I J R S S I S,Issue (VIII), Vol. II, Jan 2023: 477-482
A Double-Blind Peer Reviewed Journal
OPEN ACCESS
e-ISSN 2347 – 517X
Original Article

Reg. No. : MH-NGP/0000167

INTERNATIONAL JOURNAL OF RESEARCHES IN SOCIAL SCIENCE AND INFORMATION STUDIES

BIODIVERSITY AND SUSTAINABLE DEVELOPMENT: DISPUTE RESOLUTION SYSTEM

Rohini Fuladi
Late Govindrao Wanjari College of Law, Nagpur
*Corresponding Author: drrohinifuladi@gmail.com

Communicated : 20.12.2022 | Revision : 08.01.2023 | Accepted : 20.01.2023 | Published: 30.01.2023

ABSTRACT :-
Biodiversity was measured a common property till 20th century. With the evolution of new technologies and the rise of the Fourth Industrial Revolution, Intellectual Property is becoming increasingly influential. Major countries around the world are making efforts to build an international cooperation system based on IP, to enhance the competitiveness of companies and revitalize industrial economy in their own countries. The gravity of biological resources as sovereign rights to healthcare, energy & food has sparked international discussions on GRs and TK. As the bio-industry progresses, research and developments utilizing patented biological resources are advocated, generate need for stable preservation of patented biological resources. As per international regulatory instrument of UN on Biodiversity, the biodiversity of a nation is its sovereign property and nobody can access it without prior approval of the holders of the biodiversity. But in the recent past, there have been growing disputes dealing with ownership, control, and access and benefit-sharing between indigenous peoples and users. Dispute resolution is very critical to the stakeholders and the third-party users. Due to the weakness of the current IP and court system, however, such disputes are not addressed adequately. The WIPO ADR Centre, help parties in resolving dispute arising in the area of biodiversity, without the need for court litigation, by advice and case administration services.

Key Words: World Intellectual Property Organization (WIPO), Genetic Resources (GRs), Traditional Knowledge (TK), Convention on Biodiversity (CBD),Alternative Dispute Resolution (ADR).

.

INTRODUCTION :

With the recent development of new technologies due to the rise of the Fourth Industrial Revolution, Intellectual Property (IP) is becoming increasingly influential. As a result, the importance of IP in national competitiveness is being emphasized to such an extent that securing IP is perceived as a marker of viability for a nation's future. As per this trend, major countries around the world are making efforts to build an international cooperation system based on IP in order to enhance the competitiveness of companies and further redeveloped industrial economy in their own countries. The expanding significance of biological resources as sovereign rights to healthcare, energy, and food has sparked international discussions on Genetic Resources (GRs) and Traditional Knowledge (TK). As the bio-industry continues to grow, research and developments utilizing patented biological resources are advocated, giving rise to a need for stable preservation of patented biological resources. Recentaly, World Intellectual Property Organization (WIPO) is actively discussing GRs and TK, and an effective response to national interest has been sought.

In the recent past, there have been increasing disputes over issues like ownership, control, and access and benefit-sharing between indigenous peoples and users of GRs and TK resources. Disputes over GRs and TK are very complex.Disputesresolution of concerning GRs and TK are thus becoming complex not only to stakeholders such as the indigenous peoples and corporations, but also to third-party users. Due to the vulnerability of the current IP and court system, however, such disputes are not addressed adequately.

As part of the WIPO ADR Services for Specific Sectors, the WIPO Centre provides dispute resolution advice and case administration services to assist parties to resolve disputes

arising in the area of biodiversity, without the need for court litigation.

International Regime on Biological Diversity

Biodiversity was considered to be a common property till 20th century. UN General Assembly by a resolution on 15 December 1972 established UNEP. Governing Council of UNEP met in 1973 recognised Conservation of Nature, Wildlife and Genetic Resources as priority areas. The World Commission on Environment and Development (WCED) was established in 1983. WCED conformed to its report "our common future "in 1987 called for Conservation of Biodiversity for Sustainable Development. UNEP set up an ad-hoc working group of technological and legal experts to prepare an international legal instrument for conservation and sustainable use of biodiversity which resulted in 'CONVENTION ON BIOLOGICAL DIVERSITY' (CBD). It was in the Earth Summit in1992 at Rio that the world forum agreed on sovereign rights of states over their biodiversity. This was enshrined in the Convention on Biological Diversity which was signed in June 1992. In June 1992,171 countries were signatory toCBD during the Earth Summit at Rio de Janeiro. CBD came into force as an International Law on 29th Dec. 1993, as Convention on Biological Diversity which is an international regulatory instrument of UN. CBD for first time affirmed i.e. Biodiversity of a nation is its sovereign property and nobody can access it without prior informed consent of the holder(s) of the biodiversity. India ratified CBD on 18 th February 1994 and came into force from 19th May 1994. Objectives of CBD are:

a) Conservation of Biological Diversity

b) Sustainable use of its components

c) Fair and equitable use of the benefit arising out of the utilization of generic resources.

d) Protect traditional knowledge practices of indigenous and local communities.

Article 8(j) of the CBD requires parties to address the issue of protecting traditional knowledge, innovations and practices of indigenous and local communities at national level.

The legally binding International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) was accepted by the FAO Conference in November 2001. Article 9 of the ITPGRFA encourages countries to take steps to protect and promote Farmers' Rights including protection of their traditional Knowledge (TK) and right to participate in benefit sharing and in national decision–making.

Genetic Resources and Traditional Knowledge in the Nagoya Protocol

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is an International instrument adopted on 29 th October 2010 under the Convention on Biological Diversity (CBD). The protocol states that this will apply to genetic resources within the scope of Article 15 of the CBD and to the benefits arising from the utilization of such resources. The protocol shall also apply to traditional knowledge associated with generic resources within the convention and to the benefits arising from the utilization of such knowledge.

National Regime on Biological Diversity

The Biological Diversity Act, 2002 was outcome of India's attempt to realise the objectives enshrined in the United Nations Convention on Biological Diversity (CBD) 1992 which recognizes the sovereign rights of states to use their own Biological Resources.

- Biodiversity: The biodiversity means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of ecosystems.
- Biological Resources: The biological resources means plants, animals and micro-organisms or

parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material.

The Biological Diversity Act, 2002

The act was passed in 2002, it highlighted the conservation of biological resources, managing its sustainable use and enabling fair and equitable sharing benefits arising out of the use and knowledge of biological resources with the local commune.

Salient Features of the Act

- The Act forbid the following activities without the prior approval from the National Biodiversity Authority:
  - Any person or organisation (either based in India or not) obtaining any biological resource occurring in India for its research or commercial utilisation.
  - The transfer of the results of any research relating to any biological resources occurring in, or obtained from, India.
  - The claim of any intellectual property rights on any invention based on the research made on the biological resources obtained from India.
- The act envisaged a three-tier construction to control the access to biological resources:

1)The National Biodiversity Authority (NBA) 2)The State Biodiversity Boards (SBBs) and 3)The Biodiversity Management Committees (BMCs) (at local level)

- Under this act, the Central Government in by taking recourse with the NBA:
  - Shall notify threatened species and prohibit or regulate their collection, rehabilitation and conservation
  - Designate institutions as repositories for different categories of biological resources
- The act stipulates all offences under it as cognizable and non-bailable.
- Any grievances related to the determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act shall be taken to the National Green Tribunal (NGT).

Biodiversity Disputes

Biodiversity disputes can envelope a broad range of particularly determined subject matters dealing with patents, genetic resources, traditional knowledge, plant varieties, environment, and food. They are often international and can also entail sensitive non-legal components of a commercial, cultural, ethical, or moral nature.

ADR as a flexible and confidential forum allows the consideration of such issues and helps parties to adopt sustainable and interest-based solutions that may go beyond monetary relief (e.g., specific performance such as the production of documents). Where indigenous communities are concern, ADR may also be a forum in which customary laws and protocols may be considered. ADR permits parties to choose a mediator, arbitrator or expert that has expertise in the specific subject matter, and understands the cultural and linguistic backgrounds of the parties. It gives a neutral forum through which a global biodiversity dispute can be resolved through a single procedure. The utility of ADR in this area has also been recognized in diverse international fora.The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits came from their Utility to the Convention on Biological Diversity motivates mutually agreed terms including options for alternative dispute resolution.

Potential Stakeholders to Dispute

Genetic Resources (GRs) are generally a wide range of life-industrial resources that are found in all living organisms (such as microorganisms, animals, plants) and DNA, genomes, etc. in nature, and in a sense, can be defined as the basic material of nature. Traditional Knowledge (TK) is the collective term used to characterize for industrial, artistic, or literary outcomes

derived from tradition-based intellectual activities. Folk therapies performed in various mountainous regions, patterns of Indian murals, indigenous African music, oriental medicine such as acupuncture, etc., can all be classified as examples of TK. Recently, disputes between indigenous peoples and users of TK resources over ownership and control, access, and benefit-sharing, etc., have steadily increased. Since GRs and TK disputes may contain numerous stakeholders, such as states, non-governmental organizations, corporations, indigenous communities, and individuals, various issues may arise in settling these disputes within the existing legal system.

Genetic Resources and Traditional Knowledge in the World Intellectual Property Organization (WIPO)

Intellectual Property Rights surrounding GRs and TK in the World Intellectual Property Organization (WIPO) is intended to incorporate into the IP system effective measures designed to support the purposes, principles, and obligations stipulated in the CBD and Nagoya Protocol concerning the protection of biological resources. In the WIPO IGC , Genetic Resources in accordance with definition in the CBD and are explain as a part of a reproducible biological material of actual or potential value among generic materials of plant, animal, microbial, or other origin containing functional units of heredity. This includes plant, animal or microbial origin materials such as medicinal plants, agricultural crops, and animal varieties.

Significant Features of Alternative Dispute Resolution

Disputes relating to biological diversity are complex, spanning a wide range of highly-specific subject matter. These disputes are often cross-jurisdictional and can involve legal components and combine non-legal elements of a commercial, ethical, cultural, religious, spiritual, and moral nature. Different national court proceedings may need to be undertaken in multiple jurisdictions concerning GRs and TK disputes. The process may be expensive and timely, and there may also be a perceived jurisdictional bias, potential conflict of laws, inexperienced judges or juries, as well as the risk of conflicting outcomes where legislation is not fully harmonized, ADR is an out-of-court dispute resolution system that has many outstanding advantages, such as the speed of proceedings, matters of cost, privacy, and neutrality of forum allowing parties to settle dispute in a more flexible, time and cost efficient way. ADR gives parties more control over the process, including the possibility to select relevant experts as independent decision-makers. Technically oriented cases have a substantial incentive to choose ADR. In contrast to court litigation, ADRs are generally consensual, in that they can be initiated only if all parties agree to resolve disputes within this system. Such consent can be agreed on in advance by including an ADR clause into a contract for possible future disputes. Such advantages have made ADR a preferable method for dispute resolution, and parties can consider using ADR instead of court proceedings in various commercial matters. As ADR provides a singular dispute resolution process agreed upon and consented by parties, and since the proceedings can be neutral, it has become particularly practical for resolving complex disputes. IP disputes include multiple parties' interests, and a court-granted judgment, which is generally in favour of one party and would thus not be the right solution. Further, IP cases often involve highly-technical, complicated issues and, hence, parties would feel more comfortable with the ability to choose decision-makers who could help them formulate appropriate resolution to cases instead of using court litigation. In this manner, ADR is particularly useful for IP dispute settlements, as

it is flexible, confidential, and helps parties adopt sustainable and interest-based solutions. Key modes of ADR are negotiation, mediation, arbitration and combined method. There may be some differences between the methods; all of the ADR modes provide flexible processes that aim to enhance the understanding of the parties' interests.

(1) Mediation/Conciliation:-Mediation or conciliation is a non-binding informal procedure, whereby parties voluntarily submit a dispute for settlement, and may themselves determine the structure and conditions to resolve the dispute. Mediation or conciliation cannot be forced to accept an outcome of resolution. It remains a confidential process, and parties can withdraw from the procedure at any time. A neutral intermediary, the mediator or conciliator is a neutral third party who assists parties in engaging and identifying their underlying interests in disputes, such as causes of disagreements and possible resolutions. However, the mediator or conciliator cannot impose settlement or remedy. Mediation allows preservation of party relationships, private dispute resolutions, and speedy settlements without damage to reputations by consideration of sensitive information and non-legal issues.

(2) Arbitration:-Many IP disputes involve parties from different countries. In such cases, court litigations may involve several procedures in different jurisdictions, and parties can agree to accept arbitration so that they can resolve their disputes under a single law and in a single forum determined themselves. Hence, arbitration can be neutral to the law, language, and institutional culture of parties, and thereby avoid the complexity of multi-jurisdictional proceedings. Parties can choose arbitrators by agreement and their disputes can be submitted to arbitrators. These arbitrators have special expertise in legal, technical, or business areas relevant to the resolution of their disputes. Although arbitration shares several principles with mediation, it is a more formal process. Arbitration functions like a court where arbitrators can make final and binding decisions and parties cannot unilaterally withdraw from the process once disputes have been submitted to arbitrators. The Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention, provides for recognition of awards at par with domestic court judgments without reviewing merits. This greatly facilitates the enforcement of awards across borders.

(3) Combined Methods:-When using the ADR procedure to resolve disputes, parties may combine arbitration with mediation or vice-versa. Success rates for conflict resolution using mediation and conciliation are very high, especially when the two methods are combined. WIPO's mediation rules cover mediation and conciliation as well as links to arbitration, allowing for combined processes in appropriate cases and special rules. The most frequently used WIPO clause is providing for "mediation, followed in the absence of a settlement by (expedited) arbitration." It has the advantage of giving parties the opportunity to settle their cases in a more informal forum before moving on to arbitration.

CONCLUSION :

ADR leads parties to personally discuss necessary issues by creating new relationships, providing enough time to explore each other's complaints by realizing cultural differences causing the disputes, and developing measures for resolution beside procedural suggestion between the framework of law and the balance of court. It also accelerates the integration of a customary law which is diversified in various fields, helps parties choose suitable procedures for disputes, selects neutral and professional arbitrators or mediators in certain issues, and knows the connected relationships of interests

between indigenous individuals and communities. If parties so opt, statements of ADR are kept strictly confidential, reasonable deadlines are proposed for dispute resolution, and costs are efficient compared to regular court procedures.The WIPO AMC (Arbitration and Mediation Centre) is a fitting example of using a technological approach for modern dispute settlement. Its Electronic Case Facility (WIPO ECAF) allows parties from anywhere in the world to submit case files and documents directly to a web-based electronic docket. It also facilitates case management by providing case overviews, time tracking, and finance information. It thus increases the availability of an ADR and significantly reduces costs to parties. However, disputes of GRs and TK are increasing day by day, and lately, there is a lot of confusion regarding how to approach dispute resolutions as arguments between IPRs and non-IPRs arise complexly. As the range of the issues to be considered in this field is expected to expand, practical measures should be suggested to respond to current needs. This provides a chance to approach related informal legal procedures when required by disputing parties, enhancing their ability of decision-making, and developing a strategy to approach disputes practically and effectively by providing several options of ADR technique.

REFERENCES :

Alternative Dispute Resolution in Genetic Resources and Traditional Knowledge: Settlement at the World Intellectual Property Arbitration and Mediation Center by ChoongMokKwak*,Journal of Arbitration Studies, Vol. 29 No. 3 September 1, 2019, pp. 75~97 http://dx.doi.org/10.16998/jas.2019.29.3.75

Intellectual property rights laws' by DR.S.S.SinghAssi. Professor of Law , Allahabad , University Book House Pvt.Ltd., Jaipur, pg. no. 372.

Ibid, pg.no.551.

The Biological Diversity Act, 2002 - Legal Service India, https://www.legalserviceindia.com/legal/article-7970-the-biological-diversity-act-2002.html

https://optimizeias.com/is-indias-biodiversity-getting-exploited-without-benefits-to-communities

https://www.drishtiias.com/to-the-points/paper3/biological-diversity-act-2002/print_manually

An intergovernmental committee – the IGC- was established with a two-year mandate to identify the problems and solutions. The IGC is accountable to the General Assembly -the highest Member state body in WIPO-, for its work. Since 2000, the IGC has met regularly and its mandate renewed or enhanced every two years

Supra note,3 at 79

Supra note 3 at, 85.

Supra note3 at 86

Supra note 3 at 87

Supra note 3 at 88