

AUTHORIZED REGIME OF HERBAL MEDICINAL INDUSTRY IN INDIA**Dr. Irshad Ahmed *Dr. Mariam Arsiwala**Dr. Chandan Singh**

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ABSTRACT

As a legal instrument available to invoke Intellectual Property Right (IPR) are inadequate to protect the vast intellectual resources available in the country with the indigenous people. We need to be agile and alert in watching the IPR infringement by others and claiming the benefit sharing in proportion to the commercialization of our potentials as well as intellectual resources of medicinal plants. The IPR system and the misappropriation of potentials without prior knowledge and consent of the indigenous tribal community are bound to evoke feelings of anger, frustration, of being cheated and helplessness of knowing nothing about IPR and piracy. Even now, for indigenous tribal community, life is a common property that cannot be owned, commercialized and monopolized by an individual or a group and majority of Indians are unaware of IPR intricacies of how the system operates. We are not in the process of learning the new world order of IPR and have to tight out nuts and bolts to develop efficient safeguarding strategies by developing capacity building of the people through networking with various groups who own the intellectual resources in their interest in particular and Ayurveda as a whole.

Keywords: *Intellectual Property Right, Ayurveda, monopolized, commercialization.*

INTRODUCTION

Medicinal plants are those plants that provide medicines, to prevent disease, to maintain health or cure sickness. In one or other form, these plants benefit virtually everyone on the earth. Aromatic plants are used for their aroma and flavour and many times this group becomes inseparable in terms of uses. There are three kinds of herbal medicines available in the market: raw medicinal plants material, processed medicinal plants material and medicinal plants herbal product. India has a long history & tradition as well as rich heritage of using medicinal & aromatic plants (MAPs) for health care &

beauty in improving the quality of life. Ayurveda is about 5000 years old and predominantly use medicinal plants for their preparation and formulation. A vast majority of modern drugs although synthetic analogues but built on prototype compounds isolated from plants (MAPs).

The global coalition for bio-cultural diversity established the working group for intellectual property rights on 1990 with a mission to unite indigenous peoples, scientific organizations & environmental groups to create & implement of a forceful strategies for the use of traditional knowledge & involvement of local people in conservation as

alternative people centred conservation models¹. The group came to conclusion that legal instrument used to invoke IPR protection are inadequate for protection of cultural, scientific, intellectual resources & traditional knowledge of indigenous people.

Intellectual property rights (IPR) applicable for MAPs

Agriculture has become subject to IPR only after the creation of world trade organization (WTO) as a result of the general agreement on tariffs & trade (GATT) Uruguay round agreement . It plays pivotal role in ensuring food security, providing livelihoods, generating foreign exchange & determining the allocation of natural resources (Murphy, 2003).

Protection through the biological diversity act (2002)² : the features of this act are

- To regulate access to biological resources of the country with the purpose of securing equitable share of benefits arising out of the use of biological resources & its associated knowledge
- To conserve & sustainable use of biological resources
- To respect & protect knowledge of local communities related to biological resources.
- To share the benefits with local people as conservers of biological resources & owner of knowledge & information relating to use of biological resources
- Conservation & development of areas of importance of biodiversity.

*Traditional knowledge digital library (TKDL)*³: Since the time immemorial , folk medicines are using herbs in their preparations. This knowledge is disseminated through person to person through practice without having any written form. Therefore, there is no proper record of these practices. Collection, documentation & validation of various folk medicine, in addition of other various traditional knowledge have been initiated by National Institute of science

communication & information resources of council of scientific & industrial research and also by few other NGOs.

Globalisation: The Concept and Apprehension

Globalisation basically attempts at establishing more or less a uniform order in the world pertaining to trade and economic activities. However the developed countries of the west were supposed to be the major beneficiaries as they intended to take advantage of the relaxation in the regime of different developing as well as under developed countries so as to exploit the market & resources of such countries in their interest. In fact, globalisation has been seen & felt as a strategy of re-colonising the third world countries.

For instance, the country can now be ready to sell some of its resources, which earlier were not supposed to be saleable given their strategic, socio cultural, or any other importance, if a re-alluring price is offered for the same. Such a price is normally offered by multinational companies (MNC) as their currency has a greater purchase value than ours.

As regards medicinal plants in particular, the impact was supposed to have all or any of the following forms:

- Increase in export / import of raw materials
- Increase in the domestic & international business of traditional medicines manufactured from the raw drugs.
- Significant increase in research on the bio-chemical & clinical performances / properties of medicinal plants.
- Significant increase in patenting of herbal products
- Boost to the phyto-chemical industry.

Herbal medicinal plants & intellectual property law

There are various legal protection mechanism available under the trade related intellectual property right for herbal medi-

cine plants that can be harnessed the benefit in India's interest are as follows:

- a. Geographical indication of goods (registration & protection) act (1999)⁴: The varieties from which the medicines prepared from certain genotypes & at a particular location having a good quality can be protected after registering it under this act with the controller general of patents, designs & trade marks, Example: Trinvelly's Senna, Java's Citronella, Neemach's Ashwagandha, etc
- b. Protection of plant varieties & farmers' right act (2001): much benefit cannot be achieved in herbal medicine plants by the farmer because rule states that all the extinct varieties are to be registered within the three years from the date of enforcement of this act. Only possibility left now is to register the farmers' variety as new variety since provision is available for the farmer also to register new varieties.
- c. Protection through the biologically diversity act (2002)
- d. Traditional knowledge digital library (TKDL)

Existing problem in the industry

India is selectively undermined despite it being used by majority of the global population & has sizable scientific contributions & also there needs to be proper instruments of check and balance in the industry for its sustainable growth. Some of the problems have been discussed below

- a. **Crisis in identification:** There is no all-India inventories of medicinal plants, there are local & regional inventories, but no national level inventory. The report of the all India co-ordinated research project on Ethnobiology of the government of India 1997, only gives the number of species used, but the actual list is not in public domain. A species which is identified by a particular name by the collectors might be traded under a totally different name. On the

other hand, the same trade name may be used for more than one species, often representing asset of species belonging to the same genus or including very different species used for similar purposes. For instance for the trade name Ashok there are two botanically different species, *Saraca indica* (syn *Saraca asoka*) and *Polyalthia longifolia*. Similarly, for the trade name chirayta the two botanical species are *Andrographis paniculata* & *Swertia chirata*.

- b. **Supply channels & stake holders:** Given that medicinal plants are sourced from many different bio-geographic zones within India, tracing the supply chain of all the species in trade (if possible) would produce a most intricate web across the country. The difference between remuneration paid to primary collectors & the market rate of the product is considered. Thus the supply channel being so long & complicated not only makes it difficult to trace the cultivator & primary collector but also increases the price of such herbs unnecessarily.

Sustainable management of medicinal plants: The scale of consumption of raw material, particularly by unlicensed units, is very difficult to assess as is both the quality and source of that raw material. Some of these are summarized below:

- a. Better information on the current status & potential production of medicinal plants, both those that are cultivated & those that are collected from the wild
- b. Regulatory mechanisms that control the extent and nature of extraction can ensure that extent and nature of extraction can ensure that plant are sustainably harvested,
- c. There is a need to not only impart scientific training to harvesters but also to educate them about the short-term & long-term advantages of following har-

vest practices that do not damage the plant in the long run

- d. Support to small & marginal farmers to undertake cultivation of low-risk medicinal plants cannot only help bring marginal lands under cultivation but also increase production as well as improve returns to these farmers.

Institutional intervention in medical plant sector⁵

Central government organization dealing with medicinal plants: there are numerous central government departments & ministries with some responsibility for medicinal plants but mere intervention & policy making is not enough unless they are implemented & followed on a periodic basis.

- a. Dept. of preparation of list of medicinal plants in Indian system of medicine.
- b. Preparation of list of medicinal plants in ISM. Indian system of medicine documented of local health tradition & Indian system of medicine & homeopathy

State level organisations

The status accorded to medicinal plants in the state policies differs from one state to another. But one aspect is common; none of the states has incorporated 'medicinal plants' in a manner that reflects their enormous socio-economic-ecological significance. There is no consolidated, central level policy study available comparing the legal status of medicinal plants across the states. TRAFFIC⁶-India is currently engaged in a study that tries to address this gap. However, states like Madhya Pradesh have shown some initiative in according the deserved status to medicinal plants in their framework.

CONCLUSION

As a legal instrument available to invoke Intellectual Property Right (IPR) are inadequate to protect the vast intellectual resources available in the country with the indigenous people. We need to be agile and

alert in watching the IPR infringement by others and claiming the benefit sharing in proportion to the commercialization of our potentials as well as intellectual resources of medicinal plants. The IPR system and the misappropriation of potentials without prior knowledge and consent of the indigenous tribal community are bound to evoke feelings of anger, frustration, of being cheated and helplessness of knowing nothing about IPR and piracy. Even now, for indigenous tribal community, life is a common property that cannot be owned, commercialized and monopolized by an individual or a group and majority of Indians are unaware of IPR intricacies of how the system operates. We are not in the process of learning the new world order of IPR and have to tight out nuts and bolts to develop efficient safeguarding strategies by developing capacity building of the people through networking with various groups who own the intellectual resources in their interest in particular and Ayurveda as a whole

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¹ Posey, D.A. & Dutfield, G. (1996) Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Traditional Communities, Ottawa: IDRC.

² Biological Diversity Act 2002 and establishment of National Biodiversity Authority, Chennai". Ministry of Environment and Forests. Retrieved 24 April 2013.

³ Traditional Knowledge Digital Library AYUSH

⁴ Dr. Sudhir Ravindran; Arya Mathew (2009). "The Protection of Geographical Indication in India – Case Study on 'Darjeeling Tea'". Property Rights Alliance. Retrieved 21 April 2013.

⁵ R.B.Pradhan, S.B.Naidu, encyclopedia of pharmaceutical and herbal medicinal plants, vol-3 , 2013 p-950

⁶ "TRAFFIC: The Wildlife Trade Monitoring Network / Initiatives / WWF" worldwildlife.org. 2015. Retrieved 7 August 2015

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