

# INTELLECTUAL PROPERTY PROTECTIONS AND LEGAL IMPLICATIONS IN TRADITIONAL KNOWLEDGE OF INDIA

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## Abstract:

The legal implications of traditional knowledge vary depending on the jurisdiction and the specific context in which it is applied. Traditional knowledge refers to the knowledge, innovations, and practices of indigenous and local communities that have been developed and passed down through generations. It encompasses a wide range of areas, including agriculture, medicine, biodiversity, and cultural expressions. Intellectual Property Rights (IPRs) are often a central issue when discussing the legal implications of traditional knowledge. However, it's important to note that the protection of traditional knowledge is complex and not adequately addressed by existing IPR frameworks. Here are some key legal considerations like intellectual Property Protection: Traditional knowledge often faces challenges in fitting within the existing intellectual property system, which primarily protects individual or commercial innovations. The novelty and inventive step requirements of patent systems, for example, may not align with the communal nature of traditional knowledge, Prior Informed Consent (PIC) Respecting the rights and interests of indigenous and local communities is a crucial aspect of traditional knowledge.etc It is essential to engage in inclusive dialogues and collaborations involving indigenous and local communities to address the legal implications of traditional knowledge adequately. By recognizing and respecting the rights and interests of these communities, it is possible to develop legal frameworks that protect traditional knowledge while promoting innovation and sustainable development. In this paper we will discuss about the different legal and ethical implications regarding the Indian traditional knowledge.

**Keywords:** Traditional knowledge, PIC, IPR, indigenous, biodiversity

## INTRODUCTION

India ranks among the top 12 nations in terms of biodiversity. India is renowned for being a centre for crop varieties and the keeper of several wild crop cousins. India has a plethora of traditional knowledge about the qualities and applications of these biological resources because of its unique biodiversity and abundance of natural resources. In the majority of biologically diverse and rich environments, indigenous and local communities are present. Their way of life and sense of cultural identity revolve around living in the natural world. Traditional environmental knowledge and sustainable practices come from indigenous peoples. For long-term growth to be established, TK is essential. It has always been considered a treasure that is accessible and hence vulnerable to theft.

Traditional knowledge (TK) is made up of a great quantity of information, including knowledge of plants, animals, minerals, soils, organic and inorganic combinations, remedies, and folkloric representations like song, dance, and poetry. crafts, story, and the arts. Traditional knowledge also safeguards any innovations in science,

technology, ecology, medicine, agriculture, and biodiversity that have been developed by forebears and continuously refined by subsequent generations within a traditional society. The community's population, culture, and genetic resources are all preserved through the usage of traditional knowledge (TK).

## REASON FOR PROTECTION OF TRADITIONAL KNOWLEDGE

The numerous definitions have been given to the word protection, which provide one rationalization for a lack of clarification about the justification for protection. Some understand this term in the sense of IPRs, where security generally means excluding third parties from unauthorized use. Others distinguishes protection as an instrument for protecting traditional information from exercise that may erode it or have a detrimental effect on the lives or cultures of the societies that have created and implemented it. However, the key reasons for granting TK security incorporates:

- a) Consideration of equity.
- b) Conservation questions.
- c) The maintenance of traditional customs and community.
- d) Prevention of appropriation of components of TK by unauthorized persons.
- e) Fostering its uses and its significance in development.

**Equity:** The fundamental opinion is founded on equity contemplation in a number of TK securities instruments. The existing system of requisition and reparation does not adequately recognize or compensate TK for the value they create. So it would be crucial to defend TK in order to add justice to the largely unjust and unequal ties. Plant inherited assets serve as an illustration for this logic. Orthodox farmers use and protect the resources passed down from plants. The utilization of inherited plant assets for planting, seed preparation, and ongoing selection of farmer-specific varieties preserves and increases their significance. These farmers generally trade goods or services across the fence to connect with one another, allowing their kinds to spread and be produced in greater quantities. The main argument of this evaluation is that because breeders and seed firms are not paid for the samples they receive, traditional / local farmers are not compensated for the value they provide. There is also no later repayment or profit sharing with farmers.

**Conservation:** The importance of such information for the purposes of preservation is the topic of the second component outlining the TK security argument. So maintaining biological diversity in agricultural systems adds value for the global community. IPRs could be utilized to generate income to keep going operations that would otherwise end. A serious loss of biodiversity would happen, for instance, if traditional farmers stopped using and reproducing farmers' kinds because planting modern varieties with higher yields would result in a larger income. With this approach, TK safety contributes to society's larger goals of environmental preservation, sustainable agriculture, and food security.

**Preservation of Traditional Lifestyles:** Others view TK security as a tool for promoting the maintenance of customs and skills that are representative of traditional ways of life. In this context, the concept of "security" is considerably different from the concept used in IPRs. The preservation of TK is fundamental to the right of self-identification, essential to the survival of regional and traditional cultures, and fundamental to the cultural heritage of humanity. Statistically speaking, the catastrophe impacting the world's various cultures and languages dwarfs the tragedy to biodiversity.

**Avoiding Bio Piracy:** In some instances, the security of TK attempts to prevent the unlawful appropriation (or "bio-piracy") of traditional knowledge and to guarantee the sharing of benefits. For instance, the Government of India has proposed that a provision be added to the TRIPS Agreement stating that patents that are in conflict with Article 15 of the CBD should not be awarded. This would bring the TRIPS Agreement and the CBD into compliance. The awarding of patents that excessively cover traditional knowledge (TK) can be avoided by improving the information accessible to patent offices for examination of originality and inventive practises.

**Promoting use and development:** An important goal in and of itself is to promote the application of traditional knowledge. The "wider appliance" of TK must be endorsed in order to maintain the security of TK. Offering recompense to TK holders or safeguarding TK from theft and loss might be viewed as important fundamentals to encourage the wider usage of such information. It's possible that TK should be protected against loss and destruction in order to foster growth. TK is a source that is not fully utilized during the establishment process. Legal security can assist in maximizing the potential of TK-based goods and services. Traditional knowledge can also be a crucial tool for fostering regional creativity, which is essential for the revival of regional cultures.

## **ROLE OF INTELLECTUAL PROPERTY RIGHTS IN PROTECTION OF TRADITIONAL KNOWLEDGE**

Research and development (R&D) investments are protected by intellectual property rights, which also serve to motivate inventors and foster creativity. However, the way IPR are being used and generated places focus on altering other people's willingness to participate. Private businesses make use of common knowledge via intellectual property rights and profit from our abundant natural resources. Bio piracy deprives rural farmers and tribal members of their natural resources and related knowledge. Because bio-pirating enterprises charged exorbitant costs for these products, they cannot afford the standard knowledge-based commodities. Numerous disagreements over the safety of indigenous peoples' rights, the sustainability of regional flora and fauna, the state of the world's climate, and even the nation's capacity to offer food security are brought on by bio-piracy.

The World Trade Organisation (WTO)'s TRIPS agreement places a strong emphasis on patent rights while ignoring the rights of conventional information owners. IPRs can be a tool for TK security if they can be improved and interpreted in a real and legitimate way. Despite many flaws in the new IPR system, there are still some core ideas that can be applied in either direction, i.e. as a beneficial security and/or defence mechanism to protect conventional information. National IPR legislation and international conventions should be advanced in order to safeguard the rights of indigenous peoples, their biological resources, and related information.

Traditional knowledge is significantly protected by intellectual property rights. Traditional knowledge describes the ideas, methods, and beliefs that have been evolved over many generations by indigenous and local people and are frequently inextricably related to their sense of self. These knowledge systems cover a wide range of topics, including traditional crafts, medicine, biodiversity, and agriculture.

### **1. Biological Diversity Act, 2002**

India thought it was right to contribute to the Convention on Biological Diversity (CBD) since it is a signatory to that agreement. India subsequently enacted the Biological Diversity Act of 2002 to promote the preservation of biological diversity, the sustainable use of its constituent parts, and the equitable distribution of revenues derived from the exploitation of natural resources.

- 2. Patents:** Inventions and technological innovations are protected through patents, a type of IPR. IPRs can prevent the theft of traditional information by limiting the issuance of patents to truly innovative innovations, even though traditional knowledge is frequently regarded as prior art and cannot be

copyrighted. As a result, traditional knowledge is shielded from unauthorized commercialization and indigenous groups are given control over its application.

3. **Geographical Indications (GIs):** Products with a particular geographic origin and traits or a reputation that can be attributed to that origin are protected by GIs. GIs can aid in preserving regionally distinct traditional knowledge, including traditional farming methods, manufacturing processes, and cultural manifestations. Traditional knowledge owners who receive GIs can protect and market their traditional goods while preventing unauthorized use of their expertise.
4. **Trademarks:** Trademarks safeguard distinguishing logos, names, or designs connected to products or services. Using distinctive names, symbols, or emblems to brand and advertise their goods, indigenous groups can help conserve traditional knowledge through trademarks. This improves their marketability, protects cultural assets, and aids in preventing others from using their customary knowledge without permission.
5. **Copyrights:** Original literary, artistic, or cultural expressions are safeguarded by copyrights. Copyrights can be used to protect traditional knowledge, which includes folklore, music, dances, and traditional tales. This makes it possible for indigenous groups to keep control over how their cultures are expressed, to stop improper usage or misrepresentation, to secure equitable recognition of and financial gain from their traditional knowledge, and to do all of this without interference.
6. **Traditional Knowledge Digital Libraries (TKDL):** A database called TKDL contains traditional knowledge from India and other nations. It serves as a preventative step against appropriation by giving patent examiners proof of prior art. The TKDL assists in preventing the granting of patents for inventions that are previously known in conventional systems by making traditional knowledge available to patent offices.

It's crucial to remember that even though IPRs can help to protect traditional knowledge, there are still continuing questions and disagreements about the suitability and effectiveness of current IPR frameworks in this situation. Some support the creation of unique systems that are focused on safeguarding traditional knowledge and taking into account the requirements and rights of indigenous and local populations.

## **International regime for the protection of traditional knowledge**

Traditional knowledge protection is a significant topic that has been addressed through a number of programmes and agreements. The Convention on Biological Diversity (CBD), which recognizes the value of traditional knowledge and demands for its protection and equitable sharing of benefits, is one of the most important international mechanisms in this regard.

A multinational agreement known as the CBD was adopted in 1992 with the goals of preserving biodiversity, fostering sustainable use of its elements, and ensuring the fair and equitable distribution of benefits resulting from the use of genetic resources. The CBD acknowledges the importance of indigenous and local communities' traditional knowledge in the preservation and sustainable use of biodiversity. It emphasizes the significance of maintaining this knowledge and the related practices.

In addition to the CBD, there have been other international efforts to protect traditional knowledge:

1. Accordance with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Resulting from their Use: This CBD-related guideline, which was enacted in 2010, focuses on the fair and equitable distribution of the advantages associated with the use of genetic resources. It acknowledges the significance of traditional knowledge in relation to genetic resources and calls on nations to take the necessary precautions to safeguard traditional knowledge related to genetic resources.
2. World Intellectual Property Organization (WIPO): WIPO has been involved in discussions and initiatives related to the protection of traditional knowledge. WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore has been working on developing international legal instruments for the protection of traditional knowledge.
3. The UNDRIP, or United Nations Declaration on the Rights of Indigenous Peoples UNDRIP acknowledges the rights of indigenous peoples to conserve, control, safeguard, and develop their cultural heritage, traditional knowledge, and traditional cultural manifestations, however it is not exclusively concerned with traditional knowledge.
4. Different regional and bilateral agreements: To conserve traditional knowledge, several areas and nations have created regional and bilateral agreements. The African Model Law for the Protection of Traditional Knowledge and manifestations of Folklore, for instance, was adopted by the African Union and offers member states direction on how to protect traditional knowledge and folklore manifestations.

It's important to note that despite these international efforts, challenges remain in effectively protecting traditional knowledge.

### **General issues and problems related to the protection of traditional knowledge**

The protection of traditional knowledge is an important topic with various general issues associated with it. Here are some key issues related to the protection of traditional knowledge:

1. Recognition and Ownership: Indigenous groups and local cultures frequently give rise to traditional knowledge. Recognizing who owns traditional knowledge and ensuring that it is neither misused or abused without the informed consent and equitable benefit-sharing with the communities who have such knowledge are two of the main concerns.
2. Intellectual Property Rights: Traditional knowledge is not necessarily compatible with the legal frameworks for intellectual property, such as patents, copyrights, and trademarks. These frameworks frequently place a premium on individual ownership and originality, which may be at odds with the conventional knowledge's social and cumulative nature. It is challenging to create sufficient IPR protections for traditional knowledge without jeopardizing the rights of indigenous populations.
3. Misappropriation and Biopiracy: Traditional knowledge, particularly that pertaining to biodiversity, medicinal plants, and conventional medical procedures, has frequently been misused or exploited without permission or just compensation. An important issue is biopiracy, which is the unlicensed commercial use of biological resources or traditional knowledge. Legal procedures and international collaboration are necessary for preventing and combating misappropriation and biopiracy.

4. **Preservation and Documentation:** Traditional knowledge is susceptible to loss and deterioration because it is frequently transmitted orally and via practise. To ensure the long-term survival of traditional knowledge and its transfer to succeeding generations, it is crucial to preserve and record it. Finding adequate methods to record and preserve traditional knowledge while honouring the cultural context and the interests of the communities concerned, however, presents difficulties.
5. **Access and Benefit-Sharing:** Owners of traditional knowledge ought to have fair access to the gains made by the commercialization or application of their expertise. It is essential to establish systems for fair and equitable benefit-sharing in order to prevent exploitation and promote cooperative relationships between those who hold traditional knowledge and other external parties.
6. **Cultural and Ethical Considerations:** Traditional knowledge is closely related to spiritual and cultural practises, rituals, and beliefs. Respecting the cultural and ethical components linked with traditional knowledge is necessary to preserve it. Any framework for protection should take into account the communities' cultural rights, common law, and moral principles.
7. **International Collaboration and Legal Frameworks:** Because traditional knowledge frequently crosses national boundaries, addressing the protection of traditional knowledge necessitates international collaboration. To offer uniform protection and resolve issues relating to misappropriation, benefit-sharing, and preservation, comprehensive legal frameworks and agreements must be developed at the national and international levels.

These problems show how difficult it is to protect traditional knowledge and how important it is to work together, make changes to the law, and be culturally sensitive in order to protect it, respect the communities that have it, and treat them fairly.

### **Approaches for the protection of Indian traditional knowledge**

To maintain the cultural history and intellectual property of indigenous populations, traditional knowledge must be protected. Here are some strategies that can be used to safeguard traditional knowledge:

1. Proper documentation and archiving of traditional knowledge is crucial. This can be done by keeping textual documents, audiovisual materials, and digital archives. This guarantees that the information is maintained and accessible to coming generations.
2. Establishing suitable legal frameworks, such as patents, copyrights, and trademarks, can aid in defending traditional knowledge from unauthorized use and commercial exploitation. With projects like the Traditional Knowledge Digital Library (TKDL), India has made progress in this direction.
3. **Traditional Knowledge Digital Library (TKDL):** The TKDL is an online database of traditional knowledge, with a focus on systems of traditional medicine including Ayurveda, Yoga, Unani, and Siddha. By making previous art information available to patent examiners worldwide, it hopes to prevent unauthorized use.
4. **Community-based protection:** It is essential to involve indigenous groups and local communities in the defense of their traditional knowledge. Their active engagement and ownership are ensured by empowering them through awareness campaigns, capacity building, and participation in decision-making processes.

5. International collaborations: Collaborating with international organizations and other countries can help establish global frameworks and protocols for protecting traditional knowledge. India has been actively involved in discussions at the World Intellectual Property Organization (WIPO) and other platforms to address issues related to traditional knowledge protection.
6. Education and awareness: Raising awareness about the value and importance of traditional knowledge among the general public, policymakers, and researchers is vital. This can be done through educational programs, workshops, seminars, and campaigns to promote respect, understanding, and responsible use of traditional knowledge.
7. Benefit-sharing mechanisms: Developing mechanisms to ensure equitable sharing of benefits derived from the commercial use of traditional knowledge is crucial. This helps prevent exploitation and ensures that indigenous communities and traditional knowledge holders receive fair compensation.
8. Research collaborations: Encouraging research collaborations between traditional knowledge holders, scientists, and academic institutions can help validate and document traditional knowledge while respecting the rights and interests of the knowledge holders.
9. Ethical guidelines: Establishing ethical guidelines and codes of conduct for researchers, companies, and individuals working with traditional knowledge can help ensure its respectful and responsible use.
10. Policy and legal frameworks: Strengthening existing policies and enacting new legislation that specifically addresses the protection of traditional knowledge can provide a solid legal foundation. These frameworks should consider the unique nature of traditional knowledge and the rights of indigenous communities.

It is important to note that the protection of traditional knowledge requires a comprehensive and multi-faceted approach that takes into account legal, cultural, social, and economic aspects. Collaboration between various stakeholders, including government bodies, indigenous communities, researchers, and international organizations, is key to successfully safeguarding Indian traditional knowledge.

## CONCLUSION

In conclusion, the protection of traditional knowledge is of utmost importance for various reasons. Traditional knowledge encompasses the wisdom, practices, and innovations developed by indigenous and local communities over generations. It is often closely linked to their cultural identity, social cohesion, and sustainable use of natural resources. Therefore, safeguarding traditional knowledge is crucial for the preservation of cultural diversity, the promotion of human rights, and the sustainable development of societies. One key aspect of protecting traditional knowledge is recognizing and respecting the intellectual property rights of indigenous and local communities. This involves establishing legal frameworks that acknowledge and protect traditional knowledge as a form of intellectual property. These frameworks should ensure that traditional knowledge holders have the right to control and benefit from the use of their knowledge, and that any commercial exploitation is done with their free, prior, and informed consent. Another important aspect is promoting the documentation, preservation, and transmission of traditional knowledge. This can be achieved through various means such as establishing community-led initiatives, supporting local educational programs, and fostering collaborations between traditional knowledge holders and scientific researchers. Additionally, digital technologies can play a crucial role in the documentation and dissemination of traditional knowledge while respecting the rights and interests of the communities involved. Furthermore, community-based initiatives

play a significant role in protecting traditional knowledge. These initiatives empower indigenous and local communities to develop their own mechanisms for preserving and managing traditional knowledge. They involve community-led documentation, capacity-building, and the revitalization of traditional practices, fostering cultural pride and self-determination. However, challenges persist in effectively protecting traditional knowledge. Issues such as inadequate legal frameworks, lack of awareness, and the exploitation of traditional knowledge by external entities continue to pose threats. Additionally, the rapid advancement of technology and globalization raise concerns regarding the unauthorized digital dissemination and commercialization of traditional knowledge. To address these challenges, it is essential to foster collaboration and dialogue between traditional knowledge holders, governments, researchers, and relevant stakeholders. This collaboration should aim to establish stronger legal protections, promote ethical research practices, enhance capacity-building efforts, and facilitate the equitable sharing of benefits derived from traditional knowledge.

In conclusion, protecting traditional knowledge requires a comprehensive and inclusive approach that respects the rights and aspirations of indigenous and local communities. By recognizing and safeguarding traditional knowledge, we can ensure its continued contribution to sustainable development, cultural diversity, and the well-being of humanity.

