

THE ASSAM DRUGS (CONTROL) ACT, 1950*

(Assam Act I of 1951)+

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An Act to provide for the control of the sale, supply and distribution of drugs

Preamble.

Whereas it is expedient to control the sale, supply and distribution of drugs;

It is hereby enacted as follows:

COMMENTS

This Act provides for the control of sale, supply and distribution of drugs. The provisions of this Act are in addition to any other law in force regulating any of the matters dealt with in this Act. There is a Central Act with similar objects known as the Drugs (Control) Act, 1950 (Act 26 of 1950). The Drugs (Control) Ordinance, 1949 was promulgated in order to ensure that certain essential imported drugs and medicines were sold at reasonable prices. Similar Ordinance were issued by all provinces. The necessity for continuing the control of prices of the essential drugs continued and as such the Central Ordinance was replaced by a Central Act and some provinces also similarly replaced the Ordinances by Acts. The States like Bombay, Madhya Pradesh, Madras, Mysore, Orissa, Uttar Pradesh and Assam enacted similar State Acts.

The Drugs (and Cosmetics) Act, 1940 was enacted to regulate the import, manufacture, distribution and sale of drugs and the main object of this Act is to prevent sub-standards in drugs. [*Chimanlal v. State*, AIR 1963 SC 665]. In exercise of the powers conferred by S. 3 of the Essential Commodities Act, 1955, and in supersession of the Drugs Princes (Display and Control) Order, 1956 [which repealed the Drugs (Display of Princes) and Order, 1962 and the Drugs (Control of Princes) Order, 1963], the Central Government made the Drugs (Price Control) Order, 1970, with the similar objects.

1. Short title, extent and commencement.

- (1) This Act may be called the Assam Drugs (Control) Act, 1950.
- (2) It extends to the whole of the State of Assam.
- (3) It shall come into ce at once.

2. Interpretation.

- (1) In this Act, unless there is anything repugnant in the subject or context –

* Published in the “Assam Gazette” dated the 24th January, 1951.

+ Adapted by Meghalaya and Nagaland.

- (a) “dealer” means a person carrying on, either personally or through any other person, the business of selling any drugs whether wholesale or retail;
 - (b) “drugs” means any drug as defined in Cl. (b) of S. 3 of the Drugs Act, 1940 (Act XXIII of 1943), in respect of which a declaration has been made under S. 3;
 - (c) “offer sale” includes a reference to an intimation by a person of the price proposed by him for sale of any drug, made by the publication of a price list, by exposing the drug sale in association with a mark indicating price, by the furnishing of a quotation or otherwise howsoever;
 - (d) “producer” includes a manufacturer;
- (2) A drug shall be deemed to be in the possession of a person -
- (i) when it is held on behalf of that person by another person or when held by that person on behalf of another person;
 - (ii) notwithstanding that it is mortgaged to another person.

COMMENTS

The definition of the word “dealer” is similar to the definition thereof as provided in the Drugs (Control) Act, 1950 and the Central Order of 1970.

The word “drug” is defined in S. 3 (b) of the Central Act of 1940 and reads as follows:

“(a) ‘drug’ includes, -

- (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 disease in human beings or animals, and
- (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 vermin or insects which cause be used in human beings or animals as may be specified from time to time by the Central Government by notification in the official Gazette.”

[For similar definition of the word “drugs” see S. 2 (b) of the Central Act of 1950].

[For similar definition of the words “offer for sale” see S. 2 (c) of the Central Act of 1950].

[For similar definition of the word “producer” see S. 2 (d) of the Central Act of 1950].

Sub-section (2) is similar to S. 2 (2) of the Central Act of 1950.

3. Drugs to which this Act applies.

The State Government may, by notification in the official Gazette, declare any drug to be a drug to which this Act shall apply.

COMMENTS

This section is similar to S. 3 of the Central Act of 1950, except that in the Central Act, instead of the words “State Government”, the words “Central Government” have been used.

4. Fixing of maximum prices and maximum quantities which may be held or sold.

(1) The State Government may, by notification in the official Gazette, fix in respect of any drugs-

- (a) the maximum price or rate which may be charged by a dealer or producer;
 - (b) the maximum quantity which may at any one time be possessed by a dealer or producer;
 - (c) the maximum quantity which may in any one transaction be sold to any person.
- (2) The prices or rates and the quantities fixed in respect of any drug under this section may be different in different localities or for different classes of dealers or producers.

COMMENTS

Under S. 4 of Central Order, 1970, the Central Government may, with a view to regulating equitable distribution of an essential bulk drug and making the same available at a fair price, from time to time, fix the maximum price at which the said essential bulk shall be sold. Similarly under this section, the State Government is empowered to fix maximum price or rate which may be charged by a dealer or purchaser.

By virtue of notification dated 14th March, 1951, being numbered MMD 455/50/65, the Government in exercise of the powers conferred under this section

fixed maximum retail prices of the drug, which prices were revised vide Notification No. MMD 455/50/72, dated 18th April, 1951.

This section is however similar to S. 4 of the Central Act of 1950.

5. Restrictions of sale, etc., where maximum is fixed under S. 4.

No dealer or producer shall –

- (a) sell, agree to sell, offer sale, or otherwise dispose of to any person any drug for a price or at a rate exceeding the maximum fixed by notification under Cl. (a) of sub-S. (1) of S. 4;
- (b) have in his possession at any time a quantity of any drug exceeding the maximum fixed by notification under Cl. (b) of sub-S. (1) of S. 4; or
- (c) sell, agree to sell or offer sale to any person in any one transaction a quantity of any drugs exceeding the maximum fixed by notification under Cl. (c) of sub-S. (1) of S. 4.

COMMENTS

This section is similar to S. 5 of the Central Act of 1950. Where maximum price or rates and quantities have been fixed under S. 4, no dealer or producer shall do anything in contravention of provisions of S. 4.

6. General limitation on quantity which may be possessed at one time.

- (1) No person shall have in his possession at any one time a greater quantity of any drug to which this section applied than the quantity necessary for his reasonable needs.
- (2) This section shall apply only to such drugs as the State Government may, by order published in the official Gazette, specify for the purpose:

Provided that nothing contained in this section shall apply to a dealer or producer in respect of any drug sold or produced by him.

COMMENTS

This section is similar to S. 6 of the Central Act of 1950.

7. Duty to declare possession of excess stocks.

Any person having in his possession a quantity of any drug exceeding that permitted by or under this Act shall forthwith report the fact to the State Government or other officer empowered in this behalf by the State Government and shall take such action as to the storage, distribution or disposal of the excess quantity as the State Government may direct.

COMMENTS

This section is similar to S. 6 of the Central Act of 1950.

8. Refusal to sell.

No dealer or producer shall, unless previously authorized to do so by the State Government without sufficient cause, refuse to sell to any person any drug within the limits as to quantity, if any, imposed by this Act.

Explanation.

The possibility or expectation of obtaining a higher price for drug at a later date shall not be deemed to be a sufficient cause the purpose of this section.

COMMENTS

This section is similar to S. 8 of the Central Act of 1950.

9. Cash memorandum to be given of certain sales.

- (1) Every dealer or producer when selling any drug for cash shall, if the amount of the purchase is five rupees or more, in all cases, and, if the amount of the purchase is less than five rupees, when so requested by the purchaser, give to the purchaser a cash memorandum containing particulars of the transaction.
- (2) The State Government may, by notification in the official Gazette, prescribe the particulars to be contained in any such memorandum.
- (3) The State Government may, by notification in the official Gazette, exempt, specified areas, classes of dealers or producers or classes of drugs from operation of this section.

COMMENTS

This section is similar to S. 9 of the Central Act of 1950.

10. Marking of prices and exhibiting price list.

- (1) The State Government may direct dealers or producers in general, or any dealer or producers in general, or any dealer or producer in particular, to mark any drug exposed or intended for sale with the sale price or to exhibit on the premises a price list of drugs held for sale, and may further give directions as to the manner in which any such direction as aforesaid is to be carried out.
- (2) No dealer shall destroy, efface or alter any label or mark affixed to drug and indicating the price marked by a producer.

COMMENTS

This section is similar to S. 10 of the Central Act of 1950.

Under this section the Government is empowered to direct dealers or producers, to mark the drug with the sale prices or exhibit on the premises prices list of drugs held for sale.

11. Obligation to state price separately on composite offer.

Where a dealer or producer, makes an offer to enter into a transaction for a consideration to be given as a whole in respect both of a sale of any drug and of some other matter, the dealer or producer making the offer shall state in writing the price which he assigns to that drug, if he is required to do so by any person to whom the offer is made, and the offer shall be deemed for the purposes of this Act to be an offer to sell that drug at the price so stated.

COMMENTS

This section is similar to S. 11 of the Central Act of 1950.

12. Prohibition or regulation of the disposal of drugs.

If in the opinion of the State Government it is necessary or expedient so to do, they may, by order in writing –

- (a) prohibit the disposal of any drug except in such circumstances and under such conditions as may be specified in the order;
- (b) direct the sale of any drug to such dealer or class of dealers and in such quantities as may be specified in the order.

and make such further orders as appear to them to be necessary or expedient in connection with any order issued under this section.

COMMENTS

Under this section the State Government is further empowered to give orders prohibiting the disposal of any drug except in such circumstances and under conditions and in such quantities as may be specified in the said order.

This section is similar to S. 12 of the Central Act of 1950.

13. Penalties.

- (1) Whoever contravenes and of the provisions of this Act, fails to comply with any direction made under authority conferred by this Act, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- (2) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of drugs in respect of which the offence committed shall be forfeited to the Government.
- (3) It shall be a defence for a person charged with a contravention of any of the provisions of this section to

prove that, in relation to the matter in respect of which he is charged, he acted in the course of his employment as a servant or agent of another person on the instructions of his employers or of some other specified person.

COMMENTS

The section is similar to S. 13 of the Central Act of 1950.

14. Offence by Corporations.

Where a person committing an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every Director, Manager, Secretary, Agent or other officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

COMMENTS

The section is similar to S. 14 of the Central Act of 1950.

15. Procedure.

- (1) No person other than a Police Officer of or above the rank of an Inspector of Police or an Officer not below the rank of an Inspector of Police authorised in this behalf by the State Government by notification in the official Gazette, shall investigate any offence under this Act.
- (2) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the District Magistrate.

COMMENTS

The section is similar to S. 15 of the Central Act of 1950.

16. Powers of search and seizure.

Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being committed and take possession of any stock of drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall so far as may be applicable apply to any search and seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under S. 98 of that Code.

COMMENTS

The section is similar to S. 16 of the Central Act of 1950.

The Code of Criminal Procedure, 1898 is now replaced by the Code of Criminal Procedure, 1973. The provisions for search and seizure are contained in Ss. 93 to 105 of the new Code. Section 98 of the Code is now S. 94 of the new Code.

17. Power to make rules.

- (1) The State Government may make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:
 - (a) the maintenance by dealers and producers generally, or by any dealer or producer in particular, of records of all sale and purchases transactions made by them;
 - (b) the furnishing of any information as may be required with respect to the business carried on by any dealer or producer;

- (c) the inspection of any books of account or other documents belonging to, or under the control of, any dealer or producer.

COMMENTS

The section is similar to S. 17 of the Central Act of 1950, except that instead of the words “State Government” the words “Central Government” have been used in the Central Act.

18. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

COMMENTS

The section is similar to S. 83 of the Central Act of 1950.

19. Saving of other laws.

The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

COMMENTS

The section is similar to S. 19 of the Central Act of 1950.

Application in Meghalaya and Nagaland.

This Act has been adapted in its application to the Mokokchung and Kohima districts of Nagaland, [Notification No. TAD/Misc./32/51/7, dated 31st March, 1951]. Now by virtue of Tuensang and Mon districts (Assimilation of Laws) (Amendment) Act, 1975, the Acts applicable in Mokokchung and Kohima will now also apply to these districts.

This Act has also been adapted in its application to the State of Meghalaya by Adaptation of Laws Order (No. 1), 1974.

Application of the provisions of the Drugs and Cosmetics Act, 1940 in Assam.

Chapter IV of this Act came into force in Assam on 27th July, 1964, as published in the Assam Gazette dated 27th July, 1967, Pt. II-A, page 1736.

Section 18 of the Act came into force in Assam on 1st April, 1947 and S. 18 (a) (iii) came into force on 1st April, 1948.

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