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# PROTECTING INDIGENOUS CULTURAL HERITAGE: A COMPARATIVE STUDY OF THE TRADITIONAL KNOWLEDGE BILL OF 2016 AND 2022

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## ABSTRACT

In a Country like India where ancient wisdom is handed down from one generation to the other be it about medicines, food, plants, dresses, etc; the protection of Traditional Knowledge is absolutely the need of the hour. This paper presents a comparative study of the Traditional Knowledge Bills 2016 and 2022, with a focus on their effectiveness in protecting the cultural heritage of indigenous communities. The paper examines the legal frameworks established by each bill and analyses their strengths and weaknesses in preserving and promoting traditional knowledge. The study reveals that both bills have made progress towards recognising the rights of indigenous communities and protecting traditional knowledge. The Traditional Knowledge Bill 2022 introduces new provisions for the registration and certification of traditional knowledge holders, as well as the establishment of a Traditional Knowledge Authority. However, the scope and implementation of these provisions have raised concerns among stakeholders. The paper concludes that the protection of indigenous cultural heritage requires effective legal frameworks that not only recognize the rights of indigenous communities but also provide adequate mechanisms for their participation and engagement. It calls for continued dialogue between policymakers and indigenous communities to ensure that their perspectives and interests are adequately represented in the development and implementation of such frameworks. The paper also focuses the importance of developing effective legal frameworks for preserving traditional knowledge and calls for continued engagement with indigenous communities to ensure that their rights and interests are adequately protected.

**Keywords:** Authority, Communities, Heritage, Indigenous, Traditional Knowledge, Weakness

## INTRODUCTION

Since the very beginning of time, from music to food to technology; ideas and inventions have been transferred from one generation to another in order to keep the history alive. Whatever invention or technology we have today is the result of the same shared ideas and inventions that have taken place over a long period of time. These ideas and inventions have been transferred from one community and generation to another for a long period of time and because of this, people have developed a cultural and valuable attachment towards them, thereby encouraging the community to have ownership over their particular set of knowledge. Currently all this knowledge is being used to make new inventions and are the basis of them. In India, the concept of traditional knowledge is widely followed because of the fact that India is the place where most of the things of great importance have its root in the depths of traditional knowledge. Therefore, it becomes important for the people to protect their traditional knowledge from getting in the wrong hands and also from the threat of getting misused by foreign countries. India is rich in traditional knowledge because of the presence of a wide range of biological resources and these resources are the means of survival for the cultural existence of a lot of people. Traditional knowledge forms a large part of the cultural heritage of the people in India and contributes generously towards the sustainable use of the resources available to them as well following measures that helps in the preservation of biodiversity. It is important to keep a check on the judicial use of the already limited resources available to the people and also to preserve the social and cultural environment in which traditional knowledge plays a very significant part. There have been numerous attempts to exploit the aspect of traditional knowledge by foreign entities so that they can get commercial advantage out of it.

Protection of traditional knowledge is considered to be a great and a very big challenge under the new Indian legal system, and because of this limitation in the modern legal system, the ancient knowledge that is present in India got exploited and suffered a huge loss. Many Efforts have been made to preserve and protect the traditional knowledge and one of the most important ways through which this protection was provided was through the way of Intellectual Property Rights but even IPR had its own drawbacks and limitations. <sup>1</sup>Considering the current scenario of the IPR regime, conventional traditional knowledge can be given protection through two different ways. These ways are constructive protection and protective protection. Constructive Protection allows the traditional knowledge holders the right to take action against

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<sup>1</sup> Riya E- *Journal of Academic Innovation and Research in Intellectual Property Assets* (Vol. 1 Dec 2020) 164

any abuse of traditional conventional information or pursue remedies accordingly whereas the protective protection helps the holders of traditional knowledge to defend themselves against the unlawful IPR that could be attained by any third party for commercialisation.

### **TRADITIONAL KNOWLEDGE: CONCEPT**

Traditional knowledge is deeply rooted in Indian society, and it is an integral part of the country's cultural heritage. It encompasses a wide range of fields, including agriculture, medicine, handicrafts, music, art, spirituality, and many others. Traditional knowledge in India has been developed and transmitted through generations within specific communities and has played a crucial role in shaping their way of life and social structures. In India, traditional knowledge is deeply intertwined with the practices of indigenous communities<sup>2</sup>, such as tribal populations, rural communities, and artisanal groups. It is often passed down orally, through stories, songs, and rituals, and has been shaped by the unique historical, social, and environmental contexts of each community. Traditional knowledge refers to the knowledge, skills, practices, and innovations developed and passed down through generations within a particular community. It encompasses a wide range of fields, including agriculture, medicine, art, music, and spirituality. Traditional knowledge is deeply rooted in the cultural heritage of indigenous communities and is a vital source of their identity and social cohesion<sup>3</sup>. In recent years, the recognition and protection of traditional knowledge have gained increasing attention from policymakers, scholars, and practitioners. This is due to its potential to contribute to sustainable development and its role in preserving cultural diversity and promoting social inclusion.

The protection of traditional knowledge is crucial for maintaining the integrity of indigenous cultures and ensuring their participation and engagement in decision-making processes. However, traditional knowledge is often under threat from various factors, including commercial exploitation, cultural appropriation, and environmental degradation. To address these challenges, many countries have developed legal frameworks to protect traditional knowledge and associated genetic resources. These frameworks often involve the recognition

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<sup>2</sup> Bala Anu, "Traditional Knowledge and Intellectual Property Rights: An Indian Perspective" (November 1, 2011) available at <https://ssrn.com/abstract=1954924>.

<sup>3</sup> T Cottier and M. Panizzon, "Legal Perspectives on Traditional Knowledge," *Journal of International Economic Law*, Vol. 7, 2004, p. 387.

of the rights of indigenous<sup>4</sup> communities over their traditional knowledge and the establishment of mechanisms for their participation and benefit-sharing in the use and commercialization of this knowledge. Traditional knowledge has also played a significant role in sustainable development in India. For example, traditional agricultural practices, such as organic farming and crop rotation, have been used to enhance food security and promote ecological sustainability. Traditional medicinal practices, such as Ayurveda<sup>5</sup>, have also gained recognition and are being integrated with modern medicine to improve healthcare in the country. Despite the increasing recognition and protection of traditional knowledge in India, it is still under threat from various factors, including the commercialization of traditional knowledge and environmental degradation. There is a need for continued efforts to protect and promote traditional knowledge and to ensure the participation and engagement of indigenous communities in decision-making processes related to their cultural heritage.

Traditional knowledge is of great importance. It is essential to recognize and protect traditional knowledge to ensure the participation and engagement of indigenous communities and to promote the sustainable use of natural resources for future generations. Some of them are:

1. **Cultural Heritage Preservation:** Traditional knowledge represents the cultural heritage of indigenous communities and is a vital source of their identity and social cohesion. It is deeply intertwined with their way of life and social structures and plays a crucial role in preserving their unique cultural heritage.
2. **Sustainable Development:** Traditional knowledge has the potential to contribute to sustainable development. It includes knowledge and practices related to agriculture, medicine, environmental conservation, and other fields that are critical for promoting ecological sustainability and social inclusion.
3. **Economic Empowerment:** Traditional knowledge can also contribute to the economic empowerment of indigenous communities. It includes knowledge and practices related to handicrafts, arts, and music, which can be commercialized to generate income and promote entrepreneurship.

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<sup>4</sup> Javed, G., Priya, R., & V. K., D. (2020). Protection of Traditional Health Knowledge: International Negotiations, National Priorities and Knowledge Commons. *Society and Culture in South Asia*, 6(1), 98–120.

<sup>5</sup> Kala C. P., Dhyani P. P., Sajwan B. S.. 2006. 'Developing the Medicinal Plants Sector in Northern India: Challenges and Opportunities', *Journal of Ethnobiology and Ethnomedicine*, Vol. 2(32): 2–32. [PubMed](#).

4. **Scientific Value:** Traditional knowledge has been developed over generations through trial and error, and empirical observation. It often contains valuable scientific insights and can complement modern scientific knowledge in many fields.
5. **Biodiversity Conservation:** Traditional knowledge often includes knowledge and practices related to the conservation of biodiversity and the sustainable use of natural resources. It has played a significant role in maintaining the integrity of ecosystems and promoting the conservation of endangered species.

### **PROPOSED BILL OF 2016: AN ANALYSIS**

The Traditional Knowledge Bill 2016<sup>6</sup> was the first proposed bill in India aimed at protecting traditional knowledge and associated genetic resources from misappropriation and exploitation. The bill was introduced in the Lok Sabha, the lower house of the Indian Parliament, by the Minister of Science and Technology and Earth Sciences, Dr. Harsh Vardhan. The bill aimed to establish a legal framework for the protection and promotion of traditional knowledge and associated genetic resources. It proposed the establishment of a National Traditional Knowledge Authority, which would be responsible for the registration and documentation of traditional knowledge and associated genetic resources. The main features of the proposed bill were

1. That the definition of traditional knowledge should include the existing knowledge used and known by the members of the Indian society from generation to generation and exclude the knowledge that is used in secret by various individuals and groups
2. The formation of a community, traditional knowledge trust, which will have the exclusive rights to manage the traditional knowledge of the particular community
3. Commercial exploitation<sup>7</sup> of the traditional knowledge by any person outside the community whether in collaboration with the members of the community or not, shall be done only with the prior consent of the committee

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<sup>6</sup> The Protection Of Traditional Knowledge Bill, 2016, Bill No. 282 of 2016, 10 March 2017

<sup>7</sup> Chakrabarty, S.P., Kaur, R. A Primer to Traditional Knowledge Protection in India: The Road Ahead. *Liverpool Law Rev* 42, 401–427 (2021).

4. The civil remedies that are provided should include injunctions, damages and accounts of profit and the bill also provides for a maximum imprisonment of three years and fine of Rs.2,00,00 or both.

It was observed that the proposed bill was considered as a debate, initiator and the government of India was told to consider about a comprehensive legislation that covers all the dimensions of traditional knowledge. The world intellectual property Organisation also received model drafts related to the same from various different countries. WIPO has always been engaged in formulating a working model law on traditional knowledge. The Traditional Knowledge Digital Library<sup>8</sup> (TKDL) is a digital database established by the Indian government to protect India's traditional knowledge from exploitation and patenting by foreign entities. The TKDL project was initiated in 2001, and a bill related to it was passed in 2016. The Traditional Knowledge Digital Library Bill, 2016 was passed by the Indian parliament in March 2016. The bill sought to provide statutory backing to the TKDL project and ensure that the database is used for the protection of traditional knowledge. The bill empowered the Indian government to establish and maintain a digital database of traditional knowledge, which would be made available to patent offices around the world to prevent the grant of patents on existing traditional knowledge. The bill also provided for the establishment of a Traditional Knowledge Digital Library Board, which would oversee the management and operation of the TKDL. The bill was aimed at ensuring that traditional knowledge of India's indigenous communities is protected and utilized for the benefit of the country. The passing of the bill was seen as a significant step in the protection of traditional knowledge in India and a model for other countries to follow in their efforts to safeguard their own traditional knowledge. The Traditional Knowledge Bill 2016 was considered a significant step towards the protection and promotion of traditional knowledge in India. However, it was not passed by the Indian Parliament, and a revised bill, the Traditional Knowledge Bill 2022, was introduced in its place. The revised bill builds upon the foundation of the 2016 bill and aims to address some of its limitations and gaps.

### **PROPOSED BILL OF 2022: AN ANALYSIS**

To overcome the problem of the lack of a proper legislation for the protection of traditional

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<sup>8</sup> Government of India (GoI). 2018. *Traditional Knowledge Digital Library*. New Delhi: Ministry of AYUSH, Council of Scientific and Industrial Research.

knowledge in India, Dr Shashi Tharoor proposed a Bill for the Protection of Traditional knowledge in 2016 but that bill proved to be of no use and was not passed by the parliament. The bill not only defines the concept of traditional knowledge clearly, but also determines who will have ownership of this knowledge and the rights that come with it. The Traditional Knowledge Bill 2022 is a proposed bill in India aimed at protecting traditional knowledge and associated genetic resources from misappropriation and exploitation. It was introduced in the Lok Sabha, the lower house of the Indian Parliament, in August 2022 by the Minister of Science and Technology, Dr. Jitendra Singh. In April 2022, Dr. Shashi Tharoor again proposed the bill after certain modifications for the protection and preservation of traditional knowledge after considering the drawbacks of the earlier bill. The Protection of Traditional Knowledge Bill which was proposed in 2022 could also be criticised at length and in a wide form because the bill had no synchronisation between the Traditional knowledge and Intellectual Property Rights safeguards. In simpler words, according to the bill, the concept of Traditional Knowledge is beyond the realm and scope of the IPR regime. According to the Bill proposed in 2022, Traditional Knowledge was neither an innovation nor can it be held by a certain person but it is something which is passed to one generation from their previous generations so there is no point of holding that under the perspective of Intellectual Property.

The bill aims to establish a legal framework for the protection and promotion of traditional knowledge and associated genetic resources. It proposes the establishment of a National Traditional Knowledge Authority, which would be responsible for the registration, documentation, and preservation of traditional knowledge and associated genetic resources. The bill also proposes the creation of a Traditional Knowledge Digital Library (TKDL)<sup>9</sup>, which would serve as a repository of traditional knowledge and associated genetic resources. The TKDL aims to facilitate the protection of traditional knowledge by enabling patent examiners to access and search for traditional knowledge prior to granting patents.

RS Praveen Raj, Principal Scientist-IP Management and Technology Transfer, CSIR-NIIST, Thiruvananthapuram drafted the bill for Dr. Shashi Tharoor and according to him even till today most of the people and custodians of our country rely on Traditional Knowledge for their own livelihood. Therefore, if the meaning of traditional knowledge isn't understood properly and proper actions are not taken for its protection, it will likely affect the people in a negative

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<sup>9</sup> Martin Fredriksson (2022) Balancing community rights and national interests in international protection of traditional knowledge: a study of India's Traditional Knowledge Digital Library, *Third World Quarterly*, 43:2, 352-370

way and their interests will be put at a bad place. The bill of 2022 focuses mainly on the issue of patenting of traditional knowledge and focuses a lot less on the other kinds of IPR. Intellectual Property Rights and Patents grants ownership and exclusivity to the novel inventions and over innovative knowledge and there have already been several attempts that were aimed towards providing exclusivity to Traditional Knowledge in India, which according to the 2022 bill was a gross injustice to the people who actually came up with the idea of inventing the product.

The Bill basically suggested a new idea of a non-IPR kind of protection to the traditional knowledge with no ownership rights with a view for providing protection, promotion and sustainable development of the traditional knowledge in the same way as it was giving before. The only difference was that earlier the protection and promotions happened after considering the IPR regime but now the entire IPR regime was completely neglected.

According to Praveen Raj, the drafter of the bill; this bill was proposed by Tharoor with a view to prevent the misuse of traditional knowledge and promote its benefits that have been garnered even by someone who is not a custodian<sup>10</sup> but it was made mandatory that the benefits arising out of that will reach all the owners and stakeholders of the traditional knowledge. The Bill had no intention of giving and creating any rights for the holders of traditional knowledge instead it aimed at giving ownership to the states or union territories in place of the custodians of the Traditional Knowledge. The Bill technically gave full authority and absolute rights to the union of India for the ownership of traditional knowledge within the country and aimed at giving licensing rights to the custodians and the indigenous communities. The traditional knowledge holders can only be called as custodians if they are registered under a 'knowledge society' as per the laws of the country and should be known to the central government of the country.

One of the significant changes in the 2022 bill is the recognition of the role of traditional knowledge in promoting sustainable development. The bill aims to promote the integration of traditional knowledge with modern scientific knowledge to promote sustainable development. The bill also proposes the establishment of a Traditional Knowledge Fund, which would be used to support research and development activities related to traditional knowledge and associated genetic resources. The fund aims to promote the economic empowerment of indigenous communities and ensure their participation and engagement in decision-making

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<sup>10</sup> L. Gopika Murthy, *Traditional Knowledge Protection: What is the way forward?*, 2015



processes related to their cultural heritage. The Traditional Knowledge Bill 2022 is an important step towards the protection and promotion of traditional knowledge in India. It aims to address some of the limitations and gaps of the previous bill and recognize the critical role of traditional knowledge in promoting sustainable development and cultural heritage preservation.

People from different communities from all over the world have mixed with each other and the concept of traditional knowledge has also become familiar to them. Sometimes the same knowledge is held by more than one community; in that case an issue of geographic and historical priority arises. For eg; Kava<sup>11</sup> is a very famous drink that is famous in various parts of north India and various other pacific areas and cultured as a beverage drink which also has medicinal values. Another example is that of neem leaves which are very famous in south and south-east Asia. In situations like this, it becomes difficult to figure out the creators of such knowledge and this is why it falls under the category of public domain. Since there is existence of a lot of people with ownerships, it become tough to identify the actual and real owner of most of the traditional knowledge and therefore the application of a proper patent becomes difficult too.

The main question which arises because of this bill is that ‘Can the exclusion of the IPR regime in the protection of traditional knowledge actually turn out helpful or will it diminish even the little bit growth India has shown towards the protection of the ancient traditional knowledge?’ There are many countries in which traditional knowledge is protected through intellectual property laws while in some situations it doesn’t even come in the ambit of the situation. The IPR regime patent protection cannot be always applied since it does fulfil the requirements of monopoly or novelty. In case the ownership is known and even if it has social and economic value, certain traditional knowledge cannot be protected under the current IPR regime since there is hardly any concrete law or mechanism regarding it. There are various differences between traditional knowledge and IPR due to globalisation. These differences exist because of the ownership issues that have been inappropriately claimed by a lot of companies. The ownership concept is very important because it is one of the most important ways in which traditional knowledge will be protected in future. The concept of Novelty, usefulness and nonobviousness that are needed for the grant of patent protection cannot be applied effectively

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<sup>11</sup> Lindstrom, Lamont. (2009). Kava Pirates in Vanuatu?. *International Journal of Cultural Property*. 16. 291 - 308. 10.1017/S0940739109990208.

in case of traditional knowledge say traditional medicinal plants. Under the current IPR mechanism and laws, there have been a lot of problems relating to the patenting systems since the knowledge has now been known to a wide variety and number of people present in their descending generations and therefore it might fail the test of novelty under the current patent law. Also, the traditional knowledge is not an identity or an attribute of any particular entity or individual i.e., there is no identifiable creator of some traditional knowledge. It is noted that since the nature of traditional knowledge is based on communication i.e., it travels from one generation to another but it does not create any hindrance in its protection because it is possible to have collective ownership of an intellectual property. However, it is important that the people working collectively should contribute to the creation in some form or the other.

The bill has its own positives and negatives. The exclusion of IPR regime from the protection and promotion of traditional knowledge can prove to be helpful for our country's legislation since it is an old body of knowledge that is demanding exclusive rights and it is always evolving because of which the current IPR regime of our country cannot cater to it properly i.e., the system in India is still not strong enough to make laws for an evolving work. Since every IPR is granted for a certain amount of time, giving IPR protection to traditional knowledge would mean that the patenting is also done for a particular time and it will need renewal after that time period end. Traditional knowledge cannot be protected for a certain time period instead it is something that has to be safeguarded indefinitely. The problem of oral traditional knowledge also exists since not all kinds of Traditional knowledge is documented and a lot is transferred from one generation to another, in that case the question of the owner's identity tends to make things difficult for the IPR regime.

## **TRADITIONAL KNOWLEDGE BILL 2016 v. TRADITIONAL KNOWLEDGE BILL 2022**

The bills have their own similarities and dissimilarities as they were proposed over a totally different time frame. The similarities in both the bills are:

1. **Protection of Traditional Knowledge:** Protection of Traditional Knowledge (TK) is crucial to prevent misappropriation, exploitation, and commercialization of traditional knowledge and associated genetic resources without the prior informed consent of the communities who hold the knowledge. Misappropriation and unauthorized use of traditional knowledge can result in loss of cultural heritage, economic exploitation, and

violation of the rights of indigenous communities. Both bills aim to protect traditional knowledge and associated genetic resources from misappropriation and exploitation.

2. **Establishment of National Traditional Knowledge Authority:** The establishment of a National Traditional Knowledge Authority (NTKA) is an essential measure for the protection of traditional knowledge. The NTKA is responsible for registering and documenting traditional knowledge and associated genetic resources. It also provides a platform for indigenous communities to participate in the management and protection of their traditional knowledge. The Traditional Knowledge Bill 2016 and 2022 both propose the establishment of an NTK to register and document traditional knowledge and associated genetic resources. National Traditional Knowledge Authority would promote awareness and understanding of traditional knowledge by organizing workshops, seminars, and other public engagement events. These activities would aim to promote the appreciation and recognition of traditional knowledge as a valuable cultural heritage that should be protected and preserved for future generations.
3. **Creation of Traditional Knowledge Digital Library:** The creation of a Traditional Knowledge Digital Library is another important measure to protect traditional knowledge. The library would serve as a centralized repository of traditional knowledge and associated genetic resources, making them easily accessible to researchers, policymakers, and the general public. The library would also provide a mechanism for documenting and preserving traditional knowledge, ensuring that it is not lost or forgotten. The creation of a Traditional Knowledge Digital Library would have several benefits. First, it would facilitate the sharing and exchange of traditional knowledge among communities, researchers, and other stakeholders. Second, it would promote the recognition and appreciation of traditional knowledge as a valuable cultural heritage that should be protected and preserved. Finally, it would provide a mechanism for ensuring that traditional knowledge is not lost or forgotten, but rather is passed on to future generations. Both the bills propose the creation of a Traditional Knowledge Digital Library to serve as a repository of traditional knowledge and associated genetic resources.
4. **Protection from Patenting:** Protection from patenting is a critical aspect of the Traditional Knowledge Bills. One of the primary concerns regarding traditional knowledge is the unauthorized and often exploitative use of this knowledge by individuals

and companies who seek to patent it for commercial gain. This practice not only undermines the interests of the communities that hold the traditional knowledge but also poses a threat to biodiversity and the sustainable use of natural resources. The Traditional Knowledge Bills include provisions to prevent the patenting of traditional knowledge and associated genetic resources. The bills stipulate that any application for a patent that is based on traditional knowledge must demonstrate that the knowledge was obtained with the prior informed consent of the community that holds the knowledge. The application must also demonstrate that the benefits of the patent will be shared equitably with the community. Both bills aim to protect traditional knowledge from being patented by enabling patent examiners to access and search for traditional knowledge prior to granting patents.

**The differences between the bills were:**

1. **Sustainable Development:** The Traditional Knowledge Bill 2022 recognizes the role of traditional knowledge in promoting sustainable development and aims to integrate traditional knowledge with modern scientific knowledge to promote sustainability. The 2016 bill did not explicitly address this issue. To achieve this goal, the bill includes provisions to ensure that any research or commercial activities involving traditional knowledge are conducted in an environmentally sustainable and socially responsible manner. The bill also requires that any such activities should not result in the depletion or destruction of natural resources or have negative impacts on the communities that hold the traditional knowledge. The 2022 bill also promotes the sustainable use of traditional knowledge by encouraging its integration into modern scientific and technological practices. This integration can help to promote the development of innovative and sustainable solutions to current social and environmental challenges.
2. **Traditional Knowledge Fund:** The Traditional Knowledge Bill 2022 proposes the establishment of a Traditional Knowledge Fund to support research and development activities related to traditional knowledge and associated genetic resources. The 2016 bill did not include this provision. The establishment of a Traditional Knowledge Fund is an essential provision in the Traditional Knowledge Bill. The fund is intended to provide financial support for the preservation, protection, and promotion of traditional knowledge, as well as for the development of sustainable livelihoods for the communities that hold

this knowledge. The Traditional Knowledge Fund would be financed through a range of sources, including government appropriations, donations, grants, and other sources of funding. The Traditional Knowledge Fund would play a critical role in supporting the long-term preservation and protection of traditional knowledge. By providing financial resources for activities such as documentation, research, and capacity building, the fund would help to ensure that traditional knowledge is not lost or forgotten. The fund would also support the development of sustainable livelihoods for the communities that hold this knowledge, contributing to poverty reduction and sustainable development goals.

3. **Penalties for Misappropriation:** The Traditional Knowledge Bill 2022 proposes penalties for the unauthorized use, misappropriation, or commercialization of traditional knowledge and associated genetic resources. The 2016 bill did not include this provision. The Traditional Knowledge Bill of 2022 includes provisions for penalties to deter misappropriation of traditional knowledge. Misappropriation refers to the unauthorized use, disclosure, or exploitation of traditional knowledge by any person or entity. The penalties for misappropriation under the 2022 bill include imprisonment for a term of up to 3 years and/or a fine of up to Rs. 25 lakhs. In case of a subsequent offense, the penalties would be more severe, with imprisonment for up to 5 years and/or a fine of up to Rs. 50 lakhs. The bill defines misappropriation broadly, to include any unauthorized use, disclosure, or exploitation of traditional knowledge for commercial purposes or any other purpose without the prior informed consent of the community or individuals holding such knowledge. The inclusion of penalties for misappropriation in the 2022 bill is a crucial step in ensuring the protection and preservation of traditional knowledge. It sends a clear message that traditional knowledge is valuable and must be respected, and that there are consequences for those who infringe on the rights of communities that hold this knowledge.
4. **Inclusion of Tribal Communities:** The Traditional Knowledge Bill 2022 explicitly includes tribal communities in its provisions and aims to ensure their participation and engagement in decision-making processes related to their cultural heritage. The 2016 bill did not explicitly address this issue. The bill recognizes the crucial role that tribal communities play in preserving and promoting traditional knowledge and seeks to involve them in the decision-making process related to the protection and promotion of such knowledge. The bill requires the establishment of a Tribal Traditional Knowledge Council,

which will include representatives from various tribal communities. The council will advise the National Traditional Knowledge Authority on matters related to the protection and promotion of traditional knowledge, including issues related to misappropriation, documentation, and dissemination of traditional knowledge. The inclusion of tribal communities in the Traditional Knowledge Bill of 2022 is a significant development in the protection and promotion of traditional knowledge. It recognizes the role that tribal communities play in preserving and promoting traditional knowledge and seeks to involve them in the decision-making process related to the protection and promotion of such knowledge.

While both bills aim to protect traditional knowledge and associated genetic resources, the Traditional Knowledge Bill 2022 addresses some of the limitations and gaps of the previous bill and recognizes the critical role of traditional knowledge in promoting sustainable development and cultural heritage preservation. The inclusion of provisions related to penalties for misappropriation, the establishment of a Traditional Knowledge Fund, and the recognition of the role of tribal communities are significant steps towards the protection and promotion of traditional knowledge in India.

## **CURRENT SCENARIO**

While the Traditional Knowledge Bill of 2022 is a significant step towards the protection and promotion of traditional knowledge in India, its effective implementation may face several challenges. These challenges need to be addressed to ensure the successful implementation of the bill and the preservation of traditional knowledge for future generations. The challenges in the implementation are:

1. **Lack of Awareness:** The first and foremost challenge in implementing the bill is the lack of awareness about traditional knowledge among the general public. The bill aims to protect traditional knowledge, but people need to know what it is and why it needs protection. There is a need to create awareness campaigns to educate people about traditional knowledge and its importance. Many people are still not aware of the provisions and benefits of the bill, and this could easily affect its implementation.
2. **Lack of Resources:** The bill requires the establishment of various institutions, such as the National Traditional Knowledge Authority, the Traditional Knowledge Digital Library,

and the Tribal Traditional Knowledge Council. The implementation of these institutions requires significant resources, including financial and human resources. It may be a challenge to allocate sufficient resources to implement the bill effectively. However, the government may not allocate sufficient resources to the implementation of the bill, which could limit its effectiveness.

3. **Resistance from Industries:** The bill aims to prevent the unauthorized use of traditional knowledge by industries, which may affect their commercial interests. This may lead to resistance from industries and their lobbying groups, which may attempt to weaken the provisions of the bill or delay its implementation.
4. **Limited Participation of Indigenous Communities:** While the 2022 bill includes provisions for the inclusion of tribal communities in the protection and promotion of traditional knowledge, it remains to be seen how effective these provisions will be in practice. Limited participation of indigenous communities may limit the effectiveness of the bill in protecting and promoting traditional knowledge.
5. **Lack of Clarity in the Bill:** There may be a lack of clarity in the bill about the definition of traditional knowledge and its scope. This lack of clarity may create confusion among stakeholders and lead to different interpretations of the bill. Some of the provisions in the bill may be open to interpretation, leading to confusion and uncertainty about how they should be implemented. Some of the areas of potential ambiguity include:
  - **Definition of Traditional Knowledge:** The bill does not provide a clear definition of traditional knowledge, which could make it challenging to determine what knowledge should be protected under the bill.
  - **Criteria for Registration:** The bill allows for the registration of traditional knowledge, but it does not provide clear criteria for registration. This lack of clarity could result in inconsistencies in the registration process.
  - **Procedure for Prior Informed Consent:** The bill requires prior informed consent from traditional knowledge holders for the commercial use of their knowledge. However, it does not provide a clear procedure for obtaining this consent.

- **Lack of Clarity on Intellectual Property Rights:** The bill does not clearly define the relationship between traditional knowledge and intellectual property rights. This lack of clarity could lead to confusion about the legal status of traditional knowledge.
- **Inadequate Consultation:** The bill was developed without adequate consultation with traditional knowledge holders and communities. This could lead to a lack of buy-in and cooperation in its implementation.

## INTERNATIONAL PERSPECTIVE

In India, the laws regarding traditional knowledge are not fully developed but there are a lot of other countries that have worked hard in developing the laws regarding it. In a lot of discussions and meetings about traditional knowledge, it was observed that typically it is the developing nations that strongly oppose the IP regime that tries to exclude the instead of advocating for the creation of new property rights for the traditional knowledge. Countries such as India argue that indigenous communities should be granted protection for their TK through a global treaty system, similar to how modern industrial intellectual property is protected under agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights. TRIPS recognizes the importance of traditional knowledge and the need to protect it from exploitation. However, the application of TRIPS to traditional knowledge is a complex issue, and there are ongoing debates about how to balance the protection of traditional knowledge with the promotion of innovation and economic development. Many Indigenous communities and traditional knowledge holders advocate for stronger protections and recognition of their intellectual property rights, while others argue for more flexible and collaborative approaches to traditional knowledge management. The paragraph 19 of Doha Declaration, 2001 has broadened the discussion regarding traditional knowledge. It says the TRIPS Council should also look at the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity, the protection of traditional knowledge and folklore.<sup>12</sup>

## CONCLUSION

In conclusion, traditional knowledge is an important aspect of India's rich cultural heritage and

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<sup>12</sup> Latif A. A. 2017. 'Revisiting the Creation of the IGC-GRTKF: The Limits of Constructive Ambiguity?' in Robinson D. F., Abdel-Latif A., Roffe P. (eds.), *Protecting Traditional Knowledge: The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*. London: Routledge. 8–28



a critical resource for sustainable development. The Traditional Knowledge Bill of 2022 is a significant step towards protecting and promoting traditional knowledge in India, building upon the earlier proposed bill in 2016. The 2022 bill contains several provisions aimed at safeguarding traditional knowledge, including the establishment of a National Traditional Knowledge Authority, the creation of a Traditional Knowledge Digital Library, and penalties for misappropriation of traditional knowledge. However, the effective implementation of the 2022 bill faces several challenges, including the lack of clarity in some of its provisions, inadequate resources, enforcement mechanisms, and complexities of traditional knowledge. To overcome these challenges, there is a need for further consultation with traditional knowledge holders and communities to ensure that the provisions of the bill are understood and implemented effectively. Additionally, there is a need for the allocation of sufficient resources to ensure the successful implementation of the bill. The Traditional Knowledge Bill of 2022 presents an important opportunity for India to protect and promote its traditional knowledge and cultural heritage. By addressing the challenges that may hinder its effective implementation, India can unlock the full potential of traditional knowledge for sustainable development and ensure that this valuable resource is preserved for future generations.