

## ECONOMIC DIMENSIONS OF INDIGENOUS IPR: ISSUES AND PROSPECTS

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### Abstract

*IPR is one among the most crucial laws which affects the comprehensive development and empowerment of any nation's economy. In this technologically ingenious world, IP has become an influential asset and protection of this asset is the duty of the state. But India lacks these IP regulations in protection of the rights of indigenous people. And due to this lacking, the indigenous people are exploited by industrialists who takes advantage of their traditional knowledge for commercialisation without their consent. And even if their consent is taken, they are not given the due credit or share that they deserve. The traditional knowledge of the indigenous people has become a prey to the pirates of globalisation because of the economic gains associated with it. In this research paper, we will be discussing about the measures that are taken by the government in protection against this exploitation and one among those steps is through providing GI tags to the products which are indigenous to a specific geographical location. However, this does not seem enough while addressing the issue of such a nature which affects the life of that community which is already struggling for their basic rights. We will also be discussing about the hurdles that lies in the education system and awareness policy, because of which primeval people are becoming subject to the exploiters. Despite their proficiency in traditional cultural expression, their lack of knowledge in legal rights becomes the reason for their victimisation. Throughout this research paper, we will be conversing the impact of the laws and policies on the economic activities of indigenous/tribal people. Hence, this paper primarily aims at discussing about the challenges that are faced by the government in safeguarding the indigenous people and how can they overcome the same.*

**Keywords:** indigenous people, economic exploitation, government policies.

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## INTRODUCTION

India, i.e., Bharat, is considered the home to a rich and diverse population ranging from the Ambanis who spent lakhs of crores in their pre-wedding and wedding ceremonies to the poor, indigenous, and below poverty line people who struggle to get the two-time meals for themselves and their respective families. Most of the time, the diversity of India is considered an asset because of the precious and invaluable culture, tradition, and unique practices which have been followed for ages. We, as Indians, feel proud of ourselves for being a part of a nation where cultural values are kept at a higher pedestal than economic values. We are known for our promises and words, and the courage that flows in our veins. The famous slogan “*Vasudev Kutumbakam*” finds its place in our ancient texts and Upanishads, which emphasise the unity of the whole world and consider the entire human race as a single family.

The point of contention is that are we able to keep up with the needs of all those family members whom we consider as the indispensable member of our world family. Here I am referring specifically to the indigenous people. In this research paper, we will be discussing about the rights and needs of indigenous people who comprises 8.6% of our nation’s population.<sup>1</sup> The majority of the indigenous population still resides in the forest areas or in the villages, which are remotely situated. In such areas, the infrastructural development, technology, availability of resources, education, and health facilities are not yet accessible to those people, which hampers their economic growth and development, further restricting their commercial activities. And because of this lack of commercial activities and their awareness regarding the same, the indigenous people become prey to the pirates of globalisation. This research paper primarily aims to analyse the problems that are faced by indigenous people in commercial activities and what the possible remedies or solutions to those problems are.

Due to the advent of industrialisation and increasing demand for commercialisation, every individual is chasing the economic gains that are associated with the indigenous products, which are primarily the invention of indigenous knowledge and culture. However, these products are launched in the marketplace without giving due credit to the indigenous people and the share which they deserve. This research paper will address the issue of patent and copyright infringement of indigenous people and the potential remedies for the same.

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<sup>1</sup> MM Kumar, “Tribal population in India: A public health challenge and road to future” 9(2) *JFMPC* 508-512 (2020).

## **LAWS FOR PROTECTION OF IP RIGHTS OF INDIGENOUS PEOPLE: INTERNATIONAL AND NATIONAL**

*“We are not myths of the past, ruins in the jungle, or zoos. We are people and we want to be respected, not to be victims of intolerance and racism.”*

*– Rigoberta Menchú*

Convention 107 of the International Labour Organization (ILO) of 1957 was the first effort ever made to tackle in a comprehensive manner the issue of indigenous people.<sup>2</sup> Subsequently, many advancements took place in the drafting and implementation of rights for the protection of indigenous people, including the worldwide studies on the situation of indigenous people.<sup>3</sup>, roundtable discussion on options for the protection of the rights of indigenous peoples, consideration and adoption by the Commission on Human Rights and the Economic and Social Council (ECOSOC), and many more. However, the majority of these discussions were aimed at protecting the human rights of the indigenous people. At one point, indigenous people demanded a UN forum to address a wide range of environmental, developmental, and cultural issues that affect the indigenous population in addition to their human rights. They were concerned with creating laws and provisions that would protect their rights. They emphasised how important it is to safeguard indigenous peoples' rights to their intellectual property.

At a Technical Conference on Indigenous Peoples organised by the Working Group and the World Intellectual Property Organisation (WIPO) in 1992, it was suggested that the UN create more robust policies to safeguard indigenous peoples' rights to their intellectual and cultural property.<sup>4</sup> As a consequence of this, a legal obligation to respect, preserve, and uphold indigenous knowledge, innovations, and practices about the conservation and sustainable use of biodiversity has been established for States Parties to the 1992 Convention on Biological Diversity (CBD), which was adopted at the Rio Earth Summit. This obligation is outlined in Article 8(j) of the CBD. It was stated that the realisation of indigenous people's territorial rights and right to self-determination "is fundamentally connected with the protection of cultural and intellectual property."<sup>5</sup> Thus, the subcommission's draft declaration contained Article 27,

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<sup>2</sup> MPAZI SINJELA and ROBIN RAMCHARAN, "Protecting Traditional Knowledge and Traditional Medicines of Indigenous Peoples through Intellectual Property Rights: Issues, Challenges and Strategies" 12(1) *IJMGR* 1-24 (2005).

<sup>3</sup> Martinez Cobo, "Study of the Problem of Discrimination Against Indigenous Populations" 1 *UN document* 10-12 (1986).

<sup>4</sup> W. Wendland, "WIPO and Indigenous Peoples" 12 *WIPO* (2004).

<sup>5</sup> Erica Daes, "Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples" Sub.2 *ECOSOC* 28 (1993).

which states that indigenous peoples have the right to special protection for their sciences, technologies, and cultural manifestations as intellectual property.<sup>6</sup> This includes genetic resources, seeds, medicines, knowledge of the characteristics of flora and fauna, oral traditions, literature, designs, and visual performing arts.

India ratified the United Nations Convention on Biological Diversity in 1994, and it is legally binding on its signatories.<sup>7</sup> However, India has no laws or other provisions that are specifically focused on protecting the indigenous people's intellectual property rights. Furthermore, India is a signatory to the Convention on Biological Diversity, which only includes a brief and specific article on the protection of indigenous peoples' intellectual property rights. This demonstrates that the intellectual property rights of indigenous people continue to receive insufficient attention and lack fundamental safeguards against exploitation of their traditional knowledge by profit-seeking corporations. Hence, there is a dire need for comprehensive laws and policies on the protection of the intellectual property rights of the indigenous community.

### **COMMERCIALISATION OF INDIGENOUS PRODUCTS - BIOPIRACY**

When genetic resources and traditional knowledge are stolen without authorisation from developing nations with rich biodiversity, this is known as Biopiracy. The associated inventions are then patent protected using this knowledge, and the resulting commercial profits are not shared.<sup>8</sup> The knowledge's original owner gains nothing from its use and is probably ineligible for a patent. The main reason for this is the economic potential of the products derived from traditional knowledge. Because the indigenous people lack sufficient awareness of the commercial benefits associated with their knowledge and innovation, industrialists take advantage of this ignorance and deny the indigenous people credit and a share of the profits that they make from those goods and services. There are several examples of how the industrialised world, where financial gain is valued more highly than the knowledge and abilities of those who are preserving their heritage and legacy without being drawn to fame and fortune, has stolen the indigenous knowledge of tribal or indigenous people.

One of the most recent examples of such exploitation of indigenous knowledge by the lucratively inclined individuals, in India, is the controversy regarding the original and authentic

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<sup>6</sup> United Nations, "Draft Declaration on the Rights of Indigenous people" Sub.2 *ECOSOC* 26 (1993).

<sup>7</sup> Convention on Biological Diversity, 1992, *available at*: <https://www.cbd.int/information/parties.shtml> (last visited on July 30, 2024).

<sup>8</sup> Cynthia M. Ho, "Biopiracy and Beyond: A Consideration of Socio-Cultural Conflicts with Global Patent Policies" 39 *U. Mich. J.L. Reform* 433,436 (2006).

source or producer of *Adivasi Herbal Oil or Shampoo*. This was only a few months ago that a new hair oil and shampoo brand manufactured by the *Adivasi Communities* of India came into the market, which guarantees its customers long and thick hair within a stipulated period after the application of the product. This product gained immense popularity, and due to the growing demand for this natural elixir, it has unfortunately attracted the attention of counterfeiters who seek to profit from the oil's reputation. However, the people from that tribal community circulated videos all over the internet to make the potential consumers aware of the characteristics and ingredients of the original product. This is one among many examples of Biopiracy.

Another such instance of Biopiracy, which shows the conflict between intellectual property rights and traditional knowledge rights, was the patenting of *turmeric milk* and the *products of the neem tree* by the United States of America. In the case of the use of turmeric as a medicinal herb, The United States Patent and Trademark Office (PTO) withdrew the patent on 13 August after a year-long legal battle with India's Council of Scientific and Industrial Research (CSIR), which argued that turmeric, a native Indian plant, had been used for centuries by its people for wound healing, and so lacked the “novelty” criterion required for patenting.<sup>9</sup> In the latter instance involving the neem tree, however, an international coalition of environmentalists' attempts to have the US patents on neem tree products revoked were unsuccessful.<sup>10</sup>

These actual events demonstrate how indigenous people's intellectual property rights have been at odds for several years. Despite their struggles, no comprehensive laws or provisions have been developed for their protection from the effects of biopiracy. Even though legislators are well aware of these biopiracy incidents, they are hesitant to enact specific laws and regulations to stop this unfair and capricious practice. Therefore, laws must be created for the indigenous people to protect their long-standing traditional knowledge and indigenous culture.

## **RAMIFICATION OF GI TAGS**

Geographical indications (GIS) are a type of intellectual property that identify specific goods, such as food, agricultural, handicraft, and industrial goods, primarily based on where they were made. This is done because the origin is thought to be the primary factor contributing to the

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<sup>9</sup> K. S. Jayaraman, “US patent office withdraws patent on Indian herb” 6 *Nature* 389 (1997).

<sup>10</sup> Rajshree Chandra, “Indigenous Knowledge Rights: Neem Patent Claims” *Oxford Academic* 280-330 (2010).

intrinsic quality and reputation of the product. We look at this category of intellectual property because it is the one that has been officially defined internationally. This definition can be found in the 1994 World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which primarily addresses copyright, trademark, and patent-related matters.<sup>11</sup>

The Geographical Indication of Goods (Registration and Protection) Act came into force in 1999. As was intended when GI tags were introduced, one of their main characteristics is that they will help GI tag product manufacturers become more successful economically by increasing their demand in both domestic and foreign markets as a result of the rising demand for their products. It should be highlighted, though, that sometimes the goals of the law do not align with its results. The goal was to boost the indigenous people's economic activity, but the actual outcome was different. Without any doubt, the economic activity increased after the Hon'ble Prime Minister's appeal to go for '*Vocal for Local*' and '*Atmanirbhar Bharat*', but the same cannot be said for the economic growth of indigenous people because of the presence of middlemen and large corporations.<sup>12</sup> The middlemen and the large corporations, most of the times, capitalize the traditional knowledge of the indigenous people without giving fair compensation to them. This is evident in the export of Darjeeling tea which is considered as champagne of teas, where the product's farmers contact certain individuals to act as middlemen in order to facilitate a smooth transaction for export of their respective products. Unfortunately, those middlemen or corporations fail to give the farmer the credit they deserve, which allows them to take advantage of the farmer.

The lack of post-production control over the productions of those products whose demand increased after they received GI tags was another issue that arose following the introduction of GI tags. This resulted in a compromise in the quality of the products and encouraged "free-riders" to distribute counterfeit goods to consumers who are gullible or uninformed about the differences between original and counterfeit goods.<sup>13</sup> According to a few examples, the market penetration of lower-quality products has resulted in widespread poverty and malnourishment

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<sup>11</sup> Fabio Parasecoli and Aya Tasaki, "Shared Meals and Food Fights: Geographical Indications, Rural Development, and the Environment" 2 *Env. & Soc.* 106-123 (2011).

<sup>12</sup> K. S. Coates, *A Global History of Indigenous Peoples: Struggle and Survival* (Palgrave Macmillan, London, 2004).

<sup>13</sup> Yashna Walia & Shreya Kumar, "The Success and Failure of GI Tag in India: A Critical Analysis of the Working of Geographical Indications of Goods (Registration and Protection) Act, 1999" 1(01) *E-JAIRIPA* 232-254 (2020).

among the traditional Banarasi saree weavers. MGNREGA<sup>14</sup> benefits show that the weavers' extreme poverty and despair have either driven them to commit suicide or caused job changes. This penetration of inferior goods in the market led to the majority of skilled workers working as unskilled labourers<sup>15</sup>. Another GI-tagged product that has been struggling is Pashmina Silk, which is being imitated by the power loom industry and sold as counterfeit goods. Amritsar, in Punjab, is the source of many of these counterfeit goods. The people complain that the mechanisation is endangering their way of life and tarnishing the reputation of the handcrafted Kashmiri pashmina<sup>16</sup>.

On the other hand, it would be a flagrant fabrication to claim that the implementation of GI tags has not improved the country's economy. In some instances, GI tags turned out to be the local traders, farmers, and weavers' Messiah. However, there is still room for improvement in the regulations governing the manufacture, distribution, and production of goods with GI tags in both domestic and foreign markets. It is important to consider the implications of the laws for local artisans, farmers, and weavers when creating these provisions.

### **CAPACITY OF EDUCATION IN UPLIFTING THE ECONOMIC CONDITION OF INDIGENOUS PEOPLE**

So far, we have seen that the policies, laws, and acts that are in place to stop the practice of commercialised industrialists abusing indigenous people have flaws and gaps. But just pointing out the issues will not help the indigenous people protect their traditional knowledge; we also need to offer some recommendations for boosting their economic endeavours. In addition to considering the welfare of the indigenous people, it is our responsibility as responsible and diligent citizens of the country to devise the most reasonable and feasible solutions to those issues that are within the government's power to resolve. Given how simple it is to identify flaws, the main challenge is coming up with appropriate fixes for those issues. After determining which areas require development, we must present the relevant authorities with possible policy recommendations and request them to implement the same for the betterment of the whole nation.

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<sup>14</sup> Mahatma Gandhi National Rural Employment Guarantee Act, 2006.

<sup>15</sup> Krishna Dwivedi & Souvik Bhattacharya, "Restore glory of the Banarasi sari: The grant of Geographical Indication status to the Banarasi sari has not changed the fortunes of the artisans" *The Hindu*, Dec. 21, 2012.

<sup>16</sup> Press Trust of India, "Kashmir's famed pashmina threatened by cheap imitations" *Free Press Journal*, Jul. 28, 2015.

One of the ways to increase the economic activity of the indigenous people is to make them aware of the procedure to apply for the GI tag. Obtaining a GI tag is an extremely time-consuming and laborious process. The applicant, who wants to provide a safeguard to his traditional knowledge through this tag, must go through several stages, which are very complicated and may change his intention to acquire the GI tag. Under section 2(1)(e) of the Geographical Indication of Goods (Registration and Protection) Act, 1999<sup>17</sup> The applicant must determine whether the product falls within the definition of GI. If so, he must submit an application consisting of three copies, which must include the applicant's details, the statement of case, the product's unique characteristics, three certified copies of the region's map, and information about the inspection structure. The product is then scrutinised and examined. Based on this examination, the applicant receives a show cause notice (should there be any objections to the product), which they may then contest. Next, the application is sent to be published in the Geographic Indications Journal. After that, it is available for opposition to registration, and if no one objects, it is registered. Additionally, the GI product has a ten-year registration period after which it can be renewed by paying a renewal fee.<sup>18</sup> Because of this, it is an extremely drawn-out process that anyone who is unfamiliar with technical and documentation tasks must follow. The indigenous people should therefore be made aware of every step of this process, educated about it, and provided with assistance whenever they go for such registration in order to make it a little easier and more doable for them.

Certain laws exist for the benefit and needs of the indigenous people, as we covered in the previous section. However, do those individuals know about those laws? Do they realise that there are provisions like these in this universe to help them with their problems? But regrettably, the response is 'No'. The literacy rate in tribal communities is the cause of this. Based on statistical data, the tribal population falls well behind both the general population and the Scheduled Caste community in terms of literacy and educational attainment.<sup>19</sup> Making them aware of the value of education and its significance in a person's life is imperative in the current climate. To further illustrate to them the value of education in the advancement of both the individual and the community, educational seminars, workshops, and camps ought to be held in their local communities and, above all, in their native tongue.

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<sup>17</sup> The Geographical Indication of Goods (Registration and Protection) Act, 1999, s. 2(1)(e).

<sup>18</sup> Intellectual Property India, available at: <https://ipindia.gov.in/the-registration-process-gi.htm> (Last visited on Aug. 3, 2024).

<sup>19</sup> Dr. Vinay Agarwal, "Educating the world's largest tribal population is a challenge for India" *India Today*, Mar 16, 2017.

The most significant adjustment that needs to be made in all areas, including education, informing people about the laws and provisions that are in place for their well-being, and conducting seminars and workshops, is the use of their native tongue. Since language is the medium by which we communicate to them the most basic rights, all other efforts will be in vain if these rights are not communicated correctly. And the situation, at present, is so bad that many of the indigenous languages are on the verge of extinction because of the advancement of technology and industrialisation.<sup>20</sup> Therefore, everything that needs to be done for them will be explained to them in their native tongue, making it easier for them to interact with us and comprehend the message we are trying to get through. Thus, it is now necessary to protect and grant indigenous people's intellectual rights in addition to their human rights. We also need to put them on an equal footing with other communities in our nation, strengthening their social and economic standing.

## **WAY AHEAD**

Indigenous people are among the vulnerable section of our society. They are vulnerable not only to their human rights but also to intellectual property rights. The higher their intellect they have for traditional knowledge, the greater is their vulnerability towards the large industrialists and corporations. According to what we discussed, indigenous people are those communities that have extremely rich traditional knowledge but lack legal knowledge. This has been the situation for a long time; before that, people were less aware of the laws, but there was less globalisation and commercialisation at the time, so neither the crime rate nor the exploitation of their traditional knowledge was a major concern. In the current situation, the growing commercial value of these products puts the tribal people's knowledge of various medicinal herbs, handcrafted goods, and speciality crops at risk. Thus, it is necessary to create some comprehensive laws right now to safeguard the intellectual property of indigenous knowledge held by tribal people.

The country of the Philippines has passed the Republic Act No. 8371, also known as the Indigenous Peoples' Rights Act of 1997 (IPRA), in which they have provided Right to Ancestral Domains and Lands, Right to Self-Governance and Empowerment, Right to Social Justice and Human Rights, and Right to Cultural Integrity. This sets an example for other nations to develop and evolve their respective laws for empowerment and upliftment of

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<sup>20</sup> United Nations Human Rights Office of the High Commissioner, *Many indigenous languages are in danger of extinction* (OHCHR, 2019).

indigenous people, especially in regards to economic aspect. One case study which exemplifies this point is the case of Lavari, a small village in the Gadchiroli district of Maharashtra, an Adivasi-dominated village, particularly the Madia Gond Tribe, which has received Community Forest Rights (CFR) over 536.03 ha of forest land in 2012. The minor forest produce, primarily tendu and bamboo, serve as an important source of livelihood for the households in the village. In December 2015, the Power Grid Corporation of India Limited (PGCIL) received forest clearance for a 765 kV (KV transmission line. The project stretch included the laying of power transmission across the community forests of the village of Lavari. This would have meant the felling of several hundred mature mahua, hirda, behera and other trees which provide minor forest produce (MFP) that were a primary source of livelihood for the villagers. The villagers of Lavari demanded compensation for the loss of income because of the removal of the forest cover that lay across the transmission line.<sup>21</sup> There are several other instances in which the tribal or the Adivasi community had to go through a long process to claim their rights over which their livelihood depends.

The present research paper delves into the national and international legal framework regarding the safeguarding of tribal people's intellectual property rights. Specific measures and their legal shortcomings were examined, along with the consequences of Geographical Indications (GI) tags and the commercial exploitation of indigenous people by commercial and industrial tycoons. The situation of tribal women, however, was one topic this paper did not specifically address. When it comes to the economic activity of indigenous people, the majority of the jobs that these people hold are low-skilled, small-scale jobs where women are heavily involved. The fact that the majority of their labour involves farming, gardening, weaving, and handicrafts—all of which provide opportunities for women to be employed—and that these tasks are completed in the communities in which they live, further boosts the likelihood that women will find employment in these fields. Consequently, specific laws and provisions governing the work performed by women in the tribal population should also be included in the legislation. The reason is that the tribal population is already a vulnerable class, and women among them are even more vulnerable, so it provides a dual reason why specific provisions should be made for them. Legislation should be passed to guarantee education for indigenous community

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<sup>21</sup> Disha Gupta, Meenakshi Sinha, Ashwini Chhatre, India's Forest Rights Act and indigenous claims to community forest resources: A case study of Lavari, Maharashtra, *WORLD DEVELOPMENT PERSPECTIVE* 27(3), [https://www.researchgate.net/publication/362406002\\_India%27s\\_Forest\\_Rights\\_Act\\_and\\_indigenous\\_claims\\_to\\_community\\_forest\\_resources\\_A\\_case\\_study\\_of\\_Lavari\\_Maharashtra](https://www.researchgate.net/publication/362406002_India%27s_Forest_Rights_Act_and_indigenous_claims_to_community_forest_resources_A_case_study_of_Lavari_Maharashtra) (2022).

members by granting them a reservation in government-owned educational institutions. Some instances serve as inspiration for indigenous people to enrol their children in formal education. One of them is the example set by our Honourable President Draupadi Murmu, a member of a tribal community who overcame discrimination and adversity to ascend to the highest office in the country. From being a citizen of the country to becoming the first citizen of the nation, i.e., the President, she proved that nothing is impossible if you have dedication and commitment. Without a doubt, education was a major factor in her journey to become the President of India.

As I wrap up this research paper, I would like to point out that India is a democratic nation with a diverse population in terms of knowledge, customs, and culture. Furthermore, for the benefit of the country's overall development and expansion, it is the responsibility of every citizen living within its borders to respect one another's customs and knowledge. Furthermore, the government must step in and enact laws and regulations to prevent individuals from departing from this practice in the future. As a result, we should never deprive our national family members of their share or credit—rather, we should always support and encourage one another.