

**A Legal Study of Misleading Advertisements
in India with Special Reference to
Consumers' Interests**

ABSTRACT OF THESIS

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1. INTRODUCTION

Advertising is a form of communication that is used to convey the target group of a company on its existing and future products. Advertising is used to encourage the public to use the Products and services by ensuring that the products/services are relevant. They would give the client a social, economic, or psychological advantage over those who do not use these products/services. Communication can either be traditional, media or contemporary media. Traditional/mass media include newspapers, television, advertising in cinemas, magazines, radio jingles and contemporary/new media includes delivery of messages through blogging and advertising for web series (on platforms like YouTube), emails and more recently the use of platforms like WhatsApp, Business etc.

Advertising is used to project a specific image of the company/product into the minds of customers. Companies spend a large chunk of their money on advertising (online and offline) when creating their annual budget. The customer often bears the brunt of the company's exquisite advertising budgets, as the costs are passed on directly to the customer. In a country of a billion plus people, it is very difficult to reach different sections of society without proper advertising. However, advertising becomes superfluous if the product is over the top and the brand hopes that the product will sell based on lavish advertising or based on the celebrity star power that advertises the product. This study provides an overview of the concept of "misleading advertising" from a legal perspective and the related laws and their effects on Indian consumers. Existing and possible solutions are also discussed in order to overcome it.

Misleading advertisement is advertising that is actually incorrect or deceptive in the transmission of product information. Misleading advertisement can also be used to determine whether advertising through product components or through product slogans such as "Boost is the secret of our energy" is misleading. So this is something that is misleading advertisement other than

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labelling and has a very ambiguous tone because it lacks the facts. The problem with such advertising is that the consequences can only be felt after the purchase of the product. Advertisement can be misleading if it contains false factual statements, hides or omits important facts, contains a promise or implies to do something without the intention of doing it, or gives the wrong impression, even if all of this can be stated literally be true. They also affect consumer economic behavior and can damage an advertiser's product from a competitor.

Misleading ads have a negative impact on society and directly or indirectly disrupt any member of their ecosystem. This leads consumers to imagine a fantasy when reality is completely different. Here the negative effects have to be discussed in detail. Misleading ads can be divided into three main approaches fraudulent, false and misleading. Fraudulent means that the advertiser distorts the facts and projects the product as something that it is not. Falsehood can mean that the advertiser lies based on parameters such as price, quantity and availability. Misleading means media deception focuses on the belief of a consumer. The misleading nature obliges advertisers to heed the false beliefs of consumers about exposure to advertising. Misleading is about the distortion of facts.

The State has a legitimate compelling interest to regulate the advertising sector. Critics of state intervention however, either oppose such interventions in the advertisement sector or argue for the minimalist role of the state in the field of advertising on the following grounds:

- (i) Operation of market forces and
- (ii) Comparative advantages of self-regulatory measures than government regulation.

Government regulation of advertising has to be within the Constitutional framework. Meaning thereby it should not be inconsistent with Fundamental Rights of manufacturers, producers, distributors, dealers and service providers on the one hand and the consumers' right to receive information about the

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products and services on the other. It is worthy to mention here that commercial advertisement as a form of speech and expression is protected under the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Indian Constitution. Article 19(1) (g), which guarantees freedom to practice any profession, or to carry on any occupation, trade or business, also protects and safeguards against the imposition of unreasonable restraints on the exercise of the right to advertise and this right can only be restricted on the grounds specified, in Article 19(6) i.e. in the interest of general public Although the commercial advertisement is protected under Article 19(1) (a), it can be restricted on the grounds of public order, decency and morality etc. under Article 19(2) of the Indian Constitution.

Advertising law in our country is spread through a number of legislation, judicial decisions, orders of quasi-judicial bodies like Monopolies and Restrictive Trade Practices Commission and the Consumer Fora and Codes made by the Government and non-government agencies. The existence of a wide array of legislation on advertising reveals a segmented rather than an integrated or holistic approach towards the regulation of advertising. Most of these legislations prohibit obscene or indecent advertising and aim to protect the young minds from the harmful effects of unfair and unethical commercial advertising. To mention few of them: the Indian Penal Code, 1860, the Indecent Representation of Women (Prohibition) Act, 1986 and the Young Persons (Harmful Publication) Act, 1956 etc.

Some legislation regulates advertisements of prohibited drugs and magic remedies, cigarettes and other tobacco products and liquor etc. Interestingly, provisions of these legislations are applicable to commercial as well as non-commercial advertisements and impose criminal liability on the violators. These legislation are: the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the Cable Television

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Networks (Regulation) Act, 1995, the Drugs and Cosmetics Act, 1940, and the Food Safety and Standards Act, 2006 etc.

The advertisements promoting prize competitions and prize chits and money circulation schemes are prohibited under the Prize Competition Act, 1955 and the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 respectively. The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits the use of emblems and names specified in the schedule under this Act for the purpose of trade, business etc. The Transplantation of Human Organs Act, 1994 prohibits advertisements relating to commercial dealings in human organs. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 prohibits the advertisements of pre-natal diagnostic techniques for detection or determination of sex. Some legislation relate to advertisements involving intellectual property rights such as the Trade Marks Act, 1999 and the Copyright Act, 1957 etc. Although the 'brothel advertising' is not common in India, a new trend has emerged in the form of advertisement column named 'Health and Physical Fitness' and 'Friendship Club' published in newspapers especially designed for the advertisement of homosexual brothels. Provisions of Indian Penal Code and the Immoral Traffic (Prevention) Act, 1956 are relevant legislation in this regard. While the former punishes homosexuality the latter punishes the act of seducing or soliciting for the purpose of prostitution.

As the society advanced, newer technologies also came to dominate and with this, application and use of these technologies took place in almost all the spheres. In such a situation it is certain that media has to play a greater role which it actually does now a days. The print and electronic media spare some of their valuable times and space for advertising the product. Now, it has also become a fashion to go for advertising all aspects involving the people. Starting from entertainment, products, achievements and sporting events have become a regular feature of the both print and electronic media. The entry of corporate houses and even celebrities in sponsoring some programmes and events which

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are highlighted in the media circles have been able to arouse interest and enthusiasm in public minds. Thus, the advertisement and media are playing a major role in the present day. Turning to internet or online advertising, in coming three years India could have the second largest population of internet users, according to a report by the Internet and Mobile Association of India. The Report claims that the number of online users will rise to more than half a billion by 2018. Internet is increasingly become a part of media mix for advertisers, as they realize its high potential in reach and penetration. According to a recent Report by the Association, digital advertising and classifieds are predicted to grow at 25% by 2018. To regulate online advertising, we have only the Information Technology Act, 2000, which prohibits only the publishing of information which is obscene in electronic form and leaves other aspects uncovered and unregulated.

The other legislation controlling advertisements are the Representation of the Peoples Act, 1951, which prohibits the act of displaying to the public any election matter during the period of forty-eight hours ending with the hour fixed for conclusion of the poll, the Companies Act, 1956 which carries provisions regarding the advertisements relating to the statement showing the financial position of the company and the Advocate Act, 1961 which prohibits lawyers from advertising their services or soliciting clients.

Before the notification of the Competition Act, 2002, commercial advertising in India was regulated by the MRTP Act, 1969. Sections 36(A) to 36(E) of the Act regulated the certain categories of Unfair Trade Practices such as false and misleading advertising, bargain, sale, 'bait and switch' selling, offering of gifts or prizes with the intention of not providing them and promotional contests and non-compliance of prescribed standards etc. In order to protect the interests of the consumers, the MRTP Commission has provided compensation, passed 'cease and desist' order and issued injunctions in a large number of cases and in the process has developed and enriched the

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jurisprudence of unfair trade practice including false and misleading advertisements in our country.

The Consumer Protection Act, 1986, is an another landmark legislation which provides protection to consumers against false and misleading advertisements, bargain, sale, 'bait and switch' selling, offering of gifts or prizes with the intention of not providing them and promotional contests and non-compliance of prescribed standards etc. After the notification of the Competition Act, 2002, it has remained the only legislation on the statute book to deal with cases of false and misleading advertisements. But the Consumer Protection Act 2019 brought the dramatic change by repealing the old Consumer Protection Act 1986.

After 33 years of enactment of the Consumer Protection Act, 1986 it is time to revisit its objectives and organizational structure and enlist its shortcomings in the present era. The Consumer Protection Act, 2019 was passed by the Parliament and received the assent of the President on 9 August, 2019. The Central Government has, on 15 July 2020, notified several provisions of the 2019 Act which have come into force from 20 July 2020. It aims at protection of consumers and fast-track alternatives so that justice reaches to the aggrieved consumers immediately. The new Act repeals and replaces the older CPA, 1986 and provides mechanisms for making the consumer complaint system more robust. It envisages to remove anomalies and problems faced by the consumers. Innovative methods such as mediation, establishment of Central Consumer Protection Authority, class action suits etc. would be part of the Consumer Protection Act, 2019. The new legislative enactment has also included express definition of Misleading Advertisement, widened the term consumer as well as Unfair Trade Practices. The Consumer Protection Act, 2019 has provided many rights and option to the consumers. It also imposed certain restrictions on service providers and celebrities promoting the goods and services. Since the rules of the New Consumer Protection Act, 2019 are yet

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to be framed and implemented it is time to look at what the new Act would deliver and draw a comparison with CPA, 1986.

In addition to enactments mentioned above, advertisements are also controlled by self-regulation mechanisms. The self-regulation instruments in India are: Norms of Journalistic Conduct Regarding Advertising; Codes of the Advertising Standard Council of India; Code for Commercial Advertising on *Doordarshan*; All India Radio Code for Commercial Advertising; Federation of Indian Chambers of Commerce and Industry: Norms of Ethics and Code of Fair Business Practices. These codes are enforced through the commitment and cooperation of advertisers, advertising agenda and the media.

Considering the ever increasing importance of commercial advertising as the lifeline of trade and business and as an effective means of information and communication that the consumer needs to make 'informed buying decisions' in this era of competition and open market, the role of law is to encourage and promote ethical, fair and genuine advertising and to protect the interests of the consumers and the society at large from the adverse impact of modern commercial advertising. In view of the need to regulate the advertising sector, regimes all over the world from the most liberal democracy to the authoritarian one have put in place some regulatory mechanisms to control the menace of present day advertisements. The advertising law and ethics however, vary from jurisdiction to jurisdiction depending upon the social, political and cultural ethos of each country. Further, they are neither equally comprehensive nor adequate in all the jurisdictions.

In view of the above it is necessary to take account of law and ethics on different aspects of commercial advertising as they prevail in India and wherever appropriate to compare them from the advertising laws and the ethical codes of some of the developed countries. Such a study may not only increase our understanding of the law and ethics on advertising but will also be helpful in identifying the gaps, ambiguities and loopholes in the existing law and suggesting measures for strengthening the existing regulatory mechanism

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on advertising. The present work is a humble attempt in this direction. Its aim is to present a coherent picture of the law and ethics of commercial advertising in India and to discuss and examine their adequacy in meeting the challenges posed by the modern commercial advertising. It may be noted that while the effective regulating mechanism is a *sine qua non* for controlling obscene, vulgar, unethical, lascivious and false and misleading commercial advertisements, the existing legal framework is far from satisfactory and therefore, needs to be further strengthened. It also aims to consider and examine the causes for the poor implementation of the advertising law and suggest the remedial measures.

2. STATEMENT OF PROBLEM

Adequate information regarding the utility, quality, guarantee of product, and price of a product is one of the important basic characters for which the certain product is produced. The content of advertisement aired on television, radio and print media is being regulated by private bodies like the advertising standards council of India. Advertising Standards council of India was established in 1985. ASCI do not have statutory power. It acts only as a moral pressure group. It is publishers and agencies in mass media hands over the matter to statutory authority. Its decisions are not followed by the advertiser. There is no law that declares misleading advertisement as illegal. There is *no* uniform law or statutes to regulate advertisement. Advertisement related ethical issues like obscenity, harmful publication and incident representation of women, advertisement and children, health & safety, health & food are also problematic issues. These issues are violated consumer rights like right to information, right to choice and right to safety.

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3. OBJECTIVES OF THE STUDY

1. To explain the meaning and concepts of advertisement.
2. To make a comparative analysis national and international regime related to advertisement.
3. To study the right to advertising and freedom of speech and expression.
4. To study the misleading advertisement as an unfair trade practice.
5. To study comparative advertisement and infringement of trade mark.
6. To study of misleading advertisement and protection of consumer rights.
7. To analysing various laws and regulations related to advertisement
8. To study of judicial contribution to regulate the advertisement.

4. HYPOTHESIS

The following propositions are to be tested in the present research work:

1. The right to advertisement under Article 19 is not comprehensive enough to include all the commercial aspects of it.
2. The law relating to Trade mark are not effective enough to regulate the practices of comparative advertisement.
3. The measures taken by advertisement standard council of India to regulate misleading advertisement are not effective despite this comes within the ambit of unfair trade practices.
4. The laws such as Cable television network (regulation) Act. 1995, Telecom regulatory authority of India Act, 1997, IT Act, 2000 are not specially directed to control the acts of misleading advertisement in cyberspace.
5. The law including such as Consumer protection act, 1986, Drugs & cosmetics Act, 1940 are not specially directed to control the practises of misleading advertisements.
6. The courts are not fully equipped to deal with the commercial aspects of advertisement.

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5. SCOPE OF THE STUDY

The scope of research will be limited to misleading advertising in the food, pharmaceutical and cosmetics industries. We only discuss the Indian context. In accordance with the requirements of the studies, however, reference is made to other countries.

6. RESEARCH METHODOLOGY

The research methodology followed in this work is doctrinal in nature, not involve empirical approach. It involves systematic analysis, and critical evolution of legal principle/doctrinal/concept. The derivation of the concept from the legal principle or doctrine has been highlighted and various proposals put forth. The information shall be based on the analysis of both primary and secondary sources of data. The secondary data is availed from various books, journals, magazines, newspapers, Government publications, earlier studies, media reports. The primary source of has also been used in accordance with the requirement of study.

7. SCHEME OF CHAPTERS

The Ph.D. thesis on '*A Legal Study of Misleading Advertisements in India with Special Reference to Consumers' Interests*' is based on the doctrinal study. The whole thesis is divided into seven chapters.

Chapter I: Introduction

First chapter is introductory and endeavours to summarize the entirety of the thesis, which has been discussed at length in the chapters to follow. This introductory chapter explains about what is misleading advertisement and what is false advertisement and also discuss adverse effects to the society through these false advertisements and how advertisement creates confusion in the mind of viewers. What are the tactics which been used by the companies to make advertisement good and how to make profit.

Lastly, the work presented in this thesis is based on doctrinal research which is specifically mentioned in the research methodology. The researcher

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has discussed the literature review, statement of the problem, objectives of the study, hypothesis, scope of study, research methodology and scheme of chapter.

Chapter II: Conceptualization of Advertisement

In Chapter II i.e., Conceptualization of Advertisement, researcher gave a brief introduction about the meaning, definition of the advertisement. Advertising by nature is informative and provides the communication between someone with something to sell and someone who needs something. Advertising is also useful for consumers as it helps them in getting promptly relevant and necessary information about all competing brands and their merits, about their price, potential performance and above all about their use and thereby saves the 'search cost' of products which consumer needs for their personal use.

Further in this chapter researcher discussed the *historical backgrounds of the advertisement*. Researcher has also discussed *modes of advertisement, classification of advertisement* in the chapter two.

Chapter III: Comparative Analysis of National and International Framework of Advertisements

Researcher has completed the next Chapter i.e; *Chapter III: Comparative analysis of national and international aspects of advertisements*. In this chapter, researcher has dealt with a comparative study of Press Freedom in European and other Democracies and mention in brief about the restrictions over the Advertising among 6 countries. The 6 countries include: United States, United Kingdom, Australia, France, Japan and Canada.

Chapter IV: Constitutional Analysis of Commercial Advertising in India

In Chapter IV i.e., *Constitutional Analysis of Commercial Advertising in India*, researcher has discussed about the constitutional provision and judicial pronouncement of the Supreme Court. There is no special provision for regulating advertisement policy in the Constitution of India, which should be

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adopted by press or media. The Supreme Court has given guidelines for the same through a series of Judgments. Most significant decisions in this context are *Hamdard Dawakhana v Union of India*¹ and *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*² The constitution of India explicitly protects freedom of speech and expression in Article 19 (1) (a). It was asserted in *Hamdard Dawakhana v Union of India*³, that an advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19(1) which it seeks to aid by bringing it to the notice of the public. It allows us to freely express our ideas and thoughts through any medium such as print, visual, and voice. One can use any communication medium of visual representation such as signs, pictures, or movies.

The Supreme Court of India in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*⁴ held that advertisements to be commercial free speech subject to certain reasonable restrictions. The limitations include restriction on manipulative advertising as well. The Hon'ble apex court in the same judgment remarked "it is expected that by way of advertisement or promotion of its services, the subscriber should not be misled".

Further, researcher has discussed right to commercial advertising as a fundamental right of manufacturers/sellers in this Chapter. The Indian Constitution guarantees a number of Fundamental Rights to citizens as well as non-citizens. For the purpose of the present discussion the relevant Fundamental Rights are Freedom of Speech and Expression, which also includes the freedom of the press, and freedom of profession, occupation, trade or business. Commercial advertising raises the issue of availability of the freedom of speech and expression guaranteed by the Article 19(1) (a) of the

¹AIR 1960 SC 554.

²(1995) 5 SCC 139.

³AIR 1960 SC 554.

⁴(1995) 5 SCC 139

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Indian Constitution. But such rights are available only subject to reasonable restrictions mentioned under Article 19 (2) of the Indian Constitution.

Further, researcher has discussed *consumer's right to information* in this chapter. The constitutional issue of extension of freedom speech of expression to commercial advertisement needs to be examined from the prospective of the consumer's right to product and service information. As we know the concept of 'consumer's right' is recognized at both international and national level.

As stated previously, no right can be absolute and without restrictions or else they might not act in the best interest of the public. Advertisement has been considered as an act of communication or expressing one's views but the said right may be exploited by the advertisers if not guarded. Restrictions on advertisements might be imposed when the advertiser indulges in the following acts, for it is necessary for the government/the appropriate authorities to intervene if such advertisements are detrimental to the interests of the public at large.

Chapter V: Regulatory Framework of Advertisements by various Legislations and Institutions

In Chapter V i.e., *Regulatory Framework of Advertisements by various Legislations and Institutions*, researcher has explored and examined about the various legislations and institution regulating the misleading advertisements. The basic aim of the chapter is to present a coherent picture of legal and statutory controls of commercial advertisements. To this end an attempt has been made here to provide an overview of all major advertising legislation except the Consumer Protection Act, 1986 and the Monopoly and Restrictive Trade Practices Act, 1969. These both legislations has been discussed in separate chapter i.e., Chapter 6.

The Government of India has not set up a regulatory body in India to regulate advertisements. But as in due course depending on the nature of the grievances, the power to regulate advertisements may be exercised by a vast variety of authorities, including the courts, Central and State Governments,

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tribunals or the police authorities. In addition to that numerous legislations also deal with advertisement provisions in part not in toto unfortunately. The rules, regulations and legislations include the following:-

1. Information Technology Act, 2000.
2. Indian Penal Code, 1860.
3. The Contract Act, 1872.
4. The Young Persons (Harmful Publications) Act, 1956.
5. Indecent Representation of Women (Prohibition) Act, 1986.
6. The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
7. The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975.
8. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1955.
9. The Drugs and Cosmetics Act, 1940.
10. The Emblems and Names (Prevention of Improper Use) Act, 1950.
11. Securities and Exchange Board of India (SEBI) (Stock-brokers and Sub-brokers) Rules, 1992 - Code of Conduct for Stock-brokers.
12. Securities and Exchange Board of India (SEBI) (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.
13. Securities and Exchange Board of India (SEBI) (Mutual Funds Regulation), 1996: SEBI Guidelines for Advertisements by Mutual Funds.
14. Securities and Exchange Board of India (SEBI) (Disclosure and Investor Protection Guidelines), 2000.
15. The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
16. The Transplantation of Human Organs Act, 1994.
17. The Representation of the People (Amendment) Act, 1996.

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18. The Lotteries (Regulation) Act, 1998.
19. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
20. The Competition Act, 2002.
21. The Civil Defense Act, 1968.

Regulatory authorities have power to regulate advertisement

- Advertising Standards Council of India (ASCI).
- Food safety and standards authority of India.
- Insurance Regulatory Development Authority.
- SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Security Market) Regulation, 1995.
- Telecom regulatory authority of India.

To scrutinize certain principles and fairness in the sphere of advertising, Advertising Standards Council of India was established in India in 1985. ASCI deal with complaints received from consumers and industry against such advertisements which are false, misleading, indecent, illegal, leading to unsafe practices or unfair to competition and are in contravention to the advertising code. Even though there is no as such provision for regulating advertisement policy in the Constitution of India, which should be adopted by press or media, the Supreme Court has given guidelines for the same through a series of decisions.

It is interesting to note that most of these legislation are criminal in nature and control commercial as well as non-commercial advertisements. The prime objectives of these legislations are to save the society from immoral and unethical practices rather than individuals. The individual who has been wronged probably will not benefit financially from the Court proceedings.

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Chapter VI: Protection of Consumer Interests from Misleading Advertisements under Consumer Protection Act

In Chapter VI i.e., *Protection of Consumer Interests from Misleading Advertisements under Consumer Protection Act*, researcher has dealt with the consumer, Misleading advertisements, unfair trade practices and enforcement of protection against unfair Trade practices.

Further, researcher has made a comparative analysis between on The Consumer Protection Amendment Act, 1986 and The Consumer Protection Amendment Act, 2019 which will help me to focus on the present scenario sought by the legislators to fulfill the need of the consumers.

Chapter VII: Conclusion and Suggestions

In Chapter VII, I (researcher) have concluded my research and mentioned some findings based on research work and tested the hypothesis on the ground of such findings. It contains some of the important suggestions to protect the consumers from misleading advertisements which they are facing by any means.

Although appropriate suggestions for strengthening the legal control of commercial advertisements have been offered throughout this work, some important suggestions which are pre-requisites for better control of commercial advertisements are recapitulated below:

1. **Need for codified law:** A comprehensive legislation should be enacted by Parliament by amending and consolidating the laws relating to commercial advertisements in the print as well as the electronic media. The proposed legislation should provide for the establishment of Advertising Regulatory Authority to oversee the entire issue of advertising business in the country within its scope. The proposed legislation should also provide for a viewer's forum with a total legal backing to monitor the advertisements in the print and the electronic media and to lodge protest against undesirable advertisements.

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2. **Required express provision in the Indian Constitution:** There must have express provisions in the Constitution of India regarding consumer welfare and consumer protection. It is also necessary to include “consumer affairs” as one item on the Concurrent List of the seventh schedule of the Indian Constitution. Schedule 11 should also be amended as necessary to ensure the active involvement of the Panchayati Raj institutions in the implementation of consumer welfare programs and activities.
3. **Amendment in IT Act, 2000:** The Information Technology Act, 2000 need to be amended to include the provisions against all menaces of present e-advertising in the lines of CAN-SPAM (controlling the Assault of Non-Solicited Pornography and Marketing) Act, 2003 of USA. In particular, the IT Act should impose a ban on false or misleading header information including the originating domain name and e-mail address of the person who initiated the e-mail; and should prohibit deceptive subject lines i.e. the subject line should not mislead the recipient about the contents or subject matter of the message. The person who initiates the e-mail should provide a return e-mail address or another interest based response mechanisms that allow a recipient to ask him not to send feature e-mail messages to that e-mail address and the initiator should honor the request. The initiator’s message should contain clear and conspicuous notice that the message is an advertisement or solicitation and should include his valid postal address.
4. **Labelling of Products-** it is the responsibility of the producers & service providers that they should clearly mention in the label, price, including information, its benefits and side effects. The producer or the service provider should not indulge in misleading advertisements to lure customers. This is cheating and makes the producer or the service provider liable for punishment.
5. **Misleading claims and advertisements-** very often cosmetic product manufacturers make tall claim about the capabilities of their products. But, all of them are not true in reality. So it is needed that the claims in the advertisement must be true in its applications and results. Where any

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footage/segment/ program carried on a news channel has been paid for whether as an advertisement or advertorial or other promotion, this aspect is required to be disclosed, during the broadcast intention should be that viewers are not misled into believing that such content is part of a News reportage. As per the guidelines issued by NBSA in March 2014 the news channel are required to disclose any political affiliation either towards the candidate or a party.

6. **Role of ethics, morals for protection of public interest-** the advertisement should adhere to ethics and morals. So, that the interest of general public will be protected at larger extent.
7. **Use of ADRM and ODRM-** the consumer dispute resolution essentially requires use of “Alternative Dispute Resolution Mechanism” (ADRM) as well as “Online Dispute Resolution Mechanism” (ODRM).
8. **Encouragement to consumers-** there is need of encouragement to consumers to come forward against violation of their rights. And also safeguarding their interests can be done by providing them justice in speedy manner.
9. **Need of statutory power to ASCI or self-regulatory bodies-** To improve the efficacy of the self- regulation following measures may be adopted:
 - There is need to confer statutory powers on the Advertising Standards Council of India, which is a self-regulatory body. It can prove to be effective check on misleading advertisements.
 - The advertisement must follow the code of self- regulation which itself will prohibit the publication of misleading advertisement.
 - The procedure and implementation machinery under self-regulation scheme should be clearly defined.
 - In order to strengthen the enforcement mechanism, compliance figures should be published from time to time in addition to this adverse publication should be done in case on non-compliance of the voluntary codes. This will damage the good-will of the non complaint party as well as warn the public. And finally, warning messages (‘Ad Alerts’)

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should be issued to other members advising them to withhold their services to non-compliant marketers or deny the later's access to advertising space.

- To check the practice of departing the joint standard by the members of the advertising organizations and associates, statutory recognition should be given to these voluntary codes like the Codes of Medical Council of India or the Bar Council of India.
- The Government should work more closely with ASCI, one of the major self-regulatory advertising bodies of the country.
- Any unreasonable delay in the responding the decision given under self-regulation system should be considered a breach of the code.
- The business community should make efforts to raise the standards of self-regulation scheme up to consumer's satisfaction.
- The Television and radio codes should be suitably amended to enable the Doordarshan and the All India Radio to compete with the national and international players in these fields.
- The Press Council of India should be armed with more power to secure the compliance of its Norms of Journalistic Conduct.
- The media voluntary codes should be amended to provide an international outlook but within the existing legal framework.

10. After repealing the old Consumer Protection Act, 1986, the new consumer Protection Act, 2019 has been enforced in India which has removed some lacuna's of old Act. In spite of this, new Act should be amended to insert the following provisions:

- a) Section 2 (47) of the Consumer Protection Act should be suitably amended to accommodate following types of unfair trade practices:
 - Making false or misleading representations concerning the place of origin of good.
 - Mislead those persons looking for a job regarding availability, nature, general conditions, or other questions related to the job.

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- False represent that goods had a particular history or particular previous use.
 - Falsely represent that the particular portion has agreed to acquire goods or services.
- b) The shortcoming of the new CP Act, 2019 is that the Act does not give provision for the consumers to approach a forum for the medical negligence which was present under the old Act.
- c) The Consumer Dispute Redressal Agencies established under the CP Act should be conferred the power to take *suomoto* cognizance of cases relating to false or misleading advertisements and other unfair trade practices. Under the new Consumer Protection Act, 2019, this power is not given to the Consumer Protection Authority, only inquiry or investigation can be made into violations of consumer rights or unfair trade practices, either *suomotu* or on a complaint received or on the directions from the Central Government ..
- d) There is also a need to tackle the problems of arrears of cases, frequent adjournments, non-appearance of parties, lawyer's strikes, practice of Peshi and tendency of the lawyers to prolong the litigation.
- e) If necessary, the appropriate State Commissions and the National Commission should be conferred the power of contempt in order to create a deterrent effect among the violators of their orders.
- f) Consumer Dispute Redressal Agencies need to be armed with the power to direct a businessman to divest itself of unjust enrichment reaped by false and misleading advertisements.

In order to improve the implementation of the CP Act, 2019 following steps may be taken:

- a) Vacancies in District Forums and State Commissions must be filled as earliest as possible to increase the disposal rate.
- b) Adequate and essential infrastructure should be provided to the consumer forums.

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- c) The government should constitute a Committee to look into the infrastructure requirements of the District Forum and the State Commissions.
- d) Lawyers should be allowed only in rare cases, particularly when it will be difficult for the forum to dispose of the cases without the assistance of the lawyers. It is worthy to note that under the proposed Consumer Protection Act, 2019, the engagement of an advocate shall not be allowed in District Forum or State Commission by either party to the complaint, unless the value of the good and services, exceeds rupees 2 lakh provided that the complainant may engage an expert if the complaint requires technical expertise.
- e) Number of adjournments in the disposal of the consumer complaints should be statutory limited.
- f) Appropriate steps should be taken to ensure that funds disbursed by the Central Govt. for the purpose of strengthening of the Consumer Grievance Redressal Form is utilized expeditiously and utilized only for the purpose for which they have been sanctioned.
- g) Filing of frivolous or vexatious in the disposal of the consumer complaints should be statutorily limited.
- h) Filing of frivolous or vexatious litigations before the Consumer Dispute Redressal Agencies at all levels should be discouraged by inflicting heavy cost.

8. TESTING OF HYPOTHESIS

The researcher has tested the following hypothesis on the basis of his research work.

➤ HYPOTHESIS - 1

The right to advertisement under Article 19 is not comprehensive enough to include all the commercial aspects of it.

On the basis of the research work, it is found that though protection of the consumer against false or misleading advertisements and other unfair,

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deceptive, immoral and unethical trade practices is the need of the present hour, the Indian Constitution carries no express provision relating to consumer protection. But since consumer justice is an integral component social and economic justice which the state is duty bound to secure to citizens, the central and state government are mandated by the Constitution to recognize and protect the rights of the consumers in general and safeguard them and society at large from the negative effects of commercial advertisements in particular.

As we have seen above the idea of consumer protection is permeated through the Preamble, Fundamental Rights and Directive Principles of the State Policy of the Constitution. The discussion also reveals that though ‘consumer affair’ as a subject has not been mentioned in Union, Concurrent and State List, various items in the Union List or Concurrent List provide the legal basis for enactment of advertising laws. Regarding the protection of Commercial advertising under Article 19(1) (a) of the Constitution, the Supreme Court in *Hamdard Dawakhana case*, denied this protection on the basis of wrong presumption of facts and law. However, the same court in *Tata Yellow Pages case* extended this protection to commercial advertisements. The foregoing discussion also makes it clear that the ‘must carry’ provisions in different statute could not be viewed as a restraint on the freedom of speech and expression and further freedom of commercial advertisement is also available to manufacturing companies. Though the apex Court held that the deceptive, unfair, misleading and untruthful commercial advertisements would be hit by Article 19(2) of the Constitution for the purpose of being regulated/prohibited by the state, it has not clarified as to which restriction/restrictions under Article 19(2) would be attracted by such advertisements. Hence, it can be said that the hypothesis has been proved.

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➤ HYPOTHESIS - 2

The law relating to Trade mark are not effective enough to regulate the practices of comparative advertisement.

On the basis of research work, it is found that on the basis of research work, it is found that Comparative Advertisement is the concept which helps in comparing the advertisements of the goods and services of one seller from another which mostly focuses upon the price, quality, value, durability. The advertisers employ this technique to increase their visibility in the market and to generate higher profits and better sales. Prevalence of competition in the market has come to be realized as a means to provide better place to the consumer in the seller's market. This has brought into practice the concept of competitive advertising. In this process most of the tradesmen in their advertisement instead of representing the facts supporting their promotion of their own brand represent the lacunae of the brands of their rival trade practitioners directly or indirectly (innuendo). Sometimes this benefit the consumers, but at other times he gets confused in making purchases and aptly moves for the purchase of a new, better claimed cheap for trial. Under this sub-clause the aforesaid practice is unfair trade practice as it also confuses the market, hence, unfair to the market. The disparaging statements may be patent or subtle play of semantics i.e. an innuendo. Whether there is any disparagement or not would depend upon facts and circumstances of each case.

The governing of the concept of CA takes shape after the cordial association of the MRTP Amendment Act 1984 and the TM Act of 1999.

1. Section 29 of the TM Act 1999 speaks about the Infringement of registered TM where in, section 29(8) specifically indicates that a registered TM is infringed by any advertising of that TM if the advertising takes unfair benefit and is against the honest practice, if this advertising will be hazardous to the unique character of the TM or is against the reputation of the TM.

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2. Section 30(1) TM Act 1999 also supplements that nothing under section 29 will prevent any advertiser or company using another's TM provided it is used in honest and fair practice in industrial and commercial matters and should not affect the distinctive character of the repute of the TM.

Hence, it can be said that the hypothesis has been proved.

➤ HYPOTHESIS - 3

The measures taken by advertisement standard council of India to regulate misleading advertisement are not effective despite this comes within the ambit of unfair trade practices.

On the basis of research work, it is found that on the basis of research work, it is found that like other countries around the world, India too has a self-regulatory organization (SRO) for advertising content- The Advertising Standards Council of India (ASCI) which was founded in 1985, incorporated into a company under Section 25, Companies Act, 1956 and is headquartered in Mumbai. The three main constituents of advertising industry, viz., advertisers, advertising agencies and media came together to form this independent and self-regulatory organization.

The primary aim of ASCI is to maintain and enhance public's confidence in advertising. The chief mandate of ASCI is that the advertising material that reaches the Indian population must be honest, truthful and legal besides being safe and mindful of the interest of the consumers- especially children. Other key factors which are taken care of by the organisation are the prevention of objectification of the fairer sex and last but not the least, fairness to the competitors.

After ASCI issues notice to a party violating its code of Advertising practice, the party concerned is afforded an opportunity of presenting its case. If the party is unable to satisfy ASCI, ASCI may direct it to withdraw the advertisement. In-so-far as these directions concern members of the ASCI, there is usually no difficulty with compliance. The problem arises when

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directions are issued against non-members, who are not bound by the code. On occasion, non-members have taken ASCI to courts, challenging its authority to pass directions that affect non-members. In *Century-Plyboards (India) Ltd. v. Advertising Standards Council of India*, A Single Judge of the Bombay High Court set aside an order *of* the ASCI holding that its actions were violative of the fundamental right of the plaintiff under Article 19(1)(g) and that a voluntary association of persons could not be allowed to usurp the jurisdiction of the courts. This order was set aside in appeal, albeit, without recording any reasons. There is no decision of the Supreme Court so far on the issue. The Cable Television Networks (Regulation) Act, 1995 also recognises the standards prescribed by self-regulatory bodies. The Advertisement Code under the Cable Television Networks Rules, 1994 provides that no advertisement, which violates the standards of practice approved by the Advertising Agencies Association of India, Bombay, shall be carried in the cable service. In an age of consumerism, which has coincided with, and in fact, has been largely catalysed by the growth and spread of the media, self-regulation within the advertising industry is an effective method of ensuring ethical advertising practices. Hence, it can be said that the hypothesis has been proved.

► HYPOTHESIS – 4

The laws such as Cable television network (regulation) Act. 1995, Telecom regulatory authority of India Act, 1997, IT Act, 2000 are not specially directed to control the acts of misleading advertisement in cyberspace.

On the basis of research work it is found that, currently almost everybody in the country is familiar with the cable television. It has been spreading its wing from the initial urban cities, right to remote villages. There has been a haphazard mushrooming of cable television networks all over the country due to availability of signal of foreign television networks *via* satellites. To check the screening of undesirable programmes and advertisements which are screened on these channels and to regulate the operation of the cable television networks in the country so as to bring

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uniformity in their functioning the Parliament enacted the Cable Television Networks (Regulation) Act, 1995. Section 6 of the Act says:

“No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code”.

Rule 7 of the Cable Television Network Rules, 1994 (Amended up to 2000) lays down the Advertising Code. The relevant part of the code is given below:

- 1) Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.
- 2) No advertisement shall be permitted which promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants; infant milk substitutes, feeding bottle or infant foods.
- 3) No advertisement shall be permitted, where the objects are wholly or mainly of a religious or political nature; advertisement must not be directed towards any religious or political end.

The violators of the provisions of this Act shall be punishable (a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both; (b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

It may be noted that the Trade Marks Act, 1999, denies the extension of registration of trademarks used for brand names of wine, alcohol liquor etc., but this denial did not affect the liquor companies as the companies did not need any approvals to advertise their products other than liquor. It is the other factor that encourages surrogate liquor advertising. It shows that irrespective of sufficient laws, implementing prohibition of liquor advertisement is not going

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to be an easy task. To overcome the problem, it is humbly submitted that the ban on liquor advertising under the Cable TV network (Regulation) Act, 1995 should be extended to cover the advertising of extended brands in order to prohibit the surrogate liquor advertising. No advertisement should be allowed which is in the guise or pretext of other drinks or products, promote tobacco products, liquor, wine or other intoxicants. In addition, the Trade Marks Act, 1999 should be amended to categorically deny products having liquor brand names for brand extensions to check surrogate liquor advertising. However, as of today, this seems to be quite impossible as any amendments that seek to prevent trade mark registration of industry specific brand names in other classes of products or services would be *ultra vires* of the Trade Marks Act.

► HYPOTHESIS – 5

The law including such as Consumer protection act, 1986, Drugs & cosmetics Act, 1940 are not specially directed to control the practises of misleading advertisements.

On the basis of research work, it is found that the new Consumer Protection Act 2019 replaced the consumer protection law of 1986, which is more than three decades old. The Consumer Protection Act 2019 was passed by the Parliament on 6 August 2019 (2019 Act) with the objective of overhauling the earlier regime and replacing the Consumer Protection Act 1986 (1986 Act). The 2019 Act did not automatically come into force, and the Central Government was authorised to notify the 2019 Act and/or select provisions thereunder. The Central Government has, on 15 July 2020, notified several provisions of the 2019 Act which have come into force from 20 July 2020.

The landmark Consumer Protection Act 2019 aims to protect the rights of consumers by creating authorities to administer and resolve consumer disputes quickly and efficiently. The new Act provides the specific definition of misleading advertisement and extended the meaning of Unfair Trade practices. Apart from this, CCPA has been established to prevent the misleading

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advertisements which hamper the rights of the consumer. Hence, it can be said that the hypothesis has been proved.

► HYPOTHESIS – 6

The courts are not fully equipped to deal with the commercial aspects of advertisement.

On the basis of research work, it is found that there are many decisions in which the court has protected the interest of consumers from misleading advertisements in absence of the specific statute before Consumer Protection Act, 2019. The CCPA is also established by the Consumer Protection Act, 2019, has also played an active role in the protection of the consumers' interests. The Commission investigates the violation of the consumer's interests from misleading advertisement by suo-moto or by petition. Hence, it can be said that the hypothesis has been proved.