

A STUDY ON ADVERTISING REGULATIONS IN INDIA & REDRESSAL OF CONSUMER COMPLAINTS IN REGARDS TO ADVERTISEMENTS

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Abstract: Is Advertising different from propaganda? Yes, there is a clear difference between advertising & propaganda. Propaganda is usually done by government authorities or social workers to promote their policies or measures of public welfare. Advertising, since human civilization is seen in various forms and in all types of media namely, Television, Radio, Newspapers, Magazines & all other forms of print & digital media. Thus, it is of utmost importance that Advertising needs to be regulated in order to hold accountability & responsibility for the claims made by the advertiser. Advertising calls for public attention towards a product, service or need. Hence, consideration needs to be given to the fact that rights of consumers are not misled, harmed nor offended.

Within the last few years, Advertising has seen a huge transformation in India. From Door darshan to Prasar Bharati to Television & now with internet ads, it has come a long way. Advertising expenditure has seen the greatest growth in the world of about 2.84 billion US \$ during the period of 2015 to 2018. India's digital advertisement market is expected to grow at a compound annual growth rate (CAGR) of 33.5 per cent to cross the Rs 25,500 crore (US\$ 3.8 billion) mark by 2020. FMCG, automobiles & E-commerce are the most advertised industries in India. In managing brands and targeting consumers, advertising must reflect the social and cultural diversity of India. Thus, if advertising is to reflect Indian society, the question is, Which India will it portray? And what impact will it make on its people mainly the youth, who form the largest part of the population & form the future of an ever-growing economy.

India has the largest number of youth in the world & they account for 1/5th of the total population. The youth market is the one that is highly sought after by most marketing companies & advertising firms. It therefore becomes imperative to know & understand the impact of advertising on youth and also the level of awareness among youngsters about regulating bodies that govern advertising protocol in India. This will help them know their rights and will keep them conscious about the ill-effects of advertising gimmicks.

It is imperative for advertisers to ensure that advertisements are in compliance with national laws. At present there is no central statutory agency or uniform legislation to control advertising in India.

Keywords: Advertising, propaganda, youth, target consumers, diversity, statutory

Introduction:

Consumers are more vulnerable today than they ever have been. Traditional issues of advertising such as misleading prices, deceptive representations, and labelling issue etc. have now joined hand with modern day troubles of 'sponsored' movie shots or even paid social media posts. Alongside, the increasing stakes associated with advertisements have made it crucial that they have requisite clarity as to what they can or cannot do. Further, with growing competition, most businesses entities themselves need protection from their contemporaries disparaging their products or otherwise indulging in unfair trade practices. Most companies have self-regulation guidelines, standards & policies to which they must adhere & make sure that reasonable claims are made rather than to deceive consumers under any given circumstance. As it is said, that the most important element in advertising is the Truth.



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Review of Literature:

- 1) A study done by Barve G, Sood A, Nithya S & Virmani T, Journal of Mass Communication & Journalism stated, Advertising is a part of life & hence adolescents must get used to it. A debatable argument was conveyed which states that it is the responsibility of the government to protect the interest of the viewers while others feel that it is the responsibility of the parents to do so. Advertising plays an important role in educating the child, the information should be circulated in as careful manner & precision. It is established that particular advertising has an extremely lasting impact on teenager's psychological development. Hence, it is extremely important to limit the negative impact like body shaming, violence, unhealthy eating habits. There is a need for parents to discuss the pros & cons of advertising through effective open communication. Advertising laws & ethics should be complied & should uphold the morals of the society instead of distorting them for commercial purposes.
- 2) Another study reveals, the youth today are far more sophisticated than 20 years ago. They are well aware of their needs & wants and make utmost careful & informed buying decisions. They clearly are aware of the false allegations made by the advertisers and therefore make selective purchases. It is proven that family communication is positively associated with peer communication & age is negatively associated with advertisements on Television. There is an increased participation of youth opinion in family buying decisions due to the knowledge gained by the youngsters from viewing advertisements.
- 3) Economic times, Brand equity studied 25000+ youngsters in 400 cities between the age group of 15-25 years, those of whom are more action-oriented than their predecessors. They realise that if they want to see a change, they need to be a part of it too. Deep consumer insights & continuous engagements with the audience is the heart of meaningful consumer bonding & rapport given their sensitive age group. There needs to be clear distinction between consumer needs & their desire to spend for the same. Advertising bridges the gap between awareness & actual spending habits.
- 4) Dr. Niharika Maharishi in Rajasthan, India on the popularity & perception of youth regarding social marketing implied that social marketing campaign that depicts stories are far impactful, action oriented & attractive. Government initiatives of the Swatch Bharat Abhiyaan, Digital India or Make in India campaigns have left far reaching impact on the youth thereby leaving an interest that aspires them with a desire to explore & inculcate actions in the right direction.
- 5) An article in Brand Equity, "How media attract & affect Youth", states, today's plugged in generation is most certainly worth the effort. A detailed study of how & which media influences the youth & how they are reacting to similar environmental factors will make the whole exercise a fruitful one. The youth today, is far more aware & cautious while dealing with his rights & the subsequent consequences in case of default. Deceptive & misleading marketing practices done by advertisements needs to be opposed by the future of the country (youth) in the larger interest of all community stake-holders.

Objectives of the Study:

- 1) To study the provisions of regulating bodies of Advertising in India
- 2) To identify various enactments & provision of Indian lawmakers towards advertisements.
- 3) To understand the redressal mechanism related to advertising grievances of consumers.

Scope & Significance:

Regulation in advertising helps to filter out false claims & controls spread of misleading information to consumers. The primary reason to regulate advertising is to prevent possible well-being in the larger interests of the consumers. The representation of a product's features may reasonably affect the consumers action. an advertisement, thus may not be lengthy but it should include all significant information regards to uses of the product. As a mirror of society, advertising reflects & magnifies developments in ideologies & lifestyles through new habits that is cultivated by



the consumers. Consumer's right of choice is the utmost important one among his rights & therefore different legal systems & organisations of advertising endorse the "code" & do's & don'ts of ethical & safe practices of Advertising. True advertisements are in conformity with realities which make the consumers evaluate selected options for purchasing products & deciding upon the money & time spend in that regard.

The closest that this sector has in terms of a regulatory body is the "Code of Ethics" issued by the ASCI, Advertising Standards Council of India, a voluntary self-regulatory council established in 1985 to regulate practices relating to advertising in India.

It is vital to note that the ASCI Code specifically states that:

"The code is not in competition with law. Its rules, and the machinery through which they are enforced, are designed to complement legal controls, not to usurp or replace them."

ASCI has drawn up a code of self-regulation in the advertising industry with a view to achieve the acceptance of fair advertising practices in the best interest of the ultimate consumer. These codes are self-imposed discipline to be followed by the members of the industry & in no case is mandatory.

ASCI operate on 4 principles namely:

- 1) Honesty
- 2) Decency
- 3) Responsibility
- 4) Fairness

REDRESSAL OF GREIVANCE:

ASCI consider the following parameters while receiving complaints:

- 1) Misleading advertisements
- 2) False advertisements
- 3) Indecent advertisements
- 4) Illegal advertisements
- 5) Ads unfair to competition
- 6) Ads leading to unsafe practices

The process followed by ASCI to process a complaint is as follows:

- 1) The complainant can approach the ASCI in case of finding any misleading ads or ads that do not adhere to the specified codes
- 2) After a valid complaint is received, the ASCI forward's the complaint to the advertiser for his response on the issue
- 3) The formal complaint of the ad and the advertiser's response has been placed before a formal committee called the CCC (Consumer Complaint Council, a self-regulatory JURY representing members of the civil society & the industry.
- 4) After deliberation & discussions by the jury, considering all aspects, a balanced decision is taken as to modify, rectify or withdrawal of the said advertisement.
- 5) ASCI also offer's free advice to all its registered members that help them review their advertising content before its released & thereby consider changes.
- 6) They lastly believe, that "If you don't regulate yourself, someone else will"

The ASCI is not in competition with any law, its rules or the machinery through which it is enforced upon. Thus, ASCI Codes are designed only to complement legal controls under such laws & not to replace them.

THE DEPARTMENT OF CONSUMER AFFAIRS

In case of any Misleading advertisement witnessed by the consumer, a complaint can be registered along with the audio or video or copy of the advertisement through the web portal of the GOI at [http://: gama.gov.in](http://gama.gov.in) which is a portal and central registry for lodging complaints, called the Grievances against Misleading advertisements by the Ministry of Consumer Affairs. The mandate of



this department is consumer advocacy with an endeavour to address consumer grievances in case of advertisements.

The following are the 6 key focus sectors:

- i) Food & Agriculture
- ii) Health
- iii) Education
- iv) Transport
- v) Financial services
- vi) Real Estate

For lodging a complaint, a one-time registration should be done on the above portal & fill all appropriate & necessary details. All evidence should be attached alongwith the same. Login-id & can be used to track the status of the complaint. The complaint will be forwarded to the concerned authority consisting of governing councils, Ombudsmen & self-regulating authorities.

Apart from ASCI & The Ministry of Consumer Affairs, there are a host of agencies which are working on the regulatory role in their sphere of influence. Some of these are,

1. Indian Broadcasting Foundation, New Delhi
2. The Advertising Standards Council of India, Mumbai
3. Electronic Media Monitoring Centre (EMMC), Ministry of Information and Broadcasting, Government of India, NEW Delhi
4. Telecom Regulatory Authority of India (TRAI), New Delhi
5. Press Council of India, New Delhi
6. News Broadcasting Standards Authority, C/o News Broadcasters Association, Delhi
7. Director General, All India Radio, Parliament Street, New Delhi, India
8. Director General, Prasar Bharti, Doordarshan Bhawan, New Delhi
9. National Consumer Dispute Redressal Commission, New Delhi
10. Food Safety and Standards Authority of India, New Delhi

Some of the Advertising regulation that are notable in India presently include the following:

- 1) **Consumer Protection Act, 1986:** It seeks to provide for better protection of the interest of the consumers & thereby help consumers to settle disputes at the judiciary level. It enforces the following rights on consumers & protects the same
 - i) **Right to be heard** (that consumer complaints will be addressed)
 - ii) **Right to be protected** (against marketing of hazardous goods & services)
 - iii) **Right to be informed** (about all details of goods so as to be protected against unfair trade practices)
 - iv) **Right to be assured** (of goods at competitive prices, wherever possible)
 - v) **Right to seek redressal** (against unfair trading practices & exploitation of Consumers)
 - vi) **Right to consumer education**

Redressal mechanism are handled at the District, State & National levels respectively.

The Consumer Protection Bill, 1986 was passed by both the Houses of Parliament and it received the assent of the President on 24th December, 1986. It came on the Statutes Book as THE CONSUMER PROTECTION ACT, 1986 (68 of 1986).

However, the **Consumer Protection Bill** was passed in the Lok Sabha by the Ministry of Consumer Affairs, Food & Public Distribution. The Consumer Protection Bill 2019 replaced the Consumer Protection Act 1986.

The Central Government set up a **Central Consumer Protection Authority** to protect, promote & enforce Consumer rights. In case of Advertising, CCPA prohibits an endorser of misleading advertisement for product endorsement up to one year or 3 years as the case may be. Alongside, a penalty on the manufacturer or endorser for misleading advertisements up to an amount of Rs 10 lacs or Two years imprisonment & can be extended in case of serious offences up to Rs 50 lacs & 5 year in prison.



- 2) **Cigarettes & other Tobacco Products Act, 2003:** COTPA, 2003 is an Act of Parliament of India enacted in 2003 to prohibit advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products in India. Advertisement of tobacco products including cigarettes is prohibited. No person shall participate in advertisement of tobacco product, or allow a medium of publication to be used for advertisement of tobacco products. No person shall sell video-film of such advertisement, distribute leaflets, documents, or give space for erection of advertisement of tobacco products. However, restricted advertisement is allowed on packages of tobacco products, entrances of places where tobacco products are sold. Surrogate advertisement is prohibited as well under the Act.
- 3) **Drug & Magic Remedies Act, 1954:** It is an act of the Parliament of India which controls advertisements of drugs in India. It prohibits advertisements of drugs & related substances that claim to have magical properties & doing so is a cognizable offence. It prohibits drugs & related remedies advertisements including miscarriages, preventing conception in women, correction of menstrual disorders, maintaining sexual capacity for pleasure & prevention of any diseases mentioned thereof.
- 4) **Indecent Representation of Women Act, 1986:** This Act prohibits indecent representation of women in advertisements in publications, writings, paintings, figures or in any manner connected thereof. Punishment or prohibition of women in any indecent manner in any form.
- 5) **The Cable Television Network Act, 1995 & the Cable Television Amendment Act, 2006:** It provides that no person shall send or transmit any advertisement through a cable service unless such advertisement is in conformity with the prescribed code. It lays down the "Advertising Code" for cable services which conforms to the laws of the country and ensures that advertisements do not offend morality, decency and religious susceptibilities of its subscribers.
- 6) **Advertising restrictions under Prenatal Diagnostic Techniques Act, 1994 & Young Persons Act, 1956:** This act disregards the facilities of pre-natal determination of sex available at any clinics, laboratories or any place prohibited under the act.
- 7) **Food Safety and Standards Act, 2006:** No advertisements can promote substances that can be misleading or deluding. The body denies any sort of false dietary advertisements to be broadcasted on television. Offences shall attract a fine up to Rs10lacs depending on the nature of the product.
- 8) **The Transplantation of Human Organs Act, 1994:** This law disallows any publicizing or advertisements of human organs for transplantation or business dealings. It also provides regulations for the removal or storage for therapeutic purposes.

Needless to note, that the foregoing laws are in addition to the applicable IPR laws & other laws in general which are industry and sector specific

Research Methodology: A descriptive study was done to review the regulation present in the jurisdiction in India for advertising & related laws. The researcher has solely relied on secondary data collection for information processing.

Limitations of the study: A preliminary investigation could have been conducted on masses to know the level of awareness in regards to the provisions of the law & study the measures that need to be taken to safeguard consumer rights. Time & resource limitations were the prime reason for the conducting of the research in the said manner.

Measures to create Awareness among masses with emphasis on Youth:

Mindshare India reported that around 9 million people in the age group of 12-25 years of age set trends & raise aspirational value for masses. Youth form the largest part of the population & their buying decisions plays an important role in the economy. Their increasing buying power and



contributions in family purchase decision is incredible. The younger generation is the wealthiest generation India has ever had in record time. This age group is more open to risk & willing to try anything new in the market. The Government can try various ways to keep consumers informed about regulation that's helps consumers protecting their rights. It is of utmost importance that the government use media blitz to create awareness about the regulating boundaries of the jurisdiction. They may resort to full page advertisements in popular newspapers, commercials on television & radio can also help people to distinguish between authentic & false information. Social media is also a powerful tool to reach out to the youth precisely as they are the early adapters of modern media channels on the internet.

With an increased usage of Smart phones by the youth, another effective method to create awareness would be through Mobile advertising. It may help to transport the concerned messages to the ultimate target group as youth are no willing to pay a premium to avoid advertising on their phones. This will leave a minimum level of caution in regards to the suggested portals in case of complaints.

Comparisons between ASCI & Consumer Forum in Redressal Procedures

In comparisons to the measures taken by both bodies for redressal mechanisms, a relative faster approach in terms of queries resolved has been observed by the ASCI. The statistics shows that the ASCI has resolved about 257 cases in the period of June-July 2020, 533 objectionable ads in March-April period & about 363 cases in the period of June & July, 2020. ASCI is oriented toward the companies that advertising & violating accepted norms while the Consumer Forum focuses on resolving complaints registered by the actual end users or audience in case of misleading & fraudulent activities. While the Consumer Forum has also resolved numerous number of consumer grievances and also compensated the consumer for financial losses. The forum helps the consumer resolve issues with the help of websites, mobile applications, 24X7 helpline, toll free nos etc, present in the public domain.

Conclusion:

Zenith Media predicts that by 2020 India will be the 4th largest contributor of advertising expenses in the world. Advertisements are currently being governed by fragmented and often conflicting sector-specific regulations leaving both the businesses and the consumers exposed to several potential risks.

As evident by the current statutory framework governing advertising in India, there is no central statutory agency or uniform legislation regulating the advertising industry at present. As a result. the advertising sector is left to borrow through sector specific legislations to identify relevant provisions that require compliance by them, while the consumers are either left exposed or are mostly unaware of their rights due to the inefficiency of the current system.

With the growing influence of internet & digital upliftment in all sectors, the traditional modes of marketing & thus advertising is rapidly changing. There is therefore a serious urge to accommodate the needs of the changing & dynamic communication channels.

Indian lawmakers should consider the provisions from the FTC (Federal Trade Commission, U.S) to address newly found issues of subtle advertising where celebrities innocently promote the usage of several products through their social media accounts. A welcome move would also be when the legislators put the onus of due diligence on the endorsers before they endorse a product, so as to safeguard public interest. The absence of a single statutory, regulatory body further aggravates the problem. A comprehensive law/ regulation on advertising in all forms of media which shall provide clarity in the matter and act as a one-stop window for all matters relating to advertising is highly desirable

Suggestions & Recommendations:

The country's advertising regulation should be in sync with the ever-growing marketing practices & innovative ways of the industry. It is thus, indisputable that advertising sector is a field which merits a comprehensive & well-defined regulatory system that safeguards the interest of all its stakeholders. Every effort should be channelized in a manner that it evokes a sense of awareness & caution



among the fraternity of buyers. They should be aware of their rights & corresponding duties that surround the need of an effective advertisement strategy meant to merely inform the consumers. It is an undeniable fact that Advertisers should protect consumers in a manner that it disproves of the famous quote “Advertising is a legalised way of lying”.

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Appendix:

- 1) **ASCI HELPLINE:**

HOW TO LODGE YOUR COMPLAINT

WhatsApp at: +91-77 100 12345

1-800-22-2724

ASCIonline

www.ascionline.org

Online Form: Fill in the form and track your complaint by clicking [here](#).

contact@ascionline.org

The ASCI Code Requires

<p>Honest Representations</p> <p>Truthful and Honest to consumers and competitors.</p>	<p>Non-Offensive to Public</p> <p>Within the bounds of generally accepted standards of public decency and propriety.</p>	<p>Against Harmful Products/Situations</p> <p>Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large.</p>	<p>Fair in Competition</p> <p>Not derogatory to competition. No plagiarism.</p>
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2) Ministry of Consumer Affairs

<http://gama.gov.in> : For registration & then complaint & provide necessary details of evidence against the complaint. It shall be addressed by the Government departments/ self-regulating authorities & Ombudsmen.



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