



E-asy sell out

Creating a database of biological resources and traditional knowledge, and computerising land records may seem like two enlightened initiatives, but if they are done without securing people's rights over their resources, they could lead to further alienation, warn **Shalini Bhutani** and **Kanchi Kohli**

No one would have imagined that computers could have a profound impact on rural India. We are not referring here to the e-choupal-like Internet kiosks linking farmers with the market, or to computer literacy for rural youth. It is two Government of India electronic exercises that have the most potential. One is biological resources and traditional knowledge databasing and the other is the digitisation of land records. If these are not done legally to secure people's rights over their resources, they could lead to further alienation.

Protecting biodiversity or marketing it?

In 2002, the Biological Diversity (BD) Act was legislated in India amidst much controversy over rampant bio-prospecting. The new law was expected to check bio-piracy, as up until then there was no system available in the country by which to keep a check on access to genetic resources and traditional knowledge.

The BD Act established a regulatory framework for the purpose but without challenging the global Intellectual Property Rights (IPRs) regime. In fact, the law provides for the screening of IPR applications such as patents, trademarks, etc on biological resources and related people's knowledge. This is ironic as the 'piracy' of biological resources and traditional knowledge by other than the community holders and local users has been made possible globally by an IPR system under the World Trade Organisation (WTO). The WTO's Trade Related Intellectual Property Rights (TRIPS) Agreement does not prevent the illegal grant of patents on traditional knowledge.

Instead of reining in IPR and making certain biological resources and traditional knowledge out of bounds for patent applications, the biodiversity legislation seeks to systematically document all these resources and knowledge. This, it is said, would provide the necessary references for patent office searches while processing a patent

application. The all-India drive to database all biological resources and associated traditional knowledge would also be proof of what 'belongs' to the Indian nation-state. But this is all quite contrary to local expectations that a biodiversity legislation which, while respecting community sovereignty over local biological resources, would secure their rights of first-use and help guarantee their assured access without allowing any monopolies through any IPR. This, in legal terms, would imply going beyond even the existing Patent Act, 1970 to regard an invention that is traditional knowledge or its duplication not eligible for patentability.

The BD Act does not provide any extra protection to traditional knowledge from patents. In fact, the Act establishes a National Biodiversity Authority, which has already approved several IPR applications on our biological resources without even waiting for the completion of its own traditional knowledge documentation programmes or the setting up of Biodiversity Management Committees (BMCs). In fact, through the BMCs and their mandated function to prepare People's Biodiversity Registers, a nationwide databasing exercise for biodiversity and its associated uses is underway. Of course, in doing so, the oral knowledge neither stays oral nor does the form in which it is recorded 'an electronic centralised database -- make it either accessible or of use to the community itself. And, most critically, the IPR system remains as is.

It was hoped that a law recognising the need to protect people's traditional knowledge would require the government to take pro-active steps to check any activities that come in the way of the practice and continuance of that knowledge. The protection measures, however, are preoccupied with documentation. What is important to understand is that the government-mandated People's Biodiversity Register is required to contain comprehensive information on the availability and knowledge of local biological resources, their medicinal or any other use, or any other traditional knowledge associated with them. This must be entered in a government-prescribed format.

Many communities have articulated that they feel threatened by the extent of the enquiry and the final destination of the collected material. They fear that by this compulsory, officially-sponsored data collection things that might have been kept at a local level, or within a state, could now be used by corporations or private agencies, a not unfounded fear in this time of deepening public-private partnerships, with the government tending to side more with private interests. They feel the disconnect between a centralised electronic database -- even though it holds data about their local resources -- and their informal know-how.

In contrast, in the biodiversity legislation of Costa Rica, peoples' biodiversity rights are legally recognised by the mere existence of the cultural practice or knowledge related

to genetic resources and biochemicals; it does not require prior declaration, explicit recognition or official registration.

In our law it is mandatory for the central government to respect and protect the knowledge of local people relating to biological diversity as recommended by the National Biodiversity Authority through measures that may include registration of such knowledge at the local, state or national levels. Yet no legal registration or protection of what is documented is offered so far in the law or its implementation. So, mere compilation of databases and shifting control from the local to the national level is not going to ensure that India's biodiversity is conserved or protected from misuse.

Land records up for grabs?

In the case of computerising land records, having the hardware and customised software for a country-wide mapping is one thing, but it is necessary to first guarantee people's rights over their land and build safeguards against misappropriation or forced acquisition of land by both the government and corporations.

The National Land Records Modernisation Programme (NLRMP) was initiated in 2008. This replaces two existing centrally-sponsored schemes -- Computerisation of Land Records (CLR) and Strengthening of Revenue Administration & Updating of Land Records (SRA&ULR) -- with a modified centrally-sponsored scheme. The aim is to employ state-of-the-art information technology to overhaul the existing land record system of the country.

A Ministry of Rural Development press release dated August 26, 2008, states: "The data and the conclusive titles would be linked to the development process, such as credit institutions, disaster management, land acquisition and rehabilitation & resettlement, land use planning, cropping pattern and food security, and other secondary data such as issue of various certificates, etc. Besides the citizen and the government, the conclusive titles and secondary data will be of immense use to the private stakeholders."

It makes one wonder about the real motive behind such systemisation of land records. Digitised data could be easily accessed by agencies and interests that are in need of land for industrial and other uses. Land is one of the most contested spaces in the world, and there are huge stakes and price tags involved in determining its use.

In India, the experiences around setting up of Special Economic Zones (SEZs) are a prime example of land conflicts. Land acquisition laws are being made more compatible with the needs of the proposed acquirers. Also, with investors worldwide looking at land, governments are keen to provide relevant information at the click of a

button to speed along business decisions. India has already been chastised by the World Bank about its land records systems.

Meanwhile, only a little over 6% of people in India are reported to have basic knowledge of computers. So the question is whether this is 'inclusive growth', or is this computer-aided stock-taking going to further alienate people from their very resources? Is all this recording being done to protect land, biodiversity, knowledge from the market? Or is it actually to make it more marketable and include these resources in the list of tradeables? After all, you can't sell something till you can show your buyer that it exists!

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