

Advertising legislations

A Contrast Between Global and Indian Laws

Advertising has long been regarded as the lifeblood of commerce, influencing consumer choice, competition, and even cultural norms. However, its persuasive power also raises concerns about consumer exploitation, false claims, and ethical boundaries. To address these concerns, nations across the world have developed advertising legislations and regulatory frameworks. While there are similarities in the principles of fairness, truthfulness, and protection against misleading advertisements, there are also significant differences in the way global jurisdictions and India regulate advertising. These differences arise due to historical, cultural, economic, and legal contexts.

Globally, advertising legislations are often grounded in consumer protection laws, competition laws, and human rights frameworks. In the United States, for example, the Federal Trade Commission (FTC) is the primary body overseeing advertising practices. The FTC Act prohibits "unfair or deceptive acts or practices," which includes false or misleading advertisements. The US model is notable for its stringent enforcement actions, penalties, and focus on comparative advertising. The Lanham Act also provides remedies for businesses harmed by misleading advertising from competitors. Advertising in sensitive sectors like tobacco, alcohol, and pharmaceuticals is heavily regulated by agencies such as the Food and Drug Administration (FDA), which requires pre-approval for drug advertisements to ensure claims are scientifically substantiated. Legal experts note that the US system relies significantly on litigation, with consumers and competitors frequently suing advertisers for false claims.

In the United Kingdom, the Advertising Standards Authority (ASA) enforces advertising codes developed by the Committee of Advertising Practice (CAP). These codes stress legality, decency, honesty, and social responsibility. The UK framework emphasizes self-regulation underpinned by statutory oversight. Misleading, harmful, or offensive advertisements are swiftly banned, and repeat offenders may face legal sanctions. The UK also places emphasis on advertising directed at children, ensuring content does not exploit their credulity or encourage harmful behaviour. Similarly, the European Union's Unfair Commercial Practices Directive harmonises advertising regulations across member states, prohibiting misleading and aggressive advertising while promoting consumer choice and market fairness. EU laws mandate clear disclosures for sponsored content, influencer marketing, and comparative advertising, reflecting the digital age's challenges.

By contrast, in India, advertising regulation has historically relied more on self-regulation than statutory enforcement. The Advertising Standards Council of India (ASCI), a non-governmental body, plays a central role in developing codes of practice. Its Code for Self-Regulation in Advertising requires honesty, non-offensiveness, fairness in competition, and responsibility

toward consumers, particularly vulnerable groups like children. While ASCI can direct advertisers to withdraw or modify misleading ads, its decisions are not legally binding unless supported by government regulators. However, with the rise of misleading and exaggerated claims, statutory interventions have become more prominent. The Consumer Protection Act, 2019, explicitly prohibits misleading advertisements and empowers authorities to impose penalties on endorsers and advertisers. It also introduced accountability for celebrity endorsements, requiring due diligence before making claims.

A striking contrast lies in enforcement mechanisms. In the US and EU, regulatory agencies possess statutory authority to penalize, ban, or litigate against advertisers. In India, while consumer courts and regulators like the Central Consumer Protection Authority (CCPA) now have statutory powers, the enforcement culture remains weaker, and self-regulation by ASCI is often criticized as industry-friendly. For instance, while ASCI may recommend the withdrawal of misleading health or fairness cream advertisements, compliance is sometimes delayed or partial until consumer pressure or statutory orders intervene.

Sector-specific regulation also reveals contrasts. In many Western jurisdictions, advertising of tobacco is almost entirely prohibited across media. The US and EU impose strict health warnings on alcohol and fast-food advertisements, with additional restrictions on marketing to children. India too prohibits tobacco advertising under the Cigarettes and Other Tobacco Products Act (COTPA) and bans surrogate advertising that indirectly promotes such products. However, enforcement remains challenging, with companies using creative loopholes like brand extensions to circumvent bans. Similarly, in the pharmaceutical sector, while the US allows direct-to-consumer drug advertising under FDA oversight, India prohibits such advertisements for prescription drugs under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Legal experts view this prohibition as necessary in India, where literacy levels and health infrastructure may not adequately support informed consumer choice.

Digital advertising presents another contrast. The US and EU have been proactive in regulating online advertising, influencer disclosures, and data-driven marketing. The EU's General Data Protection Regulation (GDPR) imposes stringent rules on consent, transparency, and targeting. In India, digital advertising regulation is still developing. While ASCI has released guidelines requiring influencers to disclose paid promotions, enforcement is limited compared to Western counterparts. The proposed Digital India Bill and updates to IT Rules aim to introduce stricter oversight on misleading and harmful online content, but legal experts highlight that implementation remains a work in progress.

Cultural context also shapes advertising laws. In the West, advertising enjoys greater latitude in comparative claims and humour, often directly naming competitors. In India, comparative advertising is permitted but must not disparage or denigrate competitors, reflecting a more conservative legal and cultural approach. Courts in India, such as in *Reckitt & Colman v. M.P. Ramachandran* (1999), have clarified that while puffery is allowed, false disparagement is not.

Legal experts point out that Indian courts have historically balanced free commercial speech with consumer protection, whereas US courts, under the First Amendment, allow broader scope for commercial expression unless demonstrably deceptive.

Another point of divergence is the treatment of advertisements targeting children. The UK's CAP Code and EU directives impose strict prohibitions against exploiting children's credulity or promoting unhealthy lifestyles. In India, ASCI guidelines prohibit advertisements that harm children or encourage dangerous practices, but enforcement remains inconsistent. For instance, repeated concerns have been raised about junk food advertisements aired during children's programming despite restrictions.

Legal experts often conclude that while global advertising laws rely on strong statutory enforcement and penalties, India has historically leaned on self-regulation, with statutory law stepping in more recently to strengthen accountability. The Consumer Protection Act, 2019, and the growing role of the CCPA suggest India is moving closer to global trends, but challenges of enforcement, regulatory overlap, and industry resistance remain. Globally, advertising regulation is also increasingly influenced by data privacy, sustainability, and ethical considerations, whereas in India, the priority remains curbing misleading claims in health, food, and education sectors.

In conclusion, the contrast between global and Indian advertising legislations lies not only in the content of the laws but also in their enforcement culture and regulatory philosophy. Global regimes, especially in the US, UK, and EU, employ statutory authorities with robust enforcement powers, while India has historically relied on voluntary self-regulation with growing statutory intervention in recent years. As India's economy and digital markets expand, legal experts predict a shift toward stronger statutory oversight, harmonizing with global standards while addressing domestic socio-economic realities. Businesses and advertisers operating across jurisdictions must therefore adapt to these differences, ensuring compliance with both stringent global norms and evolving Indian frameworks.

Landmark Advertising Cases in India

1. Reckitt & Colman of India Ltd. v. M.P. Ramachandran (1999, Calcutta High Court)

This is one of the most cited cases on comparative advertising in India. Reckitt & Colman, the maker of "Blue" fabric whitener, sued M.P. Ramachandran, the manufacturer of "Ujala," for disparaging its product in advertisements. The Court held that while comparative advertising is permissible, it cannot denigrate or disparage a rival's product. Puffery (exaggerated claims about one's own product) is allowed, but false disparagement is not. This case established the principle that advertisers must balance competitive claims with fairness.

2. Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Ltd. (2014, Delhi High Court)

In this dispute, Hindustan Unilever alleged that Reckitt Benckiser's advertisement for Dettol

handwash disparaged its Lifebuoy brand. The Delhi High Court ruled that advertisements may compare products but cannot portray a competitor's product in a misleading or negative manner. Legal experts highlight this case as a reaffirmation of the boundary between permissible comparative advertising and unlawful disparagement.

3. PepsiCo Inc. v. Hindustan Coca-Cola Ltd. (2003, Delhi High Court)

This case revolved around Coca-Cola's advertisement that mocked Pepsi with the tagline "Wrong Choice Baby, Aha!" PepsiCo argued that the ad disparaged its brand. The Delhi High Court held that an advertiser can boast that its product is the best, but cannot claim or suggest that a competitor's product is inferior through false or misleading statements. The case is significant for defining the limits of humorous or comparative advertising in India.

4. Colgate Palmolive (India) Ltd. v. Hindustan Unilever Ltd. (2008, Madras High Court)

Here, Colgate challenged Hindustan Unilever's advertisement for "Pepsodent," which directly compared its effectiveness against Colgate. The Court observed that while puffery is allowed, advertisements cannot mislead consumers by presenting deceptive test results or scientific data. This case emphasized the importance of truthfulness and scientific backing in comparative claims.

5. Horlicks Ltd. v. Zydus Wellness Products Ltd. (2019, Delhi High Court)

In this case, Horlicks objected to Zydus Wellness's advertisement for its product "Complan," which claimed superior nutrition compared to Horlicks. The Delhi High Court reiterated that comparative advertising is permissible as long as it is factual and not disparaging. This case is often cited in relation to food and nutrition advertising, a sector prone to exaggerated claims.

6. GlaxoSmithKline Consumer Healthcare Ltd. v. Heinz India (P) Ltd. (2009, Delhi High Court)

This case involved a dispute between the makers of "Horlicks" and "Complan." The Court noted that misleading comparisons about nutritional benefits could amount to disparagement. Legal experts argue that the case highlights judicial concern over misleading claims in health and nutrition advertisements, especially those targeting children.

7. Dabur India Ltd. v. Colortek Meghalaya Pvt. Ltd. (2010, Delhi High Court)

Dabur challenged an advertisement for "Vanessa Talc" that allegedly disparaged its product "Dabur Gulabari." The Court held that advertisements must not mislead consumers into believing a rival's product is inferior through false or exaggerated claims. This case reinforced the principle that puffery must not cross into disparagement.

8. Patanjali Ayurved Ltd. v. Hindustan Unilever Ltd. (2017, Bombay High Court)

HUL challenged Patanjali's advertisements for soaps, which allegedly disparaged "Lux" and "Lifebuoy" by suggesting they contained harmful chemicals. The Court directed Patanjali to modify its advertisements, holding that comparative claims must not mislead or instil fear in

consumers. Experts view this case as significant for regulating “natural” or “herbal” product advertisements, which often use aggressive comparisons.

9. Marico Ltd. v. Adani Wilmar Ltd. (2020, Bombay High Court)

Marico, the manufacturer of “Saffola,” challenged Adani Wilmar’s advertisement for “Fortune” cooking oil, which allegedly suggested that Fortune was healthier. The Court held that while comparative claims were allowed, exaggerated or misleading health benefits could amount to unfair trade practice. This case underscores judicial scrutiny of health-related advertising claims.

10. Consumer Education & Research Society v. Tata Press Ltd. (1995, Supreme Court of India)

Though not directly about product disparagement, this case is a landmark on commercial speech. The Supreme Court held that commercial speech (including advertising) is protected under Article 19(1)(a) of the Indian Constitution, as long as it is not misleading or unfair. This ruling elevated the status of advertising as part of the freedom of speech, while still subjecting it to reasonable restrictions for consumer protection.

Loopholes in Indian Advertising Legislation

1. Overdependence on Self-Regulation (ASCI)

The Advertising Standards Council of India (ASCI) is a self-regulatory body with no statutory enforcement powers. While it can recommend that misleading advertisements be withdrawn or modified, compliance is voluntary. Many advertisers continue to run misleading campaigns until forced by consumer pressure or statutory authorities. Legal experts argue that reliance on ASCI creates a gap, since global regulators like the FTC (US) or ASA (UK) have stronger statutory teeth.

2. Lack of Swift Enforcement Mechanisms

Even though the **Consumer Protection Act, 2019** empowers the Central Consumer Protection Authority (CCPA) to act against misleading advertisements, the actual process of investigation and penalisation is often slow. Advertisers exploit this by running short-lived campaigns that achieve commercial goals before any regulatory action can be taken.

3. Surrogate Advertising

Despite bans on tobacco and liquor advertising under the **Cigarettes and Other Tobacco Products Act (COTPA)** and Cable Television Networks (Regulation) Act, companies frequently use surrogate advertisements — such as soda, music CDs, or lifestyle accessories branded with the same name — to indirectly promote restricted products. This loophole weakens the effectiveness of the ban.

4. Exaggerated Health and Nutrition Claims

Products like fairness creams, dietary supplements, and herbal medicines often make tall

claims of improving health, skin tone, or immunity. The **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954** is outdated and poorly enforced, allowing companies to exploit consumer anxieties. Courts have frequently pulled up such advertisements, but legislation lacks clear provisions on scientific substantiation.

5. Weak Regulation of Digital and Influencer Advertising

With the rise of digital platforms, misleading endorsements and undisclosed paid promotions have become rampant. Although ASCI issued guidelines requiring influencers to disclose paid partnerships, enforcement is limited. Unlike the EU's strict disclosure rules under GDPR and consumer directives, India's framework is still voluntary and underdeveloped.

6. Inadequate Protection for Children

While ASCI's code prohibits ads that exploit children's credulity or promote harmful products (like junk food), enforcement remains weak. Ads targeting children through cartoons, online games, or influencer marketing often bypass restrictions. Legal experts argue that unlike the UK's CAP Code or EU directives, India lacks a statutory, child-specific advertising framework.

7. Puffery vs. Misleading Claims

Indian law permits "puffery," allowing advertisers to exaggerate claims as long as they are not outright false. However, the thin line between puffery and deception is often blurred. For example, claims like "best in the world" or "No. 1 brand" are frequently used without substantiation. Courts have intervened in some cases, but legislative clarity is still lacking.

8. Celebrity Endorser Liability Loophole

The **Consumer Protection Act, 2019** introduced liability for endorsers, requiring them to perform due diligence before making claims. However, the law does not clearly define what constitutes "due diligence." Celebrities often escape liability by claiming reliance on the advertiser's information. This loophole reduces the deterrent effect of the law.

9. Regional Language and Rural Advertisements

Many misleading advertisements appear in regional languages and rural markets, where regulatory oversight is weaker. Companies exploit low consumer awareness and lack of monitoring in non-metropolitan areas to circulate misleading claims. ASCI's monitoring is more urban-focused, leaving a loophole in rural regulation.

10. Jurisdictional Overlaps

Advertising falls under multiple laws — the Consumer Protection Act, Drugs and Magic Remedies Act, Food Safety and Standards Act, COTPA, Cable Television Act, and ASCI guidelines. This multiplicity of laws often creates confusion and jurisdictional gaps. Advertisers exploit these overlaps, delaying action by shifting responsibility among regulators.

11. Penalty Provisions Not Strong Enough

Even though penalties under the Consumer Protection Act, 2019 (up to ₹50 lakh for misleading ads) appear strict, large corporations often treat them as a business expense. Legal experts argue that penalties in India lack the deterrence effect seen in the US or EU, where fines can run into billions.

12. Outdated Legislation

The **Drugs and Magic Remedies Act (1954)** and parts of the **Cable Television Networks Regulation Act (1995)** are outdated in the era of digital, social media, and AI-driven advertising. The law does not comprehensively cover programmatic advertising, influencer-driven promotions, or targeted digital ads, leaving vast gaps in regulation.

Way Forward in Improving Advertising Legislation in India

1. Granting Statutory Powers to ASCI

Currently, the Advertising Standards Council of India (ASCI) operates as a self-regulatory body with no direct enforcement power. Strengthening its mandate by giving it **statutory recognition under the Consumer Protection Act, 2019 or a separate Advertising Regulation Law** would ensure its rulings carry binding force. This would also reduce the burden on courts and regulators while ensuring swifter compliance.

2. Stronger Penalties for Misleading Advertising

The penalties under the Consumer Protection Act, 2019 (₹10 lakh to ₹50 lakh) are insufficient to deter large corporations. Adopting a **proportionate penalty system based on revenue turnover** (similar to EU competition laws) would make penalties meaningful. Repeat offenders should face harsher sanctions, including suspension of licenses to advertise for a fixed period.

3. Stricter Regulation of Surrogate Advertising

Despite bans on tobacco and alcohol advertising, surrogate promotions continue under the guise of soda, music CDs, or events. A **comprehensive statutory prohibition on surrogate advertising**, backed by clear definitions, would close this loophole. Enforcement should also extend to digital platforms, which often serve as a haven for surrogate branding.

4. Regulating Digital and Influencer Marketing

With the rise of influencer-driven promotions, India should adopt **mandatory disclosure norms**, requiring influencers and digital creators to clearly tag paid partnerships. The rules should mirror the **FTC's Endorsement Guides (US)** or the **UK CAP Code**, where failure to disclose sponsorship leads to heavy fines. AI-driven targeted ads should also be covered under new advertising regulations.

5. Child-Specific Advertising Protections

India needs a **child-focused advertising code** similar to the UK's restrictions on junk food ads

or the EU's Audiovisual Media Services Directive. Ads targeting children must be banned from making exaggerated health or educational claims, and digital platforms should be mandated to filter ads directed at minors.

6. Clarity on Celebrity Endorser Liability

Although endorsers can be held liable under the Consumer Protection Act, the concept of “due diligence” remains vague. Clear **statutory guidelines on what constitutes due diligence** (such as verifying scientific data, cross-checking certifications, and reviewing product safety reports) would ensure celebrities cannot escape accountability by shifting blame to manufacturers.

7. Modernising Outdated Legislation

Laws like the **Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954** are outdated. A **new consolidated advertising law** should replace scattered legislations, covering emerging issues such as online targeted advertising, AI-driven campaigns, and cross-border promotions.

8. Harmonisation of Regulatory Bodies

Advertising is regulated by multiple authorities — CCPA, ASCI, FSSAI, TRAI, SEBI, and state-level authorities. This creates jurisdictional overlaps. A **centralised authority or inter-agency coordination framework** could streamline enforcement, prevent contradictory rulings, and close jurisdictional gaps exploited by advertisers.

9. Faster Redressal Mechanisms for Consumers

Consumer courts and regulators often take months to act, during which misleading ads run their course. Setting up **fast-track grievance redressal systems** or online complaint mechanisms with strict timelines (e.g., 7–15 days) for taking down misleading ads would improve consumer protection.

10. Monitoring Regional and Rural Advertisements

Many misleading ads thrive in regional markets where oversight is weaker. A **regional monitoring framework**, perhaps through state consumer protection authorities working with ASCI, would help ensure uniform enforcement across India.

11. Mandatory Scientific Substantiation

Products making health, nutrition, or cosmetic claims should be required to submit **pre-verified scientific evidence** before launching advertisements. The burden of proof must lie on the advertiser, not the consumer. This approach is already followed in the EU and US, where unsubstantiated health claims attract strict penalties.

12. Public Awareness Campaigns

Stronger laws alone cannot eliminate misleading advertisements unless consumers are aware of their rights. Nationwide **consumer awareness campaigns** (similar to “Jago Grahak

Jago”) specifically highlighting misleading ads and reporting mechanisms would empower consumers to challenge false claims.

The way forward for India’s advertising regulation lies in a **multi-pronged reform strategy**: strengthening ASCI with statutory powers, imposing stricter penalties, updating outdated laws, harmonising regulatory authorities, and protecting vulnerable groups like children and rural consumers. A modern, consolidated advertising law, aligned with global standards, would not only safeguard consumer rights but also foster ethical competition and trust in India’s rapidly expanding advertising industry.