

# Global Policy Frameworks for Protecting Traditional Medicine Knowledge: An Evaluation

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## Abstract

**Key words:** Traditional Medicinal Knowledge, Intellectual Property Rights, Traditional Knowledge, Traditional Scientific Medicine, Convention on Biological Diversity

Traditional Systems of Medicine (TSM), such as Ayurveda, continues to be vital source of healthcare, particularly as modern populations seek wellness amidst rising drug costs and chronic disease. This article emphasis the enduring relevance of Traditional Knowledge (TK), noting that many modern drugs such as reserpine have roots in ancient practices. It highlights the critical but often "invisible" role of community health practitioners, like India's Nati Vaidyas, who provide primary care for millions but lack official recognition in national health policies.

The central focus of this article is on the protection of Intellectual Property related to Traditional associated Knowledge. The article argues that standard Intellectual Property Rights (IPR) are often insufficient because TK often exists in the public domain and lacks the "state-of-the-art" status required for modern patents. Consequently, the paper examines *Sui Generis* (unique) legal regimes developed by various nations to safeguard their biological and medicinal heritage. The article covers the *Sui Generis* systems which offer a more effective pathway for preserving ancient medicinal intelligence and ensuring its benefits are shared fairly with the communities that originated them.

This article evaluates the limitations of conventional IPR and examines the emergence of *Sui Generis* (unique) legal regimes across various nations including India Bangladesh, South Africa, Thailand, Peru, China, and Costa Rica as a more effective pathway for safeguarding biological heritage and ensuring the equitable sharing of benefits with originating communities.

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## Introduction

Food is the major source for serving the nutritional needs, but with growing modernization some traditional ways are being given up. Affluence of working population with changing lifestyles and reducing affordability of sick care, in terms of time and money involved, are some of the forces that are presently driving people towards thinking about their wellness. There has been increased global interest in traditional medicine. Efforts to monitor and regulate traditional herbal medicine are underway.

Ayurveda, the traditional Indian medicine, remains the most ancient yet living traditions. Although India has been successful in promoting its therapies with more research and science-based approach, it still needs more extensive research and evidence base. Increased side effects, lack of

curative treatment for several chronic diseases, high cost of new drugs, microbial resistance and emerging diseases are some reasons for renewed public interest in complementary and alternative medicines. Numerous nutraceutical combinations have entered the international market through exploration of ethnopharmacological claims made by different traditional practices. This review gives an overview of the Ayurvedic system of medicine and its role in transnational medicine in order to overcome malnutrition and related disorders<sup>1</sup>.

## Relevance of Traditional Systems of Medicine in Modern Era

### India

Herbs are the primary source of medicines in almost all TSM which uses the drug as a whole. Even though the methods of extraction are many,

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<sup>1</sup> M. M. Pandey, Subha Rastogi, and A. K. S. Rawat, *Indian Traditional Ayurvedic System of*

*Medicine and Nutritional Supplementation*, available at <http://dx.doi.org/10.1155/2013/376327> (Last Accessed on 9-02-2026)

there happens no separation of specific alkaloids from them. The drug as a whole possess in them the constituents which counteract with those which may cause side effects or adverse reactions. Hence TM stays a comparatively safer choice of treatment for both acute and chronic conditions and even for longer durations of therapy. Most of the well-established drugs of modern medicine have a strong base of traditional knowledge.

For instance, isolation of reserpine in 1952 from the herb *Rauvolfia serpentina* that has been used in India for many centuries by the natives to treat snake bites and mental illness is worth highlighting.<sup>2</sup> TM is applied in the management of almost all systemic disorders and the noteworthy applicability remains in managing chronic disorders. In communicable diseases such as malaria, HIV, dengue, chicken pox, chikungunya etc. TM has widely proved its worth<sup>3</sup>.

Apart from the 6,00,000 licensed medical practitioners of classical systems like Ayurveda, Siddha and Unani, there are over one million community-based traditional health practitioners in rural India. These people are India's traditional barefoot doctors (Nati Vaidyas). These community health practitioners assist in around 80% of all rural deliveries, treat over 40% of broken bones and 50% of snake, scorpion and dog bites. They also treat other primary healthcare problems in humans and domestic animals such as elephants, cattle and goats. Today's national health policy does not recognize existence of traditional doctors. Although they are well established and respected by local communities, their contribution to public health has never been officially assessed. Invisibility of Nati Vaidyas may be due to the fact that they work in poorest and marginal sections of society and the fact that they belong to the same communities they serve. Their invisibility is intensified because they work outside the framework of formal health service and market economy.

Complementing the work of the Nati Vaidyas are the Griha Vaidyas or home doctors, e.g., housewives, grandmothers and household elders. Range of home remedies used in rural households is impressive. Micro studies in tribal areas have shown that as many as simple health conditions are regularly treated within households itself<sup>4</sup>.

About 1420 specialized barefoot healers are working in the southern states of India. The ratio of population per healer varies considerably and ranges from 76 to 4700 individuals per healer. There seems to be one healer per village, although sometimes one local healer is still incomplete and the final report may show a higher population-healer ratio. An inventory lists several types of local healers such as traditional birth attendants, healers of poisonous bites, bone setters, traditional veterinary healers, dentists, eye-specialists and general physicians. A limited study was carried out on the range of diseases and conditions treated by specialized barefoot healers. These include gynecological disorders, pediatric disorders, jaundice, skin diseases, infectious diseases such as malaria, chicken pox and small pox, mental disorders, headaches, wounds, worm infestations, heart diseases, stomach problems, ear problems, minor surgical conditions, epilepsy, eye problems, fractures and dislocations, poisonous snake bites, dog bites, dental problems, prevention of diseases, deliveries and veterinary care<sup>5</sup>.

The Constitutional commitment of equality of status and opportunity remains silent here due to myopic vision of elite community in power to whom the qualification and not the quality does matter as such. Not even a wider area of jurisdiction of their effective contribution does matter- only a piece of certifying paper issued from authority established by law. Not without reason that a veteran has lamented, Law is what law does and the rule of law must run close to the rule of life<sup>6</sup>.

A recent survey showed that 78% of patients living with HIV/AIDS in the USA use complementary

<sup>22</sup> Vedavathi, Scope and Importance of Traditional Medicine, *Indian Journal of Traditional Knowledge*, 2003 July Vol. 2(3): p.236-239

<sup>3</sup> Wilcox M.G., *Traditional, Complementary and Alternative Medicine Policy and Public Health Perspectives*, Bodeker., G. Bodeker and G. Burford eds., Imperial College Press, 2007, p. 239-254.

<sup>4</sup> Vd.A.Hafeel and Darshan Shanker, *Revitalizing indigenous health Practice*, available at <http://www.compasnet.org/english/download/frlhart1.pdf> (last accessed on 26-01-2026)

<sup>5</sup> Vd.A.Hafeel and Darshan Shanker, *Revitalizing indigenous health Practice*, available at <http://www.compasnet.org/english/download/frlhart1.pdf> (last accessed on 26-01-2026)

<sup>6</sup> V.R.Krishna Iyer, "Indian Intellectual Property Jurisprudence and Quasi Imperial Pressures", (1991)3, *NLSJ*:117

and alternative medicines and similar patterns have been reported in many other developed and developing countries. A number of systematic studies on the efficacy of traditional management methods are slowly emerging suggesting anti-retroviral, immunomodulatory and opportunistic infection reducing effects. TSM are linked with the changes in tradition and therefore much of their concepts are either lost or modified due to changes in civilization. This has even brought in major changes in their status due to the influence of newer systems of health care and attitude of public. Hence summarizing the contribution of this ancient wisdom in few words would be prejudiced. Although some name TSM as an old and outdated system of medicine, the new research findings have reestablished the benefits of these systems for the welfare of mankind. Therefore, it is feasible to state that TSM are being continuously providing a safer and effective health care as a reassuring option of life when all the alternatives fail; just like a small child gets back home crying for support after all failures<sup>7</sup>.

#### **Traditional Life Style of Jenu Kuruba Tribes (Honey Collection Knowledge)**

Jenu Kuruba ethnic community has survived on their traditional knowledge base regarding health problems. Traditional medicines are the primary healthcare resources for the ethnic group to shield their health. Tribal practitioners are the curators of the tribal society and they have a good knowledge of medicinal plants, diseases and treatment by means of plants only. Jenu kuruba is one of the major ethnic group in State of Karnataka. They are concentrated around Mysore Chamarajnarag Coorg, districts of the Karnataka state<sup>8</sup>.

The District of Kodagu is a hill station in the Western Ghats on the southern border of Karnataka, southwest India. Set in one of the 34 biodiversity hotspots in the world, the region boasts many protected areas, including Rajiv Gandhi Nagarhole National Park, as well as a thriving adivasi (“first dweller”) population. In addition to coffee, Kodagu is also known for its

honey production, which is at its peak at the beginning of the southwest monsoon (May-June). Honey collecting has been and still is an important economic and ritualistic activity for the Jenu Kuruba, who number about 30,000 individuals living in and around the reserve forests in the state of Karnataka (Census of India 2001). Jenu means honey in the local dialect. Although some Jenu Kuruba have migrated to cities and towns, many continue to live in the forest supplementing wage labor on coffee estates with household cultivation of rice, coffee, and sweet potato.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was passed in 2006. This gives adivasis rights to inhabit forest areas, collect minor forest products, use the products of rivers and lakes, and to graze animals. It also guarantees communal rights to intellectual property and traditional knowledge, and rights for the clearance of land for government funded facilities such as roads, schools, fair price shops, and electric lines. This Act ensures continued access to the forest and rights to collect honey to the forest-dwelling Jenu Kuruba.

The passage of the Recognition of Forest Rights Act guarantees continued access to the forest and the wild honeybees therein. As long as it remains economically worthwhile to collect honey and individuals are interested in learning, the Jenu Kuruba will be able to demonstrate and observe this activity. So far, honey collecting has been able to adapt to the vast changes in India and especially in the district of Kodagu.

An NGO, the Kadi Board, provides training for what the Jenu Kuruba call “scientific” honey collection. Their goal is to teach people to harvest sustainably. The hope is to maintain healthy bee populations in the face of increasing numbers of collectors. The Kadi Board also provides material and training for household beekeeping of thudujejenu<sup>9</sup>.

#### **Traditional Life Style of Soliga tribes**

<sup>7</sup> Srihari Sheshagiri, *Connoting the Relevance of Traditional Systems of Medicine in Modern Era*, available at <https://www.researchgate.net/publication/284898695> (Last accessed on 10-10-2025)

<sup>8</sup> Nanjunda DC, “Ethno-medico-botanical Investigation of JenuKuruba Ethnic Group of

Karnataka State, India” *Bangladesh Journal of Medical Science* Vol.09 No.3 Jul’2010.

<sup>9</sup> Kathryn Demps, *The Selective Persistence of Local Ecological Knowledge: Honey Collecting with the Jenu Kuruba in South India*, available at <https://www.researchgate.net/publication/239522397> (Last accessed on 10-10-2025)

The Soliga tribe traces their origin to Karayya, son of Lord Maleya Mahadeshwara, swamy of Maleya Mahadeshwara Hills, Karnataka. Legend says that on seeing Karayya's affinity towards wild animals, Lord Maleya Mahadeshwara swamy asked Karayya to reside in forests, whereas other fusion son Biliyayya resided in plains and became the forefather of Lingayats. The Soliga speak the Sholaga language (Soliganudi) as a mother tongue. A member of the Dravidian family, it is most closely related to Kannada with several Tamil influences. The Soliga village of Hosapodu in Karnataka, won an important court victory after its entire stock of honey its key source of livelihood was seized by local forestry officials in May. The community, with the support of local organizations, took the matter to court and won. The confiscation of honey was in direct violation of the 2006 Indian Forest Rights Act, which recognizes the rights of India's tribal peoples, such as the Soliga, to live in and from their forests, and protect and manage their land<sup>10</sup>.

BRT Tiger reserve<sup>11</sup> is the first protected area in the country where community forest rights (CFR) have been granted under the Forest Rights Act, 2006 (FRA)<sup>12</sup>. The Soligas were evicted and relocated, after the forests near BR Hills were declared a wildlife sanctuary under the Wildlife

Protection Act of 1972. When the Government declared the forests they live in, a protected reserve, the Soligas created history by becoming the first tribal community living inside the core area of a tiger reserve in India to get their forest rights officially recognised by the court of law. Even today the Soligas are known for their intimate knowledge of the forests and judicious use of medicinal plants and non-timber forest produce (NTFP)<sup>13</sup> like honey, gooseberry, lichen, tubers, etc. They are extremely good at identifying animals through pug marks and smells<sup>14</sup>. Hence, it is feasible to state that tribal communities are a rich source of traditional knowledge. Initiatives that respect their knowledge while taking them through the process of development could be enriching to all the partners involved, which is mutually enriching.

Vivekananda Girijana Kalyana Kendra (VGKK), a non-sectarian and a humanitarian organization was founded by Dr.H Sudarshan in 1981. It started working with Soligas with the motto of sustainable development of tribal people through rights-based approaches to health, education, livelihood security and biodiversity conservation. Dr.Sudarshan initiated help in curing poisonous snake bites and in de-worming gained the confidence and love of the Soliga community

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<sup>10</sup> Mamatha , Dr. Laveena D'Mello , Gururaj G. Gowda , A Study on The Situations of Soliga Tribes in Karnataka ,Quality in Higher Education Challenges & Opportunities, April 2018 available at <https://zenodo.org/record/3361340/files/Apirl-254-261.pdf> (Last accessed on 10-11-2025)

<sup>11</sup> Soliga tribes are the major indigenous tribes of BR Hills situated in Chamarajanagar district of Karnataka state in south India. Since time immemorial, Soligas have led a semi-nomadic life and were engaged in shifting cultivation. Collection of non-timber forest products (NTFPs) like honey, lichens, soap nut, roots of Magali (*Decalapis hamiltonii*), fruits of Amla (*Embllica officinalis*), Chilla (*Strychnous patatorum*) and Alale (*Terminalia chebula*), is another important, but relatively recent occupation. Soligas practice subsistence agriculture for their sustenance. The indigenous cropping systems, animal rearing and other agriculture activities are in tune with the rituals of the tribes. Soligas are also known for their rich knowledge on soil fertility and ecofriendly agricultural practices. Since time immemorial, Soligas were practicing shifting cultivation. Soligas have been leading their life in harmony with nature and possess a rich wealth of indigenous knowledge on forest conservation and

sustainable agriculture. On October 2, 2011, as many as 25 villages of Soliga tribals located inside the sanctuary received community rights, including the crucial forest conservation and management right to around 60 per cent of the sanctuary area, comprising the Yellandur, K Gudi and Punjanur ranges.

<sup>12</sup> Aparna Pallavi," Court upholds Soliga tribe's community forest rights" available at <https://www.Down to earth.org.in /news/court-upholds-soliga-tribes-community-forest-rights--41256>(Last accessed on 14-12-2025)

<sup>13</sup> "The legal proceedings were taxing and time consuming," C. Made Gowda, secretary of the Zilla Budakattu Girijana Abhivrudhi Sangha, and the first Soliga to get a doctorate, told VillageSquare.in. In October 2011, when the court ruled in favour of the Soligas, and secured their rights to habitat and NTFP collection, it was a huge win for the community, especially for those dependent on the forests for livelihood.

<sup>14</sup> How an indigenous tribe in Karnataka's tiger reserve won battle over forest rights,available to <https://www.thenewsminute.com/article/how-indigenous-tribe-k-taka-s-tiger-reserve-won-battle-over-forest-rights-89255>(last accessed on 10-10-2025)

which fostered an unbreakable bond between the great humanitarian doctor and the innocent, and nature loving Soligas<sup>15</sup>

In addition to the above discussion Soliga tribes are also associated with agricultural operations certain rituals of tribals e.g. Ragi Habba (Festival) which is associated with harvesting of millets. Soligas have their own method of forecasting rain, controlling diseases and pests, through their indigenous tribal traditional agricultural calendar. This traditional calendar represents the agricultural activities and rituals associated with the Soligas in a calendar year. It also gives an insight into the comprehensive traditional agronomic practices and rituals by the Soligas<sup>16</sup>. Further, in India Traditional knowledge digital library mandates for disclosure of origin of biological resources. However, Traditional Knowledge will not fit under the umbrella of IPR protection. Hence, Sui Generis system is the choice for the protection of Traditional Knowledge.

Some of the noteworthy Sui Generis systems have been developed for protection of IK by various countries which have been discussed below:

***Sui Generis Protection of Traditional Knowledge***

Sui Generis<sup>17</sup> is a Latin term meaning “a special kind”. In intellectual property rights discourse (IPRs) the term refers to a special form of protection regime<sup>18</sup> outside the known framework. It can also be viewed as a regime especially tailored to meet a certain need. In the African

context, this regime becomes necessary in protecting traditional knowledge (TK) and associated natural resources. TK does not neatly lend itself to protection using the existing legal regimes because it is premised on the concept of community property ownership whereas the existing forms of IPR regimes are based on the Western concept of property ownership.<sup>19</sup>

The TRIPS Agreement refers to the protection of plant types as being Sui Generis.<sup>20</sup> It implies that a unique IPR legislation tailored to the particular requirements of the agriculture industry. In the instance of TK, it refers to the development of new international standards or new state laws that would provide protection for intellectual property (IP) related to GR, biodiversity, and any ensuing biotechnology.

A Sui Generis system in regard to the protection of traditional knowledge (TK) must strive to achieve the following goals:

- a) Providing positive protection of TK as opposed to defensive protection;
- b) Providing protection of TK in the sense of intellectual property by creating specific rights in intangible properties; and
- c) Protecting the content of TK.

The problem of protecting indigenous and local populations' traditional knowledge, inventions, and practices is now on the agenda of several intergovernmental forums, which includes WIPO, WTO and the CBD. The discussions at these forums are centered on numerous legal, economic,

<sup>15</sup> The interventions started with the most basic need of the communities, i.e., health. At that time, the Soligas were very shy and were hiding themselves in the forest. Dr. Sudarshan understood the basic need of the people in terms of their medical requirements and promoted curative, promotive, rehabilitative and sustainable health care practices.

<sup>16</sup> To bring in overall development of the communities, it was felt that they need to be helped beyond their health aspects. A leadership training workshop was conducted in 1985 which resulted in setting up of development councils called Soliga Abhivrudhhi Sanghas (SAS), to protect them from rapacious outsiders and resolving disputes within the community. Their work is coordinated by the Soliga Abhivrudhhi Maha Sangha, which helps the tribals in getting back their land and ensure that the forest department employs only Soligas in work to the plantations. The sangha has co-ordinated with the Forest Department for the sanction of tree patta (right to harvest the produce of certain trees),

irrigation, housing and drinking water schemes. By far, the most important contribution of the sanghas has been the sustainable management of minor forest produce by the people themselves.

<sup>17</sup> Carlos M. Correa, *Traditional knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge* (Discussion Paper Quaker United Nations Office Geneva, November 2001), p. 14.

<sup>18</sup> A sui generis regime denotes a legal regime ‘of its own kind’ which is specifically adapted to the nature and characteristics of TK.

<sup>19</sup> Moni Wekesa, *What Is Sui Generis System of Intellectual Property Protection*, available at <https://atpsnet.org/content/uploads/2017/05/techno-policy-brief-series-13.pdf> (last accessed on 4-09-2025)

<sup>20</sup> According to Black’s Law Dictionary, Sui generis is defined as of its own kind or class; unique or peculiar.

policy and scientific issues in TK protection under the IP regime.<sup>21</sup>

Numerous regional and national attempts have been launched to protect TK under a sui generic paradigm as a result of the escalating discussion on the topic and the WIPO's bottom-up approach to the worldwide protection of TK based on national experiences. As of February 2002, a Sui general form of legal protection for TK related subject matter has been offered or was being made available in at least 22 nations and certain regional integration organizations<sup>22</sup> Any attempt to establish such a Sui Generis regime has to address complex conceptual and practical issues related to definition of subject matter of protection, requirements for protection, extent of rights to be conferred, modes of acquisition, including registration, enforcement measures etc.<sup>23</sup>

However, the role of Navadanya needs much appreciation for significant victory against Monsanto's Biopiracy of Indian Wheat case. The Navdanya came in 2004 when the European Patent Office in Munich revoked Monsanto's patent on the Indian wheat varieties, Nap Hal. Monsanto, the most significant seed partnership, was appointed the patent (No. EP 0445929 B1) on wheat on May 21, 2003, by the EPO under the essential title, "plants." On January 27, 2004, The Research Foundation for Ecology, Technology, and Science, alongside Bharat Krishi Samaha and Green space<sup>24</sup> had filed a petition at the EPO regarding challenging the patent rights<sup>25</sup> given to Monsanto, prompting the patent being renounced.<sup>26</sup>

### **Bangladesh**

Bangladesh has signed and ratified all the major international treaties, conventions and agreements in relation to biodiversity including the CBC. The

Constitution of Bangladesh explicitly mandates to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wildlife for the present and future citizens (Article 18A). In line with the spirit of the Constitution, the Government of Bangladesh enacted a comprehensive law titled as the Bangladesh Biodiversity Act 2017. While complying with the international instruments relating to biodiversity, this piece of legislation expressly refers to the CBD in its preamble. With the same tuning of the CBD, the Act of 2017 pledges for protection of biodiversity, sustainable use of its components and equitable sharing of benefits accrued from biological resources. The Act underscores the importance of protecting traditional knowledge on biological resources. The Wildlife (Conservation and Security) Act 2012 is another significant law that aims for the conservation and safety of biodiversity, forest and wildlife of the country. Under this law, a "Wildlife Advisory Board" shall be established which will assess the existing condition and give direction from time to time in relation to development and management of biodiversity, wildlife and forest.

The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013, strictly prohibits the use of wood as fuel in brick kilns since burning firewood as fuel leads to deforestation and thereby degradation of biodiversity. The legal framework for conservation of biodiversity while complying with international standards reflects the paramount commitment of Bangladesh. Legislative framework alone cannot protect biodiversity unless we change our actions considering the values of biodiversity<sup>27</sup>.

<sup>21</sup> Kumar, Nithin V., "Protection of Traditional Knowledge: International and National Initiatives and Possible Ways Ahead available at <https://ssrn.com/abstract/2012724> ; <http://dx.doi.org/10.2139/ssrn.2012724>(Last accessed on 28-09-2025)

<sup>22</sup> Intergovernmental Committee on Intellectual Properties and Genetic Resources, Traditional knowledge, Folklore, available at <http://wipo.int/>(last visited on 10.3.2025).

<sup>23</sup> Graham Dutfield, *Legal and Economic Aspects of Traditional Knowledge*, A Globalized Intellectual Property Knowledge, A(Cambridge University Press, Cambridge 2005), p.23.

<sup>24</sup> An Open Letter to Prime Minister Modi and President Obama from available at <https://www.organicconsumers.org/news/> (last accessed on June 17,2025)

<sup>25</sup> Obama - stand up for Seed Freedom and Food Democracy available at <https://theecologist.org/2015/jan/23/obama-stand-seed-freedom-and-food-democracy> (last accessed on June 17,2025)

<sup>26</sup> Naturopathy available at <http://praktik-chikitsa.blogspot.com/> (last accessed on June 16,2025)

<sup>27</sup> The legal framework on biodiversity conservation available at <https://www.thedailystar.net/law-our->

The Bangladesh Academy of Agriculture (1997) documented 100 useful indigenous agricultural technologies that encompass crops, forestry, fisheries and livestock. There are other publications that document hundreds of other technologies related to TK. These technologies and farmers' practices will be further refined, verified and covered under Sui Generis systems. Farmers have been growing and retaining cultivars for ages. So far there is no legal instrument in force to protect these cultivars or knowledge concerning them.

The lists of genetic resources conserved in those gene banks are documented among the plant genetic resources of Bangladesh has given high priority to conservation and utilization of genetic resources. A National Institute on Plant Genetic Resources is being established that will be responsible for exploration of genetic resources as well as their collection, characterization, evaluation, conservation, utilization and documentation. It will also oversee exchanges and training to create awareness among stakeholders and end-users.<sup>28</sup>

### South Africa

South Africa has introduced the National Environmental Management Biodiversity Act, 2004, which contains certain lists whereby many reptiles and amphibians have been enlisted as prohibited or potentially invasive. There are a large number of other animals, birds and plant species, which include indigenous species such as Impala, which are considered invasive in certain areas of South Africa.<sup>29</sup> According to the provisions of Constitution of South Africa, everyone has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation;

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rights/news/the-legal-framework-biodiversity-conservation-1911401(last visited on 26-01-2026)

<sup>28</sup> Sophia Twarog and Promila Kapoor, *Protecting and Promoting Traditional Knowledge: Systems, National Experiences and International Dimensions*, available at [https:// unctad.org /system/f iles/ official-document/ditcted10\\_en.pdf](https://unctad.org/system/files/official-document/ditcted10_en.pdf) (last assessed on 03-01-2026)

<sup>29</sup> Rachel Wynberg: 'A decade of biodiversity conservation and use in South Africa: tracking progress from the Rio Earth Summit to the Johannesburg World Summit on Sustainable

Development' (2000) *South African Journal of Science*, 234

promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>30</sup> The National Environmental Management: Biodiversity Act (NEMBA), 2004 specifically provides for management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act (107) of 1998 (NEMA).<sup>31</sup>

### Thailand

Thailand has developed a comprehensive sui generis regime for TM. Thailand, as one of the countries rich in traditional knowledge and plant genetic resources, has opted for a Sui Generis system by enacting two major laws directly addressing the protection of traditional knowledge and plant genetic resources. First, Thailand Plant Varieties Protection Act B.E. 2542 (1999) (Thai PVP Act) has been designed to protect the interests people involved in agricultural practices in 2 main ways; to protect the rights of plant breeders in order to promote innovative plant breeding activities and to recognize and protect the rights of farmers and local communities, including related knowledge in respect of their participation in improving, conserving, and making use of plant genetic resources<sup>32</sup>. Secondly "Thai Traditional Medicinal Intelligence Act" distinguishes three different categories of "Traditional Formulations" such as the National Formulae i.e. formulations given to the Nation which are crucial for human health. The Act stipulates that the ministry of Public Health has authority to announce a certain formula of traditional Thai medicine as a national formula. The commercial use of a national formula for the production of drugs or for research and development is subject to permission from the government; the Private Formulae i.e. the formulations that can be freely used by the owner. Third parties must obtain permission from the

Development' (2000) *South African Journal of Science*, 234

<sup>30</sup> Section 24 of the Constitution of South Africa

<sup>31</sup> Michael Kidd: "Environmental Law: A South African Guide" (1997) 114

<sup>32</sup> Sirakarn Meeklam, *Protection Of Traditional Knowledge Associated With Plant Genetic Resources: A Comparative Study Of Thai Law And Indian Law*, available at [https://so05.tcithaijo.org/ index.php /TBLJ/ article/view /11256 8](https://so05.tcithaijo.org/index.php /TBLJ/ article/view /11256 8) (last accessed on 03-01-2026)

owner to use the formula. The request for the registration of a private formula can be submitted by an inventor or developer of the formula; or an inheritor of the inventor or developer of such a formula. The Act grants exclusive rights by allowing the owner of the registered personal formula to use the formula for research and to sell and distribute any product developed or manufactured by using the formula. However, there are certain limitations to the exclusive rights. The rights over a registered personal formula subsist throughout the life of the owner and for a further 50 years from the date the applicant dies; and the General formulae i.e. the formulations which by virtue of being well known, remain free to use by anybody.

#### Peru

The Sui Generis regime of Peru was established by Law No. 27, 811 of 2002, whose objectives are to protect TK, to promote fair and equitable distribution of benefits, to ensure that the use of the knowledge takes place with the prior informed consent of the indigenous peoples, and to prevent misappropriation. The law grants indigenous peoples the right to consent to the use of TK. The law also foresees the payment of equitable compensation for the use of certain types of TK into a national Fund for Indigenous Development or directly to the TK holders<sup>33</sup>.

#### China

Traditional knowledge of traditional Chinese medicine refers to the theories, skills, and symbols of traditional Chinese medicine based on the long-term practice of the Chinese nation, inherited from Test methods, diagnostic skills, traditional Chinese medicine processing skills, pharmaceutical methods, health care methods, etc. Traditional knowledge of Chinese medicine is the essence of the Chinese nation, and it is the internal core of the inheritance and development of traditional Chinese medicine culture. The main

source of traditional Chinese medicine, such as traditional Chinese medicine works, is difficult to be included in the modern intellectual property protection system due to the characteristics of long-term production, complex subjects, and many objects. However, the cultural achievements of traditional Chinese medicine are mainly created by ancient Chinese in ancient times and have a long history.

The owner's patent awareness is not high, and Chinese medicine companies also lack attention to traditional Chinese medicine patents. On the other hand, due to the influence of traditional Chinese culture, some well-known traditional Chinese medicine companies have passed down the traditional secret recipes obtained after long-term medical scientific research, only through the family, thinking that the method of publicity in exchange for protection will lack the traditional characteristics of our country.

On February 12, 2016, the "Outline of the Strategic Plan for the Development of Traditional Chinese Medicine (2016–2030)" issued by the Government Office of the State Council to affirm the significance of traditional Chinese medicine, and clearly proposes to comprehensively inherit, develop and use traditional Chinese medicine. On October 25, 2021, in order to protect traditional Chinese medicine culture, in accordance with the relevant provisions of the "Chinese Medicine Law of the People's Republic of China", China's traditional Chinese medicine management agency took the lead in formulating the "Regulations on the Protection of Traditional Chinese Medicine Knowledge"<sup>34</sup>.

#### Costa Rica

Sui Generis regime in Costa Rica the Biodiversity Law No. 7788 of Costa Rica aims at regulating access to TK. It provides for the equitable distribution to TK holders of the benefits arising from the use of TK<sup>35</sup>. Costa Rica's Biodiversity

<sup>33</sup> Pradeep Dua, Intellectual Property Rights: Need for a Sui Generis Regime for Non-codified Traditional Medicine in India, Department of AYUSH, Ministry of Health & Family Welfare, Govt. of India, *American Journal of Phytomedicine and Clinical Therapeutics*, available at <https://www.imedpub.com>. (last accessed on 3-04-2025)

<sup>34</sup> Chen Chen, Shuo Li, Junhai Li, *ABS Mechanism of Traditional Chinese Medicine Knowledge from the Perspective of Law* available at

<https://www.atlantispress.com/proceedings/iseemss-> (last accessed on 4-04-2025)

<sup>35</sup> Pradeep Dua, "Intellectual Property Rights: Need for a Sui Generis Regime for Non-codified Traditional Medicine in India, Department of AYUSH, Ministry of Health & Family Welfare, Govt. of India", *American Journal of Phytomedicine and Clinical Therapeutics*, available at <https://www.imedpub.com/articles-pdfs/intellectual-property-rights-need-for-a-suigeneris-regime-for-noncodified->

Law of 1998 is perhaps the most comprehensive legislation implementing the Convention on Biological Diversity. It includes better provisions to protect the intellectual property rights of rural communities regarding uses they have developed for natural resources and plants and animals they have bred<sup>36</sup>. Further, the Costa Rican Law also provides a grant of exclusive rights for the holders. The right is granted exclusively for all traditional knowledge possessed by the indigenous communities. This is more towards the Sui Generis system of law that has been incorporated by the Costa Rican Model Law.

The Costa Rican Biodiversity Law recognizes the unique nature of traditional knowledge. The State expressly recognizes and protects, under the common denomination of Sui Generis community intellectual rights, the knowledge, practices and innovations of indigenous peoples and communities related to the use of components of biodiversity and associated knowledge. This right exists and is legally recognized by the mere existence of the cultural practice or knowledge related to genetic resources and biochemical; it does not require prior declaration, explicit recognition nor official registration; therefore, it can include practices which in the future acquire such status.

### Conclusion

Intellectual property rights undeniably have important impacts on TK. The main impact of the introduction of IPR over TK related inventions is that TK itself cannot be protected through IPR which is already in the public domain. Further, TK is not considered to be "The state-of art," it typically is not eligible for copyright protection. In general, intellectual property rights over innovations connected to traditional knowledge (TK) which encourages a transfer of power from TK owners to intellectual property rights users. In fact, it is this shift in property rights in favour of new holders that has led individuals, organizations and governments to challenge patents, such as the turmeric patent etc. It is important to observe that the practical ramifications of the turmeric or neem patents for the initial TK holders are probably minimal, at least in some circumstances..

The evaluation of global policy frameworks reveals a fundamental tension between traditional knowledge and modern intellectual property law. Because TK is often communal and rooted in long-standing cultural practices, it does not neatly fit the restrictive criteria of standard IPR, which tends to favor the transfer of power from traditional owners to commercial users. The high-profile legal battles over patents for Indian wheat and turmeric underscore the necessity of robust frameworks to prevent biopiracy and the misappropriation of indigenous innovations.

Ultimately, the Sui Generis system emerges as the superior option for protecting the integrity of traditional medicine. As demonstrated by the diverse legislative approaches in countries like Thailand, which categorizes medicinal formulas, and Costa Rica, which recognizes community intellectual rights by their mere existence, a tailored legal "kind" is essential. While IPR is a useful tool, it is not an end in itself; rather, it must be integrated into broader strategies that respect the rights of tribal communities such as the Jenu Kuruba and Soliga to their lands, resources, and ancestral wisdom. Safeguarding this "ancient wisdom" is not merely a legal obligation but a vital necessity for the future welfare of mankind.

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traditionalmedicine-in-india.pdf (last accessed on 3-04-2025)

<sup>36</sup> Michael J. Miller, *Biodiversity Policy Making in Costa Rica: Pursuing Indigenous and Peasant*

*Rights* available at <https://journals.sagepub.com/doi/10.1177/1070496506294801> (last accessed on 4-04-2025)