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Indian medicinal plants and related traditional knowledge: Modalities of protection from an intellectual property rights perspective

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Abstract

The various problems of protection of medicinal plant resources and knowledge system also will be brought to light. Through case studies attempts will be made to expose the inadequacies of the present system and the new efforts required for protection. However, western IPR system had proved to be ill equipped to provide protection to traditional knowledge. Monopoly rights like IPR imply that only one actor gets all the benefit concerning a given invention, and thus the concept emerged of private ownership and individual invention. Our medicinal plants and related traditional knowledge is the frequent target of patenting in other countries. Through international conventions and negotiations like CBD, WTO there is a chance to create awareness and rules of the game could be formulated. By enacting national laws a country can protect their resources and knowledge (for eg India's Biodiversity act , PVP&FR act.) The community through their customary laws could protect their knowledge to a certain extent. Tremendous prospect exist in using these resources and knowledge for the benefit of the society. This has to be done in a sustainable and equitable manner. There is a real challenge and the existing models fail to do it. New models have to be evolved and developed and the people of the country will be benefited and economy will prosper.The question is whether positive exploitation has to be made or defensive protection should be given. Many times, wrong patents are given in the area of medicinal plants the recent case of Jamun / Karela linked patent on diabetes is a point. Firstly, it must be understood that patent offices do make mistakes in checking the novelty of an invention because these usually look at their own databases. So the chances of issuing wrong patent are quite finite especially when an application based on the indigenous knowledge is being examined in a foreign country. The knowledge, which may be in public domain in one country, may be a new knowledge in another country. An identical situation had existed in the famous turmeric patent. This study addresses the role of existing system for the protection of medicinal plant resources and associated traditional knowledge in India. Strength and weakness of the each instrument will be highlighted.