

संशोधक

• वर्ष : ११ • डिसेंबर २०२३ • पुरवणी विशेषांक ०२



प्रकाशक : इतिहासाचार्य वि.का.राजवाडे संशोधन मंडळ, धुळे



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इतिहासाचार्य वि. का. राजवाडे संशोधन मंडळ, धुळे
या संस्थेचे त्रैमासिक

॥ संशोधक ॥

पुरवणी अंक - डिसेंबर २०२३ (त्रैमासिक)

● शके १९४४ ● वर्ष : ९० ● पुरवणीअंक : २

संपादक मंडळ

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* प्रकाशक *

श्री. संजय मुंदडा

कार्याध्यक्ष, इ.वि.का. राजवाडे संशोधन मंडळ, धुळे ४२४००१.

दूरध्वनी (०२५६२) २३३८४८, ९४०४५७७०२०

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'संशोधक त्रैमासिक राजवाडे मंडळ, धुळे' या नावाने पाठवावी.

अक्षरजुळवणी : अनिल साठये, बावधन, पुणे २१.

महाराष्ट्र राज्य साहित्य आणि संस्कृती मंडळाने या नियतकालिकेच्या प्रकाशनार्थ अनुदान दिले आहे. या नियतकालिकेतील लेखकांच्या विचारांशी मंडळ व शासन सहमत असेलच असे नाही.



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An Analysis of Legal Regime Relating To Traditional Medicinal Knowledge in India

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Abstract :

This is a modest attempt on the part of the researcher to analyse legal framework relating to traditional medical knowledge in our country. In this paper, relevant legislations and sui generic initiative in form of TKDL have been analysed by the author. Also an e survey consisting of sample size of approximately 260 respondents has been diligently conducted. Contemporary application of traditional medicinal knowledge in pharmaceutical field has also been referred to here. Hymns from our traditional medical scripture - Atharva Veda have also been alluded by the author.

Key words :

Traditional Medicinal Knowledge

Introduction :

In tune with United Nations Sustainable Development Goals and with specific emphasis on the theme of India's G20 Presidency - "Vasudhaiva Kutumbakam" or "One Earth · One Family · One Future" - this research journey has been undertaken for analysing legal regime relating to traditional medicinal knowledge of India. India being a founding member of GATT which is now WTO and signatory to its multilateral intellectual property rights agreement - TRIPS has to proactively defend rights of its traditional knowledge holders.

Hypothesis :

- * Indian legal regime effectively recognises and protects traditional medicinal knowledge.
- * Traditional Medicinal Knowledge as ingrained in our holy Indian scriptures and mythology have inspired developments in medical field.

Research Methodology :

Non-doctrinal research methodology has been adopted by the researcher.

Meaning of traditional knowledge :

- * WIPO : Traditional knowledge (TK) is

knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

* Article 31, United Nations Declaration on the Rights of Indigenous Peoples, 2007 :

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

* According to India Science Technology and Innovation Portal of India which is an initiative of Department of Science and Technology - Traditional knowledge captures the knowledge developed in India over the years of practice in fields like Ayurveda, Yoga, Homeopathy, Naturopathy, Unani. Some of these have been documented in texts in various traditional Indian languages and others have been carried down as verbal knowledge over the years.

First Hypothesis: Indian legal regime effectively recognises and protects traditional medicinal knowledge.

For testing this hypothesis, the researcher has in brief reflected upon laudable Indian Sui generic



initiative - Traditional Knowledge Digital Library, our domestic Biological Diversity Act, 2002 including contemporary 2023 Amendment Act, and Section 3 of our Patents Act 1970.

Biological Diversity Act, 2002 :

- * This Act has been drafted post TRIPS for:
- * conservation of biological diversity,
- * sustainable use of its components,
- * fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge due to the fact that India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto.
- * This 2002 Act has specifically excluded commercial utilisation of traditional practices in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

Biological Diversity (Amendment) Act, 2023 also protects rights of traditional medicinal knowledge holders to a considerable extents as can be gathered as under :

- * Consent of National Biodiversity Authority is necessary for sharing or transferring any result of research on any biological resource accessed from our country India including associated traditional knowledge for monetary consideration or otherwise.
- * Local people, vaid, hakims and registered AYUSH practitioners who have been practicing indigenous medicines, using codified traditional knowledge, cultivated medicinal plants and its products including Indian systems of medicine as profession for sustenance and livelihood need not give prior intimation to State Biodiversity Board for accessing such traditional medicinal knowledge.
- * Biodiversity Management Committee constituted at District levels by State Biodiversity Board chronicles traditional knowledge.

TKDL :

- * Indian Sui generic pioneering initiative:
- * Safeguards and protects our traditional medicinal

knowledge

- * Systematically and scientifically converts ancient texts on Indian Systems of Medicines - Ayurveda, Siddha, Unani and Sowa Rigpa as well as Yoga into five international languages such as English, Japanese, French, German and Spanish.
- * Innovative classification system - Traditional Knowledge Resource Classification (TKRC).
- * The problem of Indian Traditional Medicinal Knowledge:
- * International Patent Offices and Patent Examiners including search authorities were unable to access our traditional medicinal knowledge as it is ingrained in ancient local dialects of Sanskrit, Hindi, Arabic, Urdu, Tamil and so on languages. Most of these ancient local dialects are no longer in use or practice today.
- * The Features of TKDL :
- * TKRC classified the Indian Traditional Medicinal System into subgroups for Ayurveda, Unani, Siddha and Yoga.
- * Improved search quality and examination of prior art involving patent applications related to traditional knowledge.
- * Acts as a bridge between books of Indian Systems of Medicine (prior art) and International patent examiners.
- * TKDL is available in following Patent Offices across the globe:
- * European Patent Office
- * United State Patent & Trademark Office
- * Japan Patent Office
- * United Kingdom Patent Office
- * Canadian Intellectual Property Office
- * German Patent Office
- * Intellectual Property Australia
- * Indian Patent Office
- * Chile Patent Office
- * Intellectual Property Corporation of Malaysia
- * Rospatent- Intellectual Property Office of Russia
- * Peru Patent Office
- * Spanish Patent and Trademark Office



- * Danish Patent and Trademark office
- * National Industrial Property Institute, France
- * Safeguards adopted by TKDL - NDA:
- * TKDL Access (Non-disclosure) Agreement has in-built safeguards to protect India's interest against any possible misuse.
- * Examiners of patent office can access TKDL for search and examination purposes only and cannot reveal the contents of TKDL to any third party unless it is necessary for the purpose of citation.
- * Achievements of TKDL:
- * More than 4.24 lakh formulations/ practices have been transcribed into the TKDL database.
- * Approximately 271 patent applications have either been set aside/ withdrawn/ amended, based on

Amendment / Modification of Claims by Applicants/Examiners due to TKDL Prior Art Evidence:⁵

Sr. No.	Title	Applicant	Date of Filing	Date of Examiner Report	Date of Amendment of Claims	Current Status
1	Herbal formulation for wound healing	Manish Saxena, New Delhi	25-3-10	8-11-11 10-4-12 11-7-14	11-6-12 10-7-12	After amendment of claims on India's TK on the basis of prior art in TKDL, patent issued
2	Synergistic Composition Herbal	Suresh Kumar Gupta, New Delhi, India	22-4-10	20-4-12 14-11-11	19-7-2012	After amendment of claims on India's TK, application is abandoned
3	Pomegranate derived products for the treatment of skin sores and lesions	MDIP LLC, Montgomery Village, MD, 20886-2630, US	27-7-2010	14-2-12 23-10-12	14-8-12	After amendment of claims on India's TK, application is abandoned
4	Novel use of Lignan type compounds or extract of Nymegor Aril of Nutmeg comprising the same	Hwang; Jae Kwan; Cho; Yu-Mi; Kim; Gyu Hoi; South Korea	17-10-08	24-12-12 27-3-14	24-6-13	After amendment of claims on India's TK on the basis of prior art in TKDL, patent issued
5	Agents from Ficus hispida for the amelioration of Metabolic syndrome and related diseases	Laha, Nutraceuticals	2.2.11	2.1.13 8.1.13	30.10.13	After amendment of claims on India's TK on the basis of prior art in TKDL, patent issued



From the above mentioned tabular data the researcher gathers that due to easily accessible prior art evidences and documentation in various foreign languages as available in our TKDL database, many patent claims based on our traditional knowledge have either been abandoned or amended globally. This is really appreciable as APEDA had to spend about seven crores towards legal fee only for getting few claims of Basmati rice patent revoked.

The Patents Act, 1970 :

- * 3. What are not inventions.-The following are not inventions within the meaning of this Act,-
 - (p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.
 - * With reference to analysis of our domestic Biodiversity Act and Sui generic initiative in the form of TKDL and legal provisions related to non patentable inventions as illustrated by Section 3(p) of our Patents Act, 1970, the researcher gathers that our legal regime does indeed safe guard rights of traditional medicinal knowledge holders.
 - * Second Hypothesis: Traditional Medicinal Knowledge as ingrained in our holy Indian scriptures and mythology have inspired developments in medical field.
 - * For testing this second hypothesis, the author has reflected upon various charms to ward of diseases as contained in our Atharva veda and also conducted a survey from a sample size of approximately 260 respondents.
- Atharva veda :**
- * In this veda one meets physicians and magicians who use drugs and spells to cure diseases, mental as well as physical.
 - * They were the prized possessions of small tribal groups, families or clans, hunter and pastoralists who avoided the forests and followed the course of rivers before they settled down.
- The author herewith reproduces Griffith's translation,

done together with Alexander Lubotsky, of a poem that illustrates the importance of the Atharvaveda for the study of Indian medicine (Paippalada Samhita 4: 15). It deals with the healing of an open fracture with the help of a plant. The translation is literal and supplies within square brackets additional clarifications:

- * Let marrow be put together with marrow, and your joint together with joint, together what of your flesh has fallen apart, together sinew and together your bone.
 - * Let marrow come together with marrow, let bone grow over [together] with bone. We put together your sinew with sinew, let skin grow with skin.
 - * Let hair be put together with hair. [The Rohin-plant] shall fit together skin with skin. Let your blood grow with blood; let flesh grow with flesh.
 - * Grower [are you], healer, grower of the broken bone. You are born on the Rohiniday, you are grower, o plant.
 - * If broken, if inflamed is your own bone, your flesh, Dhatar shall fix it whole, he shall put together joint with joint.
 - * If a thunderbolt that has been hurled has hit you, or if there is an injury due to falling into a well, or one that is there [due to falling] from a tree: the ten headed one shall remove [it]. I put together your joint as Rbhu [the parts] of a chariot.
 - * Stand up, go forth, your joint has been put together. Let Dhatar put together the injury of your body. Be steady in this way, as a chariot goes with good wheels, with good felloes, with good axle-holes, with good naves.
- * Book 1: HYMN XXII - A charm against jaundice :**
- * As the Sun rises, let thy sore disease and yellowness depart.
 - * We compass and surround thee with the colour of a ruddy ox.
 - * With ruddy hues we compass thee that thou mayst live a lengthened life :



- * So that this man be free from harm, and cast his yellow tint away.
- * Devatyas that are red of hue, yea, and the ruddy-coloured kine,
- * Each several form, each several force-with these we compass thee about.
- * To parrots and to starlings we transfer thy sickly yellowness:
- * Now in the yellow-coloured birds we lay this yellowness of thine."
- * Book 5: HYMN V - A charm to mend a broken bone "Aryaman is thy grandsire, Night thy mother, and the Cloud thy sire. ----
- * Whatever wound the arrow, or the staff, or violence inflicts,
- * Thereof thou art the remedy: as such restore this man to health.
- * Thou springest from blest Plaxa, or Asvattha, Dhava, Khadira,
- * Parna, or blest Nyagrodha, so come thou to use, Arundhat?!
- * Gold-coloured, bringing happy fate, most lovely, brilliant as the Sun,
- * Mayst thou, O Healing! come unto the fracture: Healing is thy name."
- * Book 6: HYMN XXX - A Charm to Promote The Growth of Hair
- "Over a magic stone, beside Sarasvati, the Gods Ploughed in this barley that was blent with mead.
- Lord of the plough was Indra, strong with hundred powers: the ploughers were the Maruts they who give rich gifts.
- Thy joy in hair that falleth or is scattered, wherewith thou subjectest a man to laughter
- To other trees, far from thee will I drive it.
- Grow up, thou Sam?, with a hundred branches.
- Auspicious, bearing mighty leaves, holy one,

nurtured by the rain,

Even as a mother to her sons, be gracious, Sam? to our hair."

* Book 7: HYMN CXVI - A Charm Against Fever

"Homage to him the burning one, shaker, exciter, violent!

Homage to him the cold who acts according to his ancient will!

May he, the lawless one, who comes alternate or two following

days, pass over and possess the frog."

Application of traditional medicinal knowledge in contemporary times :

* Herbal Ointment for Wounds :

Now the author has in actuality traced the application of traditional medicinal knowledge in contemporary times - Herbal Ointment for Wounds - Traditional Knowledge, Pharmaceutical Sciences which has been developed by CSIR-National Botanical Research Institute (NBRI), Uttar Pradesh.

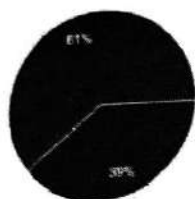
Social and Commercial Benefits derived from this traditional medicinal knowledge application is that :

- * the herbal formulation is antimicrobial and anti-fungal.
- * gives immediate relief to inflammation.
- * Unlike the commercial wound healing formulations, it is useful for regeneration of the dead cells and connective tissues.
- * Novel herbal formulation for treatment of cuts burns and wounds.
- * For external use and exhibits regeneration of the tissue.
- * Formulation used in fresh cuts and wounds, effective in healing diabetic wounds, exhibits regeneration of dead tissue.

- * Formulation used in fresh cuts and wounds, effective in healing diabetic wounds, exhibits regeneration of dead tissue.

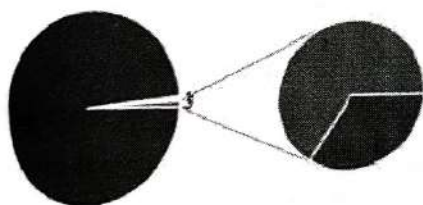
A survey of sample size of approximately 260 was conducted to gauge whether traditional medicinal knowledge as ingrained in our holy Indian scriptures and mythology have inspired developments in medical field.

Gender
264 responses



- Male
- Female
- Other
- Prefer not to say

Count of Country



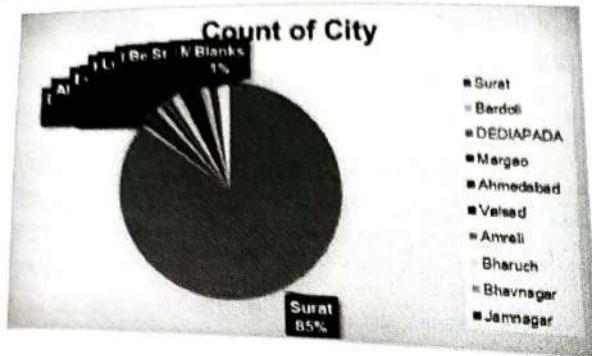
India Oman UAE UK USA

Responses from 5 countries have been received through the survey.

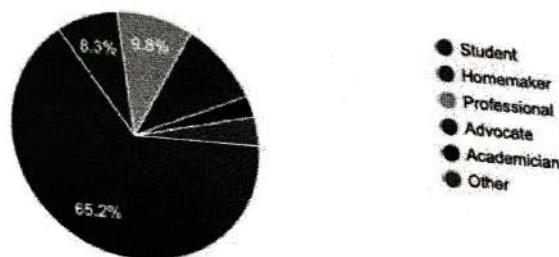
Count of State



Count of State	2	1	243	3	1	2	1	4	1	1	1	1	2
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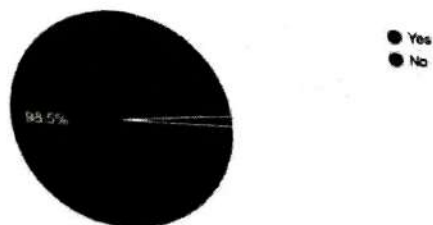


Occupation
264 responses



There is a need for Traditional Medicinal Knowledge Act for better protection of Indian Traditional Knowledge. भारतीय पारंपरिक ज्ञान के बेहतर संरक्षण के ...सारा शब्दों में परंपरागत औषधीय ज्ञान अधिनियमनी जरूर है.

256 responses



More than 98 percentage of respondents agree that traditional medicinal knowledge should accorded better statutory protection.



Rights of traditional knowledge holders should be effectively protected and safeguarded. पारंपरिक ज्ञानधारकों के अधिकारों की प्रभावी रूप से रक्षा और सुरक्षा...धारकों अधिकारोंनु असरकारक रीते रक्षाक अने अथाय बवो ज्योअने.

266 responses



● Yes
● No

All the respondents are of the opinion that the rights of traditional knowledge holders should be safeguarded.

Traditional Medicinal Knowledge (such as - use of ginger as a home remedy for cold or sore throat - application for raw turmeric paste for healing scars and ...क्षित करवाभा आय्यु छे अने प्रसारित करवाभा आय्यु छे.

266 responses

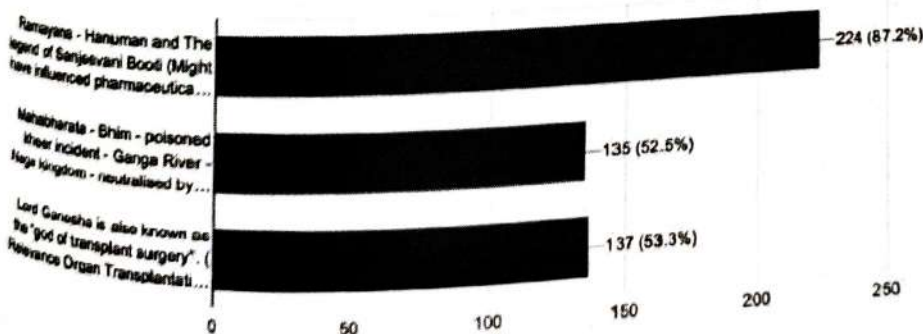


● Yes
● No

Traditional Medicinal Knowledge (such as - use of ginger as a home remedy for cold or sore throat - application for raw turmeric paste for healing scars and acne - intake of ajwain for helping with indigestion and so on) has been preserved and transmitted through generations family of nearly 98 percentage of respondents.

Check the relevant boxes pertaining to holy Indian scriptures and mythology which according to you might have inspired medicinal knowledge: आपके अनु...अने पौराणिक कथाओंने लगता संबंधित ऑइसन पसंद करो:

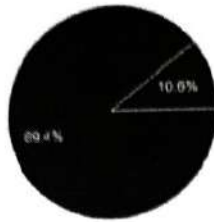
227 responses



Majority of respondents agree that holy Indian scriptures and mythology have inspired medical knowledge.



You rely on time tested home cures inspired by traditional medicinal knowledge for minor ailments and do not prefer to purchase medicines from pharmac... અને ગુર્મસીમાંથી દવાઓ ખરીદવાને પ્રાધાન્ય આપતા નથી.
263 responses



● Yes
● No

Nearly 89 percentage of respondents rely on home cures rather than purchasing medicines from pharmacy.

The author now verbatim reproduces similar observations of our Honourable Prime Minister Modiji as under:

"We worship Lord Ganesha. There must have been some plastic surgeon at that time who got an elephant's head on the body of a human being and began the practice of plastic surgery."

Conclusion :

- * Our legal regime safeguards right so traditional medicinal knowledge holders.
- * Traditional Medicinal Knowledge as ingrained in our holy Indian scriptures and mythology has definitely inspired developments in medical field as evident from the above stated CSIR initiative. This hypothesis is supported by nearly 260 respondents. To top it all similar opinion is shared by our very own dynamic Prime Minister also.

Recommendations :

In our country traditional medicinal knowledge is protected by legislations like Biodiversity Act,

Patents Act and Sui generic initiative in form of TKDL. There is a need for domestic comprehensive legislative mechanism such as Protection and Promotion of Thai Traditional Medical Knowledge Act.

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इतिहासाचार्य वि. का. राजवाडे संशोधन मंडळ, धुळे

विक्रीसाठी उपलब्ध असलेल्या दुर्मिळ ग्रंथांची यादी

☎: (०२५६२) २३३८४८

अ.न.	पुस्तकाचे नांव	किंमत रुपये
१)	छत्रपती शिवाजी महाराजांची पत्रे	३५०
२)	शिवाजीची राजनिती	४५०
३)	राजवाडे चरित्र	७००
४)	इ.वि.का.राजवाडे समग्र साहित्य (खंड ४ ते १०) ३५० × ६	२१००
५)	मराठ्यांच्या इतिहासाची साधने (खंड १ ते ११) ४०० × ११	४४००
६)	The Sources of Maratha History ५ खंड ६०० × ५	३०००
७)	गीताई धर्मसार	५०
८)	जागतिक बालक वर्षानिमित्त	२५
९)	अमृतानुभव	१००
१०)	कॅटलॉग	५०
११)	नागपुरकर भोसल्यांचे चिटणीशी बयान	५०
१२)	संशोधक-काँग्रेस शताब्दी विशेषांक	५०
१३)	ज्ञानेश्वर नितीकथा	२०
१४)	कमाविसदार	४००
१५)	योगचिंतामणी	१००
१६)	वेडिया नागेश	२५
१७)	नवरस रागमाला (संशोधक)	५०
१८)	तात्या जोगाच्या चरित्राची साधने	१००
१९)	मोडीलीपी परिचय	२००
२०)	खानदेश माळव्याच्या इतिहासाची साधने	१५०
२१)	दुर्मिळ संच (संशोधक)	३०००
२२)	निरुक्त	२०००
२३)	नागपूर राज्याच्या इतिहासाची साधने	२५०
२४)	मराठाकालीन शासन व्यवस्था आणि स्थित्यंतरे	१५०

