



ADVERTISEMENT: FABRICATING NEEDS AND DESIRE

By *Saurabh Malik*

From *Gujarat National Law University,
Gandhinagar*

ABSTRACT

The rising scope of advertisements is increasing day by day. The literal meaning of advertisement is to turn the attention of readers or viewers or listeners towards the products or services. But due to advertisements, the consumers are influenced to buy the products at high prices. They can be misleading because false claims are made in them. Many a time the advertisers present their product in a very unethical and vulgar manner which is against the general interest of the society.

The advertisements shown are matters of grave concern at the present time. The concern requires immediate attention because nowadays the advertisements are becoming an essential part of our daily life. The author will try to analyse the current trends of advertisements, its impact on the society and law surrounding this aspect of media.

The first part of the paper shall discuss the advertisements and their relevance in this materialistic and commercial world. The second part shall deal with the legal basis of the advertisement i.e. right of the manufacturer vis-à-vis the rights of the consumer both of which are protected under the right to freedom of speech and expression. This part shall not only discuss the rules, regulations and various laws on advertisements including the Advertisement

Code laid down by the Advertising Standard Council of India and various judicial pronouncements but also critically examine them. In the concluding part, the author will also be discussing the major drawbacks or disadvantages of the nature of the current trends in advertisements and the inability of the laws and regulations to face the challenges posed in the digital era by behavioural targeting.

Keywords: Advertisements, Speech & expression, Media, Law, Consumer

INTRODUCTION

We are living in times, where you open any newspaper and on the first page, hardly will you find any news. What you find is advertisement. What kind of phenomenon is advertisement, so significant that it had the power to replace news of national and international importance and push it to the later pages?

‘Advertisement’ is something (short film or a written notice) that is shown or presented to the public to help sell a product or to make an announcement. A person or a thing that shows how good or effective something is. Advertisement reflects market fluidity, and competition among the players. It is a sign of a dynamic and vibrant market, where consumer is the king.”¹

The history of advertising is not new; it is as old as human civilisation. However, in the mid- 19th century it became a major force, based primarily on newspapers and magazines. Advertising grew rapidly with new technologies in the 20th century such as

¹ Definition of Advertisement, Merriam Webster (January 2, 2019), <https://www.merriam-webster.com/dictionary/advertisement>



internet, television, direct mail, mobile devices and radio.

The modern commercial advertisements in India were started when hawkers advertised their products by shouting when markets and shops started for first time. It was then that the signage, the trademarks, the press ads and the likes evolved.

The classified advertisements stated the advertising history in the true sense. Advertisements are shown for the first time in the India's first newspaper Hickey's Bengal Gazette. Since then, advertisements have seen a sea change in their attributes coupled with the introduction of new technology and new generations of mass media.

ROLE AND SIGNIFICANCE OF ADVERTISEMENTS

Advertising is the most influential institution of socialisation in modern society² thus in order to critically assess the view that advertising is a central form of ideology in a capitalist society, and we need to understand the social and economic value of consumer brands. The 1950's era was the beginning of a consumerist culture, as multi-national corporations were faced with the competing ideologies of 'supply and demand'. Advertising became a universal phenomenon as it began to materialise in film and television. Thus, we all became passive consumers instead of active users. Many advertisements in the mass media

²Rhianee Segger, Advertisement is the central form of Ideology in capitalist society, LinkedIn (January 2, 2019), <https://www.linkedin.com/pulse/advertising-central-form-ideology-capitalist-society-why-segger>.

convinced audiences that they needed a life that would go beyond regular as consumers were told that to increase on the social ladder, they desired to buy more than just regular products. The commercials show that, their cars, clothes and even their soap could show their social status. Often consumers have the desire to be upper-class. So, the commercials informed the consumers that their products were worth more from every point of the value of the opportunity. By buying specialised products, viewers believed that they could full-fill their dreams of increasing their standard and social status. The question is while people think about advertising techniques seem silly, what leads them to care about and buy into, materialistic values and consumption behaviour?³

There is an urge in the members of society to show their branded things to others and that's why the advertisers are successful in their prime objective of selling the goods at a large quantity and at higher prices. Despite various regulations under various laws, the advertisers are showing negative products in a positive manner. Nowadays the advertisements are becoming an essential part of our daily life. We only rely on any product on the basis of the advertisement and we really don't know what the product is. They are creating a mind-set about their product. They are influencing the consumers by making their advertisements through celebrities and they are paying a huge amount for this. Loads of these huge amounts are ultimately on consumers. These advertisements are blooming under the umbrella protection

³ Ibid.



provided by Article 19(1) (a) and Article 19(1) (g) which protects freedom of speech and expression and freedom to practice any profession and carry out trade and business respectively.

JUDICIAL DEVELOPMENTS IN ADVERTISING LAWS

- Commercial Speech as a Fundamental Right

Advertisements are also known as commercial speech, and all kinds of speech that don't fall under the criteria of reasonable restrictions mentioned under Article 19(2) are protected under freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India, 1950. However, this was not the case always. It is by means of judicial interpretation that freedom of speech and expression has been broadened so as to include even advertisements within its ambit. It was in *Tata Press v. Mahanagar Telephone Nigam Ltd*⁴ that Honourable Supreme Courts of India reversed its own decision of *Hamdard Dawakhana v. Union of India*⁵ and provided the protection to advertisements under part III of the Indian Constitution.

This dramatic but very significant development took 35 years. In *Hamdard Dawakhana*⁶, the Supreme Court held that although an advertisement was a form of speech, it ceased to fall within the concept of 'free speech' when it took the form of a commercial advertisement seeking to

promote trade or commerce. The case arose out of a challenge to the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 whose object was to prevent self-medication and advertisements that offended morality and decency. Rejecting the plea that advertisements fall within the scope of article 19(1)(a), the supreme court observed: "Freedom of speech goes to the heart of the natural right of an organised freedom loving society to 'impart and acquire information but the common interest'. If any limitation is placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Article 19(1) (a). But if all it does is that it deprives trader from commending his wares, it would not fall within that term."⁷

"The reasoning that commercial advertising being primarily for commercial gain was not entitled to protection under Article 19(1) (a) was obviously flawed. If traders and businessmen advertise for commercial gain, so are newspapers and broadcasting media run as commercial, profit making enterprise. This is precisely why they enjoy no special status or immunity and are subject to the general laws of land, including those relating to taxation. The conclusion, therefore, that those who advertise for commercial gain are not entitled to enjoyment of fundamental right to free speech under Article 19(1) (a) has no justification"⁸. In *Indian Express Newspaper*, the Supreme Court observed on the conclusions of *Hamdard Dawakhana*:

"In the above said case the Court was principally dealing with the right to

⁴ *Tata Press v. Mahanagar Telecom Nigam Ltd*, (1995) AIR 2438

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

⁶ *Supra* 5

⁷ *Ibid*.

⁸ *Madhavi Goradia Diwan, Facets of Media Law* 187-188 (1st ed. 2006)



advertise prohibited drugs, to prevent self-medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the right to publish all commercial advertisements.....we feel that the observations made in the Hamdard Dawakhana case are too broadly stated and the government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the constitution merely because they are issued by businessmen.”⁹

The issue was also discussed in Sakal Papers (P) Limited¹⁰. That case arose out of a constitutional challenge to the validity of the Newspaper (Price and Page) Act, 1956 which empowered the government to regulate the prices of newspapers in relation their pages and size and to regulate allocation of space for advertisements. The court held that their curtailment of advertisement would be hit by Article 19 (1) (a) since it would have a direct impact on the circulation of newspaper.

“Again, section 3(1) of the Act in so far as it permits the allocation of space to advertisements also directly affects freedom of circulation. If the area for advertisement is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements.....

If, on the other hand, the space for advertisements is reduced, the earnings of newspaper would go down or raise its price. The aim of the Act in regulating the space for advertisements is stated to be to prevent unfair competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right to freedom of speech and expression guaranteed under article 19(1) (a) of the constitution.¹¹

Thus, the highest court of the country has finally acknowledged the importance of advertisements and recognised that commercial speech must be protected so as to economically sustain the press. Again, in Bennett Coleman & Co.¹², the Supreme Court recognised that advertisements were an essential factor affecting circulation and any restraint on advertisements would affect the fundamental right of propagation, publication and circulation under Article 19(1) (a). Since the decision in Hamdard Davakhana¹³, there has been a sea-change in the economy and advertising has come to acquire a vital role not only in shaping public choices but also in influencing the economy as a whole. In the present economy, where new product continues to flood the market every day and generate cut throat competition, the importance of advertising which may give one product and edge over another, has grown by leaps and bounds. Also, it is advertising which effectively sustains the media, whether it be the print media or broadcasting. Other forms of entertainment such as sports events and

⁹ Indian Express Newspapers v. Union of India, (1986) AIR 515

¹⁰ Sakal Papers (P) Limited v. Union of India, (1962) AIR SC 305

¹¹ Ibid.

¹² Bennett Coleman & Co. v. Union of India, 13 Supra 5



motion pictures also receive financial backing from corporate sponsors.¹⁴

In *Tata Press v. Mahanagar Telephone Nigam Ltd.*¹⁵, the Supreme Court recognised the invaluable role of advertising in the economy, which was also restated in *Hindustan Times v. State of U. P.*¹⁶,

Advertising is considered to be the keystone of our economic system. Low prices for consumers dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent on advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as life blood of free media, paying the costs and thus making the media widely available. The newspaper industry obtains 60-80% of its revenue from advertisement. Advertising pays a large portion of the costs supplying the public with newspaper. For a democratic press the advertising subsidy is important. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quantity and quantity. The cost of the 'news' to the public world increase, thereby restricting its 'democratic availability'.¹⁷

Undoubtedly, advertisements are indispensable not just to the newspapers but also to other forms of media, as mass media and various channels of communication

have just one major source of revenue that is advertisements. However, commercial speech receives multi-faceted protection, not just under freedom of speech or freedom of trade and commerce, but also under right to information. Just as any manufacturer has the right to advertise and market its products; must not the consumer have the right to know various products available in the market so as to allow him to exercise his choice?

- Advertising and the right to information: Consumer Perspective

A vital aspect of advertising that makes it part of Article 19(1)(a) is that it facilitates the dissemination of information about who is selling what product and at what price. Advertising enables the citizens to make well informed and intelligent economic choices. More important than the right of the recipient to the information when he receives from the advertisement. The Supreme Court observed in *Tata Press v Mahanagar Telephone Nigam Ltd*¹⁸:

Examined from a different angle the public at large has a right to receive the "commercial speech" Article 19(1) (a) not only guarantees freedom of speech and expression, it also save the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by information disseminated through the advertisements. The protection of Article 19(1) (a) is available to the speaker as well as recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the

¹⁴Madhavi Goradia Diwan, *Facets of Media Law* 187-188 (1st ed. 2006)

¹⁵ *Tata Press v. Mahanagar Telecom Nigam Ltd*, (1995) AIR 2438

¹⁶ *Hindustan Times v. State of U.P.*, (2003) 1 SCC 591

¹⁷ *Tata Press v. Mahanagar Telecom Nigam Ltd*, (1995) AIR 2438

¹⁸Supra 15a



advertisement giving information regarding a lifesaving drug may of much more importance to general public than to the advertiser who may be having purely a business consideration.”¹⁹

LAW IS A REGULATOR, NOT MERELY A PROTECTOR OR PROMOTOR

- Why do we need to regulate advertisements?

On one side, we live in free market times, which mean that each product or brand, no matter how big or small, has the right to be noticed (read: advertised). Still, many countries practice democratic free speech, and some people think this should extend to businesses. On the different side, not all products and services are equal. Some are neutral, while others might have a negative impact on our health, safety, and overall well-being. Now the question is, should neutral and potentially harmful products have equal advertising rights?²⁰

- What is wrong with recent advertisements?

Significance of advertisement is undisputable. However, with growing competition in the market and the world just a click away, the field of advertisement has been directly affected, adverse effect raising serious concern, which is clearly evident by the recent trends. In light of growing competition, the advertisers are going to any extant possible not just market their products, but also degrade their competitor's product and moreover try to manipulate the consumer crippling him in

exercising his freedom of choice, whereby although he himself consents to buy the products, his consent is either uninformed or misinformed.

In the present times some advertisers show that they can make the skin of any person whiter and glower by using their product for some days. This is nothing but they are showing racism and they are showing that white skin is better than dark skin. There are certain advertisements in the market which are showing that girls are attracted by applying their deodorants. These advertisements may have a bad impact on the children. Similarly, advertisers lead to various malpractices like surrogate advertisements, advertising products that are not permitted to be advertised in the guise of other products. The next section of the paper deals with some recent trends in the advertising and the judicial opinion about them.

Problems with advertising in the present scenario

Surrogate Advertising: “Merriam Webster defines a Surrogate as a 'substitute'²¹. And surrogate advertisements are just that. A surrogate advertisement can be stated as an advertisement that duplicates the brand image of one product to promote another product of the same brand. The surrogate or substitute could either resemble the original product or could be a different product altogether but it is marketed under the established brand name of the original product. Surrogate advertisements are used to promote and advertise products of brands

¹⁹ Ibid.

²⁰ Oksana Tunikova, Should Advertising Be (More) Regulate? Stop Ad Blog (January 10, 2019), <https://stopad.io/blog/advertising-laws>.

²¹ Definition of Surrogate, Merriam Webster (January 12, 2019), <https://www.merriam-webster.com/dictionary/surrogate>.



when the original product cannot be advertised on mass media. Some instances of surrogate advertisements are: Bagpiper Soda, Cassettes and CDs, Royal Challenge Golf Accessories and Mineral Water, Imperial Blue Cassettes and CDs etc.”²²

Promoting Gender Stereotyping: Gender stereotyping in advertisements is a general tactic used for many brands and products to portray their target audience. Whether it’s the strong, luxurious shampoo that only features women with lovely long hair in their commercials or the newest camping gear that only shows a male on the packaging. Are consumers conscious about gender stereotypes in advertising? Do they desire for having products for one gender over the other? Should the advertising industry also contribute to gender stereotyping?²³

Manufacturing Consent: The basic idea put onward here is that consumption is a mechanism of control. By creating an environment where consumption is equated with good, people get sucked into the cycle of making money to spend money. The point of life converts to acquire things, which makes people more controllable. And how do you keep people trapped in this cycle? By fabricating desire, so there are always more things to strive to buy. Advertising, in different ways, is the profession of

manufacturing consent. The goal is to make people want (or think they need) whatever product you are selling, and to make your particular brand of product more desirable than that of competitors.²⁴

Promoting Objectification of Human Body: Many commercial advertisement featuring deodorants, inner wears have been banned in India as those couldn’t fulfil with the ASCI codes. India has much been exposed to the westernized and modernised world after liberalizing trade after the crisis of 1991. Hence forth many western products have been brought to the Indian markets and the advertisement featuring these products started flourishing in the Indian markets. But all sections of the society weren’t ready & are not yet ready to accept the westernized outlook. Most of the brands which are western have been banned from featuring their products in the commercial advertisement, referring them as obscene, but these products had a very high demand in the world market and their outlook towards marketing their products in the world market especially in the western world is quite different from that of a conservative country like India. But anyways, India needs to come out of its conservative mindset and have a much broader outlook towards judging any content as obscene.²⁵

²²Sarbani Raut, India: Surrogate Advertisements in India, *Modaq Connection and Knowledge* (January 20, 2019),

<http://www.mondaq.com/india/x/606974/advertising+marketing+branding/CROSS+BORDER+INSOLVENCY+A+NEW+REGIME>

²³ Gender Stereotyping in Digital Advertising Survey, Choozle (January 14, 2019), <https://choozle.com/gender-stereotyping-in-digital-advertising-survey/>

²⁴ Baldwin Cunningham, Value – First Advertising: How to give to consumers while selling, *Forbes* (January 14, 2019),

<https://www.forbes.com/sites/baldwincunningham/2017/08/01/value-first-advertising/#3347f77b45a6>

²⁵ Varsha Mullick, Obscenity in the Media, *Legal India* (January 16, 2019),

<https://www.legalindia.com/obscenity-in-the-media/>



CURRENT REGULATIONS ON ADVERTISEMENTS

There are different laws in India that relate to advertising. A short brief of some of these enactments is provided hereunder-

- Consumer Protection Act 1986, Section 6 of the Act give consumers the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to save the consumer against unfair trade practices. Section 2(r) of the same Act, under the definition of the word "unfair trade practice", covers the extent of false advertisements including misrepresentations or false allurements.
- Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003, Section 5 of this Act, restricts both direct and indirect ads of tobacco products in all kind of forms audio, visual and print media;
- Cable Television Networks (Regulations) Act 1995, and Cable Television Networks (Amendment) Rules 2006, Section 6 of the Cable Television Networks (Regulations) Act 1995, states that no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the advertisement code prescribed under the aforementioned rules. However, the aforesaid provision does not follow to programmes of foreign satellite channels which can be received without the use of any specialized gadgets or decoder. Rule 7 of the aforementioned rules lays down the "Advertising Code" for cable services which are formulated to conform to the laws of the country and to ensure that advertisements do not insult morality, decency and religious susceptibilities of the subscribers;
- Doordarshan and All India Radio (AIR) Advertisement Code: Doordarshan and AIR, both under the control of Prasar Bharati (a statutory autonomous body recognized under the Prasar Bharati Act), follow a comprehensive code for commercial advertisements which regulate the content and nature of advertisements that can be relayed over the agencies;
- Drug and Magic Remedies (Objectionable Advertisement) Act 1954: This Act objects to regulate the advertisements of drugs in certain cases and to prohibit the advertising for certain purposes of remedies alleged to have magic qualities and to provide for matters connected therewith;
- Drugs and Cosmetics Act 1940: Section 29 of the Act executes penalty upon whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government researcher, or any extract from such report, for the purpose of advertising any drug. The punishment stated for such an offence is a fine which may extend up to five hundred rupees and/ or imprisonment up to ten years upon subsequent conviction;
- Food Safety and Standards Act 2006: Section 53 of this Act states a penalty of up to Rs. 10 lakhs for false and misleading ads relating to the description, nature, substance or quality of any food;
- Indecent Representation of Women (Prohibition) Act 1986: The object of the act is to prohibiting indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and the matters



connected therewith or incidental thereto (Section 3 and 4 of the Act).

- Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994: Advertisement in any manner regarding facilities of pre-natal determination of sex available at any genetic counselling centre, laboratory, clinic or any other place is barred under this Act and has been made a punishable offence under the Act (Section 22);
- Young Persons (Harmful Publications) Act 1956: Section 3 of the Act, imposes penalty for advertising or making known by any means whatsoever that any harmful publication (as defined in the Act) can be obtained from or through any person;
- Indian Penal Code 1806: The IPC prohibits obscene, defamatory publication, publication of a lottery and/ or statements creating or promoting disharmony/ enmity in society.²⁶

CRITICAL APPRAISAL

Advertising is influential enough to give society cause for concern. While making a critical assessment of advertisement role the critics focus more on its social role, while defenders present economic argument.

‘Trust in Advertising’ study by Nielsen shows that consumer trust in advertising is not 100%. Pub

lic discussion of advertisement tends to focus on its alleged influence to societal problems. Nielsen conducted a survey with

over 25,000 consumers across 50 countries in 2007 to provide a better understanding of consumer perceptions of the benefits of advertising.

The study reveals that a big number of consumers see advertising as playing a key role in the economy: 80% of the world’s consumers believe that advertising helps create jobs and 72% say advertising contributes to economic growth. About 68% of the respondents to the survey believes that it helps to reduce prices by stimulating competition. A clear majority of consumers across all markets also appreciate the importance of advertisement and sponsorship as a critical source of funding for sports, the arts and the media.

1. Noise: It is just that much advertising gets lost in the noise of competing brands, and some advertising hardly get adds to the noise.

2. It promotes materialism: It creates the want and taste for new products which are not actually required or necessities of life and income of consumers will not let them enjoy. It inspires people to buy things they do not need. Industry says that it is generally an fight against capitalist approach to marketing.

3. Advertising is harmful to children: Children cannot make informed choice or cannot differentiate between real life and the reel life in the world of advertisement. Industry says that they target the suitable audiences and they do not encourage irresponsible behaviour. Advertisement targeting children are released even before the claims are verified like Complain.

About some years back, a young man had jumped from a building attempting to copy

²⁶ Advertising Law in India: An Overview, Law Teacher: The Law Essay Professionals (January 15, 2019), <https://www.lawteacher.net/free-law...law/advertising-laws-in-india-law-essays.php>



Akshay Kumar's dare-devilry stunts shown in Thumbs Up's ad. In September, 2010, an eleven-year-old child killed himself allegedly under the influence of an ad done by a Heinz India drink, 'Complain', claimed to make children 'taller'.

4. Advertising reinforces stereotypes:It reduces people or objects into classes based on implications that are made from an individual or social context, like "all professors are absent-minded", "all blonds are dumb", etc. Industry says that they merely reflect society's attitudes. Evidence proposes that advertising generally lags behind social trends rather than shaping them. The portrayal of working woman has been shown too late.

5. The misleading advertisement:According to K V Thomas, Minister Govt. of India, Primal Healthcare ad, 'getting complete energy in 8 days or money back' and advertisement of Airtel Digital TV on 'Free Regional Pack for life' and 'fair skin' by FMCG producers were confusing and misleading. Drugs and Magic Remedies (Objectionable Advertisements) Act and the Cable Television Network Regulation Act have unsuccessful to stop misleading advertisement.

6. Advertising has subliminal power:It works at subconscious level and convinces people to purchase goods that they would otherwise not buy, Drink Coke and Eat Popcorn in a cinema hall, Gilbey's London Dry Gin which embedded the word "SEX" into the ice cubes to provoke feelings of sexuality, romance and excitement among the ad readers.

The Food Safety Agency of England, specifies that anything more than 12.5 grams of sugar for every 100 grams of an item is

unhealthy. The Kellogg's Choco label claims to hold nearly double that amount, at 23.3 grams per 100 grams of cereal. And according to Ahmadabad based Consumer Education & Research Centre, that chocolates contains even more than 32.8 grams. But who informs the customers in ads?

7. Advertising increases the cost of goods and services:Critics say that advertisement increases the cost and poorer quality of goods is introduced in the market to deceive the consumers. Price is set by the market forces of which advertising is one of them, but often not an important one. The study made by Office of Fair Trading 1983, came to the finding that prices weakened when advertising was introduced in U.K. Optical market.

8. Advertising helps to sell bad and fake products:Often miracle products that claim they can cure overnight everything from baldness to bad breath are heavily advertised. Consumer's choice is greatly injured by the advertisement. Advertisement limits the competition among the products. Big industrialists and manufacturers may exercise their anticompetitive control over the market with the help of advertisement technique which is always against the public interest.

9. Advertisement dictates media choices:It is accused of corrupting media, leading them to make editorials that favour and gain the advertisers rather than the public, case of tobacco or oil companies are clear pointers. The media denies any type of self-censorship.

10. Advertising is too pervasive:In electronic advertising, the viewers are forced to see number of advertisements to which they can't save themselves. Although this



mess from advertisement is less offensive in the print media as the reader may easily ignore the ads. At times consumers may want to see ads for aknowledgeable decision-making.²⁷

CONCLUSION

Even though we have laws that regulate advertisements, it has become very difficult to control or regulate the content of advertisement. Also, advertisement being part of commercial speech protected under Art 19, it is not advisable to provide stringent regulations in order to contain and curtail the malpractices involved in the current trends. The researches provide a twofold suggestion. First at the advertiser's end i.e. a strong self-regulatory mechanism. Self-regulatory mechanism is not so binding because it is formed by them. They can change it according to their needs. Secondly, consumer activism, Consumers must be aware of their rights so that they exercise their freedom of choice in an informed way rather than being manipulated, and if were fooled can redress their grievance to the dynamic self-regulatory authority authorised and powerful enough to put sanctions on the advertisers.

²⁷ Sam Malhotra, Important disadvantages of advertising – Explained, SHARE YOUR ESSAYS (January 18,2019), www.shareyouressays.com/.../11-important-disadvantages-of-advertising.../112831