PLATFORMED PERSUASION: INFLUENCER MARKETING AND CONSUMER PROTECTION LAW IN INDIA

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ABSTRACT

The rapid growth of social media has transformed advertising into a subtle, personality-driven exercise, where influencers act as powerful intermediaries between brands and consumers. This phenomenon, often described as *platformed persuasion*, blurs the traditional distinction between personal opinion and commercial communication. In India, the regulatory response to influencer marketing has evolved primarily through the Consumer Protection Act, 2019, supplemented by the Consumer Protection (E-Commerce) Rules, 2020 and the Advertising Standards Council of India (ASCI) Guidelines for Influencer Advertising in Digital Media. This paper critically examines the adequacy of India's consumer protection framework in addressing deceptive and misleading practices arising from influencer-led promotions. It analyses the statutory recognition of misleading advertisements, the introduction of endorser liability, and the shifting burden of responsibility from advertisers to digital intermediaries and individual influencers. The study also explores enforcement challenges posed by the decentralised and algorithm-driven nature of social media platforms, including issues of disclosure, transparency, and jurisdiction. By situating influencer marketing within broader principles of consumer autonomy and informed choice, the paper argues that while existing laws mark a significant step forward, gaps remain in effective monitoring, deterrence, and accountability. The paper concludes by suggesting the need for clearer statutory definitions, stronger coordination between regulatory bodies, and a more nuanced approach to balancing commercial speech with consumer rights in the digital marketplace.

Keywords:
Influencer Marketing; Consumer Protection Act, 2019; Misleading Advertisements; Endorser Liability

INTRODUCTION: THE RISE OF PLATFORMED PERSUASION

The digital economy has fundamentally altered the landscape of advertising. Traditional, clearly identifiable advertisements have increasingly given way to influencer-driven content, where promotions are seamlessly embedded within lifestyle narratives on social media platforms. Influencers, by virtue of their perceived authenticity and relatability, wield considerable persuasive power over consumers. This form of advertising—often termed *platformed persuasion*—raises significant legal concerns, particularly regarding transparency, consumer autonomy, and accountability. In India, where social media penetration is vast and regulatory awareness among consumers remains uneven, influencer marketing presents a unique challenge to consumer protection law.

This paper examines how Indian consumer protection law responds to influencer marketing, focusing on statutory provisions, regulatory guidelines, and judicial interpretations. It analyses whether existing legal mechanisms adequately address misleading advertisements and assesses the evolving liability of influencers as endorsers.

India's influencer marketing industry crossed Rs 2,800 crore in 2024 and is projected to surpass Rs 3,375 crore by the end of 2025, growing at a compound annual growth rate of over 25 per cent, according to the EY-FICCI Indian Media and Entertainment Report 2025. India now hosts an estimated 2.5 to 3.5 million content creators across social media platforms, with Instagram being the leading channel for brand collaborations as reported by 90 per cent of respondents in a 2024 industry study. This exponential expansion underscores the urgency of a regulatory framework capable of keeping pace with the volume and velocity of sponsored content being generated daily in the digital ecosystem.[1]

INFLUENCER MARKETING: BLURRING THE LINE BETWEEN OPINION AND ADVERTISEMENT

Influencer marketing operates on trust. Unlike conventional advertisements, influencer promotions often mimic personal recommendations, making it difficult for consumers to distinguish between genuine opinion and paid endorsement. This blurring undermines the principle of informed consumer choice, a cornerstone of consumer protection jurisprudence.

[1] EY-FICCI, *Indian Media and Entertainment Report 2025* (2025); Influencer, 'Leading Social Media Platforms for Influencer Collaboration across India in 2024' (*Statista*, September 2024) <https://www.statista.com/statistics/1241481/india-social-media-influencer-market-by-platform/> accessed 31 August 2026.

In India, the absence of early regulation led to rampant non-disclosure of sponsored content. Influencers frequently promoted products ranging from cosmetics and financial services to health supplements without adequate disclosure of material connections. Such practices raised concerns under the broader concept of misleading advertisements, even before influencer-specific guidelines were introduced.

Empirical data underlines the severity of this problem. According to the Advertising Standards Council of India's Annual Complaints Report for 2023-24, violations of influencer guidelines accounted for 21 per cent of the total 8,299 advertisements examined during that reporting period. Of influencer promotions flagged under the ASCI Code, 99 per cent were found to be in breach of applicable disclosure norms. In the personal care sector alone, influencer disclosure violations constituted 55 per cent of all advertisements processed, reflecting the extent to which non-disclosure had become normalised commercial practice.[2]

STATUTORY FRAMEWORK: CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act, 2019 (CPA 2019) marks a paradigm shift from the earlier 1986 Act by recognising the realities of modern advertising and e-commerce. Section 2(28)[3] of the Act defines a "misleading advertisement" to include false descriptions, deceptive guarantees, and deliberate concealment of material information. Influencer promotions that fail to disclose paid partnerships squarely fall within this definition.

A significant development under the CPA 2019 is the explicit recognition of *endorser liability*. Section 21 empowers the Central Consumer Protection Authority (CCPA) to impose penalties on manufacturers, advertisers, and endorsers for misleading advertisements. An endorser, including a social media influencer, may be penalised up to ten lakh rupees for the first contravention and up to fifty lakh rupees for subsequent contraventions, along with prohibition from making endorsements.

Supplementing the Act, the CCPA notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements in June 2022, providing a structured framework that details the duties of endorsers, the conditions for valid endorsements, and the obligation to disclose any material connection between an endorser and an advertiser.

[2] Advertising Standards Council of India, *Annual Complaints Report 2023-24* (May 2024) <https://www.ascionline.in/wp-content/uploads/2024/05/Annual-Complaints-Report-2023-24.pdf> accessed 31 August 2026.

[3] Consumer Protection Act, No. 35 of 2019, s. 2(28), India Code (2019).

In January 2023, the Department of Consumer Affairs further issued the Endorsement Know-hows!, a guidance document expressly directed at celebrities, influencers, and virtual influencers operating on social media platforms. These instruments reinforce the statutory mandate by clarifying that the due diligence expected of influencers under Section 21 of the Act is substantive in nature, requiring genuine verification of product claims before endorsement.[4]

REGULATORY OVERSIGHT BEYOND THE STATUTE: ASCI GUIDELINES

Complementing the statutory framework are the Advertising Standards Council of India (ASCI) Guidelines for Influencer Advertising in Digital Media. These guidelines mandate clear and prominent disclosure labels such as "#ad" or "#sponsored" and emphasise due diligence by influencers before endorsing products.[5]

While ASCI is a self-regulatory body, its guidelines play a persuasive role in enforcement. The CCPA has increasingly relied on ASCI standards to assess whether advertisements are misleading. However, the voluntary nature of compliance raises concerns about consistency and deterrence, especially among micro-influencers.

Empirical data from ASCI's Annual Complaints Report for 2023-24 further illustrates this structural gap. Of the advertisements processed during that period, 94 per cent were identified through ASCI's own proactive monitoring rather than through consumer complaints, yet the compliance rate in the digital advertising space stood at only 75 per cent, significantly below the 97 per cent compliance rate observed in traditional print and television media. This disparity highlights that the structural conditions of digital media, including the speed, scale, and algorithmic amplification of content publication, render self-regulation alone insufficient as a consumer protection mechanism.[6]

JUDICIAL APPROACH: COURTS AND CONSUMER FORUMS

[4] Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022* (9 June 2022); Department of Consumer Affairs, *Endorsement Know-hows! for Celebrities, Influencers and Virtual Influencers on Social Media Platforms* (Ministry of Consumer Affairs, Food and Public Distribution, January 2023) <https://ashlarlaw.com/know-hows-and-guidelines-on-advertisements-and-endorsements/> accessed 31 August 2026.

[5] Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021), https://asci.social

[6] Advertising Standards Council of India, *Annual Complaints Report 2023-24* (May 2024) <https://www.ascionline.in/wp-content/uploads/2024/05/Annual-Complaints-Report-2023-24.pdf> accessed 31 August 2026; see also ALG India Law Offices, 'Summary: Annual Complaints Report 2023-24 by ASCI' (28 June 2024) <https://www.algindia.com/summary-annual-complaints-report-2023-24-by-advertisement-standard-council-of-india/> accessed 31 August 2026.

Indian courts have traditionally adopted a consumer-centric approach in cases involving misleading advertisements. Although influencer-specific litigation remains limited, principles laid down in cases such as *Hamdard Dawakhana v. Union of India*[7] and *Horlicks Ltd. v. Zydus Wellness Products Ltd.*[8] highlight judicial intolerance towards deceptive advertising.

Consumer Commissions, under the CPA 2019, are empowered to grant compensation, order discontinuation of misleading advertisements, and impose penalties. As influencer marketing disputes begin to reach these forums, existing jurisprudence on unfair trade practices is likely to guide adjudication.[9]

THE ROLE OF DIGITAL PLATFORMS: INTERMEDIARY OR ENABLER?

Social media platforms act as critical enablers of influencer marketing by providing algorithms that amplify sponsored content.[10] However, their liability remains ambiguous. While platforms often claim intermediary protection, their role in monetisation and content curation raises questions about shared responsibility.

The Information Technology Act, 2000 and intermediary guidelines impose certain due diligence obligations, but these provisions are yet to be effectively harmonised with consumer protection laws. This regulatory fragmentation weakens enforcement against misleading influencer content.[11]

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 introduced enhanced due diligence obligations for significant social media intermediaries, defined as those with more than five million registered users in India, including the appointment of compliance officers and the publication of monthly compliance reports. However, these obligations are principally oriented towards the removal of unlawful content and do not extend to proactive monitoring of paid commercial speech or sponsored influencer promotions. This creates a structural asymmetry between a platform's duty to police harmful

[7] Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India, AIR 1960 SC 554 (India).
[8] Horlicks Ltd. v. Zydus Wellness Prods. Ltd., CS (COMM) No 464 of 2019, decided 14 May 2020 (Delhi High Court) (India).
[9] Christopher T. Marsden, *Regulating Platforms: Consumer Protection and Digital Power*, 6 Mod. Law Review 985 (2020).
[10] Jan Trzaskowski, *Identifying the Commercial Nature of Influencer Marketing*, 8 J. European Consumer & Market Law 223 (2019).
[11] Rebecca Tushnet, *Attention Must Be Paid: Commercial Speech, User-Generated Ads, and the Challenge of Regulation*, 58 Buffalo Law Review 721 (2010).

user-generated content and its responsibility toward the integrity of monetised advertising that it algorithmically amplifies and profits from.[12]

COMPARATIVE GLIMPSES AND GLOBAL BEST PRACTICES

A Comparative analysis of international regulatory approaches reveals that many jurisdictions have moved beyond soft guidance to adopt stricter, enforceable norms governing influencer marketing. These regimes provide valuable lessons for India in balancing consumer protection with digital innovation.

In the United Kingdom, influencer marketing is jointly regulated by the Competition and Markets Authority (CMA) and the Advertising Standards Authority (ASA).[13] The Consumer Protection from Unfair Trading Regulations, 2008 prohibit misleading commercial practices, including hidden advertising. Influencers are required to clearly disclose paid partnerships, and failure to do so has resulted in enforcement actions, public warnings, and undertakings. Notably, the CMA has emphasised that both influencers and brands bear responsibility, reinforcing the idea of shared liability rather than treating influencers as passive endorsers.

The European Union adopts a harmonised approach through the Unfair Commercial Practices Directive (UCPD) and the Digital Services Act (DSA). Influencer content that conceals commercial intent is treated as a misleading omission.[14] The DSA further strengthens platform accountability by imposing due diligence obligations on online platforms to address systemic risks, including deceptive advertising.[15] This integration of consumer protection and platform regulation offers a robust model for addressing algorithm-driven amplification of influencer content.

In the United States, the Federal Trade Commission (FTC) has developed an extensive disclosure regime through its Endorsement Guides.[16] These guidelines require clear and

[12] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4(1); see also Sharad Vadehra, 'An Update on India's Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021' (*Mondaq*, 3 June 2021) <https://www.mondaq.com/india/social-media/1074774/an-update-on-india39s-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> accessed 31 August 2026.
[13] Competition & Markets Authority, *Hidden Advertising Online: Enforcement Update* (2020), https://www.gov.uk
[14] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), 2022.
[15] Jan Trzaskowski, *Identifying the Commercial Nature of Influencer Marketing*, 8 Journal of European Consumer & Market Law 223 (2019).
[16] Federal Trade Commission, *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 C.F.R. pt. 255 (2023).

conspicuous disclosure of material connections and place affirmative duties on influencers to ensure the truthfulness of claims. The FTC's enforcement actions, including monetary penalties and consent orders, demonstrate an active regulatory stance. Importantly, the US model highlights the role of enforcement visibility in shaping influencer behaviour.

These comparative models underscore three key principles: mandatory disclosure backed by enforcement, shared responsibility among advertisers, influencers, and platforms, and proactive regulatory monitoring. India's reliance on self-regulatory guidelines, while progressive, lacks the binding force seen in these jurisdictions. Incorporating elements of platform accountability and harmonised enforcement, as reflected in global best practices, would significantly strengthen India's consumer protection regime.

CRITICAL ANALYSIS: GAPS AND ENFORCEMENT CHALLENGES

Despite the progressive intent of the Consumer Protection Act, 2019 and the supplementary ASCI guidelines, significant structural and practical gaps continue to undermine effective regulation of influencer marketing in India. These challenges arise from the nature of digital platforms, ambiguities in legal attribution, and limitations in institutional capacity.

A primary concern lies in the identification and monitoring of violations. Influencer marketing operates at an unprecedented scale, with millions of posts generated daily across platforms such as Instagram, YouTube, and X. Regulatory authorities like the CCPA lack the technological infrastructure and manpower required to proactively track non-disclosure or misleading claims. Enforcement thus remains largely complaint-driven, which places an unreasonable burden on consumers to detect and report deceptive practices.[17]

Another critical gap relates to ambiguity in determining influencer knowledge and intent. Section 21 of the CPA 2019 allows endorsers to escape liability if they have exercised due diligence. However, the statute does not clearly define what constitutes adequate due diligence for influencers. This creates uncertainty and opens the door to inconsistent application of penalties. Influencers may claim ignorance of product defects or misleading claims, even when promoting sensitive categories such as health, finance, or education.[18]

[17] G. Raghuram & Prateek Agarwal, *Regulating Digital Advertising in India: Emerging Challenges*, 64 J. Indian Law Institute 145 (2022).
[18] Vikram Raghavan, *Regulating Online Advertising and Influencer Speech in India*, 12 National Law School of India Review 87 (2020).

The issue of proportionality of penalties further complicates enforcement. While high-value influencers with massive reach can significantly distort consumer choice, the same penalty framework applies to micro-influencers with limited audiences. The absence of a differentiated liability regime risks both over-penalisation and under-deterrence, weakening the credibility of enforcement mechanisms.

A further structural challenge is the fragmented regulatory landscape. Consumer protection law, information technology law, and advertising self-regulation operate in silos. Social media platforms often invoke intermediary safe harbour under the Information Technology Act, 2000, distancing themselves from responsibility for influencer content. This results in regulatory evasion, where neither platforms nor influencers are held fully accountable, despite their combined role in amplifying deceptive advertisements.

Additionally, jurisdictional and procedural hurdles pose serious concerns. Influencers, brands, and platforms frequently operate across borders, complicating enforcement by Indian authorities. The absence of clear jurisdictional rules for cross-border digital advertising weakens India’s ability to regulate global influencer campaigns targeting Indian consumers.

This challenge is particularly evident in the financial services domain, where a parallel regulatory channel has emerged under the Securities and Exchange Board of India. Following its August 2023 consultation paper on unregistered financial influencers, or finfluencers, SEBI notified the Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, prohibiting registered financial intermediaries from associating with unregistered finfluencers and restricting the use of live stock market data in influencer educational content. This sector-specific regime operates independently of the CCPA framework, raising unresolved questions about concurrent jurisdiction and inter-regulatory coordination when a single influencer simultaneously engages in misleading consumer advertising and unregistered financial advice.[19]

There is also a risk that excessive reliance on self-regulation may lead to symbolic compliance rather than substantive consumer protection.[20] Disclosure labels, when buried in hashtags or

[19] Securities and Exchange Board of India, ‘Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers)’ (August 2023); NLIU Law Review, ‘SEBI’s Crackdown on Finfluencers: A Legal and Regulatory Perspective’ <https://nliulawreview.nliu.ac.in/blog/sebis-crackdown-on-finfluencers-a-legal-and-regulatory-perspective/> accessed 31 August 2026.

[20] Ariel Ezrachi & Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* 112–18 (Harvard Univ. Press 2016).

displayed fleetingly, fail to meaningfully inform consumers. Without standardised disclosure formats and auditing mechanisms, compliance risks becoming a mere formality.

Finally, the lack of developed jurisprudence on influencer liability contributes to uncertainty. As consumer commissions and the CCPA are still in the early stages of adjudicating influencer-related disputes, the absence of reasoned, publicly accessible decisions hampers doctrinal clarity.[21] This not only affects predictability for stakeholders but also limits the law's deterrent value.

Collectively, these gaps highlight that while India's legal framework acknowledges the problem OF misleading influencer advertising, it has yet to fully internalise the realities of platform-driven persuasion. Addressing these challenges requires a coordinated, technologically informed, and jurisprudentially consistent regulatory approach.

CONCLUSION: TOWARDS TRANSPARENT DIGITAL ADVERTISING

Influencer marketing represents the future of advertising, but its persuasive power must be exercised responsibly. The Consumer Protection Act, 2019, read with ASCI guidelines, provides a foundational framework to regulate platformed persuasion in India. However, effective consumer protection requires robust enforcement, clearer attribution of liability, and greater platform accountability.

As digital advertising continues to evolve, Indian consumer protection law must adapt to ensure that authenticity does not become a façade for deception. A transparent, well-enforced regulatory regime will not only protect consumers but also foster ethical influencer marketing practices in the long run.

SUGGESTIONS: STRENGTHENING THE REGULATORY FRAMEWORK

1. **Statutory Recognition of Influencer Marketing**

   The Consumer Protection Act, 2019 does not expressly define or recognise influencer marketing. Introducing a specific statutory definition would remove ambiguity regarding the scope of liability and clearly distinguish influencers from traditional endorsers while still holding them accountable for commercial communications.

[21] Pradeep S. Mehta & Surya Deva, *Consumer Protection in India: Law and Practice*, 43 J. Indian Law Institute 123 (2001).

2. **Mandatory Disclosure Norms with Legal Backing**

   While ASCI guidelines mandate disclosure of sponsored content, their self-regulatory nature limits enforceability. Incorporating disclosure obligations directly into subordinate legislation under the CPA 2019 would ensure uniform compliance and stronger deterrence against non-disclosure.

3. **Graduated Liability Based on Knowledge and Reach**

   A one-size-fits-all penalty framework may unfairly burden smaller influencers. Liability should be graded based on factors such as follower count, nature of the product endorsed, and the influencer's knowledge or due diligence. This would align penalties with proportionality and fairness.

4. **Enhanced Platform Accountability**

   Social media platforms should share responsibility for ensuring compliance by introducing automated disclosure tools, flagging non-compliant content, and cooperating with regulatory authorities. Clear coordination between the CPA 2019 and the Information Technology Act, 2000 is necessary to avoid regulatory gaps.

5. **Capacity Building and Consumer Awareness**

   Regulatory authorities must invest in digital monitoring mechanisms and specialised training to track misleading influencer advertisements. Simultaneously, consumer awareness campaigns can empower users to identify sponsored content and exercise informed choice.

6. **Development of Consistent Jurisprudence**

   As influencer-related disputes reach consumer forums, reasoned and consistent decisions are essential. Publication of CCPA orders and consumer commission judgments would contribute to doctrinal clarity and predictability.