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ABSTRACT

“Expressions of Folklore” takes its color from Traditional Knowledge. In a most generic sense ‘folklore’ means knowledge of the traditional community. Protection of “Expressions of Folklore” has become very important as India is amongst most bio-diversified regions in the world. In absence of any law and legal measures for the protection of folklore at national, regional, or international level, large scale commercial exploitation of folklore can be seen in various industries. The industrial and commercial exploitation of the folklore has increased due to the advent of modern technologies in the field of sound and audiovisual recording, broadcasting, cable, television and cinematography. Various revolutionary changes taking place in genetic engineering and biotechnology pose a new threat to folk science and technology. Nowadays folk medicine, folk agricultural seed and plants are used by modern scientist to create new medicinal product and new variety seed and plant. And they are granted patent right over the new creation based on traditional knowledge and folklore without prior informed consent and sharing of benefit with the traditional communities whose ‘base material’ folklore has been utilized.

After surveying all existing IP and Non-IP legal measures for the protection of expressions of folklore, it has become quite clear that none of the provisions/measures are capable of the protecting the folklore in its holistic environment. Policy of protecting the subject matter through copyright law has not been successful. The provisions of authorial works in copyright law are not sufficient to cover all the

elements of folklore. Nor the provisions of non- authorial work are able to cover the 'base works.' In fact, the provisions of non- authorial work to some extent protect the 'derivative works' based upon folklore. Thus, the 'base works' remain unprotected. On the other hand, other IP measures provide protection to only "specific elements of folklore" to a limited extent. Some of them provide "defensive protection" to it against wrongful acquisition of IP rights without confirming any "positive rights" over the holders of expressions of folklore. Similarly, Non-IP measures provide protection to folklore in specific cases and transactions. To sum up, there is no specific law in India to protect the folklore in its holistic environment, taking into account its special features including aspirations and wishes of the holders of folklore who create, preserve and maintain it.

In such a situation, there is need of change in policy objective which of course is visible from the India's stand on international forum such as WTO, where she took stands that documentations of traditional knowledge and folklore will be useful tool to prevent wrongful acquisition of patent and other IP rights but it cannot be substitute for "positive protection". Thus, apart from documentation of folklore, there is clear need of developing *sui generis* IP legislation for "positive protection" (conferring IP rights on the holder of folklore) after taking into account the customary laws and practices of the local/tribal/traditional communities who create, preserve and maintain such folklore. Such *sui generis* IP legislation must be effective, practicable and enforceable.