

**Bill No. 282 of 2016**

THE PROTECTION OF TRADITIONAL KNOWLEDGE BILL, 2016

By

DR. SHASHI THAROOR, M.P.

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CLAUSES

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**Bill No. 282 of 2016**

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A

**BILL**

*to provide for the protection, preservation, promotion and development of India's Traditional Knowledge and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

**CHAPTER I**

**PRELIMINARY**

- 5      **1.** (1) This Act may be called the Protection of Indian Traditional Knowledge Act, 2016.  
          (2) It extends to the whole of India.

Short title,  
extent and  
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(i) "appropriate Government" means the concerned State Government or the Union Territory administration; 5

(ii) "commercial use" means making available any product, process, material, form, practice or performance, that is traditional knowledge, for sale in the market or making available for sale in market the outcome of any research in traditional knowledge;

(iii) "community" means a group of people or family, whether indigenous, tribal or otherwise, residing within the boundaries of the national territory, who can be identified as a separate group from other groups or other members of the society by reason of their exclusive association with one or more forms of traditional knowledge; 10

(iv) "licensee" means any person who holds either the community traditional knowledge license or the State traditional knowledge license and is authorized to use the traditional knowledge subject to the conditions of the license; 15

(v) "large scale enterprise" means an enterprise which is not a micro, small or medium enterprise as per the definition of the Micro, Small and Medium Enterprise Development Act, 2006 by the Central Government by notification in the Official Gazette and includes any industry classified as a large industry; 27 of 2016.

(vi) "non-commercial use" means making available any product, process, material, form, practice or performance, that is traditional knowledge, for purposes other than commercial use and includes the use of such knowledge for research, provided that the research is conducted and disseminated as per the guidelines of the Central Government; 20

(vii) "person" means any citizen of India, body corporate, whether incorporated or not, partnership or organization, whether registered or not, or anyone who is not a citizen of India; 25

(viii) "prescribed" means prescribed by rules made under this Act;

(ix) "traditional knowledge" means knowledge and expression of culture, which may subsist in codified or oral or other forms, whether publically available or not, that is dynamic and evolving and is passed on from generation to generation, for at least 3 generations, whether consecutively or not, which is associated with group or groups who are maintaining, practicing or developing it in traditional cultural context and includes know-how, skills, innovations, practices, learning, medicinal preparations, method of treatment, literature, music, art forms, designs and marks but does not include any traditional knowledge covered by any law for the time being in force providing for its preservation, promotion, management or unauthorized commercial exploitation; 30 35

(x) "National Authority" means National Authority on Traditional Knowledge constituted under section 12; 40

(xi) "State Board" means the State Board constituted under section 24;

(xii) "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 45

(xiii) "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

## OWNERSHIP AND RIGHTS

3. (1) For all traditional knowledge that is obtained, derived or practiced solely within the State, the concerned State Government, and in all other cases, the Central Government, shall be the custodian of the traditional knowledge. Custodian.

(2) The appropriate Government may transfer the custodianship of the traditional knowledge to a community in such manner, as may be prescribed, provided such community sufficiently prove that—

- (i) the traditional knowledge practiced by them is distinct;
- (ii) the traditional knowledge is exclusively practiced by that community;
- (iii) the community can be sufficiently delineated from others;
- (iv) no person has any objection to the community claiming custodianship of the traditional knowledge:

Provided that in every case of refusal of transfer of custodianship, the appropriate Government shall record the reasons of refusal in writing.

(3) Any community that wishes to be recognized as a custodian of the traditional knowledge shall register with the appropriate Government.

4. (1) Subject to the conditions laid down in sub-section (3) of section 9, all practitioners of traditional knowledge within a community, recognized as custodian of traditional knowledge under section 3, shall have the collective right to— Rights of communities as custodians.

- (i) create, maintain, control and develop their protected traditional knowledge;
- (ii) authorize, deny or revoke, the access to and utilization of traditional knowledge by non-members;
- (iii) have a 'brand name' or a unique name associated with the traditional knowledge;
- (iv) be informed of access to their traditional knowledge through a disclosure mechanism in all applications, which shall require evidence of consent prior to the applications, and benefit sharing requirements, in accordance with this Act;
- (v) a fair and equitable share of benefit, whether in monetary or non-monetary terms, arising from the utilization of traditional knowledge;

(2) All persons who are practitioners of the traditional knowledge of a community, identified as members of that community, shall have the right to commercial and non-commercial use of the attributed traditional knowledge.

(3) The community shall have the right to grant license to a non-member for the use of traditional knowledge and revoke such license for good cause:

Provided that grant of license to a non-member shall be notarised by the appropriate Government.

(4) The community may seek advice of the appropriate Government on granting a license to a non-member.

(5) The community shall regulate its rights and use with respect to their traditional knowledge, against members and non-members, by forming a decision making body in such form and manner as the community deem appropriate.

(6) The decision making body under sub-section (5) shall be formed by election of its members by majority vote of each of the member of the community.

(7) The term of the decision making body shall be five years.

Community  
Traditional  
Knowledge  
License.

5. (1) Subject to the approval of the community in writing, the 'community traditional knowledge license' shall be an agreement between the community and any non-member who wishes to use the traditional knowledge.

(2) The licensee shall have the non-exclusive license for non-commercial use of the traditional knowledge: 5

Provided that the use of the traditional knowledge shall be accompanied with clear labelling, demarcation or identification of the original traditional knowledge, its custodians and the license document.

*Illustration.*—The use of traditional knowledge for research shall be accompanied with the referencing such "The traditional knowledge referring to ... was obtained with the permission of ... as per license agreement ... available with ..." 10

(3) Any enrichment, development or advancement of the traditional knowledge as a result of its non-commercial use shall be included back to the realm of the original traditional knowledge to be placed in the custody of the original custodian.

(4) Subject to the provisions of sub-section (3), the licensee shall be made a member of the community and receive one vote in the decision making body of the community, with regard to the use of such enrichment, development or advancement, whether for commercial or non-commercial use. 15

(5) Every user under the license shall sign a non-disclosure agreement with the community, in order to prevent the dissemination of traditional knowledge to unauthorized persons. 20

*Explanation.*—For the purpose of this sub-section, published research with adequate referencing and credit to the original custodian shall not be considered as a breach of the non-disclosure agreement.

(6) Where a licensee has a non-exclusive license for commercial use of traditional knowledge, a mutually agreeable and equitable benefit sharing contract shall be agreed upon between the licensee and the licensor and notarised by the appropriate Government: 25

Provided that such license shall be non-transferable and licensee, shall not transfer the technology associated with the traditional knowledge or allow the use of the traditional knowledge by a non-licensee. 30

State  
Traditional  
Knowledge  
License.

6. (1) Subject to conditions laid down in sub-section (3) of section 9, all actual practitioners of traditional knowledge, which is in the custody of the appropriate Government, shall be deemed to have 'State Traditional Knowledge License' given by the appropriate Government, but shall not have the right to transfer this license to anyone else.

(2) The Licensee shall have the non-exclusive license for non-commercial use of the traditional knowledge: 35

Provided that the use of the traditional knowledge shall be accompanied with clear labelling, demarcation or identification that the traditional knowledge is obtained or derived from India.

*Illustration.*—The use of traditional knowledge for research shall be accompanied with the referencing as "This traditional knowledge referring to ... was obtained /derived from India and is in the custody of the Union of India". 40

(3) Any enrichment, development or advancement of the traditional knowledge as a result of its non-commercial use shall be included back to the realm of the original traditional knowledge, to be placed in the custody of the original custodian. 45

(4) Subject to the provisions of sub-section (3), the licensee shall be felicitated by the

appropriate Government as having contributed to such enrichment, development or advancement of traditional knowledge, in a manner as prescribed by the appropriate Government.

(5) Where a licensee has a non-exclusive license for commercial use of traditional knowledge, such license shall be non-transferable, licensee shall not transfer the technology associated with the traditional knowledge or allow the use of the traditional knowledge by a non-licensee.

7. (1) If, over the course of time, a community is granted custody of a traditional knowledge, the 'state traditional knowledge license' shall cease to be applicable one year from the date of grant of custody, and practitioners who are deemed non-members at the time shall have one year to seek a 'community traditional knowledge license' from the community decision-making body.

Transfer from State License to Community License.

(2) The appropriate Government may grant a 'community traditional knowledge license' to a practitioner who is deemed a non-member, during such period of one year, in the absence of a relevant community decision making body.

(3) The National Authority may not grant any 'community traditional knowledge license', one year after the grant of custodianship to a community.

8. (1) No patents or any other form of intellectual property protection shall be granted or applied for by any person, within India or abroad, on any traditional knowledge obtained or derived from India, whether in the custody of the community or appropriate Government.

Patents and Intellectual Property Protection.

(2) An invention or alternative form or formula based on traditional knowledge may be patented subject to the Patents Act, 1970.

(3) Subject to the Patents Act, 1970, prior to submitting an application with the patents office, with regard to filing a patent on invention based on the traditional knowledge obtained or derived from India, the applicant shall acquire permission from the National Authority.

9. (1) The misappropriation of traditional knowledge shall include, but is not limited to—

Misappropriation and regulation of traditional knowledge.

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

(ii) use of traditional knowledge by violating the conditions laid down in sections 5 and 6 for the community traditional knowledge license and the state traditional knowledge license;

(iii) where applicable, violating any condition agreed to between the authorised user of the traditional knowledge and the custodian of traditional knowledge, for whatever purpose, whether commercial or non-commercial;

(iv) gaining a patent or intellectual property protection or attempting to gain patent or intellectual property protection by breaching the provisions of section 8;

(v) any act that is in breach of confidence and which results in the violation of any law in force; and

(vi) such misappropriation, which may or may not have resulted into gainful profit for the violator or may or may not have caused any harm to the custodians, monetary or otherwise.

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

(3) The persons who shall not have rights as laid down in section 4 or who shall not have deemed license under section 6 and be required to take the approval or license from the community or the appropriate Government are the following, namely:—

(i) a person who is not a citizen of India;

(ii) a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income tax Act, 1961;

43 of 1961.

(iii) a body corporate, association or organization not incorporated or registered in India;

(iv) a body corporate, association or organization incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management;

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(v) a body corporate, association or organization incorporated or registered in India which is a large scale enterprise; and

(vi) anyone, who is not a relevant custodian of the traditional knowledge, defined as per this Act.

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Civil remedies for misappropriation of traditional knowledge.

**10.** (1) Where traditional knowledge has been misappropriated, the custodian shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

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(2) The costs of all parties in any proceedings in respect of the misappropriation of traditional knowledge shall be in the discretion of the court.

Punishment for misappropriation.

**11.** (1) Whoever is found guilty of misappropriation under clause (i) of sub-section (1) of section 9 shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten lakh rupees and, where the damage caused exceeds ten lakh rupees, such fine as may commensurate with the damage caused, or with both.

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(2) Whoever is found guilty of misappropriation under clauses (ii) to (vi) of sub-section (1) of section 9 shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees, and, where the damage caused exceeds five lakh rupees, such fine as may commensurate with the damage caused, or with both.

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(3) If any person contravenes any direction given or order made by the Central Government, the State Government, the National Authority or the State Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second time offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine may extend to two lakh rupees everyday during which the default continues.

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(4) Where an offence or contravention under this Act has been committed by a company, every person who at the time of the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention committed unless proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

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(5) Notwithstanding anything contained in sub-section (4), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

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## CHAPTER III

## NATIONAL AUTHORITY ON TRADITIONAL KNOWLEDGE

12. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Authority on Traditional Knowledge.

Composition

(2) The National Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the National Authority shall be at Thiruvananthapuram and the National Authority may, with the previous approval of the Central Government, establish offices at other places in India.

(4) The National Authority shall consist of the following members—

(i) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of India's traditional knowledge, patents and intellectual property protections, and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;

(ii) *ex-officio* members, to be appointed by the Central Government, one each as representatives of the following ministries and departments—

- (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 and Trade Marks;
- (iii) the Director General of the Council of Scientific and Industrial Research;
- (iv) the Chairperson of the National Biodiversity Authority;

(v) five non-official non-voting members to be appointed from amongst specialists and scientists, in an advisory capacity, having special knowledge of, or experience in, matters relating to conservation and sustainable use of traditional knowledge, patents and intellectual property protections, and equitable sharing of benefits arising out of the use of traditional knowledge, representatives of industry, conservers, creators and knowledge holders of India's Traditional knowledge:

Provided that one such member shall be the head of the Traditional Knowledge Digital Library unit of the Council of Scientific and Industrial Research.

13. (1) The salary, term of office and conditions of service of the Chairperson and the members other than the *ex-officio* members of the National Authority shall be such as may be prescribed by the rules made by the Central Government.

Conditions of service of Chairperson and members.

(2) The Chairperson shall be the Chief Executive of the National Authority and shall exercise such powers and perform such duties, as may be prescribed by rules made by the Central Government.

(3) The Central Government may remove from the National Authority any member who, in its opinion, has—

- (i) been adjudged as an insolvent; or
- (ii) been convicted of an offence which involves moral turpitude; or
- (iii) become physically or mentally incapable of acting as a member; or

(iv) so abused his position as to render his continuance in office detrimental to the public interest; or

(v) acquired such financial or other interest as is likely to affect prejudicially his functions as a member;

(vi) acquired any other conflict of interest as is likely to affect prejudicially his functions as a member. 5

(4) The National Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed by rules made by the Central Government.

(5) The Chairperson of the National Authority shall preside at the meetings of the National Authority. 10

(6) If for any reason, the Chairperson is unable to attend any meeting of the National Authority, any member of the National Authority chosen by the members present at the meeting shall preside at the meeting.

(7) All questions and appeals which come before any meeting of the National Authority shall be decided by a majority of 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. 15

(8) 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 shall not attend that meeting. 20

(9) No act or proceeding of the National Authority shall be invalidated merely by reason of—

(i) any vacancy in, or any defect in the constitution of the National Authority; or 25

(ii) any defect in the appointment of a person acting as a member; or

(iii) any irregularity in the procedure of the National Authority not affecting the merits of the case.

Committees of National Authority.

**14. (1)** The National Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act. 30

(2) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Authority, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

Officers and employees of National Authority.

**15. The National Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.** 35

Authentication of orders and decisions.

**16.** All orders and decisions of the National Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Authority in this behalf and all other instruments executed by the National Authority shall be authenticated by the signature of an officer of the National Authority authorized by it in this behalf. 40

Delegation of powers.

**17.** The National Authority may, by general or special order in writing, delegate to any member or officer of the National Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 42 and the power to make rules under section 49) as it may deem necessary. 45

- 18. The salaries and allowances payable to the members and the administrative expenses of the National Authority including salaries, allowances and pension payable to, or in respect of, the officers and other employees of the National Authority shall be defrayed out of the Consolidated Fund of India.** Salaries and Allowances of National Authority.
- 5 **19. The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay by way of grants or loans such sums of money to the National Authority as the Central Government may think fit for carrying out the purposes of this Act.** Central Government to provide grants and loans to the National Authority.
- 10 **20. (1) There shall be constituted a Fund, to be managed by the National Authority, to be called the National Traditional Knowledge Fund and there shall be credited to the Fund—** National Traditional Knowledge Fund.
- (i) any grants and loans made to the National Authority under section 19;**
- (ii) all royalties and other benefits received by the National Authority on traditional knowledge under its custody; and**
- 15 **(iii) all sums received by the National Authority from such other sources as may be decided upon by the Central Government.**
- (2) The Fund shall be applied for—**
- (i) channeling benefits to the benefit claimers;**
- (ii) conservation, promotion and development of traditional knowledge; and**
- 20 **(iii) socio-economic development of persons practising traditional knowledge in consultation with the local bodies concerned.**
- 21. (1) The National Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.** Budget accounts and audit.
- 25 **(2) The accounts of the National Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Authority to the Comptroller and Auditor General of India.**
- 30 **(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the National Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National**
- 35 **Authority.**
- (4) The accounts of the National Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government.**
- 40 **22. (1) The National Authority shall be deemed the custodian of the national traditional knowledge on behalf of the Central Government.** Functions of the National Authority.
- (2) The National Authority shall advise the Central Government on matters relating to grants of erroneous patents based on India's traditional knowledge.**
- (3) The National Authority shall compile and maintain a central and unified TKDS, by acquiring such details from the State TKDS as may required.**
- 45 **(4) The National Authority shall settle all disputes and ambiguities in regard to**

communities as custodians of traditional knowledge, after investigation and consultation with the TKDL unit or any experts it deems necessary, and the decision shall reflect in the TKDS.

(5) The National Authority shall examine any dispute, application or appeal, brought to its notice in a manner prescribed by the Central Government, and after due investigation and hearing, grant decisions as per powers vested in it by this Act. 5

(6) The National Authority may—

(i) advise the Central Government on matters relating to the conservation and sustainable use of traditional knowledge and equitable sharing of benefits arising out of the utilization of traditional knowledge; 10

(ii) advise the Central Government on matters relating to TKDL access (non-disclosure) agreements with foreign patent offices and such other matters as may be deemed necessary, for access to material from the TKDL;

(iii) assist the right holders to negotiate terms with other possible users, whether commercial or non-commercial; 15

(iv) undertake promotional activities for traditional knowledge;

(v) perform such other functions as may be necessary to carry out the provisions of this Act.

(7) The National Authority shall nominate the head of the TKDL unit for the protection, preservation and development of the TKDL, by inviting applications for the post with such terms and conditions of service, as it may deem necessary: 20

Provided that the National Authority shall invite applications for the post of head of TKDL unit by advertising the terms of reference by Government notification and by such other means as may be necessary for a period of one month or if necessary for more than one month. 25

(8) The National Authority shall issue guidelines in accordance with provisions of sub-section (2) of section 3 for the certification of communities with the State Board, in order for them to be recognized as custodians of traditional knowledge.

(9) The National Authority may, after consultation with any expert committee constituted in this regard, declare any form of traditional knowledge, 'under threat of extinction', and shall constitute special provisions and programmes to prevent the extinction of the traditional knowledge. 30

(10) The National Authority shall, in consultation with the Central Government and an expert committee constituted for such purpose, frame guidelines for benefit sharing agreements, for the benefit of the communities and the State, which may be given effect in all or any of the following manner, namely: 35

(i) transfer of technology;

(ii) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(iii) association of benefit claimers and the local people with research and development in traditional knowledge and its utilization; 40

(iv) setting up of venture capital fund, for aiding the cause of benefit claimers;

(v) payment of such monetary compensation and non-monetary benefits to the benefit claimers as the National Authority may deem fit.

(vi) payment of royalty on commercial use; 45

(vii) joint patenting or royalty from benefits arising out of patenting;

(11) The National Authority shall prepare an annual traditional knowledge report on the operation of this Act, including the functioning of the National Authority, the State Boards, the Central and State Governments with regard to India's traditional knowledge.

5 (12) The National Authority shall lay the report prepared under sub-section (11) before each House of Parliament for a total period of thirty days and shall also publish the report on its website.

5 of 1908 10 **23.** (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:— Powers of the National Authority.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

15 (iv) issuing commissions for the examination of witness or documents;

(v) reviewing its decisions;

(vi) dismissing an application for default or deciding it *ex parte*;

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

20 (viii) any other matter which may be prescribed.

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

#### CHAPTER IV

25 STATE BOARD OF TRADITIONAL KNOWLEDGE

**24.** (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, an Authority for the State to be known as the (name of the State) State Board on Traditional knowledge. Composition.

30 (2) Notwithstanding anything contained in this section, no State Board shall be constituted for a Union territory and in relation to a Union territory, the National Authority shall exercise the powers and perform the functions of a State Board for that Union territory:

35 Provided that in relation to any Union territory, the National Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify.

(3) The State Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(4) The State Board shall consist of the following members, namely:

40 (i) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of traditional knowledge, patents and intellectual property protection and in matters relating to equitable sharing of benefits, to be appointed by the National Authority.

(ii) three *ex-officio* members, namely:—

(a) President of the State Sahithya Academy or Folklore Academy:

(b) Vice-Chancellor of a University to be nominated by the State Government;

(c) the Advocate-General of the State;

(iii) one scientist having adequate knowledge and experience in the conservation and sustainable use of traditional knowledge, patents and intellectual property protection and in matters relating to equitable sharing of benefits nominated by the State Government; 5

(iv) not more than five non-official members from amongst experts in matters relating to conservation and sustainable use of traditional knowledge, patents or other forms of intellectual property protections and equitable sharing of benefits arising out of the use of traditional knowledge, to be appointed by the State Government. 10

(5) The head office of the State Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.

Conditions of service of Chairperson and members.

25. (1) The salary, term of office and conditions of service of the Chairperson and the members other than *ex-officio* members of the State Board shall be such as may be prescribed by rules made by the State Government. 15

(2) The Chairperson shall be the Chief Executive of the State Board and shall exercise such powers and perform such duties, as may be prescribed by rules made by the State Government. 20

(3) The State Government may remove from the State Board any member who, in its opinion, has—

(i) been adjudged as an insolvent; or

(ii) been convicted of an offence which involves moral turpitude; or

(iii) become physically or mentally incapable of acting as a member; or 25

(iv) so abused his position as to render his continuance in office detrimental to the public interest; or

(v) acquired such financial or other interest as is likely to affect prejudicially his functions as a member;

(vi) acquired any other conflict of interest as is likely to affect prejudicially his functions as a member. 30

(4) The State Board shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed by rules made by the State Government.

(5) The Chairperson of the State Board shall preside at the meetings of the State Board. 35

(6) If for any reason, the Chairperson is unable to attend any meeting of the State Board, any member of the State Board chosen by the members present at the meeting shall preside at the meeting.

(7) All questions and appeals which come before any meeting of the State Board shall be decided by a majority of 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. 40

(8) 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 shall not attend that meeting. 45

- (9) No act or proceeding of the State Board shall be invalidated merely by reason of—
- (i) any vacancy in, or any defect in the constitution of the State Board; or
  - (ii) any defect in the appointment of a person acting as a member; or
  - (iii) any irregularity in the procedure of the State Board not affecting the merits of the case.
- 5
- 26.** The State Board may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act. Officers and employees of State Board.
- 27.** All orders and decisions of the State Board shall be authenticated by the signature of the Chairperson or any other member authorized by the State Board in this behalf and all other instruments executed by the State Board shall be authenticated by the signature of an officer of the State Board authorized by it in this behalf. Authentication of orders and decisions of State Board.
- 10
- 28.** The State Board may, by general or special order in writing, delegate to any member or officer of the State Board or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 42 and the power to make rules under section 50) as it may deem necessary. Delegation of powers.
- 15
- 29.** The salaries and allowances payable to the members and the administrative expenses of the State Board including salaries, allowances and pension payable to, or in respect of, the officers and other employees of the State Board shall be defrayed out of the Consolidated Funds of the State. Expenses of State Board on Traditional Knowledge.
- 20
- 30.** The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Board by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act. Grants and loans to State Board.
- 31.** (1) There shall be constituted a Fund, to be managed by the State Board, to be called the State Traditional Knowledge Fund and there shall be credited to the Fund— Constitution of State Traditional Knowledge Fund.
- 25
- (i) any grants and loans made to the State Board under section 30;
  - (ii) any grants or loans made by the State Government;
  - (iii) all sums received by the State Board from such other sources as may be decided upon by the State Government or the National Authority.
- 30
- (2) The State Fund shall be applied for—
- (i) the management and conservation of traditional knowledge;
  - (ii) compensating or rehabilitating any section of the people economically affected by acts committed under sub-section (1) of section 9 or the violation of the rights of traditional knowledge practitioners;
  - (iii) conservation, promotion and development of traditional knowledge;
  - (iv) socio-economic development of persons practicing traditional knowledge in consultation with the local bodies concerned; and
  - (v) meeting the expenses incurred for the purposes authorized by this Act.
- 35
- 32.** The accounts of the State Board shall be maintained and audited in such manner as the State Government may, in consultation with the Accountant General of the State, prescribe and the State Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon. Audit of accounts of State Board.
- 40
- 33.** (1) The State Board shall be deemed the custodian of the traditional knowledge of the State on behalf of the State Government. Functions of State Board.

(2) The State Board shall, after sufficient scrutiny of details as prescribed in sub-section (2) of section 3, register communities as communities of traditional knowledge, after following due process as prescribed in section 35, and as further prescribed by the National Authority.

(3) The State Board shall ensure that the TKDS remains up to date and that all decisions of the State Board, National Authority or the courts, in regard to the custodianship of communities of traditional knowledge, are reflected in the TKDS within one week of the grant of decision. 5

(4) The State Board may—

(i) advise the State Government on matters relating to the conservation and sustainable use of traditional knowledge and equitable sharing of benefits arising out of the utilization of traditional knowledge; 10

(ii) advise the Central Government on matters relating to grants of erroneous patents based on India's traditional knowledge;

(iii) assist the right holders to negotiate terms with other possible users, whether commercial or non-commercial for which they may charge a fee; 15

(iv) undertake promotional activities for traditional knowledge;

(v) perform such other functions as may be necessary to carry out the provisions of this Act.

(5) The State Board may facilitate and support, in any manner necessary, the indentifying, classifying, codifying and cataloguing of all traditional knowledge of the State, in collaboration with the TKDL unit. 20

(6) The State Board shall, by any act or measure necessary, promote and protect the traditional knowledge of the State and the rights of the communities, and build awareness of the communities on the aforementioned rights as custodians of traditional knowledge. 25

(7) The State Board may, after consultation with any expert committee constituted in this regard, declare any form of traditional knowledge 'under threat of extinction', and shall constitute special provisions and programs to prevent the extinction of such traditional knowledge.

(8) The State Board shall prepare an annual traditional knowledge report on the operation of this Act, including the functioning of the State Board and State Government with regards to the State's Traditional knowledge. 30

(9) The State Board shall lay the report prepared under sub-section (8) before the State's Legislative Assembly and Council if applicable, for a total period of thirty days and shall also publish the report on its website. 35

Powers of the State Board on Traditional knowledge.

**34.** (1) The State Boards 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:— 5 of 1908

(i) summoning and enforcing the attendance of any person and examining him on oath; 40

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for the examination of witness or documents;

(v) reviewing its decisions;

(vi) dismissing an application for default or deciding it *ex parte*; 45



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

(viii) any other matter which may be prescribed.

(2) All members, officers and other employees of the State Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

45 of 1860

## CHAPTER V

### PROCEDURES, TKDS, TKDL AND FUNCTION OF GOVERNMENT

35. (1) The National Authority or the State Board, as the case may be, shall, after receiving an application and fees in a manner prescribed and sufficient scrutiny of details as per sub-section (2) of section 3, accept an application from a community, to be recognized as custodians of traditional knowledge.

Application for grant of custodianship.

(2) **The National Authority or the State Board, as the case may be, shall give wide publicity for at least one month to the application for grant of custodianship of traditional knowledge to a community with a view to invite any objections or grievances to such grant of custodianship.**

(3) The National Authority or the State Board, as the case may be, shall examine objections or grievances brought to its notice in regard to grant of custodianship and after following due process, take a decision on application for grant of custodianship.

(4) The National Authority or the State Board, as the case may be, shall decide on grant of custodianship as per powers vested in it by this Act.

(5) In case of grant of custodianship to the community, the National Authority or the State Board, as the case may be, shall issue a certification, and a unique and exclusive docket number from its TKDS, to the community.

36. (1) A Traditional knowledge Docketing System (TKDS) shall be created and maintained by each State Board for its jurisdiction and centrally coordinated and maintained by the National Authority.

Traditional Knowledge Docketing System.

(2) The TKDS shall be deemed as a register in order to identify the custodian community with the traditional knowledge.

(3) The TKDS shall constitute—

(i) details of the custodian community for the traditional knowledge like the nature or definition by which members of the community may be identified and where they may be found.

(ii) a short non-exploitable description of the traditional knowledge:

*Explanation.*—The description of the traditional knowledge shall be enough to identify the traditional knowledge but not so much that it can be exploited without the consent of the community.

(iii) the community protocol, if any, which shall include matters like details of the decision making body of the community, whom to contact and how to approach the community.

37. (1) The Traditional Knowledge Digital Library unit shall maintain, protect and develop India's Traditional Knowledge Digital Library (TKDL) for the purposes of identifying, classifying, codifying and cataloguing the traditional knowledge that is obtained or derived from India.

Traditional Knowledge Digital Library.

(2) The TKDL unit shall attempt to identify, classify, codify and catalogue India's traditional knowledge which is in the custody of the appropriate Government.

(3) The TKDL unit shall attempt to identify, classify, codify and catalogue the traditional knowledge in the custody of any community, if the community provides consent to the TKDL unit, prior to its use.

(4) In the case of traditional knowledge in the TKDL, before the custody of traditional knowledge is transferred to a community, the community may, by way of notification through the appropriate Government, choose to purge the information relating to their traditional knowledge from the TKDL. 5

(5) The TKDL shall be made available to patent or intellectual property offices around the world, by whatever name called, as 'prior art', to prevent or revoke the grant of erroneous patents on India's Traditional Knowledge, under reasonable and necessary non-disclosure and privacy agreements. 10

(6) The access to the TKDL shall only be granted on consent of the custodian and after signing a non-disclosure agreement with the TKDL unit.

Functions of the Central Government.

**38.** (1) The Central Government may take any measures necessary to oppose, prevent or get revoked, the grant of patents or any other form of intellectual property protection, within India or abroad, which is based on traditional knowledge obtained or derived from India. 15

(2) The Central Government may constitute such schemes and programs, as it deems necessary, for the protection, preservation, promotion and development of traditional knowledge obtained or derived from India, as per the spirit of this Act. 20

Functions of the State Government.

**39.** (1) The State Government may take any measures necessary to oppose, prevent or get revoked the grant of patents or any other form of intellectual property protection, within India, which is based on traditional knowledge obtained or derived from its jurisdiction.

(2) The State Government may constitute such schemes and programs, as it deems necessary, for the protection, preservation, promotion and development of traditional knowledge, as per the spirit of this Act. 25

## CHAPTER VI

### MISCELLANEOUS

National Authority to be bound by the directions given by Central Government.

**40.** (1) Without prejudice to the foregoing provisions, the National Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time: 30

Provided that the National Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final. 35

Power of the State Government to give directions.

**41.** (1) Without prejudice to the foregoing provisions, the State Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time:

Provided that the State Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. 40

(2) The decision of the State Government whether a question is one of policy or not shall be final.

Settlement of disputes.

**42.** (1) Every determination, order or adjudication made by the National Authority in regard to any dispute shall be given in such form and after following such procedure as may prescribed by rules made by the Central Government: 45

Provided that before determining, ordering or adjudicating, the parties shall be given a reasonable opportunity of being heard.

(2) While adjudicating any dispute under this section, the National Authority shall be guided by the principles of natural justice.

5           **43.** (1) Any person, aggrieved by any determination or order of the State Board under this Act, may file an appeal to the National Authority within sixty days from the date of communication to him, of the determination or order of the State Board. Appeals.

(2) Any person, aggrieved by any determination, order or adjudication of the National Authority under this Act, may file an appeal to the Supreme Court within thirty days from the date of communication to him, of the determination or order of the National Authority:

10           Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

15           **44.** Every determination or order made by the National Authority or by the Supreme Court in any appeal against any determination or order of the State Board or the National Authority shall, on a certificate issued by any officer of the National Authority or the Registrar of the Supreme Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court. Execution of determination or order.

20           *Explanation.*—For the purposes of this section, the expression "State Board" includes the person or group of persons to whom the powers or functions under sub-section (2) of section-xx have been delegated under the proviso to sub-section (2) of section 24 and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

25           **45.** No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Authority or the State Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder. Protection of action taken in good faith.

**46.** The offences under this Act shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

30           **47.** The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to biodiversity. Act to have effect in addition to other Acts.

**48.** The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made thereunder. Power of Central Government to give directions to State Government.

35           **49.** No Court shall take cognizance of any offence under this Act except on a complaint made by— Cognizance of offences.

(a) the Central Government or any authority or officer authorized in this behalf by that Government; or

40           (b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Power of  
Central  
Government  
to make rules.

**50. (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for any of the following matters, namely:—

(i) form of application and the manner for transfer of traditional knowledge under sub-section (2) of section 3; 5

(ii) manner of felicitation under sub-section (4) of section 6;

(iii) terms and conditions of service of the Chairperson and members under sub-section (1) of section 13;

(iv) powers and duties of the Chairperson under sub-section (2) of section 13; 10

(v) procedure under sub-section (4) of section 13 in regard to transaction of business at meetings;

(vi) allowances of committee members under sub-section (3) of section 14.

(vi) form in which the annual statement of account shall be prepared under sub-section (1) of section 21; 15

(viii) form of application and payment of fees for undertaking activities under sub-section (1) of section 35;

(ix) the additional matter in which the National Authority may exercise powers of the civil court under sub-section (1)(viii) of section 23;

(x) the manner of giving notice under sub-section (5) of section 22; 20

(xi) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation. 25 30

Power of  
State  
Government  
to make rules.

**51. (1)** The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— 35

(i) form of application and the manner for transfer of traditional knowledge under sub-section (2) of section 3;

(ii) manner of felicitation under sub-section (4) of section 6;

(iii) terms and conditions of service of the Chairperson and members under sub-section (1) of section 25; 40

(iv) powers and duties of the Chairperson under sub-section (2) of section 25;

(v) procedure under sub-section (4) of section 25 in regard to transaction of business at meetings;

(vi) the manner of maintaining and auditing the accounts of the State Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 32;

5 (vii) form of application and payment of fees for undertaking activities under sub-section (1) of section 35;

(viii) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

10 (3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

**52.** The National Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

Power to give effect to the provisions of the Act.

15 **53.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

20 (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

## STATEMENT OF OBJECTS AND REASONS

India is one of the oldest societies of the world, as well as one that has been most aware and conscious of its surroundings. Its observations over the years have translated into one of the largest repositories of knowledge about medicinal preparations, method of treatment, literature, music, art forms, designs, marks etc. as well as a vast range of know-how, skills, innovations, practices and learning. Collectively this constitutes India's traditional knowledge, which has become, in many ways, an expression of our culture.

The advancement of science, technology and commerce offers considerable opportunity for the benefit and spread of India's traditional knowledge. However, since many of the indigenous communities who are its custodians still rely on their traditional knowledge for their livelihood and identity, its misappropriation can severely prejudice their interests.

For instance, patenting and intellectual property protection grants ownership and exclusive rights of use over innovative knowledge. There have already been several attempts to acquire such exclusive protections over India's traditional knowledge, which is a gross injustice. Traditional knowledge is neither an innovation nor held by any single person. Rather it is passed down and refined over several generations and thus may not be considered as 'intellectual property'.

Even as the World Intellectual Property Organization (WIPO) holds consultations to define and provide guidelines for traditional knowledge and its management, India must appropriate all its traditional knowledge to ensure that any application of it is accompanied with recognition of its original custodians. Moreover, India must ensure that the application of traditional knowledge does not harm the interests of its custodians and the benefits are equitably shared between the communities and the users.

In this regard India has even setup an innovative and one-of-its-kind Traditional Knowledge Digital Library to classify and codify India's traditional knowledge so that it can be offered as 'prior art' to prevent the grant of erroneous patents. Parliamentary recognition shall give it the due importance it deserves to protect India's interests. However, it should be complimented with a system of registration that identifies the traditional knowledge with its rightful custodians.

The protection of traditional knowledge must ensure that there is enough incentive for research and innovation and for its benefits to be shared in a fair manner. There is a vast amount of social benefit from further development of traditional knowledge, and it must equally reward those who are willing to invest in it.

This Bill recognizes the complete and absolute right of the Union of India over the traditional knowledge that exists within its national territory. In addition, it recognizes the contribution of specific communities in the development of the traditional knowledge by giving them certain rights, including the right to self-determination. The Bill also proposes administrative framework to manage traditional knowledge in India.

Legislation is required so that traditional knowledge of India is rightly attributed, correctly defined and its use appropriately incentivized to maximize its potential benefits.

Hence this Bill.

NEW DELHI;  
October 15, 2016.

SHASHI THAROOR

## FINANCIAL MEMORANDUM

Clause 12 of the Bill provides that the Central Government shall establish a National Authority on Traditional Knowledge. It also provides for appointment of a Chairperson and other members to the National Authority. Clause 15 of the Bill provides for appointment of Officers and other employees to the National Authority. Clause 19 of the Bill provides that Central Government shall provide grants and loans to the National Authority for carrying out the purposes of this Act. Clause 35 of the Bill provides that National Authority shall give wide publicity for application for grant of custodianship of traditional knowledge to a community. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore would be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

#### MEMORANDUM REGARDING DELEGATION OF LEGISLATION

Clause 50 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matter of detail only, the delegation of legislative power is of a normal character.



LOK SABHA

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**BILL**

to provide for the protection, preservation, promotion and development of India's  
Traditional Knowledge and for matters connected therewith or incidental thereto.

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*(Dr. Shashi Tharoor, M.P.)*