

# Protection of Traditional Knowledge- Initiatives of India

---

**DR. GHAZALA JAVED  
RO(U)/SCIENTIST-IV  
MINISTRY OF AYUSH  
GOVT. OF INDIA**

# Protection of TK

## →Defensive:-

---

- set of strategies to ensure that third parties do not gain illegitimate or unfounded IP rights over TK.

## →Positive Protection:-

- Acknowledging control of custodians (state/community) over traditional knowledge
- Ability to deny/authorize access and use
- Prevention of Misappropriation: Prior Informed Consent, including the conditions of use
- Benefit Sharing- Mutually Agreed Terms (monetary as well as non-monetary)
- Protection of TK needs to be inter-linked with GR and TCEs

# India's Initiatives

## Legislative

---

- National Biological Diversity Act
- Patents Act (Section 3(p))
- Protection of Plant Varieties and Farmers Rights Act
- Geographical Indications Act
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

## Administrative

- TKDL
- TKRC
- Inclusion of Indian Journals relating to TK in PCT minimum documentation (2 journals)
- State level – TKIK
- Community level databases- PBRs

# Biodiversity Act

## Institutional Set-up

- **National Biodiversity Authority (NBA)**

---

  - Regulates access by a foreigner/ NRI/ body corporate having foreign participation
  - Prior permission required by any entity seeking IPRs “based on knowledge/resource obtained from India”
- **State Biodiversity Board (SBB)**
  - Regulates access by Indian citizen/ body corporate controlled by Indian citizens
- **Biodiversity Management Committees (at local level)**
  - Preparation of Peoples’ Biodiversity Registers
  - Respond to requests from NBA and SBB

# The People's Biodiversity Registers (PBRs)

---

- Implemented / Prepared through BMCs.
- Latest Number-37,769 BMCs established in 26 of the 29 States of India.
- Covers a wide variety of TK, not limited to traditional medicines.
- Potentially, this Act can play an important role once an effective national instrument for protection of TK comes into force.

# Traditional Knowledge Digital Library

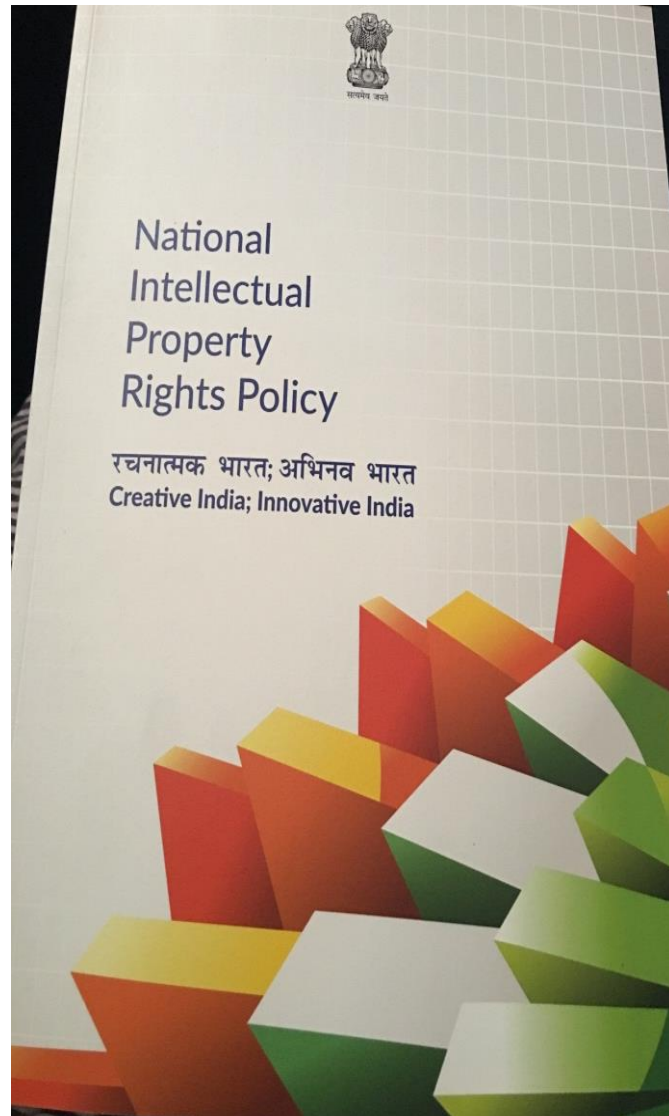
- Digitalization of the traditional medicinal knowledge- available in public domain in the form of existing literature related to codified systems of Ayurveda, Unani, Siddha and Yoga.
- Objective - protect the ancient and traditional knowledge of the country from exploitation through bio-piracy and unethical patents.
- Access to around **3,30,044** Traditional Medicinal Formulations is available to 10 Patent Offices in patent compatible format in five international languages under TKDL Access Agreement . (EPO, USPTO, JPO, CIPO, UKPTO, IP Australia, IPO, DPMA-German, Chile and Malaysia).
- Effective mechanism for defensive protection, facilitating the prior art search, bridging the language barrier.
- Has the potential of misuse, by unauthorized access to information.
- Contributions of local communities and holders of other codified, non-codified and undisclosed knowledge not protected.

# TKDL- Outcomes against misappropriation

Patent Office	No. of Cases (Withdrawn or revoked)
<i>EPO</i>	<b>130</b>
<i>USPTO</i>	<b>25</b>
<i>IP Australia</i>	<b>04</b>
<i>CIPO</i>	<b>37</b>
<i>UKPTO</i>	<b>3</b>
<i>CGPDTM</i>	<b>20</b>
<i>Indian Patent Office</i>	<b>13</b>
<b>Total</b>	<b>232</b>

SOURCE: [HTTP://WWW.TKDL.RES.IN/TKDL/LANGDEFAULT/COMMON/OUTCOMEMAIN.ASP?GL=ENG](http://www.tkdl.res.in/tkdl/langdefault/common/outcomemain.asp?gl=eng)

# National IPR Policy-May 2016- Relevant Excerpts



- The ambit of Traditional Knowledge Digital Library (TKDL) should also be **expanded** to include **other fields** besides Ayurveda, Yoga, Unani and Siddha.
- **Public research institutions should be allowed access to TKDL for further R&D**, while the possibility of using TKDL for further R&D by private sector may also be explored, **provided necessary safeguards are in place to prevent misappropriation.**
- **Document oral traditional knowledge**, taking care that the integrity of the said knowledge is preserved and **traditional ways of life** of communities are **not compromised.**
- **Promote India's rich heritage of traditional knowledge** with the effective involvement and **participation** of the **holders of such knowledge.** Traditional knowledge holders will be **provided necessary support and incentives** for **furthering the knowledge systems** that they have nurtured from the dawn of our civilization



# Conclusion

- TKDL – Good tool for providing defensive protection but it has its limitations in providing a holistic protection to different forms of TK.
- TK cannot be protected by domestic measures only due to its widespread nature leading to trans boundary misappropriation.
- The International Legal Instrument is therefore a prerequisite to provide stronger protection to all forms of TK.
- An international legal instrument would require the Member States to implement the provisions of the treaty at national level by providing positive protection and thus safeguarding/ protecting the TK for future generations.
- **A comprehensive international legal instrument- An urgent requirement for providing holistic protection of all kinds of TK.**

# THANK YOU

[ghazala.javed@gov.in](mailto:ghazala.javed@gov.in)  
[javed.ghazal@gmail.com](mailto:javed.ghazal@gmail.com)