

# The Drugs and Cosmetics Act, 1940

February 11, 2013

## 1. Short title, extent and commencement-

(1) This Act may be called the Drugs <sup>1</sup>[and Cosmetics] Act, 1940.

(2) It extends to the whole of India <sup>2</sup>[\*\*\*].

(3) It shall come into force at once; but Chapter III shall take effect only from such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and Chapter IV shall take effect in a particular State only from such date<sup>3</sup> as the State Government may, by like notification, appoint in this behalf:

<sup>4</sup>[Provided that in relation to the State of Jammu and Kashmir, Chapter III shall take effect only from such date<sup>5</sup> after the commencement of the Drugs and Cosmetics (Amendment) Act, 1972 (19 of 1972), as the Central Government may, by notification in the Official Gazette, appoint in this behalf.]

-----

**1. Ins. by Act 21 of 1962, sec. 3 (w.e.f. 27-7-1964).**

**2. The words "except the State of Jammu and Kashmir" omitted by Act 19 of 1972, sec. 2 (w.e.f. 31-5-1972).**

**3. 1st April, 1947; see Notification No.F. 28(10) (3) 45H(I), dated 2nd September, 1946, Gazette of India, 1946, Pt. I, p. 1349.**

Chapter IV came into force in the States of Delhi, Ajmer and Coorg on 1st April, 1947, see Notification No. F. 28 (10)(3) 45H(I), Chapters III and IV came into force in the States of Himachal Pradesh, Bilaspur, Kutch, Bhopal, Tripura, Vindhya Pradesh and Manipur on 1st April, 1953, vide Notification No. S.R.O. 663, dated 30th March, 1953, Gazette of India, Pt. II, Sec. 3, p. 451.

Chapter IV came into force in the Union Territory of Dadra and Nagar Haveli w.e.f. 1st August, 1968, see Notification No. ADM/Law/117(74), dated 20th July, 1968, Gazette of India, Pt. III, Sec. 3, p. 128. The Act is extended to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I; to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I; to Goa, Daman and Diu by Reg. 11 of 1963, sec. 3 and Sch. and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, sec. 3 and Sch.

**4. Added by Act 19 of 1972, sec. 2 (w.e.f. 31-5-1972).**

**5. 24th August, 1974, vide Notification No. S.O. 2185, dated 9th August, 1974, published in the Gazette of India, 1974, Pt. II, Sec. 3(ii), p. 2331.**

## 2. Application of other laws not barred. –

The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930, and any other law for the time being in force.

### 3. Definitions. –

<sup>1</sup>[(a)“<sup>2</sup>[Ayurvedic, Siddha or Unani] drug” includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of <sup>3</sup>[disease or disorder in human beings or animals, and manufactured] exclusively in accordance with the formulae described in, the authoritative books of <sup>4</sup>[Ayurvedic, Siddha and Unani Tibb systems of medicine], specified in the First Schedule;]

<sup>5</sup>[(aa)] “the Board” means—

(i) in relation to <sup>2</sup>[Ayurvedic, Siddha or Unani] drug, the <sup>6</sup>[Ayurvedic, Siddha and Unani Drugs Technical Advisory Board] constituted under section 33C; and

(ii) in relation to any other drug or cosmetic, the Drugs Technical Advisory Board constituted under section 5;]

<sup>5</sup>[<sup>7</sup>[(aaa)] “cosmetic” means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic <sup>8</sup>[\*\*\*];]

<sup>9</sup>[(b)] “drug” includes—

<sup>10</sup>[(i)] all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;]

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of <sup>11</sup>[vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;]

<sup>12</sup>[(iii)] all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices\* intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board;]

<sup>13</sup>[(c)] “Government Analyst” means—

(i) in relation to <sup>14</sup>[Ayurvedic, Siddha or Unani] drug, a Government Analyst appointed by the Central Government or a State Government under section 33F; and

(ii) in relation to any other drug or cosmetic, a Government Analyst appointed by the Central Government or a State Government under section 20;]

<sup>15</sup>[\*\*\*]

<sup>16</sup>[(e)] “Inspector” means—

(i) in relation to <sup>14</sup>[Ayurvedic, Siddha or Unani] drug, an Inspector appointed by the Central Government or a State Government under section 33G; and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under section 21;]

<sup>17</sup>[(f) "manufacture" in relation to any drug <sup>18</sup>[or cosmetic] includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug <sup>13</sup>[or cosmetic] with a view to its <sup>19</sup>[sale or distribution] but does not include the compounding or dispensing <sup>20</sup>[of any drug, or the packing of any drug or cosmetic,] in the ordinary course of retail business; and "to manufacture" shall be construed accordingly;]

<sup>21</sup>[(g)] "to import", with its grammatical variations and cognate expressions means to bring into <sup>22</sup>[India];

<sup>23</sup>[(h) "patent or proprietary medicine" means,—

(i) in relation to Ayurvedic, Siddha or Unani Tibb systems of medicine all formulations containing only such ingredients mentioned in the formulae described in the authoritative books of Ayurveda, Siddha or Unani Tibb systems of medicine specified in the First Schedule, but does not include a medicine which is administered by parenteral route and also a formulation included in the authoritative books as specified in clause (a);

(ii) in relation to any other systems of medicine, a drug which is a remedy or prescription presented in a form ready for internal or external administration of human beings or animals and which is not included in the edition of the Indian Pharmacopoeia for the time being or any other Pharmacopoeia authorised in this behalf by the Central Government after consultation with the Drugs Technical Advisory Board constituted under section 5;]

<sup>24</sup>[(i) "prescribed" means prescribed by rules made under this Act.]

<sup>25</sup>[\*\*\*]

## COMMENTS

(i) It is not necessary that the article should be applied to the whole body. If it is applied to a part of the body and if it beautifies or promotes attractiveness or alters appearance then also it will be a cosmetic within the meaning of the Drugs and Cosmetics Act, 1940; *State of Bombay v. Zahid Hussain*, 1975 Mah LJ 455.

(ii) 'Gandh' and 'nail polish' are 'cosmetics' within the meaning of the Act; *State of Bombay v. Zahid Hussain*, 1975 Mah LJ 455.

(i) The definition of 'drug' is an inclusive one. It includes all medicines for external or internal use of human beings or animals or any substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals; *Langamurti v. State of Orissa*, (1973) 1 CWR 368.

(ii) The appropriate meaning of the expression 'substances' in the section is things; *Chimanlal J. Sheth v. State of Maharashtra*, AIR 1963 SC 665.

(iii) Water meant to be used for dissolving other medicines for injection into human body is 'drug'; *R.C. Sundarka v. State of West Bengal*, 1971 Cr LJ 1369: 77 CWN 437.

- 
- 1.Ins. by Act 13 of 1964, sec. 2 (w.e.f. 15-9-1964)**
  - 2.Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**
  - 3.Subs. by Act 68 of 1982, sec. 3, for "disease in human beings, mentioned in, and processed and manufactured" (w.e.f. 1-2-1983).**
  - 4.Subs. by Act 68 of 1982, sec. 3, for "Ayurvedic (including Siddha) and Unani (Tibb) system of medicine" (w.e.f. 1-2-1983).**
  - 5.Original clause (a) relettered as clause (aa) and subs. by Act 13 of 1964, sec. 2 (w.e.f. 15-9-1964).**
  - 6.Subs. by Act 68 of 1982, sec. 3, for "Ayurvedic and Unani Drugs Technical Advisory Board" (w.e.f. 1-2-1983)**
  - 7.Clause (aa) ins. by Act 21 of 1962, sec. 4 (w.e.f. 27-7-1964) and relettered as clause (aaa) by Act 13 of 1964, sec. 2 (w.e.f. 15-9-1964).**
  - 8.The words ", but does not include soap" omitted by Act 68 of 1982, sec. 3 (w.e.f. 1-2-1983).**
  - 9.Subs. by Act 11 of 1955, sec. 2, for clause (b) (w.e.f. 15-4-1955).**
  - 10.Subs. by Act 68 of 1982, sec. 3, for sub-clause (i) (w.e.f. 1-2-1983).**
  - 11.Subs. by Act 13 of 1964, sec. 2, for "vermins" (w.e.f. 15-9-1964).**
  - 12.Ins. by Act 68 of 1982, sec. 3 (w.e.f. 1-2-1983).**
  - 13.Subs. by Act 13 of 1964, sec. 2, for clause (c) (w.e.f. 15-9-1964).**
  - 14.Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**
  - 15.Clause (d) omitted by Act 19 of 1972, sec. 3 (w.e.f. 31-5-1972).**
  - 16.Subs. by Act 13 of 1964, sec. 2, for clause (e) (w.e.f. 15-9-1964).**
  - 17.Clause (bbb) ins. by Act 11 of 1955, sec. 2 (w.e.f. 15-4-1955) and relettered as clause (f) by Act 35 of 1960, sec. 2 (w.e.f. 16-3-1961)**
  - 18.Ins. by Act 21 of 1962, sec. 4 (w.e.f. 27-7-1964).**
  - 19.Subs. by Act 68 of 1982, sec. 3, for "sale and distribution" (w.e.f. 1-2-1983)**
  - 20.Subs. by Act 21 of 1962, sec. 4, for "or packing of any drug".**
  - 21.Clauses (c), (d) and (e) relettered as clauses (g), (h) and (i) respectively by Act 35 of 1960, sec. 2 (w.e.f. 16-3-1961).**
  - 22.Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".**

**23.Clause (d) relettered as clause (h) by Act 35 of 1960, sec. 2 (w.e.f. 16-3-1961) and subs. by Act 68 of 1982, sec. 3 (w.e.f. 1-2-1983).**

**24.Clause (e) subs. by Act 11 of 1955, sec. 2 (w.e.f. 15-4-1955) and relettered as clause (i) by Act 35 of 1960, sec. 2 (w.e.f. 16-3-1961).**

**25.Clause (f) ins. by the A.O. 1950 and omitted by Act 3 of 1951, sec. 3 and Sch.**

**\* The Central Government has specified (vide S.O. 1468(E), dated 6th October, 2005) the following devices intended for external or internal use in human beings or drugs with immediate effect, namely:—**

**(i) Cardiac Stents (vi) Bone Cements**

**(ii) Drug Eluting Stents (vii) Heart Valves**

**(iii) Catheters (viii) Sclap Vein Set**

**(iv) Intra Ocular Lenses (ix) Orthopaedic Implants**

**(v) I.V. Cannulac (x) Internal Prosthetic Replacements.**

### **3A. Constitution of references to any law not in force or any functionary not in existence in the State of Jammu and Kashmir. –**

<sup>1</sup>[3A. Construction of references to any law not in force or any functionary not in existence in the State of Jammu and Kashmir.

Any reference in this Act to any law which is not in force, or any functionary not in existence, in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.

-----

**1. Ins. by Act 19 of 1972, sec. 4 (w.e.f. 31-5-1972).**

### **4. Presumption as to poisonous substances. –**

Any substance specified as poisonous by rule made under Chapter III or Chapter IV <sup>1</sup>[or Chapter IVA] shall be deemed to be a poisonous substance for the purpose of Chapter III or Chapter IV <sup>1</sup>[or Chapter IVA], as the case may be.

-----

### **5.The Drugs Technical Advisory Board. –**

<sup>1</sup>[(2) The Board shall consist of the following members, namely:—

(i) the Director General of Health Services, ex officio, who shall be Chairman;

(ii) the Drugs Controller, India, ex officio;

- (iii) the Director of the Central Drugs Laboratory, Calcutta, ex officio;
- (iv) the Director of the Central Research Institute, Kasauli, ex officio;
- (v) the Director of the Indian Veterinary Research Institute, Izatnagar, ex officio;
- (vi) the President of the Medical Council of India, ex officio;
- (vii) the President of the Pharmacy Council of India, ex officio;
- (viii) the Director of the Central Drug Research Institute, Lucknow, ex officio;
- (ix) two persons to be nominated by the Central Government from among persons who are in charge of drugs control in the States;
- (x) one person, to be elected by the Executive Committee of the Pharmacy Council of India, from among teachers in pharmacy or pharmaceutical chemistry or pharmacognosy on the staff of an Indian University or a college affiliated thereto;
- (xi) one person, to be elected by the Executive Committee of the Medical Council of India, from among teachers in medicine or therapeutics on the staff of an Indian University or a college affiliated thereto;
- (xii) one person to be nominated by the Central Government from the pharmaceutical industry;
- (xiii) one pharmacologist to be elected by the Governing Body of the Indian Council of Medical Research;
- (xiv) one person to be elected by the Central Council of the Indian Medical Association;
- (xv) one person to be elected by the Council of the Indian Pharmaceutical Association;
- (xvi) two persons holding the appointment of Government Analyst under this Act, to be nominated by the Central Government.]

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination and re-election:

<sup>2</sup>[Provided that the person nominated or elected, as the case may be, under clause (ix) or clause (x) or clause (xi) or clause (xvi) of sub-section (2) shall hold office for so long as he holds the appointment of the office by virtue of which he was nominated or elected to the Board.]

(4) The Board may, subject to the previous approval of the Central Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

-----

**1. Subs. by Act 13 of 1964, sec. 4, for sub-section (2) (w.e.f. 15-9-1964).**

**2. Subs. by Act 13 of 1964, sec. 4, for the Proviso (w.e.f. 15-9-1964).**

## **6. The Central Drugs Laboratory. –**

(1) The Central Government shall, as soon as may be, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Government, to carry out the functions entrusted to it by this Act or any rules made under this Chapter :

Provided that, if the Central Government so prescribes, the functions of the Central Drugs Laboratory in respect of any drug or class of drugs <sup>1</sup>[or cosmetic or class of cosmetics] shall be carried out at the Central Research Institute, Kasauli, or at any other prescribed Laboratory and the functions of the Director of the Central Drugs Laboratory in respect of such drug or class of drugs <sup>1</sup>[or such cosmetic or class of cosmetics] shall be exercised by the Director of that Institute or of that other Laboratory, as the case may be.

(2) The Central Government may, after consultation with the Board, make rules prescribing—

(a) the functions of the Central Drugs Laboratory;

<sup>2</sup>[\*\*\*]

(d) the procedure for the submission of the said Laboratory <sup>3</sup>[under Chapter IV or Chapter IVA] of samples of drugs <sup>2</sup>[or cosmetics] for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;

(e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions;

(f) the matters necessary to be prescribed for the purposes of the proviso to sub-section (1).

-----

**1. Ins. by Act 21 of 1962, sec. 5 (w.e.f. 27-7-1964).**

**2. Clauses (b) and (c) omitted by Act 11 of 1955, sec. 4 (w.e.f. 15-4-1955).**

**3. Subs. by Act 13 of 1964, sec. 5, for "under Chapter IV" (w.e.f. 15-9-964).**

## **7. The Drugs Consultative Committee. –**

(1) The Central Government may constitute an advisory committee to be called "the Drugs Consultative Committee" to advise the Central Government, the State Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout <sup>1</sup>[ India] in the administration of this Act.

(2) The Drugs Consultative Committee shall consist of two representatives of the Central Government to be nominated by that Government and one representative of each State Government to be nominated by the State Government concerned.

(3) The Drugs Consultative Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

-----

**1. Ins. by Act 3 of 1951, sec. 3 and Sch., for "the States".**

## **7A. Section 5 and 7 not to apply to Ayurvedic, Siddha or Unani drugs. –**

**<sup>1</sup>[7A. Sections 5 and 7 not to apply to Ayurvedic, Siddha or Unani drugs.—**

Nothing contained in sections 5 and 7 shall apply to <sup>2</sup>[Ayurvedic, Siddha or Unani] drugs.]

-----

**1. Ins. by Act 13 of 1964, sec. 6 (w.e.f. 15-9-1964).**

**2. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

## **8. Standards of quality. –**

**<sup>1</sup>[(1) For the purposes of this Chapter, the expression "standard quality" means—**

(a) in relation to a drug, that the drug complies with the standard set out in <sup>2</sup>[the Second Schedule], and

(b) in relation to a cosmetic, that the cosmetic complies with such standard as may be prescribed.]

(2) The Central Government, after consultation with the Board and after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend <sup>2</sup>[the Second Schedule], for the purposes of this Chapter, and thereupon <sup>2</sup>[the Second Schedule] shall be deemed to be amended accordingly.

-----

**1. Subs. by Act 21 of 1962, sec. 6, for sub-section (1) (w.e.f. 27-7-1964).**

**2. Subs. by Act 13 of 1964, sec. 7, for "the Schedule" (w.e.f. 15-9-1964).**

## **9. Misbranded drugs. –**

**<sup>1</sup>[9. Misbranded drugs. For the purposes of this Chapter, a drug shall be deemed to be misbranded, –**

(a) If it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is ; or

(b) If it is not labeled in the prescribed manner ; or



(c) If its label or contained or anything accompanying the drug bears any statement, design or device which is false or misleading in any particular.]

-----

**1. Subs. by Act 68 of 1982, sec. 5, for section 9 (w.e.f. 1-2-1983).**

## **9A. Adulterated drugs. –**

<sup>1</sup>**[9A. Adulterated drugs.** For the purposes of this Chapter, a drug shall be deemed to be adulterated, –

- (a) If it consists, in whole or in part, of any filthy, putrid or decomposed substance ; or
- (b) If it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health ; or
- (c) If its contained is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
- (d) If it bears or contains, for purposes of colouring only, a colour other than one which is prescribed ; or
- (e) If it contains any harmful or toxic substance which may render it injurious to health ; or
- (f) If any substance has been mixed therewith so as to reduce its quality or strength.

-----

**1. Section 9A ins. by Act 21 of 1962, sec. 7 and subs. by Act 68 of 1982, sec. 6 (w.e.f. 1-2-1983).**

## **9B. Spurious drugs. –**

<sup>1</sup>**9B. Spurious drugs.** –For the purposes of this Chapter, a drug shall be deemed to be spurious, –

- (a) If it is imported under a name which belongs to another drug ; or
- (b) If it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or contained the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or
- (c) If the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist ; or
- (d) If it has been substituted wholly or in part by another drug or substance ; or
- (e) If it purports to be the product of a manufacturer of whom it is only truly a product.

-----

**1. Section 9B ins. by Act 13 of 1964, sec. 8 (w.e.f. 15-9-1964) and subs. by Act 68 of 1982, sec. 6 (w.e.f. 1-2-1983).**

## **9C. Misbranded Cosmetics. –**

### **<sup>1</sup>9C. Misbranded Cosmetics.**

For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded –

- (a) If it contains a colour which is not prescribed ; or
- (b) If it is not labeled in the prescribed manner ; or
- (c) If the label or container or anything accompanying the cosmetic bears any statement, which is false or misleading in any particular.

-----

**1. Ins. by Act 68 of 1982, sec. 6 (w.e.f. 1-2-1983).**

## **9D. Spurious cosmetics. –**

### **<sup>1</sup>[9D. Spurious cosmetics.**

For the purposes of this Chapter, a cosmetic shall be deemed to be spurious, –

- (a) If it is imported under a name which belongs to another cosmetic ; or
- (b) If it is an imitation of, or is a substitute for, another cosmetic or resembles another cosmetic in a manner likely to deceive or bears upon it or upon its label or container the name of another cosmetic, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other cosmetic ; or
- (c) If the label or container bears the name of an individual or a company purporting to be the manufacturer of the cosmetic which individual or company is fictitious or does not exist ; or
- (d) If it purports to be the product of a manufacturer of whom it is.]

-----

**1. Ins. by Act 68 of 1982, sec. 6 (w.e.f. 1-2-1983).**

## **10. Prohibition of import of certain drugs or cosmetics. –**

From such date<sup>1</sup> as may be fixed by the Central Government by notification in the Official Gazette in this behalf, no person shall import—

- (a) any drug <sup>2</sup>[or cosmetic] which is not of standard quality;
- <sup>3</sup>[(b) any misbranded drug <sup>4</sup>[or misbranded or spurious cosmetic];]
- <sup>5</sup>[(bb) any <sup>6</sup>[adulterated or spurious] drug;]

(c) any drug <sup>2</sup>[or cosmetic] for the import of which a licence is prescribed, otherwise than under, and in accordance with, such licence;

<sup>7</sup>[(d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof <sup>8</sup>[the true formula or list of active ingredients contained in it together with the quantities thereof];]

(e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;

<sup>9</sup>[(ee) any cosmetic containing any ingredient which may render it unsafe or harmful or use under the directions indicated or recommended;]

(f) any drug <sup>1</sup>[or cosmetic] the import of which is prohibited by rule made under this Chapter:

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use:

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

<sup>10</sup>[\*\*\*]

## COMMENTS

Any import of goods, of which the importation is prohibited by law, cannot be a valid import under the Act. So, goods so imported cannot be treated to be lawfully 'imported goods'; S. Mohammed v. Asstt. Collector, Customs, AIR 1970 Cal 134.

-----

**1.1st April, 1947, for clauses (a), (b), (c), (e) and (f) and 1st April, 1949, for clause (d), see Notification No. 18-12-46-D.I., dated 11th February, 1947, Gazette of India, 1947, Pt. I, p. 189 as amended by Notification No. F-1-2/48-D(I), dated 29th September, 1948. 1st April, 1953, for the States of Himachal Pradesh, Bilaspur, Kutch, Bhopal, Tripura, Vindhya Pradesh and Manipur vide Notification No. S.R.O. 666, dated 30th March, 1953, Gazette of India, 1953, Pt. II. Sec. 3, p. 451**

**2.Ins. by Act 21 of 1962, sec. 8 (w.e.f. 27-7-1964).**

**3.Subs. by Act 21 of 1962, sec. 8, for clause (b) (w.e.f. 27-7-1964).**

**4.Subs. by Act 68 of 1982, sec. 7, for "or misbranded cosmetic" (w.e.f. 1-2-1983).**

**5.Ins. by Act 13 of 1964, sec. 9 (w.e.f. 15-9-1964).**

**6.Subs. by Act 68 of 1982, sec. 7, for "adulterated" (w.e.f. 1-2-1983).**

**7.Subs. by Act 11 of 1955, sec. 5, for clause (d) (w.e.f. 15-4-1955).**

**8.Subs. by Act 68 of 1982, sec. 7, for certain words (w.e.f. 1-2-1983).**

**9.Ins. by Act 21 of 1962, sec. 8 (w.e.f. 27-7-1964).**

**10.Explanation omitted by Act 68 of 1982, sec. 7 (w.e.f. 1-2-1983).**

## **10A. Power of Central Government to prohibit import of drugs and cosmetics in public interest. –**

**<sup>1</sup>[10A. Power of Central Government to prohibit import of drugs and cosmetics in public interest.**

Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do then, that Government may, by notification in the Official Gazette, prohibit the import of such drug or cosmetic.

### **COMMENTS**

The Central Government on the basis of the expert advice can indeed adopt an approved national policy and prescribe an adequate number of formulations which would on the whole meet the requirement of the people at large. While laying the guidelines on this score, injurious drugs should be totally eliminated from the market; Vincent Panikurlangara v. Union of India, AIR 1987 SC 990.

-----

**1. Ins. by Act 68 of 1982, sec. 8 (w.e.f. 1-2-1983).**

## **11. Application of law relating to sea customs and powers of Customs Officers. –**

(1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878 (8 of 1878)<sup>1</sup> shall, subject to the provisions of section 13 of this Act, apply in respect of drugs <sup>2</sup>[and cosmetics] the import of which is prohibited under this Chapter, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a <sup>3</sup>[Commissioner of Customs] and other officers of Customs, shall have the same powers in respect of such drugs <sup>4</sup>[and cosmetics] as they have for the time being in respect of such goods as aforesaid.

<sup>5</sup>[(2) Without prejudice to the provisions of sub-section (1), the <sup>6</sup>[Commissioner of Customs] or any officer of the Government authorised by the Central Government in this behalf, may detain any imported package which he suspects to contain any drug <sup>7</sup>[or cosmetic] the import of which is prohibited under this Chapter and shall forthwith report such detention to the Drugs Controller, India, and if necessary, forward the package or sample of any suspected drug <sup>7</sup>[or cosmetic] found therein to the Central Drugs Laboratory.]

### **COMMENTS**

(i) The tainted goods may be confiscated without proceeding personally against any person and without coming to a finding as to who was the smuggler; Shermal Jain v. Collector of Central Excise, AIR 1956 Cal 621.

(ii) Mere unlawful possession of prohibited goods does not lead to conclusion that the goods had been imported unlawfully. Onus is on the custom authorities to prove the breach of prohibition order; *Kanungo & Co. v. Collector of Customs*, AIR 1965 Cal 248: (1965) 1 Cri LJ 547.

-----

**1. Now see the Customs Act, 1962 (52 of 1962).**

**2. Ins. by Act 21 of 1962, sec. 9 (w.e.f. 27-7-1964).**

**3. Subs. by Act 22 of 1995, sec. 83, for "Customs Collector" (w.e.f. 26-5-1995).**

**4. Ins. by Act 21 of 1962, sec. 9 (w.e.f. 27-7-1964).**

**5. Subs. by Act 11 of 1955, sec. 6, for sub-section (2) (w.e.f. 15-4-1955).**

**6. Subs. by Act 22 of 1995, sec. 83, for "Customs Collector" (w.e.f. 26-5-1995).**

**7. Ins. by Act 21 of 1962, sec. 9 (w.e.f. 27-7-1964).**

## **12. Power of Central Government to make rules. –**

(1) The Central Government may, <sup>1</sup>[after consultation with or on the recommendation of the Board] and after previous publication by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter:

<sup>2</sup>[Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.]

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) specify the drugs or classes of drugs <sup>3</sup>[or cosmetics or classes of cosmetics] for the import of which a licence is required, <sup>4</sup>[and prescribe the form and conditions of such licences, the authority empowered to issue the same, the fees payable therefor and provide for the cancellation, or suspension of such licence in any case where any provision of this Chapter or the rules made thereunder is contravened or any of the conditions subject to which the licence is issued is not complied with];

(b) prescribe the methods of test or analysis to be employed in determining whether a drug <sup>3</sup>[or cosmetic] is of standard quality;

(c) prescribe, in respect of biological and organometallic compounds, the units or methods of standardisation;

<sup>5</sup>[(cc) prescribe under clause (d) of 6[section 9A] the colour or colours which a drug may bear or contain for purposes of colouring;]

(d) specify the diseases or ailments which an imported drug may not purport or claim <sup>7</sup>[to prevent, cure or mitigate] and such other effects which such drug may not purport or claim to have;

- (e) prescribe the conditions subject to which small quantities of drugs, the import of which is otherwise prohibited under this Chapter, may be imported for the purpose of examination, test or analysis or for personal use;
- (f) prescribe the places at which drugs <sup>8</sup>[or cosmetics] may be imported, and prohibit their import at any other place;
- (g) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified imported drug or class of such drug, and prohibit the import of the said drug or class of drug after the expiry of a specified period from the date of manufacture;
- (h) regulate the submission by importers, and the securing, of samples of drugs <sup>8</sup>[or cosmetics] for examination, test or analysis by the Central Drugs Laboratory, and prescribe the fees, if any, payable for such examination, test or analysis;
- (i) prescribe the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of drugs <sup>8</sup>[or cosmetics] sought to be imported, the procedure of officers of Customs in dealing with such evidence, and the manner of storage at places of import of drugs <sup>8</sup>[or cosmetics] detained pending admission;
- (j) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of drugs <sup>8</sup>[or cosmetics] imported for the purpose only of transport through, and export from, <sup>9</sup>[India];
- (k) prescribe the conditions to be observed in the packing in bottles, packages or other containers, of imported drugs <sup>8</sup>[or cosmetics] <sup>10</sup>[including the use of packing material which comes into direct contact with the drugs];
- (l) regulate the mode of labelling drugs <sup>8</sup>[or cosmetics] imported for sale in packages, and prescribe the matters which shall or shall not be included in such labels;
- (m) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drug, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder;
- (n) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any imported, patent or proprietary medicine containing such drug;
- (o) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder of any specified drug or class of drugs <sup>11</sup>[or cosmetics or class of cosmetics].

-----

**1. Subs. by Act 68 of 1982, sec. 9, for "after consultation with the Board" (w.e.f. 1-2-1983).**

**2. Ins. by Act 11 of 1955, sec. 7 (w.e.f. 15-4-1955).**

**3. Ins. by Act 21 of 1962, sec. 10 (w.e.f. 27-7-1964).**

**4. Subs. by Act 68 of 1982, sec. 9, for certain words (w.e.f. 1-2-1983).**

**5. Ins. by Act 13 of 1964, sec. 10 (w.e.f. 15-9-1964).**

**6. Subs. by Act 68 of 1982, sec. 9 for "section 9B" (w.e.f. 1-2-1983).**

**7. Subs. by Act 11 of 1955, sec. 7, for "to cure or mitigate" (w.e.f. 15-4-1955).**

**8. Ins. by Act 21 of 1962, sec. 10 (w.e.f. 27-7-1964).**

**9. Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".**

**10. Ins. by Act 68 of 1982, sec. 9 (w.e.f. 1-2-1983).**

**11. Ins. by Act 21 of 1962, sec. 10 (w.e.f. 27-7-1964).**

## **13. Offences.—**

**13. Offences.** – (1) Whoever himself or by any other person on his behalf imports,

(a) Any drug deemed to be adulterated under section 9A or deemed to be a spurious drug under section 9B or any spurious cosmetic referred to in section 9D or any cosmetic of the nature referred to in clause (ee) of section 10 shall be punishable with imprisonment for a term which may extend to three years and a fine which may extend to five thousand rupees .

(b) Any drug or cosmetic other than a drug or cosmetic referred to in clause (a), the import of which is prohibited under section 10, or any rule made under this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both ;

(c) Any drug or cosmetic in contravention of the provisions of any notification issued under section 10A, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) Whoever having been convicted of an offence –

(a) Under clause (a) or clause (c) of sub-section (1), is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both ;

(b) Under clause (b) of sub-section (1), is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

(3) The punishment provided by this section shall be in addition to any penalty to which the offender may be liable under the provisions of section 11.

### **COMMENTS**

Oral evidence can be led to prove previous conviction only if the original judgement of previous conviction has been lost; City Board Saharapur v. Abdul Waheed, AIR 1959 All 695.

-----

**1. Subs. by Act 68 of 1982, sec. 10, for section 13 (w.e.f. 1-2-1983).**

## 14. Confiscation.—

Where any offence punishable under section 13 has been committed, the consignment of the drugs <sup>1</sup>or cosmetics] in respect of which the offence has been committed shall be liable to confiscation.

-----

**1. Ins. by Act 21 of 1962, sec. 11 (w.e.f. 27-7-1964).**

## 15. Jurisdiction. –

No Court inferior to that <sup>1</sup>[of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under section 13.

-----

**1. Subs. by Act 68 of 1982, sec. 11, for certain words (w.e.f. 1-2-1983).**

## 16. Standards of quality.—

<sup>1</sup>[(1) For the purposes of this Chapter, the expression "standard quality" means—

(a) in relation to a drug, that the drug complies with the standard set out in <sup>2</sup>[the Second Schedule], and

(b) in relation to a cosmetic, that the cosmetic complies with such standard as may be prescribed.]

(2) The <sup>3</sup>[Central Government], after consultation with the Board and after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend <sup>2</sup>[the Second Schedule] for the purposes of this Chapter, and thereupon <sup>2</sup>[the Second Schedule] shall be deemed to be amended accordingly.

### COMMENTS

The standards of qualities are fixed by the Government after due deliberation and after consulting a committee of competent men, it is for them to give due allowance for probable errors before fixing a standard. When a standard has been fixed it has to be observed strictly; State of Kerala v. Vasudevan Nair, 1974 KLT 617 (FB): 1975 Cri LJ 97.

-----

**1. Subs. by Act 21 of 1962, sec. 12, for sub-section (1) (w.e.f. 27-7-1964).**

**2. Subs. by Act 13 of 1964, sec. 11, for "the Schedule" (w.e.f. 15-9-1964).**

**3. Subs. by Act 11 of 1955, sec. 8, for "State Government" (w.e.f. 15-4-1955).**

## 17. Misbranded drugs. –

<sup>1</sup>**17. Misbranded drugs.** For the purposes of this Chapter, a drug shall be deemed to be misbranded, –



(a) If it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is ; or

(b) If it is not labeled in the prescribed manner ; or

(c) If its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

-----

**1. Subs. by Act 68 of 1982, sec. 13, for section 17 (w.e.f. 1-2-1983).**

## **17A. Adulterated drugs. –**

For the purposes of this Chapter, a drug shall be deemed to be adulterated, –

(a) If it consists in whole or in part, of any filthy, putrid or decomposed substance ; or

(b) If it has been prepared, packed or stored under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health ; or

(c) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health ; or

(d) If it bears or contains, for purposes of colouring only, a colour other than one which is prescribed ; or

(e) If it contains any harmful or toxic substance which may render it injurious to health ; or

(f) If any substance has been mixed therewith so as to reduce its quality or strength.

## **17B. Spurious drugs. –**

For the purposes of this Chapter, a drug shall be deemed to be spurious, –

(a) If it is manufactured under a name which belongs to another drug; or

(b) If it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

(c) If the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist ; or

(d) If it has been substituted wholly or in part by another drug or substance ; or

(e) If it purports to be the product of a manufacturer of whom it is not truly a product.

## **17C. Misbranded cosmetics. –**

For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded, –

(a) If it contains a colour which is not prescribed ; or

(b) If it is not labeled in the prescribed manner ; or

(c) If the label or container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular.

## 17D. Spurious cosmetics. –

For the purposes of this Chapter, a cosmetic shall be deemed to be spurious, —

(a) If it is manufactured under a name which belongs to another cosmetic ; or

(b) If it is an imitation of, or a substitute for, another cosmetic or resembles another cosmetic in a manner likely to deceive or bears upon it or upon its conspicuously marked so as to reveal its true character and its lack of identity with such other cosmetic ; or

(c) If the label or container bears the name of an individual or a company purporting to be the manufacturer of the cosmetic which individual or company is fictitious or does not exist ; or

(d) If it purports to be the product of a manufacturer of whom it is not truly a product.

-----

1. Ins. by Act 68 of 1982, sec. 13 (w.e.f. 1-2-1983).

### The Drugs and Cosmetics Act, 1940

## 18A. Disclosure of the name of the manufacturer, etc. –

<sup>1</sup>[**18A. Disclosure of the name of the manufacturer, etc.** Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

### COMMENTS

On a reading of section 18A and sub-section (4) of section 23 together, it is clear that out of the four portions into which the sample has been divided one portion should be sent to the person, if any, whose name and address and other particulars have been disclosed under section 18A; *in re: R. Dayalan*, 1978 Cri LJ 1852: (1979) 1 FAC 29.

-----

1. Ins. by Act 13 of 1964, sec. 14 (w.e.f. 15-9-1964).

## 18B. Maintenance of records and furnishing of information.

—

<sup>1</sup>**18B. Maintenance of records and furnishing of information.** Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.

-----

**1. Ins. by Act 68 of 1982, sec. 15 (w.e.f 1-2-1983).**

## 19. Pleas. –

(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug <sup>1</sup>[or cosmetic] in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.

(2) <sup>2</sup>[For the purposes of section 18 a drug shall not be deemed to be misbranded or <sup>3</sup>[adulterated or spurious] or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality] only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug <sup>4</sup>[or cosmetic] as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug <sup>4</sup>[or cosmetic] or to conceal its inferior quality or other defects; or

<sup>5</sup>[\*\*\*]

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug <sup>4</sup>[or cosmetic] occurring after the vendor or distributor became aware of such intermixture.

<sup>6</sup>[(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.]

### COMMENTS

All that the prosecution is required to prove in order to establish the contravention of section 18 is the fact that the accused had sold or exhibited for sale the drug which was not of standard quality or which was a misbranded drug. If the accused want to get rid of the effect of the prosecution evidence then it is for them to establish the defences which are available to them under sub-section (3) of section 19 of the Act; Public Prosecutor v. Hatambhai, AIR 1969 AP 99.

-----

**1. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

**2. Subs. by Act 13 of 1964, sec. 15, for certain words (w.e.f. 15-9-1964).**

**3. Subs. by Act 68 of 1982, sec. 16, for "adulterated" (w.e.f. 1-2-1983).**

**4. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

**5. Clause (aa) ins. by Act 11 of 1955, sec. 10 (w.e.f. 15-4-1955) and omitted by Act 13 of 1964, sec. 15 (w.e.f. 15-9-1964).**

**6. Subs. by Act 13 of 1964, sec. 15, for sub-section (3) (w.e.f. 15-9-1964).**

## **20. Government Analysts. –**

<sup>1</sup>[20. Government Analysts.—(1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts for such areas in the State and in respect of such drugs or <sup>2</sup>[classes of drugs or such cosmetics or classes of cosmetics] as may be specified in the notifications.

(2) The Central Government may also, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts in respect of such drugs or <sup>2</sup>[classes of drugs or such cosmetics or classes of cosmetics] as may be specified in the notification.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), neither the Central Government nor a State Government shall appoint as a Government Analyst any official not serving under it without the previous consent of the Government under which he is serving.]

<sup>3</sup>[(4) No person who has any financial interest in the import, manufacture or sale of drugs or cosmetics shall be appointed to be a Government Analyst under sub-section (1) or sub-section (2) of this section.]

### **COMMENTS**

The Director of Central Laboratory is also a Government Analyst; Ram Shankar Misra v. State of U.P., (1980) 1 SCC 255.

-----

**1. Subs. by Act 35 of 1960, sec. 4, for section 20 (w.e.f. 16-3-1961).**

**2. Subs. by Act 21 of 1962, sec. 16, for "class of drugs" (w.e.f. 27-7-1964).**

**3. Ins. by Act 68 of 1982, sec. 17 (w.e.f. 1-2-1983).**

## **21. Inspectors. –**

<sup>1</sup>[21. Inspectors.—(1) The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or <sup>2</sup>[classes of drugs or cosmetics or classes of cosmetics] in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest <sup>3</sup>[in the import, manufacture or sale of drugs or cosmetics] shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority <sup>4</sup>[, having the prescribed qualifications,] as the Government appointing him may specify in this behalf.]

## COMMENTS

Judicial notice can be taken of the fact of a person being appointed as Inspector of Drugs under section 21(1) of the Act when the relevant notification published in the Official Gazette has been referred to; Ramlagun Singh v. State of Bihar, AIR 1960 Pat 243.

-----

**1. Subs. by Act 35 of 1960, sec. 4, for section 21 (w.e.f. 16-3-1961).**

**2. Subs. by Act 21 of 1962, sec. 17 for "class of drugs" (w.e.f. 27-7-1964).**

**3. Subs. by Act 21 of 1962, sec. 17, for "in the manufacture, import or sale of drugs" (w.e.f. 27-7-1964).**

**4. Ins. by Act 68 of 1982, sec. 18 (w.e.f. 1-2-1983).**

## 22. Powers of Inspectors. –

<sup>1</sup>[22. Powers of Inspectors.—(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,—

<sup>2</sup>[(a) inspect,—

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic,—

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,—

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter

has been, or is being, committed,

and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;]

<sup>3</sup>[(cc) examine any record, register, document or any other material object found <sup>4</sup>[with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;]

<sup>5</sup>[(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;]

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

(2) The provisions of <sup>6</sup>[the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under <sup>7</sup>[section 94] of the said Code.

<sup>8</sup>[(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.]

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter <sup>8</sup>[or refuses to produce any record, register or other document when so required under clause (cca) of sub-section (1),] he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.]

## COMMENTS

(i) An order prohibiting disposal of certain drugs is invalid and illegal because it can be issued only for specified period not exceeding twenty days under section 22(1)(c); B.K.D. Rajeswari v. State of Kerala, AIR 1984 Ker 95

(ii) Since under the Drugs and Cosmetics Act a search or seizure by a Drugs Inspector is equated to a search and seizure under the authority of a warrant, it is not necessary for a Drugs Inspector to record his reasons for making a search; Public Prosecutor v. Mahaveer Prasad, 1972 Cri LJ 1546.

-----

**1. Subs. by Act 11 of 1955, sec. 11, for section 22 (w.e.f. 15-4-1955).**

**2. Subs. by Act 68 of 1982, sec. 19, for clauses (a), (b) and (c) (w.e.f. 1-2-1983).**

**3. Ins. by Act 35 of 1960, sec. 5 (w.e.f. 16-3-1961).**

**4. Subs. by Act 68 of 1982, sec. 19, for "in any place mentioned in clause (c)" (w.e.f. 1-2-1983).**

**5. Ins. by Act 68 of 1982, sec. 19 (w.e.f. 1-2-1983).**

**6. Subs. by Act 68 of 1982, sec. 19, for "the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 1-2-1983).**

**7. Subs. by Act 68 of 1982, sec. 19, for "section 98" (w.e.f. 1-2-1983).**

**8. Ins. by Act 68 of 1982, sec. 19 (w.e.f. 1-2-1983).**

## **23. Procedure of Inspectors. –**

(1) Where an Inspector takes any sample of a drug <sup>1</sup>[or cosmetic] under this Chapter, he shall tender the fair price thereof and may require a written acknowledgement therefor.

(2) Where the price tendered under sub-section (1) is refused or where the Inspector seizes the stock of any drug <sup>1</sup>[or cosmetic] under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug <sup>1</sup>[or cosmetic] for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug <sup>1</sup>[or cosmetic] is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug <sup>1</sup>[or cosmetic] is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug <sup>1</sup>[or cosmetic] be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug <sup>1</sup>[or cosmetic]; and

<sup>2</sup>[(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.]

(5) Where an Inspector takes any action under clause (c) of section 22,—

(a) he shall use all despatch in ascertaining whether or not the drug <sup>1</sup>[or cosmetic] contravenes any of the provisions of section 18 and, if it is ascertained that the drug <sup>1</sup>[or cosmetic] does not so contravene forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug <sup>1</sup>[or cosmetic], he shall as soon as may be, inform <sup>3</sup>[a Judicial Magistrate] and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug <sup>1</sup>[or cosmetic], he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

<sup>4</sup>[(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform <sup>3</sup>[a Judicial Magistrate] and take his orders as to the custody thereof.]

## COMMENTS

(i) As required by sub-section (4)(iii) of section 23 read with section 18A, it is the duty of the Drugs Inspector to supply to the person whose particulars are disclosed under section 18A the third portion of the sample; Agarwal Medical and General Stores v. State of M.P., AIR 1973 MP 255.

(ii) The validity of the first proviso to section 23(3) cannot be challenged on the ground that it offends equal protection of law guaranteed by Article 14 of the Constitution as there is no purpose in having an extra portion in cases where the drug is seized from the manufacturer himself; T.Babulal v. Drugs Inspector, Madras, 1969 Cri LJ 699: (1970) 1 MLJ 124.

(iii) When the procedure mentioned in section 23 is not followed in a case, the report of the Government Analyst cannot be treated as conclusive evidence; Dharam Deo Gupta v. State, AIR 1958 All 865: 1958 Cri LJ 1453.

-----

**1. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

**2. Subs. by Act 13 of 1964, sec. 16, for clause (iii) (w.e.f. 15-9-1964).**

**3. Subs. by Act 68 of 1982, sec. 20, for "a Magistrate" (w.e.f. 1-2-1983).**

**4. Ins. by Act 35 of 1960, sec. 6 (w.e.f. 16-3-1961).**

## **24. Persons bound to disclose place where drugs or cosmetics are manufactured or kept. –**

Every person for the time being in charge of any premises whereon any drug <sup>1</sup>[or cosmetic] is being manufactured or is kept for sale or distribution shall, on being required by any Inspector so to do, be legally bound to disclose to the Inspector the place where the drug <sup>1</sup>[or cosmetic] is being manufactured or is kept, as the case may be.

-----

**1. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

## **25. Reports of Government Analysts. –**

(1) The Government Analyst to whom a sample of any drug <sup>1</sup>[or cosmetic] has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.



(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken <sup>2</sup>[and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken <sup>3</sup>[or the person whose name, address and other particulars have been disclosed under section 18A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused: cause the sample of the drug<sup>1</sup>[or cosmetic] produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

## COMMENTS

(i) Section 25 does not offend Article 21 of the Constitution as it has sufficiently protected the basic right of an accused to defend himself; *T. Babulal v. Drugs Inspector, Madras*, 1969 Cri L J 699: (1970) 1 MLJ 124.

(ii) There can be no prejudice to the accused if the Drugs Inspector, instead of sending the sample to the Government Analyst, sends it to a higher authority namely the Central Drugs Laboratory; *Ram Shankar Misra v. State of U.P.*, (1980) 1 SCC 255.

(iii) The Public Analyst can analyse the sample himself or cause it to be analysed by some other person; *Bechan v. State*, AIR 1966 All 91: 1966 Cri LJ 122.

(iv) It is not necessary to mention in the analysis report the methods or technological processes adopted by the Analyst; *Dhian Singh v. Municipal Board, Saharanpur*, AIR 1970 SC 318: (1969) 2 SCC 371.

(v) If accused wants to call the Public Analyst as a witness it is his duty to take appropriate steps; *Municipal Corporation of Delhi v. Asa Ram*, 1972 Cri LJ 1651 (Del).

-----

**1. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

**2. Subs. by Act 13 of 1964, sec. 17, for certain words (w.e.f. 15-9-1964).**

**3. Subs. by Act 13 of 1964, sec. 17, for "or the said warrantor" (w.e.f. 15-9-1964).**

## 26. Purchaser of drug or cosmetic enabled to obtain test or analysis. –

Any person <sup>1</sup>[or any recognised consumer association, whether such person is a member of that association or not] shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug <sup>2</sup>[or cosmetic] <sup>3</sup>[purchased by him or it] and to receive a report of such test or analysis signed by the Government Analyst.

<sup>4</sup>[Explanation.—For the purposes of this section and section 32, “recognised consumer association” means a voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.]

-----

**1. Ins. by Act 71 of 1986, sec. 2 (w.e.f. 15-9-1987).**

**2. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

**3. Subs. by Act 71 of 1986, sec. 2, for “purchased by him” (w.e.f. 15-9-1987).**

**4. Added by Act 71 of 1986, sec. 2 (w.e.f. 15-9-1987).**

## 26A. Powers of Central Government to prohibit manufacture, etc., of drug and cosmetic in public interest. –

<sup>1</sup>[**26A. Powers of Central Government to prohibit manufacture, etc., of drug and cosmetic in public interest.**—Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied, that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, prohibit the manufacture, sale or distribution of such drug or cosmetic.]

### COMMENTS

The State’s obligation of enforce production of qualitative drugs and elimination of the injurious ones from the market must take within its sweep an obligation to make useful drugs available at reasonable price so as to be within the common man’s reach; Vincent Panikurlangara v. Union of India; AIR 1987 SC 990.

-----

**1. Ins. by Act 68 of 1982, sec. 21 (w.e.f. 1-2-1983).**

## 27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter. –

Whoever, himself or by any other person on his behalf, manufacturers for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,-

(a) any drug deemed to be adulterated under section 17A or spurious under section 17B or which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees ;

(b) any drug —

(i) deemed to be adulterated under section 17A, but not being a drug referred to in clause (a), or

(ii) without a valid licence as required under clause © of section 18, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year and of fine of less than five thousand rupees :

(c) any drug deemed to be spurious under section 17B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than five thousand rupees :

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgement, impose a sentence of imprisonment for a term of less than three years but not less than one year,

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made there under, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine :

Provided that the Court may for any adequate and special reasons to be recorded in the judgement impose a sentence of imprisonment for a term of less than one year.

## COMMENTS

The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purposes of sale and unless all the ingredients of this category are satisfied, section 27 of the Act would not be attracted; Mohd Shabir v. State of Maharashtra, (1979) 1 SCC 568.

-----

**1. Section 27 subs. by Act 13 of 1964, sec. 18 (w.e.f. 15-9-1964) and again subs. by Act 68 of 1982, sec. 22 (w.e.f. 1-2-1983).**

**27A. Penalty for manufacture, sale, etc., of cosmetics in contravention of this Chapter. —**

Whoever himself or by any other person on his behalf manufacturers for sale or for distribution, or sells, or stocks or exhibits or offers for sale –

(i) Any cosmetic deemed to be spurious under section 17C shall be punishable with imprisonment for a term, which may extend to three years and with fine ;

(ii) Any cosmetic other than a cosmetic referred to in clause (I) above in contravention of any provisions of this Chapter or any rule made there under shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

-----  
**1. Section 27A ins. by Act 21 of 1962, sec. 19 (w.e.f. 27-7-1964) and subs. by Act 68 of 1982, sec. 22 (w.e.f. 1-2-1983).**

## **28. Penalty for non-disclosure of the name of the manufacturer, etc.**

<sup>1</sup>[28. Penalty for non-disclosure of the name of the manufacturer, etc.—Whoever contravenes the provisions of section 18A <sup>2</sup>[or section 24] shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to <sup>3</sup>[one thousand rupees], or with both.]

-----  
**1. Subs. by Act 13 of 1964, sec. 19, for section 28 (w.e.f. 15-9-1964).**

**2. Ins. by Act 68 of 1982, sec. 23 (w.e.f. 1-2-1983).**

**3. Subs. by Act 68 of 1982, sec. 23, for “five hundred rupees” (w.e.f. 1-2-1983).**

## **28A – Penalty for not keeping documents, etc., and for non-disclosure of information.**

<sup>1</sup>[**28A. Penalty for not keeping documents, etc., and for non-disclosure of information.**—Whoever without reasonable cause or excuse, contravenes the provisions of section 18B shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.]

-----  
**1. Ins. by Act 68 of 1982, sec. 24 (w.e.f. 1-2-1983).**

## **28B. Penalty for manufacture, etc., of drugs or cosmetics in contravention of section 26A. –**

<sup>1</sup>[**28B. Penalty for manufacture, etc., of drugs or cosmetics in contravention of section 26A.** Whoever himself or by any other person on his behalf manufacturers or sells or distributes any drug or cosmetic in contravention of the provisions of any notification issued under section 26A, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees.

-----

**1. Ins. by Act 68 of 1982, sec. 24 (w.e.f. 1-2-1983).**

## **29. Penalty for use of Government Analyst's report for advertising. –**

Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug <sup>1</sup> shall be punishable with fine which may extend to five hundred rupees.

-----

**1. Ins. by Act 21 of 1962, sec. 15 (w.e.f. 27-7-1964).**

## **30. Penalty for subsequent offences. – [(1) (Note: Subs. by Act 68 of 1982, sec.25, for sub-section (1) (w.e.f. 1-2-1983)) Whoever having been convicted of an offence, –**

<sup>1</sup>[30. Penalty for subsequent offences.—<sup>2</sup>[(1) Whoever having been convicted of an offence,—

(a) under clause (b) of section 27 is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to six years and with fine which shall not be less than ten thousand rupees:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and of fine of less than ten thousand rupees;

(b) under clause (c) of section 27, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than six years but which may extend to ten years and with fine which shall not be less than ten thousand rupees;

(c) under clause (d) of section 27, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to four years or with fine which shall not be less than five thousand rupees, or with both.]

<sup>3</sup>[(1A) Whoever, having been convicted of an offence under section 27A is again convicted under that section, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to <sup>4</sup>[two thousand rupees], or with both.]

(2) Whoever, having been convicted of an offence under <sup>5</sup>[\*\*\*] section 29 is again convicted of an offence under the same section, shall be punishable with imprisonment which may extend to <sup>6</sup>[ten years], or with fine, or with both.]

### **COMMENTS**

The first and the second or the subsequent offences must all relate to the breaches of the provisions of this Act; Kamal Singh v. State, 1957 All L J 9.

-----

- 1. Subs. by Act 11 of 1955, sec. 14, for section 30 (w.e.f. 15-4-1955).**
- 2. Subs. by Act 68 of 1982, sec. 25, for sub-section (1) (w.e.f. 1-2-1983).**
- 3. Ins. by Act 21 of 1962, sec. 20 (w.e.f. 27-7-1964).**
- 4. Subs. by Act 68 of 1982, sec. 25, for "one thousand rupees" (w.e.f. 1-2-1983).**
- 5. The words "section 28 or" omitted by Act 13 of 1964, sec. 20 (w.e.f. 15-9-1964).**
- 6. Subs. by Act 13 of 1964, sec. 20, for "two years" (w.e.f. 15-9-1964).**

## **31. Confiscation. –**

<sup>1</sup>[(1)] Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug <sup>2</sup>[or cosmetic] in respect of which the contravention has been made shall be liable to confiscation <sup>3</sup>[and if such contravention is in respect of—

<sup>4</sup>[(i) manufacture of any drug deemed to be misbranded under section 17, adulterated under section 17A or spurious under section 17B; or]

(ii) <sup>5</sup>[manufacture for sale, or for distribution, sale, or stocking or exhibiting or offering for sale,] or distribution of any drug without a valid licence as required under clause (c) of section 18, any implements or machinery used in such manufacture, sale or distribution and any receptacles, packages or coverings in which such drug is contained and the animals, vehicles, vessels or other conveyances used in carrying such drug shall also be liable to confiscation].

<sup>6</sup>[(2) Without prejudice to the provisions contained in sub-section (1) where the Court is satisfied, on the application of an Inspector or otherwise and after such inquiry as may be necessary that the drug or cosmetic is not of standard quality <sup>7</sup>[or is a <sup>8</sup>[misbranded, adulterated or spurious drug or misbranded or spurious cosmetic,]] such drug or, as the case may be, such cosmetic shall be liable to confiscation.]

-----

- 1. Section 31 re-numbered as sub-section (1) of that section by Act 35 of 1960, sec. 9 (w.e.f. 16-3-1961).**
- 2. Ins. by Act 21 of 1962, sec. 21 (w.e.f. 27-7-1964).**
- 3. Added by Act 13 of 1964, sec. 21 (w.e.f. 15-9-1964).**
- 4. Subs. by Act 68 of 1982, sec. 26, for clause (i) (w.e.f. 1-2-1983).**
- 5. Subs. by Act 68 of 1982, sec. 26, for certain words (w.e.f. 1-2-1983).**
- 6. Sub-section (2) ins. by Act 35 of 1960, sec. 9 (w.e.f. 16-3-1961) and subs. by Act 21 of 1962, sec. 21 (w.e.f. 27-7-1964).**
- 7. Subs. by Act 13 of 1964, sec. 21, for "or is a misbranded drug" (w.e.f. 15-9-1964).**
- 8. Subs. by Act 68 of 1982, sec. 26, for "misbranded or adulterated drug, or misbranded cosmetic" (w.e.f. 1-2-1983).**

## 31A. Application of provisions to Government departments.

—

### <sup>1</sup>[31A. Application of provisions to Government departments

The provisions of this Chapter except those contained in section 31 shall apply in relation to the manufacture, sale or distribution of drugs by any department of Government as they apply in relation to the manufacture, sale or distribution of drugs by any other person.

-----

#### 1. Ins. by Act 13 of 1964, sec. 22 (w.e.f. 15-9-1964).

## 32. Cognizance of offences. —

(1) No prosecution under this Chapter shall be instituted except by an Inspector <sup>1</sup>or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not.]

(2) No court inferior to that of <sup>2</sup> a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission, which constitutes an offence against this Chapter.

-----

#### 1. Ins. by Act 71 of 1986, sec. 3 (w.e.f. 15-9-1987).

#### 2. Subs. by Act 68 of 1982, sec. 27, for "a Presidency Magistrate or of a Magistrate of the first class" (w.e.f. 1-2-1983).

## 32A. Power of Court to implead the manufacturer, etc. —

<sup>1</sup>[32A. Power of Court to implead the manufacturer, etc.—Where, at any time during the trial of any offence under this Chapter alleged to have been committed by any person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof the Court is satisfied, on the evidence adduced before it, that such manufacturer or agent is also concerned in that offence, then, the Court may, notwithstanding anything contained <sup>2</sup>[in sub-sections (1), (2) and (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974)], proceed against him as though a prosecution had been instituted against him under section 32.

### COMMENTS

The object of the section seems to be that such a power enables speedy trial of the really guilty parties; Bhagwandas v. Delhi Admn., (1975) 1 SCC 866 : 1975 Cri L J 1091.

-----

#### 1. Ins. by Act 13 of 1964, sec. 23 (w.e.f. 15-9-1964).

#### 2. Subs. by Act 68 of 1982, sec. 28, for "in sub-section (1) of section 351 of the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 1-2-1983).

### 33. Power of Central Government to make rules. –

<sup>1</sup>[(1) The Central Government may <sup>2</sup>[after consultation with, or on the recommendation of, the Board] and after previous publication by notification in the Official Gazette, make rules for the purposes of giving effect to the provisions of this Chapter:

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.]

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the establishment of laboratories for testing and analysing drugs <sup>3</sup>[or cosmetics];

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug <sup>3</sup>[or cosmetic] is of standard quality;

(d) prescribe, in respect of biological and organometallic compounds, the units or methods of standardisation;

<sup>4</sup>[(dd) prescribe under clause (d) of <sup>5</sup>[section 17A] the colour or colours which a drug may bear or contain for purposes of colouring;]

(e) prescribe the forms of licences <sup>6</sup>[for the manufacture for sale or for distribution], for the sale and for the distribution of drugs or any specified drug or class of drugs <sup>7</sup>[or of cosmetics or any specified cosmetic or class of cosmetics], the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same <sup>8</sup>[the qualifications of such authority] and the fees payable therefor; <sup>8</sup>[and provide for the cancellation or suspension of such licences in any case where any provision of this Chapter or the rules made thereunder is contravened or any of the conditions subject to which they are issued is not complied with];

<sup>8</sup>[(ee) prescribe the records, registers or other documents to be kept and maintained under section 18B;

(eea) prescribe the fees for the inspection (for the purposes of grant or renewal of licences) of premises, wherein any drug or cosmetic is being or is proposed to be manufactured;

(eeb) prescribe the manner in which copies are to be certified under sub-section (2A) of section 22;]

(f) specify the diseases or ailments which a drug may not purport or claim <sup>9</sup>[to prevent, cure or mitigate] and such other effects which a drug may not purport or claim to have;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs, and prohibit the sale,



stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency;

(i) prescribe the conditions to be observed in the packing in bottles, packages, and other containers of drugs <sup>10</sup>[or cosmetics], <sup>11</sup>[including the use of packing material which comes into direct contact with the drugs] and prohibit the sale, stocking or exhibition for sale, or distribution of drugs <sup>10</sup>[or cosmetics] packed in contravention of such conditions;

(j) regulate the mode of labelling packed drugs <sup>10</sup>[or cosmetics], and prescribe the matters which shall or shall not be included in such labels;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale, or distribution of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder;

(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug;

<sup>12</sup>[\*\*\*]

<sup>13</sup>[(n) prescribe the powers and duties of Inspectors <sup>14</sup>[and the qualifications of the authority to which such Inspectors shall be subordinate] and <sup>15</sup>[specify the drugs or classes of drugs or cosmetics or classes of cosmetics] in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed;]

(o) prescribe the forms of report to be given by Government Analysts, and the manner of application for test or analysis under section 26 and the fees payable therefor;

<sup>16</sup>[(p) specify the offences against this Chapter or any rule made thereunder in relation to which an order of confiscation may be made under section 31; and]

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified drug or class of drugs <sup>17</sup>[or cosmetic or class of cosmetics].

<sup>18</sup>[\*\*\*]

## COMMENTS

It was obligatory on the part of the rule making authority to satisfy the Court that it was necessary in the facts and circumstances of the case to enhance the fees payable for the renewal of licence in the manner as has been sought to be done; Jaiswal Medical Hall v. Union of India, AIR 1988 Pat 266.

-----

**1. Subs. by Act 11 of 1955, sec. 15, for sub-section (1) (w.e.f. 15-4-1955).**

**2. Subs. by Act 68 of 1982, sec. 29, for "after consultation with the Board" (w.e.f. 1-2-1983).**

**3. Ins. by Act 21 of 1962, sec. 22 (w.e.f. 27-7-1964).**

**4. Ins. by Act 13 of 1964, sec. 24 (w.e.f. 15-9-1964).**

**5. Subs. by Act 68 of 1982, sec. 29, for "section 17B" (w.e.f. 1-2-1983).**

**6. Subs. by Act 68 of 1982, sec. 29, for "for the manufacture for sale" (w.e.f. 1-2-1983).**

**7. Ins. by Act 21 of 1962, sec. 22 (w.e.f. 27-7-1964).**

**8. Ins. by Act 68 of 1982, sec. 29 (w.e.f. 1-2-1983).**

**9. Subs. by Act 11 of 1955, sec. 15, for "to cure or mitigate" (w.e.f. 15-4-1955).**

**10. Ins. by Act 21 of 1962, sec. 22 (w.e.f. 27-7-1964).**

**11. Ins. by Act 68 of 1982, sec. 29 (w.e.f. 1-2-1983).**

**12. Clause (m) omitted by Act 13 of 1964, sec. 24 (w.e.f. 15-9-1964).**

**13. Subs. by Act 35 of 1960, sec. 10, for clause (n) (w.e.f. 16-3-1961).**

**14. Ins. by Act 68 of 1982, sec. 29 (w.e.f. 1-2-1983).**

**15. Subs. by Act 21 of 1962, sec. 22, for "the drugs or class of drugs" (w.e.f. 27-7-1964).**

**16. Subs. by Act 13 of 1964, sec. 24, for clause (p) (w.e.f. 15-9-1964).**

**17. Ins. by Act 21 of 1962, sec. 22 (w.e.f. 27-7-1964).**

**18. Sub-section (3) ins. by Act 35 of 1960, sec. 10 (w.e.f. 16-3-1961) and omitted by Act 13 of 1964, sec. 24 (w.e.f. 15-9-1964).**

### **33A. Chapter not to apply to [Ayurvedic, Siddha or Unani] drugs. –**

**<sup>1</sup>33A. Chapter not to apply to [Ayurvedic, Siddha or Unani] drugs.** –Save as otherwise provided in this Act, nothing contained in this Chapter shall apply to <sup>2</sup>[Ayurvedic, Siddha or Unani drugs.]

-----

**1. Ins. by Act 13 of 1964, sec. 25 (w.e.f. 1-2-1969).**

**2. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

### **33B. Application of Chapter IVA. –**

This Chapter shall apply only to <sup>1</sup>Ayurvedic, Siddha and Unani] drugs.

-----

**1. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) and Unani" (w.e.f. 1-2-1983).**

### **33C. Ayurvedic and Unani Drugs Technical Advisory Board.**

—

(1) The Central Government shall, by notification in the Official Gazette and with effect from such date as may be specified therein, constitute a Board (to be called the <sup>1</sup>Ayurvedic, Siddha and Unani Drugs Technical Advisory Board] to advise the Central Government and the State Governments on technical matters arising out of this Chapter and to carry out the other functions assigned to it by this Chapter.

(2) The Board shall consist of the following members, namely, –

(i) The Director General of Health Services, ex officio ;

(ii) The Drugs Controller, India, ex officio,

<sup>2</sup>(iii) The principal officer dealing with Indian systems of medicine in the Ministry of Health, ex-officio;]

(iv) The Director of the Central Drugs Laboratory, Calcutta, ex-officio ;

(v) One person holding the appointment of Government Analyst under section 33F, to be nominated by the Central Government ;

(vi) One Pharmacognocist to be nominated by the Central Government ;

(vii) One Photo-chemist to be nominated by the Central Government ;

<sup>3</sup>(VIII) Four persons to be nominated by the Central Government, two from amongst the members of the Ayurvedic Pharmacopoeia Committee, one from amongst the members of Unani Pharmacopoeia Committee and one from amongst the members of the Siddha Pharmacopoeia Committee ;]

(ix) One teacher in Darvyaguna, and Bhaishajya Kalpana, to be nominated by the Central Government ;

<sup>4</sup>(x) One teacher in ILM-UL-ADVIA and TAKLIS-WA-DAWASAZI, to be nominated by the Central Government ;

[(xi) (Note: Subs. by Act 68 of 1982, sec.30, for clauses (xi) and (xii) (w.e.f. 1-2-1983)) One teacher in Gunapadam to be nominated by the Central Government ;

(xii) Three persons, one each to represent the Ayurvedic, Siddha and Unani drug industry, to be nominated by the Central Government ;

(xiii) Three persons, one each from amongst the practitioners of Ayurvedic, Siddha and Unani Tibb systems of medicine to be nominated by the Central Government.]

(3) The Central Government shall appoint a member of the Board as its Chairman.

(4) The nominated members of the Board shall hold office for three years

but shall be eligible for recombination.

(5) The Board may, subject to the previous approval of the Central Government, make bye-laws fixing quorum and regulating its own procedure and conduct of all business to be transacted by it.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

-----

**1. Subs. by Act 68 of 1982, sec. 30, for "Ayurvedic and Unani Drugs Technical Advisory Board" (w.e.f. 1-2-1983).**

**2. Subs. by Act 68 of 1982, sec. 30, for clause (iii) (w.e.f. 1-2-1983).**

**3. Subs. by Act 68 of 1982, sec. 30, for clause (viii) (w.e.f. 1-2-1983).**

**4. Subs. by Act 68 of 1982, sec. 30, for clauses (xi) and (xii) (w.e.f. 1-2-1983).**

### **33D. The Ayurvedic, Siddha and Unani Drugs Consultative Committee. –**

**<sup>1</sup>33D. The Ayurvedic, Siddha and Unani Drugs Consultative Committee.** (1) The Central Government may constitute an Advisory Committee to be called the Ayurvedic, Siddha and Unani Drugs Consultative Committee to advise the Central Government, the State Governments and the Ayurvedic, Siddha and Unani Drugs Technical Advisory Board on any matter for the purpose of securing uniformity throughout India in the administration of this Act in so far as it relates to Ayurvedic, Siddha or Unani drugs.

(2) The Ayurvedic, Siddha and Unani Drugs Consultative Committee shall consist of two persons to be nominated by the Central Government as representatives of that Government and not more than one representative of each State to be nominated by the State Government concerned.

(3) The Ayurvedic, Siddha and Unani Drugs Consultative Committee shall meet when required to do so by the Central Government and shall regulate its own procedure.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

### **33E. Misbranded drugs. –**

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be misbranded –

(a) If it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is ; or

(b) If it is not labeled in the prescribed manner ; or

(c) If its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

### **33EE. Adulterated drugs. –**

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be adulterated, –

- (a) If it consists, in whole or in part, of any filthy, putrid or decomposed substance ; or
- (b) It has been prepared, packed or stored under in sanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health ; or
- (c) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health ; or
- (d) If it bears or contains, for purposes of colouring only, a colour other than one which is prescribed ; or
- (e) If it contains any harmful or toxic substance which may render it injurious to health ; or
- (f) If any substance has been mixed therewith so as to reduce its quality or strength.

**Explanation.** – For the purpose of clause (a), a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug :

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f.1-2-1983).**

### **33EEA. Spurious drugs. –**

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be spurious –

- (a) If it is sold, or offered or exhibited for sale, under a name which belongs to another drug ; or
- (b) If it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or
- (c) If the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist ; or
- (d) If it has been substituted wholly or in part by any other drug or substance ; or

(e) If it purports to be the product of a manufacturer of whom it is not truly a product.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

### **33EEB. Regulation of manufacturer for sale of Ayurvedic, Siddha and Unani drugs. –**

**<sup>1</sup>33EEB. Regulation of manufacturer for sale of Ayurvedic, Siddha and Unani drugs.–**

No person shall manufacture for sale or for distribution any Ayurvedic, Siddha or Unani drug except in accordance with such standards, if any, as may be prescribed in relation to that drug.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

### **33EEC. Prohibition of manufacture and sale of certain Ayurvedic, Siddha and Unani drugs. –**

**<sup>1</sup> Prohibition of manufacture and sale of certain Ayurvedic, Siddha and Unani drugs. –**

From such date as the State Government may, by notification in the Official Gazette, specify in this behalf, no person, either by himself or by any other person on his behalf, shall –

(a) Manufacture for sale or for distribution –

(i) Any misbranded, adulterated or Ayurvedic, siddha or Unani drug ;

(ii) Any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true list of all the ingredients contained in it ; and

(iii) Any Ayurvedic, Siddha or Unani drug in contravention of any of the provisions of this Chapter or any rule made thereunder ;

(b) Sell, stock or exhibit or offer for sale or offer for sale or distribute any Ayurvedic, Siddha or Unani drug which has been manufactured in contravention of any of the provisions of this Act, or any rule made thereunder :

(c) Manufacture for sale or for distribution, any Ayurvedic, Siddha or Unani drug, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter by the prescribed authority.

Provided that nothing in this section shall apply to Vaidyas and Hakims who manufacture Ayurvedic, Siddha or Unani drug for the use of their own patients :

Provided further that nothing in this section shall apply to the manufacture, subject to the prescribed conditions, of small quantities of any Ayurvedic, Siddha or Unani drug for the purpose of examination, test or analysis.

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

## **33EED. Power of Central Government to prohibit manufacture, etc., of Ayurvedic, Siddha or Unani drugs in public interest. –**

<sup>1</sup>[**33EED. Power of Central Government to prohibit manufacture, etc., of Ayurvedic, Siddha or Unani drugs in public interest.**—Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied on the basis of any evidence or other material available before it that the use of any Ayurvedic, Siddha or Unani drug is likely to involve any risk to human beings or animals or that any such drug does not have the therapeutic value claimed or purported to be claimed for it and that in the public interest it is necessary or expedient so to do then, that Government may, by notification in the Official Gazette, prohibit the manufacture, sale or distribution of such drug.]

-----

**1. Subs. by Act 68 of 1982, sec. 31, for sections 33D and 33E (w.e.f. 1-2-1983).**

## **33F. Government Analysts. –**

(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Government Analysts for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), neither the Central Government nor a State Government shall appoint as a Government Analyst any official not serving under it without the previous consent of the Government under which he is serving.

<sup>1</sup>(3) No person who has any financial interest in the manufacture or sale of any drug shall be appointed to be a Government Analyst under this section.]

### **COMMENTS**

The opinion of an Analyst, not recognized under section 33F, cannot be relied upon, whatever may be his qualifications; State v. Rajamani, 1982 Cri LJ (NOC) 71.

-----

**1. Ins. by Act 68 of 1982, sec. 32 (w.e.f. 1-2-1983).**

## **33G. Inspectors. –**

(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him and the conditions, limitations or restrictions subject to which such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the manufacture or sale of any drug shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and shall be officially sub-ordinate to such authority as the Central Government appointing him may specify in this behalf.

### **33H. Application of provisions of sections 22, 23, 24 and 25.**

—

The provisions of sections 22, 23, 24 and 25 and the rules, if any, made there under shall, so far as may be, apply in relation to an Inspector and a Government Analyst appointed under this Chapter as they apply in relation to an Inspector and a Government Analyst appointed under Chapter IV, subject to the modification that the references to "drug" in the said sections, shall be construed as references to <sup>1</sup>Ayurvedic, Siddha or Unani] drug.

-----

**1. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

### **33-I. Penalty for manufacture, sale, etc., of Ayurvedic, Siddha or Unani drug in contravention of this Chapter. —**

<sup>1</sup>[**33-I. Penalty for manufacture, sale, etc., of Ayurvedic, Siddha or Unani drug in contravention of this Chapter.**—Whoever himself or by any other person on his behalf—

(1) Manufactures for sale or for distribution –

(a) Any Ayurvedic, Siddha or Unani drug –

(i) Deemed to be adulterated under section 33EE, or

(ii) Without a valid licence as required under clause ( c) of section 33EEC,

shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than two thousand rupees ;

(b) Any Ayurvedic, Siddha or Unani drug deemed to be spurious under section 33EEA, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year and of fine of less than five thousand rupees ; or

(2) Contravenes any other provisions of this Chapter or of section 24 as applied by section 33H or any rule made under this Chapter, shall be punishable with imprisonment for a term which may extend to three months and with fine which shall not be less than five hundred rupees.

-----

**1. Subs. by Act 68 of 1982, sec. 33, for sections 33-I (w.e.f. 1-2-1983).**

### **33J. Penalty for subsequent offences. —**



<sup>1</sup> 33J. Penalty for subsequent offences. -Whoever having been convicted of an offences, –

(a) Under clause (a) of sub-section (1) of section 33I is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than two thousand rupees ;

(b) Under clause (b) of sub-section (1) of section 33I is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to six years and with fine which shall not be less than five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and of fine of less than five thousand rupees ;

(c) Under sub-section (2) of section 33I is again convicted of an offence under that sub-section, shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than one thousand rupees.

-----

**1. Subs. by Act 68 of 1982, sec. 33, for sections 3J (w.e.f. 1-2-1983).**

### **33K. Confiscation. –**

Where any person has been convicted under this Chapter, the stock of the <sup>1</sup>[Ayurvedic, Siddha or Unani] drug, in respect of which the contravention has been made, shall be liable to confiscation.

-----

**1. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

### **33L. Application of provisions to Government departments.**

—

The provisions of this Chapter except those contained in section 33K shall apply in relation to the manufacture for sale, sale or distribution of any <sup>1</sup>drug by any department of Government as they apply in relation to the manufacture for sale, sale or distribution of such drug by any other person.

-----

**1. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

### **33M. Cognizance of offences. –**

(1) No prosecution under this Chapter shall be instituted except by an Inspector <sup>1</sup>with the previous sanction of the authority specified under sub-section (4) of section 33G].

(2) No Court inferior to that<sup>2</sup> of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter.

-----  
**1. Ins. by Act 68 of 1982, sec. 34 (w.e.f. 1-2-1983).**

**2. Subs. by Act 68 of 1982, sec. 34, for "of a Presidency Magistrate or of a Magistrate of the first class" (w.e.f. 1-2-1983).**

### **33N. Power of Central Government to make rules. –**

(1) The Central Government may, <sup>1</sup>[after consultation with, or on the recommendation of, the Board] and after previous publication by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter:

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case, the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the establishment of laboratories for testing and analysing <sup>2</sup>[Ayurvedic, Siddha or Unani] drugs;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors;

(c) prescribe the methods of test or analysis to be employed in determining whether any <sup>2</sup>[Ayurvedic, Siddha or Unani] drug is labelled with the true list of the ingredients which it is purported to contain;

(d) specify any substance as a poisonous substance;

(e) prescribe the forms of licences for the manufacture for sale of <sup>2</sup>[Ayurvedic, Siddha or Unani] drugs, <sup>3</sup>[and for sale of processed Ayurvedic, Siddha or Unani drugs,] the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor; <sup>3</sup>[and provide for the cancellation or suspension of such licences in any case where any provision of this Chapter or rules made thereunder is contravened or any of the conditions subject to which they are issued is not complied with];

<sup>4</sup>[(f) prescribe the conditions to be observed in the packing of Ayurvedic, Siddha and Unani drugs including the use of packing material which comes into direct contact with the drugs, regulate the mode of labelling packed drugs and prescribe the matters which shall or shall not be included in such labels;]

(g) prescribe the conditions subject to which small quantities of <sup>5</sup>[Ayurvedic, Siddha or Unani] drugs may be manufactured for the purpose of examination, test or analysis; and

<sup>6</sup>[(gg) prescribe under clause (d) of section 33EE the colour or colours which an Ayurvedic, Siddha or Unani drug may bear or contain for purposes of colouring;

(gga) prescribe the standards for Ayurvedic, Siddha or Unani drugs under section 33EEB;]

(h) any other matter which is to be or may be prescribed under this Chapter.

-----  
**1. Subs. by Act 68 of 1982, sec. 35, for "after consultation with the Board" (w.e.f. 1-2-1983).**

**2. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

**3. Ins. by Act 68 of 1982, sec. 35 (w.e.f. 1-2-1983).**

**4. Subs. by Act 68 of 1982, sec. 35, for "clause (f)" (w.e.f. 1-2-1983).**

**5. Subs. by Act 68 of 1982, sec. 2, for "Ayurvedic (including Siddha) or Unani" (w.e.f. 1-2-1983).**

**6. Ins. by Act 68 of 1982, sec. 35 (w.e.f. 1-2-1983).**

### **33-O. Power to amend First Schedule. –**

The Central Government, after consultation with the Board and after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add to or otherwise amend the First Schedule for the purposes of this Chapter and thereupon the said Schedule shall be deemed to be amended accordingly.

### **33P. Power to give directions. –**

<sup>1</sup>[<sup>2</sup>**33P.] Power to give directions.**—The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made there under.

-----  
**1. Ins. by Act 35 of 1960, sec. 11 (w.e.f. 16-3-1961).**

**2. Section 33A re-numbered as section 33P by Act 13 of 1964, sec. 27 (w.e.f. 15-9-1964).**

### **34. Offences by companies. –**

(1) Where an offence under this Act has been committed by 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 offence 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 has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer 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 a 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.

## **34A. Offences by Government Departments. –**

Where an offence under Chapter IV or Chapter IVA has been committed by any department of Government, such authority as is specified by the Central Government to be in charge of manufacture, sale or distribution of drugs or where no authority is specified, the head of the department, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this section shall render any such authority or person liable to any punishment provided in Chapter IV or Chapter IVA, as the case may be, if such authority or person proves that the offence was committed without its or his knowledge or that such authority or person exercised all due diligence to prevent the commission of such offence.

### **COMMENTS**

A Chemist in a bottling company is an officer of the company; Municipal Corporation of Delhi v.G.S. Gujaral, 1972 FAC 621 (del).

-----

**1. Ins. by Act 13 of 1964, sec. 28 (w.e.f. 15-9-1964).**

## **34AA. Penalty for vexatious search or seizure.—**

Any Inspector exercising powers under this Act or the rules made there under, who,-

(a) Without reasonable ground of suspicion searches any place, vehicle, vessel or other conveyance ; or

(b) Vexatiously and unnecessarily searches any person ; or

(c) Vexatiously and unnecessarily seizes any drug or cosmetic, or any substance or article, or any record, register, document or other material object ; or

(d) Commits, as such Inspector, any other act, to the injury of any person without having reason to believe that such act is required for the execution of his duty shall be punishable with fine which may extend to one thousand rupees.

-----

**1. Ins. by Act 68 of 1982, sec. 36 (w.e.f. 1-2-1983).****35. Publication of sentences passed under this Act. –**

(1) If any person is convicted of an offence under this Act, <sup>1</sup>[the Court before which the conviction takes place shall, on application made to it by the Inspector, cause] the offender's name, place of residence, the offence of which he has been convicted and the penalty which has been inflicted upon him, to be published at the expense of such person in such newspapers or in such other manner as the Court may direct.

(2) The expenses of such publication shall be deemed to form part of the costs relating to the conviction and shall be recoverable in the same manner as those costs are recoverable.

-----

**1. Subs. by Act 68 of 1982, sec. 37, for certain words (w.e.f. 1-2-1983).****36. Magistrate's power to impose enhanced penalties. –**

Notwithstanding anything contained in <sup>1</sup>[\*\*\*] <sup>2</sup>[the Code of Criminal Procedure, 1973 (2 of 1974)], it shall be lawful for <sup>3</sup>[any Metropolitan Magistrate or any Judicial Magistrate of the first class] to pass any sentence authorized by this Act in excess of his powers under <sup>1</sup>[\*\*\*] the said Code.

-----

**1. The words "section 32 of" omitted by Act 13 of 1964, sec. 29 (w.e.f. 15-9-1964).****2. Subs. by Act 68 of 1982, sec. 38, for "the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 1-2-1983).****3. Subs. by Act 68 of 1982, sec. 38, for "any Presidency Magistrate or any Magistrate of the first class" (w.e.f. 1-2-1983).**

36A. Certain offences to be tried summarily. –

<sup>1</sup>[36A. Certain offences to be tried summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.]

-----

**1. Ins. by Act 68 of 1982, sec. 39 (w.e.f. 1-2-1983).**

## **37. Protection of action taken in good faith. –**

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.

### **COMMENTS**

In determining the question of "good faith" the Court should take into account the intellectual capacity of the accused and the surrounding facts; Muhammad Gul v. Haji Fazley Karim, ILR 56 Cal 1013

## **38. Rules to be laid before Parliament. –**

Every rule made this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, <sup>2</sup>[and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

-----

**1. Ins. by Act 13 of 1964, sec. 30 (w.e.f. 15-9-1964).**

**2. Subs. by Act 68 of 1982, sec. 40, for certain words (w.e.f. 1-2-1983).**

## **THE FIRST SCHEDULE**

[See section 3(a)]

[A.—AYURVEDIC AND SIDDHA SYSTEMS] Ayurveda

<b>Serial No.</b>	<b>Name of book</b>
<b>AYURVEDA</b>	
1.	Arogya Kalpadruma
2.	Arka Prakasha
3.	Arya Bhishak
4.	Ashtanga Hridaya
5.	Ashtanga Samgraha
6.	Ayurveda Kalpadruma
7.	Ayurveda Prakasha
8.	Ayurveda Samgraha
9.	Bhaishajya Ratnavali
10.	Bharat Bhaishajya Ratnakara
11.	Bhava Prakasha

12.	Brihat Nighantu Ratnakara
13.	Charaka Samhita
14.	Chakra Datta
15.	Gada Nigraha
16.	Kupi Pakva Rasayana
17.	Nighantu Ratnakara
18.	Rasa Chandanshu
19.	Rasa Raja Sundara
20.	Rasaratna Samuchaya
21.	Rasatantra Sara Siddha Prayoga Samgraha
22.	Rasa Tarangini
23.	Rasa Yoga Sagra
24.	Rasa Yoga Ratnakara
25.	Rasa Yoga Samgraha
26.	Rasendra Sara Samgraha
27.	Rasa Pradipika
28.	Sahasrayoga
29.	Sarvaroga Chikitsa Ratnam
30.	Sarvayoga Chikitsa Ratnam
31.	Siddha Bhaishajya Manimala
32.	Sharangadhara Samhita
33.	Siddha Yoga Samgraha
34.	Sushruta Samhita
35.	Vaidya Chintamani
36.	Vaidyaka Shabda Sindu
37.	Vaidyaka Chikitsa Sara
38.	Vaidya Jiwan
39.	Basava Rajeeyam
40.	Yoga Ratnakara
41.	Yoga Tarangini
42.	Yoga Chintamani
43.	Kashyapasamhita
44.	Bhelasamhita
45.	Vishwanathachikitsa
46.	Vrindachikitsa
47.	Ayurvedachintamani
48.	Abhinavachintamani
49.	Ayurveda-ratnakar
50.	Yogarathnasangraha
51.	Rasamrita
52.	Dravyagunanighantu
53.	Rasamanjari
54.	Bangasena
54-A.	Aurvedic Formulary of India (Part-I)
54-B.	Aurveda Sara Sangraha.]
<b>SIDDHA</b>	
55.	Siddha Vaidya Thirattu
56.	Therayar Maha Karisal
57.	Brahma Muni Karukkadi (300)

58.	Hogar (700)
59.	Pulippani (500)
60.	Agasthiya Paripuranam (400)
61.	Therayar Yamagam
62.	Agasthiya Chenduram (300)
63.	Agasthiyar (1500)
64.	Athmarakshamrutham
65.	Agasthiyar Pin (80)
66.	Agasthiyar Rathna Churukkam
67.	Therayar Karisal (300)
68.	Veeramamuni Nasa Kandan
69.	Agasthiyar (600)
70.	Agasthiyar Kanma Soothiram
71.	18 Siddhar's Chillarai Kovai
72.	Yogi Vatha Kaviyam
73.	Therayar Tharu
74.	Agasthiyar Vaidya Kaviyam (1500)
75.	Bala Vagadam
76.	Chimittu Rathna (Rathna) Churukkam
77.	Nagamuni (200)
78.	Agasthiyar Chillarai Kovai
79.	Chiktsa Rathna Deepam
80.	Agasthiyar Nayana Vidhi
81.	Yugi Karisal (151)
82.	Therayar Thaila Varkam
83.	Agasthiya Vallathi (600)
184.	Siddha Formulary of Unani Medicine (Part-I)
<b><sup>2</sup>[B. – UNANI TIBB SYSTEM]</b>	
1.	Karabadin Qadri
2.	Karabadin Kabir
3.	Karabadin Azam
4.	Iiaj-ul-amraz
5.	Al Karabadin
6.	Biaz Kabir Vol.II
7.	Karabadin Jadid
8.	Kitab-ul-Taklis
9.	Sanat-ul-Taklis
10.	Mifta-ul-Khazain
11.	Madan-ul-Aksir
12.	Makhzan-ul-Murabhat
<sup>3</sup> 13.	National Formulary of Unani Medicine <sup>4</sup> [***]]
<sup>5</sup> 14.	Makhzan-ul-Murabhat

**1. Added by G.S.R. 735 (E), dated 28th August, 1987.**

**2. Subs. by Act 68 of 1982, sec. 41, for the heading "B.—UNANI (TIBB) SYSTEM" (w.e.f. 1-2-1983).**

**3. Added by G.S.R. 735 (E), dated 28th August, 1987.**



**4. The brackets, word and figure "(Part I)" omitted by G.S.R. 780 (E), dated 25th November, 2004.**

**5. Ins. by G.S.R. 780 (E), dated 25th November, 2004**

## THE SECOND SCHEDULE

(See sections 8 and 16)

STANDARDS TO BE COMPLIED WITH BY IMPORTED DRUGS AND BY DRUGS MANUFACTURED FOR SALE, SOLD, STOCKED OR EXHIBITED FOR SALE FOR DISTRIBUTED

Serial No.	Class of drug	Standard to be complied with
1.	Patent or proprietary medicines [(Note: Ins. by Notification No. S.O. 887, dated 19th March, 1966, Gazette of India, Pt. II, Sec.3(ii), p.819) other than Homoeopathic medicines].	The formula or list of ingredients displayed in the prescribed manner on the label or container and such other standards as may be prescribed.
2.	Substances commonly known as vaccines, sera, toxine, toxoids, antitoxins, and antigens and biological products of such nature.	The standards maintained at the International Laboratory for Biological Standards, Statens Serum Institut, Copenhagen, and such further standards of strength, quality and purity as may be prescribed.
3.	Vitamins, hormones and analogous products.	The standards maintained at the International Laboratory for Biological Standards, National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
4.	Substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals.	Such standards as may be prescribed.
44-A.	Homoeopathic Medicines:	
	(a) Drugs included in the Homoeopathic Pharmacopoeia of India.	Standards of identity, purity and strength specified in the edition of the Homoeopathic Pharmacopoeia of India for the time being and such other standards as may be prescribed.
	(b) Drugs not included in the Homoeopathic Pharmacopoeia of India but which are included in the Homoeopathic Pharmacopoeia of United States of America or the United Kingdom or the German Homoeopathic Pharmacopoeia.	Standards of identity, purity and strength prescribed for the drugs in the edition of such Pharmacopoeia for the time being in which they are given and such other standards as may be prescribed.
	(c) Drugs not included in the Homoeopathic Pharmacopoeia of India or the United States of America, or the	The formula or list of ingredients displayed in the prescribed manner on the label of the container and such other

	United Kingdom or the German Homoeopathic Pharmacopoeia.	standards as may be prescribed by the Central Government].
<b>5</b> 5.	Other drugs:	
	(a) Drugs included in the Indian Pharmacopoeia.	Standards of identity, purity and strength specified in the edition of the Indian Pharmacopoeia for the time being and such other standards as may be prescribed. In case the standards of identity, purity and strength for drugs are not specified in the edition of the Indian Pharmacopoeia for the time being in force but are specified in the edition of the Indian Pharmacopoeia immediately preceding, the standards of identity, purity and strength shall be those occurring in such immediately preceding edition of the Indian Pharmacopoeia and such other standards as may be prescribed.
	(b) Drugs not included in the Indian Pharmacopoeia but which are included in the official Pharmacopoeia of any other country.	Standards of identity, purity and strength specified for drugs in the edition of such official Pharmacopoeia of any other country for the time being in force and such other standards as may be prescribed. In case the standards of identity, purity and strength for drugs are not specified in the edition of such official Pharmacopoeia for the time being in force but are specified in the edition immediately strength shall be those occurring in such immediately preceding edition of such official Pharmacopoeia and such other standards as may be prescribed.]

**1. Ins. by S.O. 887, dated 19th March, 1966.**

**2. Subs. by G.S.R. 299 (E), dated 23rd April, 1984.**

**3. Omitted by G.S.R. 299 (E), dated 23rd April, 1984.**

**4. Subs. by G.S.R. 820, dated 6th June, 1978.**

**5. Subs. by G.S.R. 883, dated 18th August, 1973.**
