



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

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Examples and instances of Misleading Advertisements

- Promise to cure horrible diseases like cancer and AIDS.
- A medical practitioner advertising his clinic and claiming that he offered a definite cure for epilepsy; Indian Medical Association (IMA) in this case declared him a fraud based on the findings of the committee that he was giving his patients lethal drugs in high doses.
- India is the land of spiritualist of babas and sadhus. There has not been a law specifically to prosecute those making false spiritual claims and deceive people.

- Those websites that promoted slimming and weight loss cures; all purpose pills that alleviated anything from arthritis, diabetes, hypertension, heart disease to kidney problems, tuberculosis, asthma and hepatitis; herbal products and magnetic devices that treated anything from headache and back injuries to insomnia, arthritis, and sprains.

OBJECTIVES OF ACT

The Act has been passed with the aim,

- ✓ To control the advertisement of drugs in certain cases.
- ✓ To prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities, which falsely claim and mislead public.

DEFINITIONS¹

'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.

'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.

'Drug'

- (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.

CLASSES OF PROHIBITED ADVERTISEMENTS¹

1. Advertisements of Drug/Drugs which may lead to its/their use for Treatment of Certain Diseases and Disorders : e.g.
 - a) *For the procurement of miscarriage or prevention of conception in women; or*
 - b) *For the maintenance or improvement of the power of human beings for sexual pleasure; or*
 - c) *For the correction of menstrual disorder in women; or*
 - d) *For the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or in the rules made under this Act.*

2. Advertisements of magic remedies for the treatment of certain diseases & disorders which claim to be efficacious for any of the purposes specified in 1 as above.
3. Misleading Advertisements Relating To Drugs :
The advertisement relating to a drug or drugs which,
 - a) *Directly or indirectly gives a false impression regarding the true character of the drug or drugs; or*
 - b) *Make any false claims for such a drug or drugs.*

4. Prohibition of Misleading Advertisements Relating to Drugs

The advertisement which contain any matter which -

- i. *Directly or indirectly gives a false information regarding the true nature or character of the drug, or*
- ii. *Make a false claim for the drug*
- iii. *Is otherwise false or misleading in any material prohibited.*

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

Publication of any advertisement related to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes (specified in 3 above) is prohibited.

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

Import into, or export from India of any document containing an advertisement of nature referred to in, 3, 4, 5 above.

CLASSES OF EXEMPTED ADVERTISEMENTS¹

(Provision for Savings, under this act)

The following classes of advertisements are not prohibited under this act. It means nothing in this act is applicable to these types of advertisements.

1. Any advertisements relating to the drugs printed or published by the Government or any other person with prior permission of the government.

2. Any advertisements relating to a drug which is sent *confidentially* in the 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, disorders or conditions which are otherwise prohibited, provided published from bonafied scientific or social point of view.

4. Displayed signboards or notices by the Registered Medical Practitioner on his premises indicating that the treatment is under taken for any diseases, disorders or conditions specified in the schedule to this Act or in the rules made under this Act.

5. Advertisement relating to the drugs which comply with the required conditions as follows :
 - a. *Leaflets or literature along with packagings of drugs; 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 (under the D & C Act, 1940 and the rules thereunder) ; or Medical literature distributed by Medical representatives.*

With the conditions that :

- i. The advertisement should contain only the information, required for the guidance of RMP 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.*

- ii. The distribution to such literature should be given to RMP, dispensaries, hospitals, medical and research institutions, chemists and druggists or pharmacies.
6. Any advertisements relating to a drug printed or published with previous sanction of the Government granted prior to the commencement of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1963.

EXEMPTION FROM APPLICATION OF ACT¹

The central government, for the public interest, may permit any advertisement of any specified drug or class of drugs by notification in the official gazette.

OFFENSES AND PENALTIES¹

1. Contravention of any of the provision of this Act or rules thereunder :
 - a. *Punishable with imprisonment up to six months or with fine or with both; on first conviction.*
 - b. *Punishable with imprisonment up to one year or with fine or with both; on subsequent conviction.*

2. In case of contravention of the provisions of the Act by a company, every person who, at the time of the commission of the offences, was in-charge and responsible for the conduct of company business shall be deemed to be guilty and liable for the punishment.

However, such person is not liable for punishment if he proves that the offences was committed without his knowledge or that he has taken all the precautions to prevent the commission of such offences.

Scrutiny of misleading advertisements relating to drugs¹

- Any person authorized by the state Government in this behalf may, if satisfied, that an advertisement relating to a drug contravenes the provisions of act, may order the manufacturer, packer, distributor or seller of the drug to furnish within specified time the information regarding the composition of that drug as he feels necessary for scrutinizing the advertisement.

- It shall be the duty of the manufacturer, packer, distributor or seller of the advertised drug to comply with the order. Failure to comply with such order is considered as an offense.
- No publisher or advertising agency shall be held to be guilty of the contravention of the provisions of the act merely by publishing the advertisement, unless such publisher or advertising agency has failed to comply with any direction made by the authority.

Manner in which advertisements may be sent confidentially¹

The documents containing advertisements discussed under exempted advertisements shall be sent by post to a registered medical practitioner by name, or to a wholesale or retail chemist. Such document shall bear the words **“For the use only of registered medical practitioners or a hospital or a laboratory”** remarkably in indelible ink.

Obtaining previous sanction of the Government for publishing an advertisement¹

- For obtaining previous sanction of the Government, to publish any advertisements discussed under exempted advertisements in this Act, the person has to apply to the concerning officer appointed by Central Government or State Government.
- The application should mention the registered name and the trade name of the drug, the detailed composition and any special reasons justifying the sanction of the government.
- The authorized officer then should submit such application to the respective Government for sanction.

CONCLUSION

It is very apparent by the nature of the Act that there is no opportunity to share information related to a drug with a consumer/patient directly by manufacturers/importers in order to prohibit self-medication. Consumers and their organizations must assert their rights against dishonest businessmen indulging in such a practice and bring such cases to the notice of the enforcement group, which in turn have to play the role of a watch dog of public interest.

REFERENCES

1. Kuchekar B. S., Khadatare A. M., Itkar S. C.; Textbook of Forensic Pharmacy; Ninth edition; Published By Nirali Prakashan; Pg. No. - 7.1 to 7.6