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Moving Towards Effective IP Protection for India's Traditional Wisdom

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Introduction

India holds a vast and remarkable repository of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE), which the author collectively terms as Traditional Wisdom (TW). This wisdom is intricately woven into the country's rich ecological diversity and cultural plurality. These systems encompass a wide spectrum, like Ayurveda, Siddha, tribal healing methods, oral traditions, folk music, dance, and artisanal crafts, each representing living, evolving traditions that are integral to the identity, spirituality, and livelihoods of indigenous and local communities. Far from being relics of the past, these practices continue to thrive as dynamic expressions of collective heritage, sustained through oral transmission, ritual, mentorship, and communal memory.

India's current Intellectual Property (IP) regime, rooted in Western legal principles, inadequately protects TW. It emphasises individual authorship and commercialisation, conflicting with the collective, spiritual, and intergenerational nature of TW, leaving indigenous systems marginalised and vulnerable to misappropriation. India has introduced mechanisms like the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Traditional Knowledge Digital Library (TKDL), which have offered some degree of defensive protection. However, these initiatives are narrowly tailored and reactive in nature. They do not constitute a holistic or forward-looking legal response capable of addressing the complex realities and evolving needs of TW holders across the country.

In the absence of a comprehensive and culturally rooted legal framework, traditional systems continue to be exploited and embezzled, often without consent, benefit-sharing, or acknowledgement of source communities. This gap in legislative design perpetuates historical injustices and deepens the marginalisation of the very communities that have nurtured these knowledge systems for generations.

This article explores the philosophical and structural gaps between India's current IP regime and the values of its TK systems. Through analysis of legal gaps, case studies on cultural misappropriation, and policy flaws, it advocates for a transformative reform based on a '*sui generis*' legal framework that reflects India's pluralistic context, upholds community rights, and ensures fair recognition and benefit-sharing for TW holders.

Nature of Traditional Knowledge

The TK and TCE are dynamic systems of knowledge and expression that guide and sustain the social, spiritual, and ecological lives of the

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communities that embody them. According to the World Intellectual Property Organisation (WIPO)[1], TK refers to "*know-how, skills, innovations, and practices that are developed, sustained, and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.*"

In the Indian context, the National Intellectual Property Rights Policy, 2016[2] also recognises TK as knowledge developed over generations in a particular community and often held collectively, particularly in fields such as traditional medicine, agriculture, and artisanal practices. Categories of TK could include, but are not limited to, agricultural knowledge, scientific knowledge, technical knowledge, ecological knowledge, medicinal knowledge, including related medicines and remedies, and biodiversity-related knowledge.

TK is holistic, experiential, and context-specific. Unlike modern scientific systems that rely on replicable experiments and empirical verification, TK evolves through a deep, symbiotic interaction with local ecosystems. For instance, indigenous methods of weather forecasting, water conservation, and herbal medicine are intimately tied to seasonal cycles, local biodiversity, and cultural rituals. It is knowledge born not in isolation, but through centuries of cumulative interactions between humans and nature. Importantly, this knowledge is transmitted through oral traditions, rituals, storytelling, apprenticeship, and communal practices, often without formal documentation. This absence of written records, however, does not diminish its sophistication or validity.

Nature of Traditional Cultural Expressions

Parallelly, TCE, also referred to as "expressions of folklore", represents the outward, performative, and aesthetic manifestations of collective creativity. WIPO[3] defines TCE as "*tangible and intangible forms in which traditional culture is expressed,*" *including "music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives.*"

In India, TCE spans a vast spectrum, ranging from tribal murals, folk dances like Garba and Bihu, and regional weaving techniques such as Kanchipuram and Pochampally, to spiritual chants and oral epics. These expressions are not merely artistic pursuits; they are often interwoven with religious beliefs, moral values, and community governance structures, forming the soul of cultural continuity.

The TK and TCE, collectively referred to as Traditional Wisdom (TW) for ease of reference, are fundamentally collective and passed down through generations. This communal authorship is further reinforced by the non-commercial and often spiritual value attributed to them.

For example, a ritual dance or medicinal chant is regarded as sacred and inseparable from the community's identity, rather than as a commercial product subject to copyright or trade.

[1] https://www.wipo.int/en/web/traditional-knowledge/tk/index (accessed on 10 Aug 2025)

[2] https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/2016-_National_IPR_Policy-2016__English_and_Hindi.pdf (accessed on 8 Aug 2025)

[3] https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index (accessed on 10 Aug 2025)

Consequently, commodifying or licensing these expressions without the community's consent raises serious ethical and cultural concerns. This essential nature of TW creates deep structural conflicts with contemporary intellectual property frameworks, both globally and within India.

WIPO on the Protection of TK and TCE

The WIPO has been instrumental in developing international strategies to safeguard TK and TCE, recognising their communal ownership, cultural significance, and intergenerational transmission. WIPO's framework addresses the limitations of conventional intellectual property systems, which often overlook the collective and evolving nature of TK and TCE, making them susceptible to misappropriation, biopiracy, and unauthorised commercialisation. Its approach is twofold: Defensive protection and positive protection.

Defensive protection aims to prevent outsiders from wrongfully obtaining IP rights over TK and TCEs by documenting them as "prior art," thereby blocking illegitimate patents. India's TKDL exemplifies this, compiling traditional medicinal knowledge in formats accessible to patent examiners worldwide to prevent patents lacking novelty. Defensive measures also protect sacred symbols, motifs, and culturally significant terms from misuse in trademarks or commercial branding, preserving the integrity of cultural heritage.

Positive protection, by contrast, empowers Indigenous and local communities as rightful custodians of their TK and TCEs, granting them legal authority to control access, usage, and benefit-sharing. This can be achieved through adapting existing IP systems, creating *sui generis* legal frameworks tailored to community needs, and implementing regulations for equitable royalties, benefit-sharing agreements, and access protocols. Positive protection also ensures legal remedies against unauthorised exploitation and supports the documentation, revitalisation, and promotion of TK in ways that respect cultural values and sovereignty.

Together, these strategies form a holistic, WIPO-endorsed approach that balances the prevention of misuse with the active empowerment of communities, ensuring that TK and TCE are preserved, respected, and fairly rewarded, while contributing to cultural diversity, sustainable development, and the protection of intangible heritage in the global IP landscape.

UNESCO on TK and TCE

The United Nations Educational, Scientific and Cultural Organisation (UNESCO), drawing from Article 8(j) of the Convention on Biological Diversity[4], defines TK as the collective knowledge, innovations, and practices

[4] https://www.cbd.int/convention/articles/default.shtml?a=cbd-08 (accessed on 8 Aug 2025)

Article 8(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

of Indigenous and local communities that are intrinsically linked to their cultural, ecological, and spiritual life, and vital for biodiversity conservation and sustainable use. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage[5] broadens this perspective by recognising intangible heritage as evolving practices, expressions, and skills that foster identity, continuity, and cultural diversity. Similarly, Article 4(3) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions[6] situates cultural expressions within the symbolic, artistic, and value-laden dimensions of cultural identity. Through its Local and Indigenous Knowledge Systems (LINKS)[7] programme, UNESCO supports Indigenous peoples and local communities in documenting, transmitting, and revitalising their unique knowledge systems, while nurturing transdisciplinary collaboration between fields such as ecology, anthropology, law, and cultural studies. This approach affirms that TCE are not mere artistic products but deeply rooted embodiments of community identity, environmental stewardship, and social governance. LINKS facilitates respectful dialogue between traditional and scientific knowledge, generating hybrid solutions to pressing global issues like climate change and biodiversity loss. In doing so, UNESCO emphasises that TW are indispensable not only to cultural diversity but also to ecological sustainability, ensuring their continued vitality as dynamic, living systems that enrich humanity's shared heritage and guide sustainable futures.

Limitations within the Existing IP Framework

The existing IPR framework poses significant limitations when it comes to protecting the TW. At its core, the conventional IPR system is designed to grant exclusive, privatised rights to identifiable individuals or corporate entities, reflecting a model of ownership based on singular authorship or inventorship. This stands in stark contrast to TK, which is collectively owned and nurtured by communities over many generations. The limitations of the existing IPR framework make it fundamentally ill-suited to safeguard TK and TCE, as it is built on principles that conflict with the nature of such knowledge.

Traditional Knowledge Digital Library (TKDL)

India's Traditional Knowledge Digital Library (TKDL)[8] is a pioneering initiative aimed at preventing the misappropriation of traditional medicinal knowledge on international patent platforms. Jointly developed by the Council of Scientific and Industrial Research (CSIR) and the Ministry of AYUSH, the TKDL documents, digitises, and translates traditional medicinal practices, primarily from Ayurveda, Unani,

[5] https://ich.unesco.org/doc/src/15164-EN.pdf (accessed on 10 Aug 2025)

[6] https://www.unesco.org/en/legal-affairs/convention-protection-and-promotion-diversity-cultural-expressions (accessed on 12 Aug 2025)

[7] https://www.unesco.org/en/links (accessed on 10 Aug 2025)

[8] https://www.tkdl.res.in/tkdl/langdefault/common/Home.asp?GL=Eng (accessed on 8 Aug 2025)

Siddha, and Yoga, into languages and formats accessible to global patent examiners. While the TKDL has been effective in challenging wrongful patents abroad and serves as a valuable defensive tool, its scope remains fundamentally limited within the prevailing IP framework.

Fundamentally, the TKDL does not grant any positive rights or legal entitlements to the indigenous communities who are the true custodians of this knowledge. It focuses solely on preventing patent grants, offering no mechanisms for benefit-sharing, prior informed consent, or community control over how their knowledge is accessed or used. As such, the TKDL operates within a defensive, state-centric model that reinforces the disconnect between community-held TK and IP law's emphasis on individual rights and commercial exploitation. In its current form, the TKDL reflects the broader limitations of the existing IP regime and underlines the urgent need for a more inclusive and community-driven legal framework.

Biological Diversity Act, 2002

The Biological Diversity Act, 2002, represents a significant legislative effort by India to regulate access to biological resources and associated TK, while ensuring Prior Informed Consent (PIC) and Fair and Equitable Benefit Sharing (FEBS) with local communities. The National Biodiversity Authority (NBA)[9], along with State Biodiversity Boards, is tasked with overseeing the implementation of these provisions. On paper, the Act aligns with global commitments under the Convention on Biological Diversity (CBD) and aims to protect the rights of indigenous and local communities over their biological heritage. However, in practice, the Act suffers from serious limitations. Implementation is often hampered by bureaucratic delays, unclear procedures, and overlapping jurisdictions among central, state, and local authorities. Many communities remain unaware of their rights under the law, and the procedural complexities discourage participation. Moreover, benefit-sharing agreements, when they occur, are rarely transparent, and enforcement mechanisms remain weak and inconsistent. This has led to limited real-world impact in terms of ensuring community control or meaningful compensation for the use of their resources or knowledge.

Protection of Plant Varieties and Farmers' Rights Act, 2001

The Protection of Plant Varieties and Farmers' Rights PPVFR) Act 2001 is a landmark legislation that seeks to strike a balance between the rights of plant breeders and the traditional rights of farmers. Unlike conventional IP laws, the PPVFR Act[10] uniquely acknowledges the invaluable contribution of farmers in conserving, improving, and preserving genetic plant resources. It grants farmers the right to save, use, sow, re-sow, exchange, and sell farm-saved seeds, including registered varieties, thereby safeguarding age-old agricultural practices. Moreover, the Act provides for benefit sharing when commercial breeders utilise traditional or farmer-developed varieties as the genetic basis for new plant varieties.

[9] http://nbaindia.org/ (accessed on 8 Aug 2025)

[10] https://plantauthority.gov.in/ (accessed on 8 Aug 2025)

Despite its progressive spirit, the Act's implementation faces several significant hurdles. One major challenge is the increasing consolidation of corporate power in the seed sector, which undermines the practical autonomy of farmers despite their formal rights. The complexity of the registration and benefit-sharing processes, coupled with bureaucratic red tape, further alienates rural communities. Most critically, a vast number of small and marginal farmers remain unaware of their rights under the Act and lack the legal literacy or institutional support necessary to assert them. Consequently, benefit-sharing claims are rarely initiated or pursued, and farmers are often excluded from the economic value derived from their contributions.

Patents, Trademarks, Copyrights, and GIS

India's IP regime, comprising the Patents Act, 1970[11]; the Copyright Act, 1957[12]; the Trademarks Act, 1999[13]; and the Geographical Indications of Goods (Registration and Protection) Act, 1999[14] remains structurally unsuited to protect TK and TCEs, which are communal, intergenerational, and often spiritual in nature.

Patent law, despite excluding TK from patentability under Section 3(p), requires novelty, inventive step, and industrial applicability criteria that ancient, collectively generated knowledge rarely meets. Copyright law, which demands fixation in a tangible form and identifiable authorship, similarly fails, as TCEs are often orally transmitted, fluid, and communally created. Trademarks can brand traditional products but cannot safeguard the underlying cultural meaning or knowledge, and they impose ongoing commercial and administrative obligations beyond many communities' capacities. Geographical Indications (GIs) have offered some protection for products like Darjeeling tea or Pashmina wool, but they secure only the product name and reputation, not the intangible heritage or practices behind them, and the costly, complex registration process often benefits traders over knowledge holders.

Across these regimes, the emphasis on individual ownership, commercial exploitation, and time-bound protection clashes with TK and TCEs' collective, non-commercial, and perpetual character. The fixation, disclosure, and registration requirements embedded in conventional IP law are alien to oral traditions, ritual practices, and ecological stewardship systems. India lacks a comprehensive *sui generis* framework tailored to these realities, one that could recognise community custodianship, ensure benefit-sharing, and prevent misappropriation.

As a result, communities remain vulnerable to cultural appropriation and biopiracy, often without the legal or financial means to seek redress. Without urgent reform, India risks

[11] https://ipindia.gov.in/writereaddata/portal/ipoact/1_31_1_patent-act-1970-11march2015.pdf (accessed on 8 Aug 2025)

[12] https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf (accessed on 8 Aug 2025)

[13] https://ipindia.gov.in/Trademarks/about_us_tm (accessed on 8 Aug 2025)

[14] https://ipindia.gov.in/writereaddata/Portal/IPORule/1_27_1_gi-rules.pdf (accessed on 8 Aug 2025)

not only the erosion of its cultural heritage but also the loss of an opportunity to lead globally in crafting inclusive, culturally sensitive IP protections.

Instances of Misappropriation and Cultural Exploitation

Turmeric Patent Case

The Turmeric Patent Case[15] is a landmark instance of biopiracy, underscoring the vulnerability of TK to misappropriation under Western intellectual property regimes. In 1995, the United States Patent and Trademark Office (USPTO) granted a patent to American researchers for turmeric's wound-healing properties—knowledge deeply embedded in Indian Ayurveda and household practice for centuries. Turmeric (*Curcuma longa*), valued for its anti-inflammatory and antiseptic qualities, was widely documented in ancient texts and folk medicine, making the patent an unjust privatisation of public-domain knowledge. The Indian government, through the CSIR, contested the patent, presenting extensive documentary evidence that turmeric's medicinal uses were neither novel nor inventive but part of a living heritage. This challenge highlighted a fundamental disconnect between Western patent criteria—novelty, inventive step, industrial applicability—and TK's collective, cumulative, and ancient character. In 1997, the USPTO revoked the patent, marking one of the first major victories against the wrongful appropriation of indigenous knowledge in a global forum. Beyond its immediate legal significance, the case catalysed broader reforms in India's TK protection strategies, leading to initiatives like the TKDL to document prior art and prevent similar misappropriations. Internationally, it strengthened calls for ethical bioprospecting, prior informed consent, and equitable benefit-sharing under the Convention on Biological Diversity and the Nagoya Protocol. Ultimately, the turmeric case stands as both a cautionary tale and a precedent, demonstrating the urgent need for proactive, culturally sensitive, and legally robust mechanisms to safeguard indigenous heritage from exploitation in a globalised IP landscape.

Neem Patent Controversy

The Neem Patent Controversy is one of the most cited examples of biopiracy, illustrating how TK can be wrongfully appropriated under Western IP regimes. Neem (*Azadirachta indica*), native to the Indian subcontinent, has for centuries been integral to Indian agriculture, medicine, and culture. Its seeds, leaves, and bark have long been used as natural pesticides, antiseptics, and skin treatments—knowledge preserved in Ayurvedic texts and rural oral traditions. In 1994, the European Patent Office (EPO)[16] granted European Patent No. 0436257 to W.R. Grace & Co. and the United States Department of Agriculture for a method of extracting and stabilising neem oil for fungicidal use. To Indian farmers and scientists, this "invention" was nothing new. Neem-based pest control had been

[15] https://www.wipo.int/export/sites/www/tk/en/docs/use-of-turmeric-in-wound-healing-e.pdf (accessed on 8 Aug 2025)

[16] https://patents.google.com/patent/EP0436257A1/en (accessed on 8 Aug 2025)

part of community practice for generations. The patent thus exemplified biopiracy: claiming monopoly rights over communal knowledge without consent or benefit-sharing.

In 1995, a coalition including the Indian government, environmental activist Vandana Shiva, the International Federation of Organic Agriculture Movements (IFOAM), and Non-Government Organisations (NGO) challenged the patent, arguing it lacked novelty and inventive step. They presented extensive prior art, from Sanskrit scriptures to colonial botanical records and modern agricultural manuals, showing that neem's fungicidal properties were long known. In 2000, the EPO revoked the patent, a decision upheld in 2005, affirming that the claimed use was part of the public domain.

The case spurred systemic reforms, most notably the creation of India's TKDL in 2001, which digitises and translates ancient medical and agricultural knowledge for global patent examiners to prevent similar misappropriations. Internationally, it influenced discussions under the CBD and WIPO's Intergovernmental Committee, strengthening calls for *sui generis* TK protection and equitable benefit-sharing. While the Neem victory was historic, it also revealed that defensive protection alone is insufficient. Proactive recognition of community custodianship remains essential to prevent future exploitation.

Basmati Rice Dispute

The Basmati Rice Dispute is a prominent example of biopiracy, highlighting the vulnerability of traditional agricultural heritage under global IP systems. Basmati, a fragrant long-grain rice cultivated for centuries in the Indian subcontinent, is prized worldwide for its aroma, texture, and cultural significance. In the late 1990s, Texas-based RiceTec Inc. secured a U.S. patent on certain "Basmati rice lines and grains," seeking exclusive rights over a crop deeply tied to Indian farming traditions. These moves sparked outrage, as they attempted to monopolise centuries-old knowledge and genetic resources without recognition or benefit-sharing.

India mounted a strong legal challenge, arguing that Basmati's unique qualities were the result of traditional cultivation in specific regions, making RiceTec's claims neither novel nor inventive. The dispute also raised issues of GIs, as Basmati is officially recognised under India's GI registry. While India succeeded in narrowing or invalidating parts of the patent, the case underscored the heavy costs, time, and expertise required to defend heritage in foreign jurisdictions.

Ultimately, the Basmati case revealed structural flaws in the global IP regime, which often overlooks the communal nature of traditional products. It reinforced the need for stronger GI protection, *sui generis* TK laws, and proactive international measures to prevent similar acts of misappropriation.

Cultural Appropriation in Fashion and Media

Cultural appropriation in fashion and media refers to the unacknowledged or inappropriate adoption of elements from a marginalised culture by members of a dominant culture, often for profit or aesthetic appeal. In the realm of TK and TCEs, it occurs when sacred, symbolic, or identity-rich designs, motifs,

garments, music, or performances are taken from their original cultural context and repurposed in ways that distort or commodify their meaning. The fashion industry has frequently been criticised for incorporating traditional Indian textiles, tribal embroidery, and indigenous patterns such as Rajasthani Bandhani, Kutch embroidery, or Warli art into global collections marketed as "exotic" or "bohemian," without credit or compensation. This strips such works of their ritual and historical significance, reducing heritage to a fleeting style trend.

In the media, appropriation is amplified by global reach. Films, advertising, and music often borrow indigenous songs, dances, and attire for visual effect, misrepresenting or trivialising their original meaning. Sacred performances may be reduced to entertainment, and traditional chants sampled in music without consent, as seen in cases involving Gond and Khasi folk traditions.

Legally, both Indian and international IP systems struggle to protect communal, intergenerational creativity lacking identifiable authorship. While GI safeguard certain goods, many art forms fall outside its scope. WIPO discussions on protecting TCEs remain inconclusive, leaving room for exploitation.

Addressing this issue requires more than legal fixes—it demands ethical reform. Respectful cultural exchange must involve prior informed consent, fair compensation, and genuine collaboration with source communities. Representation should move beyond tokenism, ensuring narratives are shaped by cultural custodians themselves. Only then can fashion and media engage with heritage in a way that enriches rather than exploits.

Need for *sui generis* Legislation

The TW holds immense cultural, ecological, and economic significance, making its recognition and protection a matter of urgent priority. Safeguarding TW is essential to ensure the active participation of indigenous communities in decision-making processes, uphold their cultural rights, and promote the sustainable use of natural resources for future generations. The value of TW is multifaceted, encompassing cultural heritage preservation, sustainable development, economic empowerment, scientific advancement, and biodiversity conservation.

From a cultural perspective, TW embodies the heritage and identity of indigenous communities, reinforcing social cohesion and continuity. It is deeply embedded in their way of life, rituals, and governance structures, acting as a living record of their history and worldview. Without adequate protection, the erosion of TW risks dismantling the very foundations of indigenous cultural identity. TW also plays a pivotal role in sustainable development. It encompasses centuries-old practices in agriculture, medicine, environmental stewardship, and natural resource management that promote ecological balance and social inclusion. Such knowledge can inform climate adaptation strategies, sustainable farming methods, and community-based conservation models, providing solutions that are both cost-effective and culturally appropriate.

Economically, TW can empower communities through the commercialisation of traditional arts, crafts, music, and medicinal practices, fostering entrepreneurship and creating

livelihood opportunities. These cultural products, when marketed ethically and with proper benefit-sharing arrangements, can help indigenous groups achieve financial independence without compromising their traditions.

The scientific value of TW is equally significant. Developed over generations through empirical observation and experimentation, it offers insights into plant-based medicines, soil management, weather prediction, and other domains. TW often complements modern science, offering alternative or supplementary approaches to innovation, healthcare, and environmental management. Moreover, TW is integral to biodiversity conservation. Indigenous practices often emphasise the sustainable use of resources, protection of endangered species, and maintenance of ecosystem integrity. Such knowledge systems have historically sustained biodiversity hotspots and can inform global conservation strategies.

However, existing IPR regimes are ill-suited to protect TK due to a fundamental philosophical and structural mismatch. Conventional IPR frameworks emphasise individual ownership, require fixed and tangible expressions of creativity, and operate on a limited-term exclusivity model. TW, by contrast, is inherently communal, collectively owned by communities, and evolves dynamically through oral traditions, intergenerational transfer, and collective practice rather than static documentation.

This misalignment underscores the urgent need for *sui generis* legislation, a tailor-made legal framework designed to address the distinct nature of TK and TCEs. Such laws would recognise communal ownership, establish collective rights management systems, and respect the oral and evolving nature of TW. Importantly, they would incorporate mechanisms that protect not only the economic value of TW but also its cultural integrity and spiritual significance. By embedding cultural sensitivity into legal protection, sui generis frameworks can bridge the gap between indigenous epistemologies and modern legal systems, ensuring that TW thrives as a living, evolving heritage rather than a commodified relic.

International Developments

Internationally, the need for *sui generis* protection has been acknowledged in various fora, such as the WIPO, Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, as well as the Convention on Biological Diversity (CBD), the Nagoya Protocol and UNESCO's Local and Indigenous Knowledge Systems[17] (LINKS), which emphasise prior informed consent and benefit-sharing. Several countries, including India, have begun to experiment with *sui generis* models, such as the Protection of Plant Varieties and Farmers' Rights Act and the Traditional Knowledge Digital Library. However, these remain partial steps, and a comprehensive global framework tailored for TK and TCEs is urgently required. Only through *sui generis* legislation can the inherent communal, evolving, and spiritual nature of traditional knowledge be adequately safeguarded, preventing exploitation while empowering indigenous communities to control and benefit from their cultural heritage

[17] https://www.unesco.org/en/links (accessed on 8 Aug 2025)

in a manner consistent with their values and worldviews.

For India, these developments offer both moral impetus and legal guidance to establish a robust *sui generis* framework that aligns with global standards. While India's TKDL is a significant step in preventing wrongful patents, comprehensive legislation is needed to ensure indigenous communities' ownership, benefit-sharing, and cultural integrity, positioning India as a leader in safeguarding TK and TCE.

India's Legislative Progress: Towards a *Sui-generis* System

India has made notable preliminary strides towards establishing a *sui generis* legal framework to protect TK and TCEs, recognising the inadequacy of conventional intellectual property laws to safeguard its vast and diverse indigenous heritage.

One of the earliest formal attempts was the drafting of the Traditional Knowledge Bill in 2016[18], which sought to create a comprehensive institutional and legal mechanism to document, protect, and regulate the use of TK. The bill proposed the establishment of a National Authority on Traditional Knowledge, tasked with overseeing the registration and management of TK-related rights, and emphasised community participation through the creation of community-run knowledge trusts. These trusts were envisioned as local bodies responsible for documentation, preservation, and granting prior informed consent before the use or commercialisation of traditional knowledge could occur. This decentralised approach was designed to empower indigenous communities at the grassroots level, recognising their role as custodians of TK. However, despite its innovative framework, the bill failed to progress beyond the drafting stage[19], stalling in the legislative process due to political and administrative challenges, and concerns about implementation logistics.

More recently, in 2022, a significantly forward-thinking initiative was introduced by Dr Shashi Tharoor in the form of the Protection of Traditional Knowledge Bill[20]. This proposed legislation reflects a deeper understanding of the distinctive nature of TK and aligns more closely with international developments, particularly the principles emerging from the WIPO and the UNDRIP. The bill recognises "Knowledge Societies" — defined as indigenous and local communities who are the original custodians of traditional knowledge — as legal entities vested with the rights to protect, control, and manage their heritage. Crucially, it dispenses with traditional IP requisites such as fixation, registration, or novelty, which are inherently incompatible with the oral, evolving, and collective character of TK. Instead, it prioritises community ownership, mandating prior informed consent before any use, research,

[18] https://shashitharoor.in/private_member_bills_details/9%22 (accessed on 12 Aug 2025)

[19] https://ijirl.com/wp-content/uploads/2023/08/PROTECTING-INDIGENOUS-CULTURAL-HERITAGE-A-COMPARATIVE-STUDY-OF-THE-TRADITIONAL-KNOWLEDGE-BILL-OF-2016-AND-2022.pdf(accessed on 12 Aug 2025)

[20] https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/87%20of%202022%20AS.pdf? source=legislation (accessed on 12 Aug 2025)

or commercial exploitation of TK. The bill also emphasises fair and equitable benefit-sharing arrangements, ensuring that communities derive tangible advantages from the use of their knowledge.

Furthermore, the Protection of Traditional Knowledge Bill innovatively addresses the complex realities of TK that span across multiple states or communities by proposing mechanisms for shared ownership and collective management. This recognises that traditional knowledge and cultural expressions are often not confined within rigid territorial boundaries but are part of dynamic cultural landscapes shared by diverse groups. By providing legal recognition to such collective and overlapping rights, the bill attempts to resolve conflicts and ensure inclusive protection. The approach is also sensitive to the spiritual and cultural dimensions of TK, aiming to preserve the integrity of indigenous traditions alongside their economic value.

India's legislative progress towards a *sui generis* system thus marks a significant shift from fragmented, reactive protection efforts to a holistic, community-empowering model that respects the unique characteristics of traditional knowledge. While challenges remain in translating these draft bills into enacted law and in designing effective institutional mechanisms, these proposals offer a promising foundation for India to assert its leadership in safeguarding TK. Aligning domestic legislation with international norms not only strengthens India's legal arsenal against biopiracy and cultural appropriation but also empowers indigenous communities to reclaim ownership of their heritage on their own terms. This legislative evolution is essential for preserving India's rich intangible heritage while promoting equitable and sustainable cultural and economic development.

Recommendations for a Holistic Legal Framework

Protecting India's TW calls for a comprehensive, culturally rooted approach that goes beyond piecemeal reforms under existing intellectual property laws. A truly effective framework must recognise TW as communal, dynamic, and spiritual in nature, ensuring that protection mechanisms align with indigenous worldviews.

First, India should enact dedicated *sui generis* legislation that formally acknowledges collective custodianship, eliminates restrictive criteria like fixation or registration, grants perpetual rights, safeguards both material and intangible values, and provides culturally sensitive conflict resolution mechanisms.

Second, the scope of protection must extend well beyond medicinal plants, encompassing oral traditions, rituals, folk arts, textile patterns, agricultural methods, music, dances, and even dialects—ensuring no cultural domain is left vulnerable.

Third, community-led documentation is vital, allowing indigenous groups to control how their heritage is recorded, preserved, and shared, while protecting sacred or confidential elements from misuse.

Fourth, mandatory PIC and equitable benefit-sharing must be legal requirements before any commercial or research use of TW, with benefits provided in both monetary and non-monetary forms, such as capacity-building and infrastructure development.

Fifth, protection must also guard against internal cultural appropriation, preventing dominant groups from commodifying marginalised

communities' heritage without credit or fair compensation.

Finally, building capacity through legal literacy, training in preservation and enforcement, and leveraging digital tools is essential, supported by specialised IP tribunals and cooperation with online platforms to curb digital misappropriation.

In today's digital age, misappropriation often occurs online, with traditional art, music, medicine, and cultural expressions reproduced and commercialised through digital platforms without authorisation. India must invest in advanced digital surveillance and enforcement strategies to combat such violations. Deploying AI-enabled tools capable of detecting copyright infringements and tracking unauthorised uses in real-time can greatly enhance enforcement capabilities. Collectively, these measures can establish a strong, inclusive, and lasting framework to safeguard India's cultural heritage.

Parting Thoughts

India's IP regime continues to be inadequate for effectively protecting TK and TCEs, collectively referred to as Traditional Wisdom (TW). Defensive measures alone cannot secure community ownership or protect the spiritual, collective and oral dimensions that conventional patent and copyright systems ignore. What is needed is a *sui generis* framework co-designed with indigenous custodians that recognises communal ownership, customary governance and the non-economic values attached to cultural practices. Such a model should dispense with rigid novelty and fixation requirements, provide flexible perpetual protection, equitable benefit-sharing mechanisms and mandatory prior informed consent provisions, preventing exploitation and promoting respect for indigenous sovereignty.

The silence of the law cannot continue in the face of cultural loss and exploitation. The time has come for India to give voice to its Traditional Wisdom through laws that protect, honour, and celebrate its unparalleled cultural legacy. Only through comprehensive, rights-based, timely reform can India honour its Traditional Wisdom. Such a legislative action will also significantly strengthen India's credibility in global forums.