

**NATIONAL CONFERENCE
ON
DEVELOPMENT AND PROTECTION OF IP RIGHTS
IN JHARKHAND**

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INTELLECTUALIZING PROPERTY DISCOURSE: A LONG MARCH AHEAD

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Today, April 26, is a day that is celebrated as Intellectual Property (IP) day by World Intellectual Property Organization (WIPO) since 2000. The day coincides with date of the Convention establishing WIPO coming into effect in 1970 and thereby being celebrated as a day to spread awareness on diverse issues vis-à-vis IP and allied rights. Despite rushing toward so called free economy with the liberalization-privatization-globalization (LPG) agenda, developing hemisphere is yet to internalize IP discourse as integral part of its larger project and India is no exception to this end. Therefore, celebration of IP day seems imperative to spread awareness in academia and in public on IP rights and wrongs against IP in general. Also, the author did contemplate upon diverse areas of traditional knowledge (TK) that refers to so called IP sans rights and thereby left to theft. With special reference to State of Jharkhand, an indigenous state on *Chotanagpur* plateau in the Republic of India, traditional knowledge constitutes the focus of World IP day in particular with cultural heritage of the tribal community in its default forest habitat.

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Initiating with the worldwide wisdom under the auspices of WIPO, a special theme marks the thrust area of emphasis each year. Hitherto inventory of these themes are:

1. Creating the future today - 2001
2. Encouraging creativity - 2002
3. Make IP your business - 2003
4. Encouraging creativity - 2004
5. Think, imagine, create - 2005
6. It starts with an idea - 2006
7. Encouraging creativity - 2007
8. Celebrating innovation and promoting respect for IP - 2008
9. Green innovation - 2009
10. Innovation- linking the world - 2010
11. Designing the future - 2011
12. Visionary innovations - 2012
13. Creativity- the next generation - 2013
14. Movies- a global passion - 2014¹

A special reason perhaps prompted the WIPO opt for movies. Hundred years back, on February 9 of 1914, ‘*The Tramp*’ (one of the classics acted, directed and produced by Chaplin) was released with heavy recourse to the then film technology introducing, albeit arguably, era of modern movies till date. Interestingly enough, this year (2014) is also the centenary year of First World War as well. Thus, juxtaposition of these two binary opposites- as the filmy world represents peace and progress since long back- a series of events that shook the world, e.g. fierce outbreak of the First World War, Bolshevik revolution (1917) and festive release of movies like *Battleship Potemkin* (1925), marked the beginning of a new world order and WIPO preferred movies (invention used for cultural enrichment of global people) in exclusion of machinegun (invention used for holocaust during the First World War). In another perspective, identifying ‘*The Tramp*’ seems strategic enough for the WIPO, along with others,² since IP resembles protagonist (Chaplin) who plays the role of a typical vagabond-

¹ WIPO programme schedule performed on the World IP Week (April 24-28, 2014). Available at: <http://www.wipo.int/export/sites/www/ip-outreach/en/ipday/2014/pdf/ipday2014_festival.pdf> retrieved on April 25, 2014.

² As per WIPO programme schedule, Tucker (USA 1988), Nueve Reinas (Argentina 2000), Three Idiots (India 2009), Amadeus (USA 1984), Half of a Yellow Sun (Nigeria/UK 2013) respectively. *Ibid.*

simple in naive appearance but, at bottom, survives in a hyper-complicated lifeworld with peculiar tricks of his own- the way IP slips into the World Trade Organization (WTO) regime through the Agreement on Trade Related Intellectual Property Rights (TRIPs) and globalized its ontology in terms of its reach.

The text of this event being set in territorial context- “Development and Protection of IP Rights in Jharkhand”- ‘*The Tramp*’ is thereby set to play traditional knowledge (TK) as its trick with major variations of the same, e.g. traditional genetic resource, traditional medicinal knowledge and traditional cultural expression. Despite vigilant protection, illegal extraction of traditional knowledge often than not go unnoticed and perhaps with the indulgence of concerned state institutions in charge of TK that tends to heavy aberration in the indigenous development discourse to gross detriment of social justice- a basic feature of the Constitution of India. Educational institutions with state support (like NUSRL Ranchi), therefore, possess the onus of spreading IP awareness far and wide in nooks and corners of the province. Establishment of forum, i.e. the Centre for Study and research in IPR (CSRIPR) serves its purpose when- and only when- the same will accomplish its outreach initiative to reach its target group. Rather than celebration of IP day in presence of such august gathering of academic and professional dignitaries, an emergent need of this hour seems keeping otherwise vulnerable IP safe from plunder and, to serve the purpose, the young IP ambassadors from these institutions are required to work in hinterlands of otherwise disturbed terrain lest the same may be disturbed farther by such vulnerable TK left to IP theft by organized vested interest operated from the so called civilized world outside. Besides, IP mentors, researchers and students ought to remain open to other rights discourse as well, e.g. moral rights, social and cultural rights, etc. and not only IP that offers economic (read commercial) rights. It seems imperative to note that mere economic perspectives may not be panacea of every sundry conundrum of the world and more so while private gain involved therein. Thus, benefit-sharing (as introduced by ‘*Arogyapacha*’ model for the *Kani* tribe in State of Kerala) apart, a moot point lies in discursive quest for alternative jurisprudence as well. Indeed there are people who decline to benefits out of IP in case of sacrosanct cultural heritage of the community which sentimental value is attached therewith. For instance, three aboriginal artists and another filed litigation in Federal Court of Australia against blunt infringement of images, symbols and styles that are attached to cultural value system of the local

aboriginal community. Rather than pecuniary compensation, specific remedy sought out of that legal action was injunction on the illegal trade practice of copying objects attached to cultural value of these people on carpet that is meant for the purpose not in consonance with spiritual sentiment of the community concerned. In its judgment, the Court recognized that the artists suffered more than the average claimant due to their responsibility to their people to safeguard their images.³

In its essence, TK constitutes no individual property *per se* and- if at all- constitutes integral part of the cultural heritage since time immemorial that belongs to commons- global or local is a point apart. IPR, as a rational extension of commercial interests and not rights in technical sense of the term,⁴ offers limited incentives in favour of creator to encourage talented individual mind toward creativity for better development of the society. Under no circumstance, therefore, invasion of IP on whatever belongs to commons may escape condemnation and more so while the same belongs to people outside civilization and thereby severed from all benefits of modern industrial world. All civilized stakeholders of the society, therefore, lack the locus to (ab)use TK and serve their individual or peer group interests in general and for commercial purpose in particular. Nowadays, benefit sharing model is in trend to hoodwink institutions of state. Under the (dis)guise of sharing, whether or how far concerned community receives benefit in their sense seems a moot point and poses few research questions for those engaged in such interdisciplinary area of study. After all, while proposing any sundry sharing model, whose benefit out of whose resource poses a moot point that deserves contemplation. Invariably speaking, all hitherto models are proposed by civilized people for their commercial benefit; but these are executed in the name of benefit of the tribal people who are devoid of the very concept of benefit the way civilized people offer them in lieu of their cultural heritage that was never for sale. In a way or other, this seems cultural highhandedness the way imposition of culture took place from civilized world to its indigenous counterpart. Indeed all IP pundits are set to banish such contention for the sake of incentive to creativity. The same is, however, their worldview that may not be shared by others who may be naive in IP,

³ For details, refer to MILPURRURRU and OTHERS v. INDOFURN PTY LTD. and OTHERS, 130 A.L.R. 659. Federal Court of Australia, 1994. Available at: <http://www.case.edu/affil/sce/authorship/milpururu.pdf> retrieved on April 20, 2014.

⁴ *Vide* P. J. Fitzgerald (ed.), Salmond on Jurisprudence, 12th ed., 1966, Universal Law Publishing Co. Pvt. Ltd., Delhi, Indian Economy Reprint 2010, Book III, Chapter 7. Legal Rights, read with Chapter 13. The Law of Property.

yet possess sense in the ways of their own. Pluralism, with the peculiarity of its own, constitutes the essence of a(ny) civilization- whether the same modern or indigenous is a point apart. And here lies a major rupture between two worldviews vis-à-vis IP. For instance, the sculpture below is a piece of art depicting the household economy of tribal woman. This is *dhokra* art (out of non-ferrous metal casting using the lost-wax casting technique) used by *Dhokra Damar* tribes- traditional metal smiths- since time immemorial and predominantly inhabited in hinterlands of few bordering districts of present Jharkhand, Chhattisgarh and West Bengal.



A specimen of *Dhokra* art. (Jharkhand) village lady grinding ants for her family.⁵

⁵ Available at: <<http://www.jharkhandstatenews.com/wp-content/uploads/2012/09/dokra.jpg>> retrieved on April 30, 2014.

Such an otherwise naive sculpture may and does import an altogether different colour in a museum that is meant to highlight poverty of the tribe, nudity of the woman, etc. and thereby put India into embarrassment before international community. Therefore, an(y) abuse of such traditional cultural expression out of context is likely to attract attention of public administrators in general. In particular, law and policymakers ought to take note of such evil practice and address the same for larger social justice. Here, the object or purpose seems immaterial. Be the same commerce or criminality, indigenous community interest ought to be a priority for “the State”.

Indeed the same should not lead to IP cynicism. From brighter side, an illustration: life and works of the legendary tribal leader- *Bhagwan Birsa Munda*- is scheduled to be published by Tribal Research Institute Ranchi in three volumes of comic book to reach state population far and wide.⁶ Needless to mention that there is no litigation against such initiative despite the personality meanwhile elevated to spiritual leader of Jharkhand. Also, there is no question of private gain in state government initiative to accelerate widest possible reach of his freedom struggle to the people of Jharkhand. There is no bar *ipso facto* against copying indigenous cultural heritage.

In a nutshell, rather than treating property as mere material resource (the way we do), contribution of the IP regime lies in a paradigm shift toward intellectualizing property as discourse that deserves interpolation from diverse points of view to contextualize the same in given text of law and public policy for this purpose. IP regime plays a role to rationalize and thereby attain transcendental permutation and combination of right and duty between competing claims for an equitable distribution of material resource among members of the society with their uneven socio-economic standing *inter se*. Thus, even within mainstream IP regime, there is breathing space in diverse names, e.g. compulsory licensing, technology transfer, etc. Besides, TK deals with the same with *sui generis* mechanism of its own for comprehensive social justice. While being

⁶ Taking inspiration of *Amar Chitra Katha* series, Jharkhand Tribal Research Institute has decided to publish a three-volume comic book set based on the life and times of legendary tribal leader, Birsa Munda.

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Oraon (Director of Tribal Research Institute Ranchi) justified the comic book format. “Comics are richly illustrated and cheap. They can be read and enjoyed by the young and old alike. We want to put the message across to both non-tribals and tribals alike, in a manner that is enjoyable and readable,” he explained, adding that the research was in its final stage.
Birsa legend rejig in comic book avatar. The Telegraph, Calcutta, July 14, 2010 (Wednesday). Available at: <http://www.telegraphindia.com/1100714/jsp/frontpage/story_12681287.jsp> retrieved on April 30, 2014.

an increasingly relevant regime with the spread of globalization around the globe, all these global commons in public domain since time immemorial ought to be severed from worldwide IP expansionism, to strike a jurisprudential balance between these competing claims and TK offers a lived experience to this end.

Last but not least, back to mainstream IP, movies being the theme for IP Day 2014, I recall wisdom of Sir Francis Gurry- the WIPO Director- on the eve of celebration:⁷

In a video message, the WIPO chief said movies are a direct product of intellectual property. “You start with a script, which is the intellectual property of an author or screenwriter. Then there are the actors, whose performances are their intellectual property. Then there is music, in which the composers and the performers have intellectual property,” he said, adding:” IP underlies the whole film industry.

“I believe it is the responsibility not just of policy-makers but of each of us to consider this challenge, and to ask ourselves: How can we take advantage of this extraordinary opportunity to democratize culture and to make creative works available at the click of a mouse, while, at the same time, ensuring that the creators can keep on creating, earning their living, and making the films that so enrich our lives?” Mr. Gurry asserted.

Indeed the IP world traverses a long way- from protection of the interest of creator to protection of the interest of entrepreneur- still there is a long march ahead since implementation of the same remains a distant daydream as in the case of moviemaking in general and its stakeholders in particular. Apart from film and audiovisual world, that is perhaps picked up as popular species out of the genus under copyright regime, the same is applicable to print and other media as well.

During this day-long academic event, I hope, these issues are likely to be dealt with. Also, other issues of concern for this predominantly indigenous state are welcome. Rather than demonstration of intellectual poverty by rambling at random between learned speakers and their august audience, I prefer not to continue my ado with little

⁷ The UN Daily News, 28 April 2014 (Monday), p. 12. UN News Service, New York. Available at: <<http://www.un.org/News/dh/pdf/english/2014/28042014.pdf>> retrieved on April 30, 2014. For more information, refer to (t)his video clipping recorded for the IP Day 2014. Available at: <<http://www.youtube.com/watch?v=O9siK7M-PQw>> retrieved on April 30, 2014.

and be seated to experience forthcoming deliberations on IP in this occasion of World IP Day to be celebrated by CSRIPR @ NUSRL Ranchi. Also, I hereby convey sense of gratitude to *Dr. Sreenivasa Murthy*, the CSRIPR event convener, for offering me this opportunity to grapple with his domain that constitutes an area of interest for me as well. Also, I wish the IP Day to activist members of the Centre. I'm confident that such initiative of the Centre in a tribal state like Jharkhand will carry forward IP awareness to the indigenous people the same meant for. In specific territorial context of Jharkhand, rather than mainstream IP regime, TK deserves attention of the Centre and its stakeholders in terms of capacity building through awareness.

About the author:



Dr. Debasis Poddar did LL.M. with specialization in Human Rights Laws from NLSIU Bangalore. He prepared his dissertation on ‘Traditional Medicinal Knowledge of the Indigenous Peoples in India’ with special reference to three tribes at District of Mysore, in State of Karnataka, e.g. *Jenu Kuruba*, one of the seventy five Primitive Tribal Groups (PTGs) identified by Ministry of Tribal Affairs, Government of India, residing inside *Nagarhole* National Forest; *Soliga*, a typical hill forest tribe, residing at the cleavages of *Billi Giri Ranga Hills*- the meeting point of extended ranges that belong to Eastern Ghats and Western Ghats; and Tibetan refugee people at *Bylakuppe*- the largest Tibetan settlement in India. (T)his field study is published as chapter of a book in *Subhram Rajkhowa* and *Manik Chakraborty* (ed.), *Indigenous Peoples and Human Rights: The Quest for Justice*, R. Cambray & Co. Pvt. Ltd., Kolkata, 2009, p. 67-102 [ISBN 978-81-89659-08-0]. Dr. Poddar supervised relevant LL.M. dissertation- on ‘Traditional Cultural Expression in India’- that is scheduled to be published soon. With fifty-odd pieces of publication to his credit so far, IP with special reference to traditional knowledge domain includes an area of interest for Dr. Poddar along with few other areas of his expertise in public law, e.g. Public International Law, Constitutional Law, etc.

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