



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.M. 1st Semester

GROUP: Constitutional Law

SUBJECT: Media Law

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Lecture-19



LECTURE 19: Offences by Companies

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.

OFFENCES BY COMPANIES: (SECTION 9 OF THE ACT):

1. If the person contravening any of the provisions of this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

2. Notwithstanding anything contained in Sub-section (1) where an offence under this Act has been committed by the company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or the officer of the company, such director, manager, secretary or other officer of the company shall be liable to be proceeded against and punished accordingly.

For the purpose of this section company means any corporate body and includes a firm or other association of individuals and director in relation to a firm means a partner in the firm.

COGNIZABILITY AND JURISDICTION:

An offence punishable under this Act shall be cognizable. This is notwithstanding anything contained in the Code of criminal Procedure, 1978, (Section 9-A). As regard jurisdiction to try offences, no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

EXCEPTIONS OR SAVINGS:

The following are the exceptions as to the application of this Act. Accordingly under Section 14 of the Drugs and Magic remedies (Objectionable Advertisements) Act, 1954, nothing in this Act shall apply to:

- (a) Any signboard or notice displayed by a registered medical practitioner on his premises indicating that treatment for any disease, disorder or condition specified in Section 3, the Schedule or the rules made under this Act, is under taken in those premises; or
- (b) Any treatise or book dealing with any of the matters specified in Section 3 from bona fide scientific or social stand point; or
- (c) Any Advertisement relating to any drug sent confidentially, in the manner prescribed under Section 16 only to a registered medical practitioner; or
- (d) Any Advertisement relating to drug printed or published by the government; or
- (e) Any Advertisement relating to a drug printed or published by any person with the previous

sanction of the Government granted prior to the commencement of the Drugs and Magic Remedies (Objectionable Advertisements) Amendment Act, 1963.

POWER OF THE CENTRAL GOVERNMENT: (SECTION 16 OF THE ACT):

1. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such rules may:

(a) Specify any disease, disorder or condition to which the provisions of Section 3 shall apply;

(b) Prescribe the manner in which advertisements of articles or things referred to in Clause (c) of Section 14 may be sent confidentially.

3. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the sessions aforesaid both Houses agree in making any modification in the rule shall thereafter have effect only in such modification in the modified form or be of no effect, as the case may be, so however, that any such modification annulment shall be without prejudice to the validity of anything previously done under that rule.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	If the person contravening any of the provisions of this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and	True	False

	punished accordingly.		
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)