



# 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-18



## LECTURE 18: Objectionable Advertisements

### WHAT ARE OBJECTIONABLE ADVERTISEMENTS?

Section 3 of the Act prohibits advertisements of certain drugs for treatment of certain diseases and disorders. Accordingly, no person shall take any part in the publication of any advertisement referring to any drug in terms, which suggest or are calculated to lead to the use of that drug for:

- (a) The procurement of miscarriage in women or prevention of conception in women; or (b) The maintenance or improvement of the capacity of human beings for sexual pleasure; or (c) The correction of menstrual disorder in women; or
- (d) The diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the schedule, or any other disease, disorder or condition (by whatsoever name called which may be specified in the rules made under this Act.

Provided that no such rule shall be made except:

- (i) In respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies; and
- (ii) After consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.

Note: Advertisements of the nature described in this section, tend to cause the ignorant and the unwary to resort to self-medication with harmful drugs and appliances which cause great harm, the Act puts a stop to such undesirable advertisements in the public interest. The provision is subject to the other provisions of this Act. Such provisions are to be found in Section 14.

The Supreme Court has ruled that the advertisements affected by the Act do not fall within the purview of 'freedom of speech' in Article 19(1)(a) of the Constitution.

### PROHIBITION OF MISLEADING ADVERTISEMENTS RELATING TO DRUGS:

Section 4 of the Act prohibits misleading advertisements relating to drugs. Accordingly no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which:

- (a) Directly or indirectly gives a false impression regarding true character of the drug; or
- (b) Makes a false claim for the drug; or
- (c) Is otherwise false or misleading in any material particular.

#### Prohibition of Advertisement of Magic Remedies

This Act also prohibits the advertisement of magic remedies for treatment of certain diseases and disorders. According to the Act, no person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in Section 3.

#### **PROHIBITION OF IMPORT INTO AND EXPORT FROM INDIA OF ADVERTISEMENTS:**

Section 6 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. prohibits import into and export from India of certain advertisements. No person shall import into or export from India any document containing an advertisement of the nature referred to in Section 3 or Section 4 or section 5 as discussed above. It is also prohibited of import into and export from India any documents containing any such advertisements shall be deemed to be goods of which the import and export has been prohibited under Section 19 of the Sea Customs Act, 1878. All the provisions of the Sea Customs Act, 1878 shall have effect accordingly.

#### **PENALTY:**

Any person contravenes any of the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 is punishable by the Act. It takes two forms such as:

- (a) In the case of a first conviction, with imprisonment which may extend to six months, or with fine, or with both;

(b) In the case of a subsequent conviction, with imprisonment which may extend to one year or with fine, or with both. (Section 7 of the Act).

### **SEARCH AND SEIZURE:**

Any person authorized by the State Government is empowered under the Act to enter, search, seize and examine any record register, document. Under Section 8 of the Act, any Gazetted Officer authorized by the State Government may:

- (a) Enter and search at all reasonable times, with such assistants, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;
- (b) Seize an advertisement, which he has reason to believe contravenes any of the provisions of this Act;
- (c) Examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

There are provisions in Code of Criminal Procedure, 1973 relating to search or seizure. These provisions are also equally applicable to any search or seizure under Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

## SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	In respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies.	True	False
2.	The Supreme Court has ruled that the advertisements affected by the Act do not fall within the purview of 'freedom of speech' in Article 19(1)(a) of the Constitution.	True	False
3.	Section 6 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. prohibits import into and export from India of certain advertisements	True	False
4.	The quality of the value of competing goods or the trustworthiness of statements made by others.	True	False
5.	Any person contravenes any of the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 is punishable by the Act	True	False

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