

BOOK REVIEW

Srivastava, Shivendu K. (2016). *Commercial use of biodiversity: Resolving the access and benefit sharing issues*. New Delhi : SAGE Publications Pvt. Ltd. (Hard Back), pp: 319, Price INR 995/- .

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In his book of nine chapters, Shivendu K. Srivastava primarily deals with the implications of the WTO and IPR regimes on biodiversity and its commercial exploitation. However the author has not taken into consideration the Forest Rights Act (FRA) of India 2006. Readers who are aware of FRA 2006 may have certain reservations against the concept of benefit sharing described in the book. Without delving into the debate, none can deny the importance of the commercial use of the world's biodiversity and traditional knowledge (TK) associated with genetic resources by the pharmaceutical industries. For example, a 120-plus list that includes Penicillin, Quinine, Atropine, Menthol, Taxol, Morphine, Salicin, Borneol, Digitalin are all natural product based.

The last two decades of the twentieth century witnessed a sudden increase in the world's interest in the rich biodiversity of the globe along with an overriding endorsement for the creation of intellectual property rights (IPRs) related to genetic resources. Under the WTO treaty, conservation and sustainable use of the world's biodiversity were addressed under the Convention on Biological Diversity (CBD), and the Agreement on TRIPS. Srivastava has cited several cases of partnership that emerged out of the WTO treaty (CBD & TRIPS) for the commercial exploitations of biodiversity and the TK associated with it. These include (a) partnership programme established between INBio (Instituto Nacional de Biodiversidad or National Institute of Biodiversity), instituted by Costa Rica's Ministry of Environment and Energy (MINAE), and Merck & Co., a US pharmaceutical corporation which led to International Cooperative Biodiversity Groups (ICBG) programme; (b) case of commercial use of biodiversity and sharing of the benefits accruing from this use with indigenous people organised by Bioresources Development and Conservation Programme (BDCP, an NGO working in Nigeria), which facilitated the establishment of the Fund for Integrated Rural Development and Traditional Medicine (FIRD-TM) in Nigeria; and (c) sharing of the royalty and the cost of patenting and patent protection mobilised by the Jawaharlal Nehru

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Tropical Botanic Garden and Research Institute (JNTBGRI) in Kerala (India) through a very simple agreement. The author also discusses the conflicts associated with most of these partnership programmes. According to him, the biggest practical problem with bio prospecting is due to unrealistic expectations about the value of biological wealth. Consequently, programmes predicted spectacular gains that were unlikely to ever be achieved. Srivastava also points out that these conflicts originate from the key provision of Article 27 under the Agreement on TRIPS that articulates the favour for granting patents to technologically advanced developed countries, which puts the rich biodiversity of the tropical countries at risk of biopiracy. On the other hand, the CBD has provisions for equitable sharing of the results of R&D and the benefits arising from the commercial use of biodiversity.

The author critically analyses the approach of 'thinking globally, acting locally', showing that cases of partnership programmes involving bioprospecting that follow this approach have provided three kinds of benefits viz. economic incentives to indigenous and local communities, training for skill development, and infrastructural facilities for collection and processing of resources. The indigenous and local communities in such partnership programmes are recognized as primary or on-site stakeholders, and the TK they own is extensively exploited in most of the commercial uses of biodiversity. It is principally affirmed that they must have full usufructs over adequate natural resources, located at an accessible distance, so that their basic needs are fulfilled. The idea of providing the usufructs, though it raises ample hopes and enormous prospects in the light of successful experiences of benefit sharing, is difficult to implement in the real sense. The domestic herbal industry in India, for example, is quite strong, giving rise to reasonable expectations, and the TK system developed through generations of traditional healers has vast scope in bioprospecting that frequently uses advanced biotechnological processes and techniques owned in general by the developed countries. Unfortunately, the countless efforts aiming for the distribution of usufructs and benefit sharing exhibit only a top dressing approach, and the core benefit from the mine of biodiversity prospecting has yet to accrue to indigenous and local communities. Another point of concern is that available incentives and community structures have failed to motivate young people to carry the torch of knowledge forward for the next generation, and thus the erosion of knowledge and resources has never been as high as it has been in the current generation.

The book's author, Srivastava believes that an acceptable equilibrium may develop in such relationships despite the language in the CBD not being mandatory on these issues, if the developing

countries adopt a common approach when negotiating with the developed world. This is possible as Article 27.2 of the Agreement on TRIPS recognizes that states can exclude from patentability inventions, the prevention of whose commercial exploitation is necessary to protect human, animal or plant life or health or to avoid serious prejudice to the environment. It follows that an invention, the commercial exploitation of which is permitted by domestic laws, cannot be excluded from patentability. Doha Declaration on the TRIPS Agreement and Public Health talks about the gravity of the public health problems of developing countries and yet is silent about the protection of TK. The Declaration recognizes that in order to promote access to medicines for all, each member country has the right to grant compulsory licence and freedom to determine the ground upon which such licences are granted, though the aspect of TK is not alluded to. TK is addressed in the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits. The three main pillars of the protocol are A - Access to genetic resources, B - Benefit sharing between users and providers of genetic resources, and C - Compliance with domestic legislation that only legally acquired genetic resources and TK are used. This scenario depicts nothing but what is now termed as globalization, and comprehensively, the arrival of the WTO is an obvious pronouncement of the same.

The analysis of the case studies and the international IPR regime, followed by an attempt made in the book to find out how to circumvent the implications arising due to the present limitations, should come in handy as a working tool to take up new bioprospecting programmes in the tropical countries. The task is 'easier said than done', and yet, if following the 'thinking globally, acting locally' concept, the stakeholders sit together and make sincere efforts, more replications of the benefit sharing cases can be formulated and enacted. The author has analysed the WTO regime and its influences on unbalanced access rights and benefit sharing leading to conflicting situations. However, Srivastava does not offer any blue print for resolving these issues except by throwing light on the reasons for conflict. One glaring omission in the book is the overlooking of the rights based approaches that have been initiated in India through the FRA 2006. Acknowledging the rights of people/forest dwellers to bio-resources may lead to a more viable partnership for both conserving biodiversity as well as the commercial exploitation of such resources in a more sustainable manner. The book is well written and certainly ignites our thought process.