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EDITORIAL ANALYSIS

Protecting Traditional Knowledge — Why India's TKDL Model Must Go Global

 **THE HINDU**

25 February 2026

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GS2

GS3

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MAINS RELEVANCE:

GS Paper 2

GS Paper 3



INTERVIEW ANGLE

"India has successfully defended its traditional knowledge at patent offices using TKDL. But the underlying IPR architecture — TRIPS, WIPO — still lacks a binding international instrument on traditional knowledge protection. What should India's negotiating strategy be at WIPO and WTO?"

The India-Brazil TKDL agreement is welcome, but it should not distract from the larger structural problem: the global intellectual property system was designed by and for industrialised economies with little traditional knowledge of their own, and it has still not been reformed to systematically protect the knowledge wealth of biodiversity-rich developing nations.

TKDL is India's brilliant workaround — a defensive tool that prevents patents on what should never have been patentable. But a workaround is not a solution.

WHAT TKDL DOES — AND DOES NOT — DO

TKDL is a **prior art database**. Its purpose is to provide patent examiners with evidence that a claimed "invention" is actually ancient knowledge — thereby triggering the novelty and non-obviousness requirements that any valid patent must meet.

It works. Between 2009 and 2023, TKDL helped reject or narrow thousands of patent applications at the EPO, USPTO, and other offices. The turmeric, neem, and basmati cases — which India fought expensively in the 1990s — would not have happened with TKDL in place.

But TKDL has four structural limitations:

First, it protects only what has been documented. Traditional knowledge held in oral traditions — not written in Sanskrit or Arabic texts — falls outside TKDL's scope. Much of India's tribal and folk knowledge exists only in practice, passed from healer to healer. TKDL cannot defend what it cannot document.

Second, it is purely defensive. TKDL prevents wrongful patents; it does not create rights for traditional knowledge holders. A community in Chhattisgarh that has used a particular forest herb for generations receives no benefit when a pharmaceutical company studies that herb and develops a medicine, even with TKDL protecting against a direct patent on the herb. The **benefit-sharing gap** remains.

Third, it requires bilateral agreements to work. TKDL's access model depends on individual patent offices signing access agreements. Jurisdictions that have not signed such agreements remain blind spots — patent grants in those countries remain unchallenged.

Fourth, it covers India's knowledge only. There are countless acts of biopiracy involving traditional knowledge from Africa, Latin America, Southeast Asia, and Pacific Island nations that TKDL cannot address.

THE WIPO NEGOTIATIONS: LONG DELAYED, NOW CRITICAL

The World Intellectual Property Organization's **Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC)** has been negotiating a **binding international instrument** on traditional knowledge protection since 2000. Twenty-five years of negotiations have produced a draft text but no treaty.

The reason for the delay is political: the United States, European Union, Japan, and other major patent-granting jurisdictions have systematically resisted any binding obligation that would:

- Mandate disclosure** of the origin of biological resources and traditional knowledge in patent applications

- Provide benefit-sharing** when commercialised products draw on traditional knowledge

- Create positive rights** for traditional knowledge holders (rather than just defensive protection)

The mandatory disclosure requirement is the most immediate reform needed. Currently, a company can patent a drug derived from an Indian medicinal plant without declaring where the knowledge came from. Mandatory disclosure would require applicants to reveal:

- The country of origin of any biological resource used

- Whether prior informed consent was obtained under the Nagoya Protocol

- Any associated traditional knowledge

This single reform would significantly deter biopiracy, because a patent obtained without proper disclosure could be challenged and invalidated.

India has consistently championed mandatory disclosure at WIPO and in TRIPS review discussions. The G77 + China bloc broadly supports this position. The BASIC group (Brazil, South Africa, India, China) coordinates positions in these negotiations.

THE BENEFIT-SHARING FRONTIER

Beyond preventing wrongful patents lies the harder question: **when traditional knowledge legitimately contributes to a commercial product, who benefits?**

The Nagoya Protocol's Access and Benefit Sharing (ABS) framework theoretically addresses this — requiring prior informed consent and equitable benefit sharing. But implementation has been weak:

Most commercial R&D does not trigger ABS because companies claim they are using publicly available information (traditional knowledge in published texts, TKDL itself) rather than accessing biological resources directly

Enforcement depends on national laws in user countries, which are often weak

Communities themselves lack legal capacity to negotiate benefit-sharing agreements

India's **Biological Diversity Act (2002)** and its amendment in 2023 attempt to address this domestically. But the international dimension — ensuring that Indian communities receive benefits when foreign companies develop products from Indian traditional knowledge — remains largely aspirational.

WHAT INDIA SHOULD DEMAND

The TKDL-Brazil deal is valuable — but India's long-term strategy must aim higher:

Push for a binding WIPO treaty on TK — with mandatory disclosure, PIC requirements, and benefit-sharing obligations, not just recommendations

Multilateralise the TKDL model — push for a global traditional knowledge database platform (a “TKDL for the world”) under WIPO or CBD auspices

Reform TRIPS Article 27.3(b) — the clause that allows patents on biological material is the root of biopiracy enabling; it needs amendment to exclude traditional knowledge-derived inventions without proper ABS compliance

Document oral traditional knowledge — expand the scope of India's People's Biodiversity Registers to capture folk and tribal knowledge, providing a first layer of evidence even for undocumented TK

The TKDL has protected India's documented heritage. The task now is to go beyond defence, build offensive rights for knowledge holders, and help reshape an international system that was never designed with them in mind.

UPSC RELEVANCE

TKDL, WIPO IGC, Nagoya Protocol, CBD, ABS, TRIPS 27.3(b), NBA, PBR, BASIC group.

MAINS GS-2:

India's international negotiating positions on IPR; WIPO; WTO TRIPS reform.

GS-3:

Biotechnology and traditional knowledge; biodiversity conservation and benefit-sharing.

INTERVIEW:

“Can India's TKDL model be replicated globally? What would it take?”

★ FACTS CORNER — KNOWLEDGE PEDIA

TKDL LIMITATIONS:

- Only covers **documented** (textual) traditional knowledge; oral traditions excluded
- Purely **defensive** — prevents patents, does not create rights for TK holders
- Requires **bilateral agreements** with each patent office; not automatic globally
- Covers only **Indian** TK; no global equivalent yet

WIPO IGC:

- Full name: Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore
- Established: **2000**
- Status: Draft text for binding instrument exists; no treaty concluded after 25 years
- Blocked by: USA, EU, Japan (resist mandatory disclosure and benefit-sharing obligations)

KEY REFORM DEMANDED:

- Mandatory Disclosure Requirement:** Patent applicants must declare origin of biological resources + associated TK; failure = patent invalidity
- Supported by: India, G77+China, BASIC group
- Opposed by: USA, EU, Japan, Switzerland

NAGOYA PROTOCOL — IMPLEMENTATION GAPS:

- Companies use “publicly available” TK loophole to avoid ABS
- Enforcement weak in user countries
- Communities lack negotiating capacity

TRIPS ARTICLE 27.3(B):

- Allows patents on microorganisms, non-biological and microbiological processes
- Debate: Developing countries seek amendment to exclude TK-derived inventions without ABS compliance
- India’s position: Patent office should have authority to check ABS compliance

OTHER RELEVANT FACTS:

- Biological Diversity Amendment Act (2023): Eased compliance for domestic access; kept ABS framework; added provisions for digital sequence information
- Digital Sequence Information (DSI): Latest TK-related debate at CBD; whether using genetic sequence data (without physical sample) triggers ABS
- G77+China: 134 developing countries negotiating bloc at UN forums including WIPO and UNFCCC

Sources: The Hindu, WIPO, PIB

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