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## Resistance and Legal Regulation of Ayurveda Medicine in Nepal- Need of Modernization in Contemporary Practices: Multi-perspective Review

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**ABSTRACT**

**Background:** Decolonizing knowledge is considered as one of defining attitude in any disciplines in modern century. There are literatures produced, analyzed and used with their method and has become phenomenally part of most of knowledge generated in different part of world. This is same case for a wide resistance for global recognition of Ayurveda as an equal and significant discipline and associated medicines as in compare to others. Hence, the objective of this article is to see the legal recognition of Ayurveda medicine in Nepal in new structure of the government.

**Materials and Methods:** This paper is prepared based on primary and secondary sources of authorities. The doctrinal research method is used for accomplishing the paper. The laws, policies, rules, directives and also commentaries on primary sources are used as references. The nature of data reflected in the paper is more qualitative.

**Results and Discussion:** The government of Nepal must give more protection in forms of promulgating the laws and adequate legal infrastructure for the practice of Ayurveda medicine. The state and local government considering their constitutional obligation also require to act promptly for the purpose of legal assurance of practices of it.

**Conclusion:** Traditional system of medicines including Ayurveda is the medical science which is not only limited to the disciplinary subject rather has an overarching impact and narrowly construed in a colonial landscape even in non-colonial setup. The nature of laws and policies, the government of Nepal has adopted as compare to the other field of medical science for legal recognition of Ayurveda. This paper has also justified; whether affirmed recognition to Ayurveda medicine in Nepal is a product of continue resistance of individuals.

**Key words:** Resistance, Regulation, Medicine, Ayurveda, Practices

**INTRODUCTION**

On 1<sup>st</sup> May 2011, the European Union issued a policy banning herbal medicine used less than 15 years in EU and 30 years outside EU.<sup>1</sup> This may seem merely ban but has larger consequences and has impacted a lot who consider Ayurveda not less than any other Western medicine. The regional resistance against the global recognition of Ayurveda is also considered as manifestations and envoy towards rapid presence and growth of Ayurveda in globe. The white logic of considering Ayurveda as merely a healer than medicine is also a product of colonial set up. The narrated projection of Ayurveda as limited to well-being of human are limited in nature is also an ill reflection of colonial construct to define and understood the drug and traditional system. The nature and nurture debate is one of beginning of all civilization and traditional healing practices is read in close with the nature. Ayurveda is the omnipresent in the eastern/Asian continent. The reference to Ayurveda dated back to early civilization and also their contribution are becoming the study materials

in conventional medical science. The ban imposed by EU are with multifaceted impact on larger community where the traditional knowledge is being associated.

Today, Ayurveda is considered as improving overall health far beyond the mere '*absence of disease*', which also constitutes modern medicine's definition of health. The overall impact of Ayurveda medicine was not literally considered as a phenomenon in English literature on other forms of medicine. The resistance for recognition of Ayurveda knowledge in region and world is also considered as push factor for the legal protection and preservation. The resistance for the global recognition of Ayurveda is also considered as one of product of colonial knowledge and white supremacy. The narration of health services and close ended understanding of health system is major cause for the resistance to recognition of Ayurveda as one among other health system of the world.

Basically, India and Nepal is marching a global campaign for due recognition of Ayurveda as not less than any other medicine for human diseases. The cosmopolite understanding of Ayurveda for all has to be well narrated in multiple forum and that may reduce the ongoing resistance by western experts. The value of norms associated with the term "*prakriti*" has genetic connotations in the field of Ayurveda.<sup>2</sup> The knowledge transmission and generation is also severely colonial in nature while dealing with the issues of Ayurveda science in global scale. This is time to re-engineer the entire construct build, developed and expanded based on white logic and methods on any disciplines and specifically in the field of medical science.

The last hope of patient are recovered with the treatment of Ayurveda medicine.<sup>3</sup> Since, the human body is associated with nature and the prescription of Ayurveda is also close with nature, it is said that the impact is more on patient than any other medicine. This has been resulted into many facets of re-orienting medicinal knowledge in contemporary practices. The language of nature is more related with the human life than reflection of other things. This was not realized when a regional resistance was made for recognition to this medicine.<sup>4</sup> In the United Kingdom's House of Lords,<sup>5</sup> the choice of a preferred system of medicine should be recognized to be a fundamental human right, in the same way that all indigenous peoples are recognized to have the right to be treated by their indigenous system of medicine. All paying patients have a right to a placebo effect; none should suffer from its opposite, a nocebo, and harmful influence. The resulting increased health costs alone make the EU's new health policies unjustifiable.<sup>6</sup> It is considered as biased resistance to the recognition of this field. The government of Nepal has acted very positively for the recognition and promotion of Ayurveda since time immemorial. Nepal as defined a land of God/Goddesses and with huge presence of natural resources, herbal plants, rich cultural diversities and other factors are considered as major for recognition of traditional system of medicine. The positive attitude of the government has also helped to march against the western resistance towards the traditional system of medicine including Ayurveda.

## MATERIALS AND METHODS

The primary sources of authorities are used in the preparation of paper in the legal research. The fundamental laws of Nepal like Constitutional provision, statutory enactment, policies of the government of Nepal, the directives, the commentaries and other case opinion are used (Table 1). The desk review is used for writing of the paper. The secondary sources are used like book, articles, journal references and other.

## RESULTS AND DISCUSSION

**Legal Recognition in Nepal:** Traditionally, Nepal is very rich in culture, traditions, plants and also indigenous knowledge. Hindu and Tibetan based traditional medical systems, Ayurveda and Amchi respectively, both use medicinal plants to treat illness and, in the case of Ayurveda, to restore health by rebalancing the body's humors.<sup>7</sup> This all benefit was seen in the practice of Ayurveda. The long association of people with nature and using nature as more in substantive ways is more beneficial for the recognition of Ayurveda as one of healthcare system as like others. Still, there are many problem associated with the patentification and legal recognition of traditional/indigenous knowledge as one form of protection of community developed in the sector of intellectuals property rights. The government of Nepal has considered the protection of intellectual property right as one of most important fundamental rights and this can be linked to protection of traditional system of medicine too. But the direct incorporation would be more beneficial in nature for the promotion and protection of intellectual property rights. The legal recognition of Ayurveda should be also extended to the protection of knowledge associated with professional.

**Constitutional Recognition:** The constitutional recognition of a term 'Ayurveda' along with the commitment of Government of Nepal (GoN) to adopt a comprehensive policy for the protection and promotion of health system is one of landmark achievement witnessed in recent practices. The GoN has already initiated a legal protection as well as have given due space for recognition of Ayurveda medicine not less than any other forms for the well-being of the human life. The narration of Ayurveda as part of national health systems is also a progressive framework for the legal recognition of it. The state policies of Nepal has given adequate space for the promotion and protection of traditional healing system and considered Ayurveda form broader national health perspectives.<sup>8</sup> Despite the non-legal obligation of State Policies in constitutional framework, the state can realize and frame policies in long run to materialize the aspirations and commitment of the Articles.

The expression and recognition of traditional medicine, natural therapy and homeopathy in the Constitution has created a strong reaction against the global resistance against the Ayurveda. Nepal government is very positive in terms of recognizing and realizing the overall impact of traditional system of medicine, the country has adopted since time immemorial. The government has further

pledged to increase the investment in health sector via inviting private sector to be part of these all initiatives.<sup>9</sup> The richness of constitutional provision towards the Ayurveda in Nepal is also a strong message to rest of the country lobbying for the global recognition and endorsement in large scale. The presence of Ayurveda in the fundamental laws of the land is one of assets for entire family practicing the Ayurveda in Nepal. Furthermore, the government has already made several commitment for materializing the broader reflection in the chapter of directive principles and state policies of the constitution. The constitution of Nepal has also recognized the right to health<sup>10</sup> as fundamental rights and also none-derogable in nature. The complementarity principle will be used while reading the linguistic expression of state policies in line with fundamental rights in the constitution. The Constitution in first time has ensured such recognition and obligated government with proper directives and asked for appropriate conduct and action in the field of Ayurveda.

Considering the wider presence of Ayurveda medicine in ecology, the Constitution of Nepal has considered it as under the Concurrent List which imposed equal obligation for protection, promotion, preservation and development of Ayurveda to federal and provincial government.<sup>11</sup> The Ayurveda medicine has importance for both the government and people, hence there is more possibilities to progress and protection as in comparison with any other forms of medicine. The unbundling report of the Office of Prime Minister and Council of Minister has also further explained the equal right of federal and provincial government towards the overall development of Ayurveda as more than merely a medicine. The holistic impact of Ayurveda is also well developed in Nepalese territories. The government of Nepal has both constitutional and legal obligation along with moral necessity to make appropriate allocation of resources, budget, proper dissemination plan for Ayurveda medicine, ensure accessibility to citizens and many more. These arrangement will have strong voice against the resistance towards the Ayurveda in globe.

**The Policy/Statutory/Legal Recognition:** The government of Nepal has a historic pledges and commitment towards the recognition, promotion, protection and preservation of Ayurveda as one of major system of health in the country. The strong and affirmed attachment to indigenous healing system and traditional healing practices was also seen as one of core priority of the government. The National Drug Policy, 1995 has incorporated the promotion of “drugs under Ayurvedic, Homeopathic and other systems, the production of drugs for which the formula is well documented under their recognized literature will be facilitated both at governmental and private sectors” and further “Activities related to drugs under Ayurvedic, Homeopathic, and other systems will be developed suitably by involving qualified personnel and related technologies” and more “The Ayurvedic Department will conduct and coordinate all technical activities related to Ayurvedic drugs”. The government of Nepal since a long time is very clear on conceptual narratives of drug including the substance of

Ayurveda. This policy has given due recognition and space to the traditional medicine closely associated with nature and human life like Ayurveda. On the basis of broader picture of drug, the government of Nepal has enacted series of laws for the promotion and protection of traditional system of medicine.

The government of Nepal has made several progress and achieved millstone in the sector of health services. The public utilities goods were and are a primary priority of the government even in unitary and federal structure. The public usable substances like the medicine were considered as one of major core issues of unitary and federal government. This philosophy can be also seen in the promulgation of Drugs Act, 1978 for the authorized manufacture, sale, distribution, export, import, storage or consumption by larger public. The law has imposed a severe restrictions on any conduct, harming the health of public and imposed sanctions and penalties for defaulter. The law has also established a department defined as, The Department of Drug Administration (DDA) as sole authorities for defining the price of drug and has also imposed fine for default. The concerns of drug as essential service was also seen as primary objective of the government and this can be also in case of Ayurveda. This law has not said any specific distinction on health system and their distribution. The comprehensive framework of drug as substance of health system was also realized with the enactment of health service Act in Nepal. The DDA has played a significant role in the promotion, regulation and defining the quality and standards of medicine.

The government of Nepal has shown serious concern for the recognition of Ayurveda as one of medicine in mainstream of entire health system of the country. The traditional attachment with the human life and considering the treatment more beyond merely absence of disease is a well-founded justification for the legal recognition of these practices. The promulgation of National Ayurveda Health Policy, 1996 with prime objective for the overall improvements of Ayurveda linking with human life. The Policy has made series of commitment for materializing the contribution of traditional system of medicine including Ayurveda. This policy has also provision for the development of human resources, research and overall recognition of professional of the field. The comprehensive nature of Ayurveda policy is also a positive manifestation of government towards a global resistance in the region.

The recognition of Ayurveda is one of the other health system in Nepal, is also seen in the description and legal provision of Nepal Health Service Act, 1997. This law has already given space for the Ayurveda professional before the enactment of Ayurveda Medical Council Act, 1998. The tussle between allopathic and Ayurveda medicine has been resulted into independent recognition of each existence. The comprehensive understanding of term ‘service’ in law has also made an equal weightage for the promotion and preservation with development of Ayurveda medicine in Nepal’s landscape. The law has to be also amended and revised considering the new set of the country and also need further updated based on

reflection in world health policies and new issues in health sectors.

The government of Nepal has further enacted specific law for the recognition and regulation of Ayurveda practice. The Ayurveda Medical Council Act, 1988 is considered as umbrella legislation for production, promotion, consumption, registration, regulation of conduct of Ayurveda professionals in the country. The fundamental reasons for this enactment is considered as backbone for the resistance and envoy towards the success of Ayurveda in Asian continent. Nepal government has timely recognized the benefit and the possible impact, these medicine can do on patient and necessity for an institutional arrangement to reduce mockery in the medicine sector. This law has also provided a proper mechanism to register someone willing and eligible for practice in Ayurveda in the Ayurveda Medical Council. This law has also prescribed series of conduct expected by professional of the field and consequences in case of misconduct. The legal position towards Ayurveda is as a reflection of long decades in the country. The presence of indigenous system of medicine has also compelled to enact this law soon after restoration of democracy, 1990 in country. The Act has also provision relating to cancellation of registration of doctor found as inappropriate in conduct. The Council has broader mandate to govern the practice and access the impact, initiate for new policies, regulate every affairs relating to the field and others.<sup>12</sup> The GoN has also agreed on further development of Ayurveda under the priority list. The issues of negligence in practice of Ayurveda is not seen in the Act.<sup>13</sup>

Considering the development in the field of Ayurveda and other need of the profession of this field, timely amendment may be need in the law. This law is enacted in the unitary set up of the government and hence has imposed more obligation to the central. The constitution has recognized the Ayurveda medicine under the concurrent list which has imposed equal obligation to federal and provincial government. Even, the amendment made in the Act has not said anything about the involvement of provincial medical council or any specific responsibilities at the provincial level. The amount of punishment is also less as seen in the case of misconduct of professional. The provincial government has not been more active in the sector of Ayurveda and mostly are failing to materialize the constitutional obligation. The timely revision in federal structure to all laws concerning Ayurveda is needed.

The government has shown a continued commitment towards the promotion and protection of traditional system of medicine. The promulgation of National Health Policy, 2015 is also considered as one of landmark for the recognition of Ayurveda that shouldnot be less than any other forms of health system, the country do have. The policy has provision relating to the protection and overall development of Ayurveda system of medicine in the country. The progressive attitude of government towards the recognition of Ayurveda as one of major health system is also a strong message to resistance in the global community towards Ayurveda. The major timeline of the laws reflecting the recognition and regulating the conduct of Ayurveda system of medicine.

**Table 1:** Act and Policy

LAWS/POLICIES	PROVISION (AYURVEDA)
2015- The Constitution of Nepal	The Constitution has recognized in chapter of fundamental rights & State Policies of the government.
2015- National Health Policy	Developing overall picture of the health system and widely recognizing the Ayurveda in national health system. This policy has given broader space for the recognition.
1998-Ayurveda Medical Council Act	The formal institutional recognition of the Ayurveda medical professional
1997- Nepal Health Service Act	Defining Ayurveda as one of essential service for public utilities
1996- National Ayurveda Health Policy	More comprehensive and concrete recognition to the Ayurveda health system.
1991-National Health Policy	Given space for the Ayurveda as part of national health system.
1978- Drug Act	Considering Ayurveda medicine as drug and giving due space for practice and promotion

The government of Nepal needs more strong foundation for fighting the mobility of resistance in Ayurveda happening around the world. Ayurveda is considered as one of the most credited and authentic traditional knowledge of medicine in the Himalayas range. These are the major key issues yet need to be addressed in the legal recognition of Ayurveda. The available legal measures seem insufficient for the promotion and protection of Ayurvedic medicine in Nepal.

The government must develop an online portal for the registration, communication, dissemination and protection of traditional knowledge of community, individual or anyone associated with it. The traditional knowledge uses for the medicinal purpose in Nepal requires both legal support along with institutional backup

in case of infringement.<sup>14</sup> The government of Nepal must create a central data base with coordination of provincial government for the promotion and protection of Ayurveda medicine. The proper record of the Ayurveda in digital way will be more helpful for the global recognition and development of Ayurveda medicine. The government of Nepal must formulate a policies for the recognition and protection of Ayurveda medicine.

The law needs to establish correlation between the commercial purposes of Ayurvedic medicine with the current patent process. The community practicing the Ayurveda medicine/traditional knowledge should be connected with the beneficial process of the system. The commercial use and benefit of the traditional knowledge needs to be a major concern of related legislative



framework for the recognition of Ayurvedic medicine in the country. The way traditional medicine is expanding across world despite the huge resistance from several communities need strong mechanism for the preservation and protection with promotional practices of the health system. Nepal's law is lacking commercial use and also commercialization of traditional knowledge is not well reflected. Since most of the Ayurvedic medicine is reflection of traditional orientation, requires this level of protection. The government can further use method for the traditional knowledge resource classification scheme.

In 1978, the World Health Organization has recognized the traditional medicine as part of primary health care system. The reflection of this initiative needs better improvement at the municipal level. The federal structure of Nepal has not given adequate responsibility to local government for promotion and protection of Ayurveda and indigenous knowledge in their localities. Hence, the better protection scheme is needed with due cooperation of all tier of government. The collaborative approach will help to consider Ayurveda as one of sustainable health system in the country. The legal obligation to the federal and provincial government need to be further supported with active presence of the local level government.

The stakeholders of Ayurveda need a coordinated network for the global patenting of the medicine and linking it with the commercial purpose. The large scale availability and need for the global presence can be also considered as more legal than moral obligation of the government. The stakeholder like government and other institution must build a sound institution and also should connect with intellectual property (IP) laws specifically laws relating to patent and trademark along with geographical indications for the better protection and promotion of Ayurveda. This seems lacking in the Nepal despite of presence of all set of laws for common protection. The laws related to Ayurveda must be read in line with the IP laws for the strong recognition and promotion. The effective legal cooperation across region need to be also in framework of the government.

The government of Nepal must provide a legal space for the academia working in the sector of Ayurveda. The adequate research and development fund should not be as matter of discretion than entitlement of professional. The dissemination authorities on the Ayurveda should be also given to academia and establishing connection with various stakeholder also as part of the broader knowledge generation scheme.

The government of Nepal must enact an integrated laws, recognizing the role of provincial and local government for the promotion, protection and preservation of Ayurvedic medicine and indigenous knowledge of the Nepalese society. The arrangement of federal institution and also desk at the local level government for the purpose of proper dissemination and preservation of Ayurveda as one of traditional medicine needs a strong budgetary and other support. The proper planning, implementation and resources allocation need to be priority of the government. The need for

institutional collaboration for the preservation against the resistance of Ayurveda by the other Country.

## CONCLUSION

Ayurveda is one of major health system of the world. The deficiency and specific impact associated with the other health system, the primacy are given to Ayurveda because of huge potentialities attached to it. The government of Nepal is very positive for recognizing the substance and giving equal weightage to this family of medicine. The constitutional and legal recognition of Ayurveda in Nepal has also considered one of the progressive framework in the region. The government has shown positive obligation for the necessary reformation required in the field of Ayurveda. The federal and provincial government has considered equal obligation to Ayurveda for the protection, promotion and development of policies relating to it. The resistance to Ayurveda in the globe is less prevalent in Nepal. The proper allocation of budget and resources needs to be improvised more.

## RECOMMENDATIONS

This paper has left many issues in field of Ayurveda from the legal perspectives need to be addressed in other research work. Like, the issues of negligence, misconduct, fine, punishment and other. The existing legal infrastructure has not also spoken on multiple issues of the Ayurveda as in compare to the other medical science. The government of Nepal has to make strong cooperation between the federal, state and local level government for the smooth promotion and utilization of traditional knowledge and medicine. The proper allocation of budget in federal set up along with due participation of state government need to be primary objective of new policies of the government. The institutional set up is also necessary for the proper development of Ayurvedic science in Nepal and for this there is need to have strong support.

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