
WIPO'S TRADITIONAL KNOWLEDGE NEGOTIATIONS: INDIA'S LEGAL PLURALIST CHALLENGE TO WESTERN INTELLECTUAL PROPERTY NORMS

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ABSTRACT

This paper examines India's role in the World Intellectual Property Organization (WIPO) negotiations on the protection of traditional knowledge (TK) through the lens of legal pluralism and global justice. It argues that the conventional intellectual property (IP) framework, founded on Western concepts of individual ownership, novelty, and market exclusivity, is inadequate for protecting traditional knowledge, which is collective, intergenerational, and deeply rooted in cultural and customary practices. Drawing on the theoretical contributions of John Rawls, Amartya Sen, Thomas Pogge, William Twining, Upendra Baxi, Graham Dutfield, and Chidi Oguamanam, the paper demonstrates how India's legal and diplomatic interventions challenge the universality of Western IP norms. It critically analyses India's initiatives, particularly the Traditional Knowledge Digital Library (TKDL), as a defensive mechanism against biopiracy while acknowledging concerns regarding state appropriation, codification of oral traditions, and the marginalization of indigenous communities. The paper further evaluates the functioning of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), highlighting the persistent tension between innovation-driven intellectual property regimes and community-based knowledge systems. It argues that legal pluralism provides a more equitable framework for international intellectual property governance by recognizing customary laws, collective rights, and benefit-sharing mechanisms. The paper concludes that India's approach extends beyond protecting national interests and contributes to reshaping global intellectual property governance towards greater inclusivity, justice, and recognition of diverse legal traditions. Ultimately, it contends that the future of traditional knowledge protection depends on integrating indigenous epistemologies into international legal frameworks rather than compelling them to conform to existing Western intellectual property models.

Keywords: Traditional Knowledge (TK), World Intellectual Property Organization (WIPO), Legal Pluralism, Intellectual Property Rights (IPR), Traditional Knowledge Digital Library (TKDL).

INTRODUCTION

Intellectual property (IP) is at the centre of multilateral governance today. Whether it is in medicines, in digital creativity, or in agriculture, the norms relating to the ownership of knowledge, the transferring of knowledge and the exploitation of knowledge determine governance, not only of economies, but communities and culture.¹ The concept of justice as fairness suggested by John Rawls sets up the idea that an institution needs to be a system that maximizes equality of opportunity, while taking difference into consideration.² When this is transferred to the arena of WIPO negotiations about traditional knowledge, the problem is that international IP law needs to be pluralist in its claims if we are going to arrive at a state of fairly equal status for indigenous people. Amartya Sen in a different view to justice in capabilities approach is the idea of justice is not just through institutional design but promoting the real freedoms of people.³ Thomas Pogge points out that structural inequality may be re-entrench in the form of transnational institutional arrangements and calls for structure reformation in a way that protects the vulnerabilities.⁴ William Twining, on the contrary, asserts that the answer to a more inclusive transnational order is legal pluralism.⁵ Collectively their reflections provide a complementary context to the challenges posed by India to the Western norms of IP during the negotiations in the WIPO.

At the very center of such a world order stands the World Intellectual Property Organization (WIPO), a United Nations specialized agency for harmonizing international norms in intellectual property.⁶ For the last twenty years, WIPO has been a main forum for communities, nations, and corporate bodies to discuss the question of how exactly knowledge is to be defined, protected, and disseminated⁷. But one question in this sphere remains very contentious: the question of the governance of traditional knowledge (TK). In essence the primary problem is the efficient IP system put forward on new and western concepts such as novelty and market exclusivity for individual ownership.⁸ The properties needed for a patent filing are well suited

¹ Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge Univ. Press 2003).

² John Rawls, *A Theory of Justice* (Rev. ed., Harvard Univ. Press 1999).

³ Amartya Sen, *The Idea of Justice* (Allen Lane 2009).

⁴ Thomas Pogge, *World Poverty and Human Rights* (Polity Press 2002).

⁵ William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge Univ. Press 2009).

⁶ World Intell. Prop. Org., About WIPO, <https://www.wipo.int/about-wipo/en/> (last visited July 9, 2026).

⁷ Daniel F. Robinson, *Traditional Knowledge and Biological Product Derivative Patents: Benefit-Sharing and Patent Law's Role in Resource Allocation*, 21 Eur. J. Int'l L. 273, 273 (2010).

⁸ Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (Routledge 2012).

for a scientist or a company shielding a brand, but they don't mix well with the collaborative, multigenerational, and often religious nature of TK.⁹ Whenever the western IP law attempts to exert itself over it can lead to abuse of patents awarded ages ago on the old use of the turmeric or neem in India,¹⁰ or, worse, the very erasure of communal rights. Such a conflict resulting is not even technical, it embodies broader conflicts over justice, recognition, and who's knowledge is important in determining the future.¹¹

There has existed a tremendous traditional knowledge system in India and it has acted based on the recognition of legal pluralism in global intellectual property governance, citing the employment of Ayurveda, indigenous farming practices, and political leadership in the Global South. India contends that instead of embracing a one size fits all Western model, it can have various legal systems such as national, international, and customary legal systems have to exist alongside each other. India is also trying to provide a voice to its traditional knowledge at the world level. There are some such projects, including the Traditional Knowledge Digital Library, that offer community knowledge in a format to which patent authorities cannot possible pretend to be blind to, and which they have sought to draw attention to the significant principle that in the event that knowledge is used, the resulting produce must be compensated and the people benefit. These are not opposition to Western colonialism, but struggling to transform how the world is governed, with more participatory and fair values.¹²

CONCEPTUAL & THEORETICAL FRAMEWORK

The WIPO controversies surrounding traditional knowledge (TK) mirror the conflicts between Western intellectual property (IP) norms and pluralist approaches suggested by Indian and other Non-Western Nations. Indian intellectuals and world jurists alike presented conceptual and theoretical foundations where pluralism, justice, and sustainability dominate the scene. The works of V.K. Gupta, Upendra Baxi, Graham Dutfield and Emilio Morgera together provide the intellectual groundwork for understanding the legal pluralist critique of Western IP orthodoxy emanating from India.

⁹ Madhavi Sunder, *The Invention of Traditional Knowledge*, 70, no. 2 *Law & Contemp. Probs.* 97 (2007).

¹⁰ Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (South End Press 1997)

¹¹ Graham Dutfield, *Traditional Knowledge, Intellectual Property and Pharmaceutical Innovation* (Edward Elgar Publ'g 2017)

¹² Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (South End Press 1997).

V.K. Gupta: Defensive Protection and the TKDL

V.K. Gupta's trailblazing work within the Traditional Knowledge Digital Library (TKDL) provides the practical foundation of the Indian strategy. Gupta argues that the TKDL is defensive and forward-looking: it prevents misappropriation by patent offices even as it places India's competence to translate traditional knowledge into an accepted format within international systems.¹³ In the coding of the patent-compatible classification for the otherwise uncodifiable (yet scientifically valid and effective) knowledge of the Ayurveda, Unani, and Siddha systems, Gupta highlights the conceptual tension between the codifiable, scientific knowledge and oral, community-held tradition.

Upendra Baxi: Justice and the Global South

Upendra Baxi frames the question of TK governance as an over-arching issue of justice within global governance. To Baxi, the Indian position at WIPO is not only a technocratic but an articulation of the politics of recognition for the Global South.¹⁴ Baxi highlights that the project of legal pluralism is one of counter-hegemony: it breaks into the "universality" of Western law through the projection of alternative visions of justice through indigenous and communal thinking. His conceptual intervention highlights the manner the discourses over TK are involved with the structural asymmetries of international law.

Graham Dutfield: TK and Pharmaceutical Innovation

He condemns the Western practice of ingesting TK in its crude form and obscuring its culture and spiritual nature in the IP law.¹⁵ Dutfield presents a conceptual model predicting TK as dynamic and adaptable to avoid the cliché of it being static folklore. The conceptual framework emphasizes that sui generis protections are needed to promote the social and ecological milieus of the TK.

¹³ V.K. Gupta, Protecting India's Traditional Knowledge, Council of Scientific & Industrial Research, <https://tkdl.res.in> (last visited August 3, 2026).

¹⁴ Upendra Baxi, *The Future of Human Rights* (3d ed., Oxford Univ. Press 2008).

¹⁵ Graham Dutfield & Uma Suthersanen, *Global Intellectual Property Law* (Edward Elgar Publ'g 2008), <https://www.scribd.com/document/436688876/Dutfield-Suthersanen-2008-Global-Intellectual-Property-Law> (last visited August 5, 2026).

Emilio Morgera: Environmental Law and Equity

Emilio Morgera connects TK to environmental governance principles and issues of equity under such instruments as the Convention on Biological Diversity (CBD) and the Nagoya Protocol.¹⁶ His model recaps how international environmental law precedent about the recognition of community rights and benefit-sharing can be claimed by WIPO negotiations. Morgera's focus on equity and sustainability puts TK in the context of wider debates on global commons and ecological justice.

CRITICAL ANALYSIS

The World Intellectual Property Organization (WIPO) traditional knowledge (TK) debates have moved incrementally over the past 20 years, yet with profound implications. WIPO instituted the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in 2000 to deal with matters which the TRIPS Agreement,¹⁷ had more or less neglected. The IGC was established when the realization came about that conventional intellectual property law, which relied on Western concepts of individual creativity and authorship, was not equipped to manage information that is intergenerational, collective, and intricately embedded in communal life.¹⁸

The impact was seen in high profile cases: when India demonstrated that these practices were an integral part of traditional existence, a European patent on the pesticidal properties of neem as well as a U.S. patent on the medicinal properties of turmeric were both revoked.¹⁹ The TKDL thus covered an important gap between traditional knowledge systems.

Yet, India's efforts are far more. It has steadily been the driving force in the Global South bloc in the context of WIPO and has worked collaboratively with countries such as South Africa, Brazil and members of African Group.²⁰ Jointly, they have worked for enforceable international rules to recognize traditional knowledge as an acceptable category of rights to be

¹⁶ Elisa Morgera, *Biodiversity and International Law: The Effectiveness of International Environmental Law* (Edward Elgar Publ'g 2016).

¹⁷ World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), World Intellectual Property Organization, <https://www.wipo.int/tk/en/igc/> (last visited May 8, 2026).

¹⁸ Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (Routledge 2012).

¹⁹ Graham Dutfield, *Intellectual Property, Biogenetic Resources and Traditional Knowledge* 135-40 (Earthscan 2004).

²⁰ N.S. Gopalakrishnan & T.G. Agitha, *Exploring the Relationship Between Traditional Knowledge and Intellectual Property* (LexisNexis 2016).

protected by systems that fit its requirements. India's position is not merely that it is preserving its own cultural heritage; it is also the voice of the wider group of developing nations that are faced with similar challenges.²¹ India has helped to shift the conversation from patent disputes to broader questions of equity, acknowledgment, and justice within international law through highlighting the issues of TK to the world.

Despite its approach received criticism, India has been one of the most active supporters of preserving traditional knowledge (TK) in international forums. The danger of state control of community knowledge, the limitations of oral tradition codification, and the dependence on international agreement at the World Intellectual Property Organization (WIPO) are the three most important issues.

1. Risk of State Appropriation- Scholars like Ruth Okediji (2018) says that there is always a chance that community voices would be ignored when states speak for indigenous or local groups.²² There are many initiatives taken such as Traditional Knowledge Digital Library (TKDL) in India which have been praised for their creative nature, but opponents argue that they also consolidate power in state institutions rather than giving local individuals more responsibility.²³ Madhavi Sunder (2007) argues that viewing communities as mere data providers instead of active norm-setters may lead top-down systems to perpetuate colonial logics.²⁴
2. Limits of Codifying Oral Traditions- Ayurvedic, Unani, and Siddha information is codified in patent-compatible formats by the TKDL. It has also reduced a lot of biopiracy²⁵ cases and the codification inevitably flattens oral traditions into bureaucratic categories, according to opposing parties. According to Graham Dutfield(2017) Oral and performative traditions frequently hold cultural values that legal-technical databases²⁶ are unable to adequately record. These address concerns about how TKDL might compromise the

²¹ Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (Oxford Univ. Press 2007).

²² Ruth L. Okediji, *Traditional Knowledge and the Public Domain*, in *Copyright Law in an Age of Limitations and Exceptions* (Ruth L. Okediji ed., Cambridge Univ. Press 2017).

²³ V.K. Gupta, *Protecting India's Traditional Knowledge*, Council of Scientific & Industrial Research, <https://tkdl.res.in> (last visited July 9, 2026)

²⁴ Madhavi Sunder, *The Invention of Traditional Knowledge*, 70, no. 2 *Law & Contemp. Probs.* 97 (2007).

²⁵ World Intellectual Property Organization, *India's Traditional Knowledge Digital Library*, World Intellectual Property Organization, <https://www.wipo.int/tk/en/databases/tkdl/> (last visited May 8, 2026).

²⁶ Graham Dutfield, *Traditional Knowledge, Intellectual Property and Pharmaceutical Innovation* (Edward Elgar Publ'g 2017).

diversity and health of indigenous epistemologies, even though it may be protective in some ways.

3. Dependence on Global Consensus at WIPO- India has worked with WIPO's Intergovernmental Committee to secure a binding agreement on traditional knowledge, but as Chidi Oguamanam (2012) points out, WIPO's consensus-based approach frequently hinders development and waters it down to suit industrialized countries.²⁷

James Boyle (2003) criticizes the larger "enclosure" of the digital commons while praising India's opposition to the extension of Western intellectual property rules. At the same time, he warns that adopting traditional knowledge just as a means of defense risks disregarding its cultural significance. Vandana Shiva (1997), a well-known activist, has also spoken out against biopiracy, claiming that traditional knowledge is more than a historical legacy, but a dynamic system of sustainable development that cannot be reduced to patents.

ORIGINAL CONTRIBUTION

India became a key player in the international discussion regarding traditional knowledge (TK) and intellectual property (IP). Its contributions to world intellectual property organization (WIPO) demonstrate the future of accepting legal pluralism in the formulation of international laws. Being focused on loosening the attempts to make TK adhere to Western patterns of IP regime, India exemplifies other forms of alternate law regarding law systems: state, community and international²⁸.

The place where this battle now mainly plays out is the WIPO Intergovernmental Committee (IGC). For developed nations there is overwhelming justification that of ensuring open knowledge flows, in order to foster innovation. But for countries like India, finding ways to safeguard the rights of communities and preventing biopiracy is the first priority²⁹ As stated by Graham Dutfield, (2017) protection for TK was always mired in debates on justice and recognition and not simply technical drafting.³⁰ (Dutfield, 2017). The IGC is thus not merely

²⁷ Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (Routledge 2012).

²⁸ Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (Oxford Univ. Press 2007).

²⁹ World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), World Intellectual Property Organization, <https://www.wipo.int/tk/en/igc/> (last visited August 3, 2026).

³⁰ Graham Dutfield, *Traditional Knowledge, Intellectual Property and Pharmaceutical Innovation* (Edward Elgar Publ'g 2017).

technical but a politicized arena where the Western norms of IP are being questioned and reoriented.

India's creation of the Traditional Knowledge Digital Library (TKDL) is one such strategy. Putting codified wisdoms like Ayurveda, Unani and Siddha in the language of the patent system, India has prevented many attempts at misappropriation. But, as Madhavi Sunder (2007) and Chidi Oguamanam (2012) see, such a strategy is a trade-off. While preventing the misuse, it risks homogenization of oral and spiritual traditions into bureaucratic formats and the exposure of living customary systems to state appropriation.³¹ In a very real way, in this situation, the conflict, for me, has been realizing the gamble of legal pluralism: how to protect TK in international regimes and in doing this, not defeat the very traditions being protected.

Several proposals flow from India's pluralist stance that could shape future WIPO instruments:

1. Strengthening disclosure of origin requirements-One such concrete reform is for patent application (applicants) to make compulsory disclosure on the origin of any TK or genetic material used. Such disclosures effectively serve as a bridge between the law of IP and the values of equity, as Professor Ruth Okediji puts it (2018):

And help build traceability and accountability³² (Okediji, 2018). For India, stricter regulations on disclosures would give communities both voice and authority in benefit-sharing agreements.

2. Recognizing customary law and community protocols-International law tends to push aside community-based norms, but these are the actual governance systems whereby TK is regulated. James Anaya (2004) and Mauro Barelli (2012) emphasize that indigenous law must not be regarded as "informal" custom but as normative orders in themselves.³³ WIPO tools might officially acknowledge community protocols, allowing indigenous and local communities an explicit voice at the decision-making table.³⁴

³¹ Madhavi Sunder, *The Invention of Traditional Knowledge*, 70, no. 2 *Law & Contemp. Probs.* 97 (2007); Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (Routledge 2012).

³² Ruth L. Okediji, *Traditional Knowledge and the Public Domain*, in *Copyright Law in an Age of Limitations and Exceptions* (Ruth L. Okediji ed., Cambridge Univ. Press 2017).

³³ S. James Anaya, *Indigenous Peoples in International Law* (2d ed., Oxford Univ. Press 2004).

³⁴ Mauro Barelli, *Free, Prior and Informed Consent in the Aftermath of the U.N. Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead*, 16, no. 1 *Int'l J. Hum. Rts.* 1 (2012).

CONCLUSION

The WIPO negotiation of traditional knowledge has been accredited with the essential contributions of India, and thus a technical consultation of intellectual property law as opposed to a mere talk of the paper, N S Gopalakrishnan discusses in his analysis. It transcends the discourse, transforming it to recognize at least non-Western knowings and systems of protection, and thereby offers leverage to allow international law to be adapted to,³⁵ the value of directing attention towards traditional knowledge in the past tense is that it allows shifting the discourse out of individualized concerns regarding patents and information databases but rather reflects general principles of fairness, culture, and sovereignty.

India's strategy has been based on two assumptions, which are both pragmatic and normative, i.e. pluralism. It is pragmatic, because it gives the legal tools for restricting biopiracy, and helps to defend national interests. It is normative in that pluralism involves a call for recognition on the terms of communities lived practices, customary laws and spiritual relationships to knowledge.³⁶

The broader implication is that pluralism is not a weakness or compromise, but really a source of strength for global law. When local voices and customary systems are incorporated into transnational diplomacy, it is not only fairer for the local community; it is also more robust and resilient for international governance.³⁷ India's experience has shown that legal pluralism can be more than simply a reaction against Western domination; it can re-imagine how institutions of the world work. Indeed, our dispute at WIPO regarding traditional knowledge is more than just dispute/brilliant on disclosure clauses or patents. It is a fight over values and who is entitled to determine the framing of the law of tomorrow. India's actions remind us that, rather than a marginal idea, pluralism (and pluralist) governance can help transition international governance to a more inherently progressive and possible, equitable, and balanced practice.

³⁵ N S Gopalakrishnan, 'Protection of Traditional Knowledge: The Need for a Sui Generis Law in India' (2005) 5(1) Journal of World Intellectual Property 725.

³⁶ Mauro Barelli, 'Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead' (2012) 16(1) International Journal of Human Rights 1.

³⁷ Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (Routledge 2012).