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## **Legal Framework for Protecting Adivasi Traditional Knowledge in India**

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### **Abstract:**

Traditional knowledge, also known as indigenous knowledge, is a relatively new addition to the realm of intellectual property rights (IPR), encompassing aspects covered under the Patent Act and other related laws. Following three significant precedents, India embraced the concept of traditional knowledge by establishing the Traditional Knowledge Digital Library (TKDL) and the Traditional Knowledge Resource Classification System (TKRC). While India currently lacks a comprehensive law specifically for traditional knowledge, there have been efforts to introduce such legislation in the Indian Parliament over the past six years. Notably, Dr. Shashi Tharoor introduced the Protection of Traditional Knowledge Bill as a private member's bill in 2016 and again in 2022. However, due to the non-profitable nature of traditional knowledge, the bill has faced challenges in garnering support from both individual and corporate sectors. Prominent intellectual property officers argue that traditional knowledge does not neatly fit within the framework of patent and IPR laws, contributing to the bill's failure to become an act.

This paper focuses on the element of indigeneity that does not align with recent modern projects of intellectual property rights law in India. It examines the legal framework for protecting traditional knowledge in the country by analyzing relevant laws and policies, and providing case studies that highlight instances of both success and failure. The paper will thoroughly discuss the diaspora of traditional knowledge and its protection, employing a mixed-method research approach that incorporates case studies, numerical data, and content analyses.

**Keywords: Adivasi, Traditional knowledge, Novelty, Intellectual, Indigenous, Customary Law.**



## Introduction

In this recent digital era, data is the oil that drives technology. When we explore the culture, literature, and artistic perspectives of Indigenous/Adivasi and other tribal communities, we see that these form the foundation of their arts and passions. They carefully preserve these intangible assets without any capitalist influence. This aspect is recognized under traditional knowledge, which falls within the scope of intellectual property rights. Currently, there is no specific legislature or policy dedicated to protecting traditional knowledge. However, India has implemented various initiatives to safeguard traditional knowledge and genetic resources, reflecting its commitment to preserving its rich cultural heritage and biodiversity.

The Traditional Knowledge Digital Library (TKDL), established in 2001<sup>1</sup>, serves as a comprehensive database of medicinal formulations in multiple languages, safeguarding India's medicinal knowledge from being wrongly patented. This initiative emerged from India's need to address challenges in overturning patents on traditional remedies like turmeric and neem. The Patents (Amendment) Act, 2005 further strengthens this protection by requiring patent applicants to disclose the origin of biological resources used in their inventions, especially those involving traditional knowledge (TK). Non-compliance may result in patent refusal. Additionally, the Trademark Act of 1999 allows indigenous groups to protect their agricultural and biological products through trademark registration, ensuring their brand is recognized and their product quality is maintained<sup>2</sup>. The Biological Diversity Act, of 2002, plays a crucial role by promoting the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of biological resources and traditional knowledge<sup>3</sup>.

Geographical Indications (GI) further protect products originating from specific regions, ensuring that their qualities or reputation remain tied to their place of origin. In terms of genetic resources, India has established several key institutions and legal frameworks. The National Gene Bank, set up in 1996, preserves the seeds of Plant Genetic Resources (PGR) for future generations and can store about one million germplasms. The Plant Varieties and Farmers' Rights (PPV&FR) Act of 2001 ensures that plant breeders and farmers who contribute to the development of new plant varieties receive a fair share of commercial benefits. This act is notable for including provisions on access and benefit-sharing (ABS)



alongside Plant Breeder's Rights (PBRs). The National Bureau of Plant Genetic Resources (NBPGR) and the National Bureau of Animal Genetic Resources (NBAGR), both operating under the Indian Council of Agricultural Research (ICAR), play a vital role in conserving the genetic diversity of cultivated plants, their wild relatives, and animal genetic resources<sup>4</sup>. Additionally, the National Bureau of Agriculturally Important Insects (NBAII) is responsible for the collection, characterization, documentation, conservation, and utilization of agriculturally important insect resources, thereby contributing to the sustainable development of India's agricultural sector. Through these initiatives, India actively protects its traditional knowledge and genetic resources, ensuring these invaluable assets are preserved for future generations<sup>5</sup>.

Despite these efforts, the Indian government has failed to adequately protect traditional knowledge. While there are several legislative frameworks, their interpretation remains broad. Although it is true that traditional or indigenous knowledge is a vast area with industrial value, the government should introduce a distinct policy that protects the customary laws of Adivasi and other tribal communities in India.

### **Element And Need of Protection Traditional Knowledge in IPR**

Traditional knowledge, also referred to as Indigenous knowledge or Indigenous traditional knowledge, is an intrinsic part of the culture and history of native communities. It has evolved over many years through daily experimentation, use, and application in everyday life, utilizing the resources available to the community. As a result, it is a unique, local knowledge system developed within and adapted to specific conditions by both men and women indigenous to a particular geographical area. Different people offer various definitions of traditional knowledge.

Indigenous Traditional Knowledge (ITK) is a comprehensive body of knowledge and practices shaped by people's experiences in diverse aspects of life, specific to a particular culture. It is a complex concept that encompasses empirical, intellectual, social, and spiritual elements that form human culture. ITK reflects the collective values and customs that guide interactions among people and between humans and nature. Over centuries, societies have evolved by learning from experience and passing this knowledge to younger generations. A recent definition by Gadgil describes traditional knowledge as a cumulative body of knowledge



and beliefs, passed down through cultural transmission, about the relationship between humans and their environment.

Traditional knowledge has developed alongside nature and has contributed to reducing carbon emissions. In today's world, where the demand for carbon credits is high and pollution levels are at their peak, leading to numerous diseases, recent debates have arisen regarding carbon emissions from machines and various technologies. Therefore, traditional knowledge presents an important pathway toward achieving a carbon-free Earth and ensuring net-zero emissions. This knowledge is passed down through folklore, songs, music, and dance, as well as through the creation and evolution of household tools and natural devices over generations.

A prime example of this is the wheat flour grinder made of wood and stone, known as "Jaat" in Gondi. This tool is used for grinding wheat, ragi, and millet at home without the use of plastic or chemicals. In Adivasi communities, their folk songs depict realistic events, essentially serving as a historical record. This history is passed down to future generations through rituals and traditional customs. It encompasses not only songs, dance, and scientific practices but also the preservation of their history, their battles with outsiders, and their spirit of innovation. Therefore, protecting traditional knowledge is essential in this polluted era. It promotes sustainable living and aids in managing risks and disasters.

### **Failure of the Legal System to address the protection of Traditional knowledge**

In India, traditional knowledge does not separate laws and any regulation, the Indian legal framework guarantees that it will be protected through the Patent, trademarks, and copyright act, which is typically impossible.

#### **A. India's Legal Framework for the Protection of TK:**

India does not have a specific law or regulation dedicated to governing traditional knowledge. The Patent Act is primarily relevant for protecting technological innovations that are uniformly new, scientifically significant, and require a level of creativity. For instance, patents are granted for genetic resources and traditional knowledge (TK) used in products that are novel, synthesized, or derived from genetic structures, microorganisms, and living



organisms within the environment. Processes related to the use and application of these resources are also protected, as long as they meet the same standards. Additionally, methods well-known within native communities may qualify for protection if they satisfy the criteria. In short, patentability is a formal process that is more capitalist and market-driven, unlike traditional knowledge. According to Section 3(p) of the Patent Act, traditional knowledge is an exception to patentability. If a product involves an element of traditional knowledge or is very similar to an existing traditional product, it cannot be patented under the Patent Act. For a product to be patented, it must meet three main criteria: novelty, an inventive step, and industrial applicability. Since the characteristics of traditional knowledge are fundamentally different from these criteria, traditional knowledge cannot be patented.

The Copyright Act of 1957 recognizes performers' rights in addition to copyright protection for dramatic works, original literature, visual art, music, sound recordings,<sup>6</sup> and cinematograph films<sup>7</sup>. sound recordings, and cinematograph films. The Act safeguards against the copying or piracy of works created by individual writers, artists, performers, as well as institutions or organizations. However, this protection does not extend to traditional knowledge (TK) and traditional cultural expressions (TCEs) in the Northeastern States. In these regions, knowledge and information are collectively held by society, typically immaterial, and not attributable to a single creator or inventor. Such knowledge is often shared orally within the community and is not controlled by any individual, organization, or confined within a system. As a result, if a person or organization (regardless of the author's nationality) writes a book about a tribe or clan's traditional knowledge, such as healing practices or medicine, the copyright belongs to the author, not the tribe or clan. Therefore, the protections offered by other national and international laws for TK and TCEs do not apply. This situation is similar for traditional artistic works, cinematographic films, music, sound recordings, and performances. Consequently, the Copyright Act falls short in safeguarding the Traditional Knowledge and Traditional Cultural Expressions of Indigenous populations in the Northeast and across the country.

In India, the northeastern region is predominantly inhabited by tribal communities, while the central part of India is home to Indigenous peoples who are generally less familiar with the World Intellectual Property Organization (WIPO) and its functioning. The designs of clothes and ornaments created by Indigenous and tribal communities are authentic and



aesthetically significant, possessing substantial industrial value. Consequently, these designs are in high demand in the market, and non-Adivasi individuals (referred to as “dikus”) often seek to commercially exploit such designs. Frequently, the Indigenous communities are unaware of the protections afforded under the Design Act, leading to violations of their rights. Capitalist entities often capitalize on these designs, presenting them with a modern approach for commercial gain.

Traditional Cultural Expressions (TCEs), as defined by WIPO, encompass music, dance, names, signs, art, designs, symbols, ceremonies, performances, architectural forms, narratives, handicrafts, and other artistic cultural expressions. This definition is applicable to the Northeastern States. However, the Design Act of 2002 does not provide any specific provisions for the protection of TCEs. It is important to note that intellectual property laws, such as the Design Act and the Copyright Act, are primarily individual- centered and lack adequate provisions for the protection of Traditional Knowledge (TK) and TCEs. These laws are intended to protect Indigenous communities from exploitation, whether by individuals or institutions.

While it may not be feasible for the Union Government to address every issue affecting the Northeast region, the respective state governments should utilize the special constitutional status granted to the Northeastern States under the Sixth Schedule of the Indian Constitution to combat the exploitation of traditional and cultural rights.

India enacted the Protection of Plant Varieties and Farmers’ Rights Act of 2001 (PPVFA) to comply with the TRIPS agreement<sup>8</sup>. However, due to the socioeconomic conditions of indigenous tribes, the PPVFA has struggled to achieve its objectives. The Act requires that new plant varieties pass the Distinctness, Uniformity, and Stability (DUS) test, which involves complex legal and scientific criteria. Indigenous farmers, who frequently live in remote areas with limited access to testing facilities, face significant obstacles in meeting these standards. Lastly, the act does not address the benefit sharing among the tribal communities, for the traditionally developed and use of plant varieties among the multiple tribal communities across the region. In the case of the Kani tribe in South India, it is going to the disputed that if the tribal does not get a benefit share, then it violates the principle and does not fulfill the goal of the TRIPS agreement<sup>9</sup>



### **B. Traditional knowledge and Customary laws:**

According to the Indian Constitution, two types of schedules address the rights of tribal communities in India. The Sixth Schedule applies to the Northeastern states, while the Fifth Schedule pertains to states where tribal people are the original inhabitants. Under the Sixth Schedule, local authorities are empowered to preserve and promote their traditions through the customary laws they have practiced since ancient times. However, for the tribal or Indigenous communities in central India, no specific legislation exists to protect or preserve their customary laws. The PESA Act does not grant local communities the power to establish self-government for Indigenous people. This could be one reason why Northeastern tribal communities are more aware of their intellectual property rights (IPR) compared to those in central India.

Regarding customary law, *Article 13(3) of the Constitution states that “law” includes any ordinance, order, bye-law, rule, regulation, notification, custom, or usage that has the force of law within the territory of India*<sup>10</sup>. This means that customs practiced in India are also considered laws. Before independence, Adivasi communities governed disputes through customary laws, often referred to as Panchayati or Rudhi Gramsabha, or by the respective names of their tribal communities. For example, the Gond tribe has the Bumkal system, the Oraon community has Padaha, and the tribals in Gujarat practice a system called Patel Sarkar.

### **C. Documentation and Digitalization of Adivasi Traditional Knowledge:**

Traditional knowledge and traditional cultural expressions form the essence of the Adivasi community's way of life. While the Indian government has invested in documenting traditional knowledge through initiatives like the Traditional Knowledge Digital Library (TKDL) in collaboration with the Council of Scientific and Industrial Research (CSIR), the focus has been limited. The TKDL, managed by the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha, Sowa Rigpa, and Homoeopathy (AYUSH), primarily documents the medicinal knowledge of Adivasi and other tribal communities, neglecting other significant aspects of their traditional knowledge, such as architecture, design, folklore, dance, and the non-fictional stories related to product evolution.

One major shortcoming in protecting traditional knowledge is the lack of comprehensive





documentation. Although the Indian government and WIPO have collaborated on documenting traditional knowledge and cultural expressions, this effort has not been inclusive of all facets of Indigenous knowledge. Experts have stressed the importance of documenting traditional skills and practices as a preventive measure against unethical patenting, biopiracy, and misuse of traditional knowledge and cultural expressions (TCEs). In Northeastern states, where autonomous authorities have the power to protect customary laws, such knowledge is better preserved. However, under the Fifth Schedule, tribal communities in central India lack such autonomy, and their daily rituals are managed through courts or administrative systems. Customary laws in these communities are typically passed down orally rather than codified, as they are transmitted through folklore and cultural practices, with little to no formal documentation.

On the other hand, many Indigenous people are reluctant to share their knowledge with mainstream society. From the British colonial period through post-independence, these communities faced displacement due to land acquisition, and many were subjected to violence, such as during the Salwa Judum movement. This history of exploitation has led to deep mistrust of the Indian government. Furthermore, government and private institutions continue to research Indigenous knowledge without full consent, often causing disputes. In 2023, the Forest Conservation Bill was introduced, further fueling concerns. In the digital age, data is seen as a valuable resource for artificial intelligence, and authentic knowledge rooted in Indigenous cultures is in high demand. This could be one reason behind the pressure to share such data with the government and private entities.

#### **D. Consent and Benefit Sharing Policy:**

At the end of World War II, decolonization and human rights became pivotal in shaping global affairs<sup>11</sup>. Cultural rights have emerged as an crucial aspect of human rights, emphasizing the right to practice cultural practices without endangering others. The distinction between universality and homogeneity is significant, as cultural relativism poses a threat to the cohesion and productivity of society. History demonstrates that forced assimilation undermines the universality of human and cultural rights. Protecting cultural choices and obtaining free, prior, and informed consent for using others' cultural practices are



critical<sup>12</sup>. Respecting cultural diversity aligns with international human rights standards, encouraging plural monoculturalism and community sensitivity<sup>13</sup>. Cultural sensitivity involves openness to diverse practices, the development of awareness programs and workplace ethics training.

Individuals who preserve traditional knowledge (TK) and traditional cultural expressions (TCEs) should be acknowledged and rewarded, as their contributions are often overlooked and undervalued. One issue concerning the protection of traditional knowledge is addressed in the WTO, specifically in paragraph 19 of the Doha WTO Ministerial Declaration, which highlights the prohibition of prior informed consent from countries or communities. This is a critical concern, as traditional knowledge encompasses both public domain information and trade secrets, and the novelty thresholds for patents. Laws regarding this vary significantly between countries, particularly where the pharmaceutical industry is most powerful, and patentability under TRIPS does not require prior informed consent from the countries or communities from which organic and informational resources are sourced.

The concept of community ownership in Indigenous and tribal communities differs from Western perspectives, but a deeper understanding can be achieved through engagement and participation. Exploring methods to identify Indigenous communities involves addressing past exploitation and ensuring access and benefit sharing. Despite progress in the protection of cultural rights, violations continue to occur, including instances of misappropriation by major fashion brands. Protecting traditional knowledge remains a central issue in WTO negotiations.

### **Proceed towards the protection of Adivasi Traditional Knowledge: case study and famous and successful example :**

#### **International context:**

Intangible Cultural Heritage encompasses the traditions and living expressions passed down from ancestors and continuously transmitted to future generations. This includes various forms of oral traditions, performing arts, social practices, rituals, festive events, and knowledge related to nature, the universe, and traditional crafts. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage emphasizes the crucial



role these cultural elements play in promoting environmental sustainability, particularly their contributions to the sustainable management of natural resources and the conservation and sustainable use of biodiversity.

Research and documentation efforts, guided by an international Advisory Panel Research Brief based on UNESCO's Intangible Cultural Heritage Convention and the Local and Indigenous Knowledge Systems (LINKS) Programme, have explored several significant topics.

For example, in Eritrea, research has examined Traditional Knowledge Systems in biodiversity conservation and climate change adaptation in Lamza Village. In Ethiopia, the focus has been on the Indigenous Knowledge System's role in biodiversity conservation in Gedeo, South Ethiopia. Kenya's study investigates how Indigenous Knowledge and Practices contribute to biodiversity conservation, climate change adaptation, and disaster risk reduction among pastoral communities. Similarly, Uganda has explored traditional knowledge systems for conserving water bodies and aquatic life, with specific cases like the River Ssezibwa Cultural Heritage Site and fish stock conservation in Panyimur along the River Nile and Lake Albert. In Somalia, Somali oral heritage has been studied as a method of conserving biodiversity, while the Seychelles case looks into the Creole Garden and Kitchen Pharmacy. In South Sudan, traditional knowledge systems have been analyzed in the context of climate change and disaster risk reduction, particularly in response to the floods and desert locust invasion in 2019 and 2020.

The UNESCO Regional Office for Eastern Africa coordinated this pilot project in collaboration with the *United Nations Environment Programme (UNEP)*, the *United Nations Office for Disaster Risk Reduction (UNDRR)*, and the *International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)*<sup>14</sup>. The resulting publication, produced in partnership with the University of Seychelles, includes the seven case studies, complete with maps and photographs. Additionally, national teams created and shared their insights during an online regional conference held on April 30, 2021.

**Domestic context:**

Patents play a crucial role in protecting traditional knowledge, but the Indian Patent Act applies only within the country's domestic jurisdiction. Neem, turmeric, and Basmati rice, which have been used in India<sup>15</sup> since ancient times, have been exploited by entities in Europe and the United States, raising concerns over India's intellectual property rights. In response to these cases, the Indian government developed the Traditional Knowledge Digital Library (TKDL) in collaboration with AYUSH. However, in 2009, the United States Patent and Trademark Office (USPTO) entered into a Memorandum of Understanding (MOU) with India for bilateral cooperation<sup>16</sup> on intellectual property rights (IPR).

On November 23, 2009, the Indian Department of Industrial Policy and Promotion (DIPP) and the United States Patent and Trademark Office (USPTO) announced that they had signed a Memorandum of Understanding (MOU) to collaborate comprehensively on the protection and enforcement of intellectual property rights (IPR).<sup>17</sup> According to the MOU, the USPTO and DIPP agreed to work together on various IPR-related matters, focusing on capacity building, human resource development, and raising public awareness about the importance of IPR. DIPP Secretary Mr. Ajay Shankar emphasized that the objective was to transform India's IP system into a world-class entity through transparent, automated, and user-friendly procedures. He noted that the MOU would be pivotal in enhancing India's ability to achieve this goal.

Several international legal frameworks address the protection of intellectual property in relation to traditional knowledge. Notably, the UN Draft Declaration on the Rights of Indigenous Peoples includes Article 29, which explicitly grants indigenous peoples full ownership, control, and protection of their cultural and intellectual property. They are entitled to special measures for managing, developing, and safeguarding their sciences, technologies, and cultural expressions, including human and genetic resources, seeds, medicines, flora and fauna knowledge, oral traditions, literature, designs, and visual and performing arts<sup>18</sup>.

A recent positive development is the establishment of global corporate guidelines for businesses using native plants and traditional knowledge from indigenous communities in producing commercial drugs. In April 2002, at the UN Biodiversity Congress in The Hague,



delegates from 166 countries negotiated and adopted these guidelines. The guidelines encourage pharmaceutical companies to enter responsible agreements with countries whose resources they exploit.

On a regional level, initiatives such as the Cancun Declaration and the Cusco Declaration on Access to Genetic Resources and Traditional Knowledge have also been significant. In February 2002, Environmental Ministers from 12 countries met in Cancun, Mexico, to discuss biodiversity-related issues in their nations and identified the need to establish terms for granting patents. At the World Summit on Sustainable Development (WSSD) in Johannesburg in August of the same year, this group was established as a permanent negotiating body to address these concerns.

There is also a suggestion that requiring patent applicants to disclose any traditional knowledge used in their inventions could aid in assessing novelty and enable countries with potential claims to review and oppose the patent promptly.

In India, the Geographical Indication of Goods (Registration and Protection) Act, 1999, passed by Parliament, represents another significant step. This Act is primarily intended to protect the valuable geographical indications of the country. Protection under the Act is granted only to registered geographical indications and authorized users<sup>19</sup>. The Act allows any association of persons, producers, or any organization or authority established by law representing the interests of producers to register a geographical indication. It is possible to argue that holders of traditional knowledge in goods produced and sold using geographical indications can register and protect their traditional knowledge under this law.



## **Suggestions Ensure effective Protection of Traditional Knowledge:**

### **1. Provide Protection for Customary of Adivasis in India:**

Under the 5th Schedule, the Constitution does not grant autonomous power to local governing bodies. Central India is home to approximately 200 tribes and contains over half of the country's natural resources, including coal, iron, natural gas, and other metals. As a result, the government conducts extensive mining activities in the name of development, leading to significant state intervention that affects both the forests and the Adivasi communities. The Adivasi way of life is deeply connected to their natural surroundings, with the forest being a fundamental part of their culture and livelihood.

### **2. Autonomous Authority for Exclusive Area:**

The 5th Schedule and the Panchayat (Extension to Scheduled Areas) Act (PESA) provide protection to tribal areas but fail to address the intangible cultural heritage of Adivasis, even though their tribal art is sold at premium rates. While the Acts mention protection of tribal areas, this could be broadly interpreted to include the preservation of traditions, but how can it be effectively implemented if traditional knowledge and cultural expressions are not explicitly mentioned? Article 13(3) of the Indian Constitution recognizes customary laws, and Article 244 grants the state control over Gramsabhas through the PESA Act, which in practice often undermines customary laws by increasing administrative intervention. The legislative and judicial branches should introduce new policies to help Adivasi and tribal communities preserve their culture and traditions. Case studies from Eastern Africa have shown the importance of traditional knowledge in addressing climate change and disaster risk reduction, underscoring the need for a legal framework to protect such knowledge.

### **3. Global Awareness and Advocacy:**

India has not yet recognized Adivasis as an Indigenous community. The International Labour Organization's Convention 169 emphasizes self-governance, but India has not ratified this convention. It's important to note the distinction between Indigenous peoples and tribal communities. The World Intellectual Property Organization (WIPO) closely examines these criteria before implementing any laws. Without formal recognition of indigeneity,



protecting traditional knowledge in India becomes challenging.

India has entered into bilateral treaties globally that may affect the traditional knowledge of Adivasis. A notable example is the Memorandum of Understanding (MOU) between the United States Patent and Trademark Office (USPTO) and India. Even with strong domestic laws, sharing the Traditional Knowledge Digital Library (TKDL) with the U.S. could lead to significant issues, potentially resulting in legal piracy or an infringement on the rights of Indigenous communities in India.

#### **4. Make Separate Policy for TK & TCE:**

In India, the Forest Act itself acknowledges this fact and provides a framework for documentation of such knowledge and the nature of evidence required for recognition of the rights of these communities in the intellectual property in respect of such knowledge. The provisions of the Biological Diversity Act and Forest Rights Act of 2006 both provide a shield for tribal traditional knowledge, by, on the one hand, respecting and protecting the knowledge of the local communities related to biodiversity and on the other, declaring that the intellectual property rights, in such knowledge belongs primarily to members of

the community collectively<sup>20</sup>. However, these acts never directly, or in wording use the words of traditional knowledge and traditional cultural expression. This is one of the reasons who not provide intent to protect the indigenous knowledge and importation regarding the concept of intellectual property.

#### **5. Stuck Down on Documentation & Digitalization**

Adivasis are generally unaware of the concept of intellectual property or any intangible assets. The primary data for the Traditional Knowledge Digital Library (TKDL) is collected through interviews and visits to rural areas, particularly in remote regions of India. This data collection may occur without proper consent. Even when consent is given, companies that gather or record this data often do not run educational programs on traditional knowledge and traditional cultural expressions. The answer is no.

Medicinal plants contribute significantly to India's healthcare system. The World Health Organization (WHO) estimates that 80% of people<sup>21</sup> in developing countries rely on traditional medicine<sup>22</sup>. In India, where over 75% of the population lives in rural areas and



has access to natural resources, indigenous peoples have long practiced the use of medicinal plants. According to Prakasha et al. (2010), India has approximately 3000 plant species with medicinal properties. According to WHO (2003), plant-based medicine serves 40% of the world's population<sup>23</sup>. All data was gathered from the exclusive area but the government does not give representation under the AYUSH system. Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homeopathy are different and Adivasi medicine is different. However, the data they collect from exclusive areas add to AYUSH, which will cause major disputes, and the Adivasi or tribal community is deprived of their rights by the unaware or misleading information.

### **6. Promote Awareness Camp and Representation:**

Adivasis and tribal people possess extensive knowledge, yet many are unaware of the complex institutional terminology, concepts, and laws surrounding it. Before enacting and implementing policies, the government or state has a responsibility to organize educational programs to ensure that people understand what these concepts entail, as well as the pros and cons associated with them. However, as has often been the case, the government has failed to fulfill this fundamental duty, which has led to negative consequences and protests. Communication between the state and the Indigenous community is often limited and unclear.

### **Conclusion**

Traditional knowledge encompasses a wide range of areas, including literature, art, folklore, scientific discoveries, inventions, designs, marks, and symbols. Scientific discoveries can involve knowledge related to diseases, health, diet, sustainable technology, and more. In the current digital technology era, the appropriation of someone else's knowledge to create new inventions has led to numerous disputes. In this context, the government has a responsibility to conduct educational camps on traditional knowledge, raising awareness about the risks of sharing such knowledge with outsiders or third parties. Additionally, the Indian government prohibits foreigners from conducting primary research in these exclusive areas, yet it continues to sign bilateral treaties with other countries. Granting Adivasi





and other tribal communities autonomy rights could be a sustainable solution for preserving their rights and would represent a significant step toward India's sustainable development. While geographical indications may provide a partial solution, they typically apply to specific sectors such as paintings, food, textiles, and embroidery, primarily benefiting capitalist interests. Consequently, the broader objectives of protecting traditional knowledge remain inadequately addressed.

**Notes:**

<sup>1</sup> AYUSH, Measures taken to protect the ancient and traditional knowledge of the country, press released 17 MAR 2023 4:45pm by PIB Delhi.

<sup>2</sup> Trademark Act, of 1999.

<sup>3</sup> Biological Diversity Act, of 2002.

<sup>4</sup> ICAR-National Bureau of Plant Genetic Resources Organizes Farmers Plant Genetic Resources Conservation Awareness Programme and Citrus Biodiversity Fair under NEH Scheme, Date Posted: 18-12-2023.

<sup>5</sup> *Ibid.*

<sup>6</sup> The Copyright Act of 1957, u/s 38.

<sup>7</sup> The Copyright Act of 1957, u/s 13.

<sup>8</sup> Krishnaswamy Sudhir, *Access to Knowledge and Traditional Knowledge Protection: The Indian experience*. Access to Knowledge in India: New Research on Intellectual Property, Innovation & Development. Ed. Ramesh Subramanian and Lea Shaver. London: Bloomsbury Academic, 2011. 14–35. Access to Knowledge.

<sup>9</sup> The Protection of Plant Varieties and Farmers' Rights Act of 2001, u/s 15,18 and 19.

<sup>10</sup> Article 13 of the Indian constitution.

<sup>11</sup> Morsink, Johannes. 1993. World War two and the Universal Declaration. *Human Rights Quarterly* 15 (2):357.

<sup>12</sup> Travis, Hannibal. 2008. Cultural and intellectual property interests of the indigenous peoples of Turkey and Iraq. *Texas Wesleyan Law Review* 15: 415.



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- <sup>14</sup> International Centre for the Study of the Preservation and Restoration of Cultural Property.
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- <sup>17</sup> *Ibid.*
- <sup>18</sup> Article 29 of UNDRIP.
- <sup>19</sup> See supra note 15.
- <sup>20</sup> Biological Diversity Act and Forest Rights Act of 2006
- <sup>21</sup> V.K.Painkra & Others, Assessment of Knowledge of Medicinal Plants and Their Use in Tribal region of Jashpur District of Chhattisgarh, India, *Journal of Applied and Natural Science* 7 (1) : 434 – 442 (2015).
- <sup>22</sup> Bhandary, M.J. and Chandrashekhar, K.R. (2002), Glimpses of ethnic herbal medicine of coastal Karnataka. *Ethnobotany*, page -1,12.
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3. Trade mark Act, 1999.
4. Desing Act, 2000.
5. Copyright Act 1957.
6. the Protection of Plant Varieties and Farmers' Rights Act of 2001 (PPVFA)
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8. Panchayat Extension of Schedule Area Act, 1996 (PESA).
9. Protection of Traditional Knowledge Bill in 2016 and 2022

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2. TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994.
3. United Nation Declaration of Rights for the Indigenous People (UNDRIP).
4. World Trade Organization (WTO)
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