
A CRITICAL ANALYSIS OF LAWS DEALING WITH MISLEADING ADVERTISEMENTS IN THE DIGITAL ERA: A COMPARISON OF INDIA, CHINA AND USA LAWS

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ABSTRACT

The research objective is to understand and analyse the need to regulate digital advertisements in India. There has been a rapid increase in misleading digital advertisement not only in India but worldwide. However, focusing within the territory of India, pandemic was a major period when misleading medical advises in the form of marketing and advertisements were in the rise. The creation of Coronil by Patanjali and its subsequent products having false claims have proved to be a major factor to discuss the gaps in current advertising laws. The report has also substantiated its statements about rising trends in misleading digital advertisements by including statistical data published by ASCI. The trends show that rapid rise in false claims through digital media was majorly during Covid 19. This period was not only a pandemic but also the period of infodemic as stated by WHO. The present report has found numerous gaps after doing a comparative analysis of Indian advertng framework with the foreign advertising framework. The existing laws cannot be sufficient to curb out different forms of misleading advertisements such as comparative advertisement, exaggeration, click baits etc. The paper concludes by providing various suggestions that may prove useful in handling misleading advertisements. It will also improve the compliance rate of the digital advertisements and protect the interests of the consumers.

I. INTRODUCTION

A. Introduction to the Advertisement Industry in India

Advertisement, in simple terms, is consolidated information on any product, services, facilities produced in creative ways to attract customers. Consumer Protection Act, 2019 defines Advertisement under section 2(1) as,

“means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;”

There are different types of advertisements such as Search Engine Advertisements, Social Media Advertisements, Print Advertisements, Outdoor Advertisements, and Broadcasting Advertisements etc. With the rapid increase in its scope and the complex process of regulation of advertisements, there has been a rise in fraudulent advertisements that are providing misinformation about the advertised facilities. Misinformation and false representation of the products and services shows that the advertisers and the publishers are in clear violation of the consumer rights. The purpose of advertisements is to provide awareness and ethical assistance of the advertised facility. However, the advertisements today are creating class consciousness, inequality and discrimination and other concepts that are not universally accepted.

Misleading claims in digital advertising industry is increasing as digital platforms and social media influencers are promoting products and services without proper regulation. The advertisements tend to exaggerate the benefits of the advertised product or service thereby misleading the customers through false claims. False information spread by Kellogg’s Special K Cereal about reducing belly fat¹ in 2019 is an example of misleading advertisement.

Misleading Advertisement has been defined under section 2(28) of Consumer Protection Act, 2019 as,

“in relation to any product or service, means an advertisement, which—

(i) falsely describes such product or service; or

¹ Sarabeth George, “Misleading ad-game has become stronger than ever”, *Economic Times*, May 29, 2024.

- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information;”

In the recent case of misleading advertisement and unfair trade practices in *Indian Medical Association & Anr. V Union of India & Ors*², Supreme Court bench prima facie opined that Patanjali has violated certain provisions of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Concerning the rise in fraudulent digital advertisements, the Bench issued some guidelines³ such as signing of a self-declaration form assuring that the advertisements will be published in compliance with Cable Television Network (Regulation) Rules, ASCI Advertising Code, ministries are required establish a grievance complaint system and ensure resolution of the issue and that the social media influencers will be equally liable for endorsing a misleading advertisement etc.

B. Trends in Advertising Industry by ASCI

The Advertising Standards Council of India (ASCI) is a Non-Profit Organisation formed in 1985 with the aim to ensure decent, fair and honest advertising in India. It is not a government body but a private entity consisting of professionals from firms, media agencies and advertisers as its board of governors. ASCI is a self-regulatory body that voluntarily issues advisories against misleading advertisements. It is not governed by any statute; however, reference to the self-regulating code drafted by ASCI is visible in various legislations in India.

The prime function of ASCI is to resolve issues in advertisements that are misleading, offensive, harmful and unfair to other competitors and regulate advertisements through all forms of media including digital platform. Since ASCI is only advisory in nature, it does not have the jurisdiction to resolve the disputes. In case of non-compliance to the advisories issued, the matter is referred to respective statutory authority of the concerned statute by the ASCI.

² 2024 INSC 406

³ “[Patanjali Misleading Ads Case] Celebrities & Social media influencers are equally liable for misleading ads, if they endorse any deceptive product or service: Supreme Court”, SCCOnline, May 7, 2024

For instance, ASCI would report the non-compliance by a television advertisement to Ministry of information and Broadcasting as it has violated Cable Television Network (Regulation) Act 1995.

In India there is an immense use of digital medium for interaction and communication. The advertisers and news channels find new ways to shift to a digital platform. Since 2023, the digital advertising industry of India has continued to show some growth. The ad impression on digital advertising witnessed a growth from 43% to 60% from January 2023 to September 2023⁴ with Amazon Online India holding the position of leading advertisers in the digital advertising industry. Recent trends show that digital media has made it easier to spread misinformation via such advertisements. Annual Complaint Report⁵ (2023 – 24) published by ASCI showed that 8229 ads were scrutinized out of which 39% of the ads were in clear violation of law as certain products were not permitted to be advertised. Furthermore, the drugs and medicinal ads accounted to 19% making the health industry as the most violating industry of the year. The Complaints Snapshot published by ASCI further compared the rapid rise in misleading ads from 2021 to 2024. It is also pertinent to note that the traditional print media accounted for 11% of misleading advertisements; digital advertising has a major portion of misleading ads amounting to 85%. Digital media has taken a centre stage as the main source of misleading advertisement with compliance rate of 75% as against 97% for print media⁶.

II. GROWTH OF DIGITAL ADVERTISING INDUSTRY AND IMPACT OF COVID 19 PANDEMIC

Covid19 Pandemic has significantly affected the advertising industry leading to increase in the degree of digital advertising. The pandemic gave an opportunity to the advertisers to take advantage of the digital platform to float their advertisements on any product or service. However, this also invited misleading advertisements to be broadcasted without adherence to legal and ethical rules. False information and rumors spread rapidly through digital media and it is difficult to locate the source of such information. With the spread of pandemic across the globe, another issue of misleading advertisements was introduced. It became easy for the advertisers to spread advertisements containing false information combined with false

⁴ “Digital Advertising Quarterly Report Jul-Sept’23”, *TAM AdEx*

⁵ “Annual Complaints Report 2023-2024”, *ASCI*

⁶ Prasanth T., “ASCI 2024 Report Reveals Digital Ads Are Riddled with Misleading Claims”, *LinkedIn*, May 22, 2024

guarantee that proved to be fatal for the global society. As per World Health Organization, the year 2020 was not only the year of pandemic but also infodemic⁷ wherein fake news and misleading, incorrect medical advices were travelling around the world.

The digital advertising media was on a full swing with agencies and people spreading deceitful advertisement of products or services claiming to cure Covid19. These unregistered and untested products advertised by companies like Patanjali and Himalayas⁸ did not bear any scientific justification or supporting data and were being advertised with absolute false guarantee to overcome Covid19 infection.

In the case of *Hindustan Unilever Ltd v Reckitt Benckiser (India) Pvt Ltd (2020)*⁹, the latter broadcasted an advertisement featuring their brand Dettol to provide better protection than soap cakes in fighting germs and infections. This was countered by the petitioners on the ground that the said digital advertisement is advocating false claims and is contravening the guidelines of WHO that recommended using soap and water to avoid infections during the outbreak of pandemic. In view of the above, the misleading advertisement was taken down.

The advertisers were required to stop making false claims without supporting research and testing, particularly during pandemic as those advertised products can prove to be fatal to human life. The influx of misleading advertisement was so huge from period 2019 to 2021. A survey by *Statista (2020)* was conducted on advertisements in India which showed majority of the customers relied on advertisements out of which 52% of the respondents no longer preferred to rely on them for purchase of products or avail services due to increase in the degree of false advertising. Of those who were influenced by the false advertisings suffered financial losses and many were exposed to health hazards.

III. LEGISLATIVE FRAMEWORK REGULATING ADVERTISEMENTS IN INDIA

For the regulation of misleading advertisements in India, the Government has come up with several Acts. All the legislations are industry specific that govern specific advertisements separately. Advertisements on sale of tobacco products are regulated through Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and

⁷ World Economic Forum, "How experts are fighting the Coronavirus 'infodemic,'" (March 2020)

⁸ Tarif Hussian, Manjusha Choudhary, Vikas Budhwar, Garima Saini, "COVID-19 pandemic: An era of myths and misleading advertisements", 17 *SAGE* (2021)

⁹ COMIPL/300/2020

Commerce, Production, Supply and Distribution) Act, 2003; advertisements on firearms, weapons are regulated through Arms Act 1959 etc.

A. The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954

The Act of 1954 is framed to control and prohibit certain advertisements of drugs and remedies that are likely to mislead the consumers. Section 3 of the Act prohibits advertisement of certain drugs if by the use of those drugs it can lead to following events –

- (a) Miscarriage or prevention of conception in women
- (b) Enhancing the sexual pleasure of a human being
- (c) Correction of menstrual disorder in women
- (d) Diagnosis and treatment of any disease, disorder or condition mentioned in Schedule such as diabetes, cancer, impotence, epilepsy etc.

In addition to this, Section 4 of the Act prohibits publication of advertisements of a drug that gives a false information and impression of the product or is misleading in any other manner. The publication of any advertisement of magic remedy such as *talisman*, *mantra* or *kavacha* which is claimed to be effective directly or indirectly is prohibited under section 5. The Act of 1954 gives an impression of being inclined more towards the regulation of non-digital advertisement as is evident by the very definition of the advertisement under section 2(a). Furthermore, the Act of 1954 follows an *ex-post* approach by way of imposing penalties such as imprisonment or fine or both on the violating advertising agency, company, firm or individuals. Section 8 of the act provides for the power of entry and search by any Gazetted Officer appointed by the State Government any premises that is believed to be source of such misleading advertisements. It also states that any documents, article or thing related to the offense can be seized by such officer.

B. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978

The purpose of the Act is to ban all the activities pertaining to the promotion of prize chits and money circulation scheme. An advertisement of any prize chit or money circulation scheme by the person in possession is subject to punishment.

C. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

The World Health Organization (WHO) through its Fourteenth Plenary meeting expressed concerns to ensure control strategy plans and effective measures in preventing non-smokers, pregnant women and children from exposure to tobacco products. Adhering with the concerns of WHO, India introduced this Act of 2003 in prohibiting advertisement of tobacco products which are injurious to the health. For the purpose of regulating violating advertisements, section 5 of this Act clearly states that a person involved in the profession of production, sale of tobacco products or any person on his behalf is prohibited from advertising tobacco product through any medium.

As a precautionary method, section 8 states that a specified warning on the package of tobacco product must be mentioned in clear, legible and readable manner. A specific health warning such as “Tobacco Causes Painful Health” must be printed on every packet of the product.

The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, like many other acts follows ex post mechanism of redressal. Any tobacco product or package or any advertising tobacco material is liable to be confiscated if it contravenes the provisions of this Act as per section 14. In addition to this, essence of ex post redressal system is visible through section 22 and 23. Section 22 of the act provides punishment amounting to imprisonment or fine or both for advertising tobacco products. Section 23 mentions about forfeiture and disposal of advertising material for tobacco products.

D. The Cable Television Networks (Regulation) Act, 1995

The advertisements broadcasted through Cable services are regulated by Advertising Code under Section 6. Cable Television Network Rules, 1994 has recognized self – Regulation Code of ASCI to be binding on the advertisement regulators as provided under Rule 7(9). Cable Television Network Rules, 1994 lays down Advertising Codes under Rule 6 such as - advertisements must not go against the morality, decency and religious susceptibilities, it must not incite or promote any activity of criminal nature or violence, advertisements must not exploit and disrespect the national emblem or the Constitution, it must not present women, children in a derogatory manner and all the social evils such as child marriage and dowry etc

must not be promoted via advertisements etc.

The Act has recognized ex ante as well as ex post approach in compliance mechanism. The ex-post approach is followed by way of imposing punishments under Section 16 in the form of imprisonment or fine or both. Every cable operator providing cable services is mandatorily required to be registered or renew his registration. Section 4 states that the registration authority before issuing certificate of registration must satisfy itself with furnished documents. As per Section 7 of the Act, every cable service provider is required to maintain a register indicating in brief the programmes transmitted. Another essence of ex ante mechanism is highlighted under section 119 of the Act which states that a cable operator can be prohibited from transmitting or re-transmitting any advertisement or programmer on grounds of religion caste etc that is likely to incite violence, hatred, ill will etc.

E. Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act does not encompass provisions of misleading advertisements. However, Section 9(3) prohibits data fiduciary to undertake monitoring of children or targeted advertising towards the children.

F. Consumer Protection Act, 2019

The provisions of Consumer Protection Act applied to the regulation of digital advertisements and lays down the procedure and authority to handle misleading or deceptive advertisements from occurring. The Act encompasses digital advertisement, unfair trade practices and misleading claims through all media. The Chapter 3 provides provisions for the establishment of Central Consumer Protection Authority (CCPA). CCPA is an authority under the Act whose responsibility is to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. Section 13 states the CCPA can engage with experts and professionals from different backgrounds such as consumer rights, law, medicine, food safety etc. It is further important note that the said Authority has an Investigative Wing that has the power to conduct investigations on the complaints received. Additionally, the Act empowers the District Collector to inquire or investigate complaints regarding violation of consumer interests as a class and forward the report of CCPA as under Section 16.

Other than the establishment of District Consumer Disputes Redressal Commission, the Act under Section 37 also calls for the matter to be dealt through mediation system. The Act also provides various measures such as penalties, corrective advertisement to be published, cessation of misleading advertisement etc.

IV. FOREIGN LEGISLATIONS REGULATING ADVERTISEMENTS

Unscrupulous advertisements lead to increased distribution costs leading to rising supply¹⁰. But it also leads to exploiting the purchaser to buy what is not necessarily needed. In view of the adverse impact of false advertising and consumers becoming prey to such globally, misleading advertisements seems to be a great concern not only for India but also for other foreign jurisdictions.

A. UNITED STATES OF AMERICA

The federal authorities adopt federal laws and empower regulatory authorities to enforce them. There are numerous federal laws that govern misleading advertisements.

i. Federal Trade Commission Act, 1914

The main regulatory body for the advertisement market is the Federal Trade Commission that has secured its powers from Federal Trade Commission Act, 1914. As per Section 45 of the Act, any person selling, advertising any product with 'Made in USA' or 'Made in America' label, then such label must be consistent with the decisions of the FTC. The Act also states that dissemination of false advertisement will be unlawful and fall under the category of unfair or deceptive act. Commission has the power to file a suit in the district court pass requesting for a restraining order or temporary injunction against any person or entity that is found or is likely to be found guilty of dissemination of false advertisement. Furthermore, the Court can also pass the order of permanent injunction after receiving full proof from the Commission.

The Act criminalizes false advertising by imposing penalties in the form of fines and imprisonment if a commodity is found to be injurious to health and if false advertising is done with the intent to defraud, mislead etc, larger penalty will be imposed. Section 54(b) provides

¹⁰ DPS Verma, "Regulating Misleading Advertisements: Legal Provisions and Institutional Framework", 2 *Vikalpa* (2001)

an exception to the publisher, broadcaster of the advertisement. The Section states that no publisher, radio broadcast licensee or agency or medium except the manufacturer, seller, distributor and packer shall be liable for the dissemination of false advertising unless such publisher, radio broadcast licensee or agency on the request of the Commission refuses to furnish details of the manufacturer, seller, distributor and packer who is responsible for the dissemination of the false advertisement.

The FTC comprises within itself various bureaus for the protection of consumers and preventing deceptive acts from taking place. These bureaus are –

- **Bureau of Competition** aims to prevent anti-competitive practices and ensures fair competitions and business practices to take place. The bureau protects consumer interests by providing fair and free choices in an open marketplace.
- **Bureau of Consumer Protection** protects the consumers from deceptive or fraudulent practices. It enforces various federal laws for the protection of consumers. The bureau is responsible for informing the government entities about the impact of its proposed actions on the consumers.
- **Bureau of Economics** has an analytic role in analyzing and informing the government about the impact of its regulations on the consumers and competition in the market. The bureau helps FTC in evaluating the economic impact of its actions on the market and consumers.

Other than the aforementioned Bureaus, FTC also consist of various offices assigned different roles in the Commission. Office of Administrative Law Judge performs the role of adjudicating complaint proceedings as per the FTC Act, 1914 among other acts. The administrative law judge assigned to handle the complaints issued by the Commission conducts meetings, conferences and resolves disputes. The office applies the law of the land on the issue and with proper reasoning and correct legal standard provides a remedy. They are the independent decision makers. Office of Chief Privacy Officer identifies privacy risks and mitigating solutions for making decisions on the collection, use, retention of personally identifiable information. The Office manages FTC's privacy program and is responsible for ensuring compliance of privacy laws by the Commission.

ii. Food and Drug Administration (FDA)

The FDA has received its power from several acts including Federal Food, Drug, and Cosmetic Act. The administration is a federal agency of the Department of Health and Human Services based in USA. The Food and Drug Administration (FDA) protects public health by assuring the safety, effectiveness, and security of a wide range of products, including human prescription drugs. In addition to this, one of the primary functions of FDA is to oversee the approval and marketing of prescription drugs. FDA ensures that the companies that sell prescription drugs also provide information that is truthful, balanced, and accurately described. For this, the Office of Prescription Drug Promotion (OPDP) established under FDA oversees the drug advertisement activities.

Under the Food, Drugs and Cosmetic Act, Section 303 imposes penalties in case of violation of any prohibited acts provided under section 301 of the Act. The penalties are in the form of fine and imprisonment. Apart from this, FDA issues Warning Letters¹¹ to the violating agency or company in case of issue in manufacturing practice, false claims on a product, improper direction or use of the product etc. these Warning Letters are issued to inform and mandate the violating company to take corrective measures with respect to the marketing and advertising of their product. The letter provides an opportunity for the company or individual to address FDA's concerns and requests a response with a certain timeframe. This response could consist of plans for correction and FDA would then check to ensure that the corrections are adequate. If a company disagrees with the letter, then proper substantiated reasoning must be given to the FDA.

Once the company has taken corrective actions and the same has been evaluated by FDA as per the Warning Letter, a Close – out letter is issued. A close-out letter will not be issued based on representations that some action will or has been taken. The corrective actions must actually have been made and verified by FDA. The standard for verifying that the corrective action is implemented is by a follow up inspection. Future FDA inspections and regulatory activities may further assess the adequacy and sustainability of these corrections and in case violations are observed during a subsequent inspection, enforcement action may be taken without further notice.

¹¹ “About Warning and Close-Out Letters”, *U.S FOOD & DRUG ADMINISTRATION*

B. CHINA

For the regulation of advertisements in China, there are several legislations that provide protection against the misleading advertisements from being broadcasted. These legislations are – Advertising Law, Consumer Protection Law and SAMR Regulations.

i. Advertising Law of the People’s Republic of China

The Advertising Law of the People’s Republic of China¹² is the primary legislation that governs advertising in China. It sets out the general principles and requirements for advertising, including the obligation to ensure that advertisements are truthful, accurate, and not harmful to the public. The Law is formulated so as to regulate advertising activities, protect the lawful rights and interests of consumers, promote the healthy development of advertising business, and maintain the socioeconomic order.

The Advertising Law is a consolidated framework governing nearly every advertising industry such as Competition, Patent, Medicines, Food and Health, Infant products, Pesticides,

Tobacco etc. The Law prohibits using absolute terms such as “best”, “national level”, “optimal” etc. With respect to the regulation of advertisements on medicines, relevant articles are from Article 15 to 17 of this Law.

Article 15 of the Law provides that advertisement of special pharmaceuticals such as narcotics, psychotropic substances used in treatment of drug withdrawal, must not be advertised. Furthermore, advertisement of prescription drugs may be featured in medical and pharmaceutical journals designated by the Administrative Department of Health under State Council and the State Council Drug Administration Department. Such advertisements must conspicuously be labeled with “this advertisement is provided solely to be read by medical and pharmaceutical professionals”. For the regulation of non-prescription drugs under Article

16, every advertisement must be labeled with “purchase and use this product in accordance with the instructions or as directed by a pharmacist”.

For the purpose of regulation of advertising conduct, Article 34 of the Law require advertising

¹² Advertising Law of the People’s Republic of China, 2018

agencies and publishers to examine the relevant supporting documents and verify the advertisement content on the basis of laws and administrative regulations, otherwise the advertisement will not be published. Additionally, Article 46 specifically require relevant departments (hereinafter advertisement review organs) conduct a review of the advertisement's content for medical treatment, medicines, medical apparatuses, pesticides, veterinary medicines and health food etc; and they must not be published without review. The advertisers applying for review are required to furnish necessary supporting documents to the review organ and same shall announce approval of the advertisement to the public.

This Law is also vocal about various penalties in the form of fines, suspension of publication, licenses, inspection and seizures in case of non-compliance with its provisions and misleading advertisements. Article 53 states that regulations of advertisement on mass media will be formulated by State Council Department for Market Regulation and relevant Department of the State Council. The units or individuals can complaint upon violation of this Law to aforementioned authorities. Where departments for market regulation and relevant departments do not perform their duties in accordance with law, any units or individual have the right to make a report to the organ at the level above or the supervisory organ.

ii. Law of the People's Republic of China on Protecting Consumers' Rights and Interests

This Law sets out the legal obligations of businesses to ensure that their advertisements do not harm consumers and provides for administrative penalties and civil remedies for consumer protection violations. The businesses have an obligation to not present false and misleading advertisements that will influence and therefore harm the consumers of the advertised commodity. As a result of violation of consumer rights and interests¹³, they can seek compensation from the producers since they used false advertisements to provide commodities or services. If the advertising agents run false advertisements, the consumers may request administrative departments to meet out punishment. The advertising agents shall be responsible for making compensation if they cannot provide the producers' true names and addresses.

The department in charge of industrial and commercial administration shall order the business operators to suspend operations for rectification or rescind their business licenses if the circumstances of their offenses are serious including making misleading, false propaganda on

¹³ Law of the People's Republic of China on Protecting Consumers' Rights and Interests, 1993

commodities or service as per Article 50.

iii. The State Administration for Market Regulation (SAMR)

SAMR is a government body of China responsible to oversee market regulation and administration. It supervises matters including market entity registration, unfair competitive practices, food product safety, inspection and certification etc. SAMR is a Chinese authority directly working under the State Council of China. It is the primary regulatory authority¹⁴ responsible for enforcing the Advertising Law and Consumer Protection Law in China. SAMR is responsible for monitoring and enforcing compliance with these laws, and it has broad powers to investigate and penalize businesses that violate the law. This government regulatory body is formed as a result of various other regulatory bodies being abolished such as State Administration for Industry and Commerce, General Administration of Quality Supervision, Inspection and Quarantine. Many regulatory bodies were also merged in SAMR including Anti-Monopoly Bureau, Standardization Administration of China¹⁵.

SAMR has promulgated New Measures on Administration of Internet Advertising explaining the role of business entities and to improve the regulatory framework for online advertising in China as an implementation regulation to the Advertising Law and Ecommerce Law¹⁶.

V. RECOMMENDATIONS FOR DIGITAL ADVERTISING LEGISLATION

To address the above gaps, there is an immense need to expand the scope of digital advertisements. The digital platform is a platform that does not have a tangible form nor does it have any restricting boundaries. The digital space is spread across the world surpassing all national boundaries, thereby increasing the scope of digital crimes from taking place. The digital crimes can range from cyber bullying and victimization of a single person to deceptive and violation of interests of the large group of people.

It becomes immensely important to address the need to have an umbrella law that covers all the advertising activities in the digital space. The Cyber space is growing and evolving with the rapid technological developments. If the digital laws are not updated then it will very

¹⁴ "Overview of the advertising laws in China", *Media Scope Group*

¹⁵ Hugo Butcher Piat "China's New State Administration for Market Regulation", *China Briefing*, Oct. 18, 2018

¹⁶ Todd Liao, Bonnie Li, "New Measures for Online Advertising in China: What You Need to Know", *Morgan Lewis*, Apr. 10, 2023

difficult to protect the needs and interests of the people. This will give a diaspora of opportunities to the private bodies to commit unfair trade practices. The misuse of digital space will range from passing of false information to the consumers to privacy concerns of consumer database.

In order to curb out and prevent the issue of rising misleading advertisements in the digital space, various countries have formulated different mechanisms. On the basis of those mechanisms and provisions and keeping in mind the democratic structure of India, various recommendations are provided as follows –

1. **Consolidated Law** – After looking into sectoral advertising laws, it has been found important to have a common law that will cover regulations on all the sectoral advertisements. To prevent confusion and chaos, it is suggested to frame a consolidated law that will act as an umbrella law for all digital advertisements. Additionally, the said umbrella law is recommended to take the essence of Section 16 of DPDP Act, 2023. The logic behind this section can be applied to the umbrella law, whereby, the said law will act as a supreme law over different sectoral advertising laws in case of contradiction between the two.
2. **Procedure similar to Consumer Protection Act, 2019** - It is also suggested that the process of entertaining and deciding a consumer complaint under Consumer Protection Act, 2019 can be applied to the consolidated law. There can be an Investigative Wing, District Collector etc that will conduct inquiry on the complaints received.
3. **Common Regulatory Authority** – Similar to CCPA, a body can be constituted that will be responsible to entertain and look into misleading digital advertising matters. This regulatory authority can be common to all forms of digital activities taking place on digital platforms. As the CCPA has an obligation towards the consumers to protect their rights, prevent unfair trade practice and to take *suo moto* actions against the violating entity, similar powers can also be granted to the common digital regulatory authority. Therefore, it is recommended that the procedure for adjudication of a complaint as laid down in the Consumer Protection Act including mediation proceedings be referred for the same.

4. **Prevention of Click Baits** – The new form of deception that the viewers of an advertisement are facing is in the form of false start, play or pause button known as click baits. Click baits are a type of misleading practice where a false headline or advertisement is produced before the users in order to attract them towards the false information. The provisions preventing click baits cannot be seen in the current advertising legislations. Therefore, it is suggested to penalize click baits to protect the viewers interests.
5. **Aspects not covered by ASCI** – There are various fraud activities directing towards misleading advertisements that remain uncovered by ASCI. These aspects such as counterfeit products, refund issues, pop – ups, advertisements not meant for Indian students etc also need to be addressed through alternate dispute resolution mechanism. These aspects although are covered in different legislations to some extent, it becomes important to ease up the pecuniary process by introducing ADR in these matters.
6. **Recognition to ASCI** – The ASCI’s position as mentioned above still lies in the grey area with different courts having different opinions. The selfregulatory code of ASCI had been recognized only in Cable Television (Network) Rules 1997 under Rule 7. However, now that the world has moved from cable networks to digital network, it is important to recognize this selfregulatory system in the consolidated digital advertising law. This will enable the advertisers and advertising agencies to maintain fair competition, professional ethics and reduce the burden on the government to tackle each and every minor advertising dispute. ASCI upon been recognized will act as an alternate dispute resolving body.