

# Patenting of Traditional Knowledge and its Relevance (Intellectual Property Rights)

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**Abstract:-** The essay aims to demonstrate the significance of traditional knowledge in various fields be it agriculture, medicine, ecology, commerce, chemical industries, etc. The entire research project contends the effective remedies to tackle issues pertaining to grant patents to the exact owner of the traditional knowledge. The loopholes in the current legal system in the relevance to the patenting of traditional knowledge are briefly discussed. In the past few decades the role of traditional knowledge has immensely grown subsequent to which patenting it with the principle of justice, equity and good conscience has become a bone of contention. The essay moves forward with the hypothesis that legal documentation and sui generis system <sup>1</sup>will be effective steps to grant patents to the rightful owners. The thesis is proved with historical illustrations like turmeric case. Finally the primary aim of the research is to suggest ways in order to grant the local communities the benefit of their innovation, novelty and creativity.

## I. OBJECTIVES

- To highlight the importance of traditional knowledge in various sectors like commerce, agriculture, medicine, research and development and other industries.
- To understand the primary reasons why traditional knowledge suffers hurdles in claiming the right ownership and how this tends to violate the rights on the communities.
- To suggest the ways to secure the traditional knowledge of the local communities who are deprived from accruing benefits because of lack of legal documentation and awareness of intellectual property rights,
- To give a general overview about the current scenario and hurdles faced by the local communities to claim their ownership or novelty.
- To enlighten the readers about the patenting of traditional knowledge with reference to cases like turmeric, neem, basmati rice cases by analyzing it.

## II. METHODOLOGY

The research paper is eluded from secondary sources like books, journals articles, newspaper editorials, articles, essays, etc. Some genuine pieces of online databases and research papers from internet sources were referred to for gaining in-depth knowledge of topic. The case analysis is done using the statute and other legal websites.

## III. CONTENT

Operation of commercial and research industries is primarily based on the traditional knowledge developed by the local and indigenous communities in accordance with the specific regional environment. This knowledge developed and practiced by these localities is proved to be a great importance because of its scientific know-how's and other technical values. It is a boon to the industries like agriculture, medicine, commerce, pharmaceutical industries, etc. These companies gain tremendous amount of monetary value swelling up their profits. The crux of the matter arises when the local communities are not able to accrue benefits from the same. The traditional knowledge is alienable and intangible from the resource. It goes hand in hand. The real holders who have developed the clues and know-hows are deprived leaving them without the credits of the knowledge they have developed since immemorial. Formation and development of a new product in the market is generally formed on the basis of the scientific research conducted on the hypothesis derived from the traditional knowledge. That is why it is essential for their creativity, knowledge, novelty, innovation, etc. to be appreciated. Though the bone of contention is proving the novelty because they are passed by generations all together yet effective documentation and legal measures might help the local communities gain their benefits. In recent times it has become necessary to patent the same because traditional knowledge has proved to be a boon in the commercial industries by saving time, money and labor.

The patenting of traditional knowledge is a complicated and contentious matter because the various loopholes associated with it. This is because the original laws related to intellectual property rights do not cover the subject matters of traditional knowledge. The main reasons are encapsulated below in a nutshell-

Firstly the intellectual property rights are generally claimed by parties of single ownership or one entity be it private ownership, organization, individual, etc. On the other hand traditional knowledge is difficult to claim because it is a collective discovery or effort by the whole community altogether. If logically analyzed we can clearly infer that the protection of an intellectual property right is time bound but in the case of patenting of traditional knowledge is quite difficult because it is not time bound involving generations.

Secondly, the information is passed from one generation to another which proves that the nature of information is quite informal and in an oral form. So it is difficult to prove the same in major disputes due to lack of concrete evidence.

Lastly it ought to be a combined effort of both the government as well as the other entities to secure the rights. Many people are unaware of the intellectual rights they can claim because of ignorance and illiteracy prevailing in India.

There are loopholes not only in the legal system but other factors like devolution, encroachment; ineffective documentation has led to the vulnerability to bio piracy. Bio piracy has caused the modern industries to exploit the creativity of the deprived communities by making a hefty amount without sharing the benefits. This clearly proves that though there is non-systematic approach to traditional knowledge yet it does not diminish the value of the cultural values and innovation of the same.

India has a diverse culture and a rich environment since immemorial. It is the home to approximately 100 million tribal forest dwellers possessing in-depth knowledge about the natural environment. There are 47000 species of flora as per as the records of the Botanical survey of India<sup>2</sup> and 81000 species of fauna as per as the records of the Zoological survey. This shows the rich environment and the base why traditional knowledge prevails in Indian culture. However, it is also recorded that there is an alarming rate of degradation and loss of the natural habitat of various species. 12 percent of the 6000 species of medicinal plants are posing severe threat of extinction in the near decades. Maintaining their gene pool is a need of hour. Maintenance of the same requires protection, preservation and conservation of the traditional knowledge by effectively patenting it. This will ensure justice, good conscience and equity to the rightful owners of the creativity. There are many issues regarding the patenting of products like *Haldi* (healing wounds), *Neem*, *Aswagandha* (heart ailments), *Basmati Rice*, etc. Effective documentation and systematic maintenance of records has proved to be a feather in the cap to claim the rights. The diverse information is effectively enlisted in many texts portraying the traditional knowledge since 5000 years. The reference can be drawn from the ancient writings like 4 Vedas, 108 Upanishads, 2 epics, 8 Puranas, Manusmriti,

Sastras, etc. The practices like Unani, Yogas, Ayurveda, Siddha is enlisted which can be used as an effective source to prevent bio piracy.

The traditional knowledge digital library has done a laudable job in effective documentation of Ayurvedic practices. Currently it has of about 35000 formulations. The icing on the cake is that these formulations are given along with their descriptions, methods of preparations, claims, other highlights, reference materials and bibliography as well. Moreover, the language of presentation involves international languages like English, German, French, Japanese and Spanish. It involves systematic approach because the local plant names are converted into scientific names. Though these measures serve as a defensive mechanism to preserve the rights yet mere documentation of the traditional knowledge won't suffice because it needs something more like backing by legal measures. Many experts claim that there should be implementation of working of the sui generis system where a core committee of experts will discuss of the issues. International experts from international organizations need to work hand in hand to promote the principle of equity pertaining to the traditional knowledge. Documentation along with the alternative law or sui generis system would help us tackle the issues up to a certain extent. CBD is the first international agreement which looked into such matters. It discussed the needs and concerns at an international level. However, the ways to achieve the same are left to the domain of the individual nations.

One of the prominent case pertaining to the traditional knowledge and related aspect is the case of turmeric. It is a landmark ruling because of which the importance of traditional knowledge was fostered. The cultural identity and spiritual identity of the community was maintained by developing the documentation and handling of the traditional knowledge. Turmeric popularly known as *Haldi* in India is a plant grown in east India. It is popularly used as a food ingredient, dye and other cosmetic industries. It is also known for its medicinal properties especially the healing properties to heal wounds by application of both oral and topical. It is used since immemorial to heal wound and rashes curbing inflammation. In 1995 two American scientist of Indian origin namely Suman K Das and Hari Har P from University of Mississippi Medical Centre applied for the patent of the healing properties of Turmeric. They were granted the patent for 'promoting healing wounds by administering it to the wound'. They gained millions of dollars through the same. CSIR challenged this on the grounds that the innovation belonged to the local communities of India. 32 references were provided by them to challenge the legality of granting patent. However, the main evidence was documentary writings in the ancient Sanskrit text published in Journal of Indian Medical Association in the year 1953. Further, by providing concrete evidences and references there was a revocation of the patent. The opposition defended this by pointing out that there was a difference in the physical and chemical properties of powder and paste of turmeric. The

bioavailability and absorbing power of both are different claimed the opposition. They tried to prove that the intensity of certainty to heal is more in case of powder as compared to the paste. Further they also claimed oral administration of turmeric and honey has a different scenario because honey itself has healing properties. The defense could not substantiate the evidences provided by the CSIR because they were concrete. The opposition has approximately spent 14,000 dollars to secure their patent. This means that it will be next to impossible for the communities to spend such hefty amount to secure their rights.

#### IV. CONCLUSION

Granting of patents to the real innovators of traditional knowledge is necessary for the purpose of securing humanity and public interest. Many times these local tribal communities are poor as well as unidentified. On the grounds of humanity they have right to share benefits for their creation, innovation, wisdom and teachings. The commercial industries earn million dollar worth out of their knowledge denying them their shares. These communities belong to the developing nations who possess huge biological diversity and knowledge regarding plant genetic resources. The developed nations who possess advanced technologies and huge capital are effectively able to use the same. Son on the principle of equity it is our responsibility to grant the rights to the respective groups. Though the crux of the matter arises when the application of traditional knowledge is known to many communities and it becomes difficult to estimate the exact community. This can be tackled with effective documentation and support from the government. International community also plays a crucial role in securing patents in such cases.

#### REFERENCES

##### ➤ Books

- [1]. Salvin P (2015) *Politics of IPR and biodiversity associated traditional knowledge*, LAP Lambert Academic Publishing.
- [2]. V K Ahuja ( 2017) *Laws Relating to Intellectual Property Rights*, Lexis Nexis.

##### ➤ Newspapers and magazines

- [3]. Chengappa, Raj. *Patents: India wins a victory over turmeric but the war is on*, India Today September 8, 1997.
- [4]. Krishna Ravi Srinivas. (2007). Intellectual Property Rights and Traditional Knowledge: The Case of Yoga. *Economic and Political Weekly*, 42(27/28), 2866-2871.

##### ➤ Journal Articles

- [5]. OGUAMANAM, C. (2006). Front Matter. In *International Law and Indigenous Knowledge: Intellectual Property, Plant Biodiversity, and Traditional Medicine* (pp. I-Vi). Toronto; Buffalo; London: University of Toronto Press. from [www.jstor.org/stable/10.3138/9781442676244.1](http://www.jstor.org/stable/10.3138/9781442676244.1)
- [6]. Saba. (2018) SSC online. Protecting Traditional Knowledge – the India story till date. Accessible at <https://www.sconline.com/blog/post/2018/04/23/protecting-traditional-knowledge-the-india-story-till-date/>
- [7]. Ajeet Mathur. (2003). Who Owns Traditional Knowledge? *Economic and Political Weekly*, 38(42), 4471-4481. Retrieved February 25, 2020, from [www.jstor.org/stable/4414163](http://www.jstor.org/stable/4414163)