

# TRADITIONAL KNOWLEDGE: IP RIGHTS VS. OPEN ACCESS

## Introduction

Traditional knowledge refers to the knowledge, inventions, and customs of indigenous and local groups worldwide. Oral transmission of traditional knowledge, shaped by decades of experience and customised to the climate and customs. It usually belongs to the community and is expressed through stories, songs, folklore, proverbs, cultural values, beliefs, rituals, local languages, and agricultural activities. Because it has been practiced, sung, danced, painted, carved, recited, and performed for millennia, it is sometimes referred to as an oral tradition. Most traditional knowledge is applied in practical contexts, especially in the areas of horticulture, forestry, fisheries, agriculture, health, and environmental management.

Traditional IPRs offer exclusive rights to individuals for a limited period, for their traditional knowledge. For example - the medicinal value of plants or herbs known only to a specific community or tribe. Open access initiatives aim to share research and resources without cost or barriers, highlighting the need for careful consideration in balancing interests and raising questions about profit-oriented motives behind IPR protection.



## Arguments favouring IPRs over open access initiatives for traditional knowledge-

IP safeguarding supports sustainable development by preserving traditional knowledge and preventing third-party claims. Recognizing IPRs in Traditional Knowledge allows equitable compensation, benefiting creators and society, particularly for Indigenous and Local Communities.

The Convention on Biological Diversity (CBD) and the Nagoya Protocol are global frameworks for recognizing and protecting traditional knowledge. Article 8(j) mandates CBD Parties to respect and preserve Indigenous and Local Communities' traditional knowledge, promoting fair benefit-sharing. Article 16 acknowledges traditional knowledge as a crucial technology for effective conservation and sustainable use of biodiversity.

## Arguments favouring open access initiatives over IPRs for traditional knowledge-

Open access initiatives promote scientific creativity by providing public access to technology and science, addressing global concerns. However, traditional knowledge faces appropriation without fair compensation, jeopardizing indigenous communities and cultural heritage. Conflicts between collective and individual ownership in the intellectual property system undermine protection efforts.

Promoting self-governance is recommended for more effective safeguarding of indigenous knowledge rights. In CBD negotiations, governments use flexible language in Article 8(j) to avoid committing to indigenous protection, which urges parties to "respect, preserve, and maintain" indigenous knowledge without ensuring specific rights.

## Conclusion-

Striking a balance between IPR and open access initiatives is crucial for protecting traditional knowledge while promoting innovation and knowledge sharing, despite the complex and challenging task of reconciling these concepts.



## Traditional Knowledge Digital Library and its Objective-

The USPTO's reversal of a turmeric patent prompted the creation of the Traditional Knowledge Digital Library (TKDL) in 2001, a collaboration between the Council of Scientific and Industrial Research and the Ministry of Health and Family Welfare. It safeguards traditional knowledge, particularly in Ayurveda, Unani, Siddha, and Yoga, from bio piracy and unethical patents. Available in multiple languages, the TKDL serves as a bridge between ancient Sanskrit Hindi, Arabic, Urdu, Tamil or other regional languages information and patent examiners, enabling prior art searches and patent examinations by offices like United State Patent & Trademark Office, Japan Patent Office, United Kingdom Patent Office, Canadian Intellectual Property Office, German Patent Office, Intellectual Property Australia, Indian Patent Office, Chile Patent Office, Intellectual Property Corporation of Malaysia, Rospatent- Intellectual Property Office of Russia, Peru Patent Office, Spanish Patent and Trademark Office, Danish Patent and Trademark office, National Industrial Property Institute, France and Eurasian Patent Office and the Indian Patent Office.