



WILL INDIA PROTECT TRIBAL BIODIVERSITY RIGHTS?

Ashish Kothari

In a case that is likely to re-ignite the debate about patents, community knowledge, and tribal rights, medical researchers have recently found that a plant used by the Onges of Little Andaman Island in the Bay of Bengal, has anti-malarial properties. The director of the Andaman regional centre of the Indian Council of Medical Research (ICMR) has allegedly expressed a desire to patent the 'discovery'. This provides an opportunity for India to put its good language on indigenous rights at the recent COP 2 into practice. In this article, Ashish Kothari, of the Indian Institute on Public Administration (IIPA), calls on his country's government to accept the challenge.

Scientists working in the Regional Medical Research Centre (RMRC) of the ICMR, at Port Blair in the Andaman and Nicobar Islands, have been testing various plants that the Onge tribe uses for medicinal purposes. One of them had noticed that while the non-tribal settlers on Little Andaman suffer from a high incidence of malaria, the Onges remained remarkably unaffected. He found that the Onges used a special plant against fever and gastro-intestinal disorders.

On testing, the scientist has found that it has anti-malaria properties. Most exciting, it appears to be highly active against the dreaded malarial parasite, *Plasmodium falciparum*. If the active ingredient of the plant could be isolated and used, the benefits would reach the millions of humans who suffer this disease across the world.

Suspecting that unscrupulous elements might misuse the information, the concerned scientist has very wisely decided not to release the name of the plant. However, it is reported that his director at the RMRC is keen to publish the findings in his own name, and subsequently claim a patent.

Destruction and Tribal Deprivation

Little Andaman is one of the 300-odd islands of the Andaman and Nicobar (A&N) Island group, a union territory of India strung across the Bay of Bengal. The islands contain coral reefs, mangroves, tropical forests, and coastal ecosystems of great value, diversity, and beauty. Unfortunately, the current administration is totally insensitive to the ecological and social fragility of the region, and imposes inappropriate developmental projects and programmes. Deforestation and forest degradation has affected a large proportion of the islands, though they are still one of India's most heavily forested territories. Coral reefs have faced serious damage, especially around the increasingly urbanised islands. Considerable portions of the mangroves have also been destroyed. On the other hand, indigenous peoples in the islands are also suffering the imposition of the administration's views on development. Attempts go on to "befriend" the hostile Jarawa and Sentinelese tribes, with the eventual aim being to bring them to the "mainstream". The consequent loss of identity, culture, and knowledge appears to be inconsequential to the islands' administrators.



The question is: how many species like the above plant are we likely to lose, before we realise the enormous potential of the island's biodiversity? And how many more elements of tribal knowledge will be lost as 'primitive superstitions' before we realise the value of their traditional systems?

International Commitments

The piracy of indigenous knowledge and of biological resources, by governments, scientific establishments, and corporations, has been going on all over the world. However, local communities and sensitive governments have been increasingly raising their voice against this, and demanding that the rights of the originators and conservers of resources and knowledge be protected by both national and international law. The most recent international expression of this is contained in the Convention on Biological Diversity, which explicitly commits every country to respect and maintain local knowledge, promote its application and encourage the equitable sharing of the benefits arising from it (art. 8j).

At the most recent meeting of the Convention, the Second Conference of Parties at Jakarta, Indonesia (November 6-17, 1995), the Indian Minister for Environment and Forests, Mr. Rajesh Pilot, underscored this point. He claimed that local community interests are not protected by existing intellectual property rights regimes (including patents), and that other steps were needed to ensure such protection.

Urgent Action Needed

If the Indian government truly means what it says at international forums, then it must act immediately to protect the interests of the Onges and of the country, before private corporations or some unscrupulous scientists attempt to monopolise the 'discovery'. This danger is very real, for if the plant does indeed lead to an anti-malaria product, the resulting profits could be incalculable. Pharmaceutical corporations

Patent Free Treaty in the Pacific

Indigenous peoples and NGOs of the South Pacific have declared the region "Lifeforms Patent Free" sending a strong signal to the world of their rejection of the use of patent legislation for any biological and genetic resources of the Pacific. Building on the precedence of the Nuclear Free Pacific Treaty, a Pacific Lifeforms Patent-Free Treaty has been established with two Protocols on bioprospecting and human genetic research. The Treaty arose from a Pacific consultation meeting on Indigenous Knowledge and Intellectual Property Rights' organized by the Pacific Concerns Resource Centre and sponsored by the UNDP in Fiji (April 1995).

The Treaty affirms the willingness of indigenous peoples to share their knowledge with humanity provided they determine when, where, how, and by whom it is used. The Treaty and its Protocol prioritize regional research and monitoring of bioprospecting and human genetic research activities in the region. It calls for a moratorium on any future bioprospecting until such research has been conducted and appropriate informed consent and other protection mechanisms are put in place.

The Protocol on Human Genetic Research opposes the Human Genome Diversity Project or any other project which seeks to collect, store, immortalize research or commercialize genetic materials of indigenous peoples of the Pacific.

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would obviously make a beeline for such a plant and the related knowledge.

In order to prevent such dangers, the following measures should be immediately adopted:



1. An embargo on the transfer of any plant and plant material from the Little Andaman Island, until steps 3-5 below are taken.
2. Strict containment of the plants/extracts already taken out, wherever they are currently housed, to ensure that they are for the time being not accessible to anyone, until steps 3-5 below are taken.
3. Publication of the names of all persons/agencies who are given permits to visit Little Andaman Island, in the official newspaper of the A&N Islands.
4. Provision of information to the Onges, regarding the implications of the 'discovery', and their own opinions and attitudes towards the wider use of the plant.
5. Steps to ensure that the rights of the Onges to the plant and related knowledge are publicly acknowledged and respected, including in any publication that may result from the scientific experiments going on. A patent in the name of the scientists involved would be wholly immoral and unacceptable, but the utility and acceptability of a patent in the name of the Onges is also questionable. Some form of community right in the name of the Onge would be more appropriate, but its precise nature, and its legality, needs to be considered.
6. Steps to ensure that the Onges are the major recipients of benefits arising from the use of the plant. In this connection, whether or not monetary benefits would be appropriate to their situation is a matter for serious consideration; what may be more appropriate is the channelisation of the benefits into a fund meant for conservation and protection of tribal rights and territory, as suggested in the steps below.

In the long run, the following measures are needed:

1. Reserving the majority of the Little Andaman Island for the exclusive use of the Onges, and a reversal of the policy of making them dependent on welfare doles. The nomadic hunting-gathering of the Onge was probably the most sustainable way of living on the island, and should be encouraged again. In a sense, this would be perhaps the greatest form of

"benefit-sharing" and respect for the knowledge and practices of these tribal people.

2. A policy on the conservation, extraction, use, and export of biodiversity elements found on the A&N Islands, especially for those plants and animals which are endemic (found only there).

3. Urgent steps to conserve the remaining natural habitats of the islands, and to secure the territorial integrity of the tribal groups (especially the Jarawas, Sentinelese, and Shompens of Great Nicobar, aside from the Onges).

4. Formulation of both a policy safeguarding the resource and intellectual rights of tribal and other local communities, and legislation requiring collectors to secure the consent of these communities, and obligating them to enter into appropriate benefit-sharing arrangements. This should also apply to scientific work.

Having ratified the Biodiversity Convention, India is obliged to safeguard the resource and intellectual rights and interests of its local communities. Bold statements at international meetings are meaningful only if translated into actions back home. The current case of the Onges will be a major test of the country's commitment to community rights, and of its commitment to the Convention. ☞

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