

TRADITIONAL KNOWLEDGE IN IPR FROM FEMINIST PERSPECTIVE

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ABSTRACT

Feminist Jurisprudence has developed over the years which has made its way over lot of fields and has improved the representation of women or gave them with a voice to raise their concerns and help other who need opportunities but Intellectual Property Rights (IPR) is one of such areas where feminist jurisprudence has not developed to that extent where it can benefit the women to increase their participation in commercializing their work or getting patent on an innovative and a novel idea. This not only impact women's social standing but also hampers the economic condition of the women which results in lower GDP of a country which will again result in less available opportunities for women and this becomes a never ending vicious cycle Women in India are less likely to commercialise the knowledge or the process that they have been practicing over the period of time. A nation should always try to strive in promoting women in the technical fields and encouraging them to research on innovative ideas and get them patented. The laws should be made responsive for women that especially cater to the needs where there is an assurance to women that they have a system to fall back on to get justice.

Keywords: Gender norms, Intellectual Property Rights, Law, socio-economic conditions and Traditional Knowledge

INTRODUCTION

Intellectual Property Rights entail various subcategories within itself like copyright, Trade Marks, Patents, Traditional Knowledge etc. and it becomes essential to analyse the role and involvement of women in IP industry through a critical lens that help us give a better understanding to the problems within society and the law that being equal on paper but still in practice has a different situation altogether.

The problem with IP rights is that when it comes to giving protection to various innovators, ideas, knowledge they tend to benefit only those with substantial material resources and those who already have access to knowledge and the data to further develop their product. For example, only companies or individuals with high technical and material resources can hope to get IP rights in terms of patents, copyrights, designs etc. The IP regime tends to bypass those who do not have such resources. Women in India and in most of the developing world lag behind both in resource ownership (capital, land) as well as in educational attainments. On the other hand, they are often the most affected by the rise in prices and lack of availability of products, medicines and healthcare.

This gap in the IP protection takes away the right of women in developing nations to work towards developing their work further so that it can be patentable which yields them monetary profits for the products they have been using for years or the practices that have been passed on for generations. The use of Indian names, imagery, iconography and other symbols for commercial purpose without Indian input constitutes '*cultural appropriation*'¹ and this cultural erosion in the name of commercialisation leads to power imbalance², racism and inequality, rather than an atmosphere of fair, open and multilateral exchange.³

¹ The social movement that flow from that flow of cultural elements from indigenous societies to larger world and the indigenous people keep experiencing the feeling of dispossession.

See, Riley R. Angela and Carpenter A. Kristen, '*Owning Red: A Theory of Indian (Cultural) Appropriation*' Texas law review, Vol. 94:859, 2016.

² R. Berger, Red: Racism and the American Indian, 56 UCLA L. REV. 591, 597–98 (2009)

³ Rebecca Tsosie, Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights, 34 ARIZ. ST. L.J. 299, 311–14 (2002)

Former President Bill Clinton addressing the annual meeting of the Clinton Global Initiative (September 2009) said that “*Women perform 66% of the world’s work, and produce 50% of the food, yet earn only 10% of the income and own 1% of the property. Whether the issue is improving education in the developing world, or fighting global climate change, or addressing nearly any other challenge we face, empowering women is a critical part of the equation.*”

Economic growth in lower-middle-income countries creates more jobs for women. But as India’s economy grew at an average of 7 percent between 2004 and 2011, its female labour force participation fell by seven percentage points, to 24 percent from 31 percent. Despite rapidly increasing educational attainment for girls and declining fertility, the International Labour Organization in 2013 ranked India 11th from the bottom in the world in female labour-force participation.⁴

In the backdrop of social, cultural, religious, political and economic inequalities enmeshed in Indian Society, this new global economic order is impacting women’s lives in India directly and indirectly. Women in India, while seeing an increase in opportunities in some sectors of the economy, are also facing a new set of disempowerments. In order to integrate the Indian Economy into the global system, the government has initiated a wide range of policy level changes that are exposing India’s producers and workers, including women to global competition. Which is making women more vulnerable to the present structure but there is a scope of the present system to be converted into a beneficial opportunity for uplifting women as it will give them with a wider access to the global economy.⁵

SOCIETAL IMPLICATIONS

Social subordination of women has resulted in under representation or no representation of women at all in the commercial and technical aspect of work. The perception of the society is these works

⁴ Pandae, Rohini “Why Aren’t India’s Women Working?” The New York Times, August 2015

⁵ FAO (1998). “Women: Users, Preservers and Managers of Agro-Biodiversity.” Sustainable Development Dimensions. Women in Development Service (SDWW)/FAO Women and Population Division, October, <http://www.fao.org/sd/WPdirect/WPan0025.htm>, accessed September 2006.

are so important that women are not equipped to handle that. The simplest examples of this could be of manufacturing tea, where women are the ones that are involved in picking the tea leaves and men in manufacturing it or how most of the professional chiefs are men whereas in every household in India women are the once that cook. So what might be the reason for not entering the commercial zone? It's not that they don't want to work. The answer is wrapped around the patriarchal roots which stems the thinking that looking after their home is their job and working outside or prioritizing their office trapes them in guilt of neglecting their family.

Much of the reason they don't work appears to lie in the persistence of India's traditional gender norms, which seek to ensure "purity" of women by protecting them from men other than their husbands and restrict mobility outside their homes. Home-based wage work or entrepreneurship, even when it exists, rarely transforms and liberates the worker. Usually in rural and few urban places men do not allow their daughters, wives and daughters-in-law to leave the village for training and subsequent job placements.⁶ Trainers, whose pay depends on employment outcomes of their trainees, are reluctant to work with women who may be more likely to refuse job placements due to their family situations. In urban India, the jobs are geographically closer but women struggle with lack of access to traditional male-dominated job networks. So, women often end up in lower-paid and less-responsible positions than their abilities would otherwise allow them – which, in turn, make it less likely that they will choose to work at all, especially as household incomes rise and they don't absolutely have to work to survive. The lifestyle of Indian women and their hardship is so devalued and it becomes much more problematic when non- Indians portray fail to recognise their efforts and portray them as exotic. Rock stars seductively portray the ravished Indian maiden, while real Indian women experience extreme rates of domestic violence and sexual assault.⁷ There are other wide-ranging examples like Victoria's Secret models walking the runway in Indian headdresses,⁸ Urban Outfitters marketing "Navajo Print Wrapped Flasks"⁹

⁶ Bennett, Lynn (2004). "Concept Note to DFID for the Nepal Gender and Social Exclusion Assessment," October.

⁷ Carpenter Kristen, Riley Angela, 'Owning Red: A Theory of Indian (Cultural) Appropriation', Vol. 94:85, 2016, pg 863.

⁸ Victoria's Secret Apologizes After Use of Native American Headdress in Fashion Show Draws Outrage, FOX NEWS (Nov. 13, 2012), <http://www.foxnews.com/us/2012/11/13/victoriasecret-apologizes-after-use-native-american-headdress-in-fashion-show/> [<http://perma.cc/42WM-L2U4>].

⁹ Sasha Houston Brown, An Open Letter to Urban Outfitters on Columbus Day, RACIALICIOUS (Oct. 10, 2011), <http://www.racialicious.com/2011/10/10/an-open-letter-to-urban-outfitters-on-columbus-day/> [<http://perma.cc/DAU6-3YHF>].

and “Navajo Hipster Panties,” Boy Scout Troops mimicking Pueblo Indian dances, and the many sports teams with Indian mascots.¹⁰

Women are also at a huge disadvantage because of the maternity leave because of two major reasons. Firstly, the employers think that the maternity leave would put them at a disadvantage as they would have to pay for the time period that the women is not working and for that period find someone to fill her space. Secondly, the time lag that women face due to maternity puts them at the back of the race as the things have changed during that period which makes their work double. We can also not forget the biological fact that the women’s body is weak during that time and giving birth is very risky and requires proper care and protection. To actually combat this problem the law needs to come into picture as that might help people to change their approach towards pregnant women by giving paternity leave so that the employer will not give preference to a man over women as he will have to give aid leave to both of them and this will give an equal opportunity to women to stand at same level as men as will not feel disadvantaged.¹¹

Another reason as a result of the society perception is lack of education which later results in lack of awareness. It becomes for women as they would not be aware about the technological advancements that could enhance their products or about their legal right that could help them. It does not really matter if the exclusion is intentional or unintentional, as long as has been no constant efforts to question the underrepresentation of women.

¹⁰ Carol Spindel, *Dancing At Halftime: Sports and The Controversy Over American Indian Mascots* 13–17 (2000).

¹¹ Having said that the author also feels giving such long break to both men and women is a burden on the employer and to actually solve that Indian law should follow the approach laid down in Sweden or Canada or the laws of Germany. Germany have parental leave and it is called “Elternzeit” which can be taken by both parents. In this parent can be take leave upto 3 years. No salary is paid till the 3 years but jobs are open for the parents. Allowance is paid equivalent to 14 or 15 moths or equal to 65% or at least 300 up to a maximum of 1,800 Euro and is called as “Elterngeld” which paid by the government. If mothers and fathers share the parental allowance, they together receive parental allowance for a maximum of 14 months.¹¹ Each parent can draw a minimum of two and a maximum of twelve months’ parental allowance.

Along with this mother can take mandatory 6 week off before the scheduled birth and 8 weeks after that.

ECONOMIC IMPLICATIONS

Women experience barriers in almost every aspect of work and they perform lot of unpaid work at home and greater attention should be directed towards such kind of works to ensure increased recognition and valuing of the ways in which care work supports thriving economies.¹² Economic empowerment is the capacity of women and men to participate in, contribute to and benefit from growth processes in ways which recognise the value of their contributions, respect their dignity and make it possible to negotiate a fairer distribution of the benefits of growth.¹³ And greater trade openness and economic integration have, in many countries, led to significant growth of export-oriented sectors, with some, such as garments and light manufacturing, employing large numbers of women in recent decades.¹⁴ Both developments have translated into stronger market incentives for women's labour force participation in the form of rising demand for female labour and, in some cases, higher absolute and relative wages.

Economic empowerment is a two way process where participation of more and more women helps the economy of the country to develop and when an economy progresses more resources and opportunity are created for women including jobs, assets, skill development etc. Along with that it gives women hope, feeling of independence which will not only help them change how the world perceives them but also make millions of other women to follow the same path.

The dearth of economic opportunities reinforces gender segregation which results in institutional failures.¹⁵ Women in almost every field have to face hardships and are likely to take up flexible working hours so that they can manage their household work (which is economically not accounted for).

¹²<https://www.oecd.org/dac/gender-development/47561694.pdf>

¹³ Eyben, R and others (2008), Conceptualising empowerment and the implications for pro-poor growth, Institute of Development Studies at the University of Sussex, Brighton.

¹⁴ World Bank (2012), Gender differences in employment and why they matter, P. 200

The report talks about how various elements contribute towards women's economic development like improving infrastructures, liberalizing trade barriers. Changes in education have also facilitated women's integration in the labour market. More educated women have traditionally exhibited higher participation rates than their less educated counterparts; so as education levels have increased around the world, more women have ventured into paid work.

¹⁵ Asian Development Bank (2004). *Gender Poverty and the Millennium Development Goals, Bangladesh Country Gender Strategy*. Manila: ADB.

NEEM CASE ANALYSIS IN CONTEXT OF GENDER

In 1985 Robert Larson from obtained a patent for his preparation of neem seed extract and the Environmental Protection Agency approved this product for use in United States (US) market. In 1988 Robert Larson sold the patent on an extraction process to the US Company W.R. Grace. In India neem has been used since ages and its uses were known to every household but since no resources were spent on development on the people where they can use a useful product further or people were not aware about the patent. Now this example fits perfectly in understanding the causation of men and women in India where assuming men being the developed nation US who have resources and women being the developing nation who have been involved with the product and knew the uses, advantages and disadvantages of that particular product but did not have an opportunity to develop it further where they could have easily commercialized the value of that product. This show how unfair and biased the system has become and it is the duty of the state to actually take initiatives to involve/ encourage women and make a legal platform that is more responsive.

LEGAL FRAMEWORK

International law and the constitution of India guarantees women's equal participation in every sphere but the reality seems too far away flowery aspirations that are laid down on a piece of paper rather the social structure is trying to subordinate their position. Gender roles, behaviours and expectations are so ingrained into the social structure and promoting such acts reinforces patterns of dominance and submission. Lot of people argue that there is no explicit prohibition on female participation so there is cause of worry. However major progress has been made in areas like employment, removing explicit discrimination but that does not mean that all kinds of discrimination do not exist. Similarly it is important to question when law is not able to achieve the desired result and requires a push from feminists all over the world to ensure the required outcome.

Legal standards are very closely tied to masculine themes of dominance and subordination. There have been instances where even the substantive law of the country has failed in not being impacted by gender stereotypes.¹⁶ Since the categories into which legal problems are placed were developed at a time when women played no part in the law, women were forced to try to fit the things that happened to them into a pre-existing framework that may not be able to accommodate their experiences effectively.¹⁷ Laws can only constitute a small part of any profound social change, yet all its faults women will continue to turn to the law, as a potential site for destabilizing and displacing previously dominant meaning of gender. Formal law reform agencies have not until very recently engaged directly with issues that particularly concern women other than with the law of sexual assault.

The various provisions and conventions that encourage women's participation/ involvement in ensuring their economic right by protecting the environment and biodiversity of their indigenous land on which their livelihood depends. It is a way through which the international community is ensuring that the states take initiatives towards the same, by giving them a legal obligation to adhere to.

¹⁶ **Section 27 of the Factories Act, 1948**, Prohibition of employment of women and children near cotton-openers.— No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. **Section 361 in The Indian Penal Code, 1860**, Kidnapping from lawful guardianship.—Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person. **Section 125 of criminal procedure code**, states that parents have to maintain their son till he is 18 and women till they are unmarried and after that the husband will maintain them. This shows a clear bias on the part of the legislators that how they feel that women are the major responsibility and a burden who are incapable of taking care of themselves and require someone to depend on.

Sections like these have been a part of Indian Substantive law which without any clear reasoning have the elements of subtle discrimination that follow the path of social reasoning that has kept women at a disadvantage and especially the above mentioned section 27 of Factories Act, is restricting fundamental right to carry on any trade and business activity within the country. Whereas for section 361 of IPC what possible reason did the legislatures had to keep different ages. This again puts the social conditioning into perspective where they think that the girl take more time to mature to who to go with and requires more years of protection. These kinds of subtle discrimination become much harder to fight.

¹⁷ The experiences of women need to be taken into account while framing the laws as it becomes the starting point of the change where law becomes responsive towards women and starts shedding its masculine nature for a better social equality.

- Convention on Biological Diversity Preamble affirms the central role of women drawing specific attention to “the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation”.¹⁸
- Agenda 21, adopted at the Earth Summit, Rio de Janeiro, 1992, stresses the need to strengthen women’s involvement in national ecosystem management and control of environmental degradation.
- The United Nations Food and Agriculture Organization (FAO) has drawn attention to the different roles that men and women maintain within livelihoods systems that comprise farms and home gardens, common property resources, such as pastures and forested lands, as well as protected areas. In addition to providing vegetables, these home gardens are also experimental plots where women try out and adapt diverse wild plant and indigenous species.

All these provisions do give a broader outline to the nations to implement these ideas and incorporate them into their municipal laws for a better outcome towards creating equality in the work sector. But it is also a fact that there is no nation that has reached gender equality till now even though the legislation of most of the nations has principles of equal opportunities, no discrimination etc. but still the problems exists. So where does the problem lie in the structuring of laws that they have not taken into account the experiences of one gender.

Margaret Davis approach towards feminism is that *“It is not possible simply to reject or accept engagement with the law; we cannot have a single position but must engage and critique... the argument is essentially that we can and should be working with to achieve change along at least two fronts, one ‘internal’ to law and accepting its power to define and redefine; second from a position of ‘scepticism and critique’ of law.”*

IP laws help only those with significant material resources who have access to knowledge. For example, only companies or individuals with high technical and material resources can hope to get IP rights in terms of patents, copyrights, designs etc. The IP regime tends to bypass who do not

¹⁸ Gross, Tony, Sam Johnston, and Charles Victor Barber (2006). “The Convention on Biological Diversity: Understanding and Influencing the Process.” *A Guide to Understanding and Participating Effectively in the Eight Conference of the Parties to the Convention on Biological Diversity*. Yokohama, Japan: UNU-IAS, March.

have such resources.¹⁹ Women in India and in most of the developing world lag behind both in resource ownership (capital, land) as well as in educational attainments. On the other hand, they are often the most affected by the rise in prices and lack of availability of products, medicines and healthcare.

So it is really essential that we incorporate their life into the legal system which needs to be led by them to achieve a fruitful result.

TRADITIONAL KNOWLEDGE AND WOMEN

The concept of collective rights is central to the indigenous cultures. But the status of indigenous women within and outside their communities remain precarious when they are unable to claim any right of their own. It is important to economically empower them so that they can enjoy autonomy over their lives and resources.²⁰ The reality is very precarious not only because of the poverty they live in but also the violence they suffer within their relations at work. Expanding indigenous women's rights strengthen the collective rights of the community. It is important for women and girls need to be aware of their traditions but also their human rights. Indigenous women across the world face disproportionate levels of discriminate, exclusive, violence.

Traditional Knowledge is a broad term referring to knowledge systems, encompassing a wide variety of areas, held by traditional groups or communities or to knowledge acquired in a non-systematic manner. These knowledge systems have significance and relevance not only to its holders but to the rest of the humanity. There are two major Systems of traditional knowledge protection. 1) Positive protection, i.e. giving traditional knowledge holders the right to take action or seek remedies against any misuse of traditional knowledge. 2) Defensive protection, i.e. safeguarding against illegitimate intellectual property rights acquired by third parties over

¹⁹ Commission on Intellectual Property Rights (CIPR) (2002). "Executive Summary: Integrating Intellectual Property Rights and Development Policy." *Report of the Commission on Intellectual Property Rights*. London: Commission on Intellectual Property Rights. September, www.iprcommission.org, accessed 2006.

²⁰ Cervantes, Silvia Rodrigues (2006). "FTAs: Trading Away Traditional Knowledge." GRAIN. March, www.grain.org/briefings/?id=196

traditional knowledge.²¹ Since the ratification of the Trade-Related Aspects of Intellectual Property Agreement (TRIPs) in 1994 and the ratification of the Convention on Biological Diversity (CBD) in 1993, the knowledge passed down from generation to generation in traditional societies around the globe has a vital significance in ensuring not only the rights of indigenous groups but also the nation.²²

According to Article 8(j) of the Convention on Biological Diversity (CBD),²³ each Member State shall, as far as possible, where appropriate, and subject to national legislation to: respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

The role of women in the practice and preservation of TK is well documented in many areas such as seed preservation, bio mass related activities, traditional agriculture, and the practice as well as use of traditional medicines, especially for gynaecology related treatment. Traditional knowledge is recognised as a 'gendered science'. It is high time that the state encashes on the hard work of these women and create a mutual give and take society where it not only benefits the state but also women by giving them a deserving source of income.

²¹ Santosh M.R. and Sengupta Ranjana, Trade, Intellectual Property Rights (IPRs) and Gender Issues, Trade and Gender Briefs No.3, April, 2011.

Various political, economic and social reasons women and men are differently placed on the development trajectories. As IP laws directly impact the entitlements of women and other marginalised sections, government should carry out comprehensive impact assessments in order to study the social and economic costs inflicted on the vulnerable sections of the Indian society.

²² Agreement on Trade-Related Aspects of Intellectual Property, Apr. 15, 1994, 33 I.L.M. 8. For an introduction to TRIPs, see World Trade Organization, Overview: The TRIPs Agreement, <http://www.wto.org/english/tratopE/trips.e/intel2-e.htm>.

²³ CBD Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (2005b). "Development of Elements of *Sui Generis* Systems for the Protection of Traditional Knowledge, Innovations and Practices." Note by the Executive Secretary. 2006UNEP/CBD/WG8J/4/7, 24 November. Prepared for Fourth Meeting Granada, Spain 23-27 January, 2006.

Bio diversity in areas such as Western Ghats, the northeast region, the Jeypore tract of Orissa and coastal ecosystems are already under threat in India.²⁴ In order to deal with the current problems in the access, practice and commercialisation of TK, there is a need to bring in alternative development models which will make the communities self-reliant and also protect their rights against corporate takeovers.

Gender differences in productivity and earnings are systematic and persistent. Whether in agriculture or off the farm, among those self-employed or in wage employment, women exhibit lower average productivity and earn lower wages than men. These differences have been documented in both developed and developing countries, and although they have declined over time (primarily as a result of the reduction in the education gap), they remain significant.

In India a large number of populations are dependent on traditional and Ayurveda medicines²⁵ like using turmeric in wound healing, basil leaves in curing cough and cold, methi as a tonic to bring down glucose, eggplant for treatment of diabetes etc. All these practices have led in major scientific discoveries but it took India some time to properly regulate these traditional knowledge that could be patented and would result in setting up a regulated system with reaps economic benefits.

LEGISLATION FOR TRADITIONAL KNOWLEDGE

It becomes very important to respect the rights of traditional communities, including Indigenous peoples, under national and international law. The legislation should be drafted in such a manner that it not only ensures that not only their moral rights but economic rights also get protected. India can develop measures that reflect and respond to its particular circumstances.

²⁴ FAO (1998). "Women: Users, Preservers and Managers of Agro-Biodiversity." Sustainable Development Dimensions. Women in Development Service (SDWW)/FAO Women and Population Division, October, <http://www.fao.org/sd/WPdirect/WPan0025.htm>, accessed September 2006.

²⁵ Wright Shelley, "Borrowed Power: Essays on Cultural Appropriation by Bruce Ziff and Pratima V Rao" [1977] Sydney Law Review 30; (1997) 19 (4) Sydney Law Review.

Along with protecting their rights ensuring that tradition based innovation and creativity should be encouraged for commercialisation that prevents knowledge erosion to other powerful agents. In that it again becomes more important to take into account woman's experiences and to put it in Christime Littleton words, "Feminist jurisprudence must take women's experience as central and legal categories of doctrines as merely raw material- to be cut and pasted, stretched, arranged and sewn together to fit that experience."

First and for most it is important to include women in framing the laws and they are directly involved with the working of laws as they will know what kinds of laws are better suited to them. The masculine nature of laws was a result of laws being framed by only men, even today very few women are involved in the law making process and it is time to reverse that by including women in law making. The structure while legislating traditional knowledge requires a framework that focuses on special provisions that help women in commercialising their work. The following incorporations can be made

- At least 5 indigenous women from every state should be involved with the law making procedures and their experiences should be incorporated so that it becomes easy to have a structured analysis for state to implement accordingly when they have specific details with regard how to structure a and deal with specific problems.
- Specific funds should be allocated for development of the products by spending on education of women in that specific area so that the further innovation can take place and that can be patented.
- Various awareness schemes and programmes should be organised to help creating knowledge in different rural places of converting their knowledge for economic gain.
- If the women or a group of women are illiterate then a special programme should be introduced that is along with giving them basic education about reading and writing gives them a detailed understanding of the legal structure their rights, duties and obligations. This is also have a positive impact on the literacy rate of the nation.
- Specific database/account should be created that keeps a record of these kind of knowledge held by women as prior art so that no one else can use that. All these should be tallied and

if there is any similarity or if any two products can be combined together to achieve an innovative and a novel product that will help in economic development of the nation.

- It becomes very important to distinguish between soft and technical works and special protection should be given to both at different levels as due to the societal bias against women, they are the once usually involved in the soft tasks according to the society. It becomes the duty of the state in changing that situation and women the correct worth of their work.

E.g.: the women plucking tea leaves in Assam tea gardens requires a special skill in deciding what kind of tea leaves should be selected for manufacturing requires proper attention and a unique lens to identify what kind of leaves should be included and what not.

- For medicinal knowledge a proper testing centre should be set up supervised by the women who are practicing these for years and their contribution should be reward economically according to the state governments and labour laws regulations. This will not only help giving commercial benefit to women but also help giving a secured and tested medicines to citizen. This will help giving India an economic advantage in medicines which they could vitalise on that opportunity and develop a ion with profitable market for that.
- A review committee should be set up that supervises the contribution of women and prepares a yearly report noting down all the progress and short comings while implemental the provisions. There should be a central committee and then a state committee to look through and analyse and scrutinise every location clearly.
- A collaboration should be formed between international organisation like UNICIEF, Red Tape etc. and National review committee. So that better and a structured training can be given to the members so that they are able to deliver what is required from them.

CASE STUDIES

In Christime Littleton words, “Feminist jurisprudence must take women’s experience as central and legal categories or doctrines as merely raw materials – to be cut and pasted, stretched, arranged

and sewn together to fit that experience”.²⁶ It thus becomes imperative to look through a feminist lens into the lives and experiences of women that act as a discovery on how the ignorance of law along with the masculine society has resulted in stabilizing the gender rules and norms.²⁷ These studies are not examined as passive social reflections of legal concepts, but as dynamic institutions that the law attempts, often clumsily to apprehend and modulate.²⁸

WOMEN IN KUMAON HILL FARMING SYSTEMS

Traditional knowledge was the cornerstone of the society and its survival in the Kumaon hills. It provides locally manageable, sustainable and cost effective survival strategies for local community, especially to the poor. Women's knowledge has been the mainstay of crop production, animal husbandry, dairy and forestry. They have excellent knowledge about collection, storage and use of seeds.

Despite all this, their immense contribution to subsistence based rural societies remained veiled. Very few efforts have been made to analyse their contribution to, rural economy, traditional hill agriculture, continuance of traditional knowledge etc. Women are considered "invisible" actors in agriculture and natural resource management in the hills. The most important feature of a woman's life in Kumaon Hills is her workload. Women are expected right from girlhood to do all the household chores and contribute substantially to agriculture. Despite all this, their immense contribution to subsistence based rural societies remained veiled. Very few efforts have been made

²⁶ Moran, Katy (1999). “Indigenous Knowledge, Equitable Benefits”. World IK Notes No. 15, December.

²⁷ The major example of this could be how the constitution of India has guaranteed the right to equality, right against discrimination but in reality women, lower castes continue to be oppressed deprived of various rights especially right to live equally with dignity. There is no denying that law can be a very important tool for social change as this paper has talked about in detail but the experiences of women can substantiate to give a better understanding of their social and economic situation but how if taken into account while framing the law or law commission report, the legislators will be at a better position to structure the law in a manner that is beneficial for women.

²⁸ Roderick A. MacDonald, “Law Reform and Its Agencies” (2000) 7 Can. Bar 9 at 105.

The author MacDonald talks about how while researching four themes should be looked at that are personal relationships, social relationships, economic relationships and governance relationships. These relationships themselves are the point of enquiry and not the rule of the law as they give us a deeper picture to analyse the situation and not blindly believe what the law wants us to believe.

to analyse their contribution to, rural economy, traditional hill agriculture, continuance of traditional knowledge etc.

It becomes an interesting area to look how women can be considered "invisible" actors in agriculture and natural resource management in the hills. How their contribution is ignored which a state can very easily help them realise and establish an economic space for themselves.

The economy of Kumaon Hills is largely depended on natural resources. Over the years, the region has suffered a major loss of its pristine natural resources. And the ever shrinking forest and water resources have hit women in Kumaon hills real hard. For one, they spend longer hours gathering fuelwood, fodder and fetching water. Then, the loss of forest cover and proliferation of *chir* pine has made agricultural activities more cumbersome. Women have directly borne the brunt and their workload has multiplied. The problem has compounded in the wake of most able-bodied men migrating to the plains and leaving the task of running the households squarely on the shoulders of women.

This economy was largely based on traditional knowledge system that is in disarray today. With the forest cover gone, the organic linkage between cropping and forest was lost, resulting in the reduction of transfer of biomass. The so called scientific knowledge system has been thrust upon the people which has threatened the very survival base of the hill society because people are fast losing natural sources and traditional knowledge to utilise them whilst the modern system remains inadequate and inaccessible to most people. Moreover these 'imported scientific solutions' have proven to be inappropriate, ineffective and irrelevant.

Government interventions, market forces, cash economy are some of the reasons amongst several others, are responsible for the downfall of traditional knowledge. Market forces and government interventions have also focussed on crops for the market. Therefore very little improvisation has been made in the technology which mainly concerns women such as processing food, cooking, fetching firewood, carrying water. Besides, external forces have completely marginalised women from the control and management of natural resources. These have not just added to women's workload but have also made a dent in their status and power and made them loose control over

their labour and knowledge. Her role as a carrier of traditional knowledge remains largely ignored by researchers.

INDIGENOUS WOMEN HEALERS FORMED GROUPS TO PRACTICE TRADITIONAL MEDICINE IN OAXACA (MEXICO)

After bitter struggles with official associations of physicians, traditional medicine people, mostly women, finally were able to organize joint meetings in which they shared their experiences and set up plans for collaboration. As a direct result, indigenous women benefitted immensely. Their involvement has been a key factor in cataloguing the plants, herbs, and practices, and in promoting the conservation and availability of curative products and practices. With the support of the National Indigenist Institute, UNICEF, and NGOs, an overall health program has been established. Recognized medicine people and healers train interested indigenous villagers as health promoters through courses and workshops, focussing on the recovery of communal knowledge about medicinal plants and traditional healing practices. The status of indigenous women has been enhanced through the creation of a council of traditional medicine where their knowledge is recognized, and through 42 the opening of community clinics. Not only can they make wide use of their traditional knowledge in medicine, but also the exercise of their practice has been greatly improved

CONCLUSION

The socio-economic condition of the women needs to be improved with the help of the legal system, which gives the protection and support that would help increase the commercialisation of the products. Along with that state's intervention what is very important is formulating the right kind of laws that fit and understand the people that they are governing. Both the case studies clearly document the role of women in preserving and protecting the traditional knowledge of their indigenous communities. The vital role that women play in preserving that should be documented and properly credited for which somewhere is lacking behind especially with the developing and

the underdeveloped nations. It becomes a crucial aspect for the economies of these developing nation to protect their identities by securing the maximum opportunities and output to help develop that. Along with that the social index/ position of the nation will also improve, giving access to women to help develop their skills that can help them get an economic benefit. This clearly draws a causal link and a direct proportional relationship between the economic development of women to their social conditions in the society and increase in the economic Gross Domestic production (GDP) of the nation. This vicious circle or link requires a little push from the law. The pattern/ structure of the law has always be masculine and this requires to be changed so that it has a positive on the women by making them part of the legal system than just the observers from outside. The most interesting thing while drafting a law should be taken into account different perspectives, experiences, thoughts etc. The importance that traditional knowledge deserves is understated by the nations for their economic development which makes the situation very complicated and takes away the right of individuals to flourish with the available resources and grow/ evolve themselves through the modern times. It has been the case that all the traditional practices have evolved and developed themselves to the required needs of the times.

Traditional knowledge legislation whenever drafted has an opportunity of doing that as it will have individuals from various states, districts who would have different experiences that they would have be it in the productivity of the soil, preparing medicines, availability of herbs etc. This platform should be used to incorporating both men and women equally but there should be special provisions made for the women as it requires a lens of substantive equality and uplift women to the point where they deserve. This will be an achievement for the long struggle of the women's movement that gives the underprivileged women of the nation their right.