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# ADVERTISEMENT ON CONTRACEPTIVES AND COMMODIFICATION OF WOMEN W.R.T. CONSTITUTION OF INDIA

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## ABSTRACT

Free commercial information flow is essential in a democratic economy. The general public benefits from the information made available through the advertisement. A huge attention has been given to the commodification of women in television commercials, serials, magazines, and films. The way women are portrayed in television commercials, serials, and motion pictures affects how viewers and society regard them. Women are portrayed as objects or commodities in movies and advertisements; therefore we called them "creatures" to reflect this. Every person has the right to do their business which includes the company's showcasing the contraceptive advertisement also, but should follow the guidelines passed by the government. Though a commercial advertisement is a type of speech, and "commercial speech" is protected under the Constitution's Article 19(1)(a) as a kind of freedom of speech and expression. But the misuse of this Article governed under the Constitution is being done by the broadband forecasting these advertisements, as they are portrayed as sexual features of woman and are getting distracted from their objective. Therefore, the paper concludes that, the contraceptive advertisement should be made in a descent and appropriate manner so that it doesn't look vulgar and the message is delivered to the general public.

**Keywords:** commodification, television commercials, contraceptive advertisement, commercial speech

## **Introduction**

Even though advertising is nothing more than a commercial agreement, it still spreads knowledge about the marketed goods. The information made available through the advertisement is beneficial to the wider population. Without the general public being informed by the information spread by commercials, there cannot be honest and cost-effective marketing. It is a subset of the item, value, place, and development elements of the advertising blend. As a unique strategy, advertising acts as a crucial tool in creating product awareness in the mind of a potential customer to make a decisive purchase decision. Customers are informed or made aware of the existence and benefits of goods or services through advertising. Its primary goal is to persuade the targeted clients to buy the advertised good or service. Although advertisement is a form of speech but its true nature is revealed by the product which is used to promote. Advertisement assumes that characteristics and components of activity under the Article 19 (1) are merely to aid by drawing it to public's attention. Although advertising is undoubtedly a form of speech, its true nature is revealed by the product it is used to promote. When it takes the form of a commercial advertisement with a trade or commerce component, it ceases to be protected under the concept of freedom of speech because now the goal is neither to spread social, political, or economic ideas nor the advancement of literature or human thought.

The Constitution of India guarantees fundamental rights to all individuals, including women, such as the right to life, equality, freedom of speech and expression, and privacy. It is important to consider the impact of advertising on contraceptives and its potential to commodify women in light of these constitutional principles. Advertisements that promote contraceptives can be seen as a positive step towards increasing awareness about sexual and reproductive health. However, there is a fine line between promoting contraceptive use as a means to empower women to take control of their reproductive health and commodifying women's bodies by reducing them to mere objects of sexual desire.

## **Contraceptive Advertisement under Article 19(1)**

The Article 19 (1) (g) guarantees the rights of all Indian citizens to practice any profession or to carry out any occupation, trade or business. However, this freedom is not absolute, and reasonable restrictions can be imposed on it in the interest of public morality, decency, and the dignity of women. But the main question arises that whether the companies which advertise contraceptive advertisement on national television should be included in the right to practice

business mentioned under Article 19 (1) (g)? The answer to this is that every person has the right to do their business, but should follow the guidelines passed by the government.<sup>1</sup> As information technology has advanced significantly over the past ten years, across international borders and affected the general public, but particularly children and young people.

The media plays a significant role in the advancement of women. Despite the fact that many women work, few of them hold senior positions, simply said, this is due to a lack of gender sensitivity. Advertising and the commercial sector frequently feature women in order to attract girls and women as customers. Though a commercial advertisement is a type of speech, and "commercial speech" is protected under the Constitution's Article 19(1)(a) as a kind of freedom of speech and expression. Additionally, it was held that Article 19(2) applies to "commercial speech" that is unfair, dishonest, misleading, and untrue and that the State may regulate or forbid it.<sup>2</sup> Hence, the advertisement telecasted should have some reasonable restrictions. The advertisements should be advertised in such a manner that it should not look obscene and vulgar, so, it should be showcased in a descent manner just like the ads of sanitary napkins are advertised so that objective i.e. to aware the public is fulfilled. We all accept this that contraceptive advertisements are necessary to be showcased as it results in unwanted pregnancy and also increase the population of the country.<sup>3</sup> In the case of *Anuradha Bhasin v. Union of India*<sup>4</sup>, According to the ruling, there are some exceptions to the rights guaranteed by Article 19(1) of the Constitution, which allows the State to impose reasonable limitations where necessary and restrictions are set forth in Article 19(2) of the Constitution are in regard to the freedom of speech and expression under Article 19(1)(a). Restrictions are seen to be reasonable in qualitative, quantitative, and relative terms. <sup>5</sup>Hence, the contraceptive advertisement should be restricted to maintain the decency so that the social message can be delivered to the general public. <sup>6</sup>

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<sup>1</sup> Jaishri Jethwaney, The Stereotyping and Subordination of Women in Indian TV ads, The Wire, (Aug 5, 2022, 8:30 pm) <https://thewire.in/books/book-excerpt-the-stereotyping-and-subordination-of-women-in-indian-tv-ads?subject=https://thewire.in/books/book-excerpt-the-stereotyping-and-subordination-of-women>

<sup>2</sup> Tata Press Ltd. v. Mahanagar Telephone Nigam Limited, (1995) SCC 139

<sup>3</sup> Dorcas A. Russo, *Advertisement for Contraceptives as Commercial Speech in Broadcast Media*, CWRLR, 336, 341-344, (1981)

<sup>4</sup> *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637

<sup>5</sup> Sidhart Sabu, *Meaning of 'Reasonable Restrictions' under Article 19 of the Indian Constitution*, Lexforti, (1 Aug, 2022, 10:30 pm) <https://lexforti.com/legal-news/reasonable-restrictions-article-19/>

<sup>6</sup> Nidhi Bajaj, *Article 19 of the Indian Constitution*, IPleaders, (1 Aug, 2022, 10:01pm) <https://blog.ipleaders.in/article-19-indian-constitution>

Advertising that objectifies women, perpetuates gender stereotypes, and promotes harmful attitudes towards women can be seen as violating the dignity and equality of women. Article 15 of the Indian Constitution prohibits discrimination based on sex, and it is the responsibility of advertisers to ensure that their advertisements do not perpetuate harmful stereotypes or contribute to gender discrimination. Furthermore, Article 21 of the Indian Constitution guarantees the right to life and personal liberty to all individuals. This includes the right to privacy, which has been recognized as a fundamental right by the Supreme Court of India. Advertising that invades women's privacy by promoting invasive or non-consensual contraceptive methods or by using women's bodies without their consent can be seen as a violation of this fundamental right.

### **History of Contraceptive Advertisement**

In order to slow down the population's rapid expansion and eradicate poverty in India, the family planning programme was put into place as a national population policy in 1952. Male sterilization was first the focus of a number of contemporary techniques before shifting to female sterilization starting in the latter half of the 1970s.<sup>7</sup> It showcased the women's desperate attempts to control their pregnancies despite the fact that the state was decades away from legalizing abortions presented a wonderful opportunity. Considering that the US Supreme Court decided to legalize abortions in 1973, one assumed that society is currently moving slowly but surely towards a progressive representation and attitude about contraceptives.<sup>8</sup> However, until AIDS-related deaths reached their peak, contraceptive commercials were prohibited in mainstream broadcast media.<sup>9</sup> Here, we can see how the conversation over contraception extends beyond stories about abortions. There were additional benefits to contraception, such as the ability to stop the spread of STIs and HIV-AIDS, but it was given importance after the spread of AIDS and STIs. But now, with the advancement in the technology, advertisement has come into picture.

### **Stereotypes in Contraception Advertisements in India**

In India, advertisements of contraceptives are heavily based on stereotypes. In family planning

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<sup>7</sup> Thulaseedharan JV, *Contraceptive use and preferences of young married women in Kerala, India*, (Aug, 1, 2022, 9:30 pm)<https://contraceptive-use-and-preferences-of-young-married-women-in-kerala-ind-peer>

<sup>8</sup> Wei C, H.A., *Social marketing interventions to increase HIV/STIs testing uptake among mwn who have sex with ad male to female transgender women*, 1142, 1245-1246, (2011)

<sup>9</sup> Supra no 7

advertisement, males are given 'pleasure' portrayals while women are given 'shame and guilt' portrayals. Vague language like "helmet pehne" (wear a helmet) was also frequently used and women's features are extremely objectified and hyper-sexualized. Even not the advertisement, but at homes too, people feel awkward to even talk about the contraceptive measures. Many people think that their culture at home is getting infringed, but they don't think that it could be a method to plan their family or control population which in reduce the overall population growth rate. The majority of family planning advertisements target women because it is believed that contraception is solely a female burden. It is usually believed that men would serve as gatekeepers, preventing women from controlling their fertility if they participated in family planning programs. But why there is a taboo that the burden of contraception should be on females, the men can also encourage and get involved in and support their wives to take up modern family planning methods.

### **Commodification of Women**

In the past, women dominated commercials and movies by showcasing their cultural aspects, but now they are focusing on the glamour industry. Women have developed into multifaceted individuals in the 21st century, asserting themselves in many spheres of life, including politics and business.<sup>10</sup> The objectification of women is a current trend in the entertainment industry as they are portrayed as sexual objects in Indian movies, music videos, and television shows. Because the entertainment industry is perpetuating a stereotype, society has suffered a complete loss. This problem is prevalent because this provides more viewers if they incorporate sexual content in their advertisement.<sup>11</sup>

In India, mass media includes both print (newspapers) and electronic (radio, television, movies, press, publications, and advertising) media. The objectification of women in the media is destructive to our society because it isolates the individual from their body by focusing on a certain body features. This changes how society perceives beauty. Media, namely the film business, is the key area of concern. Women battle for equality every day, yet in movies and advertisements, they are not given the respect they deserve. In the advertisement of 'Manforce Condoms', 'Do the Rex', 'I-Pill- emergency contraceptive pill', 'NACO condom', the women

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<sup>10</sup> Ishdeep Kaur Bhandari, *Commodification of Women Body in Indian Media*, 5 IJJAR, 979, 980-981, (2018)

<sup>11</sup> Soumya Mathew, *The Sexual Politics in How Contraception is Advertised*, (Aug, 5, 2022, 7:30 pm) <https://feminisminindia.com/2020/09/09/contraception-advertisement-stereotypes/>

are portrayed inappropriately, which delivered a bad image of women towards the society.<sup>12</sup> But the advertisement like 'IUCD Campaign' and 'India Family Planning' showcased their message in a descent and appropriate manner.

### **Rules for Advertising Contraception**

Following complaints over the showing of "explicit content" in such advertising, the Information and Broadcasting Ministry in 2017 decided that contraceptive advertisements will only be broadcast between 10 pm and 6 am. The government claimed that the action was taken to safeguard kids from "indecent and inappropriate" information. For the narrative of "sex exclusively for procreation, not pleasure," other stakeholders, such as the ad-makers themselves, should go beyond using oppressive tropes like objectifying women's bodies or legalizing sex through complex set-ups to depict marriage and a family. Therefore, this action taken by the government is appropriate and justified as advertisements can always be created in different and decent manner if the media want to break the stigma which has been created around us by banning their depiction in mainstream media.<sup>13</sup> The other restriction imposed by the government is that the contraceptive ads should be showcased in a descent manner, so that their motive behind this is delivered to the general public without being awkward.

### **Current Scenario of Contraceptive Advertisement**

The current scenario of advertisement on contraceptives and commodification of women in India is a mixed bag. While there has been some progress in promoting the use of contraceptives and empowering women to take control of their reproductive health, there are still instances of advertisements that objectify and commodify women. On the positive side, there has been an increase in the number of advertisements promoting the use of contraceptives in India. This can be seen as a step towards normalizing discussions around sexual and reproductive health and breaking down the taboo associated with it. Many of these advertisements also aim to empower women to take control of their reproductive health and make informed choices. However, there are still instances of advertisements that objectify and commodify women in the context of promoting contraceptives. These advertisements often use women's bodies to sell products, perpetuate harmful gender stereotypes, and reinforce

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<sup>12</sup> Id 12

<sup>13</sup> Meghan L. Davison, *Contraception Advertising in Contemporary India: Gender, Consumerism, and Power*, *ICITES* 1, 7-10, (2008)

patriarchal attitudes towards women. Such advertisements can be seen as violating the constitutional principles of dignity, equality, and privacy. The ASCI, as a self-regulatory body, plays a crucial role in regulating advertising content related to contraceptives. The ASCI's code of ethics requires advertisers to show sensitivity to cultural values, respect the dignity of women, and avoid objectification and commodification of women. However, the effectiveness of self-regulation depends on the willingness of advertisers to comply with these guidelines. Although, the Information and Broadcasting Ministry in 2017 decided that contraceptive advertisements will only be broadcast between 10 pm and 6 am. But this is not the only solution to restrict contraceptive advertisement. The advertisers must be mindful of the constitutional principles of dignity, equality, and privacy when creating advertisements related to contraceptives to ensure that such advertising does not commodify women or perpetuate harmful stereotypes.

### **Ban on Controversial contraceptive advertisement**

The “Amul Macho”, a clothing brand had released a television advertisement that showed a man wearing its underwear, dancing in a suggestive manner, and using his underwear to fend off a group of angry bulls. The advertisement was challenged on the grounds of being indecent, vulgar, and denigrating to women. It was observed that the advertisement was indecent and vulgar and had the potential to offend public sensibilities, as the advertisement objectified and commodified women, as it portrayed women as sexual objects and perpetuated gender stereotypes. So, the advertisement was banned as the advertisement violated the ASCI's code of ethics, which requires advertisers to show sensitivity to cultural values and respect for the dignity of women. Also, in the advertisement of “LuxCozy”, the man was seen opening the door and being greeted by a young woman with only wearing a towel around him. The woman's eyes are fixed downward as the towel slips. After few months this ad was also banned by the Information and Broadcasting Ministry and warned all the advertisers to be more careful while directing an advertisement.<sup>14</sup>

### **Conclusion**

Although "commercial speech" is protected under the Constitution's Article 19(1)(a) as a kind of freedom of speech and expression, commercial advertisements are still a form of speech.

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<sup>14</sup> REUTERS, <https://www.reuters.com/article/television-india-dc-idUKN2731281520070727>, (last visited 1 Aug 2022)

Broadband forecasting these advertising, however, are misusing this constitutionally protected Article 19 (1) because they portray female sexual characteristics and divert attention from their intended purpose. The objectification of women in the media is destructive to our society because it isolates the individual from their body by focusing on a certain body features. Because it is considered that contraception is exclusively a woman's responsibility, the burden of family planning commercials target women. The paper also observed that the common belief is that if women participated in family planning programmes, men would act as gatekeepers and prevent them from managing their fertility. But why is it considered taboo that women should bear the responsibility of contraception? Men can also assist and encourage their wives to use contemporary family planning techniques. We all accept this that contraceptive advertisements are necessary to be showcased as it results in unwanted pregnancy and also increase the population of the country, but the advertisements should be advertised in such a manner that it should not look obscene and vulgar, so, it should be showcased in a descent manner just like the ads of sanitary napkins are advertised so that objective i.e. to aware the public is fulfilled.

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