



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CASE COMMENTARY: HAMDARD DAWAKHANA (WAQF), DELHI & ANOTHER V. UNION OF INDIA

Citation: AIR 1960 SC 554 | (1960) 2 SCR 671

Bench: Justice J.L.Kapur, Justice S.K. Das, Justice K. Subba Rao, Justice K.N. Wanchoo & Justice K.C. Das

-Ayushi Malhotra

INTRODUCTION

India, renowned for its rich cultural heritage and ancient systems of medicine, including Ayurveda and Unani, has successfully maintained a delicate balance between science and tradition. The Constitution embodies this ideal by protecting innovations and cultural practices while also ensuring that the health and well-being of the public are paramount in a democratic society.¹

The case of Hamdard Dawakhana (Waqf), Delhi and Another v. Union of India² is one of the notable and earliest cases delivered by the Supreme Court of India about the freedom of speech and expression under Article 19(1)(a)³ of the Indian Constitution, with respect to commercial speech. This case dealt with the constitutional validity of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, which was formulated to control the advertisement of drugs in certain cases and to prohibit the advertisement for certain remedies alleged to possess magical qualities.⁴

¹Objectionable Advertisements Act, 1954, iPleaders (Nov. 1, 2020)

<https://blog.iplayers.in/objectionable-advertisements-act-1954/>

² Hamdard Dawakhana (Waqf), Delhi & Anr. v. Union of India, AIR 1960 SC 554

³ INDIA CONST. art. 19(1)(a)

⁴ Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, No. 21, Acts of Parliament, 1954

The petitioner argued under Article 32 of the Constitution⁵, as it violated their fundamental rights under Articles 14⁶, 19(1)(a), 19(1)(f)⁷, and 19(1)(g)⁸, contending that their right to advertise and commercial speech of Unani medicines was protected under the freedom of expression and their right to carry on business. The judgment discussed important concepts such as the delegation of powers, reasonable limits, and distinguishing between valid and invalid laws, laying the foundation for how India later balanced personal freedom with public welfare.⁹

ISSUES RAISED

- Whether commercial advertisements fall within the scope of freedom of speech and expression under Article 19(1)(a)?
- Whether the restrictions imposed under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, are reasonable under Article 19(6)?
- Whether the Act suffers from excessive delegation of legislative power?¹⁰

ARGUMENTS AND ANALYSIS

The Supreme Court analysed the arguments presented by both sides in *Hamdard Dawakhana (Waqf), Delhi and Another v. Union of India*. The issue before the Court was whether such limitations were constitutionally valid or whether the restrictions imposed by the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 violated the petitioners' fundamental rights guaranteed under Articles 14, 19(1)(a), 19(1)(f), and 19(1)(g) of the Constitution.

In pursuit of freedom of speech and expression under Article 19(1)(a), the Court drew a clear distinction between commercial advertising and freedom of expression under Article 19(1)(a). The Bench ruled that while freedom of speech and expression is indeed a fundamental right, it is not necessary that it is always within its ambit and is subject to reasonable restrictions.

⁵ *INDIA CONST.* art. 32.

⁶ *INDIA CONST.* art. 14.

⁷ *INDIA CONST.* art. 19(1)(f)

⁸ *INDIA CONST.* art. 19(1)(g)

⁹ Ananya Sharma, *Hamdard Dawakhana v. Union of India*, LawBhoomi (Feb. 20, 2025), <https://lawbhoomi.com/hamdard-dawakhana-v-union-of-india/>

¹⁰ H *Hamdard Dawakhana Case Summary*, Jyoti Judiciary (Feb. 26, 2024) <https://www.jyotijudiciary.com/the-hamdard-dawakhana-case-summary/>

The Court inferred that commercial advertisements are primarily intended to promote trade, commerce, or business and, therefore, fall within the ambit of “trade or business” under Article 19(1)(g) rather than “speech and expression” under Article 19(1)(a).

The Court noted that advertisements are primarily intended to promote the sale of goods and services. While they may involve an element of expression, their dominant purpose is commercial. Therefore, regulations that seek to curb misleading or harmful advertisements are restrictions on trade or business rather than on free speech. Such restrictions, the Court held, are reasonable under Article 19(6) of the Constitution, as they aim to protect public health and prevent exploitation.

With respect to the challenge under Article 19(1)(g), the Court analysed the validity of whether the restrictions laid down by the Act were reasonable for the purpose of safeguarding public health. The Court observed that the Act was implemented to safeguard citizens by curbing false representations and exaggerated claims through restrictions on advertisements propagating remedies having miraculous properties. Consequently, these advertisements could mislead people into self-medication or trust in unproven remedies, thereby threatening public health.

By acknowledging their potential for harm, the Court determined that the limitations placed by the Act were both reasonable and necessary to attain the legitimate goal of safeguarding the public at large from advertising and misleading medical claims.

The Court also examined the petitioners’ contention of excessive delegation under Section 3(d) of the Act¹¹. It was argued that this provision gave the executive unrestrained power to include other diseases or conditions under the prohibition. However, the Court held that sufficient legislative guidance existed in the Act, as it already specified the categories of diseases and the policy rationale for such restrictions. Allowing the executive to include similar diseases was merely an administrative step for effective implementation and not an overreach of legislative power.

Moreover, the Court highlighted that the test of reasonableness as stipulated in Article 19(6) must be exercised in light of the contemporary social conditions and the obligation to protect citizens from health risks. In a welfare state, it is the State's duty to regulate economic and commercial activities with direct implications on public health and safety. Thus, the Court

¹¹ Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, § 3(d), No. 21, Acts of Parliament, 1954

noted that the legislative intent behind the Act was to protect public welfare and not to interfere with legitimate business activities.

JUDGMENT

Upon its review, the Supreme Court verified the constitutionality of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The Court held that:

1. Commercial advertisement does not come under freedom of speech and expression under Article 19(1)(a) of the Constitution. It is integrally connected to trade and commerce, like the state's right to regulate business practices and trade, and is therefore subject to restrictions as set out in Article 19(6).
2. The restriction in the Act providing for the advertisement of certain drugs and remedies was a reasonable restriction in relation to public health under Article 19(6). The restriction to prevent misleading and injurious advertisements for serious illnesses was of significant public interest.
3. The Act did not suffer from the vice of excessive delegation of legislative power. There was enough guidance in the Act for the executive to guide it in implementing the legislation.

CONCLUSION

The Hamdard Dawakhana case stands as a landmark decision defining the limits of freedom of speech in relation to commercial advertising. The Supreme Court upheld that commercial advertisements fall under trade and business, subject to reasonable restrictions for public welfare. The judgment emphasised balancing fundamental rights with public health, establishing a lasting precedent in regulating misleading advertisements.¹²

¹² Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 (India), Dhyeya Law (Feb. 20, 2025), <https://www.dhyeyalaw.in/hamdard-dawakhana-v-union-of-india-air-1960-sc-554>