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# BEYOND THE TRIPS PARADIGM: REIMAGINING INTELLECTUAL PROPERTY THROUGH AN INDIAN DECOLONIAL LENS

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## ABSTRACT

This article adopts a Critical Legal Studies (CLS) approach, enriched by Marxist political economy and post-colonial theory, to interrogate the colonial genealogy and contemporary functioning of the global patent regime. It argues that the dominant intellectual property rights (IPR) framework, particularly in the field of patents, is not a neutral, universal system of innovation incentives but a juridical technology that reproduces patterns of colonial extractivism by systematically subordinating traditional knowledge (TK) to Eurocentric conceptions of property and invention.<sup>1</sup> The article contends that the treatment of TK as part of an undifferentiated “public domain” unless transformed into patent-compatible form constitutes a modality of structural violence against indigenous peoples and local communities. It uses the Indian experience especially emblematic biopiracy controversies involving Neem, Turmeric and Basmati, and the construction of the Traditional Knowledge Digital Library (TKDL) to demonstrate how post-colonial states navigate, resist and sometimes internalize the epistemic assumptions of the patent system.<sup>2</sup>

Against this backdrop, the article evaluates the 2024 WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (“WIPO GRATK Treaty”) as a purported attempt to recalibrate the relationship between patents and TK.<sup>3</sup> It asks to what extent the treaty succeeds in shifting the ontological basis of IPR from a model of individualized ownership to one of community custodianship. The article argues that while the treaty introduces important mandatory disclosure obligations and symbolically recognizes indigenous peoples and local communities, it remains structurally committed to the ontology of discrete, exclusive, time-bound patent rights. The core contribution is to theorize the

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<sup>1</sup> *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, World Intell. Prop. Org.

<sup>2</sup> *Bio-Piracy in India: A Practice of Patenting Traditional Knowledge Related Geographical Indications* (NLU Nagpur, n.d.).

<sup>3</sup> WIPO, *supra* note 1.

classification of TK as “public domain” as a form of structural violence, to read TKDL as both a defensive and normalizing apparatus, and to demonstrate that the WIPO GRATK Treaty effects only a partial, reformist displacement of colonial logics rather than a deep decolonization of IPR.

**Keywords:** Critical Legal Studies; post-colonial theory; Marxism; traditional knowledge; TKDL; WIPO GRATK Treaty; structural violence; accumulation by dispossession; community custodianship; decolonization.

## Introduction

Debates around intellectual property and traditional knowledge have increasingly revealed the colonial genealogy of the global patent system and its structural incompatibility with indigenous and community-based epistemologies.<sup>4</sup> The dominant Eurocentric design of patents presupposes an individual, bounded, temporally delimited act of invention and a discrete rights-holder, assumptions that clash with TK, which is cumulative, intergenerational and communally held. The resulting friction is not merely technical or doctrinal but ontological: the patent system demands that knowledge be sliced, individualized and temporally fixed in ways that are fundamentally misaligned with the social life of TK.

Contemporary international IPR instruments most prominently the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have consolidated this Eurocentric template into a global standard, embedding it within trade conditionalities and development discourse. From a CLS perspective, these instruments must be read not as neutral mechanisms for “balancing” innovation and access but as ideological projects that naturalize a historically specific European understanding of property and creativity.<sup>5</sup> The law of patents, in this view, functions as an apparatus that allocates power, vulnerability and recognition along axes of class, race and empire, even as it presents itself in the technocratic idiom of novelty, inventive step and industrial applicability.

Within this regime, TK has been especially vulnerable. It is frequently positioned as a reservoir of raw material placed in an abstract “public domain” unless re-packaged into patent-compatible formats by corporations, research institutions or state agencies. Marxist scholars would describe this process as accumulation by dispossession, whereby common or community-based resources are appropriated, transformed into capital and subjected to new

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<sup>4</sup> *The CUSB Journal of Law and Governance* (Central Univ. of South Bihar, vol. 1, n.d.).

<sup>5</sup> Brenna Bhandar, *Critical Legal Studies and the Politics of Property*, in *Researching Property Law* (2016).

regimes of exclusion.<sup>6</sup> The Indian experiences with biopiracy surrounding Neem-based pesticides, Turmeric's wound-healing properties and Basmati-related rice varieties exemplify how global capital has treated TK as freely available to be mined for proprietary inventions, while the originating communities remain legally invisible or, at best, indirectly represented by the post-colonial state.<sup>7</sup>

India's construction of the TKDL is often hailed as a pioneering response to these dynamics. TKDL operates as a defensive documentation project, translating and codifying knowledge from classical texts in Ayurveda, Unani, Siddha and other systems into patent-office-legible formats and classification systems, with the aim of preventing the grant of patents on what is, in fact, prior TK.<sup>8</sup> Yet, as critical scholarship notes, TKDL also reinscribes TK into the very epistemic and bureaucratic structures that marginalized it, privileging text-based, state-recognized canons over localized, oral and often more fragile forms of knowledge.<sup>9</sup>

The WIPO GRATK Treaty appears, at first glance, to mark a significant normative shift. For the first time at the multilateral level, a WIPO treaty explicitly addresses genetic resources and associated TK, lays down a mandatory disclosure obligation for patent applicants, and acknowledges indigenous peoples and local communities in its text.<sup>10</sup> However, whether this development genuinely reorients the ontological basis of IPR from individual ownership to community custodianship remains contestable.

The central research question of this article is that to what extent does the WIPO GRATK Treaty successfully shift the IPR ontological framework from a paradigm of individual ownership to one of community custodianship, when assessed through the lens of India's experience with biopiracy and TKDL.

Existing literature has documented the doctrinal mismatch between TK and patents, catalogued case studies of biopiracy, and proposed a variety of sui generis regimes and access-and-benefit-sharing (ABS) mechanisms.<sup>11</sup> Some scholars have advanced post-colonial

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<sup>6</sup> David Harvey, *Accumulation by Dispossession and Anti-Capitalist Struggles: A Long Historical Perspective* (2015).

<sup>7</sup> *Traditional Knowledge and Patent Issues with Respect to Basmati, Neem, Turmeric and Golden Rice*, White Black Legal.

<sup>8</sup> *About TKDL*, Traditional Knowledge Digital Library.

<sup>9</sup> Martin Fredriksson, *India's Traditional Knowledge Digital Library and the Politics of Patent Classifications*, 34 *Law & Critique* 1 (2023)

<sup>10</sup> *WIPO Treaty on IP, GR and Associated TK*, WORLD INTELL. PROP. ORG.

<sup>11</sup> *Traditional Knowledge: Penetrating Intellectual Property* (J. Intell. Prop. Rts., NIScPR, n.d.)

and decolonial critiques of intellectual property, and others have examined TK databases as political technologies of documentation and classification.<sup>12</sup> However, there is relatively little work that systematically combines CLS, Marxist and post-colonial theory to interrogate the ontological assumptions embedded in the WIPO GRATK Treaty itself, while grounding the analysis in a concrete institutional experiment such as TKDL. This article addresses that research gap by bringing these frameworks together and by centering the Indian experience as both symptomatic and distinctive.

Methodologically, the article adopts a doctrinal-cum-theoretical approach. It reads primary legal materials (treaty texts, WIPO documents, Indian statutes and policy instruments) alongside critical theory, treating law not as a closed, self-justifying system but as a site of social struggle and discursive production. This approach is consistent with CLS' insistence on exposing the contingency, indeterminacy and political content of apparently neutral legal doctrine.

The article proceeds as follows. Part I reconstructs the CLS, Marxist and post-colonial frameworks deployed in the analysis. Part II traces the coloniality of the global patent regime, with particular reference to TK. Part III examines the Indian experience, focusing on biopiracy controversies and TKDL as a defensive infrastructure. Part IV analyses the WIPO GRATK Treaty, its negotiation history and core provisions. Part V addresses the research question by evaluating whether and how the treaty reconfigures the ontology of IPR. Part VI outlines a decolonial model of community custodianship and reflects on implications for Indian and international law.

## **I. Theoretical Framework: Critical Legal Studies, Marxism and Post-Colonial Theory**

### **A. Critical Legal Studies and the politics of property**

CLS emerged in the 1970s as a movement challenging the liberal assumption that law is an autonomous, coherent and objective system.<sup>13</sup> CLS scholars argue that legal doctrine is deeply infused with social, economic and ideological conflicts, and that appeals to neutrality or formal equality often conceal the reproduction of hierarchies of class, race and gender. Property law

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<sup>12</sup> Pelin Turan, *Gazing at Intellectual Property Law: A Post-Colonial Critique* (LL.M. thesis, Cent. European Univ. 2022)

<sup>13</sup> Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 Buff. L. Rev. 205 (1979)

has been a central focus of this critique. Brenna Bhandar and others have shown how the very concept of property as an abstract, alienable, exclusive right was forged in tandem with colonial dispossession and racialized regimes of landholding.<sup>14</sup>

Applied to intellectual property, CLS reveals that categories such as “invention,” “author,” “novelty” and “prior art” are not natural descriptors of creative activity but socially contingent constructs that privilege certain forms of knowledge and certain kinds of knowers. The patent system’s insistence on a named inventor and a temporally bounded inventive act, along with its focus on written disclosure, map neatly onto the practices of corporate R&D labs and university research groups, but poorly onto diffuse, cumulative and orally transmitted TK. Law’s apparent neutrality thus performs a selection: it recognizes and rewards knowledge that already conforms to Eurocentric scientific and bureaucratic norms, while casting other forms of knowledge into the shadows.

CLS also exposes the role of legal form in stabilizing social expectations and masking distributive choices. The “bundle of rights” metaphor, for example, abstracts away from underlying power relations and histories of enclosure, presenting property as a modular toolkit available to any rights-holder. In the IP context, this abstraction obscures how TK holders rarely occupy the position of rights-holders in global markets and how the assignment of exclusive rights to external actors can be experienced as an expropriation rather than as a neutral allocation.

## **B. Marxist political economy and accumulation by dispossession**

Marxist theory contributes a complementary lens focused on the relationship between law, property and capitalist accumulation. Marx’s account of “primitive accumulation” describes the violent processes by which peasants were separated from land, commons were enclosed, and the conditions for wage labour and capital accumulation were created.<sup>15</sup> Contemporary Marxist scholars, such as David Harvey, have extended this concept to “accumulation by dispossession,” emphasizing that capitalist expansion continues to rely on the appropriation of commons land, water, minerals and, increasingly, knowledge through legal and financial

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<sup>14</sup> Bhandar, *supra* note 5.

<sup>15</sup> Karl Marx, *Capital, Volume I* ch. 26–33 (Ben Fowkes trans., Penguin 1976).

instruments.<sup>16</sup>

Patents on life forms, seeds, genetic resources and associated TK can be understood as paradigmatic mechanisms of accumulation by dispossession. Communal, intergenerational epistemic labour is converted into proprietary assets held by corporations or research institutions, often under the guise of “adding value” through standardization, stabilization or scientific validation. The process is not limited to outright biopiracy; even when patents are formally novel, they may selectively draw upon TK without meaningful recognition or benefit-sharing.

Marxist analysis also underscores law’s role in creating and securing new “frontiers” of commodification. Just as earlier enclosures transformed land into exchangeable property, contemporary IP law transforms knowledge commons into tradable intangible assets. This perspective invites a shift from asking whether IP “balances” innovation and access to interrogating whose interests are served by expanding the domain of commodifiable knowledge and whose livelihoods or cultural practices are destabilized as a result.

### **C. Post-colonial theory and the coloniality of intellectual property**

Post-colonial legal scholarship highlights the ways in which European legal categories, including IP, were transplanted into colonized territories as part of broader imperial projects of governance and extraction.<sup>17</sup> These transplants did not simply add new rules; they re-articulated local concepts of knowledge, authorship and stewardship by privileging written, codified, state-recognized forms over oral, customary and sacred ones.

In the IP context, post-colonial scholars have emphasized that the distinction between “formal” and “informal” knowledge, or between protectable inventions and unprotectable “tradition,” is tied to racialized narratives of civilization and progress. European science was coded as universal and disinterested, while indigenous knowledge was coded as particular, local and freely appropriable. Modern IP regimes, while formally universal, continue to express this asymmetry by granting robust rights to those who can navigate patent and copyright systems, while treating TK as either a raw input or a romanticized heritage resource.

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<sup>16</sup> Harvey, *supra* note 6.

<sup>17</sup> A Post-Colonial Framework for Researching Intellectual Property, in *A Post-Colonial Framework for Researching Intellectual Property* (Cambridge Univ. Press 2021)

These three strands CLS, Marxism and post-colonial theory together provide the conceptual architecture for the article's central claims: that the patent system is structurally Eurocentric, that TK's relegation to the "public domain" is a form of accumulation by dispossession and structural violence, and that reforms such as the WIPO GRATK Treaty must be evaluated not only in doctrinal terms but also in terms of whether they unsettle or reinforce the underlying colonial ontology of property.

## **II. Coloniality of the Global Patent Regime and Traditional Knowledge**

### **A. Historical transplants and imperial interests**

In colonial India, British administrators introduced IP statutes primarily to secure imperial commercial interests and to align local legal orders with metropolitan industrial policy.<sup>18</sup> Patents were used to protect imported technologies and to facilitate the exploitation of colonial resources, rather than to nurture indigenous innovation. The transplantation of European IP law thus operated as a technology of governance: it re-ordered local economies and knowledge practices in ways that were legible to colonial bureaucracies and investors.

This colonial history is not merely of antiquarian interest. Post-colonial states inherited IP statutes, judicial doctrines and administrative practices whose underlying assumptions remained largely unexamined. As India engaged with TRIPS and subsequent WIPO processes, it did so from a starting point in which Eurocentric notions of invention, authorship and property already occupied the legal landscape. Attempts to protect TK through biodiversity laws, geographical indications or TK registers have therefore been layered on top of, rather than in place of, these inherited structures.

### **B. The "public domain" as structural violence**

Critical social theory's concept of structural violence captures how institutions can harm marginalized groups without overt physical coercion, by organizing social relations and distributions in ways that systematically disadvantage certain populations.<sup>19</sup> When TK is classified as part of an undifferentiated "public domain," this classification does more than describe a legal status; it actively erases the communities that produced, curated and

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<sup>18</sup> *Property, Territory, and Colonialism: An International Legal History*, 39 Legal Stud. 400 (2019)

<sup>19</sup> Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. Peace Res. 167 (1969).

transmitted that knowledge as subjects of rights and responsibilities.

From a CLS perspective, the notion of the public domain in IP doctrine is double-edged. While it can function as a shield against over-enclosure, it can also facilitate extraction by declaring resources to be unowned and therefore available to whoever first brings them within the ambit of proprietary form. In the TK context, this is particularly pernicious: the community is denied legal subjectivity in relation to its knowledge, but external actors are permitted to re-enter that same space and claim exclusive rights so long as they satisfy formal criteria of novelty and inventive step.

This dynamic amounts to a form of structural violence because it converts community-based epistemic labour into a resource pool for others, while denying the community recognition as a rights-bearing custodian. It also reproduces colonial patterns of knowledge extraction: TK is mined, translated, codified and monetized by actors located in the global North or in national elites, while the communities themselves remain peripheral to the resulting legal and economic arrangements.

### **III. Indian Experience: Biopiracy and the TKDL Experiment**

#### **A. Emblematic biopiracy controversies**

The well-known controversies surrounding patents on Turmeric's wound-healing properties, Neem-based fungicidal formulations and Basmati-related rice varieties have been thoroughly documented in Indian and international literature.<sup>20</sup> In each case, foreign entities obtained or sought patents on uses of biological resources that had long been known and practiced by Indian communities.

The Turmeric case involved a patent granted in the United States for the use of Turmeric powder in wound healing, a use attested in Ayurvedic texts and widespread domestic practice. Indian scientists and government agencies challenged the patent by producing documentary evidence, leading to its eventual revocation. The Neem and Basmati disputes followed similar trajectories, highlighting how patent offices' reliance on English-language prior art and unfamiliarity with non-Western sources created a structural bias that facilitated biopiracy.<sup>21</sup>

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<sup>20</sup> Bio-Piracy in India, *supra* note 2

<sup>21</sup> Bio-Piracy in India, *supra* note 2.

These cases are significant not only because they resulted in high-profile victories for India but also because they exposed the deeper epistemic problem: TK remained invisible to patent examiners unless and until the state or experts translated it into a form recognizable as prior art. The communities whose knowledge had been appropriated appeared in the legal process only through the mediation of state authorities or NGOs; they did not themselves hold rights that could block or reshape the terms of patenting.

### **B. The Traditional Knowledge Digital Library: design and objectives**

In response, India developed the TKDL as a proactive mechanism to prevent the grant of patents on TK, particularly in the field of traditional medicine. TKDL is a digitized database that extracts information from classical texts in Ayurveda, Unani, Siddha, traditional Tibetan systems and Yoga, translates it into multiple languages, and organizes it according to international patent classification systems.<sup>22</sup> It is accessible to several major patent offices under non-disclosure agreements and is designed to operate as a prior-art search tool.<sup>[9][19][2]</sup>

TKDL's central objective is defensive: by placing TK in a format patent examiner can easily search, it seeks to ensure that applications claiming "inventions" based on pre-existing TK are detected and refused. In this sense, TKDL functions as a form of defensive publication orchestrated by the state on behalf of TK holders. It has been credited with leading to the withdrawal or rejection of numerous patent applications involving Indian TK, thereby reducing the need for resource-intensive post-grant oppositions.<sup>23</sup>

### **C. Political and epistemic critiques of TKDL**

However, critical analyses of TKDL highlight serious limitations. First, TKDL privileges codified, text-based knowledge drawn from "classical" canons, potentially marginalizing localized, oral or heterodox practices that fall outside these textual traditions.<sup>24</sup> In so doing, it risks reifying a state-sanctioned version of tradition while leaving more fragile or contested practices unrecognized and vulnerable.

Second, TKDL reinforces the centrality of the patent office and Eurocentric classification systems as the primary sites where the legitimacy of knowledge claims is determined. While it

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<sup>22</sup> WIPO, *About the Traditional Knowledge Digital Library (TKDL)*

<sup>23</sup> Fredriksson, *supra* note 9.

<sup>24</sup> *Id*

improves the informational environment in which examiners operate, it does not alter the basic fact that it is patent examiners and ultimately courts who decide what counts as prior art and how TK is to be framed. Communities are largely absent from these processes.

Third, TKDL's governance structure is heavily statist. The Indian state, through its scientific and health ministries, controls what is included, how it is described, and under what conditions external actors may access the database. TK holders have little direct input into these decisions, raising questions about internal representation and the distribution of benefits that might arise from future uses of TKDL-mediated information.

From a CLS and Marxist perspective, TKDL can therefore be read as a hybrid apparatus: it resists certain forms of accumulation by dispossession by making biopiracy more difficult, yet it also normalizes TK's subjection to the epistemic and bureaucratic logic of the patent system, with the state as the principal custodian rather than the communities themselves.<sup>25</sup>

#### **IV. The 2024 WIPO GRATK Treaty: Text, Context and Limits**

##### **A. Negotiation background and objectives**

The WIPO GRATK Treaty emerged from more than two decades of negotiations within WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.<sup>26</sup> Developing countries and indigenous peoples' representatives repeatedly raised concerns about biopiracy, the lack of transparency in patent applications involving genetic resources and TK, and the absence of effective mechanisms for benefit-sharing.

Adopted in 2024, the treaty is the first WIPO instrument to focus specifically on the interface between patents, genetic resources and associated TK.<sup>27</sup> Its stated objectives include enhancing the quality of patent examination in these fields, preventing the grant of erroneous patents and supporting the protection of TK through improved transparency.

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<sup>25</sup> IPR Approaches to Traditional Knowledge, *supra* note 11.

<sup>26</sup> WIPO, *supra* note 1.

<sup>27</sup> *WIPO Adopts Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, WilmerHale Client Alert (Aug. 25, 2024)

## **B. Core provisions: mandatory disclosure and sanctions**

The treaty's centerpiece is a mandatory disclosure obligation: patent applicants whose inventions are based on genetic resources and/or associated TK must disclose the country of origin of the genetic resources and, where applicable, identify the indigenous peoples or local communities that provided the TK.<sup>28</sup> Contracting Parties are required to provide for "appropriate, effective and proportionate" sanctions or remedies in cases of non-compliance, while allowing opportunities for applicants to correct inadvertent omissions.

From a doctrinal perspective, this disclosure requirement is significant. It introduces, for the first time at the WIPO level, a link between patent validity (or enforceability) and compliance with TK-related procedural obligations. It also encourages interactions between patent offices and ABS regimes established under instruments such as the Convention on Biological Diversity and the Nagoya Protocol.

## **C. Symbolic recognition of indigenous and local communities**

The treaty's preamble and certain operative provisions explicitly refer to indigenous peoples and local communities, and acknowledge their contributions to the conservation and sustainable use of biodiversity and to the development of TK. Commentators have described this as a historic step towards recognizing communities as subjects of concern, rather than merely as sources of prior art.<sup>29</sup>

Yet this symbolic recognition is not matched by strong, substantive rights in the treaty text. The instrument does not establish direct, enforceable claims for communities against patent applicants or holders, nor does it require that communities' free, prior and informed consent be obtained as a condition for patenting. Instead, it leaves the design of benefit-sharing and community participation mechanisms largely to national law.

## **D. Persistence of the individual-ownership ontology**

Crucially, the treaty leaves intact the core ontology of the patent system: exclusive rights are granted to individual or corporate inventors (or their assignees) for time-bound periods in

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<sup>28</sup> WIPO, *supra* note 1.

<sup>29</sup> *World Intellectual Property Organization (WIPO) Adopts Treaty on Genetic Resources and Associated Traditional Knowledge*, Turtle Talk (May 30, 2024).

exchange for disclosure of the invention. Disclosure of origin and of associated TK does not transform the nature of those rights into communal or custodial forms. Rather, it adds an informational layer that may influence validity or enforcement but does not fundamentally alter ownership structure.

Communities, in this configuration, are acknowledged as sources, sometimes as beneficiaries of ABS schemes, and occasionally as consultees in national implementation processes, but not as primary rights-holders within the patent framework.<sup>30</sup> The treaty thus exemplifies what might be termed “regulated individual ownership”: it seeks to discipline and render more transparent the extraction of value from TK without challenging the underlying model in which extraction remains organized around individualized property rights.

## **V. From Individual Ownership to Community Custodianship? Assessing the Shift**

### **A. Ontological stakes of community custodianship**

Community custodianship denotes an understanding of knowledge as embedded in social relations, land, cosmology and intergenerational responsibilities. The central normative question is not “who owns this knowledge” but “who is responsible for caring for, transmitting and governing this knowledge under community norms.” In many indigenous and local traditions, authority over medicinal, agricultural or spiritual practices is exercised through customary institutions that regulate access, use and modification, often combining elements of sharing, secrecy and ritualized control.

From this vantage point, any attempt to decolonize IPR must grapple not only with distributive questions (who gets what share of benefits) but with ontological ones (what kind of entity knowledge is, and who is recognized as a subject in relation to it). Community custodianship suggests that knowledge is not a detachable object but a relational set of practices and responsibilities that cannot be fully captured by exclusive rights held by discrete legal persons.

### **B. Treaty practice and the limits of proceduralism**

When viewed through this lens, the WIPO GRATK Treaty appears as a procedural intervention grafted onto an otherwise unchanged ontology of property. It mandates disclosure of origin and

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<sup>30</sup> WilmerHale Client Alert, *supra* note 27.

envisages sanctions for non-compliance; it encourages interactions between patent offices and ABS regimes; it gestures towards community interests in its preamble. But it does not authorize or require states to recognize community-level decision-making authority over whether and on what terms TK may be used as the basis for patents.

The treaty's emphasis on "quality" of patents and "transparency" of origin can be read as an attempt to improve the informational environment without unsettling core power relations. From a CLS perspective, such reforms often function to legitimize existing structures by demonstrating responsiveness to criticism while leaving intact the basic patterns of allocation and exclusion.<sup>31</sup>

### **C. The Indian lens: TKDL plus WIPO GRATK**

In the Indian context, the likely interaction between TKDL and the WIPO GRATK Treaty underscores these limits. TKDL makes it easier for patent examiners to detect TK-based prior art; the treaty obliges applicants to disclose origin and associated TK. Together, these mechanisms can significantly reduce the grant of blatantly bio-piratic patents and can enhance the visibility of Indian TK in global patent examination.<sup>32</sup>

However, the configuration still positions the Indian state as the principal intermediary: it curates TK within TKDL, negotiates access arrangements with patent offices, and implements treaty obligations through domestic law. Communities remain dependent on the state to represent their interests and to design benefit-sharing arrangements; they are not empowered as direct custodians with legally recognized decision-making authority over how their TK enters global innovation systems.

## **VI. Towards a Decolonial Framework of Community-Centred Custodianship**

The analysis above suggests that meaningful decolonization of IPR in relation to TK would require moving beyond procedural tweaks and defensive documentation towards a legal and institutional framework that centres community custodianship. At a minimum, such a framework would include:

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<sup>31</sup> Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. Legal Educ. 591 (1982).

<sup>32</sup> About TKDL & WIPO TKDL note, *supra* notes 22.

1. **Legal recognition of community-based governance regimes.** Domestic law would recognize customary institutions and norms as valid sources of authority over TK, subject to internally negotiated forms of accountability and rights protection.
2. **Collective or custodial rights over TK.** Instead of treating TK as either public domain or as raw material for individualized patents, law would provide for collective or custodial rights that reflect the relational nature of TK. These rights might be inalienable or subject to strict community-level consent rules.
3. **Integration of free, prior and informed consent and benefit-sharing.** Any external use of TK in research or commercialization including patenting would require demonstrable compliance with community protocols and fair, negotiated benefit-sharing, backed by enforceable legal remedies.
4. **Participatory governance of TK documentation projects.** Databases such as TKDL would be governed by bodies in which TK-holding communities have significant representation and decision-making power, including on questions of what to document, how to classify it, and under what conditions external actors may gain access.
5. **Pluralist engagement at the international level.** Communities should have avenues, beyond state representation, to participate in international norm-setting, including WIPO and other forums, thereby challenging the assumption that the state is the sole bearer of interests related to TK.

Such a framework would move the system closer to community custodianship not merely by redistributing benefits ex post but by recognizing communities as co-authors of the legal and epistemic orders that govern their knowledge.

## Conclusion

This article has argued that the contemporary international patent system, when examined through CLS, Marxist and post-colonial lenses, operates as a continuation of colonial extractivism in the domain of knowledge. It does so by presupposing a Eurocentric ontology of invention and property, by classifying TK as part of an ownerless public domain until reconstituted as patentable subject matter, and by granting exclusive rights to actors who stand

outside the communities that produced the knowledge in question.<sup>33</sup>

The Indian experience especially the biopiracy controversies around Neem, Turmeric and Basmati, and the subsequent construction of TKDL illustrates both the possibilities and the limits of contesting this regime from within. TKDL has succeeded in reducing some forms of biopiracy and in enhancing the visibility of TK within patent examination processes. Yet it also normalizes the subjection of TK to Eurocentric classification and bureaucratic practices, with the state as the central curator and intermediary.

The WIPO GRATK Treaty, while an important milestone in acknowledging TK and in mandating disclosure of origin in patent applications, remains wedded to the ontology of individualized ownership. It does not transform patents into vehicles for community custodianship, nor does it vest communities with primary decision-making authority over the uses of their TK. Its reforms are primarily procedural and informational, exemplifying a mode of “regulated individual ownership” that disciplines extraction without displacing it.

The research question posed at the outset can thus be answered in nuanced terms: the WIPO GRATK Treaty partially shifts the IPR framework by recognizing TK and by introducing disclosure obligations, but it does not fully re-anchor IPR in a community-custodianship ontology. The treaty mitigates some of the most egregious forms of accumulation by dispossession yet stops short of decolonizing the underlying property relations.

Addressing the research gap identified in existing literature, the article has shown that a CLS-informed, Marxist and post-colonial analysis reveals these limitations more sharply than doctrinal or policy-oriented approaches alone. It underscores that decolonizing IPR requires confronting not only who holds rights and receives benefits but what kind of entity knowledge is taken to be, and who is recognized as a subject in relation to it. Future reforms nationally in India and internationally at WIPO and beyond must thus move towards legal pluralism, collective rights and community-centred governance if they are to dismantle, rather than merely regulate, the Eurocentric structures that currently govern TK.

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<sup>33</sup> CUSB Journal, *supra* note 4