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E-Pharmacy and its Omni-Channel Play

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ABSTRACT

The recent decade has been exceptionally revolutionary in terms of the promising innovative progressions and technological advancements. We are noticing extraordinary advancements in every field of science and innovation because of the heavy vested interest in innovative work, development, education and business everywhere across the world. New advances are merging and making life simpler and more proficient. The accessibility of internet and digitalization have altered the way of life of people. The pandemic has caused a massive surge in e-commerce as a platform both from an industry and from a company point of view. Today, the online commercial centres have widened its tentacles and offers nearly everything that one can perhaps imagine, which even includes something like medications. The focus towards e-pharmacies have been in discussion since long but the prominence it has gained since the start of the pandemic puts in the spotlight.

Keywords: E-Pharmacy, Online, E-Commerce, Advancement, Medicines.

I. INTRODUCTION

In spite of the fact that medical care driven by the Indian government have improved significantly, the accessibility of drugs remains problematic in the public domain - compelling majority to rely upon the more costly private areas. India needs an undeniably more efficient pharmacy store. This is where comes in e-pharmacies which are virtual platforms that operate like E-commerce websites by selling drugs, medicines & sending them to the end customer. They currently operate at a very nascent stage in terms of users who make online drug purchases, but with the ever-increasing number of individuals who are taking to the online space has provided a very valuable source to procure drugs where visiting stores is not feasible for a larger crowd.

"The Indian pharma market is expected to hit \$130 Billion by 2030. The medical devices industry in India has the potential to grow at 28 per cent per annum to reach \$50 billion by 2025" as per Chemical and Fertiliser Minister of India.² As per a report by EY, online pharma

¹ Author is an Advocate at Rajasthan High Court, India.

² Gowda, S. (2021). <https://www.financialexpress.com/industry/indian-pharma-market-expected-to-hit-130-billion-by-2030-sadananda-gowda/2190508/>

companies are expected to attain a combined market of \$2.7 Billion by 2023.³

II. CURRENT STATE - NASCENT GROWTH OF E-PHARMACY

The recent growth of e-pharmacy can be attributed to the rise of 1mg set up by Prashant Tandon in Gurugram. The e-commerce space for pharmacy has been subject to much debate and resistance by state regulators and offline pharmacies at a time when 1mg kept growing unhindered in Gurugram.

Across states offline stores protested against any company trying to set up an online presence in pharmacy. **Jaipur for instance, the capital of India's Rajasthan state saw statues burnt and rallies held by the most incensed traditional pharmacist to intimidate any e-pharmacy having set up shop to carry out any form of commerce in 2016.** The problem, as per one of the founders of e-pharmacy LifCare was not that they were doing anything illegal, but the law in question the Drug and Cosmetic Rules, 1945, allowed regulators to crack down on any e-pharmacy. The free crackdown was possible since the regulators could not monitor on the compliance levels of e-pharmacy with certain aspects of the law. To cite a few examples, there wasn't any way to ensure if the drug purchased via an online channel would be handed over to an adult or ensuring prescriptions were stamped to avoid the same prescription to buy drugs from multiple pharmacies. Given the inherent risks, the regulators in most states decided to crack the whip on online sales.

The Indian Government noticing the rise and necessity of e-pharmacy, via the health ministry has proposed that new regulations will amend the Drugs and Cosmetic Rules, 1945 and recognise e-pharmacies as legal entities.

Draft regulations for e-pharmacies are yet to see the light of day, which has still kept large investments at bay to the fledgeling online pharma industry. This has certainly helped the existing players to grow at a faster pace and overcome challenges faced by the traditional pharma retailers.

In the absence of clear policy and regulations, today most online pharmacies operate as a marketplace and cater to patients as a platform. The platform acts a bridge between the seller and the patient making a purchase, also making sure that the Drugs and Cosmetics Act and Rules of India is adhered to.

Draft rules include defining the online sale of medicines, the type of licences online firms will

³ Jain, V. (2019). Online-pharma market to touch \$2.7 bn by 2023. <https://retail.economictimes.indiatimes.com/news/health-and-beauty/pharmacy/online-pharma-market-to-touch-2-7-bn-by-2023-report/69556951>

need to obtain from regulators and understanding an e-prescription. The draft also sought to allow online pharmacies to obtain a central license from the country's apex drug regulator that would allow it operate across the entire country unhindered. The proposal would define aspects on distribution, sales and stocking of medicines allowed by any e-pharmacy.

The regulations which have been in the making since 2016, were pushed through two expert committees under the Central Drugs Standard Control Organisation - apex drug regulator body - in June 2019, but is yet to be finally pushed to bring clarity to the online pharma space.

III. CHALLENGES

Adopting the online space as a medium to facilitate access by way of having the medicines delivered to the doorsteps is highly beneficial for the elderly, sick patients and differently abled. The logistical barriers that get bridged with last mile access is significant. Despite the benefits and advantages that accrue with online pharmacies, there are some key challenges that need to be addressed.

One of the glaring threats to public health via e-pharmacies is due to counterfeiting and intellectual property rights of pharmaceuticals. The tendency of illegal e-pharmacies to facilitate organized crimes through funds available by selling counterfeited products imported from Asia to Europe is be seen with high caution.⁴ In India, counterfeited drugs constitute nearly 25% of the domestic market.⁵

The current draft regulations on e-pharmacy in India preclude them from disclosing information relating to patients to anyone. They are only mandated to reveal such information to state or central government if and when needed for public health purposes. The rules are extremely vague and do not prescribe specific rules or guiding principles on what circumstances would constitute a public health purpose.

The draft rules also impose a hard data localisation mandate. Any information relating to patients must remain in India. A foreign online pharmacy would have to significantly invest in creating local infrastructure to store health information in order to do business. This would inadvertently increase the cost of medicines which is not otherwise available in local brick & mortar stores making them less affordable and, secondly lead to foreign e-pharmacies to wind up their business in India. Access to quality medication can take a hit which is scarce in Indian

⁴ Macdonald, G. (2015). Retrieved 8 June 2021, from <https://www.outsourcing-pharma.com/Article/2015/07/01/All-legitimate-EU-web-pharmacies-must-now-carry-new-logo-says-EC>

⁵ Sonkar, S., & Ashesh, A. (2019). India Must Carefully Navigate Regulatory Challenges Posed by E-Pharmacies. <https://thewire.in/business/regulation-online-pharmacies-india-challenges>

stores and made available through import on online orders.

IV. LEGAL FRAMEWORK SUBSUMING THE CONCLUSION

Till date, India doesn't have any unique or explicit legitimate system which looks at E-pharmacy store. And the regime administering the ordinary or conventional model of pharmacy business is applicable to E-pharmacy also which is also been clarified by the Office of Drugs Controller General (India) through its notification dated 30 December 2015 ("Public Notice").⁶

It is currently imperative to survey the difficulties that can emerge because of the visionless application of the current legitimate system that administers the sale and storage of drugs in India:

The Drugs and Cosmetics Act, 1940 ("**DCA**") read along with the Drugs and Cosmetics Rules, 1945 ("**DCR**") regulates the sale, distribution and storage of drugs and other pharmaceutical products.

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 ("**DMRA**") regulates, An Act to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith, i.e. advertisements which suggest the cure to certain specified diseases and conditions for which there are normally no accepted remedies and therefore, the DMRA serves as an additional compliance on advertisements by E-pharmacies.

The Pharmacy Act, 1948 ("**Pharmacy Act**") prescribes for the constitution and composition of a council at the central and state level, to regulate the profession of pharmacy in India in addition to prescribing the educational qualifications for pharmacists. This statute is important in the context of those E-pharmacies which deal with sale of drugs which are required to be compounded, prepared, mixed, or dispensed by a pharmacist. Also, the Pharmacy Council of India has framed the Pharmacy Practice Regulations, 2015 which provides the obligations and duties of the pharmacists in connection with the preparation and dispensation of drugs, maintenance of records.

A Self-Regulation Code of Conduct was also released by FICCI in 2016 which formulates the highest professional standards and proper safeguards to ensure that consumers' health and safety is not compromised.⁷

However, despite these efforts with the shortfall of a pertinent lawful structure combined with

⁶ Office of Drugs Controller General (India), Circular No. 7-5/2015/Misc/(e-Governance)/091 dated 30 December 2015.

⁷ (2016). <https://ficci.in/pressrelease/2600/ficci-press-nov21-e-pharmacy.pdf>.

a successful mechanism for monitoring and effective procedure, nor are such genuine E-drug stores ready to get their balance in the market nor are the buyers completely sure of buying medications and drug items online.

Government in order to encourage the online platform for e-pharmacy took an initiative and along with Department of Pharmaceuticals formulated the "Draft Pharmaceutical Policy 2017" in the interest of the consumers.

Online pharmacies can be a real boom to the masses, especially those in the hinterlands of the country and to those who find it difficult to access physical stores with ease. But, the lack of oversight, fake medicines and clear-cut implementation of rules and regulation can derail the momentum and help those who truly are in need timely access to the drugs.

It is highly imperative that draft regulations are finely tuned and fast tracked to help the industry to scale and reach out an audience that is in so desperately in need of the right medication at the right time and place.”
