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COUNCIL OF STATES

The following Bill was introduced in the Council of States on the 2nd December, 1953:—

BILL No. XXVII OF 1953

A Bill 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.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1953.

(2) 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.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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;

(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 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);

(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;

(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;

(e) 'venereal disease' includes syphilis, gonorrhœa, soft chancre, venereal granuloma and lympho granuloma.

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

(d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act.

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 indirectly 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.

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 (VIII of 1878) 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 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.

8. Confiscation of documents, etc., containing advertisements prohibited by this Act.—Any person authorised by the State Government in this behalf may, at any time, seize and detain any document, article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of this Act and the court trying such contravention may direct that such document (including all copies thereof), article or thing shall be forfeited to the Government.

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 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.

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.

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.

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 (Act XLV 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. Savings.—(1) Nothing in this Act shall apply to—

(a) any sign board or notice displayed by a registered medical practitioner on his premises indicating that treatment for any of the diseases or disorders specified in section 3 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 prescribed manner only to a registered medical practitioner or to a wholesale or retail chemist for distribution among registered medical practitioners or to a hospital or laboratory; or

(d) any advertisement relating to a drug printed or published by the Government, or, with the previous sanction of the Government, by any other person; or

(e) any advertisement, label or set of instructions which is permitted under the Drugs Act, 1940 (XXIII of 1940), or any rules made thereunder.

(2) In this section,—

(a) '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 (VII of 1916) or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1933 (XXVI of 1933); 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;

(b) 'hospital' includes a clinic, dispensary or other institution for the reception of the sick, whether as in-patients or out-patients.

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 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 advertisement of any such drug or class of drugs.

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 disease 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 sub-section (1) of section 14 may be sent confidentially.

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 treatment which causes 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.

A. KAUR.

NEW DELHI;
The 12th August, 1953.

S. N. MUKERJEE,
Secretary.

