

Chapter - 14

THE DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (hereinafter referred as the “Act”) deals with the misleading advertisement of drugs in certain cases and prohibits the advertisement of remedies alleged to possess magic qualities. The Act has been passed with the aim of protecting consumers from the mischief of magic remedies and the consequent exploitation by concerned persons. It, of course, does not arbitrarily interfere with the private business of any person nor does it impose unreasonable restrictions.

The Act covers all advertisements which are objectionable or unethical and are used to promote self medication or self-treatment. Accordingly, the prohibitions under the Act extend to any kind of advertisement of a drug which, directly or indirectly, gives a false impression regarding the true character of the drug or makes a false claim for the drug or is otherwise false or misleading in any material particular. Any person carrying on or purporting to carry on the profession of administering magic remedies is, therefore, strictly prohibited from taking part in the publication of any advertisement referring to some kind of magic remedy which claims it to be efficacious for any specified purposes.

In order to determine its scope and coverage clearly, the Act itself gives a definite meaning to the relevant terms and expressions used therein. Accordingly, for the purpose of the Act, an “advertisement” has been defined to include 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 regarding any drug or a magic remedy.¹ Taking any part in the publication of any advertisement includes “taking part in the printing or the publication of any advertisement outside the territories to which this Act extends and doing any such act at the instance of a person residing within the said territories”.² The term “drug” includes any medicine for the internal or external use of human beings or animals and any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals. It also

1. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; sec. 2(a).

2. *Id.*, sec. 2(d).

includes 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 and any article intended for use as a component of any medicine, substance or article.³

The “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. Any such kind of treatment used for affecting or influencing in any way the structure or any organic function of the body of human beings or animals is also a magic remedy.⁴

The provisions of the Act are, however, in addition to, and not in derogation of, any other law in force related to the same subject.⁵

I. Prohibition on Advertisements

Extent of Prohibitions

Section 3 of the Act prohibits taking part in the publication of any advertisement of a drug which suggests or is calculated to persuade people to use that drug for any of the following purposes:⁶

- (a) the procurement of miscarriage in women or prevention of conception in women;
- (b) the maintenance or improvement of the capacity of human beings for sexual pleasure;
- (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 in the rules made from time to time.⁷

3. *Id.*, sec. 2(b).

4. *Id.*, sec. 2(c).

5. *Id.*, sec. 13.

6. *Id.*, sec. 3(a) to (d).

7. *Id.*, “Schedule of the Act”; The disorders enumerated in the schedule of the Act include the following diseases and disorders:

Sl. No.	Name of the disease, disorder or condition	
1	Appendicitis	31 Insanity
2	Arteriosclerosis	32 Leprosy
3	Blindness	33 Leucoderma
4	Blood Poisoning	34. Lockjaw
5	Bright’s disease	35 Locomotor atoxia
6	Cancer	36 Lupus
7	Cataract	37 Nervous debility
8	Deafness	38 Obesity
9	Diabetes	39 Paralysis
10	Disease and disorders of the brain	40 Plague

The central government can make rules in respect of those diseases or disorders which require timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 and with persons having special knowledge or practical experience in *ayurvedic* or *unani* systems of medicine.⁸

The Act defines a "registered medical practitioner" as any person who holds a qualification granted by an authority specified in, or notified under, section 3 of the Indian Medical Degrees Act, 1916 or specified in the schedule of the Indian Medical Council Act, 1956. Any person who is entitled to be registered as a medical practitioner under any other law for the time being in force in any state to which this Act extends relating to the registration of medical practitioner is also a registered medical practitioner.⁹

The power to specify any disease, disorder or condition with respect to which the provisions prohibiting advertisements would apply is vested with the central government.¹⁰ It is also authorized to prescribe the manner in which the advertisements of any articles or things may be allowed to be sent confidentially.¹¹

As pointed out, the Act prohibits any advertisement of a drug if it directly or indirectly gives a false impression regarding the true character of

11	Disease and disorders of the optical system	41	Pleurisy
12	Disease and disorders of the uterus	42	Pneumonia
13	Disorders of menstrual flow	43	Rheumatism
14	Disorders of the nervous system	44	Ruptures
15	Disorders of the prostatic gland	45	Sexual impotence
16	Dropsy	46	Small pox
17	Epilepsy	47	Stature of persons
18	Female disease (in general)	48	Sterility in women
19	Fevers (in general)	49	Trachoma
20	Fits	50	Tuberculosis
21	Form and structure of the female bust	51	Tumors
22	Gall stones, kidney stones and bladder stones	52	Typhoid fever
23	Gangrene	53	Ulcers of the gastro intestinal tract
24	Glaucoma	54	Venereal disease, including syphilis, gonorrhoea, soft chancre, venereal granuloma and lympho granuloma.
25	Heart disease		
26	High or low blood pressure		
27	Hydrocele		
28	Hysteria		
29	Infantile paralysis		
30	Insanity		

8. *Ibid.*

9. *Id.*, sec. 2(cc).

10. *Id.*, sec. 16.

11. *Ibid.*

that drug or makes a false claim with respect to the drug.¹² Hence, any advertisement which is false or misleading in any material particular would be prohibited under the Act. Persons carrying on or purporting to carry on the profession of administering magic remedies are strictly prohibited from taking 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 3.¹³

In *Dr. Yash Pal Sahi v. Delhi Administration*,¹⁴ the Supreme Court extended the prohibition under the Act to sending out the advertisements by post declaring that it amounts to publication. In this case the proprietors of a homeopathic hospital had sent to the complainant some copies of a magazine published by them and a list of medicines they had produced themselves. They were convicted though they had sent those items to the complainant at his request.

The Act prohibits import or export of any document containing an objectionable advertisement, to or from the territories to which it extends. Any documents containing any such advertisements are deemed as goods, the import or export of which has been prohibited under section 19 of the Sea Customs Act, 1878 and all the provisions of that Act apply accordingly.¹⁵

Nature of the advertisement should be thoroughly examined before extending the prohibitions under the Act. In *A.P.S. Kurup v. Union of India*,¹⁶ a statement in an advertisement carrying the meaning that "the *chloroquin* is recommended in case of malarial fever and no *chloroquin* should be taken for all types of fever" had come in question before the Kerala High Court. The court held that the advertisement was neither false nor misleading in any particular aspect and it could not be held to come under the prohibition of misleading advertisements relating to drugs.

The judiciary does not appear to have so far set specific standards about the nature of advertisements permissible or prohibited under the Act. This is evident from the case of *Anand Mohan Chhapparwal and etc. v. State and another*.¹⁷ In this case, the respondent had filed a complaint before the magistrate alleging that a certain advertisement appeared in a newsletter which contained objectionable statements punishable under section 7 (a) of the Act.¹⁸ Dealing with it the learned magistrate took cognizance of the

12. *Id.*, sec. 4.

13. *Id.*, sec. 5; see *supra* note 5.

14. AIR 1964 SC 784.

15. *Supra* note 1, sec. 6.

16. AIR 1983 Ker 259.

17. 1996 Cri. LJ 597.

18. The advertisement was as follows:

"For Men Only

complaint and issued process to the petitioners, who challenged the same on the basis of limitation of time, but unsuccessfully. Against the order, the petitioner filed a revision application under section 397 of Cr PC before the sessions judge. The judge confirmed the order of the magistrate. The matter reached the Panaji Bench of the Bombay High Court. The court pursued the content of the advertisement and held that even though the complaint is maintainable on the point of limitation, it did not constitute an offence under section 3 (b) punishable under section 7 of the Act. Therefore, the issue of process by the magistrate against the petitioner was clearly an abuse of the process of the court.

The Bombay High Court has made an attempt to explain the scope of the prohibition, under clauses (a) to (d) of the section 3 referring to specific instances of ailment in *Smt. Kantirani Jaynarayan Mangal v. State of Maharashtra*.¹⁹ In this case, the court was to consider a question regarding advertisements about remedies provided for general health, social ability and beauty. In the advertisement in question, there was a paragraph regarding "Breast Beauty Bust Development". Dealing with the issue, the court first clarified that the clauses (a) to (c) of section 3 refer to the advertisements about procurement of miscarriage in women or prevention of conception in women; the maintenance or improvement of the capacity of human beings for sexual pleasure; menstrual disorder in women and clause (d) refers to the ailment, any disease, disorder or condition specified in the schedule appended to the Act. Accordingly, the court held that any disease, disorder or condition specified in the schedule should be read in the context of the ailments mentioned in clauses (a) to (c) of section 3. So all the clauses should be conjointly read to determine any question regarding the prohibitions under section 3 of the Act.

The court explained that since section 3 of the Act does not expressly refer to any specific magic cure, the aim and object of the Act, mentioned in its preamble, makes it clear that the main purpose of the Act is to prohibit misleading advertisements and prohibit advertisement of magic remedies. Restrictions can, therefore, be imposed under the Act on any magic remedies as well as on the advertisements containing reference to such magic cure. Remedies provided for general health, social ability or

303 Capsules

(Three not three)

contains highly potent and time tested HERBS & MINERALS in combination with the celebrated ingredients MOTIBHASMA, KESAR, KASTURI traditionally known for their efficacious therapeutic property for enhancing vigour and vitality. Now the ancient AYURVEDIC formula can be used by you too as once used by RAJAS, MAHARAJAS AND NAWABS. For ADULT MALES only. Available with all leading Chemists.

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19. 1982 Cr LJ 1454.

developing beauty are not hit by the section. Accordingly, the paragraph with regard to “Breast Beauty Bust Development” was held by the court as not objectionable within the meaning of the Act.²⁰ The remedies referred for immediate and forthwith cure giving hopes to the customers in a magic fashion are, however, prohibited.²¹

The advertisements about certain drugs in electronic media about immediate cure are covered by the prohibitions under the Act. In this respect the criterion is that if the effect of a drug or cosmetic can be scientifically measured it can be covered by the prohibition.

II. Prohibition of Advertisements and Freedom of Speech

The Supreme Court in *Hamdard Dvakhana v. The Union of India*,²² has observed that the Act does not merely prohibit advertisements relating to drugs and medicines connected with diseases expressly mentioned in section 3 but it covers all the advertisements which are objectionable or unethical and are used to promote self-medication or self-treatment. Viewed in this way, it does not attract any of the elements or attributes of freedom of speech falling within article 19(1) (a) of the Constitution. The court has made it clear that the advertisements affected by the Act do not fall within the ambit of the words freedom of speech in article 19(1)(a) as the scope and object of the Act in its true nature and character is not interference with the right of freedom of speech but it deals with trade and business. So there is no direct abridgement of the right of free speech. A mere incidental interference with such right does not make the Act violative of the right.

III. Period of Limitation for Cognizance

As regards the question of limitation, the courts cannot take cognizance of any offence of objectionable advertisements under section 468 Cr PC which is punishable with imprisonment up to six months or with fine or with both after the expiry of one year of its commission.²³ The petitioners would often try to take the benefit of this provision relating to their offences under section 3 of the Act. In *Sablok Clinic v. State*,²⁴ the petitioners successfully took the benefit of this provision pleading that the complaint was filed against them after the expiry of period of limitation of one year. In this case, before filing of the complaint against an advertisement allegedly representing that the medicines prescribed by the clinic and its doctors could result in maintenance and improvement of the capacity of human

20. *Ibid.*

21. *Ibid.*

22. AIR 1960 SC 554.

23. Section 468 Cr PC provides that no court shall take cognizance of an offence after one year if the offence is punishable with imprisonment for a term not exceeding one year.

24. 1984 (II) FAC 263 (Delhi).

beings for sexual pleasures, a notice was served upon one of the accused persons to show cause why legal action against them should not be taken for contravening the provisions of the Act. The period of the notice so given was sought to be excluded under section 470(3) of the Cr PC.²⁵ The notice which the drugs controller had issued to the accused showed that he was required to explain his position within a period of 15 days. It had also clarified that on his failure to reply, legal action would be taken against him without further notice. Taking into account the technicalities involved in the matter, the court observed that the said notice was addressed to one of the accused persons and it was not mentioned that whether similar notices were given to the other accused persons also. It was not clarified as to how exclusion of time was sought regarding the persons to whom the notices were not given. The court further found that even if 15 days period mentioned in the notice to one of the accused was taken into account for exclusion, the complaint would still be barred by time as it was filed after 13 months of the publication of the concerned newspaper. The complaint was, therefore, rejected by the court on this ground.²⁶

IV. Powers of Search and Seizure

Section 8 of the Act empowers the state governments to authorize any gazetted officer, within defined local limits of an area, to enter and search, at all reasonable times, any place in which he has reason to believe that an offence under the Act has been or is being committed. He can perform this function with assistants, if found necessary.²⁷ He can also seize any advertisement which he has reason to believe contravenes any of the provisions of this Act.²⁸ The power of the 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.²⁹

The officer concerned can examine any record, register, document or any other material object found in any place of search and seize the same if

25. Section 470(3) Cr PC provides where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. In computing the time required for obtaining the consent or sanction of the government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

26. *Supra* note 23.

27. *Supra* note 1, sec. 8(1)(a).

28. *Id.*, sec. 8(1)(b).

29. *Id.*, proviso to sec. 8(1)(b).

it can furnish evidence of the commission of any offence.³⁰

The provisions of the Cr PC are applicable, so far as may be, 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 thereof.³¹ Once any such seizure takes place, the matter is to be brought to the knowledge of the magistrate, whose orders are taken regarding the custody of the seized article, document or thing.³²

V. Penalties and Cognizance of Offences

Section 7 of the Act provides that any contravention of the provisions of the Act and the rules made thereunder is punishable, in the case of first conviction, with imprisonment which may extend to six months, or with fine, or with both. In the case of a subsequent conviction, the prescribed punishment is imprisonment which may extend to one year, or fine or both. It is not necessary that a person can be penalized only if he has habitually contravened the provisions of the Act.³³

For determining any contravention of the Act, there should be a fair reading of the whole contents of the advertisement. The "article" advertised must have necessary reference to the curative effect of any particular ailment. Where the advertisement has no reference to remedial aspect of ailments at all, the conviction of the accused would not be justified and would be liable to be set aside.³⁴

In case a company contravenes the provisions of this Act, the person in charge and responsible to the company for the conduct of the business of the company, at the time of the offence being committed, as well as the company, are guilty and liable to be proceeded against.³⁵ However, if such a person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he will not be liable.³⁶ If 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 other officer of the company, any such person can be proceeded against and punished.³⁷

30. *Id.*, sec. 8(1)(c).

31. *Id.*, sec. 8(2); for provisions relating to search and seizure under Cr PC. See Appendix-X.

32. *Id.*, sec. 8(3).

33. *Supra* note 17.

34. *Supra* note 19.

35. *Supra* note 1, sec. 9(1).

36. *Id.*, proviso to sec. 9(1).

37. *Id.*, sec. 9(2); For the purpose 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.

An offence punishable under the Act is cognizable.³⁸ However, an offence under the Act is not triable by a court inferior to that of a presidency magistrate or a magistrate of the first class.³⁹

Any document, article or thing, in respect of which the contravention has been made, including the contents thereof, where such contents may be seized, can be forfeited to the government.⁴⁰ Every person possessing powers of entry, seizure etc. is deemed as a public servant within the meaning of section 21 IPC.⁴¹ Any suit, prosecution or other legal proceeding cannot lie against a person for having done anything in good faith.⁴²

VI. Non-application and Exemption under the Act

Section 14 of the Act declares that the provisions of this Act do not apply to:

- (a) any sign board or notice displayed by a registered medical practitioner on his premises indicating the treatment of 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 stand point; or
- (c) any advertisement relating to any drug sent confidentially in the prescribed manner 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.⁴³ The government may, for reasons to be recorded in writing, withdraw such sanction after giving the person concerned an opportunity of showing cause against such withdrawal.⁴⁴

The central government is empowered to permit the advertisement of any specified drugs or class of drugs or any specified class of advertisement relating to drugs, if it is considered necessary in public interest. The provisions of various sections prohibiting advertisements or any one of such provisions would, in such a case, not apply or may be applied with

38. *Id.*, sec. 9 A.

39. *Id.*, sec. 10.

40. *Id.*, sec. 10 A.

41. *Id.*, sec. 11.

42. *Id.*, sec. 12.

43. *Id.*, sec. 14, clauses (a) to (d).

44. *Id.*, proviso to sec. 14.

conditions as may be specified in the concerned notification.⁴⁵

VII. Scrutiny of Misleading Advertisements

Rule 3 of the Drugs and Magic Remedies (Objectionable Advertisement) Rules, 1955 provides that if an advertisement relating to a drug contravenes the provisions relating to prohibition of misleading advertisements, the manufacturer, packer, distributor or seller of the drug can be required to furnish, within specified time, necessary information regarding the composition or the ingredients of the drug or any other information for holding the scrutiny of the advertisement. Where any such order is made, it is the duty of the manufacturer, packer, distributor or seller of such drug to comply with the order. Any failure to comply with such an order is punishable as a contravention of the provisions about misleading advertisements relating to drugs. Any publisher or advertisement agency for the dissemination of any advertisement relating to a drug cannot be deemed to have made any contravention merely by reason of the dissemination of any such advertisement, unless he has failed to comply with any direction of the authorized person about furnishing the name and address of the manufacturer, packer, distributor, seller or advertising agency, which issued such advertisement.⁴⁶

Where the customs collector has reasons to believe that any consignment contains objectionable documents, he or any other appointed officer can detain the consignment and dispose it of in accordance with the provisions of the Sea Customs Act, 1878 and the rules made thereunder. He would have to inform the importer or exporter concerned about such an order. If the importer or exporter feels aggrieved by any such order, he may make a representation to the customs collector within one week of the date of the order and give an undertaking in writing that he would not dispose of the consignment without the consent of the customs collector and return the consignment to the customs collector whenever required. On such a representation, an order may be passed making over the consignment to the importer or exporter, as the case may be.⁴⁷

Before passing any such order, the customs collector will have to consult the officer appointed for the purpose by the central government. Where an importer or exporter has given the necessary undertaking and is required by the customs collector to return the consignment or any portion thereof, he would have to return the consignment or portion thereof within ten days of the receipt of the notice.⁴⁸

45. *Id.*, sec. 15.

46. The Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955, proviso to rule 3.

All documents containing confidential advertisements relating to drugs should be sent to a registered medical practitioner by name or to a wholesale or retail chemist by post on the address of such registered medical practitioner or wholesale or retail chemist. Such document should 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".⁴⁹

Any person intending to obtain the previous sanction of the government to publish any advertisement under section 14(1)(d) should make an application to such an officer as may be authorised by the central government or the state government. Every such application should mention the registered name and the trade mark of the drug, its detailed composition and any special reasons justifying the sanction of the government and should be submitted by the officer concerned to the central or the state government, as the case may be, for sanction.⁵⁰

47. *Id.*, rule 4.

48. *Id.*, rule 4(2).

49. *Id.*, rule 5.

50. *Id.*, rule 6.