

Intellectual Property Rights: To Protect Indigenous Knowledge

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Introduction:

Legal protection of intellectual property rights plays the important role for economic and social development of Nation as well as Society. It is must for benefit of business and trade at large and for progress of technology as an incentive. There is no strong and separate law regarding protection of Indigenous knowledge in India. Therefore, Indigenous People are facing various problems regarding Protection of Indigenous Knowledge.

Keyword: IPR, TK, Indigenous Knowledge

Significance of Indigenous Knowledge:

Many People have indigenous knowledge of Music, art, culture, agricultural, handicraft, architecture, medicines etc. Some Tribes and community are very popular for their handicraft and cultural Expression.

In India local people are largely depending on their traditional healing system for their health care and the information about herbal medicine is passed on from generation to generation through the word of mouth. Many Tribal Communities have knowledge of herbal medicine.

Existing Intellectual Property Rights Laws in India are not covering Indigenous Knowledge. The Indigenous Knowledge is not Intellectually Protected. Therefore there is a scope for the protection of Indigenous Knowledge of through Express and clear provision under Intellectual Property Rights System of India. The pious purpose of the Law to Protect Intellectual Properties is still waiting for the protection of Indigenous Knowledge under IPR system.

Types of Indigenous Knowledge:

1. Herbal Medicine Knowledge
2. Handicraft Knowledge
3. Undisclosed Knowledge
4. Indigenous Knowledge Associated with Biodiversity

1. Medicine Knowledge:

In India local people are largely depending on their traditional healing system for their health care and the information about herbal medicine is passed on from generation to generation through the word of mouth. Many Tribal Communities have knowledge of herbal medicine. They are facing problem due to lack of proper protection of their knowledge.

Big pharmaceutical companies are using their knowledge and method at commercial level. Companies are enjoying the benefit of their knowledge after modification into Intellectual property. There is an urgent need to protect their traditional knowledge of herbal medicine. Indigenous people are not able to convert their knowledge into intellectual property rights under existing System due to various reasons like lack of awareness, poverty etc.

2. Handicraft Knowledge

Handicraft is a unique expression by using art on any item by hand. Handicraft is also known as artisan art, which means a type of work done by manual labour where useful and decorative devices are made completely by hand or using simple tools. The word “handicraft” is most frequently used for the term “Art and Craft”. Art and craft work is not only just a hobby of Indigenous People but is also creates useful as well as creative work for people, using both natural raw materials and traditional techniques.

For Example Rajasthan is well known all over the world for its hand printed textiles, furniture, and leather work, jewellery, painting, pottery, and metal craft. The use of lively colours and flamboyant, fantasy designs is distinctive in all forms of arts and crafts of Rajasthan. Handicraft is livelihood of some indigenous Community. There is an urgent need to protect the handicraft knowledge of local Community.

3. Undisclosed Knowledge:

Many Tribal Families of Indigenous Community does not disclose of their Traditional knowledge due to commercial value and they use such types of knowledge for business

purpose. Such types of undisclosed knowledge can be protecting by Sui generis system of IPR. Undisclosed information that has commercial value is subject matter of protection under Article 39 of TRIPs.

The Main advantages of protection of such types of undisclosed knowledge are the possibility of perpetual protection and there is no requirement of registration of such knowledge. But there is no law in India for protection of undisclosed information and knowledge.

4. Protection of Indigenous Knowledge Associated with Bio diversity:

Biodiversity Act, 2002 primarily addresses Issues of conservation, sustainable use of biological resources in the country, issues related to access to genetic resources and associated knowledge and fair and equitable sharing of benefit arising from utilization of biological resources to the country and its people. This Act provides the protection of traditional knowledge and equitable sharing of benefit arising out of use of such knowledge.

According to Provision of Act, No person, who is a citizen of India or a body corporate, association or organisation which is registered in India shall obtain any biological resources for commercial utilisation, or bio-survey and bio- utilisation for commercial utilisation except after giving prior intimation to the state biodiversity board concerned. But provision does not apply to the local people and Communities of the area, including growers and cultivators of biodiversity, and vaid and hakims, who has been practising indigenous medicine.

The Biodiversity Act 2002 is not sufficient regarding protection of Indigenous Knowledge. Because scope of this act is limited it provides protection only such traditional knowledge that associated with biological resources.

Legal protection of Indigenous Knowledge:

There are few IPR protection Laws in India like The Copyright Act 1957, The Patent Act 1970, The Trade Mark Act 1999, The Design Act 2000, The Semiconductors Integrated Circuits Layout-Design Act 2000, The Geographical Indications of Goods (Registration and Protection) Act 1999, The Protection of Plant varieties and Farmer's Rights Act 2000, The Biological Diversity Act 2002

Indigenous Knowledge and Copyright:

Literature, drama, music, cinematograph film, sound recording artistic work like Painting, Sculpture, drawing, engraving etc. are subject matter of copyright under Copyright Act, 1957 if they are original. It must not be copied from another and should be an independent creation. Copyright exists only in the material form in which the ideas are translated. If a work has been created in one's mind, copyright protection does not attach until the work is fixed in the tangible medium of expression.

Local People has various types of Indigenous knowledge and Idea but only knowledge and idea are not subject matter of copyright until the work is fixed in the tangible medium of expression.

Indigenous Knowledge and Patent

Indian Patent Law is not suitable for protection of Traditional Knowledge. Section 3(p) of Indian Patent Act 1970 clearly provides that "an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components is not considered as an invention for the purposes of patenting.

In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*¹, Supreme Court held that, The Fundamental Principal of patent law is that patent is granted only for an invention which must be new and useful.

It is important to bear in mind that in order to be patentable, an improvement on something known before, or a combination of different matters already known, should be something more than mere workshop improvement, and must independently satisfy the test of invention or a "inventive step". To be patentable, the improvement or the combination must produce a new result or a new article or a better a cheaper article than before. The combination of old known integers may be so combined that by their working under relation, they produce a new process or improvement result. Mere collection of more than one integers or things not involving exercise of any inventive faculty does not qualify for the grant of a patent.

New invention means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date

¹ Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries AIR 1982 SC 1944

of filing of patent application with complete specification, i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art.²

Traditional Knowledge promote Community interest while patent law promotes individual monopoly when both worlds overlap with each other in the case of TK derived inventions, there emerges a need to find a mean path that strikes a balance between the two.³

Indigenous Knowledge and Geographical Indication

It can be said that Traditional Knowledge and GIs share a common element insofar as they both protect accumulated knowledge which is distinctive to a specific locality. Though TK express the local traditions of knowledge, GIs stand for specific geographical origin of typical product. GIs relate a product and which is particular to region or locality while TK relates to piece of information TK.⁴

The protection granted to GIs extends indefinitely and the possibility of collective ownership of such rights suggests that they may be especially suitable for protecting Traditional Knowledge.⁵

Many countries support that the geographical Indication (GIs) could be a particularly important way of protecting product based on TK. The European Communities and their members' states have suggested that it may also be useful to look at the possible role of GIs in achieving the goals of the convention on Biological Diversity (CBD)⁶

Protection of Indigenous knowledge is major problem in India. Indigenous community do not have the capacity to transform their knowledge into form of intellectual property. Therefore, they are depriving from claim of intellectual property rights under IPR legislation in India. People are unable to convert their knowledge into wealth because of their poverty, illiteracy, isolative habit, lack of awareness, lack of information and technology gadgets.

There is no strong and separate law regarding protection of Indigenous knowledge. Although, TKDL (Traditional Knowledge Digital Library) is playing the important role for

² Section 2(1)(1) of the patent Act, 1970

³ Journal of Intellectual Property Rights Vol 17, September 2012, p 435

⁴ TRIPs Article 22.1

⁵ Suman Sahai, IndraniBarpujari, Are Geographical Indication Better suited to protect indigenous Knowledge? A Developing Country Perspective, page 3 available at <http://www.genecampaign.org> (Last accessed on 25th, Feb,2022)

⁶ ibid

cancellation or withdrawal of a large number of patent applications attempting to claim rights over the use of various medicinal plants by other country. India's TKDL is a unique tool that plays a critical role in protecting the traditional knowledge of Indigenous community. TKDL involves documentation of knowledge available in public domain on traditional knowledge.

Conclusion:

Existing Intellectual Property Rights Laws in India are not covering Indigenous Knowledge so the Indigenous Knowledge is not Intellectually Protected. There is a scope for the protection of Indigenous Knowledge of through Express and clear provision under Intellectual Property Rights System of India. The pious purpose of the Law to Protect Intellectual Properties is still waiting for the protection of Indigenous Knowledge. There are possibilities of false claims of Intellectual Property Rights because there is no proper documentation of Traditional Knowledge of Indigenous Community.

If India has a strong law for protection of indigenous knowledge it will be helpful to control the unauthorised use of their knowledge for Commercial purpose without permission of knowledge holder.

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