
IN THE COURT OF OPINION: EXAMINING THE LEGALITY OF DISPARAGEMENT AND COMPARISON IN INDIAN ADVERTISING

Shreya Agrawal, Symbiosis Law School, Pune

ABSTRACT

In today's competitive market, advertising plays a pivotal role in shaping consumer perception and brand identity. While comparative advertising is legally permissible under Indian law, it often borders on disparagement, raising complex questions around fairness, freedom of speech, and market ethics. This paper delves into the legal contours distinguishing legitimate comparison from unlawful disparagement within Indian advertising jurisprudence. It examines the evolution of judicial interpretation, statutory frameworks under the Trademarks Act and the Consumer Protection Act, and key case laws that have shaped the current regulatory environment. Through a critical analysis of landmark judgments and regulatory interventions, the study underscores the delicate balance courts must maintain between promoting healthy competition and preventing reputational harm. The paper concludes by reflecting on the need for clearer legal standards and self-regulatory guidelines to ensure that advertising remains truthful, non-misleading, and respectful of competing brands.

Keywords: Comparative Advertising, Disparagement, Indian Advertising Law, Consumer Protection Act, Freedom of Expression, Market Competition.

INTRODUCTION

“In the realm of advertising, competition breeds creativity and conflict.”

In a competitive climate, the fight of brands for superiority and greater market domination lowers to the art of persuasion. Every brand's attempts at persuasion constantly changing; every company need a different approach to grab the customer's mind. Sometimes it takes the shape of a funny comedy like "CRED" or a catchy song like the Honey Bunny tune *"Idea Cellular"*. Every brand is fighting in the field of business, trying to be dominant and different with such innovative commercials. Though there is no limit to creativity, the mind begins to act in hate when it is not involved in creation. The fierce rivalry drives companies to highlight their credibility by comparing their products with others. Still, the issue begs itself until what point should this comparison be allowed? Should one compare with malice denigrating the other brand just in limited scope? Another side of the coin would argue that limits in an open market would violate their right to express themselves and lead to a non-competitive market.

Article 19(1)(a)¹ of the Indian Constitution enshrines the fundamental right to freedom of speech and expression, which encompasses media freedom.² However, there are certain restrictions placed on this right guaranteed to the populace. Raising the concern whether the promise of free media and the protection it enjoys under Article 19³ should extend to comparative and disparaging advertisements. In a cutthroat market when brands are spending exorbitantly to remain relevant and appease the consumer, it is crucial that businesses are aware of the nuances of law relating to Comparative and disparaging advertisement.

The purpose of this research outline is to serve as the basis of a future research article dealing with such advertisements in reference to constitutionality, the Trademarks Act and ASCI Code. By shedding light on these issues, the outline seeks to contribute to a deeper understanding of the interplay between advertisements and fundamental right of free speech and expression in India's dynamic market.

RESEARCH QUESTIONS

1. What is the difference behind disparaging and comparative advertisements?

¹ INDIA CONST. art. 19(1)(a)

² Indian Express Newspapers v. Union of India & Ors., 1986 AIR 515.

³ INDIA CONST. art. 19

2. Whether restriction on Disparaging advertisements be considered violation of Article 19 of the Indian Constitution?
3. Whether Comparative Advertisements can be restricted on the same grounds as disparaging?

RESEARCH OBJECTIVES

- To highlight the difference between disparaging and comparative advertisements.
- To analyse Freedom of Speech and Expression in light of disparaging advertisements/
- To examine the limitations of Freedom of Speech and expression in reference to comparative advertisements

RESEARCH METHODOLOGY

The research was conducted with a non-doctrinal methodology. The study has a vast amount of relevant information accessible through online research. Data from law journals, legal articles and books formed the foundation of this research.

Source of Data: Primary Sources – Articles of the Constitution and provisions, Secondary Sources – Journals, Books, News articles, and Legal articles.

Method of Citation: The Uniform System of Citation (Bluebook) 21st Edition.

Time and Place of Data Collections: Online (July 22, 2025 to July 27, 2025)

LITERATURE REVIEW

In the study *Comparative Advertisement in India: A Judicial Analysis (2023)*⁴, the author has examined the constitutional perspective on control and limitations on advertising in context of Article 19(1)(a) of the Indian Constitution. The paper notes how the Supreme Court in *Tata Press v. Mahanagar Telephone Nigam Ltd*⁵ decided that advertising qualifies as business communication within the understanding of Article 19(1)(a), therefore changing the

⁴ Lamata Ashish, Comparative Advertisement in India: A Judicial Analysis, Alliance Journal of Intellectual Property Law, Vol. 1, Issue: 1, 2023.

⁵ Tata Press v. Mahanagar Telephone Nigam Ltd, (1995) 5 SCC 139.

jurisprudence of advertising. Within the framework of comparison ads, the study explores the legal ramifications and considerations of such kind of advertising in the Indian market. The report emphasizes the need of tighter control in India to guarantee that comparable advertising does not cause negative attitude against other businesses. The essay addresses negative advertising but does not precisely separate a comparative from a scathing one. Another drawback of the article is the lack of case studies or practical examples even although it addresses several judicial stances on insulting ads. In the Indian setting, such case studies would assist show the actual difficulties rivals in a such a competitive market confront.

The article by *Siddharth Ratho (2019)*⁶ offers a comprehensive overview of the debate between comparative advertisements and product disparagement by outlining the seminal precedents of media law. The research employs contemporary case studies of disparagement to elucidate the competitive dynamics within the Indian commerce sector. Nonetheless, the essay is constrained by restrictions, including the absence of legislative evidence to support the views presented. The essay also neglects to address the constitutional considerations related to advertisements and how restrictions on certain ads may be considered legal and non-violative. The paper's scope is limited, and the author may have identified avenues for further research or offered recommendations for policymakers to uphold the ideal of free speech alongside acceptable limits.

The article titled *Advertising Industry vs Freedom of Speech: Navigating the Slippery Slopes of a Developing Jurisprudence (2021)*⁷ provides a comprehensive overview of the intricate relationship between brand advertising and freedom of speech and expression. The paper delves into the constitutional framework of India and the United States and drawing from landmark case laws explores the evolving jurisprudence of advertisement. A substantial portion of the article is focused on the regulatory landscape of advertising in India; however, it fails to covert the aspect of discourse in comparative and disparaging advertisements. While the text does offer substantial insights about the constitutional protection of commercial speech under the Indian constitution, it overlooks how Article 19(1)(a) intersects with the regulation of comparative and disparaging advertisements. Similar to the paper by *Mr. Ashish (2023)*⁸ the

⁶ Ratho Siddharth, *Comparative Advertisements vs. Product Disparagement: Walkin the thin line*, Law Street India Journal, Feb 06, 2019.

⁷ Shaw Preeti, *Advertising Industry vs Freedom of Speech: Navigating the Slippery Slopes of a Developing Jurisprudence*, Indian Journal of Law, Polity and Administration, Vol 2. Issue 2 June 2021.

⁸ Supra note 4.

paper overemphasizes on legal perspectives and fails to examine any case study on disparaging advertisements let alone differentiate between a comparative and a disparaging advertisement.

CRITICAL ANALYSIS

‘Comparative advertising’ refers to narrate advertisements where the business advertises its goods or services by comparing it with another business.⁹ An advertisement can fall under three broad categories –

1. Non-comparative advertisements where no reference is made to any competing product directly or indirectly.
2. Advertisements that indirectly compare the goods or services with a competing business entity or brand.
3. Direct comparative advertisements, where the competing goods are recognizable in the advertisements.¹⁰

An commercial that belongs to the final two categories is termed comparison advertising. There are certain jurisdictions such as Germany where comparative advertisements are banned; however, in the case of most commonwealth, including India comparative advertising is seen as a positive mode of media.¹¹ It empowers the customer base by showing comparison of effectiveness, price, quality thereby, enhancing the consumer experience; however, till what limit would such comparison be tolerated. A comparative advertisement would be considered as a disparaging advertisement the moment it contains unintentional misinformation or intentional falsification of information to hamper the business of the competitor.¹²

According to the *Black's Law Dictionary* the term **‘disparage’** means to dishonour by comparison. Consequently, a disparaging advertising is one that undermines or diminishes the

⁹ Council Directive 84/450/EEC of 10 September, 1984 concerning misleading and comparative advertising (as amended by Council Directive 97/55 of the European Parliament).

¹⁰ Pechmann and Stewart, ‘The Development of a Contingency Model of Comparative Advertising’, Working Paper No. 90-108, Marketing Science Institute, Cambridge, MA cf Ryder Rodney D, Brands, Advertisements and Advertising (LexisNexis Butterworths, New Delhi) 2003, p 326.

¹¹ Bhavana B. Sharma, Comparative Advertising and Product Disparagement: Conflict Between Trademark Protection and Commercial Free Speech, IPR & Tech. L. Rev., http://docs.manupatra.in/newsline/articles/Upload/34D9D421-622C-49A1-8D5B-3CF9BF421947.2-B_IPR.pdf (last visited Apr. 21, 2025)

¹² Phillips Jeremy, Trademark Law- A Practical Anatomy, 1st edn (Oxford, London) 2003, 8.93.

reputation of another business's products or services through comparison.¹³ It is crucial to note that comparative advertisement and disparaging advertisements are not one and the same. A comparative advertisement becomes a disparaging advertisement when there is malice or unintentionally harm to goodwill caused through comparison. It can thus be said that Advertisement is the family, Comparative advertisement is the *genus* and a disparaging advertisement would be the *species* to the comparative advertisement's genus.

Article 19(1)(a) of the Indian Constitution¹⁴ guarantees Freedom of Speech and Expression to every citizen of India. However, through judicial interpretation the Supreme Court observed that '**commercial speech**' is protected under Article 19(1)(a). The freedom of speech manifested through advertisement is not absolute. **Article 19(2)**¹⁵ stipulates that defamation is prohibited under the pretext of freedom of speech and expression, and it would be excessive to assert that a business possesses the right to denigrate a competitor's product or service under the constitutional liberties it enjoys. Furthermore, in the case of ***Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.***¹⁶ the SC laid down guiding principles for advertising –

- a. A commercial advertisement enjoys protection under Article 19(1)(a) as a 'commercial expression'
- b. Advertisements are prohibited from being unfair, deceptive, inaccurate or misleading.

In light of the judgement and the restrictions on Article 19, the Delhi High Court in the case of ***Pepsi Co. Inc. & Ors. v. Hindustan Coca-Cola Ltd. & Another***¹⁷, it was determined that advertisements may be employed to promote one's goods or services, even through comparative advertising; however, disparaging a competitor's product via advertisement is impermissible and lacks protection under Article 19(1)(a), as it is inherently unfair to competitors and may be characterized by potential deceptiveness, inaccuracy, and malice intended to mislead consumers.

Similarly in the case of ***Reckitt & Colman of India Ltd. v. M.P. Ramchandran and Anr***¹⁸

¹³ Meaning of 'disparagement', as given under Black's Law Dictionary, Garner Bryan A, Black's Law Dictionary, 7th edn (West Group, Minnesota) 1999.

¹⁴ Supra note 5. Tata Press Ltd.

¹⁵ INDIA CONST. art. 19 (2).

¹⁶ Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1 1999.

¹⁷ Pepsi Co. Inc. & Ors. v. Hindustan Coca Cola Ltd. & Another, 2003 (27) PTC 305

¹⁸ Reckitt & Colman of India Ltd. v. M.P. Ramchandran and Anr., 1999 (19) PTC 741.

where the Calcutta High Court dealt with a case of puffery and disparagement of advertisement, the court ruled that A business claiming to be the best in the world or the most superior with no actual proof can do so through advertisement as commercial expression is safeguarded under Article 19(1)(a). However, if the business asserts that their goods are superior by claiming that the good's of the competitors are inferior it would amount to disparagement and the same is prohibited and would not enjoy free speech protection.¹⁹

The case (*Gujarat Co-Operative Milk Marketing v. Hindustan Unilever Ltd. And Ors*²⁰) dealt with a comparative television commercial broadcasted by Amul for its ice-cream wherein the entity compared its ice-cream with 'frozen desserts' offered by other brands. In the advertisement Amul stated that its ice-cream is made of 100% milk while every other brand manufactures its 'frozen desserts' by using vanasapati oil. Though throughout this advertisement no mention was made to Kwality Wall's ice cream, the party contended that Amul's advertisement disparages the image of its product – Kwality Wall's ice cream. The Bombay High Court in congruence to the previous precedents ruled that Amul's advertisement is disparaging in nature and ordered permanent retainment of the advertisement.

The case comes in light that a disparaging advertisement cannot enjoy shelter under Article 19(1)(a). Had it been Amul merely claiming that its ice cream is made up off a 100% milk and is superior than every company in the market. Such advertisement would have been a puffed-up comparative advertisement not amounting to disparaging material.

CONCLUSION AND SUGGESTIONS

In the era of globalization and competition, the battle for consumer attention remains fierce, marked by perpetual clash and advertisements for market supremacy. To set themselves apart from their competitors each business strives for creativity and innovation to get the edge over the other. However, in this conflicting marketplace the line of goodwill and creativity is often blurred with malice and disparagement. This research outline has traversed the landscape of advertising in India from a constitutional point of view. Through the analysis and review of judicial precedents, constitutional framework and scholarly articles it has become evident that

¹⁹ Pankaj Soni & Aastha, Comparative Advertising in India – The Thin Line Between Puffery and Disparagement, Lexology, <https://www.lexology.com/library/detail.aspx?g=3a36b90e-3b77-4467-b273-f4a30261f3da>.

²⁰ Gujarat Co-Operative Milk Marketing v. Hindustan Unilever Ltd. And Ors, AIR ONLINE 2019 BOM 1473.

comparative and disparaging advertisements are completely different from each other. *All disparaging advertisements are comparative but not all comparative advertisements are disparaging.* The thin line of difference is that of goodwill, truth, fairness and accuracy.

Within the analysis of the constitutional framework in particular Article 19(1)(a), the author comes to the conclusion that the right guaranteed is not absolute in the realm of advertisement and can be restricted if found to be in violation of Article 19(2) or disparaging in nature. The judicial pronouncements in *Colgate Palmolive*²¹ and *Pepsi Co. Inc.*²² have established guiding principles for advertisements to ensure that a healthy competition is maintained in the market. The case study of *Amul v. Kwality Wall* serves as a poignant reminder of the court's stand on disparagement. It reaffirms the ethical standards of advertising and ensures that the shield provided to the business is not used as a sword to harm the goodwill of others.

The research outline sets the stage for a greater academic endeavour in the exploration of the legal and ethical dynamics in Comparative and Disparaging advertising. The limitations pointed out in the existing literature is with the aim to foster a more nuanced understanding of media law in the avenue of advertisements.

Recommendations:

To maintain the advantages of competitive advertising while mitigating its abuse, India's legal and regulatory framework must develop with more clarity and accuracy. The existing regulations are wide, frequently permitting unethical or derogatory actions disguised as competitive marketing.

- A well articulated legal framework should specify the parameters of allowable comparative advertising, emphasizing accuracy, fairness, and the lack of malice.
- The Advertising Standards Council of India should be granted binding authority and provided with an expedited grievance resolution mechanism for competitor conflicts.
- Advertisers should be required to make substantiated claims and incorporate disclaimers to guarantee customer understanding and mitigate the risk of misrepresentation.

²¹ Supra Note 16, *Colgate Palmolive*

²² Supra Note 17, *Pepsi Co. Inc.*

A comprehensive regulatory strategy integrating legislative enhancement, strengthened self-regulation, and advertiser accountability will promote ethical competition, protect consumer trust, and maintain the integrity of commercial speech within India's advertising framework.

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