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# THE ROLE OF TRADITIONAL KNOWLEDGE IN AYURVEDA MEDICINE: EXAMINING THE NEED FOR A LEGISLATION IN INDIA

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## ABSTRACT

India does not have a separate legislation for traditional knowledge. A need for a separate law for trade secret protection was identified in the 21<sup>st</sup> century on Review of the Intellectual Property Rights Regime in India of the parliament committee, where it was observed that there is lack of clarity on several aspects in the current framework of protecting traditional knowledge in India and it is still afforded by the courts mostly following the English model based on the principles of equity, common law action of breach of confidence and contract law. Hence, a doctrinal study was carried out to understand the traditional knowledge adopted by the Indian Ayurveda Industry and examining the need for a legislation in India.

**Keywords:** Traditional Knowledge, Ayurveda, Indian laws.

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## **I. Introduction**

Ayurveda is part of the culture and tradition of India. The word Ayurveda originated from the combination of the two Sanskrit words. “Ayur” which means life & “Veda” which refers to knowledge of the ancient Indian texts. Ayurveda is recognized as an indigenous system of medicine, boasting a history of 5000 years, which includes both health service and medical products. The survey conducted by CII shows growth projections across different sub-sectors of Ayurveda with an overall CAGR(compound Annual Growth Rate)of 16 percent by 2022. Ayurveda was the system of medicine throughout India, Ayurveda was the system of medicine that had been relied upon by a substantial number of people in India. However, it was not in the form of an organized industry as we see it today. Medicines and treatments were provided by various families who passed on their traditions from generation to generation. Rituals, prayers were a part of the medicine preparations. In the present times, the Ayurveda system of medicine has turned into an organized industry owing to the consumer preferences inside and outside the country. But present situation prevented indigenous community from appropriating the knowledge acquired and passed on from generation to generation. This paper will focus on the demand for separate legislation for protection of traditional knowledge in Ayurveda medicine.

## **II. Meaning of Traditional knowledge**

Traditional Knowledge refers to the practice, and innovations that are passed down through generations within a community or culture. This knowledge is often deeply rooted in the history, environment, and values of a particular group and reflects their understanding of the world, nature, and ways of life. It is often rooted in long-standing cultural and environmental practices, including agriculture, medicine, arts, spirituality, and sustainable management of natural resources.

## **III. Characteristics of Traditional knowledge**

Characteristics of Traditional knowledge can be underlined as under:

- a. Locally Relevant: It is applicable to a particular community, region, or ecosystem, and reflects the community’s relationship with its natural surroundings.
- b. Cultural Transmission: It is often passed down from one generation to the next through

oral traditions, rituals, customs, and hands on teaching.

- c. Support a sustainable way of life: Traditional knowledge systems are often interconnected blending natural, social, and spiritual dimensions in ways that support a sustainable way of life.
- d. Provides Practical solution: It provides practical solutions, such as sustainable farming techniques, herbal medicine, weather prediction, and conflict resolution methods that have been tested over time.

#### **IV. Meaning of Ayurveda**

The Ayurveda means the “Science of life.” It is holistic approach to health that focuses on balancing the body, mind, and spirit to maintain overall well-being.

#### **V. The Role of Traditional knowledge in Ayurveda**

The knowledge of ingredients and way of preparation of some of the Ayurvedic medicines were confined to the holders of Traditional knowledge families in India. Some of the Ayurvedic formulations used to be engraved on palm leaves and were only accessible to a few members of the family. This knowledge would be passed on to the next generation of members by the elderly members of the family in order to keep alive their family traditions (called traditional knowledge).

The need and justification for protecting traditional knowledge noted as follows:

1. The valuable leads/clues provided by traditional knowledge can save time, money investment in modern biotechnology and other industries into research and product development.
2. Traditional knowledge has potential of being transformed into wealth by providing knowledge /clues for development of useful practices and processes for the benefit of mankind.
3. It is not fair that traditional knowledge is appropriated for commercial use without sharing of benefit. Appropriations will violate indigenous cultural precepts by encouraging the modification of such knowledge.

4. Protection of traditional Knowledge will be helpful in contesting false claims of IPR.
5. Traditional knowledge based on plant based medicine may enable India to accelerate drug development.

## **VI. Legislative Efforts to Protect Traditional Knowledge in Ayurveda in India**

Some efforts in the patent law, Biodiversity law and Plant varieties law have been made. They may be briefly named hereunder:

**a. The Patent (Amendment) Act, 2002 reflects concern for traditional knowledge. The following provisions are supportive to the protection of traditional knowledge:**

- I. It is compulsory for patent applicant to disclose source and geographical origin of biological material used Invention.
- II. Innovation based on traditional knowledge of aggregation or duplication of known properties of traditional knowledge is not patentable
- III. Failure to disclose source and geographical origin of biological material used in invention would be good ground for opposing patent application.

**b. The Biological Diversity Act, 2002:**

Section 4 of the Biodiversity Act provides, “No person shall, without previous approval of the NBA, transfer the results of any research relating to any biological resources occurring or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management. The publication of research paper, collaborative research project may involve biological resources or information or knowledge. Publication has not been declared transfer within section 4.

Thus, through publication or research, information and knowledge can be disseminated. However, this freedom can be enjoyed only if publication is in accordance with the guidelines of the central Government. The National Biodiversity Authority and State Biodiversity Boards have also been established to check bio-piracy and protect biodiversity.

**c. Protection of Plant Varieties and Farmers' Rights Act, 2001:**

- I. This Act has following important provisions for recognizing traditional knowledge:
- II. Concept of benefit sharing between provider and recipient of plant genetic source.
- III. Application seeking registration of plant variety must disclose geographical location from where genetic material has been taken while evolving new variety.

**e. The Drugs and Cosmetics Act 1940:**

The Drugs and Cosmetics Act, 1940 governs the regulation of the industrial production and distribution of Ayurveda medicines but there is no provision regarding the protection of Traditional knowledge holder, who contributed a lot to the Ayurvedic medicines.

- f. **The Geographical Indications Act, 1999:** The Geographical Indications law helps to protect products that have a specific geographical origin and possess qualities or reputation due to that origin. Foreexample Ayur.

**VII. Judicial Approach**

Traditional Knowledge refers to the innovations, practice, and skills developed over time by indigenous and local communities. In Ayurveda, Traditional knowledge provides not just medicinal formulations, but also diagnostic practices, spiritual therapies, dietary recommendations and preventive health strategies. The Indian courts have recognized the value of traditional knowledge and the need to protect it from exploitation.

In the famous *Turmeric Patent Case*<sup>2</sup>, the Indian Council of Scientific and Industrial Research (CSIR) successfully challenged a U.S. Patent granted for the use of turmeric in wound healing knowledge that has been part of Indian traditional medicine for centuries. Though this was a case in the United States, it had major judicial and policy implications in India, leading to the creation of the Traditional Knowledge Digital Library.

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<sup>2</sup> Indian vs. U.S. Patent No. 5,401,504.

In Aloe Vera case<sup>3</sup>, the Uttarakhand high Court addressed the issue of benefit sharing under the Biological Diversity Act 2002. Though the case involved Patanjali's use of biological resources, it touched upon the broader judicial philosophy of acknowledging that traditional knowledge cannot be privatized, and those who benefit must share profits with indigenous communities.

The Indian courts and patent authorities have increasingly relied on the TKDL, a digitized database of traditional Ayurvedic formulations, to oppose foreign and domestic patent claims on traditional remedies. This database has been instrumental in protecting Ayurveda from unauthorized commercialization use in India.

#### **VIII. The present IPR system in India cannot protect the traditional knowledge for three reasons.**

1. The current system seeks to privatize ownership and is designed to be held by individuals or corporations, whereas traditional knowledge has collective ownership.
2. This protection is time-bound, whereas traditional knowledge is held in perpetuity from generations to generations.
3. It adopts a restricted interpretation of invention, which should satisfy the criteria of novelty and be capable of industrial application; whereas, traditional knowledge is incremental, informal and occurs every time. A *sui generis*, or alternative law is therefore necessary to protect traditional knowledge.

#### **IX. Critical View**

The development of new technology in Ayurveda and the new use of traditional knowledge based products today are the major threats to the survival of many of indigenous communities. The modern cultural industries as well as the manufacturing industries now commercially exploit the traditional knowledge based products using new technology without the permission and sharing of profits with the traditional knowledge holders communities. It is possible today to bring out new products or find out new use of existing products based on traditional knowledge utilizing the technological developments in the field of biotechnology.

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<sup>3</sup> Divya Pharmacy v. Union of India, 2018

The development of new products or new use of existing products enables the claim of patent. It will affect on holders of traditional knowledge, who are contributed to the Ayurveda, as such in India there is no any specific law to protection Traditional knowledge in India. Still the following challenge remains:

- a. Bio-piracy: With the commercialization and globalization, the risk of bio-piracy increases, where foreign entities patent Indian plant species or Ayurveda based formulations without compensating the original knowledge holders.
- b. Lack of Awareness: Many local communities in India are not fully aware of how to protect their traditional knowledge or benefits from its commercialization.
- c. Fails to access Benefit sharing: while laws like the Biological Diversity Act aim to ensure fair access and benefit sharing, the implementation of these regulations remains weak, and communities often don't receive their due benefits.
- d. There is often a challenge in defining what constitutes "traditional knowledge" and ensuring that it is distinct from modern, innovative knowledge in the patenting process.

## **X. Conclusion**

The protection of traditional knowledge in Ayurveda is vital for maintaining its cultural and medicinal value in India. Indian laws like the patent Act 1970 and The Traditional knowledge plays a crucial role in safeguarding the heritage value in this country. However, challenges remain in ensuring that these laws are effectively implemented, and that the benefits of Ayurveda's Commercial use are fairly shared with the indigenous communities who have preserved this knowledge for centuries. The global recognition of Ayurveda, it is important to continue strengthening legal frameworks and ensuring that they address the complexities of traditional knowledge protection.

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## **Legislations**

1. The Patent (Amendment) Act 2002
2. The Geographical Indications of Goods (Registration and Protection) Act, 1999
3. The Protection of Plant Varieties and Farmers Rights Act, 2001
4. The Biological Diversity Act 2002
5. The Drugs and Cosmetics Act 1940