
THE ISSUES WITH THE REGULATION OF COMMERCIAL SPEECH IN RELATION TO FREEDOM OF SPEECH

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ABSTRACT

The freedom to think and talk freely and get knowledge from others through publications and public dialogue, without fear of retaliation, limitation, or repression by the government, is the essence of free speech. Commercial speech is described as a speech that offers a commercial transaction or is primarily focused on the speaker's and his audience's economic interests. Simply expressed, it is a declaration of business interest. Any expression of ideas, values, or opinions communicated to the general public through various media, such as the press, films, radio, television, and other forms of mass communication, falls under the definition of 'commercial speech' or 'commercial expression' as defined by the Supreme Court under the Freedom of Speech and Expression Act.

Current Scenario and Associated Issues

Whether advertising or "commercial speech" is protected by the Constitution has been a long-standing one. The fundamental issue is that it might be challenging to identify what constitutes "Commercial Speech" sometimes. The courts strive to strike a balance between an individual's right to receive communication and an individual's or company's right to transmit it.

Citizens enjoy the right to freedom of speech and expression, to peaceful assembly without arms, to organize groups or unions, to move freely within India's territory, and to dwell in any part of the country, according to Article 19 in its current version to acquire, keep, and dispose of property, as well as to practice any profession or carry on any business in India any profession, trade, or enterprise. Nevertheless, what is entirely black and white for cases of Individual rights in case of speech and the freedom of expression becomes increasingly tricky in determination in the case of a corporation as they are not only a way of expression but also a way to derive income.

Commercial ads in India are not afforded any explicit constitutional protection. Since 1960, India has discussed this subject. Like those in other areas of the world, courts in the United States have not followed a consistent logic. There have been several points of view. After concluding that there should be no restrictions on the distribution of information, the courts modified the law. There are, nevertheless, several unsolved questions. Is it a legal matter?

Due to the constitutional provision of freedom of expression, are business ads protected speech? Can commercial ads be afforded constitutional protection?²

The Supreme Court held in *Indian Express Newspaper v. Union of India* that commercial speech is protected under Article 19's ambit of free speech and expression, stating, "We are of the opinion that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by businessmen, and their true character is detected by the object for which it is employed."

"The case of *Hamdard Dawakhana v. Union of India* is the first time the Supreme Court has considered and resolved on constitutional protection for commercial ads *If Drugs and Magic*

¹ *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*, (1995) 5 SCC 139

² Advertising and commercial speech a first amendment guide,

<https://www.pli.edu/catalog/publications/treatise/advertising-and-commercial-speech-a-first-amendment-guide>

Remedies (Objectionable Advertisements) Act 1954, constitutionally valid in this scenario (was challenged on the grounds that it was unconstitutional. Furthermore, to see if the right to free expression has been curtailed."³

The significance of information in the operation of efficient markets has long been recognized. Customer requires knowledge in order to make the best use of their money and make the best purchase decisions. Advertising is a piece of information and persuasive medium supporting the flexible distribution of resources and delivering much of the day-to-day schooling resources required for a free-market

Commercial communication is reportedly more objective than noncommercial speech since it is more verifiable, and it is also believed to be more durable because its goal is profit-oriented. Both of the aforementioned distinctions are merely cosmetic and do not warrant any disparity in the degree of protection provided. The first distinction that commercial communication is more objective is false, as there are certain advertisements that are just political assertions with no evidence of verifiability.

Noncommercial speech, on the other hand, or speech motivated by a political objective, is allowed complete protection under the assumption that it is required to discover political truth and ensure representative democracy. Even today, the protection afforded to commercial speech is conditional rather than unconditional. As a result, political expression continues to be given priority and is stated to be given the highest protection. In the case of India, it is likewise justifiable on the grounds put out in Article 19(2), and it is not susceptible to government regulation in the US. Which many would say is quite sad and might even resemble double standards, which are sad to see.

"Because of the Supreme Court's judgment in *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd*, the finding in the *Hamdard Dawakhana* case now only applies to unpleasant ads and cannot be extended to all commercials. Commercial speech is included in the Freedom of Speech and Expression granted by Article 19(1)(a) of the Constitution, according to the court. The protection of Article 19(1)(a) of the Constitution cannot be denied to commercial speech simply because it is provided by businesspeople."

³ *Hamdard Dawakhana v. Union India* AIR 1960 SC. 554

Despite the fact that commercial speech is essential in the given aspects, that is, it leads to the dissemination of information, thereby assisting consumers in making informed decisions that support the public interest and help keep prices low, thus benefiting the economy, it has consistently been treated like a stepmother. Simply put, courts may still be compelled to uphold the Hamdard decision since it has not yet been reversed and continues to be a "good law." In many cases, the lack of protection afforded to commercial speech is explained by the distinction made between commercial and noncommercial speech in US court decisions.

Remedial Steps

The core of the problem is the author's belief that categorizing all communication as commercial or noncommercial is the best answer available. Advertising serves both informative and transactional purposes in a marketplace of products and services. The goal is always the same: to motivate the reader to take action, whether it is political, ideological, or commercial. If it is stated that a commercial advertisement delivers no noncommercial information to the public or that a noncommercial speech would not result in any economic advantage, this is an oversimplification.

It also offers the government a deadly tool with which to stifle individuals' freedom of speech and expression based on its own whims and fancies by simply labeling it as 'commercial' in nature. What is protected now as freedom of expression may become susceptible tomorrow as commercial speech? This will create a chaotic scenario, infringing on the virtues of clarity and predictability, which are at the heart of a modern legal system. Thus, in order to obtain the full extent of Article 19(1)(a), the existing ridiculous hierarchy should be ignored, but misleading and deceptive ads should be kept outside the area of complete protection, i.e., restricted on the reasons provided out in Article 19(1)(a) (2).⁴

Conclusion

Consumers are affected by commercial speech in both good and bad ways. A customer is a national asset, and as such, he has every right to choose the things he wants, which is feasible when the product is promoted. Consumers have a fundamental right to obtain information about

⁴ Step Motherly Treatment Given to Commercial Speech under Article 19(1): A Critical Analysis of the Existing Hierarchy The RMLNLU Law Review Blog, <https://rmlnlulawreview.com/2020/05/01/step-motherly-treatment-given-to-commercial-speech-under-article-191-a-critical-analysis-of-the-existing-hierarchy/>

products and things, and no one may limit this right unless the Constitution expressly allows it.

The Supreme Court of India has ruled that commercial speech falls inside the scope of freedom of speech and expression under Article 19(1)(a) of the Constitution. However, the Supreme Court of India made it plain that the government can restrict commercial speech and advertising connected to products if it is misleading and deceptive. There is no violation as long as commercial discourse about items is correct. However, the issue only occurs when the advertising is deceptive and untrue.