PERSPECTIVES ON INTELLECTUAL PROPERTY RIGHTS

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Abstract
Plagiarism is defined as unauthorized use of ideas, methods, data, language and figures of a few different author with out acknowledging the source. Plagiarism is a phenomenon that gives problems to many beginners, similarly to analyzing institutions. The recognition of plagiarism is a noteworthy undertaking in higher education global. Most of the works presented with the resource of the use of beginners for score the coursework consist of plagiarized data. Problems of plagiarism in academic institutions.

Keywords: *educational, educational integrity, Internet, software*

Objectives

Conceptual understanding is the basic requirement for proper execution of any planned activity. Keeping in mind the same notion the present paper aims around the development of conceptual background of plagiarism and the need of spreading awareness about it in order to strengthen the academic integrity and honesty in educational institutions. It, further, purports to show the strong connection between plagiarism and internet usage

along with the reasons of cheating amongst students of distinctive levels and streams.

Introduction

Students intending to advantage academic qualifications are predicted to demonstrate appropriate levels of attainment and potential through coursework and examinations Institutions are having to rent an increasing number of extra technical solutions to be able to implement their proactive anti-plagiarism policies, including using Web-based totally completely plagiarism detection services. There are many reasons for plagiarism starting from character and now now not limiting to institutions, journals, textbooks, research funding organizations or global trials. An inherent desire or urge to be successful, cultural, psychological, aggressive nature towards success, fear of discrimination for failure, promotion, financial or manner gains, peer pressure and need to boom one's record variety of guides are some of the character motives for plagiarism. Lack of schooling at the undergraduate level regarding plagiarism and the dogmatic view expressed in textbook without the potential to self assist are distinctive reasons for this trend. The name for of book during interviews are also every other cause for plagiarism. To get university or research grants, incentives from pharmaceutical companies, boom the academic and social usual overall performance of the department, advantage get right of entry to to global research, purpose of publishing in indexed journals are distinctive motives at institutional level. Shortage of time, inadequate preparation, terrible English or writing abilties and the pressure to publish greater articles than to don't forget the quality, in shorter time are distinctive motives for plagiarism. Poor quality/protection of the mag, lack of proper guiding precept following regarding book, terrible reviewing techniques or uneducated reviewer, competition amongst mag to publish greater articles are some of the

opportunity factors that might motive non-detection of plagiarized contents.

Duties of Higher Education Institutes (HEI) for Curbing of Plagiarism

1. They need to installation a mechanism as a manner to spread attention so you can promote responsible conduct, deterrence of plagiarism and academic integrity.
2. The HEIs are to hold sensitization seminars for university students, faculty and distinctive individuals every semester for responsible conduct in pursuit of academia similarly to teach academic ethics to university students.
3. The HEIs need to located academic ethics withinside the coursework for Undergraduate, Postgraduate, and Masters Degrees. They need to moreover embody research and e-book ethics for coursework of Ph.D. and M.Phil pupils.
4. The HEIs need to provide schooling for the usage of plagiarism detection technology.
5. The institutions need to installation facilities for the detection of plagiarism.

On ethical writing

A preferred precept underlying moral writing is the perception that the written paintings of an author, be it a manuscript for a mag or medical journal, a studies paper submitted for a course, or a provide suggestion submitted to a investment agency, represents an implicit settlement among the writer of that paintings and his/her readers. Accordingly, the reader assumes that the writer is the only originator of the written paintings and that any material, text, data, or thoughts borrowed from others is honestly diagnosed as such through set up scholarly conventions, which include footnotes, block-indented text, and

quotations marks. The reader additionally assumes that every one records conveyed therein is as it should be represented to the nice of the writer's abilities.

Plagiarism of thoughts

Appropriating a person else's idea (e.g., an explanation, a theory, a conclusion, a hypothesis, a metaphor) in entire or in part, or with superficial changes without giving credit score to its originator. In the sciences, as in maximum different scholarly endeavors, moral writing needs that any thoughts, data, and conclusions borrowed from others and used as the muse of one's personal contributions to the literature, be well acknowledged. The unique way wherein we make such acknowledgement may also range relying at the context or even at the discipline, however it regularly takes the shape of both a foot note or a reference quotation.

The extraordinary kinds of plagiarism primarily based totally at the literature are:

- Accidental
- Unintentional
- Intentional
- Self-plagiarism

Accidental: Due to loss of plagiarism knowledge, and knowledge of quotation or referencing fashion being practiced at an institute.

Unintentional: The vastness of to be had records affects mind and the equal thoughts may also pop out thru spoken or Intentional written expressions as one's personal.

Intentional: A planned act of copying entire or a part of a person else's paintings without giving right credit score to authentic

Self-plagiarism: Using self-posted paintings in a few different shape without relating to authentic one (Beasley 2006).

Now the maximum apparent query coming on your thoughts can be if all this contributes toward then how are we able to save you it and keep away from plagiarism.

Now the maximum apparent query coming on your thoughts can be if all this contributes toward then how are we able to save you it and keep away from plagiarism.

Methods for Curbing Plagiarism

1. All HEIs are to put into effect a mechanism as a way to discover plagiarism on the time the scripts are submitted to the institution.
2. Every scholar who's filing such scripts should additionally offer an project which says that the paintings is authentic and no content material has been plagiarised. The project may even encompass that the paintings has been checked for plagiarism.
3. All the contributors of the school, Ph.D. or M.Phil college students are to take delivery of get admission to to such plagiarism detection tool.
4. The establishments will give you a plagiarism coverage that must be authorized through the applicable statutory bodies.
5. All supervisors will offer a certificates which states that the scholar or researcher below him/her has now no longer plagiarised any content material.
6. All smooth copies of the dissertations and theses through M.Phil and Ph.D. pupils after diploma is presented are to be filing at the Information and Library Network Centre (INFLIBNET) for web website hosting through the HEIs.

7. The establishments will installation an internet repository for dissertations, theses, paper, book and all different in-residence publications.

Penalties for the Act of Plagiarism

The diverse consequences for plagiarism were furnished in Section thirteen of the guidelines. Different consequences were given for extraordinary levels of plagiarism severity. Section thirteen offers that consequences will be presented best whilst there may be absolute confidence that the accused has dedicated the act and in spite of everything different avenues of enchantment were exhausted. The accused should additionally take delivery of good enough possibility to shield himself/herself. Further, the court cases are to be held in camera, that means that court cases are to be closed to the public. The consequences given have to be in share to the severity of plagiarism.

Penalties for Students

Penalties could be given to students consistent with the selection of the Plagiarism Disciplinary Authority (PDA). The punishments given to college students for plagiarism for one-of-a-kind tiers of severity are given below:

i. Level 1 (10%-40%) – the scholar will now no longer take delivery of any mark or credit score and revised script have to be resubmitted inside a stipulated term which does now no longer exceed 6 months.
ii. Level 2 (40%-60%) – the scholar will now no longer take delivery of any mark or credit score and the revised script is to be resubmitted among 1 yr and 18 months.
iii. Level three (above 60%) – the scholar will now no longer take delivery of any mark or credit score and their registration for that route could be cancelled.

If a scholar repeats such act of plagiarism then the punishment could be for the subsequent stage to the only

formerly committed. In instances wherein the very best stage of plagiarisation takes place then the punishment stays the identical and the registration could be cancelled. If diploma or credit score has already been acquired and the accused has been confirmed to have plagiarized content material then stated diploma or credit score could be suspended for a stipulated term.

Penalties for Faculty, Staff or Researcher

Penalties for faculty, personnel or researcher of Higher Education Institutes can also be given consistent with the severity of plagiarism.

Level one (10%-40%) – he/she could be requested to withdraw the manuscript submitted for book and could now no longer be allowed to put up any paintings for a minimal term of one yr.

Level two (40%-60%) – he/she could be requested to withdraw manuscript submitted for book and could now no longer be allowed to put up their paintings for a minimal term of two years. He/she can be able to additionally be denied any annual increment that they've been receiving, he/she can be able to additionally now no longer be allowed to behave as a manager for college kids or pupils for two years.

Level three (above 60%) – he/she could be requested to withdraw manuscript submitted for book and could now no longer be allowed to put up any paintings for a minimal term of three years. He/she can be able to additionally be denied any annual increment they're receiving for two years, he/she can be able to now no longer be allowed to behave as a manager for college kids or pupils for a duration of three years.

Conclusion:

Academic dishonesty is an unacceptable degree that violates moral behaviors and can result in extreme implications for each the target target market and the cheaters. Growing together with the improvement of instructional institutions, the problems related with instructional integrity, and plagiarism nowadays is a problem of students everywhere in the world. Some of the scholars are plagiarizing unintentionally, however there are a number of folks who do it purposely. Although it's far universally diagnosed that plagiarism may also result in extreme consequences, the scholars maintain to forget about the policies of instructional writing? Plagiarism is a not unusual place however avoidable malpractice usual withinside the world. It impacts all from college students to senior instructors and from growing to evolved countries.

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2.

Understanding Plagiarism and Research Ethics in Higher Education

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Abstract:

The present paper tries to focus on the notorious concept, plagiarism and its various forms used insolently in academic research. It also covers the remedies of plagiarism i.e., ethics and integrity in the research lifecycle to be used by the academic and research community. Plagiarism is considered a moral and ethical offense rather than merely academic misconduct or literary theft. In this concern, the UGC has introduced two credit courses entitled "Research and Publication Ethics" for research scholars to create awareness about publication ethics in November 2019. The UGC has also published the *Guidance Document on Good Academic Research Practices* (September 2020) to raise the standards of research at colleges and universities in India and to conduct quality research with the help of benchmarks of quality research, integrity, and ethics in higher education. This document offers checklists for quality, ethics, integrity, and excellence at each step of the quality research.

Keywords and Phrases: *Plagiarism, research ethics, good academic practices, etc*

Introduction:

Plagiarism is a worldwide term used disrespectfully in the academic and research world. It is derived from the

Latin word, ‘plagiarius’ which means ‘kidnapper’. Ben Jonson, a famous dramatist from the Jacobean period introduced the term, plagiarism into literature in 1601 to describe someone guilty of literary theft. In research contexts, it is considered as a moral offense by stealing others’ creative work, ideas, expressions, thoughts, intellectual property as one’s original work. The Compact Oxford English Dictionary defines plagiarism as the act of “taking the work or idea of someone else and pass it off as one's own” (qtd. Babbar et el 233). It is commonly termed as academic misconduct, academic dishonesty, academic fraud, and violation of research integrity and ethics. It is a serious moral, ethical and scientific crime rather than merely academic misconduct. Merriam-Webster’s Collegiate Dictionary defines it as a “literary theft.” In this regard; the Office of the Research Integrity remarked that:

> Plagiarism is “the theft or misappropriation of intellectual property and the substantial unattributed textual copying of another’s work. It does not include authorship or credit disputes. The theft or misappropriation of intellectual property includes the unauthorized use of ideas or unique methods obtained by a privileged communication, such as a grant or manuscript review. Substantial unattributed textual copying of another’s work means the unattributed verbatim or nearly verbatim copying of sentences and paragraphs which materially mislead the ordinary reader regarding the contributions of the author” (ORI 5).

F. Cunha in his research article entitled “Gastrotomy: Its Inception and Evolution” makes an excellent state of dubious definitions available around with a critical

statement, that 'if you steal from one author, it is plagiarism; if you steal from many, it is research' (Chauhan 64).

History:

The concept, plagiarism is as old as time but it has changed a great deal with the time. When we peep into the history, we will get the first instance of plagiarism in literature around 80 AD noted by the Roman poet Martial. The word 'plagiarism' was introduced into the English language by Ben Jonson in 1601 to describe literary theft. Samuel Johnson included this word in his dictionary in 1755 and defined it as: "A thief in literature; one who steals the thoughts or writings of another" (Turnitin). The first copyright law, the Statute of Anne was introduced in the Age of Enlightenment (1685-1815) to control the originality of authorship. With the advent of ICT, the ample information made available on the internet and plagiarism becomes a new challenge in academia in the present scenario. The Society for Scientific Values (SSV) reported officially the first case of plagiarism in scientific research in April 1989 in the Indian context (Arya 26).

Types of Plagiarism:

Plagiarism involves stealing someone's words or ideas without acknowledgment. It becomes a common practice in academic research with the advancement of ICT. The researcher plagiarizes others' words, ideas, and results as his own work. Such plagiarism is considered research dishonesty and unethical practice. In his research article, "Not all plagiarism requires a retraction" in *Nature*, Praveen Chaddah has introduced three types of plagiarism:

1. Copying text from another author without appropriate permission or attribution and acknowledgment.
2. Copying someone else's research ideas.

3. Redoing other people's research and representing it as one's own without referring to the original work (124).

4. In addition, the popular web Copyleaks.com has discussed the different types of plagiarism based on copy-paste misconduct, unintentional purpose, referring own work and accidental references without giving credit to the original source. With the help of these aspects, Copyleaks.com has categorized the following kinds:
5. Direct Plagiarism: is common practice in the research community. The researcher copies and pastes someone's ideas without mentioning the original source. In direct form, the plagiarist does not change even a single word rather than submitting another's work word by word as his/her own work or sometimes changes some words, phrases or sentences by replacing them with others.
6. Mosaic Plagiarism**:** is an unintentional type of plagiarism. This type of plagiarism occurs when the researcher cites the original source of the content in his work but he does not put the referred work in quotation marks. The researcher should cite the original source in quotation marks. Unintentional paraphrasing also leads to mosaic plagiarism.
7. Self-Plagiarism: This kind of plagiarism occurs when the writer uses part of his own work previously published. If the researcher publishes the same work for different places without mentioned original source, then such work is also considered self-plagiarism.
8. Accidental Plagiarism**:** becomes regular practice among researchers. It occurs when the plagiarist cites other sources accidentally despite of the original sources (Copyleaks.com).

Further, Prof. Cecilia Barnbaum has discussed five types of plagiarism in his research paper, "Plagiarism: A

Student's Guide to Recognizing It and Avoiding It". They can be illustrated as:

1. Copy and Paste Plagiarism: In such kind of plagiarism, the researcher plagiarizes other's significant sentences or phrases without referring to citations. The source of references and quotation marks must be referred to by the researcher.
2. Word Switch Plagiarism: The researcher takes a sentence from original source and modifies a few words in this type of plagiarism. The researcher needs to cite the original source in quotation marks.
3. Style Plagiarism: In this type of plagiarism, the researcher doesn't copy sentences or paragraphs as it is from the original reference source or even in the same order. The researcher copies only the author's reasoning style. It is also considered as academic theft.
4. Metaphor Plagiarism: Metaphor plagiarism is the copying of the creative styles of the author to illustrate an idea without citing the original author's name. Metaphors are used to make an idea more clearly better than a plain description of the object or process.
5. Idea Plagiarism: In this type of plagiarism, the researcher steals someone's idea without giving credit to the original author. (Arya 28).

Research Ethics; An effective way to avoid plagiarism:

Numerous steps have been taken by the University Grants Commission to control plagiarism in higher education. In 2019, the UGC introduced two credit courses entitled "Research and Publication Ethics" for research scholars to create awareness about publication ethics. This

course may aware the researchers about research integrity, research misconduct and ethics, research metrics, citation databases and plagiarism detection tools. Further, the UGC has also published the *Guidance Document on Good Academic Research Practices* (September 2020) to raise the standards of research in higher education. In tune with UGC, the major colleges and universities are organising seminars, conferences, workshops on research integrity with ethics to create awareness among budding researchers and teachers. The universities have also developed their guidelines for the ethical conduct of research own. The research organisations, including universities, have introduced ethical formalities at the time of submission of their research work. The researcher has to submit the mandatory certificate of plagiarism check from the subscribed plagiarism detection software which shows the percentage of plagiarism. In short, the various remedies of controlling plagiarism i.e. use of plagiarism detection tools, organisation of workshops, mandatory certificate of plagiarism check, code of conduct lack ethical and moral aspects. So, research ethics and moral values are effective ways to avoid plagiarism. Here I would like to quote, "Research is, by and large, a self-regulating and self-policing process wherein researchers conduct and present their research without falsification and fabrication, giving credit to other scholars for their ideas when and where such credit is due" (Patwardhan et el 11).

In order to prevent plagiarism issues, research ethics is the ultimate solution. The research organizations, including universities and UGC suggested good academic practices based on ethics to avoid plagiarism. These good academic practices can be summarized:

1. The researcher should acknowledge the contributions of others and cite the original source in his work. When the researcher uses someone's

word-by-word text in his/her publication, he/she should attribute the original author's contribution. In such a case, the researcher must enclose verbatim (word to word text) in quotation marks and provide a reference citation.

2. The number of times, the researcher summarizes and paraphrases original authors' ideas or words. In such a case, the researcher should use his/her own words and syntactical structure to condense original ideas in a brief and identify the original source.

3. The researcher should always adhere to research ethics while using his/her own previously published work. He/she should not reuse his own work without attribution and not publish the same work in different journals or books (Roig).

Conclusion:

To sum up, Plagiarism becomes an eternal problem in higher education. It is defined as the process of using other's words, expressions, ideas, structure without acknowledging the original creator and publishing them as one's creation. It is commonly regarded as literary theft, academic misconduct, kidnapping of other's ideas, academic dishonesty, and academic fraud. It is a moral and ethical offense rather than merely intellectual theft. Good and ethical academic practice is the supreme solution to avoid plagiarism. In this regard, UGC, the apex body of higher education has published the *Guidance Document on Good Academic Research Practices* in September 2020. The researcher should follow the research ethics suggested by UGC to conduct quality research at colleges and universities in India. In addition, the researcher should use the online free plagiarism checker tools before publishing their manuscript.

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3.
Intellectual Property Rights: Need of the Academia

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Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property for a specific period of time. IPR provide certain exclusive rights to include copyrights, patents, trademarks, and trade secrets the inventors or creators of that property. Its commercial benefits from their creative efforts or reputation. Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

Intellectual property rights are customarily divided into two main areas:

(a) Copyright and rights related to copyright

The rights of authors of literary and artistic works. example books writings, musical compositions, paintings, sculpture, computer programs and films are protected by copyright. Time period of fifty years after the death of the author. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

(b) Industrial property

Industrial property can usefully be divided into two main areas:

(I) This area can be characterized as the protection of distinctive signs, in particular trademarks. Which is distinguish the goods and geographical indications (which identify a good as originating in a place. Such types of

protection sign aim to stimulates and ensure to protect consumers.

(II) These types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets.

Ours idea can be protect through four types of intellectual property

1. Trade Secrets

   It is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets.

   Protects secret information i. e new invention in new drug formation

2. Trademarks

   It is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders. i. e TATA for motors cars

3. Copyrights

   Its gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works”. Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed. i.e books and drawings

4. Patents.

   Protects functional or ornamental features i. e. i phone design

There are three main elements which are used for copyrighting.

The Three Elements of Copyrighting

i). Fixation

In fixation all idea complies together in a tangible form. Like lyrics of a song on a paper is a fixation of the lyrics' concept and content. It demands the work to be sufficiently permanent or stable. Hence a live performance can never be copyrighted

ii) Expression

In this case an idea can't be protected but the expression of an idea gets protected. For example, a book for children has certain characters attending a Magical school that can be copyrighted. But the essence of the story, like the magic, magical school, etc., cannot be copyrighted.

iii) Originality

The law tail us consideration the percentage of the originality of the copyrighted material. There can be a similar basis for the idea to generate, but it has to take an original twist to copyright. For example, an invention at a science school fair has the same number of rights as a scientific invention at the university, given the ideas strike originality.

F. O. Matthiessen said "*The true function of scholarship, as of society, is not to stake out claims on which others must not trespass but to provide a community of knowledge in which others may share"*

intellectual property implicates all type of our work as faculty members. We are doing the work in some areas by work-for-hire contracts with our institutions. We use the resources of our colleges like books, hard copy journals some old thesis from library and universities materials to produce intellectual materials that could be seen as the property of our institutions, springing forth from our minds, conveyed to computer screens by our fingers, yet fettered by our computers' hard drives (university property), posted

on course-management spaces (university contracted), shared by e-mail (often using institutional servers), and perhaps even printed on the departmental laser printer, using departmentally provided paper. When we produce such types of work and finally sent to publication which typically includes a copyright-release clause, where we acknowledge that we are assigning our rights to copy to the publisher and its representatives.

We transfer these rights because, following the US copyright revisions of 1976, the copyright to our work is anchored upon its moment of creation—and that right to copy is immediate and absolute

Universities and public research institutions are among the direct contributors towards innovation and research, particularly in emerging trends in different branches of subjects. The potential pool of talent for innovation in these trends emanates largely from educational institutions and research institutions. Significance of Intellectual Property Rights (IPR) in higher education has been widely recognised. This could be credited to the National IPR Policy approved by the Union Cabinet in May 2016, which was the first ever IPR policy framed by the Government of India.

The University Grants Commission (UGC), is higher nodal authority for determining and maintaining of standards of university education in India hence its developed new issued and send a letter about the Intellectual Property Rights (IPR) as a elective subject under the Choice Based Credit System (CBCS). The primary focus of ITR Policy is towards promoting innovation, creativity, especially in higher education institutions. The Policy brief specifically mentions synergising all forms of IPR for tapping the creativity and innovative energies in India.

In addition, the National Institutional Ranking Framework (NIRF), a ranking system developed by the

Ministry of Human Resource Development (MHRD), ranks institutions of higher education in India. The first announcement of this ranking system in 2016. NIRF focus on promoting innovation, research and development while assessing their performance beyond academics. Its monitoring Research and Professional Practice that includes IPR and patents - both published and granted, by students and faculty members. The ranking of top educational institutions was found to be proportional to the number of applications filed for patents.

Some tips are used to protecting Intellectual Property in Academia

i). Take Inventory of Your Research

The fundamental thing to keep our safe academic intellectual property but most institutions have no idea where all of that information is housed. Research coming from nature, is a decentralized effort that shifts based upon the scholarly interests of individual faculty members to graduate students and funding agencies. For example, Teams who were working on different projects or problems in early 2020 now they deeply engaged in coronavirus-oriented types of research.

ii). Create Partnerships with Faculty, Staff and Students

For Protecting intellectual property requires a team effort when campuses of institute naturally look to their information technology and cybersecurity teams to lead the way, efforts to protect proprietary research data won't work without the full support of those engaged in the day-to-day work. There are many ways that faculty, staff and students can undermine security by copying data to personal devices or cloud services, especially if they do not understand or why their work requires careful, comprehensive safely. If Teams charged with time leading intellectual property protection efforts also changes and their property also changes these data is used to identify the research teams

most likely to be targets of malicious intelligence-gathering efforts and reach out to them for an initial conversation.

Researchers are likely to understand importance of protecting their relative work if they know that the threat is specific way to their own research, particularly if examples are drawn from similar educational institutions.

iii). Secure Remote and Collaborative Research

Remote area work has force at educational institutions. While the rest of the world rapidly shifted to online telecommuting arrangements over the past six months, faculty members have long done major portions of their work from home or on the road. However, that doesn't mean that they've been working securely enough to mitigate the threat of intellectual property theft.

Campus technology teams need to understand how researchers work and the ways they routinely blur the lines between personal devices and professional data and files. Working hand in hand with research technology teams, university security teams can design solutions that will secure remote work without hindering productivity. This may involve using configuration management tools, mobile device management technology or virtualized desktops.

iv). Work with Law Enforcement to Protect Information

When it comes to protecting intellectual property, the interests of law enforcement and universities are closely aligned. Both groups benefit from sharing threat intelligence information. Teams working to protect intellectual property should consider partnering with groups such as Both of these provide collaboration and networking opportunities that may strengthen institutional defenses. While the COVID-19 pandemic marks a significant shift in the priorities of both intelligence agencies and attackers, academic research is always a potential target. Developing partnerships and putting controls in place can be critical steps to keeping research protected.

Conclusion

- ✓ *The protection of intellectual property rights plays an important role in inducing technological change and facilitating academic growth.*
- ✓ *Intellectual property protection is not used as parameter lead to growth, but it helps create an incentive structure that encourages quality research and development.*
- ✓ *An intellectual property system creates an incentive to innovate by rewarding the developers of new inventions with the right to exclude others from using that innovation for a limited period of time. In this way,*
- ✓ *Basic research needs to development the economy of country but applied research is required to sudden growth of country which must be protected by IPR.*

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4.
Intellectual Property Rights: A Historical Perspective

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Meaning of IP

In case of tangible things the owner has full right over it because of the legal documents and prevailing laws but in case of intangible property the invention must have right over it. The term Intellectual property is related to human brain applied for creativity and invention. Intellectual Property Rights is a legal provision that safeguards intended to provide protection to an individual or organizations for their intellectual creations for certain period of time. Intellectual property is an abstract concept one cannot see it nor touch it. It is invisible property. It is the wonderful creation of the supreme and imaginative minds of an individual. For example a poet composes poems a scientist invents something so that the poet is protected through this property rights that others cannot copy it in future without the permission of the original creator. Intellectual Property Rights protect the rights of individuals who create something that has got some value to society. **IPR refers to the legal rights given to the inventor or creator to protect his invention or creation for certain period of time.**[1] Intellectual Property refers to the creations of human minds like some inventions, artistic productions, and certain symbols of the company, names, and designs of the products.

Classification of IP

There are some types of Intellectual Property including patents, trademarks, copyrights, geographical indications, industrial designs, and trade secrets so and so

forth. There are different laws governing different intellectual property. Intellectual property rights are necessary for progress and innovations of the country. If a person invents something so he has right to lodge a case against someone who steals his formula for creating other product it is called patent. No doubt, a patentable formula should be novel and has some utility and involves a lot money it. Copyright is one of the types of Intellectual Property Rights. It safeguards the author, poets, dramatist, novelist or anyone who has written or produced some creative writing. Under this right the owner or creator is given complete right about his work and no one can use his materials without his permission. A trademark is also an Intellectual Property. It is a name, logo, symbol that gives a unique identity to the product and a company is recognized by that trademark. No other company or organization can use it. Another important class of IP is the trade secrets. These trade secrets are nothing but some important information, methodology that company uses in the production of the goods. It is confidential information and only the company has right to use it. If any other company uses it then it can be convicted under the laws governing IP.

Significance of IPRs

IPRs help to develop the economy of any country, IPRs boost and encourage scientists, creative minds to go for more and more research and ultimately it creates a proper environment for development of any nation. IPRs play very significant role today's world of competition and advancement. These rights provide security to artists and scientists and also inspire them for more inventions and innovations. It is a universally accepted fact that ideas rule the world. If ideas are shared throughout the world without any material gains for the creator then no one will go for any research and inventions. . IPRs are necessary for branding any product, they help any organization to create

its own independent identity in the world markets. The consumers also get an opportunity to go for better products.

Historical Background

'Intellectual Property' is a generic term that probably came into regular use during the twentieth century. Intellectual Property Rights have got a long historical background. Although it is a current trend that all intellectuals, academicians, scientists, businessmen, industrialists are holding discussions, dialogues, conferences and seminars yet it is as much new as it seems to be. It has been there in the world since the beginning of the human civilization. The laws and procedures of IPR have been originated in Europe. The term IPR became common after the establishment of the World Intellectual Property Organization in 1967. The purpose behind WIPO is to promote international cooperation with respect to creation, dissemination, use and protection of works of the human mind for economic, social, cultural progress of the world. In England the Statute of Monopolies of 1623 swept away all monopolies except those made by the true and first inventor of a method of manufacture, the U.S.A. enacted a patent law in 1790. The In France the concept of ownership was popularized back in 1791 declaring that all new discoveries are the property of the author**. After these beginnings, patent law spread throughout Europe in the first half of the nineteenth century.[2]** In the same trade mark got a lot of importance and **Statutory forms of trade mark law only make their appearance late in the second half of the nineteenth century, even though trademarks had been in use for much longer.[3]** Trade mark registration began to make their appearance in Europe: England 1862 and 1875, France 1857, Germany 1874 and the U.S.A. 1870 and 1876.12 Copyright follows a similar kind of pattern, modern copyright law beginning in England with the Statute of Anne of 1709. The Copyright is one of the types of IPRs and it attracted the attention of

many intellectuals because of piracy of the original literary works as the U.K. found in the eighteenth century that many of its authors were having their works reproduced abroad without permission and without receiving royalties. Much of the "piracy" was taking place in America, where authors like Dickens were very popular with the American public and therefore American publishers. **The Americans were not the only culprits as the following passage from Hansard (1837) makes clear:**[4]

> **"Every work written by a popular author is almost co-instantaneously reprinted in large numbers both in France, Germany and in America and this is done now with much rapidity, and at little expense . . . All the works of Sir Walter Scott, Lord Byron, Messrs. Robert Southey, Thomas Moore . . . and indeed most popular authors are so reprinted and resold by galignani and bardens at Paris."**

There are end number of sources available detaining the beginning of intellectual property rights as back as 600 BCE and later in the year 1421 when the first modern patent was awarded to an Italian inventor. It is mentioned that in Greece there was a bakery man who invented the process of making bread in 600 BCE and at that time the intellectual property of the bakery man was protected. In Indian context, it was back in 1856, a law regarding the protection of patents came into being it is known as the Act VI of 1856. It act was made to encourage invention and to protect the inventions of the inventors. Later on many acts were formulated in subsequent years. In 1949, the government of India formed a committee to evaluate the existence laws regarding IP. The committee worked on and suggested amendments of the patent acts of 1911. As per the need of the hour, in India, huge amendments are being made to protect Intellectual Property Rights.

Conclusion

This chapter on the historical background of Intellectual Property Rights highlights some important findings that intellectual property Rights are universal, they are omnipresent, found everywhere in the world. It also points out that it was in Europe and America that the urge of formation of Intellectual Property Rights took birth and later on it was accepted in other parts of the world. The Intellectual Property Rights vary from country to country. This chapter also highlights the point that Intellectual Property Rights are necessary for the advancement of scientific, technological and industrial development. The Intellectual Property Rights help the nation develop its economic, social, educational, industrial, cultural and other sectors of society. Hence, it's very important to have intellectual property Rights for holistic development of any nation.

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5.
Utility and Futility of Intellectual Property Rights

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Abstract
Intellectual Property Rights protect the creative process or product to provide maximum benefit to the person or organization who use their intellect to create something innovative. However, there are certain situations where fundamental rights of human beings and IPR come in oppose of each other. The paper delineates utility and futility of intellectual property rights under specific circumstances.

When a person or organization uses their intellect to create something useful for mankind, they have a limited monopoly on that creation. And this monopoly is given under Intellectual Property Rights henceforth IPR to that person or organization by the concerned Government of the country. IPR vary depending on the type of creation. They are as follows:

1. On creations in the field of art - literature, painting, sculpture, music, drama or film etc. - On this their creator gets the copyright.
2. If it is a product of identification mark or a brand name or a slogan identifying the product, it gets a trademark.
3. On the aesthetic design of an industrial product, the innovative shape of a car or mobile phone, etc. gets industrial design on top.
4. When a geographical location identifies a product, it acquires the intellectual property of a geographical indicator.

So on an innovative product or on the process of making a product, the researcher gets a patent with the help of IPR. These different types of intellectual property rights give their creators ownership rights over a period of time. No one can use this creation without the permission of the creator during this period. It is monopolized by its owner during this period. In by manufacturer return for the labor, money and time spent the, the government of the country gives him this monopoly. No one but her owner can make that thing during this period. So that production has no competition in the market. Since there is no competition then its prices are huge. These rising prices inevitably lead to conflicts over intellectual property rights and other rights. Let us see an example. Suppose a new TV has just hit the market. The quality of the broadcast on this TV is excellent. Its manufacturing company has invented and used new technology for the TV, and this technology is patented by that company. So of course no other company can make such a TV using this technology. Suppose the price of this TV is Rs 1.5 lakh. If the same price was Rs 80,000, one lakh people would have bought this TV. But since the price of Rs 1.5 lakh is too much for them, only 40,000 people bought the TV. The remaining 60,000 people could not get the TV even though they wanted to. In economic parlance, these deprived people are called 'Dead Weight Loss'! Now TV is a completely luxurious thing, not using it doesn't hurt anyone much. Therefore, it can be said that "those who can afford it will buy this TV, those who cannot afford it will not buy it".

But let's say a new drug for cancer or HIV AIDS has come in the market. It cures a particular type of fatal disease. The price is two and a half lakh rupees. Because of the high cost, it is unaffordable for many cancer or HIV patients. At that time, in the case of TV, we said, "Those who can afford it will take it and those who can't afford it

will not buy it." Can we say that? in case of life saving drug, obviously not.

Conflict between Fundamental Rights and Property Rights

The constitution of any country gives the people a fundamental right, the right to life. Patents on drugs are also granted by law enacted by the government of the same country. In such a case, the fundamental right to life conferred by the Constitution and the right of ownership conferred by the patent law stand in front of each other and the conflict becomes inevitable. When there is a conflict between these two rights, of course, the fundamental right must take precedence. Because the right given by the constitution must be more powerful than the right given by the law of the land. This is a fundamental right on the part of the average citizen who is a drug purchaser, and a patent right on the side of a pharmaceutical company that is part of the industry and alternatively the economy in the country. In such a case, it is up to the country to decide which side to take. Accordingly, the country's patent policy should be designed and implemented.

In general, if a country is poor or developing, then the patent policy of the government of that country should be on the side of the common-poor people. This means that a country should not easily issue patents on essential commodities like medicines so that medicines are easily available to the general public. On the contrary, if the country is rich, productive, then the economic condition of the people is relatively good. In the interest of the economy of these countries, the tendency is to be inclined towards the pharmaceutical company. In short, the patent policy reveals that the industry or the common man will be offended by someone.

A few years ago, India experienced a struggle over copyright and education. It was a conflict between an Indian university and some foreign publishing houses. The

question arose as to whether the copyright of these institutions was too large or the fundamental right of Indian students to education. Rameshwari Xerox is a small shop on the campus of Delhi University. The business of this shop is photocopying. The shop was hired by the university to do all its xerox work. The job of this shop is to take out photocopies of important parts of many books and sell them as 'course pack' on the advice of university professors. In short, the shop was like a photocopying shop set up by the University for the convenience of poor students. The world's best-known publishing houses, Oxford University Press, Cambridge University Press and Taylor Francis, have their own offices in more than fifty countries. These publishing houses publish five to six thousand books each year.University students need to use many world class books. As these books are very expensive, not enough copies are available in the library for all students. Not every student can afford to buy a book for their own personal use. In short, all the three publishing houses filed a case against Rameshwari Photocopy Shop and Delhi University, alleging that the university was selling the ‘course packs’ through that shop. ‘Our publishing houses are not some charity; how do we do business if universities and shops start copying text from our books? Moreover, taking out such unauthorized copies also puts a strain on the author's stomach. Alleging this, the publisher demanded Rs 60 lakh from Rameshwari Shop. The High Court soon banned the sale of this course pack. According to the accused, if the university decides to buy all the books included in the syllabus, the average student will go bankrupt. And if they decide to do so, they will have very few students to leran. What should the rest of the students do? What about their right to education given by the Indian Constitution? Isn't the principle of intellectual property law that the interests of both copyright owners and the general public should be taken into account? The Delhi High Court ruled

in favor of the publishers. The Indian Ownership Act made it perfectly legal to photograph books or make course packs within educational limits for educational purposes. In ruling, the judge made a very important statement - "Copyright is not a divine right." The court's decision, which states that copyright infringement may be infringed for a specific reason, is seen as a step in the right direction.

Any author has a copyright on his original writing or manuscript and the author is free from copyright after 60 years. It is considered to be the core of copyright act. According to this copyright act, the original work can be printed by anyone 60 years after his death. And as per the administrative procedure the author or his writing comes under open domain. Sixty years later, the original writing is open for publication. If anyone has made any improvements to the original text, changed it, or added it, then the copy right for this text belongs to that person. In the same way, if someone makes any change in the original writing, the legal heirs of the author can be contacted. Similarly the copyright is on the original writing, so is the copyright of the book, the cover, the design, and the calligraphy. Many authors and painters are not not aware of this legal provisions. These elements are also copyrighted in the original text of any book. Nowadays many people take advantage of this and prints books and violates the provision of copyright act. There are also legal complaints cases about e-books because they copy the text from the original writing of an author. Copyright issues do not arise if all of them are properly acknowledged. Earlier, there was no term in the agreement. It is understood that the term does not mean that it is permanent, but now it is not necessary to mention the term in the agreement. It is also necessary to renew the contract after every five years. We don't know much about copyright. Copyright survivors are easily cheated out of their homes. In foreign countries writers and artists are made aware about copy right act as

well as special courses and programs are run for the new writers and artists. It is mandatory to take these courses for anyone who is willing to be a writer or want to enter in the publication sector. We have no such provision. Because of this, there is a lot more work to do about copyright.

There isn't much demand for the literature which imparts inculcations and Indian traditional values. The same can be said about Sant Sahitya or other ideological literature. Amidst this situation, though after 50 years, but it is a matter of satisfaction that *Shyamchi Aai* or Gandhian literature is free for publication. Whenever there is a new literary text in the market, it is possible for publication to withdraw from his profit. But for the welfare of the people good literature should be available in simple binding with low price editions. For example the literature of Vinoba Bhave or the religious literature of Gorakhpur Press. Here transformational support is needed. With the advent of new concepts in writing, the style of layout is also changing. It is necessary to take the help of good readers and give space to ideas and human values. Due to copyright act, the prices of the books hike hence, there is no consumption of books or the edition does not run out. Publications which provide the low prices editions for the masses are not available in India unlike western countries. As result of it, unworthy literary texts get good sale and good literature remain unread. If we improve our Copyright Act, to provide deserving honorarium to the worthy writers and publisher as well as low price good books for the laymen, it will be a win-win situation.

According to the Copyright Act, the rights of the original texts are given to the author or his family, or the rights are vested in someone (relatives or cousins) up to 50 years after the death of the author. But after that, the book is open to the public, anyone can print such book. Unfortunately the literature of Sane Guruji or Gandhi's writings are not still made popular by the publishers due to

legal difficulties in Copyright Act. To conclude, we must now give up the one-sided approach to intellectual property rights as a whole. Whether intellectual property rights are good or bad, we must stop. Whether intellectual property rights are good or bad, we should be able to weigh them according to the situation, according to the country. We must all learn to oppose the intellectual property rights that deprive the poor people of their basic rights in a poor country.

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6.
Exemptions And Limitations Under Patent Laws In India: An Analytical Study

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Abstract

In 1995, the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), come into effect. Thereafter it has an impact on the Indian Patent Act, 1970 which can be seen from the three amendments in 1999, 2002, and 2005 respectively. Initially, the Patent Act, 1970 was known for the process of patents. The Patent (Amendment) Act, 2005, brought certain changes in patent laws and presently it allows product patents to the inventor. The Pharmaceuticals patent covers the larger areas of the patent regime in India. There is a relationship between pharmaceutical patents and compulsory licenses under the Patent Act,1970. It provides for compulsory licensing which can be granted to any person in an already patented subject matter according to Sections 84 to 92 of the Act. Apart from this, there are other provisions like sections 100 to 104 for central government power to use inventions on certain grounds. There is also a provision for Bolar Exemption under Section 107 A of the Act. However, this study is the impact of the TRIPS provisions on the compulsory license provisions in India. The research methodology used for this study is purely doctrinal. Therefore, the present study is limited to understand the relationship between compulsory licenses in patents and TRIPS provisions.

Keywords: Patent, Compulsory License, Intellectual Property Right, TRIPS.

Introduction

The intellectual property rights are very vast and it covers various rights like copyright, trademark, patents, geographical indications and design, etc. In these rights, the patent has different importance since it is related to innovation and registration for a new invention. Patents are one of the most demanding intellectual property rights all over the world. According to section 2 (j) of the Indian Patent Act, 1970 patentable inventions are " a new product or process involving an inventive step and capable of industrial application". A patent is issued to an inventor in the form of a document or license by the patent office after fulfilling the requisite criteria. The government grants a patent for the invention which involves an inventive step, which is non-obvious and has commercial value.[*] The Patent Act 1970 has been amended from time to time and the amendment of 2005 is a turning point in the patent regime which allows both product and process patents. Due to which the production of generic medicine went down otherwise India was the top exporter of generic medicines until 2005.[†] Indian Pharamecutal industry is growing by 9.4 % per year as indicated by 2018 growth reached Rs 1,290 billion ($18.12 billion). It has 75% of the market share in terms of revenue and generic drugs.[‡] Indian drugs are exported all over the world including the United States as the big market for the pharmaceutical industry. India's pharmaceutical exports rose by 11 % from 2018 to 2019 and it has high demand in North America and Europe.[§] Since it is an exclusive right given to the patentee it has a monopoly over a particular patent and hence it is

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[*] Amanpreet Kaur & Rekha Chaturvedi, *Compulsory Licensing of Drugs and Pharmaceuticals: Issues and Dilemma,* 20 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS , 279–287 (2015).

[†] Shubhra Khanna, *TRIPS, Pharmaceutical Patents and Health Care for the Poor in India,* ILI LAW REVIEW , 71–95 (2016).

[‡] https://www.worldtrademarkreview.com/bolar-exception-india.

[§] https://www.worldtrademarkreview.com/bolar-exception-india.

known as a monopoly right. However, there are certain exemptions/limitations to the patent right under the patent laws in India e.g. a voluntary license, compulsory license. Apart from this, there is some Bolar exemption in case of infringement of patents and that can be used by the third-party for their defense. However, this Bolar exemption has also some limitations therefore it is also not absolute freedom given to others. Therefore, it is important to study voluntary licenses, compulsory licensing, and Bolar Exemptions under the Patent Act, 1970.

The result of monopoly of patent it has affected the production of generic medicines in India. The reason for the reduction in the export of generic medicines was allowing product patents in India due to which patent holder can hold its product and process for a longer time and it will not allow others to work on that patented subject matter. Therefore, the monopoly of the Pharmaceutical Company increased, and their ground for Research & Development increase the price of the product.[**] Already the Patent Act, 1970 under section 48 provides exclusive patent rights for 20 years, and as they can have a monopoly over the product and process to control the prices of patented products and medicines which creates a tension between human rights and IPR. In 2001, the WTO Minister Conference held at Doha has focused on public health and TRIPS provisions but it has again been limited to the flexibilities given under the TRIPS agreements. Therefore, it is required to understand why TRIPS provisions affected the Compulsory license and what is the role of other exceptions in granting benefits to the public in case of emergency.

[**]VALBONA MUZAKA, THE POLITICS OF INTELLECTUAL PROPERTY RIGHTS AND ACCESS TO MEDICINES 18-23 (Palgrave Macmillan) (2011)

Bolar Exemptions under the Patent Act, 1970

In patent law, there was a provision for Bolar exemption and research exceptions. It is like a doctrine of fair use in copyright laws in India. The bolar exemption comes after the case of *Roche Products, Inc. v. Bolar Pharmaceutical Co*., 733 F.2d 858 (Fed. Cir.1984), and it was related to generic drug manufacturers. In short, it can be said that this exemption enables generic manufactures to do research on patented drugs and produce generic medicines. The Bolar Exemption has been introduced under section 107 A of the Patent (Amendment)Act, 2005. Its main purpose was to ensure the availability of the drugs in the Indian market immediately after the expiry of the term of such a patent.

Section 107 A of the Act provides exemptions from patent infringements which are as follows;

"*107A provides that certain acts are not to be considered as an infringement. -For this Act,- (a) any act of making, constructing,*[197] *[using, selling or importing] a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or a country other than India, that regulates the manufacture, construction, [use, sale or import] of any product; (b) importation of patented products by any person from a person [who is duly authorized under the law to produce and sell or distribute the product], Shall not be considered as an infringement of patent rights*". These provisions intend to ensure the availability of product patents, especially pharmaceutical products with the required regulations, and use it after the expiry of the term of the

patent. These provisions are most useful for generic drug manufacturers in case of patent infringement.[††]

In *Bayer Corporation v Union of India*,[‡‡] Justice Ravindra Bhat while writing the judgment for this case the Delhi High Court interpreted Section 107 A (a) discussed in detail. While interpreting the term ‘ sale’ under Section 107 A (a) of the Act, the burden of proof is on the third party if they take the defense of Section 107 A(a) for ensuring pre-conditions.[§§] Therefore, the issue relating to the legitimate use of patented products by a third party for reasonable end use or purpose of research for submission of information is triable and adjudicated by the courts based on the evidence produced by the parties. However, it has limitations and therefore compulsory license is another remedy in the hands of the government to grant in the case of public health.

The voluntary license under Patent Laws

Indian Patent Act is known for both voluntary license and compulsory license. Therefore, to understand compulsory licenses one should know about voluntary licenses. Voluntary licenses are the primary stage of getting a compulsory license because due to the high prices of patented medicines many generic drug manufacturers are ready to provide them for a cheaper price. It will give them a voluntary license from the patent holder to make, produce, and market the generic drug at affordable prices through the process of Reverse Engineering.

[††] BOLAR EXEMPTION IN INDIA - INTELLECTUAL PROPERTY - INDIA WELCOME TO MONDAQ, https://www.mondaq.com/india/patent/691036/bolar-exemption-in-india (last visited Dec 16, 2020).

[‡‡] BAYER CORPORATION VS. UNION OF INDIA & ORS. LPA NO. 359/2017 AND BAYER INTELLECTUAL PROPERTY GMBH & ANR. VS. ALEMBIC PHARMACEUTICALS LTD. RFA(OS)(COMM) 6/2017.

[§§] BAYER CORPORATION V. UNION OF INDIA: IIPRD, https://www.iiprd.com/tag/bayer-corporation-v-union-of-india/ (last visited Dec 16, 2020).

According to Article 31 b of the TRIPS and domestic laws of any country a person or company first applies for a voluntary license from the right holder on certain terms and conditions.[***]

Thereafter, if he did not get a voluntary license then one can approach authorities for granting the compulsory license. However, the procedure of voluntary license is not applicable in case of national emergency, governmental use, extreme urgency, public non-commercial use, etc. The role of the voluntary license may be useful in developing countries for cutting down the prices of drug manufacturers.[†††] There are many instances of voluntary licenses and in *Bristol-Myers Squibb Company and another v Mr. J.D. Joshi and another,* [CS(OS) 2303/2009], the Delhi High Court observed that BDR Pharma failed to make out a prima facie case for grant of compulsory license as the applicant did not try to obtain a voluntary license from the patent holder on reasonable grounds. In India, before applying for a compulsory license one should apply for a voluntary license and it is mandatory in Indian law. It is very clearly mentioned in Section 84 of the Patent Act,1970 and the Controller must be satisfied prima facie to proceed on the CL only when certain conditions are satisfied under Section 84 and 87 of the Patent Act, 1970.

A compulsory licensing under Patent Laws

The compulsory license is nothing but an authorization given by the Controller General of Patents to a third party to make, use or sell a particular product or process which is already patented without the permission of the patent holder. This provision has recognition from TRIPS provisions and also in the Indian Patents Act, 1970. There

[***] KD Raju, *Compulsory v Voluntary Licensing: A Legitimate way to Enhance Access to Essential Medicines in Developing Countries*, 22 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS , 23–31 (2017).

[†††] Gopakumar G Nair et al., *Landmark Pharma Patent Jurisprudence in India*, 19 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS , 79–88 (2014).

are certain provisions under Sections 84-94 of the Patent Act, 1970. All these conditions are required to be fulfilled for granting the compulsory license. According to Section 84, the following four conditions are important for granting a compulsory license under the Patent Act, 1970.

1. any person can make an application for a compulsory license after the expiry of three years of patent, and the following three conditions have to be fulfilled;
2. the reasonable requirements of the public concerning the patented invention have not been satisfied
3. the patented invention is not available to the public at a reasonably affordable price
4. the patented invention is not worked in the territory of India.

The provision relating to the compulsory licenses is provided under Sections 84 to 94 of the Patent Act 1970. The object of the compulsory license is to give authority to a third party by the government to work on the already patented subject matter. The first condition is very simple since it says that only after three years of the grant of a patent anyone can apply for a compulsory license. It is also advisable that whether the person applying for the compulsory license has tried to get it through a voluntary license. If the voluntary license is not given then anyone can easily apply to controller patent for a compulsory license after fulfilling the following criteria.

Concerning the second condition that reasonable requirement of the public has to be satisfied, it means that people are not getting patented medicines. Third, it is not affordable at a reasonable price and lastly, it does not have production in India or it may include the importation of medicines. Therefore, the Compulsory license could be a tool to protect public health at large in case of certain

conditions and it could be helpful to reduce the cost of patented medicines.[‡‡‡]

As discussed above the Patent Act, 1970 has been amended many times to implement the TRIPS provisions in India. In the amended Patent Act, 2005, patentees can have more control over their innovations and for compulsory licenses using marketing rights. Considering the above flexibilities under the TRIPS are incorporated in the Indian Patent Act, 1970. The relevant provisions under Chapter XVI provide for compulsory licenses in the following sections of the Patent Act, 1970. Section 84, provides general conditions for granting compulsory license issued by the Controller. Section 91, under this provision compulsory licenses are issued by the Controller for a related patent on the application; Section 92, under which compulsory licenses are issued by the Controller based upon notification, by the Central Government, of circumstances of national emergency or in circumstances of extreme urgency or the case of public non-commercial use; Section 92(A), this provision is related to compulsory license in case of manufacture and export of patented pharmaceutical products are not sufficient or no manufacturing capacity is there for the particular pharmaceutical product. This is related to the public health problem. Chapter XVII contains provisions for use of inventions for government and the acquisition of inventions by the Central Government. Chapter VIII of the Patent Rules 2003, and amended in 2006, provides for the moralities of issue and maintenance of compulsory licenses (Department of Industrial Policy and Promotion, 2010). An Individual or a company that has been granted a compulsory license has to pay the owner a set of fees for the license. Apart from this government has power in case inventions use of inventions for purposes of government

[‡‡‡] Vipin Mathur, *"Compulsory Licensing of Pharmaceutical Patents In India: A Research Study*, 3 EJPMR, , 532–543 (2016)

and acquisition of inventions by central government section 99 to 103. Out of these Section 100 is important for the understanding of the Central Government to use inventions for purposes of Government. "*(1) Notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorized in writing by it, may use the invention for Government by the provisions of this Chapte*r". The purpose of this section is to give power to the central government to use inventions. All these sections give power to the central government to use patented inventions for government use.

Section 101 of the Patent Act provides for the rights of third parties in respect of the use of the invention for purposes of Government. According to section 101 sub section (1) "in relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the purposes of Government-*(a) by the Central Government or any person authorized by the Central Government under section 100; or (b) by the patentee or applicant for the patent to the order made by the Central Government, the provisions of any licence, assignment or agreement granted or made, between the patentee or applicant for the patent (or any person who derives title for him or from whom he derives title) and any person other then the Central Government shall be of no effect so far as those provisions-(i) restrict or regulate the use for the purposes of Government of the invention, or of any model document or information relating thereto, or (ii) provide for the making of payments in respect of any use of the invention or of the model, document or information relating thereto for the purposes of Government and the reproduction or publication of any model or document in connection with the said use for the purposes of Government shall not be deemed to be an*

infringement of any copyright subsisting in the model or document".

TRIPS and compulsory licensing in patents:

There are a total of 73 articles under the TRIPS agreements and all WTO members i.e. around 164 states are members of it. However, some of the articles on compulsory licensee which are specifically dealt with the compulsory license provisions in patents. Articles 7 and 8 of the TRIPS provide express recognition for policy objectives that are fundamental to international intellectual property (IP) protection. It identifies the technological goal and innovation and dissemination at the threshold but it due acknowledge the importance f public interest. In other words, Articles 7 and 8 are poised to provide the foundation for a new legal and policy perspective on international IP regulation that is fully supportive of social as well as economic development in all participating nations.[§§§] Article 27 of TRIPS provisions for patentable subject matter which provides in para 2 that member countries may exclude from patentability inventions within their domestic jurisdiction to protect human life.

Article 28 provides for the rights of the patent holder. Article 29 provides for conditions on the patent application. Article 30 exceptions to rights conferred that " Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties." Out of which article 31 provides for use of the patented invention without authorization of the patent holder. It says that by any law member countries may allow any third party and

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[§§§] Alison Slade, *Articles 7 and 8 of the TRIPS Agreement: A Force for Convergence within the International IP System*, 14 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY , 413–440 (2014).

government to use patented subject matter without the authorization of the right of the patent holder. However, it puts certain conditions that have to be observed which is as follows;

1. this authorization shall be considered on its merits
2. the second condition provides that there should be some effort to obtain authorization from the right holder and it is like a voluntary license. It further says that this requirement may be waived in case of a national emergency and other circumstances of extreme urgency like a pandemic, epidemic, etc.
3. the third condition says that such authorization shall be limited to the purpose.

   And there are other conditions also to be followed for giving authorization.

The TRIPS agreement is under article 31 provides compulsory licensing and certain flexibilities are given to grant compulsory license and it can be used in an extreme emergency. [****] Paragraphs 5(b) and 6 of the Doha Declaration also provides for compulsory lessening which was the basis for the protection of public health in case of emergency and against the monopoly of pharmaceutical companies in case of patented medicines. [††††]

Examples of Compulsory License in Patent and Impact of TRIPS

In India, three cases are very popular in compulsory license and out of which in only one case compulsory license granted. In the case of *Bayer Corporation v. Union of India,*[‡‡‡‡] the compulsory license has been granted to Natco Pharma Ltd., a generic drug manufacturer to produce generic drugs. In *BDR Pharma v. Bristol Myers Squibb*,

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[****] Ibid.

[††††]TG Agitha, , *TRIPS agreement and Public Health: The Post Doha Crises",* , 18 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS , 287–293 (2013).

[‡‡‡‡] AIR 2014 Bom 178.

2015(64) PTC 135 (Del) the compulsory license has been rejected and in another case of *Lee Pharma v. AstraZeneca AB*, C.L.A. No. 1 of 2015 the same thing is repeated due to non-fulfilled criteria given under Section 84 of the Patent Act, 1970. However, *Novartis AG v.Union Of India*, AIR 2013 SC 1311, is one of the popular cases for amendment of Patents and approach of the judiciary in protecting public interest instead of pharmaceutical companies.[§§§§] In the above case, the Supreme Court of India discusses Section 3 (d) which was added by the Patent (Amendment) Act, 2005. It was a landmark judgment delivered by justice Aftab Alam and Justice Ranjana Prakash Desai. In this judgment main issue where what is the true import of section 3(d) of the Patents Act, 1970? How does it interplay with causes (j) and (JA) of section 2(1)? Does the product for which the appellant's compulsory license aims patent qualify as a "new product" under the Act? While deciding these issues the Supreme Court has focused on the interpretation of the newly amended Section 3(d) of the Patent Act, 1970 and given importance to the substances which are already known and held that there is nothing new in Novartis compulsory license since it is an obvious thing and *imatinib mesylate* is not patentable as it fails the test of section 3(d).

While discussing this case court observed that "*The many amendments to and enlargement of the Parent Act by the Amendment Act of 2002 laid most of the ground-work, but India was yet to take the one final step to make its patent law compliant with the mandate of TRIPS. And that was to amend the Act to allow for the grant of product patents for pharmaceutical and agricultural chemical substances. Steps were taken to finally amend the Patents Act, 1970, but the draft Bill lapsed in February 2004. Further efforts were made but the legislature was unable to*

[§§§§]AIR 2013 SC 1311.

bring an enactment to make that final amendment in the Act by December 2004; thus, the Government of India had no option but to amend the law through an Ordinance. Therefore, in order not to default on its obligations under the TRIPS Agreement, the Government brought the Patents (Amendment) Ordinance, 2004 (Ordinance No. 7 of 2004) with effect from January 1, 2005. By this Ordinance, section 5 of the Patents Act, 1970, which barred the grant of the patent for substances intended for use or capable of being used as food or as medicine or drugs or substances prepared or produced by chemical processes was done away with, opening the doors for grant of patents to, amongst others, pharmaceutical products".

All the above observations by the Supreme Court indicate that there is the influence of the TRIPS provisions on the Indian Patent Act, 1970 and therefore there are many amendments made in the Patent Act. However, how far it is implemented and how the Supreme Court is interpreting these provisions following Indian laws and TRIPS provisions has to be considered for understanding the role of TRIPS provisions.

Conclusion:

A voluntary license is a pre-condition to apply for a compulsory license as per the Indian Patent Act, 1970. There are certain exemptions to voluntary license in case of national emergency and government use to apply for a compulsory license. Apart from this Bolar Exemption is a defence for the patent infringements if the intention of the third party was not to infringe the rights of the patent holder and they want to do research and to produce generic medicines but they have to fulfill the criteria given under Section 107 A of the Patent Act, 1970.

A compulsory license is one of the tools of the government to grant a Compulsory License in case of emergency and for the benefit of the people. There are

other provisions also to deal with an emergency and a voluntary license could be for the benefit of society at large. However, from the above study it can be seen there are many conditions for granting a Compulsory License and the provisions of TRIPS agreements has to be complied with. To implement TRIPS agreements many states have made changes in their domestic patent laws to deal with emergencies but still, flexibilities given under the TRIPS are not binding on them. Therefore, compliance with the TRIPS agreement in the strict sense is not possible due to the lacunas in it. All these provisions have affected the right of the patent holder and as well as the general public who require the generic drug. It can be concluded that TRIPS provisions and other exceptions given under the Patent Act, 1970 are not adequate to address the present problem of compulsory license in India.

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7.
Intellectual Property Rights and International Trade

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Introduction:

Definitely Intellectual Property Rights play a significantly role to enhancing protection about innovative and creative ideas as well as encourage international trade among international scenario. Present research mainly focuses on patents, trade secrets, copyrights, trademarks, or geographical indications (GIs). Individual nation states have developed intellectual property rights (IPR) regimes reflecting their domestic needs and priorities; therefore, United States and other countries have acceded to several intellectual property related conventions and treaties since the 1800s. Over time, intellectual property rights protection and enforcement have come to the forefront as a key international trade issue for the United States—largely due to the role of intellectual property in an innovative United States economy and as a United States competitive benefit as well as figure prominently in the multilateral trade policy and in regional and bilateral U.S. free trade agreements (FTAs). Since the North American Free Trade Agreement (NAFTA) and the 1995 World Trade Organization (WTO) Agreement on particularly Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), trade policy has been used to updated intellectual property rights rules international level. The TRIPS Agreement set minimum standards for intellectual property rights protection and enforcement in international level. The United States gives efforts for enhancing TRIPS

Agreement, especially with negotiation of regional and bilateral free trade agreements (FTAs).

Objectives of the study: Keeping in view of the significance of the study, the following are the main objectives of the present study.

1. To Study about the impact of IPR on International Trade.
2. To understand various emerging approaches regarding IPR and International Trade.
3. To focus on (IPR), (NAFTA), (TRIPS Agreement), (WTO), (TPA), (FTAs), (GIs).
4. To give suggestions for enhancing international trade with help of IPR.

Hypotheses of the study: The following specific hypotheses have been formulated to meet the above objectives of the study.

1. There is significant impact of IPR and other related institution on International Trade.
2. IPR and other related institution are helpful in enhancing International Trade.

Research methodology of the study

Various reports of national and international agencies on Intellectual Property Rights and International Trade are searched to collect data for current study. It is not possible to go outside for data collection due to lockdown, information are collected from different secondary sources therefore this study totally depends on secondary data. The study have been review for formulate conclusion's and e-contents relating to Intellectual Property Rights and International Trade.

Scope of the study: The present study confined only overview "Impact of Intellectual Property Rights and International Trade" and based on secondary data only.

Impact of Intellectual Property Rights on International Trade: IPR and other related institution has severely affected the total international trade system of US

as well as the globe but some of the most impacted areas regarding Intellectual Property Rights and International trade are as pointed below.

International Economic Effects:

Particularly assessments of the overall global economic costs of infringement specially on copyrights, trademarks, and patents are limited, collected evidence represented that the adverse economic effects of global Intellectual Property Rights infringement stand in the hundreds of billions of dollars $249-456[2] , and are increasing. Customs data on seizures of counterfeit and pirated goods may offer some idea of the magnitudes involved in terms of impact especially on producers and exporters.

U.S. Economic Effects:

While specific estimates vary, the available data suggest that U.S. economic losses from IPR infringement are significant.

Customs Seizure Data:

Data on pirated and counterfeit seizures of imports at U.S. borders by the Department of Homeland Security (DHS) shed light on the magnitude of the issue in the U.S. context. In FY2018, the number of IPR seizures at the U.S. border totaled 33,810 commodities (shipped by express, mail, cargo, and other ways) valued at $1.4 billion (manufacturer's suggested retail price, MSRP).[3]The total number of seizures per year has been increasing while the estimated value remained relatively constant since 2014 and 2018.

Overall U.S. Estimates:

U.S. industries that rely on IPR protection claim to lose billions of dollars in revenue annually due to piracy and counterfeiting. Beyond these direct losses, the United States may face additional "downstream" losses from counterfeiting and piracy. IPR infringement could result in the loss of jobs that would have been created if the infringement did not occur, which could translate into lost

earnings by U.S. workers and, in turn, lost tax revenues for federal, state, and local governments.[4]

Suggestions of the Study: Present research paper aims to suggestions provide background on particularly intellectual property rights (IPR) and overall discusses about the role of U.S. international trade policy in increasing IPR protection and enforcement abroad. IPR are legal rights granted by governments to enhance as well as encourage innovation and creative output for the giving benefits of their inventions or works. Definitely IPR play significantly role to enhancing protection about innovative and creative ideas as well as encourage international trade.

Conclusion of the study: Present research study pointed out that provide background on particularly intellectual property rights (IPR) and overall discusses about the role of U.S. international trade policy in increasing IPR protection and enforcement abroad. IPR are legal rights granted by governments to enhance as well as encourage innovation and creative output for the giving benefits of their inventions or works. Definitely IPR play significantly role to enhancing protection about innovative and creative ideas as well as encourage international trade. Lastly study concluded that Particularly assessments of the overall global economic costs of infringement specially on copyrights, trademarks, and patents are limited, collected evidence represented that the adverse economic effects of global Intellectual Property Rights infringement stand in the hundreds of billions of dollars and also U.S. Economic Effects.

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Geographical Indications —An overview

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Abstract:

Geographical indications are today considered major intellectual assets in relation to different types of goods. They are seen not only as a tool for protecting consumer's interests but also as a legal and economic tool for the development of rural areas as well as urban area. To the preservation of an expression of the ways of living developed by a community and passed on from generation to generation. The value of geographical indications has gained over the last few years is become more The Geographical Indications of Goods (Registration and Protection) Act, 1999 is a sui generis Act of the Parliament of India for protection of geographical indications in India.

This paper is about overview of Geographical indication in India which play important role to enhance national and international value of Indian market by providing those original products for sell. Which also help to increase foreign currency in Indian market.

I. INTRODUCTION

Over the last few years, geographical indications have become major intellectual assets in relation to a variety of goods, acting not only as a tool for protecting consumer's interests and reinforcing confidence in best-quality and local products, but also as a legal and economic tool for the

development of rural areas and the protection of cultural heritage.

Within India Darjeeling tea was the first goods which accepted as GI tag in India in 2004–05. Up to today's date around 365 products have been accepted in GI list.

Careful investigation: As there is not one single definition or terminology accepted worldwide for the concept of geographical indications, it is important to distinguish the terms "geographical indications" from "indications of source" or "appellations of origin". "Indications of source" are a broad concept covering any indication pointing directly or indirectly to a country or place of origin, without being required to show that special quality, reputation, and characteristic follows from the "source". "Appellations of origin", which are probably the narrowest concepts.[2]

II. GEOGRAPHICAL INDICATIONS AS A TOOL FOR PROTECTING INDIGENOUS KNOWLEDGE.

Geographical indications have been traditionally associated with agricultural products, foodstuff, wines, and spirits. However, in recent years, geographical indications have been said to be potentially useful in protecting indigenous knowledge. At the fifth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, it was pointed out that some traditional cultural expressions (TCEs), such as handicrafts made using natural resources, may qualify as "goods" which could be protected by geographical indications.24 In addition, some TCEs, such as indigenous and traditional names, signs, and other indications may themselves be geographical indications[1]

Sr.No	Product	Type	State
1	Solapur sheet	Handicraft	Maharashtra
2	Solapur Terry Towel	Handicraft	Maharashtra
3	Navara rice	Agricultural	Kerala
4	Odisha Ikat	Handicraft	Odisha
5	Blue pottery of Jaipur	Handicraft	Rajasthan

Solapur is known for its textile industry. Once it had Asia's largest spinning mills. The development of the handloom weaving industry in Solapur seems to have commenced during the regime of the Peshwas. There were numerous small independent artisan weavers in the industry. Each artisan-house had one or two looms which were generally handled by the head of the family. The family was the unit of work and the women and the children helped the weaver in preparatory processes and in some cases in dyeing also. The rise of the modern factory in India in the 1970s altered the organisation of the local hand-loom weaving industry. They have been manufactured by Padmashali weavers from South India since their presence in Solapur in the 1950s. Many companies manufacture chaddars in Solapur district.[5]

Navara rice is one of the many types of rice found in India, and is a unique grain plant in the Oryza group it originaly invented in kerala.[8]

Odisha Ikat is a kind of ikat, a resist dyeing technique, originating from Indian state of Odisha, adapted from ikat in Indonesia. Also known as "Bandha of Odisha", it is a geographically tagged product of Odisha since 2007.[8]

Odisha Ikat is a kind of ikat, a resist dyeing technique, originating from Indian state of Odisha, adapted from ikat in Indonesia. Also known as "Bandha of Odisha", it is a geographically tagged product of Odisha since 2007. It is made through a process of tie-dying the warp and weft threads to create the design on the loom prior to weaving. It is unlike any other ikat woven in the rest of the

country because of its design process, which has been called "poetry on the loom". This design is in vogue only at the western and eastern regions of Odisha; similar designs are produced by community groups called the Bhulia, Kostha Asani, and Patara. The fabric gives a striking curvilinear appearance. Saris made out of this fabric feature bands of brocade in the borders and also at the ends, called anchal or pallu. Its forms are purposefully feathered, giving the edges a "hazy and fragile" appearance.Ikat's equivalent usage in Malay-Indonesian language is ikat or mengikat, which means "to tie or to bind"

This silk has been registered for protection under the Geographical indication of the Trade Related Intellectual Property Rights (TRIPS) agreement. In 2007, it was listed as "Odisha Ikat" under the GI Act 1999 of the Government of India.[6]

In the twenty-first century the revolution in agricultural biotechnology means that innovation, knowledge and technology has only accentuated the trend to mass production of agricultural and food products. The current development of the law of GIs has been spurred by both the greater need and the additional opportunities offered by the global marketplace for the diversification of agricultural products and foodstuffs. Coffee prices provide a dramatic example of low commodity returns to farmers.[6]

For providing security for GI products their some rules should be made and those rules have to be fallow by a group of country's like group of Asean countries which come under developing countries.

"In this Agreement, "appella Hon of origin" means the geographical name of a country, region, or locality, which serves to designate a product origina Hng therein, the quality and characteris8cs of which are due exclusively or essen8ally to the geographical environment, including natural and human factors. The country of origin is the country whose name, or the country in which is situated the

region or locality whose name, cons Htutes the appellaHon of origin which has given the product its reputaHon. ProtecHon shall be ensured against any usurpaHon or imitaHon, even if the true origin of the product is indicated or if the appella8on is used in translated form or accompanied by terms such as “kind,” “type,” “make,” “imita8on” , or the like.”[7]

Blue Pottery is commonly acknowledged as anexceptional craft of Jaipur(Rajasthan).The name 'blue pottery' comes from the attention-grabbing blue dye used to color the pottery. Blue Pottery is made mixing quartz stone powder, powdered glass, Fuller's Earth, borax, gum and water it is garlanded by with animal and bird motifs.[8]

History of Blue Pottery Blue Pottery was primary developed by Mongols who pooled Chinese expertisewith Persian art. This technique travelled east to India with early Turkic conquest in the fourteen century. After some time, the Mughals started using blue pottery in India. From there, the technique travelled to the plains of Delhi and in the seventeenth century came into Jaipur[8]

III Issues and Challenges:

After acceptance of a particular product as GI, it can face maximum challenges especially while it’s marketing within local and international markets like the originality of product and quality also.

The genesis of the goods for identifying geographic territory; Registration of GIs; observing and controlling specified procedure, procedure, and quality of GI protected goods; Protection of GIs from infractions; and application o for intellectual property rights.

While using and handling GI products it’s necessary to have the knowledge and reward the holders of that knowledge And also the use of geographical indications for advancement for predominantly.

Protection of GI products their some rules should be made and those rules have to be fallow by a number of countries like under developing countries group.

IV. Conclusions

It's just an overview of Geographical indications in India which show the specialty of products that appears in different GI areas in India. It will face some challenges while providing business for the national and international market

These geographical regions are generally consisted of rural areas and GIs gives best opportunities for country growth. Protection of GIs backing to buttress activities and settlement in rural areas and increase the life standards of the residents

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9.

Review Paper On Sui Generis Legislative: A Uniqueness In Traditional Knowledge

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Introduction

The aim of the paper is to develop sui generis as an option to describe areas in which developing countries had experience with sui generis system with a view to encourage and support those who wish to develop it. Every nation has unconventional and significant feature hidden in diverse culture and knowledge among its people. India is a corpus of such unique and distinct ethnic groups and indigenous communities. This corpus of communities plays major role in preserving the countries heritage, civilization occupying major part of history of India.

Traditional Knowledge, Traditional Culture Expression and Sue Generis System

Traditional knowledge refers to the knowledge system that has been long embedded in the culture or tradition of indigenous, either regional or local communities. The Culture along with biological properties, and traditional knowledge of societies are closely interlinked to form an intricate part of their custom as well as provide a distinctive identity to the societies. This kind of knowledge is highly vital for the existence and survival of such communities. It is based on keen observation and dialogue with surroundings nature. The need of current era is to protect such knowledge from misappropriation and misuse in order to preserve the distinctiveness of the identities of such communities. However, owing to the increase in commercial use of these resources beyond the mere

traditional information has caused in a growing threat to misappropriation and misuse by unauthentic peoples.

The aggrieved communities have expressed their concerns with regards to stealing of identity have discussed at international forums and formed organizations such as Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC) by the World Intellectual Property Organization (WIPO) in the year 2000.

However it is a need to develop a system to protect and preserve the traditional knowledge and traditional culture expression at regional as well as international levels. This initiates in developing their own sui generis for protection of traditional knowledge.

Definition of Sue Generis System

A "Sui Generis" is a Latin word used to indicate uniqueness i.e. it is a property of its own kind. It is special, unique, and different. Conventional forms of IPR are not sufficient to protect indigenous knowledge since they are based on the protection of individual property rights whereas traditional knowledge and traditional culture expression call for a larger collective as it involves communities. This system refers to design a new national law or the establishment of international norms that would give protection to intellectual property related with genetic resources or biodiversity and the biotechnology. Sui generis protection gives more flexibility to adapt to particular situations arising from the technical characteristics of inventions.

Need to have Sue Generis System

There are two major aspects of IPR system that made them inadequate to protect traditional knowledge. First aspect is the belief in property ownership. IPRs are the individual rights. Modern IPRs rules recognize individual ownership based on time and labour expended in coming up with the new invention. They also do not recognize

community rights. On the other hand, traditional knowledge is passed on from generation to generation. Traditional knowledge is knowledge owned largely by the peoples from community and there is no individual inventor. Therefore, it does not fit in the form of IPR. Although traditional knowledge is largely in the public domain, it's limited to certain families or communities. Another aspect of IPR rules is in relation to traditional knowledge which is in requirement of innovation, creation and the commercial feasibility of patent. A patent is given for an invention that fulfils all the three innovative, creative and commercial feasibility tests. Traditional knowledge does not pass these three hurdles because the knowledge under this is not recent and it does not have inventive step and the restriction of ownership within a group of people or certain societies that does not make it commercially feasible. These group of people who hold this knowledge prefer to keep it as secret.

A researchers understands the difficulties associated with protection of plants in relation to traditional knowledge, the negotiators of the Agreement on Trade Related Intellectual Property Rights (TRIPS) inserted Article 27(3) (b) that allows member states of the World Trade Organization (WTO) to use a sui generis protection system. It authorised countries to build up general, suitable and specific procedures for protection of rules. The intellectual property rights (IPRs) term refers to a special form of protection regime outside the known framework. It can also be viewed as a regime especially tailored to meet certain needs. The purpose of including a *sui generis* system in India for the protection of traditional knowledge and TCE could be done by amending some features of the existing intellectual property rule in order to accommodate the unique characteristics of its subject matter, i.e. traditional knowledge and traditional culture expression along with understanding the policy

requirements, beneficiaries and inspecting the concept of unbiased sharing and principle of prior informed permission. This system can help legal rights associated with traditional knowledge and traditional culture expression and thereby create margin for access and benefit-sharing to protect the different sets of knowledge and information that Indian indigenous communities holds.

Elements of Sue Generis System

It is very important process to analyse certain elements while defining or drafting sui generis system for the protection of traditional knowledge and traditional cultural expressions. Some of them are keeping in account and tracking of genetic and biological resources of the origin of country preferably for *sui generis* database protection system. Here is a list of the different elements:

- Make a provision of earlier informed consent and equitable benefit sharing between the correct guardian of such traditional knowledge and expressions along with third parties.
- Conservation of cultural identity and protection of communities from being threatened.
- Understand novelty, ownership and uniqueness of such traditional knowledge and expressions
- Make provision of customary international law
- Define existing traditional knowledge and expressions
- Promotion of access and sharing benefits
- Some issues of bio-piracy and preservation of the environment

Types of Sue Generis System

The rights of intellectual property protection combined in the *sui generis* system can be of two types-

1. **Defensive protection**– Where the people from outside the community holding such traditional knowledge will be prohibited from gaining intellectual

property rights over the subject matter. This will be helpful to avoid undue misuse.

2. **Positive Protection**– This type of protection helps to find the legal rights for grants, recognise local and regional communities and help them to promote their traditional cultural expressions and knowledge. It also controls use and utilization of traditional knowledge from possible commercial exploitation.

Advantages of Sui-generis System

1. This system is helpful to increase the interest in traditional knowledge concerns as it is good to protect their rights.
2. It helps in improvement of livelihood of the traditional knowledge holders and their communities.
3. This system helps in improvement of national economies.
4. The system helps to preserves the environment.
5. The bio-piracy could be prevented by applying this system.
6. It offers legal protection to traditional knowledge.

Sui Generis System of India

Agriculture innovations were not subjected to intellectual property protection in India before coming into force of Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement (2). Article 27.3 (b) of TRIPS agreement requires WTO members to provide intellectual property protection for plant varieties by patents or by effective Sui genesis system or by any combination thereof. **India** adopted the sui generis method and enacted the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PVPFR Act) which became fully operational in 2007.

Traditional Knowledge Digital Library in India

The mission designed and developed in collaboration between Council of Scientific and Industrial Research (CSIR), Ministry of Science and Technology and

Department of AYUSH, Ministry of Health and Family Welfare known as Traditional Knowledge Digital Library. This project has been implemented at CSIR. An interdisciplinary team of Traditional Medicine Ayurveda, Unani, and Siddhayoga experts, patent examiners, IT experts, scientists and technical officers are involved in creation of TKDL for Indian Medicine Systems. The TKDL took initiative to make digital documentation of existing traditional knowledge concerning Ayurveda, Unani and Siddhayoga from public domains. This digitalized literature is now available in five international language like Spanish, German, Japanese, French and English. Some well-known examples of Bio-piracy of Indian traditional knowledge include Turmeric plant, Turmeric fresh rhizomes, Turmeric dried rhizomes. In 1995, "Suman K. Das and Hari Har P. Cohly " [3] are two Indian scientists at the University of Mississippi Medical Centre [2] were granted a united states patent (No.5, 401,504) on use of property of turmeric in healing of wound. The Council for Scientific & Industrial Research (CSIR), India filed a re-examination case with the united states PTO challenging the patent on the grounds of existing of earlier art. Council of Scientific and Industrial Research claimed that turmeric has been used for thousands of years for healing wounds and rashes and therefore its medicinal use was not a novel invention. This claim was supported by documentary evidences of traditional knowledge, including ancient Sanskrit texts and few papers published on it in 1956-57 in Indian Medical Association's research journal .The united states PTO accepted the objections raised by Council of Scientific and Industrial Research and cancelled the patent. This turmeric case was a landmark judgment case as it was for the first time that a patent based on the traditional knowledge of a developing country was not only successfully challenged but the US Patent Office revoked this patent in 1997.

Conclusion

To frame sui generis rules there are few facts one should keep in mind that it is essential to either redefine or refine all categories of traditional knowledge. There is some variation in the traditional knowledge which is, however, general with the same theme. It is necessary to make sure whether Indians are ready to compromise with their rituals and culture which is adopted since long time. Sui generis will act as bridge between indigenous community and national/international legal system to protect the traditional knowledge for recognition and protection of rights. This also gives flexibility for developing knowledge of biological resources and sharing benefits among masses. To register traditional knowledge, it requires a level of literacy, time and money which is cumbersome job for indigenous people. This is the reason to leave field open for third party to acquire rights over their resources and allied traditional knowledge. The need for a sui generis form of intellectual property right was recognized early enough. In this modern era those countries which delayed in not using sui generis, created opportunities for bio-piracy and misappropriation, especially of plant genetic resources. It can also not be supposed that the absence of a sui generis system means many communities are being robbed not only of their traditional knowledge but also of their inheritance. Many countries lost their major part revenue which they actually need for their own further development. The broader intention should be to plough back some benefits of traditional knowledge to communities, biodiversity conservation and to ensure sustainable use of the resources.

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10.
BioPiracy and Rights of Indigenous People

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Abstract: It is anticipated that there are greater than 370 million indigenous human beings unfold throughout 70 nations worldwide practicing particular traditions. They hold social, cultural, monetary and political traits which are awesome from the ones of the dominant societies wherein they stay in latest years; globalization and advances with inside the introduction of recent records era and biotechnology have ended in new kinds of Intellectual Property laws. Intellectual assets created via way of means of the utility of human mind. Because of Intellectual Property Laws Indigenous peoples have grow to be sufferers of biopiracy while they may be subjected to unauthorized use in their herbal assets, in their conventional expertise on those organic assets, of unequal proportion of advantages among them and a patent holder. Biopiracy can be described as "the appropriation of the expertise and genetic assets of farming and indigenous groups via way of means of people or establishments in search of specific monopoly manipulate over those assets and expertise." Thus there's a want to guard conventional expertise of indigenous human beings which may be executed via way of means of Protecting Traditional expertise as a change Secret, Creating a international large database of current Traditional expertise, evolving a Sui Generis System for conventional expertise and although via way of means of an energetic function of Judiciary.

Key Words: Biopiracy, Traditional Knowledge, Indigenous People, Intellectual Property.

Introduction:

The increase of worldwide change family members some of the international locations has grown to be a topic of subject for the indigenous human beings. This is due to the fact the international locations; in particular the advanced ones are searching for the ones nations that are wealthy in herbal assets. There geographical vicinity is such that it's miles endowed with wealthy and various herbal assets. In the previous few a long time there was a boom with inside the biotechnology.

Biotechnology is “any approach that makes use of dwelling organisms to make or adjust merchandise, to enhance plant life or animals or to expand micro-organisms for precise makes use of”. It has performed a crucial function with inside the agricultural, pharmaceutical and scientific industries. Biotechnology is currently a thousand million greenback enterprise that profits its industrial ability from scouring the globe for wealthy supply fabric and energetic compounds that may be become a industrial product. With this growth with inside the biotechnology most of the innovations may be become multi-million greenback industries. These groups use the conventional expertise possessed via way of means of the indigenous human beings to discover the organic species which has medicinal importance, they create it to their laboratory for studies and afterward after a few adjustments they patent it as their very own invention. This misappropriation on organic assets and conventional and cultural expertise is referred to as biopiracy.

Definition of Biopiracy:

Biopiracy may be described as misappropriation and commercialization of genetic aid and conventional expertise of the indigenous human beings. This entails commercialization of freely to be had herbal assets inclusive of plant life, trees, seeds etc. via way of means of imitating the strategies that have been utilized by the area people from generations of their ordinary sports to attend to

themselves, can also additionally it's beauty or medicinal. The beauty, pharmaceutical and the agro meals companies are those who specially motel to biopiracy. They draw on biodiversity hotspots so one can create supposedly modern merchandise and assure their monopoly on them via patent system.

These groups discover organic depend which has medicinal importance with the assist of the indigenous folks who own the expertise approximately the vicinity and the advantages of the depend, convey it lower back to their labs and later patent it as their very own invention. These indigenous human beings were cultivating and continuously enhancing those regionally to be had species for years.

Instances of Biopiracy in India:

Patenting turmeric

In a surprisingly debatable decision, American Patent Office in March 1995 granted Patent US5401504A or the recovery houses of turmeric to 2 Indian scientists who had been operating with the University of Mississipi Medical Centre. This had created a massive stir in India and rocked its medical community, which claimed that it become an act of biopiracy. The Indian Council for Agricultural Research and Council for Scientific and Industrial Research asked a USPTO re-exam and declared that the patent lacked novelty as turmeric rhizomes were used for medicinal functions in Indian families for centuries. Based on historic proof supplied via way of means of the Indian authorities, the patent becomes subsequently revoked via way of means of the USPTO. This case served as a pioneer in waking up nations to the want to guard conventional expertise from any shape of encroachment.

The neem dispute

In a longstanding combat with the EPO, the Indian authorities strongly objected to EP 0436257 A1being granted to the neem plant over its use as a fungicidal

treatment. The authorities supplied large documentary proof with inside the shape of scriptures and manuscripts to show that the medicinal houses of neem were recognised to the indigenous groups of India for greater than 2,000 years. Although the patent becomes subsequently revoked via way of means of the EPO, it inspired a sour transcontinental debate approximately the ethics of IP and patent rights. Vandana Shiva, in her aforementioned book, summarised the neem dispute as “the free tree is no more free".

The BT Brinjal dispute

BT Brinjal, which become added to India on 15 October 2009 because the first-ever genetically changed crop has been a topic of excessive scrutiny considering then. This form of brinjal become advanced via way of means of MAHYCO, companion of US biotech massive Monsanto, the use of 12 indigenous types of the vegetable, which had been sourced from diverse states, such as Karnataka. These indigenous types had been used without approval that is a contravention of the Biodiversity Act of 2002. In response, the National Biodiversity Authority and different applicable stakeholders initiated court cases in opposition to Monsanto for wearing out this studies with out in search of the permission and the consent of loads of lots of farmers who've cultivated those types for generations. With worries raised over the efficacy, bio safety and nutrients of the stated introduction, BT Brinjal has been in moratorium since 2010. While the destiny of this crop stays uncertain, it is still grown illegally in numerous elements of the country.

Basmati rice:

In September, 1997, a Texas organisation named, ‘Rice Tec Inc.’, becomes granted a patent via way of means of US Patent Office to name the fragrant rice grown outdoor India as ‘Basmati’. As an end result of which the organisation become entitled to now no longer most

effective name its rice as ‘Basmati’ inside US, however additionally label it Basmati for its export functions. This gave upward push to a notable repercussion for India and Pakistan because the patent could end result into India now no longer most effective loosing US import marketplace however additionally its role in big markets like Asia, Europe and UK. This quick diplomatic disaster among US and India with the later threatening the previous to take the problem to WTO for a clean violation of TRIPs, because the Geographical Indication merchandise can't be patented under the provisions of TRIPS, in the long run got here to an give up with US Patent Office finding out towards Rice Tec.

Legal Prospective of Biopiracy:

Biopiracy being a totally complicated difficulty pertains to numerous branches of law. There are several provisions, texts and declarations under global law, highbrow Property Rights, environmental legal guidelines, regulating biopiracy. However due to distinction in difficulty count and item, once in a while those provisions appear to contradict every different. On one hand legal guidelines associated with International Trade, IPR or every other business topics objectives at maximization of advantage however legal guidelines managing surroundings safety and indigenous people’s rights search for extra of a sustainable and moral approach. These specific objectives over and over bring about contradictory consequences every so often main to struggle of interest.

TRIPs Agreement:

In order to offer global level protection for the safety of IPRs, WTO in 1995 brought Trade Related Aspects of IPRs Agreement (TRIPs). Implementation of the TRIPs agreement, which permits patenting the stay forms, has really recommended biopiracy.

Doctrine of Sui Generis:

Article 27(3)(b) of the TRIPs Agreement calls for member nation to furnish safety to plant varieties, both via way of means of patent or under a sui generis gadget, or a aggregate of both. It however, does now no longer suggest the character of the sui generis gadget referred to. Consequently, an issue has emerged among the advanced and growing countries.

India and Biopiracy Laws:

The Protection of Plant Varieties and Farmers Rights Act, 2001

The act recognizes the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country agro-biodiversity by rewarding those for their contribution through benefit sharing and protecting the traditional rights of the farmers. The act establishes a National Gene Fund to promote the conservation and sustainable use of genetic resources of agro-biodiversity and a Plant Varieties and Farmers' Right Authority to perform all functions relating to the protection of plant varieties.

The Patent Act, 1970

The act gives for what all of the matters that aren't taken into consideration as invention for the functions of this act. Section three announces any plant life and animals in entire or any component thereof, or any conventional expertise now no longer to be taken into consideration as an invention under the act. Since they're now no longer an invention, no character can declare for the patent rights of those matters. Furthermore, after modification in 2002 and sooner or later in 2005, the Act calls for "obligatory disclosure of supply and geographical beginning of the organic fabric under the specification while utilized in an invention. In case of a failure to reveal this information, or participation in wrongful divulge this information, or take

part in wrongful disclosure, then the amendments allow competition to, or revocation of, the patent.

The Biological Diversity Act, 2002

As according to the Article 15 of the CBD, the act regulates the get right of entry to organic sources and related conventional expertise to make certain equitable sharing of advantages bobbing up out in their use. In December 2012, the First National Biodiversity Congress, 2012 (Congress) held in Kerala, prepared via way of means of Ministry of Environment and Forest, the NBA, and SBBs to cope with several biodiversity issues, collectively with the control of conventional Knowledge and get right of entry to an advantage sharing of genetic sources.

The Traditional Knowledge Digital Library (TKDL)

In 2001, Indian Government released a totally formidable challenge to keep the conventional expertise from biopiracy. A virtual library with an item to discover all conventional use of India's indigenous organic sources, sourcing from specific books in neighbourhood languages become opened. Characteristics, usages and bibliographical reassets of numerous plant lives are diagnosed and translated in 5 specific global languages. The goal is to installation a in a position mechanism to set up anteriority of conventional Knowledge in instances of biopiracy. To combat biopiracy and unethical patents, the library is installation as repository of 1200 formulations of numerous structures of Indian medicine, which include ayurveda, unani and siddha. The library additionally has 50 conventional ayurveda books digitized and to be had online. One can say that is a totally novel and modern initiative that may be a excellent instance for different growing nations.

Geographical Indications of Goods (Registration and Protection) Act, 2003

GIG Act, 2003 is a *sui generis* legislation enacted by union government of India, with an aim to protect the

geographical indications of the country. Under this act a product is described via way of means of a geographical place wherein it's far historically found. It additionally enhances product standards, offer cataloguing and categorization and enforces regulation. Darjeeling tea has become the primary GI tagged product in India, in 2004–05, due to the fact that than 365 items were brought to the listing as of May 2020.

Conclusion and Suggestion:

With the enormous growth with inside the use of conventional drug treatments worldwide, safety of conventional medicinal know-how has turn out to be an vital concern. With the growth in call for medicinal vegetation, exploitation of sources through the multinationals and lack of an powerful machine of safety, the pressing want for regulating get right of entry to and gain sharing has arisen.

Here are a number of the guidelines for the safety of Traditional Medicinal Knowledge of Indigenous humans:

Equity considerations – the custodians of conventional know-how ought to acquire truthful repayment if the conventional know-how results in industrial gain.

Conservation concerns – the safety of conventional know-how contributes to the broader goal of retaining the environment, bio-range and sustainable agricultural practices.

Preservation of conventional practices and culture – safety of conventional know-how could be used to elevate the profile of the know-how and the humans entrusted with it each inside and out of doors groups.

Prevention of appropriation by un authorized parties or avoiding “bio piracy” Promotion of its use and its importance to development. India is a maximum vital useful resource series centre for vegetation and conventional know-how of machine of drug treatments like Ayurveda, Siddha and Unani. Legislation may be enacted

contemplating the numerous nearby variations with inside the matter, standard legal guidelines of numerous groups etc. Besides, we ought to provide greater precedence to collective or network rights in preference to character rights. That manner it turns into greater worthwhile to the groups to commercialize their know-how. The conventional medicinal know-how which isn't but with inside the public area may be blanketed as alternate secrets. But the maximum important aspect which is wanted is to shield the hobby of the Traditional know-how holders who're poor, illiterate, socially and economically backward. Protection in their hobby is greater important to gain the constitutional goals.

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11.
The Role of Intellectual Property Rights in Agricultural Sciences

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Introduction-

In Indian agriculture, it has some unique characteristics having 250 different crops cultivated in different agro-climatic conditions. In Indian economy, agriculture sector play the crucial role, with 18.5 per cent share in national income; 15 per cent of total exports with two-thirds of work force engaged in this sector. Inputs from agricultural engineering have played dominant role in boosting the productivity and production through appropriate mechanization technique. In India, agricultural equipment market was valued at Rs. 299.1 billion in the year 2010 and it has tremendous capacity for further growth and development. Rising population and accelerating economic growth require enhancing intensification of agricultural practices to meet the increasing demands for food. The demands would not only be in terms of the quantity of food produced, but also of its quality. It is increasingly being realized that some of these challenges can be overcome through more innovative approaches for technology development and creating better concerted diffusion systems to benefit more stakeholders.

Notwithstanding successes in higher food grain production over the four decades in making India food secure, it is now documented that some of the existing practices have led to stress on natural resources including water and soil. Problems leading to the energy crisis, deterioration of soil health, and declining water resources

are some of the critical areas needing more innovations approaches to make agriculture more sustainable (Kalpana Sastry et al,2010a). Keeping the guiding principle of inclusive growth in view, the current approach at the national level is to rebuild agriculture as an important source of livelihood generation both in the farm and non-farm sectors and ensure that there is adequate and nutritive food for the growing population. For instance, the recent initiative of the Government of India through SETU (Self-Employment and Talent Utilization) under National Institution for Transforming India (NITI Aayog, 2016) is one such step with several opportunities for support of start-up businesses, and other self-employment activities, particularly in technology-driven areas including those impacting agriculture-production systems (PCS).

1. Current Statutory IP Laws in India-

Agri-based Technologies in India the WTO-TRIPS agreement of 1995 (WTO,2016), which is binding on all member countries including India, provided for minimum norms and standards in respect of protection of IPR in several categories: patents, copyrights, trademarks, plant varieties, geographical indications, industrial designs, layout designs of integrated circuits, and trade secrets. This agreement led India to put in place a set of appropriate and compliant mechanisms and instruments. Some of the legal instruments passed by the Indian Parliament as part of compliance process to the TRIPS include The Patents Act, 1970 (39 of 1970), The Patents (Amendment) Act, 1999 (17 of 1999), The Patents (Amendment) Act 2002 (38 of 2002), The Patents (Amendment) Act 2005 (15 of 2005), The Geographical Indications of Goods (Registration & Protection) Act, 1999 (Office of Controller General of Patents Designs and Trade Marks,2016) and The Protection of Plant Varieties and Farmers Rights Act, 2001 (PPV FR Act) (53 of 2001) (PPV&FR Authority. 2016.) Apart from these, the Government of India also enacted an umbrella

legislation called the Biological Diversity Act, 2002 (No.18 of 2003). (NBA,2008) as part of the country‟s commitment to Convention of Biological Diversity (CBD). There is no specific IPR Act to provide protection for undisclosed information (trade secret). The Indian Contract Act of 1872 and common law have provisions covering this with the Ministry of Law and Justice as the nodal agency (Sudhir Kochhar,2008).

2. IP and Technology Management in ICAR System-

The IP&TM scheme launched by the ICAR during 2008 is a driver towards implementation of the policy (ICAR, 2014). Capacity building of the manpower engaged in the scheme formed the primary focus of the initial implementation process leading to series of awareness building and sensitization programmes. These initiatives resulted in emergence of a pool of about 100 trained IP professionals across the system. Notwithstanding initial apprehensions on IP protection towards stimulate investment in research in agriculture (Kumar and Sinha, 2015), these initial steps of ITMU scheme grants led to the building of vibrant IP ecosystem in the NARES. In terms of visible gains, the number of filings under various IP categories have increased significantly in last ten years (ICAR,2014c). The recent recognition of ICAR as an organisation through grant of the „Thomson Reuters India Innovation award 2015‟ is yet another testimony to this fact (Thomson Reuters 2016). Thus a viable governance mechanism (ICAR,2014a) gives a conducive environment for and necessitate an understanding of regulatory and statutory laws in the country for better positioning of technologies and related products and services in markets. Only then can it lead to trigger better opportunities for business in this sector. Recent reports of agri-start-ups successfully bringing new technologies in markets signify this fact. For example, the success of Barix, a start-up advocating eco-friendly, low-cost crop protection methods

to increase crop produce and quality at low cost. (Amit Tiwari, 2016) There are other successful start-ups like BIOSAT which uses Biochar based organic Soil Amendment Technology as an soil additive, Nashik-based start-up, MITRA (Machines, Information, Technology, Resources for Agriculture) which works on improving mechanization at horticulture farms with the use of R&D and high quality farm equipment like sprayers (Rashmi Ramesh, 2015). These instances are early-stage successes of technologies in agriculture leading to commercialization and setting of agri-start-ups.

3. Concluding Remarks-

Summarized below are few points for R&D professionals and technology developers engaged agricultural research in NARES to consider:

i. Current legal framework India affords several opportunities for R&D outputs with applications in agricultural PCS to be protected. Multiple IPs and portfolio building is possible and may be harnessed for building business models for technology developers.
ii. Compliances with regulatory bodies on use of agro-biodiversity and related knowledge is mandatory. These should form part of SOP for due diligence during the entire process of technology development and its transfer.
iii. Capacity building for R&D professionals in IP and technology commercialization should be intensified
iv. Technology developers or seekers for plant protection technologies should be encouraged through enabling ecosystem and enter as start-ups. These should form part of curriculum at university level in line with National IP Policy.
v. Encouraging the use of IP informatics for research projects proposals and execution as part of due diligence processes for understanding technology push

and market –pull forces before R&D investments are made.

This would more useful for technology development in SME sector. Thus, the early successes in transferring technologies as businesses signal positive returns on R&D investments. This is further accelerated through the fillip given by current GOI policies on innovation, incubation including building vibrant ecosystem for triggering start up culture in agriculture sector. Researchers and technology generators in agricultural sector need to recognise these opportunities and re-orient their R&D efforts. Such efforts will not only bring innovation to combat crop losses but also bring a more vibrancy and better returns in agribusinesses engaged in this sector.

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