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RIGHT TO ADVERTISMENT AS PART OF FREEDOM OF SPEECH AND EXPRESSION

AUTHORED BY - SINDHUJA DHAYANANTHAN

ABSTRACT

Advertisement is an act of attracting public's attention for the business, products or services by the media. It gives visual representation of the product which draws the consumer to purchase the goods, which make the whole process more than just a mere Commercial transaction. Since, it's a visual representation, the influence and impact on general publics is much higher. The current position that Commercial Speech holds comes after a lot of deliberations. Due to the presence of multiple Legislations which restricts and at times even puts bans on advertisement, the Rights of the Advertiser is often violated. It is unfair that a product, which is not even restricted in the market, has restrictions on advertising it. This paper tries to understand the past as well as the present position of Commercial Speech as a part of Freedom of Speech and Expression. Even though the advertising standard council of India is a self-regulatory body which regulates the advertisement in India, the other restrictions on the advertisement as per the several other Legislations make it complicated. This paper argues that such multiple restrictions are not necessarily required with the help of the tobacco advertisement restrictions in India. It will do so by mainly focusing on the standard of restricting advertisements, and the ethical aspect that comes with it.

Keywords- Commercial Speech, Legislation, self-regulatory, tobacco and violation.

HYPOTHESIS

Due to multiple intervention of Legislation in regulating advertisement there Freedom of Speech and Expression is violated.

RESEARCH METHODOLOGY

Doctrinal method of research has been used in this research work.

RESEARCH QUESTION

- Is restriction over the advertisement is infringing the Freedom of Speech and Expression?
- Whether ASCI is fulfilling their duties by balancing Advertiser's Right and protection of public from exploitation?

LITERATURE REVIEW

- **Preeti Shaw, advertising industries VS Freedom of Speech: navigating the slippery slopes of developing jurisprudence, 1, 2021.**

In this paper the author says about how advertisement is used for exploitation of the public by unfair means and at the same time as its being part of media how it's protected under the Constitution. It also discuss about the statue and regulating body that rules advertising industry and sometimes the rules are enforced indiscriminately and arbitrarily whereby the Constitutional Right is sometimes violated and also questioned about the need for new Legislation for balancing public interest and Freedom of Speech.

The paper discussed about the lack of single Legislation to maintain the advertisement lead to the clash of Freedom of Expression but its forget to focus on the main problem from the side of the ASCI which is not doing any pre-approved or pre censorship of advertisement which is getting released and falling into controversy's. This also fail to express that how the Advertiser fail to get is Freedom of Speech and Expression because it created controversy among certain people belief.¹

- **Arunima Bose, Commercial Speech, 2022**

It discuss about the Commercial Speech is a part of the Freedom Of Speech and Expression guaranteed under Article 19(1) (a) of the Constitution as competitive advertisements are permissible and its three cardinal principle which are prima facie case, irreparable loss and injury and balance of convenience.

The Article didn't exactly drawn a clear line between the comparative advertising and defaming each other which was much needed. It didn't pointed out the fact that due to the lack of single Legislation there is confusion because of involving multiple Legislation.²

¹ https://www.ijlpa.com/_files/ugd/006c7e_cf6e0c14712e4bd78c51b379984e7ffc.pdf?index=true

² <https://www.sconline.com/blog/post/tag/commercial-speech/>

➤ **Sanette Nel, Freedom of Commercial Speech: evaluating ban on advertising of legal product as tobacco, volume 37, 2004**

Here the Author mentions that although restriction on the Commercial Speech are acceptable, they should be undertaken in such manner that consumer still have access to information which will make them informed decision whereas doing that act and spreading awareness by saying that the author mentions that rather than banning the tobacco advertisement it's better to have Freedom Speech of Expression by telecasting tobacco advertisement and the author also mentions than that anti-smoking campaign and education program will be more effective rather than full ban of the advertisement.

Even though here the author mentions the banning of the advertisement is for one part of the society and the other people is blocked by it and its against Freedom of Speech and Expression but promoting the tobacco by allowing telecasting the advertisement and having awareness program idea itself is contradicting to each other which government can do. It didn't point out that banning tobacco product will reduce the consumers rather than banning tobacco advertisement³.

➤ **Akhil Deo & JoshitaPai, COMMERCIAL SPEECH: A VARIANT OR a STEP-CHILD OF FREE SPEECH, pg no: 3, 2014, Volume2.1.**

The paper deals with the Doctrine which determine the criteria for qualifying a Speech as Commercial Speech and the development of the doctrine. Also mentioned about why and how the Commercial Speech is protected.

The Author failed to concentrate on the various Legislation which have restriction over the Commercial Speech other than the court precedents. Also, failed to explain in detail about why the Commercial Speech is not considered same as the other form of Speech and Expression only because of the money agenda⁴.

➤ **Madhavi Goradia Divan, Facets of Media Law, 369-380.**

The author of the book mentioned about Statutory Regulation of advertisements and

³ sanette nel, Freedom of Commercial Speech: evaluating the Ban on Advertising of Legal products such as tobacco, 37 jstor (2004).

⁴ Akhil Deo & joshita pai, COMMERCIAL SPEECH: A VARIANT OR A STEP-CHILD OF FREE SPEECH, 2.1 manputra (2014).

Legislation which is restricting the advertisement and also mentioned the history of how commercial came under the ambit of Freedom of Speech and Expression after its status being rejected because of the economic interest from the advertisement.

The Author didn't discuss how the statutory restriction is against The Freedom of Speech and Expression and also didn't point out certain sections which is restricting the Advertisement. The author fails to bring out the part how the Advertiser's Right is getting violated due to this Legislations⁵.

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⁵ madhavi goradia divan, statutory regulation of advertisement, in facets of media law (2 ed. 2017).

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3	Cent. Hudson Gas & Elec. Corp V. Pub. Serv. Comm'n	447 U.S. 557 (1980)
4	Hamdard Dawakhana V. Union Of India	AIR 1960 SC 554: 1960 Cri LJ 735.
5	Indian Express Newspaper (Bombay) (P) Ltd V. Union Of India	(1985) 01 SCC 641 : AIR 1986 SC 515
6	Sakal (P) Limited V. Union Of India	AIR 1960 SC 305: (1962) 3 SCR 842.
7	Bennett Coleman & Co. V. Union Of India	1973 AIR 106, 1973 SCR (2) 757

INTRODUCTION

Advertising is one of the most appealing ways to get the attention of the consumer and especially if it is visual it leaves a better impact on the people. It is the place where the manufacturer can show their products or service most attractively and creatively to cover the consumers, at the same time where the people who see the advertisement may get offended or like any concept. There are instances where the advertisement of a certain product got more famous than the actual product and later hyped the sale of the product simultaneously there are instances where a product is boycotted due to its advertisement created the controversy.

⁶An advertisement is a matter that draws attention of the public or a segment of the public to a product, service, person, organization or line of that product, service, person, organization or line of conduct intended to promote sale, or use of a product, or range of products. An advertisement contains information that the producer provides about its products or services. An advertisement tries to get consumers to buy a product or a service. An advertisement is generally of goods and services and is formation intended for potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name.

Advertisements make consumer well informed about the type of product exist in the market its better way for people to know the market and product then buying and learning. Even an

⁶ ICIC Bank V. Municipal Corpn. Of Greater Bombay (2005) 6 SCC 404 AIR 2005 SC 3315.

uneducated person can know from Advertisement telecasted in the television that certain shampoo will get rid of dandruff by its visual representation. There are many kind of advertising method in the market to promote the product puffery technique which many times faced backlashes because it exaggerated the product and when it comes to testimonial the celebrity who comes in advertisement also entitle up to a point because the sales will based on their words. Free gifts, discount and contests technique where something is given as compliment to promote the sale.

Advertisements can't be considered mere promotion of products or services, especially in a country like India. Many advertisements connected their product with emotion to attract people in buying the product or receiving the services, For example, the mom making instant noodles for the kid as a reward for her showing the mother love or the brother gifting chocolate to the sister for Rakshabanadhan like this many. So, it impacts the people at large at the same time the negative side of it can't be avoided. where it went to the extreme of taking down certain advertisements because it was against some people's beliefs or made people uncomfortable. Freedom of Speech and Expression is one of the privileged Rights in a democracy. It is protected by the Constitution concurrently not protected it. In thin on ground, it's restricted if the form of Expression is unsuitable within the Constitution set up such a thing as Commercial Speech.

FREEDOM OF SPEECH AND EXPRESSION FOR ADVERTISEMENT

First the question is whether the advertisement will fall under the ambit of Commercial Speech or not. The court in the case of *Tata Press Ltd. V. Mahanagar Telephone Nigram Ltd*⁷. Approved of defining advertisement as “*merely identification and description, apprising of quality and place. It has no other object than to draw attention to be sold at accquistation of Article to be sold constitutes the only inducement to its purchase*”⁸ this definition of the advertisement given under this case falls under the Definition of the Commercial Speech, adopted in the U.S., as Speech which relates to the economic interest of the speaker and its audience and Speech which proposes a Commercial transaction⁹.

⁷ 1995 AIR 2438, 1995 SCC (5) 139

⁸ 1995 AIR 2438, 1995 SCC (5) 139

⁹ Cent. Hudson Gas & Elec. Corp V. Pub. Serv. Comm'n 447 u.s. 557 (1980).

The evolution of protection of Commercial Speech in India under Article 19 (1) (a) of the Indian Constitution has a faceting trajectory. According to the popular beliefs, Commercial Speech is treated step motherly under the Article 19. If we went back to the roots of the law, we can see that Commercial Speech was not guaranteed protected under Article 19(1) (a)¹⁰. If we track down the path the Commercial Speech came through for reaching the current place there is several ruling which gave the current status and power to it. Commercial Speech was not protected under the Article 19(1) (a) of the Constitution until the case of TATA press Ltd v. MTNL¹¹ until that advertisement were excluded from the ambit of Freedom of Speech and Expression. In the case of ¹²Hamdard Dawakhana V. Union Of India the Supreme Court held that although Advertisement was a form of Speech, it ceased to fall within the category of free Speech when it have the form of Commercial Speech the motive to promote the business. The case came into picture because of the challenge to provision of The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 whose object was to prevent self-medication and advertisements that offend morality and decency. The reason why Commercial advertising was protected under the Article 19(1) (a) of Constitution was because the Commercial gain came to picture is flawed.

So, it's not justifiable advertisement does not fall under the ambit of Article 19(1) (a) because there is Commercial gain out of it. In the case of Indian Express Newspaper (Bombay) (P) Ltd V. UOI¹³ the Supreme Court observed on the conclusion in hamdard Dawakhana, "The Court was principally dealing with the Right to Advertise prohibited drugs, to prevent self-medication and self-treatment It was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the Right to publish all Commercial advertisements... we feel that the observations made in the Hamdard Dawakhana case are too broadly stated and the Government cannot draw much support from it. We are of the view that all Commercial advertisements cannot be denied the protection of Article 19(1) (a) of the Constitution merely because they are issued by businessmen"¹⁴.

In the case of Sakal (P) Limited V. UOI ¹⁵the court held that the curtailment of advertisements

¹⁰ Geethika ES, "Commercial Speech and Article 19" (Legal Bites October 12, 2022) <<https://www.legalbites.in/topics/Articles/commercial-speech-and-article-19-351565>> accessed February 5, 2023

¹¹ 1995 AIR 2438, 1995 SCC (5) 139

¹² AIR 1960 SC 554: 1960 Cri LJ 735.

¹³ (1985) 01 SCC 641 : AIR 1986 SC 515

¹⁴ Indian express newspaper (Bombay) (P) Ltd v. UOI, (1985) SCC 641

¹⁵ AIR 1960 SC 305: (1962) 3 SCR 842.

would be hit by Article 19(1) (a), since it would have a direct impact on the circulation of newspaper. In *Bennett Coleman & Co. V. Union of India*¹⁶ the Supreme Court recognized that advertisement were an essential factor affecting circulation and any restraint on advertisements would affect the fundamental Rights of Propagation, publication and circulation under Article 19(1) (a). After the decision in the *Hamdard Dawkhana* case Advertisement started to rise its head it's a vital role not shaping public opinion but also influencing the economy as whole. Currently in every products and service there are heavy competition and because the market is updating according to people, New technologies and trend. The Advertisement is making better stage for the competition to the sellers and which really leave the impact of product on the people whether it be print media or broadcasting.

In *Tata press*¹⁸ the Supreme Court recognized the invaluable role of Advertising in the Economy, Advertising is considered to be the cornerstone of our Economic System. Low prices for consumers are dependent on mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a Democratic country, Advertising can be viewed as the life blood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtains 60/80 per cent of its revenue from Advertising. Advertising pays a large portion of the costs of suppling the public with newspaper for a democratic press the advertising subsidy is crucial. Without advertising, the resources available for expenditure on the 'news would decline, which may lead to an erosion of quality and quantity the cost of the news to the public would increase thereby restricting is democratic availability.

The court observed in the¹⁹ *Tata Press* case that Examined from another angle, the public at large has a Right to receive the 'Commercial Speech. Article 19(1) (a) not only guarantees Freedom of Speech and Expression, it also protects the Rights of an individual to listen, read and receive the said Speech. So far as the economic needs of a citizen are concerned. Their fulfillment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1) (a) is available to the speaker as well as to the recipient of the Speech. The receipt of Commercial Speech may be having much deeper interest in the Advertisement than the

¹⁶ *Bennett Coleman & Co. v. Union of India* 1973 AIR 106, 1973 SCR (2) 757

¹⁷ *Hamdard Dawakhana v. union of India* AIR 1960 SC 554: 1960 Cri LJ 735

¹⁸ *Tata Press Ltd. V. Mahanagar telepjone Nigram Ltd* 1995 AIR 2438, 1995 SCC (5) 139

¹⁹ *Tata Press Ltd. V. Mahanagar telepjone Nigram Ltd* 1995 AIR 2438, 1995 SCC (5) 139

Businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

Advertisement should not only looked with eyes of aspect which is to promote the business and trade its actually helping the people to be well informed about the product, who is selling etc. It's helping the people to make better choices. More important than the Right of Expression of the advertisers is Right of the recipient to the information which he receives from the advertisement²⁰. There were advertisements during Covid 19 where hand wash Company asked the consumers to wash hands with their hand wash or with soaps not specifically only with the advertiser's Product to prevent the infection spreading. There is advertisement which says that men helping household is not privilege for women or great help done by men to the women it's his duty. In these kind of advertisement even though it holds the economic value of the product it still hold the message which is not compulsorily need to be mentioned in the advertisement. It's time for to see the advertisements to see not only in the sense of economic gain medium lenses because it's not completely same for every advertisers. So, the advertisement should be protected properly under the Article 19(1) (a) of the Constitution.

STATUTORY RESTRICTION ON ADVERTISEMENT

There are many restriction on the Advertisement by the various Legislation which is making complication for the Advertisers because there is not any collective law which deals with guidelines of the advertisements which they can carefully go through and follow at the same time there is involvement of Advertising Standards Council of India (ASCI). There are instances where Advertisements are pushed to taken down from televisions because it hurt the feeling of certain community but some people considered it as forward thought process when there is controversies is there dilemma that whether the advertisement is good or bad for the society the Advertisers right is neglected and taken down without looking into their own interpretation with they presented the Advertisement. In this way whether really the advertiser are have having the Right to express under the Article 19 of the Indian Constitution. It's like several statutory have provision saying that this should be not there in the advertisement at the same instant it doesn't precisely says about the limitation of violating it maximum time its vague. So, it's based on the

²⁰ Madhavi Goradia Divan, The Facets of Media Law (2nd edition2013)

interpretation of it.

There are some products and services are banned from advertising those are

- The Indian Penal Code, 1860 (IPC) makes it a punishable offence to advertise any obscene publication or its distribution, sale, hire or circulation The IPC also makes it an offence to publish advertisements relating to any lottery which is not a State lottery or which is not authorised by the State Government²¹.
- Firearms, weapons and ammunition advertisements related to such products are banned under Arms Act, 1959.
- Human organs are banned from advertising to prevent from Commercial dealing of the human organs under the Transplantation of Human Organs Act, 1994.
- Advertisement of is banned Infant milk food to encourage the natural feeding
- The Bar Council of India Rules formulated under the Advocates Act, 1961 prohibit advertisement by Indian advocates and their firms. These rules were enacted and enforced to curb the false advertisement of lawyers to gain publicity to attract clients²².
- Medical services are restricted upto only show name of the institution, type of patients admitted, type of training and other facilities offered and the fees.
- The Cable Television Network Rules, 1994, the Advertising Codes of Doordarshan and the All India Radio, and Norms for Journalist Conduct issued by the Press Council of India prohibit any advertisement directly or indirectly promoting the production, sale, or consumption of cigarettes, tobacco products, wine, liquor, or other intoxicants. Cigarettes and other tobacco products banned from advertising under Tobacco Prohibition Act. However, some states allow advertising through billboards, signboards, and such media, but subject to many restrictions. Also, the ASCI Code prohibits use of minors for advertising alcohol products²³.
- The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954 prohibits advertisement of magical remedies of diseases and disorder.
- The Young Persons (Harmful Publications) Act, 1956 makes a punishable offence to advertise harmful publication a harmful publication is a publication portraying the

²¹ Madhavi Goradia Divan, The Facets of Media Law (2nd edition 2013)

²² Hemant Goya "India: Advertising and Marketing Advertising Law", (global jurix), <https://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf> accessed February 5, 2023.

²³ Hemant Goya "India: Advertising and Marketing Advertising Law", (global jurix), <https://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf> accessed February 5, 2023

commission of offences, acts of violence, or cruelty, or incidents of a repulsive or horrible nature, in such manner as would tend to corrupt a young person²⁴.

- The Indecent Representation of Women (prohibition) act 1986 prohibits the publication of advertisement contain indecent representation of women²⁵.
- The Drugs and Cosmetics Act, 1940 ²⁶makes it an offence to use any report of a test or analysis made by the central drugs laboratory or by a government analyst for the purpose of advertising any drug or Cosmetic.
- The Prize Competition Act, 1955 ²⁷prohibits the publication or distribution of advertisements of prize competitions where the prize or prizes offered exceeds I000 in any month. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978 prohibits the printing or publication to advertisements to a prize chit or a money circulation scheme.
- There are also some restriction on political advertising under Representation of the People (Amendment) Act, 1996²⁸.
- Under Consumer Protection Act and Monopolies and Restrictive Trade Practices Act, 1969 there are restriction for comparative advertising, free gifts promotion, Deceptive, Misleading, or False Advertising.

Other than this also there are many statutory provision for regulating advertisements. There are several regulatory agencies for advertisement those are Indian Broadcasting Foundation and Broadcasting Content Complaints Council (BCCC), ASCI and ASCI's Consumer Complaints Council (ASCI's CCC), Telecom Regulatory Authority of India (TRAI), News Broadcasters Association (NBA) and News Broadcasting Standards Authority, Director General of All India Radio & Doordarshan, National Consumer Dispute Redressal Commission, Food Safety and Standards Authority of India (FSSAI), Central Drugs Standard Control Organization (CDSCO). Due to the absence of uniform advertising regulation or regulation agency it is troublesome for the consumer to raise complaint because there are many regulatory agencies and statutory. Considering consumer as layman who get benefit from the advertisement it's impossible to expect them to be well educated so they can't be expected to find proper statutory or regulatory agencies

²⁴ 2nd edition, Madhavi Goradia Divan, Facets of the Media law, 375, 2013

²⁵ Sec.3 Indecent Representation Of Women (Prohibition) Act 1986

²⁶ Drugs And Cosmetics Act, 1940

²⁷ Prize Competition Act, 1955

²⁸ Representation Of The People (Amendment) Act, 1996

to raise complaint. Due to multiple restriction from regulatory bodies and laws there are chance for Overlapping jurisdiction of authorities on issues relating to advertisement²⁹.

When it comes to law which prohibiting the advertisement which is to protect consumers from misleading information its good for the consumers. But instances like banning the advertisement of tobacco products but allowing them to sell is really misleading because if its taking the defense of it will impact on people especially children, then selling and showing the tobacco products in movies with disclaimer also should be banned because even though its showed with disclaimer still it's kind of promotion. Especially the young generation may get influenced more by cinema rather than the Advertisement. The same comes to indecent representation of women which is not being more specific abbot what and all fall under that category due to that anyone can misunderstand any advertisement involving women and file case under that it, sometimes the mistake is not only on the advertiser sometime it's on the consumers too for wrongly interpreting it and getting offended, the most unacceptable aspect of this is when the consumer uses their own imagination on the Advertisement and understanding as something else and filing case. When the prime aim of the advertisement is to attract the consumer and sell product not every time it will be made with mind of creating controversies among people. The consumers also should act slowly and steadily by properly understanding fact before raising complain. Due to this multiple legislation and vague provision consumers are sometime filing case or creating issue without properly looking into Advertisement that lead to many problems from the Advertiser side too.

“Consumers are always Right maybe apply to the demand of the goods in products but not always in deciding what the Advertiser try to say in the Advertisement”. In these problem the Freedom of Speech and Expression to Expression of the advertisers are totally take away by many regulating bodies and even after they are showcasing Advertisement sometimes its takedown due to the complaints of the consumer. These regulations which are not uniform and mostly are not specific is banning the advertisements based on certain public opinion is really infringing the Right to Freedom of Speech and Expression of the advertiser's especially when the consumer i.e., public act unintelligible and file complaints its really Injustice to the Advertisers.

²⁹ Hemant Goya “India: Advertising and Marketing Advertising Law”,(global jurix), <https://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf> accessed February 5, 2023

ADVERTISING STANDARDS COUNCIL OF INDIA (ASCI)

ASCI is self-regulatory body which is voluntary established in 1985 to promote responsible Advertising and to enhance public confidence in Advertisements. It was established by the Non Statutory tribunal for introducing the advertising ethics in India. The ASCI judges the advertisements based upon its Code of Advertising Practice, also known as the ASCI code. This Code applies to advertisements read, heard or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to a significant number of consumers in India³⁰.

The Council's objectives are:

- To ensure the truthfulness and honesty of representations and claims made by advertisements
- To ensure that advertisements are not offensive to generally accepted standards of public decency
- To safeguard against the indiscriminate use of advertising for the promotion of products regarded as hazardous to society or to individuals.
- To ensure that advertisements observe fairness in competition so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behavior in business.

ASCI consists of a Board of Governors and a Consumer Complaints Council. The Board of Governors comprises four members from each of the four sections connected with the advertising industry who are Advertisers, Advertising Agencies, Media (owners of press, television, radio etc.) and Related sectors (e.g. outdoor agencies, PR, market researchers, ad producers, business schools)³¹.

According to the survey, it was found out that among the sectors as mentioned above, 31% believed that the ASCI framework is ok and enough to act and check upon the advertisements. They believed that very limited instances where the ASCI had failed to perform adequately. 13% believed that the ASCI framework is adequate but needs some reforms so as to be more effective.

³⁰ Pranav Rudresh, "What Are the Laws Governing the Advertisement in India" (iPleadersOctober 22, 2019) <<https://blog.ipleaders.in/laws-governing-advertisement-india/>> accessed February 5, 2023

³¹ Hemant Goya "India: Advertising and Marketing Advertising Law", (global jurix), <https://www.globaljurix.com/our-publications/advertising-and-marketing-law-india.pdf> accessed February 5, 2023

While shockingly a 56% believed the framework to be inadequate and ineffective. They said that there is not enough knowledge among the stakeholders regarding the regulatory mechanism and process of complaint making. They also indicated that there are ads which making false claims, and there is no medical research to substantiate the claim. The message is not conveyed in the Right spirit, and the present framework is not addressing this³².

The aim of the ASCI is serve both the consumer as well as the advertisers. The complaint will be raised by the consumer if they feel the advertisement is in bad taste or if the claim is false. In recent years ASCI addressed many problems related to misleading advertisement even involving big companies for instance when Airtel claimed its fastest network and JIO filed complain about it held that it has ambiguity and asked to take it down. But the problem lies on the advertisement which is made offensive to public interest. Here the interpretation of public is major problem even though if the advertiser didn't mean in the certain in that way if public understand in that way it should be taken down. In the matter of protecting consumer from misleading advertisement and unethical competitive advertisements it's protecting both consumer on other player in the market. In the case of advertisements against public interest it's leaned towards the public then the advertiser As a council for providing justice it should also look into the Advertiser side "Not always the majority is right" public interest should be taken into consideration but it doesn't mean that not always public side is correct. . So, here exactly the ASCI is losing its balance between public and advertisers.

CONCLUSION

Advertisements Rights are not protected completely under the Right of Freedom of Speech and Expression because there are many restriction over the advertisements several regulator bodies and statutory provision and there is lack of single regulatory body. The power to regulate the advertisement is in the hands of authority such as central, state governments, tribunals, regulatory bodies such as ASCI, Press Council etc. the current status which advertisement holding was after several case to even hold the position that it can be protected under the Freedom of Speech and Expression being Commercial Speech.

Even though Freedom of Speech and Expression doesn't hold absolute Rights advertisement

³² Pranav Rudresh, "What Are the Laws Governing the Advertisement in India" (iPleadersOctober 22, 2019) <<https://blog.ipleaders.in/laws-governing-advertisement-india/>> accessed February 5, 2023

being Commercial Speech is treated as step child of the free Speech. There is need for one regulatory body collectively for the regulation of advertisements that will protect the advertiser's from several accusation from misunderstanding and will lay easy path for the consumer to approach and file compliant rather than getting confused about going with court, regulatory bodies or tribunal. The system of preview of an advertisement should be there with council to check whether the information provided by them is true or not or how it will be understood by the layman will help in the reduce in the number of cases regarding the advertisement when it's broadcasted. The law should be added to properly protect the Rights of advertiser's too.

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