

# Protecting Traditional Knowledge: Can *sui generis* Regimes Help?

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**Abstract** – The objective of this study is to identify and evaluate the effectiveness of the *sui generis* approach as a method of safeguarding Traditional Knowledge (TK). Traditional knowledge, which is generally passed down through generations, is an important component of the cultural identity of local communities. It is formed, nourished, maintained, and handed down through the generations within a social group. The final results of this study argue that conventional Intellectual Property tools are ineffective for safeguarding Traditional Knowledge in the modern, globalized world. By comparing *sui generis* regimes of various third-world countries pertaining to the protection of Traditional Knowledge, it is hypothesized in this study, that the *sui generis* approach is the most effective method for safeguarding Traditional Knowledge. In terms of Sri Lanka's scholastic contribution to the protection of traditional knowledge, this study has stepped into an uncharted territory. By conducting a thorough assessment of the effectiveness of a *sui generis* protection regime on the utilization of Traditional Knowledge, it is anticipated that this study will contribute to the theoretical foundation of Traditional Knowledge which will be important to all third-world countries. This study primarily adheres to the qualitative research paradigm of legal research and is focused on the Black-Letter approach of research methodology in order to accomplish the study's specific objectives. In order to incorporate numerous international legal perspectives and examine various authorities in the field of protecting Traditional Knowledge, the legal comparative analytical method was additionally employed.

**Keywords:** *Traditional Knowledge, Intellectual Property tools, sui generis regime*

## I. INTRODUCTION

This study's objective was to determine and evaluate the most suitable and efficient safeguarding strategy for Traditional Knowledge (TK). The driving factor of this study was to ultimately gain a deeper understanding of how Traditional Knowledge can be safeguarded in today's globalized economy while addressing pressing issues.

Traditional knowledge is defined as the abilities, knowledge, and traditions that are created, preserved and transmitted from one generation to the next within a community. As a result, it is possible to say that certain aspects of the community's cultural and spiritual identity are shaped by Traditional Knowledge. The communities and individuals who possess and safeguard TK encompass their knowledge, expertise, and cultural heritage to particular knowledge.

It can be recognized that traditional knowledge is based on sociocultural principles that are related to people, soil, plants, living creatures, water, and integrity. TK is repeatedly alluded to as the knowledge of the day-to-day life of the particular community and is extensive, premised on a system of belief. Additionally, it plays an important role in the community's culture and heritage. Traditional knowledge is frequently entangled with folklore, social norms, and traditional influences. Traditional knowledge thus reflects the spiritual and cultural aspects of the particular community.

*Sui generis*, a Latin phrase that means "of its own kind," refers to anything unique to it; belonging to a distinct kind or category. *Sui generis* refers to a distinct legal categorization in legal contexts. A *sui generis* system alludes to the restructuring of some aspects of the intellectual property system in order to properly facilitate the unique characteristics of its particular subject and the particular policy requirements that resulted in the creation of a different structure. A *sui generis* framework may include some standardizations of Intellectual Property protection associated with other types of protection for the protection of Traditional Knowledge and genetic resources. A *sui generis* system might be defined and utilized differently in distinct countries of the world. (Balavanth S Kalaskar,2012)

Moreover, in this globalized world, no one can live alone or remain isolated and should always try to preserve the existing value of their entitlements and reap their maximum results. As a consequence, the study's outcome is that Traditional Knowledge should be documented, closely monitored, and commercialized in order to distribute the benefits among community members who possess the particular knowledge.

To achieve the goal of safe commercialization of Traditional Knowledge, a strong regulatory mechanism should be established. Following that, the benefits of traditional knowledge can be enjoyed by current and future generations by ensuring the safe commercialization of Traditional Knowledge aligned with a *sui generis* mechanism, as well as preventing misappropriation and unauthorized utilization of particular knowledge and related products and services.

## II. MATERIALS AND METHODS

This study mainly complies with the qualitative research paradigm, which draws on primary sources that demonstrate the law as it currently exists, such as statutes, regulations, and conventions, as well as secondary sources, such as books, research papers, and journal articles, that demonstrate how distinct authors observe or respond to the research question.

The black letter approach of legal research was mainly employed in this study to examine the theoretical underpinnings, interconnections, and prescriptive fundamentals, underlying concepts, principles, and understandings found in primary sources such as enacted laws, court decisions, international treaties, academic contributions, reference materials, journal articles, and discussions.

## III. RESULTS AND DISCUSSION

*Sui generis* rights are frameworks that have evolved outside of the current intellectual property structure. Article 27(3)(b) of the TRIPS Agreement provides World Trade Organization (WTO) members the option of establishing a *sui generis* system. This allows countries to design their own protection structure,

which can aid in the safeguarding of their Traditional Knowledge.

Although such *sui generis* rights have been proposed as a method of safeguarding Traditional Knowledge, the parameters of *sui generis* rights are questionable, as are the implications of enforcement. Moreover, it is unclear whether developed nations and the WTO will uphold rights defined by particular countries.

Peruvian *sui generis* law is regarded as one of the world's most productive and efficient *sui generis* strategies for the safeguarding of TK. The Peruvian *sui generis* Law clearly states that its goal is to promote the fair and equitable distribution of the advantages accruing from the use of collective Traditional knowledge. (Article 2, Peruvian Law No. 27811, Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources, 2002) Article 39 of the Law specifically states that funds from benefit-sharing will be directed to a Fund for the Development of Indigenous Peoples. (Article 39, Peruvian Law No. 27811, Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources, 2002)

Additionally, it has expanded the definition of "indigenous peoples," by defining them as indigenous peoples who possess rights that predated the establishment of the Peruvian State, uphold their own tradition, occupy a particular territorial region, and identify themselves as being such. These include rural and indigenous communities, as well as peoples who have chosen voluntary isolation or with whom contact has not been established. (Article 2, Peruvian Law No. 27811, Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources, 2002)

Another third-world country with an important *sui generis* law to protect Traditional Knowledge is Panama. Panama has passed legislation establishing a special regime for intellectual property relating to indigenous peoples' collective knowledge, in addition to the protection and security of their cultural identity and traditional knowledge. (Panamanian Law No. 20 of June 26, 2000, Special Intellectual Property Regime on Indigenous Communities' Collective Rights, 2000)

Remarkably, the Law establishes civil and criminal penalties for violations of the TK in Panama. The entirety of these rights will be granted to indigenous peoples only through the collective rights registration process. (Article 16, Panamanian Law No. 20 of June 26, 2000, Special Intellectual Property Regime on Indigenous Communities' Collective Rights, 2000) As per Article 55 of the Law, when it comes to criminal offenses concerning misappropriation of Traditional Knowledge and duplicating products while misusing the knowledge of Panamanian indigenous communities, half of the fine is apportioned to the advantage of the National Treasure, while the other half is apportioned to the advantage of the respective community. (Article 59, Panamanian Law No. 20 of

June 26, 2000, Special Intellectual Property Regime on Indigenous Communities' Collective Rights, 2000)

It is regrettable to understand that Sri Lanka's Intellectual Property Act is the only legal instrument that protects traditional knowledge. (Intellectual Property Act, No. 36 of 2003) That is also restricted to folkloric manifestations. (Section 05, Intellectual Property Act, No. 36 of 2003) Folklore expressions are protected under Section 24 of the Act from duplicating, performing for the public, broadcasting, distributing via cable, and other types of communication, as well as from adaptation, transcription, and other forms of transformation when done for profit or outside of the context in which they are traditionally used. (Section 24, Intellectual Property Act, No. 36 of 2003)

The flexibility provided by TRIPs and other international agreements to which Sri Lanka is a partner must be fully utilized by Sri Lanka in creating a system that promotes and defends the rights of those who possess traditional knowledge. It is crucial to identify the exact requirements of those who hold traditional knowledge in order to design a suitable *sui generis* regime that will recognize and protect their rights. (Althaf Marsoof, 2010).

#### IV. CONCLUSION

The study's conclusion encourages Sri Lanka and other developing nations to adopt a framework not only for the regulation of Traditional Knowledge but also for the correctly utilizing value of Traditional Knowledge by enacting a *sui generis* legislation that matches the needs of the particular society. This would provide legal clarity for both communities that possess traditional knowledge and other entities looking to exploit that wisdom-related productions and services. In light of the benefits that Traditional Knowledge offers, the above-mentioned type of structure congruent with a *sui generis* regime might be assisting to make the Traditional Knowledge accessible for beneficial use to the whole society by reaping the fruits of that wisdom while also ensuring that particular community members are fairly compensated.

#### References

- [1] Balavanth S Kalaskar. (2012) Traditional Knowledge and *sui generis* law, International Journal of Scientific & Engineering Research, 3(7), 3.
- [2] Althaf Marsoof. (2010) Protection of Traditional Knowledge in Sri Lanka: Deficiencies in the current legal framework, Neethimurasu, 12.
- [3] Peruvian Law No. 27811, Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources, 2002
- [4] Panamanian Law No. 20 of June 26, 2000, Special Intellectual Property regime upon collective rights of indigenous communities, 2000
- [5] Intellectual Property Act of Sri Lanka, No 36 of 2003