

CHAPTER-4

EFFECTIVENESS OF THE CONTEMPORARY INDIAN LEGAL FRAMEWORK IN REGULATING FALSE AND MISLEADING ADVERTISEMENT: AN ASSESSMENT

4.1 Prelude

Advertising play a major role in consumer marketing, and enable companies to meet communication and other marketing objectives. Typically, advertising is used to inform, persuade, and remind consumers. It importantly reinforces their attitudes and perceptions. It is also regarded as an engine of free market economy and a promoter of consumer welfare by securing valuable information to consumers which is essential to the concept of ‘*consumer sovereignty*’ in the contemporary era.

However advertising is also a target of criticism because some advertisements gives misleading or false information, conceals information, makes exaggerated claims and promotes irresponsible or obscene materials. Therefore taking account of possible evils that can be caused due to advertisement laws have been introduced to ensure honesty and ethics in advertising and penalize the advertisers indulging in unethical advertisement practices. In **Chapter-3** the existing Indian legal and institutional framework on regulating advertisement has been discussed in details. In this chapter the effectiveness of this contemporary legal framework in regulating false and misleading advertisement will be examined. The research scholar has collected relevant evidence to examine the effectiveness of the legal and regulatory system from on the **a) secondary literature** and **b) by using small survey research tools** and the analysis is summarized below.

4.2 Data collected from Secondary Sources on effectiveness of the legal and regulatory system

1. **Commentaries:** A commentary⁴⁶⁸ examining the working of the current system in curving false and misleading advertisement has observed that “*Though comprehensive legal*

⁴⁶⁸ Verma, Regulating Misleading Advertisements: Legal Provisions and Institutional Framework, *Vikalpa*, Vol. No. 2, April-June 2001

framework for the control of unfair, deceptive, and misleading advertising in India exists, the practice continues almost unabated.” According to the commentator after the incorporation of provisions to regulate of unfair trade practices in the MRTP Act since 1984, the MRTP Commission has taken decisions on 1500 cases of false and deceptive advertisements. In a majority of these cases; the Commission took a serious view of such practices and either passed a 'cease and desist' order or accepted an undertaking from the respondents under section 36D(2) of the MRTP Act that the impugned unfair advertising practice would be discontinued and would not be repeated in future. Similarly some cases have risen before the Consumer Courts established under the Consumer Protection Act. But despite this legal action provided against unscrupulous advertisers, there is no respite from the spate of misleading and deceptive advertisements in the mass media. In a very rare occasion the MRTP Commission or Consumer Courts has ordered for withdrawal of the misleading advertisement along with directing the advertiser to issue corrective advertisement under Acts. Also delay in issuing reliefs by consumer courts and subsequent appeals is a major problem. Pushpa Girimaji a Consumer Activist illustrated this problem by referring to the landmark case of Buddhist Mission Dental College and Hospital Vs Bhupesh Khurana. In this case only eleven students had filed the case, but there could be many more victims who did not. Even those eleven students, who won their case, did so after 15 years and they can never get back the academic years lost.⁴⁶⁹ Also on the use of celebrities in advertisements has been a prevalent practice in India, but in some circumstances when the induced reliance leads to consumer's injury or deception cases are negligible. There is a complete vacuum in the law relating to liability of celebrities endorsing a brand based on false and misleading advertisement. But in other jurisdictions there have been a number of recent cases involving celebrity endorsers of products and services and legislation e.g. the US FTC "Guides Concerning Use of Endorsements and Testimonials in Advertising" or Chinese law that imposes liability by 'joint and equal responsibility' if consumer's legitimate interests are harmed. This has provided the plaintiff-consumers right to claim for injury as a result of reliance on the endorsements against the celebrities and other deep-pocket defendants.⁴⁷⁰

⁴⁶⁹ Pushpa Girimaji, *Misleading Advertisements and Consumer* (Published by Centre for Consumer Studies, Indian Institute of Public Administration, 2013, ISBN : 81-86641-70-X)

⁴⁷⁰ Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers, Prepared by Consumer Unity & Trust Society (CUTS), 2012 (available at http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf)

2. **Opinion of Jurists:** A former Judge of Supreme Court of India **Jus. Ashok Bhan** has observed in a recent speech on success and failure of the Consumer Protection Act that it has not lived upto its expectation to tackle the issue of false and misleading advertisement. In his view the consumer courts have no power to investigate matters relating to false and misleading advertisement and also have limited infrastructure to regulate the same. Also pointing to the issue of liability for celebrity endorsement of brands and products indulging in false and misleading advertisement he was of the opinion that the law is totally underdeveloped and inadequate in India.⁴⁷¹ Resonating a similar view **Jus. K. Ramanna, Judge of Supreme Court of India** stated that the consumer courts have failed to effectively regulate false and misleading advertisement and the measures that are within the domain of these courts are insufficient to deal with the regulatory issues.⁴⁷² **Smt. M. Shreeshha, Member from the Andhra Pradesh State Consumer Dispute Redressal Commission** has mentioned that less than 2% of the cases filed before consumer courts all over the country deals with misleading advertisements. Disposal of cases takes much longer than 90 days but if the parties themselves represent, they finish within 90 days. Misleading advertisements dealing with education is on the rise. Apart from misleading advertisements there are misleading terms used by insurance companies like cyclone, winds, gale etc.⁴⁷³

3. **Government Reports:** *The Parliamentary Standing Committee Report on Proposed Amendments to Consumer Protection Act*⁴⁷⁴ has observed “*The Committee find that there are innumerable service providers such as Airlines, Communication Industries, Utility Industries, Banks and other agencies/institutions who are not providing what they are supposed to. Most of*

⁴⁷¹ Inaugural Speech at the National Conference on 25 Years of Consumer Protection Act: Challenges and the Way Forward, by Jus. Ashok Bhan, (Printed version available at 25 Years of Consumer Protection Act: Challenges and the Way Forward , Ed. Ashok R Patil, NLSIU , 2014, ISBN: 978-93-5087-913-9)

⁴⁷² Speech by Jus. K. Ramanna, at the National Conference on 25 Years of Consumer Protection Act: Challenges and the Way Forward, (Printed version available at 25 Years of Consumer Protection Act: Challenges and the Way Forward Ed. Ashok R Patil, NLSIU , 2014, ISBN: 978-93-5087-913-9)

⁴⁷³ Observation was made in the Regional Seminar on *Impact of Misleading Advertisements on Consumers* organized by Ministry of Consumer Affairs, Food and Public Distribution, GOI in association with NLSIU, Bangalore in December 11, 2011 Minutes of the Seminar prepared and circulated by the Ministry of Consumer Affairs, Food and Public Distribution, GOI in Annexed for reference in **ANNEXURE-I**.

⁴⁷⁴ TWENTY SIXTH REPORT STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2012-13) (FIFTEENTH LOK SABHA), December, 2012/ Agrahayana, 1934 (Saka), at para.

the agencies/institutions/service providers are befooling the consumers by making tall and false claims through misleading advertisements (electronic and print media) and due to which exploitation and suffering of consumers are rampant. There are no stringent laws to deal with such kind of misleading advertisements. The Committee feel that as amendment in the Act is under way, there is a strong need to warn the advertisers to refrain from publicizing such misleading advertisement, which fall under unfair trade practices...The Committee observed that no suo-motu steps have been taken by the Department against the misleading advertisements or any other consumer complaints having large implication on consumers. In this context when the Committee asked the Department whether any proposal on these lines is under consideration of the Department, the Department in their reply stated that although no steps in this regard have been taken under the existing provisions of the Consumer Protection Act, 1986, this Ministry has taken cognizance of the growing menace of misleading advertisements and has taken the following steps for tackling the same.”

4. **Parliament Questions:** The **Hon’ble Minister of Consumer Affairs, GOI, Shri Ram Vilas Paswan** responding to a Parliamentary Question on tackling the increasing problem of misleading advertisement on 05.12.2014⁴⁷⁵ stated in the House as follows: “Yes, Sir. A large number of complaints of misleading advertisements appearing in the electronic and print media making false and exaggerated claims about products, are received by various agencies and regulators from time to time. There is no single centralised agency to deal with all such complaints. The sector regulator concerned/or the ministry/department concerned takes cognizance of the complaints and takes action on matters relating to their own subjects under the relevant legislations... In so far as the electronic media is concerned, the Ministry of Information & Broadcasting encourages self-regulation. While the self-regulation is aimed at facilitating

⁴⁷⁵ LOK-SABHA **STARRED QUESTION NO.* 181 TO BE ANSWERED ON 05/12/2014, by SHRI DHIRAJ PRASAD SAHU to Minister of CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION be pleased to state:**

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

better content regulation at broadcasters' level, it does not preclude the Government from taking suo-moto action as per Law...an Inter-Ministerial Monitoring Committee (IMMC) has been constituted in the Department of Consumer Affairs to monitor misleading advertisements and unfair trade practices appearing in print and other outdoor media. Efforts are made to ensure coordinated action among various Ministries, Regulators and Agencies.” The **Hon’ble Minister of Consumer Affairs, GOI, Shri Ram Vilas Paswan** further responding to another Parliamentary Question on misleading advertisement on 28.4.2015⁴⁷⁶ accepting there is a gap in the existing system, replied that “*Department of Consumer Affairs has launched a portal for registering online complaints for Grievances Against Misleading Advertisements (GAMA) on 18th March, 2015... State Governments, Voluntary Consumer Organizations (VCOs), Grahak Suvidha Kendras, Advertisement Standards Council of India (ASCI), Indian Institute of Public Administration (IIPA) and various Regulators of the Central Government are part of the system. An Inter-Ministerial Group has already been formed to take appropriate action on the complaints received.*” The **Hon’ble Minister of Consumer Affairs, GOI, Shri Ram Vilas Paswan** again responding to a Parliamentary Question on misleading advertisement on 01.12.2015⁴⁷⁷ again admitted that there is no single centralized agency to deal with complaints on misleading advertisement and sector regulator concerned/or the ministry/ department concerned takes cognizance of the complaints and takes action and the problem persists. He emphasized that to ensure that no advertisement is made of any goods or services which is misleading or deceiving or contravenes the provisions of this Act and rules and regulations made under it amendments to the existing Consumer Protection Act, 1986, has already introduced by the Consumer Protection Bill 2015 in the Lok Sabha. The Bill seeks to establish a Central Consumer Protection Authority, the objectives of which, .inter alia, to ensure that no person engages himself in the publication of any advertisement which is false or misleading.

5. **Government Papers and Minutes:** The Ministry of Consumer Affairs, Food and Public Distribution, Government of India organized **Four Regional Seminars** on “*Impact of*

⁴⁷⁶ LOK-SABHA UNSTARRED QUESTION NO. 5713 TO BE ANSWERED ON 28/04/2016, by SHRI MOHITE PATIL VIJAYSINH SHANKARRAO and others to Minister of CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION.

⁴⁷⁷ LOK-SABHA UNSTARRED QUESTION NO. 420 TO BE ANSWERED ON 01/12/2015, by SHRI S.P. MUDDAHANUME GOWDA to Minister of CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION.

Misleading Advertisements on Consumers” between December 2011 to January 2013⁴⁷⁸ to discuss the problem and solicit the views of the stake-holders. Reputed academic institutions, including Law Universities were associated to conduct the seminars and the views of various ministries of GOI and State Governments and UTs were also obtained and consolidated. The final minutes of each of these seminars and the consolidating meeting chaired by the Minister of Consumer Affairs as prepared and circulated by Ministry of Consumer Affairs is annexed in **ANNEXURE-I**. The major consensus that have emerged from these seminars on tackling the menace of misleading advertisements are as follows:

- There are several laws and provisions to deal with misleading and false advertisements, but there is a lack of coordination. In a large and diverse country like India, we need a nationwide machinery to counter misleading ads.
- In countries like UK, USA, Australia, and New Zealand there are special statutes, statutory instruments and statutory authorities dealing with misleading advertisements. In UK, there is a statutory post known as Director General of Fair Trading Act, 1973.
- Misleading advertisements is also a criminal offence in many countries when there is a criminal intention associated with publishing such Ads in UK, Canada, Australia, New Zealand etc.
- Considering the tremendous impact advertisements have on consumers, it is earnestly felt that the Government seriously consider enactment of a comprehensive legislation to regulate and control advertising in India which will effectively deter advertisers from resorting to misleading advertisements to promote their business in unethical and unscrupulous manner. Special care must be taken to ensure that the proposed comprehensive legislation on advertising provides for simple, inexpensive but effective and efficacious remedy to aggrieved consumers. In this context, the Government may also consider adding a separate chapter to the Consumer Protection Act itself.
- The proposed set up must have its own investigative wing and also a panel of lawyers to take up cases before Consumer Courts. A similar set up could also be there at state/local level to take up cases. A proposal on these lines is under consideration of the Government. However any change in the regulatory structure, should not be of such an

⁴⁷⁸ Minutes of the Seminar prepared and circulated by the Ministry of Consumer Affairs, Food and Public Distribution, GOI in Annexed for reference in **ANNEXURE-I**

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

- Primary thrust has to be on self-regulation and interest of creativity. Efforts has to undertaken to strengthen the ASCI mechanisms and the government can put to use by associating them with the efforts made by the Government. Whenever any infringement is brought to notice, advisories are sent to ASCI and more teeth have to be given to ASCI to ensure compliance of its decision. The government departments should come together to make a single code rather than several approaches and Promote the ASCI code amongst advertisers. ASCI code needs to be in a simple consumer friendly language, its forms for submission of complaints simplified and the code should be widely circulated.
- The consensus that had emerged is that there is a need to strike a balance between voluntary restraint, self-regulations and stricter regulatory provision in order to safeguard the interest of the buyers who often fall prey to unrealistic claims made by advertisers. Any new regulatory framework should attempt to curb only the mischief in the advertising industry, not the industry itself. To fight the menace of misleading, false and offensive advertisements, there is a need for a combined strategy of Education, Prevention and Punishment.
- After compiling the data from the seminars the Ministry of Consumer Affairs desires coming up with amendments in the Consumer Protection Act.⁴⁷⁹
- There is need for Consumer Courts to become more proactive and issue suitable instructions for corrective advertisements as already provided under Consumer Protection Act.

6. **Research Studies and other reports**

Studies conducted by the NLSIU, Chair on Consumer Law and Practice in 2012-13 on curbing misleading advertisements in drugs, food and broadcasting industry. The major findings were⁴⁸⁰

⁴⁷⁹ Minutes of the Seminar prepared and circulated by the Ministry of Consumer Affairs, Food and Public Distribution, GOI in Annexed for reference in **ANNEXURE-I**

⁴⁸⁰ See in 25 Years of Consumer Protection Act: Challenges and the Way Forward , Ed. Ashok R Patil, NLSIU , 2014, ISBN: 978-93-5087-913-9

- Self regulation were effective in countries like UK and Canada due to greater awareness and stricter implementation.
- The regulations that exist in India today are not enough and that there are a lot of misleading advertisements today which trick the consumers.
- Loopholes are basically in implementation.
- There must be closer co-operation for preventive rather than corrective action as once out they make an impact immediately.

The studies recommended for an exclusive legislation which can control misleading advertisements of all sectors of all mode.⁴⁸¹ They also advocated for constitution of a strong regulatory authority under the Consumer Protection Act having power to deal with false and misleading advertisements.⁴⁸² The authority should coordinate with the industry based self-regulator ASCI. The authority should be vested with power to investigate and impose high penalty for non-compliance of its decisions and orders. Finally a code of conduct for advertisement needs to be adopted and made compulsorily applicable to all sectors.⁴⁸³

Consumer Unity and Trust Society a Voluntary Consumer Organization in 2012 had prepared and circulated a report on '*Status of Law Enforcement for Misleading Advertisements in India*'. The report concluded that although Consumer Protection Act along with several other legislations have provision to deal with misleading advertisements, yet a few instances when such a complaint has been made. The main drawbacks that exist as highlighted in the report are as follows:

- Consumer fora can only adjudicate over complaints filed before them. The consumer courts neither have the power nor the infrastructure to investigate like earlier MRTP Commission, *suo motto* into misleading advertisement nor take up such cases on their own. Nor do they have an investigative wing.
- Inordinate delays in pronouncing the final verdict; and

⁴⁸¹ See in 25 Years of Consumer Protection Act: Challenges and the Way Forward , Ed. Ashok R Patil, NLSIU , 2014, ISBN: 978-93-5087-913-9

⁴⁸² See in 25 Years of Consumer Protection Act: Challenges and the Way Forward , Ed. Ashok R Patil, NLSIU , 2014, ISBN: 978-93-5087-913-9

⁴⁸³ See in Misleading Advertisements and Unfair Trade Practice In India: A Critical Case Analysis, Ashok R Patil, NLSIU , 2014, ISBN: 978-93-83363-09-4 at pg. 311

- Also there is no clarity about the jurisdiction of consumer fora in case of misleading advertisements. If someone complain against any such advertisement who have not had actual loss, so which fora he should complain.⁴⁸⁴
- Also the study conducted by CUTs has been equally critical on the role of a self-regulator. The study observes advertising self-regulation does not replace statutory legislation. Though self-regulation is laudable but existing time lag between a claim not supported by facts and corrective measures is wide and hence unacceptable. Besides, membership of ASCI is not compulsory and hence representation on ASCI from the advertisers category continues to be poor, all major advertisers are not yet members of ASCI.⁴⁸⁵

The **Federation of Indian Chamber of Commerce and Industries** to understand the self regulatory framework and its effectiveness in advertising in India conducted a survey based on the feedback from advertising and marketing fraternity on adequacy and functional effectiveness of the existing framework in 2014.⁴⁸⁶ Feedback was collected from top tier professionals working in the advertising & marketing space including advertisers across sectors, agencies (media, digital Direct Marketing), media (print, TV & radio), market research companies, premier B schools of the country and independent marketing consultants.

According to the findings of the survey almost 31% of the respondents participating in the survey consider that the self regulatory body is effective and better for industry vis a vis Government regulation. What is necessary is to generate more public awareness about the effective work done by ASCI. The FICCI study reveals that the first area to recognise is self-regulation. This is backed by the fact that an empirical survey that nearly 75% feel that self

⁴⁸⁴ Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers, Prepared by Consumer Unity & Trust Society (CUTS), 2012 (available at http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf)

⁴⁸⁵ Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers, Prepared by Consumer Unity & Trust Society (CUTS), 2012 (available at http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf)

⁴⁸⁶ Advertising Standards in India: An Introduction, Survey Conducted by FICCI (Available at http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf)

regulation is the way forward. The industry should focus not on just the ‘bad apples’ but on making better ones. Awareness is not much of a yardstick for measuring implementation.⁴⁸⁷

However an overwhelming majority of 56% of respondents to the FICCI survey were of the opinion that the existing self regulatory framework is inadequate as well as ineffective. The primary gaps that have been identified include limited consumer awareness about the complaint mechanism, resulting in very limited number of complaint compared to sizeable proportion of the problem; the advertising code which is dated and not able to keep pace with the changing trends; the mechanism is largely reactive in its approach and also takes longer period to take a final call which may have a great impact on the practical implications of the decisions.⁴⁸⁸

Also responding to the issue of measures to curb the phenomenon of misleading advertisement only 20 % of the respondents were of the opinion that the steps and actions taken by ASCI are adequate, where as 80% of the respondents were of the view that the steps and actions taken by the body to prevent the phenomenon of misleading advertisement are not adequate. The major drawbacks pointed out by the respondents are:

- The scope of misleading advertisement needs to be well defined.
- There is no proactive monitoring of the misleading advertisements. Unless a complaint is registered, it is impossible to identify misleading advertisements. At best the self regulatory body does is stopping a certain type of advertising well after the campaign is over. The violator gets away by issuing an apology letter in most of the cases.
- Only larger campaigns are monitored. The bulk of the misleading advertising happens in rural India where consumers are mostly uneducated and unaware. The actions of ASCI are not visible in these areas that matter to the common populace.
- ASCI is seen as focusing only on inter-corporate disputes and Cable TV as a medium, it is not addressing the larger issues that Indian consumers face.
- Misleading advertisement is a two handed clap. Media space sellers are equally responsible along with advertising agency directly in many cases.

⁴⁸⁷ Minutes of the Seminar prepared and circulated by the Ministry of Consumer Affairs, Food and Public Distribution, GOI in Annexed for reference in **ANNEXURE-I**

⁴⁸⁸ Advertising Standards in India: An Introduction, Survey Conducted by FICCI (Available at http://www.ficci.com/Sedocument/20240/Survey_on_Advertising_Standards.pdf)

It was inter-alia concluded by the survey that ASCI needs to adopt stringent measures with robust implementation mechanism such as – a). prompt action on the complaint and power to pull out advertisement immediately from screening; b). regular tracking of the communication mediums carrying misleading advertisements and have the power to assess and evaluate each claim by the advertisers and penalize the errant. Also ASCI must initiate suo-motto action in case there is no complaint registered by way of filing of public interest litigation and hefty financial punishment in order to make the cost of non compliance very heavy.

An analysis of the secondary data indicates that there is a consensus that ‘false and misleading’ advertisement is harmful for consumers, business and economy at large. ‘False and misleading’ advertisement is increasing and the current system has completely failed to tackle the problem. In the given Indian scenario, the possible strategy to control misleading advertisements can be three pronged, firstly, to improve/strengthen the monitoring and implementation; secondly, to harmonize and update the existing laws/regulation into a comprehensive code and lastly in the improved system/environment, move to a sole regulator preferably industry based self-regulator backed by public authorities to ensure its compliance is mandatory. Evidence indicates that the self regulatory body is more effective and better for industry vis a vis Government regulation. What is necessary is to generate more public awareness about the effective work done by regulator among the common consumers. Finally a code of conduct for advertisement needs to be adopted and made compulsorily applicable to all sectors.

4.1 Empirical study

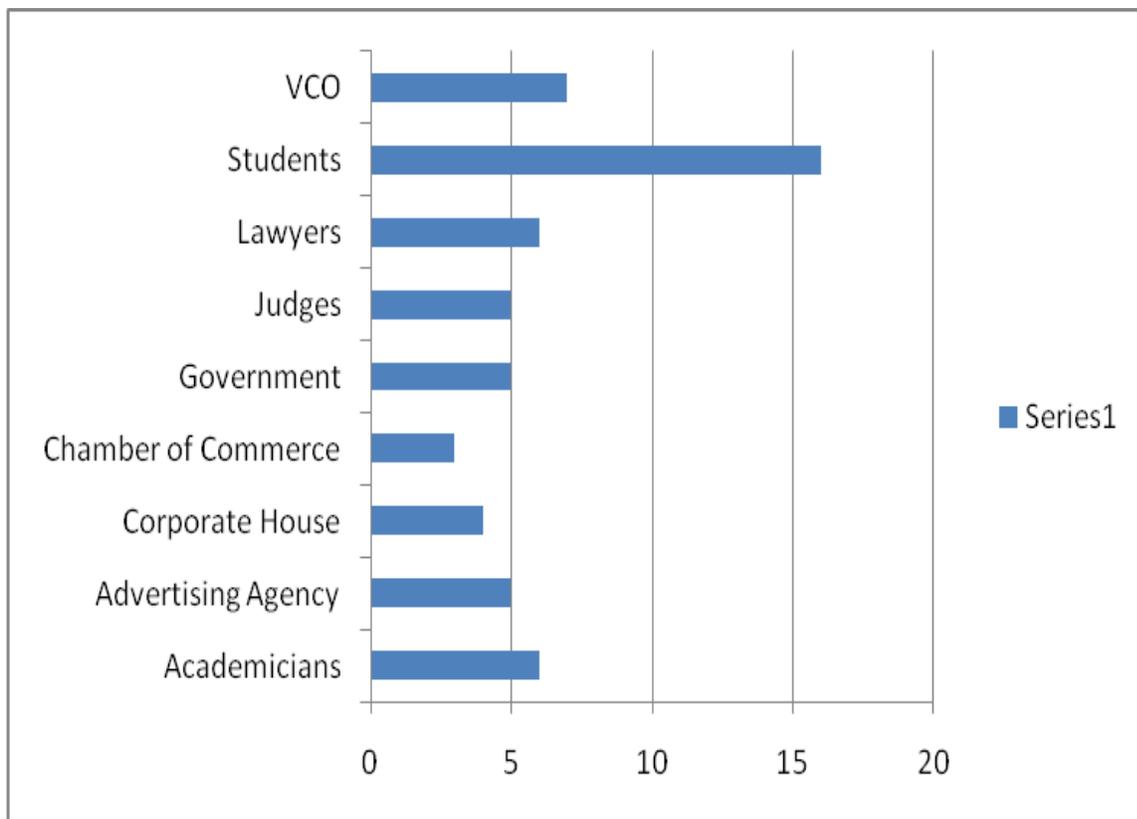
The findings based on the evidence collected on the basis of various secondary sources as discussed above is used for the purpose of verification of the hypothesis. However for greater certainty and validity of the final findings a small survey has been also administered by the researcher. The detailed methodology of the survey is mentioned in the introduction. The data collected by way of survey has been analyzed and the analysis of the data is presented same in next section.

4.1.1 Analysis of the data

1. Segregation of respondents as per professional affiliation represented below

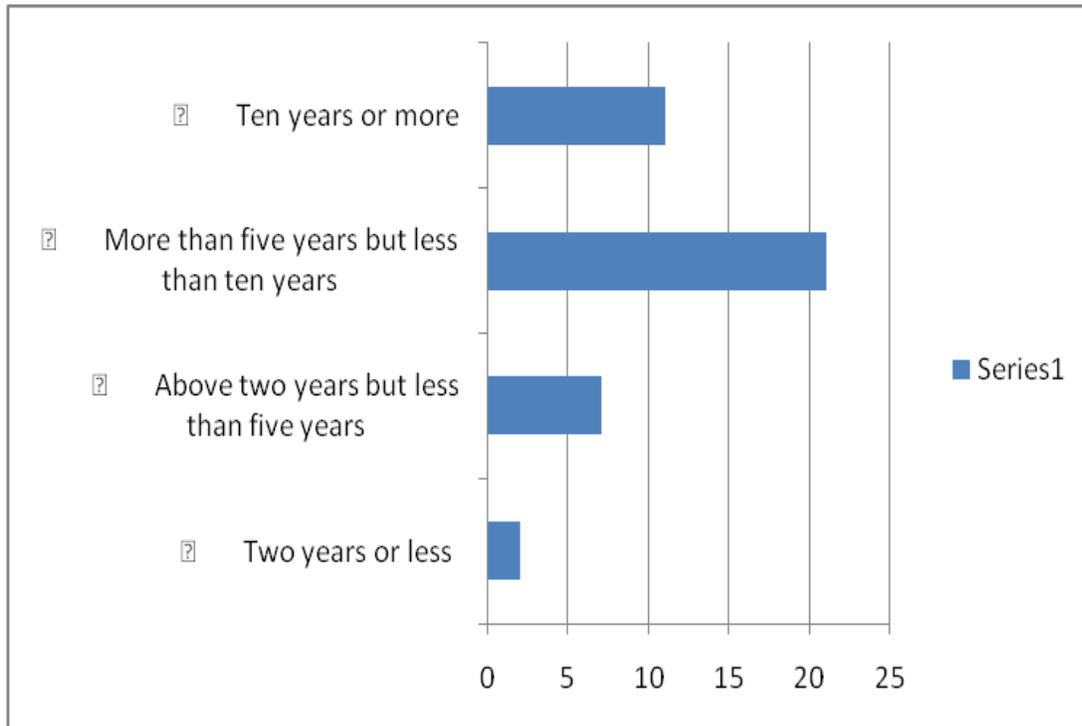
To have a more focused group for the purpose of survey only the major stakeholders were considered for the purpose of the survey who are directly involved with the advertisement sector.

The group was further categorized into nine categories based on professional affiliation, and then 30 prospective respondents from each category were identified and questionnaires were circulated for the purpose of the survey. Only 85 filled questionnaires were received till the end of the survey period. Subsequently the same questionnaire was again circulated to the 85 respondents from whom responses were received at the end of the first survey period. But till the end of the second survey period only 57 responses were received. These 57 responses were only accepted for analysis. The respondents were segregated according to the pre-determined categories. Data is represented below:



The largest group of respondents belongs to the category of students 29%. VCO representation in the data was 9%. The remaining categories were almost evenly distributed.

2. Length of professional engagement for respondents



The majority of respondents (excluding students) had length of profession engagement between 5 to 10 years (53%). 29% of respondents had length of profession engagement more than 10 years.

3. Views of the respondents on the role and function of advertisements

Issues raised	Replies received	
	Yes	No
Advertising is necessary for freedom of press, free market and development of media industry	39	18
Advertising adds value to consumers decision making relating a product by providing important information	39	18
Consumer choices are actually influenced by advertisements	22	35
Advertising enhances competition in the market	36	21
Advertising industry plays a role in the economic development and GDP	48	9

Analysis of the responses on role and function of advertisements it appears 68% of respondent agree that advertising is necessary for freedom of press, free market and development of media industry, while 32% don't agree. Similarly on the issue of role played by advertising with relation to consumer information, 68% of the respondents agree that advertisement adds value to consumer decision making relating a product by providing important information and 33% of the respondents disagree. Also 63% of the respondents agree that advertising enhances competition in the market and 37% of respondents disagree. Moreover 85% of respondents agree that advertising industry has seen a phenomenal growth in recent time it is an integral part of the modern economy and GDP. But only 21% of respondents agree that consumer choices are influenced by advertisements and 79% respondents disagree.

4. Views of the respondents about false and misleading advertisement

Issues raised	Replies received	
	Yes	No
False and misleading advertisements are increasing in India	56	1
False and misleading advertisements impair consumer behavior and decision-making in practice	50	7
False and misleading' advertisements impair competing products and affects in economic productivity	36	21
Stringent regulation on advertisements is justified to ensure advertisements are honest and non-deceptive e.g. introducing censorship and vetting of Ads	17	39
Or the regulatory approach needs to only focus on preventing and punishing false and misleading ads	56	1

Analysis of the responses about false and misleading advertisement reveals that 98% respondents agree that problem of 'false and misleading' advertisements has increased in recent times. Also 87% of respondents agree that False and misleading' advertisements by its very nature impair competing products and affects in economic productivity. Further 64% of respondents agree that False and misleading advertisements impair consumer behavior and decision-making in practice and 36% respondents disagree. But only 29% respondents agree that stringent regulation on advertisements is justified to ensure advertisements are honest and non-deceptive and 71% disagree. However 98% respondents agree that the scope of the regulatory approach needs to be limited to only preventing and punishing false and misleading ads and not in excess.

5. Views of the respondents about the effectiveness of the current legislative framework and government regulators

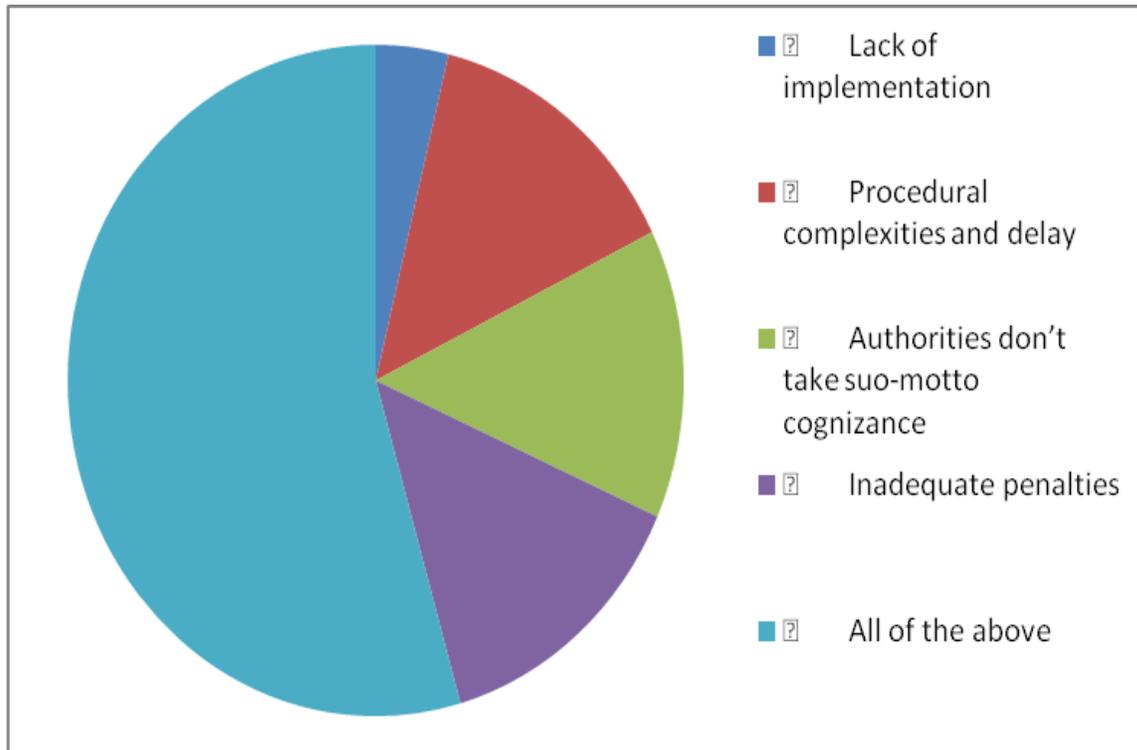
Issues raised	Replies received	
	Yes	No
Aware of the current legislative and government regulatory framework to curb misleading advertising in India	57	0
Effective in tackling 'false and misleading' advertisement	1	56
Consumers and advertisers are aware about the current legislative and government regulatory framework	7	50

Analysis of the responses on effectiveness of the current legislative framework and government regulators states that 98% of the respondents agree that the current laws and government regulators are not effective in tackling the problem of 'false and misleading' advertisement. Similarly 87% respondents agree that the level of awareness about the current legislative and government regulatory framework among the consumers and advertisers is insufficient. Respondents were probed on the major drawbacks in the current laws and government regulators to address the problem of 'false and misleading' advertisement effectively. The respondents were requested to choose among following options one or more options which in their opinion are the main drawbacks

- Multiple legislations and multiple regulator
- Lack of any uniform definition of 'false and misleading' advertisement
- Lack of implementation
- Procedural complexities and delay
- Authorities don't take suo-motto cognizance
- Inadequate penalties
- All of the above

The data collected from the responses about the major drawbacks in the current legislative framework and government regulators is represented below:

Main drawbacks of the existing system



The data as represented above indicates that an overwhelming majority of 87% of respondents agree that all the above factors are responsible for the ineffectiveness of the current legislative framework and government regulators. However 8% of respondents have separately identified procedural complexities, delay, inadequate penalties and lack of pro-activeness among the regulators as major drawbacks. Whereas only 1 respondent opines that lack of implementation is the sole drawback of the existing system.

1. Views of the respondents about the effectiveness of the industry based self-regulator

Issues raised	Replies received	
	Yes	No
Knowledge about Advertising Standard Council of India	56	1
Effective in tackling 'false and misleading' advertisement	26	31
Are consumers aware about Advertising Standard Council of India	12	45
Advertisers generally comply with the Advertising Standard Council of India directions	47	10

Voluntary control and self-regulation has been a dominant mechanism in regulating advertisements globally. As discussed in details in Chapter-III the internal or self regulator of misleading advertising in India is achieved through the Advertising Standards Council of India (ASCI). ASCI has also adopted a Code on advertising to be voluntarily observed by advertisers and has a grievance redressal mechanism. Respondents were also probed on the role of ASCI. The analysis of the responses on point out that 54% of the respondents agree that ASCI is not effective in tackling ‘false and misleading’ advertisement, whereas remaining 46% consider ASCI effective or partially effective in tackling ‘false and misleading’ advertisement. Compared to the data on effectiveness of the government regulator where 98% of the respondents agreed that the current laws and government regulators are not effective in tackling the problem of ‘false and misleading’ advertisement ASCI scores better. Also 83% of respondents agree that advertisers generally comply with the Advertising Standard Council of India directions. But 82% of the respondents agree that general consumers are not aware about Advertising Standard Council of India.

2. Views of the respondents on way forward for India

Issues raised	Replies received	
	Yes	No
Comprehensive legislation with a sole regulator replacing the current system of multiple legislations and multiple regulator will be more effective	35	22

Table-1

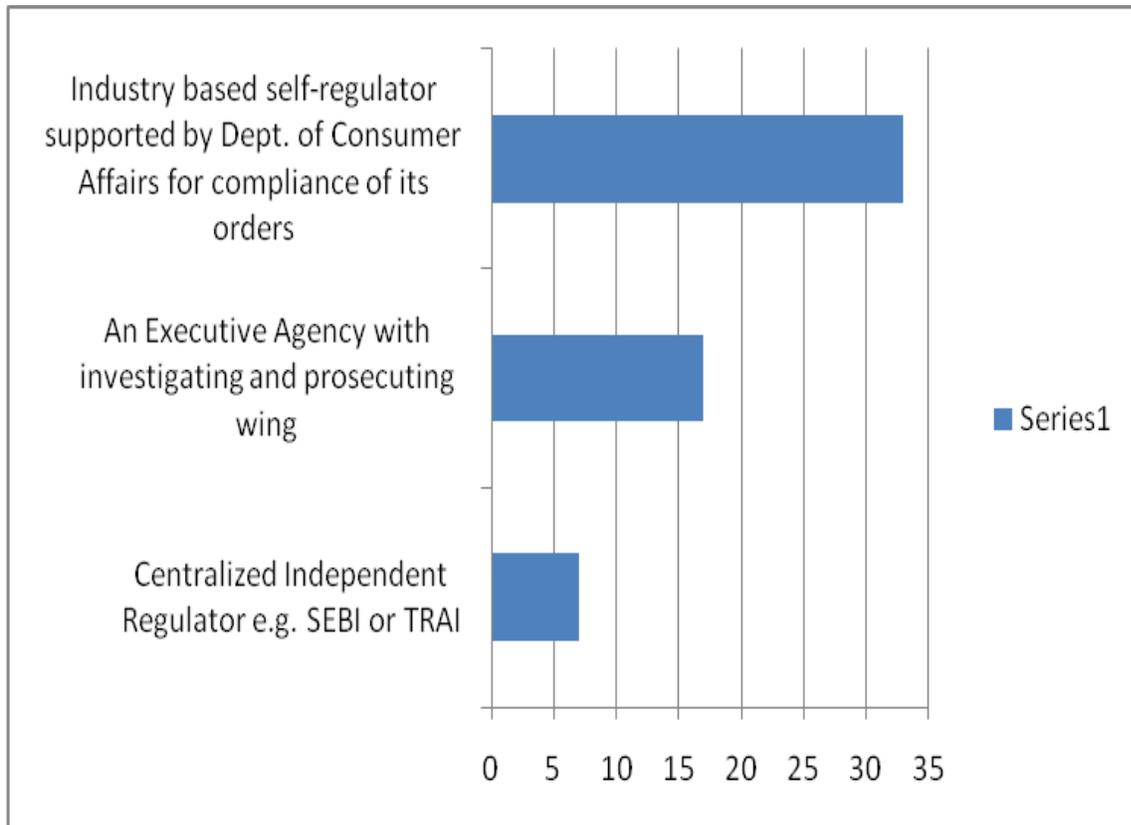
Respondents were further proved about the future steps that can be adopted to strengthen the efficacy of the legal and regulatory system so that it is better equipped to tackle the problem of ‘false and misleading’ advertisement. The way forward in view of 61% respondents are incorporating a comprehensive legislation with a sole regulator to replace the current system of multiple legislations and multiple regulators. Also respondents were asked to provide their preferences on the structure of the new regulator from the options below in the order of 1, 2, 3 and the options were

- Centralized Independent Regulator e.g. SEBI or TRAI
- An Executive Agency with investigating and prosecuting wing

- Industry based self-regulator supported by Dept. of Consumer Affairs for compliance of its orders

The data collected from the responses about the structure of the new regulator is represented below:

Structure of the regulator in the new law



It appears from the representation of the data above 57% respondents as their first preference agree that the structure of the new regulator needs to be industry based self-regulator supported by Dept. of Consumer Affairs for compliance of its orders. This is followed by choice of an executive Agency with investigating and prosecuting wing as their first preference by 29% of respondents. While only 13% of respondents has given first preference to a Centralized Independent Regulator.

Therefore it can be inferred from the analysis and interpretation of the data that most respondents tend to agree that commercial advertisements are integral to freedom of press, free market and enhancing competition. But consumer choices are not largely influenced by advertisements.

Although false and misleading advertisement may not always directly cause loss to consumers, but it impairs consumer interest and affects the economic productivity. Problem with false and misleading advertisement is increasing and the current legal and government regulators are ill equipped to control the problem. The system suffers from several deficiencies. ASCI have been comparatively more effective than government regulators to tackle false and misleading advertisements but it has a limited reach. **A comprehensive legislation with a sole regulator is the way forward, but the scope of the regulatory approach needs to be limited to only preventing and punishing false and misleading ads and not in excess.**

4.2 Chapter Findings

- 1) Currently in India a large number of complaints of misleading advertisements appearing in the electronic and print media making false and exaggerated claims about products. But very negligible number of cases are filed before consumer courts or independent regulators in various sectors all over the country on misleading advertisements.
- 2) There is a lack of uniformity in defining the scope and ambit of advertisements that fall in the category of 'false and misleading'. Currently different statutes and regulation defines 'false and misleading' advertisements differently. Also in the judicial decision there is no uniform standard applied to determine that what is the basis to judge an advertisement is misleading or not. The scope of misleading advertisement needs to be well defined.
- 3) Consumer fora can only adjudicate over complaints filed before them. The consumer courts neither have the power nor the infrastructure to investigate like earlier MRTP Commission, suo motto into misleading advertisement nor take up such cases on their own. Nor do they have an investigative wing. Also the proceedings before such courts suffer inordinate delays in pronouncing the final verdict.
- 4) Also there is no clarity about the jurisdiction of consumer fora in case of misleading advertisements. If someone complain against any such advertisement who have not had actual loss, so which fora he should complain.
- 5) The regulators that exist in India today are not doing enough to tackle the problem and there are a lot of misleading advertisements today which trick the consumers. Loopholes

are basically in implementation. There is also no proactive monitoring of the misleading advertisements. Unless a complaint is registered, it is impossible to identify misleading advertisements. At best the self regulatory body does is stopping a certain type of advertising well after the campaign is over. The violator gets away by issuing an apology letter in most of the cases.

- 6) The existing model of self regulatory (ASCI) is also not adequate and totally effective. The primary gaps that have been identified include limited consumer awareness about the complaint mechanism, resulting in very limited number of complaint compared to sizeable proportion of the problem; the advertising code which is dated and not able to keep pace with the changing trends; the mechanism is largely reactive in its approach and also takes longer period to take a final call which may have a great impact on the practical implications of the decisions. The ASCI Code on Advertising has limited application and reach. Membership of ASCI is not compulsory and hence representation on ASCI from the advertiser's category continues to be poor, all major advertisers are not yet members of ASCI. ASCI is seen to be focusing only on inter-corporate disputes and Cable TV as a medium, it is not addressing the larger issues that Indian consumers face.
- 7) In the recent past the Government has initiated various pro-active measures e.g. constitution of an Inter-Ministerial Monitoring Group for better monitoring of false and misleading advertisement; launching a web-based grievance redressal mechanism to address complaints relating to false and misleading advertisement; and introducing an amendment proposal to Consumer Protection Act to establish a federal regulatory authority with wide regulations making, investigative and prosecuting powers. But these efforts are short-term or ineffective measures because false and misleading advertisement cannot be effectively tackled with this fragmented and complex approach of multiple legislation and regulators. India requires a comprehensive legislation with a sole regulator conforming accept norms of regulatory structure.
- 8) Considering the tremendous impact that advertisement has on consumers, it is earnestly felt that the Government seriously consider enactment of a comprehensive legislation to regulate and control advertising in India which will effectively deter advertisers from resorting to misleading advertisements to promote their business in unethical and

unscrupulous manner. Special care must be taken to ensure that the proposed comprehensive legislation on advertising provides for simple, inexpensive but effective and efficacious remedy to aggrieved consumers. In this context, the Government may also consider adding a separate chapter to the Consumer Protection Act itself.

- 9) The proposed set up must have its own investigative wing and also a panel of lawyers to take up cases before Consumer Courts. A similar set up could also be there at state/local level to take up cases. A proposal on these lines is under consideration of the Government. However any change in the regulatory structure, should not be of such an omnibus kind as to impinge upon the technical and administrative expertise of other Departments.
- 10) Primary thrust has to be on self-regulation and interest of creativity. Efforts has to undertaken to strengthen the ASCI mechanisms and the government can put to use by associating them with the efforts made by the Government. Whenever any infringement is brought to notice, advisories are sent to ASCI and more teeth have to be given to ASCI to ensure compliance of its decision. The government departments should come together to make a single code rather than several approaches and Promote the ASCI code amongst advertisers. ASCI code needs to be in a simple consumer friendly language, its forms for submission of complaints simplified and the code should be widely circulated.
- 11) The consensus that has emerged is that there is a need to strike a balance between voluntary restraint, self-regulations and stricter regulatory provision in order to safeguard the interest of the buyers who often fall prey to unrealistic claims made by advertisers.
- 12) Any new regulatory framework should attempt to curb only the mischief in the advertising industry, not the industry itself. To fight the menace of misleading, false and offensive advertisements, there is a need for a combined strategy of Education, Prevention and Punishment.