

DRUGS AND MAGIC REMEDIES ACT 1954 (OBJECTIONABLE ADVERTISEMENT)

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OBJECT

- 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.



- **Extent And Commencement.**
- (1) 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.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette,
- **1st April 1955 vide Notification No. S.R.O. 511 dated 26th February, 1955, Gazette of India, 1955, Part 11, Section 3, Page 449.**

DEFINITIONS

- 1. **Advertisement:**

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.



- 2. **Magic Remedy:**

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.

2 **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);

- 4. '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

CLASSES OF PROHIBITED ADVERTISEMENTS

- **SECTION 3:**
- **1. Prohibition of Advertisement of Certain Drugs for Treatment of Certain Diseases and Disorders.**
- a) For 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 schedule, or in rules made under this Act:

● 2. 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 nature or character of the drug; or
- b) makes a false claim for the drug; or
- c) is otherwise false or misleading in any material particular are prohibited.

- **3. 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.
- **4. 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 2,3 above.

CLASSES OF EXEMPTED ADVERTISEMENT/PROVISION FOR SAVINGS

- The following classes of advertisement are not prohibited under this act:
 1. Any advertisement relating to the drugs printed or published by the Government or any other person with prior permission of the Government.
 2. Any advertisement relating to a drug which is sent confidentially in prescribed manner to Registered Medical Practitioner.
 3. Advertisement including any book or treatise (a written or printed composition) dealing with any matter relating to the diseases.

- Any sign board 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
- 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 Advertisement) 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.

• i) Advertisement relating to the drugs which comply with the required conditions as follows:

• A) Leaflets or literature along with packings of drug; or Advertisements of drugs in medicinal, pharmaceutical, scientific and technical journals.

B) Therapeutic index or price list published by licensed manufacturer, importer, or distributor of drug; or Medical literature distributed by Medical representatives.

With the condition that:

the advertisement should contain only the information, required for the guidance of registered medical practitioner regarding:

- a) therapeutic indications;
 - b) route of administration,
 - c) dosage and side effects of such drug or drugs ; and
 - d) the precaution to be taken in treatment with the drug
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- ii) The distribution of such literature should be given to registered medical practitioner,dispensaries,hospitals,medical and research institutions, chemists and druggists or pharmacies.

NAMES OF THE DISEASES ,DISORDER AND CONDITIONS AS PER SCHEDULE

- 1 Appendicitis 20 Fits
- 2. Arteriosclerosis 21 Form of structural changes of female bust
- 3. Blindness 22 Gall stones, kidney stones and bladder stones
- 4. Blood poisoning 23 Gangrene
- 5. Bright's disease(kidney)
- 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 or menstrual flow
- 14. Disorders of the nervous system
- 15. Disorders of the prostatic gland
- 16. Dropsy(oedema)
- 17. Epilepsy
- 18. Female diseases (in general)
- 19. Fevers (in general)

24. Glaucoma
25. Goitre
26. Heart diseases
27. High or low blood pressure
28. Hydrocele
29. Hysteria(uncontrolled emotion)
30. Infantile paralysis
31. Insanity(mentally ill)
32. Leprosy
33. Leukoderma
34. Lockjaw
35. Locomotor atoxia
36. Lupus
37. Nervous debility
38. Obesity
39. Paralysis
40. Plague
41. Pleurisy(inflammation of pleura)
42. Pneumonia
43. Rheumatism
44. Ruptures
45. Sexual impotence
46. Small pox
47. Stature of persons
48. Sterility in women
49. Trachoma
50. Tuberculosis
51. Tumors
52. Typhoid Fever
53. Veneral Diseases

Penalty. - Whoever contravenes any of the provisions of this Act 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.**

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 other 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.

(a) “**Company**” means - body corporate and includes a firm or other association of individuals, and **Director**” in relation to a firm means a partner in the firm.

CASE STUDIES:

1. Action against a self-styled baba who advertises offering "magic treatment" to patients.

The division bench of Acting Chief Justice AK Sikri and Justice RS Endlaw sought response from the governments by and asked petitioner AK Jain to make city-based Nirmal Baba a party in the case. **The petitioner alleged that Nirmal Baba(Nirmaljit Singh Nirula) had been advertising in different electronic and print media claiming to offer "magical treatment" while claiming himself to be a "representative of god".**

The petitioner sought a ban on all the advertisements by the Baba, saying that such publicity was contrary to the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

"The common man is being misled by the self-styled Nirmal Baba under the belief that the problems of a particular person will be solved with his blessings...the baba is spending lakhs of rupees on his advertisements and has earned more than Rs.200 crores within a few years in Delhi," the petition said.

2.

MD of Kunnath Pharmaceuticals convicted for violation of Magic Remedies Act

Peethaambaran Kunnathoor, Chennai

The Additional Chief Judicial Magistrate Court (EO) at Ernakulum in Kerala convicted the Proprietor and Licencee of '**Musli Power Xtra**', a **herbal aphrodisiac, manufactured by Kunnath Pharmaceuticals in Kerala for violation** of provisions of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954.

The Court has imposed a penalty of Rs.50,000 and also imposed jail sentence of four months on the Proprietor, KC Abraham. In default of payment of the amount, Abraham will have to undergo rigorous imprisonment of a period of three months more, the judgement says.

The case against the company was charged by the Ernakulum zonal office of the Department of Ayurveda Drugs Control, Government of Kerala in 2009.

The complainant, Dr RY John, then Ayurveda drugs controller at the zone, alleged that the company had committed offence punishable under section 7 of DMROA Act.

- In September 2009, the company had given advertisement in a leading magazine violating the provisions of the Act. **The advertisement stated that the product cured infertility by enhancing sexual capability and fertility.** The drug inspector argued in the court that the advertisement was in contravention of the provisions of Section 3 (b) of the Act and item number 48 of the Schedule of the Act.

- About the violation case, drug inspector John said ‘Musli Power Xtra’ manufactured by Kunnath Pharmaceuticals is a good Ayurvedic product, but the case was taken for giving publicity violating DMROA Act. **The Drugs & Magic Remedies (objectionable advertisement) Act clearly specifies the prohibition of advertisement for certain drugs, especially in the category of drugs described as aphrodisiac.**

- He said the company, through advertisement, was claiming that the product could treat infertility in both men and women. **The product is formulated from Safed Musli (chlorophytum borivilianum) known as Indian herbal aphrodisiac.**

➤ 3.

➤ Consumer Education and Research society, Ahmedabad, brought to notice of regulatory authority in Gujarat, sale and promotion of certain health gadgets by Conybio Health Care, in violation of Drugs and Magic Remedies (Objectionable Advertisements) Act. *Company was found promoting and distributing sun shade to cure from migraine and sun stroke, socks for acidity, pillow covers for spondylitis, palm guards for Parkinson's disease, eye-shade for sinusitis, T-shirts for high or, low blood pressure, bed sheets for paralysis strokes.*

When the regulator asked the company to produce scientific evidence to support the effect of infrared rays, which it claimed to be present in the products, the company said it had never undertaken such studies by any recognized Indian Misleading Advertisements and Consumers Institute. Subsequently, the regulator prohibited the sale and promotion of the products.



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- Kuchekar BS. A textbook of pharmaceutical jurisprudence:Nirali Prakashan;1994.
- Jain NK. A textbook of forensic pharmacy. 6th ed. New Delhi:Vallabh Prakashan,2003.