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ADVERTISING LAW IN INDIA: FROM EARLY PRINT TO DIGITAL INFLUENCE

AUTHORED BY - SANKARANATHAN P.K & N.SHRIRAM

Abstract

Advertising is an effective type of business speech and persuasion. In 1903, Walter Dill Scott defined advertising as "the attempt to influence the human mind through the use of written or spoken words and pictorial representations," and this concept is still important today, especially in the age of social media. In India, advertising began with early print notices and progressed through colonial, industrial, and post-independence periods until arriving at the digital and influencer-driven era. As advertising techniques advanced, so did the possibility of deception, covert sponsorship, deceptive promises, and customer manipulation. This article covers the historical development of advertising in India, explains why regulation became required, assesses the legal framework and landmark cases, and compares India's situation to that of other countries.[7][8][9][1][2]

Introduction

Advertising has progressed from simple notifications to a highly strategic instrument for trade. In current marketplaces, it does more than just inform consumers; it forms attitudes, builds brand identity, and influences purchasing decisions. Because of its persuasive power, advertising can mislead consumers if claims are inflated, sponsorship is concealed, or product quality is distorted. [12][11][13]

The constitutional position is crucial from the start. In *Tata Press Ltd. v. MTNL*, the Supreme Court ruled that commercial speech is protected by Article 19(1)(a) of the Constitution. At the same time, the Court acknowledged that this protection does not preclude the state from regulating deceptive or unfair advertising. That idea serves as the fundamental underpinning for advertising law in India. [1][14][15]

Meaning of Advertisement

Walter Dill Scott's explanation is valuable as it encompasses the fundamental aim of advertising: to affect the human psyche using language and visuals. This indicates that advertising is not a neutral form of information; rather, it is intentional persuasion aimed at a consumer demographic. The legal significance of this definition lies in the fact that persuasion becomes concerning when it is employed to obscure commercial motives or deceive the public. [7][16]

In legal terms, "advertisement" encompasses not only clear commercial promotions but also more nuanced marketing tactics, including influencer content, native advertising, branded posts, and seemingly personal endorsements that are, in reality, compensated. This is why contemporary regulations need to consider the manner of communication rather than solely focusing on its content. [11][17][18]

The earliest identifiable print advertisements in India are generally linked to Hickey's Bengal Gazette from 1780, which was the first weekly newspaper in the country. These initial advertisements primarily consisted of straightforward announcements regarding sales, arrivals, births, deaths, and public notices. They were more informative than convincing, yet they established the groundwork for the evolving advertising culture in India. [8][9][19]

In the initial phase, advertising was intricately connected to print media and regional markets. Oral recommendations, store signage, and newspaper ads were the primary methods of advertising. The shift from these basic formats to structured brand advertising illustrates how the commercial strength of communication progressively grew over time. [12][9]

During British administration, advertising became more structured and financially important. Newspapers, catalogues, posters, handbills, and product labels were utilised to reach out to urban residents and promote imported commodities, patent medications, and branded products. The expansion of the press and trade resulted in a more structured advertising economy and the foundation for professional agencies. [12][20][21]

This colonial period is significant because it shows a transition from ordinary notice to strategic persuasion. Advertising no longer just informs the audience; it has begun to build trust, affect consumption, and compete across goods and brands. That development subsequently

necessitated legislative oversight, particularly when false statements began to have an impact on public welfare. [12][20]

Advertising is designed to be convincing and can quickly become false, therefore regulation becomes required. As markets grew, advertisers acquired more influence over information, while customers came to rely on promises they couldn't verify for themselves. This resulted in a legal requirement to safeguard consumers from misleading or excessive statements. [22][11]

The situation grew increasingly acute in sensitive areas including health, medicine, and children's items. In *Hamdard Dawakhana v. Union of India*, the Supreme Court supported the state's authority to control unpleasant medicine marketing and clarified that misleading commercial advertisements are not protected in the same way as legitimate statements of opinion. This instance is one of the first and most important examples of why regulation was essential.[2][23][24]

Development of Advertising Law

India does not have a single advertising statute. Instead, advertising is governed by constitutional law, consumer protection law, information technology law, intermediary rules, self-regulation, and industry-specific guidelines. This disjointed structure reflects the numerous ways in which advertising intersects with free speech, commerce, consumer welfare, and digital governance. [10][11][13]

The constitutional line begins with *Tata Press and Hamdard Dawakhana* Together, these cases show that advertising is protected as commercial speech, but misleading advertisements may be restricted in the public interest. The legal development therefore moved from a narrow view of advertising to a more balanced framework in which speech is protected but deception is not. [1][2][14][15]

The modern statutory framework is mainly found in the Consumer Protection Act, 2019 and the CCPA Guidelines of 2022. These rules define misleading advertisements, impose duties on advertisers and endorsers, and allow action against deceptive claims. The 2024 self-declaration requirement further strengthens this framework by requiring new advertisements issued on or after 18 June 2024 to include compliance declarations. [13][25][26][27]

Key Statutory Provisions

Article 19(1)(a) of the Constitution guarantees free speech and expression. In advertising law, this is significant since the Supreme Court recognised in the Tata Press case that commercial speech is protected. However, Article 19 rights are subject to reasonable limitations, thus false or damaging marketing can still be prohibited. [1][14][15]

Section 2(28) of the Consumer Protection Act of 2019 defines deceptive advertising. It includes ads that misrepresent a product or service, intentionally conceal vital facts, or are likely to mislead customers about quality, quantity, composition, or nature. This term is important because it provides legal context for the harm discussed in your essay.[28]

Section 21 of the Consumer Protection Act, 2019 empowers the Central Consumer Protection Authority (CCPA) to order the withdrawal of misleading advertisements and to levy penalties on manufacturers, endorsers, advertisers, or publishers involved. This provision is especially relevant in the context of influencer marketing, as it allows enforcement actions not only against companies but also against individuals who endorse false or deceptive claims. [28][29]

Section 79 of the Information Technology Act, 2000 grants immunity to online intermediaries, provided they act as neutral platforms and comply with prescribed due diligence measures. This protection is crucial for social media companies, shielding them from liability for user-generated content as long as they follow regulatory guidelines and do not lose eligibility through failure to comply.[10]

Under Section 69A of the Information Technology Act, 2000, the government has the authority to block public access to information in certain situations, particularly when issues concerning national sovereignty, security of the state, or public order are at stake.[10]

Comparative Advertising and Disparagement

Modern advertising often involves comparison, and not all comparison is unlawful. In *Reckitt & Colman of India Ltd. v. Kiwi TTK Ltd*, The court considered the limits of comparative advertising and made clear that a trader may compare products, but not cross the line into disparagement or defamation of a competitor's goods. This case is useful for explaining how puffery differs from false attack advertising. [3][4][30]

This principle is important today because digital advertisers frequently use comparative content, “best product” rankings, and subtle negative references to rivals. The legal question is whether the communication is fair comparison or misleading denigration. Reckitt & Colman remains one of the leading cases for that distinction. [3][4]

The digital age has changed advertising methods completely. Brands now use Instagram, YouTube, WhatsApp, Facebook, X, TikTok, affiliate links, reels, stories, sponsored posts, and influencer endorsements to reach targeted consumers. These methods are effective because they blend into ordinary online content and often appear more personal than traditional advertising. [17][18][31][12]

The problem is that these formats create loopholes. Disclosures may be hidden, hashtags may be vague, endorsements may look personal, and consumer reviews may be edited or boosted. In such a setting, an advertisement can technically exist while its commercial nature remains invisible to the audience. [17][13][11]

The legal challenge becomes more complex when the promotion is hosted on a platform but created by a third party. Section 79 of the IT Act protects intermediaries only if they remain neutral facilitators and comply with due diligence. The Intermediary Rules also require platforms to publish policies, appoint grievance officers, and exercise care in handling unlawful content. [10]

This is where *Avnish Bajaj v. State (NCT of Delhi)* becomes relevant. The case involved intermediary liability for unlawful content on a digital marketplace and is often cited to explain that platform operators can be subjected to legal scrutiny when illegal material circulates through their systems. That reasoning matters for advertising because modern online marketing also depends on digital platforms that host, amplify, and distribute content. [5][32][6][33]

So, when you discuss social media advertising, *Avnish Bajaj* helps you show that platforms cannot always be treated as invisible neutral spaces. Their role in hosting and facilitating content can become legally significant where due diligence fails or unlawful content is not controlled. [34][5][6]

The ASCI remains an important body in Indian advertising regulation, especially through its

code and influencer guidelines. However, its powers are largely self-regulatory. In *Teleshop Teleshopping v. ASCI*, the Bombay High Court held that ASCI's orders are not binding on non-members. In *Century Plyboards (India) Ltd. v. ASCI*, the court further explained that ASCI cannot exercise judicial powers and lacks statutory backing. [35][36][37][38][39]

These cases are important because they show that voluntary ethical standards are helpful but not enough. In a market driven by speed, profit, and digital reach, a non-binding system may not produce sufficient deterrence. That is why statutory rules and enforcement mechanisms are necessary alongside self-regulation. [35][38][39]

Foreign Countries Procedures

The United States uses FTC guidelines to require clear disclosure of material connections between brands and endorsers. The FTC has also updated its position to address fake reviews and virtual influencers, showing that advertising law must evolve with technology. [17][13][40]

The European Union prohibits misleading commercial practices under its consumer framework, though enforcement varies across member states. The United Kingdom combines self-regulation through the ASA with additional enforcement by the CMA, which gives it stronger practical force than a purely voluntary code. [17][13][11]

These foreign systems show that advertising regulation works best when it combines disclosure duties, penalties, platform responsibility, and consumer protection. They also show that self-regulation alone usually needs statutory support to be effective. [13][11]

Conclusion

Advertising law in India has evolved from colonial print notices to sophisticated digital marketing and influencer promotion. As advertising methods have changed, the law has had to respond to new forms of deception, hidden sponsorship, and consumer manipulation. The constitutional cases of **Tata Press** and **Hamdard Dawakhana**, the comparative advertising cases such as **Reckitt & Colman**, the intermediary-liability case of **Avnish Bajaj**, and the self-regulation cases against ASCI all show that advertising is protected speech, but not unchecked speech. [1][2][3][5][38]

The present legal framework is stronger than before, but it remains fragmented and uneven in enforcement. The future of advertising law in India should therefore focus on clearer disclosure rules, stronger statutory backing, stricter platform responsibility, and better consumer protection in the digital environment. [26][13][27][10][11]

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