ACCEPTANCE OF AYURVEDIC DRUGS-THE EUROPEAN CHALLENGE AND THE INDIAN PERSPECTIVE

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Historical overview

Ayurveda, the mainstream Indian System of Medicine is in practice in Indian subcontinent for the last three thousand years. It's a comprehensive system of health care that remained to be the sole resort of Medicare till the advent of allopathic system in the middle of twentieth century. The benefits offered by Ayurveda is availed by more than 75% of the 1000 million people in the sub-continent and more recently millions round the world.

In India, it has a long history of its use for the last 3000 years. Ayurveda alone there are 250 colleges providing graduate degree (BAMS) Post Graduate Degree (MD Ayu) and Ph.D. Since last 50 years many Government, Semi Government and Private pharmaceutical laboratories have been engaged in intensive research in the field of Ayurveda and much large-scale production of classical, patent and proprietary Ayurveda medicines. Currently, more than 400,000 practitioners Vaidyas of Ayurveda are providing health care to Indian population.

The Government of India, and the State Governments, under the Health Ministries have effective regulations for and competent bodies to monitor the practice & trade of Ayurveda and other Indian Systems of Medicines (ISMs) in India.

Over the past three decades the Indian systems of Medicines, especially Ayurveda, have become highly popular in European countries due to its unique, holistic and human ethos and has an approach towards positive health as well as disease management specifically in the effective management of many chronic problems believed to be otherwise incurable. These scientific and main stream systems of medicines cater to the health care needs of a large number of Asian and European population, estimated to be over 5 million people for the last many decades in Europe.

Due to this unprecedented boost in interest thousands of practitioners have emerged out all over Europe, however, the majority of them under qualified or without any qualification. Likewise, many Institutions offering educational courses in Ayurveda have mushroomed in Europe without any recognition, proper infrastructure facilities and qualified faculty.

A range of EU Directives and Regulations such as Traditional Herbal Medicinal Products Directive (THMPD), Food Supplements Directive (FSD) and the Pharmaceutical Legislative Review (Medicines for Human Use Directive 2004/27/EC) and other relevant EU legislations will substantially negatively impact the availability of products used in Ayurveda and other ISMs, severely preventing their effective practice in the EU.

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Herbal Medicines Regulation in Europe, a preview

By early nineties, the practise of Ayurveda and other traditional medicines had reached its peak and most of the medicines were sold as food supplements, cosmetics and health promoters, without any medicinal claims. In many countries of the EU, Ayurveda gained popularity as a wellness system that uses natural medicines and yoga. In countries like UK and Germany it developed fast and gained good clientele for minor ailments and for general wellness. UK was one EU country where Ayurveda flourished well.

In the European Union, there had been an agreement that all countries would have their herbal industries and products under identical medicines controls by end 1992. The only major country to achieve tight control was UK in the course of which most herbal products ceased to exist. Germany, France, Italy and Spain all had different degrees of light control and their product ranges actually grew. No unified market existed in January 1993 and no progress has been made towards it in the last ten years.

An important product test case in Europe for a foodstuff "Cassis de Dijon" took place sometime in the late 1970s. The direction of the European Court was that any product legally sold in one country of the Union must be freely sold in all the others. However there was a proviso "as long as the product was safe and did not harm consumers". Most countries used this proviso to bar products from other countries because their own authorities (experts) said the product was not "safe". This created chaos among the public as to how a product can possibly be safe for one country and not for some other country's consumers. This created a situation where the consumers of some country can sue their Government for permitting unsafe products to be sold and vice versa.

In 2002, The Medicine Control Agency (MCA now renamed as Medicine and Health Regulatory Agency or MHRA) of UK started consulting the public regarding the need, scope and limits of a new Directive for Traditionally used Herbal Medicines. In July 2002,after some hurried attempts from International Ayurveda Foundation, many Ayurveda representatives in India responded to the MHRA raising concerns about the adverse impact of the Directive on Ayurveda Drugs. This was followed by 40 months of rigorous correspondences between IAF and MHRA and EMEA.EMEA or European Medicine Evaluation Agency, is the European authority for Regulation of Medicinal products. EMEA entrusted the issue with MHRA. Unfortunately, even after extensive representations from Ayurveda lovers and experts from India and Europe, the Directive still stands where it was, posing serious threats to the trade and practise of Ayurveda in the continent.

There are two other new Directives namely Foods Supplement Directive and the Pharmaceutical Directive (Amendment).

Summary of Key EU Directives and Regulations Affecting Ayurveda

1. EU Food Supplements Directive (Directive 2002/46/EC)

General

This framework Directive, passed into EU law in 2002, is the first of several to impact on natural healthcare sector. Its primary objective is to assist trade in food supplements between EU Member States by harmonising laws for food supplements across the European Union, although it is supposedly also meant to protect consumers from unsafe products. Its main advantage is that it considers food supplements as a category of food (concentrated sources of nutrients) as distinct from medicines. It has three main problems: 1) only food supplement ingredients that are included on a narrow positive list (initially only for vitamin and minerals) are allowed, so that excluded nutrients are at risk of only being allowed as medicines; 2) a derogation system is provided to allow existing nutrient sources (again, initially only vitamins and mineral forms) which are excluded from the positive lists to be allowed if technical dossiers are prepared and accepted by the European Food Safety Authority, but this is very costly for most ingredients, and; 3) maximum doses of nutrients will be set in due course and these levels are likely to be unnecessarily low.

If the ban in Directive is not overturned by legal challenge, the Directive will result in a ban on around 75% of vitamin and mineral forms currently on the EU market as of 1 August 2005.

Specific considerations for Ayurveda

Since the Directive will be expanded over the coming few years (implementation by 2007) to cover nutrient groups other than vitamins and minerals, it has the potential to provide a 'safe harbour' outside a medicinal regime for a range of Ayurvedic products, including especially plant extracts and minerals.

However, risk assessment procedures that are presently being considered would be likely to offer unfavourable 'safety profiles' for some Ayurvedic ingredients. It is of paramount importance that these risk assessment procedures are re-evaluated and this job has now been handed to the FAO/WHO nutrient risk assessment project.

The Alliance of Natural Health, an international NGO submitted the a ground-breaking submission to the FAO/WHO which demonstrated many of the pitfalls associated with existing risk assessment approaches, and it proposed a new paradigm for risk assessment of nutrients. The report was extensively endorsed by some of the leading clinical nutritionists worldwide.

2. The Human Medicines (Pharmaceuticals) Directive (Directive 2004/27/EC)

General

This is the key Directive controlling the use and sale of pharmaceutical products across the EU. It was first enacted in 1965 and has been amended on several

occasions, most recently in 2004. Its main problem for natural health products is that it contains an extremely broad definition of “medicinal products”, meaning it can entrap a very wide range of products at the will of the Regulator. The function limb of the definition states that any substance or combinations of substances “which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis” should be classified as a medicinal product.

This definition is so broad it technically includes all therapeutic substances, as well as all foods, water, coffee and more or less everything that is consumed by or applied to humans. In an attempt to reduce legal uncertainty, the Directive purportedly provides exclusion for “food, food supplements, medical devices, biocides or cosmetics”, but since this exclusion is contained in a Recital rather than an Article, it has little legal weight, especially as this Recital applies to the amending Directive (2001/83/EC) rather than the base Directive of 1965.

Moreover, the Directive has the ability to ‘trump’ other Directives via its Article 2, which states, “In cases of doubt, where, taking into account all its characteristics, a product may fall within the definition of a 'medicinal product' and within the definition of a product covered by other Community legislation the provisions of this Directive shall apply.” Therefore, there is a real risk that leading-edge, practitioner-type food supplements may be classified as medicines, to be controlled by this Directive rather than the Food Supplements Directive. The full drugs regime provided by this Directive is so costly that it would be prohibitive for most food supplement manufacturers.

Apart from regulating conventional pharmaceutical products, the Directive also regulates homoeopathic products and traditional herbal medicinal products (see below), allowing specific dispensations over a normal drugs regime for each category.

Specific considerations for Ayurveda

It is highly likely that the existing and proposed EU legislative regime would tend to consider many Ayurvedic medicines as ‘medicinal products’, which could then only be used if they had full market authorizations. The Traditional Herbal Medicinal Products Directive is merely a subset of the main Human Medicinal Products Directive, which allows a fast-track for pre-market authorization pending certain conditions, particularly that the medicine in question is a ‘traditional herbal medicinal product’ with demonstrated 30-years safe use, of which 15 years should typically be within the EU.

There is no fast-track for animal (e.g. glandular) products as used in Aurvedic or Unani medicine, meaning that these products could only be allowed if they passed a full medicinal (drug) licensing system.

At the heart of the problem is the very wide definition of a medicine, which captures in principle all products with “physiological”, “metabolic” or “immunological” functions.

3. Traditional Herbal Medicinal Products Directive (Directive 2004/27/EC, amending Directive 2001/83/EC)

General

The Traditional Herbal Medicine product Directive (THMPD) is an amendment made to the EU Directive regarding medicinal products, the Directive 2001/83/EC of Directive of the European Parliament and of the Council, to include a new provision for traditional herbal medicinal products. It claims to offer a "simplified registration" for "Traditional Herbal Medicine Products" which are in use in the EU Countries, without going through the complex marketing authorisation process under the Community law. According to this amendment, those "Traditional Herbal Medicine Products" would receive a traditional use registration, if the applicant could provide the necessary evidence of traditional use for the specified time, and prescribed quality.

This is actually a sub-Directive, being part of the Human Medicines (Pharmaceuticals) Directive. It is intended only for those herbal products that are considered as "medicinal" and which have a history of traditional use. It came in to force in Member States in October 2005, although provides a transition period up to 2011 before it is fully implemented. Products regulated by this Directive benefit from a fast-track drugs regime where the need to supply costly safety studies can be avoided if it can be demonstrated that the product in question has been used safely over a period of 30 years, of which 15 must be in an EU Member State.

The key difficulty here is that many products from non-EU cultures have yet to be used in the European Union and would thereby be excluded. They would then only be permitted if they were able to successfully pass through a full drugs regime, likely to be prohibitively expensive for most non-pharmaceutical manufacturers or suppliers. There is also a risk that herbal product which should rightly be considered as food supplements will be considered by competent authorities in individual Member States as "herbal medicinal products." Particular combinations of herbal products may be disallowed and complex mixtures with significant levels of nutrients will be prohibited. Combinations with vitamins and minerals will only be allowed if the action of the nutrients is considered "ancillary" to that of the herbal ingredients. Significant compliance costs will apply, which will need to be passed on to consumers.

Besides, the policy making process, led by the MHRA of UK did not take into consideration specific issues relevant to the Ayurveda and the resultant framework is detrimental to the interests of Ayurveda users and practitioners. Guidelines that resulted from this process have been deemed by most Ayurveda stakeholders throughout Europe to be unfair and protectionist.

The THMPD being inexcusably Euro centric, will not be applicable to Ayurveda or other TSMs and thus it is likely that products used in ancient practice will be re-classified as drugs and banned from use in Europe without a market authorization. Therefore, new Directive will deprive the people of Europe their basic human right to avail the service of popular, safe, scientific and effective System of Medicine which offers solution to many unresolved puzzles of Modern medical science as in the case of life style related syndromes and many other Psychosomatic diseases.

Indian Government and experts feel that these Directives (THMPD) need an in depth analysis and reconsideration, both in the interest of European people and the image of the mainstream official system of medicine in India - Ayurveda.

Ayurvedic drugs: A classical profile

Today, Ayurveda is fast catching the attention of the global community. Its holistic approach, its natural and mostly safe methods, its potential for taking care of global health needs are all recognized globally. Mainly the public from Europe and America emerged as strong supporters of this age-old Indian wisdom.

Ayurveda uses a wide range of raw materials for the treatment purpose. They are administered orally or through external application as well as internal application through nasal, anal and urethro-vaginal routes.

It uses natural materials of herbal, animal and mineral origin as ingredients. Classical Ayurvedic texts mention the use of more than 600 plants. If counted the variety of species being used comes to more than 3000 species. Government of India brought out a formulary (The Ayurvedic Formulary of India) containing formulations of a variety of pharmaceutical processes. Various raw materials other than of herbal origin are also used frequently in Ayurveda preparations.

a. Animal products – Milk, Ghee, Urine, shells, horns, flesh, musk, civet, bile,
b. Minerals and Metals – mercury, mica, zinc, arsenic, tin, iron, copper etc and many precious and semiprecious stones and gems.

Total number of these preparations will be more than 5000. There are various books, which are accepted as Pharmacopoeial standards and formulary by Govt. of India. Details of whom are available in Drug and Cosmetic Act 1940, Govt. of India. Nearly 40 texts have been mentioned as Pharmacopoeial standards.

There are various processes for detoxification and potentisation of drugs to achieve desired pharmaceutical actions. Mostly the drugs are used in combinations designed in such a way that the antagonising factors are neutralised and favourable factors are enhanced so as to bring about the maximum efficacy with no or minimum complication.

Impact of THMPD on Ayurveda drug trade

The basic misappropriation of the Directive as far as Ayurveda is concerned is that Ayurvedic drugs are considered within the ambit of this Directive, which is exclusively designed for regulating Herbal medicines, which are sold as OTC products.

The directive says, “The medicine applying for traditional medicine exemption should have indications appropriate for traditional herbal medicine products that are designed to be used without the intervention of a medical practitioner for diagnosis, treatment or monitoring purpose.” A vast majority of Ayurveda products uses raw materials other than herbs as active ingredients. Hence, they cannot be called herbal. By being classified herbal, many of the popular Ayurveda drugs will be prohibited from being sold as Traditional Drugs without authorisation. They will not be considered for traditional Use Registration either since they are not purely herbal.

The scope and limit of Ayurvedic system of medicine cannot be restricted to a few trivial indication which the authorities find 'appropriate' for traditional medicine'. The recent researches and advancements in the system should be offered for public welfare irrespective of their geographic origin. Further only very few Ayurveda products can be safely dispensed as OTC products, especially among a public who is uninformed or rather misinformed regarding the indications, actions and reactions and antidotes in case of ADRs. In short, this clause excludes the whole range of Ayurveda products that are required for a proper Ayurvedic treatment by an Ayurveda Practitioner. It denies the European public the freedom of choice for Ayurveda medicines for their medical purposes and poses threat to the existence of many small-scale Ayurveda drug companies in India, who are exporting these drugs to EU.

The major set backs for Ayurveda drugs due to the Directive are listed below.

1. Scope of the Directive: The directive only binds "herbal products" and Ayurveda uses a large number of natural products other than herbal, as active ingredients. The drugs containing such natural mineral components and animal products like honey and ghee which are otherwise used as food will be excluded from the directive, and will have to go for marketing authorisation as medicines with full data for safety, efficacy and quality suggested for modern chemical medicines.

2. Route of administration: The directive excludes medicines that take any other route for administration other than oral, external application or inhalation. All medicines that should be used for treatments like Vasthi (Medication through anal route), Utharavasthi (Medication through urethral and vaginal routes) are excluded and denied entry into the EU.

3. Quality: The applicant should furnish all the quality requirements applicable to licensed medicines in EU.GMP requirements would be required of manufacturers, importers and licensing for the manufacturers, importers and distributors will be compulsory. It will be difficult for most of the products to comply with the quality requirements laid down in the GMP. It is unfair that Traditional herbal medicines should undergo same quality requirements as other synthetic medicines while speaking of a simplified registration. Separate quality requirements should be defined for TM keeping in view its proximity to Nature and the positive effects it brings to an individual as a whole.

4. Permitted ingredients: The directive proposes a positive list of permitted herbal substances with therapeutic indications, specified strength, route of administration and relevant safety information. This list should be prepared by a Committee for Herbal Medicinal Products that would be established by the Directive. The applicant can get the exemption from licensing without any traditional use data or safety data if the concerned herbal substance is in the list, but just providing a quality data. The concept of positive list itself is absurd as far as Ayurveda practise goes. It is not a single drug-centric system. It is the whole art and science of Ayurveda practise that is relevant. The proposed Committee on Herbal Medicines will have its own limitations in preparing the lists and as such many useful Ayurveda drugs are banned from unlicensed remedies in Europe and UK since they are labelled potent and

prohibited. Most of the Ayurveda drugs contain many drugs in a balanced combination and the combinations are designed in such a way to neutralize the undesired effect of some particular drugs and to bring about only the desired results in any particular situation. Ayurveda has a tailor stitched treatment system, keeping the patient in Toto on focus, and not the disease.

5. Traditional use evidences: This is the most harmful clause in the Directive, which wipes off any chances of justice to non-European traditions. It demands that for a product to apply for traditional use registration, it should provide the sufficient data to prove that it has been in use for a minimum period of 30 years of which 15 years should be within the European Community. This will exclude all the Ayurveda products, which do not have a documented usage history for 15 years in EU.

Most of the purely herbal Ayurveda medicines that were used by practitioners for their treatments also will not meet this requirement due to the following reasons:

1. Due to less duration of usage in EU.

2. Those with history of 15 years use in EU also lack documented data since most of them are not labelled as medicinal products and are covered under Food Supplements or Cosmetics. Due to the restrictions for the legalized practice of the medicines with "medicinal actions", practitioners cannot claim for their medicinal action for a traditional use registration.

3. Besides, no new products could be brought to market even if they had been available for many years in another non-EU country with a good safety record.

4. Even those, which are in use for EU for over 15 years, would need to produce bibliographic and expert evidence of Traditional use. In the case of Ayurveda products since there was no statutory regulation for the practice, this evidences are either difficult to be collected from reliable sources or cannot be reliable as to their loyalty to the Science of Ayurveda.

   The key issues briefly can be summarized as below:

   a. Bans on the use of traditional 'combinations' that have been safely used for thousands of years in Ayurveda.

   b. Bans on animal products used in traditional medicines that have been safely used for thousands of years in Ayurveda.

   c. Forcing Ayurvedic products into a medicinal regime owing to a perception of toxicity of ingredients, without consideration of dosages used.

The smallest companies will be the most hard-it and all may go out of business, causing reduction of consumer choice, and the eclipse of the holistic values of Ayurveda and the adoption of an ideal system of medicine. The high cost of regulation will increase the tendency for it to be avoided by selling via the Internet. Thus the potential safety benefits that the regulation offers to the consumer will be lost. The inherent dangers of conventional medicines, which justify detailed and expensive regulation, is blinding the regulators to the long and generally safe history

of the use of natural traditional remedies for which such detailed regulation is inappropriate. It is lack of proper regulations that enables people to market so many things in the name of Ayurveda. By enforcing proper regulations alone can we distinguish between what is good and bad. But it is a challenging task in itself to visualize proper regulations for Ayurvedic medicines. This can only be possible by a well-organised bilateral initiative between the EU Authorities and Indian Government, with the concrete initiative from the Indian Ayurveda think tanks. Without authoritative technical assistance from Indian Ayurveda Community, it is impossible to accomplish this task ever in futures as well.

At this time when WHO is actively promoting the development of traditional and complementary medicine as a valid way of combating ill health throughout the world, and particularly in developing countries, it is unfortunate that the European regulators remain so ill-informed of the potentials of Ayurveda. The directive is not adhering to the issue of proportionality, which is one of the main mottos of Good Regulation. It will limit trade between the EU and other countries by making the standards too high to meet for the majority of manufacturers.

The MHRA who is given the task of drafting the directive is neither qualified to handle such a policy matter. The public consultations made were not wide enough to fulfil such a Herculean task. Active involvement form Indian Ayurveda Experts were never sought officially. Their attitude was rather dictatorial and dejecting. The pleas for inclusion of traditional medicines other than herbal ones were repeatedly turned down, without even a proper hearing.

The MHRA made available this month a summary of all responses to MLX 318 and publicised their own comments on the different issues raised by various parties. Disappointingly, the MHRA rejected the many valid points and suggestions made by those who participated in the consultation and bluntly stated: “Having considered the comments made in response to MLX 318, Ministers have decided to make no further changes in response to this latest consultation”.

With reference to the suggested change of title for the committee to include the major systems of Traditional Medicines like Ayurveda and Traditional Chinese Medicine, the MHRA stated: “There is no current policy intention to set up distinctive regulatory arrangements designed specifically to cover the overall range of medicinal products used in traditional medicinal systems, whether in traditional medicines as a whole or for individual medicine systems such as Ayurveda or traditional Chinese medicines.” They also shut the door to further negotiation by saying,“….we think it would be unhelpful to risk creating an expectation that there will be separate regulatory arrangements set up for the full range of medicinal products used across whole traditional medicines systems.”

The present scenario seems to be very dark for Ayurveda in EU. This will increase black marketing and Internet sales, which are more harmful for the public. At the same time, the reputation of the Traditional Systems like Ayurveda will be at stake, and getting an official recognition at that stage will be infinitely remote! It is a now or never situation for the providers and consumers of Ayurveda in EU.