

Speech for Shimla IPR Workshop scheduled for April 30 - May 01, 2005

Property can be defined as extension of the personality of the individual. Intellectual Property can easily be explained within the framework of this definition particularly because Intellectual Property is generated by the intellectual efforts of the individual. The traditional concept of property does not, however, help us to explain the global development of Intellectual Property Rights. Though in earlier times Copy Right and Patent were dealt with within the borders of a country we have now reached a stage where these rights have assumed global importance. Now, the Nation States are constrained to make their law governing Intellectual Property to suit the needs of not only their citizens but also for the citizens of other nations. The impact GATT and TRIPS have on national legislation is tremendous. The sovereignty of nations has become irrelevant.

If one examines the approach of ancient Indians towards property one becomes aware of the pragmatism and balance achieved by them in dealing with private interests and public interests in property. India indeed respected private interests in property. But its laws, customs or traditions required its citizens to safeguard the public interests while upholding the right of an individual to hold property. Certain items of property were to be available for the benefit of the community as a whole.

The concept of Common Property was therefore given importance by the Indian scholars. This becomes abundantly evident when one examines the role played by the health functionaries in ancient India. Vaidya in ancient India was not only a social institution but also a repository of traditional knowledge of medicine. He was to help the needy without caring for money. The community considered it its responsibility to look after the welfare of the Vaidyas' family. Indeed, it was believed or made to believe that the Vaidya was not to pass on the traditional knowledge to all Tom, Dick and Harry but only to the worthy. It was believed that, if this was not followed scrupulously by the Vaidya, the medicinal value of the medicinal herbs would vanish. At this juncture, I am reminded of a popular story taking rounds among the tribal people in southern part of India. Some practioners who belong to the Sidha System of Ayurveda give out the story that it was Lord Shiva who gave the knowledge about panaceas. It is said that Lord Shiva proclaimed that there are 148 diseases that a human could be inflicted with and that there are 148 panaceas also for them as prescribed by him.

It is also believed that if any information about these panaceas is given out its medicinal value would vanish. This prohibition could be considered as the mode evolved by the Ancient Indian Society to protect private interest of Intellectual Property. Also, it must have been evolved to prevent plundering of the herb wealth by the unscrupulous. In other words, what Ancient India did with reference to protection of Intellectual Property was while safeguarding private interests, it encouraged the thinking that the benefit should be extended to the community as a whole. Indeed, the private interest was limited for sustaining the knowledge holders' family at the expense of the community. And the knowledge was to be utilised for the benefit of the community as a whole. Today, what we do is not different but our legal arrangement injures the poor and needy in as much as there is enough scope for exploitation by the wealthy. The best way to avoid this situation is to disseminate knowledge about Intellectual Property Rights. The poor and disadvantaged are to be assisted to ascertain and assert their rights. Our government has been financing the effort of research institutes for achieving this purpose and thus we are here. We hope the purpose will be better achieved by way of this exercise.

Jai Hind.