ACCESS TO JUSTICE IN THE BENEFIT SHARING REGIME: AN INDIGENOUS PERSPECTIVE

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INTRODUCTION

The concept of Access to Justice in the context of access and benefit sharing (hereinafter ABS) is a matter that has seldom received the attention of the international community. Nevertheless, it is emerging as one of the most essential aspects of access to justice in respect of the indigenous and local communities (hereinafter ILCs). In order to understand the relevance of this theme, it is imperative to appreciate the reasons that led to the need for justice in this system and for which one has to look back into the historical aspects and emergence of the present ABS system.

Understanding the need for Justice in the process of Access and Benefit Sharing

In the times of conquests, the invaders plundered and took away the wealth of invaded states, including components of their natural wealth. Similar policy was followed in times to come when the concept of nationhood emerged. The colonizing nations drained away the natural and biological resources of colonized states.[1] The export of agricultural and mineral raw materials from India to Britain including cotton, indigo and spices to be further sold to their manufacturers is one such example.[2] Not only was there no sharing of benefits but such forced access caused the colonized economies to reach deplorable levels. Even after gaining independence, these colonies could not be considered to be absolutely free from dominance especially in context of access to biological resources found within their territories. During the same time i.e. around mid-twentieth century, when colonized states were breaking free from shackles of the past, the developed countries in order to ensure protection to creators of plant varieties belonging to their jurisdictions came up with the UPOV Convention[3].[4] Under this system, state sovereignty was no hindrance to access plant genetic resources whether existing in wild or protected under plant breeder's rights.[5] It was agreed that the principle of common heritage of mankind shall cover plant genetic resources within its purview[6] which impliedly meant that their access was to be allowed freely.[7] In fact, as far as access

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[1] 2 Elisa Morgera, Matthias Buck & Elsa Tsioumani, Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit Sharing to the Convention on Biological Diversity 7 (2014)
[2] Bipan Chandra, Modern India 94
[3] UPOV Convention, Upov.int (2017), <http://www.upov.int/upovlex/en/conventions/1961/content.html> Accessed on: Sep 14, 2017
[4] Relationship Between Intellectual Property Rights and Access to Genetic Resources and Biotechnology, 3-4 (1990), <https://www.cbd.int/doc/meetings/iccbd/bdewg-03/official/bdewg-03-inf-04-en.pdf> Accessed on: Aug 24, 2017
[5] Ibid at 4
[6] Resolution 8/83 INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, 1 (1983), <http://www.fao.org/wiews-archive/docs/Resolution_8_83.pdf> Accessed on: Aug 18, 2017
[7] MORGERA, Supra note 1 at 6

to biological resources was concerned, it did not practically matter that whether a state is a party to the UPOV Convention or not.

It is a matter of fact that in the wake of industrial revolution, the world had been gaining new grounds in technological advancements especially in biotechnological field. The concept of access widened in two ways, firstly, access of biological resources no longer remained concentrated to their consumption but the idea of deriving commercially tradable commodities out of their utilization started gaining prominence at the global level. This has led to excessive exploitation of biological resources of the south by technologically rich business giants of the north. Secondly, it was found to extend to the traditional knowledge (hereinafter TK) that is held by ILCs. In general, the access to TK is considered significant as it reduces the cost of experimenting, saves valuable research time and ultimately enhances the certainty to arrive at commercially viable products.[8] This exploitation of biological resources and TK associated with such resources continued without any answers to the call for sharing of benefits with those who had been conserving these resources since ages and passing the valuable TK to next generations.

Therefore, the problem was two-fold; firstly, the access was free, without a condition of prior approval and secondly, there was no sharing of benefits with the providers of resources or the associated TK. This phenomenon in the history of human and environment is referred to as Biopiracy.[9] It was rampant during last two decades of the twentieth century especially after the grant of patent rights over a genetically modified organism by a US Court.[10] This decision as well as domestic intellectual property laws of several developed nations emboldened the users of biological resources to claim intellectual property rights over such resources in one manner or the other, permissible in law, to suit their commercial interests.[11] Hence, the struggle of developing states and their ILCs for a fair and equitable sharing of benefits arrived at by utilization of biological resources and TK associated with such biological resources started boiling up. This series of historical as well as continuing exploitation of biological resources and TK in various forms, lays down the foundation of the need of access to justice in the ABS system.

STATEMENT OF PROBLEM

The efforts of the international community especially of the countries which were at the receiving end of Biopiracy culminated in the form of the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable sharing of Benefits Arising out of their Utilization to the Convention on

[8] MORGERA, Supra note 1 at 28

[9] Global Biopiracy: Patents, Plants and Indigenous Knowledge, 11-12 (2006), <https://books.google.co.in/books?id=q4MIoBKy88MC&printsec=frontcover#v=onepage&q&f=false> Accessed on: Sep 25, 2017

[10] *Diamond* v. *Chakrabarty*, 447 U.S. 303 79 (1980)

[11] MORGERA, Supra note 1 at 8, Biopiracy & Related Issues, simply decoded (2013), <http://www.simplydecoded.com/2013/07/14/biopiracy-related-issues/> Accessed on: Jul 24, 2017

Biological Diversity (hereinafter the Protocol).[12] The Protocol provides guidance to the state parties to frame domestic laws, administrative or policy measures in order to create legal certainty and transparency for providers and users of genetic resources and associated TK.[13]

Now, the inherent problem with this piece of international law is that, it has largely subjected the rights of ILCs to the regulations framed by respective state parties. That is to mean, ILCs shall be governed by and shall exercise such rights as are guaranteed within the domestic laws of their states.[14] The problem that arises out of this fact is the issue of access to justice for the ILCs in situations where in their right to a fair and equitable share in benefits is not guaranteed by the state or even if guaranteed in letters of law, is not realized.

Therefore, this paper seeks to look at this issue from the perspective of ILCs through an in depth discussion on the concept of access to justice in international law and multilateral agreements on ABS. In continuation, the domestic regulations of India with respect to ABS shall be analyzed from the same perspective. The justification of choosing India as part of this paper is that she is a part of the Like Minded Mega Diverse Countries (LMMCs)[15] and is also a party to the Protocol.[16] Given her rich biological diversity and being home to three biodiversity hotspots of the world[17], she largely acts as the provider country in the functional aspect of the ABS system.

Following the above stated doctrinal methodology of research, this paper seeks to test the following hypothesis, which shall in turn play a crucial role to arrive at an objective conclusion and make necessary suggestions in this regard.

HYPOTHESIS

'The Nagoya Protocol on ABS does not provide effective mechanisms to enable ILCs to access justice in case of violation of their right to a fair and equitable share in benefits arising out of the utilization of genetic resources or TK associated with such resources, of which they are the rightful holders.'

THE CONCEPT OF ACCESS TO JUSTICE IN INTERNATIONAL LAW

[12] Tim K. Mackey & Bryan A. Liang, Integrating Biodiversity Management and Indigenous Biopiracy Protection to Promote Environmental Justice and Global Health, 102 American Journal of Public Health 1091-1095 (2012)
[13] About the Nagoya Protocol, Cbd.int (2017), <https://www.cbd.int/abs/about/> Accessed on: Oct 9, 2017
[14] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing ff Benefits Arising From Their Utilization to the Convention on Biological Diversity, 6-7 (2011), <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf> Accessed on: Jun 3, 2017
[15] Group of Like Minded Mega Diverse Countries (LMMCs), Department of Environmental Affairs, Republic of South Africa (2017), <https://www.environment.gov.za/likeminded_megadiversecountries_lmmc> Accessed on: Jun 18, 2017
[16] Parties to the Nagoya Protocol, Cbd.int, <https://www.cbd.int/abs/nagoya-protocol/signatories/default.shtml> Accessed on: Jan 18, 2017
[17] CEPF.net - Asia-Pacific, Cepf.net (2017), <http://www.cepf.net/resources/hotspots/Asia-Pacific/Pages/default.aspx> Accessed on: Aug 18, 2017

Justice is one of the most essential components of the Rule of Law. It is a crucial factor in deciding the longevity of a legal system as it determines the faith of the people in it. Access to justice is not restricted to mean access to courts but in fact is a collection of various human rights and principles of natural justice such as right to be heard, right to a proper legal representation, right to a fair trial, access to information, right to a reasoned and unbiased decision, right of locus standi to espouse once cause and also the socio-economic right to be able to do so. Accordingly, The UNDP has defined access to justice as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.[18] Interestingly and rightly so, the definition does not put emphasis on the kind of institution delivering the judgment or the applicable law but it puts a special and express emphasis on compliance with human rights standards provided for in various sources of domestic and international law.

Access to Justice: the diminishing divide between International and Domestic Law

The point where the concept of access to justice is actualized is when an individual exercises his right to seek redress from the court of law as soon as a legal right is infringed.

With the evolution of international law, individuals stand today as a recognized subject of International Law.[19] But simultaneously, they still continue to be subjects of their state; which was created by such individuals by way of social contract for their mutual preservation and safeguarding their own fundamental freedoms.[20] The grievances of individuals are primarily brought before domestic court of law. If the state has agreed to subject itself to an international court by way of a treaty, wherein its nationals can bring up a case against it, in that case an individual can institute a proceeding against his state under such court.[21] Therefore, it would not be wrong to argue that domestic law and domestic courts continue to be the main focal point of the concept of access to justice for individuals.[22]

But nevertheless, in today's time, the domestic courts do not stand in a position to ignore components of international law such as Customary Principles of International Law, General Principles of International Law, Jus Cogens, Erga Omnes Obligations, International Human Rights Standards and Treaty Laws to which their state is a party. It is quite evident from emerging

[18] Strengthening Judicial Integrity through Enhanced Access to Justice, 6 (2017), <http://www.undp.org/content/dam/rbec/docs/Access%20to%20justice.pdf> Accessed on: Sep 25, 2017

[19] Mark Weston Janis, Individuals as Subjects of International Law, 17 Cornell International Law Journal 2 (1984)

[20] Spark Notes: Jean-Jacques Rousseau (1712–1778): The Social Contract, Sparknotes.com (2014), <http://www.sparknotes.com/philosophy/rousseau/section2.rhtml> Accessed on: Sep 15, 2017

[21] European Convention on Human Rights, Art 34 (2010), <http://www.echr.coe.int/Documents/Convention_ENG.pdf> Accessed on: Mar 18, 2017

[22] Centre for Post Graduate Legal Studies O.P. Jindal Global University, [Lecture] 'Access to Justice in International Law' 1/2 - Prof. Yogesh Tyagi (2015), < https://www.youtube.com/watch?v=OZbQ6XJBnqc> Accessed on: Aug 12,2017

domestic case laws[23] that it is crucial to appreciate the significance of international law as a whole in guaranteeing access to justice to an aggrieved individual who brings up a matter before a domestic court of law.

Access to Justice and Multilateral Environmental Agreements

Even in wake of such wider application of International Laws, the multilateral environmental agreements (hereinafter MEAs) seem to be weak instruments of law as far as access to justice is concerned. This is especially due to the nature of such agreements. MEAs cannot be put under the category of soft law or hard law in a straight-jacket manner. These instruments are in general a mix of hard and soft law provisions.[24] This fact is especially true in case of CBD and the Nagoya Protocol attached to it. Although, the convention as well as the protocol use the 'shall' terminology in several provisions of their texts but still a complete reading of these provisions brings into light the illusive character of it. The protocol leaves it to the discretion of state parties to fulfill the obligation enshrined in it and gives much legal space than is needed by states to act in accordance with the protocol. The use of phrases such as 'as far as possible' and 'as appropriate' in majority of its provision[25] dilute the binding force of the Protocol to a great extent. Also, there is no threshold level indicated by way of model laws/ model ABS Agreements to be indicative of desired standards of 'appropriateness' or 'possibilities' to be achieved by state parties depending on their respective capabilities. It is true that such leeway is required to be given to states to encourage them to become parties to international instruments and especially so in case of MEAs but it is equally required to set a limit to this flexibility in order to let the norms retain their ability to fulfill the purpose for which they were enacted. This is crucial from the point of view of ensuring access to justice. If the crafting of norms in international law itself is dubious and weak, then the domestic norms which are crafted by states in pursuance of or to give effect to such international law shall ipso facto be feeble. Also, ensuring compliance with such international or domestic laws shall become an uphill task for judicial system of a state. Resultantly, the larger purpose of ensuring access to justice and upholding the rule of law are bound to be affected in such cases.

In view of the above discussion, the next section shall analyze the international law on ABS in context to the concept of access to justice. It seeks to look at the ways in which relevant MEAs have created space for ILCs to be able to espouse their cause to a fair and equitable share in benefits arrived at by the utilization of biological resources and TK associated with such resources and by doing so whether these instruments have contributed substantially to ensure access to justice to ILCs in this regard.

[23] *Vishaka & Others* v. *State of Rajasthan & Others* (1997) 6 SCC 241: *Indian Council for Enviro-Legal Action* v. *Union of India*, AIR 1996SC 1446: *Vellore Citizens Welfare Forum* v. *Union of India*, AIR 1996 SC 2715

[24] Book Review: Daniel Bodansky, The Art and Craft of International Environmental Law, 10 Santa Clara Journal of International Law 4-6 (2013)

[25] Nagoya, Supra note 14, Art. 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

ACCESS TO JUSTICE AND INTERNATIONAL LEGAL REGIME ON ACCESS AND BENEFIT SHARING

The fair and equitable sharing of the benefits arising out of the utilization of genetic resources is incorporated as one of the objectives of the CBD[26] which is a multilateral agreement of universal character.[27] In order to further this objective, the Protocol was adopted in 2010 and has come into effect recently.[28] Collectively, these two international instruments lay out norms for the purpose of ensuring fair and equitable sharing of benefits and aiding the state parties in curtailing Biopiracy to an appreciable extent. The protocol in particular, lays down certain key norms on fair and equitable sharing of benefits with ILCs holding TK or having established rights over a genetic resource that is accessed.[29] The protocol provides that in accordance with their domestic legislations, state parties shall take measures to ensure that the prior informed consent (hereinafter PIC) of ILCs has been taken where their right to grant access to genetic resources is established in law.[30] Similarly, the state parties need to ensure that TK associated with genetic resources that is held by ILCs is accessed with the PIC or approval and involvement of these ILCs.[31] At this juncture, it is important to reiterate that this paper is not a descriptive analysis of the provisions under the CBD or the Protocol; instead it seeks to bring forward the access to justice issues and implementation challenges that arise within an ABS system specifically in context of ILCs.

The most prominent challenge facing ILCs relates to the kind of recourse that is available to them in situations where in the state parties do not provide for legislative or policy measures within their jurisdictions in compliance with the requirements of the Protocol or even if it provides for such mechanisms, those appear insufficient to safeguard their legal interests. As stated earlier, the soft language of the Protocol provides enough leeway to state parties in their actions. Therefore, unless states agree to act in good faith, the laws within different jurisdictions are bound to vary in accordance with the interests of the state parties and seldom in accordance with the interest of the ILCs.

Another related issue in context of access to justice is regarding the kind of recourse that is available to ILCs in situations when mutually agreed terms (hereinafter MAT) have not been established between them and users or when such MAT provisions in the ABS agreement have not been complied with by users in cases where TK associated with genetic resources has been accessed. One of the very basic issues left unaddressed by the Protocol is that do these ILCs have any recourse against the state where the state does not provide them with an established right to grant access to those biological resources which they have been conserving and nurturing over

[26] Convention on Biological Diversity, 49 Art 1 (1992), <https://treaties.un.org/doc/Treaties/1992/06/19920605%2008-44%20PM/Ch_XXVII_08p.pdf> Accessed on: Jul 12, 2017
[27] List of Parties, Cbd.int, https://www.cbd.int/information/parties.shtml> Accessed on: Oct 4, 2017
[28] About the Nagoya Protocol, Cbd.int, https://www.cbd.int/abs/about/ Accessed on: Oct 4, 2017
[29] Nagoya, Supra note, Art. 5
[30] Ibid, Art. 6
[31] Ibid, Art. 8

generations and hence they are devoid of right to grant PIC when access to such genetic resource is granted by state. In the understanding of the author, the protocol leaves the matter of recognizing ILCs as holders of genetic resources to the discretion of state parties[32] and hence does not guarantee such right to the ILCs. The Protocol obliges the state parties to share the benefits arising from the utilization of genetic resources only when such genetic resources are held by ILCs in accordance with their domestic law.[33] The jurisdictions wherein ILCs are not recognized as holders of genetic resources by the state parties, they do not have a right to claim a fair and equitable share in benefits unless the state provides for such sharing in spite of not recognizing them as holders of such genetic resource. This is one of the serious flaws in the drafting of the text of the protocol as it does not sufficiently safeguard the rights of ILCs who have been playing a crucial role in conservations of biodiversity at large, since hundreds of generations.

It is evident from the current framework of ABS, that in most of the cases, parties to the ABS agreement are the user which could be any physical and/or legal entity and the state which provides the genetic resource or traditional knowledge to the user as per the agreement.[34] In short, the user shares the benefits with the state authority in accordance with the terms of the agreement which in turn channelizes this benefit for the purpose of conservation of biological diversity or for the upliftment of its ILCs. The issue that arises here is, in case when a mutually agreed term of such agreement is violated by the user, do ILCs have a locus standi against the user to bring up their claims in appropriate forums or as per the rule of privity of contract, is their locus standi restricted to bring up claims against their own governments in a court of law.

A related question is whether in such situations, this right needs to be expressly mentioned as part of their domestic law by way of recognizing them as benefit claimers. A similar issue can crop up in situations when in a particular ABS arrangement, the user has complied with his part of the agreement but the benefits have not been channelized by the concerned state authorities to the ILCs or not being utilized in conservation/ restoration of the resources that were accessed. If such right to these ILCs is restricted in law or left unaddressed, then it is a matter of grave concern as it ultimately leads to curtailing access to justice to the ILCs. It can safely be said here; that the environmental jurisprudence of some of the states has advanced to an extent where in the domestic court of law might admit the pro bono publico plea even in situations where the domestic law does not recognize them as benefit claimers or does not obliges the executive to share the benefits with the ILCs of the state but it still remains a significant issue of access to justice in jurisdictions wherein environmental jurisprudence still exists in it archaic form.

The ILCs are generally tribal people who reside in interiors of a state away from the hacks of everyday life of town people. Such communities practice sustainable lifestyle and live in close proximity with nature sharing a close bond with different components of it. These ILCs are not

[32] Ibid, Art. 6 para 2
[33] Ibid, Art. 5 para 2
[34] MORGERA, Supra note 1 at 15-20

well versed with the law of the land, so they actually cannot be said to possess knowledge and means necessary to access justice even when the right to do so is guaranteed to them by the law.

Therefore, for the purpose of guaranteeing access to justice to these communities, it is not just required to guarantee rights to them by way of a legislation, but it is equally required that the state must take positive steps as part of various governmental schemes to enhance capacities of these people to claim their rights, provide legal aid to them, make them aware of their rights and the ways to ensure them. Only then, it shall be possible to bring to realization, the larger purpose of the Protocol.

After an initial discussion on access to justice challenges that crop up due to the dubious language of the protocol, it becomes necessary to look at the law of a state, party to it, in order to provide a domestic picture of the access to justice challenges with respect to ABS system.

EXPLORING THE ACCESS TO JUSTICE CHALLENGES IN ACCESS AND BENEFIT SHARING REGULATIONS OF INDIA

In India, the law that regulates ABS is the Biological Diversity Act[35] (hereinafter the Act) of 2002. It was enacted in pursuance of the CBD and much before the coming into existence of the Protocol. Therefore, certain amendments are required in country's domestic law on ABS to bring it in conformity with the requirements of the Protocol. The Act expressly recognizes the ILCs as Benefit Claimers[36] but does not recognize them as holders of genetic resources. As these ILCs are recognized to be benefit claimers under the law, they have an option to seek justice in the court of law against the state authorities in situations wherein the benefits are not shared with ILCs in accordance with MAT provisions or their right to a fair and equitable share in benefits has been violated in any other manner. Under the Act, the requirement of sharing of benefits arising out of utilization of genetic resources or TK associated with it is expressly provided for the cases where user is a foreign entity, non-resident Indian or a body corporate with a foreign element.[37] Whereas, in case of national users, the requirement is to provide prior intimation to the state biodiversity board concerned[38] which shall in turn regulate granting of approvals.[39] This fact restricts access to justice for ILCs by not requiring the national users to share the benefits, expressly under the Act. The National Green Tribunal of India exercises jurisdiction over the disputes arising out of the Act[40], and therefore, it shall be the appropriate forum for redressal of grievances in such cases. As such, the jurisprudence in relation to ABS is at a very nascent stage in India, and it remains to be seen as to the kind of approach that the court shall adopt to guarantee justice in disputes involving ILCs who move the court of law to enforce their rights as benefit claimers. As is evident from the

[35] The Biological Diversity Act, 2002, India (2002)
[36] Ibid at Section 2 (a).s
[37] Ibid at Section 21
[38] Ibid at Section 7
[39] Ibid at Section 23
[40] Schedule VII, The National Green Tribunal Act, 2010, India (2010)

previous environmental case laws,[41] in a case of this sort, the Supreme Court shall along with the applicable domestic law, apply international laws that are not in conflict with domestic laws, have acquired a character of customary international law or are part of a treaty law to which India is a party including international human rights standards in general and dealing with the protection of indigenous peoples in particular.[42]

SUGGESTIONS

The analysis of the access to justice issues in the current international ABS framework reveals that it is largely a subject matter of domestic laws on ABS of various state parties to the Protocol. Therefore, the above mentioned hypothesis of this research paper stands proved. The Protocol leaves it to the discretion of the state parties to provide the rights to their ILCs based on the state's capacity, its political will, public policy and other related factors. Access to justice issues in the ABS process can be minimized in following three ways. Firstly, through an effective domestic legislation framed in good faith and in pursuance of the obligations on states enshrined in the Protocol guaranteeing rights to the ILCs to a fair and equitable share in benefits. Secondly, a stronger executive commitment and decision making to enhance the implementation of laws in order to fulfill the larger purpose of conservation of biodiversity, sustainable use of its components and safeguarding the rights of ILCs; thirdly, by ensuring timely enforcement of judgments on ABS to ensure speedy justice. Following suggestions shall play a crucial role in strengthening domestic laws on ABS under various jurisdictions:

Express Recognition of ILCs as benefit claimers in law

The ILCs must be given recognition for the role that they have played in conserving biodiversity and propagating TK since generations and must specifically be declared as benefit claimers under the domestic law on ABS as is found in the Indian law on ABS.

Inter-state and Intra-state Sharing of Benefits

The experience says that domestic laws on ABS must provide for inter-state as well as intra-state sharing of benefits. The origin of the user must not be a criterion for discrimination in sharing of benefits.

The complete ABS process must include active participation of ILCs

The domestic law must expressly provide for a mandatory requirement of PIC of ILCs and for their representation during the grant of approval to access genetic resources and negotiations of MAT

[41] Dr. Sunil Kumar Agarwal, Implementation of International Law in India: Role of Judiciary pp. 1-14, <http://oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf> Accessed on: Oct 4, 2017

[42] United Nations Declaration on the Rights of Indigenous Peoples, (2008), <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf> Accessed on: Oct 4, 2017

wherein it is found that such resource is a part of their lifestyle and culture and they have been playing a crucial role in its conservation.

Ensuring Transparency and Accountability

The information of sharing of benefits in each ABS agreement, the manner in which the benefits are channelized for conservation of resources or upliftment of ILCs must be made available to representatives of ILCs in written form by the concerned states authorities.

Awareness and Legal Aid to Ensure Speedy Justice

As is recognized under the Protocol,[43] ILCs must be made aware about their legal rights as benefit claimers and must be provided legal aid by state authorities in cases of non-compliance of the laws on sharing of benefits in order to make them capable of raising their concerns before the court of law.

CONCLUSION

'To do justice is the aim of law'. The three wings of a state i.e. legislature, executive and judiciary, endeavour to achieve this aim within their respective domains. Access to justice becomes more crucial in the wake of high vulnerability of certain sections of society who lack legal awareness regarding their rights guaranteed under law. ILCs are one such section of the society whose interests need to be protected by their respective states in an ABS process. The crucial role that these people have played in conservation and sustainable use of biodiversity since the times when states were non-existent needs to be appreciated and rewarded. Access to justice for ILCs in context of ABS can only be enhanced through strong domestic laws and a stronger mutual cooperation between user and provider countries.

The fundamental point that this paper wishes to highlight is that the current focus of the international community is to codify rights of ILCs within their domestic laws. Access to Justice in context of ILCs is the next big issue that shall occupy the space of multilateral environmental challenges. Therefore, in the present phase of framing and amending of domestic ABS laws by the state parties in order to ensure compliance with the Protocol, it is the right time to bring forward the issue of access to justice in the process of access and benefit sharing to adequately safeguard the rights of ILCs.

[43] Nagoya, Supra note at Preamble, S Art 21