

Model Law on the Protection of India's Traditional Knowledge: An Attempt for *Sui Generis* System

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Abstract – Traditional Cultural Expressions form part of the whole corpus of Traditional Knowledge. They take different forms and can be tangible as well as intangible. Folklores are kind of Traditional Cultural Expressions that, mainly, includes intangible form of intellectual expressions of songs, music, theatre, lyrics, stories, by indigenous or tribal groups. Such, intangible intellectual expressions, like other forms of property, plays an important role in the lives of indigenous or tribal people. They are the significant source of recognition, identification and income generation. Unfortunately, the value of these intellectual expressions is ignored not only by the modern society but even by the present legal system operating in India. Traditional cultural expression, in their intangible form, find no place under the current regime of Intellectual Property Rights in India and are, thus, exposed to unwarranted commercial exploitation by the modern industries, with no flow of financial gains to them. This is because, the existing IPR regime consists of provisions relating to the protection and recognition of rights of identifiable creator/inventor for a limited period in their intellectual creations. There are many other legal and operation issues operating as hinderance in the process of granting equal protection to TCEs as IPRs under the current legal regime in India. Considering, their importance and role in the growth and development of the society, in the world of technology, it becomes an imperative step to entitle indigenous or tribal groups with equal legal rights as other inventors are hailed with under intellectual property laws in India. This requires enactment of an Act or a model law, that may be called “Model Law on the protection of India’s Traditional Knowledge” dealing, exclusively, with the redressal of problems faced by indigenous and tribal groups in the protection of their intangible traditional cultural expressions.

Key words: Traditional knowledge, Traditional Cultural Expressions, Folklores, Intellectual Property Rights, Model Law.

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INTRODUCTION

What makes a nation unique and inimitable is its cultural diversity. We are recognised, acknowledged and identified world-wide with our cultural attributes. The way we live, communicate, behave, entertain our self, our food preferences, the methods of treatment even our attire and mannerism are reflected through the cultural background we belong to.

Culture echoes different aspects of our life. The sociological aspect that is the way in which life is led by an individual, community or in a nation. Their value system, customs, language, art and craft, mode of entertainment and ethics. The political aspect that infers from the rights exercised by and duties conferred on citizens of a nation. The

ecological aspect that depicts the ecological environment in which they are living. Their methods of agriculture, farming and maintain their environment.

A culture is believed to evolve as the result of application of existent knowledge of our ancestors. This knowledge was passed down to generations leading to its progress and expansion in different fields and its expression in different manner. The knowledge was either expressed on rocks or on piece of paper or cloth or in the mode of songs, music, dance, theatre or poems. Gradually, forming pertinent part of nation, with which a nation begins to be identified. It not only played role in identification for a nation but also

became an important source of livelihood for its people.

This ancestral knowledge, steadily forming part of culture, on which the identification and existence of a nation depends, is popularly signified as traditional knowledge (*hereinafter* TK). A knowledge having different attributes, such as, "continuity", "traditionality" and "ethnicity". It is "traditional" as they are those practices that were started by our elders making them ancient, old and traditional, whereas its performance and re-production by predecessors, of a particular community or group, through imitation makes it "continuous" in nature. By ethnic nature it is meant that they develop and remain within a specific given geographical region for e.g.: *Jhumur* and *Bhadu* of *Bankura*, *Nautanki* in *Darbhangha*, *Nanchni* and *Jhumur* of *Purulia* in India.

Thus, it can be assumed that culture, of which TK is an important outcome, evolved as the result of intellectual solution to the problems and to cater to the needs of a given society. If there was hunger, the methods of farming and plantations were invented, if there was illness, the methods of medicines were invented, as the cure to the illness, if there was boredom; the methods of entertainment were invented that were artistic, literary, religious, spiritual and emotional in nature, all progressively imbibing themselves into the cultural aspect of a nation.

However, it has always been and is still a daunting task to define the term 'culture', as existence of different groups is inferred from various cultural groups forming their part. Still, it forms the most important part of any nations, playing pertinent role in setting social, political and economic norms; keeping the social, political and economic structure stable; implying wisdom; maintaining solidarity; build up national integrity and communal harmony. Additionally, it is the constant source of income for the nation, as well as, community members preserving them. The importance of culture in our life's, emphasis on the fact that an unfettered effort on part of the nation and its people is required in order to safeguard, preserve and protect them from any deterioration, oscillation, manipulation, exploitation, misuse. For they are of immeasurable value, both in terms of social identity and economic benefits, as well as it is the proof of human existence.

A Culture can be classified on different basis. On the basis of its nature, as tangible and intangible. For instance, paintings, art, craft and embroideries depicting different cultural expressions are in tangible form and traditional cultural music, dance, lyrics form part of intangible aspect. On the basis of its existence, as movable and immovable. Monuments and sites are categorised under immovable culture whereas any art form expressed in any form, like for instance, as designs on cloths, accessories, bags is categorised as movable form of culture. There is

another form of culture that forms concomitant part of nations identity and it is its natural heritage.

Culture is also categorised as "cultural heritage" and "cultural property" of a nation. Cultural heritage of a nation includes monuments and sites that are in immovable and tangible forms. Cultural property covers craft, art, paintings that are tangible and music, dance and other such intangible expressions. Such, cultural property can either belong to individual or group or community or nation as a whole. In which case, their exploitation depends on their usage by any of the categories as mentioned above.

Among the different ethnic groups, forming part of our culture, tribal groups form an important segment of our society. Tribal communities ("tribes"¹⁶) or indigenous people or traditional people are commonly called *adivasi* in India as they are believed to be the earliest settler in Indian Peninsula. They had their own system of administration and a head, which gradually took the form of ruler with time and transformed the tribal societies into republics and monarchies.¹⁷

They are called by different names as well, such as, 'native', 'aboriginal', 'indigenous', 'primitive' and so on. They are spread throughout the country in different regions and dwell mainly in forests having their own language, culture, ways of living and expressions.¹⁸ They are considered as the key source of cultural property forming part of our wide cultural, that includes, folk culture, traditions and other forms of traditional cultural expressions (*hereinafter* TCEs), such as, tribal folk literature, handicrafts, hand-looms, folk painting, folk music, folk dance etc. The contribution in the form of folk culture made by these communities has formed a

¹⁶ There are about 203 Tribal communities existing in India with distinctive features of having primeval existence, historic traits, geographical segregation, distinctive culture, economically backward, reserved, less contact with the outer world. Indian Tribal Heritage <<https://www.indiantribalheritage.org/?p=1496>> accessed on 8 July 2018; 'Evaluation study of tribal/folk art and culture in west Bengal, Orissa, Jharkhand, Chhatisghar and Bihar' Final Report by Gramin Vikas Seva Sanshtha, Dist. 24 Parganas (North), West Bengal 700129 India, Submitted to SER Division Planning Commission Govt. of India New Delhi (*Hereinafter* the Evaluation Study by Gramin Vikas Seva Sanshtha) 45 <http://planningcommission.nic.in/reports/sereport/ser/ser_folk2211.pdf> accessed on 23 June 2017. Tribes are categorised on two basis: firstly, as a phase in the history of the evolution of human civilization; secondly, as a society structured on the basis of relationships learning traditional techniques or knowledge making them multifunctional. In India, tribal's are commonly understood in connection with the cultural norms and practices conducted by the certain communities or groups.

¹⁷ Concept Of Tribe In India <https://www.academia.edu/29340205/CONCEPT_OF_TRIBE_IN_INDIA> accessed on 07 December 2017; See also André Béteille, 'The Concept of Tribe with Special Reference to India'. 27 (2) European Journal of Sociology (1986) 297-318., JSTOR, <www.jstor.org/stable/23999264> accessed on 07 December 2017.

¹⁸ 'Who are the indigenous and tribal people' <https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm> accessed on 07 December 2017.

significant part of cultural diversity with which a nation is identified.

The emergence of traditional/Tribal/ Folk culture/art¹⁹ can be associated with utilitarian and ritualistic features and sometimes by entertaining inclination, mainly, dominated and shaped by religious motifs. To say, it reflects the social norms (in the form of customs and practices), religious knowledge and wisdom of the tribal community carrying them and preserving them. These traditional and tribal cultures are considered as magnificent epitome of rich traditional heritage of India and are thus, considered as vital factors in enriching our folk-tradition and culture. These tribal cultures not only play an instrumental role in enriching our folk-tradition and culture but also in strengthening, reinforcing, crystallizing and fortifying the national integrity, social solidarity and communal harmony. Keep the social structure stable, intensify value-system, promote the elements of humanism and adherence to the traditional value system among the people of the country, thus diversifying and distinguishing socio-cultural identity.²⁰

Although, the origin of tribal culture cannot be deciphered as their history goes back to pre-historic period and due to the lack of writing skills it is not easy to chronicle it. Yet, they are considered as old as Indian civilisation which is more than five thousand years old. However, as stated earlier, their existence and creation are proved on the basis of their transmission orally by the older members of the community to the next generations through imitation that makes them traditional and continuous in nature.²¹

This tribal/indigenous culture forms part of whole corpus of TK which is divided into three types:

1. Knowledge in public domain that is readily available and accessible through written text. For instance, knowledge about medicinal properties of *haldi*, *tulsi*, *neem* are known to people in India.
2. Knowledge available and accessible in existing public libraries and archives through secured

¹⁹The concepts of folk and tribal arts overlap as folk art cannot be necessary tribal art but tribal art is a part of folk art. Further, both are imperative part of a given community deeply rooted in daily life, activities and environment of the community in they (folk) lives. Such folk art does not belong to an individual but to a group or community. The word 'Folk' refers to persons/people residing in a given territory or geographical area having distinguish and distinctive cultural knowledge which is common to that community. They are characterised with definite and constant traits relating to language, religion and occupation. The Evaluation Study by Gramin Vikas Seva Sanshtha . (n 1) 50.

²⁰ Concept of tribes in India' (n 2).

²¹ A.L Basam, *The Wonder that was India*, A survey of the history and culture of Indian sub-continent before the coming of the muslim, (Third Edn., macmillan publishers ltd, London. 2001) 512.

inter-departmental contacts and permissions. For instance, information about *Ayurveda*, homeopathy, *yoga* is learnt from books, even the patent archives in India are taken into consideration as the part of examination before grant of patents. TKDL has also been established by "Ministry of Science and Technology and Ministry for Indian System of Medicine".

3. Knowledge that is owned or possessed by indigenous or tribal groups collectively.

Attempts have been made to cover the first and second category of TK under current IPR regime as defensive system of protection. In India and other countries some steps have been taken to protect and maintain the identity of these forms of knowledge as TK, referred to under the first and second category. It covers patent laws, dealing with inventions in medicinal, agricultural knowledge, Geographical Indications for art and craft, Plant variety, biotechnology laws. However, the faulty designs of existing laws are insufficient to deal with the problem of exploitation and manipulation of TK in many other forms explicitly, TCEs/EoFs. They have instead facilitated the misappropriation of TK and financial gains to the economically well-off sections of the society by extending protection to them as their owners. It is the third type of knowledge that has been neglected in the process of legal protection to TK and has now become a matter of policy concern for many nations. This is because; in many countries there are no adequate laws, including India and mainly developing nations, to deal with the problem of monopolization over TCEs (TK).

This problem can be associated with our movement towards industrialisation²², globalisation, modernisation²³ and technological advancement as due to these changes there has been a sea-change in the manner of their expression. The expansion of innumerable inventions and creations in the fields of science, technology, art and entertainment, with the help of technology and human ingenuity, the exploitation of existing knowledge has been made possible beyond the defined boundaries, by the outsiders for their own motives, profits and commercial gains.²⁴ In this quest for technology, the existence of oral form of culture (TCEs) is greatly impacted. The technology which is on one hand is an instrument for growth is destructing, deteriorating, vanishing and losing the

²² The growth of industrial revolution in late eighties marked the development and advancement of technology

²³ Modernisation transformation from a traditional, rural, agrarian society to a [secular](https://www.britannica.com/topic/modernization), urban, industrial society < <https://www.britannica.com/topic/modernization>> accessed on 19 September 2017.

²⁴ Nirmal Sengupta (ed), *Economic studies of indigenous and traditional knowledge* (Academic foundation, New Delhi, 2007).

original value and pure form of vital forces of culture on the other hand.

No doubt, the strings of technology have made possible even the impossible task unimagined by human generation. Internet is acting as the major source of information for an individual as well as for cultural industries. The content is easily available on the internet that facilitates free downloading and making of copies. The work is reproduced and now also circulated easily through the help of technology. The information that was miles away is now in the hands of each individual. Many video streamlining portals like 'YouTube', 'facebook', 'instagram' helps in operating and having access from anywhere in the world. There is remixing, easy advertisement of products through internet without any surety or acknowledgment of the sources of origin. In certain cases, the manipulation is such, that the excellence of the performers and the folk culture is demonstrated in its crudest and distorted form.

Further, the technological upsurge, proliferation and pressure of global market forces has gradually resulted in a shift from technology based-innovation to knowledge-based innovation in early 90s giving rise to many legal and operational issues.²⁵ To point out, displacement and dispossession of the indigenous community from their ownership over, not only their land and physical properties, but also over their intangible properties that are their own creations reflecting their existence and sustenance.

Consequentially, the traditional artists are being left in the state of abeyance and are being compelled to make an occupational shift. This has affected the social, economic, political and cultural structure of the indigenous community. In addition, discouraging, disrupting, and overshadowing the growth and development of traditional cultural expressions (TCEs) within the community as per their needs and requirements.²⁶ For instance, the practice of copying, imitation and application of handmade traditional textile designs, forms, patterns on fabric created through machines. That results in dilution of the intrinsic value of textile designs, stifling the local weaving practices of folk women in villages, destroying the traditional weaving and textile crafts, thus also, amounting to economic prejudices to traditional/tribal people.

²⁵See Akhil Prasad and Aditi Aggarwal, 'Intellectual Right Property - The Next Big Thing' in Prof. (Dr.) R.H Gorane (ed) *Knowledge Access and Development* (Copyright Law Desk Book, Universal law publication company 2009) 28; See also ^{25d} International Scientific Conference Economic and Social Development (Varazdin Development and Entrepreneurship Agency (VADEA), Apr 5, 2013)3542. <<https://search.proquest.com/docview/1542129577/fulltext/EAA18DB5F58D485APQ/1?accountid=173681>; https://www.sdconference.com/upload/book_of_proceedings/Book_of_proceedings_Paris_2013.pdf.> accessed 03 June 2017.

²⁶ For eg: youth of *Bankura* and the youth of *Jashpur* are originating inclination towards the same cultural form.

In this scenario, communication and media industries are also playing a pertinent role and is living a parallel life with the existing traditional/ folk media,²⁷ including, folk and tribal music, dance, drama puppetry etc. Giving rise to a synthetic homogeneous macro-culture based on traditional mode of communication.²⁸

Even, existing contemporary system of IPR is supporting inventions and creations based on these tribal cultures. This is, mainly, due to the current structure of IP system that promote creativity and protects the rights of the creators or inventors. The structure is believed to be more westernised by the indigenous communities that is formulated keeping in mind only the interest of developed nations. This is because, the protection is extended on certain set parameters and if a work falls outside the scope, it is excluded from having any legal protection. To mention few: the requirement of identification of author, existence of originality or novelty or inventiveness that is subjected to identification, the criteria of limited protection and expression of work in some tangible form and so on.

There are number of issues relating to the protection of folklore in their original form under IP law, specifically copyright law for intangible TCEs/folklores, such as:

- identification of groups (to decide on the question of beneficiaries);
- 'work' to be protected as there is no singular definition i.e defining the subject-matter of protection;
- criteria of originality which is an undefined concept and is left to the courts to decide the originality;
- protection to secondary and derivative works as work of author even if there are trivial differences between the existing and new work created;
- fixation of TCEs in tangible form;

²⁷ Folk media is referred to as that type of media where the communication between the sender and receiver (group of people) of the cultural knowledge is done and both are closely connected and associated with each other. Folk media can be transmitted through written as well as oral communication. 'CHAPTER 2- Background Study Of Folk Media In India As Well As Assam' <http://shodhganga.inflibnet.ac.in/bitstream/10603/144729/6/07_chapter%202.pdf> accessed on 17 May 2017.

²⁸ For instance, *Chhau* dance is a well known dance of *Puruli*, West Bengal, among *Kumars*, *Mahatos*, *Santhal* and *Sashish* communities. Though has received Indian Government support but is fighting tough fight against contemporary media and entertainment industries, specially, in latest Bollywood movies, like in '*Burfi*'.

- limited duration for protection which in case of TCEs need perpetual protection for unlimited duration.

Thus, facilitating easy manipulation, misuse and commercial exploitation of “traditional creative work” that are given “contemporary form” and are protected under modern IPR system as new or inventive work. Thus, the protector of rights ‘law’ has itself become a real menace for the protection of tribal culture in their original form mainly for the developing nations like India. Though, indigenous groups and existence of their culture is recognised under international law and various conventions are laid down for the protection of rights of tribal people but there is no statutory provision in India recognising the rights of tribal people in protection of their intangible culture.

This raises the concern for the protection of TCEs in order to:

- Sustain and maintain their originality, existence and dignity,
- Give recognition to the holders of the traditional culture,
- Give economic benefits to the stakeholders of traditional cultural expressions. As traditional cultural expressions are the living cultures of group or a community and are considerable source of capital creation and income generation for indigenous communities in all types of nations.
- Establish some legal arrangements to legalize rights and access to traditional cultural expressions keeping in loop the social and cultural reasons and to eliminate them from the public domain and bring the maximum economic benefits to right authors.

To put further, the rationale under copyright law and other IPR system, makes it an ineffective means for the protection of TCEs by creating numerous rights in favour of non-indigenous people. Once the recordings are done and placed outside the community boundaries the possibility of its commercial exploitation for commercial gains increases. Another related area of concern is the exemption under the doctrine of “fair dealing”. The concept of “fair dealing” allows copying of the work in certain cases such as for teaching purpose, research etc. However, this important exception is necessary for allowing free development of individual creativity inspired by folklore. The motive of having a *sui generis* is not to hinder the creations of original work based on TCEs in any way but, to regulate the extent to which it should be permitted to prevent massive distortion of TCEs. To say, even the “fair use doctrine” must not be applied in derogation to existence of TCEs. Therefore, if these issues are not managed effectively under the current copyright

statutes it will not operate as efficient and effective area of protection for TCEs and will not yield the desired result. Moreover, the efforts taken under the ‘Constitution of India’²⁹ or by Indian cultural ministry³⁰ or by NGO’s or any other association or institution are of preservative nature. There is no statutory provision regulating the use and misuse of these folklores that are intangible cultural expressions of indigenous people. Due to lack of any effective legislative measure the unwarranted exploitation of the intangible expressions become an easy task for the exploiter or infringer. For the infringers, would then be creating work that would be entailed protection under the modern regime of copyright as his/her ‘original work’ of creation. Thus, to ensure existence of valuable intangible cultural expressions in their ‘original form’ we need to lay down some punitive measures by implementing *sui generis* laws in addition to preservative measure that are taken at different levels in our country.

Model Law on Protection of Indian Traditional Knowledge, 2019³¹

²⁹ See Generally Article 29 that provides for “Fundamental Right” (Part III) of minority groups to maintain their cultural identity, Article 51A provides that it shall be duty of every Indian citizen to value and preserve the rich heritage of our composite culture, Article 371A provides that for the state of Nagaland in the matter of religious and social practices, Nagas customary law and procedure, administration of civil and criminal justice according to Nagas customary law, ownership and transfer of land and its resources no act of parliament shall apply unless the legislative assembly of Nagaland decides for its application by a resolution. This provision leaves room for discretion for laying down laws, protecting cultural activities of Nagas people. The Constitution of India does not define ‘Scheduled Tribes’ or ‘indigenous people’ as such but under Article 366(25) refers to ‘scheduled tribes’ as ‘tribes’ scheduled as per Article 342 that lays down that the concept of Scheduled tribes consists of the tribes or tribal communities or part of or groups thereof that have been declared as the Scheduled Tribes by the President through a public notification.

³⁰ Though, for the development of scheduled tribes a separate ministry, namely, Ministry of Tribal Affairs was constituted under ‘Ministry of Social Justice and Empowerment’ way back in October 1999. It is the ‘nodal Ministry’ for overall policy, planning and coordination of programmes and schemes for the development of Scheduled Tribes. Moreover, the ‘Ministry of Culture’ was established in the year 1961 with the mandate to preserve and conserve the cultural heritage; promotion of all forms of, tangible and intangible, art and culture; to establish various means and ways to sustain the aesthetic and creative sensibility; to create awareness at national and international level; to enable cultural exchange at international level. For the purpose of achieving these objectives the Ministry receives funds in every year union budget (2017-18 funds realised Rs. 2738.47 Crore) and also allocate duties to different departments specified under the ‘GOI’s allocation of business rule’. Various autonomous bodies have also been incorporated under the Ministry of Culture with the mandate of preservation and promotion of intangible cultural heritage and diverse traditions of the country such as 1. Sahitya Akademi, Lalit Kala Akademi, Sangeet Natak Akademi 2. Indira Gandhi National Centre for the Arts 3. National School of Drama 4. Centre for Cultural Resources & Training 5. Zonal Cultural Centres (seven in number) 6. Indira Gandhi Rashtriya Manav Sangrahalaya 7.

³¹ The attempt to prepared a model law is based on the draft Article prepared by Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in its Fortieth Session held at Geneva, June 17 to 21, 2019 (WIPO/GRTKF/IC/40/19) and Draft Bill on Protection of

INTRODUCTION

Considering, the intrinsically important role played by traditional knowledge not only in terms of identification of a community but also in the matters of financial assistance, this Act be enacted to meet the needs and requirements of indigenous, tribal, communities in the protection of their traditional knowledge as their intellectual property.

Acknowledging that traditional knowledge is gaining importance among the current generation and there are laws that are in existence in other nations of the world as well recognition of rights of tribal people by international community, this Act be enacted for the recognition, preservation, protection and promotion of traditional knowledge.

Ensuring that the dignity and respect for traditional knowledge is maintained and that there is stimulation of creativity and innovation this Act may be enacted.

This Act may be enacted in order to provide preservation, recognition, promotion, development and protection of traditional knowledge of India for the purpose of stimulating creativity and innovation by traditional, indigenous, tribal groups or communities of India and for matters connected therewith or incidental thereto.

CHAPTER I

PRELIMINARY

- (1) This Act may be called the Protection of Indian Traditional Knowledge Act, 2019.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

(1) Definitions:

- (i) "appropriate Government" means the Central Government for Centre matters and State Government for State matters.
- (ii) "appropriation" means exclusive use without the permission of the rightful user of the property.
- (iii) "beneficiaries" includes indigenous, tribal, local or other peoples, groups or communities as notified by the central Government under the national law who

hold, maintain, create, develop, reproduce and use traditional knowledge.

- (iv) "benefit" The term is used to mean and include gains in terms of recognition and in terms of monetary benefits from commercial exploitation of a work.
- (v) "board" means board established at central and state level under section 12 and 18 respectively, of this Act, to regulate the matters relating to traditional knowledge in broader aspect.
- (vi) "commercial use" means any use for profit making.
- (vii) "community" means a group of people including families that can be indigenous, tribal or otherwise having close association with any form of indigenous, tribal or traditional knowledge, as the case may be, residing within the national boundaries of a country and sharing common knowledge.
- (viii) "cultural heritage" includes monuments, groups of building and sites; and natural heritage referring to physical, biological, geological and physiographical formation.
- (ix) "cultural industries" includes industries involved in any trade, business or occupation based on culture of a nation, civilization, place, nation or group. This includes tourism, media, entertainment, commercial art, fine art, craft, sports, food, information communication technology.
- (x) "cultural knowledge" means intangible cultural expression by indigenous or tribal people including expression of knowledge relating to epics, stories, dance, music, songs, theatre, poems, legends, riddles that are verbal in nature and other narratives, names, signs, symbol, words that can be expressed in tangible forms as the intellectual creations of indigenous peoples or group or community.

Explanation: the terms intangible cultural expression/ intangible cultural heritage/cultural property/ cultural knowledge/folk culture/ folklores can be used interchangeably and in broader sense so as to refer to intangible form of traditional cultural expressions.

- (i) "cultural property" means traditional ideas, knowledge, skill and know-how relating to traditional music, dance, songs, medicine, plantation, entertainment and other forms of intangible cultural expressions being an important part of "cultural heritage" of India.

India's Traditional Knowledge, Prepared and presented by Mr. Shashi Tharoo. However, the bill lapsed and was not taken up by the parliament for its furtherance.

- (ii) "exploitation" means right of the creator to exploit the work for commercial gain.
- (iii) "geographical area" means the area as designated by the state authority for any respective indigenous or tribal community within which they operate.
- (iv) "indigenous knowledge" means knowledge possess by indigenous or tribal people as their property.
- (v) "indigenous people" Indigenous or tribal people: It is used to signify people living in forests and in an informal sector mainly rural areas as differentiated from urban areas.

Explanation: The words indigenous people also signifies traditional people. Though, traditional people may or may not be indigenous as the term "traditional people" represents people acquiring knowledge vested with the elders of the society and indigenous people as those who possess knowledge specific to a group or community.

- (i) "infringement" means misappropriation of Tradition knowledge as provided under section 28 of this Act.
- (ii) "intellectual property" means property created as the result of intellect of individual or group of persons.
- (iii) "license" means the authorise use permitted by relevant authority under this Act.
- (iv) "licensee" means a person or group of persons authorised as the users of Traditional Knowledge with the permission of central, state Government or Central, State Board or by the community, as the case may be.
- (v) "National authority" means National Authority established under section 12 for regulating the matters on traditional knowledge of India.
- (vi) "NTKF" means National Traditional Knowledge Fund constituted under this Act.
- (vii) "property" includes intangible property over which one can claim Intellectual Property Rights.
- (viii) "public domain" means a domain where knowledge is readily available and accessible to members of the society and there are no ownership rights given to any individual.
- (ix) "publicly available" means when knowledge is available and accessible in existing public

libraries and archives through secured inter-departmental contacts and permissions. Here the department or organisation preserving the knowledge are considered to be owner of the knowledge.

- (x) "right: right means 'human rights' as defined under section 2(d) of the Protection of Human Rights Act, 1993, 'fundamental rights' relating to cultural enjoyment of tribal groups under The Constitution of India, 'intellectual property rights' as rights of community or group over the 'creations of mind'.
- (xi) "traditional knowledge" includes cultural knowledge, indigenous knowledge, traditional cultural expressions that are traditional, continuous and ethnic in nature, which subsist in oral (intangible) or codified (tangible) or other forms, whether in public domain or publicly available or belonging to nation, indigenous or tribal groups, which is not dynamic but is evolving in nature is passed down next generation, at least 3 consecutive generations, that is maintained, preserved, safeguarded, practiced, promoted and developed by nation or by any specific indigenous or tribal group(s) including know-how, practices, skill, learning, innovations, methods of treatment, medicinal preparations, music, art, literature, designs and other forms of traditional expressions (tangible or intangible)

Explanation: It is "traditional" as they are those practices that were started by our elders making them ancient, old and traditional, whereas its performance and re-production by predecessors, of a particular community or group, through imitation makes it "continuous" in nature. By ethnic nature it is meant that they develop and remain within a specific given geographical region

- (i) "traditional cultural expressions" means cultural expressions of traditional knowledge or practices that are the manifestation of intellectual creations of indigenous or tribal peoples or group or communities, local communities or other beneficiaries comprising of verbal expressions of cultural knowledge that are intangible forms including tangible form of expressions such as art, craft, handicraft, painting, handmade carpets, dress, tangible spiritual forms, architecture and scared places forming part of broader aspect of traditional knowledge.
- (ii) "tribes" means Tribal communities existing in India with distinctive features of having primeval existence, historic traits,

geographical segregation, distinctive culture, economically backward, reserved, less contact with the outer world.

- (iii) "TKDL" means Traditional Knowledge Digital Library, that is, the system of identifying, classifying, codifying and cataloguing traditional knowledge obtained or derived from India and maintained by the unit of the Council of Scientific and Industrial Research; and
- (iv) TKDS" means Traditional Knowledge Docketing System of registration to identify communities with their respective traditional knowledge, maintained by the State Boards and coordinated by the National Authority.

CHAPTER II

CUSTODIANS AND BENEFICIARIES AND THEIR RIGHTS

- (1) For all the tangible and intangible forms of traditional knowledge that is generated, derived, created, obtained, received, generated, held, revealed, practiced, maintained and used within the state, the concerned state, and in other cases, the central government shall be the custodian and beneficiary of the traditional knowledge.
- (2) The appropriated government may consider, in the manner prescribed, a tribal or indigenous group or community to be the beneficiaries and custodian of the traditional knowledge, considering the benefit and need to do so.
- (3) The appropriated government in the process of deciding the custodianship and beneficiaries shall take into consideration following criteria:
 - (i) that the traditional knowledge practiced is unique and distinct for the tribal or indigenous group or community;
 - (ii) that the tribal or indigenous group or community is exclusively practicing the traditional knowledge within the defined national geographical area;
 - (iii) that the tribal or indigenous group or community is responsible for preservation, safeguarding and promotion of the traditional knowledge
 - (iv) that the tribal or indigenous group or community is sufficiently demarcated from other traditional groups or communities;

- (v) that there is no objection from any person from tribal or indigenous group or community or any other person, claiming to be the custodian or beneficiary, regarding allocation of custodianship to tribal or indigenous group or community and considering the tribal or indigenous group or community as beneficiaries:

Provided that in case of refusal of custodianship, the appropriate government shall be the custodian and shall record the reasons in writing.

1. The appropriate government may deny to consider the following as the custodian and beneficiary of traditional or cultural knowledge, namely:
 - (i) a person who is not a citizen of India;
 - (ii) a person who is a citizen of India but a non-residence as defined in clause 30 of section 2 of the Income tax Act,1961;
 - (iii) an organisation, association or body corporate not registered or incorporated in India;
 - (iv) an organisation, association or body corporate registered or incorporated in India under any law for the time being in force but has any non-Indian participation in its share capital or management;
 - (v) an organisation, association or body corporate registered or incorporated in India as a large-scale enterprise; and
 - (vi) any other person or organisation or body corporate as appropriate government deem fit.

Provide that the above mentioned may be designated as the custodian and beneficiary of traditional knowledge only if they have taken any approval or license from the community or the appropriate Government in accordance with section 9.

- (1) Subject to the conditions as laid down under the Act, the custodians of traditional knowledge and all the practitioners of the traditional knowledge identified as the members of the community shall have following rights collectively:
 - (i) to make commercial or non-commercial exploitation or use of the attributed traditional knowledge;

- (ii) to generate, develop, create, reproduce, control and maintain their traditional knowledge;
 - (iii) to safeguard, preserve, promote and protect their traditional under the provision of the said Act;
 - (iv) to authorize through license under section 9 of the Act or revoke the usage as provided under the Act for good cause or to deny the utilization of and access to traditional knowledge by those not authorised as custodian (non-members).
 - (v) to be entitled to benefit sharing, whether in monetary or non-monetary terms, arising from any usage or utilization of traditional knowledge;
 - (vi) to get the expression registered with the board as their intellectual property right on traditional knowledge;
 - (vii) to be informed about the access made without prior consent to their traditional knowledge through a disclosure mechanism.
 - (viii) to bring an action for infringement and passing off, of the traditional knowledge for unwarranted exploitation and appropriation
- (2) The community shall constitute a decision-making body, in such form and manner as prescribed under this Act, to regulate its use and rights with respect to their traditional knowledge, against members and non-members.
2. No person shall be entitled to acquire intellectual property rights over the traditional knowledge, derived or obtained from India, within India or abroad, whether in the custody of the community or appropriate Government without the prior approval of the community or the appropriate Government, as the case may be.
 3. The traditional knowledge, whether in public domain or publicly available or vested with a particular community in India, shall be the intellectual property right of India, as a country, or of the particular community, as the case may be.
 4. Any traditional knowledge, whether in public domain or publicly available or vested with a particular community in India, shall be protected under this Act.

CHAPTER III

LICENSING AND PERIOD OF PROTECTION

1. LICENSE-

- (1) the license granted by the decision-making body constituted under section 20 of the Act, shall be called 'community traditional knowledge license' (*hereinafter* the license).
- (2) The license shall be an exclusive agreement between the community members entered on their behalf by the head of the decision-making body and the non-member, who want to use the traditional knowledge for exclusive commercial purpose.

Provided that for non-commercial purpose a non-exclusive license may be granted by the community head with the consent of the other members of the body and community members.

Provided further that no addition, advancement, development or enrichment shall be made to the existing knowledge without the consent of the appropriate government or community body, as the case may be, and any such improvement made shall be included back to the dominion of the original traditional knowledge with its custody to appropriate government or community, as the case may be.

- (3) The license agreement shall contain the manner of use of traditional knowledge with clear identification, demarcation and labelling of the original traditional knowledge and its custodians.
- (4) A non-disclosure agreement shall be signed by the licensee with the community, to prevent unauthorized disclosure of the traditional knowledge.

Explanation- For the purpose of this section, any fair use of the traditional knowledge will not amount to breach of non-disclosure agreement provided no alteration is made to the existing traditional knowledge and proper reference, identification or demarcation of the original custodian is provided or the place from where it is derived is made.

- (5) The license agreement shall also state the mutually agreeable and equitable benefit sharing contract between the licensee and the community.
- (6) Any contravention of the terms of license agreement or benefit sharing contract by the licensee shall call for penalty under this Act.

- (7) The licensee shall be barred from sub-licensing or transferring their rights under the licensee to the third person, non-licensee, without prior permission of the appropriate Government or community, as the case may be.
- (8) In the matter of license, the community may seek advice of the appropriate government.
- (9) The license granted to non-members shall be notarised by the appropriate government.
- (10) Any traditional knowledge in the custody of State Government shall be called as 'State Traditional Knowledge' and the practitioners of the same shall have 'State Traditional Knowledge License' that would be non-transferable license.
2. (1) If later a community is granted custody of a traditional knowledge, the 'State Traditional Knowledge License' shall cease to exist and all the practitioners granted license shall have the time period of one year to seek a 'community traditional knowledge license' from the community recognised as the proprietor or owner of the traditional knowledge.
- (2) In the absence of appropriate community decision making body the appropriate Government may grant 'community traditional knowledge license' to a non-member that shall be valid till the appointment of relevant community body and any use shall be subjected to the prior approval of the said body.
- (3) National Authority in cases where community body is not appointed shall not be responsible for grant of 'community traditional knowledge license'. The authority shall have powers and function as provided under the Act.
3. PERIOD OF PROTECTION- Notwithstanding anything contained in any other law for the time being in force, the protection to traditional knowledge.
- such date as may be notified by Central Government in official Gazette.
- (2) The National Authority shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and to sue and be sue by the said name.
- (3) The head office of the National Authority shall be at Vishakhapatnam.
- (4) The regional offices of the National Authority shall be in Chennai, Ahmedabad, Bhuvneshwar, and Punjab. The National Authority may establish offices at other places, with the prior approval of the Central Government.
- (5) The National Authority shall consist of following:
- (i) a Chairperson, who shall be a person of eminent knowledge and experience in the field of Intellectual Property Rights and having adequate knowledge of Traditional knowledge of India, in the field of conservation, sustainability and benefit sharing, to be appointed by the Central Government.
- (ii) Five other members to be appointed by Chairperson, as *ex-officio* members, belonging to different field of knowledge, mainly including one representative from each department and ministry:
- a) Ministry of Tribal Affairs;
- b) Ministry of science and Technology;
- c) Ministry of Law and Justice;
- d) Office of the Controller General of Patents, Designs, Trademarks and Geographical Indicators, registrar of Copyright.
- e) Head of the Traditional Knowledge Digital Library unit of the Council of Scientific and Industrial Research;
- (i) Two representatives from any specified tribal community, who shall be the head of the concerned community;
- (ii) The Chairperson of the National Biodiversity Authority;
- (iii) Three other members, who shall be the specialist and scientists, having experience in, or special knowledge, in the matters relating to preservation, sustenance and

CHAPTER IV

NATIONAL AUTHORITY

1. APPOINTMENT OF NATIONAL AUTHORITY-

- (1) Central Government may, by a notification in the official Gazette, establish a body to be called National Authority on Traditional Knowledge, that shall come into effect from

- (i) Two representatives from any specified tribal community, who shall be the head of the concerned community;
- (ii) The Chairperson of the National Biodiversity Authority;
- (iii) Three other members, who shall be the specialist and scientists, having experience in, or special knowledge, in the matters relating to preservation, sustenance and

conservation of Traditional Knowledge, and in the field of Intellectual Property Rights, to be by the chairperson as the advisors to the National Authority.

2. TERM AND SALARY-

- (1) The term for Chairperson shall be five years or sixty years whichever is earlier, and for other members the term shall be three years extendable up-to five years or sixty years, whichever is earlier, by the Chairperson.
- (2) The salary of the member, including Chairperson, shall be as the rules framed by Central Government for Government employees of Centre.

3. DISQUALIFICATION-

The Central Government may remove from National Authority any member who, in its opinion, has-

- (i) been adjudged as insolvent; or
- (ii) been convicted of an offence which involved moral turpitude; or
- (iii) become physical or mentally incapable of acting as a member; or
- (iv) has abused his position so as to become incapable of continuation in the interest of public;
- (v) acquired such financial or other interest as is likely to affect prejudicially his functions as a member;
- (vi) have any other interest in the position so as to affect prejudicially his functions as a member.

4. MEETINGS-

- (1) The National Authority shall meet atleast twice a year at such interval and place as may be prescribed by the Chairperson.
- (2) The chairperson of the National Authority shall preside over the meeting of the National Authority and in his absence, for any reason, any such member as chosen by the members shall preside over the meeting;
- (3) All appeals and questions which came before the National Authority, in its meeting, shall be decided by a majority votes consisting of two-thirds of the members present and voting and in the event of equality of votes, the Chairperson or, in his

absence, the person presiding, shall have and exercise a second or casting vote.

- (4) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested may not attend the meeting with the approval of the other member present in the meeting.
- (5) No act or proceeding of the National Authority shall be invalidated merely by reason of—
 - a. any vacancy in, or any defect in the constitution of the National Authority or appointment of a person acting as a member; or
 - b. any irregularity in the procedure of the National Authority not affecting the merits of the case.
- (6) The National Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

5. POWERS AND FUNCTIONS-

- (1) National Authority shall constitute a fund to be known as "National Traditional Knowledge Fund" for the purpose of receiving any loan, grant, royalties, benefits and other sums received from such other sources as may be decided upon by the Central Government in connection with traditional knowledge in its custody.
- (2) The funds so received shall be utilised for-
 - (i) distributing benefits to the benefit claimers or community recognised for such traditional knowledge;
 - (ii) conservation, preservation, development, safeguard and promotion of traditional knowledge;
 - (iii) socio-economic development of persons practices the concerned traditional knowledge.
- (3) The National Authority shall be custodian of traditional knowledge on behalf of Central Government and shall advice Central Government in the matters of conservation, protection, preservation, promotion, sustainable use of and

- equitable sharing of benefits from traditional knowledge of India;
- (4) Advise the Central Government in any other matter as it deems fit;
- (5) Provide assistance to the right holders in negotiating terms with other possible users, whether commercial or non-commercial;
- (6) The matters relating to the disputes in traditional knowledge shall be dealt with, by National Authority, either in its head office or other regional offices as established under this Act, as the case may be relating to territorial jurisdiction;
- (7) The National authority shall settle the dispute expediently after following the due process of law, namely after proper investigation and hearing of parties to the dispute, and shall grant the decision as per powers vested in it by this Act;
- (8) Guidelines shall be issued by the National Authority in accordance with the provisions of this Act for recognition, as custodians of, and certification of communities for, traditional knowledge with the State Board.
- (9) After discussion with any expert committee, constituted in the National Authority, may pronounce any form of traditional knowledge, 'under threat of extinction', and shall lay down special rules and provisions for preventing the extinction of the traditional knowledge.
- (10) The National Authority shall prepare an annual traditional knowledge report on the operation of this Act, including the functioning of the National Authority and Central Government with regards to the National Traditional knowledge.
- (11) The National Authority shall lay the report, so prepared, before the Legislative Assembly and Council if applicable, for a total period of thirty days and the report shall also be published on its website.
- (12) The National Authority shall mount principles and guidelines for entering into benefit sharing agreements with the concerned community for their benefit after the consultation with the Central Government and an expert committee constituted for such purpose. The said principles and guidelines shall be given effect for all or any of the following matters, namely, for:
- (i) the transfer of technology;
- (ii) the development and research and for the location production units in such areas which will enable better living standards for those claiming benefits;
- (iii) the connection of local people and benefit claimers with the department of research and development for utilization of traditional knowledge;
- (iv) the establishment of venture capital fund in order to aid and raise funds for benefit claimers;
- (v) the imbursement of such monetary and non-monetary compensation or benefits to the benefit claimers as the National Authority may deem fit;
- (vi) the payment of royalty in the case of commercial use of traditional knowledge by the non-member;
6. (1) The National Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: —
- (i) enforcing and summoning and the presence and appearance of any person;
- (ii) examining the person on oath;
- (iii) requiring the production and discovery of important and relevant documents;
- (iv) receiving evidence on affidavits;
- (v) issuing commissions for the examination of witness or documents;
- (vi) reviewing and revision of its decisions;
- (vii) terminating an application for evasion or deciding it *ex-parte*;
- (viii) setting aside any order of dismissal of any application or any order passed by it *ex-parte*;
- (ix) any other matter which may be prescribed.
- (2) All employees, officers and members of the National Authority shall be deemed, when acting or contending to be acting in accordance to any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

CHAPTER V

STATE AUTHORITY OF TRADITIONAL KNOWLEDGE

1. ESTABLISHMENT-

- (1) State Government may, by a notification in the official Gazette, establish a body to be called State Authority on Traditional Knowledge, that shall come into effect from such date as may be notified by State Government in official Gazette.
- (2) The State Authority shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and to sue and be sue by the said name.
- (3) The head office of the State Authority shall be at Thiruvananthapuram.
- (4) The regional offices of the State Authority shall be in Mumbai, Delhi, Kolkata, and Chandigarh. The State Authority may establish offices at other places, with the prior approval of the State Government.
- (5) The State Authority shall consist of following:
 - (i) a Chairperson, who shall be a person of eminent knowledge and experience in the field of Intellectual Property Rights and having adequate knowledge of Traditional knowledge of India, in the field of conservation, sustainability and benefit sharing, to be appointed by the State Government in consultation with National Authority.
 - (ii) Five other members to be appointed by Chairperson, as *ex-officio* members, belonging to different field of knowledge, mainly including-
 - a) One representative from Ministry of Tribal Affairs;
 - b) President of the State Sahitya Academy or Folklore Academy;
 - c) One representative, from each department, who shall be the registrar, of Patents, Designs, Trademarks, Geographical Indicators and Copyright.
 - d) One representative form Traditional Knowledge Digital Library unit of the Council of Scientific and Industrial Research;

- d) the Advocate-General of the State;
- (iii) Three other members, who shall be the specialist and scientists, having experience in, or special knowledge, in the matters relating to preservation, sustenance and conservation of Traditional Knowledge, and in the field of Intellectual Property Rights, to be nominated by the chairperson as the advisors to the State Authority.

2. TERM AND SALARY-

- (1) The term for Chairperson shall be five years or sixty years whichever is earlier, and for other members the term shall be three years extendable up-to five years or sixty years, whichever is earlier, by the Chairperson.
- (2) The salary of the member, including Chairperson, shall be as the rules framed by State Government for, Government employees of State.

3. DISQUALIFICATION-

The Central Government may remove from State Authority any member who, in its opinion, has-

- (i) been adjudged as insolvent; or
- (ii) been convicted of an offence which involved moral turpitude; or
- (iii) become physical or mentally incapable of acting as a member; or
- (iv) has abused his position so as to become incapable of continuation in the interest of public;
- (v) acquired such financial or other interest as is likely to affect prejudicially his functions as a member;
- (vi) have any other interest in the position so as to affect prejudicially his functions as a member.

4. MEETINGS-

- (1) The State Authority shall meet at least twice a year at such interval and place as may be prescribed by the Chairperson.
- (2) The chairperson of the State Authority shall preside over the meeting of the State Authority and in his absence, for any reason, any such member as chosen by

- the members shall preside over the meeting;
- (3) All appeals and questions which came before the State Authority, in its meeting, shall be decided by a majority votes consisting of two-thirds of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.
- (4) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested may not attend the meeting with the approval of the other member present in the meeting.
- (5) No act or proceeding of the State Authority shall be invalidated merely by reason of—
- (a) any vacancy in, or any defect in the constitution of the State Authority or appointment of a person acting as a member; or
- (b) any irregularity in the procedure of the State Authority not affecting the merits of the case.
- (6) The State Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.
5. POWERS AND FUNCTIONS-
- (1) The State Authority shall identify, classify, codify, and catalogue all the Traditional Knowledge, tangible or intangible, belonging to all the indigenous or tribal communities or to Centre or State, with TKDL unit as TKDS, and shall update annually, in case any request is made for the inclusion, after the due process of law;
- (2) State Authority shall constitute a fund to be known as "State Traditional Knowledge Fund" for the purpose of receiving any loan, grant, royalties, benefits and other sums received from such other sources as may be decided upon by the State Government in connection with traditional knowledge in its custody.
- (3) The funds so received shall be utilised for-
- (i) distributing benefits to the benefit claimers or community recognised for such traditional knowledge;
- (ii) conservation, preservation, development, safeguard and promotion of traditional knowledge;
- (iii) socio-economic development of persons practices the concerned traditional knowledge.
- (4) The State Authority shall be custodian of traditional knowledge on behalf of State Government and shall advice State Government in the matters of conservation, protection, preservation, promotion, sustainable use of and equitable sharing of benefits from traditional knowledge of India;
- (5) Advice the State Government in any other matter as it deems fit;
- (5) Provide assistance to the right holders in negotiating terms with other possible users, whether commercial or non-commercial;
- (6) The matters relating to the disputes in traditional knowledge shall be dealt with, by State Authority, either in its head office or other regional offices as established under this Act, as the case may be relating to territorial jurisdiction;
- (7) The State authority shall settle the dispute expediently after following the due process of law, namely after proper investigation and hearing of parties to the dispute, and shall grant the decision as per powers vested in it by this Act;
- (8) Guidelines shall be issued by the State Authority in accordance with the provisions of this Act for recognition, as custodians of, and certification of communities for, traditional knowledge with the State Board.
- (9) After discussion with any expert committee, constituted in the State Authority, may pronounce any form of traditional knowledge, 'under threat of extinction' in the state, and shall lay down special rules and provisions for preventing the extinction of the traditional knowledge.
- (10) The State Authority shall prepare a traditional knowledge report, annually, on the operation of this Act, including the functioning of the State Authority and State Government with regards to the State's Traditional knowledge.
- (11) The State Authority shall lay the report, so prepared, before the State's Legislative Assembly and Council if applicable, for a

total period of thirty days and shall publish the report on its website.

(12) The State Authority shall mount principles and guidelines for entering into benefit sharing agreements with the concerned community for their benefit after the consultation with the State Government and an expert committee constituted for such purpose. The said principles and guidelines shall be given effect for all or any of the following matters, namely, for:

- (i) the transfer of technology;
 - (ii) the development and research and for the location production units in such areas which will enable better living standards for those claiming benefits;
 - (iii) the connection of local people and benefit claimers with the department of research and development for utilization of traditional knowledge;
 - (iv) the establishment of venture capital fund in order to aid and raise funds for benefit claimers;
 - (v) the imbursement of such monetary and non-monetary compensation or benefits to the benefit claimers as the National Authority may deem fit;
 - (vi) the payment of royalty in the case of commercial use of traditional knowledge by the non-member;
6. (1) The National Authority shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: —
- (i) enforcing and summoning and the presence and appearance of any person;
 - (ii) examining the person on oath;
 - (iii) requiring the production and discovery of important and relevant documents;
 - (iv) receiving evidence on affidavits;
 - (v) issuing commissions for the examination of witness or documents;
 - (vi) reviewing and revision of its decisions;
 - (vii) terminating an application for evasion or deciding it ex-parte;

(viii) setting aside any order of dismissal of any application or any order passed by it *ex-parte*;

(ix) any other matter which may be prescribed.

(2) All employees, officers and members of the National Authority shall be deemed, when acting or contending to be acting in accordance to any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

CHAPTER VI

OFFENCES AND REMEDIES

1. The misappropriation of traditional knowledge includes:

(i) use and access of traditional knowledge without the prior approval of the appropriate Government or community;

(ii) use of traditional knowledge in violation of the contract of license granted under this Act;

(iii) use in violation of the agreed terms between the authorised user of traditional knowledge and the custodian of traditional knowledge, for whatever purpose, whether commercial or non-commercial;

(iv) an act of acquiring existing intellectual property rights over the traditional knowledge without the approval of appropriate Government or the community, as the case may be, against the provisions of the Act;

(v) any breach of confidence which results in violation of any law in force;

(vi) such misappropriation that results in benefits and unlawful gains to the violator and causes harm to the custodians;

(vii) the misappropriation of traditional knowledge shall be deemed to be an offence and be punishable under this Act.

2. The custodian in case of misappropriation of traditional knowledge, except as otherwise provided by the Act, shall be entitled to such remedies by way of accounts, damages, injunctions and otherwise as or may be conferred by law for the infringement of right.

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| <p>3. (1) Whoever is found guilty of misappropriation under clause (i) of section 28 shall be punishable with an imprisonment, for a term which may extend to five years or with the fine which may extend to ten lakh rupees, and where damages caused exceeds ten lakh rupees, such fine that is proportionate with the damages caused or with both.</p> <p>(2) Whoever is found guilty of misappropriation under clause (ii) to (vi) of section 28 shall be punishable with an imprisonment, for a term which may extend to three years or with the fine which may extend to five lakh rupees, and where damages caused exceeds ten five rupees, such fine that is proportionate with the damages caused or with both.</p> <p>(3) Any contravention of directions as given by central or state or appropriate Government or National or State Authority, for which no separate punishment has been provided under this Act, the violator shall be punished with an imprisonment, for a term which may extend to two years or with the fine which may extend to one lakh rupees, and in case of second time contravention with a fine of two lakh and in the case of continuous contravention with an additional fine of fifty thousand rupees till the default or offence continuous.</p> <p>(4) where the contravener is the company or a corporate body, every person who at the time of the offence or contravention committed, was in charge of , and was responsible to, the company for the day to day conduct, such manager, director, secretary or other officer of the company, and the company, where it is proved that the offence or contravention was committed due to negligence or with the connivance, consent and knowledge of the person responsible for the company, shall be deemed guilty of the offence or contravention committed and shall be proceeded against and shall be punished accordingly.</p> | <p>(1) The National and State Authority constituted under this Act, shall maintain proper accounts and other relevant records, and shall prepare annual statement of funds received and their utilization, in such form as may be prescribed by the Central or State Government, respectively, in consultation with the Comptroller and Auditor General of India and Additional Deputy Comptroller and Auditor General, respectively.</p> <p>(2) Comptroller and Auditor General of India shall audit the accounts of National Authority and Additional Deputy Comptroller and Auditor General shall audit the accounts of State Authority, at regular intervals, as may be deemed fit, and any expenses incurred in such audit shall be payable by the National or State Authority, as the case may be.</p> <p>(3) Comptroller and Auditor General of India and Additional Deputy Comptroller and Auditor General shall have the same rights and privileges and authority in connection with such audit as Comptroller and Auditor General of India and Additional Deputy Comptroller and Auditor General generally has in connection with the audit of Government accounts.</p> <p>(4) The dully certified accounts of National Authority, by the Comptroller and Auditor General of India, shall be submitted to Central Government, and that of State Authority, by the Additional Deputy Comptroller and Auditor General, shall be submitted to State Government, on annual basis.</p> |
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Provided that if the offence or contravention was made without the knowledge of the concerned person or that all due diligence was exercised to prevent the commission of such offence or contravention, such person shall be given exemption from any liability upon proving so.

CHAPTER VII

MISCELLANEOUS

1. MAINTAINENCE OF RECORDS AND AUDITING-

2. TRADITIONAL KNOWLEDGE DOCKET SYSYTEM

- (i) A TKDS shall be created and maintained by each State Board and Shall be Coordinated and Maintained by National Authority under TKDL unit.
- (ii) The TKDS shall be deemed to be the register for the purpose of identifying the custodian of the communities acquiring or possessing Traditional Knowledge.
- (iii) The TKDS shall be made available to different intellectual property offices located in different countries, as the 'prior art', to revoke or prevent the grant of Intellectual Property Rights over India's Traditional Knowledge, under a reasonable privacy or non-disclosure agreements.

3. The TKDS shall constitute—

- (i) details of the custodian community holding traditional knowledge like their geographical location and area where they reside;
- (ii) the nature and description of Traditional Knowledge possessed by the custodian community, tangible or intangible form, in order to identify the traditional knowledge;
- (iii) the relevance or application of Traditional Knowledge to be protected.
- (iv) the details of the decision-making body of the community, whom to contact and how to approach the community.

4. POWERS OF CENTRAL GOVERNMENT

- (1) The Central Government may initiate any actions necessary to revoke, prohibit, prevent or oppose, the grant of existing intellectual property rights over India's traditional knowledge and to protect them as intellectual property under this Act, within India or abroad.
- (2) The Central Government may execute any such program or schemes, as it deems necessary, for the purpose of safeguarding, developing, promoting, preserving and protecting India's traditional knowledge, according to the requirements of this Act.
- (3) The decision of the State Government whether a question is one of policy or not shall be final

5. POWERS OF STATE GOVERNMENT

- (1) The State Government may initiate any actions necessary to revoke, prohibit, prevent or oppose, the grant of existing intellectual property rights over traditional knowledge within its jurisdiction and to protect them as intellectual property under this Act, within India.
- (2) The State Government may execute any such program or schemes, as it deems necessary, for the purpose of safeguarding, developing, promoting, preserving and protecting traditional knowledge within its jurisdiction, according to the requirements of this Act.
- (3) The decision of the State Government whether a question is one of policy or not shall be final

To conclude, today, Indian culture, which is a well-known bucket of knowledge relating to proverbs, aphorisms, folk forms (tales, dance, music, art,

literature, songs, anecdotes, rumours, songs, impromptu street plays) etc., has become a constant source of economic development, growth and generation of revenue. They are at the verge of extinction due to lack in legal procedures for their protection against misuse at national level.³²

This necessitates not only the preservation and revitalization of cultural expressions but also the protection against unwarranted commercial exploitation for economic gains. As our present is an echo of past and is built upon the intelligence of our past people's wisdom. Additionally, our present lays down the foundation for future that protects our existence and maintains our identity. Thus, our past, present and future existences are inextricably bound up with each other and protection of one will ensure protection of other.

The question today is the need to have legal legislation for the protection of expression of traditional or tribal culture, embedded in the deep roots of our society, and prohibit their manipulative use. They are taken as free building blocks for future work by the cultural industries, exploiting them without due recognition and sharing of benefits with the tribal or indigenous groups who are the real stakeholders of the cultural property.

Hence, unless the legal regime of IPR is modified according to the claims and needs of community holder it may be a misnomer to consider indigenous knowledge as intellectual property. This is because, under the notion of IPR system, an idea is not the subject of property rights unless it is expressed in some material form. No individual can claim monopoly over intellectual knowledge for it being the product of intellect, an idea. Taking about an idea, it is an ethereal material lying in an individual's mind which when expressed is entitled to protection as per the notion of copyright law. The expression is not defined but understood by means of presentation, performance, communication and publication to the public. Which once communicated is open for further dissemination of ideas-based creations by the public in the form of adaptations and derivations. To say, there is the difficulty in recognizing communal IPRs as the nature of IPRs remains largely unclear on this point making IPR system insufficient in catering to the needs of indigenous people.

³² Bhaswati Mukherjee, 'India's Intangible Cultural Heritage: A Civilisational Legacy To The World', (January 29, 2015) Ministry of External affairs, GOI <<http://www.mea.gov.in/in-focus-article.htm?24717/Indias+Intangible+Cultural+Heritage+A+Civilisational+Legacy+To+The+World>> accessed on 13 May.2019.

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