International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435 (Online) Volume 15, Issue 07, July 2026)

Pharmaceutical Advertising and Misleading Medical Claims: A Consumer Protection Perspective

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***Abstract*-- The pharmaceutical industry occupies a distinctive position within modern economies because its products directly affect human health and life. While pharmaceutical advertising serves an important informational function by promoting awareness of medicines and therapeutic options, it also presents significant risks when promotional claims are misleading, exaggerated or unsupported by scientific evidence. Misleading pharmaceutical advertisements can distort consumer decision-making, influence prescribing behaviour, encourage irrational drug-use and undermine public health objectives. The increasing use of digital platforms, social media marketing, influencer endorsements and algorithm-driven advertising has further complicated regulatory oversight and consumer protection efforts.**

This paper critically examines pharmaceutical advertising through the lens of consumer protection law, with particular emphasis on the Indian regulatory framework. It analyses the legal mechanisms governing pharmaceutical promotion under the Drugs and Cosmetics Act, 1940, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Consumer Protection Act, 2019 and self-regulatory standards developed by the Advertising Standards Council of India. The paper further evaluates judicial responses to misleading medical claims and compares Indian regulatory approaches with those adopted in the United States, the United Kingdom and the European Union. It argues that existing safeguards remain fragmented and inadequate in addressing contemporary advertising practices. The article proposes a consumer-centric regulatory framework emphasising transparency, accountability, stronger enforcement mechanisms and digital governance to ensure that pharmaceutical advertising aligns with public health and consumer welfare objectives.

***Keywords*-- Pharmaceutical Advertising; Consumer Protection; Misleading Medical Claims; Drug Regulation; Public Health; Unfair Trade Practices**

I. INTRODUCTION

The pharmaceutical industry performs a critical role in advancing public health by researching, developing, manufacturing and distributing medicines that prevent, manage and cure diseases. However, unlike ordinary commercial products, pharmaceuticals directly affect human life and bodily integrity. Consequently, the dissemination of information regarding medicinal products assumes a significance that transcends conventional commercial speech. In this context, pharmaceutical advertising represents a complex intersection of public health policy, consumer protection, commercial interests and constitutional freedoms.

Advertising has long been recognised as an essential component of market economies. It informs consumers about available products, encourages competition and facilitates market efficiency. Yet the informational value of advertising depends fundamentally on its accuracy and completeness. When pharmaceutical advertisements contain misleading representations, exaggerated therapeutic benefits, conceal adverse effects or exploit consumer vulnerabilities, they cease to function as vehicles of information and instead become instruments of deception.

The risks associates with misleading pharmaceutical advertising are particularly acute because healthcare consumers generally lack the technical expertise necessary to independently evaluate scientific claims. Unlike purchasers of ordinary consumer goods, patients frequently rely upon representations made by pharmaceutical companies, healthcare professionals and media sources when making treatment-related decisions. The resulting information asymmetry creates substantial opportunities for manipulation and necessitates robust regulatory intervention.

The significance of pharmaceutical advertising has increased dramatically in recent decades due to the globalisation of healthcare markets and the expansion of digital communication technologies. Pharmaceutical companies now engage consumers through traditional media channels, online platforms, social media networks, disease-awareness campaigns, sponsored content and influencer marketing. These developments have blurred the distinction between health information and commercial promotion, creating novel regulatory challenges that existing legal frameworks often struggle to address.

India presents a particularly compelling context for examining pharmaceutical advertising. As one of the world's largest producers of generic medicines and a rapidly expanding healthcare market, Indian faces the dual challenge of promoting pharmaceutical innovation while protecting consumers from deceptive marketing practices. The country's regulatory framework governing pharmaceutical advertising.

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As one of the world's largest producers of generic medicines and a rapidly expanding healthcare market, India faces the dual challenge of promoting pharmaceutical innovation while protecting consumers from deceptive marketing practices. The country's regulatory framework governing pharmaceutical advertising comprises a combination of statutory provisions, administrative oversight and industry self-regulation. However, concerns regarding misleading advertisements, unsubstantiated health claims and inadequate enforcement continue to persist.

The constitutional and policy dimensions of pharmaceutical advertising further complicate regulatory responses. Commercial speech enjoys a degree of protection under the constitutional guarantee of freedom of speech and expression. Nevertheless, courts have consistently recognised that such protection is not absolute and may be restricted in the interests of public health and consumer welfare. The challenge lies in balancing legitimate commercial communication against the need to prevent consumer deception and safeguard public health.

This paper seeks to critically evaluate pharmaceutical advertising from a consumer protection perspective. It examines the conceptual foundations of pharmaceutical promotion, analyses the regulatory architecture governing advertising practices in India and explores comparative approaches adopted in other jurisdictions. It argues that existing mechanisms remain inadequate in addressing the evolving nature of pharmaceutical marketing, particularly in digital environments. The paper concludes by proposing reforms designed to strengthen consumer protection while preserving the informational value of pharmaceutical advertising.

II. Pharmaceutical Advertising: Conceptual And Theoretical Foundations

Pharmaceutical advertising may be broadly defined as any communication intended to promote the prescription, sale, supply or consumption of medicinal products. The definition encompasses a wide range of promotional activities, including direct advertising to consumers, marketing directed at healthcare professionals, disease-awareness campaigns, sponsorship arrangements, educational materials and digital communications.

The World Health Organisation defines medicinal drug promotion as all informational and persuasive activities undertaken by manufacturers and distributors that are intended to induce the prescription, supply, purchase and use of medicinal drugs.[1] This expansive definition reflects the multifaceted nature of pharmaceutical marketing and acknowledges that promotional activities often extend beyond traditional advertising formats.

From an economic perspective, advertising serves several important functions. It reduces search costs, facilitates product differentiation and promotes competition among market participants.[2] In healthcare markets, however, these functions are complicated by the presence of substantial informational inequalities. Pharmaceutical companies possess extensive knowledge regarding product efficacy, safety profiles, clinical trial outcomes and market alternatives. Consumers, by contrast, generally lack the scientific expertise requires to evaluate such information independently. The concept of information asymmetry, first articulated by George Akerlof in his seminal work on market failure, provides an important theoretical framework for understanding pharmaceutical advertising.[3] Information asymmetry arises when one party to a transaction possesses significantly greater knowledge than another. In pharmaceutical markets, manufacturers possess superior information regarding product characteristics, creating opportunities for strategic disclosure, selective presentation of evidence and consumer manipulation.

Consumer protection theory responds to these concerns by emphasising the right of consumers to receive accurate, complete and comprehensible information. The modern consumer rights movement gained international prominence following President John F. Kennedy's articulation of the consumer's right to safety and the right to be informed.[4] These principles remain particularly relevant in healthcare context where inaccurate information can produce serious physical and financial harm.

Behavioural economics further illuminates the vulnerabilities associated with pharmaceutical advertising. Traditional economic models assume that consumers act rationally and make decisions based upon complete information.

[1] World Health Organisation, Ethical Criteria for Medicinal Drug Promotion (WHO 1988) 7

[2] Phillip Nelson, 'Advertising as Information' (1974) 82 Journal of Political Economy 729, 731

[3] George A Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism' (1970) 84 Quarterly Journal of Economics 488, 489

[4] John F Kennedy, 'Special Message to the Congress on Protecting Consumer Interest' (March 15 1962) Public Papers of the Presidents 235, 236

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However, empirical research demonstrates that consumers frequently rely upon cognitive shortcuts, emotional responses and heuristic reasoning when evaluating complex information.[5] Pharmaceutical advertisements often exploits these tendencies through emotionally compelling narratives, selective use of scientific terminology and visual representations that create misleading impressions regarding efficacy and safety.

The persuasive power of pharmaceutical advertising is amplified by the unique characteristics of healthcare decision-making. Patients frequently seek treatment during period of illness, anxiety or uncertainty. Such circumstances may impair critical evaluation and increase susceptibility to persuasive messaging. Furthermore, many consumers equate medical products with scientific authority and may therefore attribute greater credibility to pharmaceutical advertisements than to advertisements for ordinary consumer goods.

The ethical dimensions of pharmaceutical advertising have generated substantial scholarly debate. Proponents argue that advertising promotes consumer autonomy by increasing awareness of available treatment options and encouraging patient engagement in healthcare decisions. Critics contend that commercial incentives inevitably distort information and encourage overconsumption of medicines.[6]

These competing perspectives are reflected in regulatory approaches across different jurisdictions. While some countries permit direct-to-consumer pharmaceutical advertising under stringent conditions, others prohibit such practices entirely. Regardless of the regulatory model adopted, there is widespread consensus that pharmaceutical advertisements must be truthful, balanced and supported by reliable scientific evidence.

III. Regulatory Framework Governing Pharmaceutical Advertising In India

India regulates pharmaceutical advertising through a combination of statutory controls, consumer protection legislation, administrative regulations and industry self-regulation. Unlike many jurisdictions that rely upon a single comprehensive pharmaceutical advertising statute, India's regulatory framework is fragmented across multiple enactments. While these laws collectively seek to prevent deceptive promotional practices, gaps in enforcement and jurisdictional overlaps often diminish their effectiveness.

The primary legislative instruments governing pharmaceutical advertising include the Drugs and Cosmetics Act, 1940, the Drugs and Cosmetics Rules, 1945, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (DMRA), the Consumer Protection Act, 2019 and various guidelines issued by regulatory authorities and self-regulatory organisations.

The co-existence of multiple regulatory regimes reflects the dual nature of pharmaceutical advertising. It is simultaneously a matter of public health regulation and consumer protection. Consequently, misleading pharmaceutical claims may attract sanctions under drug-control laws as well as consumer protection legislation.

IV. Advertising Standards Council Of India (ASCI)

In addition to statutory regulation, pharmaceutical advertising is subject to self-regulation through the Advertising Standards Council of India (ASCI).

Established in 1985, ASCI operates as a voluntary self-regulatory body responsible for maintaining ethical advertising standards[7]

The ASCI Code requires advertisements to be truthful, honest and free from misleading representations. Health-related advertisements are subject to heightened scrutiny due to their potential impact on consumer welfare.

ASCI has issued specific guidelines concerning:

- Health and wellness claims
- Medical endorsements
- Scientific substantiation
- Digital advertising
- Influencer marketing disclosures

Although ASCI lacks direct enforcement powers comparable to statutory regulators, its recommendations frequently influence media platforms, advertisers and governmental agencies.

The effectiveness of self-regulation remains contested. Critics argue that voluntary compliance mechanisms are insufficient to deter serious misconduct. Supporters contend that self-regulation provides flexibility and responsiveness that formal legal processed often lack.

[5] Daniel Kahneman, Thinking, Fast and Slow (Penguin 2011) 20-25

[6] Marc Rodwin, Conflicts of Interest and the Future of Medicine (OUP 2011) 98-101

[7] ascionline.in

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V. Misleading Medical Claims As Unfair Trade Practices

Misleading pharmaceutical advertising constitutes a form of unfair trade practice because it distorts consumer choice and undermines market integrity.

Consumer protection jurisprudence increasingly recognises that deception may occur through both affirmative misrepresentations and material omissions.[8]

In pharmaceutical contexts, misleading claims typically assume several forms:

A. Exaggeration of Therapeutic Benefits

Advertisements frequently emphasise favourable outcomes while minimising uncertainties associated with treatment effectiveness.

For example, promotional materials may describe medicines as "clinically proven" or "scientifically validated" without adequately disclosing limitations of underlying studies.

Such claims may create unrealistic expectations regarding therapeutic outcomes and encourage irrational drug consumption.

B. Concealment of Adverse Effects

Risk information is often presented in less prominent formats than efficacy claims.

Behavioural research demonstrates that consumers tend to focus disproportionately on positive representations while disregarding less conspicuous warnings.[9]

Consequently, incomplete disclosure may produce substantially misleading impressions even where risk information is technically provided.

C. Comparative Misrepresentation

Pharmaceutical advertisements frequently compare products with competing treatments.

Comparative claims may be misleading where they rely upon selective evidence, inappropriate comparators, or statistically insignificant differences.

D. Disease Mongering

One of the most controversial contemporary marketing practices involves "disease mongering."

This strategy expands diagnostic categories or exaggerates prevalence rates in order to increase demand for pharmaceutical interventions.[10]

Critics argue that disease-awareness campaigns often function as disguised promotional activities designed to stimulate pharmaceutical consumption.

VI. Judicial Responses To Misleading Medical Claims

Indian courts have increasingly emphasised the relationship between misleading advertisements, consumer rights and public health.

The judiciary's evolving approach reflects growing recognition that deceptive health-related claims may threaten not only individual consumers but also broader societal interests.

In Hamdard Dawakhana v. Union of India, the Supreme Court upheld restrictions imposed under the Drugs and Magic Remedies (Objectionable Advertisements) Act.[11]

The Court observed that commercial advertisements promoting questionable degree of constitutional protections as political or social expression.

The decision remains a foundational precedent in Indian advertising law because it recognises the state's legitimate interest in protecting consumers from medical deception.

More recently, the Supreme Court has adopted a stronger stance toward misleading health advertisements in proceedings involving false therapeutic claims made by Ayurvedic and healthcare products.[12]

The Court emphasised that misleading advertisements violate consumer rights and undermine public trust in healthcare systems.

These observations signal an emerging judicial willingness to treat deceptive medical advertising as a serious public health concern rather than merely a commercial dispute.

VII. Digital Pharmaceutical Advertising And Emerging Challenges

Technological developments have fundamentally transformed pharmaceutical marketing.

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[8] DG Owen, Products Liability Law (3rd edn., West Academic 2015) 734

[9] Cass R Sunstein, Risk and Reason (CUP 2002) 85-88

[10] Ray Moynihan and Alan Cassels, Selling Sickness: How Drug Companies Are Turning Us All into Patients (Nation Books 2005) 2-5

[11] Hamdard Dawakhana v. Union of India AIR 1960 SC 554, 561-63

[12] Supreme Court orders in proceedings concerning misleading medical advertisements by Patanjali Ayurved Ltd (2024)

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Traditional regulatory models were designed primarily for print, radio and television advertisements. Contemporary promotional activities increasingly occur through digital platforms characterised by speed, personalisation and cross-border dissemination.

These developments present substantial challenges for regulators.

a. Social Media Marketing

Social media platforms have become major channels for health-related communication.

Pharmaceutical companies increasingly use sponsored content, disease-awareness campaigns, educational videos and patient testimonials to engage consumers.

Unlike traditional advertising formats, social media communications often blur distinctions between commercial promotion and informational content.

Consumers may encounter pharmaceutical messages through:

- Facebook advertisements
- Instagram posts
- YouTube videos
- Influencer endorsements
- Sponsored podcasts
- Health blogs

Such communications frequently evade conventional advertising oversight mechanisms.

b. Influencer Marketing

The rise of social media influencers has introduced new regulatory concerns.

Influencers often possess substantial credibility among followers and may significantly affect purchasing decisions. Research suggests that consumers frequently perceive influencer recommendations as more authentic than conventional advertisements.

In healthcare contexts, this phenomenon creates significant risks.

Influencers may promote nutritional supplements, wellness products or alternative remedies without adequate scientific knowledge.

India has attempted to address these concerns through guidelines issued by the CCPA and ASCI requiring disclosure of material connections between advertisers and endorsers.

Nevertheless, enforcement remains challenging due to the volume and transnational nature of digital content.

c. Online Pharmacies

The expansion of online pharmacies presents additional regulatory complications.

Digital pharmacy platforms increasingly engage in targeted advertising based on consumer search histories, purchasing patterns and health-related interests.

While personalised advertising may improve access to healthcare information, it also raises concerns regarding privacy, manipulation and consumer vulnerability.

Advertisements generated through algorithmic systems may exploit behavioural biases and encourage unnecessary consumption of pharmaceutical products.

d. Artifical Intelligence (AI) and Algorithmic Advertising

AI has begun to transform healthcare marketing.

Machine-learning systems enable advertisers to predict consumer behaviour, personalise promotional content and optimise engagement strategies.

While these technologies offer significant commercial advantages, they also create unprecedented opportunities for manipulation.

AI-generated advertisements may dynamically adapt messages to individual consumers based on psychological profiles, medical histories and behavioural characteristics.

Traditional consumer protection frameworks were not designed to address such sophisticated forms of persuasion.

Consequently, future regulatory reforms must account for emerging technological realities.

VIII. Reform Proposals And Policy Recommendations

The preceding analysis demonstrates that India's current regulatory framework requires substantial modernisation.

The following reforms are proposed through this paper:

i. Enact Comprehensive Pharmaceutical Advertising Legislation

India currently relies upon fragmented statutory provisions dispersed across multiple enactments.

A dedicated Pharmaceutical Advertising Regulation Act could provide:

- Uniform standards
- Centralised enforcement
- Clear definitions
- Modern digital governance mechanisms

Such legislation would reduce regulatory uncertainty and enhance accountability.

ii. Modernise the Drugs and Magic Remedies Act

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 reflects the realities of a pre-digital era.

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Comprehensive amendments should:

- Expand coverage to online advertising
- Include influencer marketing
- Address algorithmic promotion
- Increase penalties
- Strengthen investigative powers

Without modernisation, the legislation risks becoming increasingly ineffective.

iii. Strengthen Scientific Substantiation Requirements

Pharmaceutical claims should be supported by robust scientific evidence.

Regulators should require advertisers to maintain documentary substantiation demonstrating the accuracy of therapeutic representation.

Independent review mechanisms could further enhance credibility.

iv. Enhance CCPA Enforcement Capacity

The effectiveness of consumer protection law depends upon institutional capability.

The CCPA should receive:

- Additional funding
- Technical expertise
- Digital monitoring tools
- Enhanced coordination powers

Given the complexity of pharmaceutical advertising, multidisciplinary regulatory teams may be particularly beneficial.

v. Establish a Specialised Pharmaceutical Advertising Authority

Many jurisdictions maintain specialised agencies responsible for pharmaceutical promotion.

India may benefit from creating an independent authority combining expertise in:

- Law
- Public health
- Pharmacology
- Consumer protection
- Digital governance

Such an institution could provide consistent oversight and rapid response capabilities.

vi. Regulate Influencer and Celebrity Endorsements

Endorsements should be subject to enhanced due-diligence obligations.

Influencers and celebrities promoting healthcare products should be required to verify:

- Scientific substantiation
- Regulatory approval status
- Accuracy of claims

Failure to exercise reasonable diligence should attract meaningful sanctions.

vii. Improve Consumer Health Literacy

Regulatory intervention alone cannot eliminate misleading medical claims.

Consumer education initiatives should promote:

- Critical evaluation of health information
- Awareness of deceptive advertising techniques
- Understanding of scientific evidence

Improved health literacy reduces consumer vulnerability and strengthens market discipline

IX. Conclusion

Pharmaceutical advertising occupies a unique position within modern regulatory systems because it directly affects human health and well-being. Unlike ordinary commercial products, medicines involve complex scientific information, significant risks and profound consequences for individual consumers. Consequently, misleading pharmaceutical advertisements present dangers that extend beyond economic harm and encompass broader public health concerns.

This paper has demonstrated that pharmaceutical advertising is characterised by significant information asymmetries between manufacturers and consumers. Such asymmetries create opportunities for exaggerated efficacy claims, selective disclosure of evidence and concealment of risks and manipulation of consumer perceptions. While advertising may enhance awareness of treatment options, its informational value depends fundamentally upon accuracy, transparency and scientific substantiation.

The Indian regulatory framework reflects a longstanding commitment to protecting consumers from deceptive medical claims. Statutory mechanisms including the Drugs and Cosmetics Act, 1940, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Consumer Protection Act, 2019 collectively provide important safeguards. The establishment of the Central Consumer Protection Authority has further strengthened enforcement capabilities and expanded regulatory oversight.

Nevertheless, significant challenges remain. Existing legislation was largely designed for traditional advertising environments and struggles to address contemporary forms of digital promotion.

Social media marketing, influencer endorsements, online pharmacies and AI-driven advertising have transformed pharmaceutical communication in ways that existing legal frameworks do not adequately anticipate.

Ultimately, effective regulation requires a consumer-centric approach that recognises the distinctive nature of pharmaceutical products. Regulatory frameworks must ensure that promotional communications remain truthful, balanced, evidence-based and consistent with public health objectives.

By integrating stronger enforcement mechanisms, modernised legislation, digital governance strategies and enhanced consumer education initiatives, India can create a regulatory environment that protects consumers while preserving the legitimate informational functions of pharmaceutical advertising.

In an era increasingly defined by digital communication and data-driven marketing, safeguarding consumers against misleading medical claims is not merely a matter of commercial regulation but it is a fundamental public health imperative.