

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to

the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



March 14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



participated in several workshops on research methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

Food Advertisement Standards in India: A Critical Analysis

Authored by – Athira Mathew

Abstract-

Advertising lies at the core for spreading awareness among people. It forms the heart of commercial speech and has been protected under the ambit of free speech and expression under Article 19 of the Indian Constitution by the Apex Court through various landmark judgments. One may comprehend the importance of the same by considering its impact on the economy and the employment market. Although there are numerous statutory requirements, India does not have a single unified code of law that deals with and regulates all aspects of advertising. Despite the absence of a uniform integrated legislation, there are certain other national legislations that lay down certain guidelines for advertisements. One such legislation that governs food advertisements is the Food Safety & Standards Act, 2006.

As per this act, no advertisement that is misleading or deceptive or that violates the requirements of this law or the rules and regulations imposed thereunder can be made regarding the standard, quality, amount, or grade-composition, or regarding the necessity for or utility of any food. Furthermore, the Food Safety and Standards Authority of India (FSSAI) set up under the Food Safety and Standards Act, 2006 holds food businesses accountable for misleading claims. The present paper briefly analyses the provisions given in the abovementioned statute with regards to food safety. The paper mainly focuses on whether or not these regulations are just and fair and whether they violate the Constitution and the basic guarantee of freedom of speech and expression.

Keywords-

Food Advertisements, Food Safety, Misleading Advertisements, Freedom of Speech and Expression, FSSAI.

Introduction-

“Stopping advertising to save money is like stopping your watch to save time.” – Henry Ford

The significance of this crucial promotional activity is encapsulated in this famous American industrialist's quote. The Institute of Practitioners in Advertising have defined Advertising as “Advertising presents the most persuasive possible selling message to the right prospects for the product or service at the lowest possible cost”. Therefore, advertising is a practice undertaken with the aim to sell a product or service to a target audience and is one of the oldest forms of marketing which attempts to influence the actions of its target audience. Advertising, which has been referred to as the heartbeat of a corporation, reflects the product or service itself, as well as its naming, packaging, pricing, and distribution. Without advertising, goods and services cannot be distributed to retailers and sellers, who then pass them on to buyers or users. A thriving national economy also depends on advertising to boost sales so that manufacturing is kept up, people are employed and have money to spend, and the money keeps flowing. Mass production, which is essential to the current industrial civilization, necessitates mass consumption, which in turn necessitates mass market promotion via mass media. As a result, advertising is necessary in the modern world.¹

From the individual who publishes a small classified ad in the newspaper to an MNC that places an advertisement on a TV channel, advertising has a very broad scope, many uses, and many advertisers. Depending on the inventive presentation and use of media required, it could be divided into consumer, business-to-business, trade, retail, financial, direct response and recruitment advertisements. The first goal that advertisements try to accomplish is to tell the public about a good or service. It helps people become aware of and knowledgeable about a new product. Second, it makes an effort to persuade the potential customer by gradually and consistently establishing an impression of the business and its goods. Additionally, it serves to remind the potential customer about the good or service. All of the roles of advertising ultimately work toward achieving the aims of the marketing communication system, namely the creation of demand and sales promotion, much like all other components of the marketing mix.

The qualities of a successful advertisement and the essence of advertising include creativity to draw in and hold the interest of consumers as well as the selection and usage of the most

¹ Frank Jefkins, *Advertising* 23-27 (4th ed. 2009).

cost-effective media.²

There are many people who oppose advertising, despite its economic justification. It has frequently been charged with being an immoral and parasitic force that elevates false values and persuades individuals to purchase items they do not need or cannot afford. It has drawn criticism for fostering fictitious consumer demand and adding to the issue of overconsumption. This industry is also rife with dishonest activities.

Despite the scale and nature of this industry, there remains no central legislation to regulate the same in India. The advertising market is generally regulated by or controlled by a non-statutory body i.e., ASCI (Advertising Standards Council of India). Apart from this code there are some laws which specifically govern specific media. These laws include those laws which specifically govern media, secondly, laws which protect both society and the consumer and lastly laws which are specifically related to industry. Code of Conduct of the News Broadcasters Association, Norms for Journalist Conduct issued by the Press Council of India, The Press Council Act 1978, Cable Television Network Rules, 1994 and Electronic Media Monitoring Centre (EMMC) are some of the laws that govern media that help regulate advertisements. Furthermore, Emblems and Names (Prevention of Improper Use) Act, 1950; Young Persons (Harmful Publications) Act, 1956; Standards of Weight & Measures Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; Consumer Protection Act 1986; Companies Act, 2013 and Consumer Protection Act 2019 are few legislations that oversee advertisements and mainly deal with society and consumers.

Additionally, there are certain industry-specific statutes that also lay down certain guidelines for advertising like The Drugs and Cosmetic Act, 1940, The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954, Public Gambling Act, 1867, the Lotteries (Regulation) Act, 1998 and the Prize Competitions Act, 1955, Advocates Act, 1961, The Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, Securities and Exchange Board of India Act, 1992 8. The Transplantation of Human Organs Act, 1994, The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and The Food Safety & Standards Act, 2006 etc.³

² *Id* at pg. 55.

³ Dr. R. M Kamble, *Laws Governing Advertisement in India: An Overview*, 9 International Journal of All Research Education and Scientific Methods (IJARESM) 836-837.

Major legislations that pertain to advertisements in India include the following-

Firstly, The Consumer Protection Act 2019, which replaced the erstwhile Consumer Protection Act 1986, has brought much relief to consumers. It has provided provisions to deal with new challenges that have been faced by consumers in the new digital era. Section 2(1) of the Act defines "advertisement" to mean any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.⁴ Further, the new act also has clear provisions against misleading advertisements and has also defined misleading advertisements. Additionally, the Central Authority has been granted the power to issue directions and penalties against false or misleading advertisements as per Section 21 of the Act.⁵

Secondly, The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the statute that prohibits advertisement of cigarettes and other tobacco products. Section 22 of the Act provides the penalty for contravening the same. Whoever contravenes the provision i.e., Section 5, is to be punished with imprisonment up to 2 years or fine extendable up to Rs.1,000/- or both (applicable for first conviction); further in case of successive convictions imprisonment up to 5 years and fine extendable up to Rs. 5,000/-.⁶

The Transplantation of Human Organs Act, 1994 has also defined the term „advertisement“ and has prohibited any advertising inviting individuals to provide any human organ for payment.⁷

Finally, the Bar Council of India Rules (specifically before amendment of Rule 36 of BCI Rules) formulated under the Advocates Act 1961 also govern advertisements and this piece of legislation has effectively set a ban on advertisement for publicity and also provided for control on fake advertisement of practicing lawyers to a public at large to attract the clients.⁸ Therefore, despite the absence of a uniform integrated legislation, there are certain other national legislations that lay down certain guidelines for various kinds of advertisements.

⁴ The Consumer Protection Act, 2019, §2(1).

⁵ The Consumer Protection Act, 2019, §21.

⁶ The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, §22.

⁷ The Transplantation of Human Organs Act, 1994, §2(a).

⁸ Bar Council of India Rules, 1975, §36, (6th September, 1975).

Laws pertaining to Food Advertisements-

Now, advertisements pertaining to food have been mainly regulated through the Food Safety and Standards Act, 2006. This Act was passed to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

This Act explicitly defines unfair business practises and imposes penalties for the use of deceptive and misleading advertising. Section 24 of the Act deals with same. It stipulates that no advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder. Further, it prohibits individuals from partaking in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which—falsely represents that the foods are of a particular standard, quality, quantity or grade composition, makes a false or misleading representation concerning the need for, or the usefulness of a particular article of food, or which gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof.⁹

Additionally, Section 53 of this legislation lays down the punishment for publication of food related advertisement. It provides that any person who publishes, or is a party to the publication of an advertisement, which falsely describes any food or which is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees.¹⁰

In addition to this, The Food Safety and Standards Authority of India (FSSAI) set up under the Food Safety and Standards Act, 2006 has finalised certain guidelines to regulate claims and advertisements by food business operators in relation to consumable food items. By holding food enterprises responsible for such claims and promotions, these regulations seek to uphold fairness in the marketing of food items and safeguard the interests of consumers.

These regulations have laid down general principles for claims and advertisements; criteria for nutrition claims (including nutrient content or nutrient comparative claims), non-addition claims (including non-addition of sugars and sodium salts), health claims (reduction of

⁹ Food Safety and Standards Act, 2006, §24.

¹⁰ Food Safety and Standards Act, 2006, §53.

disease risk), claims related to dietary guidelines or healthy diets, and conditional claims; claims that are specifically prohibited; and procedures for approval of claims and redressal of non-compliances under these regulations.

General guidelines established by the FSSAI for food industry operators and marketers to follow while advertising include the following: assertions must be verifiable, clear-cut, relevant, and not deceptive. They should not promote or support excessive food consumption. The quantity of servings of the meal per day necessary to achieve the claimed benefit must be specified in the claims. A food's nutritional or health claims must also be supported scientifically by procedures that are approved for quantifying the ingredient or substance that forms the foundation of the claim. Words/phrases such as natural, fresh, original, traditional, authentic, genuine, real etc. are not to be used on the food labels except under specific conditions where the meaning of a trademark, brand name or fancy name contains these adjectives. Finally, every declaration which is required to be made on advertisements under these regulations need to be conspicuous and legible.¹¹

These regulations have also prohibited certain types of claims such as those that refer to the suitability of the food for use in the prevention, alleviation, treatment or cure of a disease, disorder or particular physiological condition unless specifically permitted under any other regulations made under the Act. Claims which do give rise to doubt or suspicion about the safety of similar food or which may arouse fear are also not to be made. Further, no advertisements or claims for articles of foods shall be made by any food business operator that undermines the products of any other manufacturer for the purpose of promoting their products or influencing consumer behaviour.¹²

Overall, these guidelines have been a good way to keep food companies in check and not indiscriminately use the words „natural“, „fresh“, „original“, „traditional“, „authentic“, „genuine“ etc. in food advertisements. These guidelines have been wide in scope and has been able to provide solutions for the challenges of the modern world.

¹¹ Food Safety and Standards (Advertising and Claims) Regulations, 2018, §4, (19th November, 2018).

¹² Food Safety and Standards (Advertising and Claims) Regulations, 2018, §10, (19th November, 2018).

Constitutionality of Advertisement Regulations-

Article 19(1)(a) of the Indian Constitution stipulates that everyone has a right to freedom of speech and expression.¹³ Judicial activism and inventiveness have enlarged the scope of this right to include various other aspects such as right to silence, freedom of press etc. Article 19(2) of the Indian Constitution lays down the reasonable restrictions to the aforementioned fundamental right. This provision states that the State can make laws that impose reasonable restrictions on the exercise of the right conferred Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.¹⁴

Now, the constitutionality of regulations on advertisements can be traced through a number of landmark judgements put forth by the Apex Court.

In the case of *A. Suresh v. State of Tamil Nadu*, it was held that where an activity involves questions of freedom of speech as well as questions of freedom to carry on a business, profession or vocation, it is legitimate for the State to regulate the business aspect in terms of Article 19(1)(g).¹⁵

Later, in *Romesh Thappar v. State of Madras*, the Supreme Court held that Article 19(1)(a) includes the freedom of press.¹⁶ In *Hamdard Dawakhana v. Union of India*, the Court observed that, an advertisement is a form of speech but its true character is reflected by the object for the promotion of which it is employed and brought it under the ambit of Art. 19(1)(a) as it is to the notice to the public at large. Further the Court held that the moment these activities take the form of a commercial advertisement it no longer falls within concept of freedom of speech.¹⁷

However, in *Indian Express Newspaper v. Union of India*, the Supreme Court held that commercial speech is protected under the ambit of free speech and expression under Article 19 and the Supreme Court observed that “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 and its true character is detected by the object for the promotion of which it is employed.”¹⁸

¹³ Ind. Const. § 19, cl. 1(a).

¹⁴ Ind. Const. § 19, cl. 2.

¹⁵ *A. Suresh v. State of Tamil Nadu* (AIR 1997 SC 1889).

¹⁶ *Romesh Thappar v. State of Madras* (1950 AIR 124).

¹⁷ *Hamdard Dawakhana v. Union of India* (AIR 1950 SC 554).

¹⁸ *Indian Express Newspaper v. Union of India* (1985) 2 S.C.R. 287.

The above position was also elaborated upon in *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.*, wherein the Supreme Court observed the right of the consumer as a recipient of commercial speech. In this case, the Court held that Article 19(1)(a) not only guarantees freedom of speech and expression but that it also protects the rights of individuals to listen, read and receive the said speech. Further, the Apex Court also clarified that misleading and deceptive advertising would not fall within the protection of Article 19.¹⁹

Furthermore, in *Sushil Chowdhary v. State of Tripura*, wherein the action of the State Govt. was challenged when the State Govt. Tripura, departing from its established policy, started allowing 24 percent of its advertisements to only one newspaper and allowing only 6 percent to another newspaper. The Court held that the action of the State policy violated two articles of the Constitution i.e., Article 14 and Article 19(1)(a). The High Court further pointed out that freedom of speech and press, are not so much for the benefit of the press, as for the benefit of the general community. It also observed that a duty to ensure circulation of newspaper arises on the part of the government because the community has a right to be supplied with information and as the government owes a duty to educate the people within the limits of its recourses.²⁰

Therefore, through various pronouncements Indian courts have brought advertisements, which lie at the heart of commercial speech, within the ambit of freedom of speech and expression but have also held on various instances that reasonable restrictions can be placed on misleading and deceptive advertisements. Hence, regulations on advertisements are to be held constitutional and just.

Conclusion-

To conclude, advertisements in India have been governed mainly by voluntary bodies due to the lack of a central legislation. Despite the absence of a uniform integrated statute, there are certain other national legislations that lay down certain guidelines for advertisements. One such statute is the Food Safety & Standards Act, 2006. This legislation governs food related advertisements and lays down certain guidelines regarding the same. Such guidelines are constitutional and justified in nature considering the sheer amount of misleading trade practices that are followed in the contemporary digital era and taking into account various landmark judgments put forward by the Apex Court. Hence, food advertisement standards in India are to be deemed fair and justifiable.

¹⁹ Tata Press Ltd v. Mahanagar Telephone Nigam Ltd. (1995 AIR 2438).

²⁰ Sushil Chowdhary v. State of Tripura (AIR 1998 Gau. 28).