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FOUNDER'S NOTE

Dear Readers,

Greetings from IPVarna, I am delighted to welcome you to the first edition of the IPVarna Law Review. In addition to being a publication, this journal marks the start of a bigger vision that aims to create a strong intellectual ecosystem focused on the vital and developing topic of intellectual property rights.

In an age of creativity, invention, and information, intellectual property has become one of the most potent instruments for promoting innovation, safeguarding free speech, and influencing economies. But despite its increasing importance, intellectual property is still well known and frequently misinterpreted, particularly by new academics and practitioners. The purpose of IPVarna was to alter that.

Our goal at IPVarna is to provide a space where ideas and action may coexist, where academic rigor influences governance, where study and practice can coexist, and where the legal minds of the future generation can tackle the most pressing issues in IP law, both domestically and internationally. Our goal is to emphasize the intersection between law, technology, trade, and culture, foster important questions, and advance interdisciplinary research.

The first part of the organisation's name, "IP", refers to Intellectual Property, while the second part of the organisation's name, "Varna,"

refers to the variety of voices, ideas, perspectives, and color or spectrum that we want to gather. For intellectual property, this variety is essential and not existent in a vacuum. It resides at the intersection of creativity and invention, accessibility and distinctiveness, individual ingenuity, and group advancement.

The papers, essays, and case comments in this first issue explore current developments in a wider interface between intellectual property rights and other facets of life. In addition to demonstrating academic proficiency, these contributions also reflect a shared responsibility to further discussion in this area.

We appreciate the support of authors, editors, and editorial board members during the development of this project. Your vision has come to pass thanks in large part to your wisdom, enthusiasm, and trust.

I encourage you to consider, question, and participate as you turn the pages of this problem. Don't let it be a destination; rather, let it be the start of a conversation that will influence IPR's future.

With Regards,



Preyansi Anand Desai

Founder and Publisher,

IPVarna

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A DETAILED OVERHAUL OF TRADITIONAL KNOWLEDGE BILLS: COMPARATIVE ANALYSIS OF 2016 AND 2022 DRAFTS¹

Abstract

Pastoral communities rely on their ecology, cultural legacy, and accumulated knowledge to maintain their past and distinctiveness. A community's distinctiveness is preserved when these resources are shielded from unapproved use. It might be challenging to sort out these factors. Western corporations were criticized in the 1990s for stealing indigenous expertise, especially in the fields of agriculture and health. Many people in the Global South believed that this desecrated their cultural history and stripped them of their identity. Indigenous knowledge and cultural traditions are safeguarded under intellectual property (IP). By having their distinctive traditions, beliefs, and innovations recognized by the law, indigenous peoples are able to preserve their historical and cultural identities. The complex process of safeguarding traditional knowledge is shown by the relationship between intellectual property rights and indigenous heritage.

¹Arryan Mohanty, Student, Symbiosis Law School, Nagpur and Bhuvana Marni, Graduate, ICFAI Foundation for Higher Education, Hyderabad, Paper Id:- IPV02VI25II04

Indigenous people frequently deal with issues including cultural misrepresentation, exploitation, and restricted access to legal recourse. Misunderstandings regarding cultural customs, documentation issues, and bureaucratic obstacles exacerbate these difficulties. Traditional knowledge must be preserved in order to save the environment and promote sustainable development, much as indigenous peoples have helped to maintain world variety. Protecting genetic resources and biological wealth requires raising awareness among indigenous populations. In certain nations, traditional knowledge associated with Indian items has a higher economic value than other products. This is mostly due to India's abundant natural resources, which have been cultivated by local knowledge over many years. India's indigenous wisdom must be protected from global multinational corporations. Improving laws like those pertaining to indigenous knowledge patents might help alleviate these issues. This research assesses how well India's 2016 and 2022 Traditional Knowledge Bills protect indigenous groups and their cultural heritage. This article examines the legal frameworks established by each bill and contrasts their advantages and disadvantages in terms of preserving and advancing traditional knowledge. Both legal initiatives have supported the preservation of traditional knowledge and upheld indigenous rights, according to the results.

Keywords: *Traditional knowledge, indigenous community, safeguard*

Introduction

Technological developments, artistic creations, and the sharing of knowledge have all played a significant role in our capacity to preserve our past. Every technical development or discovery that we see now is the product of centuries of shared creativity and persistent innovation. These notions and inventions have been maintained and enhanced through the years, cultivating a strong cultural and emotional bond within communities. As a result, societies take great pride in their distinct heritage and feel a duty to safeguard and maintain their traditional knowledge.² The classic adage “knowledge is power” has been revalued and recognised since ‘knowledge is not only a source of power but also the primary source of income generation. This special acknowledgement supports the preservation of IP developed by people or communities. India is one of the twelve megadiverse countries of the world. It is noted for its rich and diversified biological history, with over 91,200 animal species and 45,500 plant species reported throughout its 10 biogeographic zones. Being a recognised centre of agricultural variety, with several wild variants of related crops, India is also one of the twelve major plant production centres, with a high level of agricultural biodiversity. India has a wealth of traditional wisdom due to its unparalleled biodiversity and natural bounty. Traditional knowledge is the cornerstone of cultural heritage. Most indigenous and local populations may be located in the most biodiverse areas. The natural world is their way of

²Akirti Gupta, “Protecting Indigenous Cultural Heritage: A Comparative Study of the Traditional Knowledge Bill of 2016 & 2022” 3 *Indian Journal of Integrated Research in Law* 489,493,494 (2023).

life and an integral aspect of their cultural identity. Indigenous communities serve as a reservoir for traditional knowledge regarding conservation and sustainable usage. It was always a readily available jewel and prone to abuse.³

Traditional knowledge means the significant and complex information that has been created over decades by tribal and rural people across the world and is passed down orally from generation to generation. It encompasses the knowledge, inventions, and customs of indigenous and local populations worldwide. Thus, it combines knowledge and experience with a cohesive value system based entirely on bio-resources. It includes experiences in spiritualism, philosophy, politics, and technology, as well as all livelihood activities, social systems, customs, traditions, and external relationships of all forest inhabitants whose lifestyle is heavily impacted by their traditions.

Traditional knowledge is seen as an emerging field of intellectual property rights. This category was eventually recognised as a kind of Intellectual Property. For numerous years, only conventional types of intellectual property have been considered legitimate. However, when the strength of knowledge was assessed, traditional knowledge emerged. It is a set of rules derived from experiences that govern indigenous people and those living in rural and tribal communities. This understanding of bio-resources can be translated into commercial gain in today's herbal era. Indigenous people turn a plant they discover in the forest that has therapeutic and medical qualities into a valuable

³Gautam Badlani, "Traditional Knowledge in IPR", *iPleaders*, available at <https://blog.ipleaders.in/ipr-vis-vis-traditional-knowledge/> (last visited on September 17, 2025).

commodity. In addition to being a wealth of knowledge and possessing around 8% of the world's biodiversity, India has the potential to become a major player in the international herb trade. The international society has not yet formally acknowledged the value of this information, but the increasing trend of bio-piracy shows how valuable it is. Many agencies profit from commercialising traditional knowledge without benefiting the community whose information has been stolen. An estimate confirms this: whereas the overall commerce in herbal items exceeds US \$56 billion, payments to communities for indigenous knowledge are less than 0.001% of the profit.⁴

Concept of Traditional Knowledge

Traditional knowledge is mainly retained through oral traditions and is deeply intertwined with the cultural essence of indigenous communities. This ancestral understanding is dynamic; it adapts in reaction to environmental, climatic, and sociocultural shifts. Several defining traits characterise traditional knowledge:

- It is transmitted from generation to generation;
- Oral communication is the primary means of preservation, with relatively rare documented records;
- Traditional knowledge is owned by the community, which prevents individual claims of ownership;

⁴Adarsha MN and Dr. A. Mohanram, “A Critical Analysis on Protection of Traditional Knowledge Under Intellectual Property Rights Law” 5 *Indian Journal of Research* 1-3 (2016).

- It is often challenging to pinpoint the precise origins of traditional knowledge.

Over a long period of time, many people's efforts contribute to the development of traditional knowledge. Indigenous daily life and subsistence are closely linked to traditional knowledge, which is essential to the tribes' survival. This body of knowledge signifies a shared legacy, the community's property that has been carefully maintained throughout generations. It encompasses customs, teachings, and insights conveyed within indigenous groups. Nonetheless, not all traditional knowledge is openly accessible. While some elements may be available to the public, specific knowledge is kept confidential or sacred and protected within particular communities. Ongoing discussions examine the extent and safeguarding of traditional knowledge, tackling issues of ownership, preservation, and ethical use. Traditional knowledge is defined by Article 8(j) of the Convention on Biological Diversity as the collective wisdom, inventiveness, and customs of indigenous and local groups. It is closely related to the community's environmental and cultural heritage and has been developed over decades of real-world use. It can take many various forms and is passed down orally from one generation to the next. These include stories, music, folklore, proverbs, cultural values, beliefs, conventions, social norms, indigenous languages, and agricultural techniques like raising crops and caring for animals. It has endured for thousands of years because it has been maintained through oral traditions, storytelling, dance, art, sculpture, and performance. Agriculture, fishing, safety, horticulture, forestry, and environmental preservation are its main areas of

practicality and necessity. This accumulated wisdom adapts over time, responding to societal changes and influencing production techniques to fulfil new requirements. As a dynamic and constantly growing body of knowledge, these innovations build on existing practices, impacting the information handed down to future generations and ensuring the continuous evolution of traditional knowledge.

Conventional expertise involves:

- (a) developing new practices to meet specific needs;
- (b) passing down these practices through generations using cultural customs;
- (c) adhering to intrinsic values within one particular group or community. The neem tree, said to have several purposes in India, is an excellent example of traditional wisdom.

References to this practice can be traced back over 2,000 years in Indian literature, and it has been utilised for thousands of years in fields such as agriculture, human and veterinary medicine, personal care, cosmetics, and as a natural pest repellent. Despite ongoing debates about protecting traditional knowledge spanning more than four decades, a globally accepted definition of the term is still lacking. The regulatory framework that governs traditional knowledge is somewhat unclear. Indigenous knowledge, which is occasionally monetarily valued through various means, is frequently regarded in environmental accords as a way to preserve natural resources. The United Nations (UN) and the International Labour Organization (ILO) have stances that emphasize the need of recognizing indigenous peoples' inherent rights, which disagree with this. However,

international commercial law, which primarily serves to further the financial interests of developing countries and multinational corporations, contrasts sharply with the emphasis on environmental preservation and indigenous rights. Given the complexities and ambiguities within international legal systems, the balance of various interests in traditional knowledge policies largely hinges on how they are implemented at the national level. Traditional knowledge and cultural expressions are considered valuable national resources with considerable economic promise. However, often, foreign entities seek ownership without equitable benefit-sharing, resulting in conflicts between developed and developing nations, as illustrated by cases in Indonesia. The inability to create a comprehensive protection system is due mainly to the lack of a suitable legal framework, exacerbated by insufficient data, documentation, and information.⁵

Indigenous groups have a wealth of knowledge regarding medicinal plants, healing methods, and holistic wellness practices that have been meticulously developed and honed over generations. In agriculture, traditional wisdom fosters sustainable farming techniques, strategies for seed conservation, and efforts toward environmental protection. Craftsmanship deeply entwined with indigenous customs showcases artisans who exhibit extraordinary talent in weaving, pottery, carving, and textile creation. Each handmade item embodies cultural heritage, ancestral craftsmanship, and unique indigenous artistic expressions.

⁵Andi Tyas Tri Wibowo and Joko Setiyono, “Legal Protection of Traditional Knowledge (Comparative Study of Bangladesh, Australia, and Indonesia)” 5 *International Journal of Social Science and Human Research* 4602, 4603-4604 (2022).

Storytelling is crucial in preserving myths, folklore, and oral traditions, conveying ethical principles, spiritual beliefs, and cultural teachings from one generation to the next. Cultural heritage includes ancestral insight, indigenous languages, spiritual practices, and collective festivities, significantly contributing to social unity, resilience, and the continuity of traditions across generations. Maintaining cultural practices is vital for reinforcing indigenous rights, self-determination and sovereignty while underscoring the importance of indigenous knowledge systems in supporting global diversity and sustainability. Protecting IP ensures that indigenous communities keep control over their traditional knowledge and cultural legacy. Legal structures enable these communities to claim ownership, regulate access, and prevent exploitation. Mechanisms like patents, trademarks, copyrights, and geographical indications offer the necessary legal structures for protection. Traditional knowledge, gathered over centuries, carries considerable value in fields like medicine and agriculture yet is frequently utilized without adequate recognition, compensation, or legal safeguards. Intellectual property rights help prevent cultural misrepresentation and unauthorised use, ensuring the preservation and dignity of indigenous heritage. Furthermore, these legal protections help deter biopiracy and unauthorised exploitation by providing avenues for addressing violations. By securing intellectual property rights, indigenous communities can uphold their sovereignty over their knowledge and traditions, safeguarding them for future generations.⁶ Indigenous communities encounter various challenges in preserving their

⁶ *Id.* at 5.

traditional knowledge and cultural heritage. The Indigenous and Tribal Peoples Convention of 1989 states that Indigenous peoples differ from other national groups due to their distinctive economic, social, and cultural traits. They frequently adhere to their enduring customs, traditions, and governance structures, and their identity is deeply connected to their ancestral heritage. These obstacles arise from historical injustices, systemic discrimination, and the difficulty of harmonising traditional knowledge with contemporary legal frameworks. A significant concern is biopiracy, wherein companies take advantage of indigenous knowledge for profit without consent or fair compensation. This usually involves patenting traditional remedies, plants, or genetic resources that indigenous communities have depended on for generations. The lack of robust legal protections renders these communities susceptible to exploitation, jeopardising their ability to manage their intellectual and cultural property. Another pressing issue is the insufficient legal recognition of traditional knowledge within current intellectual property frameworks. Indigenous customs, oral traditions, and cultural expressions do not conform to established intellectual property laws, making them vulnerable to unauthorised utilisation and appropriation. The absence of formal documentation and legal recognition of oral histories adds to the challenges of asserting ownership rights and preventing misuse. Furthermore, indigenous groups often face issues related to poverty, marginalisation, and restricted access to legal resources, which makes it even more challenging to protect their cultural heritage. Many indigenous organisations lack the financial support, technical

expertise, and institutional backing to advocate for their rights and safeguard their traditions effectively.

Laws Related to Traditional Knowledge in India

The jurisprudential framework in India concerning Intellectual Property Rights has significantly evolved over recent decades, as evidenced by codified statutes addressing the recognition, registration, and resolution of intellectual property disputes. Nevertheless, a conspicuous absence of dedicated legislation to safeguard traditional knowledge remains. Traditional knowledge has instead been addressed through various other intellectual property laws. A notable illustration of incorporating traditional knowledge within Indian legal statutes is the Patents Act of 1970, particularly Section 3(p),⁷ which articulates that any invention rooted in conventional knowledge shall not be classified as legitimate. This provision serves as one of the grounds upon which a patent may be denied, contingent upon an objection being lodged either before or after the patent's issuance, as delineated in Sections 25 (1)(K)⁸ and 25 (2)(K)⁹ of the Patents Act, 1970. Another instance of the explicit acknowledgement of the preservation of traditional knowledge is embodied in Section 2(k) of the Plant Varieties and Farmers Rights Act, 2001, which is fundamentally designed to uphold the rights of farmers and their pivotal contributions towards the conservation, enhancement, and

⁷ The Patents Act, 1970 (Act 39 of 1970), s. 3(p).

⁸ The Patents Act, 1970 (Act 39 of 1970), s. 25(1)(k).

⁹ The Patents Act, 1970 (Act 39 of 1970), s. 25(2)(k).

utilisation of plant genetic resources.¹⁰ This legislation addresses the registration of both “extant variety” and “farmers variety” by individual farmers or collectives. Extant variety is characterised as “traditionally cultivated and evolved by farmers.” The Act implicitly acknowledges the traditional knowledge and indigenous methodologies farmers across India employ. Similarly, another legislative instrument designed to protect Intellectual Property Rights is the Geographical Indications Act of 1999, which protects products produced and marketed under a specific geographical indication. This Act protects individuals who harness traditional knowledge in producing and marketing goods and services while utilising a designated geographical indication.¹¹ Indigenous people can protect traditional knowledge as trade secrets for free. All they need to do is make a conscious effort to keep their information concealed. Traditional knowledge is often exclusively shared by community members and hence may be protected as a trade secret. However, the problem with this strategy is that it is unsuitable for mass use and exploitation. The Designs Act of 2000 forbids the registration of some designs that are not fresh or unique or previously revealed to the public in tangible form before the filing date. In this manner, the Act can safeguard particular areas of traditional knowledge.

¹⁰The Protection of Plant Varieties and Farmers’ Rights Act, 2001 (Act 53 of 2001), s. 2(k).

¹¹Aditya Vemulakonda, “Intellectual Property Rights Law Protection of Indigenous Knowledge” 2 *International Journal of Advanced Legal Research* 1,6-7 (2021).

Traditional Knowledge Digital Library (TKDL)

Since disputes regarding intellectual property over India's traditional knowledge emerged in the late 1990s, the Indian government has initiated the Traditional Knowledge Digital Library (TKDL) project. This project is a comprehensive collection of traditional knowledge from various regions of the Indian subcontinent. The primary purpose of the TKDL is to help international patent offices assess whether an invention or creation can be patented, considering the existence of previously recorded traditional knowledge. The library was created in response to legal challenges over patents granted by the European Patent Office and the United States Patent Office for Neem and Turmeric. Similarly, the World Intellectual Property Organization (WIPO) has developed an Intellectual Property Digital Library that serves a comparable purpose. Although the TKDL offers considerable advantages in fighting bio-piracy and obstructing unjust patents, it faces several challenges that complicate its navigation and effective implementation. Since the TKDL is tailored for international use, it must adhere to universally accepted classification standards.

The TKDL is a joint initiative led by the Government of India in collaboration with the Council for Scientific and Industrial Research (CSIR) and the Ministry of AYUSH. It aims to organise and compile India's rich traditional knowledge into a unified database, accommodating a variety of languages and formats. The library is vital in aiding patent examiners as they review prior art while evaluating patent applications at International Patent Offices (IPOs). The TKDL is notable for its structured and accessible format, ensuring

that traditional knowledge is efficiently categorised. Traditional Indian knowledge, initially documented in languages such as Sanskrit, Urdu, Arabic, Persian, and Tamil, is systematically translated into five major international languages—English, French, Spanish, German, and Japanese—enhancing its accessibility for patent examiners globally. The structure of the TKDL resembles that of typical patent applications, facilitating examiner comprehension. Each entry in the database contains references to traditional Indian texts, complete with hyperlinks to digitised versions of the original manuscripts. The TKDL has implemented the Traditional Knowledge Resource Classification (TKRC) to enhance the classification process, which aligns with the International Patent Classification (IPC) framework. Database entries are assigned both TKRC and IPC codes for uniformity.

Another essential feature of the TKDL is its restricted access. The entire database is solely available to patent examiners at specific regional patent offices. However, a publicly accessible version containing 1,200 sample entries can be found on the TKDL website. The setting up of the TKDL has dramatically aided in safeguarding India's traditional knowledge while preventing its unauthorised patenting. By functioning as a central repository of indigenous wisdom, it empowers patent offices to thoroughly evaluate applications that may involve aspects derived from traditional knowledge. This initiative has effectively bridged the language gap between conventional knowledge custodians and patent authorities. The TKDL has been instrumental in contesting patent applications

globally, resulting in the successful opposition of 36 patent claims in Europe alone.

The Traditional Knowledge Resource Classification (TKRC) is a sophisticated framework developed to systematically organise and categorise traditional medicinal practices. It classifies traditional Indian medicine into roughly 25,000 subcategories, encompassing Ayurveda, Unani, Siddha, and Yoga. By integrating this classification with the International Patent Classification system, TKRC has broadened the scope of sub-groups under A61K 36/00, expanding upon the previously limited A61K 35/00 classification. This improvement has enhanced the precision of prior art searches and patent examinations related to traditional medicinal knowledge. In 2011, in partnership with CSIR, WIPO conducted an international conference in New Delhi focused on “The Utilization of the Virtual Knowledge Digital Library as a Model for Safeguarding Traditional Knowledge.” As part of this effort, WIPO facilitated an "International Study Visit to TKDL" for representatives from 19 nations interested in adopting India's method of protecting traditional knowledge. The TKDL has effectively prevented unauthorised claims on traditional knowledge while maintaining its intellectual and cultural integrity. Instead of limiting the use of traditional knowledge, its main objective is to avoid the improper granting of patent rights due to inadequate access to prior art. Furthermore, it guarantees that valuable traditional wisdom remains accessible to current and future generations.

The Proposed Bill of 2016: Salient Features

In response to climate change, farming communities have started conserving rice seeds for future planting, raising concerns about interpreting and assessing the framework established in the Traditional Knowledge Bill, 2016. The preamble of the Bill clearly states the importance of protecting, preserving, promoting, and advancing traditional knowledge. When analysing a legislative proposal, it is essential to determine whether its core provisions introduce any doctrinal uncertainties or limitations. A detailed examination of the commercial and non-commercial elements within the Bill's definition shows a significant focus on the marketability of products stemming from traditional knowledge. Nonetheless, the definitions do not indicate whether explicit or implicit consent is required from the knowledge holders or rightful owners. While the Bill mainly tackles commercial misuse and misappropriation issues, current challenges increasingly centre on bio-piracy. Any legislative initiative must deal with existing legal concerns and foresee future challenges. The Bill provides a thorough definition of traditional knowledge, integrating insights from the sessions of the Intergovernmental Committee on Traditional Knowledge, genetic resources, and folklore. Acknowledging traditional knowledge recognises the diverse knowledge systems across India's rich cultural and geographical landscape.

Section 3 of the Bill¹² lays down that depending on the situation, the custodians of traditional knowledge can be either the Central or State government. Furthermore, this section allows for the transfer of

¹²The Protection of Traditional Knowledge Bill, 2016, s. 3.

custodianship if a community can furnish adequate evidence as stipulated in clause two. However, this requirement places an unreasonable burden on Indigenous communities, which must demonstrate ownership of knowledge that has inherently belonged to them for centuries. This paradox is particularly significant, as many of these communities have historically been isolated from external influences. On the international stage, the International Covenant on Civil and Political Rights (ICCPR) emphasises preserving cultural rights and guaranteeing their active enjoyment. Article 1.2 of the ICCPR proclaims that no community should be deprived of its means of subsistence.¹³ Building on this principle, Section 4 of the Bill provides officially recognised custodians with specific rights.¹⁴ Previous cases of bio-piracy illustrate that indigenous knowledge holders frequently face challenges in validating their ownership because of legal and systemic obstacles. This section also links trademark law and traditional knowledge by permitting an official entity to assign a 'Brand Name' to specific knowledge. Additionally, this provision enables traditional knowledge holders to profit meaningfully from their intellectual heritage. Section 4 further reinforces the concepts of 'Prior Informed Consent' and 'Fair and Equitable Sharing of Benefits,' which can be monetary or non-monetary. Section 4(2) affirms that practitioners of traditional knowledge retain rights to its commercial and non-commercial usage.¹⁵ Clause 3 stipulates that communities are permitted to issue

¹³ The International Covenant on Civil and Political Rights, art. 1.2.

¹⁴ The Protection of Traditional Knowledge Bill, 2016, s. 4.

¹⁵ The Protection of Traditional Knowledge Bill, 2016, s. 4(2)

licenses to use their knowledge, with the ability to revoke such permits if granted to non-members.¹⁶

Given the commercial exploitation and appropriation of traditional Knowledge, indigenous communities have increasingly turned to legally binding contracts to assert their rights. Nevertheless, these agreements frequently result in one-time compensation rather than ongoing benefit-sharing. Section 4 is aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), particularly Articles 11-31, which recognise the rights of indigenous peoples to preserve, protect, and develop their cultural heritage, including traditional knowledge. Article 11 asserts that indigenous groups can protect and foster cultural expressions comprising archaeological sites, artefacts, rituals, and artistic traditions.¹⁷ Article 31 expands these rights to encompass control over genetic resources, medicinal knowledge, oral traditions, and intellectual property. Governments are accountable for taking measures to protect these rights in cooperation with Indigenous communities.¹⁸

Section 8 of the Bill stipulates that no patents or other intellectual property rights shall be awarded for traditional knowledge originating in India.¹⁹ This provision seeks to thwart the unauthorised appropriation of traditional knowledge via bio-piracy. Bio-piracy presents a significant challenge in establishing legal protections for

¹⁶ Spadika Jayaraj, "Towards a Nuanced Approach to Protection of Traditional Knowledge", *SPICY IP*, available at <https://spicyip.com/2015/07/guest-post-towards-a-nuanced-approach-to-protection-of-traditional-knowledge.html> (last visited on February 17, 2025).

¹⁷ The Protection of Traditional Knowledge Bill, 2016, s. 11.

¹⁸ The Protection of Traditional Knowledge Bill, 2016, s. 31.

¹⁹ The Protection of Traditional Knowledge Bill, 2016, s. 8.

commercialising traditional and Indigenous knowledge. The Bill links the misappropriation of traditional knowledge and its exclusion under Section 3 of the Patents Act 1970. Additionally, any innovation that arises from traditional knowledge and requires patenting must secure prior approval from national authorities, as detailed in Section 8. The main legal difficulty in formulating a framework for traditional knowledge resides in accurately defining misappropriation and addressing its nuances. Section 9 details the characteristics of misappropriation, emphasising that any unauthorised patenting or commercial exploitation of traditional knowledge without appropriate consent is deemed misappropriation.²⁰ The justification for safeguarding traditional knowledge within intellectual property laws is often based on its commercial worth. Unauthorised utilisation undermines the economic potential of traditional knowledge, making legal protections vital. To strengthen these safeguards, misappropriation has been categorised as a punishable offence, ensuring the availability of civil and criminal remedies.

A practical legal framework must provide enforceable rights and efficient remedies. Section 10 of the Bill grants custodians the right to pursue legal action, including claims for damages and injunctions, as determined by the judiciary.²¹ This aligns with Article 11(2) of UNDRIP, which requires restitution when traditional knowledge has been exploited without proper authorisation. A notable aspect of the Bill is the creation of the National Traditional Knowledge Fund under

²⁰ The Protection of Traditional Knowledge Bill, 2016, s. 9.

²¹ The Protection of Traditional Knowledge Bill, 2016, s. 10.

Section 20.²² This initiative acknowledges community custodianship and establishes a national body to oversee the benefits and royalties of traditional knowledge, guaranteeing fair distribution. The fund aims to facilitate the preservation, promotion, and enhancement of traditional knowledge. This conforms with Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which ensures the right to benefit from scientific advancement while safeguarding economic interests. The clause also aims to protect the moral and material interests tied to cultural and scientific creations. However, these rights must be integrated into national laws to be enforceable. Section 20 of the Bill reflects this concept by creating a national framework for managing traditional knowledge. A significant issue in traditional knowledge law is the lack of awareness among Indigenous and traditional communities regarding their rights. Section 35 of the Traditional Knowledge Bill 2016 clearly states that communities asserting themselves as legitimate custodians of traditional knowledge may submit requests for official recognition to national authorities. According to Section 35, the national authority must provide a one-month timeframe for objections before bestowing custodianship status.²³ The right to cultural expression, as outlined in the International Bill of Human Rights, includes both substantive protections and procedural safeguards. These rights should be upheld at all levels of government—legislative, executive, and judicial—as

²² The Protection of Traditional Knowledge Bill, 2016, s. 20.

²³ The Protection of Traditional Knowledge Bill, 2016, s. 35.

stated in Article 2 of the ICCPR.²⁴ The proposed legal structure must incorporate principles of natural justice to address the unique vulnerabilities of indigenous communities. One urgent issue is that incidents of traditional knowledge misappropriation may only be pursued if the central government, an authorised entity, or an impacted party formally lodges grievances. In the absence of such complaints, numerous instances of non-consensual commercial exploitation may go unchallenged. UNDRIP calls for a mechanism to redress the exploitation of traditional knowledge, making it crucial that any legal framework incorporates this tenet. A legal system that does not offer sufficient remedies would ultimately prove ineffective in safeguarding the rights of Indigenous communities.²⁵

The 2022 Bill: An Analysis

The Traditional Knowledge Bill, 2022 is a legislative proposal in India designed to protect traditional knowledge and genetic resources from unauthorised usage or exploitation. It was first introduced by Dr Jitendra Singh, the Minister of Science and Technology, in the Lok Sabha in August 2022. It was later reintroduced by Dr Shashi Tharoor in April of the same year with amendments to address issues in the initial version. Critics contend that the proposed law does not adequately align traditional knowledge with protecting intellectual

²⁴ UN Economic and Social Council, *Partnering with Custodians of Traditional Knowledge Key to Tackling Climate Change, Protecting Humanity, Speakers Stress as Permanent Forum Continues Session*, HR/5432 (April 23, 2019).

²⁵ Deepika Chhangani and Afrin Khan, “The Traditional Knowledge Bill, 2016: Biopiracy and Protection of Cultural Rights” 12 *Christ University Law Journal* 59, 61-66 (2023).

property rights (IPR). Specifically, the bill maintains that traditional knowledge exists outside the realm of IPR since it is not deemed an innovation owned by any individual but is instead viewed as a cultural heritage handed down through the ages. Therefore, the bill suggests a legal structure to guarantee preserving, promoting, and protecting traditional knowledge and related genetic resources. It also proposes the creation of a National Traditional Knowledge Authority tasked with managing the registration, documentation, and conservation of this knowledge. Furthermore, the bill advocates for establishing a Traditional Knowledge Digital Library (TKDL) to act as a repository, allowing patent examiners to assess existing traditional knowledge before granting patents.²⁶ RS Praveen Raj, the Principal Scientist for Intellectual Property Management and Technology Transfer at CSIR-NIIST in Thiruvananthapuram, played a significant role in drafting the bill for Dr Tharoor. He underscores the ongoing dependency on traditional knowledge among many segments of the population, warning that inadequate protection could adversely affect the interests of knowledge custodians. The bill mainly focuses on the issue of patenting traditional knowledge while giving less priority to other forms of IPR. Patents and intellectual property rights provide exclusive ownership over new inventions and ideas, and India has made several attempts in the past to extend such exclusivity to traditional knowledge. Nevertheless, the 2022 bill is a setback for the original knowledge holders. Instead of incorporating traditional

²⁶ Martin Fredriksson, “Balancing Community Rights and National Interests in International Protection of Traditional Knowledge: A Study of India’s Traditional Knowledge Digital Library” *Third World Quarterly* 352-370 (2022).

knowledge into the IPR system, it presents an alternative model centred on protection, sustainability, and cultural preservation. Unlike previous efforts that aimed to integrate IPR-based safeguards, this new strategy completely avoids existing IPR structures. Praveen Raj states this legislation seeks to avert the exploitation of traditional knowledge while ensuring an equitable distribution of benefits among all rightful custodians.²⁷ However, rather than attributing ownership rights to those who hold traditional knowledge, the bill allocates ownership to states or union territories, thereby reducing the authority of indigenous knowledge custodians. Under the proposed legislation, only individuals or groups registered as part of a 'knowledge society' and officially recognised by the Central government would be considered custodians.

One significant element of the 2022 legislation is its acknowledgement of the importance of traditional knowledge in achieving sustainable development. The law aims to merge indigenous insights with contemporary scientific practices to further sustainability objectives. Furthermore, it suggests the creation of a Traditional Knowledge Fund to back research and development projects related to traditional knowledge and genetic resources. This fund is designed to economically empower Indigenous communities and ensure they are actively involved in decisions regarding their cultural heritage. The Bill marks a crucial advancement in protecting and promoting traditional knowledge in India, addressing previous legislative

²⁷ L. Gopika Murthy, "Traditional Knowledge Protection: What is the way forward?" *SpicyIP*, available at <https://spicyip.com/2015/09/traditional-knowledge-protection-what-is-the-way-forward.html> (last visited on February 17, 2025).

shortcomings. Over time, the exchange of traditional knowledge across various cultures has made it difficult to trace its origins. For example, *kava*, a medicinal drink, is prevalent in northern India and various Pacific regions. Likewise, neem leaves are commonly utilised throughout South and Southeast Asia. In such instances, identifying the rightful stewards of traditional knowledge becomes complicated, often leading to its classification as knowledge in the public domain. When several communities lay claim to ownership, it becomes difficult to determine a single legitimate owner, thus complicating the patenting process.

A significant question raised by this bill is whether excluding intellectual property rights (IPR) from the protection of traditional knowledge is advantageous or could impede India's progress in protecting its cultural legacy. Numerous countries have implemented intellectual property legislation to safeguard traditional knowledge, although some types of knowledge may still fall outside the reach of IPR protections. The patent system necessitates that inventions fulfil criteria such as novelty and exclusivity, which do not always pertain to traditional knowledge. While traditional knowledge holds cultural, social, and economic significance, it frequently does not qualify for patent protection due to the lack of a discernible creator and the fact that it has been transmitted through generations. Globalisation has intensified conflicts between traditional knowledge and IPR, especially as companies have sought to claim ownership of indigenous methods. Since any singular entity does not own traditional knowledge but is instead shared among communities, it challenges the

traditional IPR framework. Although collective intellectual property ownership is possible, it requires formal recognition of the contributors who actively shape and maintain the knowledge. The bill offers both pros and cons. The decision to exclude IPR from protecting traditional knowledge could prove beneficial, as traditional knowledge represents a dynamic body of wisdom that does not fit neatly within the current IPR structure. Because patents are granted for a finite period, applying IPR protection to traditional knowledge would impose time limits that may not correspond with the necessity for perpetual safeguarding. Unlike patented innovations, traditional knowledge needs to be protected indefinitely. Another issue arises from the oral tradition of traditional knowledge, as numerous indigenous practices have been orally transmitted over generations without written documentation. This absence of formal records complicates efforts to assert ownership within the IPR framework.

Comparative Analysis of 2016 & 2022 Draft

Similarities

Safeguarding traditional knowledge is crucial in stopping its unauthorised usage, exploitation, and commercialisation, mainly when such actions occur without the informed consent of the communities that possess this knowledge. The wrongful appropriation and misuse of traditional knowledge can lead to serious repercussions, including damage to cultural heritage, economic exploitation, and the infringement of indigenous rights. The legislative measures proposed

in both bills aim to protect traditional knowledge and genetic resources from misappropriation and exploitation. One key strategy for preserving traditional knowledge is the creation of a National Traditional Knowledge Authority (NTKA). This organisation would be tasked with documenting and registering traditional expertise and its related genetic resources. Furthermore, it would act as a platform for indigenous communities to actively protect and manage their knowledge. Both the Traditional Knowledge Bill of 2016 and its revised version from 2022 suggest establishing the NTKA to supervise the registration and documentation of traditional knowledge. In addition, this authority would play a vital role in raising awareness by organising seminars, workshops, and public outreach initiatives to emphasise the importance of traditional knowledge as a cultural asset that should be preserved for future generations.

Another important initiative for the protection of traditional knowledge is the development of a Traditional Knowledge Digital Library. This library would serve as a centralised archive, providing easy access to traditional knowledge and genetic resources for policymakers, researchers, and the public. This initiative would help prevent its loss or disappearance by systematically documenting and conserving traditional knowledge. The advantages of such a library are broad: it would facilitate knowledge-sharing among communities, researchers, and stakeholders, enhance the recognition of traditional knowledge as a vital element of cultural heritage, and ensure that this knowledge is secured for future generations. Both legislative proposals endorse the creation of this digital library as a crucial

resource for preserving traditional knowledge. An essential component of the Bills is to prohibit patenting of traditional knowledge. The unauthorised acquisition and commercial exploitation of such knowledge by corporations and entities looking to patent for profit, remains a significant concern. This practice undermines the rights of the communities that hold this knowledge and poses a threat to biodiversity and sustainable resource management. The proposed legislation incorporates measures to disallow the patenting of traditional knowledge and related genetic resources. It mandates that any patent application based on traditional knowledge must provide proof of prior informed consent from the community and ensure that benefits arising from the patent are justly shared. Additionally, the bills aim to empower patent examiners with access to traditional knowledge databases to review and evaluate patent applications before granting approval, thereby enhancing protections against unauthorised claims over traditional knowledge.

Differences

The Traditional Knowledge Bill, 2022 recognises the significance of traditional knowledge in promoting sustainable development. In contrast to the 2016 Bill, it explicitly seeks to merge traditional knowledge with modern scientific practices to bolster sustainability. All research or commercial endeavours involving traditional knowledge must be conducted in an environmentally and socially responsible manner, ensuring that they do not result in resource depletion or negatively impact the communities that protect this knowledge. Moreover, the Bill encourages the sustainable use of

traditional knowledge by integrating it with scientific and technological progress, fostering innovative solutions to current social and environmental issues.

Furthermore, the Bill suggests the establishment of a Traditional Knowledge Fund to finance research and development related to traditional knowledge and genetic resources, a feature that the 2016 bill lacked. This fund aims to support the preservation, protection, and promotion of conventional expertise while also helping to create sustainable livelihoods for communities that hold this knowledge. It will be financed through government appropriations, donations, grants, and other sources. By funding documentation, research, and capacity-building projects, the fund will ensure the ongoing protection of traditional knowledge and contribute to poverty alleviation and sustainable development.

Another significant aspect of the 2022 Bill is the implementation of penalties for the unauthorised usage, misappropriation, or commercialisation of traditional knowledge and genetic resources, which were absent in the 2016 Bill. Misappropriation is defined broadly to include any unauthorised usage, disclosure, or exploitation of conventional knowledge without the prior informed consent of the community or individuals who possess it. The Bill outlines penalties of up to three years in prison and/or a fine of up to Rs. 25 lakhs for first-time offences, increasing to five years of imprisonment and/or Rs. 50 lakhs for subsequent violations. These penalties affirm the importance of traditional knowledge and act as a deterrent against its improper use.

The 2022 Bill also officially acknowledges the role of tribal communities in safeguarding and promoting traditional knowledge, ensuring their involvement in decision-making processes regarding their cultural heritage. Unlike the previous Bill, this version necessitates the establishment of a Tribal Traditional Knowledge Council, consisting of representatives from various tribal groups. This Council will guide the National Traditional Knowledge Authority on the misappropriation, documentation, and distribution of traditional knowledge. By involving tribal communities directly, the Bill enhances efforts to protect traditional knowledge while respecting their rights and contributions.

In short, the Bill of 2022 resolves the inadequacies of the previous Bill by incorporating essential measures such as penalties for misappropriation, a dedicated fund, and the official inclusion of tribal communities. These provisions represent significant advancements in protecting and promoting India's traditional knowledge, ensuring its sustainable use while safeguarding cultural heritage.

Conclusion

After undertaking an exhaustive examination of the intricate facets of traditional knowledge, it becomes increasingly apparent that, on one hand, it functions as the cultural cornerstone of any nation; conversely, it also constitutes a vital resource that demands strategic utilization to promote economic development. Nevertheless, the delicate balance between protecting the rights of indigenous

populations and the benefits accrued from the commercialization of advancements pertaining to such knowledge to be preserved to ensure socio-economic harmony. In the Indian context, where substantial efforts have been made to safeguard traditional knowledge, the escalating demands of the Indian populace, when contrasted with the limited investment opportunities, have transformed it into an unexploited resource that awaits efficacious utilization. Consequently, without encroaching upon the rights of indigenous communities and while giving due respect to India's cultural heritage, commercial entities should progressively engage with the vast repository of TK to address the growing needs of the nation's populace. Moreover, in light of the prevailing legal framework that supports both community rights and a favorable environment for patenting, it is imperative to systematically promote benefit-sharing agreements to maintain the balance between TK custodians and innovators. The comparative analysis of the Traditional Knowledge Bills from 2016 and 2022 highlights significant progress in legislative aims, scope, and implementation strategies. While the 2016 draft laid the foundation for recognizing and protecting traditional knowledge, the 2022 draft introduced more comprehensive provisions, encompassing enhanced community rights, more transparent benefit-sharing frameworks, and reinforced enforcement mechanisms. The shift towards a more inclusive and globally aligned framework in the 2022 draft signifies an increasing awareness of the complex issues surrounding traditional knowledge and the rights of Indigenous peoples. Nonetheless, challenges such as enforcement gaps, community representation, and

potential conflicts with existing intellectual property laws continue to represent significant areas requiring further refinement.



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PARODY OR INFRINGEMENT? THE DELHI HIGH COURT'S RULING IN TATA SONS V. GREENPEACE²⁸

Abstract

The present research paper examines the classic case Tata Sons Limited vs Greenpeace International & Anr (2011), wherein the Delhi High Court had pondered the crossroads of trademark law, freedom of speech, and parody. The case originated in a video game published by Greenpeace that attacked the Tata Group's participation in the Dhamra Port venture, accusing environmental damage to Olive Ridley turtles. Tata Sons had gone to court praying for a trademark infringement injunction and defamation. However, the court reiterated Greenpeace's right to freedom of expression, noting that parody and denominative use of a trademark to make a statement of criticism need not be infringement. The ruling is consistent with global jurisprudence weighing intellectual property rights against public interest and free speech. By analyzing judicial reasoning, precedent, and comparative case law, this paper brings to light the implications of the judgment on corporate reputation, activism, and legal doctrines of trademark dilution and fair use.

²⁸ Logasri, Student, Vellore Institute of Technology, Paper Id:- IPV03VI25II04

Keywords: *Free speech, trademark law, parody, defamation, Greenpeace, Tata Sons, intellectual property, environmental activism, public interest, judicial precedent.*



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Introduction

The issue of intellectual property versus freedom of expression has been contentious in law, especially when the issue has been under trademark law and criticism. The Tata Sons Limited vs Greenpeace International & Anr (2011),²⁹ is the prime example of this conflict, where a corporation sued an NGO for allegedly violating its trademark in an online game intended to criticize the environmental activities of the corporation. This article analyzes the case from legal and juristic perspectives regarding broader implications for the law of trademarks, parody, and freedom of expression in India. Based on a reading of the court's logic and relevant precedents in Indian and foreign law, this research essay attempts to analyze the effect of the judgment on corporate litigation strategy, green movements, and the evolving legal landscape around intellectual property and public interest litigation.

Background

The Tata Sons Limited v Greenpeace International & Anr (2011) case resulted from a clash between the trademark protection right of a company organization and freedom of expression in the context of environmental activism. Following the completion of the Dhamra Port in India's Odisha, Greenpeace released the video game Turtle vs. Tata. It has been reported that the port built by Larsen & Toubro and Tata Steel together is endangering Olive Ridley nesting grounds.

²⁹ Tata Sons Limited v. Greenpeace International & Anr., I.A. No. 9089/2010 in CS (OS) 1407/2010, Delhi High Court, decided on 28 January 2011.

Greenpeace developed the video game to raise awareness of the environmental concerns associated with the project. Due to trademark infringement and dilution under the Trade Marks Act of 1999, Tata Sons, the parent business of the Tata Group, filed a lawsuit against Greenpeace for utilizing its registered brand (TATA) and logo in the game without permission. Tata Sons further asserted that the game was defaming the company by depicting it as an evil company which was causing harm to the environment and that it would harm its goodwill and reputation. Greenpeace claimed that their act was legal since the game is satire and just criticism and would qualify as covered by freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Greenpeace claimed that its invocation of the Tata trademark was "denominative"—that is, it was merely indicating that the company was the focus in discussing matters related to the environmental sustainability of the port development project and was not attempting to confuse or to take unfair advantage of using the trademark. The case raised basic questions of law regarding how much intellectual property rights could be stretched over non-commercial, critical, or parodic use of trademarks. The role of the court in defending free expression without being hampered by trademark laws was another major theme of this case. By refusing Greenspace an interim injunction, the Delhi High Court rendered a historic decision, arguing that trademark laws cannot impede reasonable criticism, especially when it comes to matters of public interest.

Judgment

The Delhi High Court, in granting its order, refused to grant an interim injunction against Tata Sons Limited, maintaining the very principles of free speech and public interest. The court derived strength from the settled principle in *Bonnard v. Perryman*³⁰ to the extent that courts are generally reluctant to grant prior restraints on speech, even more so where the case is defamation unless it is clear that the plaintiff will succeed at trial. The court looked at the nature of Greenpeace International's use of the logo and mark "TATA" in its video game, *Turtle vs. Tata*, intended to denounce the Dhamra Port project. The court observed that the mark was used in a denominative and parodic manner to denounce Tata's alleged ecological harm and not to exploit the trademark for gain. Referring to *Louis Vuitton Malletier S.A. v. Haute Diggity Dog*³¹ and *Esso v. Greenpeace*,³² the court further indicated that satire and parody that is for critical comment does not necessarily amount to trademark infringement or defamation. Also, the ruling noted that an injunction would stifle public debate on a significant environmental concern contrary to the free speech values of a democratic country. The court held that Tata Sons had failed to establish a case warranting an immediate need for interim relief and dismissed the application for an injunction, allowing the case to proceed to trial.

³⁰ *Bonnard v. Perryman* [1891] 2 Ch 269 (UK)

³¹ *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252 (4th Cir. 2007)

³² *Esso v. Greenpeace*, C-100/02, [2003] ECR I-11757

Analysis

Delhi High Court ruling in *Tata Sons Limited v. Greenpeace International & Anr* maintains the delicate balance between trademark rights and freedom of speech, especially where parody and public interest criticism are involved. The ruling reaffirms that trademark law should not be employed to suppress critical speech, especially when a mark is not commercial in nature but to bring public awareness. One of the important consequences of the ruling is the use of the rule of *Bonnard v. Perryman*, that is, courts should be highly cautious in issuing interim injunctions where defamation is involved since it would be pre-emptive against free speech. The principle is highly relevant where the subject matter of the alleged defamatory material, such as the environment, is public concern. By refusing to issue an injunction, the court restated the principle of law that restraints upon speech can only be issued in exceptional cases in which the plaintiff has a rational and clear case. Invoking international jurisprudence, e.g., *Louis Vuitton Malletier S.A. v. Haute Diggity Dog* and *Esso v. Greenpeace*, similarly brings Indian law in line with international legal standards on parody and trademark dilution. These judgments confirm that parody is a valuable political and social satire instrument, even if it involves a famous trademark. The court recognized that parody always harms the distinctiveness of a trademark but can also bring about greater public awareness of the mark. The ruling also insists that one considers the reason behind using a trademark. Greenpeace's game, *Turtle vs. Tata* was not made to generate profit

but to satirize Tata's alleged ecological ruin by way of its Dhamra Port business.

The court rightly said that the extreme portrayal of Tata as a nefarious villain in the game was an example of hyperbolic expression, the essence of satire and political. Constraining such an expression would not only silence public debate but also create a wrong precedent for corporate censorship of dissent. The decision also maintains the role of the judiciary in defending democratic values. The court upheld the right of free speech by refusing to get involved in what amounted to public debate on the environment. It thwarted powerful commercial interests from hijacking trademark law to stifle dissenting voices. The case is an excellent precedent for future disputes over trademark rights and the right of free speech, particularly in cyberspace, where critical and satirical speech are increasingly being utilized. The judgment strongly honours free speech rights in India, particularly advocacy and public interest freedoms. The case warns corporations that trademark rights must be protected and that they have not been established to suppress genuine criticism. The case enunciates the broader constitutional commitment to freedom of expression and enforces the promise that judicial processes will not be misused to kill dissenting thoughts.

Conclusion

The Tata Sons Limited v. Greenpeace International case reaffirms the notion of free speech and the importance of free expression of speech

in public discourse. The Delhi High Court's denial of an injunction spared the freedom of satire and criticism, without which trademark law should not be allowed to muzzle activism. The ruling is a necessary precedent because it guarantees that intellectual property rights cannot overshadow democratic ideology and public debate.

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CASE COMMENT: TOYOTA JIDOSHA KABUSHIKI V. M/S PRIUS AUTO INDUSTRIES LIMITED³³

Abstract

The Supreme Court's decision in NR Dongre v. Whirlpool Corporation³⁴ upheld the territoriality principle, stating that trademark protection can be granted even with a cross-border reputation established through media and advertisements without a physical presence in India. In Toyota Jidosha Kabushiki v. M/S Prius Auto Industries Limited, the court upheld the principle, stating that proof of goodwill within India's territorial jurisdiction is necessary to claim the rights of a popular unregistered mark outside the same. The court also highlighted the Trinity Test, which requires tangible evidence to establish trans-border goodwill in India. The court also emphasized examining consumer mindsets, marketing trends, and practices to establish a link between disputed marks and confusion.

³³ S. Varshini, Student, VIT Chennai, Paper Id:- IPV04VI25II04

³⁴ *N R Dongre v. Whirlpool Corporation*, (1996) 5 SCC 714.

Citation: (2018) 2 SCC 1

Court: Honourable Supreme Court of India

Judge(s): Honourable Justice Pradeep Nandrajog and Honourable Justice Yogesh Khanna, JJ.

Introduction

The decision in *NR Dongre v. Whirlpool Corporation*¹, where the Supreme Court reaffirmed that a trademark can be granted protection even with cross-border reputation, established only by means of media and advertisements and no physical presence in India, was a pivotal precedent until the Supreme Court reconsidered this doctrine in 2017. The change took place in the case of *Toyota Jidosha Kabushiki v. M/S Prius Auto Industries Limited*³⁵, which led the Apex Court to consider the applicability of the universality principle in determining trans-border reputation. In a latter decision, the Supreme Court, upholding the territoriality principle, ruled that to claim the rights of a popular unregistered mark outside national jurisdiction, proof of goodwill within India's jurisdiction is necessary. This change indicated a fundamental departure from the previous position and put heavy emphasis on proving inherent value and recognition in the Indian marketplace as a condition for ascertaining protection of famous trademarks around global borders. The judgment emphasized

³⁵ *Toyota Jidosha Kabushiki Kaisha v. M/S Prius Auto Industries Limited*, (2018) 2 SCC 1.

the importance of a physical link to the Indian market, in accordance with the general principle that legal protection must be based on the physical presence and effect within the territorial boundaries of the country. The ruling emphasized the strategic imperative for both domestic and foreign parties to develop and build goodwill in India as a key step towards protecting their intellectual property rights globally.

Background

Toyota Jidosha Kabushiki Kaisha, a multinational automobile producing corporation of Japan, introduced a hybrid model vehicle named 'Prius' in the 1990s, which obtained trademark registrations in different nations. The defendants, M/s Prius Auto Industries Ltd, produced spare parts and accessories for vehicles in India from 2001 and registered the trademark 'PRIUS' in 2002. In 2009, Toyota introduced its PRIUS vehicle in India and started promoting the same. The plaintiff found that the defendants were utilizing the mark 'TOYOTA' and 'PRIUS' for automobile parts and accessories, which caused an unfair gain of their reputation and goodwill in the market. The Trial Court concluded that the defendant is responsible for passing off the plaintiff's trademarks, enjoining them from using the trademarks and awarding punitive damages. The Delhi High Court held in Toyota's favor and said that Toyota's unregistered PRIUS mark is a highly recognized mark internationally and that Toyota enjoyed a trans-border reputation in India by making advertisements in overseas magazines and on the internet. The plaintiff thus approached the

Division Bench of the Delhi High Court, which held that the evidence of the plaintiff was not adequate to prove the trans-border reputation of PRIUS in India at the time the defendants adopted the mark.

The Honourable Supreme Court's Decision on the Issue

The Supreme Court upheld the ruling of the Division Bench and adopted Prius Auto's submissions on the "Territoriality Principle" according to which even if a mark has already acquired a lot of goodwill in foreign jurisdictions, there has to be substantial evidence to establish that it has acquired important trans-border goodwill in India. Further, from a brand-perspective viewpoint, the Apex Court viewed consumers within a given jurisdiction as a fundamental element towards creating goodwill in such a jurisdiction.

Further, the Supreme Court underlined the Trinity Test, as formulated in the case of *Reckitt & Colman Products Ltd. v. Borden Inc.*³⁶

- I. The goods or services have acquired goodwill or reputation in the marketplace that distinguishes such goods or services from competitors;
- II. The defendant misrepresents his goods or services, either intentionally or unintentionally, so that the public may have the impression that the offered goods or services are those of the claimant; and
- III. The claimant may suffer damages because of the misrepresentation.

³⁶ *Reckitt & Colman Products Ltd. v. Borden Inc.*, [1990] 1 All ER 873.

Analysis

According to trademark law, trademarks that have acquired reputation and value in the Indian market for being linked to promotional materials qualify for protection. It is a requirement, however, that tangible evidence be given to support the claim. As an example, if advertisements and news stories published in print media do not reach the wider Indian public, then they cannot become a solid foundation for building up a reputation across borders.

It should be noted that the success of promotional materials, such as print media advertisements, in creating brand recognition and consumer confidence can depend on the cultural values and tastes of the target group. Although such materials can be effective in certain cases, their power to build a trans-border reputation depends on their capacity to appeal to consumers across geographical locations.³⁷

In addition, building a robust reputation through promotional campaigns requires an in-depth understanding of the values, preferences, and communication channels of the target market. In a multicultural and dynamic environment such as India, where cultural and regional differences significantly influence consumer attitudes, brands need to adapt their promotional strategies to reflect the changing needs and aspirations of their consumers.

³⁷ *Bulbul Patni*, “Toyota Jidosha Kabushiki v Ms Prius Auto Industries Limited”, LawBhoomi, available at <https://lawbhoomi.com/toyota-jidosha-kabushiki-v-m-s-prius-auto-industries-limit-ed/> (last visited on April 3, 2025).

Essentially, the safeguarding of trademarks under Indian law depends not just on the availability of promotional material but also on their deep-seated influence over the collective psyche of the masses. Through the use of culturally significant and relatable content in print media and other promotional channels, brands are able to not just find legal protection for their trademarks but also create an enduring reputation that knows no boundaries and strikes a chord with people across the globe.

Toyota Jidosha Kabushiki's reputation across borders with the "PRIUS" car, even on the basis of evidence from magazines and websites, does not establish that Indian consumers were aware of the car prior to 2009. The mark must be known to a significant portion of Indian consumers for it to be recognized in India. In Indian trademark law, the first use rule is the deciding factor in determining the ownership and the protection of rights of a mark in the country's legal framework. M/S Prius Auto Industries, which brought the "PRIUS" car to India as early as 2001, obtained a stronger claim over the trademark. This priority of use cemented M/S Prius Auto Industries as the original owners of the mark and placed emphasis on the legal support and protection granted to their rights by Indian trademark law. The proven history of first use offered a strong foundation for maintaining the argument of M/S Prius Auto Industries, highlighting the significance of giving due priority to the temporal factor of trademark registration and claiming ownership within a territorial jurisdiction such as India. This legal precedence underscores the intricate nuances involved in trademark disputes and the critical role

that establishing first use plays in shaping the outcome of ownership battles within the realm of Indian trademark law.

The claimant is not required to establish genuine misunderstanding once goodwill and reputation have been acquired, held by the court. Rather, by considering the distinctive features of the mark and the circumstances of sale and advertising of the goods, the possibility of misunderstanding can be determined. Prosecutors must provide compelling evidence demonstrating how similar presentation of a product or branding features could lead to confusion among customers. In attempting to establish a link between the disputed mark and confusion, the court further emphasized the necessity of examining consumer mindsets, marketing trends, and marketing practices. This approach enhances the fairness and integrity of trademark litigation processes while providing a solid foundation for establishing claims of confusion.

Conclusion

The current law in India may hinder international brands from establishing themselves due to its rigid territoriality. To adapt to global business dynamics, a modern strategy should be developed, moving beyond traditional territoriality concepts and exploring alternative methods. An integrated strategy that integrates offline and online realms is crucial for successful market adaptation, as online platforms offer unique opportunities for brand exposure and customer engagement.

A CASE ANALYSIS IN ASSOCIATED PRESS V. SHEPERD FAIREY³⁸

Abstract

The precedent-setting case of Associated Press v. Shepard Fairey brought attention to the intersection between artistic expression and intellectual property law. The street artist Fairey's "Hope" poster was inspired by a picture of Barack Obama. The case raised questions about how to balance intellectual property rights, fair use laws, and artist obligations with creative freedom. As part of the 2011 settlement, Fairey agreed to divide the poster's sales revenues and refrain from using another AP photo without permission.

The Associated Press v. Shepard Fairey case serves as an example of the importance of transformative usage in copyright cases, maintaining integrity in court, and protecting photos. Because of the settlement, Fairey's stylized and accurate poster was not deemed sufficiently transformative. According to the prosecution, Fairey's work had a commercial impact, which emphasized the necessity of licenses or permits when using copyrighted works. The case also highlighted the legal and ethical responsibilities that artists have

³⁸ K.S.D Janani, Student, VIT Chennai, Paper Id:- IPV05VI25II04

when dealing with copyrighted works. The case highlights how unclear the fair use theory is when it comes to visual art matters.



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Introduction

The well-known copyright case of Associated Press v. Shepard Fairey serves as an example of how intellectual property law and artistic creations interact. The dispute began when the Associated Press (AP) accused Shepard Fairey, a famous street artist, of exploiting one of their images without their consent to create his now-famous "Hope" poster of Barack Obama. In the context of transformative works, this case serves as an example of the legal conflict between copyright rights and the idea of fair use. Most issues surrounding the limits of fair use and artists' requirements when employing copyrighted work are still left unanswered by the parties' ultimate agreement.

Background

The "Hope" poster, created by Shepard Fairey, was one of the most recognizable images from Barack Obama's 2008 presidential campaign. AP photographer Mannie Garcia's 2006 image of then-Senator Obama during a press conference served as the inspiration for the piece. Inspired by the photo, Fairey painted a graphic reproduction with the term "HOPE" typed in red, white, and blue at the bottom.

The Associated Press asserted ownership of the original photograph and asserted Fairey's infringement on its copyright soon after the poster became widespread notoriety. Fairey said that his work constituted fair use under US Copyright Law and launched a lawsuit in advance of the AP's demand for payment and licensing costs.

Artists, copyright specialists, and lawyers became instantly interested in the case since it brought up significant issues about how to balance artistic freedom with intellectual property rights.

Legal issues

In this case, the key question of law was if Fairey's utilization of the AP photo qualified under "fair use," which allows for the unconditional utilization of copyrighted material for teaching, research, criticism, commentary, news reporting and scholarship. Courts consider the following under the four factors set forth in 17 U.S.C. § 107³⁹:

- 1) The first two considerations are Whether or not the use is transformative and whether or not it is commercial use.
- 2) The copyrighted material's character, including whether or not it is fact or creative.
- 3) The amount and quality of the part used – The ratio of the original work used to the total.
- 4) The effect on the value of the new work in the marketplace and that of the original work.

Fairey argued that his poster was a transformative work that, unlike the original photograph, conveyed a new message and creative expression. However, in the AP's view, Fairey's work was commercially valuable and was used without permission, so it

³⁹ 17 U.S.C. § 107

competed with the original. The argument mirrored broader legal debates over what constitutes transformative use and whether commercial success should be considered when assessing a fair use defence.

Proceedings and outcome

The court's legal case took another turn when Fairey admitted that he initially misrepresented the specific AP picture that inspired his poster. Following its filing in his legal pleadings claiming he took another AP photograph, he confessed to purposefully taking the picture of Garcia.⁴⁰ With that admission came tainted credibility that eroded people's faith and possibly left him facing sanctions through perjury charges. As courts often consider the honesty and good faith of the defendant in evaluating copyright charges, this statement further hampered his argument based on fair use.

The parties settled in 2011 rather than going to court. The agreement provided that Fairey and the AP would share the proceeds from selling the "Hope" poster and related merchandise. Fairey also agreed not to use another AP photograph without permission. The case remains an important touchstone in discussions regarding fair use and copyright law, even following the settlement.

Implications for copyright and fair use

⁴⁰ Mannie Garcia, "Obama Photo Rights," AP News, 2008

This case underscores several important themes in copyright law and fair use analysis:

1. The Role of Transformation in Fair Use - Courts prefer works that significantly alter the source material. Fairey's poster was stylized and had a clear visual representation, but due to the settlement, the court could not rule on whether it was transformative enough. The case illustrates the increasing importance of the transformative use doctrine in copyright cases involving works of art.
2. Second, the importance of honest depiction in court- Fairey's reputation was greatly damaged when he admitted manipulating evidence and lying about where he got his work. This illustrates that honesty is important in copyright matters, especially when pleading for fair use. This is also a lesson to artists and attorneys regarding what happens to people who lie in intellectual property cases.
3. Protection of Photographs through Copyright- The court reiterated that photographs recording actual events are protected under copyright laws. The AP aggressively pursued Fairey, illustrating stronghold media organizations and photojournalists possess over their images. The ruling has had a lasting impact on the use of reference images by designers and artists in their work, pointing to the necessity of obtaining the correct permissions or licenses when using copyrighted material.
4. Market Impact Considerations- Although not a direct competitor to the AP company, Fairey's poster generated a

significant amount of revenue, leading to the question of whether or not the fair use argument holds water when an illegal derivative work is commercially successful. This section of the case is a warning for artists and companies that profit from works based on protected content.

5. The Moral and Legal Responsibilities of Artists- Broader moral issues about artists' responsibilities when using existing media are also raised by this case. Fairey's art was groundbreaking, but for the AP, it was an unauthorized reproduction. The case highlights that artists should consider ethical and legal consequences when inspired by copyrighted objects.

Analysis

While the Associated Press v. Shepard Fairey case was resolved before a final court ruling, the arguments released powerfully prove that the Associated Press's complaint was warranted.

1. Balancing Fair Use and Copyright Protection- While Fairey's works are acceptable in fair use, his appropriation of the AP photograph raised genuine queries about the limit of transformation. The central elements of Garcia's photograph, i.e., Obama's posture and demeanour, were duplicated in his artwork. Regardless of modification to the style and colours, the essential content of the photograph remained intact. Fair use has generally been enforced more rigorously by courts in cases where a work directly incorporates a copyrighted photograph without going through substantial alteration.

2. Financial Considerations and Options for Licensing- The fair use position of Fairey was compounded by the financial success of the "Hope" poster. With the ample cash generated by his work, the case was brought about where one artist benefited monetarily from a work copyrighted by another without approval from the owner. The AP was correct when they commented that Fairey could have arranged a license agreement beforehand, which would have resolved the issue out of court. Artists who use copyright photographs for commercial purposes should obtain permission since the revenue-sharing provision in the settlement emphasizes.
3. Legal History and the Necessity for Clarity- The case illustrates the vagueness of the fair use doctrine in situations encompassing visual art. Each case is particular, although courts develop criteria. Had this case gone to trial, an even more definitive ruling could have been made on the boundaries of fair use in derivative works. Instead, the transaction creates unanswered questions for additional legal recourse.

Conclusion

The artists were more aware of the risk of using copyrighted images without permission following the lawsuit. To avoid such legal problems, some producers have recently taken a more careful route, often searching for images that have been adequately licensed for re-use or commissioning original photographs. A model for future negotiations between copyright owners and artists has also been set by

the AP and Fairey settlement, which values compromise over lengthy litigation.



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Fostering Creativity
Safeguarding Creators

CASE COMMENTARY: STAR ATHLETICA V. VARSITY BRAND INC⁴¹

Citation: 580 U.S. 405 (2017)

Bench: Supreme Court of the United States

Judges: Justice Clarence Thomas delivered the majority opinion, joined by Chief Justice Roberts and Justices Alito, Sotomayor, and Kagan. Justice Ginsburg concurred in the judgment. Justice Breyer, joined by Justice Kennedy, dissented.

Brief Facts Of The Case

The Varsity brand (respondents) manufactures cheerleading uniforms and secured copyrights for around 200 2-D designs under the Copyright Act, 1976². Star Athletica, a fellow competitor company, produced similar uniforms, leading to an alleged copyright infringement. Varsity Brand alleged a copyright infringement in a suit against the appellant (Star Athletica). The case was first heard in the U.S. District Court for the Western District of Tennessee, and the court held in favour of Star Athletica. Then Varsity Brands filed an appeal with the U.S. Court of Appeals for the Sixth Circuit, challenging the district court's ruling. The case was remanded for

⁴¹Varsha. J, Student, VIT, Chennai, Paper Id:- IPV06VI25II04

additional hearings after the Sixth Circuit Court of Appeals overturned the lower court's decision in favor of Varsity Brands. After that, Star Athletica moved the US Supreme Court for a writ of certiorari, asking the court to take up the issue. After hearing the case and issuing the writ of certiorari, the Supreme Court upheld the decision of the Sixth Circuit Court of Appeals.

Issues

1. Are the designs of the cheerleading uniforms under copyright since they can be detached from the useful article?
2. How could designs of useful articles be tested for copyright eligibility under the separability test?

Analysis

The Sixth Circuit's ruling that the designs were entitled to copyright protection was affirmed by the Supreme Court. In his majority opinion, Justice Thomas laid out a specific test for deciding whether a design can be distinguished from a utilitarian product. Through this case, the test of the separability principle, under section 101 of the Copyright Act 1976, defined the term useful article as an item with an inherent practical use that goes beyond just expressing information or the item's look. An article that typically forms a portion of a helpful article is referred to as a "useful article". The principle was held to determine if a feature included in a helpful article's design qualifies for copyright protection. There are two components to the test:

- A. Apart from the practical item, the feature must be able to be viewed as a two- or three-dimensional piece of art.
- B. The second condition is that the feature must be able to stand alone as a picture, graphic, or sculpture that is protected. The Supreme Court judgment was held 6:2 in favour of Varsity Brand.

The Court held that Varsity's color-block, chevron, and stripe graphic designs met this requirement. The designs could exist independently as two-dimensional artwork outside of the functional aspects of the uniform. Justice Ginsburg, in her concurring opinion, pointed out that the designs are protectable because they were registered individually as standalone artistic works, obviating the necessity for further separability test application. In an opposing viewpoint, Justice Breyer contended that the designs bore an indivisible relationship to the uniforms in that they enhanced the appearance and utility of the clothing as cheerleading attire.

The design and fashion industries are now more legally certain as a result of the *Star Athletica* decision. This decision is a strong one for maintaining artistic expression without extending the protection of copyrights to functional elements unnecessarily. Critics argue that the decision can lead to an overextension of copyright claims, particularly in industries where function and design go hand in hand. The possibility of monopolizing shared design attributes is also brought out by the opposition, which can discourage competition. In order to prevent abuse, the separability test may be enforced even more specifically in future cases.

Conclusion

It is a landmark ruling in the area of copyright law, especially concerning strengthening the defenses against delicate and contemporary designs common to the fashion industry and other fields. This decision, sometimes called a "light of hope for creativity", serves as a clarification and guidance for designers to maintain the integrity of their creative work, reinforcing the concept of separability. In this regard, the Supreme Court has not only upheld a broad principle but has also clarified a well-defined route for designers to safeguard their original works while carefully balancing the practical and functional factors that are fundamental to copyright law.

Through this precedent, which impacts the creative sector by giving protection to artists' work by respecting originality and also minding the practical restraints that determine the extent of copyright.⁴² This judgment proves the court's ability to protect originality and provide creative freedom where innovation may thrive under strict legal oversight. Artists can push the limits of art experimentation one step higher when they can be certain that their creative genius is secured by the legal precedent that is affirming the form and function within the complex universe of copyright law. The legal significance of this precedent extends beyond the court and impacts the basic underpinning of the creative process.

⁴² The Copyright Act, 1976, 90 Stat. 2541.

We should also take the judgment with a grain of salt as various issues have arisen as a result of the ruling, such as the subjectivity of the separability test, the excessive scope of copyright protection, the effect it has on competition and innovation, and the possibility of copyright law being misused. In the judgment, Justice Breyer's opposition opinion⁴³ asks for additional industrial effects, and the need for legislative clarity. Inconsistent rulings from lower courts resulting from the subjective application of the separability test can cause conflict and confusion for manufacturers and designers. The decision may also monopolize common design elements in the fashion industry by extending copyright protection to designs that are directly related to a product's functioning. This judgment may limit innovation and monopolize the marketplace because businesses can also use infringement as a weapon to ruin a rival's goodwill or to halt the competing business that produces a similar product. A less rigid approach to copyright is suggested in Justice Breyer's opinion, which complains about the inseparability of form from its functional context. The decision has broad implications on other categories such as electronics, automobiles, and furniture product design, as companies try to include decorative aspects of functional goods under copyright, which can result in legal battles over design ownership.

⁴³ *Star Athletica v. Varsity Brand Inc.*, 580 U.S. 405 (2017).

PEPSICO INDIA HOLDINGS PVT. LTD. VS KAVITHA KURUGANTI⁴⁴

Abstract

The case⁴⁵ serves as a landmark judgement in the field of India's Intellectual Property Law Domain, redefining the scope of plant variety registration under the Plant Varieties & Farmers Act, 2001, by establishing the framework upon which such registrations are to be made and in doing so shall not impede on the rights of farmers⁴⁶ in India.

The Hon'ble High Court of Delhi dismissed the appeal filed by Pepsico India Holdings, challenging an annulment of their registration of a plant variety FL 2027 as a new variety and then amending it to be an extant variety⁴⁷. The court dismissed such appeal on grounds specified under Section 34(b)⁴⁸ and 34(c)⁴⁹ of the Act. The

⁴⁴ Aditi Sundarjan and Nishanth S, VIT Chennai, Paper Id:- IPV07VI25II04

⁴⁵ *Pepsico India Holdings Pvt. Ltd. Kavitha Kuruganti v. Kavitha Kuruganti*, 2024:DHC:83-DB

⁴⁶ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (k)

⁴⁷ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (j)

⁴⁸ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 34(b)

⁴⁹ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 34(c)

court also noted the incorrect information furnished by Pepsico about the first sale of such potato varieties in 2009. It was also deduced that the exact information from the first sale was to obtain the plant variety registration.



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Neutral Citation: 2024:DHC:83-DB

Court: The Hon'ble Delhi High Court

Coram: Yashwant Varma and Dharmesh Sharma, JJ

Facts of the Case

The appellant applied to the Plant Variety Authority⁵⁰ on February 18, 2011, to register a potato variety named FL 2027, which she claimed was "new." The Registrar, however, classed it as 'extant.' The application was still incorrectly labelled as a "new variety" even after later changes. The Registrar formally acknowledged it as an "extant variety" on February 1, 2016. No objections were made after the publication during the time allowed by section 21(2) of the Act. The respondent then attempted to have the registration annulled pursuant to section 34 of the Act. The Authority complied with this petition and repealed the registration of FL 2027 by Sections 34(a), (b), (c), and (h) of the Act.

The respondent/appellant sued to invalidate the FL 2027 plant variety registration by the Protection of Plant Varieties and Farmers' Rights Act of 2001. This move was supported by an Assignment Deed from the original breeder, Dr. Robert Hoopes, to Recot Inc., which later changed into Frito-Lay North America (FLNA), which owns Lays Chips.

⁵⁰ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (a)

PepsiCo first tried registering a plant variety as "new" but later changed it to "extant." Approval for the registration was granted in 2016. Kavitha Kuruganti challenged the registration in 2019, seeking its annulment on the grounds of purported errors and failure to comply with the legal requirements of sections 16(1)(c) and 18(3) of the Act. She claimed that the petition was harmful to the interests of Indian farmers and unfairly benefited the Corporation. She also cited PepsiCo's legal actions against farmers in Gujarat as violations of their rights under Section 39(1)(iv). The court concluded in 2021 that the "new" classification was incorrect, that crucial documents were missing, and that public interest had been compromised due to PepsiCo's legal action against farmers. As a result, the registration was annulled.

The Authority's letter dated February 11, 2022, refuted the appellant's later application for registration renewal and stated that it had been rejected. Dissatisfied with the decision, an appellant filed an appeal under section 56 of the Act. She argued that the Authority had breached Section 34 by reviewing the registration facts for the FL 2027 potato variety and that it was not within its power to modify the Registrar's initial decision.

Key Issues

1. Whether PepsiCo's submission of inaccurate information regarding the date of the initial sale of the candidate variety, along with its failure to provide the necessary documentation during the registration process, constitutes valid grounds for the

revocation of its registration under sections 34 (a), (b), and (c) of the PPV&FR Act?

2. Whether PepsiCo's actions in filing multiple lawsuits against farmers are contrary to the public interest, thereby warranting the revocation of the registration certificate under clause (h) of Section 34 of the PPV&FR Act?

Legal Provision

Section 34: Revocation of protection on certain grounds-Subject to the provisions contained in this Act, the protection granted to a breeder⁵¹ in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:-⁵²

- (a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;
- (b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;
- (c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;
- (d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the

⁵¹ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (c)

⁵² The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s.

registration to the Registrar⁵³ in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

- (e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47⁵⁴ regarding the variety in respect of which registration certificate has been issued to such breeder;
- (f) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;
- (g) that the breeder has failed to comply with the directions of the Authority issued under this Act;
- (h) that the grant of the certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file an objection and be heard in the matter.

Court Decision and Prospective Focus

The court inspected the incorrect categorization of the plant variety. It concluded that it was a clerical error and the fault lies with the Registrar in charge of such registration. The court deemed it to be

⁵³ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (t)

⁵⁴ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 47

strictly scrutinised and mandated that such mistakes should henceforth never occur. To ensure that such is carried out, the Court directed the Registry to submit a report on how such mishaps may be avoided in the future and, in continuance of this error, deemed that the registration of FL 2027 in favour of the registered breeder stands revoked. The registration certificate provided by the Registry⁵⁵ shall also be revoked, effective immediately. PepsiCo's appeal is allowed; previous judgments are set aside, and the renewal application is restored, hence cross appeal dismissed.

Ratio Decidendi

Revocation is not an automatic procedure as outlined in Section 64(1)(m). The Court can examine whether the failure to supply the necessary information was intentional. Revocation will occur only if the Court concludes that the omission was intentional.

Revocation under Section 34(a) necessitates proof that registration was acquired through false information. Similarly, Section 34(b) allows for revocation if it was awarded to applicants who fail to meet the eligibility requirements, suggesting that revocation should only be considered when there is clear evidence of inconsistency or ineligibility concerning the registration.

Obiter Dicta

⁵⁵ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001), s. 2 (v)

PepsiCo's application for FL 2027 registration under the "extant" category, without claims of novelty, should remain valid. The timing of the initial sale, whether in Chile or India, does not affect PepsiCo's application, as the Act allows submissions within 15 years of the sale date. Registration protection begins on the registration date, not the first sale date, and the Act differentiates between new and extant varieties.

Section 34 of the Act restricts the authority to revoke registration to cases concerning the applicant's qualifications or registration validity. It requires a materiality assessment for revocation, and revoking registration on unreasonable grounds undermines the process's integrity.

Analysis

PepsiCo India Holdings (hereinafter referred to as 'PIH') stated in May 2019 that it would drop lawsuits against nine farmers in Gujarat state. Without permission, the company first sued 11 farmers for cultivating and selling a unique variety of potatoes, FL-2027 (labeled as FC-5). The potato variety is used in Lay's potato chips and is patented under the India's Protection of Plant Varieties and Farmers' Rights Act of 2001 until 2031. PIH stated that it had exclusive rights over the variety and that farmers grew it under a buyback agreement. The farmers, however, stated that they never entered into an agreement with PIH and did not know that the variety was patented until they received a legal notice.

Following widespread criticism and government-initiated negotiations, PIH decided to withdraw the lawsuits.

The situation changed dramatically when the Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA) canceled PepsiCo's intellectual property rights on FL-2027. The Delhi High Court reaffirmed this in light of flaws in the registration process by PepsiCo. The firm had made false statements about the date of commercialization of the variety, compromising the strength of its application.

India's PPV&FR Act represents a deliberate shift from the International Union for the Protection of New Varieties of Plants (UPOV) 1991, which tightens rules on farmers. Indian law allows farmers to maintain their old rights over seeds, focusing on more significant issues⁵⁶ regarding biodiversity, food security, and ecological sustainability. Opponents of UPOV⁵⁷ argue that its tight patent-like protections have not materially improved public welfare and have sparked concerns regarding monopolistic tendencies and ecological effects.

Conclusion

⁵⁶ N. Lalitha, "Intellectual Property Protection for Plant Varieties: Issues in Focus" 39 *Economic and Political Weekly* 1921-1927 (2004).

⁵⁷ A. Ravishankar and Sunil Archak, "Searching for Policy Options: Is CoFaB a Suitable Alternative to UPOV?" 34 *Economic and Political Weekly* 3661-3667 (1999).

The Delhi High Court Division Bench has held that a registration certificate under the PPV&FR Act can be cancelled under section 34 only in instances of fundamental, intentional, or deliberate mistakes. In the future, the Authority must use its discretionary powers only when shortcomings drastically undermine the registration and the applicant's credentials. The Authority's Registry is mandated to examine applications so as not to make clerical mistakes carefully, and the applicants are to adhere to procedures established in order to obtain compliance with the Act⁵⁸. The Authority must also put in place measures to enhance enforcement of plant breeders' rights and make farmers aware of the provisions of the Act. This will justify variety registration in India⁵⁹, thus enabling farmers to procure improved varieties of crops and ensuring an increase in the agricultural economy.



⁵⁸ Pratibha Brahmi, Sanjeev Saxena, *et.al.*, “The Protection of Plant Varieties and Farmers' Rights Act of India” 84 *Current Science* 392-398 (2004).

⁵⁹ Suman Sahai, “Protection of New Plant Varieties: A Developing Country Alternative” 34 *Economic and Political Weekly* 579-580 (1999).

