

Biodiversity/Traditional Knowledge: Practical & Regional Experiences

India

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Overview

- Introduction and Importance of Protecting TK
- Protecting TK – the Indian Scenario
- Importance of Biodiversity
- Regulating Access and Exploitation of Biodiversity – Indian Scenario



TK - Introduction and Importance

- No specific internationally accepted definition;
- Relates to knowledge, or product of human intellect that is passed on from one generation to another
- Closely relates to biodiversity
- Generally - traditional / cultural heritage specific to a community
 - used for (free) benefit of mankind / community

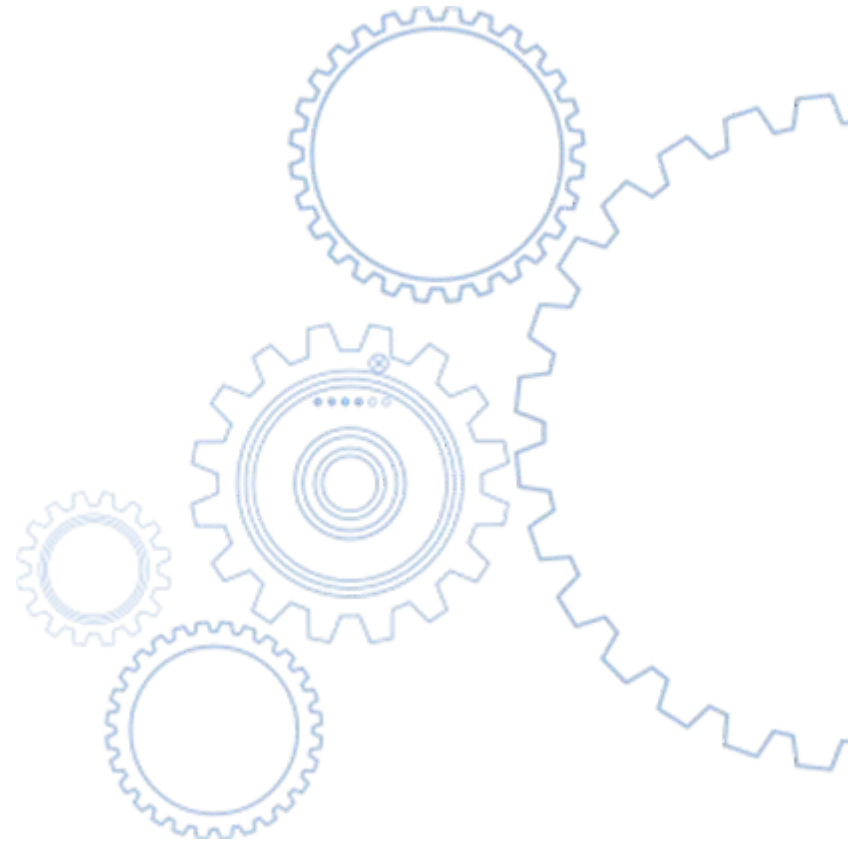


- Rampant misuse by ‘outsiders’ for commercial exploitation, especially by claiming IPR exclusivity
 - Benefits of commercial monopoly do not trickle to original authors/community
- Urbanization & culture leading to erosion and eventual death of traditional practices



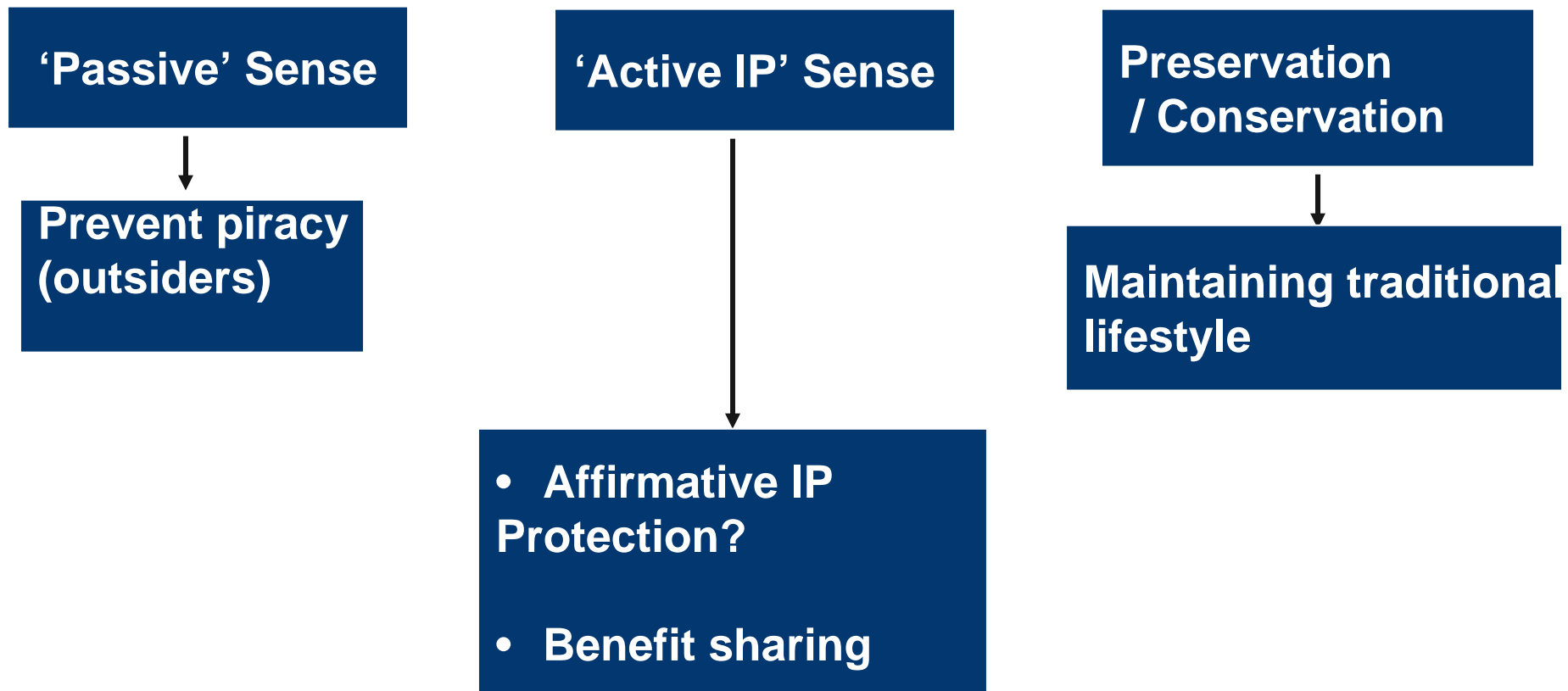


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Indian Scenario –TK

Protection of TK





Protection through Patent Law

- Section 3(p) of the Patents Act, 1970 (not-patentable inventions)
 - an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known property of traditionally known component or components
 - Distinct from novelty / non-obviousness grounds – traditional legal tests of ‘anticipation’ and ‘non-obviousness’ are not applicable





Protection through Patent Law

- Oppose / revoke patents –
 - ❧ the invention is ‘anticipated’ having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India *or elsewhere*
 - ❧ No need for written publication or proof of actual public use
 - ❧ “Indian or elsewhere”

- Oppose / revoke patents –
 - ❧ Incorrect disclosure or failure to disclose source of biological material



Protection of TK - Database

- India aggressively protects against Indian TK being monopolized in other countries
 - Efforts against attempted patent on Neem in EPO
 - Efforts against attempted patent on Turmeric in USPTO
 - Most recently, efforts against attempted patent in USPTO on yoga postures



Protection of TK – Database

- The development and deployment of the **“Traditional Knowledge Digital Library”** (TKDL)
 - Access provided to USPTO, EPO, JPO and UKIPO
- Budget (2001-2012) – approx. USD 3 Million
- The database provides ‘proof’ of TK as prior art
- Object is to codify Indian TK – Ayurveda, Unnani, Siddha, Yoga etc.
 - A database for prior art.



Protection of TK – Database

- TKDL reports close to a hundred success stories
- Recent examples of TKDL being used
 - Against EPO patent relating to Ashwagandha (Indian ginseng)
 - Against US Patent relating to use of *Holoptelea integrifolia* (Putikaranja) against obesity





Affirmative Protection through GI

- Limited in scope
 - ❧ GI identifies a 'good'
 - ❧ Logically excludes other intangible forms of TK such as methods of medical treatment, techniques for dyeing cloth, folk music, and dances etc.
- Must be limited to a defined territory
- A certain quality, reputation, or other characteristic - essentially attributable to its geographical origin





Affirmative Protection through GI

■ Examples –

- Textiles: Most registered GIs in India are for textiles such as Mysore Silk, Pochampally Ikat, Chanderi Sarees, Kancheepuram Silk, and Kullu Shawls.
- Crafts: Aranmula Metal Mirrors, Channapatna Toys and Dolls
- Embroidery: So far two kinds of embroidery have been granted a GI: Phulkari and Kasuti





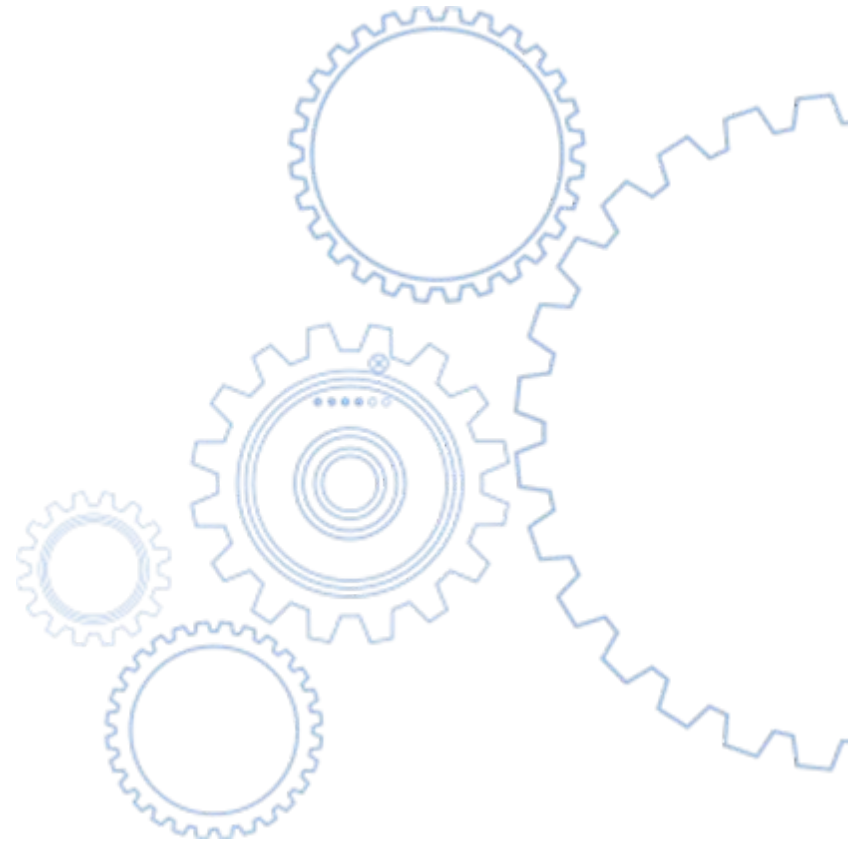
Affirmative Protection through GI

- GIs allow small local / indigenous producers to enhance their reputations, and sell directly to final users, thus competing more effectively against large corporations
- But only useful where supply is through traditional small-scale production and products are being marketed.





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Biodiversity Conservation and Sustainable Use

Indian – Biodiversity

- Two hot spots (Western Ghats, NE)
 - 47,000 species of plants (7.31% of the faunal species in the world and 33% of the flora endemic to the world)
 - 89,451 species of animals
- Centre for origin for –
 - rice, pigeonpea, mango, okra, bamboo, banana, sugarcane, citrus, cardamom, turmeric, tea and cucumber
 - buffaloes, chick



Value of Genetic Resources - Examples

- Environmental mgmt - Use of microbes and enzymes to treat residues
- Organic chemistry - enzymes as catalysts etc
- Leather - replacement of polluting chemical technology; for e.g. “liming” leather with enzymes





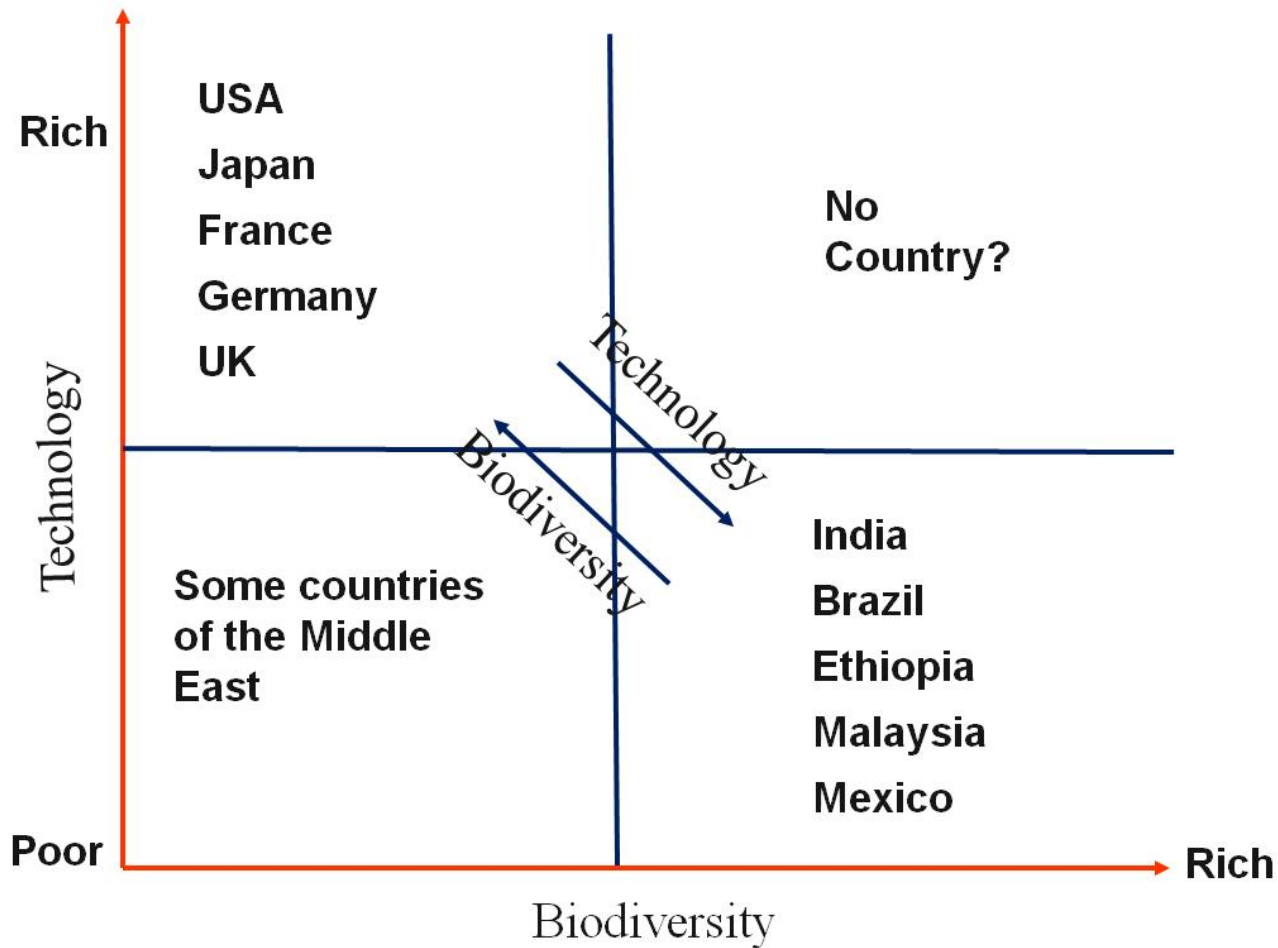
Value of Genetic Resources - Examples

- Bioremediation - clean up of oil dispersed pollutants, use of genetically modified biosensors to assess land and water contamination
- With developments in bio-technology, genetic resources and genetic diversity has gained significance
 - ✧ Newer and better crops
 - ✧ Using specific microbes for manufacturing / developing bio-fuels / complex molecules





Biodiversity and Technology



Biological Diversity Act, 2002

- Legislation passed with the following objectives –
 - the conservation of biodiversity;
 - the sustainable use of biological resources;
 - equity in sharing benefits from such use of resources.
- The legislation is intended to implement the Convention on Biological Diversity
- Penal sanctions for violation (imprisonment and fine)





Biological Diversity Act, 2002

- Prior informed consent / approval for “biological resources occurring in India”–
 - Applies only to non-Indian entities (even Indian subsidiaries of foreign entities)
 - Covers bio-prospecting (Research, commercial utilization or bio-survey and bio-utilization)
- Prior informed consent / approval for transferring “results of research” relating to Indian biological resources to non-Indian entities



Biological Diversity Act, 2002

- Prior informed consent / approval for obtaining IPR anywhere in the world (except PVP right in India) if relates to Indian biological resource
- Obligations apply even to access knowledge –TK would be covered as well.
- All approvals come with benefit sharing obligation (continuing royalties)
- Authority will also examine w.r.t. “sustainable use”



Biological Diversity Act, 2002



- On-going controversy
 - Legislation is broader than CBD – national authorities try to cover even access to proprietary material
 - No guidelines on how to determine benefit sharing
 - Delays in granting approvals.



Protection through PVP law

- Applicant to declare that parent material used to develop the new plant variety have been 'lawfully' obtained –
 - In combination with the Biological Diversity Act, 2002 – 'prior informed consent'
 - May potentially be a ground for opposing a PVP registration



Discussion



Lakshmi Kumaran & Sridharan

Lakshmi Kumaran & Sridharan (L&S) is an Indian law firm specializing in the areas of International Trade, Taxation, Intellectual Property and Corporate law.

Founded by V. Lakshmi Kumaran and V. Sridharan in 1985, the firm has eight offices across India in New Delhi, Mumbai, Chennai, Bengaluru, Hyderabad, Pune and Ahmedabad.

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Thank you

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