

The logo of Galgotias University is a stylized 'G' composed of three curved, overlapping bands in shades of yellow, blue, and red. It is centered in the background of the slide.

Media, Advertisement & Law

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Topics Covered

Unit-5: Media and Other Contemporary Issues

- Media, Advertisement and the Law
- Concept of Advertisement
- Advertising Ethics in India
- Regulation of Advertising
- Advertising Standards Council of India (ASCI)
- The Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 & other Laws.

Media, Advertisement and Law

- Advertising is an expression intended for promotion of a product or a service or a concept.
- Advertising is an economic phenomenon, involving constitutional rights, legal limitations, economic interests and also liabilities towards the receivers of communicated advertisement message.
- Strictly speaking, advertisement in terms of print media and electronic media, is the material published for promotion of a product involving a payment of consideration for publication, which is expected to fetch some publicity.
- Codes of the Advertising Standards Council of India (ASC) defined Advertisement as: 'Advertisement' is a paid for communication, addressed to the public on a section of it, the purpose of which is to influence the options of behaviour of those to whom it is addressed. Any communication which in the normal course would be recognised as an advertisement by the general public would be included in his definition even if it is carried free of charge for any reason.

Concept of Advertisement

- Advertising as a concept is a product of the increased commercial transaction, and competitive marketing strategies.
- Every propagatory means to promote a concept or service is a form of advertisement.
- It is a form of communication like any other process of sending across the message, which can be called medium to reach the masses.
- Advertisement is any document which announces or proclaims to the public the production, quality, availability or the like of something.
- Advertisement is also a speech, though categorized as commercial, the publisher and printer or editor of the published material, whether it is commercial speech or news story or editorial matter, will be held liable for any kind of illegality.

- Advertising may be broadly divided into broadcast advertising and non broadcast (or print) advertising.
- One of the most important tasks of the research wing of an advertising agency is to select the right media, right region and right language for the advertisement of the good or service of the advertiser.
- The commonly used media are:
 - Newspapers and Periodicals
 - Television Channels, Radio Jingles And Informative Talks, Discussions etc. aiming at Specific Target Audience
 - Outdoor Signs
 - Direct Mail
 - Internet

Advertising Ethics in India

- More than external regulation, the advertisement needs internal controls and self regulation.
- With the increased competition the advertising became an essential component of commercial strategy for publicity, which in turn paves the way for higher sales resulting in exploitation.
- False and misleading advertising is the most common way of such exploitation.
- Self-regulation in advertising should be and has been a subject matter of Advertising Ethics.

Advertising Standards Council of India (ASCI)

- **ASCI** is a voluntary self-regulatory council established in 1985 to promote responsible advertising and to enhance public confidence in advertisements.

The council's objectives are:

- To ensure the truthfulness and honesty of representations and claims made by advertisements
- To ensure that advertisements are not offensive to generally accepted standards of public decency
- To safeguard against the indiscriminate use of advertising for the promotion of products regarded as hazardous to society or to individuals.
- To ensure that advertisements observe fairness in competition so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behavior in business

Regulation of Advertising

- No specific enactment is contemplated in India dealing wholesomely with advertising.
- That is also not a requirement as there are different legislations, which provide for specific regulations for advertising.
- Lotteries, Betting Advertisements, Election Advertisements, Indecent Advertisements, Medical Advertisements, Advertisements promoting Tobacco and Wines are illegal as they are prohibited by law.
- Precedents and related or associated laws guide regulation of Advertisement.

Laws Governing Media

- The Press Council Act 1978
- Cable Television Network Rules, 1994
- Code for Commercial Advertising on Doordarshan and All India Radio
- Electronic Media Monitoring Centre (EMMC)
- Norms for Journalist Conduct issued by the Press Council of India
- Code of Conduct of the News Broadcasters Association

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Laws Protecting Society and the Consumer

- Emblems and Names (Prevention of Improper Use) Act, 1950
- Young Persons (Harmful Publications) Act, 1956
- Companies Act, 1956
- Standards of Weight & Measures Act, 1976
- Indecent Representation of Women (Prohibition) Act, 1986
- Consumer Protection Act, 1986
- Laws related to intellectual property rights

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Industry-Specific Laws

- The Drugs and Cosmetic Act, 1940
- The Transplantation of Human Organs Act, 1994
- The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954
- The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Advocates Act, 1961
- Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- Securities and Exchange Board of India Act, 1992
- The Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- Public Gambling Act, 1867, the Lotteries (Regulation) Act, 1998 and the Prize Competitions Act, 1955
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
- The Food Safety & Standards Act, 2006

Illustrations

Legal Services

- The **Bar Council of India Rules** formulated under the **Advocates Act 1961** strictly enforce the advertisement ban and publicity rules governing law firms' websites. These rules were enacted and enforced to curb the false advertisement of lawyers to gain publicity to attract clients.
- **The Transplantation of Human Organs Act, 1994:** This law provides for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs. This law prohibits any advertising inviting persons to supply, offering to supply, any human organ for payment.

- The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ("**Tobacco Prohibition Act**") prohibits all direct and indirect advertising of tobacco products in all media.
- **The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954** prohibits advertisement of magical remedies of diseases and disorders.
- **The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994** prohibits advertisements relating to pre-natal determination of sex.
- The **Cable Television Network Rules, 1994**, the **Advertising Codes of Doordarshan**, and the **All India Radio and Norms for Journalist Conduct** issued by the **Press Council of India** prohibit any advertisement directly or indirectly promoting the production, sale, or consumption of cigarettes, tobacco products, wine, liquor, or other intoxicants. However, some states allow advertising through billboards, signboards etc. but subject to many restrictions. Also, the **ASCI Code** prohibits use of minors for advertising alcohol products.

- The **Prize Chits and Money Circulation Schemes (Banning) Act, 1978** prohibits advertisements relating to prize chit and money circulation schemes.

The **Representation of the People (Amendment) Act, 1996** has the following provisions relating to advertisements:

- prohibit advertisements for a period of forty-eight hours ending with the hours fixed for conclusion of polling for any elections in a given polling area.
- use of displaying posters, signboards etc. for political advertisement in any public place strictly in accordance with the relevant provisions of the local laws.
- equitable opportunity to all political parties and candidates to have access to public advertisement space for election related advertisements during the election period.
- use of private premises for political advertisement only with the voluntary permission of the occupant.
- prohibition of any and all advertisements at the cost of the public exchequer regarding achievements of the political party/ruling government.

Under the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**, issued under the **Indian Medical Council Act, 1956**, physicians are not allowed to advertise their services in any form or manner of advertising through any mode, as soliciting of patients directly or indirectly, by a physician, by a group of physicians, or by institutions or organizations is unethical. (A physician refers to a doctor with a qualification of MBBS or MBBS with a postgraduate degree/diploma or with an equivalent qualification in any medical discipline.) However, medical practitioners are allowed to make a formal announcement in press regarding the following:

- On starting practice
- On change of type of practice
- On changing address
- On temporary absence from duty
- On resumption of another practice
- On succeeding to another practice
- Public declaration of charges

References

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