TRADITIONAL MEDICINE AND BIOPIRACY

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ABSTRACT: This article discusses some aspects of the much-debated biopiracy of traditional medical knowledge.

Two Streams

The diverse expressions of medical knowledge in Indian society for purposes of classification can be fitted into two sets of traditions a set of oral traditions or folk medicine and a set of codified traditions. Each set comprises a diversity of traditions that is why it is referred to as a “set”.

In order to address issues of IPR related to indigenous medical knowledge, we need to understand the genesis and scope and nature of the knowledge systems in both these sets and also the nature of their ownership.

The Codified stream

In the first set viz the set of “codified” traditions the medical knowledge is documented and presented in thousands of medical manuscripts. They deal with subjects related to medicine and surgery. There is also literature on medicinal materials viz plants, animals, metals and minerals and products, processes and therapeutical applications. Over 10,000 natural products are documented in traditional texts along with their applications.

In the Indian context the codified medical traditions are drawn from knowledge systems like ayurveda, Unani, siddha and the Tibetan system. In the case of Ayurveda, Siddha the genesis of these systems goes as far back as 1500BC from which time they have been evolving. The Unani and Tibetan system also have an old history which is linked at some point to the evolution of ayurveda. The medical literature from these traditions may be in both classical and regional scripts and languages. There is no “exhaustive” catalogue of the corpus of medical literature available in any of these medical traditions, but “first list” of literary sources can certainly be drawn up.

The codified traditions are evidently in the public domain. The custodians of this set of medical traditions are for all practical purposes, several hundred thousands physicians, who are its present day carriers. These consist of the Kaviraj’s of West Bengal, the Namboodri’s of kerala, the Acharyas and siddhas of Tamil Nadu, Buddhist monks in Arunachal Pradesh and Hakms of Uttar Pradesh. The physicians of this documented tradition are distributed across several ethnic communities, castes and professions all over India.

The Oral system

The second set of traditions viz the oral traditions are also in public domain. Their age is probably as old as the advent of human kind. They exist in rural
communities from the transhimalayas in Ladakh down to the coast of Kanyakumari and upto the hill regions in the northeast of India and in the desert region of Gujarat and Rajasthan. They are characterized by the fact that they are oral in nature and undocumented. They comprise a series localized health traditions that are mostly based on empirical experiences of the so called “eco-systems and they are also specific to the different ethnic communities of India. There are estimated to be more than 7500 species of plants and several hundred animal species and also metals and minerals that are utilized by the folk tradition across the whole country. The custodians and carriers of this traditions are tribal as well as non-tribals, they consist of millions of house wives and welders, thousand of herbal healers, bone setter, vish-vaidyas, birth attendants and other specialists. They include certain professions like potters, gold-smiths, black smiths, barbers and even wandering monks. According to ASI there are 4635 ethnic communities in India. In principle each of these communities could be having their own oral medical traditions that have been evolving across time and space.

**Traditionally Access was Free**

Given the wide distribution of these 2 sets of medical tradition their evolving nature’s collective patterns of current ownership, their diversity and the large number of human carriers that nurture and sustain these social traditions, on the face of I, it seems very difficult to protect this knowledge today from being accessed by any one who wishes to seek acces. Today access is infact free because they are in the public domain un-protected by any laws or scheme of rights. The codified traditions are mostly in published form and the oral traditions can be accessed by establishing friendly links with folk carriers who traditionally do not engage in ‘sale’ of their knowledge. These living traditions have a continuity of over 2 milenia so they obviously have been transmitted and handed down from generation to generation. the more specialized aspects of the tradition do carry a code of ethics in transmission which was regulated earlier by the guru-shishya paramparas. These paramparas are gradually weakening and in so far as the codified tradition in concerned, this parampara is almost dead because education of the codified tradition is not based in colleges of traditional medicine.

In the past these traditions were even shared with neighbouring countries like Tibet, Mongolia, China, Burma, Thailand, Malaysia and Indonesia. Many documents of the codified traditions still exist in these countries even today. Many manuscripts of ht codified tradition are also deposited in libraries in Europe and the united states.

**Till Today Bio-Prospecting is Legally correct**

One notices current commercial trends in the medical field in India and abroad wherein there is an interest in Industry and scientific institutes in developing ‘natural products’ and there fore an interest in accessing traditional systems of medicine as sources for information and material transfer. Today they are not violating any existing ‘laws’ by freely accessing traditional medical systems because there are no laws preventing access or regulating access on any terms and conditions.

The process of obtaining accessions to traditional systems of medicine and bio-resource recently termed arrogantly as ‘bio-prospecting’ (a very insensitive term)-were presumably “legally correct” in the past.
Some Unresolved Problems & controversies

The Bio-diversity convention since 1992, has now made access to both knowledge and native bio-resources conditional to informed consent’ and therefore since 1992 has arisen the question- on what terms will access to traditional medicine be granted and simulataneously has arisen other operational questions like who will grant access and who will benefit from payments charged (if that is the case) for access. Some viable operational solutions can perhaps be found to these question if careful application of mind is put into the search for realistic solutions. A wider public debate on the issue is also desirable before arriving at national solutions.

Another controversy more complex that has recently arisen related to what is being termed as biopiracy viz ‘patents’ granted on modifications and derivatives of traditional knowledge or native biological resources.

The controversy is explained by the question, can a patent or IPR be claimed on a development that is largely based and build upon the centuries old cultural innovation of a medical tradition?

In the context of modern trends in scientific research and IPR, all scientific innovations are based upon previously discovered knowledge and the fact of using such ‘public domain knowledge’ is no disqualification for filing a ‘patent’ on a modification or/innovation built upon the previously known. Certain criteria for accepting a modification as an innovation have been laid and these are to be applied for accepting a patent claim.

The Challenge

The difference in the case of accessing traditional systems of medicine from public domain only lies in the fact that traditional knowledge lies in different cultural domain and the access involves a “cross-cultural transaction” for which no norms exist for information transfer or use.

There also exist no accepted” theoretical bridges” to translate knowledge and information reliably from one culture to the other.

The primary issues involved in cross-cultural transactions are firstly political, ethical and epistemological and only in an operational context, legal. Is it not presumptuous to pick up elements of a different knowledge system and epistemology and transport them into a foreign knowledge system on the assumption that the foreign knowledge system can effect an ‘improvement’ on the traditional application, or product or process?

The real challenge seems to be to establish norms for cross-cultural transactions, the least of which could be the courtesy of ‘informed consent’ but what else? There are larger questions related to hegemony of western knowledge systems over the knowledge systems of non-western cultures. On what grounds should for instance consent be denied to scientists by the custodians of non-western knowledge systems, not on grounds of unfair commerce of trade but on grounds of epistemological incompatibility.

The real threat to traditional medical knowledge systems is not on account of ‘theft’ or simple biopiracy but on account of the undermining of non-western cultures and knowledge systems. The real challenge is to
protect “cultures” from being destroyed and not only to protect the products and bio-resources of these cultures from theft and misappropriation.

The key issue that legal minds have to address themselves to is therefore a broader question of international norms for “cross-cultural transactions” where epistemologically distinct knowledge systems and values are involved.

If this wider question is avoided and one confines the national effort to only protecting traditional systems of medicine from simple bio-piracy-then the solution we are likely to formulate will really boil down to creating an “access system”, where commercial users have to pay for access to traditional information and resources, and they will be free to develop modifications of traditional knowledge. The change will be that access which is today ‘free’ because these traditions function in the public domain and in culture of ‘sharing’, will no longer be free tomorrow.

But what will such a solution achieve? Will selling our culture as raw-material contribute substantially to national wealth?

Will the Indian psyche feel good that what it has shared freely for over two millennia is now being priced, and for a pittance?

It seems for more self-respecting to allow free access for unmodified use but create restrictions for permitting modifications – based on epistemologically informed guideless for “cross-cultural transactions”

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