

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

TRADITIONAL KNOWLEDGE AS INTELLECTUAL PROPERTY: EXPLORING SUI GENERIS SYSTEM IN INDIA AND THEIR APPLICABILITIES IN INDIA

AUTHORED BY - TAMANNA DWIVEDI

ABSTRACT

Traditional knowledge within particular regional, indigenous, or local communities, and it is also referred to as indigenous knowledge or folk knowledge embodies a rich and varied body of knowledge, skills, practices, wisdom, customs, and expertise that have flourished and been passed down through the generations. It represents an extensive body of information, abilities, and customs that are firmly ingrained in regional and cultural traditions. It differs from Western scientific knowledge in that it is collaborative, dynamic, and community-based, which makes it a vital resource for sustainable development, cultural preservation, and a comprehensive understanding of the world. Due to lack of intangible nature, collective ownership, biopiracy, misappropriation, lack of awareness, weak framework it is difficult to register the traditional knowledge in existing Intellectual property.

So, in this paper it has explained the importance of the sui generis system for recognition of community based ownership rights, prevention of misappropriation and regulation of access and benefit sharing mechanisms, prior informed consent, documentation and registration and dispute resolution mechanisms.

This research adds to the conversation about how to safeguard traditional knowledge in India, provide equitable acknowledgement for knowledge bearers, and encourage the sustainable use of this priceless resource by examining the idea of sui generis systems by exploring the area of:

1. How is the sui generis system specifically designed to protect the traditional knowledge?
2. Limitations of the conventional intellectual property in safeguarding traditional knowledge?
3. Also discuss the bill present in Indian parliament, the draft protection of traditional knowledge bill, 2016, that aims to establish a sui generis framework for traditional

knowledge and

4. Traditional knowledge digital library

The aim of writing this paper is to contribute to the ongoing discussion on safeguarding and effective protection of traditional knowledge as a valuable intangible asset for indigenous communities in india.

KEYWORDS

Traditional knowledge, Intellectual property, Sui generis, India, indigenous communities, Misappropriation, biopiracy

LISTS OF ABBREVIATION

S.NO.	ABBREVIATION	FULL FORM
1.	TK	Traditional Knowledge
2.	IP	Intellectual property
3.	IPR	Intellectual property rights
4.	GI	Geographical indications
5.	WIPO	World intellectual property organization
6.	IGC	Intergovernmental committee
7.	TCEs	Traditional cultural expression
8.	GRs	Genetics resources
9.	CBD	Convention on biological diversity
10	PIC	Prior informed consent
11	FPIC	Free and prior informed consent
12	IPRA	The Philippines' indigenous people rights Act
13	ICC/IPs	Rights of indigenous culture community/Indigenous peoples
14	ABSP	The Navajo nation's access and benefit-sharing policy
15	CSIR	Council of scientific and industrial research
16	USPTO	United states patent and Trademark Office
17	TKDL	Traditional knowledge digital library

LIST OF CASES

S.NO.	CASE	PAGE NO.
1	Turmeric case (1997)	35
2	Neem case (1995)	35
3	Basmati rice case	35

LISTS OF FIGURE

S.NO.	EXPLANATION
Fig 1	Highest level of education
Fig 2	Familiar with concept of traditional knowledge
Fig 3	Existing intellectual property framework adequate for protection
Fig 4	Concern about protecting traditional knowledge
Fig 5	Sui Generis system protection for traditional knowledge
Fig 6	Sui Generis system is important to protect intellectual knowledge
Fig 7	Potential challenges in implementing Sui Generis for protection
Fig 8	Responsible for managing and enforcing Sui Generis protection
Fig 9	Importance of protection traditional knowledge and cultural expression

CONTENT

CHAPTER	TOPIC	PAGE NO.
1	INTRODUCTION	8
1.1	LITERATURE REVIEW	8
1.2	STATEMENT OF PROBLEM	9
1.3	HYPOTHESIS	9 - 10
1.4	RESEARCH OBJECTIVE	11
1.5	RESEARCH METHODOLOGY	11

1.6	BRIEF INTRODUCE THE CONCEPT OF TRADITIONAL KNOWLEDGE AND ITS SIGNIFICANCE FOR COMMUNITIES AND THE WORLD	12
1.7	HIGHLIGHT THE CHALLENGES FACED BY TK DUE TO MISAPPROPRIATION AND LACK OF ADEQUATE PROTECTION	13 - 14
1.8	INTRODUCTION THE CONCEPT OF SUI GENERIS SYSTEM AS POTENTIAL SOLUTION FOR TK PROTECTION	14 - 15
2	TRADITIONAL KNOWLEDGE AND ITS UNIQUENESS	16
2.1	DEFINE TK AND ITS CHARACTERISTICS , EMPHASIZING ITS COLLECTIVE , DYNAMIC AND COMMUNITY - BASED NATURE	16
2.2	ILLUSTRATE DIFFERENT TYPES OF TK IN INDIA , COVERING AREA LIKE MEDICINE , AGRICULTURE , BIODIVERSITY AND CULTURAL EXPRESSION	17 - 18
2.3	DISCUSS THE CULTURAL AND SPIRITUAL SIGNIFICANCE OF TK FOR TRADITIONAL COMMUNITIES	18 - 19
3	WHAT IS THE ROLE OF WIPO IN PROTECTING TRADITIONAL KNOWLEDGE	20 - 21
4	CHALLENGES IN PROTECTING TRADITIONAL KNOWLEDGE	22
4.1	EXPLAIN THE LIMITATION OF EXISTING IP SYSTEM LIKE PATENT AND COPYRIGHT IN PROTECTING TK	23
4.2	ANALYZE THE ETHICAL CONCERN SURROUNDING THE COMMERCIALIZATION OF TK WITHOUT FAIR COMPENSATION OR BENEFIT - SHARING	24
5	SUI GENERIS SYSTEM FOR TRADITIONAL KNOWLEDGE PROTECTION	25
5.1	DEFINE THE CONCEPT OF SUI GENERIS SYSTEM AND THEIR FLEXIBILITY IN ADDRESSING THE UNIQUE NEEDS OF TK	25 - 26

5.2	SHOWCASE SUCCESSFUL EXAMPLES OF SUI GENERIS SYSTEMS FROM AROUND THE WORLD , LIKE THE PHILIPPINES' INDIGENOUS PEOPLES RIGHTS ACT AND THE NAVAJO NATION'S ACCESS AND BENEFIT - SHARING POLICY	27 - 28
6	APPLICABILITY OF SUI GENERIS SYSTEM IN INDIA	29
6.1	ANALYZE THE CURRENT LEGAL FRAMEWORK FOR TK PROTECTION IN INDIA , INCLUDING THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT , GEOGRAPHICAL INDICATIONS ACT AND THE DRAFT TRADITIONAL KNOWLEDGE BILL	29 - 30
6.2	EVALUATE THE STRENGTHS AND WEAKNESSES OF THESE EXISTING MEASURES IN ADDRESSING THE SPECIFIC NEEDS OF TK PROTECTION	30 - 31
6.3	ASSESS THE PROTECTION AND CHALLENGES OF ADAPTING AND IMPLEMENTING A SUI GENERIS SYSTEM FOR TK PROTECTION IN THE INDIAN CONTEXT	31- 33
6.4	CONSIDER RELEVANT CASE STUDIES	34 - 35
7	THE NEED FOR SUI GENERIS PROTECTION	36 - 42
	CONCLUSION	43
	RECOMMENDATION	43 - 44
	BIBLIOGRAPHY	44

CHAPTER 1 INTRODUCTION

1.1 Literature Review

The Challenge of Protecting TK

- Collective Ownership
- Oral Traditions

These limitations create vulnerabilities:

- Biopiracy
- Erosion of Cultural Heritage

The WIPO provides resources outlining elements of a Sui Generis system, including:

- Existing Legal Frameworks
- Potential for Adaptation

Implementing Sui Generis systems presents challenges that need to be addressed:

- Administrative Burdens
- Community Ownership Disputes

Despite these challenges, Sui Generis systems offer opportunities:

- Preservation of TK
- Fair Compensation and Development

By exploring these areas, research can contribute to a comprehensive understanding of how Sui Generis systems can best serve the protection and promotion of TK in India.

1.2 Statement of Problem

Existing IP frameworks like patents and copyrights struggle to adequately protect TK due to its:

1. Collective Ownership
2. Oral Traditions and Documentation lack of protection creates vulnerabilities:
3. Biopiracy
4. Erosion of Cultural Heritage

Therefore, the core problem lies in finding a legal framework that effectively protects TK in India, ensuring:

1. Fair compensation
2. Preservation and documentation of Tk

How Sui Generis systems can be effectively implemented in the Indian context, considering:

1. Adaptability:
2. Challenges

By tackling these problems, this study hopes to strengthen the legal foundation that protects India's wealth of traditional knowledge and promotes its development and preservation.

1.3 Hypothesis

1. Brief introduce the concept of traditional knowledge and its significance for communities and the world
2. Highlight the challenges faced by tk due to misappropriation and lack of adequate protection
3. Introduction the concept of sui generis system as potential solution for tk protection
4. Define tk and its characteristics , emphasizing its collective , dynamic and community - based nature
5. Illustrate different types of tk in india , covering areas like medicine , agriculture , biodiversity and cultural expression.
6. Discuss the cultural and spiritual significance of tk for traditional communities
7. What is the role of wipo in protecting traditional knowledge
8. Challenges in protecting traditional knowledge
9. Explain the limitation of existing ip system like patent and copyright in protecting TK
10. Analyze the ethical concern surrounding the commercialization of tk without fair compensation or benefit - sharing
11. Define the concept of sui generis system and their flexibility in addressing the unique needs of tk
12. Showcase successful examples of sui generis systems from around the world , like the philippines' indigenous peoples rights act and the navajo nation's access and benefit - sharing policy

13. Discuss the key features and functionalities of these system , emphasizing aspects like community involvement , knowledge documentation and benefit - sharing mechanism
14. Applicability of sui generis system in india
15. Analyze the current legal framework for tk protection in india , including the protection of plant varieties and farmers' rights act , geographical indications act and the draft traditional knowledge bill
16. Evaluate the strengths and weaknesses of these existing measures in addressing the specific needs of tk protection
17. Assess the protection and challenges of adapting and implementing a sui generis system for tk protection in the indian context
18. Consider relevant case studies
19. The need for sui generis protection

1.4 Research Objective

"Traditional Knowledge as Intellectual Property: Exploring Sui Generis Systems and their Applicability in India" is a research project whose primary goal is to determine the most effective ways to safeguard and administer the IPR related to traditional knowledge in the Indian context.

Below is a summary of the essential components:

1. **TK** is the term for the skills and information that have been passed down through communities' generations.
2. **IP** refers to the legal structure that safeguards mental works, including innovations, literary compositions, designs, and symbols.
3. **Sui Generis Systems** are legal frameworks that, unlike current IP regimes like patents or copyrights, are expressly intended to accommodate the special qualities of traditional knowledge.

These topics would probably be covered by the study:

1. **Limitations of Traditional IP for TK**
2. **Sui Generis Options for TK Protection**
3. **Sui generis systems' applicability in India**
4. **Possibilities and Challenges**

The overall goal of the research would be to offer perspectives and suggestions for a strong

legislative framework that safeguards TK in India and promotes its development, preservation, and fair use and also apply sui generis system.

1.5 Research Methodology

Qualitative method

- Primary Data : Collected through structured surveys/ questionnaires administered to Youths.
- Secondary Data : Review of existing literature, published research paper , articles on internet

Research Instrument: Structured questionnaires designed to gather data on performance metrics.

1.6 Brief Introduce the Concept of Traditional Knowledge and its Significance for Communities and the World

TK includes those knowledge in which skills and practices that are sustained , developed and passed on from generation to generation within a community. TK, also identified as indigenous knowledge or folk knowledge, pertains to the collective knowledge,skills and practices transferred across generations within distinct communities.

It includes the substance of knowledge and subsistence practice, healthcare and traditional cultural expression, such as unique signs and symbols.

Traditional knowledge is present in diverse fields like agriculture, science, technology, ecology, medicine and biodiversity.¹

This knowledge encompasses various aspects, including:

- **Subsistence practices:** Tools and techniques for hunting, agriculture, and resource management.
- **Healthcare:** Traditional medicine, midwifery, and ethnobotany (knowledge of plants).
- **Environment:** Ecological understanding, weather forecasting, and celestial navigation.
- **Culture:** Language, stories, songs, rituals, and traditional crafts.

¹ World intellectual property organization(WIPO),Intellectual property and traditional knowledge <https://www.wipo.int/tk/en/tk/>

Significance for communities:

- **Cultural identity:** TK is deeply intertwined with a community's cultural identity and provides a sense of belonging and continuity.
- **Sustainability:** It offers practical solutions for sustainable living, fostering harmony with the environment.
- **Resilience:** TK equips communities with the skills and knowledge to adapt to changing environments and challenges.

Significance for the world:

- **Biodiversity conservation:** Indigenous communities often hold vast knowledge about local ecosystems and their sustainable management.
- **Scientific discovery:** TK has contributed significantly to scientific advancements in medicine, agriculture, and other fields.
- **Cultural diversity:** It enriches the world by offering diverse perspectives and solutions to various challenges.

1.7 Highlight the Challenges Faced by TK due to Misappropriation and Lack of Adequate Protection

Misappropriation and lack of adequate protection is one of the main significant challenges for TK. These challenges present a peril to the communities that safeguard this knowledge and to the broader global community that take its benefits.

Here are some challenges faced by traditional knowledge :

1. Misappropriation:

- **Biopiracy:**

Biopiracy refers to the unethical exploitation of TK without providing fair compensation or ensuring equitable benefit-sharing with the indigenous communities possessing it.

Examples: patenting in traditional medicines or agricultural practices without acknowledging their source.

One instance of purported biopiracy is the hoodia cactus plant. It is not possible to secure the knowledge that the San people of southern Africa possess regarding the appetite suppressing properties of hoodia cactus. However, a patent was obtained for an innovation based on this knowledge, and Pfizer was granted a license to use it. The

San people of southern Africa have utilized this plant as a hunger-prevention for many years. Pfizer, the largest pharmaceutical company, was awarded a license to use an extract from the plant that was patented for its ability to combat hunger. In contrast to the instance involving turmeric, the patent for the plant extract remained valid. If the pharmaceutical company's weight-loss medication using Hoodia is effective, it might make money while the San people continue to live in poverty. Regretfully, even if medical knowledge concerning the applications of hoodia or turmeric has some social or commercial worth, it cannot be protected under the current system.

- **Cultural Appropriation:**

Cultural appropriation involves the inappropriate or disrespectful utilization of cultural expressions linked to TK, typically for the purpose of commercial gain or entertainment, without granting due recognition or seeking permission from the communities associated with it.

2. **Lack of Adequate Protection:**

- **Inapplicability of existing IP laws:**

The unique nature of traditional knowledge often does not define easy categorization within existing IP frameworks such as patents or copyrights, posing challenges in obtaining adequate legal protection

- **Difficulty in documenting and registering TK:**

Due to lack of awareness in the communities might face difficulties in formally documenting and registering their knowledge due to limited resources or expertise. This can create challenges in establishing ownership and preventing the misappropriation of their TK.

- **Unequal power dynamics:**

Indigenous communities frequently possess fewer resources and wield less power in comparison to corporations or individuals who may seek to exploit their knowledge.

Consequences of these challenges:

- **Loss of cultural heritage:** The erosion of traditional practices and cultural identity can occur as a result of misappropriation and inadequate protection, leading to a weakened connection between communities and their knowledge.
- **Unequal benefit sharing:** The lack of opportunity for communities to benefit from

the commercialization of their knowledge hampers their development and perpetuates historical injustices.

Ongoing efforts are being made to establish sui generis legal framework and international agreements that provide better protection for traditional knowledge TK and promote ethical and respectful engagement with indigenous knowledge holders.

1.8 Introduction the Concept of SUI Generis System as Potential Solution for TK Protection

Sui generis, when translated, means "of its own kind." It refers to a legal framework that is specifically crafted to cater to the distinct characteristics and requirements of TK protection. Instead of attempting to fit TK within existing intellectual property IP frameworks, a sui generis system strives to provide a customized solution that recognizes the cultural, communal, and non-commercial aspects associated with this knowledge.

The greater social benefit that results from safeguarding traditional knowledge as a new type of intellectual property must be made abundantly evident if a sui generis traditional knowledge right is to be established.

Key features of a sui generis system for TK protection:

- **Community-based ownership:** Recognizing communities as the collective holders of TK and granting them control over its use and access.
- **Benefit-sharing mechanisms:** Ensuring fair and equitable distribution of benefits arising from the commercialization of TK.
- **Prior informed consent (PIC):** Establishing procedures for obtaining the consent of communities before using or commercializing their knowledge.
- **Documentation and registration:** Providing systems for communities to document and register their knowledge, although respecting their cultural sensitivities and avoiding rigid formalities.
- **Dispute resolution mechanisms:** Establishing fair and accessible frameworks for resolving disputes related to TK ownership and use.

Potential benefits of a sui generis system:

- **Empowering indigenous communities:** Providing them with greater control over

their knowledge and a stronger voice in negotiations with potential users.

- **Promoting fair and ethical use:** Encouraging responsible research and development practices that respect the rights and interests of TK holders.
- **Enhancing knowledge sharing:** Encouraging communities to share their knowledge openly when they are assured of fair treatment and potential benefits.

The idea of establishing a sui generis system to protect TK presents an opportunity to tackle the obstacles encountered by this invaluable resource. The concept of a sui generis system for TK protection recognizes the need for a unique and tailored approach to address the challenges faced by TK. Unlike conventional IP frameworks, a sui generis system acknowledges the distinctive nature of TK, which often encompasses traditional practices, cultural expressions, and community knowledge that have been passed down through generations.

To ensure the effectiveness of a sui generis system, continuous monitoring, evaluation, and adaptation are necessary. Regular review and assessment of the system's implementation can help identify gaps, challenges, and areas for improvement. This process allows for the refinement of policies, legal frameworks, and mechanisms to better align with the evolving needs and aspirations of the TK-holding community.

CHAPTER 2

TRADITIONAL KNOWLEDGE AND ITS UNIQUENESS

2.1 Define TK and its Characteristics, Emphasizing its Collective, Dynamic and Community - Based Nature

Traditional knowledge is often referred to as indigenous knowledge or folk knowledge embodies a diverse collection of body of knowledge, skills, practices developed, wisdom, customs, and expertise that has flourished and been passed down through generations within specific regional, indigenous, or local communities. **It embodies a rich repository of knowledge, skills, and practices that are deeply rooted in cultural heritage and local contexts.**

Key characteristics emphasizing its collective, dynamic, and community-based nature:

- **Collective Ownership:** TK is not owned by individuals but rather by **entire communities**. This collective ownership reflects the collaborative nature of knowledge creation and transmission within the community.

- **Dynamic and Evolving:** TK is **not static**, but rather constantly evolving and adapting through experimentation, innovation, and interaction with the environment. Communities continuously refine and improve their knowledge based on experience and changing conditions.
- **Community-Based Transmission:** TK is primarily **transmitted orally** from generation to generation through storytelling, rituals, songs, and demonstrations. Communities play a vital role in preserving and transmitting this knowledge through their cultural practices and social interactions.

Examples of TK:

- **Subsistence practices:** Traditional methods for hunting, fishing, agriculture, and resource management passed down through generations.
- **Healthcare:** Knowledge of medicinal plants, traditional healing practices, and midwifery skills.
- **Environmental knowledge:** Understanding of local ecosystems, weather prediction, and sustainable resource utilization practices.
- **Craft skills:** Traditional techniques for weaving, pottery, carving, and other crafts, often embedded with cultural stories and symbolism.

2.2 Illustrate different types of TK in India , Covering Area like Medicine , Agriculture , Biodiversity and Cultural Expression

Diverse Expressions of TK in India

India is home to a diverse and vibrant tapestry of TK systems that span a wide range of aspects in life. India proudly showcases a rich and vibrant array of TK systems, which encompass a wide spectrum of life's facets and hold deep roots within its diverse communities. These TK systems are deeply ingrained within the cultural fabric of the country and are nurtured by its diverse communities.

Here's a glimpse into some of the distinct types of TK practiced in India, showcasing their application in medicine, agriculture, biodiversity, and cultural expression:

1. **Medicine:**

- **Ayurveda:** An ancient holistic medical system that emphasizes preventive care, using herbal remedies, dietary modifications, and lifestyle practices to promote overall well-

being.

- Ayurveda herbs.
- **Siddha:** A traditional medical system originating from South India, focusing on balancing the body's humors (vata, pitta, and kapha) through herbal concoctions, diet, and yoga.
- **Unani:** A system of medicine developed in the Greco-Arab world, using
- plant-based and mineral-based remedies alongside dietary and lifestyle practices for healing.

2. **Agriculture:**

- **Crop rotation:** The practice of planting different crops in sequence on the same land to maintain soil fertility and pest control.
- **Indigenous seed varieties:** Farmers have preserved a diverse range of indigenous seed varieties, well-adapted to local conditions and resistant to pests and diseases.

3. **Biodiversity:**

- **Indigenous knowledge of medicinal plants:** Communities possess extensive knowledge about the medicinal properties of various plants, used for treating various ailments.
- **Traditional water harvesting techniques:** Communities have developed ingenious methods like rainwater harvesting and water conservation practices to adapt to diverse climatic conditions.
- **Ethnoveterinary practices:** Utilizing plants and traditional remedies for treating animal diseases, ensuring the well-being of livestock and maintaining ecological balance.

4. **Cultural Expression:**

- **Ikat weaving:** A traditional weaving technique using resist-dyeing to create intricate patterns, practiced in various regions of India with distinct style and motifs
- **Warli art:** An indigenous art form from Maharashtra depicting scenes from daily life, nature, and mythology using simple geometric shapes and earthy tones.
- **Yaan:** Folk songs and ballads passed down through generations, often carrying historical narratives, cultural values, and social commentary.

By understanding and appreciating the diverse expressions of TK in India, we can foster a

more inclusive and sustainable future, where these valuable knowledge systems continue to thrive and contribute to the well-being of communities and the planet.

2.3 Discuss the Cultural and Spiritual Significance of TK for Traditional Communities

Cultural and Spiritual Significance of TK for Traditional Communities

TK intertwines profoundly with the very essence of cultural identities, becoming an intrinsic component of a comprehensive worldview for countless communities. It becomes inseparable from their ways of life, values, spiritual beliefs, and customary legal systems, forming an unbreakable bond that shapes their cultural identity. TK transcends its practical applications and holds immense **cultural and spiritual significance** for the communities that hold and practice it.

Here's a deeper exploration of this significance:

1. Embodiment of Cultural Identity:

- **Shared history and heritage:** TK serves as a repository of a community's history, traditions, and values, passed down from ancestors and reflecting their unique way of life.
- **Sense of belonging and continuity:** Engaging with TK practices fosters a sense of belonging and connection to past generations, strengthening communal identity and social cohesion.

2. Spiritual Connection:

- **Harmony with nature:** Many TK systems are deeply rooted in a spiritual belief in the interconnectedness of all living things, promoting respectful interactions with the environment.
- **Rituals and ceremonies:** TK often manifests in rituals and ceremonies, connecting communities to their spiritual beliefs and practices, offering a sense of purpose and meaning.
- **Healing practices:** Traditional medicine and healing practices often incorporate spiritual elements, using plants, chants, and rituals to restore balance and well-being.

By recognizing the cultural and spiritual significance of TK, we can contribute to a future

where these invaluable knowledge systems are valued, protected, and continue to enrich the cultural tapestry of our world.

CHAPTER 3

WHAT IS THE ROLE OF WIPO IN PROTECTING TRADITIONAL KNOWLEDGE

The WIPO General Assembly formed the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore ("IGC") in October 2000 to investigate the connections between intellectual property and these related fields. In order to create an international legal instrument or instruments specifically addressing the protection of TK, traditional cultural expressions, and genetic resources. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC) is a specialized forum within the WIPO. Its purpose is to address the protection of TK, traditional cultural expressions (TCEs), and genetic resources (GRs) on an international level.

The WIPO plays a multifaceted role in **promoting the protection of TK**, though it doesn't directly offer legal protection itself.

Here's an overview of its key activities:

- **International Negotiations:** WIPO facilitates discussions for an international legal instrument that would define TK and establish how it should be protected. This agreement would address ownership, access rights, and benefit sharing.
- **Policy and Legislative Assistance:** WIPO helps countries develop national laws and policies that better safeguard TK within their borders.
- **Supporting Communities:** WIPO works with indigenous peoples and local communities to empower them in managing and protecting their traditional knowledge. This can involve capacity building workshops and raising awareness about TK rights.
- **Encouraging TK Entrepreneurship:** WIPO supports initiatives that help communities leverage their traditional knowledge for economic benefit. This could involve commercialization strategies or intellectual property management training.
- **Documentation and Best Practices:** WIPO promotes the documentation of TK to

prevent its loss and create a record of ownership. They also share successful strategies for TK protection from around the world.

Challenges and limitations:

While WIPO plays a significant role in promoting TK protection, it's important to acknowledge the challenges:

- **Lack of an international legal instrument:** Negotiations at the IGC have yet to reach an agreement on a legally binding international instrument specifically for TK protection.
- **Balancing diverse interests:** Finding a solution that balances the interests of communities, governments, and potential users of TK remains a complex and ongoing challenge.

In spite of its limitations, WIPO's multifaceted approach plays a significant role in establishing a supportive and enabling environment for the protection and sustainable utilization of traditional knowledge.

CHAPTER 4

CHALLENGES IN PROTECTING TRADITIONAL KNOWLEDGE

A comprehensive mechanism for communities to jointly secure their TK across all fields is lacking in the current IP system, which allows people to protect their inventions and IPRs. Communities frequently fail to exercise their rights to collective IP registration, even in situations where it is practical. As a result, TK is typically not protected by the IP system in India or elsewhere in the world. It is noteworthy, nonetheless, that the IP system has protected traditional knowledge TK through geographical indicators with some degree of success, especially when it comes to wines and spirits.²

Despite WIPO's efforts, protecting TK remains complex due to several challenges:

- **Intangible Nature:** Unlike inventions or designs, TK is often passed down orally or through practice, making it difficult to document and prove ownership.
- **Collective Ownership:** Traditional knowledge frequently belongs to a community

² Ishita chatterjee, intellectual property rights and traditional knowledge - indian perspective <https://www.manupatra.com/roundup/363/articles/ipr%20and%20traditional%20knowledge.pdf>

rather than a single individual.

- **Biopiracy:** Biopiracy refers to the unauthorized appropriation of genetic resources or associated TK by researchers or companies, often without fair compensation to indigenous communities.
- **Misappropriation:** Traditional knowledge can be misappropriated and exploited commercially without the knowledge or consent of its holders.
- **Lack of Awareness:** Many indigenous communities lack awareness of their rights regarding traditional knowledge and how to protect them.
- **Weak Legal Frameworks:** National and international laws may not adequately address the unique characteristics of traditional knowledge.

4.1 Explain the Limitation of Existing IP System like Patent and Copyright in Protecting TK

Limitations of Patents:

- **Novelty Requirement:** Patents typically require an invention to be novel, meaning new and unique.
- **Inventive Step:** Patents often require an inventive step– the invention shouldn't be an obvious solution to a problem. Many TK-based practices, though innovative, may be seen as lacking this step due to their incremental and community-based development.
- **Individual Ownership:** Patents privilege individual inventors. TK is inherently collective and intergenerational, rendering it unsuitable for individual ownership.
- **Focus on Products:** Patents tend to focus on tangible products, which may not easily align with intangible TK systems such as traditional medicines or cultural practices.

Limitations of Copyrights:

- **Originality Requirement:** Copyrights usually require a fixed and original form of expression. Much TK is orally transmitted, dynamic, and collectively developed, potentially hindering its eligibility.
- **Limited Duration:** Copyrights have a limited term of protection. However, TK may have significance that communities seek to protect in perpetuity for the preservation of their heritage.
- **Focus on Individual Creators:** Copyrights emphasize individual authorship, not

aligning with the collective nature of authorship and transmission of TK.

The current IP frameworks primarily cater to Western concepts of innovation and ownership, which leads to a fundamental disregard for the distinctive attributes of TK. These frameworks fail to recognize and adapt to the collective nature, evolutionary essence, intangible aspects, and profound spiritual and cultural values inherent in TK. As a result of this mismatch, TK is left vulnerable to misappropriation and exploitation, lacking adequate protection within existing IP systems.

4.2 Analyze the Ethical Concern Surrounding the Commercialization of TK Without Fair Compensation or Benefit - Sharing

Ethical Concerns of Commercializing TK Without Fair Compensation or Benefit-Sharing

The commercialization of TK without fair compensation or benefit-sharing raises significant ethical concerns that deserve critical analysis.

Here's a breakdown of these concerns:

1. Injustice and Exploitation:

- Communities that have developed and sustained TK over generations are excluded from the economic benefits derived from its commercialization. This creates an unjust situation where communities are not adequately compensated for their intellectual contributions.
- This lack of compensation can further marginalize and disadvantage already vulnerable communities, exacerbating existing inequalities and perpetuating historical injustices.

2. Lack of Informed Consent:

- Communities may not be fully informed about the potential uses and commercial value of their TK before it is appropriated. This lack of informed consent raises ethical questions about the exploitation of communities who may not fully understand the implications of sharing their knowledge.

3. Cultural Appropriation and Disrespect:

- Commercialization without fair compensation can be seen as a form of cultural

appropriation, where the intangible cultural heritage of a community is exploited for commercial gain without proper acknowledgment or respect. This can lead to the trivialization and commodification of cultural practices and beliefs.

4. **Loss of Control and Cultural Erosion:**

- When communities lose control over their TK due to lack of proper recognition and protection, it can lead to cultural erosion and the loss of valuable knowledge.

This can have a devastating impact on the cultural identity, traditions, and spiritual connection of communities.

CHAPTER 5

SUI GENERIS SYSTEM FOR TRADITIONAL KNOWLEDGE PROTECTION

5.1 Define the Concept of SUI Generis System and their Flexibility in Addressing the Unique needs of TK

A **sui generis system** (Latin for "of its own kind") refers to a **legal framework specifically designed** to address the **unique characteristics and needs** of a particular subject matter.

A new intangible property right known as a sui generis regime may be created, which would prevent anybody but the right holders from using this intergenerational knowledge without their permission. Perpetual protection, the preservation of historical collective cultural works, and the preservation of knowledge that might be valuable but isn't, by intellectual property law's definition, inventive or creative are all possible features of a traditional knowledge right.

In the context of **TK**, a sui generis system aims to offer a **tailor-made solution** that acknowledges the **cultural, communal, and non-commercial aspects** of such knowledge. Compared to attempting to fit TK into existing IP frameworks, which often struggle to accommodate its unique nature, a sui generis system offers greater **flexibility** in several ways:

1. **Addressing the shortcomings of existing IP:**

- Existing IP systems like patents and copyrights emphasize **individual ownership, novelty, and commercialization**, which often **contradict** the **collective, dynamic, and non-commercial nature** of TK.
- A sui generis system can offer **flexibility** in defining protected subject matter, allowing

for the inclusion of:

- **Cultural expressions** like traditional music, stories, and rituals.
- **Ecological knowledge** associated with biodiversity and resource management.
- **Traditional practices** alongside potentially patentable elements.

2. Key features of a sui generis system for TK protection:

- **Community-based ownership:** Recognizing communities as the collective holders of TK and granting them control over its use and access, unlike individual ownership in traditional IP.
- **Benefit-sharing mechanisms:** Ensuring **fair and equitable distribution** of benefits arising from the commercialization of TK, addressing the concerns of exploitation and lack of compensation.
- **Prior informed consent (PIC):** Establishing procedures for obtaining the **consent of communities** before using or commercializing their knowledge, ensuring their voice is heard and addressing ethical concerns.
- **Documentation and registration:** Providing **flexible and culturally sensitive systems** for communities to document and register their knowledge, respecting their traditions and avoiding rigid formalities.
- **Dispute resolution mechanisms:** Establishing **fair and accessible frameworks** for resolving disputes related to TK ownership and use, addressing potential conflicts surrounding knowledge transmission and sharing.

3. Benefits of flexibility:

- **Empowering indigenous communities:** Providing them with greater control over their knowledge, fostering participation in decision-making processes, and ensuring their voices are heard.
- **Promoting fair and ethical use:** Encouraging responsible research and development practices that respect the rights and interests of TK holders, addressing concerns around exploitation and misappropriation.
- **Enhancing knowledge sharing:** Encouraging communities to share their knowledge openly when they are assured of fair treatment and potential benefits, fostering collaboration and scientific advancement.

It's important to note that developing and implementing a sui generis system effectively requires ongoing **dialogue, collaboration, and respect** for the diverse cultural contexts surrounding traditional knowledge. While a sui generis system offers **promising flexibility** in addressing the unique needs of TK, its successful implementation relies on continued efforts to ensure **fairness, equity, and respect** for indigenous communities and their invaluable knowledge.

5.2 Showcase Successful examples of SUI Generis Systems from Around the World , like the Philippines' Indigenous peoples rights act and the Navajo Nation's Access and Benefit - Sharing Policy

While there is no single, universally adopted sui generis system for protecting TK worldwide, several countries and communities have implemented innovative legal and policy frameworks that demonstrate the potential of this approach.

Here are two successful examples:

1. The Philippines' Indigenous Peoples Rights Act (IPRA) of 1997:

- **Focus:** IPRA recognizes the **rights of indigenous cultural communities/indigenous peoples (ICC/IPs)** to their ancestral domains and the collective ownership of their **traditional knowledge, cultural practices, and intellectual property.**
- **Key Features:**
 - **Community-based protection:** IPRA acknowledges collective ownership of TK by ICC/IPs and grants them the right to control its access, use, and commercialization.
 - **Free and Prior Informed Consent (FPIC):** Requires obtaining informed consent from ICC/IPs before any research or development activities involving their TK are undertaken.
 - **Benefit-sharing mechanisms:** Establishes mechanisms for ensuring fair and equitable benefits are shared with ICC/IPs if their TK is commercially utilized.
- **Success:** IPRA has been recognized for its **progressive approach** to protecting TK and promoting the rights of indigenous communities. However, challenges remain in implementing the law effectively, including limited resources and capacity building for ICC/IPs to fully exercise their rights.

2. The Navajo Nation's Access and Benefit-Sharing Policy (ABSP) of 2003:

- **Focus:** The ABSP establishes a framework for **ethical research and development** involving the **biological resources and traditional knowledge** of the Navajo Nation.
- **Key Features:**
 - **Community consent and participation:** Requires researchers to obtain informed consent from the Navajo Nation and relevant communities before conducting research and ensures their participation throughout the process.
 - **Benefit-sharing:** Establishes a mechanism for equitable sharing of benefits arising from commercialization of research and development activities using Navajo resources and knowledge.
 - **Protection of knowledge and cultural integrity:** Aims to protect the **confidentiality and intellectual property rights** of the Navajo Nation associated with their TK and cultural resources.
- **Success:** The ABSP has been lauded for its **comprehensive approach** to addressing ethical concerns and ensuring equitable benefits for the Navajo Nation. It serves as a model for other indigenous communities seeking to manage access to their resources and knowledge.

These examples showcase the potential of sui generis systems in addressing the unique challenges of protecting TK and empowering communities to **control their knowledge, share it ethically, and benefit from its potential applications.**

CHAPTER 6

APPLICABILITY OF SUI GENERIS SYSTEM IN INDIA

6.1 Analyze the Current Legal Framework for TK Protection in India , Including the Protection of Plant Varieties and Farmers' Rights Act, Geographical Indications Act and the Draft Traditional Knowledge Bill

While India lacks a single, comprehensive law dedicated solely to TK protection, it has adopted a **multifaceted approach** through various existing legislations and proposed bills.

Here's an analysis of three key components:

1. **Protection of Plant Varieties and Farmers' Rights Act (2001):**

- **Focus:** Protects the rights of **plant breeders** and **farmers** by providing a **sui generis system** for the registration of plant varieties.
- **Key Features:**
 - **Farmers' Rights:** Recognizes the **rights of farmers** to save, use, exchange, sell, and commercially exploit their **farm-saved seeds** of protected varieties.
 - **Benefit-sharing:** Requires **benefit-sharing** between breeders and farmers when protected varieties are commercially exploited.
 - **Community rights:** Recognizes the **contributions of communities** in conserving and developing plant varieties, though specifics are not well-defined.

2. **Geographical Indications (GI) Act (1999):**

- **Focus:** Protects **geographical indications (GIs)**, which are products associated with a specific geographical location and possessing specific qualities or reputation due to that origin.
- **Relevance to TK:** Many **GI-protected products** often rely on **traditional knowledge and skills** associated with their production. Protecting GIs helps **indirectly protect** the associated TK.
- **Limitations:** GIs only offer **limited protection** for the **knowledge** itself, focusing primarily on product origin and characteristics.

3. **Draft Traditional Knowledge Bill (2016):**

- **Status:** Currently a **draft bill**, not yet enacted into law.
- **Focus:** Aims to establish a **sui generis system** for the protection of **India's traditional knowledge** from misappropriation and unfair commercialization.
- **Key Features:**
 - **Community ownership:** Recognizes **communities** as the **collective owners** of their traditional knowledge.
 - **Documentation and registration:** Aims to establish an **optional** system for documenting and registering TK.
 - **Benefit-sharing:** Provides a framework for **fair and equitable**

- **benefit-sharing** when TK is commercially utilized.
- **Biopiracy prevention:** Aims to address the issue of **biopiracy** by establishing mechanisms to prevent the unauthorized access and use of TK.

6.2 Evaluate the Strengths and Weaknesses of these Existing Measures in Addressing the Specific Needs of TK Protection

Strengths:

- **Multifaceted approach:** India acknowledges the complexity of TK protection by employing various legislative tools, each catering to specific aspects.
- **Recognition of farmers' rights:** The Protection of Plant Varieties and Farmers' Rights Act offers a unique model by recognizing and protecting the rights of farmers, who are crucial custodians of TK related to agriculture.
- **Geographical Indications Act:** This act indirectly protects certain aspects of TK by safeguarding the reputation and origin of products linked to traditional knowledge and skills.
- **Draft Traditional Knowledge Bill:** This proposed legislation, if implemented effectively, can address crucial gaps by recognizing community ownership, establishing optional documentation and registration, and providing a framework for benefit-sharing and biopiracy prevention.

Weaknesses:

- **Fragmentation:** The current framework lacks a **unified and cohesive approach**, making it complex and potentially challenging to navigate for both communities and potential users.
- **Limited scope:** Existing laws like the Protection of Plant Varieties and Farmers' Rights Act primarily address specific aspects like plant varieties, leaving other domains of TK, such as medicinal knowledge or cultural expressions, inadequately addressed.
- **Challenges in implementation:** The effectiveness of existing laws, particularly the GIs Act, in directly protecting the underlying TK associated with GI-protected products remains a concern.
- **Draft Bill's uncertainties:** The Draft Traditional Knowledge Bill, while a positive step, faces uncertainties regarding its potential for creating bureaucratic burdens for

communities and the effectiveness of its proposed mechanisms in addressing complex issues like benefit-sharing and biopiracy prevention.

6.3 Assess The Protection And Challenges of Adapting and Implementing a SUI Generis System For TK Protection in the Indian Context

The merits of a sui generis IP style TK right are dubious because of two primary challenges with TK, in my opinion. First, it is extremely difficult to define the boundaries of the right's application due to the lack of a clear agreement on what an indigenous or local person is. I do admit that there might be a number of good reasons for this lack of agreement, such as political and historical ones that are outside the purview of this paper's discussion. Secondly, the imbalances brought about by the abuses of the existing system are not addressed by the suggested traditional knowledge right. The approach aims to tackle the issues by broadening the scope of intellectual property instead of trying to fix the current shortcomings through contracting the regime the effects of preserving information or artistic creations that represent the combined brainpower of multiple generations within a distinct group, whether or not they are indigenous.

Potential benefits of a sui generis system for TK protection in India:

Problems include the diversity of the subject matter, identifying the owner of the rights, procedures and formalities for the acquisition and maintenance of the rights conferred, and time limits conferred on the right³.

- **Comprehensive approach:** A single, dedicated law could address the limitations of the current fragmented framework, offering a **more holistic** approach to TK protection.
- **Community empowerment:** Recognizing **collective ownership** and establishing **control mechanisms** can empower communities to manage their TK effectively and prevent misappropriation.
- **Fair and equitable benefit-sharing:** A well-defined framework for **benefit-sharing** can ensure communities receive fair compensation when their TK is commercially utilized, addressing concerns of exploitation.
- **Biopiracy prevention:** Robust mechanisms can be established to **prevent unauthorized access and use** of TK, addressing biopiracy concerns.

³ IPTF Luncheon, January 14, 2004, New York City, International Intellectual Property Institute <https://iipi.org/wp-content/uploads/2010/07/NewYork011404.pdf>

- **Respect for cultural heritage:** Implementing a sui generis system can demonstrate **respect for India's unique cultural heritage** and the invaluable knowledge embedded within its diverse communities.
- **Recognition and Ownership:** Communities may be granted official status and ownership rights under a sui generis system. This can give communities more control over how their information is used and help prevent outsiders from misappropriating it.
- **Documentation and Preservation:** Since TK is frequently transmitted orally, the system can promote its written record. This can assist in protecting this priceless knowledge for upcoming generations.

Challenges of adapting and implementing a sui generis system in India:

- **Identification of Holders:** Since TK is frequently owned collectively, it can be challenging to pinpoint specific owners who are qualified to receive benefits. Determining decision-making procedures and community representation is also difficult.
- **Documentation Methods:** It's critical to strike a balance between the necessity of documentation and the requirement to respect cultural sensitivity and safeguard confidential information. It might be difficult to standardize documentation procedures while taking into account different cultures.
- **Enforcement mechanism:** Sturdy legislative and administrative frameworks are necessary for the development of efficient enforcement tools to monitor theft and protect TK rights.
- **Costs & Bureaucracy:** Putting in place a new system may result in administrative expenses and bureaucratic roadblocks for the government as well as local communities. It is critical to streamline procedures and provide accessibility for communities with minimal resources.
- **Alignment with Existing:** The sui generis system must support current IP rules without adding to their complexity or duplication. It's critical to strike a balance between promoting innovation and community rights.

The traditional knowledge narrative suggests that intellectual property law is under inclusive because it fails to protect much of the knowledge and creations of traditional knowledge

generating communities. However, intellectual property may be a poor tool for addressing traditional knowledge concerns, except to the extent that intellectual property law encroaches on indigenous and local communities. A sui generis system incorporating all TK is inadvisable.

Criticisms include:

- Subject matter is too diverse.
- Why create a new law when existing laws and norms suffice?
- Difficulty with establishing ownership of right – also exists with benefit sharing agreements.
- Difficulties with applying for right and maintaining it.
- Difficult to place a time limit on TK.
- Constraints placed on existing laws that might make them non-compliant with International Agreements.
- **Defining and delineating TK:** Defining the **scope and boundaries** of what constitutes TK can be challenging, considering the diverse nature of knowledge and potential overlaps with existing IP frameworks.
- **Documentation and registration:** Establishing an **optional and culturally sensitive** system for documenting and registering TK, while avoiding excessive bureaucratic burdens on communities, is crucial.
- **Benefit-sharing mechanisms:** Designing **equitable and effective benefit-sharing mechanisms that are adaptable to diverse contexts and types of TK utilization requires careful consideration.**
- **Enforcement and dispute resolution:** Developing robust mechanisms for **enforcement and dispute resolution** related to TK protection is essential for the system's effectiveness.
- **Capacity building:** Equipping communities with the necessary **resources and skills** to navigate the system, participate in decision-making processes, and effectively manage their TK is crucial.

6.4 CONSIDER RELEVANT CASE STUDIES

With only 2.4% of the world's surface area, India is a massively diverse nation that is home to 7 - 8% of all known species, including approximately 45,000 plant species and 91,000 animal

species. Four of the 34 global hotspots for biodiversity—the Himalaya, the Western Ghats, the Northeast, and the Nicobar Islands—are located in India. In addition, India is the world's top producer of medicinal herbs, and the concepts behind the traditional medical systems Ayurveda, Siddha, and Unani originated there between 2500 and 500 BC. It is acknowledged that India is a biologically varied country and that its TK of many resources, particularly the medical system, makes it a wealthier country; yet, the knowledge of these resources needs to be both conserved and promoted.⁴

Case Studies:

Yoga is an example of subject matter that has been described as TK and which is partially protected through intellectual property law. Although it has become popular throughout the world, yoga is a traditional practice that originated in India several generations ago. While yoga per se is not protectable, yoga poses have been copyrighted in the United States, leading to debates about whether yoga is in the public domain. Other well-known examples of TK include the medicinal uses of spices such as turmeric and plants like the hoodia cactus, or neem. The patenting of turmeric is an example of alleged misappropriation. Although the traditional knowledge about the uses of turmeric is not protectable, two Indian expatriates based in the United States obtained an American patent on the use of turmeric in wound healing. Turmeric is a spice used in Indian cooking. It has also been used in traditional medicinal practices to heal wounds and rashes. The Council of Scientific and Industrial Research (“CSIR”) in India challenged the validity of the patent, arguing that the use of turmeric was not novel because it had been used medicinally in India for thousands of years. The CSIR supported its claim with a printed publication from an Indian medical association and was successful in having the patent revoked. However, if the traditional medicinal knowledge had not been documented, the patent may not have been invalidated. An American patent covers the application of turmeric for wound healing. Indian cuisine makes use of the spice turmeric. Additionally, it has been utilized to treat rashes and wounds in conventional medical procedures. Since turmeric has been used medicinally in India for thousands of years, the Council of Scientific and Industrial Research (“CSIR”) in that country contested the patent's validity. The Indian Medical Association's printed publication, which the CSIR used to bolster its claim, was successful in getting the patent invalidated. Nevertheless, the patent might not have been void if the conventional medical knowledge had not been recorded.

⁴ SCC online TIMES <https://www.sconline.com/blog/post/2018/04/23/protecting-traditional-knowledge-the-india-story-till-date/>

Turmeric case: In 1997, the US Patent and Trademark Office granted a patent to the University of Mississippi for a process using turmeric to heal wounds. This sparked outrage in India, as the use of turmeric for healing has been documented in traditional Ayurvedic medicine for centuries. The patent was eventually revoked due to lack of novelty, highlighting the importance of recognizing prior traditional knowledge.

- **Neem case:** In 1995, the US Patent and Trademark Office granted a patent to the US Department of Agriculture for a neem-based pesticide. The Indian government challenged the patent, arguing that the knowledge of neem's pesticidal properties was already well-established in India and belonged to the public domain. The patent was eventually abandoned, demonstrating the potential for legal challenges against misappropriation.
- **Basmati rice:** Another instance that caused a lot of chaos included a patent for "Basmati rice lines and grains" that the USPTO issued to RiceTec, an American corporation. In India and Pakistan, basmati rice is a traditionally cultivated aromatic kind of rice. A plethora of intellectual property (IP) concerns, including those pertaining to trade marks and geographical indications, were raised by the patent's issuance. Due to the lower quality of Basmati rice grown in the US compared to the higher quality Basmati rice being cultivated in northern India and Pakistan, RiceTec was granted a patent for the invention of hybrid rice lines, which combined desirable grain traits of Basmati rice with desirable plant traits. This would aid in growing a better crop of Basmati rice. In the western hemisphere, basmati rice is most popular in the US. A request for reexamination was submitted, accompanied by affidavits from two scientists, multiple publications on Basmati rice, and research on rice in India, one of which led the USPTO to conclude that RiceTec's central claims were not immediately apparent. As a result, RiceTec's twenty claims were reduced to three and it decided not to contest the USPTO's ruling.

CHAPTER 7

THE NEED FOR SUI GENERIS PROTECTION

Some communities and nations have determined that modifications to the current IPR frameworks are not enough to address the comprehensive and distinct nature of TK subject matter. As a result, it was decided to use sui generis rights to defend TK. An IP system

becomes sui generis when certain of its properties are changed to appropriately handle the unique features of its subject matter and the particular policy requirements that gave rise to the creation of a unique system.

Here are some examples from different countries of the use of sui generis IP rights to safeguard TK:

1. Law No. 27, 811 of 2002 established the sui generis regime in Peru, with the goals of safeguarding TK, to ensure that the knowledge is used with the prior informed agreement of the Indigenous peoples, to encourage a fair and equitable sharing of benefits, and to prevent theft. Indigenous peoples' collective knowledge pertaining to biological resources is protected. Indigenous peoples have the legal right to approve the use of Traditional Knowledge. In addition, the law stipulates that fair compensation for the usage of specific TK types must be paid to TK holders directly or into a national fund for indigenous development.
2. The goal of Costa Rica's Biodiversity Law No. 7788 is to control access to TK. It stipulates that the advantages resulting from the use of TK will be fairly distributed to TK holders. The Law defines two scopes of subject matter: first, TK, to which it governs access, and second, TK, to which it grants exclusive rights. The National Commission for the Management of Biodiversity will define the terms and boundaries of sui generis community intellectual rights, as well as who will hold the title, through a participatory process with indigenous and small farmer communities.

To know more about the sui generis protection in India. There was a small survey conducted on 60 people who have different educational backgrounds. The purpose of conducting this small survey is to get the information regarding knowledge among the people regarding traditional knowledge.

This data show thought of people regarding many question in context of sui generis system :

1. How many people are aware of traditional knowledge in regard to intellectual property?
2. Is the present intellectual property framework adequate to protect the traditional knowledge?
3. What would be the biggest concern regarding protection of traditional knowledge?
4. How many people know about the sui generis ?
5. Is sui generis important to protect traditional knowledge?

- 6. What can be the potential challenges in implementing sui generis?
- 7. Who should be responsible for managing and enforcing sui generis?
- 8. Is it important to protect traditional knowledge and cultural experience?

Highest level of Education

60 responses

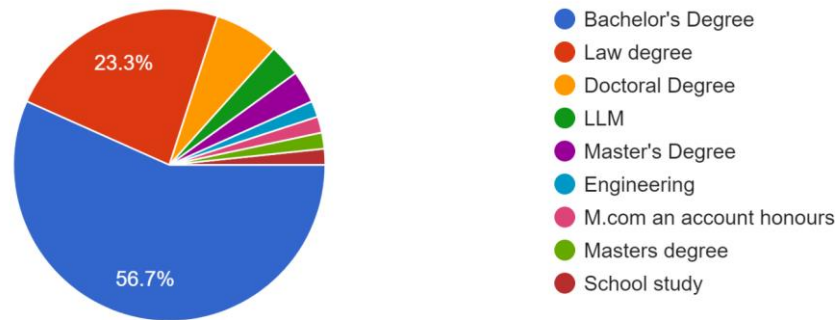


Fig 1

The first data show the educational background of the people who have been involved in the test conduct . The data was collected from the background of the people who are young and pursuing their degree which are considered high in our society . Because If they will identify the problem and suggest for better solution then it will be not more challenges for the people that have less knowledge about it but if youngster have not knowledge that how can we expected from that people who have less knowledge about it . As we all known that the youngster is the future of developing country so it should be needed that first youngster should know the things then the importance of protection of traditional knowledge possible at the some extent.

How familiar are you with the concept of Traditional Knowledge?

60 responses

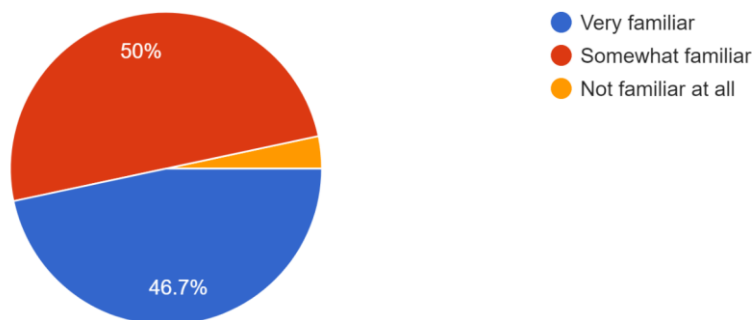


Fig 2

From the above data we easily calculate interference, a large number of the people still don't know the importance of traditional knowledge.

Do you believe that existing intellectual property framework such as patents, copywrite and trademarks are adequate for protecting traditional knowledge?

60 responses

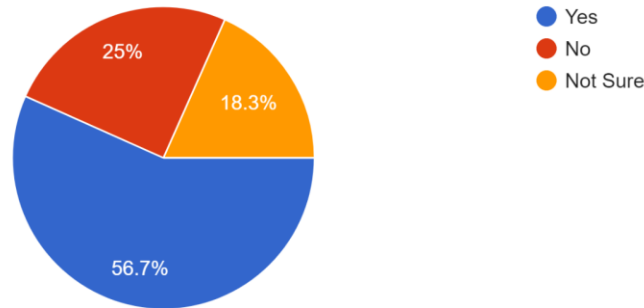


Fig 3

56.7% of the people answer to this question that existing intellectual property frameworks are adequate for protecting traditional knowledge whereas the 25% of the people don't know it protection can be possible under these intellectual property or not and the 18.3% of the people is clueless regarding the protection of traditional knowledge.

What are your biggest concerns about protecting traditional knowledge?

60 responses

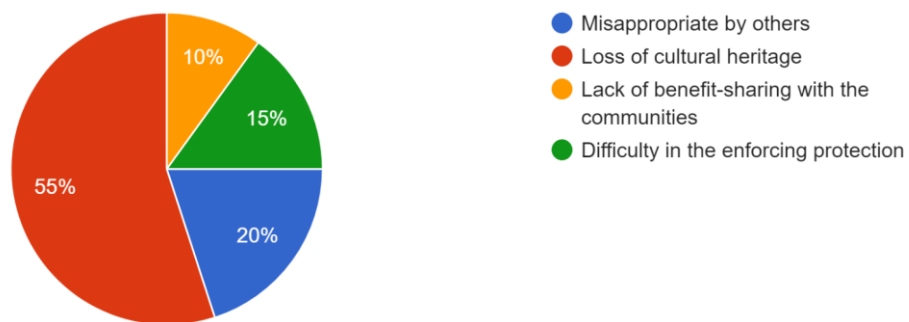


Fig 4

Lack of benefit-sharing with the communities is also called a biggest concern by the people because it is that when TK is accessed and commercialized, a framework can be developed to guarantee benefit sharing that is just and equal. Communities may receive financial rewards

for sharing their expertise and making contributions to R&D as a result.

Have you heard of the concept of "Sui Generis" protection for traditional knowledge?

60 responses

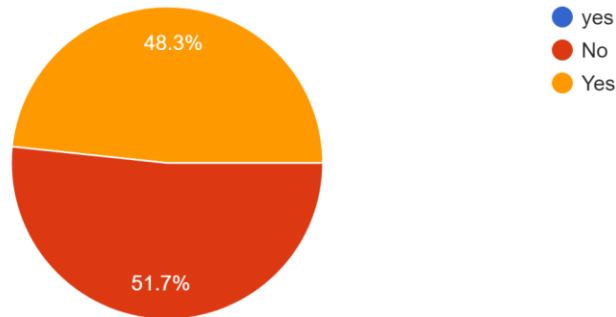


Fig 5

51% of the people have the knowledge of the concept of sui generis protection of traditional knowledge whereas 48.3% of the people have not heard that term. It shows that 48% of the people only heard about traditional knowledge but they didn't know that there was a system to protect this knowledge.

Do you think "Sui Generis System" is important to protect traditional knowledge

60 responses

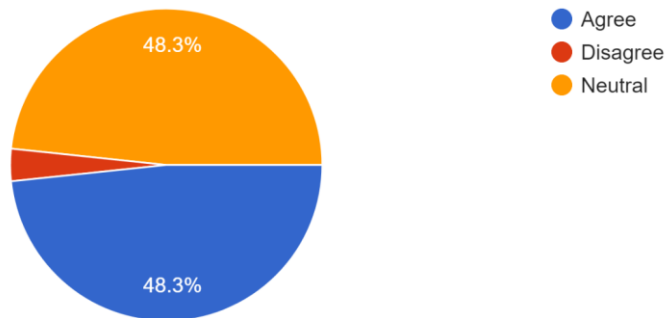


Fig 6

Here the percentage of people who agree or disagree is 48.3% . 48.3% of the people who agree think that there should be a system like sui generis to protect the traditional knowledge where the 48.3% of the people who disagree with the system and the remaining people are clueless over it .

What are some potential challenges in implementing Sui Generis protection for Traditional Knowledge and Cultural Expressions

60 responses

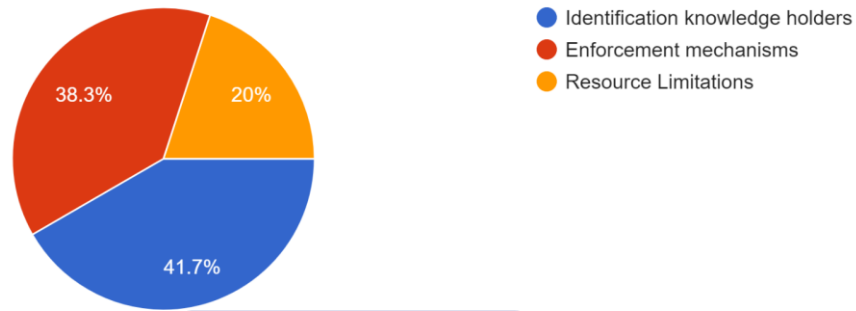


Fig 7

Lack of Identification of knowledge holders is one the main concern for protecting the traditional knowledge because if we don't know the true owner or the true owner don't know they can protect their knowledge then how we can resolve the problem and the mechanism was the concern for protecting although it is one of the reason because if there was proper law on it or any enforcement mechanism regarding it then it will be the beneficiary for the people to identify and people take it on serious note .

Who should be responsible for managing and enforcing Sui Generis protections for the traditional knowledge?

60 responses

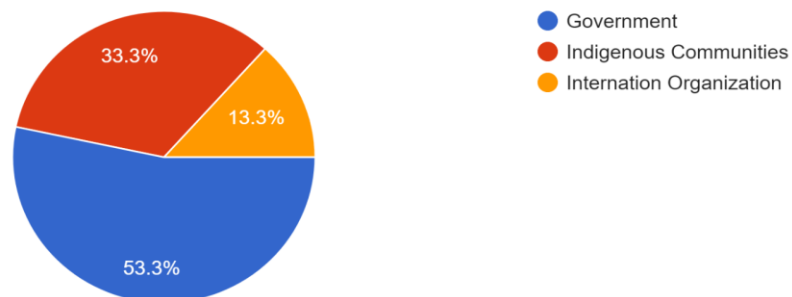


Fig 8

53% of the people think that the government is responsible for managing and enforcing sui

generis protections for the traditional knowledge, 33.3% of the people think that indigenous communities are responsible and 13.3% of the people think that international organizations .

In your opinion, is it important to protect traditional knowledge and cultural expressions?

60 responses

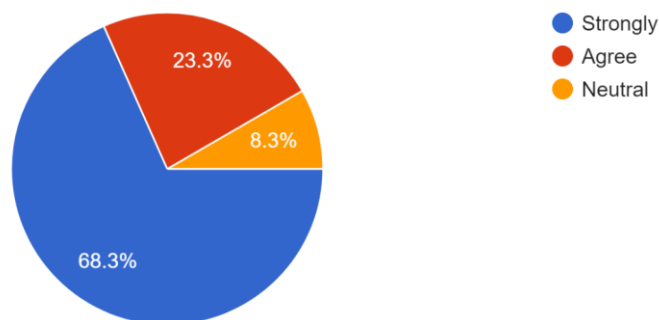


Fig 9

68.3% of the people strongly agree that it is important to protect the traditional knowledge and cultural expression whereas 23.3% of the people just accept the fact that it is important to be protected whereas 8.3% have neutral opinion on it.

These data not only show the knowledge of people regarding traditional knowledge or cultural expression but it also shows that everyone is concerned with protecting the cultural heritage. Here the government can play a very vital role through implementing some law regarding this and strict punishment for the people who misuse the other traditional knowledge practice in his own name . It should be important that proper functioning and management for this otherwise will create a very major issue in the future.

Traditional Knowledge Digital Library (TKDL)

The Central Government's Planning Commission established a "Task Force on Conservation and Sustainable Use of Medicinal Plants" in June 1999. Finding ways to make the "patent rights and IPR of medicinal plants" easier to defend was one of its goals. The Task Force recommended, among other things, the establishment of a library to guarantee the collection of traditional knowledge on a single platform. This library will be digitally accessible and aid in demonstrating to the rest of the world that traditional medicinal knowledge associated with India is prior art, meaning that patent applications based on such knowledge will not meet the requirements for novelty. As a result, an archive of traditional knowledge in India was created.

A database containing more than 2,50,000 formulas used in Indian traditional medicine systems, such as Ayurveda, Siddha, Unani, and Yoga, is called the Traditional Knowledge Digital Library (TKDL). TKDL is an innovative attempt by India to stop the theft of the nation's traditional medical knowledge at foreign patent offices, which is essential for millions of people's livelihood and to meet the healthcare needs of over 70% of the population. The world has taken notice of India's efforts to prepare a digital library as a defensive measure against biopiracy and the theft of traditional knowledge. But acknowledgment alone is insufficient; what is required is the establishment of a fair benefit-sharing structure.

The TKDL expert group estimated in 2005 that approximately 2000 incorrect patents pertaining to Indian medical systems were being granted annually at the international level. This was primarily because Indian traditional medical knowledge, which is available in regional languages like Sanskrit, Hindi, Arabic, Urdu, Tamil, etc., is inaccessible and difficult for patent examiners at international patent offices to understand.

CONCLUSION

With an emphasis on current IP laws and rules, the suitability of intellectual property protection to protect traditional knowledge in India is examined. It is stressed that a sui generis mechanism that is especially designed to safeguard TK is necessary. The objectives of sui generis instruments are to protect traditional knowledge, safeguard the rights of indigenous peoples, guard against abuse, and control access and benefit distribution. A notable "mismatch" exists between traditional knowledge and traditional

cultural expressions on one side and the intellectual property system on the other. While TK and cultural expressions have existed long before the development of the intellectual property system, they were generally not regarded as protectable subject matter due to their inability to meet certain criteria for protection. For instance, they may not fulfill requirements such as originality, fixation, and identifiable author for copyright protection, or novelty and inventive step for patent protection. While there are certain gaps in the ability of IP to safeguard traditional knowledge and traditional cultural expressions, existing intellectual property laws can still be valuable in protecting and promoting the contemporary creations and innovations of indigenous peoples and local communities. By effectively addressing challenges and

pursuing further research, India can harness the potential of Sui Generis systems to create a legal framework that fosters the protection, preservation, and development of its rich traditional knowledge. This will ensure that TK continues to serve not just as a legacy of the past, but as a cornerstone for a sustainable and equitable future.

RECOMMENDATION

It was recognised early enough that an IPR sui generis system was necessary. Biopiracy and misuse are probable consequences of any delays in this field. Also, the idea of conservation and sustainable use of plant genetic resources is being buried by such delays. It is also untrue to say that many groups are denied access to their tradition and knowledge because there is no sui generis system in place. This has a lot to do with the fact that the nations lose considerable amounts of income that they can rightfully need for their own development. Therefore, it is advised that states establish sui generis IPR regimes as soon as possible. Restoring some of the benefits of

traditional knowledge to communities, protecting biodiversity, and ensuring the sustainable use of resources need to be the main objectives.

The link between knowledge that is and is not protected by intellectual property legislation seems to be the main focus of the conventional knowledge discourse. Essentially, one of the main causes of the issue is the way the intellectual property laws interact with traditional knowledge and enable what is considered to be unjust use of it.

It is important to create independent indicators to protect biodiversity of communities but there are many ways to do this. On the international level, declarations, treaties and the Convention of Biological Diversity and at the national level through consultative committees, watchdog bodies, amendments to existing legislation and best practice guidelines.

When legislators work to create a sui generis framework to safeguard TK, In general, they must take into account the following important issues:

1. What is the ideological goal behind the protection?
2. What kind of content or subject matter needs to be safeguarded?
3. What requirements does this material need to fulfill in order to be protected?
4. What kind of people benefit from protection?

5. What are the rights?
6. How are the rights obtained?
7. How are the rights enforced and exercised ?

BIBLIOGRAPHY

1. <https://www.intepat.com/blog/a-sui-generis-system-of-ip-protection-for-traditional-knowledge>
2. <https://www.scconline.com/blog/post/2018/04/23/protecting-traditional-knowledge-the-india-story-till-date/>
3. <https://www.legalserviceindia.com/legal/article-9989-need-of-sui-generis-systems-in-ip-protection.html>
4. https://www.wipo.int/edocs/pubdocs/en/tk/920/wipo_pub_920.pdf
5. <https://www.wipo.int/tk/en/tk/>
6. J.Janewa OseiTutu, Emerging Scholars Series: A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law, Vol 15.

