LICENSING OF ASU DRUGS WITHOUT CLINICAL TRIALS UNDER THE DRUGS AND COSMETIC RULES, 1945: A BOON OR BANE?

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ABSTRACT

The number of Indian households adopting Ayurvedic products is steadily increasing. It is expected to rise to 77 percent in 2017 from 69 percent in 2015. In India, there are around 9000 registered pharmacies that manufacture Ayurvedic medications to meet domestic and international demand. (3) In recent years, Indian Ayurvedic medication businesses have pursued a robust marketing strategy in order to grow their part of the health-care industry. Ayurvedic pharmaceuticals, consumer goods, and toiletries make up the majority of ayurvedic health care products. Ayurvedic medications are divided into two categories: traditional formulations mentioned in Ayurvedic scriptures and private or patented formulations developed via experience or research.

Classical medications are not protected by a patent and are essentially sold under the same name and composition as those found in Ayurvedic scriptures. Because there are so many medicine firms on the market producing the same traditional drug, the buyer has the option of purchasing the product from whatever company he prefers. This buyer liberty eventually dilutes a company's chances of becoming a market leader unless it can convince buyers that its formulas are ethical, real, and have followed the tight criteria of their preparations outlined in classical books. Most Ayurvedic medication businesses, on the other hand, are hesitant to promote their drugs based on these criteria. Only a select number are able to do so, and they do so by charging a significant premium to their subscribers.

Due to the limitations of traditional medication marketing, Ayurvedic pharma companies have begun to advertise private and patented drugs for which they can claim proprietary rights. As a result, they become brand owners who can employ any marketing approach to position their brands as market leaders in specific market categories.

Drug corporations have used a variety of techniques to entice consumers in order to gain a larger portion of the market. A more disturbing development

> is the selling of proprietary medicines disguised as traditional through their names, in addition to active promotion through mass media and advertising campaigns featuring celebrities endorsing Ayurvedic remedies. These are medications that are created by mixing a few traditional drugs and giving them a new name that sounds close to the traditional formulations. Because they are disguised as a traditional drug, these products have the advantages of both proprietary and traditional therapy.

Jurisprudential Analysis of Licensing

The term "drug" as described in the Drugs and Cosmetics Act comprises broad diversity of substance, diagnostic and medical devices. The term "cosmetic" in the act describes any product that is meant or used for the purpose of embellishing or purification. Ayurveda, Siddha, and Unani (ASU) medications were included to the statute in 1964.

All medicines intended for internal or exterior use for or in the diagnosis, treatment, mitigation, or prevention of disease or disturbance in humans or animals, and prepared only in accordance with the formulae, are classified as Ayurveda, Siddha, or Unani pharmaceuticals.

Worldwide there is a demand for Ayurveda and other traditional forms of medicine. Around 80% of India's rural population uses medicinal herbs or traditional medical methods. The Indian herbal sector is projected to utilise about 960 plant species, and the industry's sales is more than Rs 80 billion. Herbal exports include medicines of AYUSH (Ayurveda, Unani, Siddha, and homoeopathy) products, which occupy a share of 3% of total Indian pharmaceutical export.

A drug licence is a government-issued permit that allows a business to deal with narcotics. Before launching a drug business, you must first obtain a drug licence. The drug comprises the all the medicines whether Allopathic, Homeopathic Ayurvedic, Siddha or Unani.

Manufacturing of Ayurvedic medicines need Drug license from the concerned State Government as well as compliance to Good Manufacturing Practices (GMP) and the standards prescribed in the Ayurvedic Pharmacopoeia. PLicensing of several kinds of Ayurvedic medications requires proof of safety and efficacy.

Social engineering theory propounded by Roscoe Pound is based on the concept that laws exist and are formulated in the society to regulates individual's behaviour and to regulate the activities in the society. "Law is social engineering which means a balance between the

competing interests in society". Individual, public and social interests are considered for the purpose of maintaining and formulating the legal framework in a society. This legal framework is imperative to maintain the balance and prevent conflicts in the society among social and individual interest.

The researcher intends to establish a link between the social engineering theory and the concept of Licensing. Licensing ensures that the activities undertaken by entities are correctly regulated by law through a proper framework. It grants 'permission' to such entities to carry out their activities. Licensing is important as it ensures that permission is granted only after ensuring that specific criteria with regards to protection of society from such activities are ensured. The researcher draws this analysis from the concept of Social Engineering Theory which also tries to ensure that regulation of activities in the society provides maximum benefit to individuals.

The researcher understands that licensing ensures maximum benefit to the society, but aims to concentrate on the recent issue which has arisen i.e., licensing of ASU drugs without clinical trials. Clinical trials help in ensuring that the licensing provided will result in benefit to society. However, with the absence of clinical trials, the authenticity of such drugs is questionable which in turn violates the social engineering theory of ensuing benefit to the society. The researcher intends to bridge the lacunae caused by the violation of the social engineering theory and intends to advocate the need for appropriate licensing for the better good of the society.

Legal Framework of the Licensing of ASU Drugs

In the case of ASU medications, the word 'clinical trial' isn't contained in the Drug and Cosmetic Act's regulations. However, as a regulatory requirement, evidence regarding efficacy for the ASU drug must be supported by textual rationale, published literature and pilot study. Pilot study is merely required when textual rationale, published literature and textual indications supported authoritative ASU books aren't provided in support of indication for intended ASU drug.

In India, the main provision is Rule 158B of drugs and cosmetic rules 1945[1]. Under the terms of Rule 158B of the Drug and Cosmetic Rules, 1945, the Department of Ayush has clarified the requirement of a pilot study/clinical trial for the licence of Ayurvedic, Siddha, and Unani medications. According to the Drugs and Cosmetics Act, a "Ayurvedic, Siddha, or Unani drug"

[1] Drugs and Cosmetics Rules, 1945, rule 158B

is any medicine intended for internal or external use for or in the diagnosis, treatment, mitigation, or prevention of disease or disorder in humans or animals, and manufactured exclusively in accordance with the formulae described in the authoritative books of the Ayurvedic, Siddha, and Unani (Tibb) systems of medicine, which are listed in the First Schedule.

The main aim behind the clarification is to clear the wants for issuing of the license of ASU drugs. Clinical test reports are sought from manufacturers for patent or proprietary medicines leading to immoderate delay in granting license or renewal of an equivalent.Standardised 985 Ayurvedic Formulations, 399 Siddha Formulations, and 1229 Unani Formulations are published in their respective Formularies. The Pharmacopoeia Commission of Indian Medicine and Homeopathy, as well as Pharmacopoeia Committees, are in charge of developing standards for ASU medicines. Manufacturers must adhere to the stated conditions for licencing of manufacturing units and medicines, which includes following Good Manufacturing Practices (GMP) and adhering to the quality standards of drugs specified in the relevant pharmacopoeia.

Rule 158B of D&C Rules 1945-:

"Proof of safety and effectiveness required for issuing manufacturing license for various categories of ASU medicines is prescribed in Rule 158B of the Drugs & Cosmetics Rules 1945. Accordingly, the Licensing Authorities/Drugs Controllers appointed by the State governments are empowered to grant or renew license for manufacturing of ASU medicines and to require necessary action against the defaulters acting in contravention of the legal provisions."[2]

The Court in J. Hareendran Nair v. State observed that, "Rule 158 of the Drugs and Cosmetics Rules, 1945 deals with the conditions of licence and it obliges the licensee to keep proper records of the details of manufacture and of the tests, if any, carried out by him or by any other person on his behalf of the raw materials and finished products."[3]

In reference to Ayurvedic, Siddha and Unani Tibbs system of drugs of all formulations containing only such ingredients mentioned within the formulae described within the authoritative books of Ayurveda, Siddha or Unani Tibbs system of medicines spected in the

[2] *Id*
[3] J. Hareendran Nair v. State (2009)

First Schedule, but does not include medicine which is administered by parenteel route and also formulation included in the authoritative books.

In State Of Bihar v. Baidyanath Ayurved Bhawan the Court observed that, "Rule 158 provides for conditions of license for manufacture for sale of such drugs. In the Rules, so far as Ayurvedic and Unani drugs are concerned, there is no provision for licensing of use and possession of Ayurvedic drugs as under the 1915 Act. The Rules under the Drugs Act regulate only manufacture of Ayurvedic drugs for sale and not for consumption, use or possession. On reading the provisions of the Drugs Act with the Rules, we find that the Act is confined to use of Ayurvedic medicines containing alcohol for diagnosis, treatment, mitigation or prevention of disease. Under the rules, the manufacture of Ayurvedic drug for sale alone is regulated. The object of the Drugs Act is to maintain the quality of drugs as drugs."[4]

Herbal medicines aren't defined within the Drugs & Cosmetics Act, 1940 and Rules. However, Ayurvedic, Siddha and Unani (ASU) medicines formulated from herbal/plant materials and associated ingredients are regulated within the country via exclusive internal control provisions mentioned within the Drugs & Cosmetics Act 1940 and Rules. Fake medicines instances have also been reported that are defined in chapter IV A of the Drugs & Cosmetics Act, 1940 as adulterated, spurious and misbranded types alongside the penal provisions for the defaulters. Substandard medicines complaints are forwarded to the respective State Regulatory Authorities for acting consistent with the legal provisions.

162-A. Qualifications for State Drug Licencing Authority for Licensing of Ayurveda, Siddha and Unani Drugs:–

Ayurvedic/Siddha/Unani qualifications as defined in Schedule II of the Indian Medicine Central Council Act, 1970 (84 of 1970) Pharma (Ayurveda) from a recognised university At least 5 years of experience in Ayurveda/Siddha/Unani drug manufacture or testing, or enforcement of the provisions of Chapter IV-A of the Drugs & Cosmetics Act, 1940 and rules issued thereunder, or teaching/research on clinical practise of the Ayurveda/Siddha/Unani System.

In Procter & Gamble India Limited v. The Municipal Corporation , the Court observed that "An elaborate machinery is provided under the Drugs & Cosmetics Act, 1940 read with the

[4] State Of Bihar v. Baidyanath Ayurved Bhawan 2007 (1) PLJR 29

Drugs & Cosmetics Rules, 1945 to investigate into the claim for issuance of a licence for the manufacture of an ayurvedic medicine. The formula of the medicine has to confirm to the standard drugs of the particular system of medicine. The experts in the field can be consulted before granting a licence. There is thus a strict control on the manufacture and sale of the drug or medicine."[5]

Requirement of Clinical Trials for Licensing

A recent provision of the Ministry of AYUSH, declaring that Ayurvedic drugs with any prior experience of their indications, or reference in an authoritative text book, do not require clinical trials to obtain the manufacturing licence and market the drug, has dealt a serious blow to drug research in Ayurveda. This provision has nullified the importance of obtaining current data through clinical trials prior to the launch of a new Ayurvedic medicine. As a result, the Ayurvedic medication industry was suddenly saturated with a slew of goods making big claims but lacking in supporting proof. Because there are no further studies on Ayurvedic formulations, the chances of further improving them in terms of dosage, dose forms, indications, length of use, safety, and cost effectiveness are reduced, limiting overall progress.

However, this is falsifiable because, in accordance with Rule 158(b) of the Drugs and Cosmetics Rules, experience or evidence of effectiveness of the ASU drug based on textual rationale, published literature, and a pilot study is required in support of the claims of the indication or use for the issuance of a licence.

The ministry provided a clarification to all state licencing bodies on the non-essentiality of drug trials in Ayurveda on July 4, 2018. "*The term 'clinical trial'as such is not mentioned in the context of ASU drugs related provisions of Drug and Cosmetic Rules 1945. However, experience or evidence of effectiveness of the ASU drug based on textual rationale, published literature and pilot study is required in support of the claims of the indication or use for issue of license in accordance with the provisions of Rule 158(b). Proof of effectiveness in the form of Pilot study may be required for intended ASU drug, if the textual rationale, published literature and textual (authoritative book based) indications are not furnished to support the claim of use or indication*."

[5] Procter & Gamble India Limited v. The Municipal Corporation 1994 (3) BomCR 403

The Court observed in Reckitt Benckiser (India) Ltd. v. Union of India and Anr that, "*The Drugs and Cosmetics Rules, 1945 provides for licenses for import of drugs, grant of or renewal of licenses for manufacture for sale of drugs other than homeopathic medicines. Schedule-A to the Rules prescribed the forms of applications for such grant or renewal of licenses. The Rules deals with the standards of drugs, substances, veterinary drug, patent of proprietary medicines, ophthalmic preparation and etc*."[6]

In the absence of any fresh clinical trials on experienced or referenced Ayurvedic pharmaceuticals for their licence, pharmaceutical corporations would most likely steer clear of such academic endeavours, and the most necessary revalidation studies of Ayurvedic formulations will be halted immediately.

In Dr. Janarthanan v. The Secretary to Government the Court observed that, "*A close analysis of the entire scheme of the Act and Rules would make it clear that separate provisions have been made to deal with Ayurvedic, Siddha and Unani drugs which are different from the other drugs. The Rules were amended and separate provisions have been made in respect of Ayurveda, Siddha or Unani drugs. Part V of the Rules deals with Government Analysts, Inspectors, Licensing Authorities and Controlling Authorities in respect of drugs and cosmetics other than homeopathic medicines and Ayurveda, Siddha or Unani drugs. In respect of Ayurvedic, Siddha or Unani drugs Part XVI has been introduced in the Rules*."[7]

When a firm in India wishes to produce or import a new drug, it must apply to the licencing authority and obtain permission (DCGI). Clinical trials must be conducted in compliance with the Drugs and Cosmetic Rules in order to show its efficacy and safety in the Indian population. The fact that the regulations under the Drugs and Cosmetics Act 1940 and its rules 1945, 122A, 122B, and 122D, as well as Appendix I, IA, and VI of Schedule Y, define the information required for approval of an application to import or manufacture a new medicine, backs up this assertion.

In *Prabhunath Sharma v. Commissioner of Commercial Taxes* Tribunal, the Court observed that, "*a licence is not granted very casually as it would be seen from the Drugs and Cosmetics Rules, 1945. A licence under these rules is granted by the licensing authority after consulting*

[6] Reckitt Benckiser (India) Ltd. v. Union of India and Anr (2015)
[7] Dr. Janarthanan v. The Secretary to Government (2009)

such expert in ayurvedic system of medicines which the State Government may approve in this behalf."[8]

This thesis, on the other hand, can be refuted. The licencing authority may waive some trials if he deems that in the interest of public health, he may provide approval for the import of new pharmaceuticals based on data from trials conducted in other countries, according to Rule 122A of the Drugs and Cosmetics Act 1940 and Rules 1945. A similar provision in Rule 122A states that clinical studies may be waived in the event of novel pharmaceuticals that have been approved and used for several years in other countries.

Clinical research reports and related material for the licencing of new drugs in India, with a focus on clinical trials, must adhere to the CDSCO's Schedule Y, the Drug and Cosmetics Rules 1945.

Conclusion

Clinical trial requirements may vary from case to case, depending on the extent to which the licencing authority is satisfied with its safety and efficacy. The approval of a novel medicine in India is a lengthy procedure that includes meeting all essential conditions and submitting an NDA to the FDA. The purpose of this project is to research and document the conditions for the approval of new drugs in India, with a focus on clinical trials, as prescribed by the Drugs Control Department of the Government of India.

The Central Drugs Standard Control Organization requires an application to show the safety and efficacy of a drug product in people before it can be licenced for import or manufacturing of a new drug (CDSCO).

We may need to take substantial strides in this area to make Ayurvedic medications safer, more responsive, and trustworthy in the situations where they can be deemed a reliable cure. We must also recognise that there is no substitute for the information gained via methodical and rigorous investigation into topics, with a focus on people's viewpoints. This fundamental guideline should not be broken only because Ayurvedic formulations are included in authoritative text books or because they are used in clinical practise.

[8] Prabhunath Sharma v. Commissioner of Commercial Taxes (2000) 120 STC 241

It can be inferred that all clinical study results and relevant material pertaining to the approval of new drugs in India should be submitted to FDA together with the NDA. In general, the drug approval process consists of two steps: a request for a clinical trial and a request for marketing authorisation from the regulatory body. Clinical research reports and related material for the licencing of new drugs in India, with a focus on clinical trials, should adhere to the CDSCO's Schedule Y, Drug and Cosmetics Rules 1945.