

# **Impacts of Bio prospecting on the Protection of Traditional Knowledge: Implications for Sri Lanka**

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## **Introduction**

Bioprospecting is the act of conducting scientific research in an area where prior knowledge, usually based on traditional knowledge, already exists. Reid et al. describe bioprospecting as: ‘the exploration of biodiversity for commercially valuable genetic and biochemical resources’. Kim (2007) observes that, “In its most basic form, bioprospecting is a scientific and commercial research paradigm in which bioprospectors explore secluded locations in order to find new drugs and new foodstuffs from exotic plants and animals”. It has become a very important feature in research in both the pharmaceutical and agro-tech industries.

## **Research Problem**

Due to the possibility of unearthing a potentially successful drug or a miracle crop, bioprospecting has become an activity conducted with great urgency of purpose by companies from the developed world. It has been alleged by some that bioprospecting is nothing more than biopiracy- the act of taking traditional knowledge out of communities either with or without their permission, or even without compensating them for it. The problem is further aggravated by the fact that communities do not seem to have a say in whether to allow or exclude outside researchers, as there is some confusion as to who owns traditional knowledge and traditional resources. International instruments that deal with the issue of access to biological and genetic resources have a lopsided view on the right to access, as they fail to consider that once access is granted and the resource is removed from its original site, and taken outside to be developed and patented, the owner him/herself begins to block access to the patented product, thereby denying access altogether

## **Objectives of the Study**

The study aims to examine the bioprospecting experiences in a few selected jurisdictions and analyse the benefits of bioprospecting, both to the

traditional communities and to the prospectors. Through this, it is proposed to ascertain whether traditional communities and the countries they belong to are being exploited or not duly compensated for the input they provided. It also proposed to examine the existing legislation on the subject, both in terms of the international covenants as well as the local laws, to establish whether or not communities are placed in a position to make decisions related to their traditional knowledge, lifestyles and practices.

### **Theoretical Considerations and Empirical Evidence**

It has been the opinion of jurists and researchers in the area that bioprospecting did not bring in adequate benefits to traditional communities. While bioprospecting was regarded as the solution to combat the negative effects of biopiracy, the experience of the early bioprospecting cases only served to heighten the fears that bioprospecting was a more legal means of misappropriating the traditional knowledge of communities.

### **Methodology**

The study was primarily a desk-based research, focusing on secondary sources such as international instruments, scholarly texts and articles, as well as relevant local legislation on the subject.

### **Key Findings and Conclusion**

- In most cases bioprospecting resulted in greater benefits to the prospectors, and very few benefits to the community. Bioprospectors gained valuable insights into the properties of plants and other biological and genetic material that they would have had to otherwise devote a large amount of research into ascertaining. In terms of returns to the community, very often the royalty payments were paltry and in some cases they were not honoured.
- Bioprospecting caused communities to alter their lifestyles, primarily in their production and consumption. The bioprospecting of neem in India provided a good example of this. In that case, communities moved from a “needs” based way of life to a “wants” based culture, placing unbearable burdens on available resources.

- Once the bioprospecting activity was over, communities could not re-adjust back to their former lifestyles. This in turn led to unsustainable patterns of life, which threatened to break down the very fabric of that society.
- Legal and regulatory mechanisms seem to promote bioprospecting as a right of the bioprospector, leaving the communities with little options to refuse a bioprospecting activity in their community.
- The current pattern of vesting ownership of traditional knowledge in the state, rather than in the community nurturing it, reduces the power of the community to refuse bioprospecting activities that they feel could be inimical to their interests.
- In Sri Lanka, biopiracy is already taking place. As a biodiversity hotspot, as well as a country rich in traditional knowledge, it is an ideal location to attract bioprospectors.
- Sri Lanka does not have any legislation that deals specifically with bioprospecting.

Access and benefit sharing agreements (ABS) should be regulated carefully by the state to ensure that communities are not cheated out of their legitimate dues in bioprospecting activities. Benefits arising from such activities should be channeled meaningfully into community development, ensuring that such initiatives do not alter the lifestyle of the community. Communities should be assisted to evaluate such bioprospecting proposals and have the right to refuse those proposals that do not propose meaningful benefits, or that pose a threat to the communities' resources or way of life. Legal instruments should be amended to reflect this position. Communities should be given the ownership rights over their traditional knowledge so that they can take measures to protect and promote their knowledge in the manner that they think best. The state should foster such activity, but not monopolise it. Legal mechanisms could be used to ensure that bioprospecting could be managed in a sustainable manner so that the benefits of scientific research could accrue to society without destroying the base from which it sprang. Sri Lanka needs to enact legislation that will regulate bioprospecting for the greater good of society.

**Keywords:** Access and Benefit Sharing; Bioprospecting; Traditional Knowledge

**References**

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