



PROTECTION OF TK IN INDIA

The coming into force of the Nagoya Protocol in October will have great benefits for the defence of indigenous people's rights over their resources, and strengthen India's already robust protective measures, says Vikrant Rana.

“When an elder dies, a library burns”—this old African proverb may be the best way to understand traditional knowledge (TK).

Over the years, IP rights have been formulated as individual, monopolistic rights to protect the innovative, novel and utilitarian ideas of the human mind. TK was thus undervalued: every community has its customary practices, home remedies and cultural expression (folklore). However, the need to protect TK came to the forefront with the adoption of the global Convention on Biological Diversity (CBD) in 1992.

The need for protection

TK does not have an internationally-accepted definition. However, in a wider sense, it covers not just TK itself but traditional cultural expressions (TCEs), including distinctive signs and symbols associated with TK. TK in the narrower sense refers to knowledge as such, in particular, the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills and innovations.

Article 8(j) of the CBD states that every member nation in accordance with its domestic law should move towards the preservation, maintenance and sustainable use of resources important to the TK of the indigenous community. Member nations are urged to promote wider use of TK with the prior approval and involvement of the holder(s) of the knowledge.

The fact that industries are using TK without the prior informed consent of the knowledge holders is a concern, as is the lack of benefit-sharing mechanisms.

TK in India

India is a diverse country in all senses. It is counted among the ‘megadiverse’ countries under the CBD due to its innumerable genetic resources (GRs) and associated TK. With advancements in technology around the world, GRs and associated TK are vulnerable to bio-piracy and similar threats. With a view to protecting biodiversity, the Biodiversity Act was enacted in 2002.

The act governs conservation and use of bio-resources (BRs) and associated knowledge for commercial and research purposes as well as for bio-survey and bio-utilisation.

To implement the act, the National Biodiversity Authority (NBA), an autonomous body that performs facilitative, advisory and regulatory functions for the government of India, was established in 2003.

The NBA has supported the creation of State Biodiversity Boards (SBBs) in 28 states and over 32,000 Biodiversity Management Committees (BMCs).

Under the act, Indians and Indian institutions (excluding non-resident Indians) do not need the authorisation of the NBA to conduct research or work; however, they need to inform the relevant SBB of the activity. International institutions need the authorisation of the NBA. The NBA gives approval after consultation with the relevant SBB and after establishing mutually-agreed terms for sharing the benefits.



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than 100 wrongful patents, which were based on prior art from Indian TK (see <http://www.tkdil.res.in/tkdil/langdefault/common/Outcome.asp>).

India has successfully fought for the revocation or modification of patents for substances such as turmeric, basmati and neem oil.

The Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD was adopted at the 10th Conference of Parties (COP) to the CBD in Nagoya, Japan, on October 29, 2010.

It is the first international instrument particularly relevant to indigenous communities since the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007.

The protocol has 92 signatories and 52 ratifications; it is set to come into force on October 12, 2014, ie, 90 days after receiving the 50th ratification.

The purpose of the protocol is to effectively implement one of three core obligations of the CBD: the access to genetic resources and the sharing of benefits.

Obligations have been set out for seeking prior informed consent of indigenous communities for access; provisions have also been made for the sharing of benefits on mutually agreed terms from the use of TK and GRs in accordance with the domestic legislation of the source country.

The text of the protocol also contains a review clause, which states that four years after entry into force, the COP is to conduct an evaluation with regard to the effectiveness of the protocol. The COP has decided that the review should be

undertaken in the light of developments in other relevant international organisations, including the World Intellectual Property Organization.

The protocol allows for parties to implement other relevant international agreements, provided they are supportive of the objectives of the CBD and the Nagoya Protocol.

India and the protocol

India signed the protocol on May 11, 2011 and ratified it on October 9, 2012. India also co-hosted the COP-11 in October 2012 and is the president of COP until October 2014. The Environment Minister has stated that India has taken significant steps in the last 21 months to bring the protocol into force.

In view of the CBD's Aichi Biodiversity Targets for 2020, the protocol's ratification is of great significance, having been completed one year ahead of the deadline.

The protocol gives incentives to move towards the conservation and sustainable use of genetic resources and associated TK. ■

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TK digital database

It has become imperative to safeguard the sovereignty of TK. To facilitate this, the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) and the Department of Indian Systems of Medicine and Homoeopathy (ISM&H) set up an interdisciplinary task force, establishing the TK Digital Library (TKDL): www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng in 2001.

TKDL is an online database of TK existing in India in a format understandable by patent examiners at international patent offices, thereby preventing the wrongful grant of patents. The project involved the documentations of 150 books, including volumes, under the headings Ayurveda, Unani, Siddha and Yoga; more than 290,000 traditional medicine formulations have been transcribed.

Due to the TKDL, patent offices around the world, including the US Patent and Trademark Office, the UK IP Office and the European Patent Office, have revoked, modified or rejected more