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

[Act 21 of 1954]

along with

Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955

and

Case Law

HIGH COURT OF TRIPURA
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The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

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

[Act 21 of 1954][1]

[*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 magicqualities and to provide for matters connected therewith

Be it enacted by Parliament as follows:—

Statement of Objects and Reasons.—In recent years there has been a great increase in the number of objectionable advertisements published in newspapers or magazines or otherwise relating to alleged cures for venereal diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women. These advertisements tend to cause the ignorant and the unwary to resort to self-medication with harmful drugs and appliances, or to resort to quacks who indulge in such advertisements for treatments which cause great harm. It is necessary in the public interest to put a stop to such undesirable advertisements. This Bill is intended for this purpose.

2. It is considered that the necessary legislation should be enacted by the Centre in order to deal with this menace on uniform lines. Such legislation is relatable to the Entry "Drugs and Poisons" in the Concurrent List in the Seventh Schedule to the Constitution of India in so far as undesirable advertisements relating to drugs are concerned and to the Entry "Legal, Medical and other Professions" in the same List in regard to similar advertisements of magic remedies by persons who practise the profession of administering such remedies. The Bill when enacted will supersede State laws where they exist to the extent to which they are repugnant to the Central law.

CASE LAW ▸ Scope and object of the Act.—The scope and object of the Act is to prevent self medication or self-treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited. It cannot be said that this is an abridgement of the petitioners' right to free speech, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Purpose of the Act.**—The Act is to prevent self-medication or self-treatment and so advertisements recommending certain drugs and medicines have been prohibited. The advertisements in the instant case relate to commerce or trade and not to propagating of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Article 19(1)(*a*), *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

1. Short title, extent and commencement.—(1) This Act may be called the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

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1. Extended to Dadra and Nagar Haveli by Regn. 6 of 1963 (w.e.f. 1-7-1965) and to Pondicherry by Regn. 7 of 1963 (w.e.f. 1-10-1963).

(2) It extends to the whole of India [2][* * *] 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[3] as the Central Government may, by notification in the Official Gazette, appoint.

CASE LAW ▸ Sections 1 and 3—Object and purpose of the Act.—Remedies provided for health, sociality or developing beauty are not hit by Section 3, *Kantirani Jaynarayan* v. *State of Maharashtra*, 1982 Mh LJ 822.

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;

CASE LAW ▸ Definition of word "advertisement" not very wide in Section 2(*a*).—The definition of advertisement in the Act is not too wide keeping in view the object and the purpose of the Act which is to discourage self-medication and self treatment. If the definition of the word "advertisement" was not so broad and inclusive, it would defeat the very purpose for which the Act was brought in existence, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ Advertisement, publicity and sale promotion.—The target for any advertisement or publicity or sale promotion of prescription drugs could only be the doctors who would prescribe them. The object of distribution of the samples of the drugs to the doctors is to make them aware that such drugs are available in the market in relation to the cure of a particular affliction and, therefore, to persuade them to prescribe the same in appropriate cases. So doing is tantamount to publicity and sales promotion, *Eskayef* v. *CIT*, (2000) 6 SCC 451.

(*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 preventing 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*);

CASE LAW ▸ Section 2(*b*)—Machine if included in definition of drug—If an "article" under sub-clause (*iii*) of Section 2(*b*).—Under Section 2(*b*)(*iii*) any article other than food, which is intended to affect or influence in any way any organic function of the body of a human being is a drug within the

2. The words "except the State of Jammu and Kashmir" *omitted* by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

3. 1-4-1955 [*Vide* Noti. No. SRO 511, dated 26-2-1955]

meaning of that provision. The so-called "machines of science" or of "electric treatment" whose magically curative properties were advertised by the appellant are articles intended to influence the organic function of the human body. Indeed, the very claim of the appellant was that by the use of these machines he could cure nervous diseases amongst other ailments. It was held, a 'machine' is a thing and is therefore an 'article', *Zaffar Mohd.* v. *State of W.B.*, (1976) 1 SCC 428.

▸ **Section 2(*b*)(*iv*)**—Article in Section 2(*b*)(*iv*) has reference to ailments as provided by Section 2(*b*)(*i*), (*ii*)—Drugs as defined in Section 2 must have necessary reference to curative aspect of ailments, *Kantirani Jaynarayan* v. *State of Maharashtra*, 1982 Mh LJ 822.

Drug as defined in Section 2(*b*) must necessarily include an article having reference to ailments described in Section 3, *Kantirani Jaynarayan* v. *State of Maharashtra*, 1982 Mh LJ 822.

(*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;

CASE LAW ▸ Advertisement on Magic Remedies: Prohibition of.—The main object of the Act is to prohibit advertisement on such Drugs and Magic Remedies which can be construed as medicine or remedy for the treatment of diseases and ailments indicated under Sections 3 or 4 of the Act. The spiritual, supernatural or astrological powers are not prohibited in this country. Advertisement of Astrology or of an Astrologer cannot be construed to be an offence under the Drugs and Magic Remedies (Objectionable Advertisement) Act or under any statute. Discussion in T.V. is not an advertisement but a discussion. In the present advertisement there is no element affecting the provisions of Sections 3, 4 and 5 of the Act. So from this stand point also the learned Magistrate came to a just decision that the case against the present appellant was without any basis and he rightly dropped the proceedings, *Prabir Ghosh* v. *Jaya Ganguly*, (2003) 1 CHN 68.

[4][(*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;

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4. *Ins.* by Act 42 of 1963, S. 2(*i*) (w.e.f. 7-12-1963).

CASE LAW ▸ What is correct.—Distribution or sending out of prohibited advertisement within India, held, covered. *Yash Pal Sahi* v. *Delhi Admn.*, (1964) 5 SCR 582 : (1964) 1 Cri LJ 560.

Where the prohibited article is sent, it would amount to publication within the meaning of the Act. The printing of the prohibited article or advertisement is included in publication. But publication does not mean printing alone, publication means sending out the said advertisement outside India under clause (*ii*), and so, if sending out the advertisement outside India is brought within the purview of the inclusive definition, it is difficult to resist the conclusion that sending out the same advertisement within the territories of India to which the Act applies would amount to publication. The definition prescribed by Section 2(*d*) is wide enough to take in the printing of the advertisement and the sending of it in any part of India, *Yash Pal Sahi* v. *Delhi Admn.*, (1964) 5 SCR 582 : (1964) 1 Cri LJ 560.

(*e*) [5][* * *]

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

[6][(*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.]

CASE LAW ▸ Applicability.—The advertisements present the drug to public at large as a drug which will enhance the overall personality of an individual. It is projected that the use of medicine will increase the height of a person. The advertisements profess that the drug will help in treatment of the condition of stature of persons. The drug which is advertised need not be a dangerous or harmful to attract Section 3(*d*).

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5. Clause (*e*) *omitted* by Act 42 of 1963, S. 2(*ii*) (w.e.f. 7-12-1963). Prior to omission it read as:
'(*e*) "venereal disease" includes syphilis, gonorrhoea, soft chancre; venereal granuloma and lympho granuloma.'

6. *Subs.* for clause (*d*) by Act 42 of 1963, S. 3 (w.e.f. 7-12-1963).

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In the facts of the case, the prohibition under clause (*d*) of Section 3 is squarely attracted, *Gmt Teleshopping (P) Ltd.* v. *Union of India*, (2013) 5 Mah LJ 661 (Bom.).

▸ **Essential ingredients of.**—The essential ingredients to be liable under Section 3 are as follows:

(*i*) the accused should have taken part in the publication of an advertisement;

(*ii*) that advertisement should relate to or should have reference to a drug;

(*iii*) that drug is suggested as a cure for (*a*) the procurement of miscarriage in women or prevention of conception in women; or (*b*) the maintenance of improvement of the capacity of human beings for sexual pleasure; or (*c*) the correction of menstrual disorder in women for (a) the procurement of miscarriage 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, *State of Karnataka* v. *R.M.K. Sivasubramanya Om*, 1978 Cri LJ 853.

▸ **Article 19(1)(*g*) and (6)—Reasonableness of restrictions.**—The true intention of the Act is, as indeed it is, to stop objectionable and unethical advertisements for the purpose of discouraging self-medication no question of unreasonable restrictions arises, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Vagueness—Improper delegation of Power.**—The words impugned are vague. Parliament has established no criteria, no standards and has prescribed no principle, on which a particular disease or condition is to be specified in the schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying disease and conditions as given in Section 3(*d*) must therefore be held to be going beyond permissible boundaries of valid delegation. As a consequence of the Schedule in the rules must be struck down, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Commercial advertisements do not fall under Article 19(1)(*a*).**—The Act read as a whole does not prohibit merely advertisements relating to drugs and medicines connected with diseases, expressly mentioned in Section 3 of the Act but they cover all advertisements which are objectionable or unethical and are used to promote self-medication or self treatment. This is the content of the Act. Viewed in this way, it does not select any of the elements or attributes of freedom of speech falling within Article 19(1)(*a*) of the Constitution, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Use of the word "suggest" in Section 3 proper.**—The argument that the word 'suggest' is something subjective is also not well founded. 'Suggest' has many shades of meaning and in the context it means commendatory publication. It connotes a direct approach and its use in section does not support the contention that the restraint is disproportionate. *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Contravention of Section 3: When punishable.**—To bring the act of an accused within the mischief of law all the ingredients of that offence will have to be strictly proved by the prosecution. It was held that publication of an advertisement, to amount to an offence, should have reference to a drug and that drug should have been suggested as a cure for certain ailments mentioned in clauses (*a*) to (*d*) of Section 3. Since the contravention of Section 3 is made punishable, it is necessary to construe the section strictly, *State of Karnataka* v. *R.M.K. Sivasubramanya*, 1978 Cri LJ 853.

▸ **Use of Drug: Maintenance or improvement of capacity of human beings for sexual pleasure.**—In order to attract Section 3(*b*), the advertisement should suggest or calculate to lead to the use of a particular drug for the maintenance or improvement of the capacity of human beings for sexual pleasure. The advertisement in question only deals with the vitality and vigour of men. It is common knowledge that man's beauty lies in his vigour and vitality also. Therefore this advertisement in question however deals with only the beauty of the men and speaks nothing about sexual pleasure of the men in order to attract the application of Section 3(*b*) of the Act, *Anand Mohan Chhaparwal* v. *State*, 1996 Cri LJ 597.

▸ **Prohibition of publication of advertisement referring to drugs of the type mentioned therein—Applicability.**—Held, not applicable to distribution of samples of the drugs to doctors, *Eskayef* v. *CIT*, (2000) 6 SCC 451 : (2000) 245 ITR 116. *CIT* v. *Ampro Food Products*, (1995) 215 ITR 904 (AP), partly *overruled*. *CIT* v. *J&J Dechane Laboratories (P) Ltd.*, (1996) 222 ITR 11 (AP), partly overruled and also *distinguished*.

▸ **Section 3(*d*)**—Words "any other disease or condition which may be specified in the rules made under the Act" held confer uncanalised and uncontrolled power—Held, ultra vires and severable, *Hamdard Dawakhana* v. *Union of India*, AIR 1960 SC 554 : (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 746.

▸ **Sections 3(*d*) and 7.**—Accused advertising in a booklet an article known as Bust Developer, an instrument to be used for proper development of breast of women—Advertisement not having any reference to any ailments as mentioned in Section 2(*b*)(*i*), (*ii*) and (*iii*)—Pamphlet and the instrument known as Bust Developer cannot be said to be an objectionable article or a drug under the Act—Conviction not sustainable, *Kantirani Jaynarayan* v. *State of Maharashtra*, 1982 Mh LJ 822.

▸ **Misleading advertisement—Embargo on.**—Embargo on telecast pending scrutiny by authorised person not permissible. Concerned person must be given opportunity to put his case in terms of principles of natural justice when order passed by authorised person under Sections 3 and 4 would curb his rights, *Tele World Mktg.* v. *Entorr-10 Television (P) Ltd.*, 2016 SCC OnLine MP 4364 : (2017) 2 MP LJ 394 (MP).

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 directly 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.

CASE LAW ▸ Misleading advertisements.—Where the accused persons who were astrologers jointly cheated general public by selling them James and Tavis by leading this invocation that they would bring welfare to the people by making advertisement in newspaper, the evidence collected by the investigating officer in the nature of seizure and search, prima facie discloses that the offences under Sections 4, 5 and 7 of D.M.R. Act, have been committed, which is further corroborated in material particulars by the statements of the prosecution witnesses and in such circumstances, proceedings against them cannot be liable to be quashed, *Dipankar* v. *State of Maharashtra*, 2003 Cri LJ 3271 (Bom).

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 advertisements 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)[7] 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 [8][or the rules made thereunder] 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.

CASE LAW ▸ Habitual contravention not necessary.—Section 7 shows that before a person is penalised it is not necessary to show that the contravention brought home to him is in the nature of a habitual contravention. A single contravention proved against a person would make him guilty under Section 7. That is why the scheme adopted by the penal section is that it provides for a lesser punishment for the first offence and a relatively more serious penalty for subsequent offences, *Yash Pal Sahi* v. *Delhi Admn.*, (1964) 5 SCR 582 : (1964) 1 Cri LJ 560.

[9][**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 authorised,—

(*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;

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7. Now Customs Act, 1962 (52 of 1962).
8. *Ins.* by Act 42 of 1963, S. 4 (w.e.f. 7-12-1963).
9. *Subs.* by Act 42 of 1963, S. 5 (w.e.f. 7-12-1963).

(*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)[10] 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 (*c*) of sub-section (1), he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.]

CASE LAW ▸ Constitutionality —Held infringes Article 31, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 646.

▸ First part of the Section viz. "any person authorised by any of the provisions of the Act" held violative of Article 21—Held not severable—Whole section inconstitutional, *Hamdard Dawakhana* v. *Union of India*, (1960) 2 SCR 671 : 1960 Cri LJ 735 : (1960) 1 KLR 745.

▸ Notification of the Government of A.P. dated 16-9-1963— Applicability of.—Considering the provisions of the 1954 Act and the object of the said notification, held, it was applicable to the entire State of A.P. — A narrow interpretation confining the operation of the notification to a part of A.P. (Telangana area in this case), held, would defeat the public purpose for which this notification was issued, *Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559.

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.

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10. Now Criminal Procedure Code, 1973.

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.

[11][**9-A. Offences to be cognizable.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)[12], 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.

[13][**10-A. 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 authorised under Section 8 shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (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][**14. Savings.**—Nothing in this Act shall apply to,—

(*a*) any signboard or notice displaced 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

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11. *Ins.* by Act 42 of 1963, S. 6 (w.e.f. 7-12-1963).
12. Now Code of Criminal Procedure, 1973.
13. *Ins.* by Act 42 of 1963, S. 7 (w.e.f. 7-12-1963).
14. *Subs.* by Act 42 of 1963, S. 8 (w.e.f. 7-12-1963).

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.]

CASE LAW ▸ Conditions for applicability of Section 14.—Rule 6 prescribes some conditions which have to be complied with by a person who sends lists of medicines to which the Act applies so as to bring his case within Section 14(1)(*c*). One requirement to which it refers is that the list should have printed in indelible ink the statement to which we have just referred. The other requirement is that the list should be sent to a registered medical practitioner or wholesale or retail chemist. In relation to this requirement, the statutory provision prescribed by Section 14(1)(*c*) itself says that it must be sent confidentially to a registered medical practitioner.

The fact that one of the conditions prescribed by Rule 6 has been complied with does not lead to the inference that the other conditions prescribed either by Section 14(1)(*c*) or by Rule 6 have also been complied with, *Yash Pal Sahi* v. *Delhi Admn.*, (1964) 5 SCR 582 : (1964) 1 Cri LJ 560.

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 [15][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 advertisements of any such drug or class of drugs [16][or any such class of advertisements relating to drugs].

NOTIFICATIONS

(1)

Ministry of Health Notification No. S.O. 282, dated January 24, 1961, published in the Gazette of India, Part II Section 3(ii) dated February 4, 1961, page 350

Regarding prevention of conception in women

In exercise of the powers conferred by Section 15 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), the Central Government hereby directs that the provisions of clause (*a*) of Section 3 in so far as they relate to "prevention of conception in women" and those of Section 6 of the said Act shall not apply to or in relation to any advertisement in respect of contraceptives, provided that the advertisement shall relate only to such contraceptives as have been approved by the Government.

(2)

Ministry of Health Notification No. G.S.R. 843, dated May 29, 1967, published in the Gazette of India, Part II Section 3(ii) dated May 29, 1967

Whereas the Central Government is of opinion that public interest requires that certain classes of advertisements relating to drugs should be permitted.

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15. *Ins.* by Act 42 of 1963, S. 9(*i*) (w.e.f. 7-12-1963).
16. *Ins.* by Act 42 of 1963, S. 9(*ii*) (w.e.f. 7-12-1963).

Now, therefore, in exercise of the powers conferred by Section 15 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), the Central Government hereby directs that the provisions of clauses (*c*) and (*d*) of Section 3 of the said Act shall not apply to the classes of advertisements specified in column (1) of the Table below, if the conditions specified in the corresponding entries in column (2) of the said Table are fulfilled.

TABLE

	Class of advertisement(1)		*Conditions*(2)
1.	Leaflets or literature accompanying packings of drugs	(1)	The advertisements contains only such information as is required for the guidance of registered medical practitioners in respect of matters relating to (*a*) therapeutic indications of the drug, (*b*) its administration, (*c*) its dosage, (*d*) its side-effects and (*e*) the precautions to be observed in treatment with the drug
		(2)	It shall be the responsibility of the advertiser to prove that any claim made in the advertisement in respect of the drug is not false, exaggerated or misleading
2.	Advertisement of drugs in medical, pharmaceutical, scientific and technical journals	(1)	The advertisement contains only such information as is required for the guidance of registered medical practitioners in respect of matters relating to (*a*) the therapeutic indications of the drug, (*b*) its administration, (*c*) its dosage, (*d*) its side-effects and (*e*) the precautions to be observed in treatment with the drug.
		(2)	It shall be the responsibility of the advertiser to prove that any claim made in the advertisement in respect of the drug is not false, exaggerated or misleading.
3.	Price Lists or Therapeutic indexes published by manufacturers, importers or distributors of drugs duly licensed under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Rules thereunder.	(1)	The advertisement contains only such information as is required for the guidance of registered medical practitioners in respect of matters relating to (*a*) therapeutic indications of the drugs, (*b*) its administration, (*c*) its dosage, (*d*) its side-effects and (*e*) the precautions to be observed in treatment with the drug.
		(2)	The distribution of such literature is confined only to the registered medical practitioners, hospitals, dispensaries,

Class of advertisement(1)	*Conditions*(2)
	medical and research institutions, and Chemists and Druggists or Pharmacies duly licensed under the provisions of the Drugs and Cosmetics Rules.
	(3) It shall be the responsibility of the advertiser to prove that any claim made in the advertisement in respect of drug is not false, exaggerated or misleading.
4. Medical Literature distributed by medical detailers appointed by manufacturers, importers or distributors of drugs, duly licensed under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Rules thereunder	(1) The advertisement contains only such technical information as is required for the guidance of registered medical practitioners. In regard to therapeutic indications of drugs, the manner of their administration, their dosage schedule, their side-effects and the precautions to be observed in treatment.
	(2) The distribution of such literature is confined only to the registered medical practitioners, hospitals, dispensaries, medical and research institutions, and Chemists and Druggists or Pharmacies duly licensed under the provisions of the Drugs and Cosmetics Rules.
	(3) It shall be the responsibility of the advertiser to prove that any claim made in the advertisement in respect of drug is not false, exaggerated or misleading.

(3)

Ministry of Health and Family Welfare (Deptt. of Health), Noti. No. G.S.R. 446(E), dated April 30, 1992, published in the Gazette of India, Extra., Part II, Section 3(i), dated 30th April, 1992, p. 3, Sl. No. 194 [No. S-14017/8/90-OP (DMS & PFA)

Whereas the Central Government is of the opinion that Public interest requires that the advertisements of chemical contraceptives for oral use should be permitted.

Now therefore in exercise of the powers conferred by Section 15 of the **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954)**, the Central Government hereby directs that the provisions of clause (*a*) of Section 3 of the said Act shall not apply to the class of advertisement specified in column (1) of the Table below if the conditions specified in the corresponding entries in column (2) of the said table are fulfilled namely:—



TABLE

Class of advertisement	*Conditions*
Advertisement of chemical contraceptives for oral use	(*i*) Advertisement relates to chemical contraceptives for oral use having the following composition per tablet— (*a*) DL-Norgestrel—0.30 mg. Ethinyl Estradiol—0.30 mg. or (*b*) Levo-norgestrel—0.15 mg. Ethinyl Estradiol—0.03 mg. or (*c*) Centchroman—30 mg. (*ii*) It shall be the responsibility of the advertiser to prove that any claim made in the advertisement in respect of the drug is not false, exaggerated or misleading.

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 [17][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 [18][* * *] Section 14 may be sent confidentially.

[19][(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may 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.]

17. *Subs.* for the words "disease or disorder" by Act 42 of 1963, S. 10(*a*)(*i*) (w.e.f. 7-12-1963).
18. The words, brackets and figure "sub-section (1) of" *omitted* by Act 42 of 1963, S. 10(*a*)(*ii*) (w.e.f. 7-12-1963).
19. Sub-section (3) *ins.* by Act 42 of 1963, S. 10(*b*) (w.e.f. 7-12-1963).

[20][THE SCHEDULE

[*See* Sections 3(*d*) and 14]

Sl. No.	*Name of the disease, disorder or condition*
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 the 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 or low blood pressure
28.	Hydrocele
29.	Hysteria
30.	Infantile paralysis

20. *Ins.* by Act 42 of 1963, S. 11 (w.e.f. 7-12-1963).

Sl. No.	*Name of the disease, disorder or condition*
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

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

Notification No. S.R.O. 512, dated 26th February, 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[1] 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.

[2][* * *]

3. Scrutiny of misleading advertisements relating to drugs.—[3][Any person authorised 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 authorised 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 an advertisement relating to a drug shall be deemed to have made any such contravention merely by reason of the dissemination by him or it of any such advertisement, unless such publisher or advertising agency has failed to comply with any direction made by the authorised 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.

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1. April 1, 1995 *vide* S.R.O. 512, dt. 26-2-1955.
2. Rule 3 *omitted* and Rules 4 to 7 *re-numbered* as Rules 3 to 6 by S.O. 1688, dt. 22-5-1962.
3. *Subs.* by S.O. 826, dt. 10-4-1961.

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 purposes 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 receipt of the order and gives 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 thereof, the Customs Collector shall consult the officer appointed for the purpose by the 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.

[4][**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 wholesaler or retail chemist being given. Such document shall be 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".]

[5][**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.]

4. *Subs.* by S.O. 348, dt. 20-1-1962.
5. *Subs.* by GSR 442(E), dt. 1-6-1982.



[6][THE SCHEDULE

[*See* Rule 6]

1. Asthma
2. AIDS.]

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6. *Subs.* by G.S.R. 447(E), dt. 25-6-2002 (w.e.f. 25-6-2002).