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**HAMDARD DAWAKHANA (WAKF) LAL KUAN, DELHI AND ANOTHER VS. UNION OF INDIA AND OTHERS  
(AIR 1960 SC 554)**

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**INTRODUCTION**

In the case of *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others*,<sup>1329</sup> the Supreme Court emphasized the executive's role in determining the efficacy of legislatively established norms, as well as how condition legislation comes into effect as an uncodified law that has taken on paramount importance in the operation of the nation's institutions. Conditional legislation permits the government to enforce existing laws in certain circumstances while denying the right to enact new laws. This legislative approach enhances law enforcement by providing greater flexibility in execution. Governments can address major implementation difficulties, such as time and breadth, which are critical to the success of modern social welfare programs. It is obvious that parliament is not always available to make decisions on minor issues of processing laws, or when there is a need for adaptability, such as in crisis situations or natural disasters, or when the need for specialists in specialized issues cannot be overlooked, that delegated legislation comes in handy. However, the question that emerges is how and when the concept of conditional legislation is understood in legal systems.

So, even though the executive is provided with power to enforce existing laws, there still exists specified instances of conditional legislation to be exercised judiciously to avoid overstepping delegated powers and risking nullification of actions.

GRASP - EDUCATE - EVOLVE

<sup>1329</sup> *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others*, (AIR 1960 SC 554)

### OVERVIEW OF THE CASE

Conditional legislation can be found in occurrences where:-

- i. The legislature empowers the executive to expand the activity of a current law to a specific area or region.
- ii. To determine and decide the time of application of an Act to a given area.
- iii. To broaden the span of a Temporary Act, subject to maximum period fixed by the legislative assembly.
- iv. To determine and decide the degree and limits within which the statute or Act should be employable and operative.
- v. Lastly, to introduce a special law if the contemplated situation has arisen in the opinion of the government.<sup>1330</sup>

Similarly, in this case, the legislative rule of conduct's effectiveness was examined. The case begins with the appellants representing Hamdard Dawakhana (Waqf), Delhi, which was founded in 1906 provided clinics, conducted clinical studies, and manufactured pharmaceuticals based on the Ayurvedic and Unani systems. Further, they received objections from authorities regarding ads and product notifications under the Act. On December 4, 1958, the Drugs Controller in Delhi rejected Section 3 of the Act, thus prohibiting the sale of 40 products. Drug Administrations in other provinces expressed similar concerns. Discrimination, a breach of the right to freedom of expression, and economic constraints imposed by Articles 14, 19 (1) (a), (f), and (g), as well as Articles 21 and 31 of the Constitution of India are the grounds on which the Act is being challenged. Not only do the plaintiffs want a declaration of specific violation of Part III of the Constitution, but they also want a mandamus

and prohibition order against the officials, as well as a suspension of policies and reports.

### KEY ISSUES

*Hamdard Dawakhana v. UOI* challenged the constitutionality of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 on many grounds, including:

1. The Act seeks to regulate medication advertising and prevent promotions for possibly magical remedies, which may violate the freedom of speech and expression granted by Article 19(1)(a) of the Constitution. The Act's limits are claimed to be incompatible with the exceptions given in Article 19(2).

2. The Act and the corresponding provisions impose permanent restrictions beyond the petitioner's rights under Article 19(1)(f) and (g).

3. The legislative power conferred by the Act is not valid and legally binding as it goes beyond the defined norms.

4. The power of the Act to deprive individuals of their rights conflicts with the rights guaranteed by Articles 21 and 31 of the Constitution.

The complaints were filed under Article 32 of the Constitution dispute the legitimacy of the Drug and Magic Remedies (Objectionable Advertisements) Act of 1954.

### REASONING

<sup>1330</sup> Dr. N. V. Paranjape, Studies in Jurisprudence and Legal Theory, 8th Edition, Central Law Agency, Pg. 331.

The goal of this Act, as mentioned in Mr. Merchant's declaration, is to prevent self-medication commercials. The preamble of the Act does not prohibit medical professionals trained in the English Venereal Diseases Act of 1917 from treating other disorders. In most cases, it was acceptable to give affidavits to demonstrate the reasons for the law, the conditions surrounding pregnancy, and the malpractice being treated. This was done in the instance of *Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar & Ors.*<sup>1331</sup> In *Kathi Raning v. State of Saurashtra*<sup>1332</sup> and *Kavalappara Kottarathil Kochunni v. The State of Madras*, affidavits were presented to describe the circumstances that led to the transfer of the relevant legislation.<sup>1333</sup>

#### ARGUMENTS OF PETITIONER

According to the allegations, petitioners were requesting a variety of actions from respondents who infringed their fundamental rights as outlined in Article 19 (1) (a) and Article 19 (1) (f) and (g). In addition, they challenged the Act on the grounds that it did not comply with the stipulations of Article 14, as well as Articles 21 and 31.

#### ARGUMENTS OF RESPONDENTS

Respondents stated in their affidavit that drug advertisement by complainants and others highlights the necessity for a law comparable to the Criticized Act, with strong enforcement. Allegations of discrimination, infringement of fundamental rights under Art. 19 (1) (a), (f), and (g), as well as artistic offenses. Art. 21 and 31 were denied saying- "This limit is in the form of an advertisement for the general public. I would say that the main purpose of this Act is to prevent people from making their own treatment for a variety of diseases. of advertising has been thoroughly tested and the manufacturers are forced to submit their products to reputable sources so that the products of these manufacturers are approved

and appropriate testing and consideration by professional agencies."

#### DECISION

The judgment of the Supreme Court in the case of *Hamdard Dawakhana* dealt with the legality of the Drug and Magic Remedies Act of 1954.

##### • Key Decision:

##### i) Set aside certain provisions of the Act:

The Court held Sections 3 and 8 and paragraph (d) of the Act to be invalid. Confiscated property was ordered returned, and each side paid their own legal fees.

##### ii) Justification to Arguments Rejected:

The Court denied arguments for the Act's absolute legitimacy, as well as specific proposals for interpreting it under Article 1 Section III of the Constitution.

##### • Understanding The Law:

The Court stressed the necessity of determining a law's genuine nature and intent. This entailed considering its origins, intended role, and the challenges it sought to answer. The Court also permitted affidavits to illustrate the statute's reasoning and historical context.

##### • Legislative Intent and Public Need:

The court accepted the legislature's awareness of society requirements and its duty in enacting appropriate legislation. Laws addressing those needs were more likely to be constitutional. In addition, the court confirmed its right to interpret statutes based on common knowledge and historical context.

##### • Commercial advertisements vs. Free speech:

The Court ruled that the Act only applies to commercials proposing treatments and cures, not those considered morally objectionable. It ruled that such commercial advertising did not constitute free expression under Article 19(1)(a). Instead, it fell under the trade and commerce rules authorized by Article 19(1)(g).

<sup>1331</sup> *Shri Ram Krishna Dalmia vs. Shri Justice S.R. Tendolkar & Ors*, 1959 SCR 279

<sup>1332</sup> *Kathi Raning v. State of Saurashtra*, 1952 SCR 435 (AIR 1952 SC 123)

<sup>1333</sup> *Kavalappara Kottarathil Kochunni v. The State of Madras*, AIR 1959 SC 725

- Setting a precedent:

This chapter covers advertising and promotional material (subject to Article 19(1)(g)) and social, political, literary and ideological expression (which may be subject to Article 19(1)(a) or (g) protected).

#### CRITICISM OF THE ACT'S APPROACH

This action could have been founded on arguments that the Act was overly broad or omitted critical information. Here are some potential criticisms:

- Freedom of Speech: For the purpose of achieving a legitimate government goal, such as safeguarding clients from false or deceptive advertising and subsequent marketing, the question that arises under the freedom of expression is to accomplish this goal. Regarding the act, which is considered to be a breach of the right to objectionable advertising, which in turn leads to a violation of Article 19(1)(a) of the Indian Constitution, which permits individuals to freely express their opinions.

- Ambiguity: Due to the fact that the definition of "objectionable advertising and marketing" in the Act was not clear, it was difficult for businesses to determine whether ads were qualified for the program. There is a possibility that this illegibility will avoid unneeded legal and advertising advancements.

- Consumer protection and accountability: When it comes to the right balance between consumer protection and misleading information, as well as access to accurate product information, there is the possibility of dispute. It would appear that the regulation is excessively restrictive, as it prevents individuals from making informed decisions regarding their treatment.

#### ANALYSIS & OPINION

With regard to the Hon'ble Court's decision, I believe it was made with great significance and should be considered. Especially because it addresses critical issues including public health and consumer welfare.

According to me, the Drug and Magic Remedies (Objectionable Advertising) Act, 1954 is a measure to protect public health and hence has been upheld by the Hon'ble Supreme Court which is something that I think is exceptional and a very essential decision by the Court. Nowadays, when there exists so much misinformation with respect to the healthcare sector, such kind of legislation is absolutely necessary. Like the act itself signifies, preventing consumers from the misleading advertising and magical remedies which is an essential step to move forward to its goal. Hence, the consumers must be protected from the risk of being exploited or injured, and the Act's purpose of prohibiting such advertising is a significant step toward that goal.

In addition, including declarations attesting to the Act's legal validity is an important stage in the documentation process. Although I fully think that the right to free expression is vital, I also acknowledge the need to strike a careful balance between this freedom and the greater welfare of society, particularly in areas of health and safety.

Another issue that I believe has to be considered is the legal framework that was established by the Act. This framework places the burden of regulating and controlling drug advertising on the authorities. The objective of the law is to ensure that consumers have a greater level of confidence in pharmaceuticals while simultaneously reducing the number of instances in which misleading marketing strategies are used. To achieve this, it has to be ensured that all quality and safety measures are adhered to at all times.

More broadly, this decision highlights the importance of contextual law in addressing the pressing issues facing society today, as well as the Court's significant contribution to the achievement of social welfare development and preservation of constitutional values.

## CONCLUSION

An example of close relationship between employment opportunities and public health concerns is the case of Hamdard Dawakhana. The right to advertise enables the companies to identify consumer customs for the products and services offered by them for its fostering competitiveness and innovation as it is central to a free market economy. But at the same time the restrictions that come along with advertising can prevent a business from reaching its target audience.

Hence, the case of Hamdard Dawakhana puts forward a balance between these interests wherein companies are free to advertise their products in their true form, but at the same time laws are needed to prevent consumers to go in the wrong direction through misleading. Laws like these have been developed in the first place to minimize the exposure to harmful advertising and non-deceptive communication.

## WORK CITED

- 1) *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others*, (AIR 1960 SC 554)
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