

2016

Criterion III

3.4.2

LEGALITY OF ONLINE PHARMACY IN INDIA

Vivek Dubey

Assistant Professor of Law

Dr. Harisingh Gour Vishwavidyalaya, Sagar (M.P.)

'Pharmacy' means a shop or hospital dispensary where medicinal drugs are prepared or sold¹. As per medical dictionary it also means the branch of the health sciences dealing with the preparation, dispensing, and proper utilization of drugs or a place where drugs are compounded or dispensed². However, an online pharmacy, e-pharmacy, Internet pharmacy, or mail-order pharmacy is a pharmacy that operates over the Internet and sends the orders to customers through the mail or shipping companies³.

The growth of the Internet has made it possible to compare prices and buy products without having to leave home. It started with books, gradually moving to gadgets, cars and clothes. One of the progressive technology models that have evolved in the last few years is tele-medicine that has enabled accessibility to the finest doctors at the tap of a button. Another recent innovation that has positioned itself as an attractive model in the healthcare space is E-pharmacy or Online Pharmacy⁴.

It might include:

- i. Pharmacy benefit manager – A large administrator of corporate prescription drug plans
- ii. Legitimate Internet pharmacy in the same country as the person ordering.
- iii. Legitimate Internet pharmacy in a different country than the person ordering. This pharmacy usually is licensed by its home country and follows those regulations, not those of the international orders⁵.
- iv. Illegal or unethical internet pharmacy. The web page for an illegal pharmacy may contain lies about its home country, procedures, or certifications. The "pharmacy" may send outdated (expired shelf life) or counterfeit medications and may not follow normal procedural safeguards⁶.

An online pharmacy sounds convenient; no waiting in queues, no rushing to the pharmacy before it shuts shop for the day, placing the order is easy, moreover, the order can be placed any time of the day and the medicines are conveniently delivered via courier at your doorstep. Yet, this convenience comes at a price. Not only there may be financial implications for the patients, their safety may even be endangered at times.⁷ The online pharmacy may have its own cancellation policy and may not refund or only partly refund the amount paid upon cancellation of the order or even non-delivery of an order. Unlike the local neighborhood pharmacy or the hospital pharmacy, the patient does not have access to a pharmacist if he/she has any questions about a medicine.⁸

Models of E-pharmacy or Online Pharmacy

Presently there are three models of online pharmacy that exist in India – organised, unorganised and illegal. These three models of E-pharmacy or online pharmacy have been misunderstood and used interchangeably⁹. A common misconception behind the authenticity of operations of an e-pharmacy is prevalent because there is skeptical knowledge behind the legal business models vis a vis the illegal international trade of drugs online¹⁰. Clearly, model under organized e pharmacy has scope of adding value to the ecosystem. While the unorganized and international trade models need to be controlled, it is important to enable and support the organized model which has tremendous benefits and opportunity to create significant innovation.¹¹

1. The Organized e-pharmacy¹²: There are two models which operate in this category. One is a market place model where a technology company connects neighbourhood licensed pharmacies to the end user. Other is an inventory based model where E-pharmacy is an online service of an offline licensed pharmacy¹³. In other words this either connects neighborhood licensed pharmacies to the end user or it operates as an inventory-based model where e-pharmacy is an online service of an offline licensed pharmacy.

In an Organized Pharmacy, every order that is received is verified and checked by a team of registered pharmacists. Drugs requiring a prescription medicine are checked for a copy of the prescription. The validity of the prescription is checked as the set format. The medicines are dispensed by registered pharmacists in a licensed premise in a sealed tamper proof pack. Without a prescription the medicines are not dispensed. With the most advanced technology aligned with their processes, they keep track of each and every order.

Drugs that do not require prescription from a medical practitioner or are sold over-the-counter ("OTC Drugs") are even better administered in Organized Pharmacy. Given that OTC Drugs can be sold by any person holding a 'Restricted Drug License' and does not require involvement of a registered pharmacist, such persons should be allowed to sell OTC Drugs online as long as they hold a valid license¹⁴. "The Drugs and Cosmetics Act does not cover all loopholes and we also need a clearer definition of OTC (over-the-counter) drugs to make e-commerce of drugs a safer and viable option.¹⁵

2. Unorganized e-pharmacy: In this model prescription medicines are ordered without any validated prescription¹⁶. There is no check on the genuineness of the order due to absence of qualified pharmacists. Also improper record keeping and no audits is a major area of concern¹⁷.

3. Illegal International trade through E pharmacy: Drugs being shipped across the international borders without any prescription and approval from the concerned authorities.¹⁸ This is generally used to order cheaper version of drugs like Viagra¹⁹.

Benefits of E- Pharmacy for the Patients

1. Consumer Convenience and access: The E-pharmacy can be very convenient and significantly improve the access of medicines for the patients. This will be pertinent with increasing nuclear family concept, working couples, increasing number of elderly population and urban development in periphery of the metro cities²⁰. The access to

medicines
when one is

2. Improved
resulting in
technology
can signific

3. Enhanced
enhance the
answered
Knowledge
monitoring
accessible to
to help a p

4. Data re
reducing the
and address
amounts of
public heal

5. Patient
infrastructure
side effects
always ben
electronic
improved

6. Transp
prices of an
transaction
therefore d
the technol
as drug in
substitutes

knowledge
7. Medicine
counterfeit
thereby mak
maintained

8. Transac
all transact
considering
Law on Onli
There are n
UK. Pharm

• The Dr

Law and Soc