

Portrayal of colour discrimination vis-à-vis Indian television advertisements

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Abstract: Advertisement is the process of communicating the most persuasive selling message possible, to the right potential consumer of products or services at the right time and place, at least possible cost. Advertisement acts as a bridge between potential seller and buyer. Advertising is a pervasive, powerful force shaping the attitudes and behaviour of the present society. The modern market economy has also seen a boom in the Advertising industry. In order to beat the competitors in the highly competitive and fast market; at times advertisers go beyond the traditional role of portraying 'fair and truthful' information; and showcases undesirable and unethical messages that have a detrimental effect on the society. The researcher, through this paper, cites elaborate instances of colour discrimination; and thereby the violation of advertising ethics in context of Indian Television. The researcher also highlights the laws and codes already in place but their lack of implementation and specifically, the lack of awareness on the part of the viewers have made the scene worse. The research paper concludes with effective suggestions through which the problem of colour discrimination through television advertisements can be dealt with in an efficient way.

Key words: Television advertisements, colour discrimination, racism, Media, ethics, violation

Objectives:

1. To give a detailed analysis on the concept of colour discrimination.
2. To compile comprehensive case studies of Indian television advertisements wherein colour discrimination is portrayed.
3. To find out if such portrayal affects human rights.
4. To find out if there is any law or code to protect such portrayal.

Research Question: *Is portrayal of colour discrimination, through advertisements on national television, a violation of human rights?*

Research Design: *The research is a Descriptive and Diagnostic one. We have done case studies of advertisements that contain clippings of scenes that portray colour discrimination. Moreover it will be an exploratory study as not much literature was available on the topic and the study in this field is a new one so we have to explore the possible ways in which we can protect the human rights. The data are mainly collected through secondary sources like books, newspapers, magazines and internet sources and primary sources like interviews.*

I. Introduction

Discrimination based on skin colour, or colourism, is a form of prejudice or discrimination in which human beings are treated differently based on the social meanings attached to skin colour.

Colourism, a term coined by Alice Walker in 1982, is not a synonym of racism. 'Race' depends on multiple factors (including ancestry); therefore, racial categorization does not solely rely on skin colour. Skin colour is only one mechanism used to assign individuals to a racial category, but race is the set of beliefs and assumptions assigned to that category. Racism is the dependence of social status on the social meaning attached to race; colourism is the dependence of social status on skin colour alone. In order for a form of discrimination to be considered colourism, differential treatment must not result from racial categorization, but from the social values associated with skin colour.

Colourism can be found specifically in parts of Africa, Southeast Asia, East Asia, India, Latin America, and the United States. The abundance of colourism is a result of the global prevalence of 'pigmentocracy', a term recently adopted by social scientists to describe societies in which wealth and social status are determined by skin colour. Throughout the numerous pigmentocracies across the world, the lightest-skinned peoples have the highest social status, followed by the brown-skinned, and finally the black-skinned

who are at the bottom of the social hierarchy. This form of prejudice often results in reduced opportunities for those who are discriminated against on the basis of skin colour.

Colourism is a form of discrimination prevalent in all over the world. From the birth of the civilisation, it has been recognised as a distinct form of discrimination which eventually led to a number of movements. Certainly, Nelson Mandela's name comes to our minds when we raise our voices against colour based discrimination.

In the context of our country, colourism plays a vital role, especially in a girl's life, which truly depicts that our mentality is very stereotypical. However, such a socially acknowledged type of racial detection is indeed very problematic. Particularly, when the notion of whiteness is strongly associated with elements of 'purity' and 'fairness' while blackness is more allied to 'dirt' and 'evil'.

In print, online and electronic media we often come across dominant messages that advertising companies are sending to people. They try to portray dark-skinned people as inferior, less beautiful, less competent, less intelligent, and less accomplished than light-skinned people. The main purpose of the advertisers is to promote their products by conveying a message through these ads. These ads attempt to convince people that they are incomplete without a particular product. Thus it affects the psychology of the dark-skinned people and they tend to feel deficient and suffer from low self-esteem.

Moreover, another common fact we often experience is that majority of media, for example, television programmes, movies, and advertisements choose to represent fair skinned people. According to those ads, fair skinned people tend to have higher social standing, more positive networks, and more opportunities to succeed than those of people with darker skin tones. Additionally, we see that blackness is always associated with elements of 'dirt' and 'evil' things such as 'black money', 'black laws', etc.

However, colour as a ground for discrimination is prohibited in the equality clause of the constitution of Bangladesh through Article 28(1). Although constitution only talks about discrimination based on religion, race, caste, sex or place of birth, but colour is conventionally grouped with race when unfair discrimination is in question (Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination). Moreover, international instruments also prohibited the discrimination based on any specific colour, such as Article 2 of UDHR and ICCPR, and Article 14 of ECHR.

Challenging such discrimination, an Indian NGO called Women of Worth delivered a petition with 30,000 signatures to the cosmetics company 'Emami,' calling on them to withdraw a particularly discriminatory advert for 'Fair and Handsome'. However, the company refused to remove the ad. On this Emami's managing director said, "There is a need in our society for fairness creams, so we are meeting that need." He refused to withdraw the ad. Undeterred, Dark is Beautiful is lobbying the Advertising Council of India to legislate against adverts that discriminate against dark skin.

Nevertheless, an Indian organisation recently proposed a new regulation to control such discrimination. The new rules propose that ads should not directly or implicitly show dark people as unattractive, unhappy, depressed or concerned, should not portray people with darker skin are at a disadvantage, should not associate skin colour with any particular socio-economic class, ethnicity or community, and should not show gender based discrimination because of skin colour.

Colour discrimination always dispirits the youth to nourish their inborn talent. In order to eliminate this menace the areas of protection against unfair discrimination based on skin colour should be regulated properly. Simultaneously, proper legal attention should be paid to persons living under discriminative positions. Moreover, we all have to begin to realise that our skin, no matter the shade, is always beautiful. We should work on bringing common sense, self-pride and economic self-determination to our own community.

II. The Indian Scenario

The roots of our fair obsession:

'Yashomati maiyya se bole Nand lala, Radha kyun gori, main kyun kala' — a devotional song has a tiny Lord Krishna beseeching his foster mother to find why his lady love is fair while he is dark. Much before India was invaded by fair skinned people, the country has been fascinated by the lighter colour of skin. In Sanskrit, the term 'Asuryasparsh' is used to define he who is untanned, untouched by the sun's heat and is therefore pure and affluent.

"There's this notion about dark-skinned people belonging to the labour class because they'd work on the fields under the sun. White skin, on the other hand, symbolised power," shares Devdutt Pattanaik, chief officer at Future Group.

His Royal Whiteness:

Royal Indian women, fascinated by white skin, used to apply pearl extracts on their skin for enhanced fairness. In 1919, India got its first commercial fairness cream in Afghan Snow, manufactured by ES Patanwala,

a perfumer/entrepreneur who came to Mumbai from a small principality (Jhalra Patan) in Rajasthan. The cream was named after King Zahir of Afghanistan, who felt that it reminded him of the snow from his homeland.

Fair & Lovely Creates A Category:

The year was 1975. Hindustan Unilever (then Hindustan Levers) introduced a fairness cream that was soft on skin unlike the bleaching creams of the time, usurping the fairness bleach market. Soon, they attained a pioneer status in the business. The product started off by marketing dreams and desires, switching to being the key that'll get you the man of your dreams.

Who Is The Fairest Of Us All?:

Post liberalisation, a flurry of brands decided to get their hands white. It started with Emami Naturally Fair Herbal Fairness Cream in the early 90s, CavinKare's Fairever in 1998 and Godrej's FairGlow in 1999. Emami focussed on pearl extracts, FairGlow on the 'no compromise with fair skin' positioning whereas Fairever, that went on to be the biggest challenger brand to Fair & Lovely centred its advertising around its two unique ingredients — saffron and milk.

To oust them in the market and own a distinctive positioning, Fair & Lovely flipped from the dream man track to woman empowerment and the cream being a confidence aid to land the perfect job.

Several brands that didn't bother themselves with fairness as a platform now have at least one and sometimes multiple variants addressing this need — for instance Garnier and Lakme. The recent introduction of a fairness cream for a rather intimate part of female anatomy proves that marketers are not even close to being done exploiting this category.

Fair and Filmy:

Bollywood damsels made a lot of bucks by selling women the notion that it's these fairness creams that made them look the way they do, and not make-up artists, plastic surgeons and genes. From Padmini Kolhapure to Juhi Chawla to present day divas, they've all been there, sold that.

In the mid-2000s, soap operas embraced advertiser funded programming and fairness brands were quick to jump on board, slowing the already snail like pacing of these serials to a crawl, with sales pitches that stalled the narrative for several minutes on end.

In 2008, Pond's came up with a 5-part 45 second series, narrating a story of love, heartbreak and triumph. Saif Ali Khan breaks up with Priyanka Chopra who's clearly low on self-esteem. A distraught Priyanka starts using Pond's White Beauty and gradually her superior pigmentation brings back both her confidence and her wayward beau who abandons his next love interest, Neha Dhupia.

Why Should Girls Have All The Fair?:

Men who were secretly applying women's fairness creams formed 30% of the total users. That they needed a fairness cream that suited their skin was an insight Emami was the first to leverage on. It launched Fair & Handsome in 2005. Others followed suit but till date, they remain the strongest in the men's fairness creams market. And what's the USP of each of these brands? It's the celebrity that endorses the product. (Source: http://articles.economictimes.indiatimes.com/2014-02-26/news/47705699_1_fairglow-fairever-skin)

Small Is Beautiful:

There are plenty of small fish in the fairness pond. Most of them are prevalent in markets like Uttar Pradesh and Madhya Pradesh, says an Emami spokesperson. Some of these players are Neha & Love, Lufina, Melas, Toni N Lovely, Zohra (in MP) and Roopa in Chhattisgarh.

The Medical Intervention:

In the year 2000, Dr R K Pandhi, then HOD of AIIMS Delhi's Dermatology department made an official statement to the press saying that none of the fairness creams have any valuable substantiation to their claims.

Through The Glass Darkly:

Protests against the fascination for fairer skin and how it's adversely affecting the psyche of Indian women have been gaining ground, especially over social media. A non-profit organisation called 'Women of Worth' launched a campaign in 2009 called 'Dark is Beautiful'. The campaign picked up steam with Nandita Das coming onboard and supporting the cause by fighting against the bias on the basis of skin tones. From Madhur Bhandarkar's film 'Traffic Signal' which features a street kid ranting against fairness creams to global columnists writing horrified editorials about 'racist' Indian ads, the category has a huge array of critics. (Source: http://articles.economictimes.indiatimes.com/2014-02-26/news/47705699_1_fairglow-fairever-skin/2)

Individuals in India have a tendency to see whiter skin as more beautiful. This can be traced to the invasion of Aryans who were mostly light skinned. They referred to two classes of people, the white-skinned Aryans and the black-skinned Indian. The Aryans were religious and followed the Vedas, performing all the rituals while the Dasas (at a later stage) merged into the Shudra caste.

Discrimination based on skin colour was most visible in British India, where skin colour served as a signal of high status for the foreign British. Thus, those individuals with a lighter skin colour enjoyed more privileges, were considered to have a more affluent status and gained preference in education and employment. Darker skinned individuals were socially and economically disadvantaged due to their skin tone.

The caste system in India too involves complications of skin colour. British historians claimed that since the upper castes were not involved in tedious labour and weren't as exposed to the sun as the lower castes, they used to stay indoors and thus possessed lighter skin. The lower castes on the other hand had higher melanin concentration in their skin cells due to continued exposure to sun from working in agricultural fields and outdoors.

I. Stereotypes prevalent in the society:

Children are complimented by relatives and friends for being the 'fairer one', and this bias keeps growing with age. It can be blamed on peer pressure, societal prejudices or irresponsible advertising and product manufacturing.

II. Bleaching creams:

Skin-whitening cosmetics, popularized by Dutch company HUL are a multi-billion dollar industry pushing the idea that beauty equates with white skin and that lightening dark skin is both achievable and preferable. In a country such as India, with issues such as employment and relationships often resting on skin tone, people invest in skin-whitening creams in the hope of a better existence. Capitalizing on this inequality, hundreds of products are peddled by corporations, among them armpit whitener, genital area whitener and fairness baby oil. Nearly all major cosmetic companies (like Dove, Nivea, Pond's, Garnier, Neutrogena, Olay) sell products that claim alter genes to suppress melanin.

III. Matrimonial advertisements:

Skin colour preference in matrimonial matters is something certainly not unique to India; however the way it gets expressed is most certainly distinctive from that in any other society. Whether it is sticking to the tradition of 'arranged marriages' but evolving from the use of matrimonial columns in newspapers to websites like shaadi.com, bharatmatrimony.com or evolving to the system of 'love marriages'; people still prefer their partners to be light.

IV. 'Skin' crayon:

Hindustan Pencils, the manufactures of the popular Nataraj and Apsara pencils have started a Colourama crayon series which has a peach-coloured crayon labeled as 'skin', even though it is clearly not the skin tone of most Indians. In a country with as many skin tones as India, labeling one particular shade as 'skin' colour and that shade in turn being used to represent skin in all human caricatures unknowingly deepens the colour bias against skin tone at a very tender age.

This is not unique to India. Companies like Crayola, Faber-Castell and Camlin have crayons labeled as 'flesh' but Crayola chose to rename its 'flesh' crayon as 'peach' in 1962 in response to the US civil rights movement. It also introduced a special set of eight 'Multicultural Crayons' representing different skin tones.

V. Facebook-photo editing and sharing

Hindustan Unilever, the manufacturer of Fair & Lovely, under its cosmetic brand name Vaseline, recently launched an application to make the skin of Facebook users look lighter in their profile pictures. There also exists a widespread practice of using photo editing software to make one self look lighter in photographs.

VI. Campaigns and petitions

Bollywood filmmaker Shekhar Kapur, who directed films such as 'Bandit Queen' and 'Elizabeth', started a campaign with the Twitter hash tag 'adswedontbuy' to protest against irresponsible ads, including ads for skin whitening creams. Millions joined the discussion within a period of 24 hours.

January 18th, 2014, Kolkatta — Women of Worth (WOW) , the Chennai based NGO behind the ‘Dark is Beautiful Campaign’, has invited today to a one on one meeting with Mr. Mohan Goenka, Director of Emami Group. This was in response to a ‘petition drive on Change.org’ against Fair and Handsome ad which has garnered more than 25000 online signatures from across the length and breadth of the country and even from many countries across the world, notably Pakistan, Middle Eastern countries, a few African nations, USA, Australia, Singapore, Thailand, Malaysia, and UK. At a closed door meeting in EMAMI’s headquarters in Kolkatta with Mr. Goenka, Director, EMAMI and Ms. Mahasweta Sen, GM, Corporate Communications, Ms. Kavitha Emmanuel, Founder Director, Women of Worth, requested EMAMI to consider removing the Fair and Handsome advertisement from television screens, hoardings and magazines. She further challenged Mr. Goenka to lead the change in the current trend in fairness-products marketing and make a difference by addressing the issue of skin colour bias in the nation head on. In response Mr. Goenka said that the advertisement will continue as they are meeting a need in the society based on their market research. He believes whitening is a global phenomenon and a trend and changing mindsets might be impossible. During the discussion he stressed how preference for fair skin has been there for generations and changing it now did not make sense. When quizzed about the 25,000 petitioners who are saying that the ad is discriminatory he said, ‘in a country with billion people I cannot answer every individual’s petition!’ “If people want to be like Shah Rukh Khan, there is nothing wrong with it. If they want to be fair, it is an aspiration,” he said. Ms. Mahasweta Sen added that ‘if the cream is helping people be more confident, what is wrong with that?’ Talking about the future of this campaign, Ms. Emmanuel added, “We hope that brands and brand ambassadors will listen to the united voices that are calling for new attitudes and new products that appreciate and celebrates the diverse skin tones in a land of 1.2 billion shades of skin. The campaign will continue to address the issue of skin colour bias and tackle unfair advertising practises with the Advertising Standards Council of India and the Ministry of Information and Broadcasting.” (Source: <http://darkisbeautiful.blogspot.in/2014/01/emami-says-no-to-leading-change-against.html>)

A second-year law student at Bangalore’s National Law School filed a complaint against Hindustan Pencils at the district-level consumer forum in Bangalore in June 2013 in relation to the ‘skin’ crayon, accusing the company of being racist for promoting the idea that there is only one kind of acceptable skin colour – peach, in a country where most people have darker skin in varying tones of brown. When he lost the case at the district forum in October 2013, he took it up to the State Consumer Commission. He has asked for the removal of the label ‘skin’ of the crayon along with compensation of Rs 100,000 for hurting his sentiments. With 10 other people, he has started an NGO called Brown n’ Proud which aims to raise awareness about ‘rang bhed’, or colour discrimination. They have also started an online petition with change.org against this ‘skin’ crayon.

VII. Beginning of change

Many Bollywood actors have showed support for a change in attitude against skin colour discrimination. Actor and activist Nandita Das became the face of the Dark is Beautiful campaign and also believes that the name of a crayon is important, even though it may seem like a small issue. “After all, children are sponges and absorb more than we think they do.” An entire segment in Madhur Bhandarkar’s ‘Traffic Signal’ is devoted to an anti lightness-cream rant. The category’s ads have been pilloried in global media for promoting a kind of ‘racism’.

Many people now feel that they do not have to get light skin to succeed in life. Brown or dark skin is being embraced by young consumers which was reflected in the declines of the sales of Fair & Lovely skin lightening products (the largest player with nearly 60% of the market share) by 4.2% in 2013 while the sales of Fair & Handsome dipped by 14%. According to market estimates, the fairness cream and lotion industry as a whole is pegged at Rs 2,940-crore and is expected to grow at a slower pace as compared to its growth rate in the last decade. (Source: <http://www.sunday-guardian.com/news/nandita-makes-dark-beautiful-fairness-market-registers-negative-growth>)

The Advertising Standards Council of India, a self-regulatory body has proposed a draft of new guidelines that tells skin lightening advertisements not to show darker skinned people as unhappy, depressed, or disadvantaged in any way by skin tone, and should not associate skin colour with any particular socioeconomic class, ethnicity or community. According to Sam Balsara, chairman and managing director, Madison World and a former chairman of ASCI “The reason for these guidelines is to make it clear to advertisers as to what society finds acceptable and what it doesn’t.” (Source: Wikipedia)

III. Case Studies

For years, advertisers of skin-lightening creams and other products have shown people — mostly women — with dark skin as having problems when it comes to finding jobs, getting married and generally being accepted by society. The makers of these ads include behemoths like Unilever, Johnson & Johnson and P&G. The so-called ‘fairness’ cream industry in India was estimated at \$432 million a year and growing by 18 percent annually in 2010, by AC Nielsen. The researcher would be discussing about a few prominent case studies of advertisements which portray colour discrimination on national television in India.

1. Pond's White Beauty (old ad):

When you watch this ad, you slowly come to the realization that the theme is, "If your epidermis isn't white enough, the man of your dreams will never love you." Here, Saif Ali Khan ignores Priyanka Chopra because of her dark skin but wins him back after the application of the cream.

2. Pond's White Beauty (new ad):

The New Pond's White Beauty Daily Anti-Spot Fairness Cream Get spot-less radiant skin with the new Pond's White Beauty Daily Anti-Spot Fairness Cream. Now reduce spots and dark circles to reveal your spot-less glowing skin. Bollywood actress Ileana D'cruz is the face for the new range in India.

3. Pond's white beauty BB+ foundation and fairness cream:

Now Pond's white beauty™ BB+ Foundation and Fairness cream is all set to make every girl look her Selfie best! Pond's, the leading face care brand has announced the launch of an exciting digital campaign that invites consumers to get "Selfie ready". The revolutionary Pond's white beauty™ BB+ Foundation and Fairness cream vouches to be a girl's best friend when it comes to taking the perfect Selfie. This first of its kind innovative beauty solution, combines the dual benefit of instant coverage of spots as well as lightening skin from within to help reveal perfect natural look that is "Selfie Ready".

4. Pond's men oil control fairness moisturiser:

This moisturizer is beneficial for oily skin and contains potent, yet natural ingredients mineral clay and witch hazel, which give best fairness results, in addition to reducing oiliness of the skin and tightening the skin pores temporarily.

5. Fair & Lovely:

A retired father with money problems laments that he didn't have a son to bail him out. His dark-skinned daughter decides she'll "be a son" and uses a Fair & Lovely (owned by Unilever India) to land a coveted job as a flight attendant. The brand promises the benefit of 'making complexion fairer over a period of six weeks'.

6. Fair & Lovely MAX Fairness for Men:

The current cream has specifications like; affordable amount to be paid, works intensively on tough male skin, helps you have visible fairness in a couple of weeks, visible spot reduction and triple sunscreen UV protection.

7. Fair & Handsome:

Even India's biggest superstar, actor Shahrukh Khan, is in on it. He recalls his (clearly fictional) past, when he was a regular guy who wanted to be a celebrity.

8. Clean & Dry:

It's not just your face you should worry about, ladies. This recent ad for Clean & Dry emphasized how bleaching your genitalia would make your husband love you more.

9. Garnier:

Being outdoors is amazing, even for India's beefcake poster child John Abraham, who doesn't care as much about the dangerous effects of sun exposure as much as he does about tan lines on his bulging biceps.

10. Glam up Cream:

The girl says, "Aaj Rahul ke sath date hai...naya glam up jab dikhna ho special".

11. Vaseline Men Antisport Whitening Total Fairness Serum:

The cream vouches that it ensures you have white and glowing skin, keeps you look younger for longer and protects your skin from harmful rays of sun.

12. Olay Natural White Healthy Fairness Night Cream:

The ad says the cream has the combined with of whitening effects and spot remover, Intense moisturizing capacity and reveals healthy and radiant skin.

13. Olay White Radiance UV Whitening Day Cream:

The ad says that it minimizes the skin pores and has advanced light diffusion technology and triple efficacy whitening formula.

14. Vaseline Healthy White UV Lightening Lotion:

It comes with specifications like; ensures great skincare, clinically proven for radiant, naturally lighter skin in only 2 weeks, comes with active whitening system, includes vitamin B3, helps bring out naturally fair skin, triple sunscreen for preventing further darkening and yogurt serum moisturizes the skin.

15. Garnier White Complete Fairness Cream:

The TVC shows one girl asking the other if she is happy with the fairness cream she uses. The latter replies in affirmative adding that she has always been using that and rates it 6 or 7 out of 10. The former asks her to change her cream immediately; and when asked for one reason, the former states ten reasons. The voiceover goes, “Ab payiye 10 on 10 fairness naya Garnier White complete ke saath.” And adds that its new technology gives ten benefits: sun protection SPF 17, lasting fairness, glow, deep skin whitening actives, skin feels fresh, moisturises skin, smoothens skin, anti dark spots and anti dullness. ‘Tuocho nikhare aur aap paaye complete fairness’

16. Garnier for Men PowerLight Intensive Fairness Face Wash & Cream:

The product ensures that it Deep cleanses impurities & pollutants, helps eliminate dark skin cells, refreshes skin’s glow naturally and has lemon extract & Anti-oxidant grape water included.

17. Nivea advanced whitening oil control moisturizer:

This light and fast acting cream claims to give very fast results, with its sun protection action as well as moisturizing quality, to give a fair glowing skin in just a few weeks.

18. Boroplus body lotion:

Kareena Kapoor endorses the product and advocates its skin lightening qualities. Boroplus Healthy & Fair Winter Cream, which is being rolled out, addresses the need of fairness cream users who find their creams inadequate to battle dry skin brought on by the winter. This cream combines the promise of fairness along with winter protection. This will retain the core promise of protection with all the Boroplus brands

19. Nutregena Fine Fairness cream:

Another well known skin lightening formulation in India is Neutrogena Fine Fairness Cream, which gives fair skin by reducing the effect of melanin, and at the same time accelerated cell renewal process for best results. Additionally, this skin cream nourishes and hydrates the skin. Deepika Padukone has been an ambassador of this product.

20. Himalaya fairness cream:

The cream acts fast on tough skin of men, using natural ingredients like walnut, aloe vera, rose and orange. It is known to reduce pigmentation and show results within just 4 weeks of regular use.

21. Fairever cream:

A product of CavinKare, Fairever Fairness cream offers consumers the unique and innovative '3 Way Fairness Therapy' solution. The new Fairever fairness cream scientifically extracts actives from nature to give a complete solution to all facial problems like skin darkening, blemishes, oiliness, dark circles & spots and protection from sun, dirt and pollution

The '3 Way Fairness Therapy' works in three ways:

Step 1: Masks - instantly masks all blemishes, spots and dark circles.

Step 2: Lightens - penetrates 2 layers deep to lighten skin tone, reduces pigmentation and spots.

Step 3: Protects - the fairness against sun, dust and pollution.

22. Roop Amrit cream:

Roop Amrit Cream helps you achieve the perfectly fair and spot-free skin that you’ve always dream of. Finished of ordinary ingredients extracted from the dissimilar corners of the earth, Roop Amrit fairness cream is combination of different type of herbal products specifically to give your skin the strength and complete nourishment over a period of time, so that you can be proud of your new found shimmering skin tone. This face cream combines various ancient secret harvest and remedies used by our relatives to gain an in good physical shape skin tone. It fights the growing levels of melanin underneath the surface of your skin.

23. Meglow fairness cream:

The cream vouches of an upgraded formula with the latest brightening and whitening technology to target uneven skin tone, dark spots, fine lines and pigmentation. It assures of instant radiance and luminosity for the perfect look and feel.

24. Lakme Perfect Radiance Intense Whitening Day Creme:

The TVC has a voiceover, "Leave home with salon like fairness and turn the world into a ramp." "It gives you salon like fairness at home with skin polishing and de-tanning qualities."

IV. Advertising Related Laws In India

The Government of India has not set up a regulatory body in India to regulate advertisements. But as in due course depending on the nature of the grievances, the power to regulate advertisements may be exercised by a vast variety of authorities, including the courts, Central and State Governments, tribunals or the police authorities. In addition to that numerous legislations also deal with advertisement provisions in part not in toto unfortunately. The rules, regulations and legislations include the following:-

1. Advertising Standards Council of India (ASCI)
2. Constitution of India
3. Consumer Protection Act, 1986
4. Information Technology Act, 2000
5. Indian Penal Code, 1860
6. The Young Persons (Harmful Publications) Act, 1956
7. Indecent Representation of Women (Prohibition) Act, 1986
8. The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
9. The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975
10. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1955
11. The Drugs and Cosmetics Act, 1940
12. The Emblems and Names (Prevention of Improper Use) Act, 1950
13. Securities and Exchange Board of India (SEBI) (Stock-brokers and Sub-brokers) Rules, 1992 - Code of Conduct for Stock-brokers
14. Securities and Exchange Board of India (SEBI) (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995
15. Securities and Exchange Board of India (SEBI) (Mutual Funds Regulation), 1996: SEBI Guidelines for Advertisements by Mutual Funds
16. Securities and Exchange Board of India (SEBI) (Disclosure and Investor Protection Guidelines), 2000
17. The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
18. The Transplantation of Human Organs Act, 1994
19. The Representation of the People (Amendment) Act, 1996
20. The Lotteries (Regulation) Act, 1998
21. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
22. The Competition Act, 2002
23. The Contract Act, 1872
24. The Civil Defense Act, 1968

But in the cases related to colour discrimination only four law/code count:

a. **Constitution of India:**

Article 15 in The Constitution Of India states:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
 - (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
 - (3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

b. The ASCI Code:

To scrutinize certain principles and fairness in the sphere of advertising, Advertising Standards Council of India was established in India in 1985. ASCI deal with complaints received from consumers and industry against such advertisements which are false, misleading, indecent, illegal, leading to unsafe practices or unfair to competition and are in contravention to the advertising code. Even though there is no as such provision for regulating advertisement policy in the Constitution of India, which should be adopted by press or media, the Supreme Court has given guidelines for the same through a series of decisions.

c. Consumer Protection Act, 1986:

Anyone can file such complaints with Consumer Forum for "unfair trade practices" under section 2(1) (r) of The Consumer Protection Act, 1986 which includes false claims made for a particular good.

Nov 14, 2012: BANGALORE: What does one do about ads featuring cosmetics, energy drinks and other sundry products that don't deliver on their promises? It's a case the National Law School of India University (NLSIU) and its students are seriously addressing. One trimester of their law course focuses on the impact of misleading ads on consumers. What's more, the students have 10 cases pending against big multi national corporations (MNCs) on false claims.

Students from the country's premier law school have been battling against companies that falsely advertise fairness creams, clinics that promise weight reduction and manufacturers claiming their creams/lotions can arrest sunburn.

"In India, there is no comprehensive legislation to control misleading ads. False ads are not just unethical but violate several rights of the consumers. Our students buy these products and test them on themselves before filing cases," Ashok R Patil, associate professor of law at the chair on consumer law and practice, told TOI.

There are 10 cases pending before various courts in Bangalore against big MNCs over claims ranging from hair damage therapy and dandruff care, energy fresh spray, **fairness cream** for men and sun control lotion.

Using these products on themselves, the students found that the effect of these cosmetics was far from the claims made by the companies manufacturing them. The first step was to issue a legal notice before a case was filed.

What prompted the NLSIU to train its students to take on the consumer law was a directive from the Centre against ads that mislead the consumers.

"The Centre is contemplating setting up a national consumer protection agency under the consumer affairs ministry to monitor and penalize misleading ads. We thought it fit to train our future lawyers in the subject by devoting a subject to it," added Ashok. When our students checked on the basis for the ad claims, they were surprised to find the companies relied totally on their R&D lab. One firm did a survey on 100 persons for the entire country and then made the claim. (Source: <http://timesofindia.indiatimes.com/city/bengaluru/Law-students-fight-false-advertisements/articleshow/17212177.cms>)

The Act applies to all goods and services unless specifically exempted by the Central Government. It covers all the sectors whether private or public and any person. The provisions of the Act are compensatory as well as preventive and punitive in nature. The Act confers various rights on the consumers and envisages establishment of Consumer Protection Councils at the central, state, and district levels, the main objectives being: to promote and protect the rights of consumers; to provide a simple, speedy and inexpensive redressal of consumer grievances.

The Act envisages a three-tier quasi-judicial machinery at the national, state, and district levels. These are:

- National Consumer Disputes Redressal Commission known as National Commission,
- State Consumer Disputes Redressal Commissions known as State Commissions, and
- District Consumer Disputes Redressal Forum known as District Forum.

There are many ways by which consumers are exploited. A few of them are:

- a.** Selling at higher prices -- The price charged for the product will not be proportionate to the quality;
- b.** Product risk -- Drugs that are hazardous, banned or beyond expiry date, electrical appliances with inadequate safety precautions, etc;
- c.** Adulteration -- This is very common in food items and could prove to be highly injurious to one's health;
- d.** Sub-standard Products -- Items whose quality is far below the required standard;

e. False Claims -- Manufacturers make false representations about their products in the media with a view to mislead the consumers. Claiming that use of a particular oil will cure baldness, using a company's **fairness cream** for a specific period will make one fair, etc., are all typical examples of exaggerated, misleading advertisements; and

f. Warranty/Annual Maintenance Contract -- In many cases, though the product will have a warranty or will be under annual maintenance contract (AMC), when a problem arises, the consumer is told that certain parts will not be covered and they will have to pay.

The Consumer Protection Act, 1986, is definitely a blessing for consumers wronged by manufacturers or dealers.

d. The Drugs and Cosmetics Act, 1940:

This law regulates the production, manufacture and sale of all drugs and cosmetics in the country. The Act prescribes a fine of up to Rs. 500 for any person using any report or extract of report of a test or analysis made by the Central Drugs Laboratory or a government analyst for advertising of a drug or cosmetic.

Cosmetics are governed by the Drugs and Cosmetics Act, 1940. The Act has been amended from time to time, with a view to maintain quality control. However, despite all these amendments, cosmetics manufacturers continue to use substandard raw material. What is more, there is virtually no check over the chemicals used in these cosmetics.

To protect Indian consumers from this risk, a series of steps is required:

1. The Government must announce very strict penalties for shopkeepers, beauty parlours and vendors of cosmetics who sell or use products which are fake, labelled or do not carry even the minimum required statutory information under the packaged Commodities Act (such as the name of the manufacturer, to whom the liability can be attributed). If a producer of fake and spurious products is deprived of a sales outlet, he will go out of business. In the case of imported cosmetics, the name and address of the importer must be clearly mentioned and it should be made clear by law that the importer will be legally responsible for the safety aspect of the product.
2. The Government should publish a list of known toxic chemicals that are banned for use in cosmetics and toiletries. This should be made known to the Industry Associations, and through, to their constituents. Any deliberate use of banned chemicals should be severely penalized. Stringent action should be taken against the owners/directors as well as the senior officials of the manufacturing units deliberately using banned substances or manufacturing fake or spurious cosmetics.
3. Manufacture of cosmetics and toiletries should not be permitted without a valid manufacturing license. Records of each manufacturer must be maintained by the State Government, which should renew licences only if there are no serious cases pending against the manufacturer. The licence number must be made part of the labelling requirements.
4. The Government should seriously investigate whether some form of certifying label can be awarded to those products that do not contain harmful substances, this could be in the form of an ISI mark.
5. The standards for cosmetics and toiletries should be universally applicable, irrespective of whether or not a product contains 'herbal' ingredients. Back-passing between different departments of the Government should not be allowed. An educational campaign, demonstrating that so-called 'herbal' or 'Ayurvedic' cosmetics can also be very harmful, should be launched, so that consumers are not lulled into a false sense of security.
6. And finally, the Government, reputed manufacturers and consumer groups should join hands to inform the consumer of what is safe and what is not. (Source: [http://www.cccindia.co/corecentre/database/ Database/ Docs/DocFiles/Artical1_28Apr07.htm](http://www.cccindia.co/corecentre/database/Database/Docs/DocFiles/Artical1_28Apr07.htm))

Jan 17, 2014: NEW DELHI: Here is one more piece of news to bolster the fact that beauty is only skin deep. Blame it on incessant TV ads vouchsafed by stars in Bollywood appealing to all to look fair, handsome and the constant desire to sparkle. But now this medium used to shine has been proved lethal. Cancer, kidney damage, skin rashes and scars, besides anxiety and depression are some of the side-effects for those using fairness creams and lipsticks. This shocking piece of news was revealed in a maiden study of its kind in India by Delhi based environmental organization Centre for Science and Environment (CSE). It has found alarming levels of mercury, chromium and nickel in fairness creams and lipsticks that they tested. "Presence of mercury in cosmetics is completely illegal and unlawful," said CSE director general Sunita Narain.

Here are some of the culprits — Aroma Magic Fair Lotion, a product of Blossom Kochhar Beauty Products Pvt. Ltd, had the highest mercury level at 1.97 ppm, followed by Olay Natural White (1.79 ppm), a product of Procter and Gamble, India, and Ponds White Beauty (1.36 ppm) of Hindustan Unilever Ltd. Chromium was found in 15 out of 30 lipsticks tested in the range of 0.45 ppm to 17.83 ppm. Hearts & Tarts (080V) shade of ColourBar had the highest concentration. Nickel was found in 13 out of 30 products tested in the range of 0.57 to 9.18 ppm, with Lancome- Labsolu Nu-204 of L'Oreal India Pvt. Ltd. containing the highest concentration. "Mercury is a neurotoxin. Inorganic mercury that is present in fairness creams can damage kidneys and may cause rashes, skin discolouration and scarring. It can also cause anxiety, depression, psychosis and peripheral neuropathy," the study said. CSE did not find any heavy metals in anti-aging creams and lip balms. It also didn't detect Lead and Cadmium in Lipsticks. To gauge the safety of cosmetic products it tested, CSE compared the levels of heavy metals found with their Acceptable Daily Intake (ADI) limits. ADI is the maximum amount of a toxin that a person can be exposed to over a lifetime without any appreciable health risk. Since India has not set limits for ADI of mercury, CSE compared the amount of mercury in fairness creams with the ADI set by the US Environmental Protection Agency (USEPA). The results show whitening creams may contribute up to 71 per cent of the ADI for mercury, depending upon the product and the amount of the fairness cream used. This is a very high level of exposure to mercury from just one product. People are regularly exposed to the heavy metal from sources such as food, water and air. With some whitening cream accounting for over 50 per cent of the ADI for mercury, chances are high that a person using these products may exceed the ADI limit for mercury. Health risks associated with mercury would increase proportionally. Mercury is a neurotoxin. Inorganic mercury that is present in fairness creams can damage kidneys and may cause rashes, skin discolouration and scarring. It can also cause anxiety, depression, psychosis and peripheral neuropathy. In India, limits are set only for a few heavy metals and that too, in colourants – an ingredient used in cosmetics. "Manufacturers often get away on the pretext that toxic metals are present in trace levels. It is important that regulators set limits for final products and enforce them," Chandra Bhushan, head of PML, CSE, said. CSE had approached all companies with the test results of their products. Seven out of 14 companies responded. However, most took refuge in the concept of 'trace' presence. Their defense is that the heavy metal found is small in quantity and it is unavoidable because it is part of the ingredients. They also claimed that their product is safe for long-term use. "Additionally, the fact that our lab did not find mercury in 56 per cent of the products tested suggests that the industry has the capacity and wherewithal to clean up their act. Many companies are following the law – what is stopping the others from doing so?" Narain asked. In India, limits are set only for few heavy metal and that too, in colourants – an ingredient used in cosmetics. Colourants make up 10 per cent of the weight of a lipstick, and are one of the sources of heavy metals. There are no limits for finished products – which makes it difficult to monitor. Over and above, none of these products are tested by regulators. But a look at the Drugs and Cosmetics Act of India, 1940 shows that cosmetics are one of the most unregulated products under the law. The enforcement itself is very tardy. For example the Drugs Controller General of India (DCGI) which is responsible for the safe usage of cosmetics sold in the country is done on the basis of documents provided by the manufacturer or the company importing the product. Cosmetics are imported by registering a brand for \$250 and then details of the product, testing protocols and documents are then given for clearance stating that the cosmetics do not contain toxic products. The manufacturer also needs to provide similar documents for seeking license from the state drugs authority. But in all this procedures the DCGI never evaluates the safety of the products as claimed by the companies. According to RNCOS, a business consultancy service in the US, the Indian cosmetic industry is one of the fastest growing, posting sales of Rs. 26,410 crore and is expected to expand at about 17 per cent a year by 2015. In 2007, Campaign for Safe Cosmetics, a US-based coalition against unhealthy ingredients used in cosmetics, tested lipsticks of 33 popular brands and found 61 per cent of them containing lead in the range of 0.03 to 0.65 parts per million (ppm). Maybelline Colour Sensation by L'Oreal USA had 10 times more lead than earlier. The findings were published in the July-August 2009 issue of the Journal of Cosmetic Science. The Centre for Environmental Justice in Sri Lanka has found high levels of mercury in 25 of the 46 skin whitening products found in the island nation. Pai Mei, a whitening spot cream imported from China, contained a whopping 30,167 ppm of mercury. (Source: <http://www.americanbazaaronline.com/2014/01/17/beauty-indeed-skin-deep-lipsticks-cosmetics-fairness-creams-lethal-says-study/>)

e. Indecent Representation of Women (Prohibition) Act, 1986:

The Indecent Representation of Women (Prohibition) Act, 1986 forbids the depiction of women in an indecent or derogatory manner in the mass media. No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

f. Cable Television Networks (Regulation) Act:

Under the Cable Television Networks (Regulation) Act, the ministry issues directions to television channels or cable TV operators to stop airing an ad and not to the advertisers.

V. Role Of ASCI

New guidelines from the Advertising Standards Council of India, a self-regulatory body could quite literally change the face of advertising in the approximately Rs 3,000-crore fairness category which includes creams, face washes and lotions.

Hindustan Unilever dominates the category with its Fair & Lovely brand, and other big brands include Emami's Fair & Handsome for men, as well as Garnier from L'Oreal.

A draft of the new guidelines specifically targets several well-established tropes of fairness advertising.

The new rules propose, among other things, that advertising should not communicate any discrimination as a result of skin colour. "Specifically, advertising should not directly or implicitly show people with darker skin as unattractive, unhappy, depressed or concerned. These ads should not portray people with darker skin as at a disadvantage of any kind, or inferior, or unsuccessful in any aspect of life particularly in relation to being attractive to the opposite sex, matrimony, job placement, promotions and other prospects."

Further, advertising should not use post production visual effects on the model/s to show exaggerated product efficacy or associate darker or lighter colour skin with any particular socio-economic strata, caste, community, religion, profession or ethnicity and should not perpetuate gender-based discrimination based on skin colour, the draft said.

According to Sam Balsara, chairman and managing director, Madison World and a former chairman of ASCI, "The reason for these guidelines is to make it clear to advertisers as to what society finds acceptable and what it doesn't."



In a recently released memo, ASCI outlined four guidelines for advertisers:

1. Advertising should not communicate any discrimination as a result of skin colour. These ads should not reinforce negative social stereotyping on the basis of skin colour. Specifically, advertising should not directly or implicitly show people with darker skin, in a way which is widely seen as, unattractive, unhappy, depressed or concerned. These ads should not portray people with darker skin, in a way which is widely seen as, at a disadvantage of any kind, or inferior, or unsuccessful in any aspect of life particularly in relation to being attractive to the opposite sex, matrimony, job placement, promotions and other prospects.
2. In the pre-usage depiction of product, special care should be taken to ensure that the expression of the model/s in the real and graphical representation should not be negative in a way which is widely seen as unattractive, unhappy, depressed or concerned.
3. Advertising should not associate darker or lighter colour skin with any particular socio-economic strata, caste, community, religion, profession or ethnicity.
4. Advertising should not perpetuate gender based discrimination because of skin colour.

When asked about the ramifications on the guidelines on its advertising, a spokesperson from Hindustan Unilever, said, "We welcome ASCI's move to further strengthen guidelines. This will help to promote transparency in advertising. These guidelines are currently at a draft stage and have been published for seeking industry inputs."

Adds a spokesperson from **Garnier**, "We strongly believe advertising should not encourage social discrimination of people based on aspects like the colour of their skin. All Garnier communication focuses on the efficacy of the product and is most importantly, backed by scientific fact. Our conviction is that there is no single model for beauty."

Both ASCI and Balsara say that advertisers have been consulted while coming up with the guidelines. And advertising folk who chose to respond off the record believe (or at least hope) that the letter and spirit of these guidelines allow a certain room for interpretation.

Pioneered by Afghan Snow in 1919, the fairness category is dominated by Hindustan Unilever's Fair & Lovely, launched in 1975.

Today, almost every skin care brand worth its name, from Garnier to Ponds, has a fairness variant, with an entire sub-category targeting men. It has been built on storylines about how being dark skinned could materially affect the job and marital prospects of consumers.

However, over the last decade, there's been a groundswell of protests against these products and how they are marketed. Celebrities like film director Shekhar Kapur have taken on the category on social media including Twitter.

An entire segment in Madhur Bhandarkar's Traffic Signal is devoted to an anti fairness-cream rant. The category's ads has been pilloried in global media for promoting a kind of "racism".

Chennai based Women of Worth has been running a campaign around the theme Dark is Beautiful with support from actor and director Nandita Das. It's finally made ASCI take notice.

Long regarded as a well intentioned but powerless body, the ASCI has revitalised itself over the last couple of years, moving with speed and aggression against ads that break its code of conduct.

Says Shweta Purandare, secretary general at the ASCI, "Over the years, we have come across several complaints against advertisements regarding skin lightening or fairness improvement."

10% of ASCI's complaints are targeted at personal care products, typically dealing with their lack of efficacy and exaggerated claims.

For years now, companies have flogged formulaic before-after ads to sell fairness creams, India's largest cosmetics category, accounting for a Rs.3,036 crore slice of a skin-cream market worth Rs.9,641 crore in annual sales.

Guidelines issued in August 2014 by the Advertising Standards Council of India (ASCI), a self-regulatory organization of advertisers, may put a stop to that. ASCI claims the new guidelines will not allow ads for fairness creams and other fairness products to depict people with dark skin as inferior to those who are fair.

They should not depict people with dark complexions as "unattractive, unhappy, depressed or concerned", the guidelines said. Nor should they be depicted as being at a disadvantage when it comes to "being attractive to the opposite sex, prospects of matrimony or job placement and promotions".

ASCI has also said that the advertising should not associate darker or lighter colour of skin with any particular socioeconomic strata, caste, community, religion, profession or ethnicity, nor perpetuate gender-based discrimination because of skin colour.

According to Partha Rakshit, chairman, ASCI, the "...new guidelines...will help advertisers comply with ASCI code's Chapter III 1 b, which states that advertisements should not deride any race, caste, colour, creed or nationality". ASCI saw the need to set up specific guidelines for this product category given the widespread advertising of brands in this segment, Rakshit said.

Hindustan Unilever Ltd's skin-lightening cream **Fair and Lovely** and **Emami Ltd's Fair and Handsome** are widely advertised.

Former ASCI chairman and consultative committee member Bharat Patel said that the feedback to the draft guidelines was positive. "Advertisers have reconciled to the fact that they cannot show dark-skinned people as depressed or disadvantaged in any manner. Fairness brands cannot deride any skin colour," he said.

TV ads will have to comply with the guidelines, as the Cable Television Networks (Regulation) Act makes it mandatory for all television commercials to abide by ASCI rules, Patel said. "We expect 92% compliance in print also, as most large advertisers will follow the guidelines," he added. TV is the primary advertising medium for fairness creams.

Fairness and skin-lightening products are also popular in Japan, China and Thailand, although they do not deride dark skin in their advertising, Patel said. "So while we cannot wish away advertising of skin-lightening products, communication strategies of brands in India will change after these guidelines."

The sheer size of the market in India has meant that even multinational corporations that entered the cosmetics business with lofty notions of selling sophisticated formulations have quickly changed their plans and launched whitening or brightening creams. **L'Oréal India Pvt. Ltd.**, for instance, launched whiteness creams under the **Garnier** brand.

Srinivasan Swamy, Chairman, RK Swamy BBDO and ASCI board member told The Hindu, "Fairness is a large product market of about Rs. 4,000 crore and advertising from it is about Rs. 600 crore."

"Fairness products have elicited views ranging from calls to ban them to liberal views that Indians are like this only, but consensus is required from all constituents," Arvind Sharma, outgoing Chairman & CEO, Leo Burnett Advertising & ASCI board member, told The Hindu.

Responding to the new guidelines issued by ASCI, Mohan Goenka, director, **Emami Ltd.**, said: "We welcome the new advertising guidelines of ASCI for the skin whitening products category which address the concerns raised by various quarters including industry, society and consumers at large. The aim of an advertiser should be to ensure that viewers are not misguided about the efficacy of any product or promote discrimination of any sort, without compromising the creative licence to portray product attributes. We believe that consumer is the king...and it should finally be his choice to use any product that is advertised."

Darshan Patel, chairman and managing director of **Vini Cosmetics Pvt. Ltd.**, the company that manufactures powder under the **White Tone** brand name, said that although White Tone does not have "fairness" as a product promise, his firm will abide by the ASCI rules.

"We talk of looking good as it is a make-up powder. We also have **Glam-up**, a foundation cream, that makes you look special. However, we sincerely hope that companies that were crossing the line in advertising their fairness products will stay within limits after this ruling."

ASCI and its consumer complaints council deal with complaints received from consumers and industry against advertisements which are considered false, misleading, indecent or leading to unsafe practices. ASCI currently monitors over 80% of the new print and television ads released every month.

VI. Banned Indian Television ADS

Every Fairness Product Advertisement goes against the ASCI's codes.

1. They are dishonest: They sell products that do not work. These products do not change the colour of anybody's skin. Worse, they sell a wrong notion that a particular colour of skin is superior than the other, thus promoting colour discrimination!
2. These advertisements are Extremely Offensive to 90% of the population of India who are dark skinned! It offends the entire Nation.
3. These products are extremely harmful, the ingredients are dubious and can contribute to chronic diseases.

In August 2014, the Advertising Standards Council of India, a self-regulated advertiser group, issued a new set of guidelines that will ban all ads that depict those with darker skin as being inferior in any way.

For years, advertisers of skin-lightening creams and other products have shown people — mostly women — with dark skin as having problems when it comes to finding jobs, getting married and generally being accepted by society. The makers of these ads include behemoths like Unilever, Johnson & Johnson and P&G. The so-called “fairness” cream industry in India was estimated at \$432 million a year and growing by 18 percent annually in 2010, by AC Nielsen.

“Advertising should not communicate any discrimination as a result of skin colour,” read the new ASCI guidelines, and the expression of the model in the ads should not be “negative in a way which is widely seen as unattractive, unhappy, depressed or concerned.”

Former ASCI chairman Bharat Patel told business news site ‘Live Mint’ that all advertisers have to comply with the ASCI rules — both in television and print.

The movement is a long time coming. For years, activists like Indian film star and director Nandita Das (who is often called “dusky”) have tried to start social movements against the manufacturers of these types of products and advertisers that carry those messages. Recently, she launched “Dark is Beautiful,” a campaign to celebrate “beauty beyond colour.”

The four Indian ads we won't see on Indian television ever again are the **Fair & Lovely, Fair & Handsome, Clean & Dry and Garnier** advertisements that have been discussed in the ‘Case Studies’ section.

VII. The For And Against Debate

Celebrities Who Advocated Fairness Creams:

In an India where the educated classes are increasingly demanding a social conscience and accountability from their stars, celebrities these days face an interesting dilemma when they agree to be the face of a fairness product. After all, it's not easy trying to position yourself as a sensitive and liberal star when the product you endorse cashes in on the widely prevalent prejudice against dark skin in our country.

Genelia D'Souza:

In the Garnier ad I say: “Sach bolne waale fairness creams, so rare na? But where am I saying that you are dark so use this and you are gonna get light? It's Garnier Light Moisturiser. I'm saying if it has a quality of making your skin look fairer or brighter or whatever, it's probably part of the thing. I, as an endorser, am saying, at times your skin gets dull so use this because it's a moisturiser.”

John Abraham:

Genelia is not alone. John Abraham – who endorses Garnier's fairness moisturiser for men – insists that “in India, fairness means removing blemishes”.

Priyanka Chopra:

And Priyanka Chopra who earlier endorsed Pond's White Beauty and now backs a rival fairness product has famously said that Pond's White Beauty “doesn't lighten the skin, it brightens the skin”.

Sonam Kapoor:

Few ads illustrate this new-age subtlety better than the one for L'Oreal's Pearl Perfect. The product's star ambassador Sonam Kapoor sounds convinced that it's not a fairness product. “It's got SPF and it takes off dark spots on your face,” she explains. “Indian skin has a tendency to be patchy, we get brown spots in the sun, so it's all about evening out your skin tone.” But closely watch the Pearl Perfect advertisement and you will see that while the voiceover and star endorser speak of a flawless and beautiful complexion, appearing on the screen in passing are the words “skin looks visibly fairer 88%”.

Shah Rukh Khan:

Shah Rukh Khan, like many others, says there is nothing wrong with using fairness creams, while advertising executives insist the ads should not be blamed for perpetuating stereotypes.

Neil Nitin Mukesh:

Neil, who is now associated with Emami, does not know yet which product he will be endorsing, but is not disconcerted at the prospect of Fair and Handsome. "Where there is a demand, there is a supply," he says with a nonchalance that some people may find disturbing but is at least uncommonly frank in this scenario. "If you want bad films you will get bad films. And if using a fairness product makes someone feel better about themselves, then why not?"

Celebrities Who Are Against Advocating Fairness Creams:

In an India where standards of political correctness are changing, clearly these stars are torn between the large sections of their fan followings who use fairness creams; and another section that accuses them of being racist, colour prejudiced and socially irresponsible when they endorse these products.

Ranbir Kapoor:

Hindi filmstars who say no to skin 'whiteners' are treading a fine line in their community. After all, no one wants to offend colleagues, friends and relatives in the industry who are endorsing such products. That's perhaps why Ranbir Kapoor is not particularly anxious to tomtom his stance that he will never lend his name to a fairness cream. But earlier this year he quietly rejected an offer from a major manufacturer simply because he doesn't believe in what the product stands for. And Ranbir currently endorses Docomo, John Players, Pepsi, Panasonic, Hero Honda and Nissan Motors, a list he pointedly restricts to six because "it's a big responsibility, it's not just a money thing. You have to be careful, you have to believe in it, you have to be honest to what you're endorsing."

Bipasha Basu:

Bipasha Basu has negotiated this tricky situation with admirable finesse. Her just-recently-ex-boyfriend John Abraham has been the face of cosmetic giant Garnier's men's fairness cream for a while now, but that has not deterred the gorgeously and unapologetically olive-skinned Bipasha from consistently rejecting the advances of fairness product makers. Bipasha is the face of 14 products right now.

Says a source close to Bipasha: "There have been not just one or two, but several offers over the years. Bipasha has always refused. She believes we are all beautiful the way nature made us and we should accept ourselves that way." Fans would expect nothing less from this beauty and fitness icon who has chosen the brand name 'BB Love Yourself' for her fitness videos and clothing range.

Bipasha and Ranbir are not merely grandstanding to make waves. Considering that Bipasha earns Rs 1-1.25 crore and Ranbir gets Rs 4-5 crore for a year's commitment to a brand, their anti-fairness-creams stance has cost them big money.

Abhay Deol:

But it is just as attention-worthy that Abhay Deol says he'll never endorse a fairness cream, even before he's been approached to do so. Reason? These stars are rare phenomena in an India where actors – unlike their counterparts in the West – usually avoid taking positions on controversial social and political issues, unless they're keen on alternative careers in politics.

Kangana Ranaut:

Kangana Ranaut has also refused to endorse fairness creams. Ms Ranaut's reason is that she would be insulting her sister who "is dusky, yet beautiful".

Nandita Das:

Actress Nandita Das has lent her star power to the "Dark is Beautiful" campaign, which was launched in 2009. She revealed that, as a child, she often got comments like "Poor thing, she is so dark". She said she had said "no" to directors who wanted her to use make-up to look fairer.

Mahesh Mathai:

"The fact that these stars seem to be going through a dilemma is a positive sign for me. I thought once they got the money they didn't care about anything else. I'd be worried about the celebrity who'd tell you he doesn't care and that if there's a demand there will be a supply," says ad filmmaker Mahesh Mathai, who tells

us he's turned down several offers to direct fairness cream commercials through his career because he finds the concept of these products unethical.

Kavitha Emmanuel:

Ms Kavitha Emmanuel, who started the Women of Worth group and launched the 'Dark is Beautiful' campaign, said: "We hope that some of the blatantly discriminatory advertisements will find their way out of our television channels, hoardings and other print media." But she added: "Even so, we wonder if advertisers will find loopholes to keep discriminatory messages on the screen."

The Debate:

Mathai's words are in contrast to the stand taken by R Balki, chairman and chief creative officer of the ad agency Lowe Lintas (India) whose client roster includes market leader Hindustan Unilever, producers of Fair & Lovely. "This is downright hypocrisy," says Balki. "Obviously these stars want the big bucks they can get from endorsing fairness creams, but they don't want to stand by the product either." True. Most celebrities would find it hard to resist the lure of the moolah offered by the Rs 2,000-crore fairness creams industry. Shah Rukh Khan (who could take home up to Rs 12 crore per annum for an endorsement) accepts a lower fee for his long-standing association with Emami, manufacturers of Fair and Handsome: that 'lower fee' is approximately Rs 8 crore a year. Other celebrities too are paid mind-boggling sums for these tie-ups.

Balki insists that fairness cream ads "have not changed for reasons of political correctness but because the world has changed. It's like today if we advertise Vanaspati the way we used to, people would be up in arms pointing out the health impact, so we have to position it differently."

But many of them clearly do not want to be considered indifferent to their social responsibilities either. Because matrimonial ads may continue to be dominated by demands for 'fair brides'; professions where beauty is a pre-requisite may continue to be ruled by light-skinned people; even some critics of these supposed fairness facilitators may be surreptitiously using them... but at least among large swathes of the educated population, it's no longer politically correct to admit that you believe white is beautiful and dark is not.

This is a world far removed from 1978 when Fair & Lovely was first launched in India. Through the 1980s, advertisers would crudely show a charcoal-coloured or chocolate-skinned girl using the product to dramatically alter her colour to near-white and consequently improving her miserable life. "Very early on when Fair & Lovely began, there was a blatant colour argument," recalls media analyst Akhila Sivadas. "Even the ads would be moaning and moping. We were all protesting at the time. Finally there was an ad that was so derogatory that the All India Democratic Women's Association went straight to the I&B Ministry and said, this is highly demeaning to women and in contravention of the Indecent Representation of Women Act. The ministry made it clear that such ads would no longer be tolerated."

Today's ads try to be more positive and understated. 'Glow', 'radiance' and 'brightness' have become catchphrases in commercials featuring major celebrities for products that promise "an even skin tone" and a removal of blemishes, but quietly tucked away in a corner somewhere the word 'fairness' will peep out.

Sociologist Shiv Visvanathan explains this 'politically correct' advertising: "There's a gradient of whiteness these products sell. One is epidermal; the other guy almost sells it as a health cream. So it's ecological whiteness. The whiteness is not epidermal or cosmetic and therefore catering to racialism, but a kind of inner whiteness. And that's what a John Abraham would like to sell because it's eco-brand friendly. He and Priyanka can advocate green ecologies and health programmes while at the same time catering to folklore racial categories."

Sure enough, "healthy" is a key word in most fairness cream ads today, as if assuring dithering consumers, those who are seated on the fence in their attitude towards such products, that there's nothing to be embarrassed about using them since they're no different from a medical prescription.

"In a culture where mothers-to-be take huge amounts of dairy products in the hope of having a fair baby, I would say the obsession with fair skin is already deep-rooted," said Ms Zenobia Pithawalla, executive creative director of ad agency Ogilvy & Mather India.

Corporates and star brand ambassadors stress the "ethical" aspects of their advertising. A L'Oreal India spokesperson says: "The communication for L'Oreal India's fairness products focuses on their efficacy and is done in a manner that is ethical, responsible and backed by scientific fact. We do not play up the social discrimination and insecurities of people in the communication for any of our brands." And asked if Garnier Light is a fairness product, Priyanka Chopra responds: "Discolouration, pigmentation, dark spots and uneven skin tones are common problems plaguing Indian skin, including mine. Garnier Light Ultra Intense Fairness Moisturiser is a fairness cream that works towards improving skin quality and texture by protecting it from the sun and taking care of all these problems. The communication for Garnier Light Ultra focuses on specific issues like dark spots and the efficacy of the product. It has been done in a manner that is ethical, responsible and backed by scientific fact."

Ethical? Hmm... let's get down to brass tacks: can any cream make a dark person's skin lighter? "Koi kaala aadmi kabhi gora nahi ban sakta hai (a dark man can never become white)," replies Dr Anuj Pall, consultant dermatologist at Max Hospital, Gurgaon. "These over-the-counter products only even out skin tone if the person has normal skin, so maybe the user feels that they've become fairer but they've not. Even their claims of removing a tan and acne marks is questionable, since those acne marks will go away anyway, if left to themselves. So will that temporary tan acquired right after a visit to the beach."

But there is a more dangerous aspect to these so-called fairness products that goes beyond political correctness. Dr Shehla Aggarwal, skin specialist and director, Mehak Skin Clinic, Delhi, says, "Our Indian skin produces a dark melanin that protects us when we are exposed to the sun and prevents cancer. It is this element that also makes our skin age less than the skin of white people who get more lines and wrinkles than we do. These fairness products bleach the melanin. So a long-term use of fairness products could cause ageing and perhaps even skin cancer. The Indian dermatologists' community doesn't want to cause a cancer scare but it's been about 30 years since Fair & Lovely was launched in the Indian market and the impact is likely to be felt in the coming years."

With so much baggage accompanying these products, it's clear that the fairness creams industry needs to offer incredible sums of money to filmstars to bring them on board. While SRK remains the highest paid of the lot, Abraham gets anywhere from Rs 2-3.5 crore a year for an endorsement, Priyanka Chopra and Deepika Padukone are paid in the range of Rs 2-3 crore per annum (Deepika endorses Johnson & Johnson's Neutrogena skincare range that includes its Neutrogena Fine Fairness cream), Shahid Kapoor (Vaseline's whitening advocate) earns Rs 2-2.5 crore, Sonam Kapoor gets Rs 1.5-2 crore and the figure for Genelia is Rs 1.5 crore.

There is another irresistible benefit for these stars. Intense competition in the fairness products market ensures that consumers are bombarded with ads at every turn, which translates into high visibility for brand ambassadors. So as long as there are professional rivalries in the film industry, Indian stars will continue to endorse fairness products.

But Shruti Swetambhari, CEO of celebrity and brand management firm Green Leaf Sports and Entertainment, explains that today's more refined ads have added to the allure of fairness cream endorsements. "When brands like Garnier and L'Oreal entered the market, fairness products immediately shot into an A-list category of products that became desirable and acceptable to big stars," she explains. "Stars are also more comfortable with the fact that these ads no longer talk about a dark person becoming white, but about healthy skin." (Source: Anna MM Veticad is the author of *The Adventures of an Intrepid Film Critic*.)

VIII. Ethics Vis-A-Vis Demand & Supply: Analysis

The international cosmetics brand L'Oreal recently released a survey that stated that around 60 to 65% of Indian women regularly use fairness creams. (Source: <https://itsmesophiya.wordpress.com/tag/discrimination/>)

South Asians are obsessed with fairness and the prestige attached to having a certain shade of skin colour. Although this has changed in many urban communities as people become educated, it is still a widespread notion in rural and less developed areas. In arranged marriages, fairer brides are sought after while factors such as personal nature and education might be overlooked. The only reason for all this colour discrimination is the belief that fairer means more beautiful.

These ideas are deeply ingrained in the local culture and perhaps this obsession dates back to the colonial era when the British ruled the countries, creating this 'white equals superior' complex in South Asians. Even the beauties gracing the big screen in Bollywood productions reflect this discrimination against darker women as we hardly see darker actresses playing the lead roles. With the exception of a few, all the lead actresses are the fairer women that match the Indian model of a 'perfect' woman. These are the supposed "role models" for the millions of girls in a country of dark skinned people, encouraging the use of these fairness creams as most Bollywood actresses, being fair-skinned, appear in advertisements for fairness creams.

Marketers have tapped into the insecurities of the Indian women and magnified them and are feeding them the exaggerations of these insecurities for the benefit of their brands. These fairness ads feature young Indian women who cannot get the job of their dreams because, well, their skin colour and the magic of the fairness cream of course makes the girl more confident in herself as she becomes several shades lighter and scores the job of her dreams.

It is a multimillion-dollar industry that panders to those obsessed with achieving a lighter skin tone, but India's advertising standards authorities have now stepped in to make sure its ads are, well, fair.

The Advertising Standards Council of India (ASCI) - which regulates print, radio and TV ads - issued guidelines this month to ensure that ads do not discriminate against darker-skinned people when it comes to dating, finding a spouse, securing a job or getting a promotion.

"There has been a proliferation of advertisements for fairness products," said ASCI chairman Partha Rakshit. "Many consumers and consumer activists wrote to us to say such ads are degrading. That's why we took this up.

"Basically, one should just advertise a product and not attach any value to a person's skin colour - that if you are not fair, you are not good enough in some way."

In this country of more than 1.2 billion people, the perception that those with fair skin are more successful in love, marriage and career has spawned an industry in fairness products that generates more than US\$400 million (S\$500 million) in revenue every year.

Advertisers pay big bucks for Bollywood stars such as Shah Rukh Khan, John Abraham and Deepika Padukone to endorse their products.

The bigger makers of fairness creams say they will follow the new guidelines. Hindustan Unilever, which makes the popular cream, Fair & Lovely, said it had been consulted on the guidelines and was fully committed to them.

Emami Limited, the maker of Fair and Handsome which is endorsed by Shah Rukh Khan, said the guidelines would provide clarity.

Said Mr Mohan Goenka, a director of Emami: "The guidelines, which did not exist before, give clarity on how we show the benefits of using a fairness product. This will help in creating socially responsible campaigns."

While the fairness cream industry has boomed, counter-campaigns with names such as "Dark is Beautiful" have emerged in recent years to dispel the deeply entrenched notion.

Bollywood stars such as Ranbir Kapoor and Kangana Ranaut have refused to endorse fairness creams. Ms Ranaut's reason is that she would be insulting her sister who "is dusky, yet beautiful".

Actress Nandita Das has lent her star power to the "Dark is Beautiful" campaign, which was launched in 2009.

She revealed that, as a child, she often got comments like "Poor thing, she is so dark". She said she had said "no" to directors who wanted her to use make-up to look fairer.

Campaigners welcome the new guidelines. Ms Kavitha Emmanuel, who started the Women of Worth group and launched the "Dark is Beautiful" campaign, said: "We hope that some of the blatantly discriminatory advertisements will find their way out of our television channels, hoardings and other print media." But she added: "Even so, we wonder if advertisers will find loopholes to keep discriminatory messages on the screen."

Shah Rukh Khan, like many others, says there is nothing wrong with using fairness creams, while advertising executives insist the ads should not be blamed for perpetuating stereotypes.

"In a culture where mothers-to-be take huge amounts of dairy products in the hope of having a fair baby, I would say the obsession with fair skin is already deep-rooted," said Ms Zenobia Pithawalla, executive creative director of ad agency Ogilvy & Mather India.

IX. Suggestions

1. It is an undisputed fact that advertisement plays a vital role in building up any business. The aim of advertisement is to attract the sales and enhance the visibility of the products and services of the company among the consumers. Through an advertisement, a company can build an image which it wants to make in the minds of the people. Therefore, nowadays, companies spend a huge amount of their resources on advertising and promotional strategies. Thus it is evident that there are no specific legislations governing advertising in India, other than ASCI even which is not up to the mark to govern advertising spectrum. It is evident that all that is needed a codified uniform legislation for Advertising Laws.
2. We should have such laws that are binding on both the producers and advertisers of the products. Unless the laws are strict, advertisers will not be cautious regarding their violations of other's rights.
3. It is also the duty of the aware citizens and institutions like judiciary to raise their voice through Public Interest Litigations against airing of such advertisements on national Television. Here, the work done by the students of Bangalore's National Law School deserves to be applauded; and have set an example for others to follow.
4. Under the Cable Television Networks (Regulation) Act, the ministry issues directions to television channels or cable TV operators to stop airing an ad and not to the advertisers. But unless the advertisers are booked and given penalty, the menace of such advertisements would be seem more often in national television.

X. Conclusion

Controversial Jamaican artist Vybz Kartel produced his own line of skin-bleaching products, saying in 2011: "When black women stop straightening their hair and wearing wigs and weaves, when white women stop getting lip and butt injections and implants ... then I'll stop using the 'cake soap' and we'll all live naturally ever after." However in June 2013, he appears to have taken an about turn by encouraging youngsters to stop bleaching. It is crystal clear that colourism is neither a phenomenon reserved for African-Americans nor are they

the largest consumers of skin whitening products on a revenue basis. Japan leads the way there, with China and India contributing to 13% growth year on year. By 2018, the skin-whitening industry is projected to evolve globally into a \$20 billion business. In Asia, especially in Japan, it is almost impossible to buy any kind of skin cream without it having an active ingredient to 'brighten' one's skin. However, avid consumers of such products span Tokyo, India, Shanghai, Lagos, Kuala Lumpur, Manila, New York and London. Yet the industry is coming increasingly under fire, and is being presented with major corporate social responsibility and business ethics issues.

In July 2013, an article entitled 'Recall in Japan Blemishes Skin-Whitening Industry', tells of how a Japanese company Kanebo had to recall a skin lightening product. It is approximated that as many as 15,000 consumers were left with white patches as large as 2-inches in diameter, a side effect of the agent Rhododenol, which is used to brighten skin. The company is now faced with paying medical costs of their customers.

Recently in Thailand, the corporate practices of Unilever and Vogue have been brought into question. Unilever broadcast a commercial, directly correlating the lightness of one's skin and the level of one's education, which got pulled. Based on the article 'Thailand race row reignited by Unilever ad for skin-whitening cream', clearly there is a history of colourism in Thailand.

Within the same week, Vogue in Thailand published an image of Naomi Campbell of its cover. Naomi appears markedly lighter in the magazine's depiction of her. The artist in question, in his defense, claimed that he always uses pastels in his photographic artwork, as officially stated by Vogue's CEO.

The Television advertisers in India have been debating on the lines of demand and supply rather than accepting the unethical character of these advertisements.

Exception Of 'Tanishq' Advertisement:

Jewellery retailer Tanishq has come up with a commercial that moves away from the stereotype of blushing, fair-skinned brides and introduces the concept of remarriage—possibly for the first time in Indian advertising. The ad, shot by filmmaker Gauri Shinde of English Vinglish fame, showcases a dusky bride—theatre actor Priyanka Bose, looking at herself in the mirror as she readies herself for the wedding. A little girl runs up to her and chatters away. They walk towards themandap together. The little girl settles down between her grandparents to watch the wedding unfold, but soon wants to participate in the pheras with the bride and groom. On being shushed into silence, the little girl sits back disappointed. On seeing this, the groom calls out to the girl and carries her through thepheras. The ad ends with the little girl asking the groom if she can call him Daddy.

The ad, created by Lowe Lintas India, has received much praise on social media. Member of Parliament and industrialist Naveen Jindal, for instance, tweeted: "A dusky bride with a daughter in an ad? Well done @TanishqJewelry for breaking stereotypes with grace & power."

To be sure, the agency was mindful of the fact that the ad could ruffle some feathers. "Lots of conversations happened (with the client). But it finally came through," said Arun Iyer, national creative director, Lowe Lintas, explaining that he wasn't really worried about the audience. "This is the thinking that most progressive people have. They may not be going through the same thing in their life, but the ad makes a bold, progressive, statement and people like to be associated with brands that make such statements." He added that the agency was conscious of the way the ad was shot to ensure that it did not come across too strongly. From the casting of the actors "it had to look like a marriage of equals, not something that was done out of pity", to the execution of the ad, to ensure that it looked like a small, cosy wedding. "We didn't want it to look like we were trying to make a point," said Iyer.

In addition to dealing with the topic of remarriage rather boldly, the advertisement also drew attention because the leading actress, Priyanka Bose, is darker than the average Indian woman who is depicted on advertisements. In a society where there is still some premium placed on light skin, this new advertisement by Tanishq was seen as defying accepted stereotypes surrounding the depiction of beauty in the mainstream media.

In an interview with India Today, director Gauri Shinde (who went on to win many awards for her debut feature film English Vinglish), stated that the use of a "dusky" model was not deliberate. "I don't see these differences between dusky and fair and frankly I personally don't even want to be part of that debate because I feel there is a complex at play; against the dusky, against the fair. It's unnecessary. Everyone's beautiful," said Shinde.

Shinde raises a very important point here, which is that sometimes, in our haste to uphold the beauty of dark skinned people, we (often unintentionally) end up undermining the beauty of the lighter skinned. We also tiptoe around descriptions of people, using "dusky" instead of saying "dark," thereby still adhering to the mentality that calling someone "dark" would be an insult. What's wrong with calling people what they are? Dark or fair, fat or thin? These words by themselves are not insults, but we have created a framework whereby they have developed negative connotations.

Kudos to Tanishq for not defying the unspoken standards in the world of Indian advertisement, and for taking on socially relevant issues that reflect the reality of many Indians.

Grass-Root Changes:

A few changes should be made at the ground-level to deal with the concept of colourism that is so deeply ingrained in the minds of most Indian citizens. Some of these changes are mentioned as follows:

- First, it is challenge the validity of colourism.
- Second, is to raise awareness, to educate people globally about the history of colourism and the negative impacts it has had on the health and wellbeing on individuals and societies.
- Third, is to encourage responsible business practices and consumerism.
- Fourth, is to lobby for greater regulation and removal of products which are not only harmful to people and the environment, but which also reinforce racist attitudes and social stratifications based on skin colour.

If we all become responsible and work together for the protection against discrimination on the basis of skin colour, then our society would feel more secured and protected.

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