as is the right of the indigenous people. Despite the efforts made by various initiatives and national and international laws, no proper protection is being provided to these communities. Assam and its various Ethnic communities' indigenous knowledge and cultural expressions face the threat of extinction and bio-piracy due to lack of proper protection.

1.3 Aims

The basic aim of the study is to delve into some of the traditional practices and folklores of Assam and peruse some key researches done by various researchers in the field of Traditional Knowledge and Folklore.

Moreover, a study on the existing IP Laws both in National and International Level will further help in finding out if there are any lacunae in the legal framework and finally to provide suggestion on that basis.

1.4 Objectives

In order to understand the core issues underlying the increasing issue of bio piracy of traditional knowledge and threats received to the traditional cultural expressions, a deeper study into the laws available both in the country and internationally is pertinent.

Assam being a state of North East, its research on cultural expressions and traditional knowledge is shoddy finished. Traditional knowledge' is the answer to many of the present day modern problems and is thus important to research and protect them.

India has a history of developing laws influenced from foreign laws and has also succeeded enormously in protecting people's rights by adopting them. Thus a study on

the existing legal framework relating to traditional knowledge and folklore in various foreign jurisdictions is also important.

Apart from the above, indigenous knowledge of medicine and its role in the coming future is something that cannot be ignored. Thus the main objective behind this research is to bring into light some of the most unique and important traditional knowledge and traditional cultural expressions of Assam and to do an in-depth study of the legal framework dealing with traditional knowledge and traditional cultural expression, both in India and international.

Another key objective of this study is to find out whether a sui generis laws on traditional knowledge will provide the necessary protection to the TK an TCEs of Assam.

1.5 Limitations

There are not enough recordings of the traditional knowledge and folk practices of Assam. Moreover, most the oral knowledge commonly prevalent in Assam and amongst its various ethnic communities are not available in abundance. Some of the writings that are found are written by the academicians and scholars, from the region. There are less research done by outsiders and it seems that most of them fail to take interest in the rich culture and traditions of the state.

Similarly, what is more challenging to find out is about the existing IP laws of some other jurisdictions, as there are not enough data available in this regard. It is not an easy task to collect data on traditional practices and law available (both customary and national) from a community without the help of proper resources. All these problems stood as difficulties in doing a proper study on the framework dealing with traditional knowledge and folklore.

1.6 Detailed Literature Review

The present research is aimed as the prospective viability of framing policies and/or legislations for the unprotected Traditional Knowledge in India, especially Assam.

The present research also aims to look into the legal framework relating to traditional knowledge of some foreign jurisdictions and to look into the prospects of applying them

in the country. The research attempts to investigate the rights of ethnic communities in the country especially as is laid under the Constitution of India.

The research has gone through “Legal and constitutional protection of traditional knowledge of indigenous peoples of the north east India” by Deka Neelotpal, <http://hdl.handle.net/10603/200631>, “Branding And Commercialisation of Traditional Knowledge And Traditional Cultural Expressions: Customary Law of North East vis-à-vis Contemporary Law” by Dr. Moatoshi Ao, Ecuador: Intellectual Property in Ecuador, by Enrique Chiriboga (Quito), “Protecting Traditional Knowledge In International Intellectual Property Law: Imperatives For Protection And Choice Of Modalities” by Tesh Dangne; The John Marshall Review Of Intellectual Property Law, , “Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law” by Julia Janewa Oseitutu, Regional Study in the Andean Countries: “Customary Law in the Protection of Traditional Knowledge” by Rodrigo de la Cruz I., With the collaboration of the indigenous experts: José Gregorio Mirabal – Venezuela, Gabriel Muyuy – Colombia, Germán Flores – Ecuador, Alejandro Argumedo – Peru, Jaime González – Bolivia and the non-indigenous experts: Vladimir Aguilar – Venezuela Margarita Flores – Colombia Manolo Morales - Ecuador Manolo Ruiz – Peru, November 2006.

For the purpose of this research the following legislations were perused-

1. Constitution of India
2. The Biological Diversity Act, 2000
4. The Convention on Biological Diversity (CBD), 1992
5. The Declaration on the Rights of Indigenous Peoples, 2007
6. The Designs Act, 2000
7. The Indian Evidence Act, 1872
8. The Patents Act, 1970

9. The Protection of Plant varieties and Farmers Rights Act, 2001

1.7 Research questions

1. Can a sui generis law on traditional knowledge aid in the protection of traditional knowledge in India?
2. Are the existing national and international frameworks sufficient for the protection of the Traditional knowledge and folklore of Assam?
3. Will the adoption of indigenous legal systems help uplift the indigenous rights of people in India, especially in Assam?
4. Is the Traditional Knowledge Digital Library sufficient for the protection of Traditional Knowledge in North East India?

1.8 Research Methodology

This research is a purely doctrinal research and focuses on the current national and international legal framework dealing with Traditional Knowledge and Folklore.

The materials and data are majorly collected from secondary sources. The paper is based on the available information gathered from secondary sources. This paper is also prepared from various books, newspapers, articles, journals, reports, websites, blog, academic literature and available authentic internet sources.

1.9 Chapterization

The chapterization given is as under-

Chapter 1 deals with the introduction. It is inclusive of the research methodology, research questions, aims, and objectives, scope and limitation of the study, and other aspect in relation to the introduction

Chapter 2 deals with the Folklores and Traditional Knowledge of Assam and attempts to briefly typify the beauty of cultures and traditions prevalent in the state.

Chapter 3 deals with the legal framework relating to traditional knowledge and folklore in India and also attempts to find out if the existing laws are sufficient.

Chapter 4 deals with the role the international forums in protecting traditional knowledge and folklore and to also study their impact in Indian legislation.

Chapter 6 deals with the study of laws relating to traditional knowledge and folklore in some other countries so that a comparison can be made with the Indian legal system.

Chapter 7 deals with the conclusion. It mentions about the findings, recommendations and a brief conclusion.

Chapter 2: Traditional Knowledge and Traditional Cultural Expression of Assam

2.1 Meaning of Traditional Knowledge and Folklore

Traditional knowledge has been defined by the World Intellectual Property Organization as "knowledge, know-how, skills, and practises that are produced, nurtured, and passed down from generation to generation within a community, frequently as part of the group's cultural or spiritual identity." It goes on to say that, while there is no internationally agreed definition of TK yet, it may be claimed that:

Traditional Knowledge, in its broadest definition, encompasses both the body of knowledge and traditional cultural manifestations, such as TK's characteristic signs and symbols. In the limited meaning, traditional knowledge denotes to knowledge in general, and in a particular knowledge coming from intellectual effort in a traditional setting, which includes skills, know-how, practices and inventions.

Scientific, agricultural, technological, medical knowledge and ecological, as well as biodiversity-related knowledge, are all examples of traditional knowledge.³

Folklore is a wide term that denotes the linguistic, material and spiritual aspects of a culture that are have been passed down orally, via observation, or through imitations. People who share the same culture may be of the same profession, speak the same language, are of the same ethnicity, are of the same age, or are from the same geographical locations. This body of traditional knowledge is preserved and passed down from generations with minor variations shaped by memory, current requirement or purpose, and individual ability.

In 1846, William John Thoms, an English antiquary, used the word folklore to reinstate the phrase common antiquities. According to other writers, folklore is the body of expressive culture that include music, tales, legends, dance, oral history, jokes, proverbs, popular beliefs, and so on within a particular specified population that

³ < <https://www.wipo.int/tk/en/tk/>> accessed on 12 May, 2021

includes the culture, subculture, or group's traditions (including oral traditions). It is also the set of processes that makes it possible to disseminate such expressive genres.

Folklore is also referred to as Traditional Cultural Expressions. Folkloristic refers to the academic and typically anthropological study of folklore. While folklore may include religious or mythological aspects, it also addresses the sometimes banal customs of everyday life.

By delving into cultures and traditions of the various ethnic groups of Assam, we will have an idea about the rich traditional knowledge and cultural expressions of the people in the state. The study in this chapter focuses on the indigenous medicines of the ethnic communities and the other prevalent traditional knowledge and cultural expressions of Assam.

North East India contains the greatest reservoir of plant species in India and is one of the world's hotspots of biodiversity, supporting almost half of India's biodiversity. This area is rich in medicinal plants and ancient healing methods. People's dietary habits include a variety of therapeutic herbs and plant products based on traditional knowledge. This area's unique medicinal plants are used by the inhabitants in the form of medications as well as dietary habits on a daily basis.

2.2 Traditional Knowledge and Folklore in Assam

One thing that cannot be denied is that without cultures and customs, every community becomes ambiguous. Any civilization is defined by its culture, customs, and well-structured norms created by men to live together, regardless of caste, class, tribe, or other factors. With the advent of new technology, ideas, and concepts, society is developing at a breakneck pace. Even with rapid growth, one of the greatest arguments in support of conserving indigenous knowledge, customs, and culture is that if no attempts are made to conserve them, human civilization would regress.

We shall find solutions in indigenous wisdom that we will not find in the contemporary world. Indigenous wisdom gives us optimism that we may be able to find solutions to

many unsolved problems, such as water shortages, global warming, illnesses, and many more.⁴

Moreover, the art, culture and expressions of a particular community form the part of its own identity. For rural areas and people, local culture gives a sense of identity. This identity promotes the identification of plans of action to increase well-being by facilitating common understandings, traditions, and values. Culture helps to the development of a sense of community and belonging. It has an impact on rural communities' willingness to work together to address specific needs and issues. Regardless of economic or political situations, citizens' local commitment may be a powerful instrument in determining the efficacy of development alternatives and local activities.⁵

Indigenous people have created a plethora of technology and arts over the centuries.

They've learnt to traverse enormous distances in the Pacific by relying on their understanding of currents and the sensation of periodic wave bouncing off faraway islands: They've looked into the therapeutic characteristics of plants, as well as created techniques to cultivate various deserts without irrigation and harvest abundantly from the rain forest without disrupting the ecosystem's delicate balance: They've figured out how to traverse enormous distances in the Pacific using currents and the sense of occasional waves bouncing off faraway islands, and they've created means to do it.

If this knowledge had to be duplicated from scratch, it would beggar the scientific resources of the West. Much of this expertise and wisdom has already disappeared, and if neglected, most of the remainder could be gone within the next generation.

Indigenous peoples have been threatened for centuries as development encroaches on their lands and traditions. What is different about the present situation, however, is that it goes beyond basic questions of native land rights into more ambiguous issues, such as

⁴Importance of incorporating local culture into community development <<https://extension.psu.edu/importance-of-incorporating-local-culture-into-community-development>> accessed 17 may, 2021

⁵ Ibid.

the prerogative of individuals to decide between traditional and modern ways. Indigenous knowledge disappears when natives are stripped of their lands, but in many parts of the globe, knowledge also disappears because the young who are in contact with the outside world have embraced the view that traditional ways are illegitimate and irrelevant. The most immediate tragedy in the loss of knowledge and traditions is for the tribes themselves. They do not always die out, but the soul of their culture withers away.⁶

Assam being a meeting ground of various tribes and ethnic community possesses enormous knowledge typical to respective community and also remains an half explored land of cultural expressions. Preserving the traditional knowledge and cultural expression of Assam will not only bring economic benefit but also help protect the Assamese identity.

People of Assam

Assam has long served as a crossroads for numerous groups of people who have moved and resided there. Over time, there has been cross-pollination between members of two tribes. Hundreds of years of coexistence have resulted in the fusion of cultural and physical traits, culminating in the birth and development of an Assamese composite culture. Assam today has a diversified population of individuals from different tribes, castes, languages, and faiths.

The Government has identified fifteen numbers of communities of Scheduled Caste in the State. They are 1. Bansfor, 2. Bhuinmali, Mali, 3. Brittial Bania, Bania, 4. Dhupi, Dhubi, 5. Dugla, Dholi, 6. Hira, 7. Jalkeot, 8. Jhalo, Malo, JhaloMalo, 9. Kaibortha Jalia, 10. Lalbegi, 11. Mahara, 12. Mahtar, Bhanghi, Muchi, Rishi, 13. Namasudra, 14. Patni, 15. Sutradhar. Assam's Scheduled Caste population accounts for 7.2 percent of the state's overall population. In Assam, the Scheduled Castes community is dispersed

⁶ Eugene Linden, 'Lost Tribes, Lost Knowledge' <<http://www.ciesin.org/docs/002-268/002-268.html>> accessed 17 May, 2021

rather than concentrated in specific enclaves. Agriculture is one of the primary source of income for the majority of Assamese Scheduled Castes.⁷

The Tea Tribe is made up of people from many communities and makes about 25% of the population of the state. They are an important component of Assam's culture. The Brahmaputra River's bed has spawned a slew of river islands known as chars or chaporis. The size, form, and physical susceptibility of these chars or chaporis vary widely. Only a few of the characters are permanent, while the majority are transitory or semi-permanent. As a result, residents of the chars rarely have a stable location and are forced to relocate multiple times. The people who live in the char and chaporis live their lives around the river. The river has a significant impact on their way of life, community, and culture.

Around two thousand chars are livable in Assam, centred on the Brahmaputra River. Aside from the Mising, Deoris, and Kaibarrtas, these islands are home to Muslim cultivators who migrated to Assam from East Bengal, Nepalees who migrated from Nepal, Hindu refugees, and a few individuals from Bihar and Bengal. The majority of char dwellers are Muslim, and their number is believed to be approximately thirty lakhs. Pamua Musalman (the Farming Muslim), Na- Asamiya (Neo-Assamese), and Charua Musalman are some of the names given to these people (the Muslims of the river Islands or banks). They occupy the chars of Dhubri, Barpeta, Nalbari, Kamrup, Morigaon, Nagaon, Darrang, Sonitpur, etc. On the other hand, the Misings, Deori and Kaibbartas are found in the Charchaporis of Lakhimpur, Dhemaji, Jorhat, Dibrugarh, Sibsagar, etc.⁸

The population of Scheduled Tribes makes up 12.41 percent of the overall population of the state. There are fifteen Scheduled Tribes (Hill) and fourteen Scheduled Tribes (Plain) in total, each with its own culture, language, folkways, legal system, religious beliefs and customs, and each at a different state of social, educational, and economic development. The Scheduled Tribes are found in all 32 districts of the state, in both

⁷ <[People of Assam.pdf \(thebrahmaputra.in\)](#)> accessed on 18 May, 2021

⁸ Ibid.

plains and hills. The plain tribes live in plain districts, whereas the hill tribes live primarily in the North Cachar Hills and Karbi Anglong districts. The following is a list of Assam's Scheduled Tribes.

In the autonomous Districts: 1. Chakma, 2. Dimasa, Kachari , 3. Garo ,4. Hajong, 5.Hmar, 6. Khasi, Jaintia, Synteng, Pnar,War, Bhoi, Lyngngam,7. Any Kuki Tribes, 8. Lakher, 9. Man (Tai Speaking) , 10. Any Mizo (Lushai) tribes, 11. Mikir, 12. Any Naga Tribes, 13. Pawi, 14. Syntheng,15. Lalung In the state of Assam excluding the autonomous districts: 1. Barmans in Cachar ,2. Boro, Borokachari, 3. Deori, 4. Hojai, 5. Kachari, Sonowal ,6. Lalung, 7. Mech ,8. Miri, 9. Rabha, 10. Dimasa, 11. Hajong, 12. Singhpho, 13. Khampti, 14. Garo. ⁹

The Brahmaputra valley is the meeting ground of diverse linguistic and racial groups. The valley is home to both tribal and non tribal communities. The Bodo also called as Boro or Boro Kacharis is a branch of the great Bodo Group of the Indo-Mongoloid family. The Mising of Assam previously known as Miris is the second largest group of Scheduled Tribe (Plains) of Assam. The Rabhas are one of the Scheduled Tribes in the plains districts of Assam. They are widely scattered, but mostly concentrated in the districts of Goalpara, Kamrup and Darrang. The Sonowal Kacharis is one of the important plain tribes of Assam. They are distributed in the districts of Dibrugarh,Tinsukia, Dhemaji, Lakhimpur, Sibsagar, Jorhat and Golaghat.

The Tiwas, formerly known as the Lalungs, are one of Assam's most populous ethnic groups. 'Ti' means 'water,' and 'Wa' means 'great,' in Tiwa language. The tribe's origins are shrouded in mystery. They are claimed to have followed the Brahmaputra's course and announced themselves to others as Tiwa when moving to Assam. The non-Tiwas referred to them as Lalung. Those who lived on the Brahmaputra's south bank were referred to as Lalungs by the Karbis. Water is represented by the letter 'La,' and retrieved by the letter 'Lung.' This people were given shelter by the river Brahmaputra, and as a result, they were given the name Lalung. They are a subgroup of the Bodo people and are Mongoloid in ethnicity. The Tiwas are mostly concentrated in Nagaon,

⁹ Ibid.

Morigaon and Karbi Anglong districts of Assam. Besides these, there are a few other Tiwa villages in Dhemaji, Sonitpur, Jorhat and Kamrup districts.¹⁰

The Garos have received the status of Scheduled tribes both in the hills and Plains of Assam. In the plain region they are distributed in Kamrup, Goalpara and Dhubri districts of the Brahmaputra valley. Another riverine community of Assam is the Deori tribe. They are one of the fourteen Scheduled Tribes (Plains) of Assam. The original abode of the Deori was on the banks of the river Kundilpani at Kundil, presently known as Sadiya. In the census of 1901, it is mentioned that the banks of the Kundilpani river is the ancient habitation of the Deoris. Brown In the book 'Deori Chutiya Grammar' (1837) observes that the Deories had their original habitation on the bank opposite to Sadiya. The Dimasa Kachari constitutes one of the major tribal groups of Assam and is an important ethnic group in the autonomous hill districts and also in the plain districts of Assam. In the plains they have a population of 19,702. The Singphos in Assam has a population of 2,342. The Singphos belong to the Tibeto Burmese language group of the Mongoloid stock.

The Assamese Khamti tribe has 1,106 people. During the 18th century, the Tai Khamtis moved to Assam from Bar Khamti (khamti Lung) in Burma. They first pitched their camp on the Tengapani River's bank. They then travelled to Sadiya before arriving in Narayanpur. The Tai Khamtis now live in numerous villages in the North Lakhimpur district's Narayanpur region. They had previously lived in Sadiya before migrating to Narayanpur on the banks of the Dikrong River.

The Karbis are an important Assamese tribe. They are mostly found in Karbi Anglong's hill district. In the districts of Karbi Anglong and Dima Hasao, they have been designated as a scheduled tribe (H). A huge number of Karbi settlements can also be found in the state's plains. In Assam, there are various small indigenous populations that practise Buddhism. Turungs, Aitonias, Tai Phakes, and Khamyangs are their names.

Jorhat, Sibsagar, Dibrugarh, Tinsukia, North Lakhimpur, Golaghat, Dhemaji, and certain sections of Nagaon and Sonitpur districts are home to the Ahom community of

¹⁰ Ibid.

Assam. They're also scattered around the state in small pockets. The Ahoms are part of the Mongoloid race's Tai ethnic group. They first arrived in Assam in the early thirteenth century. Sukapha, the first Ahom king of Assam, established a kingdom in 1228 that lasted until 1826. They have left a significant legacy in the history of our land during the last 600 years.

Muslims is the second largest religion in Assam .There is a significant population of Muslim people in the state. The Christian community of Assam `accounts for 3.7 percent of the state's population. With the coming of the British and American Missionaries, Christianity in the Assam developed after the establishment of the British regime in 1826.

Assam has had a long history with Buddhism. According to K. Burah Gohain (1946), Buddhism was brought to Assam (formerly Kamarupa) from Eastern India. According to the 2011 census, Buddhism is practised by 0.2 percent of the population. The Assamese Sikhs are a separate ethnic group in the state. Although members of the clan are dispersed around the state, they are currently centred in a village called Borkhola in Nagaon district. Sikhism is practised by about 0.1 percent of the state's population. Beside the above religious groups, there is a small community of followers of Jainism in Assam.¹¹

Thus it is clear from above that there are various ethnic groups in Assam existing in the land since time immemorial and classifying them is a difficult task. Similarly, an attempt to include the traditional knowledge and folklore of all the ethnic communities will also turn out to be vague at this point of time.

The focus of study in this chapter thus will be to bring into light only some of the knowledge and folklores practiced by some amongst these ethnic communities of Assam to typify the significance these knowledge and practices in the present context.

The composite culture of the region owes its origin to a varied source which gives rise to a unique culture of the region. The dress patterns, food habit, belief system, material culture, rituals and festivals of the region are a testimony to this fact. The ethnic

¹¹ Ibid.

communities of Assam have a wealth of traditional knowledge that has to be preserved or they would perish.

The endless knowledge that these ethnic communities hold within themselves includes the knowledge relating to art, craft, food, sculpture, indigenous medicines, the unique knowledge to predict annual season, making of musical instruments, biological conservation strategies and many more.

In an otherwise varied ethno-economic mix, Bihu is a symbol of Assamese cultural unity and reflects the spirit of Assam. The cultural component of Bihu is the most significant feature. It includes music, dances, songs, and musical instruments, among other things. They all reveal the distinct Assamese character, and as a result, they have become the identity of the increasing global Assamese community.

Dhol is a very important part of any festival of almost all tribes of Assam, despite the fact that the use of musical instruments is changing with the generations. Considered to be the most important Musical instrument of Assamese Folk culture, Dhol is a very crucial part of any festival of almost all tribes of Assam. Without Dhol, Assamese Bihu and Husari are incomplete. In Bihu and Husari, Dhol playing always takes the lead.

There are various types of Assamese Dhols that are used by different communities of Assam. These are like

1. The Bihu Dhol
2. Oja Dhol
3. Khram
4. Dhepa Dhol
5. Jay Dhol
6. Madol
7. Bor –Dhol

8. Kavi Dhol¹²

However, commercial production of these musical instruments such as the Dhol, is a threat to the community as a whole. In this regard a research on this important field is important to mention

Sunanda Baidyakar is a resident of Dibrugarh, Assam, a professional in making musical instruments like the Assamese Dhol. He owns a shop where he has been carrying on his business for more than twelve years. He mentions that he learned these skills from his father and further mentions that Dhol making runs in his family.

One of the most important issues that he puts forward is that the cheap dhols that are widely made available in the market are produced in some unconventional manner and are made of woods that even the sellers are not aware of. The original way of making these dhols is generally done by using jackfruit tree trunks and if unavailable, may also be made of mango tree trunk.

Similar, another research in this regard was done to bring into light this particular issue.

The study indicates that, at a time when there are calls for Benarasi silk to be introduced into Assam, dhol-making, an important traditional skill, is in danger of extinction due to the availability of cheaper alternatives on the market.

According to the study, over 100 craftsmen in nearly thirty households were formerly active in producing dhols in the Jamuguri area, but owing to the introduction of low-cost dhols into the market, all but two families were compelled to abandon the profession and seek other sources of income. One person claims that the inexpensive dhols on the market are made of inferior materials. Making authentic dhols is a time-consuming procedure that requires careful selection of raw materials for various sections.

¹² Magical Assam, '10 most important instruments of Bihu' <<https://www.magicalassam.com/2016/04/most-important-instruments-of-bihu.html>> accessed on 29 May, 2021

It was also noted that selecting the leather for dhol production is a laborious procedure. The kuboni side of the dhol is used for beating with the stick, while the tali side is used for beating with the hand. Boroti are the leather strings that connect the two sides. The skin of a young cow's neck is used to make the tali. Skin from the buttocks of cows and bulls is used to make kuboni and boroti, respectively.

Finally, it was noted that one dhol takes a week to manufacture, and the Saikia siblings make around 50 of them each year due to limited resources and their inability to produce more than 50 dhols each year.¹³



A picture of the dhol making process (picture: Ashim Jyoti Boruah)

Mask Making in Assam

In nations like China, mask creation is seen as a vital part of social, intellectual, and aesthetic activity. Masks are an important component of their traditional cultural expression, which they have guarded for decades. Majuli, the world's largest river island, has one such ritual. Majuli is Assam's cultural capital, and the satras are the guardians of antiques including swords, utensils, masks, and jewellery.

¹³ 'Bihu's heart misses a beat - 'Cheap' threat to Traditional dhol', <https://www.telegraphindia.com/north-east/bihu-s-heart-misses-a-beat-cheap-threat-to-traditional-dhol/cid/1620811> accessed on 21 May, 2021

The **Satras** (or Xatras) of Majuli are a Vaishnavite ashram, which apart from being a platform for religious discourses are also centres for imparting cultural and creative knowledge. At present, all the Satras of Majuli do not practice the art of making masks. The art has been kept alive at the **Nutan Chamaguri Satra**. Mask making is an elaborate process.

Making a three-dimensional framework for the face is the first step. It's created from a local bamboo species that's been split into splits. The framework is created by weaving these divides into a hexagonal pattern. The woven basis is now coated with cotton cloth that has been dipped in a mixture made of clayey soil, water, and cow dung.

This paste is put to the mask as needed, and then face features are carved out using a specific pair of knives on each of the wet frames. The pieces are then exposed to the sun to dry. Previously, natural colours were utilised to beautify the masks. Artificial colours from the market, on the other hand, are now used. Jute and water hyacinth are used to make the hair and moustaches. The masks are only ready for Bhaona performance once these careful processes are completed.¹⁴

Majuli had an area of 800 Square Kilometres at the beginning of the 20th century but have lost significantly due to flooding and soil erosion. If this continues, soon the land of great cultural significance will lose its identity. ¹⁵

The humble and exquisite **Assamese gamocha** is a symbol of Assamese identity during Rongali Bihu, but commercialization of the Assamese cloth under power loom manufacturing has altered some of the meaning attached with the gamocha. The rectangular silk or cotton gamocha, traditionally made by handloom, is primarily white with attractive red (there are different colours on the patterns as well) motifs on two opposite sides and red stripes skirting around the border of the gamocha. They have different names, with different motifs and designs meant for different purposes. The

¹⁴ Agni Amrita, 'Masks of Majuli – A Vanishing Tradition', <[Masks of Majuli - a vanishing tradition | Tale of 2 Backpackers](#)> accessed on 20 May, 2021

¹⁵ Sangita Barooah, 'Inheritance and Loss', <<https://www.thehindu.com/features/friday-review/history-and-culture/Inheritance-and-loss/article13381991.ece>> accessed on 21 May,2021

gamocha that is given on Bihu to the elderly and dearest of kith and kin is called Bihuwan.¹⁶

The quick arrival of power loom made gamochas, as according to the experts on authentic Assamese textiles and fabric, has thus altered the arrangement of traditional patterns, designs, size, weight, and form of the conventional gamocha.¹⁷

A strong commitment is thus required on the part of the government as well on the part of the people of Assam so that these valuables are not exploited.

Chapter 2.3: Traditional Healing Methods among various ethnic communities of Assam

2.3.1 Indigenous Medicinal Practice of Ahom Community

A survey was conducted to record the ethno medicinal practises practised by the Ahom population in upper Assam of India. The survey that was carried out in fifteen villages across three districts, with information gathered through observation and personal contact. There were a total of sixty eight plant variety identified. The reported species were discovered to be widely available and utilized for the treatments of a variety of ailments such as cough, fever, headache, bodily pain, animal bite, heart issue, and so on. Different plant components, such as seed, leaf, bark, root, and so on, have been discovered to be employed in the form of medicine. The majority of the medications were made in conjunction with other plants or non-plant materials.

The researcher here classified the findings into three parts

1. The disease in which the medicine will be applicable
2. The particular medicinal plant/fruit/herb
3. How it is used for cure

“One of such is the cure for diabetes-

¹⁶ ‘Traditional gamocha faces risk of oblivion’, <[Rongali Bihu: Traditional gamocha faces risk of oblivion | Guwahati News - Times of India \(indiatimes.com\)](https://www.indiatimes.com/News/Guwahati/Traditional-gamocha-faces-risk-of-oblivion-Guwahati-News-Times-of-India)>, accessed on 21 May,2021

¹⁷ Ibid.

(i) *Momordica charantia* (Titakerela) Fruits are rubbed externally below foot; fruit juice is also preferred except for gastric patients

(ii) *Syzygium cumini* (Jamuk) Powder of seeds and bark by mixing it with milk

(iii) *Coccinia grandis* known as Kunduli Fruit is taken as vegetable or even eaten raw

For high pressure

(i) *Clerodendrum colebrookianum* (Nephaphu) Leaf twigs are either eaten raw or in steamed condition



A picture of Clerodendrum colebrookianum (Nephaphu)

(ii) Rauvolfia serpentina (Sarpagandha) either leaves or root juice is taken

(iii) Tamarindus indica (Teteli) Fruit eaten raw or also as paste

Then for the heart problem-

(i) Terminalia arjuna (Arjun goch) Patients are advised to take bark powder mixed with milk

For Jaundice-

(i) Saccharum officinarum known as Kuhljar, the Stem juice is taken.

(ii) Averrhoa carambola (Kordoi) Fruit juice

For Pox & measles

(i) Azadiracta indica (Neem) Leaf paste is applied over affected portion or also directly used to relief itching

(ii) Spondius pinnata (Amora) Tender leaves are boiled and the water is applied or leaf pastes are used.

For Eye problem

(i) Punica granatum (Dalim) Juice applied as eyedrops

For Eyesight improvement-

(i) Amaranthus viridis also known as Khutura is used as vegetable

(ii) Spinacia oleracea (Paleng) is used as salad or vegetable”¹⁸

¹⁸ Bhenila Bailyung, Munmi Puzari, ‘Traditional use of plants by the Ahoms in human health management in upper Assam, India’ Journal of Medical Plant Studies 2016, 4(2):48:51

2.3.2 Traditional healing practice and folk medicines used by Bodo Community of Assam

A study revealed the medicinal usage of plants among the Bodo population of Chakrashila Wild Life Sanctuary (WLS). The Wild Life Sanctuary is located in the districts of Kokrajhar and Dhubri of the Bodoland Territorial Council (BTC) in western Assam. The study was done via interviews with traditional healers and knowledgeable older people, as well as focal group discussions with both young and old people and women. Plants were also obtained from natural environments and private gardens with the assistance of local practitioners.

A total of twenty plant species from twenty families were discovered to be utilised in the treatment of various illnesses. Herbs, shrubs, and trees were the most often used plant types. Comparisons of the medicinal plant usage patterns of the Bodos of Chakrashila Wild Life Sanctuaries with other Bodo tribes from Goalpara, Kokrajhar (Ultapani), Kamrup, and Sonitpur districts found some overlap, with 16 plants used by the investigated population not utilised by the other groups.

- 1.) Adhatoda vasica Nees. (Bar- sikhe) Acanthaceae (Shrub) Leaf ground with water and extract mixed with honey given in cough
- 2.) NR Aegle marmelos Correa (Bel) Rutaceae (Tree) Unripe fruit boiled and ground with water given in indigestion, constipation and diarrhea
- 3.) (Bohera) Combretaceae (Tree) Fruit in gastric ulcer
- 4.) NR Terminalia chebula Retz. (Silikha) Combretaceae (Tree) Dry fruit ground with raw turmeric twice daily in constipation and loss of appetite.¹⁹

2.3.3 Traditional folk medicine and healing practice used by Mising Community of Assam

Mishing is a significant tribal group that is spread from Arunachal Pradesh to Assam's plains and is regularly separated due to migration from Arunachal Pradesh's hills to Assam's plains. They broadened their knowledge by studying from other nearby

¹⁹ Talukdar, Simi & Gupta, Abhik. (2011). Medicinal plants used by the Bodo community of Chakrashila Wildlife Sanctuary, Assam, India. Indian Journal of Applied Research. 4. 4-4. 10.15373/2249555X/FEB2014/13.

cultures and treating a range of diseases with plants found in and around their settlements.

According to the information gathered, the responsible persons in the villages were long ago the village head known as Gaon Burha in the Arunachal Mishing, but during these communications, more than three persons from the same or different families are involved in healing practises by developing some farming of herbs used in their practises that are somewhat not naturally occurring in the surrounding area just a short distance away.

All individuals who are impacted immediately practise certain common types of therapy such as cuts and wounds, sprains, and skin illnesses that need external application. Certain plants, such as *Centella asiatica*, *Houttuynia cordata*, *Phyllanthus emblica*, and *Terminalia citrina*, are extensively used as protective medicine and are widely available in vegetable stores.²⁰

2.3.4 Traditional healing practice and folk medicines used by Tea garden Community of Assam

A study was completed to comprehend the ethnobotany of therapeutic plants utilized in human wellbeing that are predominant among the tea clans of Dibrugarh region, Assam. Review was led in tea garden regions abided by the neighborhood tea clans and information was gathered through close to home correspondence, meetings, conversations and perception. An aggregate of 20 plant species were recorded in the long stretch of January 2020. All the recorded plant species were by and large utilized for the infirmity of normal issues of day by day life like hack, fever, migraine, body torment, heart, loose bowels and so forth and here and there utilized for different infections like jaundice, pneumonia, and so on after analysis.

Plant parts like leaf, bark, root, natural product, seeds and so forth were discovered to be utilized by various techniques for planning like direct crude utilization with water,

²⁰ Rama Shankar, G. S. Lavekar¹, S. Deb, B. K.Sharma, 'Traditional healing practice and folk medicines used by Mishing community of North East India', <<https://www.researchgate.net/publication/232814049> Traditional healing practice and folk medicines used by Mishing community of North East India> accessed 10 July, 2021

glue, juice, curry or by blending in with different things. The examination uncovered the acquired information on use of therapeutic plants by individuals from their seniors, family, companions or others individuals from their local area. The examination centers around the possibilities of ethno therapeutic exploration in light of the fact that there is a requirement for protection of our biodiversity and documentation of these species will profit humankind and further pharmaco-substance examinations might be completed for the advancement of medications to battle human sicknesses.

An aggregate of 20 plant species utilized for the treatment of different sicknesses like Sinusitis, Loss of hunger, Ring worms, Dysentery, stomach issues, memory supporter, Hypertension, Pharyngitis, Hair tonic, dropsy, elephantiasis, Skin copy, heaps, white release, Gum torment, Fever, body shortcoming, Rheumatic joint inflammation, Itching, smoothen hair, Minor trims and wounds, Asthma, Bone break, and so on were recorded. Various pieces of plant like seed, leaf, bark, root, and so on are utilized for treatment of various sicknesses. Numerous multiple times, individuals were discovered to be hesitant to share their insight due to their traditionalist convictions and uninterested in sharing their insight. This might be treated as a significant factor for appropriate investigation and further documentation of the ethnic natural medicines to carry on to its people in the future.²¹

2.3.5 Traditional healing practice and folk medicines used by Rabha Community of Assam

The Rabha are a Tibeto-Burman ethnic group that live in the Indian states of Meghalaya, Assam, and West Bengal. They are mostly found in the plains of Lower Assam and the Dooars, although few are also found in Garo Hills.

Although this particular community follows various techniques and indigenous use of plants and herbs to cure various diseases just like other communities of Assam, what makes them unique is their unique knowledge of bone setting. An important survey conducted in this regard is pertinent to mention here. The information was obtained

²¹ Dutta, Manisha & Barman, Pankaj & Barman, Rani & Chatterjee, Jayant & Pegu, Bijeta. (2020). Ethnobotany of medicinal plants used by the tea tribes of Dibrugarh district, Assam, India.

from traditional bone setters who are well-versed in the use of plants as herbal medicine.

The survey included a list of ethnomedicinal plants names, as well as their family names, local name, used plant parts, voucher numbers, and medicinal uses, and it revealed that the use of herbs and the manner in which they are used are similar to "Puttur kattu," a Trabecular Bone Score practise in Rout and Panda in South India. In the "Puttur kattu" practise, the paste of the *Cassia occidentalis* plant is commonly used as a bandage. In this study, the researcher suggests that the practise be enhanced by more skilled current trainings, peer observation, and attentiveness.

According to the findings of the study, the Rabha Hasong region of Assam is certainly rich in ethno medicinal plants. Traditional procedures done by medicine men help the people. This is the main reason why, despite the availability of modern orthopaedic therapies, TBS practise continues to function successfully with full trust and optimism. Furthermore, including comprehensive nutraceutical assessment of these therapeutic herbs into TBS practise would open up a potential avenue for future pharmacological study on current orthopaedic methods. This will also provide adequate scientific validation to this technique.

The non-availability of land and resources forced indigenous people to shift their pattern of livelihood. The alienation of land and natural resources pushed indigenous people to work in the industries as wage labourer. In this process of shifting pattern of livelihood the young indigenous youth come to contact with the non-indigenous people. This work culture promoted the indigenous youth to out-migrate as part of national trend

In spite of taking part in the village matters as part of community they try to influence as non-indigenous people. Within the period of staying in the village they only share the way of life style where they work. In this process staying distance from the native land and relatives the indigenous knowledge which was handing down from the old generation to younger is gradually declining. On the other hand they do not have option to maintain the livelihood in the native villages. Another type of social disarticulation

has been recognized in the sample area among the youths staying in villages, which is the reason of declining of indigenous knowledge system.

They do not find an official job in the industries due to lack of suitable educational qualification rather they have to work as a wage labourer under contractors. After working hard for an about of eight hours a day with the smoke and sound of engine they return to the home. In order to relief from the tiredness and irritation they take rest in the after taking food without sharing anything with the family or community members. Some of them take alcohol and lead life in their own way without contributing and sharing with own family and community members. These attitudinal changes create a big gap between the older and younger generation which have closed the all doors of flowing of knowledge system to the next generation. In spite of those problems a psychological problem has been recognized among the indigenous youths.

The shifting livelihood pattern exposes the indigenous youth to contact with non indigenous people. They come to contact with a culture which is new to them. Gradually they attract towards the non-indigenous cultural practices and start to devalue their own cultural practices. The non-indigenous cultural practices spread in the indigenous area in a great extent. It has been highly observed among female youth particularly the dressing pattern is concerned. They are attracted so much towards the fashion world of non-indigenous communities.²²

Chapter 2.4 GI as a savior of Traditional Knowledge in Assam

The aforesaid characteristics of geographical indications are amenable because they blend well with the complicated relationship between traditional knowledge and its bearers, i.e. indigenous groups, reflecting the comparable historical and symbolic link between product and location.

The requirement for disclosure of the origin of genetic resources in patent applications has accelerated the preservation of traditional knowledge across the world, and several

²² Dutta, Tapan & Rabha, Pinaki & Bora, Rekha & Goswami, Jayashree & Khakhalary, Seema. (2019). TRADITIONAL BONE SETTING PRACTICE OF RABHA PEOPLE OF ASSAM. Asian Journal of Pharmaceutical and Clinical Research. 12. 81. 10.22159/ajpcr.2018.v12i1.28671.

countries have created sui-generis systems to preserve their communities' indigenous knowledge. The focus on GIs as an IPR weapon to safeguard traditional knowledge is unquestionably a step forward in recognising the value of intellectual property rights.²³

To understand the relationship of Geographical indication and Traditional Knowledge, a report shared by Dr Prabuddha Gangungly is significant to mention.

The report mentions that Muga Silk was given a GI status in the year 2007. From 2007 to January 2014 when an interest was developed in this aspect, it was discovered that there was only one authorised user of the MUGA GI in the entire State of Assam till then. The MUGA GI application had indicated that over 27800 stakeholders would possibly benefit from this GI.

As per the Indian Law on GI, only authorised users can use the GI on their products. To become an authorised user, one has to apply to the GI Registry in Chennai which is a fairly long and complicated process. These procedures coupled with low or no awareness at the grassroots level results in the non-registration of stakeholders as authorised users. The ultimate outcome of these is that the GI brings no socio-economic benefits to the stakeholders for whom the GI is obtained.

After completion of some grassroots work in the heartland of MUGA, the actual reasons for the non-working of Muga Silk of Assam GI despite the fact that this is an important traditional product in Assam, was found out.

A strategic approach was set up and in April 2015 a one day "Grassroots MUGA GI Camp" was conducted with about 110 MUGA stakeholders in North Lakhimpur, Assam" and interestingly, in just one afternoon of that workshop, 92 persons wanted to prepare their "Authorised Users Applications". During this Camp, we were able to get the stakeholders, local lawyer to prepare all the affidavits, the local bank to get all the bank drafts prepared for payment of fees to the GI Registry, certificates from the all the

²³ Manisha Singh, Role Of Geographical Indications In The Field Of Traditional Knowledge, <<https://www.mondaq.com/india/intellectual-property/56866/role-of-geographical-indications-in-the-field-of-traditional-knowledge>> accessed on 21 May, 2021

village chiefs from where these applicants had come, and consent letter from Assam Science and Technology and Environmental Council (ASTEC) who are the owners of the GI for Muga in Assam.

The workshop led to the registration of 92 application of Authorised users of Muga GI in Assam. The issues related to GI are generic and are common across the country. Today there are 237 Registered GIs in India. The total number of Authorised users in India is only about 900. The number of authorised users ought to have been in several tens of thousands. We need to set up a National Forum on GI to address these issues so that GI in India becomes a socio-economic reality, or else it will remain a theoretical exercise with little or no consequences.²⁴

²⁴ Prabuddha Ganguly, < <https://www.linkedin.com/pulse/geographical-indications-gi-muga-silk-assaman-update-ganguli/> > accessed on 22 May, 2021

Chapter 3: Legal Framework Dealing With Traditional Knowledge in India

3.1 Constitution of India

The Indian Constitution ²⁵protects the rights of all Indian citizens. After several judicial decisions, essential Articles such as the Right to Equality, the Right to Freedom of Expression, and the Right to Life and Personal Liberty were given the fullest meanings possible. However, in order to understand about the rights of minorities, ethnic communities, and other groups, a closer examination of the different provisions is required.

Apart from that, there are particular laws dealing with the rights of Assamese people, minorities in the nation, Scheduled Castes and Scheduled Tribes, which have helped the country to remain together despite the fact that people speak a variety of languages and have diverse cultural backgrounds.

The Supreme Court ruled in *Sunil Batra v. Delhi Administration*²⁶ that the "right to life" includes the right to live a healthy life in which all of the human body's faculties were in peak shape. It would also include the right to safeguard a person's tradition, culture, and heritage, as well as anything else that gives significance to his existence. It encompasses the rights to live in peace, sleep in peace, and rest and health.

It is also important to discuss about whether or not any specific provision of Constitution of India deals with the protection of traditional knowledge or folklore of the people of the country.

1. In the cases of *Menoor v. Denne* ²⁷and *Tyson v. Smith*, which discuss the reasonableness of customs, it is said that a custom's legality is derived from its reasonableness at its beginning and current exercise.
2. In *Bhiku v. Shooram*, the right to make pots was affirmed as a customary right, as asserted by a village's kumbhar group.

²⁵ The Constitution of india,1950

²⁶ (1978) 4 SCC 409

²⁷ CA 1905

3. The Supreme Court held in *State of Bihar v. Subodh Gopal* ²⁸ that a customary right allowing local residents to excavate stones for the purpose of trade (rather than domestic or agricultural purposes) would be unreasonable on its face because the exercise of such a right usually results in the complete destruction of the right's subject matter. As a result, the custom had become unreasonable.

Customary rights based on lengthy usage are recognised by Indian courts and become customary laws. Indian courts came up with these customary laws. By definition, customary rights cannot be created by a written document. In India, neither the ideas of customary law nor the traditions themselves were codified or specified separately by legislation.

Customary rights, on the other hand, were recognised as early as 1872, when the Indian Evidence Act²⁹ was passed. The act's section 13 deals with the facts that must be proven in order to prove customary law. Sections 12 to 16 of the Indian Forest Act ³⁰ recognise rights to pasture and forest produce at the stage of settling rights before a forest is certified as reserve forest. These are, without a doubt, customary rights. However, in the field, these rights were seldom converted into customary rights.

There were two causes behind this. Either the forest-dependent communities were unaware of their rights, or the settlement officials, with their limited and strict pre-establishment worldview, were unwilling to award the people such rights. It should be noted, however, that early colonial legislation established over a century ago did recognise customary rights, albeit in a limited number of cases.

Article 13 of the Indian Constitution addresses customary law alongside other disciplines of civil law. If proven, a custom or use becomes law under this provision. Courts can take judicial notice of certain customary rights that have legal effect under Section 57 of the Indian Evidence Act 1872.

²⁸ AIR 1968

²⁹ The Indian Evidence Act, 1872

³⁰ The Indian forest Act, 1972

Traditional area-specific usage and practise gave rise to community-level customary laws. As a result, they represent the local people's cultural ethos and customs. These activities supported local livelihoods since they arose from unique natural settings. Because the local communities' demands were minimal, these methods assisted them in becoming self-reliant and self-sufficient. With the arrival of colonial control and the enactment of official legislative laws, however, customary rules faded into the background.³¹

The promotion of educational and economic interests of Scheduled tribes, Scheduled Tribes, and other disadvantaged groups is only mentioned in Article 46 of the Constitution of India. It states that the state would support the educational and economic interests of the weaker parts of the population, especially the Scheduled Castes and Scheduled Tribes, and will safeguard them from social injustice and exploitation in all forms.

In *State of Nagaland v. Ratan Singh*³², the Supreme Court of India upheld and recognised the relevance of customary law, saying, laws of this sort are created with a mind to simplicity. People living in underdeveloped regions are unlikely to be aware of the details of a complicated Code. What matters is that they are able to properly deliver their defence without being hindered by the complexities of complicated legislation.

Article 29(6) of the Constitution of India might assist a particular community with a unique culture to protect its folklore but no express legislation is available relating to it. Moreover, **Article 51 A (7)** is a relevant provision with respect to safeguarding traditional cultural expression which imposes fundamental duty on its citizens.

Hence, from above it can be well understood that to some extent the protection and preservation of traditional knowledge is possible by challenging cases of violations through the provisions of the constitution of India.

³¹ B. J Krishnan, 'Customary Law' <492 B. J. Krishnan, Customary law [492 B. J. Krishnan, Customary law \(india-seminar.com\)](http://www.india-seminar.com)> accessed on 22 May,2021

³² 9 March,1966

3.2 The Patents Act³³

Under the Act one important provision relating to traditional knowledge is contained under Section 3. It mentions about what are not inventions.

And under section 3(p) exempts “an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.”

The Indian Patent Act although protects people from cases of bio piracy, it is not free from lacunae. The Act do not specifically mention about all kinds of traditional knowledge and also about the protection of traditional cultural expressions. Traditional Knowledge is generally passed orally and informally, and thus it becomes difficult to protect them under the conventional intellectual property framework.

3.3 Traditional Knowledge as Trade Secret

Trade secrets, according to Srividhya Ragavan, are one of the finest kinds of Intellectual Property Rights for safeguarding traditional knowledge. It safeguards the owner's knowledge from disclosure or illegal use. It outperforms other forms of intellectual property protection for non-disclosed traditional knowledge. This field of law is concerned with all types of secrets.

It includes any patterns that provide a competitive advantage, such as method, technique, food and beverage recipes, or procedure. Traditional knowledge that is kept inside the community by people or members might be considered a trade secret since it encompasses such a broad spectrum of facts. When dealing with outsiders who improperly acquire, disclose, and exploit relatively private information, a trade secret can be a helpful vehicle for conventional knowledge holders. Because information is exchanged with outsiders under agreements or contracts that protect secrecy, trade secret legislation might be beneficial to a society.

Trade secret laws may be used to pursue legal action if third parties gain confidential information through illegal ways. The information in a trade secret is protected indefinitely; there are no requirements for characteristics such as originality, non-

³³ The patents Act, 1970

obviousness, and so on. However, India's absence of specific trade secret legislation might be a substantial impediment to such protection. However, Indian courts have applied common law principles to the protection of sensitive information in several situations. When customary norms of secrecy are breached, courts may provide remedies for breach of trust, and the law of confidentiality and trade secrets has been successfully applied to protect non-disclosed traditional knowledge.

Limitation of Trade Secret Protection

Through confidentiality and access agreements, trade secrets safeguard concealed knowledge. A trade secret is a piece of traditional information that is kept within a group. However, if the information is widely disseminated, this alternative is no longer available. Except in situations of breach of trust, a trade secret is only enforceable as long as it remains a secret. Trade secrets cannot be legally protected since they are secrets; nevertheless, the consequences of violation of trust or legal obligations can be enforced. It refers to the disclosure of secrets to the general public in order to compensate for the loss of confidentiality.

Traditional knowledge is a type of intellectual property that is passed down through the generations. Due to the absence of legal entitlement to the bearer of the secret, it is difficult to safeguard trade secrets against theft. When it comes to community-owned knowledge, the community must make a reasonable effort to keep the knowledge secret. Trade secret protection does not apply to conventional knowledge if a reasonable attempt is not made to keep it secret.³⁴

Despite its ostensibly broad scope of protection, trade secret legislation fails to adequately safeguard indigenous peoples' Traditional Knowledge. First, the information must be confidential or secret, and it must be protected. It can't be public information or property. Traditional knowledge, on the other hand, places a great emphasis on knowledge sharing and considers it to be part of the public domain. Because traditional

³⁴ Anuprita Mishrikotkar, '[Trade Secret: Limited Approach to Protect Traditional Knowledge](#)', < [Trade Secret: Limited Approach to Protect Traditional Knowledge \(legalserviceindia.com\)](#)> accessed on 23 may, 2021

community information is passed down through generations and then published by outsiders, it becomes impossible for the community to maintain secret because it is in the public domain. Then information is no longer hidden or protected by law, and anybody may access it.

The information must also have economic worth, which is the second fundamental condition. Traditional knowledge holders find it difficult to demonstrate the economic worth of their information because it only has a sacred value. The third requirement is that the data be linked to commerce and industry. Traditional knowledge holders are prohibited from using their expertise or information in commerce or business. Fourth, it has been proposed that for knowledge to be considered a trade secret, it must exist independently of its owner. Traditional knowledge is difficult to keep since it is an important part of the lives of individuals who practise it on a daily basis and in ceremonies.

Finally, it only offers treatments after the secret has been revealed. Traditional knowledge is holy and hidden, and disclosing it to non-initiated people jeopardises its sacredness. Traditional knowledge cannot be protected under trade secret legislation, notwithstanding the difficulties of attempting to fulfil these particular conditions. It is a restricted and ineffective strategy for safeguarding traditional knowledge.³⁵

3.4 The Copyright Act³⁶ and the Designs Act³⁷

Copyright in theatrical works, original literature, visual art, music, sound recording, and cinematograph films, as well as performer's rights, are recognised under the Copyright Act of 1957. Individual writers, artists, performers, and institutions or organisations are all protected from work duplication or piracy under the Act. It is, however, different in the case of NE States TK and TCEs.

Knowledge and information are generally retained by society as a whole and cannot be traced back to a single creator or author. It may be publicly and easily available within the local bounds, but it is not in the possession of any individual or institution, nor is it locked away in a secure system. Thus, whether an individual or an institution (whether

³⁵ Ibid.

³⁶ The Copyrights Act,1957

³⁷ The Designs Act,2000

the author is a native or an outsider) produces a book about a tribe or clan's traditional healing or medicinal expertise, the copyright belongs to the author, not the tribe or clan. As a result, various local and international laws that protect TK and TCEs become void.

Traditional creative works, cinematograph films, music, sound recordings, performances, and so on, all have a similar dynamic. The Copyright Act consequently fails miserably to safeguard the indigenous peoples' TK and TCEs across India, not only in the Northeast. Tribal peoples in the Northeast have indissoluble value in their cultures, traditions, rituals, and usages, which shape their identities. Any unwelcome intrusion into their customs is deemed forbidden and may result in severe customary punishments. Traditional jewellery, shawls, and costumes, for example, are valuable assets for tribes since they differentiate them from others.

Clothes such as shawls and mekheles are commonly used by NE tribes to denote social rank and honour. No one can claim ownership of these traditions because they have been passed down from generation to generation. They are members of the community as a whole. Such holy traditions have been affected by recent changes in living conditions and the acceptance of modernity. Traditional garments such as jewellery, shawls, and mekheles being redesigned or modified by designers and then sold for large profits is an issue that has to be addressed by legal and social means.

TCEs are defined as “music, dance, names, signs, art, designs, symbols, rituals, performances, architectural forms, tales and handicrafts, other creative or cultural expressions” by the WIPO. The case of the NE States fits under this description.

The Design Act, on the other hand, has no explicit rules for TCEs. It's important to remember that IP regulations like the Copyright Act and the Design Act are still primarily focused on individuals, with no provisions for the protection of TK and TCEs. The goal of such legislation is to safeguard tribes against predatory people and groups. It may be difficult for the union central government to recognise and address all of the NE region's problems.

However, the special constitutional status given to the NE States and the Sixth Schedule to the Constitution of India should be used to combat such exploitation of traditional and cultural rights by the respective state governments.³⁸

3.5 The Biological Diversity Act, 2002³⁹

This Act recognised the sovereign rights of states to use biological resources of their own by introducing the Biological Diversity Act, 2002 (BDA). This Act aim for the preservation of the biological diversity, and fair and equitable sharing of benefits arising from the use of biological resources, sustainable use of its components, knowledge, and matters connected therewith or incidental thereto.

For implementing its laws, the BDA established a three-tiered decentralised system, with the State Biodiversity Boards, National Biodiversity Authority, , and Biodiversity Management Committees functioning as national, state, and local level organisations, respectively.

3.6 The Protection of Plants Varieties and Farmers' Rights Act, 2001

The 2001 “Protection of Plant Varieties and Farmers' Right Act (PPVFR Act)” creates an efficient framework for safeguarding plant varieties, farmers' rights, and plant breeders' rights, as well as stimulating the creation of new plant varieties. As a result, one of the first countries in the world to pass law granting equal rights to farmers and breeders was India.

The PPVFR' Act, which represents its participants' interests, allows for the registration of four types of plant varieties: new plant varieties, existing varieties, essentially derived varieties (EDV), and farmers' varieties. The provision in Indian law that safeguards farmer variety is the country's most distinguishing feature of its legal system. It was created to address the demands of farmers interested in the preservation of plant genetic resources and related information.

³⁸ Dr. Moatoshi Ao, ‘ Branding and Commercialisation of Traditional Knowledge and Traditional Cultural Expressions: Customary Law of North East vis-à-vis Contemporary Law’, <[BRANDING AND COMMERCIALISATION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS \(escholarship.org\)](https://escholarship.org)> accessed on 24 May,2021

³⁹ The Biological diversity Act,2002

Both the Biological Diversity Act and the Plant Variety Act fails to provide express provisions for protecting traditional knowledge in India and are found to be not sufficient.

With respect to traditional cultural expressions, a vast number of misappropriations take place on a regular basis and the current laws are failing to a great extent to protect. A study in this regard is critical to mention. The study focused on revealing a few types of TCEs and the name of the indigenous communities to which they come from, the potential instances of appropriation by third party, scope of protection if available in case of violation and the current legal status for protection of such intellectual property.

The study reveals three important things among all others. They are-

- a) India possesses a large number of folk-lore or cultural expressions which are at present without any legal protection within the fold of Intellectual Property Laws. The numbers of such folklores along with their source communities are yet to be ascertained by any governmental or independent authority.
- b) Due to the absence of legal protection to these folklores, enormous misappropriation has been taking place by Bollywood production houses and large music companies.
- c) Due recognition in the form of moral attribution to their folk-songs/dances as well compensation has not been afforded to the source communities/indigenous communities in the absence of a legal framework on Intellectual property in India.⁴⁰

Keeping into view all the above circumstances, what is felt more important in the current scenario is the need to further strengthen the existing intellectual property legal framework for the benefit of the ethnic communities especially in a state like Assam and protect the right of these communities.

⁴⁰ Amlan Chakraborty, 'Missing Legal Protection for Traditional Cultural Expressions in India? : A brief write-up on issues concerning them at contemporary times.', <https://www.theippress.com/2020/05/07/missing-legal-protection-for-traditional-cultural-expressions-in-india-a-brief-write-up-on-issues-concerning-them-at-contemporary-times/> > accessed July 11, 2021

Chapter 4: Role of the International Forums in Protecting Traditional Knowledge and Folklore

Treaties underpin the majority of modern international law. They assist governments satisfy a basic necessity by allowing them to manage matters of mutual concern by agreement, providing stability, reliability, and order to the world.

Treaties and conventions are the most essential aspects of international peace and security as instruments for guaranteeing stability, dependability, and order in international interactions. This is why treaties have always been the major source of legal interactions between entities presently known as States, dating back to the dawn of international law.

International organisations frequently assist in building national capacity by giving financial and technical assistance and assisting in standard implementation at the country level. The majority of UN member nations employ diverse approaches to the preservation and development of intellectual property rights, with the goal of fostering innovation and creativity, which are regarded as significant sources of long-term economic success.

The United Nations Organization (UNO) plays an important role in the protection and development of intellectual property rights (IPR) with the assistance of World Intellectual Property Organization (WIPO), one of the most significant and important organisations among the 16 UN organisations working in various sectors. WIPO's mission is to promote and defend intellectual property rights (IPR) across the world, as well as to ensure the ownership of a utility model, trademark, or industrial design.

Provisions relating to protection of Traditional Knowledge and folklore under various International Forums will give us an idea as to where do these two subjects of IPR stands in the present scenario.

4.1 Convention on Biological Diversity (CBD)⁴¹

Although its mission is limited to biodiversity-related sectors, it is reasonable to claim that CBD is now one of the most dynamic worldwide legal mechanism for promoting the conservation of Traditional Knowledge. In effect, the regime is one of the most important international organisations that takes TK holders seriously.

Article 8(j) of the CBD states-

“Each contracting Party shall, as far as possible and as appropriate:

Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.”

Although there are no definite and precise obligations of the Parties mentioned under Article 8(j) of the CBD in terms of the preservation of Traditional Knowledge, it is now to be seen which states will actually obliges under this Article.

Article 10(c) states the following-

Each Contracting Party shall, as far as possible and as appropriate protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

The Convention on Biological Diversity (CBD) is an international legal instrument ratified by 196 countries that is dedicated to the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits resulting from the use of genetic resources.

Its primary objective is to motivate people to participate in activities that will contribute to a relatively more sustainable future. As a result, specific requirements pertaining to

⁴¹ The Convention of Biological Diversity,

the safeguarding of traditional knowledge are only addressed in Articles 10 (c) and 8(j) of the agreement.

Some of the key challenges relating to these provisions are-

1. “Indigenous and local communities embodying traditional lifestyles” and “traditional cultural practices that are compatible with conservation”

Articles 10 (c) and 8(j), only apply to groups whose traditional practises are important for bio diversity conservation and sustainable use and biodiversity. As a result, they do not apply by default to other traditional lifestyles or cultural practises that governments do not recognise as helpful to conservation and long-term usage. Other recognised human rights, such as self-determination and freedom of speech, may be incompatible with this. Many Indigenous peoples and local communities, whether purposefully or unintentionally, actively conserve and sustainably use resources.

2. Failure to Recognize “Indigenous Peoples”, and Other Outdated Terms

Since its adoption in 1992, the CBD has used the term "indigenous and local communities." It is currently regarded as obsolete. The International Indigenous Forum on Biodiversity, (the CBD's Indigenous caucus) has frequently asked for the full phrase "indigenous peoples" to be recognised. Failure to do so, according to some organisations, is discriminatory and violates human rights standards such as, the UN Declaration on the Rights of Indigenous Peoples. The phrase "preserve" in Article 8(j) again demonstrates the CBD's out-of-date wording. Traditions and ways of life in communities are continuously evolving and cannot be kept in a static form, it is now commonly accepted.

3. Lack of Clarity about Intellectual Property

The Intergovernmental Committee on the Intellectual Property and Genetic Resources, Folklore and Traditional Knowledge, and of the World Intellectual Property Organization is currently working on a binding international agreement on intellectual property and genetic resources, folklore and traditional knowledge. There are numerous unresolved issues concerning intellectual property and traditional knowledge inside the CBD. Parties to CBD generally defer to the Intergovernmental Committee's protracted negotiations rather than seeking to address these concerns within the provisions of the Convention.⁴²

4.2 The World Intellectual Property Organization

WIPO is a global platform for intellectual properties (IP) policies, services, information, and collaboration. WIPO is a United Nations specialised organisation that supports its 192 member states in establishing a balanced international intellectual property law framework to suit society's altering demands. It offers commercial services such as securing IP rights and settling disputes in different countries. It provides capacity-building initiatives to assist developing nations in reaping the benefits of IP. It also offers free access to one-of-a-kind IP knowledge banks.

The Intergovernmental Committee (IGC) has introduced a set of draft laws for the preservation of traditional expressions/folklore (TCEs) and the traditional knowledge (TK) against theft and misuse as a result of its work. It has also compiled a paper including information on intellectual property (IP) and genetic resources.

The development of a collection of substantive rules that are primarily legal in character is arguably the draft's most important contribution to TK protection. The draught regulations are made up of fourteen articles that form a comprehensive legal framework for the protection of traditional knowledge. The IGC does not intend to take a positive-rights approach to TK protection, as previously stated. As a result, no exclusive or monopolistic property rights for TK are formed.

⁴² 'Traditional Knowledge & Customary Sustainable Use of Biodiversity', < [Traditional-Knowledge.pdf](#) ([naturaljustice.org](#))> accessed on 23 may, 2021

It's possible to argue that the current WIPO/IGC draft is most comprehensive international mechanism for TK protection, at least in connection intellectual property protection. It not only lays out haughty goals and values, but also lays forth a clear and well-structured legal framework. If broadly recognised and implemented, it would help to safeguard traditional knowledge across the world while also advancing the rights and interests of traditional knowledge holders.

Not unexpectedly, the World Intellectual Property Organization (WIPO) has been deemed the right platform for developing applicable regulations on TK protection. Despite the fact that the IGC's work has not yet been completed, the draft's impact on international legislative development cannot be overstated. Indeed, the proposed WIPO rules have been used by various regional and national procedures in creating and establishing their TK protection laws.⁴³

Despite the success described above, it should be noted that the drafts instrument's TK protection is a defensive measure, since it only applies to acts done in reaction to TK theft. In terms of national practise, Peruvian legislation, which is comparable to the WIPO's approach, is the major example of allowing TK holders, among other things, to enjoy the right of protection against unauthorised use. Furthermore, numerous faults in the WIPO work are obvious. Regardless of the WIPO's well-organized structure, these regulations stop short of placing responsibilities on States since the WIPO uses the term "should" as seldom as possible.

As a result, States are not required to make any firm pledges, and they can continue to use considerable freedom discretion in regulating Traditional Knowledge protection. More significantly, the document's ultimate shape and status have yet to be determined.

The majority of WIPO members, developed and developing, are believed to lack significant political will and incentive to pursue the task seriously. As a result, the document is likely to resemble the Bonn Guidelines, which are voluntary. Of course, the IGC will continue to work for an international agreement on TK protection in order to

⁴³ Kuei-Jung N, 'Traditional Knowledge and Global Lawmaking', Volume 10, Issue 2

establish a baseline. Even if the wording becomes a legally binding document, the WIPO's basic flaw, the lack of an effective enforcement mechanism, diminishes its usefulness.

The World Intellectual Property Organization (WIPO) should be in charge of protecting intellectual property all around the world. However, poor nations advocated an intellectual property rights agenda during the Uruguay Round of Multilateral Trade Negotiations, which took place between 1986 and 1994, since they were dissatisfied with the WIPO's lack of enforcement.⁴⁴

4.3 WTO/TRIPS

The World Trade Organization (WTO) signing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a win for developing countries, led by the United States (US), who have long fought for effective and universal intellectual property rights protection. Despite the formation of the WIPO, the WTO has obtained parallel authority for the protection of intellectual property rights since then.

Many bio-resource-rich developing nations' requests for origin disclosure have been key issues of discussion in the TRIPS Council, which has also been a contentious issue at the CBD and WIPO. They oppose the inclusion of new transparency requirements to the TRIPS Agreement.⁴⁵

As a prerequisite of acquiring patent rights, the proposed amendment requires patent applicants to present the following proof :

- (i) disclosure of the source and country of origin of the biological resource and traditional knowledge used in the invention;
- (ii) evidence of prior informed consent through approval of authorities under the relevant national regime; and
- (iii) proof of benefit-sharing that is fair and equitable within the applicable national framework.

⁴⁴ Ibid.

⁴⁵ The Trade Related Aspect of Intellectual Property Rights

Developing countries believe that mandating disclosure requirements will help prevent patents for technology that embezzle or unlawfully acquire bio-resources or associated TK. Furthermore, such revisions attempt to guarantee that TRIPS is implemented in a way that is consistent with the CBD's goals. Nonetheless, several developed members have voiced significant resistance to the plan. The United States, for example, has repeatedly opposed the amendment.

The US claims that the requisites would place an undue burden on national patent offices, and thus the enforcing national laws and contract agreements is a more effective way to combat bio-piracy. Despite sympathising with poor nations' concerns, Switzerland recommends amending the WIPO Patent Cooperation Treaty as an alternative. Both parties have been engaged in a very intense argument since the announcement of the transparency plan.

Given the amendment's substantial controversy and the developed world's, particularly the United States', adamant resistance, there appears to be little evidence that the impasse will be broken any time soon, or that disclosure modification will gain consensus amongst WTO members.

If developing nations' request is approved, the amendment will be binding on all WTO members, and applicable national IP laws will need to be updated. The TRIPS Council would be in charge of overseeing the mandate's implementation. Non-compliance with the presumptive requirements would then be subject to the WTO's reasonably effective dispute settlement mechanisms.

If such an amendment is to be passed, the TRIPS will require mandatory confession of TK origin, and thus would allow TK-hosting nations that are WTO members to file a suit against the countries just as the United States (a WTO member) if US agents (such as the US Patents and Trademark Office) fail to require intellectual property rights applicants to disclose of the information.

Instead of indigenous tribes and states, this would be a disagreement between WTO members. Local organisations may, of course, exert pressure on their hosting nations to use the WTO dispute settlement process. As a result, it's no surprise that developing

nations believe the WTO is the best venue for resolving the problem of theft of bio resources and related information.

4.4 The U.N. Declaration on the Rights of Indigenous Peoples

Indigenous groups account for the majority of TK holders. Because TK holders are the most essential stakeholders in TK preservation, their rights to TK should be adequately safeguarded and acknowledged. Indigenous peoples' rights are increasingly being promoted and recognised on a global scale. In addition to the International Labor Organization's (ILO) initiatives, the United Nations has participated in lawmaking to safeguard indigenous peoples' rights in a variety of fora during the last several decades.

The Human Rights Commission's Sub-Commission of the United Nation on the Prevention of Discrimination and the Protection of Minorities, for example, was a catalyst for the discussion of indigenous peoples' issues. However, it wasn't until 1982 that the Working Group on the Indigenous Populations, a sub-organ of Sub-Commission, was formed to seriously explore ways to protect the rights of indigenous communities.

Several clauses in the United Nations document support indigenous peoples' rights to TK. Article 11 affirms peoples' rights to defend, preserve, and develop their cultures' past, present, and future expressions.

States are required to develop an effective mechanism for resolving theft of their cultural, religious, intellectual, and spiritual property. This criterion is thus consistent with the WIPO's instrument of TK, which focuses on legal protection against unauthorised use of intellectual property. Most importantly, the Article 31 that recognises indigenous people's right to TK in relation to the cultural development, including intellectual property rights to TK. Indigenous peoples have the right to preserve, protect, control and develop their own cultural heritage, traditional knowledge, and folklore.

They also have the right to preserve, protect, and expand their intellectual property rights in cultural heritage, traditional knowledge, and folklore.⁴⁶

This is indeed an important international instrument for the protection of the rights of the indigenous people and can be regarded as one of the most significant instrument for the rights of people of states in North East, especially Assam.

4.5 The UNESCO Convention on the Protection of the Diversity of Cultural Expression

The Convention of UNESCO entered into force 3 months after the thirty-first instrument of ratification was submitted, on March 18, 2007. The Convention, which was passed by a vote of 148 to 2 in 2005, is fast gaining traction, since it was endorsed by the European Union and ninety eight other countries, including twenty five African countries. Essentially, this Convention seeks to promote and protect cultural diversity inside the boundaries of member countries against the growing tide of the globalisation.

Following are the objectives of the UNESCO Convention:

- a) to protect and promote the diversity of cultural expressions;
- b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
- c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
- d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
- e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;

⁴⁶< <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> > accessed on 12 July, 2021

f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;

g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;

h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;

and i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions. The rights and obligations of State Parties, which are elaborated in Article 6, seem ideally contemplated within the framework of a State's cultural policies and measures. Each State Party is allowed to adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

It is important to note that these measures are not restricted to cultural policies, but encompass all measures which may include the following:

a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;

b) measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;

c) measures aimed at providing effective access to the means of production, dissemination and distribution of cultural activities, goods and services for domestic independent cultural industries and activities in the informal sector; d) measures aimed at providing public financial assistance;

e) measures aimed at encouraging non-profit organisations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions

and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

f) measures aimed at establishing and supporting public institutions, as appropriate;

g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions; and

h) measures aimed at enhancing the diversity of the media, including through public service broadcasting.

Article 7 of this Convention authorises States to take steps to promote folklores, such as creating environment in their countries that encourages individuals and social groups to create, access and distribute, their own cultural expression, while also taking into account the unique circumstances and needs of women and other social groups, such as indigenous peoples.

According to Article 8 of the Convention, a State may take extraordinary steps to safeguard folklores on its territory which are in risk of extinction, are under severe risk, or otherwise require immediate preservation under exceptional circumstances.

Article thirteen of the Convention encourage States Parties to strive to incorporate culture into their development policies at all levels in order to create conditions helpful to sustainable development and within this structure, to promote developments relating to cultural diversity promotion and protection.

Without a doubt, the Convention is an effective tool for aiding countries such as India in building their unique cultural potential. In this regards, it is worth mentioning that the Convention allows nations to develop their cultural industry and creative talents by "any" methods. As a result, these policies can be adopted in any field that has an impact on the cultural zone.

Despite the fact that worldwide protection of TK have been debated for almost a decade, no clear enforceable protection framework has been yet established. International discussions at the WIPO IGC have come to a halt due to delegates' inability to agree on a number of critical topics. Among these issues are the proposed instrument's legal nature, the tension between giving freedom for local policy space and constructing an effective system of protection, and the relationships amongst the proposed instrument and existing international treaties. Despite these discrepancies in bargaining positions, the WIPO IGC is still in session.⁴⁷

⁴⁷ Aman Gebru, 'the global protection of traditional knowledge: searchingforthemimumconsensus', <<https://repository.law.uic.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1423&context=ripl>> accessed on 24 May, 2021

Chapter 5: A global perspective to sui generis law on traditional knowledge

5.1 Laws relating to Traditional Knowledge and TCEs in various Jurisdictions

A proper study regarding the laws present in other countries is important, to understand where India stands in the present time. It is evident from various examples that countries like New Zealand, is somewhat successful in preserving, protecting and upholding the indigenous rights of its people.

It is also important to make a comparative analysis of the laws that are prevalent in India and in other jurisdictions of the world to find out whether there lies any defect in the current IP Laws in the country and to analyze whether there exist any scope to adopt some of the laws that has been implemented in those countries.

What is more important to peruse is how or whether these countries are allowing the scope of customary laws to co-exist along with the national laws.

5.1.1 Ecuador

Ecuador is a country of South America situated in the northern part of the continent. Ecuador is among the world's most ecologically varied countries, and it has made enormous contribution to environmental research.

Ecuador, one of the Latin American countries that has been especially interested in recent decades regarding the development and preservation of intellectual property rights. Ecuador's government acknowledges, regulates, and protects intellectual property through a legal framework that includes local, communal, and international regulations.⁴⁸

(A) Political Constitution of 1998

⁴⁸ Enrique Chiriboga, 'Intellectual Property in Ecuador', <[Intellectual Property in Ecuador - Intellectual Property - Ecuador \(mondaq.com\)](#)> accessed on 25 May, 2021

The most important and relevant aspect is the recognition of collective rights under Article 84 which contains some of the following provisions:

1. Maintaining, developing and strengthening their identity and traditions in spiritual, cultural, linguistic, social, political and economic terms (para. 1).
2. Conserving the ownership of community lands, not subject to prescription, which will be inalienable, not subject to seizure and indivisible (para. 2).
3. Conserving and promoting their practices in managing biodiversity and their natural environment (para. 6).
4. Conserving and developing their traditional forms of coexistence and social organization, and generation and exercise of authority (para. 7)
5. The collective intellectual property of their ancestral knowledge: its enhancement, use and development in accordance with the law (para. 9).
6. Their traditional medicine systems, knowledge and practices, including the right to the protection of ritual and sacred places, plants, animals, minerals and ecosystems of vital interest from the point of view of traditional medicine (para. 12).

(B) Intellectual Property Law of Ecuador

For traditional knowledge and folklores, special mentions are reflected in the IP laws of the country. The IP law bans the illegal imports and exports, and transfer of ownership of the cultural properties and mentions that the expressions of its communities, its identities, values that are transmitted orally such as language, customs, rituals, handicrafts, arts and architecture, etc., are to be protected.

Special mention for the introduction of a sui generis system of collective intellectual right of ethnic groups and local community is also reflected.

(C) National Biodiversity Policy and Strategy of Ecuador

The national biodiversity policy mentions about some of the legal frame for protection of traditional knowledge are with stress being placed on the protection and enhancement of traditional knowledge.

The provisions include the introduction of corresponding standard on the collective intellectual property of ancestral information. Apart from that the laws make it necessary for the registration of familial knowledge through sui generis protection system.

The following are further mentioned-

The development of capacities for the negotiation of annex contracts for access to the intangible component. Information systems on the forms of traditional management of biodiversity.

5. Fora for participation of indigenous peoples in the implementation of Article 8(j) of the CBD.

(D) Regulations under the Law on Agrarian Development

Article 5 mentions that research programs will be developed to enhance, innovate, register and transmit traditional technologies and uses for indigenous, rural, mountain and Afro-Ecuadorian communities to maintain ancestral production systems. For this purpose, the State, through the Ministry of Agriculture and Livestock, will conclude contracts and agreements with the beneficiary organizations.

However, in accordance with this situation it may be stated implicitly that existing legislation in Ecuador has allowed:

1. the recognition of indigenous peoples as such, with their own forms of organization and specific government, to exist; the strengthening of identity and traditions in spiritual, cultural, linguistic, social, political and economic terms to be promoted;
2. their traditional practices in managing biodiversity and their natural environment to be conserved and promoted;
3. their traditional forms of coexistence and social organization, and generation and exercise of authority to be conserved and developed;
4. the collective intellectual property of their ancestral knowledge; its enhancement, use and development in accordance with the law;

5. their traditional medicine systems, knowledge and practices, including the right to the protection of ritual and sacred places, plants, animals, minerals and ecosystems of vital interest from the point of view of traditional medicine; the administration of justice in accordance with their customary law and human rights standards (Article 191).

It is clear from above that indigenous peoples must take control of their own institutions, ways of life, economic development, and cultural identities, while ensuring that their knowledge, innovations, and traditional practices are respected, preserved, and maintained.

Their spread is aided by the permission and involvement of traditional knowledge owners, as well as the acknowledgment by authorities of indigenous peoples' competency in the efficient regulation of traditional knowledge through their own conventions or customary law (collective intellectual property recognised in the Political Constitution)⁴⁹

5.1.2 Bolivarian Republic of Venezuela

The indigenous population of the Bolivarian Republic of Venezuela accounts for 1.5 percent of the overall population. There are thirty eight ethnic groups based on linguistic features, twenty eight of which historically dwell in territory of Venezuela and ten of which came from or are located in adjacent countries like as Brazil, Guyana and Colombia.

(A) Political Constitution

Article 124 states that indigenous peoples' collective intellectual property (knowledge, innovations and technology) must be secured and preserved. Any action using genetic resources and information connected with them must seek to benefit the whole

⁴⁹ Tesh Dagne, 'PROTECTING TRADITIONAL KNOWLEDGE IN INTERNATIONAL INTELLECTUAL PROPERTY LAW: IMPERATIVES FOR PROTECTION AND CHOICE OF MODALITIE', < [Protecting Traditional Knowledge in International Intellectual Property Law: Imperatives for Protection and Choice of Modalities](#), 14 J. Marshall Rev. Intell. Prop. L. 25 (2014) ([uic.edu](#))> accessed on 24 May, 2021

community. Patents on these ancestral resources and knowledge will not be allowed to be registered.

(B) The Laws on Biological Diversity in the country

1. Article 13. The State shall recognize the importance of cultural diversity and associated knowledge which local and indigenous communities have in relation to biological diversity, and shall also recognize the rights derived there from.

2. Article 39. The State shall recognize and protect the economic rights and traditional knowledge of local communities and indigenous peoples and communities, in relation to biological diversity.

3. Article 42. The capacity to dispose of knowledge, innovations and past, current or future knowledge, innovations and practices which form the collective intellectual property of indigenous peoples and communities shall constitute community rights.

4. Article 43. The State shall recognize, for local communities and indigenous peoples, the right which assists them in refusing their consent to authorize the collection of biotic and genetic materials, access to traditional knowledge and biotechnology plans and projects in their territories, without having previously obtained sufficient information on the use and benefits of all that. They may also request the elimination of any activity, if it is demonstrated that the activity affects their cultural heritage or biological diversity.

5. Article 84. The State shall recognize and undertake to promote and protect the rights of indigenous and local peoples and communities in their traditional knowledge related to biological diversity, as well as the right of such peoples and communities to enjoy collectively the benefits derived therefrom and to be compensated for conserving their natural environments.

6. Article 85. The rights of indigenous and local peoples and communities shall be collective and shall be considered acquired rights, distinct from the right of individual ownership, where they correspond to a cumulative process of use and conservation of biological diversity. In accordance with the constitutional provision cited, the Bolivarian Republic of Venezuela has also devised relevant secondary legislation based

on the Organization Act on Indigenous Peoples and Communities (LOPCI – December 2005).

(C) The Organization Act on Indigenous People and Communities (LOPCI)

Within the specific framework of the Constitution, customary law is developed in the LOPCI which was approved in December 2005 and specifies the intellectual property law in the following circumstances:

1. in the collective ownership of the knowledge, technologies, innovations and practices specific to indigenous peoples and communities (Article 101) as regards their uses and customs, they shall protect, develop and undertake sustainable use of genetic resources and the knowledge associated therewith (Article 102).
2. The State shall guarantee the right of indigenous peoples and communities to establish and protect, in accordance with their uses and customs, their cultural, artistic, spiritual, technological and scientific heritage, knowledge on animal and plant life, designs, traditional procedures and, in general, all knowledge (Article 103).
3. As to the administration of justice, indigenous peoples and communities may take, directly or through indigenous organizations, civil, criminal and administrative action as required, in order to determine the responsibilities of and reparation to be paid by any person who has participated directly or indirectly in the illicit use of their knowledge, technologies, innovations and practices in violation of their collective ownership rights (Article 104).

5.1.3 The Laws on traditional knowledge and customary laws in Peru.

Peru has over forty eight indigenous peoples each comprising with their own language, and a population of 9.3 million people, or forty seven percent of the country's total population (“National Institute of Statistics and Information Technology, 2000”). The classifications for indigenous peoples in Peru includes native communities (Amazonia) and rural (mountain and coastal) villages.

(A) Political Constitution (1993)

1. Article 2(19) protects and recognizes the “ethnic and cultural plurality of the Nation”

2. Article 89. - The last part of this Article states that the State shall respect the cultural identity of rural and native communities, by virtue of which the intellectual rights of indigenous peoples shall be recognized.

3. Article 89. - Rural and native communities have a legal identity and are legal entities. They are autonomous in their organization, communal work, and the use and free disposal of their lands, as well as in economic and administrative terms, within the framework established by the law. Ownership of their lands is not subject to prescription, apart from in the case of abandonment provided for in the previous Article.

Article 149.- This Article provides recognition for customary law and it is stated that the authorities of rural and native communities may, with the support of rural councils, exercise the jurisdictional functions within their territorial sphere in accordance with customary law, provided that they do not infringe the fundamental rights of individuals.

(B) The law No. 27811 creates a framework of protection for indigenous peoples' collective knowledge, which is related to biological resources. These regulations are unique in Peru and the Andean area since they are the only ones of their type in the world that preserve indigenous peoples' traditional knowledge in connection to biological variety.

The following provisions are important in this regard:

1. Article 1- The State of Peru shall recognize the right and capacity of indigenous peoples and communities to take decisions on their collective knowledge.
2. Article 11- Collective knowledge and cultural heritage. Collective knowledge forms part of the cultural heritage of indigenous peoples.
3. Article 14- Representatives of indigenous peoples. For the purposes of these rules, indigenous peoples shall be represented through their representative organizations, respecting the traditional forms of organization of indigenous peoples.
4. Article 24- Local registers of collective knowledge of indigenous peoples. Indigenous peoples may organize Local Registers of Collective Knowledge, in accordance with their uses and customs (customary law). The National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall lend technical assistance with the organization of these Registers, at the request of indigenous peoples.
5. Article 46- Settlement of disputes between indigenous peoples. In order to settle disputes that may arise between indigenous peoples within the framework of application of these rules, such as those relating to implementation, by the indigenous people that has negotiated a license contract for use of its collective knowledge, of the provisions of Article 6, second paragraph, of this Law, such peoples may have recourse to customary law and to its traditional forms of dispute settlement, and may rely on the mediation of a higher indigenous organization.⁵⁰

New Zealand leverages existing IPRs to offer TK protection through defensive actions. The New Zealand Trade Marks Act was changed to make it illegal to register trademarks that are likely to insult a large portion of the population, such as indigenous Maori people. Furthermore, even if a registered mark is characteristic of a registered owner, the Act provides for the cancellation of a registered mark upon application by a person who is "culturally offended." It blends the use of IPRs with efforts for a unique approach to TK, keeping in mind the holistic character of TK.

⁵⁰ "CUSTOMARY LAW IN THE PROTECTION OF TRADITIONAL KNOWLEDGE",
<https://www.wipo.int/export/sites/www/tk/en/resources/pdf/study_cruz.pdf> accessed on 1 July,2021

It cannot be claimed that the laws relating to Intellectual Properties existing in the above mentioned jurisdictions are free from defects. But there have been continuous efforts on the part of the respective governments to successfully provide both positive and defensive protection to the traditional knowledge and traditional cultural expressions.

5.2 Customary Law and the Concept of Legal Pluralism

There is legal diversity in almost everywhere. In all social sphere investigated appears to have a variety of legal systems, ranging from the most basic level to the most wide global one. There are several sorts of village, town, or municipal laws; state, district, or regional laws; national, international and transnational laws; and there are numerous types of national, transnational, and international laws.

Many societies have more exotic kinds of law, such as customary law, indigenous law, or laws related to certain ethnic or cultural groups, in addition to these well-known legal systems. There has also been a noticeable growth in quasi-legal activity, ranging from private police and adjudication to privately managed prisons and the continuous development of the new *lex mercatoria*.

The fact that there are many uncoordinated, overlapping or co-existing systems of laws, as well as variation among them, is what distinguishes this plurality. They may assert opposing claims of authority, enforce contradictory expectations or standards, or have distinct styles and perspectives.

India has always been a land of legal pluralism. But how much the system of co-existing legal framework has aided in the development and protection traditional knowledge and cultural expressions of the communities in India, especially Assam, is a matter to look into.⁵¹

Few case studies with respect to the existence of customary laws and how are they aiding in protecting traditional knowledge, will provide with us an insight as to how these customary laws have made an impact on that particular jurisdiction. The study

⁵¹ BRIAN Z TAMANAHA, 'Understanding Legal Pluralism: Past to Present, Local to Global', <[Tamanaha.fm \(austlii.edu.au\)](http://Tamanaha.fm(austlii.edu.au))> accessed on 2 July,2021

was done in four of the important regions of the countries of Peru, Venezuela and Colombia.

A case study of Peru in the La Papa Park in the area of Cuzco

The study depicts how the application of customary law has led the Quechua communities in the Cuzco region not just to re discover their indigenous knowledge of different potato variety, but also to state that customary law is a body of rules/laws that exists in communities and that, through practises adaptable to the wavering situations without these resulting in explicit principles, has allowed them to not only recover ancestral knowledge of different potato varieties, but to also state that customary law is a body of laws that exists in the communities and that, through practises adaptable to changing situations.

The communal territory, the material good that is considered Pacha Mama (Mother Earth) in Andean communities and from which the indigenes derive their material, intellectual, and spiritual aspects, is an important aspect to mention in this case, as it is the vital link between conservation of biodiversity and indigenous practices for the survival of the traditional knowledge.

The key ingredients of customary law highlighted in the study are pliable ecosystem management, the administration of information and natural resources in this matter, such as the potato, which is critical for indigenous communities' food security, the maintenance of cultural and spiritual values, the maintenance of fairness and collective systems, self-determination and autonomy.

A case study on Ecuador's Mojanda Cajas plateau

To begin with, the traditional knowledge prevalent in this area for conservation of biodiversity is one of the most vital one to mentions. The people in this area has found out means to conserve scarce resources like water, vegetation, fauna that became scarce as a result of global warming, in their own traditional methods and has managed to bring a drastic change.

The organizations in the local have through their own ancestral practices, found out ways to protect and rescue their resources, through the use of their customary rules. One example in this regard will be the conservation and preservation of biodiversity through the active involvement of the ‘yachakuna’ which means ‘ancestral wisdom’ for the management of the plateaux, which plays an important role in the overall plan.

The beauty of their traditional knowledge and practices can be seen from the various terms that they use to preserve and protect TK and TCEs.

1. Pacha Mama(Mother Earth)

The people in this region believe that human beings are not the owner of the Pacha Mama or mother earth but rather are only a member in it. It sees the world as a whole and thus respects the resources available on earth. These concepts have resulted in the discovery of traditional knowledge and have also increased in tremendous respect for all life forms existing in the plateau.

2. Sumak Kausav(Good Living)

The indigenous people in the region seek for Sumak Kausay i.e Good Living. The people in the region thus, indulge in efforts to recover old practices relating to indigenous knowledge and traditional cultural practice. The people says that as they are the son of mother earth, they want to live properly

This link is also in accordance with the CBD's principles of preservation, acknowledgment, and use of indigenous knowledge, as well as customary usage in the biodiversity resources management (Articles 10(c) and 8(j)).

A case study on Colombia case the Nam Misak (Guambiano) people

The Guampia people recognize their right to decide, repatriate, protect, defend and develop all the existing resources in its territories. They make it mandatory that their resources are not subjected to any doings without prior express approval of the ancestral authorities of their region. This authority is responsible solely to take decision on resources of the region with due support of the community.

They have made stringent rules with regard to use, theft, appropriation, contamination of biodiversity, abuse by “transgenic substances, patents, licensing, or any other act carried out without the express authorization of the Guambiano people”

They have declared that they have sole ownership of not only on their cultural and archaeological heritage, but also their ancestral traditions and language as well as their collective ancestral knowledge, including ancestral drugs, medicines, ideographical art, treatment and cure practises, native seeds, agricultural production systems, food processings, and form of consecrative justice.

A case study on Venezuela’s Alto Caura

Another study in Venezuela was based on the efforts of the indigenous peoples of the Ye'kuana and Sanema, who dwell in the eastern state of Bolvar. Diversification and crop rotation, for instance, have received the great attention and, as a result, have safeguarded both indigenous and non-indigenous peoples' nutrition and food security.

These indigenous people are founded on old practises of profound knowledge, and they do not result in the whole plundering of forests, but simply the sustenance requirements. They have their unique techniques of hunting.

It is also significant to note that the traditional practises of these two people are related with other types of traditional knowledge, including indigenous medicine, but are always consistent with the requirements for sustainable use of and conservation resources associated with their concept of human beings due to the unique nature of their concept. In the prevention and treatment of diseases through therapeutic treatments and the use of plants(medicinal), a great priority is thus placed on spirituality.⁵²

India’s North Eastern region, that comprises of Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland, Mizoram and Tripura, is a legal pluralist area, suggesting the presence of several legal regimes inside a single political system. This region is home to indigenous communities, and indigenous folk law controls several aspects of their life

⁵² “CUSTOMARY LAW IN THE PROTECTION OF TRADITIONAL KNOWLEDGE”,
<https://www.wipo.int/export/sites/www/tk/en/resources/pdf/study_cruz.pdf> accessed on 1 July,2021

in society. Simultaneously, formal legislation made at the national and state levels in the country is extended to the region.

North East Indian states that do not come under the sixth schedule are still regulated under the late-nineteenth-century British Rules for Administration of Justice. This is especially true in Arunachal Pradesh, Nagaland, and Manipur, where there are no Autonomous Councils. Manipur has also adopted its own set of specific laws for the administration of justice in the hilly areas.

The applicability of Acts of Parliament and State Legislatures in non-sixth schedule states is a fundamental contrast between the non-sixth schedule states and sixth schedule states. The sixth schedule prohibits the applicability of Parliamentary and State Legislative Acts to Autonomous Council regions in areas where the latter are empowered to enact laws.⁵³

⁵³ Ruchi Pant, 'Exploring the Role of Community and Customary Law in Natural Resources Management in the Legal Pluralist Societies of North East India', < [Customary-Law-May-2003.pdf \(kalpavriksh.org\)](#)> accessed on 5 July,2021

Chapter 6: Repository Aspect of Traditional Knowledge

6.1 What is bio piracy?

Bio-piracy is described as any effort, without the consent or involvement of those who have such resources and expertise, to gain exclusive rights over biological resources and indigenous knowledge as well as products based on them. To put it another way, bio piracy is the process of patenting living resources or traditional knowledge and practises, therefore imposing intellectual property limitations on their usage. These practises will result in inequity between developed (transnational corporation-supported) and poor nations (dependent solely on their indigenous resources). The question of biological piracy is approaching dangerous borders because Western nations play with their patents on basic traditional and unreliable commodities in emerging countries.

Rural India's dominance is under danger as a result of these modern liberal policies. TRIPS has opened the door for agribusiness-based multinational companies to engage in biopiracy, geographical indication, and genetically modified (GM) seed domination, putting our rural and traditional communities at risk. Companies are exploiting intellectual property rights to their own benefit, rendering patents useless and putting indigenous farmers on defensive. A large number of farmers have lost their control over production cycles, putting them in debt, disempowering them, and jeopardising their existence.⁵⁴

The following cases are important to cite for

The Turmeric Case

The United States Patent and Trademark Office (USPTO) granted two non-resident Indians affiliated with the University of Mississippi Medical Center a patent in 1995 for "Use of Turmeric in Wound Healing." "**The Council for Scientific and Industrial Research (CSIR)**", India's industrial research body, contested the patent, claiming that ayurveda practitioners had known about the therapeutic qualities of turmeric for

⁵⁴ Verma, Madhu. (2014). India Victim of biopiracy. INDO AMERICAN JOURNAL OF PHARMACEUTICAL RESEARCH. 4. 329-342.

centuries and that its medicinal capabilities were not an unique discovery. Factual confirmations of TK, such as Sanskrit ancient texts and a 1953 paper in the Journal of the Indian Medical Association, backed their case.⁵⁵

The Basmati Rice Case

In 1997 the USPTO issued a patent to RiceTec Inc. of Texas in respect of Basmati rice and grain lines. The Science, Technology and Ecology Research Foundation in India et al., filed an appeal in the public interest with the Supreme Court of India on 4 March 1998 requiring the Government of India to file an application to review the above patent with the USPTO in a bid to restore the validity of the patent. This suggestion seems to have a substantial effect on the financial and commercial interests of basmati rice exporters in the nation.

In reality, until the UK was sued by Ricetec for registering the "Texmati" mark in 1998, the Indian authorities ignored the patent application. Because of the unusual and elaborate union of agricultural factors and the Basmati genetic code, the claims of India were founded on the assumption that only the indo-gangetic plains of India and Pakistan can produce genuine Basmati rice.

As a result of these occurrences, a diplomatic crisis has emerged between the United States (US) and India, which threatens to violate TRIPS by threatening India with the World Trade Organization. US Ricetec was compelled to remove 15 claims from the first patent application, which was a well-written document with 20 claims. This was a major victory for Indian farmers, who would have lost a lot of money if the patent had been awarded.⁵⁶

The Neem Case

Robert Larson received a patent in 1985 for the extraction technique of his neem seed extract Margosan-O, which he later sold to WR Grace in the United States. In 1995, the

⁵⁵ Ibid.

⁵⁶ Ibid.

US Department of Agriculture (USDA) and W.R. Grace, a large US chemical company, were granted patent rights (European Patent Office patent #436257) for a method of extracting neem oil for its antifungal qualities. Patents for neem-based bio insecticides, notably Neemix for agricultural use, were held by W.R. Grace. Neemix overwhelm and crush the development and feeding behaviour of over 200 insect species.

Grace began commercialising its product after obtaining patents and receiving approval from the Environmental Protection Agency (EPA) by establishing a production factory in India in cooperation with the P.J. Margo Pvt Ltd. In 1993, the RFSTE India launched a campaign against bio-piracy involving Neem (*Azardictica indica*), in collaboration with International Federation of the Organic Agriculture Movements and Magda Aelvoet, a Green member of the European Parliament, to oppose the patenting of natural living resources and their products.

Indians have known about the use of neem as a fungicide, insect repellent, soaps, cosmetics, and contraceptive for over a thousand years, and this knowledge proved to be the structural stone used to refute the US claims for the Neemix. The European Patent Office (EPO) revoked the patent in May 2000 based on the examination of previous art evidence, which indicated that there was no involvement of any innovative step.⁵⁷

6.2 Traditional Knowledge Digital Library

The Traditional Knowledge Digital Library (TKDL) is a groundbreaking initiative from India to prevent the misappropriation by international patent agencies of the country's traditional medical knowledge, which is dependent on the healthcare of over 70% of India's population and on millions of people for a lifetime. Everything started with an Indian petition to the USPTO for the cancellation of a patent on turmeric wound treatment.

In addition, in 2005 the TKDL expert group has estimated that approximately 2,000 incorrect patents concerning Indian medical systems were then granted annually internationally because Indian traditional medicinal knowledge, as it does, is neither

⁵⁷ Ibid.

available nor comprehensible for patent examiners to local language, such as Tamil,Sanskrit, urdu, Hindi, and others

TKDL has overcast the barrier of format and language by scientifically transferring to five international languages, namely Spanish,English, Japanese, German, etc and the available material (to date, 0.29 million medically-formulated) of old texts on the Indian medicinal systems, namely the Ayurveda,Siddha, Unani and Yoga (TKRC).

The TKRC has organised and divided into more than 25000 subcategories for Yoga, Ayurveda, Siddha, Unani, Siddh, the Indian Traditional Medicine System. The TKRC allowed the inclusion, under the A61K 36/00, of approximately 200 subgroups in the International Patent Classification instead of the few previously available subgroups on medicinal plants under the A61K 35/00, thus improving the quality of prior art searches and reviews in the field of traditional applications for knowledge patents.

TKDL has also managed to establish worldwide TK database requirements and recommendations based on the TKDL specifications. The IGC on “Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore” Exprint of the WIPO adopted this during its fifth session in 2003.

Patent examiners can only use TKDL for searching and reviewing patents, and they can't share the database's contents with anyone else unless it's for the purpose of citing, according to the Access agreement's regulations. The TKDL Access Agreement is unique in that it includes non-disclosure clauses to safeguard India's interests against exploitation.⁵⁸

6.3 Impact of TKDL on biopiracy

The EPO is already feeling the effects of the TKDL. Since July 2009, the EPO's TKDL team has discovered two hundred and fifteen patent applications pertaining to Indian medical systems that have been lodged using third-party TKDL evidence. On the basis of TKDL evidence, the EPO has already overturned its prior decision to issue the patents in two cases. In one example, the applicant changed the claims provided, and in

⁵⁸ <<https://www.csir.res.in/documents/tkdl>> accessed on 5 July,2021

thirty three other situations, the applicants then withdrew their four to five-year-old petitions after seeing TKDL proof, implying that they were guilty of biopiracy.

Some 179 cases presently in balance are likely in the next months either to be rejected by EPO or to be retired by the applicants. In the next months, it is predicted that 179 cases that are presently pending will either be dismissed by the EPO or dropped by the petitioners.

According to a recent research conducted by a TKDL expert committee at the EPO, the number of patent application submitted relating Indian medical systems, notably medicinal plants, has decreased by 44%. The TKDL is proven to be a very effective deterrent against biopiracy. Many governments, as well as indigenous and local people, are concerned about the biopiracy of genetic resources and misappropriation of traditional knowledge.

While these issues have been discussed in multilateral foras such as the Convention on Biological Diversity (CBD), the World Trade Organization's (WTO) TRIPs Council, and the World Intellectual Property Organization (WIPO), a global framework to protect traditional knowledge has yet to be established.

However, the WIPO Intergovernmental Committee is making progress, and it is believed that an agreement on an internationally binding instrument to properly safeguard TK will emerge in the near future.

India is the only country in world that has established an institutional framework to safeguard its traditional knowledge (the TKDL). The TKDL facilitates the withdrawal or cancellation of patent applications pertaining to India's traditional knowledge (TK) in a timely and nearly cost-free manner. In comparison, without the TKDL, the EPO took ten years (1995-2005) to cancel the patent on neem's antifungal qualities, and it took a 13-year legal struggle to invalidate the Monsanto Soybean patent in July 2007. It is now feasible to avoid the erroneous award of patents on Indian TK, thanks to India's pioneering creation of the TKDL.⁵⁹

⁵⁹ <[Protecting Indian Traditional Knowledge from Biopiracy \(wipo.int\)](http://wipo.int)> accessed on 8 July,2021

TKDL, is proven to be an effective prevention mechanism against biopiracy, and it is becoming known as a global leader in traditional knowledge protection. The World Intellectual Property Organization (WIPO) and CSIR jointly convened an international conference in New Delhi in 2011 on 'Utilization of Traditional Knowledge Digital Library as a Model for Traditional Knowledge Protection.' As a result, WIPO arranged a "International Study Visit To TKDL" for nineteen countries interested in replicating TKDL in conjunction with CSIR and DIPP (Ministry of Commerce and Industry).

By proving the benefits of proactive action and the strength of strong deterrence, TKDL has created ripples across the world, particularly in the TK-rich nations. The goal isn't to limit the use of conventional knowledge, but to guarantee that incorrect patents aren't awarded as a result of Patent Examiners' lack of the access to previous art.

Apart from above, what is pertinent to mention is that TKDL is not free from drawbacks. Special attention has to be given for traditional knowledge prevalent in states like Assam. There are numerous oral practices that are required to be protected cautiously. Another important legal issue is that there is no common definition of what constitutes "prior art," as a result, the data provided by TKDL is not considered prior art by the US Patent Office.

Chapter 7: Concluding Part

7.1 Findings

Assam is rich in indigenous knowledge as well as traditional cultural expression. As a result, there appears to be no reason why the diverse ethnic groups' knowledge and traditions should not be safeguarded. However, as previously said, the state's knowledge, culture, and customs are dwindling for many reasons. Initiatives and actions made to preserve indigenous people's rights have been deemed to be insufficient.

One of the key findings of the study is the declining tendency of passing on information and tradition from one generation to the next, which was once common among the indigenous people. The ethnic beauty has been lost due to factors such as urbanisation and industrialisation. Making Assamese musical instruments like the dhol is one such example. In a region where the inhabitants are recognised for their ability to make Assam's dhol, they now just participate in such activities. The major cause for this may be attributed to the introduction of lower-cost, lower-quality items onto the market.

Another factor for diminishing of traditional knowledge is environmental. People are losing its identity and culture to the increasing flood and land erosion in the country. Majuli, is one such example.

It is also found that, even now, the majority of ethnic tribes in the state rely on traditional remedies for healing. Traditional remedies are first used by the state's indigenous inhabitants to treat illnesses. However, for a variety of reasons, there is a declining tendency in passing on these skills and information to the younger generation. In certain cases, the diverse groups of Assam appear to be permissive when it comes to the exploitation of their traditional cultural manifestations. People in Assam are rapidly losing their folk culture to the commercial entertainment sector in a globalised world, resulting in a loss of the charm and beauty of their own culture.

Countries with strong intellectual property laws have been successful in safeguarding their own indigenous knowledge and traditions, according to the findings. Countries that allow their own tribes or ethnic communities more autonomy in making decisions about preserving their own intellectual property appear to be more successful in doing

so. In certain nations, the involvement of the judiciary in this respect is equally noteworthy. Furthermore, customary laws have played an important part in this. According to the findings of this study, communities that are proud of themselves and make greater efforts to preserve their environment are more likely to thrive.

The governments of Australia and New Zealand are doing study and attempting to comprehend the indigenous knowledge of their ethnic communities in order to develop solutions that will best safeguard their rights. When compared to other nations, it is clear that India still has a long way to go in terms of enacting a robust Intellectual Property legislation to safeguard indigenous rights to traditional knowledge and cultural manifestations, although certain government initiatives appear to be satisfying from time to time.

“The state administrations have failed to strictly implement the Inner Line Permit system created by the colonial administration under the Bengal Eastern Frontier Regulation of 1873. The colonial administration enacted this legislation for the NE region not to make the region backward and inaccessible to the outside world, but to protect the traditions, cultures, identities, and rich biological resources of the region. However, the state administrations have failed to realize the positive aspect of the Regulation and remained negligent to consequences that may follow.”⁶⁰

Documentation and repository initiative as is mentioned above can also turn out to be a futile exercise in certain cases. As is mentioned, the defensive protection of traditional knowledge will not be fruitful if knowledge is kept open for the public at large. The indigenous population will also be reluctant to share the same openly as was seen in the case of indigenous medicine of the Bodo Community of Assam.

⁶⁰ Dr. Moatoshi Ao, ‘BRANDING AND COMMERCIALISATION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS: Customary Law of North East vis-à-vis Contemporary Law’, accessed on 8 July, 2021

7.2 Conclusions and Suggestions

More emphasis should be placed on strengthening current statutory laws rather than stressing on introducing new sui generis law, by amending them to integrate customary norms in order to promote broader and more effective application of both domestic and international laws. Australia, Canada, Kazakhstan, and the Russian Federation have all shown how current intellectual property systems have been utilised to safeguard traditional knowledge.

The ethnic communities themselves must put forth more effort to safeguard traditional knowledge and traditional cultural manifestations. The younger generation must be more eager to pass on their knowledge and culture to the younger generations. It is clear that some of the solutions to maintain and safeguard may be discovered in the roots of their customary laws, and so a thorough investigation is required. Provision has to be included with regard to traditional knowledge and folklore in the Constitution of India.

The most viable path forward for international TK protection appears to be striking the right balance between giving domestic jurisdictions the flexibility to craft domestic laws based on their needs and capabilities while also ensuring that there is a sufficient international obligation to encourage the codification and disclosure of TK. A structure like this should start with a minimal level of agreement among important players, such as major source nations and jurisdictions where the majority of users seeking access to TK reside.

Special initiative for preservation of oral knowledge and traditions has to be taken up. Awareness also plays a major factor. From the study, what is further realised is that people are not aware of their own rights and also regarding the fact that they should protect their own identity, cultures and traditions for their own benefit.

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