Protection of Traditional Knowledge-Initiatives of India

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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

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<th>Patent Office</th>
<th>No. of Cases (Withdrawn or revoked)</th>
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<tr>
<td>EPO</td>
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Source: http://www.tkd.res.in/tkd/langdefault/common/outcomemain.asp?gl=ENG
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

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