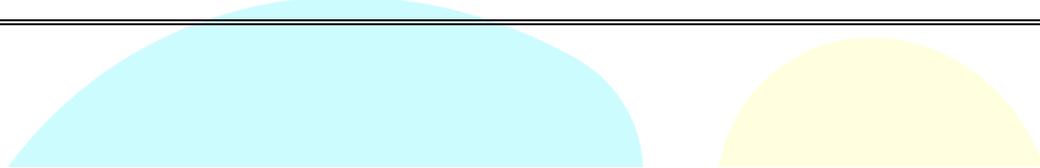


STATUTORY CONTROL AND REGULATION OF ADVERTISEMENT IN INDIA

Written by *Manoj Singh** & *Prof. Raghuvinder Singh***

**Research Student, Department of Laws, Himanchal Pradesh University, Shimla*

***Professor, Department of Laws, Himanchal Pradesh University, Shimla*



Advertisement is non-personal mode of communication of information. It is surprising that though it is impersonal but it is very much effective. Communication may be in any way. It is not limited to speech and pictures only. It uses types of sense like smell, taste, sight and touch. But; two of them have great importance sound and sight. It may be commercial and non-commercial.

In commercial advertisement object of the advertiser is to get a commercial transaction or offer. Non-commercial advertisements have no concern with business but it usually involves public welfare or public information. Advertisement is playing very crucial role in business world. It has become separate sector in business. A lot of money is being spent on advertisement now days. It has become a separate industry. It has number of benefits but it has also a dark side also. For example women are presented in indecent way and Children are used in bad manner. Some advertisements are such that children can cause harm themselves by following scenes in the advertisement. Besides all these misleading advertisement regarding products can be seen also.

For combating against such problems our legislatures has enacted a number of statutes and provisions regarding regulation of advertisement.

The Indian Penal Code, 1860 provide a number of provisions, prohibits obscene, defamatory publication, publication of a lottery and statements creating or promoting disharmony/ enmity in the society. While it is not implicitly written, any advertisement that related to an offence,

like hiring a contract killer or inciting violence, terrorism or a crime is illegal and will be punished under IPC or other applicable provisions. Section 292 deals with sale, etc., of obscene books, etc. this section provide for punishment for advertising any obscene publication or its distribution, sale, hire or circulation with imprisonment which may extend to two years with fine which up to two thousands. Subsequent violation is punishable with harsh punishment. In this case imprisonment may extend to five years and fine may extend to five thousands. The keeper, printer may be held liable under this section for the publication of advertisement.¹

Section 294 A of the act makes punishable advertisement of lottery if it is not state lottery or state government authorized lottery with fine up to one thousand rupees. For such lottery, not only the maker of the advertisement but also the proprietor, printer or publisher of the newspaper would be liable, whether or not the lottery is actually held.²

Indecent Representation of Women (Prohibition) Act, 1986 was enacted to prohibit indecent representation of women by advertisement, in publications, writings, paintings, figures or any manner and for matters connected therewith or incidental thereto. Section 3 of the Act prohibits advertisements containing indecent representation of women which says publication are causing to be published or arranging or taking part or exhibiting of any advertisement containing indecent representation of woman in any form is prohibited. Section 6 of the same Act prohibits publication or sending by post of books, pamphlets, etc containing in indecent representation of women.

The object of **prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994** was to regulate the use of pre –natal diagnostic techniques for detecting genetic or metabolic disorders or chromosomal abnormality or certain congenital malformations or sex linked disorders and to prevent the misuses of such techniques for the purposes of pre-natal foeticide. Section 22 of the Act prohibits advertisement relating to pre-natal determination of sex and punishment for the same. Violation of the provision is punishable with imprisonment up to 3 three years and fine up to ten thousand rupees. The definition of advertisement under this Act is very comprehensive which include any notice, circular, label, wrapper, or other

¹ D.Pandurangam, Re, AIR 1953 Madras, 418.

² F.A.D. 'Souza V Emperor, AIR 1926 Sind, 213.

document, and any announcement made orally or by means of producing or transmitting light, sound or smoke.

Section 3 of Emblems and Names (Prevention of improper use) Act, 1950 prohibits the use, for professional or commercial purposes, of select emblems and names of national or international significance. An advertiser, who makes commercial use of such emblems and names, would be liable under the Act.

Commercial speech or advertisement is also freedom of speech given under Article 19(1) (a) of the Constitution of India. It says that all citizen shall have the right to freedom of speech and expression. But, this right is available to some restrictions which are- sovereignty and integrity of India, the security of state, friendly relations with foreign states, public order, decency or morality or contempt of court, defamation or incitement to an offence. ³In *Hamdard Dawakhana Case*⁴ our Apex Court told that commercial speech cannot be denied the protection of Article 19(1) (a) of the Constitution of India. The protection is available to the speaker as well as to the recipient of the speech. The recipient of commercial speech may be having much deeper interest in the advertisement than the businessman who is behind the publication.⁵ It is very much clear that commercial advertisements are available to citizens subject to restrictions given under Article 19(2).

The discriminatory allotment of government advertisement to different newspapers of the same category by the state government will impair the freedom of press violating Article 14 and Article 19(1) (a) of the constitution of India.⁶

Young Persons (Harmful Publications) Act, 1956 makes it a punishable offence to advertise a “harmful publication”.⁷ A harmful publication is a publication portraying the commission of offences, acts of violence, or cruelty, or incidents of a repulsive or horrible nature, in such manner as would tend to corrupt a young person.⁸

³ Article 19(2) of the constitution of India.

⁴ A.I.R.1960 SC554

⁵ TATA Press Limited V Mahanagar Telephone Nigam Limited AIR1995 SC 2438.

⁶ Dainik Samvad V State Of Tripura AIR 1989 Gau.

⁷ Section 3 of the Young Persons (Harmful Publications) Act, 1956.

⁸ Section 2 (a) of the Young Persons (Harmful Publications) Act, 1956.

Section 29 of the **Cosmetics Act, 1940** makes punishable advertisement of the government report for advertising which says that whoever uses any report of a test or analysis made by the central drugs laboratory or by a government analyst or any extract from such report, for the purposes of advertising and drug or cosmetic shall be punishable. Violation of this provision is punishable by way of penalty which may extend to five hundred rupees.

Section 126 The Representation of People Act, 1951 is very much important regarding advertisement as it prohibits political advertising forty hours before the polling time. Besides this section 127 of the same act requires all election pamphlets and posters to bear names of the printer and publisher.⁹

Drug and Magic Remedies Act, 1954 was passed for the regulation of the advertisements of drugs in certain cases and for the prohibition of the advertising for certain purposes of remedies alleged to have magic qualities and the matters connected therewith. This Act also prohibits advertisement relating to drugs and magical remedies for the treatment of certain diseases and disorders. Section 29 of the Act provides for the penalty for use of Government Analyst's report for advertising which may extend to five hundreds rupees. The definition of advertisement under this Act is very comprehensive which include any notice, circular, label, wrapper, or other document, and any announcement made orally or by means of producing or transmitting light, sound or smoke.¹⁰

The consumer protection Act, 1986 and advertising was passed for the protection of consumers from undue business practices. The appropriate consumer forum has the power to discontinue an unfair trade practice or a restrictive trade practice. The forum also has the power to issue a corrective advertisement to neutralize the effect of misleading advertisement.¹¹

The Transplantation of Human Organs Act, 1955 was passed for providing the regulation of removal, storage and transplantation of human organs for therapeutic purposes for the prevention of commercial dealings in human organs. Section 19 of the Act provides for punishment for commercial dealing in human organs. Section 19(f) says that publication or distribution or causing publication or causing distribution any advertisement inviting persons to supply for a payment of any human organ, offering to supply any human organ for payment

⁹ Madhavi Goradia Diwan, *Facets of Media Law* (Lucknow: Eastern Book Company, 2013), 379.

¹⁰ Section 2 (a) of the *Drug and Magic Remedies Act, 1954*.

¹¹ Madhavi Goradia Diwan, *Facets of Media Law* (Lucknow: Eastern Book Company, 2013), 377.

etc is punishable offence. Infringement of this provision is punishable from imprisonment from two years to seven years and fine ten thousands to twenty thousands.

Cable Television Networks (Regulations) Act, 1995 and Cable Television Networks (Amendment) Rules, 2006- section 6 of the Act deals about advertisement code. It says that no person shall transmit or re-transmit through a cable service any advertisement in conformity with the prescribed advertisement code. But this section exempts foreign satellite channels which can be received without the use of any specialized gadgets or decoder. Rule 7 of the cable television networks rules, 1994 provides a list of advertisement code. Under this rule some advertisements are prohibited like deriding any race, caste, color, creed and nationality; violating any provision of Constitution of India, tending to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way; presenting criminality as desirable, exploiting the national emblem, or any part of the constitution of India or person or personality of a national leader or a state dignitary, exploiting social evils like dowry, child marriage, promoting consumption of tobacco product etc. Contravention of the provision are punishable under section 16 and 17. Section 17 of the Act says that anyone who is held to be in violation of the provision of the Act is punishable with imprisonment which may extend to two years or fine extending up to 1000 or both. Every subsequent offence is punishable for a term which may extend to 5 years and with fine which may extend to 5000 rupees. Section 17 of the Act deals when offence is committed by company. In such case the person in charge will be liable. The authority under this Act is empowered to prohibit the transmission of a programme or a channel if it contravenes the Advertisement Code under Rule 7.

The Prize Competition Act, 1955 prohibits publication or distribution of advertisement of prize competition where the prize or prizes offered exceeds rupees 1000 in any month.¹²

Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 Section 5 of this Act prohibits advertisement of the tobacco products whether directly or indirectly, in all forms audio, visual or print media.

¹² *Ibid.*

Food Safety and Standards Act, 2006 section 53 of the Act provide penalty for misleading advertisement. This section says that any person who publishes advertisement which falsely describes any food or is likely to mislead as to the nature or substance or quality of any food or gives false guarantee is liable to be punished from penalty which may extend to ten lakh rupees.

Prasar Bharti Act, 1990 provides comprehensive code of commercial advertisement which is followed by Doordarshan and all India radio as they are under the control of Prasar Bharti. Rule 36 of the **Bar Council of India Rules** advocates are barred from soliciting or advertising, directly or indirectly, whether by circulars, advertisements, personal communication, interviews, inspiring newspaper comments or producing photographs to be published in connection with they have been engaged.

Motor Vehicle Act, 1998 also contains provision regarding advertisement. Section 116 (4) of the Act says that state government is authorize to empower any police officer not below the rank of Superintendent of police to remove or cause to be removed any sign or advertisement which may mislead as to traffic sign or breach the attention or concentration of the driver.

There are a number of laws regarding regulation of the advertisement. This multiplicity of laws is aggravating the problem. A comprehensive code is required for regulation for advertisement in India. Next problem is that there is no such regulatory law for advertisement in cyberspace. Another problem is related to enforcement agencies under various statutes. Enforcement agencies are seems to be sleeping this is the reason why misleading advertisements are spread in spite of being a number of advertisement regulatory statutes. At last, the cost of products are raising unreasonably high due to unnecessary advertisements. Government should provide guidelines regarding expenses on advertisement.