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A Critical Analysis of Advertisement Regulation in India: Does Advertisement Regulation Do Enough for the Citizen

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Abstract

This paper critically examines the effectiveness of advertisement regulation in India in protecting citizens' interests. Through analysis of regulatory frameworks including the Advertising Standards Council of India (ASCI), the Consumer Protection Act 2019, and sectoral regulations, this research evaluates whether current mechanisms adequately safeguard Indian consumers from deceptive, manipulative, and harmful advertising practices. The findings suggest that while India has established a comprehensive regulatory framework on paper, enforcement gaps, reliance on self-regulation, limited digital oversight, and inadequate protection for vulnerable populations undermine citizen protection. The paper argues that significant gaps remain in addressing the sophisticated targeting capabilities of digital advertising, protecting rural and low-literacy populations, regulating emerging advertising technologies, and ensuring meaningful accountability for violations.

Introduction

Any Indian city today is full of ads, whether it is billboards that promise to help you lose weight miraculously or mobile ads that offer to give you a loan in a few seconds, TV commercials offering fairness creams or influencers promoting cryptocurrency on Instagram. The advertising environment in India has been incredibly changed in the last 20 years and shifted to a complex digital ecosystem that is valued at 83,000 crores as of 2023. Digital advertising has already taken control of 35 percent of the total advertising spend, and it is estimated to pass the traditional media by 2025.[1] This change presents unseen prospects of economic growth, yet it poses a very crucial question that comes to the fore for all Indian citizens, and that is whether we are sufficiently insulated against the dangers of this advertising bombardment.

It is even more pressing when we take into account the situation in India, a country of more than 1.4 billion individuals with wide differences in literacy rates, twenty-two official languages, an extreme rural-urban divide, and a range of

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levels of digital advancement. Having about 65% of the population living in rural regions[2] where there is little information on consumer rights and more than 700 million internet users[3] (a significant number of whom are first-time users and thus much more susceptible to digital manipulation) the stakes could not be greater.

The given paper will consider one of the basic research questions: Are the current regulatory frameworks in India sufficient to safeguard citizens against the possible evils of advertising? The discussion covers a variety of dimensions such as regulatory frameworks and structural limitations of India, the threat of digital and social media advertising, the vulnerabilities of particular groups, such as children and rural consumers, the issue of data privacy and targeted advertisement, gaps in enforcement, new issues of influencer marketing and e-commerce, the importance of language diversity in the effectiveness of regulations. Sectoral regulatory loopholes in sectors such as health products, financial services and online gaming that expose citizens to a high level of harm are also discussed in the paper.

Theoretical Framework: Why a Regulation of Advertising?

Constitutional Foundations & the Balance of Rights

Article 19(1)(a) of the Indian Constitution grants freedom of speech and expression, which has been extended by the courts to commercial speech and commercial advertising. In the landmark case of Tata Press Limited vs Mahanagar Telephone Nigam Limited in 1995, the Supreme Court held that commercial speech is entitled to protection under the Constitution.[4] However, this freedom is not complete. Article 19(2) allows for "restrictions which are reasonable in the interest of decency, morality, and public order," and there is an inherent tension between the interest in safeguarding commercial expression and the interest of protecting the well-being of citizens. This constitutional framework means that Indian advertising regulation needs to walk a tightrope in that it has to, in principle, limit false and misleading advertising and allow legitimate commercial communication. The question is whether this balance has been achieved in practice, or whether commercial interests have been given disproportionate protection at the citizen's welfare.

The Philosophy of Consumer Protection

The Consumer Protection Act 2019 reflects a basic principle, i.e. consumers have inherent rights such as the right to be informed and the right to be protected against unfair trade practices.[5] The Act defines "unfair trade practice" as including false or misleading representations, which serves as the statutory basis for regulations of advertising. This philosophic underpinning acknowledges that in a market economy, consumers cannot protect themselves by choice alone, where information itself is manipulated or untrue.

Information Asymmetry in the Indian Context

Economic theory acknowledges that markets only function efficiently when the parties of a transaction, buyers and sellers, have fairly equal knowledge. In India, this assumption often does not work out dramatically. When around twenty-six percent of the population is functionally illiterate,[6] and many more have limited digital literacy, the advertiser has an overwhelming informational advantage. Rural consumers buying agricultural inputs based on unsubstantiated claims about their yield, first-time users trying to surf the internet and encountering sophisticated phishing advertisements, and non-English speakers struggling with fine print disclosures - all are challenged by an overwhelming asymmetry of information. This reality makes strong advertising regulation not merely a help to the working of the market, but it is fundamental.

India's Regulatory Architecture: A Maze of Laws

The Self-Regulatory Cornerstone: ASCI

The Advertising Standards Council of India has been the main protector of the standards of advertising since its inception in 1985. Created by advertising industry stakeholders themselves, ASCI creates and enforces codes based on simple principles: advertisements must be legal, decent, honest, and truthful; they should not mislead and deceive; they should compete fairly; and they should be appropriate for the intended audience. ASCI has a complaint-based mechanism in which consumers, competitors or ASCI itself can lodge complaints. The Consumer Complaints Council considers these complaints in making its decisions, which are usually complied with voluntarily by advertisers.

According to the 2022-23 annual report from the American Society of Consumer Information (ASCI), the organization received 8,299 complaints and upheld 88% of the complaints.[7] On the face of it these numbers are encouraging. However, if we look into the actual powers of ASCI, we can see some fundamental limitations. The organization does not have statutory power to impose fines and enforce compliance. Its strength is entirely in industry cooperation and the threat of adverse publicity. Advertisers who are determined to continue misleading campaigns can simply ignore the decisions of the ASCI and not face legal repercussions. Many small and regional advertisers are completely outside ASCI's purview. The time taken to process the complaint itself takes weeks or months, and/or the harmful advertisements are already running, continuing to inflict consumer harm. Perhaps most importantly, ASCI is mostly reactive rather than systematically monitoring the advertising landscape.

ASCI has tried to go modern by focusing on digital platforms. In 2022-23, digital media complaints accounted for 76% of total complaints, showing the media's dominance.[7] The organization set up a partnership with TAM Media Research to track advertising across digital platforms through AI-enabled technology. While this is progress, the orders of magnitude of digital advertising are far beyond available monitoring capacity. Thousands of new advertisements come up every day across the board, many of which are aimed at specific demographic segments that are unlikely to raise complaints.

Statutory Regulations: Power Without Sufficient Enforcement

The Consumer Protection Act 2019

The Consumer Protection Act 2019 gave a huge boost to the regulation of advertising by providing a comprehensive definition of the term "misleading advertisement" under Section 2(28) of the Act, penalties up to 10 lakhs for manufacturers and 50 lakhs for endorsers, the setting up of the Central Consumer Protection Authority with powers to investigate and penalise false advertising, and the right to file class action suits by consumer organisations.[5] For the first time in the history of Indian regulations, there was a statutory body in place to penalize misleading advertising directly. The CCPA has the ability to impose penalties, order product recalls, and prohibit endorsers from appearing in advertisements for up to three years. This was a real breakthrough in Indian consumer protection. However, implementation is way behind the statutory promise. As of 2023, the CCPA has issued relatively few penalty orders given the vastness of the advertising market in India. Lack of resources, jurisdictional issues between states and the sheer number of potential violations limit effectiveness. The amounts of the penalties, while substantial to the individual, may not be sufficient deterrence to the large corporations for whom such fines are marginal costs of doing business easily absorbed as a marginal cost.

The Drugs and Cosmetics Act: A Case of Regulatory Malfeasance

The Advertising of drugs, cosmetics and medical devices is regulated under the Drugs and Cosmetics Act 1940 and rules made in 1945.[8] Rule 106 prohibits advertisements containing false claims, references to cures for specified diseases included in Schedule J or containing claims not approved by the regulatory authorities. Enforcement is left to the Central Drugs Standard Control Organization and state drug controllers. Yet enforcement has been notoriously weak. Patent medicines, ayurvedic preparations and dietary supplements regularly flout advertising regulations with relatively few repercussions. The fairness cream controversy showed this failure of regulation in its most glaring form. For decades, fairness creams had dominated Indian advertising with claims that were explicit and implicit about the link between fair skin and success, marriage and social acceptance. Despite the clear damage to social equality, as well as self-esteem, especially for women and dark-skinned individuals, there was still little regulatory intervention. Only in 2020 did ASCI change guidelines to ban ads perpetuating skin color bias, and there is still inconsistency in doing so. Major brands such as Fair & Lovely (hurriedly renamed Glow & Lovely in 2020) existed for decades peddling the message of colorism with the acquiescence of the very bodies that should have regulated it.

Cable, Digital, and Digital Regulation

The Cable Television Networks Rules, 1994 govern the contents of television advertisements, which forbid advertisements that threaten safety, use national symbols, and those advertisements that are obscene or vulgar. While state broadcasting service providers are required to do so, the enforcement against cable operators is extremely uneven across areas. This is why commercials clearly violating these rules are aired by regional cable networks without suffering repercussions. The Information Technology Act 2000 offers some provisions which are relevant to online advertising, in particular, relating to liability for intermediaries.[9] However, it is not designed for advertisement regulation and has major gaps in the regulation of digital advertising practices that now take over the market.

Sectoral Regulation and Coordination Issues

In some fields, advertising is strictly controlled by specific bodies. Advertising of food products including health claims and nutritional claims is regulated by the Food Safety and Standards Authority of India.[10] The Insurance Regulatory and Development Authority is responsible for regulating insurance product advertisements. Investment and financial product advertisements are controlled by the Securities and Exchange Board of India. The Ministry of Information and Broadcasting regulates the broadcasting content, including advertisements. This fragmentation makes coordination difficult, which is why sophisticated advertisers take advantage. An advertisement can be in violation of ASCI guidelines, FSSAI regulations and Consumer Protection Act simultaneously, but only one channel or none may act on it. Jurisdiction ambiguities enable offenders to take advantage of the regulatory space, either by arguing that the regulation is outside of its jurisdiction or that another agency is primarily responsible for the regulation.

Recent Developments: The 2022 Guidelines

In June 2022, the CCPA published extensive Guidelines for Prevention of Misleading Advertisements, which set the definition of misleading advertisement in thirteen categories and the penalty procedure, as well as the substantiation of claims and the prohibition of "bait advertising" and "surrogate advertising."[11] These principles constitute an important regulatory step forward. However, the implementation is still in its early stages. The CCPA will need to develop a significant amount of institutional capacity to be able to enforce these provisions effectively across India's enormous advertising market. Although the guidelines lay down significant principles, initial experience indicates that applying them consistently in different situations presents enormous challenges.

Where Indian Regulation is Deficient: Protecting Citizens

The Self-Regulation Paradox

India's dependence on ASCI as the main regulatory body is emblematic of the one fundamental dichotomy: the advertising industry is self-regulating. While self-regulation provides flexibility and industry expertise, such an approach introduces inherent conflicts of interest against which no amount of procedural independence is able to overcome. ASCI's budget is solely derived from advertising income - from advertisers, advertising agencies, and media houses. This produces economic dependency, which may affect decision-making. While ASCI may be able to be independent in the adjudication of individual cases, the overall regulatory framework will inevitably be a reflection of the industry preference for minimum intervention.

As they say, the fox keeps the hen-house. Aside from legislative bodies with powers of investigation, subpoena and penalty, ASCI works only by persuasion. An advertiser who is determined to keep marketing misleadingly can easily take the easy way out by disregarding ASCI with little to no scorn. While the names and shames approach can be used by ASCI to publicize non-compliance, this "name and shame" approach is of limited use, especially for advertisers operating in regional markets or who target less-informed consumer segments who never hear of ASCI actions.

The case of the Patanjali project is an example of this failure in a spectacular fashion. Repeated unsubstantiated claims about products for the cure of COVID-19, diabetes, and other serious diseases were falsely and repeatedly propagated by Patanjali Ayurved, the ayurvedic product company founded by Baba Ramdev. Despite numerous investigations by the American Society for Safe Information in Cyberspace (ASCI), warnings by state drug authorities, and ultimately the intervention of the Supreme Court, these false ads went on and on. In 2021, Patanjali received a Supreme Court notice for contempt over advertisements for violating its undertakings against misleading advertisements. The company continued to earn from misleading advertising despite the intervention of the Supreme Court, India's highest judicial authority. And the resulting punishment did not seem to be enough to modify the behaviour or make up for deceived consumers who delayed potentially life-saving treatment while under the influence of these phony products.

The Advertising Black Hole of Today: Digital Advertising

Digital advertising in India raises issues which are no longer addressed in any meaningful way by the current laws. The difference between traditional media regulatory frameworks and the intensive targeting that digital platforms allow has left a protection gap, making consumers highly vulnerable.

Microtargeting and Weaponized Individual Data

Indian digital platforms allow advanced targeting on the basis of demographics, behaviour, interests, location and psychological characteristics. Facebook, Google, and local platforms such as ShareChat amass vast amounts of user data that enables targeting that would be the stuff of science fiction twenty years ago. This results in one-sided power dynamics where advertisers know consumers inside and out, while consumers are not given any transparency on how their data is harvested, processed, and used against them. The worst bit about it is that they aim at vulnerability instead of interest. Advertisers can specifically target users who are financially distressed, health-conscious or aspire to higher education. Personal loan applications are directed towards people who are looking for "urgent cash" or "emergency loan"- people with desperate situations who are least likely to know about their rights and most likely to be the ones who will be exploited by these terms. Get-rich-quick ideas are aimed at unemployed youth, seeking ways to find employment. Many medical treatments are unproven and play to people's fears and hopes at the same time, while they seek proof of disease symptoms.

Indian data protection law has not been fully developed after years of debate. The Personal Data Protection Bill was subjected to various amendments, and due to this, the bill was eventually withdrawn in 2022. The new Digital Personal Data Protection Act 2023 (DPPA) sets out a framework, but does not go into specifics of implementation.[12] This lack of regulation provides wide-open doors for behavioural profiling for advertising purposes without any kind of oversight. Companies follow users from website to website, track app usage, analyze purchase records, track location data, create psychological profiles and other things, with little in the way of a requirement for consent and virtually no true transparency.

Dark Patterns: Designing Manipulation

Dark patterns - design features that are used to manipulate users into doing things they did not intend to do - are rampant across India's digital advertising and e-commerce. These techniques use human psychology and individual cognitive biases to elicit consent, purchases, or data that users would not be willing to share if informed about them. Tactics to create a sense of urgency that is false. E-commerce websites say "Only 2 rooms left at this price" all the time, and create artificial scarcity. Consumers schedule an appointment without comparison shopping, only to receive the same "2 rooms last" message days later. Hidden costs are another common scheme, in which prices are displayed without taxes and fees until you get to the point of purchase. Consumers make choices based on product prices they see on advertising platforms, and at the last step, when they are psychologically ready to buy, they are presented with higher prices. Forced continuity is the practice of taking free users and coercing them into paying for subscriptions, without any clear notice. Users subscribe to a "free month," enter credit card information, and have to be reminded when the trial is over, which is often done months later when the user sees the charge. Disguised advertisements show listings of products on e-commerce platforms in a format that makes it appear as if the results of a search were the result of an algorithm, when in reality they are paid placements, therefore misleading users about the relevance of the results. Bait-and-switch tactics of advertising products that turn out to be unavailable and then offering better but more expensive products in their place - a classic deceptive technique that is now automated on a massive scale.

The Consumer Protection (E-Commerce) Rules 2020 ban some dark patterns, but virtually no enforcement takes place. The Department of Consumer Affairs released dark patterns guidelines in September 2023, explicitly acknowledging the issue, but it is still in the process of developing effective enforcement mechanisms.[13] Small and medium-sized e-commerce operators regularly use dark patterns with total impunity, knowing that your chances of consequences are close to zero.

The Disclosure Crisis of Influencer Marketing

Influencer marketing has also taken off by storm in India, and the industry is estimated to be worth 900 crores in 2023 and is expected to grow to 2,200 crores by 2025.[14] However, disclosure compliance is still abysmal, and consumers have no way to tell the difference between real recommendations and paid advertisements. ASCI issued Influencer Advertising Guidelines in 2021, calling for the clear disclosure of brand partnerships to be made. Disclosure should be prominent, of the same language as the content, with platform-specific labels, such as "#ad" or "#sponsored," and should be disclosed even if the payment is in-kind, as opposed to monetary. These are reasonable, easy requirements. Yet compliance remains poor. A 2023 ASCI study tracking 1115 influencer posts determined 34% of them were not properly disclosing that they were sponsored posts.[7] Micro-influencers had poor compliance rates compared to established influencers. The regional language influencers frequently fully ignored disclosure requirements. The issue is not isolated to individual posts - there are entire YouTube channels that are dedicated almost exclusively to promoting products in a way that lacks clear disclosure, taking the form of an independent review or lifestyle video.

Enforcement is almost non-existent. ASCI is able to ask platforms to remove content that is not in line, but cannot penalize influencers or brands directly. The CCPA also has power under the Consumer Protection Act and has taken very few enforcement actions against influencer marketing violations. Influencers are still making tremendous money with undisclosed advertising with minimal legal peril, creating perverse incentives where honest disclosure is actually worse for the compliant influencers. The cryptocurrency promotion wave of 2021-2022 is a good example of the consequences. Many famous celebrities from Bollywood and cricket have been marketing the use of cryptocurrency platforms and cryptocurrency schemes, with Virat Kohli, Ranvir Singh and others appearing in advertisements offering unrealistic returns. When several platforms collapsed and investors lost a lot of money, questions arose about celebrity accountability. Despite the Consumer Protection Act clearly allowing action against misleading advertisement endorsers, nothing significant happened. The gap between stated law and practical accountability is no more apparent.

Inadequate Response to Vulnerable Groups

Children: An Unshielded Audience

India has around 472 million people below the age of 18 - a huge population with unique advertising weaknesses.[6] The regulatory framework encompasses the provisions of the ASCI Code against advertising that exploits the credulity of children, Cable Television Rules that limit advertising during children's programming hours and the Consumer Protection Act general protections. In practice, these protections are nothing but a fiction. Indian television for children is still awash with ads of junk food, sweet drinks and products of questionable educational value. Despite the ban on direct appeal to children, brand presence on children's programming is permitted. This distinction turns out to be meaningless when it comes to practice. Cartoon characters selling unhealthy foods have a powerful influence on children, whether or not advertisements "directly appeal" to them, technically speaking. Children don't care about these legal nuances; they just imbibe the persuasive messages.

The internet makes it even more vulnerable. Indian children increasingly access content through YouTube, Instagram and other platforms where advertising restrictions for children's media simply don't apply. Targeted advertisements based on viewing history, in-game purchases with manipulative progression mechanics and unboxing videos blurring the lines between entertainment and advertising work without any meaningful regulatory oversight. Parents often lack the understanding of such methods of manipulation on the digital world: they can't protect children from the sophisticated ways of targeting that they can't see or understand themselves. The situation of online gaming is one that is of particular concern to child welfare advocates. Real money gaming applications advertise heavily in cricket matches and popular shows viewed by families, including children. Games such as Dream11, MPL and others are offering gambling-like mechanics in the form of "skill-based gaming." While the advertisements contain disclaimers, in the aspirational content, the target audience is youth. Despite the concerns about underage gambling, there has been little regulatory action, and it has been spotty across states. The Kerala and Karnataka governments banned some of the gaming formats, but there is no regulation at the national level, exposing kids to gambling normalization at a vulnerable age.

Rural and Low-Literacy Consumers: The Forgotten Majority

Approximately 65% Indians reside in rural areas with literacy rates far lower than in urban centers, and the rate of digital literacy is even lower.[2] This population - the actual majority of Indian citizens - is highly vulnerable to misleading advertising, with a tiny access to the regulatory protection mechanisms. Language barriers cause immediate problems. Advertisements will often be in English or Hindi, in areas where neither is the predominant language. Even where regional languages are used, disclosures in fine print often appear in English, making them totally inaccessible to rural consumers. The assumption that consumers will be able to read and understand technical disclosures breaks down completely for large segments of the population.

Exploitation examples are very numerous. Microfinance and personal loan advertisements are aimed at the rural and target population with ambiguous interest and repayment terms, locking families in cycles of debt. Agricultural input advertisements make claims of making yield improvements for which there is no proof, causing farmers to spend money on expensive products that do not perform as expected. Health products promise cures for serious diseases based on testimonials instead of scientific evidence, so that rural patients end up delaying legitimate medical treatment. Skill development and employment schemes promise unrealistic levels of earnings, and squeeze fees from desperate families who are desperate for economic movement.

"Regulatory mechanisms are premised on literate and informed consumers who are able to lodge complaints to ASCI or consumer forums. Rural consumers do not always know that advertising can be challenged or that there are even regulatory mechanisms. Geographical distance from the forums of consumers, legal expenditure, and time requirement are some insurmountable barriers in filing complaints. A farmer in rural Madhya Pradesh who loses money because he puts ineffective agricultural inputs into his crop is up for months of travel and legal expenses to file a consumer complaint, all for far more than he stands to recover.

In public television stations, advertisements are aired for herbal medicines that have been reported to cure diabetes, cancer, kidney disease, and other terminal conditions. These are ads with doctors (usually actors in white coats) and patient testimonials. Despite flagrant breaches of the Drugs and Cosmetics Act, those advertisements get away for years. Rural consumers who do not have access to quality healthcare may prevent legitimate medical treatment and instead use products which are ineffective, resulting in unnecessary deterioration or death. Regulatory authorities have no capacity to monitor media in the region adequately, and enforcement actions are still rare. When fines are imposed, however, they are clearly not strong enough to prevent repeated offences.

Senior Citizens: Singled Out in Their Golden Years

India is an ageing population with the 60+ age bracket expected to increase to 194 million by 2030. This population is a target of systematic exploitation within various advertising categories; there is inadequate regulatory protection. The abuse of financial products affects most of all the elderly. Reverse mortgages, equity release packages and investment products with poor terms are sold using emotional marketing messages - “don’t be a burden to your children,” “remain financially independent” - with little or no mention of the costs and risks. Many elderly retirees, on fixed incomes, who are fearful of losing their independence, make poor decisions because of these fraudulent advertisements with catastrophic long-term results.

Health product targeting taps concerns of aging. Senior citizens are bombarded with advertisements for arthritis cures, supplements for improved memory, anti-aging creams and unproven claims. This population is especially at risk of being influenced by persuasive advertising because of the cognitive decline that makes it hard to process information about products and services, and because lower social networks reduce the availability of alternative sources of information that can contradict advertising claims.[15] The digital divide makes people even more vulnerable. Many older people are not digitally literate enough to know what is a scam online. Advertisements have led to fake websites, phishing schemes and romance scams against lonely elderly people.[16] These scams are carried out on a large scale and with little intervention from the authorities, yet they result in a lot of money and emotional damage.

Health and Wellness: The Business of Deception

Ayurvedic Products and Ambiguity in the Regulatory Environment

Ayurvedic medicine in India is a culturally important part of the country’s history, and is valued by those who believe in it. However, there are regulatory loopholes which allow for the organized exploitation of consumers’ trust in TCM. Ayurvedic products fall in the category of drugs and cosmetics, but the regulations for them are much laxer than those for allopathic medicines. Less rigorous substantiation requirements allow manufacturers to make broader claims and create the space for misleading advertising, which would be allowed for traditional pharmaceutical products. Ayurvedic products often make claims of curing disease with no evidence to support up-to-date scientific standards of disease-curing. Advertisements claim cures for diabetes, hypertension, obesity, and arthritis based on traditional texts rather than clinical trials and capitalize on the cultural authority of the tradition, while making specific therapeutic claims that are never made by traditional Ayurvedic practice.

The impact on the market is huge. The market of Indian Ayurveda has reached 30,000 crores in 2022. While traditional medicine does have some valid worth, misleading advertising leads consumers to replace proven treatments with ineffective drugs, delay diagnosis and treatment of serious illnesses, waste money buying useless products and experience adverse effects from unregulated preparations which can contain harmful ingredients or contaminants. The advertising of Ayurvedic products is seldom subjected to advertising restrictions by the state drug controllers. ASCI hears complaints but does not have the power to enforce compliance. The CCPA has power but has done little in this area. The outcome is systematic regulatory failure to allow profitable exploitation of cultural traditions and consumer trust.

Weight Loss: Extraordinary Claims without Evidence

Weight loss product advertising in India is making extraordinary claims on thin evidence, playing on body image anxieties and health concerns. Common infractions include before-and-after photos without a paid testimonial, claims of specific weight loss in specific times without being scientifically sound, claims of "clinically proven" results without conducting scientifically sound trials, and claims of weight loss without diet or exercise that go against how physiology works. In 2022, 1,045 complaints were processed by ASCI involving health and wellness products, with many of these complaints about weight loss claims.[7] Complaints were ignored, and the same products, with slight changes to claims, were advertised. Lack of financial penalties means that violators can simply tweak advertising language while continuing sales without taking regulatory compliance seriously and consider it as a window-dressing requirement. The basic business model - selling useless products on the basis of false advertising - remains profitable.

Financial Services: The Advertising in a Hypnotic Trance

Given the potentially devastating impact for individuals and families of making the wrong financial decisions, financial services advertising poses a particular challenge.

Personal Loans: The Advertising Sinecure

During and after COVID-19, digital lending applications spread like wildfire against a backdrop of aggressive advertising to people in financial distress. Examples of regulatory issues include fine print interest rates or interest rate disclosure requiring a post-download click, "instant approval" statements without qualifying statements about stringent eligibility requirements, targeting of financially stressed individuals based on search activity, and credit score impact claims. There were reports of predatory lending, harassment of borrowers and the use of personal data obtained through loan applications that require overly intrusive permissions.[17] RBI guidelines on digital lending may not be enforced in the most effective way. Advertisements still make false promises, entice susceptible consumers into predatory relationships. Families who are already in financial distress are hit with an extra blow with the debt accumulated due to loans taken based on misleading advertising, making it impossible to get out of debt for years.

Surrogate Advertising: Regulatory Avoidance in Broad Daylight

Surrogate advertising--the practice of advertising brand names that are in the course of advertising products that are illegal to advertise--has been a scourge of regulatory oversight in India for decades, and is an excellent measure of how determined advertisers can and have overcome regulatory hurdles. In most states, advertisements of alcoholic beverages are regulated and are completely banned in Tamil Nadu. Under the COTPA Act 2003, the advertising of tobacco products is banned. However, brands of spirits are regularly advertising with brand extensions. Royal Stag advertises "music CDs" and "pop." Kingfisher advertises the mineral water and calendars. Imperial Blue is an advertisement for "music" and fashion. While surrogate advertising is technically prohibited, proving that music CD advertising actually promotes whisky is legally complex. Brands argue that brand extension products exist independently. Consumers, however, clearly associate brand names with alcohol products—which is precisely the advertisement's actual purpose.

The fiction that consumers see a "Royal Stag" advertisement and think about music CDs rather than whisky is absurd, yet courts struggle with evidentiary standards for proving surrogate advertising intent. Surrogate advertising continues during cricket matches, festivals, and prime-time television despite decades of regulatory awareness. Regulatory agencies occasionally issue notices, but sustained enforcement remains absent. The practice demonstrates how determined advertisers exploit regulatory complexity and enforcement limitations, continuing prohibited advertising through transparent legal fictions that regulators prove unable or unwilling to address effectively.

Consumer Protection as a Democratic Necessity

Consumer protection is not an economic regulation - it's a democratic necessity. When citizens are not able to check the line between truth and manipulation, when the choice is based on invisible algorithmic profiling, and when being vulnerable is the basis for the target, democratic participation itself is compromised. Consider what proper advertising regulation is protective of. It saves a rural Indian farmer in Maharashtra from buying inputs for his farm that make no difference to his yield because they are based on false promises of yields, saving his economic well-being and his agricultural productivity. It saves a senior citizen from falling prey to unscrupulous reverse mortgage schemes in Chennai while earning financial security in the golden years of retirement. For instance, online gaming advertisements may be normalizing gambling among children in Delhi, but with parental controls, it can be stopped from affecting a child's healthy development. It is a safeguard of the first-time internet user in Patna from phishing schemes disguised as genuine advertisements to allow digital participation without exploitation. This situation has saved many lives in Bangalore: Patients are prevented from delaying cancer treatment by sticking to unproven ayurvedic "cures" that can, in some cases, be fatal. It keeps a youngster safe from cryptocurrency scams that guarantee a huge return in Mumbai, and saves her from financial disaster.

Such protections are not only for the benefit of individuals but also for democratic citizenship. Democracy requires markets to be able to participate as informed, autonomous agents in markets; in other words, economic citizenship. When advertising is a controlled misrepresentation, when there is the opportunity for manipulation due to asymmetrical power distribution, and when vulnerability becomes a profit centre, economic citizenship is being damaged. The Supreme Court of India has consistently acknowledged that constitutional rights are positive rights and that they are rights that require positive action from the state for them to be realized and not just non-interference. Article 21 has been interpreted to include the quality of life. The right of freedom of speech encompasses the right to receive information. These broad constitutional interpretations recognize that constitutional rights without the ability to act based on them are nothing more than promises to act. Advertising regulation advances constitutional values by allowing for authentic economic choice. The constitutional right to equality under Article 14 of the Constitution is violated if algorithmic advertising is used as a tool to facilitate systemic discrimination. When misleading health advertising leads to unnecessary deaths, survival of the fittest cannot be considered to have been achieved. "Manipulative advertising that takes advantage of children's developmental vulnerabilities violates the protection of children's welfare found in all branches of Indian law.

Conclusion: The Verdict is Not in Doubt

This paper raised a basic question: Is the regulation of advertisements in India sufficient for the citizens? After reviewing regulatory structures, enforcement structures, protection of vulnerable populations, sectoral gaps and emerging challenges, one can only come to one conclusion: No. The current regulation of advertisements in India is failing citizens systematically and profoundly. The failure expresses itself in many dimensions that combine to form the complete protection insufficiency. The opening in the structure enabled by a lack of reliance on regulation leaves determined violators free to disregard regulatory advice at a profit. Digital deficits make citizens vulnerable to advanced targeting and manipulation, which regulation for traditional media cannot handle. Abandoned by the gap, children, rural consumers, low literacy groups and old people are left vulnerable to exploitation. The failure to enforce the law allows violations to go on for years despite clear regulatory violations. Sectoral failures in health products, financial services, and online gaming have a direct negative impact on consumers. Citizens, in the meantime, are being exposed to AI-generated advertising, voice-based commerce and metaverse marketing - with no proper regulatory safeguards in place.

However, the analysis also shows that failure does not have to be the case. The Consumer Protection Act 2019 gives a solid statutory foundation that needs to be implemented rather than radically rethought. ASCI's digital monitoring pilot projects are a breakthrough in terms of solving scale problems. Tobacco regulation is successful: determined regulatory action can achieve public health goals. The regulatory tools exist. The legal structures are largely sufficient. What is left now is execution - institutionalized, resourced, dedicated enforcement of citizen protection.

The Path Forward

The way forward is the path of all-sided reform. CCPA must be empowered to increase statutory regulation with meaningful fines and swift enforcement. ASC compliance should be made compulsory for large advertisers in order to transform self-regulation. The provision for data protection needs to be integrated holistically by including advertising-specific conditions. Vulnerable populations need to be better protected, recognizing their real situation. Specific harms in the health products, financial services and online gaming sectors require regulation. Advertising hosted on platforms should be accountable. Uncoordinated enforcement has to be coordinated. People need to be educated and empowered. Technological change has to be anticipated rather than dealt with after the fact.

These reforms require political will, which is not at the level necessary now. Advertising regulation has few political parameters in contrast with other issues, so that industry interests prevail in policy formation. People need to ask for better consumer protection. Enforcement: policymakers must make sure this is a priority. Resources should be distributed according to the challenge. The question is not whether India can afford to have stronger advertising regulation. The question is whether this continued inadequacy is India's luxury. Every advert that misrepresents the health ramifications of treatments and prevents real treatment takes a cost in suffering and death. Every loan that traps families in predatory lending has the potential to create debt cycles that destroy economic stability for generations. Every manipulative children's ad creates lifelong consumption patterns. Every discrimination algorithm mirrors social inequality which is clearly not desired by constitutional values. Every successful advertising fraud destroys the trust in the market that is the prerequisite of economic development.

These costs are not abstract. They are real human suffering, squandered money, impaired health, lost opportunity and lost dignity. They are borne disproportionately by those least able to carry them - rural farmers, urban poor, children, seniors, first-time internet users, low-literacy populations. Even the citizens who are the most vulnerable for exploitation are the ones who are the least protected. India stands at a crossroads. The next decade will see if India's advertising industry develops a structure of protection and innovation or exploitation and lack of accountability. The regulatory tools exist. The legal structure is sufficient. The enforcement mechanisms can be developed What is lacking is first of all the political will to prefer citizen protection to commercial convenience, to put resources into enforcement and to identify advertising regulation as part of the basic consumer protection that, as fundamental public protection, requires regular, meaningful enforcement.

The current advertisement regulation does not serve Indian citizens effectively. The evidence is numerous and indisputable. The way forward is obvious and practicable. The choice left is whether India will guard its citizens or will commercial interests exploit the regulatory loopholes at the expense of its citizens. India's 1.4 billion citizens deserve better than the regulatory failure. They deserve advertising markets in which truth can be enforced, in which vulnerability is protected and not preyed upon, in which childhood is protected, in which aging is dignified, in which peasants are as important as city consumers, in which technology is the servant of human well-being and not the tool of perverse sophistication. They deserve to be regulated and actually regulated, enforced and actually enforced, protection and actually protected. The discrepancy between what there is and what citizens deserve is huge. But it is not unbridgeable. All journeys start with a single step. India must take that step -- not tomorrow and not next year but now. The cost of delay is human suffering that could have been avoided, dignity that could have been saved, trust that could have been retained, and so forth. That is a high cost to pay while regulatory inadequacy reigns. The verdict is clear. The path forward is defined. The one question that remains is if India will act.

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