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“Utilisation of diversity in land use systems:
Sustainable and organic approaches to meet human needs”

Traditional Medical Knowledge Systems and Piracy: The Issues Related to Trips and Beyond

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Abstract

TRIPs (trade related intellectual property rights) agreement stipulates minimum standard that WTO member countries are required to adopt on patent laws. TRIPs however, presently do not have adequate provisions for protection of Intellectual Property rights of Traditional Knowledge. In the absence of any protective mechanism the TK holders are deprived of any benefit actually derived from their knowledge. It stipulated that access to genetic resource could be based on mutually agreed terms with Prior Informed Consent (PIC) and equitable benefit sharing. The diverse expressions of medical knowledge in Indian society can be fitted into two sets of traditions, viz., (a) codified traditions and (b) folk medicine. In the Indian context, the codified medical traditions are drawn from knowledge systems like Ayurveda, Unani, Siddha and Gso-rig-pa (the Tibetan system). The codified traditions are evidently in the Indian public domain by virtue of their accessibility. The custodians and carriers of these traditions in India are spread across 4639 ethnic communities. The Local Health Traditions (LHT) are mostly undocumented and oral. These oral or folk medical traditions are extremely diverse, since they are rooted in natural resources located in so many different eco-systems. They are dynamic, innovative, and evolving. These health traditions consist of various health practices that are based on local epistemologies and empirical experience. Both in the written and oral tradition there have been a definite ‘culture of ethical sharing’. There are no regulatory measures to prevent deliberate bio-piracy of herbs from the wild and the rapidly expanding market of traditional medicine. Convention of biodiversity (CBD) is the only internationally binding agreement that clearly indicates protection of TK. It stipulated that access to genetic resource could be based on mutually agreed terms with Prior Informed Consent (PIC) and equitable benefit sharing. Several problems related to promotion and protection of traditional knowledge goes beyond TRIPS and others remain unresolved in the present framework of TRIPS and CBD.

Keywords: Benefit sharing, convention of biodiversity, intellectual property rights, traditional knowledge, prior informed consent