**ABSTRACT:**

The future of healthy and prosperous Nepal lies in Ayurved rather than Allopathy. Most of the allopathy drugs in Nepal are imported foreign drugs that not only take away our currency but even leave numerous side-effects to patients in the name of curing one particular illness. It is a truth- Allopathy is more effective in emergency medical condition for speedy cure. But, the value of ayurveda in preventing people from getting sick is incomparable. By applying the principles of ayurveda in our way of living and by introducing standard ayurveda practices as school level education curriculum of Nepal, we can create healthier Nepal, prosperous Nepal, and self-dependent Nepal. Medicinal values inherent in herbs and raw materials that nature has gifted to us, that grow densely in our garden, jungles, heavenly soil needs to be massively marketed in domestic and international pharmaceutical industry. Herbs and raw materials that we are supplying since long to world cheaply are coming back to Nepal as expensive tablets and packets. Our Health system though recognizes ayurveda, unani and allopathy as three medical systems, government’s over attention to allopathy and neglect to ayurveda has brought smile into the faces of medical mafia who want to extend their allopathy market by using all means for commercial motive. Though Ayurveda medicine takes longer time to cure illness and restore health in comparison with allopathic medicine, ayurveda, if made our way of life and art of living, our families, societies and nations will get much healthier. Ayurvedic mode of health care and treatment modality has to be generalized and allopathy is to be limited only in exceptional situation where allopathy is inevitable for restoration of health loss.

**Key words:** Ayurveda, allopathy, emergency, cute, treatment, law, prevention, sideeffects.

**A. Introduction to Ayurveda**

Widely regarded as the oldest form of healthcare in the world, ayurveda is an intricate medical system that existed in ancient Nepal thousands of years ago. The fundamentals of Ayurveda can be found in Hindu scriptures called the Vedas. The Rig Veda, which was written over 6,000 years ago, contains a series of prescriptions that can help humans overcome various ailments.¹

Vyasa Rishi is the author of the four Vedas; Rigveda, Yajurveda, Samveda, and Atharveda. He is also the compiler of Great Epic Mahabharata, 18 Puranas and Vedanta sutras. He is believed to be the incarnation of supreme Narayana and also considered to be one of the 8 Chiranjivis (immortals).

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Ayurveda generally considered to have been revealed to sages in the Himalayas, during meditation. Nepal has a special place in the history of Ayurveda. It is thought by many that the original knowledge of Ayurveda was obtained in the Himalayan foothills of Nepal. There are thousands of ancient Ayurvedic manuscripts located here. In addition, the biodiversity of Nepal makes it a fertile region for many Ayurvedic herbs. The geology, with mountains facing north, south, east and west, encourage the growth of unique flora. Over 3500 medicinal herbs are indigenous to Nepal.

Nepalese law has not yet defined what exactly ‘ayurveda’ is. Section 1.2.1.8 of Nepal Ayurveda Medical Council Act, 1988 even though has defined the term ‘ayurvedic medicine’ as a medicine prepared by the Ayurvedic method, it still lacks clear definition what exactly ‘ayurvedic’ denotes. Ayurveda can be defined as a system, which uses the inherent principles of nature, to help maintain health in a person by keeping the individual’s body, mind and spirit in perfect equilibrium with nature. Ayurveda is a Sanskrit term, made up of the words ayus (life) and veda (Knowledge or science). The term “ayurveda” thus means ‘the knowledge of life’ or ‘the science of life’. According to the ancient Ayurvedic scholar Charaka, “ayu” comprises the mind, body, senses and the soul. No medicine can compensate for unhealthy living and the principles of ayurveda teaches us the art of healthy living in harmony with nature.

Since Ayurveda is concerned with art of life, its scope is very extensive. There are eight classic, comprehensive branches of Ayurveda developed due to this complexity: (a) Internal medicine, (b) General surgery, (c) Head and neck (ear, eye, nose, throat), (d) Pediatrics, (e) Toxicology, (f) Fertility & conception, (g) Rejuvenation, and (h) Psychiatry. The knowledge of Ayurveda was passed down orally for generations, and then eventually recorded as part of the vedas - the oldest books known on Earth.

B. Principles of Ayurveda

The main seven principles on the foundation of which ayurveda functions are:

1. Human body, mind and everything in universe is influenced by triguna or three primordial forces (sattva, rajas and tamas).

2. Everything in universe including human being is made by combination of five elements (Pancha Mahabhuta) - earth (prithvi), water (apa or jala), fire (tejas or agni), air (vayu) and space (akash).

3. In humans, the five elements combine to produce three primary life/biological forces called tridosa (vata, pitta, kapha). Each dosa is made up of five elements, however each has a predominance of one or more elements. Vata has a predominance of the elements of air and space and is responsible for movement, Pitta has fire as the dominant element and controls transformation, and Kapha has predominance of water and earth and represents cohesion.

4. All humans have the three dosha present in different proportions. This unique combination of tridosa is responsible for our unique natures. Knowing this constitution assists both in preventing as well as curing the diseases.

5. The basic tissues which maintain body are seven and called seven dhatu- plasma, blood, muscle, fat, bone, marrow and reproductive fluid. The quality and quantity of each dhatu, and its balanced functioning is prerequisite for good health.

6. Byproducts of bodily metabolic activities are mainly three whose proper elimination is very important for good health- urine, feces and sweat. Accumulation of these causes various diseases.

7. Human body has numerous invisible aspects- marmas (sensitive points), chakras (energy centers), nadis (energy channels) and prana (life air). This are related to subtle body.

C. Laws Regulating Ayurveda in Nepal


Constitution is the fundamental law of the land. All laws that conflict with constitutional provisions will be null and void. This supreme law has included a word ‘ayurveda’ in Article 51(h)7 where constitution dictates State to adopt policy ‘for protection and promotion of health systems including Ayurveda, as a traditional medical system of Nepal, natural therapy and homeopathy system,’ as policies relating to basic needs of the citizens. State is duty bound to keep on enhancing investment necessary in the public health sector to make the citizens healthy.

Though constitution mandats State to: (a) ensure easy, convenient and equal access of all to quality health services, (b) make private sector investment in the health sector service oriented by regulating and managing such investment, while enhancing the State’s investment in this sector, and (c) focus on health research and keep on increasing the number of health institutions and health workers in order to make health services widely available and qualitative; State investment in ayurveda, natural therapy and homeopathy seems neglected in comparison to
allopaky. Regulation of ‘Ayurvedic medicines’ fall under the jurisdiction of concurrent powers of Federation and State as per Schedule 7 of the constitution.

The constitution in Article 35 guarantees fundamental right relating to health. Accordingly, every citizen has the right to free basic health services from the State, and no one can be deprived of emergency health services. Every person has right to get information about his or her medical treatment. Every citizen has equal access to health services and right of access to clean drinking water and sanitation. Recourses of state are not an excuse and these guarantees have to be fulfilled at any cost.

(b) **Ayurveda Medical Council Act, 1988:**

The main objective of Ayurveda Medical Council Act, 1988 is to promote production and consumption of ayurvedic medicines and ensure registration of Ayurvedic doctors. For regulating Ayurvedic medical profession, the Act has established Ayurveda Medical Council. Even though the law intends to maintain health and convenience of general public by making Ayurvedic medical system more effective through development in method of production and use of Ayurvedic medicines, this medical system has remained marginalized and somehow neglected from government side. There are many allopathic doctors in Nepal who at home garden have planted tulshi and allovera for herbal purpose and there are many chronic allopathic patients who after losing huge property as well as hope in allopathy, have finally been cured after taking dependency of ayurvedic system.

The Act in section 2.4 empowers and assigns Ayurveda Medical Council with certain functions and duties. The Council holds significant role in regulation of ayurveda medicine in Nepal as it is responsible to: (i) determine policies as may be required to smoothly operate Ayurveda medical treatment, (ii) determine the qualifications of doctors and to provide for the registration of the names and preparation of a code of conduct of doctors, and (iii) delete the name of a doctor who fails to observe the code of conduct from the register by taking action against him/her, as prescribed.

The Act has provisions for punishment to those who carry on profession without registration; to those who carry on the Ayurveda medical profession in contravention to the Act; to a registered doctor who misuses power while issuing certificate and prescription and; to those who produce, sell and distribute Ayurvedic medicines in contravention to this Act. The Act provides for taking disciplinary action against the Ayurvedic medical professionals who fail to follow the code of conduct and also to take penal action for violating the provisions of the Act. However, it does not provide for payment of compensation to the victim of negligent practice of profession.

(c) **Nepal Health Service Act, 1997**

The Act recognizes health as “service” and not as business. It acknowledges health service as an essential service for the general public. It aims to make the health service more competent, vigorous, service-oriented and responsible by making provisions related to constitution, operation and conditions of health service. The Act has defined terms like integrated medical officer and family however, what exactly is ‘health’ has not been defined by the Act. WHO, in Ottawa Charter for Health Promotion, 1986 had said that health is “a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities.” It is to be remembered that overall health is achieved through a combination of physical, mental, emotional, and social well-being, which, together is commonly referred to as the Health Triangle however, the Act needs clarity whether it includes even mental, emotional and psychological health as well.

The Act in section 5 creates duty on Government to classify technical posts in health service including the expert posts in different classes of the health service. The titles of such posts are to be as prescribed and Government is required to prepare the job description of each level of the health service. Such job description should clearly specify, inter alia, the functions, duties, responsibilities and powers of the concerned post. The job description prepared by Ministry of health several decades ago is already outdated and needs to be updated.

Section 6(1) of the Act recognizes three medical systems under the Nepalese health service viz.- (a) Allopathic Medical System, (b) Ayurveda Medical System, and (c) Homeopathy Medical System. Government of Nepal by notification in Nepal Gazette may prescribe other additional medical systems. Those who have not been registered in the Health Professional Council established pursuant to the prevailing law and who have not got such registration renewed are not qualified for appointment to the post of health service according to section 12 of the Act. Even though the Act recognizes three medical systems in the health service viz allopathic medical system, ayurveda medical system, and homeopathy medical system, the former two have their own Acts, Councils and mechanisms for controlling professional misconducts, however, homeopathy system still lacks separate Act and Council for its regulation.

Section 63 of the Act imposes restriction in doing act recklessly or with ulterior motive which is likely to
cause loss or damage to the body of patient.

(d) Drugs Act, 1978

Ensuring safe, efficacious and quality standard drugs for public consumption is the major purpose of the Act. To achieve the purpose, section 12 and 13 of the Act prohibits manufacture, sale, distribution, export, import, storage or consumption of drug not conforming to prescribed standard. The statute is victim friendly as it provides for compensation to victims as well. Drug manufacturer have to be responsible for death or injury to the health of any person because of the drug not being safe for public consumption, efficacious and of quality standard. Such manufacturer is required to provide compensation as prescribed to the successor of the deceased for such death or to the injured one as per section 15 of the Act.

Only pharmacist or pharmacy assistant or professional person himself is authorized under section 17 and 18 of the Act to sell or distribute those drugs that are categorized to be sold or distributed strictly after doctor’s prescription. Sale or distribution of remaining drugs is allowed only at the presence of a pharmacist or pharmacy assistant or professional person. Any seller may, based on the experience, sell in a reasonable quantity the drugs other than those mentioned above. Violation of these three statutory directives is deemed to be “misuse or abuse of drugs” that is punishable as per section 34 of the Act.

Government may at any time prohibit the manufacture, sale, distribution, storage, transportation, export, import or consumption of drugs by notification in gazette. The Department of Drug Administration (DDA) has power to fix price of drug. Any person who violates such governmental notice/order is punished for a term not exceeding three years or a fine not exceeding Rs 25,000/- or with both as per section 34 of the Act.

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Government may at any time prohibit the manufacture, sale, distribution, storage, transportation, export, import or consumption of drugs by notification in gazette. The Department of Drug Administration (DDA) has power to fix price of drug. Any person who violates such governmental notice/order is punished for a term not exceeding three years or a fine not exceeding Rs 25,000/- or with both as per section 34 of the Act. (DDA) has power to fix price of drug. Any person who violates such governmental notice/order is punished for a term not exceeding three years or a fine not exceeding Rs 25,000/- or with both as per section 34 of the Act.

Drug manufacturer is required to label in its product to which system- Allopathic, Ayurvedic, Homeopathic or Unani does that drug belong to. Likewise, while manufacturing any drug, the possible side effects from the consumption of that drug is required to be mentioned as prescribed according to section 32 of the Act however, almost all drugs available in market do not have label that awares the public regarding their sideeffects.

(f) Ayurveda Health Worker’s Code of Ethics

Code of Ethics for Certificate level in Traditional and General Medicine and Auxiliary Ayurveda Worker, Auxiliary Ayurveda Health Worker, 2004 has major provisions such as: (a) 17 duties of professionals in general, (b) General professional guidelines to be followed in course of: (i) consultation process, (ii) appropriate prescribing, (iii) patient communication, (iv) appropriate dispensing, (v) guidelines for appropriate prescribing and dispensing practice. (e.g. drug should always be prescribed by their generic names - Article 2.5.6), (vi) prescription and its contents (patient, therapy and prescriber), and (vii) research. (c) Circumstances of working fields – General medicine and surgery, community health, Ayurvedic system of II and III level. (d) Drugs that can be used by AGM-B level (who passed examination of PCL in medical science and traditional and general medicine), Ayurvedic drugs that can be used by AGM-B level, drugs that can be used by AYA-C level (who passed examination of Auxiliary Ayurveda Worker and Auxiliary Ayurvedic Health Worker), ayurvedic drugs that can be used by AYA-C level.

(g) National Health Policy, 2071 B.S

National Health Policy, 2071 B.S in policy no. 3 aims at protection and systematic development of ayurveda medical system and other traditional
medicines through domestic herbal management and consumption. To execute this policy, government is bound to adopt strategies of-(a) research over service quality monitoring and then protection, development and extension of ayurveda medical system, (b) effective implementation of ayurvedic medicine through infrastructure development and extension, (c) special plan to protect local herbs and through government-private partnership focus on quality control, maximize production and professionalism. (d) prioritize study research and human resource production in ayurveda system, (e) special attention in promoting ayurveda health service and to control unwanted activities done in the name of ayurveda or herbs.

(h) National Ayurveda Health Policy, 2052 (1996)

The policy aims to improve health condition of mass people and make them self-reliant on health service by officially and utmostly utilizing local medical herbs and medical entities which are easily available and can be used persistently.

D. Liabilities

Ayurveda Medical Council Act, 1988 requires mandatory registration of doctors prior to carry on ayurveda medical profession in section 5.1 and anyone who breaches this duty is liable for punishment of up to Rs 3000/- fine or up to 6 months imprisonment or both as per section 9.3 of the Act. Even a registered doctor under Ayurveda Medical Council would be punished if he misuses power while issuing certificate and making prescription dragging him to the liability of up to Rs 2000/- fine or up to 2 months imprisonment or both. The Act also holds liable to those who produce, sell and distribute Ayurvedic medicines in contravention to this Act. Even if the Act provides for taking disciplinary action against the Ayurvedic medical professionals who fail to follow the code of conduct and also prescribes penal action for violating the provisions of the Act, it does not provide for payment of compensation to the victim of negligent practice of profession.

No cases as such have been found to be complained for negligence of ayurvedic medical practitioner in Nepal till date. However, in India, in Juggankhan case, a homeopathic doctor gave to his patient, who was suffering from guinea worm, 24 drops of stramonium and a leaf of datura without contemplating the reaction such a medicine could cause, as a result of which the patient collapsed. The doctor was held guilty of committing the offence under section 304A of IPC.

Even though section 6(1) of Nepal Health Service Act, 1997 recognizes three medical systems in the health service viz Allopathic Medical System, Ayurveda Medical System, and Homeopathy Medical System, the former two have their own Acts and Councils whereas Homeopathy System still lacks separate Act and Council for its regulation. Negligence and professional misducts in allopacy and ayurveda medical systems have been addressed by their respective Acts however, in absence of Homeopathy Medical Council Act, there is no mechanism to held homeopathic medical practitioners liable for professional misconducts till date in Nepal.

Drug manufacturer is required to label in its product to which system does that drug belong to whether- Allopathic, Ayurvedic, Homeopathic or Unani. Likewise, while manufacturing any drug, the possible side effects from the consumption of that drug is required to be mentioned as prescribed according to Section 32 of the Act. If this statutory requirement is effectively enforced then patient consumers to a large extent can be aware about the sideeffects of the drugs and actively participate in discussion with doctor during informed consent discussion. Almost all drugs in market do not lable their sideeffects which leaves patient consumers in confusion. Further, many drugs are found to be kept under sale in plastic packets and bottles without any label.

Another similar case is that of Dr. Khusal Das case, where it was held that the fact that a person totally ignorant of science of Medicine or practice of surgery undertakes a treatment or performs an operation is very material in showing his gross ignorance from which an inference about his gross rashness and negligence in undertaking the treatment can be inferred. In this case the accused, a Hakim, not educate in allopathic treatment and having no idea about the precautions to be taken before administering the injection and effects of the procaine penicillin injection, gave it to the deceased. This act was taken to be clearly rash and negligent within the meaning of section 304A of IPC 1860. It is important to note that the criminal liability for negligence has not been invoked in certain cases where other sections were applicable. The example for this may be the recent case where a medical practitioner was registered to practice in electro homeopathy and ayurveda only but he performed abortion on a lady. He was charged with section 314 of IPC 1860 but was not charged with section 304A for gross negligence.

In a case, a homeopathic doctor gave to his patient who was suffering from guinea worms, twenty-four drops of stramonium and a leaf of datura without contemplating the reaction such a medicine could cause, resulting in the death of the patient. The doctor was held guilty of criminal negligence for committing the offence under section 304 of IPC.

About 14 years ago Dr. Niraj who opened “Niraj Ayurvedic Clinic” in Rishikesh, India and advertised treatment of Epilepsy through Ayurvedic drugs was arrested by police. The incidence became big scandal. He used to crush allopathic capsules for Epilepsy and sell it after packing in powder form advertising it as ayurvedic drug. Side effects of an allopathic Epilepsy drugs include- swelling of jaw,
allergy in body which is not treated immediately may cause eyesight loss to death. Many consumers who purchased these powders started developing side-effects and when patient checked in All India Medical Institute, Delhi, doctors identified it was due to the side-effect after consumption of modern allopathic drugs for epilepsy. Patients from Nepal also were found to have visited his clinic for drugs. After police searched the clinic, there were many khals (crushing equipments) behind the curtain where capsules of allopathic medicine was crushed into powder form and packed in plastic and sold by giving name as ayurvedic medicine. Other allopathic drugs were also found in the site. In Nepal, Teleshop TV channel advertises fake facts with goal to touch consumer’s heart and play with their emotion and innocence. For example - (a) reduction of waist size from 34 to 33 inches by wearing an electric belt for few minutes. (b) advertisement of cosmetics saying “change your skin complexion by taking desired colour from nature”, human should be white and when boys and girls achieve white face, they start falling in love etc. Government has not monitored how hygienic is the use of such cosmetics? To what extent are such advertisements true? What impact does it make on health if used for long time? etc. Consumers in India and Nepal are being cheated by such kinds of fake advertisements.16

E. Situation of Ayurveda Medicine in Nepal

Government has formulated Drugs Counseling Council and Drugs Advisory Committee Regulation, 2037 B.S. under with the authority conferred by section 40 of Drugs Act, 2035 B.S. The regulation in rule 3 establishes Drugs Advisory Council (Aausadhi Paramarsha Parishad) chaired by forest minister. Rule 4 mandates Drugs Advisory Council with authority to advise government in a manner that protects national interest and makes nation independent by relying more on domestic herbs. Rule 5 established Drugs Advisory Committee (Aausadhi Sallahakar Samiti) chaired by secretary, Ministry of health. Despite having adequate legal framework required for massive practice of ayurveda, our health care system in practice has not been able to enjoy witnessing ayurveda blooming to the extent it deserves.

F. Conclusion

Laws and policies are good in books but in action, ayurveda is being marginalized. Its example is insensitivity shown regarding registration of ayurveda doctors by ayurveda council.17 Acknowledging value indigenous medicine system, courts have started need to preserve and develop them. Recognizing the importance of ayurveda and other indigenous medicine, Madras high court observed18 that the development of indigenous medicines will benefit the entire mankind. A division bench of justice P N Prakash and justice B Pugalendhi observed that Tamil Nadu had effectively handled dengue fever by promoting siddha medicine nilavembu kudineer, and now kabasura kudineer is promoted as an effective immune booster and provided to all as a preventive medicine for Covid-19. Nepal can still cash this pandemic threat as opportunity to market her divine herbs and ayurveda for giving international recognition to indigenous ayurveda system of health care but for that, it requires leaders to concentrate more on research and environment making rather than spoiling time, creativity, and energy in power game and chair struggle.

The future of healthy and prosperous Nepal lies in Ayurveda. Most of the allotropy drugs in Nepal are imported foreign drugs that not only take away our currency but even leave numerous side-effects to patients in the name of curing one particular illness. It is a truth- Allopathy is more effective in emergency medical condition for speedy cure. But, the value of ayurveda in preventing people from getting sick is incomparable. By applying the principles of ayurveda in our way of living and by introducing standard ayurveda practices as school level education curriculum of Nepal, we can create healthier Nepal, prosperous Nepal, and self-dependent Nepal. Medicinal values inherent in herbs and raw materials that nature has gifted to us, that grow densely in our garden, jungles, heavenly soil needs to be massively marketed in domestic and international pharmaceutical industry. Herbs and raw materials that we are supplying since long to world cheaply are coming back to Nepal as expensive tablets and packets. Our Health system though recognizes ayurveda, unani and allopathy as three medical systems, government’s over attention to allopathy and neglect to ayurveda has brought smile into the faces of medical mafia who want to extend their allopathy market by using all means for commercial motive. Though Ayurveda medicine takes longer time to cure illness and restore health in comparison with allopathic medicine, ayurveda, if made our way of life and art of living, our families, societies and nations will get much healthier. Ayurvedic mode of health care and treatment modality has to be generalized and allopathy is to be limited only in exceptional situation where allopathy is inevitable for restoration of health loss.

Ayurvedic medicines are completely natural and mostly free of any side-effects. Though these medicines are not quick healers in comparison to allopathic drugs, they are boon to boost our immune system and in adopting preventive strategy against potential illness. From commercial perspective, investment in ayurveda might not be lucrative as allopathy, but in long run, this investment pays lot more by enabling public to stay safer, healthier through delivery of much affordable, accessible, and natural health care service.

**Abbreviations:** Not Applicable

**Acknowledgements:** Not Applicable

**Conflict of interest:** Author declares that there is no conflict of interest.

**Source of support:** None
References

5. Ibid.
6. Id.
7. Id.
8. Section 2(c) Defines: “integrated medical officer” means a person who, having acquired master’s degree in Ayurved and Allopathic from a recognized educational institute, is holding a post of the health service, after getting his/her name registered in the Ayurved Medical Council, and this term includes a person whose name is registered after the formation of the Ayurved Medical Council where the Council was not yet formed at the time of commencement of this Act.
9. Section 2(e) defines: “family” means the husband, wife, son, unmarried daughter, adopted son, unmarried adopted daughter, father, mother or step mother living together with an employee and whom he/she himself/herself has to maintain and subsist, and this term also includes his or her grandfather, grandmother in the case of a male and unmarried female employee, and her mother-in-law, father-in-law, in the case of a married female employee.
17. Deepa Daha, Ayurved doctors did not get recognition from ayurved council, Annapurna Post Post 2074-07-19. (http://annapurnapost.com/news/83459 Retrieved on September 10, 2020) Issue is related to dozens of ayurved doctors sent to china for ayurved study (Traditional Chinese Medicine) by scholarship from Nepal government after completion of 4 years course returned Nepal but Ayurved council’s chair denied to register their degree simply stating that their practice will create trouble to Indian and Nepalese long practiced traditional ayurvedic approach of treatment, despite Health Ministry’s and CIAA’s instructions to allow registration. This is an example of gross negligence in acknowledging ayurvedic human resources by few representatives of ayurvedic council having narrow mindset.

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