

## Chapter 13

# Intellectual Property Rights on Traditional Knowledge and their Significance in Sustainable Societal Development

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### ABSTRACT

*Rich biodiversity and equally rich cultural heritages are the two invaluable assets of most of the Third World Countries (TWC). Biogenetic resources are the primary source of valuable genes, chemicals, drugs, pharmaceuticals, natural dyes, gums, resins, enzymes or proteins of great health, nutritional and economic importance. Biodiversity regulates and maintains overall health of the life support systems on earth and is the source from which human race derives food, fodder, fuel, fibre, shelter, medicine and raw material for meeting his other multifarious needs and industrial goods required for the ever changing and ever increasing needs and aspirations. TWC members are still at the receiving end as far as the development of special value added products and herbal technologies are concerned. The developed countries, on the other hand, are emerging as super powers with their biotechnological strength. IPRs emerged strongly during the industrial revolution and it has been an important driving force behind rapid industrial growth and prosperity of the Western countries during the last 3 centuries. Nowadays Access and Benefit Sharing issues have become a central theme for subsequent detailed discussions and decision making under CBD, TRIPS and the WIPO. It is therefore increasingly urgent for the CBD to make ABS work as was intended. The entry into force of the Nagoya Protocol represents a step in this direction. In India, we can be proud of having the distinction of the first country in experimenting a benefit-sharing model that implemented in Letter and Spirit Article 8(j) of CBD.*

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## **INTRODUCTION**

Genetic resources constitute an integral component of biological diversity. They provide the basis not only for the continuous evolution and maintenance of the life-supporting systems on earth, but also for the sustainable economic, scientific, technological, cultural and spiritual development of humankind. There is a growing body of information on the significant contributions that genetic resources and associated traditional knowledge make to global economy and global intellectual property regimes. The prospects of exploring biodiversity for new medicines, foods, crops, insecticides, pesticides and other commercially valuable genetic and biological products and processes are booming, thanks to the rapid development in biotechnology - particularly genomics, proteomics, metabolomics, enzymatic and transgenic technologies-Herbal Technology and Information Technology, and this exploration of biodiversity for commercially valuable genetic and biochemical resources is termed as bioprospecting (Eisner 1989, Reid et al. 1993). The advancements in biotechnologies have further redefined the overall scope and utility of bioprospecting to encompass all relevant activities related to systematic search for genes, natural compounds, designs and whole organisms in wildlife with a potential for product development by biological observations and biophysical, biochemical and genetic methods without disruption to nature (Mateo et al. 2001). Throughout history, biodiversity has been the commons of local communities, with both resources and knowledge being freely exchanged. The concept of sovereign rights or property rights in genetic resources was almost alien to the traditional communities. Less than a year after CBD came in to force, the World Trade Organization (WTO) in 1994 was established with a different agenda. The convention is founded on the principle that local communities are dependent on biodiversity and should continue to benefit from it. The WTO administers a global trading system, much of which is founded on the private monopoly rights of transnational corporations over biodiversity. Thus we observe a paradigm shift in the world view on biodiversity and its utilization in the 21<sup>st</sup> century.

The history of human civilization and development of economic systems are all inherently and inextricably interwoven with our biological resources (Ravi and Pushpangadan 1998). Economic activity of humankind continues to derive its sustenance directly or indirectly from the biological resources. The unknown potentials of genetic diversity found in the biological organisms, particularly the plants represent a never ending biological frontier of inestimable value. Genetic diversity will enable breeders to tailor crops to meet the increased productivity, adapt changing climatic conditions, disease resistance and to meet the other essential needs and future aspirations of humankind. Biodiversity is thus the biological capital of our planet and it forms the foundation upon which human civilization is built.

## **BIODIVERSITY AND TRADITIONAL KNOWLEDGE**

Biodiversity is the variety and variability of living organisms on the planet and it forms the bedrock for sustainable economic development. The greatest part of the global biodiversity (species diversity!) is found in animals and microorganisms (Myers 1998; Wilson and Peter 1992). Over two third of the estimated 300,000 species of higher plants in the world occurs in the tropical forests of South America, Africa, Madagascar and tropical Asia including New Guinea and tropical Australia (Primack 1993). Most of the countries located in these regions are interestingly the Third World Countries (TWCs) blessed with almost all known type of topographic and climatic conditions ranging from tropical to temperate and alpine zones. India is rated as one of 17 mega-diverse countries with over 1,26,756 species of plants,

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