WIPO GRATK Treaty: India Helped Write and Would Not Sign

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On 24 May 2024, after roughly a quarter-century of negotiation, the Member States of the World Intellectual Property Organisation adopted, by consensus and in Geneva, the *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge,* aka the GRATK Treaty.

It is the first WIPO instrument to weave genetic resources and traditional knowledge into the fabric of the international patent system, and the first to name Indigenous Peoples and local communities within it. For a country such as India, a mega-biodiverse civilisation and the intellectual architect of the very disclosure principle the Treaty enshrines, this should have been a coronation. Instead, when the pen was offered, India did not sign.

This article discusses why it is the most instructive lesson the Treaty has to teach.

What Was Adopted in the GRATK Treaty and What Was Left Out

The Treaty is, at its core, a single operative idea dressed in careful procedural clothing. Article 3 of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (the GRATK Treaty), requires certain qualities in a patent applicant. The applicant must disclose the country of origin or source of a genetic resource and identify the indigenous people or local community that furnished any associated traditional knowledge, where the claimed invention is 'based on' that material.

'Based on' is not a loose phrase; it is a deliberately narrow, two-part test. The genetic resource or traditional knowledge must have been necessary for the claimed invention, and the invention must depend on the specific properties or information of that resource or knowledge. Anything short of that or knowledge that merely inspires research, incidental use, or indirect derivation, falls outside the trigger.

It is equally important to grasp what the Treaty pointedly is not. It is not an access-and-benefit-sharing instrument. It creates no ownership right over genetic resources or traditional knowledge. It does not demand prior informed consent. It does not require proof that benefits were shared with the source community. It establishes no global enforcement machinery. It is, in the end, a disclosure-of-origin rule in a defined class of patent applications, no more, and no less.

The Architecture of Restraint

The remarkable thing about the GRATK Treaty is not its ambition but its restraint, negotiated, clause by clause, into the text itself. Four features deserve the practitioner's attention, because each one narrows the instrument's bite:

- **Remedy is capped:** The Treaty forbids a Contracting Party from revoking, invalidating or rendering unenforceable a patent solely because the applicant failed to disclose. Sanctions for non-disclosure are permitted only where there has been fraudulent conduct or intent, and even then, the applicant must first be allowed to rectify the omission. Disclosure without a meaningful consequence risk becoming a formality is a box ticked, not a barrier crossed.
- **Digital sequence information is excluded:** The disclosure obligation attaches to genetic material in its physical form. It does not, on its face, reach digital sequence information, the very medium through which most modern genetic-resource-based inventions are now conceived. A disclosure rule that misses where the science lives has a widening blind spot, even if nothing prevents a State from going further at home.
- **Verification is disclaimed:** Patent offices are not obliged to verify the authenticity of a disclosure. An applicant who states that the origin is 'unknown', absent a robust due-diligence duty, may satisfy the letter of the Treaty while defeating its spirit. This is a particular danger for knowledge that remains oral, community-held and unindexed in any searchable database.
- **It does not look back:** The Treaty is expressly non-retroactive, and a mandatory review four years after entry into force is the designated and only doorway through which derivatives, digital sequence information, other intellectual property rights and emerging technologies may later be brought within scope.

India's Long Campaign for Disclosure

To read India's absence correctly, one must first recall how far India walked to reach that room. Since WIPO's Intergovernmental Committee began this work in 2001, India has been among the most persistent advocates of a mandatory disclosure-of-origin requirement in the patent system. That advocacy was not abstract. It was forged in hard experience - the turmeric patent, the neem patent, and the basmati episodes in which knowledge Indian communities had held for generations was appropriated abroad through patents that ought never to have been granted.

India answered that experience by building, at home, one of the most robust defensive systems in the world. The Traditional Knowledge Digital Library gave foreign examiners the prior art they had previously lacked. Section 10(4)(ii)(D) of the Patents Act, 1970 makes disclosure of the source and geographical origin of biological material a statutory requirement of the specification itself.

However, decisively, Indian law arms that requirement with teeth: non-disclosure or wrongful mention of the source or geographical origin of biological material is a ground of pre-grant and post-grant opposition under Section 25, and a ground of revocation under Section 64. The Biological Diversity Act, 2002, as recalibrated in 2023, layers a further access-and-benefit-sharing regime over the whole. India, in short, did not come to Geneva asking for a principle it lacked. It came having already legislated a stronger version of it.

The Paradox - Why India Did Not Sign GRATK Treaty

Here lies the genuine story, and it deserves candour rather than ceremony. The Government of India publicly welcomed the Treaty as a landmark and a gain for India and the Global South. Yet the signature window opened at the close of the Diplomatic Conference and ran for a full year, to 23 May 2025 and India's name is absent from the list of forty-four signatories. That is not an oversight. It is a decision, and the most persuasive explanation for it is uncomfortably simple: the Treaty India helped deliver sets a standard lower than the one India already keeps.

Consider the collision squarely. Section 64 of the Patents Act permits revocation for non-disclosure of source or geographical origin, without first extending the patentee any opportunity to 'rectify' and without requiring proof of fraudulent intent. The Treaty does the opposite on both counts; it mandates a rectification opportunity and confines the harsher sanctions to cases of fraud. A country that binds itself to the Treaty, and then reads its obligations expansively, may find itself pressed to soften its own domestic remedies to match. For India, ratification framed that way is not an advance. It is a potential downgrade of hard-won statutory protection, dressed as multilateral progress.

The reasoning extends beyond remedy. The Treaty's silence on digital sequence information, its refusal to require prior informed consent or benefit-sharing, and its disclaimer of any verification duty together describe an instrument that stops well short of what India has argued for over two decades. Seen in that light, India's restraint is not indifference. It is the calculated caution of a State unwilling to trade a strong domestic regime for a weaker international one and unwilling, having built the house, to accept a lease with fewer rooms.

Two candid caveats are owed to the reader:

1. The Government has issued no formal statement of reasons; the account above is the considered inference of commentators and practitioners, not an official position, and it should be read as such.
2. Signature was never a precondition to membership. Because India did not sign within the window, it may no longer sign, but it remains fully free to accede to the Treaty directly, at a time of its choosing, should it judge the calculus to have changed. India's absence today forecloses nothing tomorrow.

Success or Failure? An Honest Ledger

To call the GRATK Treaty a triumph, or to dismiss it as a failure, is to flatten an instrument that is genuinely both. Honesty requires the ledger to be kept on both sides.

On the side of success, the Treaty is historic in a way no press release can exaggerate. For the first time, the international patent system formally acknowledges Indigenous Peoples and local communities and the knowledge they steward.

For the first time, disclosure of origin is a global norm rather than a scattered national preference. It ends twenty-five years of deadlock by consensus, no small feat in a forum where the Global North and South have long spoken past one another, and it hands provider countries, India foremost among them, a legal hook in foreign patent systems that domestic law alone could never reach.

India's statute binds India; it cannot compel disclosure of Indian-origin material in a patent office in another jurisdiction. The Treaty, once in force and implemented, begins to close precisely that gap.

On the side of failure, the instrument is thin where it most needed to be thick. It leaves digital sequence information outside its reach, forgoes consent and benefit-sharing, caps remedies, and asks patent offices to verify nothing.

A disclosure rule without verification, and without a consequence beyond fraud, is a rule that can be honoured in form and evaded in substance. And the harder questions like traditional knowledge and traditional cultural expressions unattached to genetic resources were left on the negotiating table entirely, where they remain stuck.

The Treaty's current legal standing sharpens the point. It is not yet in force. Entry into force requires fifteen ratifications or accessions; as matters stand, only two States namely Malawi and Uganda have deposited their instruments. A landmark that thirteen more countries must still ratify before it binds anyone is, for now, a landmark on paper. The verdict, therefore, is neither victory nor defeat but something more demanding: a floor, deliberately laid low, on which everything of consequence remains to be built.

The Way Forward for India and for WIPO

For India,the wiser course is neither reflexive refusal nor premature celebration, but disciplined engagement. India should accede only on terms that leave its domestic remedies untouched, preserving Section 10(4)(ii)(D), Section 25 and Section 64 in full force and should say so plainly, so that accession is never mistaken for a promise to dilute.

It should treat the mandatory four-year review not as a distant formality but as the arena it has been waiting for: the place to press, with the moral authority of a provider nation, for digital sequence

information, prior informed consent, benefit-sharing, derivatives and other intellectual property rights to be brought within scope.

However, it should turn disclosure into genuine scrutiny at home, modernising and multilingualising the Traditional Knowledge Digital Library, linking it to its biodiversity institutions, so that a disclosure once made can actually be examined rather than merely filed.

For WIPO,the institutional task is to prove that the GRATK Treaty was a beginning and not an alibi. The Intergovernmental Committee's renewed 2026–27 mandate carries the unfinished work on traditional knowledge and traditional cultural expressions, the very protection that provider countries have sought for a generation and that the March 2026 session again failed to advance. If the disclosure principle is to mean anything, WIPO must shepherd ratifications toward the fifteen the Treaty needs to breathe and must resist the temptation to treat a single hard-won consensus as the completion of a project that has, in truth, only just cleared its first gate.

Conclusion

The GRATK Treaty is a paradox worthy of the country that helped author it. It is at once a genuine milestone and a study in how much can be conceded in the drafting of one. India's decision to stand at the threshold rather than cross it is not the timidity it may appear to be; read against the strength of India's own law, it is a form of principled patience, a refusal to accept a smaller version of a right India already holds in full. The true measure of this Treaty will not be the applause that greeted its adoption, nor the signatures it gathered or missed, but whether the disclosure it promises can be made to bite. Until then, India is right to keep its own law as the higher standard, to accede only on its own terms, and to hold WIPO to the harder work that lies ahead. The house of protection has its first stone. It is not yet a home.

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