

# Advertising and Its Statutory Regulation in India

## Abstract

*"Advertising is the foot on the accelerator, the hand on the throttle, the spur on the flank that keeps our economy surging forward"*<sup>1</sup>

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**Keywords:** Advertising, Statutory Regulation

## Introduction

Advertisement play a very significant role in the modern consumer driven world. Business concerns spend millions of rupees on advertising their goods and services with the cut throat competition, due to globalization, every producers and manufacturer wants to allure the customers with the best possible advertisement strategies. Advertisement is a two sided coin. It not only helps the business concern to expand its business but also creates awareness among the consumers about the availability and suitability of various products.

The basic idea behind advertising is that it is just a presentation, which may be oral or written, to induce consumption to make people buy things which they actually do not want. When it comes to India, advertising has a profound impact on how people understand life, the world and themselves, especially with regard to their values, choices and behavior.<sup>2</sup>

Advertisement means 'Public Announcement'. It involves communication with the public about a product, idea or service through a medium to which the public has access. The medium may be print (such as newspapers, magazines, posters, etc.), or electronic (television, radio, internet etc.).<sup>3</sup>

Older times the scope of advertisement was very limited hence the impact was not that crucial, but with the passage of time and the information technology revolution and globalization of world economies, advertisements are impacting everyone of us in a big way.

Now, Advertisement is a part of our daily life. It changes our thinking process, buying process and slowly it raise our standard of life. It encourages us to raise our life style from better to best.

## Review of Literature

The proposed study is aimed at deep review of the existing literature on the subject. Several books, encyclopedias, journals, newspapers, magazines, reports, projects and websites were consulted. Some of the important books and articles relating to this subject are mentioned here:

1. In *Advertising in India: Trends and Impact*,<sup>4</sup> The author Oma Gupta has discussed in details of advertising in India. This is very informative book on the topics like; advertising, history, ethics, advertising and portrayal of women, impact of advertising on rural India, etc.
2. Kim Bartel Sheehan, *Controversies in Contemporary Advertising*<sup>5</sup>, The author discusses things changing the nature of advertising and communication process.
3. ArunChaudhuri, in his book *Indian Advertising: 1780to 1950 AD*<sup>6</sup>, discusses history of advertisement. The changing fads, trends and fiction are captured in the way marketing strategies are developed and implemented.
4. Kruti Shah, in *Advertising and Integrated Marketing Communications*<sup>7</sup>, clears the concept of integrated marketing communications and its major tools, techniques and media, with a special focus on advertising.
5. *In Media Law and Ethics*<sup>8</sup>, the author M. Neelamalar, define the purpose of providing a complete account of law and ethics relevant to media and media professionals.
6. Sangeeta Sharma, Raghuvir Singh, in the book *Advertising: Planning and Implementation*,<sup>9</sup> author provides an in-depth coverage of the concepts related to advertising, media planning and creativity in advertising



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**Objectives of the Study**

1. To study the nature, purpose kinds of advertisement.
2. To understand the laws dealing with advertisement in India.
3. To study the advertisement regulatory bodies in India.
4. To study the role of judiciary in dealing with advertisements in India.
5. To suggest changes in the present legislative framework.

**Research Methodology**

The present work requires theoretical and empirical research in this area. The material for the proposed study will be collected from various primary and secondary sources. The study shall be mixture of doctrinal as well as non-doctrinal research methodology. Help of various sources like the decisions and observations of various courts in India as published in law reports, journals, law reviews, newspapers, magazines and internet etc. will be taken.

**Research Hypothesis**

It is felt that the various enactments dealing with different aspects of Advertisements in India are not providing a comprehensive and umbrella approach and a central legislative mechanism is the need of the hour.

**Nature, Purpose and Kinds of Advertisement**

Advertising is influential in nature, it influences us to buy things which we need or not. Day by day advertising became more attractive and creative which impact on every age person.

The term "advertising" has been variously defined by several authors although the basic idea has remained more or less the same. The simplest definition of an advertisement is that it is a 'public announcement.' In earlier times, to 'advertise' meant merely to announce or to inform. Some advertisements today still do just that: provide information about 'birth,' 'deaths,' 'engagements,' with little or no intention to persuade.<sup>10</sup>

The wide definition put forward by the American Marketing Association (AMA) describes it as, "Advertising is any paid form of non-personal presentation and promotion of ideas, goals and services by an identified sponsor."<sup>11</sup>

According to R.S. Davar, "Advertising aims at education the consumers, supplementing the salesmen, enabling the dealers to face competition but above all, it is a link between producer and consumer."<sup>12</sup>

According to Philip Kotler, "The objectives of advertising are to inform, to persuade and to remind the target audience about the advertiser's product."<sup>13</sup>

Generally speaking, an advertisement on a hoarding, a newspaper 'display' or a television commercial will not be regarded as an offer.<sup>14</sup> In other words, the practical consequences of treating the advertisement as an offer would be such that it is highly unlikely that this is what the person placing the advert can have intended. It is concluded that the advertisement is nothing more than an invitation to treat.<sup>15</sup>

In *SPC Engineering Co. (India) Ltd. V. Union of India*,<sup>16</sup> It is held that the advertisement inviting tenders or bids is not in itself an offer, which creates a right until accepted. Invitation of tender is a mere attempt to ascertain whether an offer can be obtained within such a margin as the employer is willing to adopt.

**Purpose of Advertisements**

The purpose of most advertising is to sell products or services. Manufacturers advertise to try to persuade people to buy their products. Large business firms want the company name to be known and respected for the products the firm makes or the services it provides. Local businesses use advertising to gain new customers and increase sales. Advertising thus plays a part in the competition among businesses. It is the cheapest and fastest way to inform large numbers of people about products or services for sale.<sup>17</sup>

**Kinds of Advertisements****Print Media Advertisement**

This is the oldest media, which include newspapers, magazines, trade journals, newsletters, brochures, leaflets, and so on. They have wide public acceptance intensive market coverage, trustworthiness, flexibility.<sup>18</sup>

**Broadcast Advertisement**

It includes radio, television motion pictures, video, multi-media and the internet. It is the latest way of advertisement and covers large number of people.

**Outdoor Advertisement**

They include bill boards, hoardings, posters, neon signs, banners and so on, which aims at drawing peoples' attention during their staying outside their home. Outdoor media are flexible, provide repeat exposure and are less costly, but suffer from lack of creativity.<sup>19</sup>

**Public Service Advertisement**

This is a non-commercial advertising used to inform, educate, stimulate, raise awareness and motivate the public about issues affecting healthcare such as HIV/AIDS, environment and political ideology. Public affairs, broadcasting, focusing on politics and public policy broadcast at times when listeners or viewers are tuned in or are even awake.<sup>20</sup>

**Transit Advertisement**

Different vehicles like bus, train, taxi and auto are used as media for giving advertisement with a view to making an appeal to the public during their travel from one place to another.<sup>21</sup>

**Online Advertisement**

The internet is an emerging web medium, which is relatively less costly and has high selectivity in making interaction possible. But, only a limited number of people have access to this medium, more precisely in a country like India.<sup>22</sup>

**Statutory Regulations of Advertisement in India**

There is no uniform and specific law dealing wholesomely with advertising in India. Following are some legal provisions which control the advertisements:-

**The Constitution of India**

Freedom of speech is given under Article 19 of the Constitution but reasonable restrictions can be

placed on the grounds of safety, peace and security. Incitement to an offence is a ground based on which freedom of speech and expression can be restricted by the state.

#### **The Indian Penal Code, 1860 (IPC)<sup>23</sup>**

The Indian Penal Code, 1860 prohibits the dissemination of any obscene matter under section 292 and 293. IPC also prohibits the publication of matters pertaining to unauthorized lotteries.<sup>24</sup> Section 377 of the Act declares “anal and non-procreative sex against the order of nature” and a crime even if undertaken in private by consenting adults. By implication, it cannot be represented in advertising.<sup>25</sup>

#### **The Consumer Protection Act, 1986<sup>26</sup>**

This Act provides for the better protection of the interest of consumers and for the purpose establishes consumer councils for the settlement of consumers’ disputes. Thus the Act serves two purposes; one, to provide education to consumers regarding their various rights and two, to provide for a simplified, inexpensive and speedy remedy for redressal of grievances of consumers.<sup>27</sup>

#### **The Young Persons (Harmful Publications) Act, 1956<sup>28</sup>**

This Act prohibits distributions of publications that may be harmful to persons under the age of twenty. ‘Harmful Publication’<sup>29</sup> is also defined in the Act. Advertising a harmful publication is punishable by up to six months’ imprisonments, with or without a fine.

#### **The Indecent Representation of Women (Prohibition) Act, 1986<sup>30</sup>**

This is an Act to prohibit indecent representation of women through advertisement or in publications writings, paintings, photographs, or in any other manner. The Act prescribes general legislative action to check the growing commoditization of women and to see to it that a woman or her body is not representation in a derogatory manner.<sup>31</sup>

#### **The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003<sup>32</sup>**

The main objective of the Act is to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products.

#### **The Drugs and Cosmetics Act, 1940<sup>33</sup>**

This Act is a Central legislation, which regulates the import, manufacture, distribution and sale of drugs and cosmetics in the country. The main objective of this Act is to ensure that the drugs available to the people are safe and efficacious and conform to prescribed quality standards and the cosmetics marketed are safe for use.<sup>34</sup>

#### **The Drugs and magic Remedies (Objectionable Advertisements) Act, 1954<sup>35</sup>**

This Act was passed to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic and to provide for matters connected therewith.<sup>36</sup>

#### **Authorities Regulating Advertisements in India**

All advertisements have to pass through norms laid by the regulatory authorities. The following regulatory bodies provide an important check on advertisers, seeing to it that they do advertise in ways that are deceptive or otherwise socially irresponsible.<sup>37</sup>

#### **The Advertising Standards Council of India (ASCI)**

ASCI is a voluntary self-regulation council, registered as a not-for-profit company under Section 25 of the Companies Act, 1956<sup>38</sup> established in 1985. It has also established a Consumer Complaints Council (CCC) to examine the complaints received. It is a commitment to honest advertising and to fair competition in the market-place. It stands for the protection of the legitimate interests of consumers and all concerned with advertising - advertisers, media, advertising agencies and others who help in the creation or placement of advertisements.<sup>39</sup>

#### **The Advertising Agencies Association of India (AAAI)**

This is the official, national organization of advertising agencies, formed in 1945, to promote their interests. The association promotes professionalism, through its founding principles, which uphold sound business practices between advertisers and advertising agencies and the various media. It is thus recognized as the apex body of and the spokesperson for the advertising industry at all forums – advertisers and media owners and their associations and government.<sup>40</sup>

#### **The Press Council of India**

The Press Council of India functions under the Press Council Act, 1978.<sup>41</sup> The Press Council of India is enjoined upon to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.<sup>42</sup> It is a statutory body that acts as a watchdog of the press. It adjudicates the complaints against and by the press for violation of ethics and for violation of freedom of press respectively.<sup>43</sup>

#### **The Telecom Regulatory Authority India (TRAI)**

The Telecom Regulatory Authority of India (TRAI) was established in Telecom Regulatory Authority of India Act, 1997.<sup>44</sup> It has been entrusted with discharge of certain function, *inter alia*, to regulate the telecommunications service and to protect the interests of service providers and consumers of the telecom sector.<sup>45</sup>

TRAI regulating the TV advertisement under Act “Standard of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012” which mandates that broadcasters restrict advertisements on television channels to a maximum of twelve minutes per clock hour.<sup>46</sup>

#### **Role of Judiciary in Regulation of Advertisements in India**

The judiciary is playing a proactive role in ensuring that the advertisements are made in the proper spirit & they are not misleading or contravene the provisions of various enactments.

In *Tata Press Ltd V. Mahanagar Telephone Nigam Limited (MTNL)*.<sup>47</sup> MTNL filed a case against Tata Press Ltd. that Tata Press has no right to print

and publish 'Tata Press Yellow Pages' containing advertisements given by traders, businessmen and professionals and MTNL had the sole authority to maintain the telephone service and as a part of it to publish and distribute telephone directory. The Supreme Court of India held that these yellow pages were not part of the directory; that advertisements were speech protected under article 19(1)(a) of the Constitution and monopoly could not be created in favour of MTNL.

In *Novva ADS V. Secretary, Deptt. of Municipal Administration and Water Supply and Anr.*<sup>48</sup> the Court held that hazardous hoarding should be removed and said the District Collector and the Tahsildar working in their respective zones were to be personally responsible for the removal of unauthorized hoardings in their respective zones. Similarly in *M.C. Mehta V. Union of India and Ors.*<sup>49</sup> the Tamil Nadu Legislature introduced the amendment in Section 326J of the Land Acquisition Act, 1894<sup>50</sup> by the Amendment Act 2000. By an amendment, the Commissioner (later amended to District Collector) was empowered to remove the existing hoardings which were dangerous and causing disturbance to safe traffic movement, which adversely affect free and safe flow of traffic. The provision also empowers the District Collector to refuse the license for such hazardous and dangerous hoardings.<sup>51</sup>

In *Colgate Palmolive (India) Ltd. V. Hindustan Unilever Ltd.*<sup>52</sup> (*Colgate V. HUL*) Hindustan Unilever Limited (HUL) had launched its Pepsodent Germicheck's advertisement which compared the toothpaste's germs attack power with Colgate Strong Teeth claiming that Pepsodent Germicheck has "130% superior" germs attack power over Colgate Strong Teeth after four hours of brushing. Colgate filed a suit against HUL for interim injunction. Two cases such as *Dabur India Ltd. V. Colortek Meghalaya Pvt. Ltd.*<sup>53</sup> and *Reckitt and Colman of India Ltd V. M.P. Ramchandran and Anr.*<sup>54</sup> were referred under this case and court dismissed the present case by saying that HUL is not denigrating the product of Colgate. Comparative advertising is permissible as long as the competitor's product is not derogated and disgraced while comparing.

### Conclusion

In today's world advertisement is everywhere we go. It has been written, oral or in symbolic form. Different media like Television, radio, newspapers, magazines are used to advertise. It has also been on billboards, walls, roads, doors of shops even on the bus and other transport vehicles.

Advertising is one of the best and oldest means of creating such awareness about the products. Advertisement is an announcement of product, service and idea. It is a one sided communication, members from public are free to respond on it in any way. Advertisements should be socially, culturally, morally ethical.

Its nature is an informative, persuasive and reminding communication which reaches large number of people. It is a worldwide phenomenon and is integral part of society. It includes not only sale of

products but also provide information about new inventions and new technologies.

Advertising sometime mislead to customer and use unethical means to convince people to buy their product it creates serious misconception in the society. Advertising authorities time to time check on these kinds of advertisements. Governments make laws to punish these kinds of frauds and there are also Self-organized authorities issue directions for saving people from these advertisements and give directions and create limits for the advertisers. Still there is a need of one unique law to regulate misleading advertisements and proper implementation of these laws.

### References

1. Kim Bartel Sheehan, *Controversies in Contemporary Advertising*, 1 (Sage Publications, 2004).
2. *Advertisement Laws of India - It's Time for a Uniform Legislation.* available at <http://www.legalonline.blogspot.in>, (visited on 31 August 2016).
3. Oma Gupta, *Advertising in India: Trends and Impact*, 19 (Kalpaz publication, 2015).
4. Kalpaz publication, 2015.
5. Sage Publications, 2004.
6. Tata McGraw-Hill Education India, 2006.
7. McGraw Hill Education (India) Pvt. Ltd., 2014.
8. PHI Learning Pvt. Ltd., 2012.
9. PHI Learning Pvt. Ltd., 2010.
10. S.A. Chunawalla, K.C. Sethia, *Foundations of Advertising Theory and Practice*, 15 (Himalaya Publishing house, Mumbai, 2010).
11. *Marketing Principles and Techniques*, Nirmal Singh, Devendra Thakur, 145 (Deep and Deep Publications Pvt. Ltd. Delhi 2003)
12. Mukesh Trehan, Ranju Trehan, *Advertising and Sales Management*, 89 (Rahul Jain V K Enterprises, 2009-10).
13. Mukesh Trehan, Ranju Trehan, *Advertising and Sales Management*, 89 (Rahul Jain V K Enterprises, 2009-10).
14. In *Harris v Nickerson*, (1873) LR 8 QB 286; (1873) 42 LJ QB 171, the defendant had advertised that an auction of certain furniture was to take place on a certain day. The plaintiff travelled to the auction only to find that the items in which he was interested had, without notice, been withdrawn. He brought an action for the breach of contract to recover his expenses in attending the advertised event. His claim was rejected by the Queen's Bench. The advertisement did not give rise to any contract that all the items mentioned would actually be put up for sale.
15. Richard Stone, James Devenney, *The Modern Law of Contract*, 43 (Routledge, 2015).
16. AIR 1966 Cal 259.
17. Oma Gupta, *Advertising in India: Trends and Impact*, 55 (Kalpaz publication, 2015).
18. Isita Lahiri, Sujit Kumar Ghosh, *Principles of marketing and E-commerce: For University of*

- Calcutta and WB,156(Dorling Kinderley (India) Pvt. Ltd., Delhi,2012).
19. IsitaLahiri, Sujit Kumar Ghosh, *Principles of marketing and E-commerce: For University of Calcutta and WB,156(Dorling Kinderley (India) Pvt. Ltd., Delhi,2012).*
  20. Steve Dr. Esomba, *Advertising and the Spread of Business, Democracy and Knowledge*, 64(Dr. Phil. Esomba (Standard Copyright License), 2012).
  21. MukeshTrehan, RanjuTrehan, *Advertising and Sales Management,156(Rahul Jain V K Enterprises,2009-10).*
  22. MukeshTrehan, RanjuTrehan, *Advertising and Sales Management,156(Rahul Jain V K Enterprises,2009-10).*
  23. Act no 45 of 1860.
  24. Section 294A of Indian Penal Code, 1860.
  25. Kruti Shah, *Advertising and Integrated Marketing Communications*, 819 (McGraw Hill Education (India) Pvt. Ltd., 2014).
  26. Act no 68 of 1986.
  27. Steve Dr. Esomba, *Advertising and the Spread of Business, Democracy and Knowledge*, 824(Dr. Phil. Esomba (Standard Copyright License), 2012).
  28. Act no 93 of 1956.
  29. Section 2(a) of the Young Persons (Harmful Publication), Act 1956.
  30. Act no 60 of 1986.
  31. Steve Dr. Esomba, *Advertising and the Spread of Business, Democracy and Knowledge*, 820(Dr. Phil. Esomba (Standard Copyright License), 2012).
  32. Act no 34 of 2003.
  33. Act no 13 of 1964.
  34. Dr. Lily Srivastava, *Law & Medicine*, 216 (Universal Law Publishing, 2010).
  35. Act no 23 of 1940.
  36. M. Neelamalar, *Media law and ethics*,3(PHI Learning Pvt. Ltd., 2012).
  37. Sangeeta Sharma, Raghuvir Singh, *Advertising: Planning and Implementation*, 59 (PHI Learning Pvt. Ltd.,2010).
  38. Act no 1 of 1956.
  39. <http://www.ascionline.org/index.php/ascicodes.html>, (visited on 27 August, 2016).
  40. <http://www.aaaindia.org/about-aaai>. (visited on 27 August, 2016).
  41. Act no 37 of 1978.
  42. Dr. VirBalaAggarwal, *Essentials of Practical Journalism*,494(Concept publishing company, 2006).
  43. Kartik Sharma, Ashley Tomlinson, Maura Finn & Media Law Division, *International Senior Lawyers Project, Freedom of the Press: Using the Law to Defend Journalists*,46(Human Rights Law Networks, 2009).
  44. Act 24 of 1997, the Act provides for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunications services and to protect the interest of Service Providers and Consumers of the Telecom Sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto.
  45. Shivkumar Upavasi, *Marketing Mechanic*, 85(Education Publishing, 2011).
  46. Sohini Chatterjee & Gauri Piilaj, *TRAI's Advertisement Regulation: Ensuring a Quality Viewing Experience or Regulatory Overreache?* available at [www.nujslawreview.org](http://www.nujslawreview.org), (visited on 29 August 2016).
  47. (1995)5SCC 139.
  48. Appeal (civil) 2702 of 2008.
  49. 1998 (1) SCC 363.
  50. Act no 1 of 1985.
  51. [www.indiankanoon.org](http://www.indiankanoon.org).
  52. 2013(55) PTC 499.
  53. 167(2010) DLT 278.
  54. 1999(19) PTC 741.