

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

(21 OF 1954)

[30th April, 1954]

An Act to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

1. Short Title, Extent And Commencement.— (1) This Act may be called the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to persons domiciled in the territories to which this Act extends who are outside the said territories.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.— In this Act, unless the context otherwise requires,—

- a) 'advertisement' includes any notice, circular, label, wrapper, or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke;
- b) 'drug' includes—
 - (i) a medicine for the internal or external use of human beings or animals;

- (ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

- (iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;

- (iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii);

- c) 'magic remedy' includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals;

- [(cc) 'registered medical practitioner' means any person,—

- (i) who holds a qualification granted by an authority specified in, or notified under, section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916) or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

- (ii) who is entitled to be registered as a medical practitioner under any law for the time being in force in any State to which this Act extends relating to the registration of medical practitioners;]
- d) 'taking any part in the publication of any advertisement' includes-
 - (i) the printing of the advertisement;
 - (ii) the publication of any advertisement outside the territories to which this Act extends by or at the instance of a person residing within the said territories.

3. Prohibition of Advertisement of Certain Drugs for Treatment of Certain Diseases and Disorders.–

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for –

- a) the procurement of miscarriage in women or prevention of conception in women; or
- b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or
- c) the correction of menstrual disorder in women; or
- d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act:

Provided that no such rule shall be made except,–

- (i) in respect of any disease, disorder or condition which requires timely

treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, and

- (ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 (23 of 1940) and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.]

4. Prohibition of Misleading Advertisements Relating to Drugs.–

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which-

- a) directly or indirectly gives a false impression regarding the true character of the drug; or
- b) makes a false claim for the drug; or
- c) is otherwise false or misleading in any material particular.

5. Prohibition of Advertisement of Magic Remedies for Treatment of Certain Diseases and Disorders.–

No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3.

6. Prohibition of Import into, and Export from, India of Certain Advertisements.–

No person shall import into, or export from, the territories to which this Act extends any document containing an advertisement

of the nature referred to in section 3, or section 4, or section 5, and any documents containing any such advertisement shall be deemed to be goods of which the import or export has been prohibited under section 19 of the Sea Customs Act, 1878 (8 of 1878) and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word 'shall' therein the word 'may' were substituted.

7. Penalty.— Whoever contravenes any of the provisions of this Act [or the rules made there under] shall, on conviction, be punishable –

- a) in the case of a first conviction, with imprisonment which may extend to six months, or with fine, or with both;
- b) in the case of a subsequent conviction, with imprisonment which may extend to one year, or with fine, or with both.

8. Powers of Entry, Search, etc.— (1) Subject to the provisions of any rules made in this behalf, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorized,—

- a) enter and search at all reasonable times, with such assistants, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;
- b) seize any advertisement which he has reason to believe contravenes any of the provisions of this Act:

Provided that the power of seizure under this clause may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such

document, article or thing, if the advertisement cannot be separated by reason of its being embossed or otherwise, from such document, article or thing without affecting the integrity, utility or saleable value thereof;

- c) examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

(3) Where any person seizes anything under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.]

9. Offences By Companies.— (1) If the person contravening any of the provisions of this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or the officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

- a) 'company' means any body corporate and includes a firm or other association of individuals, and
- b) 'director' in relation to a firm means a partner in the firm.

[9a. Offences to be Cognizable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence punishable under this Act shall be cognizable.]

10. Jurisdiction To Try Offences.— No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

[10A. Forfeiture.— Where a person has been convicted by any court for contravening any provision of this Act or any rule made thereunder, the court may direct that any document (including all copies thereof), article or thing, in respect of which the contravention is made, including the contents thereof where such contents are seized under clause (b) of sub-section (1) of section 8, shall be forfeited to the Government.]

11. Officers to be Deemed to be Public Servants.— Every person authorized under section 8 shall be

deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

12. Indemnity.— No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

13. Other Laws Not Affected.— The provisions of this Act are in addition to, and not in derogation of the provisions of any other law for the time being in force.

14. Saving.— Nothing in this Act shall apply to —

- a) any signboard or notice displayed by a registered medical practitioner on his premises indicating that treatment for any disease, disorder or condition specified in section 3, the Schedule or the rules made under this Act is undertaken in those premises; or
- b) any treatise or book dealing with any of the matters specified in section 3 from a bona fide scientific or social standpoint; or
- c) any advertisement relating to any drug sent confidentially in the manner prescribed under section 16 only to a registered medical practitioner; or
- d) any advertisement relating to a drug printed or published by the Government; or
- e) any advertisement relating to a drug printed or published by any person with the previous sanction of the Government granted prior to the commencement of the Drugs and Magic Remedies (Objectionable Advertisements) Amendment Act, 1963 (42 of 1963):

Provided that the Government may, for reasons to be recorded in

writing, withdraw the sanction after giving the person an opportunity of showing cause against such withdrawal.]

15. Power to Exempt from Application of Act.— If in the opinion of the Central Government public interest requires that the advertisement of any specified drug or class of drugs [or any specified class of advertisements relating to drugs] should be permitted, it may, by notification in the Official Gazette, direct that the provisions of sections 3, 4, 5 and 6 or any one of such provisions shall not apply or shall apply subject to such conditions as may be specified in the notification to or in relation to the advertisement of any such drug or class of drugs [or any such class of advertisements relating to drugs].

16. Power to Make Rules.— (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the

foregoing power, such rules may-

- a) specify any [disease, disorder or condition] to which the provisions of section 3 shall apply;
- b) prescribe the manner in which advertisements of articles or things referred to in clause (c) of section 14 may be sent confidentially.

[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each of House of Parliament while it is in session for a total period of thirty days which be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

SCHEDULE

Diseases and Ailments (by whatever Name described) which a Drug may not Purport to Prevent or Cure or Make Claims to Prevent or Cure

1. Appendicitis
2. Arteriosclerosis
3. Blindness
4. Blood poisoning
5. Bright's disease
6. Cancer
7. Cataract
8. Deafness
9. Diabetes
10. Diseases and Disorders of brain
11. Diseases and Disorders of the optical system
12. Diseases and Disorders of the uterus
13. Disorders of menstrual flow
14. Disorders of the nervous system
15. Disorders of the prostatic gland
16. Dropsy
17. Epilepsy
18. Female diseases (in general)
19. Fevers (in general)
20. Fits
21. Form and structure of the female bust
22. Gall stones, kidney stones and bladder stones
23. Gangrene
24. Glaucoma
25. Goitre
26. Heart diseases
27. High/Low Blood Pressure
28. Hydrocele
29. Hysteria
30. Infantile paralysis
31. Insanity
32. Leprosy
33. Leucoderma
34. Lockjaw
35. Locomotor ataxia
36. Lupus
37. Nervous debility
38. Obesity
39. Paralysis
40. Plague
41. Pleurisy
42. Pneumonia
43. Rheumatism
44. Ruptures
45. Sexual impotence
46. Smallpox
47. Stature of persons
48. Sterility in women
49. Trachoma
50. Tuberculosis
51. Tumours
52. Typhoid fever
53. Ulcers of the gastro-intestinal tract
54. Venereal diseases, including syphilis, gonorrhoea, soft chancre, venereal granuloma and lympho granuloma.]

The Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955

In exercise of the powers conferred by section 16 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), the Central Government hereby makes the following rules, namely:-

1. Short Title and Commencement.— (1) These rules may be called the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955.

(2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.— In these rules, unless the context otherwise requires,—

(1) the “Act” means the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954); and

(2) “section” means a section of the Act.

[3] Scrutiny of Misleading Advertisements Relating to Drugs.— [Any person authorized by the State Government in this behalf may, if satisfied, that an advertisement relating to a drug contravenes the provisions of section 4], by order, require the manufacturer, packer, distributor or seller of the drug to furnish, within such time as may be specified in the order or such further time as may be allowed in this behalf by the person so authorized

information regarding the composition of the drug or the ingredients thereof or any other information in regard to that drug as he deems necessary for holding the scrutiny of the advertisement and where any such order is made, it shall be the duty of the manufacturer, packer, distributor or seller of the drug to which the advertisement relates to comply with the order. Any failure to comply with such order shall, for the purposes of section 7, be deemed to be a contravention of the provisions of section 4:

Provided that no publisher or advertising agency of any medium for the dissemination of any advertisement relating to a drug shall be deemed to have made any contravention merely by reason of the dissemination by him or if any such advertisement, unless such publisher or advertising agency has failed to comply with any discretion made by the authorized person in this behalf calling upon him or it to furnish the name and address of the manufacturer, packer, distributor, seller or advertising agency, as the case may be, who or which caused such advertisement to be disseminated.

[4] Procedure to be followed in prohibiting Import into, and Export from India of Certain Advertisements.— (1) If the Customs Collector has reasons to believe that any consignment contains documents of the

nature referred to in section 6, he may and if requested by an officer appointed for the purpose by the Central Government, shall detain the consignment and dispose it of in accordance with the provisions of the Sea Customs Act, 1878 (VIII of 1878), and the rules made thereunder, and shall also inform the importer or exporter of the order so passed:

Provided that if the importer or exporter feels aggrieved by an order passed by the Customs Collector under this sub-rule and makes a representation to him within one week of the date of the order and has given an undertaking in writing not to dispose of the consignment without the consent of the Customs Collector and to return the consignment when so required to do by the Customs Collector, the Customs Collector shall pass an order making over the consignment to the importer or exporter, as the case may be:

Provided further that before passing any order under this sub-rule or under the first proviso thereto, the Customs Collector shall consult the officer appointed for the purpose by Central Government.

(2) If the importer or exporter who has given an undertaking under the first proviso to sub-rule (1) is required by

the Customs Collector to return the consignment or any portion thereof, he shall return the consignment or portion thereof within ten days of the receipt of the notice.

[5] [Manner in which Advertisements may be sent Confidentially.]— All documents containing advertisements relating to drugs referred to in clause (c) of sub-section (1) of section 14, shall be sent by post to a registered medical practitioner by name or to a wholesale or retail chemist, the address of such registered medical practitioner or wholesale or retail chemist being given. Such document shall bear at the top, printed in indelible ink in a conspicuous manner, the words. “For the use only of registered medical practitioners or a hospital or a laboratory”].

[6] Prohibition of Advertisement of Drugs for Treatment of Disease, etc.]— No person shall also take part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder, or condition specified in the Schedule annexed to these rules.

SCHEDULE (See Rule 6)

1. Asthma
2. AIDS