
The Significant Aspects of Intellectual Property Rights in Sustaining Adivasi Ancient Knowledge, Art, Literature and Mythology

Dr. Manoj Shankarrao Madavi
Annasaheb Gundewar College,
Katol Road, Nagpur
Mob No-9730925380
manojmadavi2015@gmail.com

Abstract

Indigenous communities across the world have accumulated considerable wealth of traditional knowledge and other forms of intangible heritage, passed down through generations. Among these communities, the Adivasi communities of India have a high tradition of ancient knowledge, unique forms of art, literature, and complex forms of mythology. However, the very existence of these forms of intangible heritage is threatened by the unprecedented menace of bio piracy, cultural appropriation, and exploitation of the same for commercial and economic gain. This paper seeks to examine the role of intellectual property rights as a tool to protect the traditional knowledge of the Adivasi communities.

Keywords- Innovation, Patent, Mythology, Ancient Knowledge, Adivasi, Displacement

Introduction

The word "Adivasi" refers to the collective identity of the 705 different tribes of the country, constituting almost 8.6% of the total population of the country. They possess highly evolved knowledge systems, including medicinal, agricultural, ecological, and artistic knowledge. Moreover, the oral literature of the Adivasi tribe contains history, philosophy, and social ethics, whereas the mythology helps the Adivasi tribe explain the natural environment, the universe, and the human race. However, the Adivasi knowledge system has always remained at the periphery of the intellectual property rights regime, which is more focused on protecting the rights of individuals. As a result, the knowledge system has been misused by the non-tribal population, wherein the pharmaceutical industry has been granted patents for the plant-based medicinal knowledge of the Adivasi tribe, the fashion industry has been using the artistic knowledge of the Adivasi tribe, and the mythology has been misused by the non-tribal population. However, the

application of intellectual property rights is an opportunity for the Adivasi tribe, but it is equally a challenge.

Traditional Knowledge Systems and Their Vulnerability

Adivasi communities are known to possess vast knowledge with regard to biodiversity, ecosystem management, and sustainable resource utilization techniques. Tribal healers possess vast knowledge with regard to herbal remedies and their applications. Similarly, agricultural communities possess knowledge with regard to crop development and techniques to preserve crops in specific ecological settings.

This knowledge is threatened in several ways. "Biopiracy" is a term used to describe situations where corporate entities or researchers access traditional knowledge, often through casual interactions with members of the community, and then obtain patent rights over the information without the consent or benefit-sharing of the holders of the knowledge. For example, the controversy with regard to the patenting of the Neem tree's applications in Indian traditional knowledge was highlighted as an example of biopiracy, as the knowledge with regard to the applications of Neem had been known to Indian communities for several centuries. Similarly, the wound-healing properties of turmeric had been known to tribal healers but had also been patented outside the country before the patent was revoked. The lack of documentation is another factor that causes difficulties. A large part of Adivasi knowledge is based solely upon oral tradition, which is passed down through apprenticeship. This is problematic, as it is difficult to prove the antiquity of knowledge, especially when contesting misappropriation.

Artistic Expressions and Cultural Heritage

Adivasi art forms are not only a matter of creative expression; rather, these art forms are a reflection of spirituality, history, and social organization. For example, Warli art from Maharashtra, Gond art from Madhya Pradesh, and various forms of Pattachitra art are all characteristic of their own techniques and symbolisms.

The Commercialization of Adivasi Art Forms

Adivasi art forms are being commercially exploited without any recognition or reward. For instance, the demand for tribal art in the markets of cities like Mumbai and abroad has increased.

However, the artists are not being compensated properly for their work. The most alarming issue related to the commercialization of art forms is that non-tribal artists are copying the designs of these art forms and claiming intellectual property over these designs.

Spirituality Associated with the Commercialization of Adivasi Art Forms

The issue of spirituality associated with these art forms becomes a major problem while considering the commercialization of these art forms. For example, the designs associated with these art forms are of religious significance or clan significance. Thus, the commercialization of these art forms would be highly inappropriate. The conventional concept of copyright does not provide a satisfactory answer to this problem.

Traditional Knowledge Systems and Their Vulnerability

Adivasi people are known for their rich knowledge of biodiversity, ecosystem management, and sustainable use of natural resources. Tribal healers, for example, possess detailed knowledge of medicinal plants, the processes of preparing them, and the uses of such plants. Similarly, agricultural communities have developed plant varieties according to the ecological setting, ensuring food security through preservation techniques.

Traditional knowledge is vulnerable to a variety of threats. Biopiracy, for example, is the use of traditional knowledge by companies or individuals, usually through casual interaction with the people, for the purpose of obtaining patents or other intellectual property rights. The controversy surrounding the use of the neem tree is an example of biopiracy, where the knowledge of the tree's use, known for generations among the people of India, has been patented globally. Similarly, the use of turmeric for the healing of wounds, known among the tribals, has been patented abroad, though the decision has been reversed. Another challenge with the lack of documentation is that a considerable amount of Adivasi knowledge exists entirely through the oral tradition. The lack of written records creates a problem with the demonstration of the antiquity of the knowledge.

Artistic Expressions and Cultural Heritage

Adivasi art forms do not merely represent artistic expressions but also spiritual convictions, historical accounts, and social constructs. Warli art from Maharashtra, Gond art from Madhya

Pradesh, Pattachitra art traditions, etc., involve unique techniques and symbols. Adivasi art forms face the challenge of commercialization without recognition or compensation. Urban markets and international markets need tribal art. However, the tribal artists do not receive fair compensation for their art. Moreover, the challenge of misappropriation of intellectual property by non-tribal artists is a greater challenge. Non-tribal artists copy the art forms of tribal artists without recognition or compensation. These art forms are registered as the intellectual property of the non-tribal artists.

The spiritual connotations of the art forms create a challenge for the commercialization of art. Many art forms depict religious convictions or clan traditions. These art forms cannot be commercialized due to the spiritual connotations. Copyright laws do not provide a sufficient solution to the challenge of misappropriation of intellectual property.

Intellectual Property Rights Mechanisms for Protection

Several intellectual property rights mechanisms offer scope for the protection of Adivasi cultural heritage. Each of these mechanisms has its own advantages and limitations. Geographical Indications involve linking the product with the geographical area from where the product originates. This mechanism has already been successfully used to protect Darjeeling tea and Basmati rice. Similarly, handicrafts and agricultural products of the Adivasis can be protected. Adivasi art forms are not only related to the concept of art; rather, these art forms are related to spirituality, history, and social organization. For example, Warli art, which is prevalent in Maharashtra; Gond art, which is prevalent in the state of Madhya Pradesh; and different kinds of Pattachitra art are characteristic of their own. Traditional Knowledge Digital Libraries involve the documentation of traditional knowledge in an easily understandable format. Once documented, no external party can obtain a patent for the knowledge. India's Traditional Knowledge Digital Library has already successfully challenged many patent claims. To extend this mechanism to cover the traditional knowledge of the Adivasis, the community's consent needs to be taken into account to decide what needs to be documented.

Sui Generis Systems involve specially designed intellectual property rights systems that recognize the unique qualities of traditional knowledge. These systems can be tailored to incorporate provisions for collective rights, perpetual protection, etc. Several countries have

already developed sui generis systems. Community Intellectual Rights are based upon the principles of collective ownership, which are similar to the patterns of transmission of indigenous knowledge. This would grant the power to the community to control access, use, and benefit-sharing. However, it is important to establish the structures of the community.

Challenges in Implementation

Implementation of the IPR frameworks on Adivasi heritage faces numerous challenges. First, the individualistic nature of IP rights does not align with the community ownership of heritage. Also, the time-bound nature of IP rights does not match the eternal nature of traditional knowledge. Second, the requirement of novelty and inventiveness might not favour the knowledge that has existed for centuries. Finally, the heterogeneity of the communities adds to the complexity of the issue. Adivasi communities are known to have different languages, traditions, and forms of governance. In addition, the knowledge could either be shared by the communities or exclusive to individual communities. Finally, the issue of who to approach for permission and rights on behalf of the communities must also be considered.

Successful Case Studies and Best Practices

Despite the challenges, several successful stories can be cited as effective approaches to the strategies of protection. The Honey Bee Network promotes grassroots innovations while ensuring that the innovators have full control. There are instances where tribal cooperatives have come together to market their products collectively, thus earning higher profits. Another challenge to the implementation of the IPRs on the heritage of the Adivasi communities lies in the economic imbalances. When the communities enter into any agreement with economic entities, the power imbalance might result in unequal terms and conditions. For instance, the communities might not have the power to enforce the rights and might not have the knowledge to challenge the violation of the rights. Some Adivasi artists have successfully registered their styles, which are unique. Protocols that have been established through consultation with the elders have defined the appropriate approaches to the sharing of knowledge. Joint research approaches that position the community as partners rather than subjects ensure that the knowledge remains with the community while at the same time allowing for the documentation of the benefits.

Recommendations and Conclusion

In order to protect Adivasi traditional knowledge, art, literature, and mythology, it is important to adopt a variety of measures. Some of the measures include the strengthening of sui

generis legislation, the empowerment of the Adivasi, the implementation of capacity building, the implementation of fair benefit sharing, and the implementation of education programs. By strengthening sui generis legislation, it is possible to protect the rights of the Adivasi. By involving the Adivasi in documentation programs, it is possible to establish prior art. By capacity building, it is possible for the Adivasi to protect their rights. By ensuring fair benefit sharing, it is possible to ensure that the Adivasi benefit from the commercialization of traditional knowledge. By ensuring education programs, it is possible to protect the traditional knowledge of the Adivasi. However, the role of intellectual property rights does not only stop at providing legal protection to the heritage of the Adivasi people but also involves recognizing them as creators of knowledge and culture. It is to be noted that the preservation of the heritage of the Adivasi people is not only important to the people of India but to the entire world as well because their heritage provides a window to the world to learn how to live sustainably and how to preserve biodiversity while providing new perspectives on how to view the world as a whole.

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