

PROTECTION OF SYSTEMS OF TRADITIONAL MEDICINE AND HEALTH CARE

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ABSTRACT

Traditional Medicine continues to be an important means of health care. Practice of traditional medicine by vaidyas is legally permissible only if it is done at home for dispensing family medicine, without personal gain. In view of the role of practitioners of traditional medicine in serving the needs of health care, there is a need to understand the issues connected with it like availability of materia medica, protection and propagation of biological diversity, the legal provisions regarding access to biological resources for commercial utilization, documentation and research etc. There is also a need to develop an action plan for propagation of biodiversity to ensure the sustainability of traditional medicine as well as Ayurveda. Folk traditions of medical treatment and Ayurveda had a mutually beneficial relationship in the past. This can be equally useful for the future also.

Keywords: Traditional medicine, biological resources, practice without personal gain, commercial utilization

INTRODUCTION

Traditional Medicine has been defined as “The sum total of all the knowledge and practices, whether explicable are not, used in diagnosis, prevention and elimination of physical, mental or social imbalance and relying exclusively on practical experience and observation handed down from generation to generation, whether verbally or in writing. (WHO Traditional Medicine Programme-1998) In India, it includes traditional medicine practiced by *vaidyas*, *hakims* etc; Buddhist /Tibetan Medicine / *Amchi*, folk medicine and family medicine and health care practices like meditation, *Yoga*

and Pranayama. These are not covered by the formal institutions like Medical Council of India (MCI), Central Council of Indian Medicine (CCIM) and Department of Ayurveda, Unani, Siddha and Homeopathy (AYUSH). Why traditional medicine is important? Firstly, a very large number of people across the world use it for health management and this is likely to continue. Secondly, it has immense potential for drug development through reverse pharmacology. Thirdly, it provides livelihood to people, in addition to caring for the wellness of the people in general. The importance of tradi-

ditional medicine has been recognized by WHO. The WHO Congress on traditional medicine adopted Beijing declaration in 2008, and recommended that the knowledge of traditional medicine, treatment and practices should be respected, preserved, promoted and -2-

Communicated widely and appropriately based on the circumstances in each country.

WHO recommended to Member States

(i) To formulate national policies on traditional medicine,

(ii) To study its potential usefulness,

(iii) To evaluate its practices,

(iv) To examine the safety and efficacy of remedies,

(v) To upgrade the knowledge of traditional and modern health practitioners and

(vi) To educate and inform the general public about proven traditional health practices.

The academic discussion and the Rules under Biodiversity Act have centered around protection of Intellectual Property Rights (IPR), patent protection and equitable sharing of benefits with those who had the traditional knowledge. The experience of “Jeevani” developed by TBGRI is a good case study of the complexities involved in this matter. Non availability of the basic plant materials reversals that “Plant protection” has become as important as patent protection.

Patenting and registration of drugs cannot adequately protect the secrecy of the developer of the drug out of traditional medicine since exhibiting the contents and ratios or quantity of the composition of items is mandatory under the Packaged, Commodities Act and Rules. Therefore, it is only “the state of the art” gained by experience which

can protect the secrecy and the IPR of the process, if not the product. It is generally admitted that the modalities for protecting traditional knowledge / medicine are still emerging and evolving, nationally and internationally.

India harvests 90% of the medicinal plants from the forest –uncultivated sources. Around 200 medicinal plant species have been considered as endangered. Cultural erosion represents the loss of traditional knowledge caused by migration of the young to the urban areas. The knowledge inherited from elders in the rural setting about ethno botany and ethno medicine will not be available to the children born in the urban areas.

New techniques of cultivation and propagation like tissue culture can enhance production of the medicinal plants.

Bio-piracy and unauthorized appropriation of traditional medicine under IPR systems have to be noted as important issues. In a legitimate manner, research into traditional medicine can give impetus to development of new plant based medicines.

Between 1955-2001 about 55 US patents were derived from ethno medicine – (Tribal, Chinese, Ayurvedic and Euro folk medicine) However, application of IPR systems in the context of traditional medicine has been considered as complex. This is much more so in India. In our context, enabling the practice of traditional medicine and plant protection and propagation are more important than dealing with IPR, patents and registration of drugs.

2. Problem of access to materials used for Ayurvedic and traditional / indigenous medicine:

This is a common problem for registered Ayurvedic and Unani practitioners as well as traditional/ indigenous healers and *vaidyas* who are not registered practitioners.

Many of the “*materia medica*” are sourced from forests which might have been notified as “reserved forests” under Indian Forest Act, 1927. Section 26 of the Act prohibits any person from “trespasses” (26(1)(d) , “strips off the bark or leaves from , or otherwise damages” any tree (26(1)(f), “collects” or “removes any forest produce” (26(1)(g) Any such acts shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both, in addition to compensation for damage.

‘Forest producer’ is defined as

- (i) Trees and leaves flowers and fruits and all other parts or produce of trees.
- (ii) Plants not being trees (including glass creepers, seeds and moss), and all parts or produce of such plants.
- (iii) Cocoons honey and wax
- (iv) Soil, mineral oils

See 64 empower Forest Officers to arrest without warrant.

Further, Biological Diversity Act, 2002 regulates access to biological diversity and resources (plants, animals, micro organisms and parts thereof). However, Section 7 exempts “the local people and communities of the area” and “*vaidas* and *hakims*, who have been practicing indigenous medicine” from prior intimation to State Biodiversity Board for obtaining biological resources for “commercial utilization”.

Biodiversity Management Committees constituted under Section 22 and Rules 22 allows “maintaining data about the local *vaidas*

and practitioners using the biological resources”.

This indirectly provides for registering and recognizing indigenous medical practitioners, *vaidyas* and *hakims*.

3. Problems of complaints to KAUP Board.

Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners Miscellaneous Provisions Act 1961, as amended , provides for registration of qualified Practitioners of alternative systems of medicine Section 34 of the Act exempts traditional / indigenous *vaidas*/ practitioners who are not practicing “whether directly or by implication, practicing for personal gain. Those “who without personal gain furnishes medical treatment or does domestic administration of family medicines” are exempt from registration.

4. Risk of prosecution for “quackery”

‘Quack’ is a person who cheats by practicing as medical practitioner, on commercial basis without qualifications prescribed by law. Though there is no specific definition of quackery under Indian Penal Code the following IPC section are used to book the quacks:

IPC 416-cheating by impersonation

IPC418- cheating with knowledge

IPC 420- cheating

IPC 23, 24, 25-Wrongful gain, dishonesty and fraud

IPC-44- injury

IPC 269,270- Negligent act

IPC -336,337,338- Act endangering life or personal safety, causing hurt and grievous hurt

Sec-27 of Drugs & Cosmetics Act- sale of drug which is not licensed

Sec-15 of Indian Medical Council Act.

Karnataka Government has passed a notification No. HFW 215/ PIM -2007 dated 13.12.2007 to control quack doctors.

5. Measures for propagation of bio diversity of plants:

We believe that all the plants have medical uses. Even those which are not used till today may yield very valuable medicines in future. There is considerable interest in re-search for plant based medicines. But the increase of demand and decrease in natural forests and inadequate efforts to grow and multiply medicinal plants and trees has led to non availability of many of them. Even if they are available in dry and processed form, they may lack the freshness and of potency of medicinal benefits. There is a felt need for regeneration and propagation of biodiversity of flora within forests as well as outside forests. Therefore, we may suggest the following measures for multiplication:

- (i) Inside the forests, Dept of Forests may plant as much diversity of flora as possible in addition to natural regeneration.
- (ii) A list of endangered and non available species may be prepared by practitioners of Ayurveda, Siddha, Unani and indigenous medicine and circulate it to all concerned but more particularly to collectors and of seeds and species for multiplying them.
- (iii) All such practitioners may train the collectors of materials for harvesting them in a sustainable manner. This should include how to judge the maturity of plants, nuts and fruits Leaves etc., how to remove bark only from one third /limited portion of trunks, how to replant tender branches and roots to sprout again etc.
- (iv) Forest Dept may permit practitioners of indigenous medicine to collect seed and re-

productive material for propagation by them and enlisted nurseries.

(v) Those flora which are dependent on a specific locale and ecology for growth may not be amenable for cultivation. Therefore, insitu conservation may be practiced in such cases.

(vi) Local Biodiversity Management Committees may be constituted by all local bodies including in City Corporations / Municipalities and Panchayats. Biodiversity Registers may be prepared for all such local areas as required under Biodiversity Act and Rules.

6 Protections of Plants and Practitioners of Traditional Medicine:

(i) List / Register of practitioners of traditional / indigenous medicine like *Vaidyas and hakims* may be maintained. In addition, resource persons with indigenous knowledge of ethno botany and ethno medicine may also be enlisted.

(ii) There are two categories of practitioners of traditional medicine : (a) Those who practice without personal gain in their houses and dispense medicines and treatment through domestic administering without commercial consideration, who are exempt from registration under section 34 of KAUP Board". (b) Those who practice as a profession and as source of livelihood by acceptance of consideration. If a self regulatory statutory council of traditional medicine (like Central Council of India Medicine is created, registration of practitioners, disciplinary action etc can be facilitated.

(ii) Conference of collectors of seeds and species may be held every year, preferably on World Environment Day (5th June) in all colleges, institutions and colleges of Ayur-

veda .Each college of Ayurveda and colleges and Universities with department of Botany may maintain biodiversity in their campuses like in Indian Institute of Science, Bangalore and Pune University. Names of trees may be tied appropriately around the trunk so that they are not cut without knowing their significance.

(iii) Gift of plants as memento etc. may be practiced. Temples may adopt nurseries for distribution of *Vrikshaprasada* as was done by Tirupati Tirumala Devasthanam . They may also popularize plantations like *Rashi vana*, *Nakshatra vana*, *Navagraha vana*, *Vaidika vanas*, *Kadamba vana* , *Ashoka vana*, *Bilva vana etc.*, The cultural and religious significance of flora may be made known to the visitors to temples. The ecological relevance of flora and fauna may be highlighted to school children during their trekking, excursion etc. Students of botany must get involved with preparation of Peoples Biodiversity Registers.

(iv) *Vaidyas* may distributed seeds and plants and motivate patients to plant and look after the plants / trees which are responsible for their restoration of health and cure.

(v) The ethos of believing that planting trees is a sacred duty needs to nurtured in all. It is important to highlight that Puranas, Mahabharata, etc have stressed that planting trees is a virtuous act and even a single tree planted and protected can take the soul to salvation.

7. Documentation and Research:

(i) Traditional medical practitioners may take up writing books / reports, if necessary regarding their *materia medica*, so that such plants wealth is indentified and propagated.

It will also reduce destruction / cutting down due to ignorance. They need not worry about of actual practice because the art of actual use /application is much more than mere knowledge.

(ii) Third party facilitation by institutions, (like Society of Indian Medical Anthropology) may be taken up. The codification of ethno medicine practiced by three generations of *Vaidyas* of Panaje family in Puttur by Vivekananda Centre for Research Studies is a good example (This is a botanically vetted / indexed collection of 280 plants used in “*eka moolika prayoga*” system) Such documentation of traditional knowledge will make oral tradition “legible” and protect that knowledge for the future.

(iii) Maintaining the register of patients treated, with the dosage and composition / combination of medicines is another requirement for promotion of evidence based research. The list of patients treated by traditional medicine facilities tracing of the cases, if required, provides some comfort level against complaints and facilities experience based improvements in the protocols of treatment.

CONCLUSION

The Projection of certain local health traditions as superstition in textbooks, possibility of harassment through authorities of Forest and Registration Boards and failure to recognize the role of traditional medicine by the intelligentsia may be avoided. The Paramparika Vaidya Parishat could play a vital role in educating the public and the practitioners and provide the much needed respect and protection to traditional medicine and it practitioners.

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