

Lecture- 15



13.2 ADVERTISING LAWS IN INDIA

The origin of advertising laws in India is concealed in early annals of Indian history. The available records show that advertising laws in India are almost as old as the print media itself. You may recall that the first newspaper to be started in India, The Calcutta General Advertiser, also called, Hickey's Bengal Gazette, appeared in 1780 in Calcutta (now renamed as Kolkata). It carried some classified notices and notifications meant for the employees of the British East India Company. The Company was then fully involved in politically administering India. Though only a few issues of the Hickey's Gazette were brought out, most of the contents it carried, related to the Company's employees, and were worded in objectionable and defamatory language. These were protested against by the Company's management and Hickey was repeatedly warned against publishing such materials. However, he persisted and as a result, Hickey was deported back to England, and the paper stopped publication. That is also deemed to be the point of time in India's history when the laws pertaining to, and restricting the freedom of the press, and also advertisements were said to have been conceived.

13.2.1 Early Beginnings

The first newspaper to be published in India, Hickey's Gazette, was in English language. However, in due course of time several publications were brought out in local languages such as Persian, Urdu, Bengali and Hindi. For the first time in 1799, certain rules and regulations were issued in India that were applicable on newspapers of all categories. However, a systematic 'licensing' procedure was laid down in 1823 for starting the newspapers. According to Licensing Regulations, 1823, the press without license was a penal offence. The restriction was directed mainly to Indian language newspapers or those edited by the Indians. The Indian Penal Code that was notified in 1860 contained some provisions pertaining to the press and thereby also applicable on advertising. The Press and Registration of Books Act was passed in 1867. Though a number of enactments followed thereafter, none of these exclusively related to, or applied on advertising industry.

Incidentally, Mahatma Gandhi, leader of India's freedom movement, who was editing two papers – Navjivan in Gujarati and Young India in English considered advertising as 'immoral' in the sense that it could influence the contents of newspaper. Therefore the two papers did not

publish even one line of advertising in any of his publications. Later Mahatma Gandhi founded Harijan Sevak Sangh which brought out three weekly newspapers, namely Harijan Bandhu in Gujarati language, Harijan Sevak in Hindi and Harijan in English. These three papers were also not carrying any advertisement as such. The real beginnings of legislating laws began in independent in 1950, when India adopted its Constitution. One of the first and the most crucial enactments for the

advertising industry was the provisions contained in the Article 19(1)(a) of Advertising Ethics & Laws Constitution on fundamental rights, which said, 'all citizens shall have freedom of speech and expression.' Article 19(1) (a) also applies on the contents of the advertising copy that appeared in the print or broadcast. This clause of the Constitution has proved to be an eminent benchmark in the beginnings of advertising law in India. However, the freedom of speech and expression is not absolute. Under Article 19 (2) of our Constitution, reasonable restrictions could be imposed by the State on freedom of speech expression in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

13.2.2 Important Laws Relating to Advertising

After India became a sovereign Republic, a plethora of advertising- specific laws were enacted. Some of the most important advertising laws include:

- 1) The Emblems and Names (Prevention of Improper Use) Act, 1950
- 2) The Drugs and Cosmetic Control Act, 1940
- 3) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- 4) The Prize Competition Act, 1955.
- 5) The Prevention of Food Adulteration Act, 1954
- 6) The Copyright Law, 1957
- 7) Cigarettes and other Tobacco Products (Prohibition of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
- 8) The Indecent Representation of Women (Prohibition) Act, 1986.
- 9) The Consumer Protection Act, 1986.
- 10) Trade Marks Act, 1999
- 11) The Prize Chits and Money Circulation Schemes (Banning) Act, 1978

We will briefly discuss some of the important provisions of these laws that regulate, control or prohibit advertisements of objectionable nature. The details given below will serve your purpose as media person to have an overview of these laws. Emblems and Names (Prevention of Improper Use) Act, 1950:

The law lays down that no person will use name or national emblem, or their colourful imitation, or register any firm, or any other institution containing some emblems or names for any commercial purpose. Some of these emblems or names include:

- the United Nations- UN;
- World Health Organisation –WHO; UNESCO;
- India's national flag; any insignia of India's central or state governments;
- Rashtrapati Bhawan; Mahatama Gandhi, Shivaji, or the Prime Minister of India;
- medals or badges, such as Ashok Chakra, etc.

Drugs and Cosmetic Control Act, 1940:

Though enacted before independence, the law still stands on India's statute book in a somewhat amended form. The primary objective of the Act is to ensure that the drugs and cosmetics sold in India are safe, effective and conform to state quality standards.

This law regulates import, manufacture, distribution, and sale.

Laws of drugs and cosmetics at the national level. It regulates the approval of new drugs and clinical trials in the country. This law prescribes the standards for drugs and medical devices, control over the quality of imported drugs, testing of drugs, and all other related activities with the drugs in the country. The law affects the advertisements of drugs and cosmetic items.

Drugs and Magic Remedies (Objectionable Advertisement Act, 1954:

This Act controls advertising of drugs in India. It prohibits advertisements of drugs and remedies that claim to have magical properties, and makes doing so a cognizable offence. The law prohibits advertising of drugs and remedies for: inducing miscarriage or preventing conception in

women; improving or maintaining the capacity for sexual pleasure; correction of menstrual disorders, etc. The words “no person shall take any part in the publication” are wide enough to include a printer or publisher of the newspaper or journal where such advertisement is printed or published.

Prize Competition Act, 1955

It is an offence under this law to issue or publish any advertisements or notices, offering money in which prizes are offered for solution of any puzzle based on the building up, arrangement, combination or permutation, of letters, words or figures. Prevention of Food Adulteration Act, 1955 and the Food Safety and Standards Act, 2006.

These Acts relate to advertisements of food products put out for sale and which are adulterated with ingredients bad or harmful to human health. The provisions of these laws also prescribe standards to be observed for ensuring science-based standards for articles of food.

The Copyright Law, 1957

This law was enacted to ensure that all the creators of original works of art, painting, architecture, music, literature and dramatic are exclusively able to enjoy the fruit of their labour in creating these works. The law lays down terms and conditions for holding copyright, transfer of ownership of copyright, duration of copyright, punishment for the infringement of the copyright.

Cigarettes and other Tobacco Products Advertisement law of 2003

This law prohibits publication of advertisements for production, supply and trading of cigarettes and other tobacco products. Terms and conditions of seizure, destruction of such goods and punishment are laid down in the law. The law also implements measures for the protection of non-smokers from involuntary exposure to tobacco smoke.

Indecent Representation of Women (Prohibition) Act, 1986

The law prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or

incidental thereto. It prohibits indecent representation, i.e., depiction in any manner of the figure of a woman, her form, body, or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or which is likely to deprave, corrupt, or injure the public morality or morals of women in any way.

Consumer Protection Act, 1986

This law is termed as 'benevolent social legislation' and lays down the rights of consumer. It provides for promotion and protection of rights of consumer. The law details the meanings of goods, services and unfair trade practices punishable under the law.

Trade Marks Act, 1999

Laws such as the Trade Marks Act, 1999, the Patents Act, 1970, and similar enactments protect the rights of owners of intellectual property. No advertisement that violates intellectual rights of any owner can be published. As per law "trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours." The law prescribes punishment for its infringement.

The Prize Chits and Money Circulation Schemes (Banning) Act, 1978

Section 3 of the Act imposes a ban on chit fund scheme. It specifically holds that no person shall encourage or organise or enroll as a member, participate in any of such schemes which are banned under the Act. Any person who breaches the provisions of section 3 of the Act shall be punished under the provisions of section 4. The punishment may be imprisonment extending to three years or with fine or with both.