

# **CURBING FALSE OR MISLEADING ADVERTISEMENTS IN INDIA: CHALLENGES AND SOLUTIONS**

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## **ABSTRACT**

Advertisement is an age old practice and currently part and parcel of commercial marketing strategy. It is used by producers to drive consumer behavior to its commercial offering and increase consumption of their product. But when these advertisements are false or intend to deceive consumers, they impair the economic behavior of the consumers; cause injury to their rights to exercise informed choice; result in information asymmetry and also harm the interests of competing commercial brands. They are unethical and are regarded as a social and commercial ill, but more significantly in economic terms the resulting information asymmetry due to such advertisements causes “market failure.” The article, after briefly discussing the ineffectiveness of the current Indian legal and regulatory framework to deal with the challenges posed by the menace of false and misleading advertisement, argues that India requires a complete overhauling. It further argues that a large number of jurisdictions had strengthened their legal and regulatory framework governing advertisements in the last decade. Thus, there is a global consensus that a comprehensive legal and regulatory framework is required to curb the problem of false and misleading advertisements to check the “market failure.” The article concludes that India requires adopting a more effective regulatory model to curb false and misleading advertisements. It recommends that the model needs to be aligned with global experiences and advance consumer interest, but not in a manner more extensive than is necessary to correct the market failure.

## **INTRODUCTION**

Commercial advertisement has become a part and parcel of modern

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marketing strategy and consumerism. It is regarded as an engine of the free market economy in the era of globalization. Its proponents argue that advertisement is beneficial to consumers because they provide valuable information to a consumer which is essential to the concept of “consumer sovereignty” in the contemporary era. Realizing the value of advertisement to the current economic system and market development, majority of nations has awarded it a free speech status.

The Indian market post globalization has become an attractive destination of major brands and corporations. As a part of the growing new market culture these brands have to reach to a large number of consumers within a shortest possible timeframe and also persuade them about their products and services by capturing innovative commercial messages. Hence advertising industry has expanded leaps and bound in the recent decades. The Supreme Court of India has also recognized “commercial advertisement” as a protected speech under Art 19 (1)(a) of the Constitution of India.<sup>2</sup>

But as J. Walter Thompson stated “advertising is a non-moral force, like electricity, which not only illuminates but electrocutes. Its worth to civilization depends upon how it is used.”<sup>3</sup> Advertising is a beneficial tool as long as the techniques used are fair. But the problem arises when deceptive and fraudulent advertising tactics are used by advertisers aimed at attracting consumers by luring through false or misleading messages about products, its qualities and utilities. False and misleading advertisements affect consumer’s “right to be informed” and results in injuring consumer interest as well as the competing commercial brands. Majority of nations in the recent past has strengthened their legal and regulatory framework on advertisement to address the challenges posed by false and misleading advertisements. In India a host of legislations and regulatory institutions are in place to check the problem, but the fact remains that this problem

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2 Tata Press Ltd v. Mahanagar Telephone Ltd., AIR 1995 SC 2438.

3 Ashok R. Patil, *Misleading Advertisements-Impact and Regulations*, in 25 YEARS OF CONSUMER PROTECTION ACT: CHALLENGES AND THE WAY FORWARD, 35 (Ashok R. Patil ed., 2014).

continues to a serious extent in India. The article after briefly examining the effectiveness of the existing legal and regulatory framework to check false and misleading advertisement in India, recommends the probable action required to comprehensively deal with this problem. In reaching its recommendations the article places reliance on the international best practices that have emerged from the U.S., the U.K. and the E.U. to effectively tackle the false and misleading advertisement.

### **UNDERSTANDING FALSE AND MISLEADING ADVERTISEMENT**

Advertising is used to inform, persuade, and remind consumers. It importantly reinforces their attitudes and perceptions. However, if an advertisement

- a. uses a false statement about the product; or,
- b. intends to mislead through its presentation; or,
- c. intends to deceive or be likely to deceive the consumers to whom it is addressed; or,
- d. conveys potential promises about the efficacy of their product, which are exaggerated to such an extent that the products cannot deliver; or,
- e. intend to actively conceal the ill effects of the products;

and when such falsity or deception has the potential to impair the economic behavior of the consumers or cause injury, such advertisements are regarded as “false or misleading advertisement.”<sup>4</sup> These advertisements convey a false impression or there is a reasonable probability of confusion being caused by them being designed to mislead. Hence, they are not just an abstract risk to a reasonable man viewing the advertisement. The falsity or confusion can be either in the literal or in the implied meanings of the advertisement.

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4 This definition is attempted by digesting various definitions on false and misleading advertisement including the components of false and misleading advertisements as included within the definition of “unfair trade practice” under the Consumer Protection Act, 1986.

The objective of false and misleading advertisement is to persuade consumers into commercial transactions that they might avoid; and affect their “right to be informed” about the quality, quantity, purity and safety of the product or service that they are buying. “Right to be informed” means that every consumer requires to have factually accurate and reliable information that provides knowledge about products, services, laws or anything that relates to the thing consumers buy and use in everyday life. The scope of this right is to include access to reliable, independent and accurate information about all aspects of a product or service to ensure that consumer can take informed and independent decision.

Therefore, false and misleading advertisements cause information asymmetry which if not effectively corrected through legal and regulatory institutions result in a condition in economic terms called “market failure.”<sup>5</sup> Market failure due to such information asymmetry causes unintended and unwanted consequences in the market and impairs competitiveness. Also conditions affecting the consumer’s economic behavior through deceptive representation result in a permanent impairment to the consumer rights. This form of advertisement in connection to drugs and food items causes a significant and detrimental impact on the health of the consumers.

If the condition perpetuates without effective legal and policy based intervention measures, it causes an irreparable injury to consumer welfare, consumer rights and economic efficiency of the market. Referring to such a problem Joshep Stigliz, Nobel Prize winner economist has observed that “whenever there are important imperfections and asymmetries of information (that is, situations in which one party knows something different from what others know), markets are not in general efficient...Previously

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5 In economic terms it is referred as a condition occurring when there is an inefficient allocation of resources in a free market. Market failure can occur due to a variety of reasons, such as monopoly, negative externalities (over-consumed), public goods (usually not provided in a free market) information failure etc. In this thesis the market failure is used in context of market failure due to information failure i.e. where there is lack of information to make an informed choice. **Failure to disclose information or fraudulent misrepresentation is a form of information failure.**

the presumption that markets were efficient was widespread, with the corollary that only under exceptional circumstances (such as monopoly and massive pollution) were there failures that warranted intervention. Now, among mainstream economists, there is no presumption that markets are efficient. Government interventions thus necessarily need to focus on areas where market failures are most pronounced.”<sup>6</sup>

## **THE CURRENT INDIAN LEGAL AND REGULATORY FRAMEWORK TO CHECK FALSE AND MISLEADING ADVERTISEMENT**

The legal framework to protect Indian consumers from false and misleading advertisements is laid down in a number of legislations<sup>7</sup> and multiple regulators are empowered. The Consumer Protection Act 1986, being the principle law, defines “misleading advertisement” as an unfair trade practice and provides in Section 14(1)(hc) that where a consumer forum has found a complaint of misleading advertisement it can direct the complainant to remove the advertisement, pay compensation or issue corrective advertisement to neutralize the effect of misleading advertisement at its cost. Regulation framed by SEBI, TRAI, IRDA defines misleading advertisement but the same varies with the Consumer Protection Act. Also, along with Consumer Courts which have the jurisdiction to admit complaints relating to false and misleading advertisement under the Consumer Protection Act, FSSA, SEBI, IRDA, TRAI are all independent regulators and have the authority to entertain complaints relating to its specific sectors and impose penalties. These multiple judicial and independent regulators in India have not been able to reach to any uniform definition and standard to determine false and misleading advertisements.

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6 See, Joseph Stiglitz, *Regulation and Failure*, in *NEW PERSPECTIVES ON REGULATION* (David Moss and John Cisternino ed., The Tobin Project, Cambridge, 2009) available at <http://www.tobinproject.org/books-papers/new-perspectives-regulation>.

7 Food Safety and Standards Act, 2006; The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act, 2003; Drugs and Cosmetics Act, 1940; Drugs and Magic Remedies (Objectionable Advertisements) Act, 1955; Indecent Representation of Women (Prohibition) Act, 1986; The Lotteries (Regulation) Act, 1998; Securities and Exchange Board of India Guidelines for Advertisement by Mutual Funds, 1996; Competition Act, 2002; Insurance Regulatory and Development Authority Act, 1999.

This problem has been compounded with the issue where common law has deemed appropriate for a seller to engage in “puffing.” Courts in India have upheld that an overly enthusiastic, perhaps exaggerated, and clearly biased presentation of his product is not per se illegal or wrongful act.<sup>8</sup> There is also no law relating to liability of celebrities endorsing a brand based on false and misleading advertisement. But in other jurisdictions there have been a number of recent cases involving celebrity endorsers of products and services in which plaintiff-consumers claimed injury as a result of reliance on the endorsements and asserted novel legal claims against the celebrities.

Further a voluntary non-profit organization called Advertising Standards Council of India (ASCI)<sup>9</sup> also governs and regulates the same without having any legal enforcement to its orders. ASCI have adopted a Code of Self Regulation in Advertising for India, which is intended to control offensive content of advertisements. The ASCI code applies to every advertisement read, heard or viewed in India, directed to Indian consumers, even if it originates or is published abroad. However, compliance with ASCI code is not mandatory.

## **THE INEFFECTIVENESS OF THE CURRENT INDIAN LEGAL AND REGULATORY FRAMEWORK TO TACKLE THE CHALLENGE**

A commentary<sup>10</sup> examining the working of the current system in curbing false and misleading advertisement has observed that “[T]hough comprehensive legal framework for the control of unfair, deceptive, and misleading advertising in India exists, the practice continues almost unabated.” According to the commentator, after the incorporation of provisions to regulate unfair trade practices in the Monopolies and

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8 Reckitt & Colman of India Ltd v. Ramchandran, 1999 PTC (19) 741.

9 The Advertising Standards Council of India (ASCI), established in 1985, is committed to the cause of Self-Regulation in Advertising, ensuring the protection of the interests of consumers. ASCI was formed with the support of all four sectors connected with Advertising, viz. Advertisers, Advertising Agencies, Media (including Broadcasters and the Press) and others like PR Agencies, Market Research Companies, etc.

10 DPS Verma, *Regulating Misleading Advertisements: Legal Provisions and Institutional Framework*, 2 VIKALPA 51 (2001) available at [www.vikalpa.com/pdf/articles/2001/2001\\_apr\\_jun\\_51\\_57.pdf](http://www.vikalpa.com/pdf/articles/2001/2001_apr_jun_51_57.pdf).

Restrictive Trade Practices Act (hereinafter “MRTP Act”) since 1984, the MRTP Commission has taken decisions on 1500 cases of false and deceptive advertisements. In majority of these cases, the Commission took a serious view of such practices and either passed a “cease and desist” order or accepted an undertaking from the respondents under Section 36D(2) of the MRTP Act that the impugned unfair advertising practice would be discontinued and would not be repeated in future. Similarly, some cases have risen before the Consumer Courts established under the Consumer Protection Act. But despite this legal action provided against unscrupulous advertisers, there is no respite from the spate of misleading and deceptive advertisements in the mass media. In a very rare occasion, the MRTP Commission or Consumer Courts have ordered for withdrawal of the misleading advertisement along with directing the advertiser to issue corrective advertisement under the Acts. Also, delay in issuing reliefs by consumer courts and subsequent appeals is a major problem. Smt. Pushpa Girimaji, a well-known Consumer Activist, illustrated this problem by referring to the landmark case of *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*.<sup>11</sup> In this case, only eleven students had filed the case, but there could be many more victims who did not. Even those eleven students, who won their case, did so after 15 years and they can never get back the academic years lost.<sup>12</sup>

Justice Ashok Bhan (a retired Judge of Supreme Court of India) has observed in a recent speech on success and failure of the Consumer Protection Act that it has not lived up to its expectation to tackle the issue of false and misleading advertisement. In his view the consumer courts have no power to investigate matters relating to false and misleading advertisement and also have limited infrastructure to regulate the same. Also pointing to the issue of liability for celebrity endorsement of brands

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11 *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*, (2009) 4 SCC 484.

12 Pushpa Girimaji, *Misleading Advertisements and Consumer* (Centre for Consumer Studies, IIPA, New Delhi) available at [http://consumeraffairs.nic.in/WriteReadData/userfiles/file/misleading\\_advertisment\\_and\\_consumer%20\(1\).pdf](http://consumeraffairs.nic.in/WriteReadData/userfiles/file/misleading_advertisment_and_consumer%20(1).pdf).

and products indulging in false and misleading advertisement he was of the opinion that the law is totally underdeveloped and inadequate in India.<sup>13</sup>

Similarly, the Parliamentary Standing Committee Report on Proposed Amendments to Consumer Protection Act has observed:

the Committee finds that there are innumerable service providers such as Airlines, Communication Industries, Utility Industries, Banks and other agencies/institutions who are not providing what they are supposed to. Most of the agencies/institutions/service providers are befooling the consumers by making tall and false claims through misleading advertisements (electronic and print media) and due to which exploitation and suffering of consumers are rampant. There are no stringent laws to deal with such kind of misleading advertisements. The Committee feels that as amendment in the Act is under way, there is a strong need to warn the advertisers to refrain from publicizing such misleading advertisement, which fall under unfair trade practices.<sup>14</sup>

Further the Minister of Consumer Affairs, Govt. of India, Shri Ram Vilas Paswan responding to a Parliamentary Question on tackling the increasing problem of misleading advertisement has stated in the Parliament as follows:

Yes, Sir. A large number of complaints of misleading advertisements appearing in the electronic and print media making false and exaggerated claims about products, are received by various agencies and regulators from time to time. There is no single centralized agency to deal with all such complaints. The sector regulator concerned/or the ministry/department concerned takes cognizance of the complaints and takes action on matters relating

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13 Justice Ashok Bhan, *Inaugural Speech at the National Conference on 25 Years of Consumer Protection Act: Challenges and the Way Forward* in 25 YEARS OF CONSUMER PROTECTION ACT: CHALLENGES AND THE WAY FORWARD 5 (Ashok R. Patil ed., 2014).

14 Twenty Sixth Report of the Standing Committee on Food, Consumer Affairs and Public Distribution (15<sup>th</sup> Lok Sabha, New Delhi, 2012-2013).

to their own subjects under the relevant legislation... In so far as the electronic media is concerned, the Ministry of Information & Broadcasting encourages self-regulation. While the self-regulation is aimed at facilitating better content regulation at broadcasters' level, it does not preclude the Government from taking suo-moto action as per Law... an Inter-Ministerial Monitoring Committee (IMMC) has been constituted in the Department of Consumer Affairs to monitor misleading advertisements and unfair trade practices appearing in print and other outdoor media. Efforts are made to ensure coordinated action among various Ministries, Regulators and Agencies.<sup>15</sup>

Lastly, Consumer Unity and Trust Society, a Voluntary Consumer Organization in 2012 had prepared and circulated a report on "Status of Law Enforcement for Misleading Advertisements in India." The report concluded that although Consumer Protection Act along with several other legislations has provisions to deal with misleading advertisements, yet there are a few instances when such a complaint has been made. The main drawbacks that exist as highlighted in the report include inefficiency of legal and regulatory authorities to investigate and prosecute complaints of misleading advertisement; inordinate delays in pronouncing the final verdict; and that self-regulation does not replace statutory legislation. Though self-regulation is laudable but existing time lag between a claim not supported by facts and corrective measures is wide and hence unacceptable.<sup>16</sup>

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15 Starred Question No. 181, 16<sup>th</sup> Lok Sabha:

- (a) whether Government has received any reports/complaints regarding misleading / surrogate advertisements appearing in the electronic and print media making false and exaggerated claims about the products;
- (b) if so, the details thereof indicating the number of cases reported / identified, companies held responsible along with the action taken against the persons/companies involved therein, during each of the last three years and the current year; and
- (c) whether Government proposes to bring in a comprehensive legislation incorporating various rules and regulations presently in vogue to put an effective check on such cases and if so, the details thereof?

16 Consumer Unity & Trust Society (CUTS), *Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers* (2012) available at [http://cuts-international.org/cart/pdf/Study\\_on\\_the\\_Status\\_of\\_Law\\_Enforcement\\_for\\_Misleading\\_Advertisements\\_in\\_India.pdf](http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf) .

From the available information from various sources discussed above, it is evident that the existing legislative and voluntary efforts to curb false and misleading advertisement have been largely futile in India. The legal framework had been very limited success. It is effective in certain areas and has miserably failed in other fields. Currently in India a large number of complaints of misleading advertisements appearing in the electronic and print media remain unaddressed. Due to poor investigation and prosecution, negligible number of complaints are actually filed before courts or independent regulators in various sectors all over the country on misleading advertisements. Also, there is a lack of uniformity in defining the scope and ambit of advertisements that fall in the category of “false and misleading.” Currently, different statutes and regulations define “false and misleading” advertisements differently. Also in the judicial decisions, there is no uniform standard applied to determine that what is the basis to judge an advertisement is misleading or not.

The regulators that exist in India today are not doing enough to tackle the problem and there are a lot of misleading advertisements today which trick the consumers. Loopholes are basically in implementation. There is also no proactive monitoring of the misleading advertisements. Unless a complaint is registered, it is impossible to identify misleading advertisements. At best, what the self regulatory body does is stopping a certain type of advertising well after the campaign is over. The violator gets away by issuing an apology letter in most of the cases. The existing model of self regulation (ASCI) is also not adequate and totally effective. The primary gaps that have been identified include limited consumer awareness about the complaint mechanism, resulting in very limited number of complaints compared to sizeable proportion of the problem; the advertising code which is dated and not able to keep pace with the changing trends; the mechanism is largely reactive in its approach and also takes longer period to take a final call which may have a great impact on the practical implications of the decisions.

In the recent past, the Government has initiated various pro-active measures, e.g., constitution of an Inter-Ministerial Monitoring Group<sup>17</sup> for better monitoring of false and misleading advertisement; launching a web-based grievance redressal mechanism to address complaints relating to false and misleading advertisement;<sup>18</sup> and introducing an amendment proposal to Consumer Protection Act to establish a federal regulatory authority with wide regulations governing making, investigative and prosecuting powers.<sup>19</sup> But these efforts are short-term or ineffective measures because false and misleading advertisement cannot be effectively tackled with this fragmented and complex approach of multiple legislations and regulators. To rectify the existing situation and address the problem there is an urgent need to evolve a more holistic approach with a strong focus on consumer rights. India requires a comprehensive legislation with a sole regulator conforming accept norms of regulatory structure.

### **SOME GLOBAL BEST PRACTICES TOWARDS A MORE EFFECTIVE REGULATORY ENVIRONMENT TO CURB FALSE AND MISLEADING ADVERTISEMENTS**

The issue of the regulation of advertising poses a significant challenge in law. Nonetheless, most jurisdictions have found it necessary to impose some form of regulation over advertising. Various models for regulation on advertising have emerged globally in the last decade. The US model on regulation of advertising is one of the most visible aspects of consumer protection programs. The Federal Trade Commission serves as the central institution in the model and as a result of increasing sophistication in the analysis of advertising and its effects, the commission has, over the years,

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17 See, Advertising Standard Council of India, Press Release (New Delhi, 18 March 2015) available at [http://www.ascionline.org/images/pdf/gama%20portal%20\\_press%20release.pdf](http://www.ascionline.org/images/pdf/gama%20portal%20_press%20release.pdf).

18 Department of Consumer Affairs, Government of India launched web portal named GAMA (Grievances Against Misleading Advertisements) in March 2015, see <http://gama.gov.in/Default.aspx>.

19 Consumer Protection (Amendment) Bill 2015 introduced by Ministry of Consumer Affairs, Food and Public Distribution, Government of India on 10 August 2015 in 16<sup>th</sup> Lok Sabha.

evolved a widely accepted set of principles for regulation. The European Union has formulated a Directive for Regulation of Misleading Advertising; the Council of the European Union has accepted that “advertising, whether or not it induces a contract, affects the economic welfare of consumers.” Further, the EU Council has also found it desirable, in certain cases, to prohibit misleading advertising even before it is published. To implement its consumer protection and information policy, the European Union has introduced a programme to provide for appropriate action against misleading and unfair advertising. On the basis of this definition, it is highly justifiable to regulate or control misleading advertising because it may cause a consumer to take decisions detrimental to him when acquiring goods or other property, or using services. Also, in U.K., a primary legislation Consumer Protection from Unfair Trading Regulations 2008 governs the system. UK has developed a unique model for regulation which is called as “mandated self-regulation” where an attempt is made to “make associative, self-interested collective action contribute to the achievement of public policy objectives.” The UK model illustrates a combination of delegation and increased accountability through independent third parties.

Also, the use of celebrities in advertisements has been a prevalent practice in India, but in some circumstances when the induced reliance leads to consumer’s injury or deception, cases are negligible. There is a complete vacuum in the law relating to liability of celebrities endorsing a brand based on false and misleading advertisement. But in the US FTC “Guides Concerning Use of Endorsements and Testimonials in Advertising” or Chinese law that imposes liability by “joint and equal responsibility” if consumer’s legitimate interests are harmed. This has provided the plaintiff-consumers right to claim for injury as a result of reliance on the endorsements against the celebrities and other deep-pocket defendants.<sup>20</sup>

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20 See Study, *supra* note 16.

## **CONCLUSION AND POSSIBLE POLICY RECOMMENDATIONS TO EFFECTIVELY ADDRESS THE PROBLEM OF FALSE AND MISLEADING ADVERTISEMENTS**

It is concluded that the challenges posed by “false and misleading advertisement” in India cannot be effectively tackled with the current approach of multiple legislations and regulators. India requires a comprehensive approach. The consensus that has emerged is that a regulatory policy model requires to be developed adopting a comprehensive legislation that discards the current multiple legal and regulatory system and aims to strike a balance between voluntary restraint, self-regulations and stricter regulatory provision as and on required. However, this new regulatory framework should attempt to curb only the mischief in the advertising industry, not the industry itself. To fight the menace of misleading, false and offensive advertisements, there is a need for a combined strategy of Education, Prevention and Punishment.<sup>21</sup>

The unification of many laws currently existing into a single comprehensive legislation will greatly assist simplification like the model adopted by the United Kingdom.<sup>22</sup> A single set of definitions of terms needs to be framed across all sections of the law. The entire legislation must be internally consistent, and have a simple and logical table of contents. This emphasis on simplicity would reduce the complexity faced by law-makers, bureaucrats, legal professionals and finance practitioners in understanding the law and workings within it. The legislation shall apply uniformly and

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21 Proceedings of the Stakeholders Consultation on proposed amendments to Consumer Protection Act, 1986, Ministry of Consumer Affairs, Food & Public Distribution, Government of India (New Delhi, 3 September 2014).

22 United Kingdom introduced a new regulation to clamp down on unfair sales and marketing practices called Consumer Protection from Unfair Trading Regulations 2008 which came into force on 26 May 2008, and implemented the EU Unfair Commercial Practices Directive (UCPD) into UK law. In order to avoid duplication and simplify the UK's consumer protection framework, the CPRs partially or wholly repeal provisions in 23 such laws. Twelve of these laws are repealed outright, including for instance Part III of the Consumer Protection Act 1987. Eleven laws were repealed in part, including most of the Trade Descriptions Act 1968. The CPRs provide similar or greater protection to these laws.

eliminate any pre-existing inconsistency and necessarily repeal the existing legislations totally or partially that may cause any problem of gaps and overlap.

Also following the EU Council<sup>23</sup> and UK model<sup>24</sup> the Indian legislation as proposed requires identifying and if finds it desirable, in certain cases, prohibit misleading advertising even before it is published. To implement its consumer protection and information policy, the European Union has introduced a programme to provide for appropriate action against misleading and unfair advertising. On the basis of this, it is highly justifiable to regulate or control misleading advertising because it may cause a consumer to take decisions detrimental to him when acquiring goods or other property, or using services.

The comprehensive legislation should develop a model for regulation that ensures a balance between commercial enterprises' "right to advertise" vis-à-vis consumers' "right to be informed." The legal-institutional framework should provide clarity of purpose, powers and functions, as well as a statutory mechanism of accountability for the regulators.

Special care must be taken to ensure that the proposed comprehensive legislation on advertising provides for simple, inexpensive but effective and efficacious remedy to aggrieved consumers. In this context, the Government may also consider adding a separate chapter to the Consumer Protection Act itself. The proposed set up must have its own investigative wing and also a panel of lawyers to take up cases before Consumer Courts. A similar set up could also be there at the state/local level to take up cases. A proposal on these lines is under consideration of the Government. However, any change in the regulatory structure, should not be of such an omnibus kind

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23 Directive on Unfair Commercial Practices, Directive 2005/29/EC of the European Parliament and of the Council (11 May 2005) available at [http://ec.europa.eu/consumers/consumer\\_rights/unfair-trade/unfair-practices/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm).

24 Consumer Protection from Unfair Trading Regulations (2008), United Kingdom, available at <http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>.

as to impinge upon the technical and administrative expertise of other Departments.

The primary thrust of this new approach has to be on self-regulation and interests of creativity. Efforts have to be undertaken to strengthen the ASCI mechanisms. Whenever any infringement is brought to notice, advisories are sent to ASCI and more teeth have to be given to ASCI to ensure compliance with its decision. The government departments should come together to make a single code rather than several approaches and promote the ASCI code amongst advertisers. ASCI code needs to be in a simple consumer friendly language, its forms for submission of complaints simplified and the code should be widely circulated.

A sole regulator having jurisdiction over all sectors to control false and misleading advertisement is also recommended. The Central Consumer Protection Council as proposed by the Consumer Protection Act (Amendment) Bill, 2015 may be considered, but its current constitution, authority and accountability structures require that it be completely revisited. The proposed “Central Consumer Protection Council” has to be conceptualized totally as an independent regulator. Mere physical separation of the regulator from the Government is however not sufficient to ensure its independence. This needs to be accompanied by legal and administrative processes that clearly delineate the functioning of the regulator from the rest of the Government. The independent regulator should be given precise objectives, and a specific toolkit of powers through which those objectives are to be pursued, with the independence to decide the manner in which the powers are to be used. Any action of the regulator will however remain subject to extensive mechanisms of accountability. To this extent the FSLRC recommendations<sup>25</sup> on accountability mechanism can be the basis and the accountability parameters.

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25 Report of the Financial Sector Legislative Reforms Commission, Ministry of Finance, Government of India (New Delhi, 2013) available at [http://finmin.nic.in/fslrc/fslrc\\_report\\_vol1.pdf](http://finmin.nic.in/fslrc/fslrc_report_vol1.pdf).