



Prospect through Disagreement Declaration in Admission Advantage Contribution

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Abstract: *It refers to how genetic resources may be accessed. The main aim of Access and benefit-sharing is fair and equitable sharing of benefit and promoting sustainable development. Mutually Agreed Terms between the parties is one the important procedure in which this process is to be conducted which often results in disputes which require efficient resolution. This paper range over the features of Access and Benefit Sharing disputes.*

Keywords: Access and Benefit Sharing, Alternative Dispute Resolution, ADR Conflict resolution better than Litigation, Interest-based mediation & GR and TK (Traditional Knowledge)

I. ACCESS AND BENEFIT SHARING

The main aim of Access and benefit-sharing is fair and equitable sharing of benefit and promoting sustainable development. Rules which govern access and benefit-sharing are mentioned in Article 15 of CBD. To gain access, users must first get permission (PIC) from the provider country. In addition, the provider and the user must mutually agree with the terms and conditions of the agreement to share the resulting benefits equitably.

1.1 Features of Access and Benefit Sharing Disputes

- **Access and Benefit Sharing Disputes are International Disputes Involving Multiple Actors with different cultural ideologies.** The differences in cultural and social beliefs may further heighten the tension between the parties and make the dispute harder to resolve. Employing litigation as a means of resolving ABS disputes involving multiple parties brings with it numerous challenges.
- **Access and Benefit Sharing Disputes Involve Specific Subject Matter with Technical and Scientific Components.** ABS disputes revolve around issues relating to specific subjects like biodiversity, public policy and environmental issues, traditional knowledge, and sometimes intellectual property. They also involve the use of cultural, scientific, and technical terminologies. Courts sometimes lack the requisite knowledge to handle technical and scientific issues. This lack of understanding will make resolving the dispute more difficult. Scientific or technical issues will require some expert evidence in courts. Expert evidence in litigation is oftentimes problematic. The judge sometimes lacks in-depth knowledge or expertise in these issues, the judge may rely on inaccurate expert evidence to make decisions. An expert is, therefore, more likely to lean towards the side



with a financial advantage and a judge who relies on such expert evidence may deliver a wrong judgment.

- **Access and Benefit Sharing Disputes involve Power Imbalances between the disputants.** ABS disputes involve large corporations, foreign firms local communities and western societies is because the large organizations have more money than the local communities which leads to an imbalance in financial resources and therefore the economic power of the parties.¹⁰² Due to their economic power, large corporations are therefore more at an advantage of getting a favourable decision in court.
- **Access and Benefit Sharing Disputes involve Potential Sensitive Non-Legal components which may need Unconventional Remedies.**

1.2 Related Case Law: Basmati Rice

India has a long history of the cultivation, domestication, and breeding of Basmati rice. It has been reported that India grows approximately 650,000 tonnes of rice annually with most of it exported throughout Asia and to Europe and the US. The Basmati rice controversy emerged in late 1997 when a US-based company applied for a patent which was granted by the US patent office to call the scented rice grown outside India 'Basmati'. This was irrespective of the fact that the rice had been grown in India for centuries especially among the Punjab, and Uttar Pradesh. Rice Tek Inc. was granted patent No. 5663484 on September 2, 1997. The grant of the Basmati patent spelled doom for Indian farmers and exporters as they lost out on profits from exports and also lost their positions in crucial markets like the European Union, Western Asia, and the Middle East shortly after the grant of the patent, Indian NGOs initiated a campaign against the patent which drew international attention to the patent The Indian government approached the US patent office urging them to reconsider the grant of the patent to protect India's interest as the patenting of Basmati by Rice Tek was a threat to the Indian economy. As far as the Indian government was concerned, "patenting basmati was like snatching away their history and culture.

Following the re-examination, Rice-Tek agreed to withdraw some of its claims which were formally retracted in January 2002. However, some other specific claims were retained such as the claims for novel rice lines. This case was addressed as a major victory against bio piracy.

How can ADR address the peculiar needs of GR and TK Related Access and Benefit Sharing Disputes?

ADR can serve as an effective dispute resolution tool for the ABS process. It explores three main ADR processes: Mediation, Conciliation, and Arbitration.

What is ADR?

ADR is an informal dispute resolution process. In this process, parties resolve their disputes with the assistance of a third party. The main aim of ADR is to establish an interest-based resolution to disputes, Greater access to justice for underprivileged groups. Lawful, effective outcomes should be produced that are acceptable to the parties and the Court, and also reduce the cost of resolving



disputes. Mutual agreements/consensus is one of the important principles of ADR that make it fair to the ABS dispute resolution system.

Forms of Alternative Dispute Resolution

- **Mediation:** Amicable settlement of disputes between the parties with the help of a mediator or a moderator. It is an efficient and cost-effective way of achieving the result.
- **Arbitration** is a process of fair and equitable settlement of disputes through a person or persons. In the process of arbitration, disputes are resolved outside the judiciary court. The disputes between the parties in arbitration are settled by a neutral third person who is chosen by the parties to the dispute.
- **Conciliation:** Conciliation is an informal process. It refers to a process in which disputes are settled without litigation. A neutral third party facilitates negotiations between the parties to a dispute to help them reach an amicable settlement

Features of Alternative Dispute Resolution that acknowledge the Special Nature of ABS Disputes

According to Slaikeu&Hasson four ways of resolving disputes are “power, rights, interest, and avoidance” An effective dispute resolution system should embody certain principles:

- Prevention and early intervention options
- Seeks to build collaborative strength and
- utilize the mediation model.

Proposing an Interest-Based Mediation to Resolve ABS Disputes

Interest-based mediation as the best form of resolving ABS disputes and exploring the features of mediation that are amenable to the challenges of ABS disputes. The flexibility, control, speed, cost-effectiveness, and other advantages offered by the mediation process make it more amenable to handling the peculiar challenges of ABS disputes. Parties, therefore, do not necessarily have to resort to the famously expensive and time-consuming process of traditional litigation but may exercise the option to choose mediation as a dispute resolution system.

CONCLUSION

The presentation has explored the potential for ADR in ABS disputes by discussing the challenges of ABS disputes and examining which forms of alternative dispute resolution could be more effective in handling the challenges.

REFERENCES

- [1]. www.thecpa.co.uk
- [2]. https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2864671_code2506623.pdf?abstractid=2864671&mirid=1 www.wipo.int
- [3]. https://www.researchgate.net/publication/23505790_Geographical_Indications_and_the_Trade_Related_Property_Rights_Agreement_A_Case_Study_of_Basmati_Rice_Exports
- [4]. www.sciencedirect.com



[5]. www.lawreform.ie

[6]. www.cbd.int

[7]. <https://blog.ipleaders.in>

[8]. <https://en.m.wikipedia.org>

[9]. <https://millerlawpc.com>