

## THE EFFECTIVENESS OF INDIA'S LAWS AND POLICIES IN PROTECTING TRADITIONAL KNOWLEDGE

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### ABSTRACT

*This paper examines India's legal and regulatory framework for protecting traditional knowledge and folklore, both of which are critical components of India's cultural legacy and economic growth. Traditional knowledge is communal, passed down through generations, and does not correspond to Western concepts of patents and private ownership. The study investigates India's efforts to create alternative frameworks and procedures that respect Indigenous and local groups' rights and interests. Existing legal frameworks are also thoroughly examined, including the Indian Constitution, the Traditional Knowledge Digital Library, intellectual property rights, and the Convention on Biological Diversity.*

*The report addresses some issues that traditional knowledge protection faces, such as its intangible character and the potential for misappropriation and exploitation by external groups or persons. Furthermore, the effectiveness of present legal measures and policies in protecting traditional knowledge and folklore is still being debated and implemented. Some challenges include guaranteeing indigenous and local populations' active involvement and permission, resolving misappropriation concerns, and building effective benefit-sharing arrangements.*

*The study also suggests measures to conserve traditional knowledge, such as encouraging more engagement and permission from indigenous and local people, resolving misappropriation concerns, and building efficient benefit-sharing structures to ensure fair and equitable usage. The author has emphasized the significance of striking a balance between maintaining cultural*

*history, stimulating innovation, and protecting indigenous and local people's rights and interests. Furthermore, the report indicates that further research is needed to better understand the challenges of properly safeguarding traditional knowledge and folklore.*

**Keywords:** *Cultural legacy, Economic growth, Folklore, Intellectual Property Rights and Traditional Knowledge.*

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## 1. INTRODUCTION

Traditional knowledge and folklore are integral components of India's cultural heritage, which must be preserved. They reflect the diversity and uniqueness of India's communities and modes of life. This knowledge must be preserved to maintain cultural diversity and promote cultural identity. Traditional knowledge and folklore contribute significantly to India's cultural diversity and economic growth, especially in the field of medicinal plants. Ethnobotany, the study of medicines derived from plants and their use in the treatment of various maladies and afflictions, is a significant field of study that draws upon indigenous pharmacopoeia, folklore, and herbal charms. Various regions of India, including Nagaland, Telangana, and Chhattisgarh, have conducted studies on traditional medicinal practises to document and analyse the use of medicinal plants by local communities.

Protecting traditional knowledge and folklore necessitates a comprehensive legal and policy framework that recognizes the unique communal character of traditional knowledge while also protecting Indigenous and local community rights and interests. To ensure a sustainable future for traditional knowledge and folklore, the paper emphasizes the need to protect cultural heritage, stimulate innovation, and respect the rights and interests of indigenous and local people in a balanced manner.

## 2. CONCEPT AND SIGNIFICANCE OF TRADITIONAL KNOWLEDGE AND FOLKLORE

Traditional knowledge and folklore refer to the knowledge, practises, and beliefs passed on within a community from generation to generation. It 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<sup>1</sup>. Traditional knowledge and folklore contribute in multiple ways to India's cultural diversity and economic growth:

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<sup>1</sup> *Traditional Knowledge*, WORLD INTELLECTUAL PROPERTY ORGANIZATION (May 14, 2023, 5:00 PM), <https://www.wipo.int/tk/en/tk/>

Traditional knowledge and folklore can contribute to economic development. For instance, traditional medicinal practises and herbal remedy knowledge can be utilised to advance the pharmaceutical industry. In a similar fashion, traditional agricultural practises can be utilised to promote sustainable agriculture and rural development.

Traditional knowledge and folklore are frequently at risk of being exploited or inappropriately utilized by outsiders. It is essential to safeguard the intellectual property rights of indigenous communities and prevent the exploitation of their skills by protecting this knowledge.

The study on the traditional medicinal practises of four main communities in Nagaland<sup>2</sup>, for instance, identified 257 species of ethnomedicinal plants from 85 families. Similarly, a survey of Khammam District, Telangana, residents' knowledge of folklore medicinal plants revealed that 78 plant taxa belonging to 73 genera and 42 families were prescribed as ethnobotanical drug formulations to treat various ailments. Another study investigated folklore regarding medicinal plants used to treat digestive disorders in livestock in the Telangana district of Medak and documented 66 species of medicinal plants used by local physicians.

The sustainable use of resources necessitate the active participation of local communities, thereby preserving their invaluable knowledge for future generations. The propagation of traditional knowledge and folklore can also contribute to India's economic growth by fostering the expansion of the pharmaceutical industry and the tourism sector. In addition, the establishment of mechanisms for the accumulation and consolidation of information and the preservation of traditional knowledge can contribute to the expansion of local economies and the empowerment of indigenous and local communities.

The importance of traditional knowledge and folklore to India's economic development cannot be exaggerated. Documenting and analysing this information can help establish scientific foundations in the Ethno-medico botanical domain, paving the way for future pharmacological studies and the discovery of potent phytochemical compounds.

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<sup>2</sup>S.I. Bhuyan, Meyiwapangla & I. Laskar, *Indigenous Knowledge and Traditional Use of Medicinal Plants by Four Major Tribes of Nagaland, Northeast India*, 6 INT'L J. INN. SCI. ENG'G. & TECH. (2014)

### 3. CURRENT LEGAL FRAMEWORK

#### 3.1 The Indian Constitution

There are no provisions in the Indian Constitution devoted solely to the preservation of traditional knowledge and folklore. Nonetheless, certain constitutionally protected fundamental rights and directive principles contribute indirectly to the preservation of traditional knowledge and folklore. Here are some relevant considerations:

Article 29(1) - Protection of Culture<sup>3</sup>: Article 29(1) of the Indian Constitution protects the unique language, script, and culture of a particular community. This provision indirectly contributes to the preservation of traditional knowledge and folklore, recognising the significance of preserving cultural heritage and practises.

Article 46 - Protection of Weaker Sections: Article 46 of the Constitution instructs the State to promote the educational and economic interests of marginalised communities, such as Scheduled Castes (SCs) and Scheduled Tribes (STs)<sup>4</sup>. The protection and preservation of the cultural heritage of these communities, including traditional knowledge and folklore, can be regarded as part of a larger effort to uplift and empower them.

Article 51 A (f)- Every citizen has a responsibility to "value and safeguard the rich legacy of our composite culture"<sup>5</sup>.

It highlights the responsibility of Indian citizens to recognise, value, and preserve the diverse cultural heritage inherent to the composite culture of the nation. It stresses the importance of appreciating and preserving India's diverse heritage, which includes traditions, customs, art forms, languages, historical sites, and practises.

#### 3.2 Traditional Knowledge Electronic Library

The Traditional Knowledge Digital Library<sup>6</sup> is a significant initiative by the Indian government to document and safeguard traditional knowledge, such as folklore and medicinal practises, from

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<sup>3</sup> INDIA CONST. art. 29(1)

<sup>4</sup> INDIA CONST. art. 46

<sup>5</sup> INDIA CONST. art. 51A (f)

<sup>6</sup> *Protecting India's traditional knowledge*, WIPO MAGAZINE (May 14, 2023, 7:00 PM), [https://www.wipo.int/wipo\\_magazine/en/2011/03/article\\_0002.html](https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html)

misappropriation and biopiracy. CSIR and AYUSH (Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homoeopathy) are collaborating on the TKDL.

The objective of the TKDL is to create a global database of traditional knowledge, including information on medicinal plants and their applications, that can be accessed by patent offices and other relevant organisations. This prevents the granting of patents on traditional knowledge already in existence and ensures that this valuable information is preserved and protected for future generations. Additionally, the TKDL plays a crucial role in promoting the sustainable use of traditional knowledge and supporting the development of new products and therapies based on this knowledge.

### **3.3 Protection of intellectual property**

Folklore and traditional knowledge are safeguarded by the present Indian legal framework. India has acknowledged the significance of preserving its numerous communities' traditional knowledge and cultural expressions. Here are a few of the most crucial aspects of India's legal framework that protect traditional knowledge and folklore:

Patents Act, 1970: Section 3(p) of the Patents Act prohibits patenting inventions that are solely traditional knowledge or a collection of known properties<sup>7</sup>. This provision prevents the misappropriation of traditional knowledge by prohibiting the issuance of patents for inventions derived from traditional knowledge that do not meet the requirements for patentability.

The Copyright Act of 1957 protects literary, artistic, musical, and dramatic works, as well as traditional cultural manifestations. Section 2(ff) of the Act defines "works of folklore" and grants certain rights to the community or custodian of such works<sup>8</sup>. The Act acknowledges the communal nature of folklore and protects it from unauthorised use and exploitation.

The Geographical Indications of Goods (Registration and Protection) Act of 1999 establishes a framework for the registration and protection of Geographical Indications (GIs) in India<sup>9</sup>. GIs

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<sup>7</sup> Patents Act, 1970, § 3(p), No. 39, Acts of Parliament, 1970 (India).

<sup>8</sup> Copyright Act, 1957, § 2(ff), No. 14, Acts of Parliament, 1957 (India).

<sup>9</sup> Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48, Acts of Parliament, 1999 (India).

can prevent the unauthorised use or misuse of traditional practises, agricultural products, handicrafts, and other goods originating from particular geographical regions.

Traditional Cultural Expressions (TCEs): India has actively participated in international discussions and negotiations pertaining to the protection of TCEs. Despite the absence of specific legislation in this regard, the Indian government has stated its intention to construct a novel legal framework for the preservation of TCEs.

It is crucial to note that the effectiveness of these legal provisions in protecting traditional knowledge and folklore is a topic of ongoing discussion and implementation. Assuring the active participation and consent of indigenous and local communities, addressing issues of misappropriation, and establishing efficient benefit-sharing mechanisms are remaining obstacles.

### **3.4 Convention on Biological Diversity**

The Convention on Biological Diversity (CBD) is the international legal instrument for "the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources" that has been ratified by 196 nations, including India<sup>10</sup>. The Convention on Biological Diversity recognises the importance of protecting traditional knowledge associated with biodiversity and includes provisions to address this concern. The Convention on Biological Diversity (CBD) is an international agreement with the purpose of conserving biodiversity, ensuring the sustainable use of its components, and fostering the fair and equitable distribution of benefits derived from the utilisation of genetic resources. The following are key provisions of the CBD pertaining to the protection of traditional knowledge:

Article 8(j): Article 8(j) of the CBD acknowledges the importance of indigenous and local community's traditional knowledge, innovations, and practises to the conservation of biodiversity and promotes their fair and equitable sharing of benefits<sup>11</sup>. It promotes the incorporation of traditional knowledge into relevant policies and programmes by emphasising the significance of respecting, preserving, and maintaining traditional knowledge.

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<sup>10</sup> Convention on Biological Diversity, key international instrument for sustainable development, UNITED NATIONS (May 15, 2023, 6:30 PM), <https://www.un.org/en/observances/biological-diversity-day/convention>

<sup>11</sup> Convention on Biological Diversity, 1992, art. 8(j)

Access and Benefit-Sharing (ABS) provisions: The ABS provisions of the CBD endeavour to ensure that the benefits derived from the use of genetic resources and associated traditional knowledge are fairly and equitably distributed. They emphasise prior informed consent and terms mutually agreed upon by providers and consumers of genetic resources and traditional knowledge.

The Nagoya Protocol<sup>12</sup> on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation supplements the CBD. It provides a legal framework for the implementation of the CBD's ABS provisions. The Nagoya Protocol recognises the importance of traditional knowledge and requires parties to take measures to protect traditional knowledge associated with genetic resources, including the creation of appropriate laws and policies.

Benefit-Sharing Agreements<sup>13</sup>: The CBD encourages benefit-sharing agreements between consumers and providers of genetic resources and traditional knowledge. By ensuring that the benefits derived from the utilisation of traditional knowledge are shared fairly and equitably, these agreements provide incentives for the conservation and sustainable use of biodiversity.

The Convention on Biological Diversity recognises the connection between indigenous knowledge and intellectual property rights (IPR). It promotes the development of effective legal and policy measures to safeguard traditional knowledge from misappropriation and unjustified IPR claims. Moreover, it calls for the respect and preservation of traditional innovation, as well as the use of appropriate IPR mechanisms to protect traditional knowledge.

In addition to recognising the rights and interests of indigenous and local communities, the CBD's traditional knowledge provisions aim to promote the preservation, respect, and equitable sharing of traditional knowledge associated with biodiversity.

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<sup>12</sup> *The Nagoya Protocol - Convention on Biological Diversity*, DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER (May 15, 2023, 5:30 PM), <https://www.dcccew.gov.au/science-research/australias-biological-resources/nagoya-protocol-convention-biological>

<sup>13</sup> Introduction to access and benefit-sharing, CONVENTION ON BIOLOGICAL DIVERSITY (May 16, 2023, 6:00 PM), <https://www.cbd.int/abs/infokit/brochure-en.pdf>



#### **4. WHY THE CURRENT LEGAL FRAMEWORK IS INSUFFICIENT TO PROTECT TRADITIONAL KNOWLEDGE?**

Due to the unique characteristics and complexity of current legal framework, safeguarding traditional knowledge and folklore presents numerous obstacles. Due to the intangible nature of traditional knowledge, its legal protection faces a number of obstacles. Here are a few instances where the immaterial nature of traditional knowledge causes issues:

Cultural practises, beliefs, rituals, ecological knowledge, and traditional medicine are typical components of traditional knowledge. Due to the fact that traditional knowledge is frequently embedded within the social, cultural, and historical context of a specific community, it can be challenging to precisely define its boundaries. This imprecision makes it difficult to create legal frameworks that safeguard and regulate traditional knowledge effectively.

Traditional knowledge is typically collective and community-based, as opposed to the work of individual authors or inventors. Given the communal nature of traditional knowledge, it is challenging to designate ownership to specific individuals or groups. Traditional intellectual property laws are predicated on the concept of individual authorship or invention, which may be incompatible with the collective nature of traditional knowledge.

**Transmission and Oral Tradition:** Traditional knowledge is transmitted orally from one generation to the next within communities. This oral tradition is essential for the preservation of cultural heritage, but its legal protection presents difficulties. When information is transmitted orally, it is challenging to establish the fixed and tangible form of expression required for many intellectual property rights, such as copyright. Additionally, reliance on oral tradition can result in the alteration or loss of knowledge over time, making documentation and preservation more challenging.

**Prior Art and Originality:** Without written or formalised documentation, traditional knowledge may have existed for generations. This lack of documentation can make it difficult to establish prior art, which is frequently necessary to invalidate patents or prevent the issuance of new patents. In the absence of prior art documentation, the issuance of patents for inventions or

innovations based on traditional knowledge can result in the misappropriation of traditional knowledge<sup>14</sup>.

Traditional knowledge is not static; rather, it evolves and adapts over time in response to changing conditions and needs. This dynamic nature complicates the application of traditional intellectual property frameworks, which are more accustomed to dealing with fixed, static works. Traditional knowledge may not easily work within the traditional legal concepts of copyright, patents, and trademarks, making it difficult to provide sufficient legal protection.

**Misappropriation and Exploitation:** Misappropriation and exploitation of traditional knowledge and folklore occur when external entities or individuals use, commercialise, or profit from traditional knowledge or cultural expressions without the required permission, consent, or equitable and reasonable benefit-sharing arrangements. The following are examples of misappropriation and exploitation:

- Traditional knowledge and folklore may be used for commercial purposes without obtaining the necessary consent or engaging in equitable negotiations with the communities that possess the knowledge<sup>15</sup>. This can result in the commercial exploitation of traditional knowledge without providing adequate economic benefits or recognition to the indigenous communities.
- Misappropriation can occur when individuals or entities assert intellectual property rights, such as patents or copyrights, over traditional knowledge or expressions that are in the public domain or have been practised traditionally by indigenous or local communities. This can limit communities' rights to access, utilise, and benefit from their cultural heritage.
- Biopiracy is the illegal acquisition and commercial exploitation of biological resources and the associated traditional knowledge. It frequently involves appropriating indigenous

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<sup>14</sup> Tanya Saraswat, *The Neem Patent Case*, MONDAQ(May 16, 2023, 3:00 PM)  
<https://www.mondaq.com/india/patent/1286020/the-neem-patent-case>.

<sup>15</sup>Johny Soloman Raj & Swaraj SIngh Raghuvanshi, *Nature of IPR Protection given by Law in Turmeric Case*, SS RANA & CO. (May 16, 2023, 5:00 PM), <https://ssrana.in/articles/nature-of-ipr-protection-given-by-law-in-turmeric-case/>

knowledge of medicinal plants, agricultural practises, or genetic resources without adequate compensation or informed consent.

- Researchers are permitted to conduct studies and research projects involving traditional knowledge or cultural expressions without obtaining informed consent, respecting customary protocols, or adequately involving communities. This may result in the extraction of communities' knowledge and resources without ensuring their participation, equitable benefit-sharing, or preservation of their intellectual and cultural rights.

**Appropriation of culture:** Appropriation of culture occurs when elements of traditional knowledge or cultural expressions are taken, used, or represented by individuals or groups outside the culture of origin, often without proper understanding, respect, or acknowledgement of the cultural significance. This may result in the commercialization, distortion, or exploitation of traditional knowledge and folklore, disregarding the cultural identity and heritage of the affected communities.

Exploitation occurs when traditional knowledge is used for commercial or research purposes without the communities possessing the knowledge receiving fair and equitable compensation. This can perpetuate economic disparities, undermine the social and cultural fabric of communities, and result in imbalances of power and resources.

Current intellectual property rights (IPR) law, which consists predominantly of patents, copyrights, trademarks, and trade secrets, is frequently regarded as insufficient to protect traditional knowledge and folklore effectively. Several reasons exist for why the current intellectual property law may be inadequate in this regard.

Frequently, indigenous and local communities hold traditional knowledge and folklore collectively. Current intellectual property law is predicated on individual ownership and does not readily accommodate the communal nature of traditional knowledge. This misalignment makes it challenging to establish ownership of traditional knowledge, authorise its use, and enforce rights.

**Protection Restrictions:** In general, the current IPR law requires originality, creativity, and novelty for protection. Traditional knowledge, which is frequently transmitted orally from one

generation to the next, may not meet these criteria because it is more suited to individual inventions<sup>16</sup>. This limits the ability to obtain patents or copyrights for traditional knowledge.

Frequently, traditional knowledge, which may have existed for centuries and been handed down from generation to generation, is not recorded in formal written forms. This lack of documentation can make it challenging to establish prior art<sup>17</sup>, which is necessary for challenging the validity of patents or preventing the issuance of new patents based on traditional knowledge. Because traditional knowledge is frequently transmitted orally, it is difficult to provide concrete evidence of its origin, authenticity, and traditional practises. This complicates establishing claims of infringement or establishing ownership under the current IPR law. In addition, restricted access to the traditional knowledge of indigenous communities can hinder research, documentation, and preservation efforts.

**Misuse and Cultural Appropriation:** Traditional knowledge and folklore are susceptible to cultural appropriation, which occurs when elements are borrowed, used, or represented without proper understanding, respect, or acknowledgement of their cultural significance. Current intellectual property law lacks comprehensive mechanisms to combat cultural appropriation, which has led to the commercialization and misuse of traditional knowledge.

**Inadequate Benefit Sharing:** The current intellectual property law is silent on the issue of fair and equitable benefit sharing with indigenous and local communities whose traditional knowledge is used for commercial or research purposes. If communities do not receive adequate compensation or recognition for their cultural heritage, this can result in economic disparities and exploitation.

**Power Disparities and Inequality:** Power disparities and inequality significantly impede the effective protection of traditional knowledge. Here are several ways in which power imbalances and inequality create barriers:

- At the national and international levels, indigenous and local communities with traditional knowledge often have limited representation and influence in decision-making

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<sup>16</sup> Sourav Kumar Pattnaik, *Intellectual Property Rights and Protection of Traditional Knowledge: A General Indian Perspective*, SCC ONLINE BLOG (May 17, 2023, 6:00 PM), <https://www.scconline.com/blog/post/2020/06/22/intellectual-property-rights-and-protection-of-traditional-knowledge-a-general-indian-perspective/>.

<sup>17</sup> *Supra* note 7.

processes. In discussions regarding the protection and use of traditional knowledge, this lack of representation can cause their perspectives, concerns, and rights to be ignored or marginalised.

- Indigenous and local communities may experience economic, educational, and technological disadvantages compared to external entities or industries that seek to exploit traditional knowledge. A lack of resources and capacity hinders their ability to effectively engage in legal processes, negotiate equitable agreements, document traditional knowledge, and enforce their rights.
- Frequently, power imbalances lead to information asymmetries, wherein external entities or researchers have greater access to information and resources than indigenous and local communities. This information asymmetry can hinder the ability of communities to make informed decisions regarding the use, preservation, and commercialization of their indigenous knowledge.
- Communities may be subject to unjust contracts and agreements that exploit their traditional knowledge due to power imbalances. If communities lack bargaining power and legal representation, they may be forced to accept unfavourable terms, insufficient compensation, or the loss of control over their cultural heritage.
- Indigenous and local communities are marginalised and stereotyped due to power disparities. This may result in the commercialization or devaluation of their cultural expressions and traditional knowledge. Stereotyping and prejudice can lead to the misappropriation or exploitation of traditional knowledge if they disregard its cultural and spiritual significance.

**Inadequate Institutional Frameworks:** Inadequate institutional frameworks can pose a significant barrier to the preservation of traditional knowledge and folklore. Here are a few instances in which inadequate institutional frameworks generate impediments:

- The lack of dedicated institutions or specialised entities dedicated to the protection and propagation of traditional knowledge and folklore can hinder the effectiveness of preservation efforts. These institutions play a crucial role in developing policies,

establishing legal frameworks, conducting research, and assisting communities in documenting, preserving, and asserting their rights over traditional knowledge.

- Inadequate institutional frameworks frequently result in insufficient preservation of traditional knowledge expertise, resources, and funding. Documenting, validating, and preserving traditional knowledge can be hampered by insufficient research capacities, restricted access to technology, and a dearth of trained professionals. This can also impede the ability to participate in legal proceedings, negotiate equitable agreements, and advocate for the rights of holders of traditional knowledge.
- Inadequate institutional frameworks may result in fragmented or incoherent legal frameworks for the preservation of traditional knowledge and folklore. This could lead to legal ambiguities, vacancies, and inconsistencies, making it difficult for communities to assert their rights or seek legal recourse in cases of misappropriation or exploitation.
- Inadequate institutional frameworks can impede effective coordination and collaboration among the diverse stakeholders involved in the protection of traditional knowledge. Government agencies, indigenous and local communities, researchers, civil society organisations, and international organisations are included. Inadequate coordination can result in duplication of efforts, conflicting approaches, and a lack of cohesive strategies for addressing the challenges posed by traditional knowledge holders. Ineffective enforcement mechanisms for the preservation of traditional knowledge and folklore may result from insufficient institutional frameworks. A lack of effective enforcement can undermine the deterrence of misappropriation, exploitation, and unauthorised use of traditional knowledge. It can also limit the capacity of communities to seek legal recourse or hold infringers accountable.
- Inadequate institutional frameworks may result in inadequate education and awareness regarding the value, rights, and significance of traditional knowledge and folklore. This can contribute to a lack of understanding among policymakers, the general public, and even traditional knowledge holders themselves, thereby aggravating the challenges of protecting traditional knowledge.

## 5. WHAT CAN BE DONE TO ENSURE THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKFORE?

To overcome the current obstacles to the preservation of traditional knowledge and folklore, a multifaceted strategy involving multiple stakeholders is required<sup>18</sup>. Here are some strategies for overcoming these constraints:

**Strengthen Legal and Policy Frameworks:** To overcome restrictions and enhance the protection of traditional knowledge and folklore, it is essential to strengthen legal and policy frameworks. Intellectual property rights (IPR) can assist in overcoming the limitations and difficulties associated with preserving traditional knowledge and folklore.

**Sui Generis Systems**<sup>19</sup>: Meaning "one that is of its own kind." Put in place specialised legal procedures or systems of their own kind to protect traditional knowledge and folklore. These systems should recognise the unique characteristics of traditional knowledge and folklore and provide protections that go beyond the scope of standard intellectual property rights.

**Create databases or registries to record and preserve folklore and traditional knowledge:** These databases can serve as information registries, facilitating the identification, documentation, and verification of conventional knowledge. Additionally, they can be used as evidence in cases of unauthorised use or misappropriation<sup>20</sup>.

**Prior Informed Consent:** Establish legal requirements for traditional knowledge holders to provide prior informed consent before their knowledge is accessed or exploited. This ensures that proprietors of traditional knowledge have the right to control and determine how their knowledge is used and protects them from exploitation.

**Benefit-Sharing Mechanisms**<sup>21</sup>: Establish legislative norms and standards for equitable benefit-sharing agreements between holders of conventional knowledge and consumers. This ensures

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<sup>18</sup> Bala Anu, *Traditional Knowledge and Intellectual Property Rights: An Indian Perspective*, SSRN (May 18, 2023, 4:00 PM), <https://ssrn.com/abstract=195492>.

<sup>19</sup> *The Neem Tree: A Case History of Biopiracy*, INTERNATIONAL INTELLECTUAL PROPERTY INSTITUTE (May 19, 2023, 5:00 PM), <https://iipi.org/wp-content/uploads/2010/07/NewYork011404.pdf>.

<sup>20</sup> *Supra* note 3.

<sup>21</sup> Dr. Marisella Ouma, *Traditional knowledge: the challenges facing international lawmakers*, WIPO MAGAZINE (May 20, 2023, 7:00 PM), [https://www.wipo.int/wipo\\_magazine/en/2017/01/article\\_0003.html](https://www.wipo.int/wipo_magazine/en/2017/01/article_0003.html).

that traditional knowledge holders are appropriately compensated, recognised, and rewarded when their information is utilised for commercial or research purposes.

**Customary Law Recognition:** Recognise and incorporate into the legal system the customary rules and practises of indigenous and local communities. This acknowledges the authority of traditional governance systems to administrate and preserve traditional knowledge and folklore.

**Improved Patent Examination:** Enhance patent examination procedures to ensure that conventional knowledge and prior art are exhaustively researched and considered when evaluating patent applications. This prohibits the granting of patents for inventions that were previously known or derived from common knowledge.

**Develop public awareness campaigns and educational programmes** to enhance the public's appreciation and understanding of traditional knowledge and folklore. These programmes should educate legislators, academics, legal professionals, and the general public about the significance of traditional knowledge and the need to protect it.

**Promote international cooperation and collaboration** to address cross-border issues regarding the preservation of traditional knowledge and folklore. Participating in international dialogues, exchanging best practises, and harmonising legal frameworks via organisations such as the World Intellectual Property Organisation (WIPO) and the Convention on Biological Diversity (CBD) are required.

**Collaboration and partnership are essential for the effective preservation of traditional knowledge and folklore:** By encouraging cooperation and partnership, stakeholders can use their combined knowledge, experience, and resources to create successful plans, policies, and initiatives for the conservation and preservation of traditional knowledge and folklore. This collaborative strategy ensures a more inclusive, culturally sensitive, and sustainable approach to the management of cultural assets.

**Engage Traditional Knowledge bearers:** Actively include traditional knowledge bearers, such as indigenous and local communities, in decision-making processes and policy discussions. Respect their rights, knowledge systems, and cultural protocols, and ensure their meaningful participation in activities related to the preservation of traditional knowledge and folklore.



**Facilitate frequent dialogues and consultations** with diverse stakeholders, including custodians of traditional knowledge, researchers, policymakers, legal experts, industry representatives, and civil society organisations. These conversations may facilitate the development of mutual comprehension, trust, and cooperation, as well as the exchange of information and perspectives.

**Encourage collaboration among numerous stakeholders**<sup>22</sup>, including indigenous organisations, research institutions, government agencies, and non-governmental organisations (NGOs), by forming partnerships. Such collaborations can leverage the talents and resources of each stakeholder group, enabling cooperative efforts, research projects, and capacity-building initiatives.

**Knowledge Exchange and Capacity development:** Promote mutual learning and comprehension through initiatives involving knowledge exchange and capacity development. This is exemplified by workshops, training programmes, and community-based initiatives that facilitate the exchange of traditional knowledge, best practises, and research findings among numerous stakeholders.

**Respect for Indigenous Laws and Protocols:** Recognise and respect the customary laws, protocols, and practises of indigenous and local communities. It is necessary to comprehend their cultural values, traditions, and traditional governing structures and to incorporate them into joint activities. Respecting and following procedures ensures culturally appropriate and mutually beneficial cooperation.

**Encourage Interdisciplinary Research:** Encourage research that combines traditional knowledge systems with scientific and academic understanding. This could result in innovative methods, strategies, and solutions for the conservation, preservation, and long-term application of traditional knowledge and folklore.

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<sup>22</sup> Henrietta Marrie AM, *Emerging Trends in the Generation, Transmission and Protection of Traditional Knowledge*, UNITED NATIONS (May 19, 2023, 7:00 PM), <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/TK-Emerging-trends-in-the-generation-transmission-and-protection-of-TK-final-paper.pdf>.

## 6. CONCLUSION

Ultimately, India's policy and legal framework for the conservation of traditional knowledge and folklore are critical for the country's economic growth while protecting indigenous and local populations' rights. The necessity of maintaining culture and traditional knowledge is recognized in Indian law, as are the guiding concepts of indigenous rights and the obligation of Indian people to safeguard varied cultural assets, including traditional knowledge. However, due to the intangible character of traditional knowledge and the possibility of exploitation by other institutions or individuals, issues arise in safeguarding it.

Despite efforts by India to develop alternative frameworks and mechanisms that respect Indigenous and local communities' rights and interests, such as the Nagoya Protocol on Access to Genetic Resources and the fair and equitable sharing of benefits arising from their utilization under the Convention on Biological Diversity, The implementation of these frameworks continues to confront challenges, including a lack of active engagement and permission from indigenous and local populations, misappropriation difficulties, and insufficient benefit-sharing systems.

Through intellectual property rights and the Convention on Biological Diversity, India's legal system protects traditional knowledge and folklore. The CBD recognizes the importance of protecting, preserving, and sustaining traditional knowledge and supports its implementation of appropriate policies and programmes while encouraging fair and equitable benefit sharing.

However, there are several reasons why the existing legal structure is insufficient to safeguard traditional knowledge. One of the major problems is the economic, educational, and technical disadvantages that indigenous and local groups endure. Power imbalances, insufficient institutional structures, and a lack of coordination and collaboration can also inhibit the preservation of traditional knowledge. Furthermore, contracts and agreements that use traditional knowledge may be provided and accepted unfairly, thus leading to the marginalization and stereotyping of Indigenous and local groups.

As a result, a balance must be struck between maintaining cultural heritage, stimulating innovation, and honouring Indigenous and local groups' rights and interests in traditional knowledge. To do this, it is critical to encourage more engagement and consent from Indigenous and local people, resolve misappropriation concerns, and build effective benefit-sharing arrangements. Furthermore, awareness and education about the value, rights, and relevance of traditional knowledge and folklore must be promoted, and effective enforcement mechanisms to safeguard traditional knowledge and folklore must be implemented.

In conclusion, the Indian government must take the necessary steps to strengthen and expand the policy and legal framework for the protection of traditional knowledge and folklore, including an in-depth analysis of current legal frameworks that may pose obstacles as well as exploring innovative ways to achieve a better balance between preserving heritage and promoting innovation.

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