

**TOPIC: NEED OF STRICT IPR LAWS IN SAFEGUARDING  
TRADITIONAL KNOWLEDGE AND INDIGENOUS CULTURAL  
PROPERTY**



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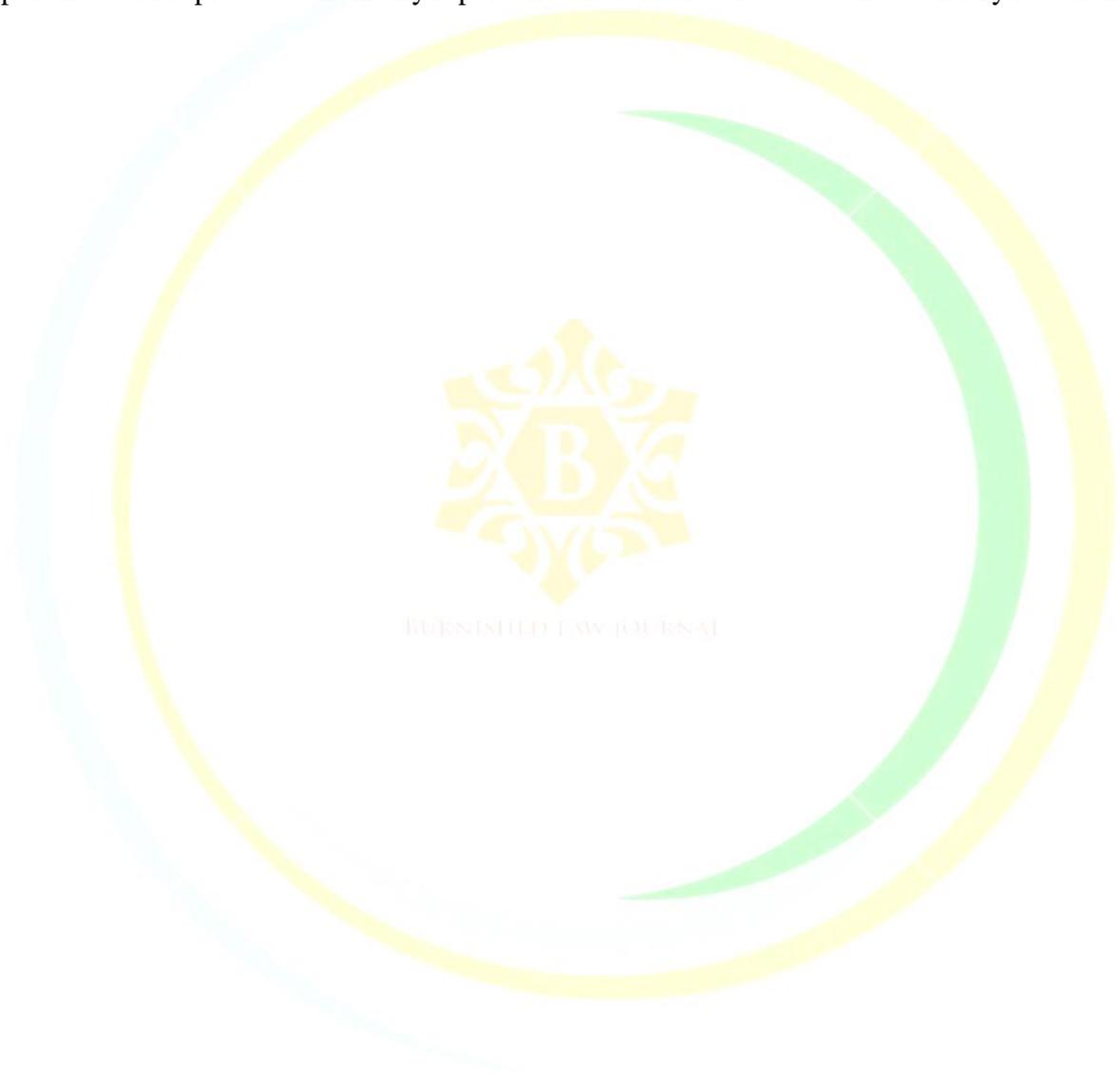
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## **DECLARATION**

I am Bhaskar Joshi, 2<sup>nd</sup> year law student at Faculty of Law, University of Delhi batch of 2020-2023. I'm submitting my essay on the topic "INDIAN TRIBE AND THE NEED TO EMPHASIZE ON THEIR INTELLECTUAL RIGHTS". This essay has the requisite standard and the submission is the original work done by me to the best of my knowledge no part of this report has been reproduced from any report and the contents are based on secondary research.



Advancement and innovativeness affecting unmistakable circles of society are somewhat basic for the comprehensive enlargement and improvement of a country. Indigenous communities

exemplify our country's social and unifying spirit. The current IPR laws do not effectively reflect the enormity of current traditional know-how. Some jurisdictions have managed in implementing laws to protect their vanishing traditional knowledge, while others are rapidly losing their important information due to a lack of protective or appropriate measures. <sup>1</sup>This requires the need to set up a tough and an incredible IPR system that energizes and boosts development and innovativeness related to getting aggregate interest of the general public.

The definition and extent of IPR laws are dependent upon unreasonable discussion inside the rising talk surrounding IP. These discussions habitually revolve around indigenous people alleged claim that prevailing IPR systems fail to recognise and safeguard their cultural products and expressions adequately. IPR system, according to some experts, constitute a risk to Indigenous peoples' cultural preservation. Indigenous/Native individuals have plenty of thoughts and recollections and this has consistently been their significant way for financial increase.<sup>2</sup> Each culture has craftsmanship and potentially the essential type of work of art is the expressed expression, making pictures with expressions and imparting it in like manner. One should glance back at the fabric of culture and workmanship to apprehend the native cases to social capital as an immediate assignment to domineering social exercise and its related abuse by the others.

Native peoples, local groups, and governments from expressly non-industrial nations such as India, Africa etc., have recently asked for the same level of security for traditional data systems. The antiquity of traditional information isn't usually claimed as a direct outcome of its age. It is a repository of information that is passed down from one generation to the next within a community, often becoming a part of its social or spiritual identity. As a result, it isn't easily covered by the existing IP framework, which generally grants limited protection to inventions and special works created by identified persons or organisations for a limited period of time. Its residence status also indicates that "standard" information is not available isn't in every case simple to characterize.<sup>3</sup>

## OBJECTIVE

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<sup>1</sup> Olivia J. Greer, *Using intellectual Property law to protect indigenous cultural property*, 22, NYSBA Bright ideas, 3, (2013).

<sup>2</sup> Parliament of India, Rajya Sabha, <https://rajyasabha.nic.in>, (last visited 15 Sept. 2021)

<sup>3</sup> Rajat Rana, *Indigenous culture and intellectual property rights*, 11, Journal for intellectual property rights, 132-139, (2006).

The purpose of this paper is to see if and to what extent the existing IPR system protect traditional knowledge and traditional manifestation of many indigenous communities. The law of intellectual property has no effect on these concerns. At the most fundamental level, there is an evident misalignment between western individualistic IP rights, ideas, and native ideas of local area development, that western IPR system create individual property rights, which can be subject to transactions, and which are designed to foster commercial and industrial growth. These systems are conceptually limited in their ability to afford recognition and protection of Indigenous intellectual property rights. In general, indigenous peoples across the world see cooperatively owned resources and management as essential. Patterns will be limited in scope and length, according to IP legal requirements. As a result, there may be a reasonable critique of IP regulations that is completed with specific reference to India.

### **TRADEMARK**

In addition to commercial symbols, trademark law has grown to embrace the protection of every imaginable symbol, including colours, smells, and sounds. Trademark laws have become more complicated, ranging from simple trademark infringement to dilution theories and anti-cybersquatting protection. On the other hand, indigenous peoples have lacked the same clout as capitalist interests. Intellectual property law has been expanded in a number of key ways to serve corporate interests. In comparison, there are only a few, and they are quite limited, initiatives that respect indigenous cultures' rights.

On account of **Navajo Nation v. Urban outfitters, in February 2012**, The Navajo Nation is a Native American tribe that resides in North America. The Navajo Nation, which is culturally affluent, is known for the excellent quality and diversity of its arts, which include costume jewellery, ceramics, weaving, and paintings. The American multinational corporation Urban Outfitters, aware of the economic importance of the word "Navajo," decided to advertise products bearing the names "Navajo" and "Navaho" and to copy traditional Navajo patterns without proper licencing.

Because the Navajo Nation owns 86 trademarks registered with the United States Patent and Trademark Office (USPTO) and has been using the name "Navajo" since 1894, when using the Navajo Nation's Name and Design, Urban Outfitters not only violated the Navajo Nation's intellectual property rights, but also the federal Indian Arts and Crafts Act. This was also a form of unfair competition and a betrayal of Navajo tradition. The Navajo Nation filed a lawsuit

in reaction to this illegal act. In September 2016, the parties ultimately came to an agreement under which they agreed to work together and market real "Navajo" items.

## **COPYRIGHT**

The focus of copyright law on the rights of a certain creator's work further complicates the potential benefits of copyright protection for indigenous cultural property. The law's focus on the work of creator(s), to the exclusion of others who may have an interest in or relationship to the work, it makes it difficult to advance a group's interests in preserving its history and heritage as reflected in cultural objects. Copyright is used to protect works like unique creative work, published article, sound recordings, movies and broadcasts. The right exists impartial of the medium on which the work is recorded and therefore buying duplicating thereof does not confer a right to copy the work however restricted copying, scanning and downloading without permission of the copyright proprietor is permissible but only for research activities. Numerous cases of cultural appropriation have led to a strong reaction from some indigenous people one such example is *Yumbulul v. Reserve Bank of Australia*.

In the Australian case of ***Yumbulul v Reserve Bank of Australia***, it has become clear how the individualistic propensity of copyright law causes issues for the indigenous individuals. In the present circumstance a native craftsman, Terry Yumbulul sued the Reserve Bank of Australia since it had utilized the photograph of his sculpture on a brand new Australian ten Dollar note gave to honour the bicentennial of the European Understanding of Australia. The bank guaranteed that the craftsman who remarkably had a genuine copyright, authorized the monetary organization to utilize the photograph. The artist claimed that he didn't have the position to give this kind of permit as authorization was additionally needed, under customary standard law, from the elders of the Galpu people, to whom the underlying motif belonged.

## **INDIAN SCENARIO**

Following are the cases involving such violation, the patents are granted without actually looking into the novelty of the innovation and hence allegedly pirated and used derogatorily by western countries:

### **Neem Case**

Neem (*Azadirachta indica*), a medicinally valuable tree species native to India, several patents have been filed on it (More than 35 in the US alone and approx.200 worldwide). All of the neem-related inventions were built on the foundation of public domain traditional knowledge. This sparked outrage among Indian users, who refused to accept it, resulting in the challenge of two patents (1) “to a European Patent Office (EPO) patent for the fungicidal effects of neem oil and (2) to the US patent for a storage-stable azadirachtin formulation.” The patent detailed above was cancelled by the EPO in the year 2000 due to a lack of originality and an inventive step. Almost everyone in India's rural and semi-urban populations is aware of neem's numerous health advantages. The indigenous people objected patenting neem by American business and further stated that the patenting is ambiguous. They were afraid of the tyranny that loomed huge, which the patent holder may unleash if the IP rights were obtained.

### **TURMERIC CASE**

Turmeric is a tropical herb native to India's east coast. Turmeric powder is used as a medication, a food ingredient, and a dye in India, to name a few applications. It's used as a blood purifier, to cure the common cold, and as an anti-parasitic for a variety of skin problems, for example. It is also an important component in the preparation of many Indian meals. In 1995, the United States granted the University of Mississippi Medical Center a patent on turmeric for its wound-healing properties. The claimed topic was the use of "turmeric powder and its administration" for wound healing, both orally and topically. An exclusive right to sell and distribute has been awarded. The Indian Council for Scientific and Industrial Research (CSIR) has filed a patent opposition and furnished the USPTO with detailed prior art information. Though it was common knowledge that turmeric had been used in Indian households for centuries, it was a tremendous endeavour to uncover written literature on the use of turmeric powder for wound healing via oral and topical routes. 32 references were found in numerous languages, including Sanskrit, Urdu, and Hindi, as a result of thorough research. As a result, the USPTO cancelled the application, claiming that the claims in the invention were obvious and anticipated, and

admitting that using turmeric to treat wounds was an ancient art. As a result, in the Turmeric case, the TK that belonged to India was protected.

## CONCLUSION

Is the Indigenous community protected by intellectual property laws? When one begins an investigation rather than proceeding rapidly to a conclusion that isn't final, it shows that there aren't any early answers to the issue of commercial exploitation of local culture. In the light of new and growing developments in the fields of innovation and research, which involve precise procedures to preserve them as IPRs, a re-evaluation of the IPR laws is required. The re-evaluation is also important for identifying the IPR current difficulties and the corrective actions that really need to be made to ensure its effective implementation.

Another issue arises as a result of the investigation: against whom do you need protection. It's clear right away that there are fresh interests and motives at play. As a result, it's unlikely to give a suitable answer to a question for one gathering while ignoring another. The law of trademarks and copyright isn't well suited to the problem of current native social assignment, the existing worldwide system for intellectual property protection was formed in response to the perceived needs of technologically advanced economies during the Contemporary industrialization era. However, in recent years, indigenous peoples, local communities, and governments, primarily in developing countries such as India, have advocated for traditional knowledge systems be given the same level of protection.

It is critical to emphasise that the minimal Traditional knowledge (TK) that remains among the people, mostly among the elderly, deserves immediate protection and documenting. The young must be assured that their ancestors' expertise is economically viable. Special measures should be implemented to promote these TK and retrospectively defend these peoples' rights with a strong legal framework for benefit sharing.

Trademark law necessitates registration and meticulous surveillance, yet it is impossible to catch every unlawful use of a mark. Copyright law also contains limitations, the most notable of which is life in addition to a 60-year period. The history of native meetings, which includes a lot of unauthorised abuse and constant lop-sidedness, may argue for a one-of-a-kind mechanism to protect native social structures. property, as some have suggested This is a

question whose answer will invariably be influenced by the circumstances, and which will eventually necessitate a balancing act that will not always be fully satisfying.

