

**GOVERNMENT OF INDIA  
COMMERCE AND INDUSTRY  
LOK SABHA**

UNSTARRED QUESTION NO:3491  
ANSWERED ON:20.08.2004  
PATENTING OF HERBS AND MEDICINAL PLANTS  
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**Will the Minister of COMMERCE AND INDUSTRY be pleased to state:**

- (a) whether some developed countries and the multinational companies have obtained the patent of several of the Indian herbs and medicinal plants;
- (b) if so, the details thereof; and
- (c) the action taken by the Government to safeguard and extend the Indian patent claim on these herbs and medicinal plants that are being patented by other countries?

**Answer**

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI E. V. K. S. ELANGO VAN)

(a) and (b) : Patents are sought and obtained by applicants/inventors, both Indian and foreign, in different countries to safeguard and promote their commercial and other interests. Such patents are granted under the sovereign prerogative of countries according to their respective patent laws and have territorial effect, that is, they are effective only in the country of grant. In order to qualify for grant of patent in any country an invention, whether process or product, has to meet the criteria of patentability, namely, novelty, inventiveness and industrial applicability. Herbs and medicinal plants, existing in nature, would not meet the criteria of patentability, namely, novelty, inventiveness and industrial applicability. However, patents have reportedly been granted on compositions based on properties of certain herbs/medicinal plants. Data on goods/ items patented worldwide is not maintained.

(c): As patents are essentially private rights they are normally challenged, in accordance with the patent laws of the country concerned, by the person(s) whose interests are affected/jeopardized. Government acts as a facilitator by granting patents to inventions which fulfil the criteria of patentability as per the patents law.

As and when information is received about patents being obtained on certain items which are not considered patentable and which affect Indian interests, steps are taken to assess whether the grant of such patent can be challenged under the patent laws of the country concerned. Earlier a patent granted in the United States of America on the use of turmeric in wound healing was successfully challenged and was also cancelled by the Patent Office of the country concerned. Similarly, a patent on the fungicidal property of neem, granted in Europe, was successfully challenged. The claims of the patent on Basmati Ricelines and grains granted in the United States of America which had the potential of affecting India's commercial interest were also challenged. The said claims were subsequently cancelled by the United States Patent and Trademark Office and the title of the patent was also amended.

In order to protect bio-resources, provisions have been incorporated in the Indian Patent law through the Patents (Amendment) Act, 2002, providing for mandatory disclosure of source and geographical origin of the biological material used in the invention while applying for patents in India. Provisions have also been incorporated to include non-disclosure or wrongful disclosure of the same as grounds for opposition and for revocation of the patent, if granted. These are contained in sections 10, 25 and 64 of the Patents Act.

In order to protect traditional knowledge from being patented, provisions have been incorporated in the said law to include anticipation of invention by available local knowledge, including oral knowledge, as one of the grounds for opposition as also for revocation of patent. An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components has also been made non-patentable. These are contained in sections 3, 25 and 64 of the Patents Act. Apart from these, Government is also developing a digital database of traditional knowledge in the field of medicinal plants in order to prevent patents being granted incorrectly on such knowledge.