



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.M. 1st Semester

GROUP: Constitutional Law

SUBJECT: Media Law

SUBJECT CODE: LL.M. 110

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Lecture-16



LAWS OF ADVERTISING

To protect the consumer against misleading advertisements a number of laws have been passed all over the world. In India, it was started in 1868, when commercial activities were included under the purview of the Indian Penal Code. With growing competitiveness in the market & growth of consumer awareness, additions and amendments are being introduced in the legal system to control the erring advertisers. Some of the major laws are listed here:

INDIAN PENAL CODE, 1868: With regard to advertising, the IPC provides that “a book, pamphlet, paper writing, drawing, painting, representations, figures or any other object shall be deemed to be obscene if it is lascivious or appeals to prurient interests or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read see, or hear the message contained or embodied in it.”

The code, though does not refer to advertising in particular, covers advertising as part of the activities listed above.

INDIAN CONTRACT ACT, 1872: This Act governs the rights and duties of advertising agencies.

THE PUNJAB EXCISE ACT, 1914: This Act prohibits advertising offering or soliciting the use of liquor in any form in the area of Punjab. An extension of this Act also prohibits such advertisements in the Union Territory of Delhi.

THE DRUGS AND COSMETICS ACT, 1940: This Act enables the Government to regulate the import, manufacture, distribution and sale of drugs and cosmetics.

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954: This Act prohibits publication of objectionable advertisements in newspapers and magazines or otherwise relating to alleged cures for venereal diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women. The Act controls drug advertisements and also advertisements of remedies stated to have magical qualities known as magic remedies. In this case an advertisement includes ‘any notice, circular, label, wrapper or other documents and announcement made by any means or producing or transmitting light, sound or smoke’.

YOUNG PERSON (HARMFUL PUBLICATION) ACT, 1956: This Act provides ‘penalty for a person who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation any harmful publication or for purpose of sale, hire distribution, public exhibition or circulation, prints, makes known by any means whatsoever, that any publication harmful for young people.

COPYRIGHT ACT, 1957: This Act, which protects the copyright, also protects the right of the copywriter and other creators of advertisements.

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT 30, 1984: Popularly known as the MRTP Act, this Act and its amendments have made special provisions for regulating misleading advertisements and unfair trade practices etc.

THE CODE OF COMMERCIAL BROADCASTING:

This Code has laid down the following general rules of conduct in advertising:

- o Advertising should be so designed as to conform to the laws of the country and should not offend against morality, decency and religious susceptibilities of the people.
- o No advertisement should be permitted:
 - * Which derides any race, caste, colour, creed, nationality except wherein such usage would be for the specific purpose of effective dramatization, such as combating prejudice;
 - * Which is against any of the objectives, principles, or provisions of the Constitution of India;
 - * Which will tend to incite people to crime or to promote disorder, violence or breach of law;
 - * Which presents criminality as desirable, or furnish details of crime or imitation thereof;
 - * Which would adversely affect friendly relations with foreign states;
 - * Which exploits the national emblem, or any part of the Constitution, or the person or personality or national leader or State dignitary;
 - * No advertisement shall be permitted the objects whereof are wholly or mainly of a religious or political nature; advertisements must not be directed towards any religious or political end or have any relation to any industrial dispute;

* Advertisement for services concerned with the following are not acceptable; (a) Moneylenders; (b) Chit Funds and Saving Schemes other than those conducted by nationalized or recognized banks; (c) Matrimonial agencies; (d) Unlicensed employment services; (e) Fortune-tellers or sooth-Sayers, etc., and those with the claims of hypnotism would be excluded from advertising on T.V.;

Betting tips and guide books, etc., relating to horse racing or other games of chance shall not be accepted;

* No advertisement shall contain references, which are likely to lead the public to infer that the product advertised or any of its ingredients has some special property or quality, which is incapable of being established, or proved, e.g., cure for baldness;

* Scientific or statistical excerpts from technical literature, etc., must be used only with a proper sense of responsibility to the ordinary viewer. Irrelevant data and scientific jargon must not be used to make claims appear to have a scientific basis they do not possess.

Statistics of limited validity should not be presented in such a way as to make it appear that they are universally true;

* Advertisers or their agents must be prepared to produce evidence to substantiate any claims or illustrations;

Advertisements should not contain disparaging reference to another product or service;

* Imitation likely to mislead viewers even though it may not be of such a kind as to give room for legal action or be deemed, as breach of copyright must be avoided;

* Visual and verbal representation of actual and comparative prices and costs must be accurate and should not mislead on account of undue emphasis or distortion; and

* Testimonials must be genuine and must not be used in a manner likely to mislead the viewers. Advertisers or the agencies must be prepared to produce evidence in support of any testimonial and any claims it may contain.

o In all other respects, the Director General, AIR or DD be guided for purposes of commercial broadcasting and telecasting on AIR or DD by the Code of Ethics for Advertising in India issued by the Advertising Council of India, as modified from time to time.

o Notwithstanding anything contained herein, this code is subject to such modification or direction as may be made or issued by the Government of India from time to time.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Advertising is omnipresent, it is alluring, it is inviting and it involves people. Advertising creates images or personalities for the products advertised.	True	False
2.	"Freedom" implies the absence of restraint, particularly of legal penalties.	True	False
3.	"freedom of information" means a citizen is free to receive and impart information without fear of punishment.	True	False
4.	With regard to advertising, the IPC provides that "a book, pamphlet, paper writing, drawing, painting, representations, figures or any other object shall be deemed to be obscene if it is lascivious or appeals to prurient interests or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read see, or hear the message contained or embodied in it.	True	False
5.	The Press Commission opined that secrecy in bureaucracy, which arose out of functional necessity, as a means to achieving organizational efficiency-has become an end in itself from effective outside control.	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)