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# **REGULATION OF MISLEADING DIGITAL ADVERTISEMENTS, UNDER CONSUMER PROTECTION ACT, 2019**

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## **ABSTRACT**

India's digital advertising market, valued at over ₹50,000 crore annually, has given rise to sophisticated forms of consumer deception that older regulatory frameworks were ill-equipped to address. This article examines the adequacy of the Consumer Protection Act, 2019 in regulating misleading digital advertisements, with particular focus on the Central Consumer Protection Authority (CCPA) as India's primary enforcement body. Through doctrinal and comparative legal analysis, the article surveys India's enforcement record against high-incidence jurisdictions such as the United States and Brazil, and benchmark jurisdictions such as Norway, Germany, and Australia. The study identifies five structural deficiencies in India's framework: inadequate penalty scales, limited institutional technical capacity, broad platform safe-harbour protections, a reactive (rather than proactive) enforcement posture, and a significant consumer digital literacy gap. Targeted legislative and executive reforms including adoption of turnover-based penalties, establishment of a Digital Advertising Monitoring Unit, mandatory advertising transparency registries, and a National Digital Media Literacy Mission are proposed, drawing on international best practices adapted to India's constitutional and institutional context.

**Keywords:** *Consumer Protection Act 2019, Misleading Advertisements, CCPA, Digital Advertising Regulation, Influencer Marketing, Dark Patterns, Comparative Consumer Law*

## **I: INTRODUCTION**

### **A. Background of the Study**

The digital revolution has fundamentally altered the advertising landscape. As of 2024, India is home to over 900 million internet users, and digital advertising expenditure has surpassed ₹50,000 crore annually, accounting for nearly 40% of total advertising spending in the country. Digital advertising encompassing social media promotions, influencer marketing, search engine ads, programmatic advertising, and targeted campaigns offers advertisers the ability to reach consumers with pinpoint precision. While this personalisation can be useful, it also enables sophisticated forms of deception that older regulatory frameworks were never designed to address.

Misleading advertisements have existed since commerce itself, but the digital medium amplifies their reach and impact exponentially. A single deceptive post on Instagram can reach tens of millions of users within hours. Unlike a newspaper advertisement that a regulator could inspect before publication, digital ads are often dynamic, targeted, and ephemeral disappearing after their purpose is served or being shown only to specific user segments making regulatory oversight extremely difficult.

The Consumer Protection Act, 2019 was enacted in recognition of these evolving realities. It replaced the Consumer Protection Act, 1986, which was ill-equipped to deal with e-commerce disputes, digital fraud, and the new ecosystem of online advertisements. The 2019 Act established the Central Consumer Protection Authority (CCPA) as a dedicated regulatory body, introduced specific provisions on endorsements and celebrity liability, and explicitly defined 'misleading advertisement' for the first time in Indian consumer law.

### **A. Objectives and Hypothesis**

This article examines the adequacy of the CPA, 2019 framework, its enforcement record, and the lessons India can draw from global regulatory experiences. The key hypotheses are: (H1) While the CPA, 2019 represents a substantial improvement, it contains significant gaps addressing programmatic advertising, AI-generated content, and dark patterns; (H2) The CCPA faces structural constraints including limited technical capacity and insufficient penalties for large multinationals; (H3) Countries with low incidence of misleading digital advertising share strong independent regulators, high financial penalties relative to corporate turnover, and proactive monitoring; and (H4) India can meaningfully reduce misleading digital advertising by adopting targeted reforms inspired by Norway, the EU's Digital Services Act,

and Australia's mandatory code framework.



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## **II: CONCEPT AND LEGAL FRAMEWORK**

### **A. Definition of Misleading Advertisement**

The Consumer Protection Act, 2019 defines 'misleading advertisement' in Section 2(28) as any advertisement that falsely describes a product or service; gives a false guarantee or warranty; conveys an express or implied representation that would constitute an unfair trade practice; deliberately conceals important information; or violates consumer rights. This statutory definition is broader than the common law conception and explicitly encompasses both active misrepresentation and deliberate concealment.

The ASCI Code further distinguishes between 'puffery' hyperbolic promotional language that no reasonable consumer would take literally and genuine false claims capable of deceiving the average consumer. In the digital context, the concept extends to native advertising (paid content designed to look like editorial content), dark patterns (UI designs that trick consumers), and algorithmic amplification of unverified health or investment claims.

### **B. Types of Misleading Digital Advertisements**

Misleading digital advertisements manifest in several distinct forms:

- **False Product or Service Claims:** Exaggerated efficacy claims for health products, false discount advertisements (artificially inflating 'original prices'), and unverifiable comparative claims. E-commerce platforms have been found to display inflated 'maximum retail prices' during sale events to create a false sense of savings.
- **Undisclosed Paid Endorsements:** Social media influencers who command audiences of millions routinely promote products without disclosing paid arrangements. The ASCI introduced Influencer Advertising Guidelines in May 2021 requiring labels such as '#Ad' or '#Sponsored'. The CCPA issued similar guidelines in 2023.
- **Dark Patterns:** UI design techniques that manipulate consumers inadvertent subscriptions, inability to cancel, manufactured urgency ('Only 2 left in stock!'). India's Department of Consumer Affairs recognised dark patterns as a form of unfair trade practice in 2023 and issued guidelines prohibiting 'roach motel' designs, 'confirm-shaming', and 'hidden costs'.
- **Health and Wellness Misinformation:** The COVID-19 pandemic saw an explosion of dubious health claims in digital advertisements. The CCPA took suo motu cognisance of several such advertisements. This category is especially harmful because it targets vulnerable consumers who may forgo proven medical treatments.

- Fabricated Reviews and Ratings: Studies estimate that between 15% and 30% of online reviews on major e-commerce platforms in India may be inauthentic. Fake positive reviews and suppressed negative reviews constitute a sophisticated form of advertising deception.

### C. Legal Framework under the CPA, 2019

The Consumer Protection Act, 2019, which came into force on 20 July 2020, represents the most comprehensive overhaul of consumer protection law in India since the 1986 Act. Key provisions include:

- Section 2(28): The statutory definition forming the cornerstone of the regulatory framework, encompassing false descriptions, misleading implications, and deliberate concealment.
- Section 21: Confers extensive powers on the CCPA to inquire into violations of consumer rights, investigate unfair trade practices, and impose penalties of up to ₹10 lakh on the manufacturer and ₹50,000 on the endorser for a first offence, with higher penalties for repeat violations.
- Section 89: Provides for imprisonment of up to two years and a fine of up to ₹10 lakh for the first offence of publishing a misleading advertisement prejudicial to consumer interests; up to five years and ₹50 lakh for subsequent offences.
- Consumer Protection (E-Commerce) Rules, 2020: Impose specific obligations on e-commerce platforms like Amazon and Flipkart to prevent misleading listings and ensure genuine product information.
- CCPA Guidelines on Misleading Advertisements (2022): Require advertisements to be legal, decent, honest, and truthful, with specific requirements for health and safety claims.

The six consumer rights codified in Chapter II of the CPA, 2019 the Right to Safety, Right to be Informed, Right to Choose, Right to be Heard, Right to Seek Redressal, and Right to Consumer Education underpin the entire legislative framework. In the context of misleading digital advertising, the Right to be Informed is most directly violated.

### **III: ENFORCEMENT MACHINERY – CCPA AND CASE**

#### **LAWS**

##### **A. The CCPA: Establishment and Powers**

The Central Consumer Protection Authority (CCPA) was formally established on 24 July 2020, pursuant to Section 10 of the Consumer Protection Act, 2019. Its establishment marked a pivotal shift in India's approach to consumer protection from a purely reactive, forum-based adjudication model to a proactive regulatory model capable of intervening in the market before individual complaints arise. The CCPA is constituted of a Chief Commissioner and two Commissioners, supported by a dedicated Investigation Wing under a Director General with powers of a civil court.

The CCPA's enforcement toolkit includes: (i) cease-and-desist directions; (ii) directions to publish corrective advertisements at the advertiser's expense; (iii) prohibition of endorsers from making endorsements for one to three years; and (iv) monetary penalties. A notable feature of the CPA, 2019 is the requirement that endorsers including celebrities and influencers exercise 'due diligence' before endorsing a product. This provision has had a demonstrable deterrent effect, with several Bollywood celebrities publicly withdrawing endorsements following the CCPA's guidelines.

##### **B. Landmark Case Laws**

Several landmark judicial decisions have shaped the law on misleading advertising in India:

- *Hamdard Dawakhana v Union of India* (AIR 1960 SC 554): The Supreme Court upheld the constitutionality of the Drugs and Magic Remedies Act, 1954, establishing that commercial speech can be regulated more stringently than political speech and that consumer protection is a legitimate constitutional objective justifying advertising restrictions.
- *Tata Press Ltd v MTNL* (1995) 5 SCC 139: The Supreme Court recognised commercial speech as protected under Article 19(1)(a), providing the constitutional architecture within which all advertising regulation including the CPA, 2019 operates.
- *Horlicks Ltd v Heinz India Pvt Ltd* (2009) Delhi HC: Established that comparative advertising is permissible provided the comparison is honest, factually accurate, and not disparaging. Comparative claims must be verifiable and must not be designed merely to denigrate competitors.
- *Colgate Palmolive (India) Ltd v Hindustan Unilever Ltd* (2013) Cal HC: The Court emphasised that quantitative claims in advertisements particularly those involving

percentages and technical specifications must be based on credible, independent scientific evidence.

- Recent CCPA Actions (2020–2024): The CCPA has issued orders against airlines for misleading baggage fee advertisements, penalised multiple FMCG brands for false COVID-19 immunity claims, directed educational institutions to stop misleading placement statistics, and issued show-cause notices to influencers for undisclosed paid promotions.

### C. Challenges in Digital Advertising Regulation

Several structural challenges impede effective digital advertising regulation in India:

- Algorithmic and Programmatic Advertising: Ads placed through automated real-time bidding systems create acute regulatory challenges it is often impossible to identify the human decision-maker responsible for a misleading advertisement.
- Ephemeral and Targeted Content: Digital advertisements targeted to specific user segments and set to expire after brief periods disappear before complaints can even be investigated, requiring real-time monitoring tools.
- Deepfakes and Synthetic Media: AI-generated synthetic audio-visual content fabricated celebrity endorsements and manipulated product demonstrations is increasingly difficult to distinguish from genuine content. Existing laws do not specifically address deepfakes in advertising.
- Cross-Border Issues: Many problematic digital advertisements targeting Indian consumers originate from entities outside India. The CPA, 2019's extraterritorial jurisdiction is limited, and enforcement of Indian orders against foreign entities is practically challenging.

## **IV: GLOBAL COMPARISON AND RECOMMENDATIONS**

### **A. High-Incidence Jurisdictions**

The global digital advertising market was valued at approximately USD 627 billion in 2023. Advertising fraud costs the global economy between USD 50 billion and USD 80 billion annually. Three jurisdictions merit particular examination as high-incidence cases:

**United States:** The FTC received over 2.8 million consumer fraud reports in 2023, a significant proportion relating to deceptive digital advertising. Despite sophisticated laws, the US struggles due to First Amendment constraints on advertising restrictions, a fragmented regulatory architecture across multiple agencies, and the Supreme Court's 2021 decision in *AMG Capital Management LLC v FTC*, which curtailed the FTC's ability to seek monetary relief. Studies find that over 70% of influencer posts fail to comply with FTC disclosure requirements.

**India:** Consumer complaints related to misleading digital advertisements to the National Consumer Helpline increased by over 300% between 2019 and 2024. The EdTech crisis (2020–2023) vividly illustrates the consequences companies like BYJU'S spent over ₹2,300 crore on advertising annually while deploying systemic misleading claims (guaranteed placements, implausible success rate statistics). Maximum CCPA penalties of ₹50 lakh represent approximately 0.02% of BYJU'S annual advertising spend an amount with no meaningful deterrent effect.

**Brazil:** Latin America's largest digital advertising market has consistently high complaint rates, particularly in telecommunications and health supplements, despite the comprehensive Consumer Defence Code. Regulatory fragmentation between CONAR, PROCON, and SENACON creates enforcement gaps, while limited resources have failed to keep pace with digital advertising's growth.

Country	Key Regulation	Max Penalty	Enforcement Rating
USA	FTC Act 15 U.S.C. §45; Endorsement Guides 2023	USD 51,744/violation/day	Medium – resource-limited
India	CPA 2019 s.89; CCPA Guidelines 2022/23	₹50 lakh (repeat offence)	Developing – improving
Brazil	CDC Law 8,078/1990; CONAR Code	BRL 10.6 million	Medium – inconsistent

### **B. Best-Practice Jurisdictions**

Three jurisdictions offer specific, adoptable policy models for India:

**Norway The Gold Standard:** The Norwegian Consumer Authority (NCC) is internationally recognised as one of the most effective digital advertising regulators in the world. The Marketing Control Act 2009 (as amended 2021) provides for infringement fees of up to 4% of annual turnover no fixed ceiling. The NCC's proactive sweep operations using AI-assisted monitoring of social media identified and resolved 46% of total enforcement actions proactively in 2022, without waiting for complaints. Norway's 2021 amendments introduced the world's first legally binding influencer disclosure framework, requiring 'Reklame' (Advertisement) as the first word in any paid post caption. Between 78–82% of Norwegian internet users report confidence that digital advertisements they encounter are truthful compared to fewer than 30% in India.

**Germany:** The UWG (Act Against Unfair Competition, as amended 2022) creates a self-policing market by giving competitors and consumer associations direct standing to seek injunctions against misleading advertising. Interim injunctions are typically granted within 24–48 hours. Violation of an injunction attracts fines of up to EUR 250,000 per breach. Germany's 2022 UWG amendment specifically codified the prohibition of fake reviews, AI-driven manipulative pricing, and greenwashing as per se misleading practices.

**Australia:** The Australian Consumer Law provides for civil penalties of up to AUD 50 million, three times the benefit obtained, or 30% of adjusted turnover whichever is greatest. Crucially, the ACL applies strict liability: regulators do not need to prove intent, only that conduct was objectively misleading. The ACCC imposed a AUD 44.7 million penalty against Meta for misleading use of personal data in advertising targeting. Criminal penalties include up to 10 years' imprisonment for deliberate consumer deception.

Country	Penalty Model	Incidence Level	Key Innovation
Norway	Up to 4% of turnover	Very Low	Proactive sweep; influencer disclosure law
Germany	EUR 250,000/injunction breach + damages	Very Low	Private enforcement by competitors
Australia	AUD 50M or 30% of turnover	Low	Strict liability; tech-enabled enforcement
EU	Up to 6% of global turnover (DSA)	Low	Ad transparency repository; VLOP obligations

India (current)	₹50 lakh fixed ceiling	High	Nascent; improving post-2019
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## V: Conclusion

India's digital economy is projected to reach USD 1 trillion by 2030. The hundreds of millions of consumers who will participate in this economy many of them first-generation digital users with limited awareness of their rights deserve a regulatory framework that genuinely protects them from commercial deception. The Consumer Protection Act, 2019 provides a solid foundation. The experience of Norway, Germany, Australia, and the European Union demonstrates that the five structural deficiencies identified in this study penalty inadequacy, institutional capacity gaps, platform safe harbour, reactive enforcement posture, and consumer digital literacy deficit are addressable through targeted reform. The pathway forward is clear; what is required is legislative will and executive commitment.



## VI: Suggestions

The comparative analysis yields eight priority recommendations for India, in order of implementation urgency:

- **Turnover-Based Penalties (Legislative):** Amend Section 21 of the CPA, 2019 to replace the fixed ₹50 lakh ceiling with a graduated scale of 0.5%–10% of annual turnover (modelled on Norway's 4% and Australia's 30% models), with a statutory minimum of ₹25 lakh. This is the single highest-priority reform.
- **Digital Advertising Monitoring Unit (Executive):** Establish a DAMU within the CCPA's Investigation Wing, staffed with data scientists and AI specialists, empowered to conduct proactive sweep operations and suo motu investigations.
- **Advertising Transparency Registry (Subordinate Legislation):** Require digital platforms with more than 5 million monthly active users to maintain a publicly accessible, machine-readable advertising repository disclosing advertiser identity, targeting parameters, impressions, and creative content modelled on the EU DSA's Article 39.
- **Mandatory Pre-Screening for High-Risk Categories (Executive):** Require pre-CCPA approval for advertisements making health efficacy claims (Ayurvedic/Siddha/Unani medicines), financial product advertisements directed at retail consumers, and advertisements targeting children under 18.
- **Private Law Enforcement Standing (Legislative):** Amend the CPA, 2019 to give ASCI, consumer associations, and trade associations statutory standing to seek High Court injunctions against misleading digital advertisements, with a 48-hour emergency hearing procedure (modelled on Germany's UWG).
- **Platform Liability Reform (Subordinate Legislation):** Revise Section 79 IT Act safe harbour to impose graduated platform obligations: mandatory vetting systems, 24-hour take-down compliance with CCPA notices, and loss of safe harbour for non-compliant large platforms.
- **National Digital Media Literacy Mission (Executive/Legislative):** Integrate critical digital advertising literacy into the school curriculum (Classes 8–12) in all 22 scheduled languages, train 50,000 Digital Consumer Champions for community outreach, and sustain multilingual consumer rights awareness campaigns on digital platforms.

- International Enforcement Cooperation (Executive): Negotiate bilateral enforcement cooperation agreements with the FTC (USA), ACCC (Australia), CMA (UK), and NCC (Norway), and advocate for an ASEAN consumer protection enforcement network.

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