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COMMERCIALISATION OF TRADITIONAL MEDICAL KNOWLEDGE: BALANCING INTELLECTUAL PROPERTY PROTECTION AND CORPORATE RESPONSIBILITY

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ABSTRACT

Traditional Medical Knowledge (TMK) emerges as a critical concept, denoting the extensive collective experience, practices, and medical practices that have been developed by local communities and indigenous populations to prevent and treat various diseases. However, the increasing commercialisation of herbal medicine, pharmaceuticals, and biotechnology has resulted in the creation of considerable economic value. As a consequence, TMK faces the danger of being misappropriated and bio pirated. This article seeks to discuss the challenges of appropriate commercialisation of traditional medical knowledge. The article will delve into the details of patentability, ownership, and the lack of mechanisms that can offer sufficient protection to the TMK. Additionally, the article will highlight the role of corporations and social responsibility as ethical and legal factors. The article will conclude by asserting the importance of a balanced approach to the issue, outlining the benefits of appropriate commercialisation, and offering recommendations on how to address the issue.

I. FROM ANCIENT HEALING TO COMMERCIAL VALUE

Traditional Medical Knowledge Essay

Traditional Medical Knowledge (TMK) is the knowledge, practices, and innovations that have been developed by indigenous and local communities over time to prevent, diagnose and treat various diseases. Traditional medical knowledge and practices emanate from different cultural groups and

have been in existence for hundreds of years. Indians have been using traditional medical systems such as Ayurveda, Siddha, Unani, and tribal medicine. TMK has become a significant market globally due to increased demand for herbal medicine, natural products, and botanical drugs. Various businesses have been using traditional medicine knowledge to produce new products and health technologies. Therefore, the commercial value of traditional medical knowledge is gradually increasing.

Traditional medicine has been used for health promotion and disease prevention among the locals. However, the commercialisation of traditional medical knowledge has caused adverse impacts, such as the appropriation of indigenous knowledge, biopiracy, and patenting of traditional medicine without the consent of the local community. The exploitation of TMK poses a challenge in protecting indigenous knowledge since the resources are not well protected. Thus, there is a need to promote commercialisation of TMK while ensuring that the intellectual property is protected.

II. WHEN TRADITIONAL KNOWLEDGE BECOMES A COMMERCIAL ASSET

The commercialisation of Traditional Medical Knowledge (TMK) entails bringing traditional medical practices, treatments, and remedies to market. Scientific research and biotechnology have propelled the pharmaceutical, cosmetics, nutraceutical, and wellness industries into discovering the therapeutic value of traditional remedies and integrating them into contemporary healthcare products and services. As a result, there has been a significant rise in the herbal medicine market worldwide, which has created new opportunities for research and development, as well as economic growth.

The commercialisation of TMK has the potential to yield considerable benefits, including increased research and development of traditional medicines, broad access to traditional remedies, and economic gains for communities that have long utilised these traditional systems of medicine. The commercialisation of traditional medicine promises to catalyse the incorporation of traditional healing techniques into mainstream healthcare while also promoting public health.

Conversely, the commercialisation of TMK has raised concerns about the exploitation of traditional knowledge and the appropriation of indigenous contributions to healthcare. Traditional medical knowledge is often used by private companies to develop lucrative drugs and health treatments without acknowledging the source of inspiration or offering the communities due credit for their role in medical research. On the other hand, commercialisation presents TMK with intellectual property challenges that hinder the customary methods of passing knowledge from one generation to the next.

In addition, businesses involved in the commercialisation of indigenous medical knowledge face the challenge of ensuring ethical sourcing of traditional ingredients and remedies to meet global pharmaceutical, nutraceutical, and cosmetics markets' demand.

III. PROTECTING KNOWLEDGE BEYOND CONVENTIONAL PATENT SYSTEMS

The commercialisation of traditional medical knowledge (TMK) presents several challenges to the current intellectual property (IP) system. Contemporary patent law offers protection to new IP generated by individuals or entities but fails to consider TMK that is owned and created collectively by communities or indigenous groups. TMK is usually not easily documented or has been in existence for a long time, thus rendering it non-patentable under the current IP regime.

The problem with biopiracy of TMK presents a major challenge to the current IP protection regime. Biopiracy is the illegal appropriation of natural resources and traditional knowledge by individuals or entities without the consent of the owners of the resources or knowledge. The first case of biopiracy involved the patenting of turmeric by Johnson & Johnson in the United States on the basis that the plant healed wounds (Agarwal & Agarwal, 2003). The patent was revoked after it was revealed that TMK regarding the medicinal use of turmeric had been in existence in India for hundreds of years. Similarly, a European patent for the antifungal properties of Neem was revoked because the knowledge had been in existence in India well before the filing of the patent application. Thus, the failure to document TMK or present it in a manner that overrides its traditional status makes it vulnerable to biopiracy by corporations.

The ownership of TMK also presents another challenge to the current IP protection regime. Normally, ownership of IP is either individually or collectively owned by persons, entities, or communities. TMK is traditionally owned by communities through their cultural practices, making it difficult to determine who exactly owns the knowledge or who should benefit from its commercialisation. Challenges associated with determining ownership of TMK and its subsequent commercialisation present another challenge to the current IP protection regime.

India has made great strides in protecting TMK by creating the Traditional Knowledge Digital Library (TKDL), which contains information on various traditional medicinal systems including Ayurveda, Siddha, Unani, and Yoga. The TKDL provides information on various traditional medicinal systems including Ayurveda, Siddha, Unani, and Yoga to patent offices around the world to prevent the

wrongful appropriation of TMK as private IP. However, the TKDL is only a defensive measure and more needs to be done to ensure that TMK is adequately protected globally. The various challenges associated with the protection of TMK illustrate the limitations of the current IP protection regime in protecting traditional medical knowledge from being wrongly appropriated as private IP by individuals or entities and the need to enforce stricter laws to ensure compliance and punish violators.

IV. INNOVATION WITH ETHICS AND ACCOUNTABILITY

The commercialisation of traditional medical knowledge should be considered not only from the perspective of intellectual property rights but also from the point of view of corporate social responsibility and ethical business practices. When corporations engage in commercialisation activities such as developing drugs, cosmetics, or other pharmaceuticals based on traditional medical knowledge, they should acknowledge their responsibility to ensure that access to this knowledge is provided based on fair terms. Compensating the holders of this knowledge for their contributions is one of the ways to address this responsibility.

Prior Informed Consent is an ethical and legal concept that requires companies to seek the Free, Prior, and Informed Consent (FPIC) of the holders of traditional knowledge before accessing their resources or using their knowledge for research and development purposes. The principle of Access and Benefit-Sharing (ABS) implies that the holders of traditional knowledge should benefit from its commercialisation in the form of financial rewards, technology transfer, training, healthcare services, or other compensation. This approach supports the most vulnerable populations in receiving fair compensation for their contributions to sustaining human health and wealth. When incorporated into business practices, the principles of PIC and ABS help businesses meet their corporate social responsibility commitments while ensuring ethical sourcing of traditional medicinal knowledge.

Moreover, ethical business practices require organisations to operate transparently and responsibly when engaging with traditional medical knowledge, respecting the cultural heritage of traditional societies, and considering the impact on local populations. ESG principles increasingly demand that businesses incorporate respect for indigenous peoples' rights, biodiversity conservation, and ethical governance in their policies. As a consequence, pharmaceutical companies that comply with ESG requirements can innovate in line with ethical guidelines and avoid potential controversies surrounding the commercialisation of traditional medical knowledge.

In this regard, corporate social responsibility and ethical business practices demand that companies acknowledge the value of traditional medical knowledge to society and consider this knowledge as a legitimate asset that requires legal protection and ethical treatment.

VI. PROTECTING HERITAGE WHILE ENCOURAGING INNOVATION

The commercialisation of Traditional Medical Knowledge creates unprecedented opportunities for innovation, healthcare, and economic development, but it also raises the spectre of biopiracy, inadequate intellectual property (IP) protection, and transaction costs. As shown in this article, standard IP frameworks often fail to account for the communal, collective, and historical nature of knowledge.

The challenge ahead is to ensure that both legal and corporate mechanisms adequately address these shortcomings, thus promoting sustainable commercialisation and appropriate recognition of Traditional Medical Knowledge. Enhancing the access to and transparency of information through initiatives such as the Traditional Knowledge Digital Library, promoting international collaboration via treaties such as the Convention on Biological Diversity, Nagoya Protocol, or the 2024 WIPO Treaty, and encouraging ethical corporate behaviour are all viable ways of achieving this goal. The empowerment of local communities and the promotion of equitable benefit-sharing are also essential elements of this strategy.

The future of Traditional Medical Knowledge lies not in restricting innovation but in ensuring that commercial success is accompanied by legal protection, ethical corporate conduct, and equitable recognition of the communities that have preserved this invaluable knowledge for generations. This article aims to show that to maximise the benefits of commercialisation while minimising the risks, Traditional Medical Knowledge requires both legal and corporate protection.