



## **India: Advertising and Marketing Advertising Law**

### **Introduction**

At present in India, there is no central statutory agency or uniform legislation regulating the advertising industry. The Indian advertising market as a whole is regulated and controlled by a non-statutory body, the **Advertising Standards Council of India (ASCI)**. In the absence of uniform integrated legislation, it is necessary for advertisers to ensure that an advertisement is in compliance with all local and national advertisement laws.

### **Role of the Advertising Standards Council of India (ASCI): Self-Regulation of Advertising**

ASCI is a voluntary self-regulatory council established in 1985 to promote responsible advertising and to enhance public confidence in advertisements.

### **Objectives**

The council's objectives are:

- \* To ensure the truthfulness and honesty of representations and claims made by advertisements
- \* To ensure that advertisements are not offensive to generally accepted standards of public decency
- \* To safeguard against the indiscriminate use of advertising for the promotion of products regarded as hazardous to society or to individuals.
- \* To ensure that advertisements observe fairness in competition so as to inform the consumer on choices in the marketplace while observing the canons of generally accepted competitive behavior in business

### **Structure**

ASCI consists of a Board of Governors and a Consumer Complaints Council. The Board of Governors comprises four members from each of the four sections connected with the advertising industry:

- \* Advertisers
- \* Advertising Agencies
- \* Media (owners of press, television, radio etc.)
- \* Related sectors (e.g. outdoor agencies, PR, market researchers, ad producers, business schools)

### **Code**

To regulate advertisement in India, ASCI has adopted a **Code for Self-Regulation in Advertising (ASCI Code)**, which applies to all involved in the commissioning, creation, placement, or publishing of advertisements. This **ASCI Code** applies to advertisements read, heard, or viewed in India even if they originate or are published abroad so long as they are directed to consumers in India or are exposed to a significant number of consumers in India.

Though non-statutory, the ASCI Code is recognized under various Indian laws in addition to being adopted by advertising-industry bodies. Notably, the code provides that it is not in competition with any law, its rules, or the machinery through which they are enforced, thus the ASCI Code is designed only to complement legal controls under such laws and not to usurp or replace them.

### **Laws: Statutory Regulation of Advertising**

Complementing the **ASCI Code** are Indian laws governing specific media, specific populations, and specific goods and services. The most significant of these laws are listed here.

### **Laws Governing Media**

- \* The Press Council Act 1978
- \* Cable Television Network Rules, 1994
- \* Code for Commercial Advertising on Doordarshan and All India Radio
- \* Electronic Media Monitoring Centre (EMMC)
- \* Norms for Journalist Conduct issued by the Press Council of India
- \* Code of Conduct of the News Broadcasters Association

## Laws Protecting Society and the Consumer

- \* Emblems and Names (Prevention of Improper Use) Act, 1950
- \* Young Persons (Harmful Publications) Act, 1956
- \* Companies Act, 1956
- \* Standards of Weight & Measures Act, 1976
- \* Indecent Representation of Women (Prohibition) Act, 1986
- \* Consumer Protection Act, 1986
- \* Laws related to intellectual property rights

## Industry-Specific Laws

- \* The Drugs and Cosmetic Act, 1940
- \* The Transplantation of Human Organs Act, 1994
- \* The Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954
- \* The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- \* Advocates Act, 1961
- \* Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- \* Securities and Exchange Board of India Act, 1992
- \* The Prize Chits and Money Circulation Schemes (Banning) Act, 1978
- \* Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- \* Public Gambling Act, 1867, the Lotteries (Regulation) Act, 1998 and the Prize Competitions Act, 1955
- \* Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
- \* The Food Safety and Standards Act, 2006

## Products and Services Banned From Advertising

### Firearms, Weapons, and Ammunition

Sale and purchase of such items requires a license from government authorities. Therefore, advertisements related to such products are not permissible in India under the **Arms Act, 1959**.

### Human Organs

The **Transplantation of Human Organs Act, 1994** provides for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs. This law prohibits any advertising inviting persons to supply, or offering to supply, any human organ for payment.

### Infant Milk Food (Formula)

Advertising forbidden in order to encourage natural feeding of infants. See details under Food.

### Legal Services

The **Bar Council of India Rules** formulated under the **Advocates Act, 1961** prohibit advertisement by Indian advocates and their firms. These rules were enacted and enforced to curb the false advertisement of lawyers to gain publicity to attract clients.

### Magical Remedies

The **Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954** prohibits advertisement of magical remedies of diseases and disorders.

### Services for Prenatal Determination of Sex

The **Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994** prohibits advertisements relating to prenatal determination of sex

### Physicians

Under the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**, issued under the **Indian Medical Council Act, 1956**, physicians are not allowed to advertise their services in any form or manner of advertising through any mode, as soliciting of patients directly or indirectly, by a physician, by a group of physicians, or by institutions or organizations is unethical. (A physician refers to a doctor with a qualification of MBBS or MBBS with a postgraduate degree/diploma or with an equivalent qualification in any medical discipline.) However, medical practitioners are allowed to make a formal announcement in press regarding the following:

- \* On starting practice
- \* On change of type of practice
- \* On changing address
- \* On temporary absence from duty
- \* On resumption of another practice
- \* On succeeding to another practice
- \* Public declaration of charges

## Prize Chits and Money Circulation Schemes

The **Prize Chits and Money Circulation Schemes (Banning) Act, 1978** prohibits advertisements relating to prize chit and money circulation schemes.

A prize chit is defined as follows:

Any transaction or arrangement under which a person collects monies by way of contributions or subscriptions or by sale of units, certificates, or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises the monies so collected *inter alia* for a specified number of subscribers as determined by lot, draw, or in any other manner, prizes or gifts in cash or in kind.

## Tobacco Products

The **Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003** ("**Tobacco Prohibition Act**") prohibits all direct and indirect advertising of tobacco products in all media.

## Regulations Related to Product and Service Advertising

### Alcohol

The **Cable Television Network Rules, 1994**, the **Advertising Codes of Doordarshan and the All India Radio**, and **Norms for Journalist Conduct** issued by the **Press Council of India** prohibit any advertisement directly or indirectly promoting the production, sale, or consumption of cigarettes, tobacco products, wine, liquor, or other intoxicants. However, some states allow advertising through billboards, signboards, and such media, but subject to many restrictions. Also, the **ASCI Code** prohibits use of minors for advertising alcohol products.

### Cosmetics

See under Pharmaceuticals, below.

### Advertisement by Companies to Shareholders, Etc.

The **Companies Act, 1956** stipulates that no deposits from the general public should be accepted by public companies (other than non-banking financial companies) without issuing advertisement following the prescribed norms. The law also specifies various provisions relating to advertisement by Indian companies.

### Firearms, Weapons, and Ammunition

Advertising is banned; see above.

### Food

As per the **Food Safety & Standards Act, 2006**, no advertisement relating to the standard, quality, quantity or grade-composition, and no representation concerning the need for, or the usefulness of any food can be made which is misleading or deceiving or which contravenes the provisions of this law or rules and regulations made thereunder.

### Nutritional Claims

Nutritional claims by the advertiser for selling a product undergo a keen check by the **Food Safety and Standards Authority of India**, which is the country's food regulator under the provisions of the **Food Safety & Standards Act, 2006**. This regulatory body prohibits any kind of false nutritional claims made by the companies and prohibits them from broadcasting on television.

### Infant Milk Food (Formula)

The **Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992** prohibits the advertising of infant milk substitutes or feeding bottles.

### Gaming

The federal structure in the **Constitution of India** explicitly gives the states the right to legislate upon "gambling and betting." The **Public Gambling Act, 1867** prohibits gambling activities in India. However, the law permits games of mere skill. In April, 2011, the **Information Technology Act, 2000** was also amended to ban Internet gambling and online betting websites. The **Lotteries (Regulation) Act, 1998** gives power to the concerned State government to hold lotteries subject to prescribed conditions. Under section 294-A of the **Indian Penal Code**, advertisements of a lottery unless it is in accordance with the Lotteries (Regulation) Act shall be punishable.

The **Prize Competitions Act, 1955** controls and regulates prize competitions in certain parts of India and prohibits the advertisement of unauthorized prize competitions. Of note, though unrelated to advertising, the Indian government's **Foreign Direct Investment Policy** does not permit foreign investment in "Lottery Business including government /private lottery, online lotteries, gambling and betting, including casinos, etc."

### Legal Services

Advertising prohibited. See Legal Services under Products and Services Banned from Advertising, above.

## Medical Devices

The authority principally responsible for regulating medical devices in India is the **Central Drugs Standard Control Organization** (“CDSCO”) under the provisions of the **Drugs & Cosmetics Act, 1940**. CDSCO’s functions include regulating the medical devices industry by approving the import, manufacture, and sale of medical devices in India.

## Medical Services

An institution run by a physician for a particular purpose such as a maternity home, nursing home, private hospital, rehabilitation centre or any type of training institution, etc., may be advertised in the lay press, but such advertisements should not contain anything more than the name of the institution, type of patients admitted, type of training and other facilities offered and the fees.

## Nonprofit Fundraising

Any funding for public nonprofit activities requires registration with the concerned state government. Also, fundraising from foreign entities requires prior approval of the Indian government under the provisions of the **Foreign Contribution Regulations Act, 2010**.

## Nutritional Supplements

These are regulated under the **Food Safety and Standards Act, 2006**, under the same terms as for food.

## Occult (“Psychic”) Services

These services are not legally recognized in India and are not permissible under the **Drugs and Magical Remedies (Objectionable Advertisements) Act, 1954**.

Packaged Goods, Etc.

The **Standards of Weight & Measures Act, 1976** prohibits issuing advertisements otherwise than in accordance with the provisions of this law.

## Pharmaceuticals

Prescription-only drugs are those medicines that are listed in *Schedules H and X* of the **Drug and Cosmetics Rules, 1945**. The phrase over-the-counter (OTC) has no legal recognition in India. All the drugs not included in the list of “prescription-only drugs” are considered to be non-prescription drugs (or OTC drugs).

The **Drugs and Cosmetics Act, 1940** prohibits advertisements for any drug or cosmetic from using reports of tests or analysis of the **Central Drugs Laboratory** or by a government analyst. This act also requires advertisement of certain medicines to be made in a prescribed manner.

## Political Advertising

The **Representation of the People (Amendment) Act, 1996** has the following provisions

- \* Political advertisements are prohibited for a period of forty-eight hours ending with the hours fixed for conclusion of polling for any elections in a given polling area. The law stipulates that during this time, a person shall not display to the public any election matter by means of cinematography, television, or other similar apparatus.
- \* Use of displaying posters, signboards, and similar means for political advertisement in any public place must be strictly in accordance with the relevant provisions of the local laws
- \* Equitable opportunity to all political parties and candidates are to have access to public advertisement space for election-related advertisements during the election period
- \* Use of private premises for political advertisement may be made only with the voluntary permission of the occupant
- \* Prohibition of any and all advertisements is at the cost of the public exchequer regarding achievements of the political party/ruling government

The statute provides for a penalty of imprisonment and/or fine for anyone, including advertisers, who contravenes these provisions.

## Products Related to Sexuality

Advertisements related to sexuality are allowed with the provision that there should not be any indecent representation of women under the **Indecent Representation of Women (Prohibition) Act 1986**. Products must comply with the **Drugs and Cosmetic Act 1940** and other certification rules under the **Cable Television Network Rules 1994**.

## Professionals such as Chartered Accountants, Company Secretaries, and Cost Accountants

These professionals are prohibited from soliciting clients or professional work by advertisement. However, they may issue advertisements about their firm or the services of their firm, through any mode of transmission, showing the following details:

- \* Names of partners
- \* Address and website, telephone, mobile, e-mail, fax number
- \* Year of establishment
- \* Additional recognized qualifications
- \* Languages spoken by the partner(s)

- \* Honors or awards in the field of teaching, research, authorship, and so on, conferred by nationally accredited institutions
- \* Details of networking through own office or through formal association in other places within and outside India
- \* Number and name of employees of the firm and their qualifications and other particulars, willingness (or unwillingness) to accept work, either generally or in particular areas of practice
- \* Display of a passport-size photograph of firm members
- \* Particulars of services
- \* Names of clients and services provided

### Religion

Under the **Cable Television Networks Rules 1994**, the **Advertising Codes of Doordarshan & All India Radio** and **Norms for Journalist Conduct** issued by the **Press Council of India**, advertisement based on religion or to hurt religious sentiments are not allowed. Also, such advertisement may be punishable under the **Indian Penal Code 1860**.

### Securities

The **Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003** issued under section 30 of the **Securities and Exchange Board of India Act, 1992** prohibits fraudulent or unfair trade in securities. These regulations further provide that dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves an advertisement that is misleading or contains distorted information and which may influence the decision of the investors.

### Sex (Adult) Services

Advertisement pertaining to sexual services is illegal in India.

### Tobacco Products

Advertising prohibited.

### Toys

There is no specific restriction on the advertisement of toys provided advertisements are in compliance with other applicable laws

## Regulations Related to Advertising Methodology

### Advertising to Children

The **Young Persons (Harmful Publications) Act, 1956** prohibits advertisements relating to any harmful publication, i.e., any publication that tends to corrupt a young person (person under the age of 18 years) by inciting or encouraging him or her to commit offenses or acts of violence or cruelty or in any other manner whatsoever.

According to the **ASCI Code**, advertisements addressed to minors shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental, or moral harm or which exploits their vulnerability. For example, advertisements may not:

- \* Encourage minors to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like
  - \* Feature dangerous or hazardous acts which are likely to encourage minors to emulate such acts in a manner which could cause harm or injury
  - \* Show minors using or playing with matches or any flammable or explosive substance; or playing with or using sharp knives, guns, or mechanical or electrical appliances, the careless use of which could lead to their suffering cuts, burns, shocks, or other injury
  - \* Feature minors in promoting tobacco or alcohol-based products
  - \* Feature personalities from the field of sports, music, or cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors

### Celebrity Endorsements

No current restrictions

## Comparative Advertising

The provisions pertaining to comparative representation were part of "Unfair Trade Practice" under the **Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)**. After repeal of the **MRTP Act**, the provisions relating to unfair trade practices were inserted in the **Consumer Protection Act, 1986**. However, a business entity cannot claim relief against unfair comparative advertising under the **Consumer Protection Act**, as a business entity is not a consumer. This can be taken up only by consumer associations, the central government, or state governments, and it does not provide protection to the business entity equal to the protection under the **MRTP Act**. Thus, under the existing law, a manufacturer whose goods are disparaged has no standing to seek a remedy. Presently, in the absence of any specific legislation regulating comparative advertising, disputes are decided by various courts on the basis of the facts in each case. However, **ASCI Code** (which is made part of the **Cable Television Network Rules, 1994** as well) permits advertisement containing comparisons including those where a competitor is named in the interests of vigorous competition and public enlightenment, provided:

- \* It is clear which aspects of the advertiser's product are being compared with which aspects of the competitor's product
- \* The subject matter of comparison is not chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case
- \* The comparisons are factual, accurate and capable of substantiation
- \* There is no likelihood of the consumer being misled as a result of the comparison, whether about the product advertised or that with which it is compared
- \* The advertisement does not unfairly denigrate, attack or discredit other products, advertisers or advertisements directly or by implication

Presently, **ASCI** is actively taking action against any advertisements making unsubstantiated claims, exaggeration, unfair denigration in violation of the **ASCI Code**.

## Contests

The **Public Gambling Act, 1867** prohibits gambling activities in India. However, the law permits games of mere skill.

## Deceptive, Misleading, or False Advertising

Deceptive or misleading advertisements are restricted under various legislation including the **Consumer Protection Act, 1986**; the **Cable Television Network Rules, 1994**; the **Norms for Journalist Conduct** issued by the **Press Council of India Act**, and the **ASCI Code**.

## Disguised Ads and Advertorials

The **Norms for Journalist Conduct** issued by the **Press Council of India**, the **Cable Television Network Rules, 1994**, and the **Advertising Code of Doordarshan** require that advertisements must be clearly distinguishable from news content and programs.

## Free Gifts/Samples

The **Consumer Protection Act 1986**, Section 2(3)(a) states that the following constitute unfair trade practice:

- \* The offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole
- \* The conduct of any contest, lottery, or game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use, or supply of any product or any business interest

The **Norms for Journalist Conduct** issued by the **Press Council of India** has stated that journalists should not accept gifts including those given by the advertisement agencies for publication of material relating to their clients or otherwise.

## Limits to Free Speech

Article 19(1)(a) of the **Constitution of India** protects the right to freedom of speech and expression, which is also extended to advertisements. However, like any other right, this freedom is also subject to reasonable restrictions imposed by Article 19(2) of the Constitution of India. Furthermore, the **ASCI Code** states that no advertisement shall be permitted which:

- \* Derides any race, caste, color, creed, or nationality
- \* Tends to incite people to crime or to promote disorder and violence or intolerance
- \* Presents criminality as desirable or directly or indirectly encourages people, particularly minors, to emulate it or conveys the *modus operandi* of any crime
- \* Adversely affects friendly relations with a foreign state

Another restriction is dictated by the **Emblems and Names (Prevention of Improper Use) Act, 1950**. See Use of a Public Person's Image or Name, below.

### Length of Commercial, Volume, and Similar Restrictions

The **Telecom Regulatory Authority of India** has issued the **Standard of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012**, which regulates the duration of broadcasting an advertisement and the length of the commercial. The main features of these regulations are as follows:

- \* Advertisements exceeding 12 minutes in a clock hour; any shortfall of advertisement duration in any clock hour shall not be carried over by any broadcaster in any broadcast of its program
- \* The time gap between end of one advertisement session and the commencement of next advertisement session shall not be less than 15 minutes (30 minutes in case of a movie). However, this restriction is not applicable to live broadcast of a sporting event.

### Rights of Privacy

The **Electronic Media Monitoring Centre** of the **Ministry of Information and Broadcasting, Government of India**, has made self-regulatory guidelines applicable to the broadcasting service provider wherein, to protect the privacy of an individual, it is stipulated that no program (including advertisement) should invade an individual's personal or private affairs or privacy unless there is an identifiable larger public interest.

### Product Demonstrations

No current restrictions

### Regional Public and/or Community Standards

Under various legislation, including the **Cable Television Network Rules, 1994**; **Norms for Journalist Conduct** issued by the **Press Council of India Act**, and the **ASCI Code**, no advertisement to hurt community or any section of society is allowed. Also, such advertisements are punishable under the **Indian Penal Code 1860**.

### Rebates

No current restrictions

### Sex in Advertising

The **Indian Penal Code 1860** prohibits obscene publications. Further, the **Indecent Representation of Women (Prohibition) Act, 1986** prohibits indecent representations of women.

### Sponsorships

Products which are banned from advertising may not be used to provide any kind of sponsorship. Also, misleading representation of sponsorship is an unfair trade practice under the **Consumer Protection Act, 1986**.

### Subliminal Advertising

While there are no laws defining subliminal advertising or to restrict such practice, misleading advertisements are banned and restricted.

### Surrogate Advertising

The **ASCI Code** provides that advertisements of products whose advertising is prohibited or restricted by law or by the **ASCI Code** must not circumvent such restrictions by purporting to be advertisements for other products the advertising of which is not prohibited or restricted by law or by **ASCI Code**. To determine if there is an indirect advertisement of prohibited products due attention shall be given to the following:

- \* Visual content of the advertisement must depict only the product being advertised and not the prohibited or restricted product in any form or manner.
- \* The advertisement must not make any direct or indirect reference to the prohibited or restricted products.
- \* The advertisement must not create any nuances or phrases promoting prohibited products.
- \* The advertisement must not use particular colours and layout or presentations associated with prohibited or restricted products.
- \* The advertisement must not use situations typical for promotion of prohibited or restricted products when advertising the other products.

The **Cable Television Networks Rules, 1994** also impose similar restrictions to curb surrogate advertising.

### Sweepstakes Offers

No current restrictions. However, any offer to deceive consumers is banned from advertising, and proper legal action will be taken against the responsible parties.

### Testimonials

Any testimonial must be true, failing which appropriate actions can be taken by **ASCI** and under the **Consumer Protection Act 1986**.

### Tie-In Offers

No specific restrictions

### **Use of a Public Person's Image or Name**

No advertisement should be in violation of the **Emblems and Names (Prevention of Improper Use) Act, 1950**, which prohibits the improper use of names or pictorial representation of certain famous persons for commercial use. Accordingly, names or images of Mahatma Gandhi, Jawaharlal Nehru, Indira Gandhi, Shivaji Maharaj or the Prime Minister of India or the words "Gandhi," "Nehru" or "Shivaji" may not be used in advertisements.

### **Use of Children in Advertising**

No current restrictions, but other applicable laws need to be followed.

### **Use of Foreign Language in Advertising**

No current restrictions, but other applicable laws need to be followed.

### **Use of Models as Doctors, Nurses, Lawyers, or other Professionals**

There are no restrictions on the use of models as doctors, nurses, or lawyers; however, there should be no misleading or controversial advertisement.

### **Violence in Advertising**

The **Cable Television Network Rules, 1994**, **Norms for Journalist Conduct** issued by the **Press Council of India Act**, **Advertising Code of Doordarshan**, and the **ASCI Code** prohibit any violence in advertisements.

## **Regulations Related to Media Channels**

### **Billboard Advertising**

Outdoor advertisement through billboards is regulated by jurisdictional municipal corporations. The content of the advertisement should, however, be in accordance with the **ASCI Code** and other applicable laws.

### **Digital Media Advertising**

Online advertisement and website content including social media sites such as Facebook and Twitter must comply with a range of marketing, consumer, privacy, and contract laws. Online advertisers should comply with **ASCI**, the **Indian Penal Code**, the **Information Technology Act, 2000** and other applicable laws. For this purpose, the Information Technology Act was amended in 2011.

### **Direct Mail Advertising**

Currently, no regulation exists specific to direct mail advertising. However, any such advertisement has to be in compliance with the **ASCI Code** and other applicable laws.

### **Email Advertising (Spam)**

Currently, no regulation exists specific to direct mail advertising. However, any such advertisement has to be in compliance with the **ASCI Code** and other applicable laws.

### **Newspaper and Periodical Advertising**

The **Press Council of India** constituted under the **Press Council of India Act 1978** has issued **Norms for Journalist Conduct**, a reference guide for the press. These norms include advertising norms similar to provisions in the **ASCI Code** and prohibit, *inter alia*, advertisements that are vulgar; advertisements promoting cigarettes, tobacco products, wine, liquor, and other intoxicants; advertisements hurting religious or communal sentiments; or any advertisement prohibited by any other law. Also, **ASCI** has approached the **Press Council of India** to incorporate the **ASCI Code** into its regulations.

### **Radio and Doordarshan Advertising**

The **Code for Commercial Advertising on Doordarshan and All India Radio**: All advertisement on **Doordarshan** and **All India Radio ("AIR")** should conform to the code issued by Director General of each Doordarshan and AIR respectively. These codes have also mandated compliance to the **ASCI Code** and in general prohibit any advertisement containing the following:

- \* Criticism of friendly countries
- \* Attack on religions or communities
- \* Obscenity
- \* Defamation
- \* Incitement to violence or anything against maintenance of law and order
- \* Contempt of court
- \* Aspersion against the integrity of the president and judiciary
- \* Anything compromising the integrity of the nation
- \* Criticism by name of any person



## Television Advertising

The advertising code issued under the **Cable Television Network Rules, 1994** require advertising carried on the cable service to conform to the laws of the country and not to offend morality, decency, or religious sensibilities of the subscribers. The rules make the **ASCI Code** compulsory for television and state that no advertisement which violates the **ASCI Code** shall be carried on the cable service. Under the rules, no advertisement shall be permitted through cable services which

- \* Derides any race, caste, color, creed, or nationality
- \* Is against any provision of the Constitution of India
- \* Tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way
- \* Presents criminality as desirable
- \* Exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary
- \* In its depiction of women, violates the constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women
- \* Exploits social evils like dowry, child marriage
- \* Promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants. However a product that uses a brand name or logo which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, may be advertised subject to prescribed conditions.
- \* Promotes infant milk substitutes, feeding bottles, or infant food (defined as any food which is represented as compliment to mother's milk to meet the growing nutrition needs of the infant after the age of four months)
- \* Be wholly or mainly of a religious or political nature or be directed towards any religious or political end
- \* Contain references which hurt religious sentiments
- \* Endanger the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner
- \* Promote goods or services that suffer from any defect or deficiency as mentioned in the Consumer Protection Act, 1986
- \* Contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality which is difficult to prove
- \* The picture and the audible matter of the advertisement shall not be excessively "loud"
- \* Contain indecent, vulgar, suggestive, repulsive or offensive themes
- \* All advertisement should be clearly distinguishable from the programme and should not in any manner interfere with the program viz, use of lower part of screen to carry captions, static or moving alongside the program
- \* No program shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to two minutes per hour of a channel's self-promotional programs

## News Broadcasters Association Regulations

The **News Broadcasters Association (NBA)** represents the private television news and current affairs broadcasters in India. NBA presently has 20 leading news and current affairs broadcasters (comprising 45 news and current affairs channels) as its members. According to the **News Broadcasting Standards Regulations** issued by NBA, (**NBA Regulations**), any broadcast (which includes advertisement) should be in compliance with **NBA's** code of conduct. The code has a procedure for complaints against a broadcaster who is in breach *inter alia* of the following:

- \* Depiction of violence or intimidation against women and children
- \* Sex and nudity
- \* Endangering national security
- \* Refraining from advocating or encouraging superstition and occultism

## Regulatory Agencies

### Indian Broadcasting Foundation and Broadcasting Content Complaints Council (BCCC)

The Secretary  
Broadcasting Content Complaints Council  
C/o Indian Broadcasting Foundation  
B-304, Ansal Plaza  
New Delhi 110047  
India  
Email: [bccc@ibfindia.com](mailto:bccc@ibfindia.com)  
Tel: [91] (11) 43794488  
Fax: [91] (11) 43794455  
Web: [www.ibfindia.com](http://www.ibfindia.com)

Independent council set up by the Indian Broadcasting Foundation (IBF), India's premier organization of television broadcasters. Complaints regarding content carried on TV channels are addressed by Ministry of Information and Broadcasting, Government of India as per the extant provisions under the Cable Television Networks (Regulation) Act, 1995 and related rules/guidelines. At the industry level, BCCC examines complaints about television programs including advertisement received from the viewers or any other sources, including NGOs, RWAs, and the Ministry of Information and Broadcasting, against its members. BCCC ensures that the programs are in conformity with the content guidelines. On receiving a consumer complaint, the agency validates the information against the official records. BCCC usually passes the final orders within three weeks of the receipt of the complaint. Any directive issued by the BCCC to the IBF is binding and must be implemented with immediate effect. In case of non-adherence of the directions of BCCC by the TV channel, it may, *inter alia*, initiate actions to expel the concerned member and to recommend the Ministry of Information and Broadcasting, Government of India for appropriate action against the channel as per the law.

In case of any complaints received by the BCCC for a channel which is not a member of IBF, the complaint is forwarded to the Ministry of Information and Broadcasting, Government of India for appropriate action.

#### **ASCI and ASCI's Consumer Complaints Council (ASCI's CCC)**

Secretary General  
The Advertising Standards Council of India  
219, Bombay Market, 78 Tardeo Road  
Mumbai 400 034  
India  
Email: [asci@vsnl.com](mailto:asci@vsnl.com)  
Tel: [91] (11) 23513982,  
Fax: [91] (11) 23516863  
Web: [www.ascionline.org](http://www.ascionline.org)

Serves for the redressal of consumer complaints and grievances. The ASCI's CCC comprises:

- \* Twelve non-advertising professionals representing civil society, recognised opinion leaders in disciplines such as medical, legal, industrial design, engineering, chemical technology, human resources and consumer interest groups; and

- \* Nine advertising practitioners from member firms of ASCI.

The ASCI's CCC decides upon the complaints within a period of four to six weeks after giving the other party an opportunity of being heard. If the complaint is upheld, then the advertiser and its agency are given two weeks to comply with the ASCI's CCC decision. Noncompliant advertisements are published in ASCI's Media quarterly release on an all-India basis. In the case of noncompliant television advertisements, the advertiser is in violation of the Cable TV Networks (Regulation) Act, 1995 and will be reported to the Ministry of Information & Broadcasting, Government of India. In the case of noncompliant advertisements in the press, ASCI will inform the Press Council of India about breach of the ASCI Code.

#### **Electronic Media Monitoring Centre (EMMC)**

The Director EMMC  
14 B, Ring Road, IP Estate  
New Delhi 110002  
India  
Email: [emmc.india@gmail.com](mailto:emmc.india@gmail.com)  
Tel/Fax: [91] (11) 23378050  
Web: <http://emmc.gov.in>

The EMMC was established by the Ministry of Information and Broadcasting, Government of India, with the aim to have effective monitoring of the content of various FM and TV channels beaming over Indian territory for any violation of the Programme Code, the Advertisement Code, various provisions of the Cable Television Networks Regulation Act, or any other law relevant to the content of television channel. As per the self-regulation mechanism of the EMMC, it is responsibility of each broadcasting service provider to ensure that each advertisement complies with the ASCI Code.

## Telecom Regulatory Authority of India (TRAI)

Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg (Old Minto Road)  
New Delhi 110002  
Email: [ap@traai.gov.in](mailto:ap@traai.gov.in)  
Phone No: [91] (11) 23236308, 23233466  
Fax No.: [91] (11) 23213294  
Web: [www.traai.gov.in](http://www.traai.gov.in)

Web: [nccptraai.gov.in/nccpregistry/Welcome.jsp](http://nccptraai.gov.in/nccpregistry/Welcome.jsp)

Established in 1997 through an Act of Parliament, viz the Telecom Regulatory Authority of India Act, 1997. TRAI's mission is to ensure that the interests of consumers are protected and at the same time to nurture conditions for the growth of telecommunications, broadcasting, and cable services in a manner and at a pace which will enable India to play a leading role in the emerging global information society.

TRAI has notified the Telecom Commercial Communication Customer Preference Regulations, 2010 to curb a growing menace and effectively regulate unsolicited commercial calls and messages ("UCC"). The Telecom Commercial Communications Customer Preference Portal is a database containing a variety of information prescribed in the Telecom Commercial Communications Customer Preference Regulations, 2010.

## Press Council of India (PCI)

Secretary  
Press Council of India  
Soochna Bhavan, 8-C.G.O. Complex  
Lodhi Road, New Delhi 110003  
India  
Email: [pci@alpha.nic.in](mailto:pci@alpha.nic.in)  
Tel: [91] (11) 24366746  
Fax: [91] (11) 2436640  
Web: [presscouncil.nic.in](http://presscouncil.nic.in)

Functions under the Press Council Act 1978. It is a statutory, quasi-judicial body which acts as a watchdog of the press. It adjudicates complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively. PCI is headed by a Chairman, who has by convention been a retired judge of the Supreme Court of India. PCI consists of 28 other members of whom 20 represent the press and are nominated by the press organisations/news agencies recognised and notified by PCI as all India bodies of categories such as editors, working journalists, and owners and managers of newspapers, five members are nominated from the two houses of Parliament and three represent cultural, literary, and legal fields as nominees of the Sahitya Academy, University Grants Commission and the Bar Council of India.

A complaint against a newspaper should first be taken up with the editor or other representative of the publication concerned. If the complaint is not resolved to satisfaction of complainant, it may be referred to PCI within two months of the publication of impugned news item in case of dailies and weeklies and four months in all other cases, along with the original/photostat copy of the impugned clipping (English translation if the matter is in vernacular) along with a copy of your letter to the editor & editor's reply.

On receipt of a complaint made to it or otherwise, if PCI is *prima facie* satisfied that the matter discloses sufficient ground for inquiry, it issues show cause notice to the respondents and then considers the matter through its Inquiry Committee on the basis of written and oral evidence tendered before it. If on inquiry, PCI has reason to believe that the respondent newspaper has violated journalistic norms, PCI keeping in view the gravity of the misconduct committed by the newspaper, warns, admonishes or censures the newspaper or disapproves the conduct of the editor or the journalist as the case may be. It may also direct the respondent newspaper to publish the contradiction of the complainant or a gist of the PCI's decision in its forthcoming issue.

## News Broadcasters Association (NBA) and News Broadcasting Standards Authority

News Broadcasting Standards Authority  
c/o News Broadcasters Association  
Reg. Off.: Juris House Ground Floor  
22, Inder Enclave, Paschim Vihar  
New Delhi 110 087  
India  
Email: [authority@nbanewdelhi.com](mailto:authority@nbanewdelhi.com)  
Web: [www.nbanewdelhi.com](http://www.nbanewdelhi.com)

Performs its functions and exercises the powers vested in it under NBA Regulations in relation to, and upon, the members and associate members of NBA or in relation to such other complaints or broadcasters and channels as may be referred to the Authority by the Ministry of Information & Broadcasting or other Ministry or other governmental body. Upon receiving a complaint from any aggrieved person, NBA will issue notice to the concerned broadcaster not later than 14 (fourteen) days from the date of receipt of a complaint to show cause why action should not be taken against such broadcaster. The said Authority may, after inquiry, warn, admonish, censure, express disapproval against and/or impose a fine (of up to INR 100,000) upon the broadcaster and or recommend to the concerned authority for suspension/revocation of license of such broadcaster.

### **Director General of All India Radio & Doordarshan**

Director General  
All India Radio, Parliament Street  
New Delhi  
India  
Email: [adgnews2@air.org.in](mailto:adgnews2@air.org.in), [adgnews2.nsd@nic.in](mailto:adgnews2.nsd@nic.in)  
Tel: [91] (11) 23421209  
Director General  
Doordarshan Bhawan, Copernicus Marg  
New Delhi 110001  
India  
Email: [webadmin@dd.nic.in](mailto:webadmin@dd.nic.in)

Regulates the functioning of All India Radio and Doordarshan. Complaints or reports on contraventions of the code received by All India Radio/Doordarshan may in the first instance be referred by the Director General to the Advertiser's Association concerned with request for suitable action. If complaints under the Code cannot be satisfactorily resolved at the Association(s) level, they are reported to the Director General, who will then consider suitable action. For any complaints under the Code received by All India Radio/Doordarshan concerning a party outside the purview of the various member Association(s), the Director General will draw the attention of such party to the complaint and where necessary, take suitable action on his own.

### **National Consumer Dispute Redressal Commission**

Upbhokta Nyay Bhawan  
'F' Block, GPO Complex, INA  
New Delhi 110023  
Fax: [91] (11) 24658509  
PBX No: [91] (11) 24608801, [91] (11) 24608802, [91] (11) 24608803, [91] (11) 24608804  
Web: [www.ncdrc.nic.in](http://www.ncdrc.nic.in)

Provides inexpensive, speedy, and summary redressal of all types of consumer disputes through quasi-judicial bodies in each district and state and at the national level, called the District Forums, the State Consumer Disputes Redressal Commissions, and the National Consumer Disputes Redressal Commission, respectively, under the provisions of the Consumer Protection Act, 1986. The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit.

### **Food Safety and Standards Authority of India (FSSAI)**

Food Safety and Standards Authority of India  
FDA Bhawan, Kotla Road  
New Delhi 110002  
India  
Email: [admin@fssai.gov.in](mailto:admin@fssai.gov.in)  
EPABX: [91] (11) 23236975  
Telefax: [91] (11) 23220994  
Web: [www.fssai.gov.in](http://www.fssai.gov.in)

Lays down science-based standards for articles of food and regulates their manufacture, storage, distribution, sale, and import to ensure availability of safe and wholesome food for human consumption.

### **Central Drugs Standard Control Organization (CDSCO)**

Directorate General of Health Services  
Ministry of Health and Family Welfare  
Government of India  
FDA Bhawan, ITO, Kotla Road  
New Delhi-110002  
Email: [dci@nb.nic.in](mailto:dci@nb.nic.in)  
Tel: [91] (11) 23236965, [91] (11) 23236975  
Fax: [91] (11) 23236973  
Web: [www.cdsc.nic.in](http://www.cdsc.nic.in)

Regulates the approval of new drugs, clinical trials in the country, laying down the standards for drugs & medical devices, control over the quality of imported drugs, testing of drugs, coordination of the activities of State drug control organisations and providing expert advice with a view of bring about the uniformity in the enforcement of the Drugs and Cosmetics Act in India.

## Key Laws and Regulations

### Advocates Act, 1961

Enacted to consolidate the law relating to legal practitioners and to provide for the constitution of the **State Bar Councils** and an **All-India Bar**. The Bar Council of India, established under the Advocates Act, 1961 is regulator of this act, along with state bar councils. The function of the **Bar Council of India** includes the following:

- \* To lay down standards of professional conduct and etiquette for advocates
- \* To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council
- \* To safeguard the rights, privileges and interests of advocates
- \* To promote and support law reform
- \* To promote legal education and to lay down standards of legal education. This is done in consultation with the universities imparting legal education in India and with the State Bar Councils
- \* To recognize universities whose degree in law is a qualification for enrollment as an advocate

### Cable Television Networks (Regulation) Act, 1995

Formulated to regulate the cable television networks in the country and for matters connected therewith or incidental thereto. The act *inter alia* regulates provisions relating to registration as a cable operator; transmission or retransmission programs and advertisements through the cable TV network; and punishment for violation of the provisions. As per the provisions of this act, the authorized officers within their local limits of jurisdiction are the district magistrate, the sub-divisional magistrate, and the commissioner of police. Violation of orders and regulations issued by TRAI can be brought to TRAI's notice for appropriate action.

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

The **Tobacco Prohibition Act** was enacted to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for related matters. Any police officer, not below the rank of a sub-inspector or any officer of **State Food or Drug Administration** or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the central government or by the state government, may take actions for violation of any provision of this act.

### Code for Commercial Advertising on Doordarshan and All India Radio

These codes are laid down in order to develop and promote healthy advertising practices in **Doordarshan and All India Radio**. Responsibility for the observance of these rules rests equally upon the advertiser and the advertising agency. The respective Director General shall be the sole judge of the suitability or otherwise of an advertisement, and his decision in this regard shall be final. The advertisement should be clearly distinguishable from the program in order to avoid the message of the programme getting mixed up with the content and images of the advertisement.

### Companies Act, 1956

Enacted to consolidate and amend the law relating to companies and certain other associations. The Registrar of Companies acts as regulator of this act, which covers all the provisions relating to incorporation, management, and winding-up of companies.

### Consumer Protection Act, 1986

Benevolent social legislation that lays down the rights of consumers and provides for promotion and protection of the rights of consumers. The first and the only law of its kind in India, it has enabled ordinary consumers to secure less expensive and often speedy redressal of their grievances. By spelling out the rights and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services, the act makes the dictum *caveat emptor* ('buyer beware') a thing of the past. The provisions of this act cover "goods," "services," and unfair trade practices. The goods are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are in the nature of transport, telephone, electricity, housing, banking, insurance, medical treatment, and so on.

### Drugs and Cosmetic Act, 1940

Regulates the import, manufacture, distribution, and sale of drugs and cosmetics. **CDSCO**, at the national level, regulates the approval of new drugs, clinical trials in the country, laying down the standards for drugs and medical devices, control over the quality of imported drugs, testing of drugs, coordination of the activities of state drug control organisations and providing expert advice with a view of bring about the uniformity in the enforcement of the **Drugs and Cosmetics Act** in India. State drug control organisation *inter alia* regulates licensing of drug manufacturing and sales establishments, licensing of drug testing laboratories, approval of drug formulations for manufacture, quality of drugs and cosmetics manufactured by the respective state units and those marketed in the state, and investigation and prosecution in respect of contravention of legal provisions.

#### **Emblems and Names (Prevention of Improper Use) Act, 1950**

Enacted to prevent the improper use of certain emblems and names for professional and commercial use. Under this act, the name or pictorial representation of Mahatma Gandhi, Pandit Jawaharlal Nehru, Shrimati Indira Gandhi, Chatrapati Shivaji Maharaj or the Prime Minister of India or the words "Gandhi", "Nehru" or "Shivaji", except the pictorial use thereof on calendars where only the names of the manufacturers and printers of the calendars are given and the calendars are not used for advertising goods.

#### **Food Safety & Standards Act, 2006**

Consolidates various laws and orders that have hitherto handled food-related issues in various ministries and departments of government. This act deals *inter alia* with food safety and regulates the manufacture, storage, distribution, sale, and import of food in order to ensure the availability of safe and wholesome food for human consumption in India. The **Food Safety and Standards Authority of India** operates under this act to lay down science-based standards for articles of food.

#### **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**

Issued under the **Indian Medical Council Act, 1956** to regulate issues relating to the professional conduct, etiquette, and ethics for registered medical practitioners. The **Medical Council of India** acts as regulator of the act.

#### **Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992**

Regulates the production, supply, distribution, and advertising of infant milk, substitutes, feeding bottles, and infant foods with a view to protecting and promoting breastfeeding and ensuring proper use of infant foods and related matters. The reasoning for this prohibition is that promotion created by advertisers was so strong that most people had begun to believe that artificial food was healthier for babies than mother's milk itself. With a view to oppose the negative publicity created by the baby-food manufacturers, the government banned any kind of advertisement related to infant milk food products.

#### **Indecent Representation of Women (Prohibition) Act, 1986**

Prohibits indecent representations, i.e., the depiction in any manner of the figure of a woman, her form or body, or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or which is likely to deprave, corrupt, or injure the public morality or morals of women.

#### **Intellectual Property Rights**

Intellectual property rights related laws, i.e., the **Trade Marks Act 1999**, the **Patents Act 1970**, the **Design Act 2000**, and others offer protection to owners of intellectual property. According to **ASCI Code**, no advertisement may be in violation of intellectual property rights of any other person as recognised under such laws.

#### **Public Gambling Act, 1867**

Enacted to make provision for the punishment of public gambling and the keeping of common gaming-houses in some of the then Indian States. The act prohibits gambling activities in India. However, it permits games of mere skill. In April, 2011, the **Information Technology Act, 2000** was also amended to ban Internet gambling and online betting websites. Today, two Indian states, Goa and Sikkim, have legalized many forms of gambling. The **Lotteries (Regulation) Act, 1998** gives power to state governments to hold lotteries subject to prescribed conditions. Today, 13 states have legalized lottery.

#### **Securities and Exchange Board of India Act, 1992**

Enacted to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto. The **Securities Exchange Board of India** acts as regulator of this Act.

#### **Standards of Weight & Measures Act, 1976**

Enacted to regulate trade or commerce in weights, measures, and other goods which are sold or distributed by weight, measure, or number.

#### **Young Persons (Harmful Publications) Act, 1956**

Prohibits advertisements relating to any harmful publication, i.e., any publication having stories portraying the commission of offences; acts of violence or cruelty; or incidents of a repulsive or horrible nature, in such a way that the publication tends to corrupt a young person by inciting or encouraging him or her to commit offences or acts of violence or cruelty or in any other manner whatsoever.

## Advertising Pre-Clearance Agencies

In India presently there is no pre-clearance agency for advertisements, although advertisers must obtain permission from the local municipal corporation if they want to publicize their products through billboards or through posters.

## Trends

Up to the present, a number of factors have impeded protection of consumers as well as other stakeholders of the advertising industry. Notable among these factors are:

- \* The absence of any uniform advertising regulation or regulating agency
- \* Ineffective enforcement
- \* Complaint redressal systems that are difficult for most consumers to access
- \* Lack of education amongst consumers
- \* Overlapping jurisdiction of authorities on issues relating to advertisement

Presently there are more than 150 TV channels and more than 82,000 registered newspapers in India. To verify whether their content, including advertisements, adheres to the codes of conduct under various laws is a challenging task. The number of advertisements which are patently false and misleading, promoting dubious products and making unsubstantiated claims is significant. In reality, most of these advertisements escape the scrutiny of regulatory bodies.

With globalization and economic liberalization, the Indian market has shown a tremendous growth in the early 1990s and according to Goldman Sachs, it will be the third-largest economy of the world by 2035. In response to this tremendous economic growth and industrialization, the Indian government is continuously promulgating advertising regulations outlining the ways in which products and services can be advertised to the general public and other stakeholders while protecting the consumers' interests. However, the absence of uniform legislation and single regulator makes it difficult to effectively implement any advertising-related law. Most of self-regulating codes issued by various industry associations are contractually binding only on their members and have no force of law. Therefore, to protect the interests of consumers and their belief in advertisement, it is necessary to have a uniform legislation with a single regulator who can provide expedient relief and easy access to consumers and other stakeholders.

## Author of this Article: Global Jurix, Advocates & Solicitors, India



**ABOUT US:** Global Jurix, established in 2002, is a full-service law firm with offices at New Delhi, Mumbai, Hyderabad and Kolkata. The firm comprises attorneys/lawyers and consultants including chartered accountants, company secretaries and MBAs. Our in-house team with a variety of specialized expertise ensures that complete advice is available to our clients under one roof. We aim to provide top-quality legal solutions with a strong emphasis on client satisfaction.

**KEY PRACTICE AREAS:** Our focus is on doing business in India, including foreign direct investment; general corporate and commercial laws; mergers and acquisitions; private equity and fund/venture capital investment; capital market laws; infrastructure and real estate projects; tax laws; intellectual property rights; social sector including foreign NGO; competition and anti-trust laws; corporate governance and regulatory compliances; corporate frauds and independent searches; and employment and HR laws.



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