

The Regulatory Design for People's Knowledge Protection in India's Biodiversity Regime

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The Bio-cultural context

Diversity of Ecosystems, People's Knowledge and Livelihoods



Locating Knowledge

1. Knowledge as a contextualised and dynamic entity spread across various cultures, ecosystems and livelihoods.
2. Controversies around terminologies of 'indigenous', 'traditional', "tribal" and 'people's' knowledge.



3. The power politics of validation: does local, traditional, people's knowledge require validation of mainstream science?

4. Relevance of local, traditional, tribal knowledge in the commercial realm (*agro, pharma*).



Premise of the current Knowledge- Use-Regulation Interface

1. Reconciling to the inevitability of private and commercial use of local knowledge.
2. Databasing (not documentation) as a pre-requisite for conservation, continuation of knowledge and making it relevant at national and international arenas.

3. Need for models of valuation to determine benefit claimers and benefit sharing (monetary in nature).

4. Rights and Responsibilities within overarching legal frameworks of access, rather than outside of them

The Regulatory Regime around Biodiversity and Rights in India



Biological Diversity Act, 2002

- a) Access oriented legislative framework for both bio-resources and knowledge, largely centralised (*dominantly IPRs and commercial use*)

- b) Allows for developing a sui generis system for people knowledge, Benefit Sharing Regime (*to be done*)

- c) Exempts traditional knowledge holders like *vaidas, hakims* from seeking permissions from national/state authorities (*no self declaration by industry about access through local knowledge holders, process ongoing*)

- d) Differential treatment for Indian and Foreign entities/Collaborative Research exempt (*Loopholes*)

- e) Applicability for pre-2002 accessions in both germplasm and knowledge banks (*Bt Brinjal case*)
- f) **Knowledge holder's** right limited to charging fees for access, or challenging instances of piracy and/or violations of law by proving themselves and **“benefit claimers”**
- g) Knowledge holders to be only “consulted” as well as treated as “information providers” for biodiversity registers (*for establishing prior art*)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

a) System of Individual and Community Rights on accessing **forest** land and resources

i) individual land rights upto 4 ha per family (non alienable rights)

ii) use rights for individuals and communities (grazing, forest produce)

iii) rights to conserve and protect forests

- b) Rights related to traditional knowledge (linking up with the institutional framework of the BD Act, 2002)
- c) Ambiguous safeguards against displacement and land diversion and its impacts over continuance of knowledge systems (*Eminent Domain powers of the state; rights as important basis for compensation*)
- d) No clarity of lease of land by rights holders for purposes other than what has been traditionally followed or part of community conservation practice

Regulating Knowledge has required...

1. Freezing the Knowledge- Resource interface into databases that are relevant for private and commercial use agreements
2. Reducing Custodianship of Knowledge to being that of Benefit Claimers
3. Filtering out the non-tangible from policy and law (“what cannot be measured cannot be managed”)
4. Reliance of Rights based models as precursors for engaging with fiscal relationships