

Drugs And Cosmetics (Amendment) Act, 2008

26 of 2008

[05 December 2008]

CONTENTS

1. Short Title And Commencement
2. Insertion Of New Section 17E
3. Amendment Of Section 18
4. Amendment Of Section 26A
5. Insertion Of New Section 26B
6. Amendment Of Section 27
7. Amendment Of Section 27A
8. Amendment Of Section 28
9. Amendment Of Section 28A
10. Amendment Of Section 29
11. Amendment Of Section 30
12. Amendment Of Section 32
13. Insertion Of New Section 32B
14. Amendment Of Section 33
15. Amendment Of Section 33-I
16. Amendment Of Section 33-J
17. Insertion Of New Section 33Ka And 33Kb
18. Amendment Of Section 33N
19. Amendment Of Section 36A
20. Insertion Of New Section 36Ab, 36Ac, 36Ad And 36Ae

Drugs And Cosmetics (Amendment) Act, 2008

26 of 2008

[05 December 2008]

An Act further to amend the Drugs and Cosmetics Act, 1940. Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

1[(1) This Act may be called the Drugs and Cosmetics (Amendment) Act, 2008.

(2) It shall come into force on such date as the Central Government

may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.]

1. Effective date of Drugs and Cosmetics Act, 2008 to be 10th August 2009 vide Ministry of health and Family Welfare Notification No. S.O. 2076(E) Dated 10th August, 2009.

2. Insertion Of New Section 17E :-

After section 17D of the Drugs and Cosmetics Act, 1940(23 of 1940) (hereinafter referred to as the principal Act), the following section shall be inserted, namely,--

"17E. Adulterated cosmetics-For the purposes of this Chapter, a cosmetic 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 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."

3. Amendment Of Section 18 :-

In section 18 of the principal Act, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely,--

"(ii) any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;"

4. Amendment Of Section 26A :-

In section 26A of the principal Act, for the word "prohibit", the words "regulate, restrict or prohibit" shall be substituted.

5. Insertion Of New Section 26B :-

After section 26A of the principal Act, the following section shall be inserted, namely,--

"26B. Power of Central Government to regulate or restrict, manufacture, etc., of drug in public interest-Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug."

6. Amendment Of Section 27 :-

In section 27 of the principal Act,--

(i) in clause (a),--

(A) for the figures, letter and words "17B or which", the figures, letter and words "17B and which" shall be substituted.

(B) for the words "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;", the words "punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:" shall be substituted.

(C) the following provisos shall be inserted, namely:--

"Provided that the fine imposed on and realised from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.--For the purposes of the second proviso, the expression "relative" means--

(i) spouse of the deceased person; or

(ii) a minor legitimate son, and unmarried legitimate daughter and

a widowed mother; or
(iii) parent of the minor victim; or
(iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or
(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,--
(a) the parent; or
(b) a minor brother or an unmarried sister; or
(c) a widowed daughter-in-law; or
(d) a widowed sister; or
(e) a minor child of a pre-deceased son; or
(f) a minor child of a pre-deceased daughter where no parent of the child is alive; or
(g) the paternal grandparent if no parent of the member is alive;" ;
(ii) in clause (b),--
(A) for the words "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", the words "not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;
(B) in the proviso, for the words "less than one year and of fine of less than five thousand rupees", the words "less than three years and of fine of less than one lakh rupees" shall be substituted;
(iii) in clause (c),--
(A) for the words "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", the words "not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;
(B) in the proviso, for the words "less than three years but not less than one year", the words "less than seven years but not less than three years and of fine of less than one lakh rupees" shall be substituted;
(iv) in clause (d), for the words "and with fine", the words "and with fine which shall not be less than twenty thousand rupees" shall be substituted.

7. Amendment Of Section 27A :-

In section 27A of the principal Act, for clauses (i) and (ii), the following clauses shall be substituted, namely,--

(i) any cosmetic deemed to be spurious under section 17D or adulterated under section 17E shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than fifty thousand rupees or three times the value of the cosmetics confiscated, whichever is more;

(ii) any cosmetic other than a cosmetic referred to in clause (i) in contravention of any provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both."

8. Amendment Of Section 28 :-

In section 28 of the principal Act, for the words "with fine which may extend to one thousand rupees or with both", the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

9. Amendment Of Section 28A :-

In section 28A of the principal Act, for the words "with fine which may extend to one thousand rupees or with both", the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

10. Amendment Of Section 29 :-

In section 29 of the principal Act, for the words "five hundred rupees", the words "five thousand rupees" shall be substituted.

11. Amendment Of Section 30 :-

In section 30 of the principal Act,--

(a) in sub-section (1),--

(i) in clause (a),--

(A) for the words "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", the words "not be less than seven years but which may extend to ten years and with fine which shall not be less than two lakh rupees" shall be substituted;

(B) in the proviso, for the words "less than two years and of fine of less than ten thousand rupees", the words "less than seven years

and of fine of less than one lakh rupees" shall be substituted;

(ii) in clause (b), for the words "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", the words "shall not be less than ten years but which may extend to imprisonment for life and with fine which shall not be less than three lakh rupees" shall be substituted;

(iii) in clause (c), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted;

(b) in sub-section (2), for the words "ten years, or with fine, or with both", the words "two years, or with fine which shall not be less than ten thousand rupees or with both" shall be substituted.

12. Amendment Of Section 32 :-

In section 32 of the principal Act, for sub-sections (1) and (2), the following subsections shall be substituted, namely:--

"(1) No prosecution under this Chapter shall be instituted except by-

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter."

13. Insertion Of New Section 32B :-

After section 32A of the principal Act, the following section shall be inserted, namely:--

"32B. - Compound of certain offences - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any offence punishable under clause (b) of sub-section (1) of section 13, section 28 and section 28A of this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government or by any State Government or any officer authorised in this behalf by the

Central Government or a State Government, on payment for credit to that Government of such sum as that Government may, by rules made in this behalf, specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:

Provided further that in cases of subsequent offences, the same shall not be compoundable.

(2) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed or, as the case may be, before which the appeal is to be heard.

(3) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith."

14. Amendment Of Section 33 :-

In section 33 of the principal Act, in sub-section (2),--

(i) after clause (dd), the following clause shall be inserted, namely,--

"(dda) prescribe under clause (d) of section 17E the colour or colours which a cosmetic may bear or contain for the purposes of colouring;"

(ii) in clause (p), the word "and" occurring at the end shall be omitted;

(iii) in clause (q), the word "and" shall be inserted at the end;

(iv) after clause (q), the following clause shall be inserted, namely,-

-

" (r) sum which may be specified by the Central Government under section 32B."

15. Amendment Of Section 33-I :-

In section 33-1 of the principal Act,--

(a) in sub-section (1),--

(i) for clause (a), the following clause shall be substituted, namely:--

"(a) any Ayurvedic, Siddha or Unani drug--

(i) deemed to be misbranded under section 33E,

(ii) deemed to be adulterated under section 33EE, or

(iii) without a valid licence or in violation of any of the conditions thereof, as required under section 33 EEC, shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more;"

(ii) in clause (b), for the words "five thousand rupees", occurring at both the places, the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(iii) after clause (b), the following clause shall be inserted, namely:--

"(c) any Ayurvedic, Siddha or Unani drug in contravention of the provisions of any notification issued under section 33EED shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees or three times the value of the drugs confiscated, whichever is more.";

(b) in sub-section (2), for the words "three months and with fine which shall not be less than five hundred rupees", the words "six months and with fine which shall not be less than ten thousand rupees" shall be substituted.

16. Amendment Of Section 33-J :-

In section 33 J of the principal Act,--

(a) in clause (a), for the words "two thousand rupees", the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(b) in clause (b), for the words "five thousand rupees" occurring at both the places, the words "one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(c) in clause (c), for the words "six months and with fine which shall not be less than one thousand rupees", the words "one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted.

17. Insertion Of New Section 33Ka And 33Kb :-

After section 33K of the principal Act, the following sections shall be inserted, namely,--

"33KA. Disclosure of name of manufacturer, etc.-Every person, not being the manufacturer of any Ayurvedic, Siddha or Unani drug 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 Ayurvedic, Siddha or Unani drug.

33KB. Maintenance of records and furnishing of information - Every person holding a licence under clause (c) of section 33EEC 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."

18. Amendment Of Section 33N :-

In section 33N of the principal Act, in sub-section (2),--

(i) in clause (gga), the word "and" occurring at the end shall be omitted;

(ii) after clause (gga), the following clause shall be inserted, namely,--

"(ggb) prescribe the records, registers or other documents to be kept and maintained under section 33KB; and"

19. Amendment Of Section 36A :-

In section 36A of the principal Act, for the words "all offences under this Act", the words, brackets, figures and letters "all offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act" shall be substituted.

20. Insertion Of New Section 36Ab, 36Ac, 36Ad And 36Ae :-

After section 36A of the principal Act, the following sections shall be inserted, namely:--

36AB. Special Courts-(1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, subsection (5) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of

Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.---In this sub-section, "High Court" means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973(2 of 1974), be charged at the same trial.

36AC. Offences to be cognizable and non-bailable in certain cases-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974) --

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of subsection (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

(b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, subsection (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973(2 of 1974) or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439

of the Code of Criminal Procedure, 1973(2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB.

36AD. Application of Code of Criminal Procedure, 1973 to proceedings before special Court-

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973(2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government or the State Government may also appoint, for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973(2 of 1974) and the provisions of that Code shall have effect accordingly.

36AE. Appeal and revision

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973(2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court..