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Reassessing the International IP Law: Doctrinal Gaps in Protecting Traditional Knowledge and Cultural Expressions

Saleh Almazyad

Law, Saudi Electronic University, Jeddah

Contact the Journal Email: salehalmazyad818@gmail.com

Abstract. This study critiques how current global intellectual property (IP) laws fail to protect Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), which are rooted in Indigenous collective identity, spirituality, and governance. Treaties such as TRIPS and Berne prioritize individual authorship and market logic, excluding Indigenous epistemologies. National laws offer limited remedies, and though the 2024 WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge introduces binding protections such as Free, Prior and Informed Consent (FPIC) and benefit-sharing, significant gaps remain. Employing a doctrinal legal research method supported by postcolonial and pluralist theoretical perspectives, this study critically examines the adequacy of existing international and national IP regimes in safeguarding TK and TCEs. It calls for hybrid legal reforms that integrate Indigenous legal orders to achieve epistemic justice, legal pluralism, and meaningful cultural protection.
Keywords: *traditional knowledge (TK), traditional cultural expressions (TCEs), intellectual property law, Sui Generis Protection, indigenous rights*

INTRODUCTION

As the global legal and economic system becomes increasingly connected, the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) has become increasingly recognized as an important issue within international intellectual property (IP) debates. TK and TCEs refer to a range of cultural expressions, including medicinal knowledge, practices related to nature, oral traditions, visual arts, music, rituals, and spiritual expressions that are collective to, and define the identity of, Indigenous and other local communities worldwide. Because they are collective in nature, they are typically orally transmitted and localized activities that include spirituality; they cannot be understood within the context of Western IP, which is based on individual authorship, fixation, and finite terms.[1]

Although several international agreements endorse Indigenous rights, the current IP systems—such as the TRIPS Agreement and the Berne Convention—remain oriented toward privileging market-based protection, individual ownership, and material fixation. They therefore do not accommodate TK and TCEs within their normative design.[2] For example, in 2019, the Neem Foundation in India challenged European patents over neem-based pesticides, arguing that such patents exploited

[1] Dutfield G. (2023). Protecting Traditional Knowledge: Pathways and Pitfalls.
[2] Oguamanam C. (2022). Intellectual Property and the Common Good.

Indigenous ecological knowledge without benefit-sharing, highlighting doctrinal gaps in TRIPS.[3] As a result of this exclusion, widespread cultural appropriation and biopiracy continue to undermine Indigenous knowledge sovereignty and cultural justice. The lack of recognition of TK and TCEs has created a vacuum that facilitates the commodification of Indigenous ways of knowing without proper consent, benefit-sharing, or acknowledgment of customary practices.

Scholars have identified that these systemic exclusions maintain colonial legacies, limiting Indigenous peoples' epistemic authority, cultural sovereignty, and rights to self-determination over their intangible cultural heritage.[4] In response, international organizations such as the World Intellectual Property Organization (WIPO) have initiated processes to address these limitations. In May 2024, the WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore adopted a binding international legal instrument—the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.[5] This treaty formalizes provisions on Free, Prior and Informed Consent (FPIC), benefit-sharing, and the legal recognition of customary law, marking a historic integration of Indigenous governance systems into international IP frameworks.

At the national level, models such as India's Traditional Knowledge Digital Library (TKDL), Peru's Law No. 27811 on collective TK rights, and the Philippines' Indigenous Peoples' Rights Act (IPRA) represent alternative routes to recognizing Indigenous ownership and governance over TK and TCEs. Yet they have shortcomings in terms of enforceability, integration with IP offices, and doctrinal coherence.[6] Without effective implementation and enforcement from both domestic and international mechanisms—and relying on outdated utilitarian IP rationales—the realization of TK and TCE rights remains tenuous.

Recent scholarship has identified the need to move beyond instrumental and utilitarian justifications and to pivot toward legal pluralism and postcolonial theory, especially in recognizing Indigenous legal systems that co-exist with international law as legitimate sources of legal authority.[7] These approaches advocate against reverting to paradigms that deny customary norms, collective authorship, intergenerational stewardship, and cultural integrity within IP regimes.

This study employs a doctrinal legal research method supported by postcolonial and legal pluralism theories to assess whether the current international IP system provides sufficient protection for TK and TCEs. The analysis centers on international frameworks—specifically the TRIPS Agreement, the Berne Convention, and the 2024 WIPO Treaty—while drawing comparative insights from national sui generis models in India, Peru, and the Philippines.

Research Question:

To what extent do international and national intellectual property regimes provide doctrinally sufficient protection for Traditional Knowledge and Traditional Cultural Expressions in ways consistent with Indigenous legal orders and epistemic justice?

By engaging this question, the study situates itself at the intersection of international IP law, comparative legal analysis, and postcolonial critique. It aims to determine whether existing treaties and national legal frameworks effectively safeguard TK and TCEs, or whether they perpetuate structural inequities embedded in Eurocentric legal doctrines. The study also examines alternative

[3] Neem Foundation v. European Patent Office (2019).
[4] Chon M. (2020). "Intellectual Property and Postcolonial Justice."
[5] WIPO (2024). Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.
[6] Gupta A. (2019). "Traditional Knowledge Digital Library: Defensive or Positive Protection?"
[7] Bhatia A. (2021). Legal Pluralism and the Postcolonial Turn in IP Law.

mechanisms—such as sui generis frameworks, community protocols, and hybrid protection models—that may better align with Indigenous worldviews, cultural integrity, and empowerment.

Ultimately, this research aspires to contribute to the broader discourse on reforming international IP law by integrating Indigenous epistemologies and legal norms. In doing so, it advocates for a hybrid legal system that embodies epistemic justice, cultural pluralism, and meaningful protection of Indigenous heritage worldwide.

RELATED LITERATURE

2.1 Doctrinal Limits of TRIPS and Berne

Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) are integral to the cultural identity, spirituality, and cultural continuity of Indigenous and local communities across the world. They encompass medicinal practices, ecological stewardship, agricultural knowledge, oral traditions, visual arts, and sacred performances transmitted through collective memory and experience. As McMillan explains, these are not static artefacts but evolving forms of cultural life that retain core meanings while adapting to changing contexts.[8]

However, these expressions remain largely invisible in the existing intellectual property (IP) architecture. The TRIPS Agreement and the Berne Convention, which form the core of the international IP regime, were crafted for a world that privileges individual creativity, fixation, and economic exclusivity. These foundations fundamentally contradict the collective, oral, and intergenerational nature of TK and TCEs. Dutfield observes that IP law's structure of originality and limited duration inherently excludes community-based and orally transmitted works.[9]

The TRIPS Agreement (1994), especially Article 27(3)(b), allows members to exclude "plants and animals" from patentability but remains silent on the ownership and control of TK associated with biological resources. This omission has facilitated the privatization of Indigenous knowledge under the guise of innovation. Berne, in turn, anchors copyright in the concept of an identifiable author and a tangible fixation of expression.[10] Oguamanam notes that such criteria reflect utilitarian notions of creativity aimed at promoting industrial progress rather than preserving cultural continuity.[11]

The consequences of this doctrinal mismatch are evident in several cases of biopiracy, such as the neem, turmeric, and basmati controversies, where Western patent systems granted protection to inventions derived from Indigenous knowledge already in the public domain of traditional communities. These episodes reveal how TRIPS' global reach has legitimized the commodification of Indigenous heritage under market logic, reinforcing the asymmetrical relationship between industrialized and traditional societies.

As Chon argues, the Berne Convention's author-centered logic cannot account for the communal nature of creative expression that defines Indigenous arts and rituals.[12] Her critique links this exclusion to a broader epistemic hierarchy embedded in IP law, where Western categories of property and authorship marginalize alternative conceptions of collective custodianship. The result is a double exclusion: Indigenous communities are denied both recognition and participation in the benefits generated from their cultural assets.

In short, TRIPS and Berne's doctrinal architecture perpetuates a legacy of epistemic dominance that prioritizes innovation and ownership over equity and continuity. The 2024 WIPO Treaty represents

[8] McMillan L. (2022). Epistemic Justice in Indigenous Knowledge Governance (Oxford Univ Press) at p. 35.
[9] Dutfield, supra note 1, p. 47
[10] TRIPS Agreement (1994); Berne Convention (1971).
[11] Oguamanam, supra note 2, pp. 83-84
[12] Chon, supra note 4, p. 191

an attempt to correct this imbalance, but its implementation will depend on how deeply it engages with the plural legal traditions and lived realities of Indigenous peoples.

2.2 National *Sui Generis* Models and Comparative Responses

Recognizing these doctrinal limitations, several countries have developed sui generis mechanisms that integrate customary law into national frameworks. India's Traditional Knowledge Digital Library (TKDL) provides defensive protection by digitally documenting Ayurvedic, Unani, and Siddha medical formulations to prevent their patenting by foreign entities.[13] While this has proven effective against biopiracy, it does not create positive rights for the originating communities.[14] The TKDL's strength lies in deterrence, not empowerment.

Peru's Law No. 27811 (2002) advances the concept of community-based ownership by requiring Free, Prior and Informed Consent (FPIC) and benefit-sharing before the commercialization of TK. Ruiz Muller notes that while the statute establishes collective rights, its enforcement remains inconsistent due to institutional limitations and lack of local capacity.[15] The Peruvian framework nonetheless provides an important precedent for integrating customary decision-making into statutory IP law.

The Philippines' Indigenous Peoples' Rights Act (IPRA) of 1997 goes a step further by formally recognizing Indigenous legal systems and self-governance as part of the national legal order. Tauli-Corpuz explains that IPRA affirms the jurisdiction of Indigenous communities over their ancestral domains and cultural expressions, embodying the principle of legal pluralism.[16]

Other countries have followed similar paths. Panama's 2000 Law on Collective Rights of Indigenous Peoples over Their Cultural Expressions recognizes perpetual community ownership, while Brazil and Costa Rica have enacted benefit-sharing laws grounded in prior informed consent. These models demonstrate that sui generis protection is both conceptually and practically feasible. However, the persistence of fragmented enforcement and lack of harmonization across jurisdictions hinder their impact on global IP reform.

Collectively, these experiences reveal a spectrum: India's TKDL emphasizes defensive protection, Peru institutionalizes positive rights, and the Philippines and Panama embody pluralist recognition. Each approach, while context-specific, underscores the possibility of aligning IP doctrine with Indigenous epistemologies through participatory governance and community consent mechanisms.

2.3 Postcolonial and Legal Pluralist Critiques

The persistence of doctrinal exclusion in IP law has drawn attention from scholars working within postcolonial and pluralist frameworks. Bhatia argues that global IP systems replicate colonial hierarchies by privileging Eurocentric notions of ownership and individualism, thereby displacing Indigenous understandings of collective stewardship.[17] This critique extends beyond economics: it exposes how international IP law perpetuates a colonial ontology that defines knowledge through control and commodification.

Postcolonial theorists like Chon and Oguamanam emphasize that knowledge itself is a site of power — the ability to define what counts as innovation or creativity reflects deeper social hierarchies

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[13] Gupta, supra note 6, 214

[14] Ibid, pp. 216-217

[15] Ruiz Muller M. (2021). "Law No. 27811 and Collective Knowledge Protection in Peru" Journal of Cultural Heritage Law 19(2) at pp. 44–46.

[16] Tauli-Corpuz V. (2023). "Indigenous Rights and Cultural Sovereignty in the Philippines" Asian Law Review 28 at p. 303.

[17] Bhatia, supra note 7, p. 62

inherited from colonial systems. For Indigenous communities, asserting TK rights thus becomes not only a legal issue but also a form of resistance to epistemic erasure.

Legal pluralism provides a pathway toward reconstructing IP law from a more inclusive foundation. McMillan explains that pluralism recognizes multiple sources of legal authority — statutory, customary, and moral — that coexist and intersect within the same legal space.[18] By acknowledging Indigenous customary law as a valid source of normative order, pluralism challenges the exclusivity of Western legal positivism and allows TK and TCEs to be governed according to culturally relevant principles.

A useful analogy lies in the contrast between natural rights theory and collective custodianship. Whereas Western IP originates in the Enlightenment notion that the individual author owns the fruits of personal intellect, Indigenous traditions view creativity as relational, collective, and sacred — a shared inheritance sustained for future generations. Pluralist IP models attempt to reconcile these paradigms by embedding customary norms within statutory structures, as seen in the Philippines' IPRA and Peru's Law No. 27811.

This theoretical synthesis suggests that meaningful TK protection requires more than treaty amendments; it calls for a shift in the ontological foundations of IP law itself — from ownership to responsibility, and from exclusivity to reciprocity.

2.4 Identified Research Gaps

Despite advances at both international and national levels, significant doctrinal and practical gaps persist. Current global IP instruments continue to lack binding mechanisms for recognizing Indigenous customary law. WTO reviews confirm that TRIPS do not yet accommodate community protocols or Indigenous governance structures in patent or copyright procedures

Moreover, few empirical studies assess how sui generis systems operate in practice. Comparative research on Peru's benefit-sharing enforcement and India's TKDL usage remains limited, leaving uncertainty about their long-term effectiveness.[19]

Another critical concern is the growing trend of digital documentation of TK, such as online databases and registries. While intended to preserve and safeguard Indigenous heritage, such projects risk reproducing "digital colonialism" — transferring control of TK **from** communities to state or international institutions without adequate consent or governance safeguards. This highlights a new frontier in the ethics of knowledge protection.

Finally, the public-domain doctrine remains incompatible with Indigenous worldviews. As Bhatia explains, the idea that works automatically enter the public domain after protection expires reflects a temporal logic foreign to cultures where stewardship is perpetual and sacred.[20] Addressing these conceptual and procedural gaps requires embedding Indigenous participation in rule-making and enforcement, ensuring that IP reform translates into epistemic and cultural justice.

Theoretical and Conceptual Framework

3.1 Postcolonial Theory and the Reconstruction of IP Law

Postcolonial legal theory exposes how contemporary IP systems continue to reflect colonial hierarchies of knowledge. Bhatia observes that international treaties replicate the colonial premise that law flows from the metropole to the periphery, thereby subordinating Indigenous legal orders to

[18] McMillan L. (2022). Legal Pluralism in Global Intellectual Property Governance (Hart Publishing) at p. 118.
[19] Gupta and Ruiz Muller, supra notes 6 and 15, at pp. 221 and 47, respectively
[20] Bhatia, supra note 7, p. 75

Western rationalities.[21] Within this framework, TK and TCEs are often regarded as "raw materials" awaiting refinement through Western innovation rather than as self-sufficient epistemologies.

By applying postcolonial critique, this study situates IP law within the larger discourse of power, authority, and epistemic justice. It examines how colonial categories of property, originality, and authorship were universalized through TRIPS and Berne, erasing non-Western understandings of collective stewardship. The theory thus provides a lens to reinterpret these treaties not merely as legal texts but as instruments of epistemic governance that determine whose knowledge counts as protectable.

Postcolonial analysis also reveals resistance and reform. Indigenous assertions of knowledge sovereignty—such as the 2024 WIPO Treaty's incorporation of FPIC—represent attempts to decolonize IP by embedding consent, reciprocity, and recognition within its procedural core. Yet these developments remain incomplete unless supported by pluralist mechanisms that value Indigenous jurisprudence as an equal source of legal normativity.

3.2 Legal Pluralism and the "Ownership of Ownership" Problem

Legal pluralism posits that multiple normative orders can coexist within a single legal system. McMillan explains that pluralism allows IP doctrine to recognize Indigenous customs not as exceptions but as parallel sources of authority.[22] This theoretical stance provides the conceptual foundation for what may be termed the "ownership of ownership" problem—the clash between Western legal title and Indigenous stewardship.

In conventional IP law, ownership denotes exclusive control and the right to exclude others. In contrast, Indigenous traditions conceive ownership as custodianship—a collective duty to preserve knowledge for future generations. The divergence reflects two modes of legal reasoning: one transactional, the other relational. Legal pluralism reconciles these by acknowledging that the same asset can carry overlapping entitlements—statutory rights vested in individuals and customary rights vested in communities.

This duality mirrors an earlier distinction in Anglo-American jurisprudence between law and equity. Law confers legal title, whereas equity recognizes beneficial or moral interests that temper absolute ownership. Applying this analogy, Indigenous custodianship can be likened to equitable ownership, while statutory IP rights represent legal title. As in equity, the function is corrective rather than oppositional: equity intervenes where strict law would produce injustice, just as pluralism intervenes where rigid IP doctrine fails to honor collective stewardship.

3.3 Defining Ownership and Justice in Plural Contexts

The concept of ownership thus extends beyond possession to encompass responsibility. Three interrelated dimensions emerge:

1. *Legal ownership* – formal title recognized by statute or treaty;
2. *Equitable ownership* – beneficial interest recognized by moral or customary duty; and
3. *Communal ownership* – collective custodianship transmitted through kinship and spiritual obligation.

Understanding these layers is essential to reconcile Indigenous law with international IP regimes. Oguamanam notes that failure to differentiate between title and stewardship leads to doctrinal confusion, as IP systems attempt to impose exclusive rights on inherently shared resources.[23]

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[21] Ibid, p. 61

[22] McMillan L. (2022). Legal Pluralism in Global Intellectual Property Governance (Oxford Univ Press) at p. 118.

[23] Oguamanam, supra note 2, p. 89

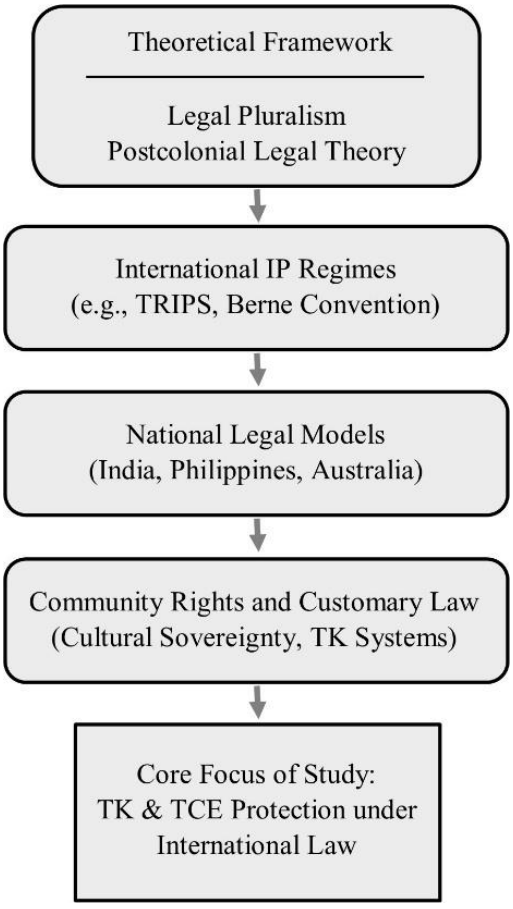
The related notion of justice in this framework is both distributive and epistemic. Distributive justice requires that benefits derived from TK and TCEs be shared equitably among the communities that sustain them, while epistemic justice demands recognition of Indigenous ways of knowing as valid and authoritative. Chon argues that epistemic justice is the necessary precondition for distributive fairness because without recognition, benefit-sharing reduces to tokenism.[24]

Consequently, justice here transcends compensation; it involves restoring legal agency to communities historically excluded from defining their own norms. The integration of pluralist and postcolonial perspectives therefore aims not merely to reform IP procedures but to re-imagine ownership itself as stewardship grounded in relational ethics.

3.4 Conceptual Model

Figure 1 below illustrates how the study's theoretical framework is structured, linking Postcolonial Legal Theory and Legal Pluralism to the hierarchical analysis of international and national IP regimes. The flow begins from theoretical foundations and moves toward the community level, where cultural sovereignty and TK systems interact with legal norms. This framework demonstrates how the study connects abstract theory with applied doctrinal analysis on TK and TCE protection under international law.

Figure 1. Conceptual Flow of the Study Linking Theoretical Framework, Legal Models, and Core Focus



[24] Chon, supra note 4, p. 196

The framework illustrates how Legal Pluralism and Postcolonial Theory guide the analysis of TK and TCE protection under international IP law.

In addition to this overall framework, the study employs a second conceptual model (see Table 1) to illustrate the interaction between Postcolonial Theory and Legal Pluralism in shaping doctrinal reform. This interaction produces what the study terms Plural Equity—a normative space where statutory IP law and Indigenous customary law co-govern TK and TCEs.

Table 1 below summarizes how each theory functions within the analytical structure and what doctrinal outcomes emerge from their intersection.

Table 1. The Intersection of Postcolonialism and Legal Pluralism in IP Reform

Framework	Function	Doctrinal Outcome
Postcolonial Theory	Critiques the epistemic bias of global IP systems	Reveals colonial assumptions behind authorship and fixation
Legal Pluralism	Recognizes coexistence of statutory and customary law	Enables hybrid recognition of communal stewardship
Intersection (Plural Equity)	Integrates recognition with redistribution	Promotes epistemic justice and equitable benefit-sharing

This model guides the study's doctrinal analysis, ensuring that subsequent discussions of TRIPS, Berne, and national sui generis laws are interpreted through the dual lenses of decolonization and pluralism.

4. METHODOLOGY

4.1 Research Design

This study employed a doctrinal legal research design, involving systematic evaluation and interpretation of legal materials related to the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). Doctrinal legal research examines existing laws, treaties, and case law to determine whether current frameworks achieve their intended protective purposes. This design was chosen because it allows in-depth exploration of whether present intellectual property (IP) laws—especially under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Berne Convention for the Protection of Literary and Artistic Works—effectively safeguard TK and TCEs or perpetuate doctrinal exclusion.

The analysis is framed through Postcolonial Legal Theory and Legal Pluralism, which together assess how global IP structures sustain or challenge colonial hierarchies of knowledge and whether they recognize Indigenous legal orders as legitimate sources of authority. This theoretical grounding ensures that the doctrinal critique remains both normative and justice-oriented.

4.2 Legal Sources

Unlike empirical research involving human participants, this study relies exclusively on legal documents and secondary literature as data. The following sources were examined:

1. *International treaties and conventions*, including the TRIPS Agreement (1994) and the Berne Convention (1971), which establish global IP norms but fail to accommodate the collective, oral, and intergenerational nature of TK and TCEs.[25]

2. *The WIPO Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge* - adopted on May 24, 2024, at the 51st Session of the Intergovernmental Committee (IGC)--which

[25] TRIPS Agreement (1994); Berne Convention (1971).

introduces binding obligations on Free, Prior and Informed Consent (FPIC), benefit-sharing, and respect for customary law.[26]

3. *Judicial decisions,* including Indofurn Pty Ltd v Aboriginal Artists Agency Ltd, Milpurrurru v Indofurn, and Tsilhqot'in Nation v British Columbia, analyzed comparatively to illustrate evolving judicial perspectives on communal and intergenerational ownership.[27]

4. *National legislative frameworks*, such as India's Traditional Knowledge Digital Library (TKDL), Peru's Law No. 27811, and the Philippines' Indigenous Peoples' Rights Act (IPRA), used to evaluate national sui generis models and their interaction with formal IP regimes.[28]

5. *Academic commentaries and doctrinal critiques* (2019–2025), sourced from peer-reviewed journals, monographs, and reports, providing comparative and theoretical insights into Indigenous rights and IP protection.

4.3 Data Collection and Analysis

Legal materials were gathered from official repositories and recognized databases, including the World Trade Organization (WTO), World Intellectual Property Organization (WIPO), national legislative databases, and online legal libraries (e.g., HeinOnline, JSTOR, and Westlaw).

Selection Criteria:

1. Relevance to doctrinal or policy questions concerning TK/TCE protection.
2. Authorship by recognized scholars or legal institutions.
3. Accessibility in English and publication within 2019–2025.

Analytical Process:

1. Textual interpretation — to identify the express scope and limitations of IP instruments.
2. Doctrinal analysis — to assess whether the laws achieve equitable protection for TK and TCEs.
3. Comparative review — of international and national systems to identify convergence or divergence.
4. Theoretical application — using Postcolonial and Pluralist perspectives to interpret how each law either perpetuates or mitigates epistemic and distributive injustice.

These methods ensured that interpretation was not only descriptive but evaluative—grounded in theory and directed toward reform.

4.4 Scope and Limitations

The study is limited to doctrinal analysis and does not involve fieldwork or empirical community engagement. Jurisdictions were chosen for their doctrinal relevance and availability of accessible legal texts. Because the study focuses on formal law, it does not capture community-specific oral or customary practices unless codified or cited in jurisprudence.

Nonetheless, these boundaries are consistent with doctrinal legal methodology and appropriate for assessing whether global and national IP regimes structurally accommodate Indigenous epistemologies and custodianship models.

5. LEGAL AND DOCTRINAL ANALYSIS

5.1 International IP Regimes

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[26] World Intellectual Property Organization (WIPO). Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore, adopted May 24, 2024, Fifty-First IGC Session, Geneva.

[27] Indofurn Pty Ltd v Aboriginal Artists Agency Ltd (1998) 41 IPR 159 (FCA); Milpurrurru v Indofurn Pty Ltd (1995) 30 IPR 209; Tsilhqot'in Nation v British Columbia [2014] SCC 44.

[28] Peru, Law No. 27811: Protection of Collective Knowledge of Indigenous Peoples, 2002; India, Traditional Knowledge Digital Library (TKDL); Philippines, Indigenous Peoples' Rights Act (RA No. 8371).

The evolution of international intellectual-property (IP) protection traces a long arc from the Paris Convention (1883) for industrial property, to the Berne Convention (1886) for literary and artistic works, through the Rome Convention (1961) on performers' rights, culminating in the TRIPS Agreement (1994) and, most recently, the WIPO Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore (2024).[29] This historical sequence demonstrates that global IP law developed primarily to harmonize trade and protect individual inventors within capitalist economies rather than to safeguard communal or intergenerational creativity.[29]

The Paris Convention first articulated the principle of "national treatment," requiring states to grant foreign inventors the same protection as nationals. Yet it remained silent on community knowledge systems. The Berne Convention introduced the foundational doctrine of fixation—that creative expression must be embodied in a tangible form. Article 2(2) explicitly confines copyright to "literary and artistic works fixed in some material form."[30] As Cornish and Llewelyn explain, this rule emerged to ensure evidentiary certainty in disputes over authorship and to facilitate licensing in emerging print and music industries.[31]

While effective for reproducible media, fixation excludes orally transmitted heritage such as ritual chants, weaving patterns, and dances—core forms of Traditional Cultural Expressions (TCEs). Similarly, TRIPS Article 27(1) confines patents to inventions that are "new, involve an inventive step and are capable of industrial application." The requirement of novelty ensures technological progress but disqualifies long-standing Indigenous innovations already known within communities.[32] As Oguamanam observes, this transforms continuity into disqualification and renders entire epistemologies invisible[33] (Oguamanam, supra note [34], p. 97).

Throughout the 1990s, multiple cases exposed this imbalance. The Neem tree patent granted to W.R. Grace & Co. by the U.S. Patent Office claimed fungicidal properties long known to Indian farmers; it was later revoked after TKDL evidence proved prior art. The Basmati rice patent controversy likewise revealed attempts to privatize centuries-old agricultural knowledge.[34] In Africa, patents on the Hoodia cactus—a San people appetite suppressant—sparked public backlash and led to the first benefit-sharing agreement under the Convention on Biological Diversity (CBD).[35] These examples illustrate how the formal doctrines of novelty and inventive step inadvertently facilitate biopiracy when detached from ethical disclosure obligations.

The TRIPS Agreement Article 27(3)(b) required WTO members to review patentability of biological materials by 1999, but consensus stalled over whether states must require "disclosure of origin."[36] The WTO–CBD coordination debate continues, as CBD Article 8(j) merely urges—not compels—

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[29] Paris Convention for the Protection of Industrial Property (1883); Berne Convention for the Protection of Literary and Artistic Works (1886); Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961); Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994).

[30] Cornish W. & Llewelyn D., Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights (9th ed., Sweet & Maxwell, 2019) p. 115.

[31] Ibid.

[32] TRIPS Agreement Art. 27(1); see also Gervais D., The TRIPS Agreement: Drafting History and Analysis (5th ed., Sweet & Maxwell, 2020) pp. 212–216.

[33] Oguamanam, supra note 2, p. 97

[34] India, Traditional Knowledge Digital Library (TKDL), Ministry of AYUSH Annual Report 2020 (Neem and Basmati cases).

[35] Shiva V., Biopiracy: The Plunder of Nature and Knowledge (2nd ed., Natraj Publishers, 2019) p. 54.

[36] WTO, "Review of Article 27.3(b) of the TRIPS Agreement," IP/C/W/163 (2000).

respect for Indigenous knowledge. Without binding disclosure provisions, corporations can still patent derivatives of TK while communities bear no enforceable right to consent or compensation.[37] The Doha Declaration on TRIPS and Public Health (2001) affirmed member flexibility to protect public welfare. Yet, as Gervais notes, similar flexibilities for cultural heritage never materialized.[38] IP thus remains asymmetrically responsive: medical emergencies justify waiver; epistemic injustices do not.

Negotiations under the WIPO Intergovernmental Committee (IGC) sought to remedy this. The 2024 Treaty's Preamble proclaims:

"Recognizing the intrinsic value of traditional knowledge and traditional cultural expressions and the need to respect, preserve and maintain the customary law systems that govern them."[39]

Substantively, Articles 8–11 impose obligations for Free, Prior and Informed Consent (FPIC), benefit-sharing, and acknowledgment of source. These clauses mark a doctrinal breakthrough—shifting from voluntary guidelines to binding treaty norms. Nevertheless, the Treaty avoids defining "collective authorship" or guaranteeing perpetual duration of rights.[40] In practice, therefore, doctrinal symmetry coexists with functional asymmetry: the system now recognizes communities as stakeholders but not as rights-holders.

From a postcolonial standpoint, this asymmetry reveals what Bhatia terms the "formalism of modernity"—the legal impulse to universalize Western epistemes.[41] Legal pluralism provides a corrective: it acknowledges multiple normative orders within one jurisdiction.[38] Re-reading TRIPS and Berne through pluralist methodology would allow Indigenous customary norms—reciprocity, stewardship, and continuity—to coexist with statutory IP regimes. Such reinterpretation would not dismantle global IP but pluralize it, transforming protection from exclusionary ownership into inclusive custodianship.

5.2 National Sui Generis Models and Judicial Approaches

National experiences reveal that legal systems are experimenting with sui generis mechanisms—laws crafted "of their own kind"—to accommodate Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) that do not fit the industrial logic of conventional IP regimes. These models differ by region but share one normative goal: reconciling statutory IP with community custodianship.

(a) Asia: India and the Philippines

India's Traditional Knowledge Digital Library (TKDL) represents one of the most comprehensive sui generis databases in the Global South. Established in 2001 by the Council of Scientific and Industrial Research (CSIR) and the Ministry of AYUSH, it translates Sanskrit, Arabic, Persian, and Tamil pharmacopoeias into patent-classification language, thereby enabling patent examiners to identify prior art. Between 2009 and 2020, more than 300 patent applications referencing turmeric, neem, and other medicinal plants were withdrawn or refused on the basis of TKDL documentation.[42] Yet, as

[37] Convention on Biological Diversity (1992) Art. 8(j).
[38] Gervais, supra note, p. 213
[39] World Intellectual Property Organization (WIPO), Report of the Fifty-First Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Geneva, 2024), para. 12.
[40] WIPO, Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore (2024) Arts 8–11.
[41] Bhatia, supra note 7, p. 64)
[42] India, Traditional Knowledge Digital Library (TKDL), Ministry of AYUSH Annual Report 2020; see also Gupta R., supra note 6, p. 218.

Gupta observes, this tool is defensive rather than distributive: it prevents misappropriation but provides no legal entitlement or benefit-sharing to the custodial communities.[43]

India's experience demonstrates the dilemma of formal recognition without empowerment. Because the TKDL is housed within a government agency, communities have little participation in its governance or in the negotiation of benefit-sharing contracts. The framework thus satisfies TRIPS's evidentiary requirements but not CBD's equity mandate. This tension underscores the need for pluralist reform in which documentation complements, rather than replaces, community consent.

The Philippines' Indigenous Peoples' Rights Act (IPRA, RA No. 8371 [1997]) offers a stronger normative statement. It enshrines collective ownership of ancestral domains and knowledge, requiring Free, Prior and Informed Consent (FPIC) before any research or commercialization.[44] The National Commission on Indigenous Peoples (NCIP) issues Certificates of Ancestral Domain Title (CADT) that may include control over cultural expressions. In practice, however, enforcement remains largely administrative; the Philippine courts have yet to articulate a jurisprudence of Indigenous cultural property. The absence of judicial interpretation limits IPRA's transformative potential. As Oguamanam notes, legal pluralism requires judicial—not merely bureaucratic—recognition.[45]

(b) Latin America: Peru, Panama, and Brazil

Latin America provides pioneering examples of binding sui generis statutes grounded in collective rights. Peru's Law No. 27811 (2002) establishes a legal regime for the "Protection of Collective Knowledge of Indigenous Peoples," mandating FPIC and equitable benefit-sharing for any commercial utilization.[46] The law also created a National Register of Collective Knowledge and a Fund for Indigenous Development supported by royalties from access agreements. Its first test came in 2009 when the CAMISEA Project—an energy consortium—signed Peru's first benefit-sharing agreement with the Machiguenga Council, allocating 5 percent of profits from biogenetic resource use to local communities. Despite administrative delays, this precedent demonstrated the law's capacity for redistributive justice.

Panama's Law No. 20 (2000) goes further by granting perpetual collective ownership over TCEs and requiring that any user obtain authorization from the General Directorate of Collective Rights of Indigenous Peoples.[47] The statute recognizes seven Indigenous groups and codifies their traditional designs, music, and oral traditions as protected IP. Scholars view it as the most explicit recognition of perpetual moral rights for Indigenous peoples, functioning as a cultural constitution. However, implementation remains slow because administrative agencies lack expertise in customary law.

Brazil's Law No. 13.123 (2015), regulated by Decree No. 8.772 (2016), integrates TK protection into national biodiversity policy.[48] It establishes a Genetic Heritage Management Council (CGen) and requires disclosure of origin and benefit-sharing for any research using traditional knowledge. The law was tested in 2017 when CGen suspended multiple foreign patents that failed to identify Indigenous collaborators. Brazil's approach is notable for embedding TK governance within

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[43] Gupta, supra note 6, p. 218).

[44] Philippines, Indigenous Peoples' Rights Act (RA No. 8371, 1997).

[45] Oguamanam, supra note 2, p. 92

[46] Peru, Law No. 27811: Protection of Collective Knowledge of Indigenous Peoples (2002); Peru Ministry of Environment, First Benefit-Sharing Agreement under Law 27811 (CAMISEA Project, 2009).

[47] Panama, Law No. 20 of June 26 2000 on the Special Intellectual Property Regime on Collective Rights of Indigenous Peoples.

[48] Brazil, Law No. 13.123/2015 on Access to Genetic Heritage and Associated Traditional Knowledge (Regulations Decree No. 8.772/2016).

environmental law—aligning with Article 8(j) of the CBD—and for mandating state enforcement of benefit-sharing obligations. Still, community representation in CGen remains limited, perpetuating what Chon calls "epistemic asymmetry".[49]

Across these Latin systems, sui generis protection evolves from moral symbolism to procedural enforcement. The region's experience shows that strong statutory recognition must be paired with institutional capacity and sustained Indigenous participation to realize distributive and epistemic justice.

(c) Common-Law Systems: Australia, Canada, and South Africa

Common-law jurisdictions reveal how judicial interpretation can evolve pluralist principles without enacting new statutes. Australia's trajectory illustrates the gradual shift from formal copyright toward communal moral rights. In Milpurrurru v Indofurn Pty Ltd (1995) —the Carpets Case—the Federal Court held that unauthorized reproduction of sacred Aboriginal designs on commercial carpets constituted copyright infringement and breach of moral rights.[50] The Court acknowledged that "authorship may arise collectively from tradition," an acknowledgment that inspired subsequent legislative reform. Three years later, Bulun Bulun v R & T Textiles Pty Ltd (1998) extended this reasoning: the artist was deemed a fiduciary holding copyright "in trust" for his community, thereby importing equitable concepts into IP doctrine.[51] These rulings reframed copyright as stewardship, not dominion—anticipating later reforms such as the Arts Law Centre's Indigenous Cultural and Intellectual Property (ICIP) Protocols (2018).

Canada's jurisprudence demonstrates similar pluralist potential. In Delgamuukw v British Columbia (1997) and Tsilhqot'in Nation v British Columbia (2014), the Supreme Court recognized Aboriginal title as a proprietary interest arising from pre-sovereign occupation, encompassing rights of stewardship and decision-making.[52] The Court characterized Aboriginal title as "a right to the land itself," thus aligning Indigenous custodianship with equitable ownership. Although these decisions arose in property, not IP, they provide doctrinal analogies for recognizing collective authorship and moral rights in cultural heritage. They echo the reasoning of Mabo v Queensland [No. 2] (1992), which overturned terra nullius and grounded native title in continuity rather than written proof.[53]

South Africa offers a statutory complement through the Protection, Promotion, Development and Management of Indigenous Knowledge Act (2019), which recognizes community ownership and establishes registration and benefit-sharing frameworks.[54] The Act mandates that rights "subsist in perpetuity" and can be collectively enforced. Early administrative rulings have already required companies to negotiate benefit-sharing agreements with Khoisan communities. Yet, as McMillan notes, the transition from recognition to redistribution demands continuous judicial engagement.[55]

d. Comparative Assessment

Across these jurisdictions, three trends emerge. First, Asian approaches (India, Philippines) emphasize documentation and consent, creating evidence of ownership but relying on administrative

[49] Chon, supra note 4, p. 151

[50] Milpurrurru v Indofurn Pty Ltd (1995) 30 IPR 209 (FCA) (The Carpets Case).

[51] Bulun Bulun v R & T Textiles Pty Ltd (1998) 86 FCR 244 (FCA).

[52] Delgamuukw v British Columbia [1997] 3 SCR 1010; Tsilhqot'in Nation v British Columbia [2014] SCC 44; see also McMillan L., supra note [49], p. 122.

[53] Mabo v Queensland [No. 2] (1992) 175 CLR 1 (High Court of Australia).

[54] South Africa, Protection, Promotion, Development and Management of Indigenous Knowledge Act (Act No. 6 of 2019).

[55] McMillan, supra note 8, p. 122.

bodies rather than courts. Second, Latin American frameworks (Peru, Panama, Brazil) prioritize statutory codification and benefit-sharing, embedding equity directly into law. Third, Common-law systems (Australia, Canada, South Africa) evolve through judicial pluralism, gradually integrating customary law into mainstream doctrines via analogy and equity.

These trajectories reveal that pluralism can operate at different normative levels—administrative, legislative, and judicial. Administrative models secure defensive protection; legislative models ensure distributive justice; judicial models achieve interpretive transformation. As Bhatia argues, the ultimate goal is a "plurality of pluralisms," where coexistence replaces hierarchy.[56] The comparative record demonstrates that meaningful protection of TK and TCEs requires harmonizing these layers rather than privileging one.

Despite diversity of form, all models confront the same structural challenge: reconciling fixation and novelty with continuity and stewardship. Doctrinal pluralism does not abandon legal certainty; it supplements it with contextual justice. By embedding Indigenous participation within rule-making, adjudication, and benefit-sharing, states can transform IP from an extractive mechanism into a collaborative institution. As Dutfield observes, "the test of reform is not how law protects culture from markets but how it empowers culture within them".[57]

5.3 Toward a Framework of Plural Equity

The preceding analysis reveals that neither global treaties nor national sui generis laws alone can resolve the structural inequities that marginalize Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). A transformative framework must move beyond doctrinal amendment toward a re-imagination of legal purpose. The combined insights of Postcolonial Legal Theory and Legal Pluralism point to such a transformation—what this study terms Plural Equity—a synthesis that integrates recognition, participation, and redistribution within the same normative design.

Plural Equity proceeds through three progressive dimensions: epistemic justice, procedural justice, and substantive justice. Together, they reconstruct intellectual-property governance as a partnership among legal systems rather than a hierarchy of civilizations.

a. Epistemic Justice: Restoring Legitimacy of Knowledge Systems

Epistemic justice addresses the most foundational exclusion—the delegitimization of Indigenous knowledge as "non-legal." Fricker describes epistemic injustice as the denial of a group's capacity to know and to be recognized as a knower.[58] Within IP law, this manifests when oral, performative, or sacred knowledge fails to meet formal standards of authorship or fixation. Postcolonial critique exposes how these standards emerged from imperial modernity's binary between "science" and "superstition," which positioned Indigenous peoples as mere resource custodians rather than innovators.[59]

Plural Equity responds by restoring epistemic legitimacy through co-validation mechanisms. Instead of forcing TK into Western evidentiary molds, legal systems should recognize customary documentation—community registers, oral testimony, lineage recitations—as valid proof of authorship or custodianship. This approach mirrors Peru's collective registers and South Africa's Indigenous Knowledge Act, which already treat community attestations as equivalent to statutory filings.[60] At the international level, the WIPO 2024 Treaty's Article 8 reinforces this shift by

[56] Bhatia, supra note 7, p. 71.
[57] Dutfield, supra note 1, pp. 246–247.
[58] Fricker M., Epistemic Injustice: Power and the Ethics of Knowing (Oxford University Press, 2019) p. 180.
[59] Bhatia, supra note 7, p. 64).
[60] Rawls J., A Theory of Justice (Rev. ed., Harvard University Press, 1999) pp. 36–38.

obligating states to "respect the customary law and protocols governing access and use of traditional knowledge."[61] The provision implicitly affirms that such law is a legitimate source of normativity within the global IP order.

b. Procedural Justice: Embedding Participation and Consent

Epistemic recognition alone cannot ensure fairness; communities must also participate meaningfully in decision-making. Procedural justice, as articulated by Rawls, rests on fairness in institutional process—what he calls "pure procedural justice," where legitimacy arises from participation rather than outcome.[62] In IP governance, this translates into community representation in standard-setting, licensing, and adjudication.

Plural Equity operationalizes procedural justice through mandatory consent frameworks. The Free, Prior and Informed Consent (FPIC) requirement—long invoked in environmental law—becomes a procedural safeguard against cultural extraction. Under Article 9 of the WIPO 2024 Treaty, states must ensure that no authorization for commercial use of TK is granted without prior consultation with rights-holding communities.[63] While some nations treat FPIC as advisory, the treaty elevates it to a binding obligation, thereby transforming consent from courtesy to condition.

A related procedural mechanism is the establishment of Customary Advisory Panels within IP offices. South Africa's CIPC and India's CSIR have already experimented with such bodies, which evaluate claims through customary principles before statutory approval. This model mirrors pluralism's essence: law as dialogue. By embedding community representatives within decision structures, procedural justice bridges the gap between recognition and enforcement.

c. Substantive Justice: From Recognition to Redistribution

The third dimension, substantive justice, ensures that participation yields equitable outcomes. Sen's capability approach underscores that justice is not merely institutional fairness but the actual expansion of people's freedoms to live the lives they value.[64] In TK governance, this requires moving beyond recognition toward tangible redistribution of benefits, aligning with the distributive aspirations of the CBD (1992) and the Nagoya Protocol (2010).

Under the WIPO 2024 Treaty's Articles 10 and 11, contracting parties must establish benefit-sharing systems that allocate profits derived from TK commercialization to the source communities. This includes monetary royalties, technology transfer, and joint authorship credit. However, to avoid bureaucratic capture, plural equity insists on community-controlled trust funds rather than state-managed accounts. Peru's Indigenous Development Fund and Brazil's CGen provide partial templates but remain state-centric. A plural-equitable system would vest financial governance directly in Indigenous councils, supervised by independent auditors.

Another instrument of redistribution is collective authorship recognition. Drawing on equity jurisprudence, Bulun Bulun v R & T Textiles established that an artist may hold copyright "in trust" for the community. Extending this logic, plural equity proposes that national copyright statutes include communal moral rights, allowing groups to prevent distortion or misrepresentation of cultural expressions even after commercialization.[65] This would transform moral rights from individual dignity claims into collective sovereignty tools.

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[61] World Intellectual Property Organization (WIPO), Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore (Geneva, 2024) Arts 8–11.

[62] Ibid.

[63] Ibid.

[64] WIPO, supra 61, pp 8-11

[65] Bulun Bulun v R & T Textiles Pty Ltd (1998) 86 FCR 244 (FCA).

d. Institutional Mechanisms for Implementing Plural Equity

Translating these three dimensions into legal reality requires multi-level reform. At the international level, WIPO's Intergovernmental Committee should evolve from a negotiation forum into a Permanent Council on Cultural Diversity, mandated to monitor compliance with FPIC and benefit-sharing clauses. Such a council could issue interpretive opinions akin to the WTO's dispute-settlement panels, ensuring consistency without coercion.

At the national level, governments should integrate TK offices within IP registries but staffed by experts in anthropology and customary law. These offices would maintain dual registers: (1) confidential databases for sensitive sacred knowledge, and (2) public inventories for commercial licensing. This bifurcation aligns with the pluralist principle of contextual disclosure, balancing transparency with cultural secrecy. It echoes the "tiered-access" model recommended in WIPO's IGC Working Document 2023 para 46, which distinguishes between sacred, community, and public domains.[66]

Finally, at the judicial level, courts must adopt interpretive presumptions favoring community interests in ambiguous IP disputes. Drawing on the equitable maxim ubi jus ibi remedium (where there is a right, there is a remedy), plural-equitable adjudication would treat Indigenous claims as moral presumptions of ownership unless proven otherwise. This mirrors Canada's evolving "honour of the Crown" doctrine and the fiduciary duties recognized in Mabo v Queensland [No. 2].[67]

e. Policy Blueprint for the Gulf Region and Saudi Arabia

The Gulf states, particularly Saudi Arabia, are uniquely positioned to pioneer plural-equitable IP reform. Vision 2030 emphasizes cultural heritage preservation and knowledge-based economic diversification—objectives congruent with the plural-equity model. Saudi Arabia's Intellectual Property Authority (SAIP) already administers geographical indications and heritage branding; this infrastructure can be extended to TK and TCE protection through a National Register of Traditional Arts and Crafts, modeled after Peru's collective-knowledge registry.

A Saudi sui generis statute could incorporate four pillars of plural equity:

1. *Recognition* – acknowledging tribal and regional customary norms as supplementary sources of IP interpretation, particularly for crafts, designs, and folklore.
2. *Participation* – establishing an Indigenous Knowledge Council within SAIP composed of cultural historians, artisans, and tribal representatives to advise on registration and consent.
3. *Redistribution* – linking commercial use of traditional crafts to community development funds; licensing revenues from heritage tourism could feed directly into local cooperatives.
4. *Integration* – coordinating with WIPO's IGC to align national implementation with international standards, ensuring global recognition of Saudi TK certificates.

Such a framework would advance not only compliance with WIPO 2024 but also the moral objectives of Vision 2030: preserving identity while fostering innovation. It would position Saudi Arabia as a regional leader in decolonizing intellectual property—moving from cultural consumption to cultural co-creation.

Synthesis

Plural Equity thus completes the trajectory from critique to construction. Where postcolonial analysis unmasks the asymmetry of global IP, pluralism rebuilds its normative foundation through

[66] WIPO, IGC Working Document on Traditional Knowledge and Traditional Cultural Expressions (WIPO Doc WIPO/GRTKF/IC/47/INF/3, 2023) para. 46.

[67] Mabo v Queensland [No. 2] (1992) 175 CLR 1 (High Court of Australia).

coexistence. Together, they shift the paradigm from ownership to stewardship, from exclusion to co-governance. This framework transforms IP into a living system—adaptive, inclusive, and reflexive—capable of delivering both epistemic and distributive justice.

As Bhatia concludes, "the promise of pluralism lies not in replacing one universal with another but in institutionalizing conversation among laws".[68] Plural Equity embodies that conversation: a commitment to fairness that listens as well as legislates. In this spirit, the next chapter will examine how these doctrinal insights translate into concrete findings and policy implications within the broader architecture of global IP reform.

CONCLUSION/RECOMMENDATION

Conclusion

This doctrinal analysis examined whether international intellectual-property (IP) law sufficiently protects Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). The findings confirm that core treaties such as TRIPS and the Berne Convention remain structurally misaligned with Indigenous epistemologies. Their reliance on individual authorship, fixation, and economic commodification excludes the collective, intergenerational, and spiritual dimensions that define TK and TCEs. Such exclusion perpetuates not only legal but also epistemic injustice, rendering Indigenous knowledge systems subordinate within global IP governance.

Building upon this critique, the study advances the concept of Plural Equity — a framework emerging from the intersection of postcolonial legal theory and legal pluralism. Plural Equity reframes protection as a continuum of epistemic, procedural, and substantive justice. It calls for recognition of Indigenous knowledge as law, participation of Indigenous communities in decision-making, and redistribution of benefits derived from their intellectual and cultural heritage. This tri-level approach moves beyond symbolic inclusion toward structural transformation of IP systems.

National sui generis frameworks — such as India's TKDL, Peru's Law No. 27811, and South Africa's Indigenous Knowledge Act — demonstrate the feasibility of pluralist reform when paired with community participation and benefit-sharing mechanisms. However, their effectiveness remains constrained by administrative centralization and inconsistent enforcement. These experiences affirm that genuine protection must integrate customary authority into the formal architecture of IP governance.

The WIPO Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge and Folklore (2024) represents a pivotal step toward global doctrinal inclusivity. Its binding provisions on Free, Prior and Informed Consent (FPIC), equitable benefit-sharing, and respect for customary law align with the plural-equitable vision proposed in this study. Yet, implementation will determine whether the Treaty's promise of procedural recognition translates into substantive justice.

Ultimately, the protection of TK and TCEs requires not only new rules but a paradigm shift — from ownership to stewardship, from universality to coexistence. By embedding Indigenous legal orders within statutory frameworks, IP law can evolve into a plural, dialogic system that values cultural diversity as a source of law rather than an exception to it. In doing so, international IP governance moves closer to epistemic justice and to the ethical pluralism that defines a truly postcolonial world order.

Recommendations

In line with the findings above, the following policy and doctrinal reforms are recommended:

[68] Bhatia, supra note [59], p. 71.

1. Embed Plural Equity within international IP treaties. WIPO should integrate the three-tier model — epistemic, procedural, and substantive justice — into future treaty interpretations and monitoring mechanisms.
2. Strengthen national sui generis systems. States must harmonize defensive databases (e.g., TKDL) with positive rights, ensuring Indigenous participation in benefit-sharing governance and dispute resolution.
3. Institutionalize Indigenous legal authority. National IP laws should formally recognize customary law as a parallel source of rights and procedures, enabling courts and agencies to adjudicate according to community norms where relevant.
4. Mandate community-based benefit-sharing funds. Revenues from commercialization of TK and TCEs should flow into community-controlled trusts overseen by transparent auditing mechanisms.
5. Promote participatory lawmaking and capacity-building. Indigenous representatives must co-design IP reforms and receive institutional support to engage effectively in WIPO and domestic policymaking forums.
6. Regional adoption in the Gulf States. Saudi Arabia and neighboring countries could pioneer plural-equitable protection through a National Register of Traditional Arts and Crafts, an Indigenous Knowledge Council within the national IP office, and benefit-sharing frameworks consistent with Vision 2030 and the WIPO 2024 Treaty.

Closing Reflection

Protecting TK and TCEs is not solely a legal endeavor but an ethical re-ordering of how knowledge itself is valued. International IP law must move beyond its Eurocentric origins and embrace pluralism as a principle of justice. Indigenous knowledge is neither a relic nor a commodity; it is a living expression of identity, ecology, and continuity. Recognizing its legal sovereignty affirms humanity's shared duty to preserve the moral and cultural foundations of creation. True reform begins when global law listens — not only to inventors but to the ancestral voices that sustain the world's intellectual heritage.

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إعادة تقييم قانون الملكية الفكرية الدولي: الثغرات المذهبية في حماية المعارف التقليدية والتعبيرات الثقافية

صالح عبدالرحمن محمد المزيد
القانون، الجامعة السعودية الإلكترونية، جدة
بريد التواصل مع المجلة:salehalmazyad818@gmail.com

المستخلص

ينتقد هذا البحث أوجه القصور التي تعاني منها أنظمة الملكية الفكرية العالمية المعاصرة في توفير حماية فعّالة للمعارف التقليدية وأشكال التعبير الثقافي التقليدي، باعتبارها مكونات متجذّرة في الهوية الجماعية للشعوب الأصلية، ونُظمها الروحية، وبُناها الحكومية. إذ تعطي الاتفاقيات الدولية، مثل اتفاقية الجوانب المتصلة بالتجارة من حقوق الملكية الفكرية (تريبس) واتفاقية برن، أولوية لمفهوم المؤلف الفردي ومنطق السوق، بما يؤدي إلى إقصاء المنظومات المعرفية للشعوب الأصلية. كما توفّر التشريعات الوطنية سُبل حماية محدودة، وعلى الرغم من أن معاهدة الويبو بشأن الملكية الفكرية والموارد الوراثية والمعارف التقليدية المرتبطة بها لعام ٢٠٢٤ قد أدخلت التزامات ملزمة، من قبيل مبدأ الموافقة الحرة والمسبقة والمستنيرة وتقاسم المنافع، فإن فجوات جوهرية لا تزال قائمة.

ويعتمد هذا البحث على المنهج القانوني التحليلي(Doctrinal Legal Research)

مدعومًا بمقاربات نظرية وتعددية قانونية، لتقييم مدى كفاية الأطر الدولية والوطنية الحالية للملكية الفكرية في حماية المعارف التقليدية وأشكال التعبير الثقافي التقليدي. ويخلص البحث إلى الدعوة لاعتماد إصلاحات قانونية تُدمج النُظم القانونية للشعوب الأصلية، بما يحقق العدالة المعرفية، ويعزّز التعددية القانونية، ويوفّر حماية ثقافية حقيقية وذات مغزى.

الكلمات المفتاحية :المعارف التقليدية، أشكال التعبير الثقافي التقليدي، قانون الملكية الفكرية، الحماية ذات الطبيعة الخاصة (Sui Generis)، حقوق الشعوب الأصلية.