

**WIPO Regional Seminar on Intellectual Property (IP) and Traditional Knowledge (TK),
Genetic Resources (GRs) and Traditional Cultural Expressions (TCEs)
Bangkok, Thailand -December 16 and 17, 2009**



***Overview of TK, GRs and TCEs
Protection in the Region***

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Indian Biodiversity Act-2002

Legislative Features

- National Biodiversity Authority & establishment of State Biodiversity Boards (SBB) (28 States, SBB established 22 States)
- Foreign National Require NBA approval for acquiring Biological Resources
- Indians to seek NBA's approval before transferring knowledge/ research & material to foreigners

Indian Biodiversity Act-2002

Legislative Features

- Prior approval of NBA before applying IPRs on biological material & associated TK
- Determination of equitable benefit sharing
- Conservation of Biodiversity
- Impact Assessment of developmental projects on Biodiversity
- Regulation on release of GMOs
- Biodiversity Heritage Sites
- People Biodiversity Registers

Indian Biodiversity Act-2002

Administrative Aspects

- **Composition of NBA & SBB**
- **Functions and Powers of NBA & SBB**
- **National & State Biodiversity Funds**
- **Biodiversity Management Committees**
- **Appeal to High Courts**
- **Penalties including imprisonment up to 5 years**

Indian Biodiversity Act-2002

Rules & Procedures

- **Standardized Forms and Agreements under prescribed fees**
- **Collaborative Research**
 - **Details of Collaborators & Purpose**
- **Access to Biological Resources & associated TK**
 - **Details of applicant, resources & purpose**
- **Transferring the research & material**
 - **Details of transferor & transferee (s) and knowledge & Material**
- **Seeking IPRs**

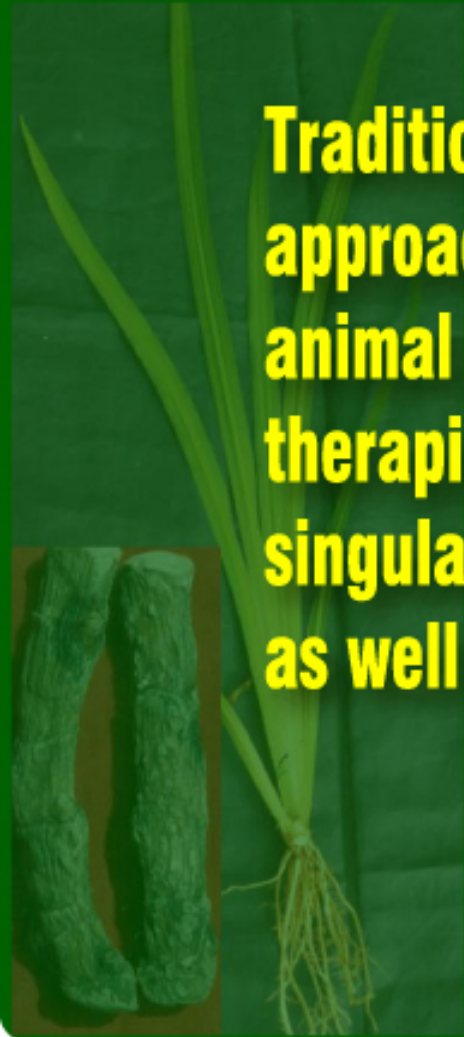
Approvals during 2007-2008

Number of applications approved

Details of Access Applications	No.
Access of Bioresources for Research / Commercial Purpose	5
Intellectual Property Rights	212
Third Party Transfer	3
Collaborative Research Projects	2

What is traditional medicine?

Traditional medicine includes diverse health practices, approaches, knowledge and beliefs incorporating plant, animal and/or mineral based medicines, spiritual therapies, manual techniques and exercises, applied singularly or in combination to maintain well-being, as well as to treat, diagnose or prevent illness.



TM Therapies

Herbal Medicine

Acupuncture

Manual

Spiritual

Exercises



Traditional Medicine Systems (TM)

- **TM based on Natural Materials (Herbal & Animal Origin)**

Ayurveda

Unani

Siddha

Chinese

Thai

Tibetan

African

Korean

Homeopathy

- **TM based on Physico, Holistic & Diagnostic Methods**
 - **Yoga, Meditation, Acupuncture, Acupressure**

Status of Indian System of Medicines

System of Medicine*	Registered practioners	Hospitals	Dispensaries	Colleges	Graduates Annual	Post-Graduates Annual
Ayurveda	366,812	2189	14252	154	6300	437
Unani	40748	189	966	31	1252	55
Siddha	12911	204	357	2	150	24
Naturopathy	402	21	55	-	-	-

***more than 1000 years old**

Adding value to TK



Partner TK with modern S&T

Commercialize certain types of TK

Equitably share the benefits with holders of TK

Protection of TK under Existing Models of IPRs

Patents (elements of traditional medicines...)

Copyrights (artistic manifestations ...)

Plant breeders rights (new varieties ...)

Industrial Designs (utilitarian craft products ...)

Trademarks (goods by craftsman ...)

**Geographical indications
(traditional craft products ...)**

IPRs & Positive Protection of TCE/TK



The different plants from which the shaman has made the potion may be protected under a plant variety protection system, provide the plants are new, stable, distinct and uniform



The potion (or the formula thereof) can be the subject matter of a patent, provided it is new, inventive and susceptible of industrial application, or as undisclosed information



IPRs & Positive Protection of TCE/TK

The prayer, once fixed, could be copyrighted

The performance, once fixed, can be protected by copyright-related rights, and the shaman - as performer - can be accorded the right to authorize the fixation of the performance



Inadequacy of existing IPRs for TK Protection

Can not prevent misappropriation

TK is holistic

Positive protection need fragmentation



Cost & affordability

Classification of TK

For granting rights, need to distinguish novelty/intellectual property of one inventor/owner from that of others

IPRs have adopted classification system

Patents : IPC

Trademarks : Nice & Vienna

Integrated Circuits : Locarno

Need for classification system : TKRC

Elements of *Sui generis* framework

Recognise TK as community/national rights

Recognise multiplicity of owners

Communities

Countries

Recognise public domain TK as national assets/rights

Utilise applicable procedures of IPRs for TK Rights

Right to oppose

: IPRs

Right to use/licensing

: Patents

Right to morality

: Copyrights

Right to reprocess

**: Unfair Competition
from unfair/illicit use**

Customary Laws

- Idea of exclusivity is not known
- No time limit on rights and obligations
- Strong spiritual character
- Knowledge is not owned but held in custodianship
- Benefits and services to be shared equitably

SAARC Legal Framework

- Includes TK in open domain, registries and databases
- Access to TK governed by PIC
- Protection against misappropriation and acquisition by unfair means
- Right of compensation in commercial use
- Competent authority
- Registration and licensing
- Customary laws and protocols

SAARC Legal Framework: Registration Mechanism

- Maintenance of registers, digital libraries without compromising the rights of Holders
- Preservation and safeguard of collective knowledge
- Registration will enable licensing
- Defensive protection by use as prior art



Legal Framework

Sui-generis elements

Zero cost/minimal cost

Ownership dispute through opposition

National/Regional

**Fair and just benefit through
market mechanism akin to
Patent system**

TK Holders and Rights

(ABS/CBD Approach)

TK	Disclosed	Undisclosed
TK holder/custodian		
Identifiable	NIL	PIC & mutually agreed terms (ABS)
Unidentifiable	NIL	

TK Holders and Rights

(Sui-Generis Legal Framework/ Registry based Approach)

TK holder/custodian	Disclosed	Undisclosed
Identifiable	Licensing Rights (LR) for TK holders	Depending on choice of TK holder: 1 PIC & mutually agreed terms (ABS) 2 LR to the TK holder
Unidentifiable	Licensing Rights for National Competent Authority	



Thank You

Case Shaman Tribe Fable

— Cost of Protection (US \$)

Knowledge/Innovations	IPR	National	International			
		India	US	EU	JAPAN	TOTAL
<ol style="list-style-type: none"> 1. Method of preparation and usage of 'Potion' 2. Vase for any technical feature 	Patent/ Utility Model	1400	9000	2,02,695	35,250	2,47,043
<ol style="list-style-type: none"> 1. Performance of prayer 2. Garments of Page's 	Copyright	10	1000	No fee	No fee	1100

Case Shaman Tribe Fable

— Cost of Protection (US \$)

Knowledge/Innovations	IPR	National	International			
		India	US	EU	JAPAN	TOTAL
1. Vase used in preparation 'Potion'	Design	100	1200	1216	3225	5671
2. Ceremonial Garments of 'Page's						
1. Plant used in potion subjected to certain requirements	New Plant Variety Protection Act	NA				15000 (approx.)
TOTAL (\$)		1510	13240	2,03,911	38,475	2,68,000

