

CONCEPT OF VISUAL POLLUTION AND ITS LEGAL DISPARITIES

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Abstract

This paper analyses the constitutional provisions with respect to commercial advertisement and its field of business in marketing if there is a interference by the local bodies which can make laws to ban all forms of advertisement within its jurisdiction in the interest of the general public and to improve the visual aesthetics of the city. The constitutional provisions of Article 19(1)(a) which is right to freedom of speech and Article 19(1)(g) right to freedom of trade and profession are analyzed with respect to commercial advertisement and if a ban or prohibition of billboard/hoardings commercial advertisement is unconstitutional even if done by the state in interest of the general public and to improve the visual aesthetics of the city. The scope of the analysis is to the city of Bangalore and billboards as a form of commercial advertisement which contributes to visual pollution which is of a growing concern and which has face a need to curb visual pollution.

Introduction

Pollution has raised public concern and various types of pollution has been classified according to the effects it has on the basic elements of the earth. Apart from the basic forms of pollution like air and water, visual pollution is a new area of pollution and we have seen the importance increase to regulate visual pollution. Visual pollution is with regard to sight and our surroundings and how we see it. The impression of a community is based on its visual aspect or environment. Visual pollution is the whole of irregular formations and includes everything that affects the ability to fully enjoy and appreciate the view or environment. Visual pollution has a very wide scope to include anything within public reach and effects the pretty scenes in

surrounding environment such as excessive advertisement to spoil the architecture of the buildings, garbage on the streets, cluttered telephone lines and poles, billboards and hoardings¹

Visual pollution is the result of excessive advertisement, which spreads knowledge of the product in the market and induces the customer to purchase the product by creating value in the minds of the customers. Administrative negligence in public utility works in cases where the administration loses control over and loses track of public spaces and disorganization in the planning of public utility areas is included in visual pollution. Vandalism being another source of disturbance is the aesthetic view of the city ranges from graffiti, offensive messages and group markings.

Visual pollution effects the society is vast and includes traffic congestion, health hazards, psychological disturbances, loss in the quality of life, loss of sense of aesthetics and motor vehicle driver distraction. Psychologist after their research stated that the streets foster a socio-economic bond in bringing people together. The mentally pleasing system around streets and street collectively is called streetscape. Elements in such environment improve psychological well being by reducing stress, restoring attention, and increasing positive emotions and aesthetic values²

Even though visual pollution has a vast source in the surrounding environment, the scope of this paper reaches out only to the area of visual pollution by advertisement through the medium of billboards and hoardings and law related to the jurisdiction in the state of Karnataka and does not include any matter regarding the content and context of advertisement. It includes only the fixture of billboards and hoardings, which contribute to visual pollution, and removal of such in the interest of the public. There exist Karnataka Open Places (prevention of disfigurement) Act, 1981 and The Advertisement Bye-Laws 2006, which regulate the setting up of all types of advertisements within the jurisdiction, stated in the law

¹ *URBAN ADVERTISING CONTROL IN COMMERCIAL STREETS: THE CASE OF OSCAR FREIRE STREET*, , http://www.labcom.fau.usp.br/wp-content/uploads/2015/08/2012-Urban-Advertising-Control_final_12052012.pdf (last visited Jul 10, 2018).

²] <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4133958/> Lin, Y.H., Tsai C.C., Sullivan, W.C., Chang, P.J., Chang, C.Y.: Does Awareness Effect the Restorative function and perception of street trees? (2014) [7]

Karnataka Open Places (prevention of disfigurement) Act, 1981 is the legislation passed by the state legislatures that regulate all forms of advertisement in the cities mentioned in the act. The statement of objects and reasons of this act mentions the intention only to prevent disfigurement of buildings to the view of the public. Section 2 of the Karnataka Open Places (prevention of disfigurement) Act being the definition clause of the act gives only a broad definition of the terms advertisement, public view and public place. Section 3 of the act states the punishment or fine with respect to unlicensed advertisements or advertisements which do not have prior permission from local authority but this section also includes exceptions which state that any advertisement which is related to the building and the trade which takes place there will not be regulated under this act. This act does not involve and recognize the new methods and advertisements, which have come up in the 20th century

The Advertisement Bye Laws, 2006 is a law passed by the B.B.M.P (Bangalore Mahanagara Palike) after obtaining the sanction from the state government to regulate all forms of advertisement within the jurisdiction of the B.B.M.P city limits. This law well defines advertisements and includes all forms of advertisements. The act regulates and controls all forms of advertisements and includes licensing for billboard, hoardings and outdoor advertising. However the scope and objectives of this law includes the power of the B.B.M.P to prohibit or regulate the erection, location, exhibition, fixation, retention, size, shape or display of all or any class of advertisements in any street, public road, or public or private place, public or private building, wall, hoarding, structure, tree, lamp posts etc. This allows the B.B.M.P to completely prohibit advertisements within city limits to improve the visual aesthetics of the city in view of public interest and safety.³

The Advertisement Bye Laws clearly stated that the B.B.M.P has the power to prohibit the erection of any type of advertisements in the aim to promote public interest and to improve the visual aesthetics of the city, this includes the power to prohibit erection and removal of billboards and hoardings within the jurisdiction of the B.B.M.P. Visual aesthetics is the ability of one to enjoy and appreciate the view offered by the surrounding environment, here in this context it is the appreciation of the visual aspect of urban development and architectural features of developments and buildings. The existence of billboard and hoardings in the city restrict and completely negate the visual aesthetics of the city. Considering this aspect of visual

³ Section 1(B) of the Advertisement Bye Laws 2006

pollution the B.B.M.P has the power to prohibit the use of billboards and excessive advertisements within city limits.

In 2006, Sao Paulo, Brazil, which was one of the largest consumer markets, imposed a ban on advertisements but with strict storefront advertisement⁴. This step taken by the mayor of Sao Paulo brought up an important constitutional matter regarding the destruction of a business and loss in jobs. The advertisement agencies approached the court to state that the step taken by the city authority was unconstitutional. In *Sepex vs. Mayor of Sao Paulo*, the Supreme court stated that the step taken by the city authorities was not unconstitutional and was done in the highest degree of public interest.

In the context of the Indian Constitution the prohibition of commercial advertisement would involve the right to freedom of speech⁵ and right to freedom of trade or business⁶.

Right to freedom of Speech & Expression

Article 19(1)(a) of the Indian Constitution states that every citizen has the right to freedom of speech and expression, the inclusion of commercial advertisement in the context of freedom of speech and expression mainly depends on the courts interpretation and judgments. In **Hamdard Dawakhana v. Union of India**⁷, the Supreme Court of India stated that an advertisement was no doubt a form of speech and expression but every advertisement is not of matter dealing with freedom of speech and expression as it includes the context of commerce and trade. The Supreme Court also stated that a commercial advertisement advertising an individual's business couldn't be regarded as a part of freedom of speech. But later the Supreme Court modified its decision and laid details on the great significance on advertisement in **Indian Express v. Union of India**⁸, where the apex court of the country stated the commercial advertisement cannot be denied under Article 19(1)(a) of the Indian Constitution merely because they are issued by business men. In this case the court was referring to the importance of advertisement in news papers to provide information to the public and did not look into the

⁴ VISUAL POLLUTION - OUTDOOR ADVERTISING, <https://www.economist.com/business/2007/10/11/visual-pollution> (last visited Sep 3, 2018)

⁵ Article 19(1)(a) of the Constitution of India

⁶ Article 19(1)(g) of the Constitution of India

⁷ AIR 1960 SC 554

⁸ AIR 1960 SC 554

matter regarding commercial advertisement with respect to billboards and hoardings which obstruct a view and distract the drivers of motor vehicles which leads to visual pollution.

Reading the Hamdard Dawakhana and Indian Express cases the Supreme Court concluded in the **Tata Press Ltd v. Mahanagara Telephone Nigam Ltd**⁹, that commercial speech cannot be denied under Article 19(1)(a) of the Indian Constitution and stated that the public has the right to receive the information regarding the commercial product and the protection is available to the speaker and the recipient of the speech, under Article 19(1)(g) of the Indian Constitution.

Although the Constitution of India under Article 19(2) states that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right in exercise of the interest of the public.

Right to freedom of Trade and Occupation

Article 19(1)(g) of the Indian Constitution guarantees all citizen the right to practice any profession or to carry on any occupation, trade or business. Advertisement being a major sector in business in selling of advertisements, which generates income, is recognized under this section. Although under Article 19(6) of Constitution of India states that nothing in Clause (g) shall affect any existing laws and allows the State to make laws in view of the general public interest with reasonable restrictions. This is inclusive of the power of the State to completely restrict any form of business in the interest of the general public. In **Nagar Rice and Flour Mills v. N. Teekappa Gowda & Bros**¹⁰, the Supreme Court held that even though the Constitution of India granted the citizens the right to freedom of trade and occupation, this freedom and right can be curtailed by the state under Article 19(6) in the interest of the general public.

The B.B.M.P which is considered to be within the context of the state¹¹ as it is a local authority/body which is under the control of the government which has the power to make

⁹ AIR 1995 SC 2438

¹⁰ 1971 AIR 246

¹¹ Article 12 of the Indian Constitution

laws, issue orders, bye laws, create notifications and make regulations. The General Clauses Act, 1897 also recognizes the B.B.M.P as a local authority¹² and the constitution qualifies it under the meaning of a State, which has the power to make laws.

Conclusion

Visual pollution is the concept of pollution, which involves the sub-consciousness of a person mind and thinking process effects a person directly in case of excessive advertisements adhering to distraction, and catches the attention of a person and indirectly through the decisions and thoughts of an individual. The existing laws in the city of Bangalore with respect commercial advertisement which is laid down by the B.B.M.P which is the local municipal authority allow the body to prohibit any form of advertisement in the interest of the public and to maintain the aesthetics of the city. These provisions under the Advertisement Bye-Laws 2006 pull in the question if the ban on billboards as a form of commercial advertisement to curb visual pollution and improve the visual aesthetics of the city is imposed, will it go against the constitutional provisions of right to freedom to speech and right to freedom of trade and business. As seen in the court's interpretation commercial advertisement is a part of Article 19(1)(a) but Article 19(2) allows the state to make laws, which on the interest of the public is of the highest degree. A similar provision of Article 19(6) states the exception to Article 19(1)(g). Looking into this area the municipal bodies have the power to impose a ban on all types of billboards and hoardings and this ban will not interfere with the rights granted under the Indian Constitution.

¹² Section 3(31) of the General Clauses Act of 1897