

SURROGATE ADVERTISING IN RESTRICTED SECTORS: AN ANALYSIS WITH SPECIAL REFERENCE TO RULE 170 OF THE DRUGS & COSMETICS RULES.

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ABSTRACT

Surrogate advertising has surfaced as an eminent challenge in India, particularly in sectors where explicit advertising of sensitive products is restricted. By promoting substitute goods, companies announce products similar as alcohol, tobacco, and more lately, drugs. In the medicinal and AYUSH sectors, this practice has contributed to a swell of misleading remedial claims, exploiting consumer vulnerabilities. In its response, Rule 170 of the Drugs and Cosmetics Rules, 1945 was introduced in 2018 as a targeted measure to regulate announcements of Ayurvedic, Siddha, and Unani(ASU) medicines. By requiring a Unique Identification Number by the companies before promoting such drugs, it created a preventative medium to prevent the surrogate content into the public sphere. This paper critically examines the validity of Rule 170 and its role in preventing surrogate advertising with a direct focus on public health sector. This Rule, has remained the subject of sustained controversy ever since its insertion through the Eleventh Amendment in 2018. It situates the discussion within an indigenous frame, analyzing Article 14,19,21, and 47, while drawing on crucial judicial pronouncements similar as Hamdard Dawakhana v. Union of India and the 2025 Supreme Court ruling in Indian Medical Association v. Union of India which upheld the deletion of the said Rule.

The study then infers that the future of drug advertising regulation in India lies in building a unified and comprehensive framework that can effectively counter surrogate practices across all medical systems while maintaining an environment conducive to fair competition and legitimate trade.

INTRODUCTION

Advertising plays a crucial role in shaping consumer choices, particularly in the health sector where claims about therapeutic efficacy directly influence vulnerable positions. In a country like India which has over the time gained a position of that of a global market, the protection of consumers from surrogate advertising is a formidable task. In the 21st Century with the vast developments in technology which has certainly made the task of alluring one's customers feasible task has also dramatically raised concerns on the authenticity of the claims made by such advertisers.

The scale and urgency of this regulatory challenge is borne out by empirical data. The Advertising Standards Council of India (ASCI) flagged 233 health-related advertisements to the Ministry of AYUSH for breaching existing advertising prohibitions in its Annual Complaints Report for 2024-25 alone.¹ Cumulatively, the AYUSH Ministry acknowledged that approximately 38,539 instances of misleading advertisements had been referred to state licensing authorities over the preceding three years.² These figures are particularly striking given that the AYUSH market in India was valued at USD 43.3 billion in 2024 and is projected to grow exponentially over the coming decade, meaning that the scale of potential consumer harm will only increase in the absence of robust preventive regulatory mechanisms.³

Our Country being filled with visionary policymakers have already formulated various legislations to regulate such advertisements. Acts like The Consumer Protection Act, 2019, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Drugs and Cosmetics Act, 1940, Cable Television Networks (Regulations) Act, 1995 and several others.

But the main question in today's time is whether all these acts were sufficient in themselves to curb the escalating issue of surrogate advertisement or not. The escalating issue of surrogate advertising encompasses an array of problems which we in our daily lives often neglect. In our country, the prevalence of misleading advertisements for drugs and health products has long posed a challenge for regulators. Exaggerated claims of "miracle cures" and surrogate

¹ Advertising Standards Council of India, 'Annual Complaints Report 2024-25', reported in 'ASCI Reports 233 Misleading Health Ads; Healthcare Top Non-Compliant Sector' (Medical Buyer, 3 June 2025) <<https://medicalbuyer.co.in/asci-reports-233-misleading-health-ads-healthcare-top-non-compliant-sector/>> accessed 30 August 2026.

² Cyril Amarchand Mangaldas, 'Prescription for Deception: An Analysis of Pharmaceutical Advertising in India' (India Corporate Law Blog, 8 October 2024) <<https://corporate.cyrilamarchandblogs.com/2024/10/prescription-for-deception-an-analysis-of-pharmaceutical-advertising-in-india/>> accessed 30 August 2026.

³ India Brand Equity Foundation, 'AYUSH Industry in India: Growth, Market Size & Opportunities' (IBEF, 2025) <<https://www.ibef.org/industry/ayush>> accessed 30 August 2026.

promotions of products and questionable therapeutic value not only distort consumer perception but also pose serious risks to public health.

This need for a strong regulatory mechanism in this domain led to the introduction of the much debatable Rule 170 of the Drugs and Cosmetics Rules, 1945, (hereinafter referred to as “DC Rules”) through the Drugs and Cosmetics (Eleventh Amendment) Rules, 2018. This Rule, has remained the subject of sustained controversy ever since its insertion through the Eleventh Amendment in 2018. While proponents argue that it is Constitutionally valid and necessary to safeguard public health, industry stakeholders contend that it infringed upon the trade freedoms and imposes disproportionate restrictions. Several petitions were then filed by industry stakeholders in different states including Delhi and Bombay, ultimately attracting the attention of the Hon’ble Supreme Court.

LEGAL FRAMEWORK ON DRUG ADVERTISEMENTS IN INDIA

In the year 1940, Central government enacted the Drugs and Cosmetics Act, 1940 (the Act) to regulate the import, manufacture, distribution and sale of drugs and cosmetics. Section 33 of the Act provides power to the Central Government to frame rules under the Act. The DC Rules were notified in the year 1945. Further enacted in the year 1954 was the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (DMR Act) to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith. Following the DMR Act was, the notification of the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955.

On 04.06.2016, Draft rules were published by the Central Government for amending the DC Rules for comments and observations. By way of these Draft Rules, Rule 170 was proposed to be inserted in the DC Rules.

On 21.12.2018, the finalized Rule 170 was inserted by way of the Drugs and Cosmetics (11th Amendment) Rules, 2018 (Impugned Rule). It prohibited advertisements of Ayurveda, Siddha & Unani drugs (hereinafter referred to as “ASU drugs”) by the manufacturer or his agent unless permitted by the State Licensing Authority or the Drugs Controller. Such notification also specified conditions on the basis of which the required permission can be granted /rejected.

The introduction of Rule 170 was not an isolated regulatory initiative but a deliberate response to accumulated evidence of systemic failure in the existing framework. A parliamentary standing committee on health had, prior to the 2018 amendment, specifically flagged the frequency of misleading advertisements in the AYUSH sector as a serious concern warranting dedicated legislative attention.⁴ This concern was further underscored by the Patanjali Ayurved controversy, in which aggressive and unsubstantiated advertising for products allegedly curing serious diseases continued unabated despite the existence of various pre-Rule 170 regulatory frameworks, ultimately compelling the Supreme Court's direct intervention in *Indian Medical Association v. Union of India*.⁵

Rule 170 was to act as a regulatory check on unverified and potentially misleading claims made in relation to the efficacy, purpose, or therapeutic value of medicinal products, particularly within traditional or AYUSH systems. In light of the increasing commercialisation of health products and the surge of public advertisements, the Rule ensures that unsubstantiated or exaggerated therapeutic claims are not made to vulnerable consumers, thereby protecting them from harm, exploitation, or deceptive practices.

Post-omission evidence further reinforces the necessity of such a prior-approval mechanism. The Ayush Suraksha Portal, launched by the Ministry of AYUSH in May 2025 as a digital platform to monitor misleading advertisements and adverse drug reactions, had already logged over 10,269 complaints within barely a year of its launch, according to data placed before the Lok Sabha.⁶ This volume of complaints in so short a window powerfully demonstrates that reactive reporting mechanisms, however sophisticated, are insufficient to prevent consumer harm after misleading claims have already entered the public domain; only a preventive gatekeeping mechanism of the kind that Rule 170 provided can effectively check the flow of unverified therapeutic claims before they reach vulnerable consumers.

Some argued that Rule 170 was unnecessary as there were pre-existing statutes like The Consumer Protection Act, 2019, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Drugs and Cosmetics Act, Cable Television Networks (Regulations) Act, 1995 that

⁴ Shruti Mahajan, 'Patanjali Contempt Case: Blatant Violations, Expanded Scope, Repeated Scoldings and the Flip-Flop on Rule 170' (Supreme Court Observer, 14 May 2024) <<https://www.scobserver.in/journal/patanjali-contempt-case-blatant-violations-expanded-scope-repeated-scoldings-and-the-flip-flip-on-rule-170/>> accessed 30 August 2026.

⁵ AZB & Partners, 'The Patanjali Journey: Supreme Court's Expanding Scrutiny on Advertising Compliance for Cosmetics' (Mondaq, 23 September 2025) <<https://www.mondaq.com/india/healthcare/1681808/the-patanjali-journey-supreme-courts-expanding-scrutiny-on-advertising-compliance-for-cosmetics>> accessed 30 August 2026.

⁶ 'Ayush Suraksha Portal Logs Over 10,000 Complaints Within a Year of Launch' (Outlook India, 21 March 2026) <<https://www.outlookindia.com/healthcare-spotlight/ayush-suraksha-portal-logs-over-10000-complaints-within-a-year-of-launch>> accessed 30 August 2026.

regulated such advertisements. But in reality, the mechanism of Rule 170 was distinct and unique.

Rule 170 created an active regulatory safeguard for consumers by mandating that manufacturers of ASU drugs seek prior permission from the State Licensing Authority before making any therapeutic claim in advertisements, regardless of whether it pertains to a scheduled disease under the DMR Act or not. Rule 170, thus filled a critical regulatory gap by preventing unverified content from entering the public domain.

The Consumer Protection Act, 2019 (the CP Act) is a general statute applicable to all goods and services and is primarily reactive in nature. It penalizes misleading advertisements post-publication or post-distribution, after damage may already have been done to the consumer.

A further illustration of the reactive character of general regulatory mechanisms is the self-declaration regime introduced pursuant to Supreme Court directions in 2024, which requires advertisers, advertising agencies, and endorsers to upload a certificate affirming that an advertisement is not misleading before it goes live.⁷ While this regime applies broadly across media, it still operates as a declaration by the advertiser rather than as a domain-specific technical scrutiny by a licensing authority with competence to evaluate the scientific basis of therapeutic claims in traditional medicine systems. Rule 170, by contrast, placed that gatekeeping function directly in the hands of State Licensing Authorities with the requisite technical expertise in ASU medicine, making it uniquely suited to the challenges of regulating health claims in the AYUSH context.

The DMR Act, is limited both in its legislative scope and operational framework. The statute primarily targets and prohibits advertisements relating to drugs for specified diseases enumerated in the Schedule to the Act and is aimed at curbing exaggerated, sensational, or so-called ‘magical’ claims. Notably, the DMR Act does not contemplate or mandate any prior approval mechanism for advertisements, nor does it establish a statutory framework for pre-publication scrutiny or content vetting. Furthermore, the Act is devoid of any regulatory architecture providing for continuous administrative oversight or monitoring by Licensing Authorities.

⁷ AZB & Partners, ‘The Patanjali Journey: Supreme Court’s Expanding Scrutiny on Advertising Compliance for Cosmetics’ (Mondaq, 23 September 2025) <<https://www.mondaq.com/india/healthcare/1681808/the-patanjali-journey-supreme-courts-expanding-scrutiny-on-advertising-compliance-for-cosmetics>> accessed 30 August 2026.

The Cable Television Networks (Regulation) Act, 1995, along with its Rules, 1994, and the Advertising Code appended thereto, constitute a general statute enacted to regulate the operation of cable television networks and ensure that content disseminated *via* such platforms conforms to standards of decency, public order, and morality. The scope of the said Act, however, is confined to the medium of dissemination and does not extend to the scientific scrutiny or regulatory approval of the substantive content of advertisements, particularly those making therapeutic or medicinal claims. In contrast, Rule 170 of the DC Rules, 1945, is a domain-specific regulatory provision framed under the Act, which mandates prior approval from the State Licensing Authority for any advertisement of Ayurvedic, Siddha, and Unani (ASU) drugs making therapeutic claims.

The Table below will show a clean comparison of major laws governing Drug Advertisements in India;

Statute	Scope	Regulatory Approach	Mechanism
Rule 170 of the Act	Specific to Ayurvedic, Siddha, and Unani (ASU) drugs	Preventive: requires prior approval of advertisements before publication	Manufacturers have to obtain Unique Identification Number from State Licensing Authority for therapeutic ads
The Consumer Protection Act, 2019	Applies to all goods and services	Penalizes misleading ads after publication	No pre approval mechanism

DMR Act, 1954	Targets only advertisements for certain diseases listed in schedule	Bans ads for specialized diseases.	No pre approval mechanism
Cable Television Networks Act, 1995	Regulates advertisements broadcast through cable TV	Ensures decency, morality, and public order.	No pre approval mechanism

The table indicates that Rule 170 filled the critical regulatory gap by preventing unverified content from entering the public domain, a function not fulfilled by any other Act.

JUDICIAL AND PARLIAMENTARY PERSPECTIVES

The Constitutional validity of Rule 170 had been one of the most contested aspects of its existence, with industrialists alleging violations of Constitutional provisions under Article 301 and fundamental rights granted under Article 14, 19(1)(g) and consumers defending it as a reasonable restriction in the larger public interest.

However, an analysis of constitutional provisions and various judicial precedents reveals that the Rule, while restrictive in nature, was firmly grounded in India's constitutional framework and aligned with the State's primary duty to protect public health.

Rule 170 was never enacted to infringe upon the fundamental right to practice any profession or to carry on any occupation, trade or business under Article 19(1)(g) of the Constitution, as contended by various parties. Even assuming *arguendo* that it amounts to a restriction, the same is saved under Article 19(6), which permits the State to impose reasonable restrictions keeping in mind the interest of the general public.

The public health case for such prior-approval regulation is further supported by evidence on the relationship between misleading health advertising and unsafe self-medication practices. A 2024 peer-reviewed study published in the journal *Cureus* identified media and internet advertisements as among the primary drivers of escalating self-medication in India, particularly among lower and middle-income households.⁸ Self-medication encouraged by unverified therapeutic claims carries significant public health risks, including delayed treatment of serious conditions, adverse drug reactions, and the masking of symptoms that require professional medical attention. These are precisely the categories of harm that Rule 170, through its preventive prior-approval mechanism, was specifically designed to forestall.

The Hon'ble Apex Court in *Hamdard Dawakhana v. Union of India* (AIR 1960 SC 554) upheld similar restrictions on the ground that deceptive or exaggerated medical advertisements do not enjoy constitutional protection. The Court emphasised on the point that if the aim is to reduce the harmful consequences of self-medications and foster treatment by professional medical practitioners then these kinds of prescribed regulation should not be termed as undue restriction. Thus, the misleading or surrogate advertisements that have become a trend in today's time demands for a stringent regulation in order to look after the greater good of the society.

The same judgment also provide clear guidelines on the exercise of fundamental right granted under Article 19(1)(a) and the right to trade under Article 19(1)(g). The Court clarified that whenever the freedom of speech takes the form of a business promotions it ceases to fall under the ambit of ideas and granted under Article 19(1). Therefore, statutes designed to protect public health are treated as a primary responsibility of the State and falls under the reasonable restrictions under Article 19(6) of the Constitution.

In *State of Andhra Pradesh v. McDowell & Co.*, (1996) 3 SCC 709, the Hon'ble Apex Court reiterated that the right to trade does not include a right to conduct trade free from reasonable regulations aimed at protecting public interest. Therefore, Rule 170, being a content-neutral regulation for consumer safety, did not violated Article 301.

Moreover, the State under Article 47 of the Constitution, forming part of the Directive Principles of State Policy, has an affirmative obligation to improve public health and to prevent

⁸ Sohilkhan R Pathan and others, 'A Growing Concern: The Prevalence of Self-Medication in Pediatric Healthcare in India' (2024) 16(2) *Cureus* e53807 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC10865283/>> accessed 30 August 2026.

the consumption of injurious substances. This constitutional mandate applies uniformly to all systems of medicine.

Therefore, it is evident that Rule 170 was a Constitutionally valid piece of subordinate legislation. It was aimed to achieve a legitimate public purpose by regulating health-related advertisements in a sensitive and high-risk sector. The Rule neither offended the right to equality under Article 14 nor infringed upon the freedom of trade or expression under Articles 19(1)(g) or 301. On the contrary, it furthers the Constitutional mandate under Article 21 (Right to Health) and Article 47 (State's duty to improve public health).

THE PRESENT SCENARIO

After extensive hearings, the Hon'ble Supreme Court of India in its judgment dated 11.08.2025 in the matter of Indian Medical Association (IMA) Vs. Union of India vacated the interim stay on the notification issued by the Ministry of AYUSH dated 1 July 2024 and disposed of the petition, thereby permitting the omission of Rule 170 of the DC Rules, 1945 to take effect, while reserving liberty to all parties to challenge the omission in appropriate proceedings.⁹

CRITICAL APPRAISAL

While Rule 170 served as an important regulatory experiment in curbing misleading drug advertisements, its selective scope, uneven enforcement, and eventual omission highlights both its strength and inherent limitations. It has never been an arbitrary in nature as it expressly allows for advertisements of ASU drugs for purposes other than therapeutic claims, provided prior approval is obtained from the Licensing Authority under Rule 170(2). The rule thus balances trade freedoms with the State's Constitutional obligation to protect health and prevent deceptive practices under Article 47.

A critical appraisal of the provision underscores the need for a more comprehensive and harmonized framework that balances both consumer protection with industry interests.

⁹ 'Supreme Court Closes IMA Petition on Misleading Medical Ads, Vacates Stay on Rule 170 Omission' (India TV News, 12 August 2025) <<https://www.indiatvnews.com/news/india/supreme-court-closes-ima-petition-on-misleading-medical-ads-vacates-stay-on-rule-170-omission-2025-08-12-1003194>> accessed 30 August 2026.

Although Rule 170 has been omitted from the DC Rules, 1945, it's need in the present scenario is undebatable.

CONCLUSION WITH WAY FORWARD

The concern of false and misleading claims in the pharmaceutical and healthcare market continues to escalate at an alarming rate, and existing legislation has struggled to effectively curb this trend. In response, the parliament successfully enacted the Rule 170 of the DC Rules, 1945, which required prior approval of state's Licensing Authority before any ASU advertisements could be published. Though, it was regarded as one of the repetitive statutes already implemented by Parliament, it's distinct mechanism of preventing misleading claims through the issuance of a Unique Identification number made it one of its kind.

Various judgments by the Courts have consistently emphasized the need of regulatory mechanisms to safeguard public health, recognizing it as the primary duty of the State. Yet, despite its preventive value, the provision's narrow focus on ASU drugs ultimately led to its omission from the Rules. The Rule concentrated exclusively on ASU drugs while overlooking the burgeoning multi trillion-rupee allopathy drug industry in India, thereby rendering it discriminatory and placing the sole responsibility for misleading claims on allopathic drug manufacturers.

India is a growing economy and it must move towards a harmonized law regulating all forms of drug advertising to ensure consumer safety without stifling legitimate trade. Such a framework should ensure robust consumer protection against misleading health claims while maintaining an environment conducive to fair competition and legitimate trade.

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