

Drugs & Magic Remedies Act 1954

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History

- In 1927 a resolution was adopted by then Council of State recommending to the Central and Provincial Governments to take immediate measures to control the indiscriminate use of medical drugs and for standardisation of the preparation and for the sale of such drugs.
- In August 1930, in response to the public opinion on the subject and in pursuance of that resolution the Government of India appointed the Drugs Enquiry Committee with Sir R. N. Chopra as its Chairman to enquire into the extent of the quality and strength of drugs imported, manufactured or sold in India and to recommend steps for controlling such imports, manufacture and sale in the interest of the public.

- As a result of the Chopra Committee Report the `Drugs act, was passed in 1940.
- In 1948 [The Pharmacy Act](#) was passed to regulate the provisions of pharmacy.
- As a result of these two enactments the State Governments were given the responsibility of controlling the manufacture of drugs and pharmaceuticals and their sales through qualified personnel and the Central Government was given the control on quality of drugs and pharmaceuticals imported into the country.
- he Chopra Committee Report dealt with the popularity of the patent and proprietary medicines in the following words: "The pride of place must be accorded to ingenious propaganda clever and attractive dissemination of their supposed virtues and wide and alluring advertisements. The credulity and gullibility of the masses, especially when 'certain cures' are assured in utterly hopeless cases, can well be imagined. Perusal of the advertisements of cures' produces a great effect on patients who have tried treatment by medical men without success. Such patients resort to any and every drug that comes in their way.

- They had also warned against the dangers of self-medication and of the consequences of unethical advertisement relating to proprietary medicines particularising those diseases which were more likely to be affected by the evil. There is reason, therefore, for us to assume that the state of facts existed at the time of the legislation which necessitated the Act.

The Act

- The preamble shows that the object of the Act was to control the advertisement of drugs in certain cases, i.e., diseases and to prohibit advertisements relating to remedies pretending to have magic qualities and provide for other matters connected therewith, (1) [1959] S.C.R. 279, 297.
- The title of the Act also shows that it is directed against objectionable advertisements. The definition section (s. 2) in cl. (a) defines advertisements and in cl.
- (b) drugs which include (i) medicines for use of human beings and animals, (ii) substances for use of diagnosis, treatment or prevention of diseases in human beings and animals, (iii) articles other than food which- affect the organic functions of the body of human beings or animals and
- (iv) articles intended for use as a component of any medicine etc., cl. (c) defines magic remedies to include a talisman, mantra, kavacha and other charms and (d) relates to the publication of any advertisement and (e) what a venereal disease is

Hamdard Dawakhana

- An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under [Art. 19\(1\)](#) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas- social, political or economic or furtherance of literature or human thought ; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines.

- The policy behind the Act is that medication should be on the advice of qualified medical practitioners. Merely because the legislature thought that it would not exclude advertisements in medical journals of the country would not be indicative of the disproportion of the restraint.
- Objection was then taken to the procedural part in [s. 8](#) and it was submitted that the power seizure and detention was unfettered and there is no proper procedure laid down [Criminal Procedure Code](#) or the [Drugs Act](#) are no rules and safeguards in regard warrants or entry into premises as there [Code of Criminal Procedure](#) or the [Drugs Act](#).

Objections raised

- Besides, it would prevent the medicines being brought to the notice of the practising medical practitioners or distributing agencies. It would also prevent a properly worded advertisement suggesting cure of diseases to people who for the sake of prestige and other understandably valid reasons do not like to confide to any person the nature of their diseases and that it would prevent medical relief in a country where such relief is notoriously inadequate

Judgment

- In our opinion this portion of the section goes far beyond the purpose for which the Act was enacted and, the absence of the safeguards which the legislature has thought it necessary and expedient in other statutes, e.g., the Indian Drugs Act, is an unreasonable restriction on the fundamental rights of the petitioners and therefore the first portion of the section, i.e., " any person authorised by any of the provisions of this Act" is unconstitutional. What then is the consequence of this unconstitutionality ? If this portion is excised from the rest of the section the remaining portion is not even intelligible and cannot be upheld. The whole of the section 'must therefore be struck down.
- By a portion of cl. (d) of [s. 3](#) and the whole of B. 8 being declared unconstitutional the Act is not thereby affected as they are severable from the rest of the Act. As a consequence of excision of that portion and of [s. 8](#) from the Act the operation of the remaining portion of the Act remains unimpaired. [R. M. D. Chamarbaughwala v. The Union of India](#)(1). As a result of [s. 8](#) being declared invalid, all the goods seized from the petitioners having been seized without the authority of law must be returned to the respective petitioners. It will be for the Government to take such action in regard to the proceedings taken or prosecutions commenced as is in accordance with the law laid down in this Judgment.

Contd....

- We declare the portion of cl. (d) of s. 3 indicated above and s. 8 unconstitutional and direct therefore that a writ of mandamus shall issue directing the respondents to return the goods seized. As the petitioners' challenge to the constitutionality of the Act is partially successful the proper order as to costs is that the parties do pay their own costs.

Purpose

- To control advertisements of drugs alleged to possess magic qualities.
- Magic Remedy: Talisman, mantra, kavacha, or 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.

S.3 Prohibition of Advert

- No person shall take any part in the publication of any advertisement referring to drug in terms which suggest or are calculated to lead to the use of that drug for-
- Procurement of miscarriage in women or prevention of conception in women
- Maintenance or improvement of capacity of human beings for sexual pleasure.

Section 3 Offence

- Correction of menstrual disorder in women
- Diagnosis, cure, mitigation, treatment or prevention of any disease or disorder or condition specified in the Schedule, or any other disease, disorder or condition which may be specified under rules. (substituted by Amendment in 1963)

Exception

- 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 Drugs Technical Advisory Board or experts in Unani, Ayurveda.

Misleading

- Section 4. No person shall take any part in any advertisement relating to a drug containing matter which
 - a) directly or indirectly gives a false impression regarding the true character of drug or
 - b) makes a false claim for the drug, or
 - c) is otherwise false or misleading in any material particular

5 Prohibition of Advert

- No person carrying on profession of administering magic remedies shall take part in any publication of advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3.
- S 6 prohibition of import or export of such material

7. Penalty

- For first conviction: Imprisonment up to six months or with fine or with both
- For subsequent conviction: Imprisonment which may extend to one year or with fine or with both.
- S 8: power of entry, search, seize
- S 9: Offence by company
- S 10 Cognizable offence

Savings

- S 14: Nothing in this Act shall apply to
- a) any sign board or notice displayed by a RMP on his premises indicating that treatment for any diseases or disorders specified in Sec 3 or Schedule or rules is undertaken in those premises
- b) any treatise or book dealing with it from a bona fide scientific or social stand point

Exemption

- c) any advertisement relating to any drug sent confidentially in the corner prescribed under S 16 only to a RMP
- d) any advertisement relating to drug printed or published by government
- e) any ad published with sanction of government before this Act. Sanction may be withdrawn after notice and chance.

Power of Center

- Center may make rules
- Specify any disease or disorder or condition to which the provisions of s 3 will apply
- Prescribe manner in which advertisement of articles or things may be sent confidentially.

Remedies to prohibit Drug & Magic Remedies misleading Advertisements

- There is need for self regulation in advertising therefore, the Advertising Standards Council of India (ASCI) should adopt a Code for Self Regulation which would ensure that advertisement should be such that there is no violation of the code of self regulation.
- It is necessary to identify the spots where the consumers are required to be cautioned in order to prevent them from being deceived by such advertisements. This could be done by way of advertising in buses, metro or railway platforms.
- Disciplinary action must be taken against doctors who advertise their services or against those who participate in advertisements for promoting a particular medicine, vitamin or drug.
- People should avoid self-medications via advertisements. A medicine that promises to relieve from ailments, such as joint pain etc should not be believed unless it is prescribed by a certified medical practitioner.
- To strengthen the DMR Act, a member committee should be structured which may include drug controllers from different states, doctors and pharma association representatives.

- In addition to amending law, Government should establish a sovereign system to monitor the execution of law and ensure its inflexible enforcement.
- Corrective advertisements are also very essential and necessary in order to ensure that the impression created by a false or misleading advertisement is corrected through a series of advertisements.
- "Pre-clearance" (pre-vetting) is another mode to avoid false and misleading ads. This involves evaluation of ads by self regulatory body before they are published or broadcast.
- It is necessary to provide severe punishment & mandatory jail term for advertising magic cures.
- Cine stars and celebrities should also caution against endorsing such misleading ads of magic remedies & drug products. There should be legal provisions to prosecute them as well.
- As major ayurvedic companies are being scanned for dubious claims promising magical remedies. For checking on Ayurvedic fake products, more number of ayurveda drug inspectors should be recruited in every state.
- Food and Drug Administration (FDA) should plan to pull the plug on television channels that offer air time to promote medicines which guarantee to cure joint pain, impotency and weight reduction etc.

Proposals to amend

- Pharmaceutical companies or anybody involved in exaggerating how well their drugs work will face exemplary penalty and imprisonment, according to the proposed amendments to the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

Read more at:

https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/pharma-cos-may-face-rs-10-lakh-penalty-2-year-jail-term-for-deceptive-drug-ads/articleshow/73238074.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

- As per the proposals, offence involving deceptive advertisement would invite a fine of Rs 10 lakh and imprisonment that could be up to two years in case of a first conviction, people in know said. In case of a subsequent conviction, the fine could go up to Rs 50 lakh and the jail term to five years. The proposed amendments would cover digital advertising, notice, circular, label, wrapper, invoice, banner and poster, among others

- At present, penalties for false claims include imprisonment up to six months, fine, or both in the case of the first conviction. In case of a subsequent conviction, imprisonment could be extended to one year, or fine, or both. To check deceptive advertising practices by pharmaceutical companies that put public health at risk, the health ministry had set up a committee to recommend amendments to existing laws to initiate criminal procedures, including jail term for top managers, and impose huge f ..

- The experts have also proposed to amend the definition of advertisement in line with the Consumer Protection Act. While the existing Act prohibits misleading health claims in the print media, it has no provision to tackle advertisements that may appear on the Internet.

- According to the proposed amendment, “advertisement would mean any audio or visual publicity, representation, endorsement, pronouncement made by means of light, sound, smoke, gas, print, electronic media, Internet or website and includes any notice, circular, label, wrapper, invoice, banner, poster or any such other documents”, same a person cited earlier.
- The amendment also includes a clause to protect actions taken in good faith from legal proceedings.

- Government has initiated the process of amending Drugs and Magic Remedies Act for bringing Ayush medicines under its purview so that selling them by making wrong claims and misguiding the public can be checked, Rajya Sabha was informed today.

"The government is in the process of bringing the amended Drugs and Magic Remedy Act. The Law department has already approved it. Medicines sold through such advertisements while misguiding the public should be stopped," Minister of State for Ayush ..

Nirmal Baba

- The Delhi High Court on Wednesday issued notice to the Central and Delhi governments on a plea seeking 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 July 4 and asked petitioner AK Jain to make city-based Nirmal Baba a party in the case.

The petitioner alleged that Nirmal Baba 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.

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- "Nirmal Baba through the electronic and print media publicity claims that if anyone starts acting on his advice then the person will be cured from any disease," said advocate Sugriv Dubey appearing for MrJain.

It was alleged by Jain that the baba had been organising camps in Delhi.

- The Health and Family Welfare Ministry has proposed the draft amendment to the Drugs and magic Remedies (Objectionable Advertisements Act, 1954), with a stringent punishment of a jail term of up to five years and a fine of up to ₹ 50 lakh for advertisements for magic remedies and drugs promoting fair skin, enhancing sexual performance, stammering, infertility in women, premature ageing and greying, increasing brain capacity among others.
- The draft amendment has made several additions to the list of diseases, disorders, conditions covered in the Act. The Act says that medicines, "magic remedies" and products to cure any of these 78 diseases, disorders, conditions named should not be advertised.

- The new additions include ads for drugs or treatment for enhancing sexual performance, sexual impotence, premature ejaculation and spermatorrhoea, fairness of skin, premature ageing, AIDS, improvement of memory, improvement in height of kids/adults, improvement in size of sexual organ, duration of sexual performance, premature graying of hair, stammering, sterility in women, disorders of menstrual flow hysteria, power to rejuvenate, obesity, maintenance or improvement of the capacity of the human being for sexual pleasure, improvement in size and shape of the sexual organ and in duration of sexual performance, insanity, increase in brain capacity and improvement of memory and improvement in height of children/adults

- Under the Act, the first conviction is punishable with imprisonment of up to six months or fine or both; and a subsequent conviction can result in imprisonment of up to a year or fine, or both.
- The amendment proposes to increase the penalties. For the first conviction, the proposed punishment is imprisonment of up to two years and fine up to ₹ 10 lakh. For subsequent conviction, the imprisonment may extend to five years with a fine of up to ₹ 50 lakh.
- The Ministry said the amendment is being made in order to keep pace with changing time and technology. It has been decided to solicit suggestions/comments/objections from the public/ stakeholders with regard to the said draft Bill.