

NOTES

1. By recombinant DNA technology, genetic materials of two different organisms are combined together to obtain a new organism with desired characteristics. By this technology, DNA fragments from a variety of sources are inserted into a particular gene via appropriate vector to have a desirable gene sequence.
2. Traditional medicine that has been adopted by other populations (outside its indigenous culture) is often termed ‘complementary and alternative medicine’ (CAM) (WHO, 2002).
3. According to the definition provided by the CBD ‘Biological diversity means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems’ (Article 2, Para 1: Use of Terms).
4. ‘Biological resources’ according to the definition provided by the CBD, ‘include genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity’ (Article 2, Para 2: Use of Terms).

5. Two words ‘indigenous people’ and ‘local community’ do not bear similar meaning. Those who voluntarily isolate themselves from the main stream and have distinct linguistic and cultural identity are called indigenous people. Local community, on the other hand, may mix with the main stream of population but they possess a little bit knowledge relating to biological resources (Elumalai, 2012).
6. Resolution 1803 (XVII) provides that States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter of the United Nations and the principles contained in the resolution. http://legal.un.org/avl/ha/ga_1803/ga_1803.html. Accessed on March 26, 2015.
7. According to a report prepared by the Director-General and adopted by the 21st Session of the Conference ‘plant genetic resources should be considered as a common heritage of mankind and be available without restrictions for plant breeding, scientific and development purposes to all countries and institutions concerned’ (<http://www.fao.org/docrep/x5563E/X5563e0a.htm>. Accessed on March 30, 2015).
8. The term ‘biodiversity hotspot’ is coined by Norman Myers. The areas where natural ecosystems are largely intact, but a large number of species that are rarely found outside the hotspot are endemic are called biodiversity hotspots. So far 34 biodiversity hotspots all over the world have been identified.

9. Among the plant-rich countries of the World, India ranks 10th, and in the context of Asian countries, her position is fourth.
10. This plant, a small rhizomatous, perennial herb, is available in India, Malaysia and Sri Lanka. The subspecies found in India is called *trichopuszeylanicus-travancoricus*. It grows at an altitude of around 1,000 meters in southern part of India, mainly in Western Ghats belongs to Tirunelveli district of Tamil Nadu and Thrivananthapuram district of Kerala (Gupta, WIPO).
11. Customary law is a set of customs, practices and beliefs that are accepted as obligatory rules of conduct by indigenous peoples and local communities. Customary law forms an intrinsic part of their social and economic systems and way of life (WIPO, Background brief 7). Such laws can serve as the fundamental legal basis or source of law for a community's legal rights over traditional knowledge and a factual element in establishing a community's collective rights over traditional knowledge.
12. Traditional knowledge registries may be internal or external, as well as it may be private or public. If registries are established and maintained within a community, they are called internal. The registries which are established and maintained outside the community are called external. External registries are maintained outside the community, often on the national or international level, by governments, non-governmental

organizations, museums or libraries. These registries can again be collections of TK specific to a particular community or to several communities (Hansen & Vanfleet, 2003).

However, more important is the distinction between private and public registries. Public registries place information in the public domain, but private registries do not. Since the information in a private registry is documented but is not in the public domain, it may not constitute prior art capable of preventing a patent based on the knowledge by an outsider. The knowledge in a private registry cannot prevent the approval of a patent under most IP systems unless it is considered prior art through a *sui generis* mechanism and disclosed to patent authorities (Hansen & Vanfleet, 2003). Private registries can be useful only if patent offices are made aware of the existence of such a registry. However, it may be possible to challenge and revoke a patent with knowledge documented in a private registry if patent law recognizes prior art not disclosed to public as is being admissible under a *sui generis* system.

13. Up to 2011 India managed to sign such an agreement with the European patent office and patent offices of Australia, Canada, Germany, the United Kingdom and the United States.
14. This information is available at http://www.ulwazi.org/index.php5?title=Main_Page.
15. 'Biological resources' means plants, animals and micro-organisms or parts thereof, their genetic material and

byproducts (excluding value added products) with actual or potential use or value, but does not include human genetic material (Section 2 (c)).

16. 'Benefit claimers' means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application (Section 2 (a)).
17. The State shall designate or establish a National Competent Authority which shall implement and enforce the provisions of this legislation (Part 7.57 of African Model Law).
18. The Model Law Provisions 1982, Panama Special Intellectual Regime Law 2000 and South-Pacific Model Law 2002 make provision for indefinite period of protection.
19. The Section 18. (1) of GI Act,1999 reads as 'the registration of a geographical indication shall be for a period of 10 years, but may be renewed from time to time in accordance with the provisions of this section'.
20. The Section 18. (2) of GI Act,1999 reads as 'the registration of an authorised user shall be for a period of 10 years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier'.

21. However, there may be exceptions to this. The knowledge regarding the use of 'triphala', for instance, is well-known to almost all parts of our country. This herbal product is used for ailments of stomach. Since raw materials of 'triphala' are available in a defined geographical area, it is eligible for getting protection under the Geographical Indication Act. A geographical indication can be obtained if at least one of the activities of either the production or processing or preparation of the goods concerned takes place in the defined territory (Chavan, 2013).