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BIO PIRACY IN INDIA: PATENTING TRADITIONAL KNOWLEDGE

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INTRODUCTION :

Nature has given a sub-continent with a rich bio diversity and India is the one with the indigenous system which has the gainful utilisation of these resources. These resources from the plant and animals have been used as a medicine in India for more than a century. But these traditional knowledges and the biodiversity is under a great threat a global and contemporary issue. The threat of biodiversity and traditional knowledge of indigenous peoples is referred as bio-piracy. The term bio-piracy nowadays is commonly used in the fields of intellectual property laws. It's is an illegal act of obtaining IPRs i.e., usually patent for a product to have a monopoly control over the product without the consent of the original owner or giving them any credit or paying them any benefit for their product or resources. One notable of this bio piracy is patenting of turmeric by foreign corporations which is been used in India of thousand of years as an anti-biotic for treating wounds. Similarly, usage of neem oil and seeds by other country companies have largely exploited the traditional knowledge and natural resources of India. Traditional knowledge in India have been highly exploited in the name of bio-piracy, highlighting the need for an right based approach of intellectual property law in protecting the rights of indigenous peoples and a proper benefit sharing for an sustainable development.

JUDICIAL DECISIONS¹ : PROTECTING INDIGENOUS RIGHTS AND TRADITIONAL KNOWLEDGE

¹ Council of scientific and industrial research (CSIR) traditional knowledge digital library, bio piracy of traditional knowledge available at: [TKDLTraditional Knowledge Digital Library](https://www.tkdlib.org/), (last visited: 10th September 2024)

There are certain success stories given by the court in protecting the indigenous rights and traditional knowledge

Turmeric (*Curcuma longa* Linn.):²

Two expatriate Indians³ at the university of Mississippi medical centre was granted U.S patent for the use of turmeric for healing wounds and rashes in 1995. The Council of scientific and industrial research (CSIR) filed a case against the U.S granted patent for re examination as it's the prior art not the novelty invention. It also argued that turmeric is used in India for more than 1000 years in cosmetics, anti-biotic for wounds which acts as an medicine , food items etc., Then they submitted some documentary evidence in support of their claim which also includes ancient text and a paper published in the journal of Indian medical association (IMA) in 1953 which states its uses. In 1997, After considering all this claims US patent office revoked its patent as this is the prior act and there is no novelty and originality and upheld the objections raised by CSIR and the patent knowledge is well known for long time in India.

Neem (*Azadirachta indica* A. Juss):⁴

European Patent Office (EPO) in 1994, granted patent to an US Corporation W.R. Grace Company and US Department of Agriculture for the method used by them with neem to control fungi in plants by the neem oil extract. In 1995, international NGOs and Indian farmers filed a case against the patent by submitting evidence that states that this neem oil is extracted from the neem seeds which is used to cure the fungi on the crops and it's was unpatentable. In 1999 by the determination of EPO the evidence shows that these have been already exposed to public before granting patent and there is no invention in this extract. By 2000 the EPO revoked the patent given for that company.

Basmati Rice (*Oryza sativa* Linn):⁵

The basmati rice case refers to legal dispute regarding the recognition of basmati rice as geographical indication(GI) or for the ownership of the rice between the India and US. Corporation filed and application for the registration of trademark before the UK trademark registry which is being opposed by the agricultural and process the food exports and

² Turmeric Case (Judgement) [1997] U.S. Patent No. 5 401,504.

³ Suman K. Das and Hari Har P. Cohly

⁴ *Neem Patent Case (Judgement)* [2000] E.P.O. Patent No. 436257.

⁵ India-US Basmati Rice dispute, [2001], U.S. Patent No 5663484 A.

development authority so one of the document which is being relied by the rich tec incorporate is U.S patent grant to them and 1997 so the US have granted them a utility patent for the rice this is similar to the basmati rice which is been prevailing in India more than a century. It has the same similar characteristics of it like aroma quality taste patenting this is being challenged by India attempted to monopolies the protection and export of basmati which effects the Indian livelihood in large. This client to consideration the US patent and trademark offers(USPTO) granted rice tech patent on basmati rice but on certain exemption that it will not improve the characteristics of passengers like Aroma taste and quality. In appeal was taken by India and rice tec patent was revoked and Indian's traditional knowledge and GI is protected. And there are also some other examples that are related to bio piracy like

INITIATIVES TAKEN BY THE GOVERNMENT:

The convention on biological diversity, 1992:⁶

The first measure taken by the international community was this convention which was been adopted in 1992 and it was in force on December 1993 and it have been ratified by 176 countries. Main objective is to protect the natural resources and the interest of an communities and states over those natural resources. The main goal of CBD there should be and agreement between the contesting parties and those parties will have the rights over the natural resources, and those resources should be equally shared between those parties or states, before using this there should be a prior concern over those resources from the government or the local communities also from the contracting parties, if there is any research or the benefit arising over those community then that should be equally accessible by all those contracting parties and those objectives should not go beyond the CBD. An objective of this convention has to protect the bio-piracy and to bridge gap between developing and developed countries.

Bonn guidelines, 2002:

The name itself we can come to a conclusion that it is only a guideline not and convention so that it will only be a voluntary and not a compulsory and not binding on the parties. Is guideline also focus done equal sharing between the parties but one of the main object to of if

⁶Convention on Biological Diversity, art. 15(1), 1992.

two give a prior concern to and government and local commune it is of those tradition knowledge which is being used by the parties and being exploited and it also request the party to give the formula in the traditional knowledge or a geographical resources that is being used in formulating a invention. One of the main drawbacks as it is mere guidelines will not bind on the parties.

INDIAN LEGISLATIVE:

You come up with various acts which is being concerned with IPR and which especially used in the protection of an biopic or exploitation of those resources or the traditional knowledge

The biological diversity Act, 2002:

This was enacted as a replacement to CBD has the same object as this convention. The main purpose of this BDA is making bodies at National state and local level this bodies will grant access to the foreigners to use biological resources are the traditional knowledge or they can apply patent for the other IPR inventions. All this also ensures that the resources have been equally beneficial for all the communities. At National state and local levels biodiversity funds have been set up to receive funds from the persons who axis and make the utilisation over those biological resources and the knowledge which have been derived from the traditional knowledge.

Protection of plant varieties and farmer's rights Act, 2001:

This act have been enacted to protect the rights of the farmers over their new plant varieties or bred also increases the farmers for their development so that further new varieties will be developed. This gives the exclusive right for the owners over there varieties so that they can sell distribute in both export the variety this right prevent the other person from using these varieties without their knowledge. There is mechanism called National gene fund⁷ which will pay a reward for the farmers for their new invention of varieties and for the traditional knowledge.

The geographical indication of goods (registration and protection)act, 1999:

Protecting the product with the specific characteristics of the region which follows the specific traditional production process. Geographical indication cover the areas of agriculture products, natural and manufacture goods of specific quality but depends and originate from a

⁷ Protection of Plant Varieties and Farmers' Rights Act, section 45(1) (2001).

particular geographical area. Under geographical indications registry geographical indications can be registered so this registration provides a geographical indication protection for the product so that no one can have an unfair competition or in friends in by using the state and product and also gives a representation from where the product have been originated without misleading the consumers.

The patents Act, 1970 (amendment in 1999, 2002, 2005):

This patent Act excluded for the protection of traditional knowledge or for the protection of bio piracy but it gives an information on geographical origin and how a patent should be properly protected if wrongful information is provided to get a patent then it will be cancelled . It gives an indirect connection of providing a bio piracy for a resource.

Traditional knowledge digital library (TKDL):

This TKDL initiative was started by the Indian government in 2000 to have digitalized database the traditional knowledge that are related to the medicinal plants. This was adapted with the view of recording the plants is uses and the properties behind use to be recorded in and DVD or internet which are being easily accessible and search able by everyone so that the product will not come under the category of bio-piracy. Have given an immense record protecting the traditional knowledge in a digitalised manner with improve the database. Information will be available worldwide so that the person who has creating or using the traditional knowledge will be aware that it has already been patent and being used in India for long years. In ancient days these or not in a codified manner it is available in and ancient text that is Tamil Urdu Sanskrit etc. No documentation showing that such traditional knowledge is in codified manner and oral knowledge is not accepted as an evidence that it has been prevailing in India for long period. Due to all these drawback TKDL was brought into force.

STRENGTHENING INTELLECTUAL PROPERTY LAWS

In a country like India which is rich in its biodiversity protecting these traditional knowledges or biological or natural resources is important because international communities are using this to have and huge sum of money by selling it or patent in ask their own without the knowledge of the original owner. To combat these situations of bio piracy Indian legislation should take more effective steps in order to protect the traditional knowledge

First and four most steps which is to be taken is to find what are the biological resources available and in what are the commercial values of those resources in India which have been

used for more than a century to implement this initiative a state wise panchayat at certain local level organisations should be set up who has a complete knowledge about the biological or traditional uses of various resources available in their community. Setting them up a database should be taken from them on what are the resources are available how it is being used and what should be protected. On the other hand, the villagers must have a complete knowledge on the IPR laws or the misuse or misleading of the traditional knowledge of our country by the international communities. They should be strong enough to give those information without the fear of misusing those resources by our country itself so to gain the just among those peoples certain measures or awareness program should be conducted to give a knowledge on how these resources being misused by the international community or taking and commercial benefit from this. A committee should be made on the behalf of the Government and their government will have a consultation because people of what are the traditional knowledge is being available there and it will be patent as well as water available. To make this initiative possible it is very important to have the corporation of the traditional communities at a large level.

Collecting information is a secondary the primary is these information's be made in an document manner so that if patenting of our traditional knowledge is done by some other person then the evidence of the document can be shown rather than an oral knowledge.

Gathering information about the traditional practices and registering in the peoples biodiversity register should ensure a top most secrecy until it is been patent this also helps in identifying whether the products contain and status of geographical indication or not so geographical indication is also one important measure or initiative that should be taken in order to prevent a bio piracy so providing such geographical indication to particular broad at can prevent up people from getting confused of the origin of a particular product. This registering of geographical indication prevents India from litigation cost. The meaning example of this is Darjeeling tea where outside manufacture of the he can't climb its trademark over the particular product overcome this geographical indication act has been an order even though it have been an acted or full-fledged work should be initiated to protect these products and register it with the graphical indication.

Apart from this the main thing is that the trips agreement gives a more provision on how to protect IPR but protecting of traditional knowledge not available in the agreement. Countries like India should have a provision that are related to misusing this traditional knowledge,

whether related to geographical origin or proper information to local community or equal distribution of the resources but there should not be sovereign power over the product. Without all these provisions in trips agreement, it puts India in a very disadvantage place where our traditional knowledge is being exploited by the other persons.

CONCLUSION

After all those discussion on previous Precedent cases where these traditional knowledge is being originated or initiated and various preventive step on international basis and from our Indian legislative we come to a conclusion that there still needs a effective mechanism on protecting biodiversity which is still a contemporary issue in our world. There are many people who suggest that there should not be a monopoly control over the natural resources but without giving them those rights every people will start to exploiting those resources so that no one will be benefited out of this. Government should that the person who app providing the resources should get an equal benefit from those resources. The company which gets weather sources of this traditional knowledge should give equal share security by way of dividends. The utmost necessity is that the person should have an awareness over those products or resources.

Only to those illiterate peoples but also two other professionals who are been unaware of the bio piracy consequences in an present economic life on to those persons who sit in the bones simply by without knowing the consequences of all these things. Awareness should be held by all those NGOs in NTV shows or keeping it in seminar or broadcast or radio broadcasting where the people at Mass are present I like to conclude my essay by saying that the rights of an indigenous peoples and the traditional knowledge will be protected by hoping for the initiative of the government.