

STATUS OF TRADITIONAL KNOWLEDGE
IN INTERNATIONAL PATENT REGIME

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Abstract

The debate in India on the effects of grant of patents in one country, on the traditional knowledge of another country led to this study.

The study involved the analysis of the definition and the scope of the traditional knowledge on the one hand and evolution of patent regimes and its scope in protecting traditional knowledge on the other.

Comparison and analysis of relevant provisions of patent laws of the United States, India, China and Japan revealed the path of 'free riding' of traditional knowledge from the country of its origin to other countries.

The harmonization process of international patent system by multinational treaties and agreement is evaluated. It was observed that though the importance of preserving traditional knowledge was emphasized in Biodiversity Convention there was no provision to protect traditional knowledge or safeguard the rights of its possessors. The need for such provision is borne out by the emerging trend in pharmaceutical industry to compensate the indigenous communities for their contribution.

Though complex issue of protecting traditional knowledge cannot be solved overnight, the process to initiate legal effort in this direction must not be delayed.

No country can achieve the objective of protecting its traditional knowledge by changing its patent laws alone. The problem needs to be tackled under the auspices of TRIPS. Not only TRIPS should prohibit patenting of traditional knowledge but also prevail upon the member nations to recognize 'unpublished foreign art' as 'prior art' under their patent laws.

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