

Jammu and Kashmir Drugs and Magic Remedies (Objectionable Advertisements) Act, 2018

JAMMU & KASHMIR

India

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Act 8 of 2018

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Jammu and Kashmir Drugs and Magic Remedies (Objectionable Advertisements) Act, 2018(Act No. 8 of 2018)[Dated 10th August, 2018.]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.In exercise of the powers vested under Proclamation No. P-1/18 of 2018 dated 20th June, 2018, the Governor is pleased to enact as follows :-

1. Short title and commencement.

(1)This Act may be called the Jammu and Kashmir Drugs and Magic Remedies (Objectionable Advertisements) Act, 2018.(2)It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"Act" means the Jammu and Kashmir Drugs and Magic Remedies (Objectionable Advertisements) Act, 2018 ;(b)"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 ;(c)"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 effect 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) ;(d)"Government" means the Government of Jammu and Kashmir ;(e)"magic remedy" includes a talisman, mantra 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 ;(f)"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 (Central Act) , specified in the Schedules to the Indian Medical Council Act, 1956 (Central Act) or specified in the Schedule to the Jammu and Kashmir Medical Registration Act, Samvat 1988 ; orii. who is entitled to be registered as a medical practitioner under any law for the time being in force in the State ;(g)"taking any part in the publication of any advertisement" includes -i. the printing of the advertisement ; andii. the publication of any advertisement outside the State at the instance of a person residing in the State.

3. Prohibition of advertisement of certain drugs for treatment of certain diseases and disorders.

- Subject to the provisions of the 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 woman ; or(b)the maintenance or improvements 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 diseases, 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 by the State Government 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, the State of certain advertisements.

- No person shall import into, or export from, the State any document containing any advertisement of the nature referred to in section 3, or section 4, or section 5.

7. Penalty.

- Whoever contravenes any of the provisions of the 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 which may extend to rupees ten thousand, or with both ;(b)in the case of a subsequent conviction, with imprisonment which may extend to one year, or with fine which may extend to rupees twenty-five thousand, or with both.

8. Powers of entry, search, etc.

(1)Subject to the provisions of any rules made in this behalf, any Gazetted Officer authorized by the Government by way of notification in this behalf may, within the local limits of the area for which he/she is so authorized -(a)enter and search at all reasonable times, with such assistants, if any, as he/she considers necessary, any place in which he/she has reason to believe that an offence under the Act has been , or is being, committed ;(b)seize any advertisement which he/she has reason to believe contravenes any of the provisions of the 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 ;(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 the Act.(2)The provisions of the Code of Criminal Procedure, Samvat 1989, shall, so far as may be, apply to any search or seizure under the 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 clause (c) of sub-section (1) he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

9. Offences by companies.

(1)If the person contravening any of the provisions of the 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 the 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 the 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 or 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 anybody 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. Offence to be cognizable.

- Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, an offence punishable under this Act shall be cognizable.

11. Jurisdiction to try offences.

- No court inferior to that of a Chief Judicial Magistrate shall try any offence punishable under this Act.

12. Forfeiture.

- Where a person has been convicted by any court for contravening any provision of the 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.

13. Officers to be deemed to be public servants.

- Every person authorized under section 8 shall be deemed to be a public servant within the meaning of section 21 of the Jammu and Kashmir State Ranbir Penal Code, Samvat, 1989.

14. Indemnity..

- No suit, prosecution or other legal proceedings shall be against any person for anything which is in good faith done or intended to be done under the Act.

15. 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.

16. Savings.

- Nothing in the Act shall apply to -(a)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 the Act, is undertaken in those premises ; or(b)any treatise or book dealing with any of the matter 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 18 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 the commencement of the Act :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.

17. Power to exempt from application of Act.

- If in the opinion of the Government public interest requires that the advertisement of any specified drug or class of drugs or any specified class of advertisement relating to drugs should be permitted, it may by notification in the Government 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 or any such class of advertisements relating to drugs.

18. Power to make rules.

(1)The Government may, by notification in the Government 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, 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 Section 16 may be sent confidentially.