

**Moot Proposition**

Indiva is a one of the developing country situated in South Asia, with population of more than 1.25 billion it is rated as one of 17 mega-diverse countries with over 1,26,756 species of plants, animals, fungi and micro-organisms identified and classified. It is estimated that floristic spectrum of Indiva comprises of over 30,000 species (excluding fungi, which are now being treated as a separate kingdom). In Indiva, 17,500 species of flowering plants are recorded representing about 7% of the flowering species of the world. Out of this, 140 genera and 5285 species are endemic to the country.

The endemic flora is concentrated mainly in three major hot spot centers of flora viz. the Eastern Ghats (3500 species), the Western Ghats (1600 species) and the Sanorica and Panorica Islands (185 species). The Eastern Ghats and Western Ghats are the two identified global hot spots of Biodiversity. The rich biodiversity of Indiva is matched with an equally rich cultural diversity and a unique wealth of traditional knowledge system, developed, preserved and practiced by millions of ethnic and indigenous people living in the rural and forest areas.

In recent years issues related to the importance of traditional knowledge held by indigenous communities, its role in the economy as well as in biodiversity conservation and sustainable use, and the need for its protection from misappropriation by commercial interests have been the subject of debate in International forum like the Convention on Biological Diversity, the World Trade Organization and the World Intellectual Property Organization. Recognition of the remarkable economic potential of such knowledge has led many multinational corporations of the industrialized nations to free ride on the genetic resources and traditional knowledge and technologies of the developing countries leading the latter to resent such "bio piracy" or uncompensated exploitation of their natural resources.

With an increasing number of Patents being extended to products based on genetic resources, developing countries, which harbor much of these biological diversities, are concerned not just about the misappropriation of resource based inventions but also the intangible knowledge associated with the resource. Much of this knowledge belongs to local and indigenous communities who through generations of observation, practice and usage have not only maintained and conserved biodiversity, but also developed and preserved an associated Traditional Knowledge base.

However, in most cases, benefits arising from commercial utilization of such resources are not shared with the communities that provide the knowledge. Though, there is recognition of the need to protect the rights of such indigenous communities, there is also the realization that this cannot be done through conventional Intellectual Property Rights (IPR) systems which are based on the concepts of individual ownership. More and more biodiversity rich nations and indigenous groups are realizing the significance of this fact and taking measures to put in place legally and non-legally binding mechanisms to protect their Traditional Knowledge base.

The Vasi - a semi nomadic community is predominant tribe habituating in the Palwa forest of North - East part of the Indiva in the State of Vassam. Their traditional occupation includes craft works, basket making, mat making and sari making from the banana peels, they are also engaged in collection of non-timber forest produces like honey, bee wax, medicinal plants, python fat, etc., This community is also well-known for their rich knowledge on medicinal plants of the region. The highest cultivation was of Peri Plant in that region.

The leaves of the Peri Plants area rich source of zinc, which is associated with increasing energy level, stamina and the sex drive. It also contains L-arginine and carnitine acid that improve blood flow. Uninterrupted blood flow is crucial to sexual response in both men and women; it increases the sex stimulation in men

and women. Therefore, this plant is well-known for its medicinal properties in the Vasi community. The Peri plant leaves have been used by this community since many generations. For hundreds of years Vasi community has used Peri leaves as sex stimulator. Many indigenous views this plant as sacred symbol in their religion and use it during post marital ceremonies for the newly wedded couple.

The Medimine Pvt. Ltd., a Multi-National pharmaceutical company registered in 1991 having its head office in Kroasia has expanded its business in 19 countries of the world. It has its unit in Indiva also. The company in Indiva is set up in Kandi hill, Hima Pradesh. It has gained an immense expertise in supplying and trading of medicine all over the world. The total turnover of the company is 95.5 million dollars. It is one of the most reputed and biggest companies in the pharmaceutical field. In 1995, the company's new venture Medilife Pvt.Ltd. was incorporated as per the provision of Companies Act, 1956 with stake holding by Medimine Pvt. Ltd. which is having business in Kandi hill, Hima Pradesh, Indiva since its inception. The company has started trading and manufacturing the medicines and is also conducting the research based activities.

In 1996, a scientist and entrepreneur named Mr. Phunshuk Yaveda started a research project in different tribal areas of Indiva. In February 1996, he visited the tribal area where vasi community was residing. In his research he came across the scientific observation, he found that dry leaves are consumed a lot by these tribal people. On researching about these leaves, it was found that it is used for multiple purposes. When the scientist asked one of the persons from the tribal community about this plant, he revealed that they ate the dry leaves of the plant to increase their sex stimulation and its intake also increases the energy level in entire body. The scientist was almost shocked and surprised on hearing this. After consuming the same the scientist also felt sudden gush of energy and strength. The scientist inquired more in these leaves. The tribal man was initially reluctant to reveal the secretes, however, the team of scientist convinced the vasi man that if he passes on the information, they will not misuse it and that they would conduct scientific investigation and if found promising, a drug would be developed for their welfare.

The tribal of vasi then showed the plant and the method of consuming the leaves. After completion of research project in January 1997, when the scientist returns to the Kandi hill, Hima Pradesh, he conducted research on that leaves where he found many important properties in these plant leaves which would increase the energy, stamina and also the main source of sex stimulation. By researching more on this leaves, he made one oil from these leaves, which works for the similar purposes. The scientist soaks that leaves in some essential oils which when applied on hair, increase the sex stimulation. After testing, the scientist came to the conclusion that this can be very effective product globally and hence decided to Patent his invention.

In 1997, Mr. Phunshuk Yaveda applied for process and product Patent before the Patent Authority in Kalipuram for this process of making the oil from the leaves. Considering the innovation, the patent was granted by the Patent Officeto him in 1998. After getting the patent, he started commercial tradingof the said oil. Within a year, the said oil got immense publicity and response from all over the world, through which the company started making good profit out of it. The profit was almost 200% of the manufacturing cost. This product was very effective and was having monopoly market in Globe because it was made from the natural ingredients. Also, there was no side effect and therefore people were very fond of this product.

The International Patent WO 87458569 was also granted for the monopoly use of the extracts of Peri leaves for this purpose in the year 1999. As the purpose being one of the major aspects for the public domain, the market potential for such a drug was enormous and within a year the revenue from this product was doubled.

In December 2007, an NGO - "Arise and Awake" working exclusively for the upliftment of tribal community of Eastern part of Indiva, came to know about the fact of the oil being extracted from the leaves. Also, how the products are taken

from tribal people who were using them from generations. The NGO found that the company is not giving any benefit to the indigenous persons, who are not aware about their traditional knowledge being used. The indigenous people were not aware about their rights. The NGO made the people of vasi understand about their rights under the Biodiversity Act of India.

On behalf of the vasi community, in January, 2008 the NGO sent a legal notice to the Company for Access and benefit sharing under the Biodiversity Act, 2002. The NGO also challenged the validity of the Patent before the Patent Authority. The said legal notice was replied by the company in March 2008 submitting that they have acquired patent for their own invention and innovation and hence there is no question of benefit sharing and also that the challenge to their Patent rights is pending before the Authority and they would like to wait for the outcome. The NGO asked the company to stop extracting the resources from the tribal areas but they still continued to extract the same for the use of the company.

In addition to the same, the NGO sent notice that the submissions of the company are not tenable and further directed to furnish information regarding the process and product under the Patent.

In the meantime company entered into an agreement with the State Government for extraction of resources and use of the Peri leaves for their commercial establishment in March 2009. Industrial unit was proposed to be established in the local area for commercial extraction of the leaves. It was when the said factum coming to notice of the locals about the extraction of resources on commercial scales and the company setting up industrial plant agitations led by locals commenced which ultimately led to closure of the industrial unit also as the State Government was forced to retract from the agreement permitting such commercial extraction in October 2009. Such action of withdrawal from the agreement by the State Government was challenged by the company before the

High Court of the State in November 2009, which dismissed the challenge on various grounds in January 2012.

The said order of dismissal has been challenged before the Supreme Court of India in June 2012 where notice came to be issued and the matter is pending for final hearing. In the meantime the NGO also filed an intervention application in January 2013, which came to be allowed so as to enable the NGO, put forth their claims for benefit sharing and access in line with the provisions of Biodiversity Act for the persons belonging to Vasi Community.

The Supreme Court also formulated certain issues of national importance in lines with the provisions of Biodiversity Act, 2002 and the conflict of the same with the Patents Act, 1970 and the United Nations Convention on Biological Diversity, 1992 held in Rio de Janeiro. It was during the pendency of the petitions before the Supreme Court, the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 came to be published by Central Government.

The said matter is pending before the Supreme Court for final hearing by keeping all the contentions open.

Note: The Laws of India are in Pari Materia to that of India.

**Disclaimer: The Problem is hypothetical Moot Problem. It is only for the academic purpose having no concern with any pending/decided cases before any court and all details and name of the parties are fictitious and nothing to do with reality even if found similar it is only coincident.**