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IPR and Recognition of Indigenous Cultural Identity

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In this present society, it can be seen that the indigenous people are considered an ignored identity where they are not considered a part of the society. The indigenous people and their cultural practices have a unique and different nature that needs to be protected and preserved based on the changing situation in society. In this study, the researcher focuses on IPR and the need to recognize the indigenous culture and traditions where the identity of the indigenous people is considered. The misuse and misappropriation of the cultural and traditional practices of the indigenous people are increasing with time due to the intervention of third parties making the communities more vulnerable. Their traditional knowledge and cultural practices are being misused and taken for granted as the people are not aware of such aspects. This needs to be resolved and the communities have to be protected to make sure that they have a place in society.

Keywords: *indigenous community, rights, protection, traditional and cultural practices, traditional knowledge.*

INTRODUCTION

The recognition of indigenous cultural identity has been an issue of concern where the whole community was always ignored by society due to the domination of others. Their unique traditions and culture need to be protected and the necessary recognition has to be shown as they deserve to be treated the same way as others in the society. The local and indigenous

communities have used the traditional knowledge for centuries which applies to all aspects including agriculture, environment, etc. The laws related to the customs and cultural taboos of these communities focus on the protection of this knowledge and help in the regulation of the same¹. The increase in the commercial use of the resources beyond a limit point toward the increasing misappropriation and misuse by third parties. The holders of traditional knowledge and policymakers are focusing on new policies in this particular area to ensure that it is protected for better future development².

IDENTITY OF THE INDIGENOUS PEOPLE

Indigenous people are often treated as an ignored identity as they live away from society with their own unique culture and practices. They are not given the right to live like the others due to their indifferent nature which is creating a division in society. The heritage of the indigenous people is a living heritage that is passed down from one generation to another. It includes all cultural and traditional practices along with traditional knowledge. The indigenous cultural identity can be protected by giving the value and respect it deserves based on the changing circumstances. The uniqueness of the indigenous communities has to be protected where cultural expressions like music have to be valued properly. As traditional songs became popular with time, the music producers started using folk music and other music styles of the indigenous people for better fame and respect. The usage of such pure traditional aspects has increased with the introduction of OTT platforms where the real owners of traditional music are not treated the way they have to be treated³.

TRADITIONAL CULTURAL EXPRESSION

The traditional cultural expression can be defined as per WIPO as an “expression of the traditional culture which is integral to social and cultural identity and heritage of local communities, are handed down from generation to generation, maintained and developed by

¹ Jo Recht, *Intellectual Property in Indigenous Societies: Culture, Context, Politics and Law* (2008) 6 Dart Mouth L.J., 277

² *Ibid*

³ Michael Davis, *Indigenous Rights in Traditional Knowledge and Biological Diversity Approaches to Protection* (1999) 4 Austl. Indigenous L. REP., 1

its holders, constantly evolving and developing”⁴. While dealing with this concept, it can be seen that the ownership of the same belongs to the whole community rather than an individual as it arises from a customary practice that might be transferred from one generation to another. In most instances, the real owner of the traditional cultural expression is unknown and since it is used from generation to generation, it is available freely in the public domain for usage by the people⁵. India, being a diverse country, it is important to protect such valuable cultural and traditional aspects for the maintenance of a proper system in the society.

IPR AND INDIGENOUS CULTURE

The preservation of a particular person’s cultural identity is a fundamental right that is provided under Article 29 of the Indian Constitution⁶. The authorities and Government have to focus on protecting the indigenous communities and preserving their cultural identity so as to maintain their identity and culture. The increase in the misappropriation of the culture and art of the indigenous communities can be regulated through proper implementation of the IP laws where they have to be empowered economically and acknowledge their rights. In this present 21st century, the protection of the cultural identities of indigenous people especially traditional knowledge and traditional cultural expressions have gained a lot of importance as there have been various issue coming up regarding cultural misappropriation and other related problems which need to be resolved for the betterment of the indigenous communities. There is a need to protect the people who have been preserving the art from becoming extinct and acknowledge their existence in society. The indigenous culture can be protected only if certain rights are provided to those people and the community at large where any kind of violation has to be taken seriously along with other rules and regulations in the society⁷. The vulnerable communities in the society need to be protected along with their culture and traditional practices to ensure that they are not being exploited in any manner. In this

⁴*Ibid*

⁵ Antonio G. M. La Vina & MylinSapiera, ‘Traditional Knowledge: Challenge to Intellectual Property Rights’ (1995) 70 PHIL. L.J., 140

⁶ Constitution of India 1950, art. 29

⁷ Gregory Younging, ‘Traditional Knowledge Exists; Intellectual Property Is Invented or Created’ (2015) 36 U. PA. J. INT’L L. 1077

changing society, there is a need to empower the indigenous communities for utilizing their traditional practices and cultural practices in the required manner without any kind of exploitation of the people.

INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY (ICIP)

The rights under ICIP can be considered as rights of the indigenous people concerning their heritage and culture. All kinds of cultural practices, traditional knowledge, and other knowledge systems which are developed by the indigenous people come under the head of heritage which signifies their identity in the society. The rights regarding intellectual property have a wide scope that extends beyond the IP aspects including cultural heritage, environment, etc. These rights which refer to the rights that the indigenous people have and desire to have helps them in protecting their culture and traditional art from getting extinct and misappropriated⁸. The idea behind ICIP is the principle of self-determination where the main right includes the right to ensure that the traditional laws and customary obligations are valued and respected by the others in the society. This covers different types of traditional culture and expression which include music, artistic work, languages, etc⁹.

PROTECTION OF TRADITIONAL KNOWLEDGE

The main concern of the indigenous people is that the present IPR system does not provide recognition and protection for their cultural expressions. Some people consider this system as a threat to the whole cultural aspect of the indigenous people. The recognition and protection of the rights of indigenous people are not limited to art or copyright alone, rather it extends to their dance, songs, language, etc which brings about a uniqueness among the others existing in the society. As per Article 8 (j) of the Convention on Biological Diversity, traditional knowledge is referred to as the awareness, inventions, and traditions of the local and indigenous cultures across the world¹⁰. The concept of traditional knowledge has a practical nature that is acquired from experience which is gained over centuries. One of the most

⁸ Michael Davis (n 4)

⁹ Johanna Gibson, 'Trading Places with Communities: Towards the Protection of Traditional Knowledge in the Context of International Trade and Global Markets' (2003) 2 (3) J. INT'L TRADE L. & POL'y

¹⁰ Convention on Biological Diversity 1992, art. 8(j)

important facts about traditional knowledge is that it has an ancient origin which is preserved for a long time and transmitted to the coming generation with time. The lack of respect for traditional knowledge is a great obstacle in maintaining the information coming along with it¹¹. The introduction of the modern lifestyle by the new generation and the disinterest shown towards the traditional practices result in the loss of traditional knowledge and the practices concerning the same.

RELEVANCE OF IP

The holders or owners of traditional knowledge face a lot of difficulties where the cultural survival of the communities is under threat. The increased demand for the commercialization of biodiversity is one of the important factors which pose a threat to the same. When the concept of IP is considered, it is often read along with research or experiments rather than the technical advances which are produced by the farmers, tribes, etc. But it can be seen that most of the indigenous communities have refined their knowledge systems which are related to farming, ecology, etc. In most instances, traditional knowledge is considered as a piece of information for free use in the public domain where the efforts of the indigenous people are not given much consideration. The problem faced in this developed era is that due to the increase in technology, there have been various instances of using the existing knowledge for producing innovative and useful goods without recognizing the efforts of the local communities, and the whole credit is taken by the big corporations where they are using these technologies to bind resources and related knowledge¹².

INTERNATIONAL PROTECTION OF TRADITIONAL KNOWLEDGE

Traditional knowledge can be considered as a crucial part of most of the native cultural identities where there is a need to protect the whole indigenous community and their culture. If the national laws are analyzed, it can be seen that such laws have a limited impact on where the legal effect will be in the countries where it was enacted. At the international level, it is

¹¹ Jordan E. Erdos, 'Intellectual Property Rights: Cure for Cultural Appropriation' (1997) 9 LBJ J. PUB. AFF., 50

¹² RatulaDatta, 'Indigenous Communities in India and the Protection of Traditional Knowledge: An Inadequate Legal Initiative' (2021) 25 *Supremo Amicus*, 392

better to find a common interest with regard to the protection of traditional knowledge where agreements between countries will help in the effective protection of traditional knowledge based on its nature of the same¹³. The main objective of such laws is to ensure that there is control over traditional knowledge lies with the indigenous community and preserve the same against any kind of misuse by third parties so as to promote equitable benefit sharing in society. The protection of traditional knowledge goes beyond the intellectual property aspects where the nature of the indigenous community has to be considered along with other related aspects.

NEED FOR A *SUI GENERIS* SYSTEM OF IP PROTECTION FOR TRADITIONAL KNOWLEDGE

India is home to thousands of unique indigenous communities, it can be seen that these communities play an important role in the cultural heritage of the country. As it involves a lot of distinct indigenous communities, it is important to protect and preserve traditional knowledge and cultural expressions. Hence the countries have come forward to develop their own *sui generis* system for this particular purpose where the protection of traditional knowledge is given importance. The term *sui generis* meaning, "of its own kind" defines something special and unique, and hence there is a need to have a collective effort in protecting the traditional knowledge which has a great role in the whole cultural aspect¹⁴. This system involves intellectual property protection which can be defined based on the region and nature of the indigenous communities. In a *sui generis* system of protection, it can be seen that there is positive protection of traditional knowledge where it is focused on empowering the communities to control the usage of their traditional knowledge and benefit from the same based on the changing circumstances in the society¹⁵.

¹³ David J. Stephenson Jr., 'The Nexus between Intellectual Property Piracy, International Law, the Internet, and Cultural Values' (2001) 14 St. Thomas L. REV., 315

¹⁴ *Ibid*

¹⁵ Vicente Paolo B. Yu II., 'Controlling Indigenous Knowledge: Towards a Property Regime for Indigenous Knowledge Systems' (1995) 70 PHIL. L.J., 27

CONCLUSION

Indigenous people are considered a vulnerable group that needs to be protected from any kind of misuse or misappropriation of others in society. The cultural practices, traditions, and traditional knowledge require effective methods of protection as it helps in the overall development of the society. The laws and regulations have to be framed based on the changing circumstances and nature of the indigenous community for the protection of the vulnerable group. In most countries, it can be seen that there are various types of indigenous communities that are unique and different having various cultural practices and traditions which need to be preserved to ensure that the cultural background of the country is not destroyed in any manner. The exploitation of the indigenous people also needs to be considered and immediate measures have to be taken for the betterment of the communities and the society at large.