



Concept of Intellectual Property Rights

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Abstract: The Intellectual Property, generic title for copyright, trade mark, design or patent was first officially recognized by World Intellectual Property Right Organization (WIPO) as Property Right. However, with the passage of the time other than copyright, patent, trade mark, literary and artistic work, claims have been made to recognize Intellectual Property Right relating to Human Right and Traditional Knowledge³¹. National Resources play a vital role in preserving countries economic self-determination and thus cherish the ideal of economic democracy

Introduction:

Human genius is the source of all works of art and invention. These works are the guarantee of a life. Intellectual property is all about human creativity and innovation³². Intellectual property Right are considered as reward for creative and skillful work in execution of ideas. In fact it is more than a reward for conceiving and executing ideas³³. In the sense intellectual property Right are rewards provided as recognition to the creative work. The immaterial product of a man's brains, says Salmond, may be valuable as his lands or his goods. The law, therefore, gives his proprietary, right in it. Protection of the invention is the object of the law of IPR. It is also is object to encourage research and development. Today's advance knowledge is tomorrow ignorance with the development of society new discoveries and invention is made, thus winding that items that fall under the categories of intellectual property. IPR refer to the privileges granted by the government to any individual or organization for creative process³⁴. Intellectual Property plays an important role in the international trade and commerce and also in industrial, economic and social development of a nation.

2. Kinds of Intellectual Property: Patents, design, trademarks, geographical indication, copyright and similar Right are referring to as "Intellectual Property" Property may be dividing into two categories Corporeal Property and Incorporeal Property is related to physical entities while in Corporeal Property is related to immaterial entities.

³¹ Seenivasulu N.S, Intellectual Property Right, (2nd Edition, Regal Publications, New Delhi, 2011), p.4

³² Catherine Colstan ,Principles Of Intellectual Property Law,(Cavendish Publishing Limited,London, 1999),p.1

³³ Holyoak And Torremans,Intellectual Property Law,(2nd Edition ,Butterworths,London.1998),P.3

³⁴ Aailable At [Http://Www.Iprlawindia.Org.In](http://www.iprlawindia.Org.In),Last Visited On 11.10.2011



Traditional Knowledge may be of two kinds:

As localized knowledge; and
As knowledge that is virtually in the public domain.

Today, the protection of creator's Right is a fundamental social principle recognized by the United Nation (UN) in the Universal Declaration of Human Right, 1948(UDHR). Art 27 of Universal Declaration of Human Right runs as follows: Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Intellect is a word originated in Latin and also etymologically speaking perception. It is the faculty of knowing and reasoning. It is the barometer of one's understanding of persons are things, of events and concepts; individually or collectively. It is birth- place of ideas rather than the idea itself. It is the laboratory of the intelligible vibrations of brain, trying to bring forth certain ideas and concepts or combinations of them³⁵. In Latin, the word 'proprius' means; one's own special. That means one's property is what one owns or what one has as especially his. Sometimes it may mean ownership or title and, at others, the res over which the ownership is to be exercised. The term also takes in its ambit assets which in the eyes of law are only the Right in personam³⁶. With the changing times, the concept of property is acquiring newer dimensions in the modern world which has recently entered the age of science and technology leaving behind the age of Industrialization with the developments in various fields of human endeavors the property over intangible things, like say, ideas or inventions, has occupied the center stage³⁷. Since intellect is the reservoir of ideas, the Intellectual Property, so to say, becomes the property over ideas³⁸.

3. Intellectual Property Right-Traditional Knowledge : The definition of Traditional Knowledge used by the World Intellectual Property Right Organization (WIPO) includes indigenous knowledge relating to categories such as agricultural knowledge; medicinal knowledge; bio diversity related knowledge and expressions of folklore in the form of music, dance, song, handicraft, designs, stories and artwork³⁹.

³⁵ G.W Paton A Text Book of Jurisprudence,(4th edition Oxford Ar The Calendar Press,1972)'P505.

³⁶ J.K.Das, Intellectual Property Right, (1 st Edition, Oxford at the Calendar Press, 1972), p.505.

³⁷ W.Friedmann, Law in the Changing Society, (2nd Edition, 3rd Indian Reprint, University Law Prblication Co.Pvt. Ltd, New Delhi, 2001), p. 100.

³⁸ J.Mishra, An Introduction to Intellectual Property Right, (3rd Edition, Centeal Central Law Publication, Allahabad, 2012), p.42.

³⁹ For the various Issues on Indigenous Peoples, see. J.K.Das, Human Right and Indigenous Peoples, (APH Publishing Corporation, New Delhi, 2001): S.Vonlewinski,



The World Intellectual Property Right Organization (WIPO) however seems to go closer to a definition. In one of its reports on the subject, it defines the Traditional Knowledge as the knowledge "comprising tradition - based literary; artistic or scientific works; performances; inventions; scientific discoveries; designs; marks; names and symbols; undisclosed information, and all other tradition-based innovation and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields"⁴⁰.

Traditional Knowledge (TK), Indigenous Knowledge (IK), Traditional Environmental Knowledge (TEK) and Local Knowledge generally refer to the long-standing traditions and practices of certain regional, indigenous, or local communities. In many cases Traditional Knowledge has been orally passed for generations from person to person. Some forms of Traditional Knowledge are expressed through stories, legends, folklore, rituals, songs, and even laws. Other forms of Traditional Knowledge are expressed through different means⁴¹.

Protection of TK Under the American Doctrine :

Several traditional plants and related knowledge in Asia, specifically in India, have also been allegedly falsely patented by the US Patent office, including: Neem; Haldi; Pepper, Harar, Mustard, Basmati Rice, Ginger, Castor, Jaramla, and Jamun.

Traditional Knowledge is generally associated with biological resources and is invariably an intangible component of such a biological resource. Instead, the all undertaking located in the specified geographical areas are allowed to use the geographical indications on the specified products produced by them⁴².

Knowledge is the mentor of man for the society. It is a torch-bearer on its way to posterity. If the Knowledge is modern, it stands fair chances of protection under the banner of Intellectual Property Right. Apart from this stands what one may term as the Traditional Knowledge, which should be allowed remaining where it is, that is the public domain.

A New Art 300A in part XII of the Constitution has been introduced, that no person shall be deprived of his property save by authority of law. The Courts in India will now be free to give the same quality and extent of protection to the private property as

Indigenous Heritage and Intellectual Property : Genetic Resource, Traditional Knowledge and Folklore. Kluwer International, The Hague (2004).

⁴⁰ J.W.Baxter, World Patent Law and Practice, (2nd Edition, Sweet and Maxwell Press, London, 1973), p.22.

⁴¹ Acharya Deepak and Shrivastava Anshu, Indigenous Herbal Medicines: Tribal Formulations and Traditional Herbal Practices, (Aacishkar Publication, Jaipur, India, 2008), p.440.

⁴² Dated July 28, 1999 Shiva, Vandana "The US Patent Legalizes theft And Biopiracy", The Hind



the courts is given under the "Due Process Clause" and the American doctrine of "Eminent Domain"⁴³.

Justice Bhattacharjee has indicated another dimension of the right to property the light of Art 21 of the Constitution. A law seeking to deprive a person of his personnel liberties relating to property must not only be reasonable but must also be right Just and Fair⁴⁴ The "Value" of Traditional Knowledge is being applied in the fields of botanical, pharmaceutical, agricultural, biotechnological and genetic research.⁴⁵ In recent years concern has been expressed in relation to the recognition of Traditional Knowledge as prior art. Patents have been granted for Traditional Knowledge related inventions which did not fulfill the requirements of novelty and inventive step when compared with the relevant prior art. This prior art consisted of Traditional Knowledge that could not be identified by the patent granting authority during the examination of the patent application⁴⁶.

Protection of Intellectual Property Right :

Since the pace of scientific and technological developments cannot be reversed, newer and newer inventions are bound to happen. These, in turn will induce newer techniques and designs and will create new set of information for the benefit of commerce and industry. This will keep the IPR regime growing. WR Cornish observes that the anxiety to get the IPR protection is equally on increase. The expansion of trade competition since 1950 has brought ever increasing advantages to those in the van of innovation. Intellectual Property Right which help to sustain the lead of those with technical know-how, with successful marketing schemes, with new fetishes for pop-culture, have come to foster immense commercial returns.

The increasing numbers of patents granted and trademarks registered, particularly in industrial countries, and the upsurge of publishing, record producing, film making and broadcasting, stand as some measure of this development. The Intellectual Property, generic title for copyright, trade mark, design or patent was first officially recognized by World Intellectual Property Right Organization (WIPO) as Property Right. However, with the passage of the time other than copyright, patent, trade mark, literary and artistic work, claims have been made to recognize Intellectual Property

⁴³ Jayashree Watal, Intellectual Property Tight In World Trade Organizations And Developing Countries,

(3rd edition, Oxford University Press, Bombay, 2002), P.26.

⁴⁴ Tripathi P.K "Right To Property after 44th Amendment Better Protected Than Before" All India Report, (1980), P.49.

⁴⁵ A.M. Bhattacharjee, "Right to Property", 44th Amendment AIR Journal, (1980), p.5.

⁴⁶ "Biodiversity, Biotechnology and the Production of Traditional Knowledge", Washington University in St. Louis School of Law, Conference, (2003), April 4 to 6.



Right relating to Human Right and Traditional Knowledge⁴⁷. National Resources play a vital role in preserving countries economic self-determination and thus cherish the ideal of economic democracy⁴⁸.

The school advocating for recognition of Traditional Knowledge as Intellectual Property, argued that Traditional Knowledge being a part of cultural heritage of the indigenous communities should be protected. World Intellectual Property Right Organization (WIPO) started the work on Traditional Knowledge in 1998 and first recognition of it was reflected through the Convention on Biological Diversity in 1992. In India, the Biological Diversity Act 2002 championed the cause of Traditional Knowledge by acknowledging that the knowledge of the local people relating to biodiversity should be respected and protected.

7. Sources

To test the framed hypothesis the researcher has employed a chronological list of binding as well as non-binding documents both primary and secondary sources. The Secondary Sources are mainly the books and articles written by eminent authors and experts as pointed out at the bottom of each and every page of this thesis in the foot note. Whenever it is found necessary modern sources like electronic sources including internet and the data available in web sites, newspapers and periodicals were utilized for present research.

8. Cultural Property

Cultural Property has been defined as property of importance for literature, art or science⁴⁹. This speaks volumes about its importance. Such property is rare and irreplaceable if once destroyed.

This aspect of cultural property makes it most worthy of protection; particularly because it can be damaged by the foulest among us whereas it cannot be restored in its original form even by the wisest among all human beings. It is liable to be destroyed by fanatics of the present generation who may not appreciate the true value of this priceless property.

The destruction of the Bamiyan Buddhas by Taliban in 2001 serves as the latest example. Besides, changing perceptions, environmental degradation, and neglect also have their telling effect on pieces of cultural property. Yellowing of the Taj by the fumes of Sulphur Dioxide from Mathura Refinery in India is a glaring example of the impact of industries on environment and hereby on cultural property.

⁴⁷ Seenivasulu N.S, Intellectual Property Right, (2nd Edition, Regal Publications, New Delhi, 2011), p.4

⁴⁸ A.David Ambrose, "Directive Principles of State Policy and Distribution of Material Resources with Special Reference to National Resources –Recent Trends", 55, JILI, (2003), PP 1-20, at 2.

⁴⁹ Fridmann, Changing Concepts Property in Law in a Changing Society, p.100.



In its ambit cultural property has several elements which may be declared by the modern man as his own invention or creation in an effort to get exclusive proprietary Right over a piece of cultural property. This will be nothing short of appropriation by an individual of something that had been held collectively by the preceding generations. Apart from being ethically untenable such an effort is nothing but an attempt by an individual or group of individuals to violate the Right of mankind to collectively own the property inherited from preceding generations.

A piece of cultural property is the result of hundreds of years of human endeavor left behind for the benefit of the present generation and, therefore, its appropriation by one or a few individuals is unjustified by all canons of law. The cultural property needs to be identified, marked for protection and made a subject matter of not only individual but also collective duty of man. The fact that such a property is either movable or immovable makes it vulnerable to efforts of theft and destruction; whereas the fact that it comprises the property known as well as unknown makes it susceptible to attempts aimed at discovering the same and fraudulently getting exclusive proprietary Right there for⁵⁰.

The age of industrialization witnessed a great departure of the concept of property from traditional path. Renner's analysis of property makes this change in notion of property quite clear. In the earlier phase of industrial society, says Renner, the power aspect of property becomes immensely extended.

Friedmann summarizes this theory, the ownership of physical assets enables the early capitalist entrepreneur to multiply not only his power over things factories commodities or products but also over men. In the earlier days of industrialism, before trade unions were legitimate and powerful, this power enabled the owner of industrial assets to become in Renner's analysis, a commander⁵¹. Friedmann criticizes this theory, however, by nothing that the analysis Renner makes neglects the decisive and dominant function which the modern large scale corporate enterprise is exercising in contemporary capitalism.

With the rapid pace of industrialization accompanied by scientific and technological developments, the notions of property have undergone a drastic change. In the modern industrial age ownership and control are more 'divorced', to use Friedman's phrase, than they were in the early stage of industrialization. This is because, says he, the management of a vast and complex corporate enterprise can govern undisturbed either because of the disposal of shareholdings among multitude of small owners or because it can, if necessary, stir-up the majority of share-holders in order to fight the dominant minority.

⁵⁰ Friedmann, Changing Concepts Property in Law in a Changing Society, p.100.

⁵¹ G.W.Paton, A Text Book of jurisprudence, In fungible thing consists of Movable things which in ordinary dealings are usually determined by numbers, (4th Edition, Oxford at the Clarendon Press, 1972), 9. 515.



Property is no more only an absolute control over a thing. While the absoluteness of control was always qualified to some extent with an eye to protect social interests, the thing the subject matter of proprietary right was often a material one and very rarely, an abstract one. With the developments in various fields of human endeavor the property over intangible things, like say, ideas or inventions, has occupied the center stage.

In its political and sociological and indeed, in its popular sense property' is clearly not confined to ownership in things. It comprises not only the reality and personality or, more precisely, immovable objects but also patents, copyright, shares, claims World Intellectual Property Organization Convention, 1967 states that Intellectual Property includes the Right relating to literary, artistic and scientific works, performances and performing artists, photographs and broadcasts, inventions in all fields of human endeavor scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition and all other Right resulting from intellectual activity in the industrial, scientific, literary or artistic Fields⁵².

With this definition, it is evident that Intellectual property Right protect the novelty in the products of human intellect in whatever field of human activity and endeavor. This protection, we may note, is aimed at preventing its use in an unauthorized manner so as to encourage the spirit of innovations on the one hand and to discourage the tactics of imitation on the other.

9. Paris Convention⁵³:

Paris Convention is a landmark development made in the direction of protecting industrial properties. Its significance is testified by the sheer fact that as far as the protection of industrial properties is concerned, the Agreement on Trade Related Aspects of Intellectual Property Right (TRIPs) has adopted the first twenty Articles of the Convention.

10. Berne Convention⁵⁴:

The Convention aims to protect, as far as possible, effectively and uniformly the Right of authors in their literary and artistic works. It establishes a union of the countries to which it applies for the purpose of the said Protection⁵⁵.

⁵² Looner Bently and Brad Sherman, Intellectual Property Law , (1st Edition , Oxford University Press, New York, 2003),p.1.

⁵³ Op.cit., p.1.

⁵⁴ Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at Paris on May 4, 1896, Revised at Berlin on November 13, 1908, Completed at Berne on March 20, 1914, Revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971, and Amended on September 28, 1979.



With the stand point of IPR, any idea having enough potential of being commercially exploited may get protected provide it is novel. Although the components of Traditional Knowledge are well known to the people who have been practicing it for ages, yet it may be regarded as fairly new for the rest of the world. This, however, needs to be looked in to with abundant caution because certain religious, cultural and moral aspects of such knowledge may come in the way of protection for the gear of outraging the sentiments of the communities concerned.

IPR protection, though not very easy-going for the applicant, is not impossible either. The agreement on trade-related aspects of intellectual property Right (TRIPS) IS the most significant development in this area.

In order to protect Traditional Knowledge, it is necessary to ensure that wrong Grants are not made; 'right' grants are facilitated; and a 'disclosure' clause⁵⁴ is brought into operation. There has been a persistent demand from the members of WTO that necessary amendments should be made to the TRIPs, and also to the treaties administered by the WIPO (like the patent cooperation treaty) to make the disclosure clause a compulsory requirement to be fulfilled by the applicant prior to the grant of mono polyright over his invention; so that a non-compliance of it or a fraud related thereto may result in to denial or as the case may be, revocation of the grant.

11. Intellectual Property :

Traditionally, a number of intellectual property Right such as patents, trademark, indications of sources and industrial designs were collectively known as industrial property⁵⁶.

The different kinds of intellectual property Right could be categorized as follows:

Copyright,
Trademarks,
Geographical Indications,
Industrial Designs,
Patents,
Semi-conductor chip and Integrated circuits, and
Trade Secrets⁵⁷.

In each case the challenge has been to find an acceptable balance between protecting the position of the proposed right holder whilst retaining a competitive economy. Whether the right balance between adequate protection and effective

⁵⁵ Article 1, *ibid*.

⁵⁶ Biodiversity is not equally distributed all over the Globe. Certain Countries are characterized by high Species Richness and more number of Endemic Species. These Countries are known as Mega Biodiversity Countries. Twelve such Countries have been identified.

⁵⁷ Bio- Piracy is the act of taking away a Biological Resource without the Authority of Law. The Biological Diversity Act, 2002 of India, Surprisingly, does not define the term 'Bio-Piracy'.



economy. Whether the competition has been achieved is a source of continuing debate in any discussion concerning the enhanced scope of intellectual property Right.

In the 1986 White Paper on Intellectual Property and Innovation it was said that we must ensure that intellectual property Right strike the appropriate balance between on the one hand, protection which ensures an adequate reward for authors and creators and, on the other hand, access to creative ideas in ways which stimulate competition and allow the use of modern technology.

Patents for inventions have been granted regularly since the beginning of the sixteenth century but it was not until 1852, that the first major piece of legislation on patent was enacted by the Parliament.

Limiting the scope of the patent developed in the eighteenth century as a result of the practice of depositing descriptions of inventions at the Court of Chancery as a means of proving the date of the invention⁵⁸. Once granted, a patent is valid for a patents of 20 years from the date of publication of the grant, subject to payment of renewal fees. Under certain circumstances, it may be possible to extend this period for a further five years following the grant of a supplementary protection of certificate⁵⁹. Modern copyright law has its roots in the Statute of Anne of 1710, although the law has been revised substantially since then⁶⁰. Before the introduction of the statute (which itself was the result of extensive lobbying by members of the book trade)⁶¹, the Stationer's Guild had a royal monopoly on the printing of certain books, but with the removal of the monopoly the booksellers found themselves vulnerable to pirated editions of certain works and it was this that led to calls for statutory protection.

⁵⁸ David Bainbridge, Intellectual property, (5th Edition, Pearson Education, Delhi, 2003), p.5.

⁵⁹ Sahil, K.Roy Chowearry and H.K.Sahang, Law of Trademarks, Copyright, Patents and Designs, (Kamal Law House, Calcutta, 1999, 2nd Edition, Volume II,)PP 1- 71.

⁶⁰ Coulter, Property In Idea: Thr Pattern Question In Mid- Victoran Britain,(The Thomas Jefferson University Press, Kirksville,1991),P.27.

⁶¹ Patents(Supplementary Protection Cerifcate For Medicinal Products)Rules 1992> The Of The Supplemantry Production Certificate Is To Compensate The Owner Of The Patant For Los t Patent Lise Whilst Obtaining Regulatory Approval Of The Patented Produted Is Sought. For Further Information On Supplementary Protection Certificate.See Terrel, The Law Of Patent, (FourteenthEdition,Sweet&Maxwell,London,1994)Para,3.P.67.



The current law of copyright is set out in the Copyright Act 1967 (as amended four times, most notably in 1994). The complexities of such an analysis have led some authors to challenge the entire notion⁶².

12. The International Dimension :

So far in this section we have been considering the various forms of protection available in the UK. We will now turn to consider the various international agreements that exist that enable owners of intellectual property in India to obtain corresponding protection in other countries. We will start by looking briefly at the main international agreements as they relate to the various intellectual property rights referred to above. The Paris Convention for the protection of Industrial Property in 1883 (the Paris convention) was the first international convention relating to industrial property. The convention has been revised on a number of occasions⁶³. As its name suggests, the Paris Convention applies to all forms of industrial property which, in art 1(2) is said to include 'patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin and the repression of unfair competition. The Paris Convention does not, therefore, cover copyright works but it does cover most of the other types of intellectual property. The Berne Convention for the Protection of Literary and Artistic Works: Like the Paris Convention, the Berne Convention seeks to establish a minimum standard of protection throughout member countries. Its sphere of application relates to the rights of authors in their literary and artistic works, although the expression 'literary and artistic works' is very wide and is said to encompass 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression'⁶⁴.

13. GATT-TRIPS :

In 1994 as a part of the re-negotiation of the General Agreement on Tariffs and Trade (GATT) an agreement was concluded specifically relating to international aspects of intellectual property rights. The Agreement, entitled Trade Related Aspects of Intellectual Property Rights (TRIPS) not only incorporates the Paris Convention and Berne Convention but also seeks to establish links between the WIPO and a new organization established under GATT known as the World Trade Organization (WTO).

⁶² For A More Detailed Account Of The Development Of Copyrights Law Refer To William Cornish Intellectual Property , (4th Edition Sweet & Maxwell London ,1999) And Laddie, Prescott And Victoria, The Invention Of Copyright (2nd Edition , Butterworth, London, 1995), Pp18-24.

⁶³ For An Interesting Account Of The Birth Of Copyright Law And The Struggle Concerning The Grant Of A Property Right Refer To Fose, Authors Owners- The Invention Of Copyright, (Harvard University Press Cambridge 1993).

⁶⁴ Laddie, Prescott And Victoria, The Modern Law Of Copyright, (2nd Edition, Butterworth London, 1995), P.2.



The WTO provides a forum for enforcing obligations under the TRIPS agreement. The TRIPS Agreement also combines the principle of national treatment found in the Paris Convention with that of the 'Most Favored Nation Treatment' found in the WTO agreement. The aim of the GATT-TRIPS Agreement is to promote standards of Intellectual Property Protection and to ensure that Intellectual Property Right in themselves do not become barriers to trade⁶⁵.

14. Components of Intellectual Property Right :

The various components of IPRs as envisaged by WIPO and TRIPs have specific aims and objects. Although a detailed study of this specific right will be made in subsequent chapters, it is worthwhile to explain, in brief, their meaning hereunder:-

Copyright and related right

The word "copyright" is derived from the expression 'copier of words' first used in the context according to the oxford dictionary in 1586⁶⁶. The subject matter copyright is the literary, artistic, dramatic, musical, cinematographic films, sound recording. Literary works now also includes computer programs, tables, compilation including computer database. In most European languages other than English, copyright is called as Authors' Right. The copyright is to original creation.

Trademark and Service Mark

Trademark is a symbol through which goods are sold in market. They may consist single letter, numeral, logo, design, word pictorial device or combination of words and device.

Patent The term "Patent" has its origin in the phrases "Letters Patent". These were the instruments under the great seal of king of England addressed by the crown to all the subject at large in which the crown conferred certain Right and privileges on one or more individual. However, in the recorded history, the first patent was granted in the year 1449 to John of Uty name in Russia for a process of making glass.

Geographical Indication

An indication which identifies goods, such as agricultural goods, natural goods are manufactured goods as originating in the territory of a country or a region or locality in that territory are called as geographical indications. The indications denote quality, reputation or other characteristic of such goods essentially attributable to its geographical origin. The right conferred on geographical indication confers Right to prevent competition from commercially exploiting the respective Right to the detriment of the owners of that property.

Industrial Design Industrial design means only the features of shape, configuration pattern, or name or composition of lines or color applied to any article.

15. Reasons for protection: One reason for a lack of clarity about the rationale for protection stems from the different meanings given to the concept of protection. Some

⁶⁵ In particular, in 1900, 1925, 1934, 1958, 1967 and most recently 1979. As at October 1997 more than 140 states were members of the Paris Convention including the U.K. and most of the other developed countries.

⁶⁶ Article 5(2) Paris Convention



understand this concept in the context of IPRs, where protection essentially means to exclude the unauthorized use by third parties⁶⁷. Others regard protection as a tool to preserve Traditional Knowledge from use that may erode it or negatively affect the life or culture of the communities that have developed and applied it⁶⁸. Protection here has a more positive role in supporting TK-based community livelihoods and cultures, as proposed by the Organization of African Unity's (OAU) Model Law and its definition of community Right. Overall, however, the main arguments for granting protection to TK include:

Equity considerations,

Conservation concerns,

The preservation of traditional practices and culture,

The prevention of appropriation by unauthorized parties of components of TK, and

Promotion of its use and its importance in development.

Traditional Knowledge (TK) represents a viable knowledge system that was the basis of traditional and developing societies⁶⁹. The experience of peoples constituting these societies - indigenous and local communities - expressed through customary norm and customary 'law' was the route by which the 'commons' were managed⁷⁰.

The Danish-Norwegian King Christian IV in 1604 refused to let the Norwegian General Code of law replace customary laws, and allowed it to replace only existing codified laws⁷¹. The critically central role of the TK of Indigenous and Local Communities (ILCs) in resource management is best illustrated in the knowledge and practice relating to forestry and agriculture. In local knowledge systems the plant world is not

⁶⁷ For Further Information Concerning The Impact Of The Trips Agreements Refer To Blakeney, Trade Related aspect Of Intellectual Property, (Sweet And Maxwell), 1996.

⁶⁸ Wadehra B.I., Law Relating To Patent, Trade Marked, Copy Rights, Design, (Universal Law Publishing, Delhi, 2000) p.281.

⁶⁹ Timothy Swanson (Ed.), "The Appropriation Of Evolution's Values: An Institutional Analysis Of Intellectual Property Regimes And Biodiversity Conservation, In IPRs And Biodiversity Conservation-An Interdisciplinary Analysis Of The Values Of Medicinal Plants", (1995), p.6.

⁷⁰ K. Balasubramanian, "Herbal Remedies: Consumer Protection Concerns, Consumer David Downes "Using Intellectual Property As A Tool To Property As A Tool traditional Knowledge :Recommendations for Next Steps" Center For International Environmental Law Washington, Dc (1997). T. Simpson, "Indigenous Heritage And Self-Determination :The cultural And Intellectual Property Right Of Indigenous Peoples" International Work Group For Indigenous Affairs Copenhagen, (1997)

⁷¹ Bolivia, "Minutes Of The Council For Trips Meeting "IP/C/M/37/Add.1(8 November 2002), Para 241; Kenya, IP/C/M/37/Add, Para.254; Peru, Article 27.3(B) "Relationship Between The Trips Agreement And The CBD And Protection Of Traditional Knowledge And Folklore "IP/C/W/447(8 June 2005).



artificially separated on the basis of commodity markets to which it supplies raw materials and resources such as timber and food commodities. Instead, the forest and the field are in an ecological continuum. Activities in the forest contribute to the food needs of the local community, while agriculture itself is modelled on the ecology of the tropical forest⁷². The potential for the use of such knowledge is immense, as culturally diverse knowledge systems hold valuable information about the diversity of plant species; only 1 per cent of such species have been documented by science for their medicinal or chemical properties⁷³. For a multitude of generations, farmers have drawn on the diverse plant genetic resources to breed the major crops that feed the world today⁷⁴. Indigenous knowledge (IK) and traditional knowledge are terms that describe knowledge specific to a given culture or society. Most of the time, IK is transferred orally; hence, documentation of such knowledge is a somewhat new area for exploration by scientists. The community of Loma Alta had decades of experience with local decision making and had a clear stake in the long-term sustainability of the goods and services associated with their forest commons⁷⁵. Forest products (timber and game), land, and water were all part of the local economy, and traditional institutions for negotiating use rights for these resources were in place. According to common property theory, communities with secure land tenure, traditional institutions, and economic value for natural resources have a strong foundation for designing sustainable conservation systems⁷⁶.

⁷² Bolizli, "Review Of Article 27.3 (B)B- Communication From Brazil." IP/C/W/228(24NOVEMBER2000),JP/C/M/28,PARA 136;INDIA PROTECTION OF BIODIVERSITY AND TRADITIONAL KNOWLEDGE-THE INDIAL EXPERIENCE"IP/C/W/198,14JULY,(2000).

⁷³ See Wipo ,Traditional Knowledge; Operational Terms And Definitions At 8,Geneva,June 13 To 21 2002,Wipo/GRTKF/IC/3/9

⁷⁴ Article 8(J)Of The Convention On Biological Diversity,1992

⁷⁵ The Sum Total Of The Knowledge ,Skills And Practices Based On The Theories , Beliefs And Experiences Indigenous To Different Cultures, Whether Explicable Or Not ,Used In The Maintenance Of Not ,Used In The Maintenance Of Health As Well As In The Prevention Diagnosis Improvement Or Treatment Of Physical And Mental Illnesses'doc,WHO/EDM/TRM/2000.AT1.

⁷⁶ See The WIPO-Unesco Model Provisions For National Law On The Protection Of Expressions Of Folklore Against Illicit Exploitation And Other Prejudicial Actions ,(1982), Annex II,SECTION 2.11