INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

ISSN: 2582-6433

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ISSN: 2582-6433

RETHINKING LEGAL PROTECTION OF SACRED TRADITIONAL KNOWLEDGE IN INDIGENOUS CEREMONIAL PRACTICES

AUTHORED BY - EESHA S. VICHARE
5th year, BA.LLB
Christ (deemed to be university), Pune, Lavasa

Abstract

Indigenous communities across the globe have, over millennia, developed and transmitted sophisticated bodies of knowledge embedded within ceremonial, spiritual, and customary practices. This sacred traditional knowledge (TK) constitutes not merely cultural heritage, but a living epistemology — one that sustains ecological relationships, communal identity, and the sovereignty of Indigenous peoples. Yet the prevailing architecture of international intellectual property (IP) law, constructed principally upon Western liberal conceptions of individual authorship, temporal novelty, and commercial utility, is fundamentally ill-equipped to protect knowledge that is collectively held, spiritually encoded, and deliberately maintained in secrecy. This article undertakes a doctrinal and analytical examination of the structural inadequacies of the existing IP regime, with particular attention to the irreducibly sacred dimension of traditional knowledge. It critically evaluates key international instruments — including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity (CBD), the Nagoya Protocol, and the newly adopted WIPO Treaty on Genetic Resources and Associated Traditional Knowledge (GRATK Treaty) — and demonstrates that these frameworks, while normatively significant, remain procedurally insufficient to prevent misappropriation. Drawing on documented cases of biopiracy involving turmeric, neem, and ayahuasca, and engaging with the theoretical discourse on sui generis protection, the article argues that a purpose-built legal framework — one incorporating free, prior and informed consent (FPIC), collective ownership, perpetual cultural privacy rights, and community-controlled benefit-sharing — is not merely desirable, but constitutionally imperative as a matter of Indigenous justice and cultural survival.

Keywords: *Traditional Knowledge; Indigenous Rights; Sacred Knowledge; Biopiracy; Sui Generis Protection; Cultural Privacy; Free Prior and Informed Consent (FPIC)*

ISSN: 2582-6433

1. INTRODUCTION

Traditional knowledge (TK) constitutes one of the most intricate and contested frontiers in contemporary legal scholarship. For Indigenous communities worldwide, TK is neither archaic nor merely historical; it is a dynamic, evolving, and cosmologically grounded body of knowledge that governs relationships between peoples, territories, and the non-human world.[1] This knowledge encompasses medicinal practices, agricultural techniques, ecological taxonomies, and — most critically for the purposes of this article — sacred ceremonial practices that encode spiritual law. The latter category, often described as *sacred or secret TK*, demands particular legal attention because its very sanctity is predicated upon controlled transmission, and because its commodification by external actors constitutes not merely economic harm but an assault upon ontological integrity.

Modern intellectual property law, as codified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and administered through the World Intellectual Property Organization (WIPO), was not designed with Indigenous epistemologies in mind.[2] Its conceptual architecture — premised upon individual authorship, fixed temporal originality, and market-oriented disclosure — is not only ill-fitted to communal, intergenerational, and secret knowledge, but in many instances actively hostile to its protection. The consequence is a legal vacuum exploitable by pharmaceutical corporations, bioprospectors, and cultural entrepreneurs who appropriate sacred TK without consent, compensation, or acknowledgement.

The scope of this article is deliberately circumscribed to *sacred and secret TK* embedded in Indigenous ceremonial practices, as distinguished from more general categories of TK such as folk arts or open agricultural knowledge. This distinction is analytically important: sacred TK is subject to indigenous protocols of restricted access, spiritual sanction against unauthorized disclosure, and a communal obligation of guardianship rather than mere ownership. These features render it categorically incompatible with the disclosure logic of patent law and the expiry logic of copyright.

The central thesis advanced in this article is threefold. First, existing IP frameworks are structurally incapable of protecting sacred TK because their foundational premises are irreconcilable with the nature of that knowledge. Second, international legal instruments, though normatively progressive, lack enforceable mechanisms capable of preventing

[1]World Intellectual Property Organization (WIPO), *Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions* (WIPO Pub. No. 933, 2015), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_933.pdf.
[2]Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* 47 (2012).

ISSN: 2582-6433

misappropriation at the national level. Third, only a purpose-built sui generis framework — one grounded in Indigenous sovereignty, FPIC, and perpetual cultural privacy — can provide adequate and just protection.[3]

2. CONCEPTUAL FRAMEWORK OF TRADITIONAL KNOWLEDGE

Traditional knowledge, as a legal category, defies easy definition. WIPO broadly describes it as knowledge, know-how, skills, and practices developed, sustained, and passed down from generation to generation within a community, often forming part of its cultural or spiritual identity.[4] This definition, while expansive, subsumes an enormous heterogeneity of knowledge forms, ranging from openly shared folk medicines to jealously guarded ceremonial chants. Legal analysis that fails to disaggregate this spectrum risks conflating distinct types of knowledge with fundamentally different protection needs.

A productive taxonomy distinguishes between *open TK* — knowledge that communities freely share, such as general ecological practices — and *closed or sacred TK* — knowledge whose circulation is governed by customary protocols, spiritual authority, and the dictates of ceremonial law. Sacred TK includes, but is not limited to, healing songs and chants, ritual plant preparations, initiation rites, sacred site narratives, and cosmological maps. Its defining feature is not secrecy for strategic advantage, as in trade secrets, but secrecy as a constitutive element of its sacred function. Disclosure to uninitiated or unauthorized persons does not merely commodify the knowledge; it desacralizes it, severing its connection to the spiritual economy within which it operates.[5]

The characteristics of sacred TK further resist IP accommodation in multiple dimensions. It is **collective**: custodianship typically vests in a clan, lineage, or ceremonial society rather than any individual. It is **intergenerational**: authorship — if the concept is even apposite — is distributed across ancestral time, with no identifiable moment of individual creation. It is **cosmological**: its validity derives not from empirical verification but from spiritual mandate, and its value cannot be assessed in market terms without distorting its nature. And it is **dynamic**: it evolves through practice and revelation, yet this evolution is governed by customary law rather than by individual creative agency.[6]

[3]Michael Brown, *Who Owns Native Culture?* 3–4 (2003).
[5]Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].
[6]G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples arts. 11–12 (Sept. 13, 2007) [hereinafter UNDRIP].

ISSN: 2582-6433

These characteristics explain why sacred TK requires not merely stronger protection within the existing IP paradigm, but a qualitatively different mode of legal recognition. The conventional IP system rewards disclosure, commodification, and temporal limitation — precisely the opposite of what sacred TK requires. The heightened protection argued for in this article is accordingly premised not on an analogy with conventional IP, but on the recognition of a distinct normative claim: the right of Indigenous peoples to maintain, control, protect, and develop their sacred knowledge and cultural heritage in accordance with their own laws and protocols.[7]

3. LEGAL CHALLENGES IN THE PROTECTION OF SACRED TRADITIONAL KNOWLEDGE

The limitations of the patent system as a mechanism for protecting traditional knowledge are both structural and doctrinal. Patent law requires that an invention be novel, non-obvious, and capable of industrial application — criteria that systematically exclude knowledge which predates the patent application by centuries and which has never been claimed as an individual invention.[8] While this exclusion might appear protective in principle (since pre-existing TK cannot be patented by the community itself), it fails in practice because corporations and researchers have repeatedly exploited documentation gaps to claim patents on applications *derived from* TK while characterizing those applications as sufficiently novel. The result is that TK enters the public domain as prior art, but the commercial derivative — the patent — remains proprietary.

A further doctrinal problem is the IP system's insistence on identifiable authorship. Copyright law, which requires a human author whose creative expression is fixed in a tangible medium, cannot accommodate knowledge whose authorship is ancestral and whose expression is oral, ritual, and performative.[9] The concept of "work made for hire" is similarly inapposite since no employment relationship can extend across generations. Trade secret law, which protects confidential business information, offers superficially closer analogies to secret TK, but requires active measures to maintain confidentiality under commercial law standards — an alien framework for communities whose confidentiality obligations are governed by spiritual

[7]Stephen R. Munzer & Kal Raustiala, The Uneasy Case for Intellectual Property Rights in Traditional Knowledge, 27 *Cardozo Arts & Ent. L.J.* 37, 43 (2009).
[8]Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* 208 (1998).
[9]Madhavi Sunder & Madhavi Sunder, Intellectual Property and Development as Freedom, *in Intellectual Property, Trade and Development* 453, 468 (Daniel Gervais ed., 2007).

ISSN: 2582-6433

law rather than contractual mechanisms.

The phenomenon of biopiracy — the unauthorized extraction and commercialization of biological materials and associated TK — is perhaps the most vivid illustration of the IP system's structural failure. Three landmark cases expose the systemic nature of this failure with particular clarity.

The turmeric case of 1997 is instructive as an early test of the international TK protection regime. The United States Patent and Trademark Office had granted a patent to researchers at the University of Mississippi Medical Center for the use of turmeric in wound healing — knowledge that had been practiced by South Asian communities for over three thousand years and documented in classical Sanskrit texts.[10] India's Council of Scientific and Industrial Research successfully petitioned for reexamination, submitting thirty-two pieces of prior art including ancient manuscripts. The patent was cancelled.[11] The turmeric case is significant not for its resolution — which was ultimately favorable — but for what it reveals about the inadequacy of the prior art mechanism as a mode of TK protection. India's success was contingent upon the existence of written, accessible documentation. Sacred TK that exists only in oral ceremonial transmission, or that communities deliberately withhold from public documentation, would have no such evidentiary defense.[12]

The neem case similarly illustrates both the scale of biopiracy and the fragility of documentation-dependent defenses. Over forty patents relating to neem-derived fungicidal and pesticidal properties were granted in Europe and the United States, notwithstanding millennia of documented Indian and African use.[13] The European Patent Office revoked key patents in 2000 following opposition proceedings brought by the Indian government and international NGOs.[14] Yet the litigation spanned over a decade, consuming resources far beyond the capacity of most Indigenous communities. The neem case also illustrates the *commodification paradox*: the traditional knowledge itself remained unprotected even as the patents were revoked, meaning that any entity could subsequently file a slightly modified application.[15]

[10]Kristen A. Carpenter et al., In Defense of Property, 118 *Yale L.J.* 1022, 1079 (2009).
[11]Council of Scientific and Industrial Research v. Activists for Alternatives (Turmeric Case), U.S. Patent No. 5,401,504, reexamination (U.S. Pat. & Trademark Off. 1997). The USPTO cancelled the patent after India's CSIR submitted prior art documentation demonstrating centuries of documented use.
[12]WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles, WIPO Doc. WIPO/GRTKF/IC/7/5 (Nov. 22, 2004).
[13]Robert M. Strozier, Traditional Knowledge, Genetic Resources and Intellectual Property Rights: Navigating the International Framework, 13 *J. Marshall Rev. Intell. Prop. L.* 749, 755 (2014).
[14]Vandana Shiva et al., The Neem Campaign: Organising Against Biopiracy, *in The Globalisation of Natural Resources* 112, 118 (1997). The European Patent Office revoked EP0436257 in 2000 following opposition by India and international NGOs. See also EPO, Opposition Division Decision, EP0436257 (May 9, 2000).
[15]35 U.S.C. §§ 101–103 (2018).

ISSN: 2582-6433

The ayahuasca patent case is arguably the most egregious from the perspective of sacred TK, because the subject matter was not merely medicinal but ceremonially central to Amazonian Indigenous spiritual practice. In 1986, a United States patent was granted to Loren Miller for a variety of *Banisteriopsis caapi* — the vine used in ayahuasca ceremonies — which had been used by dozens of Amazonian peoples in sacred healing and visionary rituals for centuries.[16] The Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA) successfully challenged the patent, which was eventually cancelled, but the intervening period had exposed fundamental deficits in the system's capacity to recognize ceremonial knowledge as a cognizable prior art category.[17] That a spiritual sacrament could be subject to proprietary claim by a non-Indigenous researcher reveals the depth of the legal system's epistemological bias.

The most pernicious doctrinal trap in this landscape is what scholars have termed the *disclosure trap*.[18] IP systems typically require applicants to disclose the origins of TK-derived inventions. While disclosure requirements were designed to prevent biopiracy, they paradoxically incentivize communities to document and publish their knowledge — thereby placing it permanently in the public domain — as a prerequisite for protection. Communities protecting sacred knowledge through deliberate secrecy have no means of invoking prior art defenses without self-destructively disclosing what they seek to protect.[19] This doctrinal paradox confirms that patent law, far from being merely inadequate, is structurally antithetical to the protection of sacred TK.

The documentation gap compounds these difficulties. Indigenous sacred knowledge exists primarily in oral, performative, and ceremonial modes. Requirements of fixation and written documentation not only fail to capture the living nature of this knowledge but impose a literacy-centric epistemological standard that privileges Western knowledge systems.[20] Databases of traditional knowledge, such as India's Traditional Knowledge Digital Library, represent one response to this gap, but they raise their own problems of access, control, and the

[16]Agreement on Trade-Related Aspects of Intellectual Property Rights art. 27, Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].
[17]In re Patent Application of International Plant Medicine Corporation, U.S. Patent No. 5,751,803 (Ayahuasca Patent), cancelled following opposition by the Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA). See Efraín Jaramillo, The Ayahuasca Patent Revocation: Implications for Protection of Traditional Knowledge, 36 *Geo. Wash. Int'l L. Rev.* 747 (2004).
[18]Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* 65–70 (1997).
[19]Madhavi Sunder, IP3, 59 *Stan. L. Rev.* 257, 281 (2006) (coining "disclosure trap" to describe how documentation requirements force communities to publicize knowledge as a precondition for protection, paradoxically facilitating exploitation).
[20]Graham Dutfield, *Intellectual Property Rights and the Life Science Industries: Past, Present and Future* 172 (2d ed. 2009).

ISSN: 2582-6433

commodification risk attendant on making knowledge searchable by corporations.

4. ETHICAL CHALLENGES: BIOPIRACY, CULTURAL PRIVACY, AND COMMODIFICATION

The ethical dimensions of sacred TK misappropriation extend well beyond economic harm and into the domain of epistemic justice and cultural survival. Biopiracy — defined as the appropriation of the genetic resources and associated TK of Indigenous and local communities without their free, prior, and informed consent — is not merely an IP violation; it is a continuation of colonial expropriation through legal mechanism.[21] The issuance of a patent over ayahuasca or turmeric does not simply deprive a community of revenue; it converts a spiritually constituted practice into a commercial commodity, subject to the logic of market exclusion and capital accumulation.

The concept of cultural privacy deserves particular analytical weight in the context of sacred TK. Privacy, in its contemporary legal formulation, typically protects individual informational autonomy. Its extension to cultural or communal privacy — the right of a community to control information about its own sacred practices — is less doctrinally developed, but finds normative support in UNDRIP's recognition of Indigenous peoples' rights to maintain, protect, and develop their cultural heritage and traditional knowledge.[22] Cultural privacy, as applied to sacred TK, encompasses not merely the right to prevent disclosure but the right to determine whether knowledge may be shared, under what conditions, and with what ceremonial authorization. It is fundamentally incompatible with the mandatory disclosure architecture of patent law.

Spiritual harm constitutes a category of injury that the law has consistently failed to cognize adequately. When sacred ceremonial knowledge is appropriated, decontextualized, and commodified, the harm is not merely symbolic. Ceremonial songs, healing rituals, and plant preparations derive their efficacy — within the knowledge system that sustains them — from their relational and sacred context.[23] Their extraction into patent applications or pharmaceutical products severs the relational web within which they are meaningful. For many Indigenous communities, this desacralization constitutes a violation of cosmological law that no monetary remedy can repair. The law's failure to recognize non-economic, spiritually constituted harm

[21]Shiva, *supra* note 14, at 70–75.
[22]Michael F. Brown, Can Culture Be Copyrighted?, 39 *Current Anthropology* 193, 201 (1998).
[23]Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* 88 (2015).

ISSN: 2582-6433

reflects a deep ontological bias that a reformed legal framework must confront directly.[24]

Decontextualization — the process by which knowledge is stripped of its cultural, relational, and spiritual context and reframed within a Western scientific paradigm — is a form of epistemic violence that compounds economic exploitation.[25] When ayahuasca is reclassified from a sacred ceremonial medicine to a patentable *variety* of plant, the legal system does not merely grant a property right; it imposes a reclassification of reality that erases the ontological framework within which the knowledge is meaningful. This has been identified in the anthropological literature as a form of *cultural strip-mining* — extracting value while destroying the ecological and relational conditions that produced it.[26]

The commodification of sacred TK also engenders intergenerational harm. Knowledge held in trust across generations carries obligations to past and future community members that are not reducible to present preferences. Alienation of sacred TK, even with the consent of currently living community members, may violate obligations to ancestors and future generations that are recognized in customary law. Legal frameworks that allow individuals or even elected community representatives to consent to TK disclosure must grapple with the trans-temporal dimension of custodianship.

5. THE INTERNATIONAL LEGAL FRAMEWORK: NORMATIVE PROMISE AND STRUCTURAL LIMITS

The international legal framework for TK protection has evolved considerably since the 1990s, yet remains inadequate to the protection of sacred knowledge. Four instruments merit critical evaluation: UNDRIP, the CBD, the Nagoya Protocol, and the WIPO GRATK Treaty.

UNDRIP, adopted by the General Assembly in 2007, Represents the most comprehensive articulation of Indigenous peoples' collective rights in international law.[27] Articles 11, 12, and 31 affirm Indigenous peoples' rights to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, including the human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games, and visual and

[24]Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* 55 (2017).
[25]See generally Laurelyn Whitt, *Science, Colonialism, and Indigenous Peoples: The Cultural Politics of Law and Knowledge* 155–62 (2009).
[26]See Carpenter et al., *supra* note 9, at 1085–86 (arguing that the commodification of ceremonial knowledge fractures its spiritual and relational efficacy).

ISSN: 2582-6433

performing arts.[28] These provisions establish a normative baseline of considerable significance. However, UNDRIP operates as a declaration rather than a binding treaty; it lacks direct enforceability mechanisms at the national level and depends entirely upon domestic legislative implementation, which remains incomplete in most jurisdictions.

The CBD's Article 8(j) requires state parties to respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles, subject to national legislation and with approval and involvement of the holders of such knowledge.[29] While significant as a binding treaty obligation, Article 8(j) is hedged by sovereignty reservations and the qualification "as far as possible and as appropriate" — a phrase that has been widely criticized as gutting the provision of its normative force.[30] The CBD also operates primarily at the level of genetic resources, and its application to intangible sacred ceremonial knowledge has been contested.

The Nagoya Protocol, adopted in 2010, establishes a framework for access and benefit-sharing (ABS) from the utilization of genetic resources and associated traditional knowledge.[31] Articles 7 and 8 require that access to TK held by Indigenous communities be obtained with their prior informed consent and that utilization be subject to mutually agreed terms for benefit-sharing.[32] The Nagoya Protocol represents a meaningful advance insofar as it creates binding ABS obligations for 138 state parties. However, its effectiveness is limited by weak enforcement mechanisms, the difficulty of monitoring compliance in global supply chains, and its primary orientation toward *genetic resources* rather than the sacred knowledge systems within which those resources are embedded.[33]

The WIPO GRATK Treaty, adopted at the Diplomatic Conference in May 2024, constitutes the first internationally binding IP instrument requiring disclosure of the origin of genetic resources and associated traditional knowledge in patent applications.[34] It represents a significant normative achievement, closing a longstanding loophole in the patent disclosure system. Nevertheless, the Treaty's protections are primarily *defensive* — they aim to prevent

[28]UNDRIP, *supra* note 5, arts. 11(1), 12(1), 31(1).
[29]CBD, *supra* note 4, art. 8(j).
[31]Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Oct. 29, 2010, U.N. Doc. UNEP/CBD/COP/DEC/X/1 [hereinafter Nagoya Protocol].
[32]Nagoya Protocol, *supra* note 31, arts. 7–8.
[33]Gurdial Singh Nijar, The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Challenges, 35 *Third World Quarterly* 1065, 1072 (2014).
[34]WIPO, Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Associated Traditional Knowledge, Geneva Act (May 24, 2024) [hereinafter WIPO GRATK Treaty]. The Treaty was adopted on May 24, 2024, and represents the first internationally binding IP instrument requiring disclosure of the origin of genetic resources and associated TK in patent applications.

ISSN: 2582-6433

the misappropriation of TK in patent applications but do not create positive rights in TK holders, do not protect undisclosed or secret TK, and do not establish mechanisms for benefit-sharing over existing patents. The Treaty accordingly represents a necessary but insufficient step in the reform of the international TK protection regime.[35]

6. THE CASE FOR A SUI GENERIS FRAMEWORK

The cumulative inadequacy of existing frameworks makes the case for a sui generis system compelling. A *sui generis* approach — one designed specifically for TK rather than adapted from existing IP categories — would not merely address individual doctrinal gaps but would reconceptualize the foundational premises upon which TK protection rests. The following elements are proposed as constitutive of such a framework.

Free, prior and informed consent (FPIC) must function as the central operative principle of any TK protection system. FPIC, as articulated in UNDRIP and the Nagoya Protocol, requires that Indigenous communities' agreement to any use of their knowledge be secured in advance, in full knowledge of the implications, and without coercion.[36] A sui generis system should operationalize FPIC through enforceable legal mechanisms — not merely procedural guidelines — that impose genuine legal liability on actors who utilize TK without consent. This requires both national legislative implementation and international monitoring mechanisms with enforcement capacity.

Collective ownership must replace the individual authorship paradigm. A sui generis framework should vest TK rights in the community, clan, or ceremonial authority recognized under customary law, with legal personality conferred upon these collective entities for the purposes of IP enforcement.[37] This formulation would enable communities to litigate, license, and exclude on their own terms — and to do so in accordance with internal customary governance rather than externally imposed organizational forms. The question of which community body exercises custodial authority must be determined by Indigenous customary law rather than state administrative decision.

The temporal architecture of IP law must be wholly abandoned in the context of sacred TK. Copyright terms, patent durations, and trade secret protections are all temporally bounded in ways that are premised on economic rationales — incentivizing creation, balancing public

[35]Srividhya Ragavan, The Globalization of Intellectual Property Protections, 7 *Vand. J. Ent. & Tech. L.* 427, 445 (2005).
[36]UNDRIP, *supra* note 5, art. 32(2); CBD, *supra* note 4, art. 8(j).
[37]Daniel F. Robinson, *Confronting Biopiracy: Challenges, Cases and International Debates* 132–38 (2010).

ISSN: 2582-6433

access, rewarding disclosure. None of these rationales applies to sacred TK, whose custodianship is perpetual and whose removal from communal control constitutes permanent harm.[38] A sui generis framework should establish permanent, inalienable rights over sacred TK that cannot be extinguished by non-use, commercial exploitation, or disclosure by unauthorized parties.

Cultural privacy rights should be codified as a positive legal entitlement of Indigenous communities — encompassing the right to maintain sacred knowledge in secrecy, the right to refuse access or documentation requests, and the right to determine the conditions and protocols of any permissible transmission.[39] Critically, this must include protection against the unauthorized documentation of sacred TK by researchers, corporations, or state agencies — a form of appropriation that currently occupies a legal grey zone in most jurisdictions. Negative databases — confidential registries maintained by and for Indigenous communities, accessible only to authorized parties — should be legally recognized as establishing prior art without mandating public disclosure, thereby resolving the disclosure trap.

Benefit-sharing mechanisms must be robust, monitored, and calibrated to non-economic values.[40] Where communities choose to permit access to TK, the benefits flowing from its utilization must be shared equitably, with sharing arrangements negotiated in accordance with community protocols rather than standard commercial licensing practices.[41] The framework must also recognize that for certain categories of sacred TK, no economic benefit can constitute adequate compensation; the appropriate response in such cases is absolute exclusion from commercial utilization, backed by criminal sanction. This represents a departure from the access-and-benefit-sharing paradigm and toward an unconditional prohibition paradigm for the most sacred categories of knowledge.[42]

7. CONCLUSION

This article has demonstrated that the protection of sacred traditional knowledge requires not a reform of existing IP frameworks but their wholesale reconceptualization. The structural premises of patent law — individual authorship, novelty, disclosure, and temporal

[38]Marianne Levin, On the Possibility of a Sui Generis System for the Protection of Traditional Knowledge, 10 *Marquette Intell. Prop. L. Rev.* 1, 19–22 (2006).
[39]See Carpenter et al., *supra* note 9, at 1100–05.
[40]Nagoya Protocol, *supra* note 31, arts. 5–6.
[41]See generally Tania Bubela et al., Bioprospecting and Traditional Knowledge: Approaches to Benefit Sharing, in *Traditional Knowledge in Policy and Practice* 67 (Suneetha M. Subramanian & Balakrishna Pisupati eds., 2010).
[42]Peter Drahos & John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* 215 (2002).

ISSN: 2582-6433

limitation — are irreconcilable with knowledge that is collective, ancestral, secret, and cosmologically constituted. International instruments, from UNDRIP to the WIPO GRATK Treaty, have made normative progress, but they remain institutionally fragile, enforcement-deficient, and epistemologically constrained by the IP paradigm they nominally seek to supplement.

The cases of turmeric, neem, and ayahuasca are not aberrations but symptoms of a systemic failure — one that reflects the deeper incapacity of a legal system designed for commodity markets to reckon with the sacred. The appropriate response is a sui generis framework anchored in FPIC, collective perpetual ownership, cultural privacy rights, and community-controlled benefit-sharing. Such a framework would not merely protect Indigenous knowledge; it would affirm the right of Indigenous peoples to define the terms upon which their knowledge systems engage — or decline to engage — with the global economy.

The protection of sacred TK is, at its core, a matter of justice rather than merely of intellectual property policy. It is a recognition that the colonial structures through which Indigenous knowledge has historically been expropriated have found modern expression in patent applications and bioprospecting agreements. To dismantle those structures requires legal instruments that take Indigenous sovereignty seriously — not as a rhetorical aspiration, but as a constitutive principle of the international legal order. The legal community has both the analytical tools and the moral obligation to make that case.