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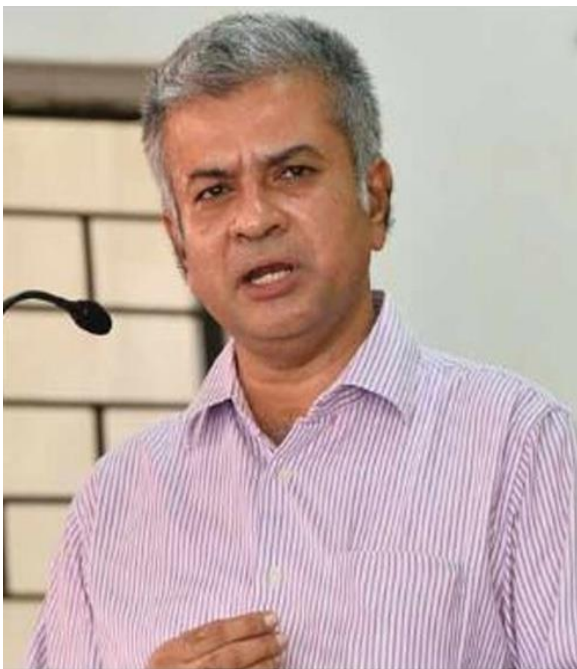
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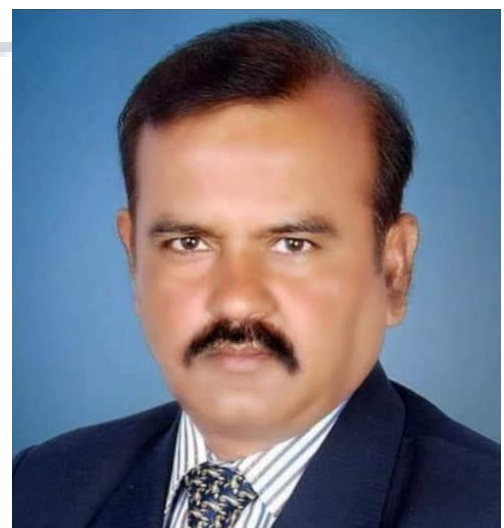
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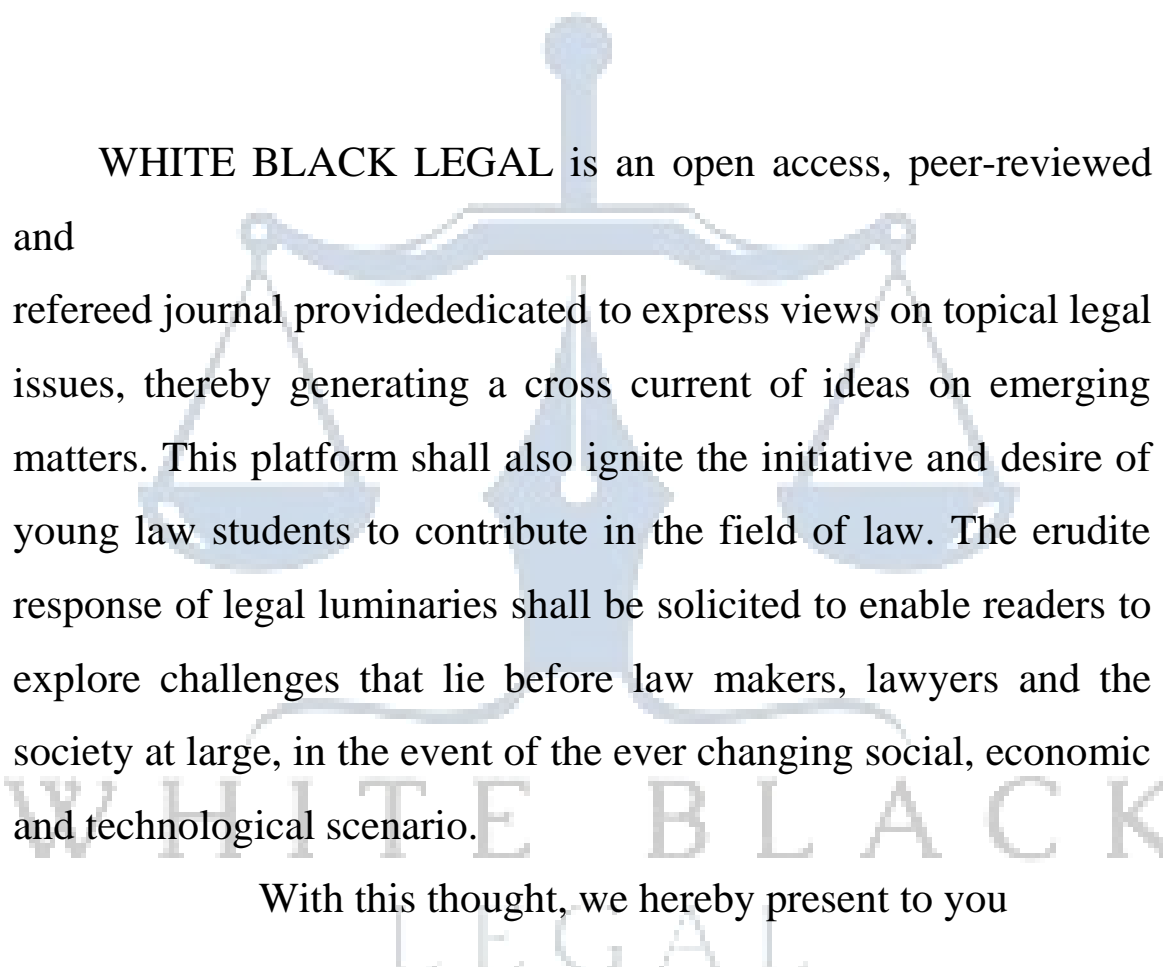


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ADVERTISEMENT IN INDIA A **CONSTITUTIONAL LEGAL STUDY**

AUTHORED BY - M.SAKTHIVEL

LLM 1ST YEAR

The Tamilnadu Dr.Ambedkar Law University, Chennai
& The Central Law College, Salem

ABSTRACT:

- Advertisment is a crucial element in the function of a market economy ,pronoting products,ideas,and services
- In the India adverstisement are Governed or not only by industry norms and ethical guidelines but also constitutional principle
- The study explores article 19(1)(a)guarantees freedom of speech and expression
- Such as the landmark tata press v.mahanagar telephone nigan ltd case
- Article 19(1)(2) to the protect the public order decency morality
- ASCI Adverstisement stands council of india
- Legislative measures like and consumer protection aact
- Consumer protection act2019
- Article 19(1)(a)of the constitutional guarantees the fundamental rights to freedom of speech and expression
- ASCI -Advetising standards council of india
- CCI -Competatition commission of india
- CPA -Consumer protection act
- ICMR -Indian council of medical reserch
- SC -Supreme court
- TRAI -Telecom regulatory authority of india
- RTI -Right to information act
- HC -High court
- GOI -Government of india

CHAPTER 1

INTRODUCTION:

- Advertisement is a powerful tool of communication that influences consumer behavior, shapes public opinion and contributes significantly to economic growth
- In the advertising industry has evolved into a dynamic and vibrant sector driven by globalization technological advancement and changing consumer preferences
- However the regulation of advertisements is a complex legal and constitutional issues as it intersect and ethical consideration
- Article 19(a) which includes commercial speech at the same time this right is subject to reasonable restrictions
- Article 19(2) to protect public order, decency, morality, and health, between commercial interest
- ASCI Advertising standards council of india and the judicial process and precedents standard in the country
- The research also investigates contemporary challenges including misleading advertisements, surrogate advertising and the impact on the advertising regulation
- By the issues of the understanding of the constitutional and legal principles and underlying in india
- Emphasizing the need of balanced regulatory framework that upholds both constitutional rights and societal interests

ADVERTISING IN INDIA:

- Advertising in india has undergone a remarkable transformation over the decades reflecting the country cultural, economic, and technological changes. It serves as a key driver of commerce influencing consumer behavior
- Advertising in india has a long history dating back to the Indus valley today it is a multi billion dollar industry, with a wide range of media used to reach consumers. Television, radio and digital media are all popular platforms for advertising industry in india.
- The india advertising industry is also known for its creativity and innovation.

Constitutional framework

- A constitutional ¹framework advertisement in india requires adherence to the principles enshrined in the constitutional particular those related,governance,and legal compliance.heres n outline of a legal study on the topic
- Constiitutional framework advertisement in india:a legal study
- Definition of constitutional framework :the system of fundamental principles or established precedents guiding the establish the governance of the state
- Freedom of Speech and Expression (Article 19(1)(a)): Article 19(1)(a)
- guarantees the right to freedom of speech and expression, which includes the freedom to disseminate ideas through advertisements
- . However, this right is not absolute. It is subject to reasonable restrictions under Article 19(2), which allows the state to impose restrictions on the grounds of sovereignty, integrity of India, security of the state, public order, decency, morality, and contempt of court.Advertisements

like any other form of speech, must balance the right to free expression with ²societal concerns like decency, morality, and public order.Case Example: The Indian Express Newspapers (Bombay) Ltd. v. Union of India (1985) case established that freedom of speech can be restricted in the interest of public morality and decency, which can affect advertising standards

CHAPTER 2

JUDICIAL INTEROERATION:

- Judicial interperation of adverstisement in india:
- Judicial interperation has played a crucial role in defining and regulating adversting practices in India ,especially within the frame work and public interst
- The judiciary has sought to be balanced fundamental rights
- Judicial Interpretation of AdvertisingThe Indian judiciary has played a significant role in interpreting the boundaries of advertising rights and imposing restrictions in the public interest. Below are some important judicial principles related to advertising:a)

¹ 14 Mittal & Singh, Comparative Advertising: An Eye for an Eye Making the Consumers Blind, 13 JIPR 19-27 (2008).

² 1. The Consumer Protection Act, 2019

Right to Freedom of Speech and ExpressionThe right to advertise is considered a part of the right to freedom of speech. In the case of *Indian Express Newspapers v. Union of India* (1985), the Supreme Court recognized the right to freedom of speech as a broad and comprehensive right, which includes commercial speech (advertisements). However, the court also acknowledged that this right is not absolute and can be restricted based on public interest.

- **Deceptive and Misleading Advertisements**In the landmark case of *Laxmi Enterprises v. Union of India* (2007), the Supreme Court held that misleading advertisements, particularly those that claim false health benefits, are not protected under the freedom of speech. The courts have regularly issued orders for the banning of deceptive advertisements, particularly in the context of health, beauty products, and weight-loss products
- **Ethical Advertising**The ³Supreme Court has emphasized that advertisements must maintain ethical standards and refrain from exploiting societal norms or discriminating against individuals or groups. This includes ensuring that advertisements do not perpetuate harmful stereotypes, particularly with respect to gender, caste, or religion.
- **Legal Regulation of Advertising in India**Several statutory laws regulate advertising practices in India:
 - The Cable Television Networks (Regulation) Act, 1995:** This Act regulates the content of advertisements on television and prohibits advertisements that are deemed inappropriate or harmful, including those that promote products to children or mislead the public.
 - The Consumer Protection Act, 2019:** This law has specific provisions for misleading advertisements, and it empowers the Consumer Protection Authority to take action against companies and advertisers who violate consumer rights. It also empowers the government to regulate deceptive and fraudulent advertisements.
 - The Food Safety and Standards Act, 2006:** This law regulates advertisements related to food products and ensures that such advertisements do not mislead consumers regarding the health benefits or qualities of the product
- **Judicial interpretation** has played a crucial role in defining and regulating advertising practices in India, especially within the framework of public interest
- The judiciary has sought to balance fundamental rights
- **Judicial Interpretation of Advertising**The Indian judiciary has played a significant role in interpreting the boundaries of advertising rights and imposing restrictions in the

³Advertising Standards Council of India (ASCI) guidelines

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- Judicial interpretation has played a crucial role in defining and regulating advertising practices in India, especially within the framework and public interest
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- the Supreme Court upheld the⁶ right of the press to advertise freely but recognized that the government could regulate advertisements to maintain public interest. In *Rajendra Singh v. Union of India* (2011), the Supreme Court dealt with issues of tobacco advertising and emphasized that advertisements that promote harmful products, particularly those related to health risks, can be heavily regulated. In *Pepsico India Holdings Pvt. Ltd. v. Food Safety and Standards Authority of India* (2020), the Court considered the regulation of misleading health claims in food advertisements, particularly those related to nutrition and weight loss, which led to greater scrutiny over health-related marketing.

⁴ Advertising Standards Council of India (ASCI) guidelines

⁵ *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554.

⁶ *Tata Press v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139.

- Recent Developments and Judicial TrendsThe government's increased focus on protecting consumer interests has led to stricter regulations on misleading advertisements, especially those concerning health products, food, and beauty items
- .The growing trend of digital advertising and the rise of social media influencers have also brought new challenges, leading to an evolving legal landscape.⁷ Courts have started to look more closely at influencer marketing and sponsored content to ensure transparency and prevent deception.

Case studies other than case law:

- Common Cause v. Union of India (2018)Issue: This case addressed the advertising of products like tobacco and alcohol, which are considered harmful to public health.Judgment:
- The Supreme⁸ Court held that advertisements that promote harmful substances like tobacco or alcohol must be regulated to prevent them from glamorizing the consumption of such products. The Court emphasized that public health takes precedence over commercial interests, affirming that advertisements that could endanger public health, particularly through the glamorization of harmful substances, must be strictly regulated.
- State of Uttar Pradesh v. Rajesh Gautam (2018)Issue: The case dealt with the regulation of misleading advertisements related to various consumer goods and services.Judgment
- The Supreme Court ruled that deceptive advertisements which make false claims about products or services could be challenged under the Consumer Protection Act.
- It reaffirmed the need for consumers to be protected from exploitation through deceptive advertising practices. The Court emphasized the role of the Central Consumer Protection Authority (CCPA) in taking action against such advertisements

CHAPTER 3

Regulatory mechanism:

- Regulatory Mechanism in Advertisement in India: A Constitutional PerspectiveThe regulation of advertising in India is shaped by the Constitution of India, statutory laws, judicial pronouncements, and self-regulatory bodies.
-

- The constitutional framework sets the groundwork for regulating advertisements in a manner that balances commercial interests with public welfare. Advertising in India must adhere to constitutional principles such as freedom of speech, public order, consumer protection,
- and public health.¹ Constitutional Framework for Advertising Regulation
The⁹Constitution of India provides the broad constitutional framework for regulating advertisements through fundamental rights and reasonable restrictions
- Hamdard Dawakhana v. Union of India (1959): This case involved regulating advertisements for medicines that made false health claims. The Court upheld the Drugs and Magic Remedies Act, acknowledging the state's duty to protect public health from misleading or harmful advertisements
- ¹⁰Common Cause v. Union of India (2018): The Supreme Court ruled that advertisements promoting harmful substances like alcohol and tobacco must be regulated to prevent glamorization and to protect public health. This case highlighted the tension between commercial interests and public health protection.

1. Legislative framework

- Advertisement in India operates within a well defined constitutional
- legislative framework
- however challenges persist and the impact of advertising on society and the impact economy is multifaceted
- However, this freedom is not absolute. The Constitution allows reasonable restrictions under Article 19(2), which can be applied to advertisements to prevent them from violating public order, decency, morality, or harming national security.
- ¹¹Right to Information (Article 21): The right to life and personal liberty includes the right to access truthful information. This is significant in advertising because advertisements must provide accurate and transparent information about products or services.

2. Legal Framework for Advertising in India

- Several legal provisions regulate advertising practices in India:

⁹ Constitution of India

¹⁰ KANNON 2012

¹¹ Right to Information (Article 21):

- A. Consumer Protection Laws
- ¹²Consumer Protection Act, 2019: This Act provides a comprehensive framework for the protection of consumer rights. Section 2(47) defines a "misleading advertisement" and empowers the Central Consumer Protection Authority (CCPA) to take action against deceptive ads. Advertisements that mislead, deceive, or exploit consumers are prohibited.
- Advertising Standards Council of India (ASCI): Though ASCI is a self-regulatory body, it operates within the framework of Indian laws, including the Consumer Protection Act. It enforces ethical advertising standards and addresses complaints about misleading or offensive advertisements. The Cable Television Networks (Regulation) Act, 1995
- This Act regulates advertisements on cable TV networks. Section 5 of the Act prohibits advertisements that are:
 - Harmful to children or general public.
 - Against decency or morality.
 - False or misleading.
- C. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- This Act specifically targets misleading advertisements about medicines and health products. It prohibits advertisements that claim to cure diseases or conditions without scientific proof, particularly when they exploit people's health concerns.
- The Food Safety and Standards Authority of India (FSSAI) Regulations
- These regulations govern food-related advertising. They require food advertisements to be truthful and non-misleading, ensuring that claims made about food products are substantiated by scientific evidence.
- E. The Legal Metrology (Packaged Commodities) Rules, 2011
- This law ensures that advertisements for packaged goods conform to certain requirements, such as proper labeling and disclosure of information about weight, volume, and ingredients.

3. Regulation of False and Misleading Advertisements

- A. The Central Consumer Protection Authority (CCPA)

¹² Consumer Protection Act, 2019:

- The CCPA, established under the Consumer Protection Act, 2019, plays a significant role in regulating misleading advertisements. The CCPA can take suo-motu action against false advertisements and impose penalties, fines, and other corrective actions.
- B. Self-Regulatory Bodies
- Advertising Standards Council of India (ASCI): ASCI, a non-governmental body, is responsible for ensuring ethical advertising practices. It enforces guidelines that prohibit misleading, offensive, or harmful advertisements.
- ASCI's Code of Advertising Practice outlines standards for ethical and responsible advertising. Advertisements must be legal, decent, honest, and truthful.
- It also deals with complaints regarding deceptive advertisements and works with various stakeholders, including advertisers, media owners, and regulatory bodies, to maintain advertising standards.
- The National Consumer Disputes Redressal Commission (NCDRC)
- Consumers can approach the NCDRC for redressal if they are misled by advertisements, especially in cases involving unfair trade practices. The NCDRC has the authority to impose penalties on companies that engage in deceptive advertising.

4. Advertising in Specific Sectors

- Tobacco and Alcohol Advertising
- Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003: This law prohibits direct or indirect advertising of tobacco products. Advertisements promoting tobacco products are completely banned, except for trade communication among manufacturers
- Recent Developments and Challenges
- Rise of Digital Advertising: With the growth of online platforms, there are increasing concerns over the regulation of digital and social media ads, especially in the context of influencer marketing and targeted ads. While ASCI has introduced guidelines for influencer marketing, the rapid development of digital media often outpaces regulation.

- **Ethics and Social Responsibility:** There is growing pressure on advertisers to address social issues, environmental concerns, and corporate responsibility in their advertising campaigns. The challenge lies in balancing creative advertising with ethical guidelines
- **Challenges in Advertising in India: A Constitutional and Legal Study**
- Advertising is a powerful tool that shapes consumer behavior and impacts society at large. However, in India, advertising faces several challenges that arise due to the interplay of constitutional principles, statutory laws, regulatory frameworks, and the evolving media landscape. The challenges in the Indian advertising sector are not only related to content and its ethical implications but also to the enforcement of legal provisions and balancing the interests of businesses, consumers, and public welfare.

Balancing Freedom of Speech with Public Welfare:

- **Constitutional Challenge (Article 19(1)(a) vs. Article 19(2)):**
- Advertising, being a form of commercial speech, is protected under Article 19(1)(a) of the Indian Constitution, which guarantees the freedom of speech and expression. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2), which allows the state to regulate content on grounds of public order, decency, morality, and other concerns.
- The challenge lies in striking a balance between the free flow of commercial communication and ensuring that advertising does not harm public welfare, mislead consumers, or cause social harm (e.g., advertisements promoting harmful substances like tobacco, alcohol, or unhealthy food).

CHAPTER 4

Regulation of Misleading Advertisements:

- Advertisements that mislead or make false claims are a significant concern. For instance, health-related advertisements that make unverifiable or exaggerated claims can pose a public health risk. There is often a conflict between the need for aggressive marketing and the public interest in protecting consumers from fraudulent or misleading claims.
- **Inadequate and Overlapping Regulatory Frameworks:**

- **Fragmented Legal Framework:**
- The legal framework governing advertising in India is fragmented and involves multiple statutes, including the Cable Television Networks (Regulation) Act, the Consumer Protection Act, 2019, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, and others. This often leads to confusion regarding the applicability of certain regulations to specific forms of advertising, creating uncertainty for advertisers and regulators.
- There is also a lack of uniformity in the enforcement of regulations across different sectors. For example, while food-related advertisements are governed by the Food Safety and Standards Act, advertisements for medicines and healthcare products are controlled under different laws, creating inconsistencies in regulatory standards.
- The lack of a comprehensive, centralized advertising law that integrates all aspects—ranging from digital media to traditional broadcast and print—adds complexity and results in weak enforcement of advertising regulations

Challenges in Regulating Digital Advertising:

Growth of Digital Media:

- With the rise of digital media, social media platforms, and online influencers, regulating advertising has become increasingly difficult. Unlike traditional media like television or print, digital advertising often involves cross-border interactions, making enforcement of local regulations challenging.
- **Influencer Marketing:** The growth of social media influencers has created new issues in advertising regulation. Many influencers fail to disclose sponsored content, leading to consumer deception. While the ASCI (Advertising Standards Council of India) has provided guidelines on influencer disclosures, there is still a significant gap in legal enforcement.

Data Privacy Concerns:

- Personal data collected through digital platforms, including consumer behavior data, is increasingly used in targeted advertising. However, the lack of comprehensive data protection laws and regulations raises concerns regarding the privacy of individuals. The proposed Personal Data Protection Bill (PDPB), which is still under review, could

play a critical role in regulating data-driven advertising but faces hurdles in its implementation.

Misleading Ads on Social Media:

- The widespread use of digital media for advertising has led to issues like misleading ads, targeted fake news, and propaganda, especially in the context of health, financial products, and weight loss remedies. Regulatory bodies like the Central Consumer Protection Authority (CCPA) are now focused on tackling misleading ads in digital spaces, but the rapid proliferation of online content makes regulation slow and ineffective.

Censorship vs. Freedom of Expression:

Censorship Issues:

- The regulation of advertising can often lead to conflicts over censorship, especially in a diverse and culturally sensitive society like India. Some advertisements may be deemed offensive, while others are seen as promoting unhealthy lifestyles or products. There are examples where ads have been banned or censored due to their potential to offend cultural, religious, or moral sensibilities.

Public Interest vs. Corporate Interests:

- The tension between corporate freedom to advertise products and public interest is a key constitutional and legal challenge. For example, advertisements promoting alcohol, tobacco, or gambling often face regulatory barriers due to their potential harm to public health and safety. Advertisers argue that these restrictions violate their right to freedom of expression.

6. Consumer Protection and Enforcement Issues:

Lack of Awareness:

- Many consumers are not fully aware of their rights when it comes to misleading advertising. While laws like the Consumer Protection Act, 2019, give consumers the right to file complaints against deceptive ads, the lack of awareness and the complexities of legal proceedings often prevent consumers from taking action.

- Regulatory bodies like the CCPA have the power to take action against misleading ads, but their effectiveness is limited by the volume of complaints and the slow pace of enforcement.

Penalties and Accountability:

- While India has laws in place to address false advertising, penalties and actions taken against violators are often inadequate. Regulatory bodies are sometimes seen as being underfunded or lacking the authority to effectively address violations, particularly in the case of digital advertising.

7. Cultural Sensitivities:

Multicultural Society:

- India is a highly diverse country with multiple languages, religions, cultures, and traditions. Designing advertisements that are culturally sensitive and do not offend any particular group is a significant challenge for advertisers. What works in one region or demographic may not work in another.
- Advertisements that are considered harmless in one part of the country may spark protests or legal challenges in another due to local cultural or religious sensibilities

IMPACT OF DIGITAL MEDIA

- **Insecurity of Jobs:** It used to be that you had to be physically present at a workplace to do a job,
- but now many work tasks are performed remotely via the internet. That means a Third World
- worker in a low wage economy can undercut you and take your job. Increasingly, humans aren't
- needed at all for many tasks, as computers gradually replace them. Driving jobs, for instance, will disappear soon as vehicles become self-driven.
- **Crimes:** The internet is fertile territory for negative forces to operate, thanks to its international nature, large scale, and the relative anonymity that users can enjoy. Examples of this include: terrorists using social media to promote themselves and encourage others; drug dealers using the dark web to trade; pedophiles using chat rooms

and other places to exchange photos, videos and other information; and authoritarian regimes attempting to sway or distort elections in democratic countries etc.

- Digital media's Impact: The digital media's impact can be viewed from a broader perspective
- namely the positive perspective and the negative perspective.

The Positive perspectives include the following:

Digital revolution: Digital media and digital revolution are two sides of the same coin. The

- revolution is seen in the form of usage of modern technology. Personal computers, smartphones
- helps anybody to access, modify, store and share digital media. Many electronic devices from digital cameras to drones help in creating, transmitting and viewing digital media content.
- Combined with the World Wide Web and the Internet, digital media has transformed 21st century society in a way that is frequently compared to the cultural, economic and social impact of the
- printing press. The change has been so rapid and so widespread that it has launched an economic transition from an industrial economy to an information-based economy, creating a new period in
- human history known as the Information Age or the revolution. The transition has resulted in uncertainty about definitions where the words like digital media, new media, multimedia and similar terms have a relationship to both the engineering innovations and cultural impact of digital media.

ADVERTISING LEGAL ISSUES IN CONSTITUTIONAL PERSPECTIVE

- The legal issues surrounding advertising from a constitutional perspective are complex and involve balancing the interests of free speech with the need for regulation to protect consumers and prevent harm. In many countries, including the United States and India, advertising is subject to scrutiny because it involves both commercial speech and government regulation.
- Key Legal Issues in Advertising from a Constitutional Perspective:

Freedom of Speech vs. Regulation:

- In many countries, advertising is considered a form of commercial speech and is protected under the right to free speech. However, unlike political speech, commercial speech is not given the same level of protection. Laws that regulate advertising are generally justified under the principle of protecting consumers from misleading, false, or harmful messages.
- The U.S. First Amendment provides broad protection to speech, including commercial speech, but allows for restrictions when the speech is misleading, false, or related to illegal activities. The U.S. Supreme Court has held that commercial speech can be regulated more than other types of speech.

Misleading and Deceptive Advertising:

- False advertising can violate constitutional protections if it leads to consumer harm. Governments have a legitimate interest in regulating misleading or deceptive ads to protect public interest. For example, claims about health benefits or product efficacy that are false could mislead consumers and harm them.
- In the U.S., the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) regulate deceptive advertising practices. Any claims made in advertisements need to be substantiated with evidence.

Commercial Speech Doctrine (in the U.S.):

- The Central Hudson Test (from the 1980 U.S. Supreme Court case *Central Hudson Gas & Electric Corp. v. Public Service Commission*) is a key framework for determining the constitutionality of commercial speech regulations. The test has four parts:
 - The speech must concern lawful activity and not be misleading.
 - The government must have a substantial interest in regulating the speech.
 - The regulation must directly advance the government's interest.

The regulation must not be more extensive than necessary to serve that interest.

- This doctrine ensures that advertising is regulated without unnecessarily restricting free speech.

Privacy Concerns:

- The rise of digital advertising, particularly through targeted ads, raises constitutional issues related to privacy. Many advertisements are based on consumer data, leading to concerns about surveillance and the right to privacy. In the U.S., privacy issues are generally not explicitly protected by the Constitution but may be addressed through federal and state laws.
- In countries like India, data protection laws such as the Personal Data Protection Bill regulate how advertisers collect and use personal data. Such regulations can clash with the interests of advertisers who rely on consumer data for targeting purposes.

Content-Based Restrictions:

- Content-based restrictions on advertising, such as banning certain types of ads (e.g., political ads during election periods or ads promoting alcohol), may be challenged on constitutional grounds. Courts often have to balance the government's interest in promoting public welfare against the right to free expression.
- In some cases, courts may find that the regulation is overly broad or not narrowly tailored to address the specific harm the government seeks to prevent.

Cultural and Social Considerations:

- In different countries, advertisements are subject to varying social and cultural standards. For instance, India has specific restrictions against ads promoting or encouraging cultural insensitivity or offending religious sentiments. Such regulations can raise constitutional issues about freedom of expression and cultural norms.

Global Perspectives:

- Different countries have varying approaches to constitutional protections of advertising. For example, in European Union countries, commercial speech is also protected but may be subject to more extensive regulation in areas such as consumer protection, advertising to children, and environmental claims. The EU has stronger data protection laws, impacting how advertisements are targeted to individuals.
- regulation to protect consumers, public health, and cultural values. Legal frameworks like the Central Hudson Test in the U.S. and various data protection laws in other countries guide how far the government can go in regulating advertisements.

- Advertising in India raises several legal issues from a constitutional perspective. These issues are primarily concerned with the balance between freedom of speech and expression (Article 19(1)(a) of the Constitution of India) and the need to regulate and control the content of advertisements to protect public interest, prevent harm, and uphold societal values.

Here are some key constitutional and legal issues related to advertising in India:

1. Freedom of Speech and Expression vs. Regulation

- **Constitutional Provision:** Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression. This includes the freedom to disseminate information through various mediums, including advertisements.
- **Limitation:** However, this right is not absolute and can be restricted under Article 19(2) on grounds of public interest, such as to prevent defamation, obscenity, incitement to violence, or social harm. Therefore, advertisements are subject to reasonable restrictions that aim to protect public health, morality, and order.

2. Obscenity and Morality

- Advertisements must not offend public morals or promote obscenity. The Indian Penal Code (IPC), particularly Section 292, criminalizes the sale or distribution of obscene materials. Advertisements containing sexually explicit content or messages that undermine social values might be considered unconstitutional under the restrictions outlined in Article 19(2), especially if they are deemed harmful to public decency and morality.
- **Censorship and Regulation:** The Central Consumer Protection Authority (CCPA) and the Advertising Standards Council of India (ASCI) are responsible for regulating advertisements in India to ensure they are in line with social norms and do not violate decency or morality standards.

3. False or Misleading Advertising

- Advertisements that contain false claims or misleading information can harm consumers, and such practise
- protection laws in India, including the Consumer Protection Act, 2019. Such advertising practices may be challenged on the basis of Article 21 (Right to Life and

Personal Liberty), as they can lead to unfair or harmful practices that affect consumer rights and well-being.

- Constitutional challenges can arise when advertisers argue that government regulations infringe upon their freedom to express, but such claims are generally weighed against the need to protect consumers and ensure truthful information.

4. Advertising to Children

- India faces increasing concern about advertisements targeting children, especially those that promote unhealthy foods, products, or behaviors. There is an ongoing debate regarding whether such advertisements violate children's rights and freedoms. Some argue that such advertisements exploit children's innocence and lead to long-term harm.
- While India has no specific constitutional law that regulates advertisements to children, this issue can be addressed through consumer protection laws, such as guidelines by the ASCI and other regulatory bodies.

5. Regulation of Political and Electoral Advertising

Political advertisements during elections raise concerns regarding fairness, transparency, and equal representation. The Election Commission of India (ECI) has established guidelines on political advertising, aiming to prevent the misuse of advertising for spreading hate speech, false information, or to unduly influence voters.

The conflict between political freedom (a vital part of democracy under the Constitution) and the need for regulation to ensure fair elections often comes to the forefront. Cases where political advertisements are found to spread false or defamatory information could raise constitutional issues related to freedom of speech and fair representation.

6. Advertising of Harmful Products

There are constitutional debates over the advertising of products like tobacco, alcohol, and other harmful substances. Article 47 of the Constitution mentions the duty of the state to improve public health and prohibit harmful substances.

The Cigarettes and Other Tobacco Products Act (COTPA) restricts the advertisement of tobacco products. This creates a conflict between freedom of expression (advertisement) and public health concerns (protection from harm).

7. Regulation of Digital and Social Media Advertising

As advertising increasingly shifts to digital platforms, issues such as data privacy, targeted advertising, and online consumer protection have emerged. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and the Personal Data Protection Bill (in draft) aim to regulate online advertising. Digital advertising often raises questions of privacy (protected under Article 21) and consumer autonomy, especially when personal data is being harvested to target ads. Advertisers argue that digital platforms enable more effective communication, but this needs to be balanced with consumer rights and the potential for misuse of personal data.

8. Religious and Cultural Sensitivities

Advertisements that touch on religion, caste, or ethnic identities can spark debates about their impact on social harmony and national unity. There have been cases where advertisements have been challenged for offending religious beliefs or promoting stereotypes.

From a constitutional perspective, such advertisements may raise concerns regarding Article 25 (Freedom of Religion) and Article 29 (Protection of Interests of Minorities), as well as the principle of secularism. Advertisements that marginalize or ridicule a particular religious or cultural group can be seen as unconstitutional if they violate these provisions.

9. Freedom of Trade vs. Public Health and Morality

Advertisers argue that restrictions on certain types of advertisements, especially for products like alcohol, tobacco, and even gambling, affect their right to conduct business freely. However, the state has the power to regulate such advertisements to protect the larger public interest, including health and social welfare.

This brings the tension between freedom to do business (protected under Article 19(1)(g)) and the state's responsibility to protect the public, especially vulnerable groups, from harm.

CASE LAWS:

Colgate-Palmolive India Ltd. v. Hindustan Unilever Ltd. (1999)

Legal Issue: False advertising and unfair trade practices

Facts: The case arose out of a dispute between Colgate-Palmolive India and Hindustan Unilever Ltd. (HUL) over advertising claims about the effectiveness of their respective toothpaste products. HUL's advertisement for its toothpaste claimed that it provided better protection

against cavities compared to Colgate.

Legal Question: ¹³Whether the advertisement by HUL was misleading and violated the Consumer Protection Act, 1986, and the norms of fair advertising.

Constitutional Perspective: This case touches on the right to advertise (under freedom of speech), but it was balanced with the right of consumers to be protected from misleading claims (which could be considered an unreasonable restriction on free speech under Article 19(2)).

Outcome: The court ruled that HUL's advertisement was misleading and ordered a cessation of the unfair promotional practice. This case underscored the need to ensure that advertisements should not mislead consumers or promote false claims.

2. Vishaka v. State of Rajasthan (1997)

Legal Issue: Obscenity and sexual harassment in advertisements

Facts: This case is primarily about sexual harassment at the workplace but has significant implications for how the media (including advertisements) portrays women. While not directly about advertising, the case dealt with the portrayal of women in media and the issue of public decency and morality.

Legal Question: How far can advertisements go in portraying women in a sexually suggestive or demeaning way, and what are the constitutional limitations to freedom of speech in such cases?

Constitutional Perspective: The Vishaka Guidelines established the need to protect women from sexual harassment and recognized the potential harm caused by inappropriate or demeaning portrayals of women in the media. The ruling emphasized the importance of decency and morality in public discourse, which could extend to advertising.

Outcome: The case led to guidelines for addressing sexual harassment, and in the advertising context, it prompted better regulatory scrutiny regarding the portrayal of women and the need to uphold ethical standards in media and advertisements.

3. Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. (1995)

Legal Issue: Right to advertise as part of freedom of speech and trade

Facts:¹⁴ The case involved Tata Press Ltd. publishing a classified advertisement in a newspaper

¹³ 9 Parth Gokhale and Shriyani Datta, Comparative Advertising in India: Evolving a Regulatory Framework 4 NUJS L.REV. 131 2011

¹⁴ 8 Charlotte J R, Comparative Advertising in the United States and France, 25 NJILB 371-409 (2005).¹⁴

promoting the services of Mahanagar Telephone Nigam Ltd. (MTNL). MTNL objected to the ad, claiming that it amounted to unfair competition. MTNL argued that only "official" advertisements could be published about its services.

Legal Question: Whether the right to advertise can be restricted by MTNL's monopoly over the telecommunication services in a particular area.

Constitutional Perspective: The case centered on the right to freedom of trade (under Article 19(1)(g)) and freedom of speech and expression (under Article 19(1)(a)). Tata Press argued that they had the right to advertise their business, while MTNL sought to restrict this as a monopoly.

Outcome: The Supreme Court ruled in favor of Tata Press, stating that advertising is a part of the fundamental right to trade and conduct business. The Court emphasized that restrictions on advertisements based on a monopoly of services were not valid unless they were reasonable and justified in the public interest.

4. K.K. Verma v. Union of India (1981)

Legal Issue: Obscenity in advertisements

Facts: In this case, a public interest litigation (PIL) was filed by K.K. Verma against the government, alleging that certain advertisements promoting products like "Cigarettes" and "Alcohol" were offensive, immoral, and harmful to public health.

Legal Question: Whether advertisements for harmful products, such as tobacco and alcohol, violate public morals and decency under the constitutional framework.

Constitutional Perspective: The case touches on the fundamental right to freedom of speech (Article 19(1)(a)) against the duty of the state to promote public health and morality under Article 47, which mandates the state to improve public health and prevent the consumption of harmful substances.

Outcome: The Supreme Court did not rule directly on this case, but it influenced the later development of regulations on the advertising of tobacco and alcohol. The¹⁵ Cigarettes and Other Tobacco Products Act (COTPA), 2003 and regulations regarding alcohol advertisements were enacted as a direct result of the concerns raised in this case about public health and morality.

¹⁵ Cigarettes and Other Tobacco Products Act (COTPA), 2003

5. Advertising Standards Council of India (ASCI) Guidelines

Legal Issue: Self-regulation of advertising

Facts: The Advertising Standards Council of India (ASCI) is a self-regulatory organization set up by the advertising industry to promote ethical advertising. The case study here looks at how ASCI's guidelines affect the advertising industry and whether they comply with constitutional standards, particularly the freedom of speech.

Legal Question: Whether self-regulation by the advertising industry violates any constitutional rights, or whether it is a necessary restriction to ensure ethical and truthful advertisements.

Constitutional Perspective: The issue of self-regulation brings up the balance between freedom of speech (under Article 19(1)(a)) and public interest, such as preventing misleading, deceptive, or harmful advertising. The ASCI guidelines aim to maintain the balance by ensuring that advertisements do not mislead consumers or harm societal interests.

Outcome: The ASCI plays a crucial role in shaping advertising norms in India. Though not a legal body in itself, its¹⁶ guidelines have influenced the Consumer Protection Act and other legal frameworks, and its decisions are often followed by the courts as part of fair advertising practices. Cigarettes and Other Tobacco Products Act (COTPA), 2003

6. Minister of Information and Broadcasting v. Cricket Association of Bengal (1995)

Legal Issue: Right to advertise during public events

Facts: The case arose out of a dispute over the rights of the Cricket Association of Bengal (CAB) to display advertisements during a Cricket match. The government had restrictions on advertising in the stadiums, and the CAB challenged these restrictions on the grounds of the right to advertise.

Legal Question: Whether the government can restrict advertisements during public events such as cricket matches,¹⁷ and whether such restrictions infringe upon the freedom of expression.

Constitutional Perspective: The case involved the right to advertise (under Article 19(1)(a)) versus the right of the state to regulate public spaces for the larger public interest (such as public order and safety). The case also dealt with whether restrictions on advertising could be seen as a form of prior restraint, violating freedom of speech.

Outcome: The Supreme Court ruled that advertisements are part of freedom of expression, but

¹⁶ Stewart E S, The Law of Comparative Advertising: How much worse is 'better' than 'great', CLR, 76-80 (1976).

¹⁷ Directive 2006/114/EC, OJ L 376 at 22, Art. 2(c).

6 Charlotte J. Romano, Comparative

the state may impose reasonable restrictions on advertisements during public events. The decision highlighted the tension between economic interests and public policy.

Conclusion:

Advertising in India, from a constitutional and legal perspective, involves a delicate balance between freedom of speech and expression (under Article 19(1)(a) of the Indian Constitution) and the need for public welfare, consumer protection, and social morality. Over the years, the legal landscape has evolved to ensure that advertisements do not mislead, harm, or exploit vulnerable sections of society. The following conclusions can be drawn from the constitutional and legal issues surrounding advertising in India:

Freedom of Speech vs. Public Welfare: While advertising is a legitimate exercise of freedom of speech and expression, it is not absolute. The state has the authority to impose reasonable restrictions on advertisements that could harm public health, morality, consumer rights, or national security. Restrictions are considered constitutional as long as they are aimed at protecting public welfare and not arbitrary censorship.

Consumer Protection: There is a growing emphasis on truthful advertising. Advertisements that are misleading, false, or unfairly manipulate consumers have come under scrutiny through various laws, including the Consumer Protection Act, 2019, and guidelines from bodies like the Advertising Standards Council of India (ASCI). Courts have reinforced the need to protect consumers from deceptive practices.

- **Public Health and Morality:** Advertisements promoting harmful products such as tobacco, alcohol, and unhealthy food have raised constitutional concerns regarding public health and morality. The Cigarettes and Other Tobacco Products Act (COTPA) and regulations surrounding the advertising of alcohol reflect the constitutional mandate under Article 47, which emphasizes improving public health. The portrayal of women and children in advertisements has also been a major area of concern, with courts and regulatory bodies pushing for a more ethical and responsible representation.
- **Self-Regulation and Industry Standards:** The ASCI plays a crucial role in ensuring that advertisements adhere to ethical standards and respect societal values. However, self-regulation by the advertising industry has limitations, especially when it comes to enforcing laws that protect vulnerable groups from exploitation.

- Digital Advertising: The rapid growth of digital and social media advertising has raised new challenges, particularly regarding privacy, data protection, and targeted marketing. The rise of online advertising has complicated issues related to consumer autonomy and privacy, requiring stronger regulatory measures to safeguard individual rights and prevent exploitation.

Suggestions for Future Improvements in Advertising Law and Regulation in India:

Strengthen Consumer Protection Laws:

- ¹⁸Consumer Protection Act, 2019 has made significant strides, but there is a need for more robust enforcement mechanisms to ensure that misleading and harmful advertisements are swiftly addressed.
- Regulatory bodies like the Central Consumer Protection Authority (CCPA) should be empowered with more resources and authority to act against advertisers who violate the law.

Enhance Regulation of Harmful Products: The government should consider stricter regulation on the advertisement of harmful products like tobacco, alcohol, and junk food. For example, tobacco advertisements should be completely banned, and alcohol ads should include stronger health warnings.

Clearer guidelines should be set for the portrayal of health-related claims in advertisements to avoid promoting unhealthy behaviors.

Protect Vulnerable Audiences:

- ¹⁹Advertisements targeting children should be strictly regulated. Measures such as banning the promotion of unhealthy food and drinks to children or limiting ads during children's programming can reduce the impact of such advertisements on vulnerable audiences.
- Greater protection for women's portrayal in advertisements is needed to prevent gender stereotyping and exploitation. Stronger regulations are needed to ensure that advertisements adhere to ethical standards, avoiding content that objectifies or degrades women.

Regulate Digital Advertising:

With the growing importance of digital platforms, there is an urgent need for comprehensive data privacy laws to protect consumers from targeted advertisements that exploit personal data.

¹⁸ 4 Gillette Australia Pty Ltd. v Energizer Australia Pty Ltd., (2002) 193 ALR 629.

¹⁹ <https://www.legalserviceindia.com/>

The Personal Data Protection Bill (PDPB) should be enacted and enforced to ensure that consumer privacy is safeguarded.

Greater transparency in digital advertising is needed, especially regarding the algorithms and methods used²⁰ for targeted advertising. Consumers should be given more control over how their data is used for advertising purposes.

Promote Ethical Advertising through Awareness:

Continuous ²¹awareness programs should be run to educate advertisers, consumers, and regulatory bodies about ethical advertising practices, consumer rights, and the potential harms of deceptive ads.

The Advertising Standards Council of India (ASCI) can be further empowered to take proactive actions and work closely with regulators and consumer protection agencies to address advertising issues swiftly.

Encourage Industry Collaboration with Government:

Collaboration between the advertising industry, government agencies, and consumer protection bodies is essential to ensure that advertising remains a tool for information and promotion, without becoming a source of harm. Joint efforts can create a more cohesive approach to regulating and overseeing the content of advertisements.

The self-regulation mechanisms of the advertising industry should be enhanced by encouraging more industry players to adhere to ethical standards, thereby reducing the need for heavy-handed government intervention.

Balanced Approach to Freedom of Speech:

While advertisements are a form of free expression, constitutional safeguards must ensure that the freedom to advertise is exercised responsibly. Any attempt to restrict advertisements must be justified on reasonable grounds and not used as a tool to suppress legitimate business interests.

Courts must continue to strike a balance between protecting public interest and upholding freedom of expression, ensuring that advertisements serve both societal and commercial purposes.

²¹ <https://ascionline.org>

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