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THE LAW OF DIGITAL INFLUENCE: FREE SPEECH, PAID PROMOTIONS AND ACCOUNTABILITY

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ABSTRACT

In response to the constantly changing global environment, the country is aggressively incorporating and influencing new breakthroughs, reforming occupations, and updating infrastructure. This technology progress has prompted numerous changes, easing professional work. On top of that, the rapid rate of evolution has led to the formation of new occupations. Improvements in professional practices are visible in India, where the shift from largely agrarian professions to employment as social media influencers reflects the changing terrain. This raises questions about the causes behind such professional decisions, such as the appeal of fame, financial independence, or the status connected with the title.

The designation of social media influence as a legitimate profession requires further investigation, particularly in terms of its status within the organized labor force and the appropriate legal frameworks governing it in India. Influencers are subject to a variety of legal requirements, including adherence to the Consumer Protection Act, the Copyright Act, the Advertising Standards Council of India's rules, the Information Technology Act, and constitutional prohibitions.

These legislative frameworks are intended to govern terminological usage, control the nature of content, and protect the nation's integrity. Although Article 19 of the Indian Constitution provides free expression, it does not apply to hate speech. Nonetheless, instances of public defamation and derogatory content directed at women or certain groups are common on social media sites. Such incidents illustrate the continuous difficulties in reconciling liberty of speech with the safeguarding of individual liberties and public safety.

Influencers usually in compliance with particular guidelines and rules that specify their rights, obligations, and liabilities. These standards tend to be rigid in certain nations, like China, where influencers who talk about subjects like medical, law, education, or finance must have the necessary professional credentials. The ultimate objective of this paper is to analyse the intricacies of the influencer market, with a particular emphasis on the changing responsibilities and safeguards that come with it. For everyone, behavioural accountability is essential,

particularly when it comes to their social connections. The emergence of social media platforms has brought about a great deal of change in the mechanics of communication.

These social media sites should make significant changes. It should be mentioned that not every member of the audience that influencers target with their material takes their remarks properly.

INTRODUCTION

This article aims to examine the duties and obligations that social media companies and influencers have in order to prevent people from experiencing emotional discomfort. A regulatory foundation is provided by a number of statutory frameworks, including the ASCI recommendations and the Consumer Protection Act. There may be situations where the audience experiences a different reality despite the content's promise of a particular result. This disparity is particularly noticeable in situations where influencers support products that might not be appropriate for some people, primarily in industries like legal services or medical. Regulations over who is allowed to talk about specialized subjects like health, law, education, or finance are severely enforced in China and other countries. In order to discuss certain topics on social media, participants must have the necessary professional credentials. A case of someone being punished for spreading false information without these qualifications was documented¹.

Five years ago in June 2020, the Government of India banned 59 applications, most of them popular Chinese applications, and TikTok was one among them, along with Shareit, Mi Video Call, Club Factory and Cam Scanner, citing threat to national security and sovereignty.²

The term influencer is defined under the ASCI guidelines, it is not a government body rather a self-regulatory body, according to it, "An Influencer is someone who has access to an audience and the power to affect their audiences' purchasing decisions or opinions about a product, service, brand or experience, because of the influencer's authority, knowledge, position, or relationship with their audience."³

Influencers are not specifically defined by law, although several court rulings indirectly govern

¹ 'No Degree? No Platform. China Fines Fake Finance Gurus \$14,000 And Deletes Their Accounts' [NDTV](#) (online, 25 April 2026) accessed 17 May 2026.

² "The TikTok ban: why did India ban TikTok five years ago?" *The Hindu* (online, 18 January 2025) <https://www.thehindu.com/sci-tech/technology/tiktok-ban-why-did-india-ban-tiktok-five-years-ago/article69118314.ece> accessed 17 May 2026.

³ Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (ASCI 2023) <https://www.ascionline.in/wp-content/uploads/2023/08/GUIDELINES-FOR-INFLUENCER-ADVERTISING-IN-DIGITAL-MEDIA.pdf> accessed 18 May 2026.

them through various activities. However, in the case of *Marico Limited v Abhijit Bansal*⁴, the court tried defining the word social influencer, social media influencers are individuals who have acquired a considerable follower base on social media along with a degree of credibility in their respective space. Depending on the popularity of their field of expertise, their following can range from thousands to even millions of persons. These influencers often employ the goodwill they enjoy amongst their followers / viewers to promote a brand, support a cause or persuade them to do or omit doing an act.⁵

As the name suggests, influencers play a role that goes beyond simple amusement and has a big impact on decision-making in a variety of fields, including politics, the consumer market, and public opinion. These domains show their substantial impact, indicating that influencers function not just as performers but also as media personalities with a great deal of social and political power.

FREE SPEECH IN DIGITAL ERA

Frequently, the idea of free speech is misconstrued as an unconditional right to publicly express any opinion. However, there are essential obligations and responsibilities associated with this basic right, which is protected by Article 19(1)(a)⁶. It is a contentious issue because of the restrictions outlined in Article 19(2)⁷. Hate speech, defamatory remarks, and assertions that insult or mislead people are not considered forms of free speech. This obligation is universal and extends to the digital era. Violence, social unrest, and threats to peace, law, and order can result from a lack of regulation of free speech. Unfettered speech may lead to social unrest and undermine national integrity, particularly when it contradicts religious beliefs.

The Supreme Court of India made it clear in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.* that commercial speech falls under Article 19(1)(a)⁸. Similar to this, the Delhi High Court extended this protection in *Telecom Watchdog v. Union of India*, stating that such speech must further higher goals like political, social, or economic development as well as the progress of human intellect and literature.⁹

The primary act of legislation regulating social media and electronic communication in India

⁴ *Marico Limited v Abhijit Bansal* *Marico Limited v Abhijit Bansal* 2024 SCC OnLine Del 1234 (Del HC).

⁵ LiveLaw 'PDF Upload' https://www.livelaw.in/pdf_upload/pdf_upload-369176.pdf accessed 18 May 2026.

⁶ Constitution of India 1950, art 19(1).

⁷ Constitution of India 1950, art 19(2).

⁸ *Tata Press Ltd v Mahanagar Telephone Nigam Ltd* *Tata Press Ltd v Mahanagar Telephone Nigam Ltd* AIR 1995 SC 2438.

⁹ *Telecom Watchdog v Union of India* *Telecom Watchdog v Union of India* WP (C) No 8529/2011 (Delhi HC, 13 July 2012).

is the Information Technology Act of 2000¹⁰. Section 79(1)¹¹ of this legislative framework outlines the "safe harbour" clause, which shields intermediaries from liability with regard to third-party content, provided that they operate as impartial platforms without exerting control or modification over such content. Section 2(1)(w)¹² defines intermediaries as any person or organization that receives, stores, or transmits information pertaining to a record on behalf of another, including telecom and network service providers.

Additionally, Section 69A¹³ gives the government the power to restrict internet content if it is thought to be essential for maintaining public order, international relations, security, defense, sovereignty, or preventing the inciting of crimes.

This provision exhibits the intent of accomplishing a balance between national security and freedom of expression. The *Shreya Singhal v. Union of India*¹⁴, In this case, the Supreme Court struck down Section 66A¹⁵, maintaining that speech that is considered offensive is protected under the Constitution as long as it doesn't encourage violence or disturb public order, as stated in Article 19(2)¹⁶. In the *Kaushal Kishore v. State of Uttar Pradesh*¹⁷ case, the Supreme Court ruled by a majority of 4:1 that the right to freedom of speech and expression cannot be restrained for reasons other than the comprehensive list of legitimate restrictions given in article 19(2). which asserts that speech is mostly protected as long as it doesn't interfere with morals, decency, or public order.

Additionally, the court held in *Imran Pratapgadhi v. State of Gujarat*¹⁸ that speech should be evaluated through the eyes of rational, strong people rather than those who are sensitive. However, five social media influencers were arrested in 2025 for remarks they made on the India Got Talent show that offended a specific community segment. The Supreme Court ordered them to publicly apologize for making fun of people with disabilities. Additionally, it said that commercial speech that offends other communities cannot be protected by the right to free speech and expression. Additionally, the top court declared that it will punish the social media influencer for targeting people with disabilities.¹⁹ These judgments and case studies

¹⁰ Information Technology Act 2000.

¹¹ *Information Technology Act 2000, s 79(1)*.

¹² *Information Technology Act 2000, s 2(1)(w)*.

¹³ Information Technology Act 2000, s 69A.

¹⁴ *Shreya Singhal v Union of India Shreya Singhal v Union of India* AIR 2015 SC 1523.

¹⁵ Information Technology Act 2000, s 66A.

¹⁶ *ibid* art 19(2).

¹⁷ *Kaushal Kishor v State of Uttar Pradesh Kaushal Kishor v State of Uttar Pradesh* (2023) 4 SCC 1.

¹⁸ *Imran Pratapgadhi v State of Gujarat Imran Pratapgadhi v State of Gujarat* 2025 SCC OnLine SC 678.

¹⁹ 'India's Got Latent row: Supreme Court directs Samay Raina, Ranveer Allahbadia to apologise, asks Centre to frame guidelines' *The Times of India* (online, 2025) <https://timesofindia.indiatimes.com/india/indias-got-latent->

reflect the increasing need for regulatory mechanisms to govern social media platforms while ensuring that the exercise of freedom of speech remains within constitutional and legal boundaries.

DISCLOSURE OF PAID PROMOTIONS

Advertisements including paid promotions must be clearly labelled in order for consumers to make educated decisions about the products being pushed, according to government regulations in a number of jurisdictions. By classifying ads into three different groups according to their labelling needs, the Advertising Standards Council of India (ASCI)²⁰ makes a substantial contribution to this supervision.

- High-risk commercials, which are essentially forbidden information that violates the ASCI code, is unlawful, violates rights, and makes false claims. Even if a label is used, some of these will still be in violation of the code. These include making up testimonials or endorsements, inflating the features or results of a product through claims or visual representations to provide false information, etc.²¹
- Medium-risk ads: in these situations, influencers must mention the brand because they are endorsing it.
- Low Risk: Low risk advertisements use AI in methods that don't significantly affect a consumer's capacity to make an informed decision.

Section 21²² of the Consumer Protection Act of 2019 gives the Central Consumer Protection Authority, which was established under section 10²³, the authority to deal with deceptive or false ads. This clause makes traders, manufacturers, publishers, endorsers, advertising, and social media influencers responsible for promoting a product or service without sufficient verification.

Additionally, the clause expressly stipulates that failure to comply would result in a punishment of up to 10 lakhs, a ban on future endorsements, and, in the event that an influencer is proven guilty, a criminal prosecution that could last up to five years for repeat offenders²⁴. By placing

[row-supreme-court-directs-samay-raina-ranveer-allahbadia-to-apologise-asks-centre-to-frame-guidelines/articleshow/123496358.cms](https://www.whiteblacklegal.co.in/row-supreme-court-directs-samay-raina-ranveer-allahbadia-to-apologise-asks-centre-to-frame-guidelines/articleshow/123496358.cms) accessed 24 May 2026.

²⁰ Advertising Standards Council of India, *Draft Guidelines for Responsible Labelling of AI-Generated Content in Advertising* (ASCI 2026) <https://www.ascionline.in/wp-content/uploads/2026/05/asci-ai-labelling-guidelines.pdf> accessed 27 May 2026.

²¹ Ibid 20

²² Consumer Protection Act 2019, s 21.

²³ *Consumer Protection Act 2019, s 10.*

²⁴ National Consumer Disputes Redressal Commission, *Consumer Protection Act, 2019* https://ncdr.nic.in/bare_acts/CPA2019.pdf accessed 27 May 2026.

some checks and balances on influencers, the law aims to protect consumers. Since influencers serve a wide range of people, these rules should be viewed as a safeguard for consumers.

The Ministry of consumer affairs release of the “Endorsement know-how guidelines (MCA guidelines)²⁵ address the issue much elaborately and speak about the necessity for the influencers to disclose their promotion content through use of specific labels like ‘advertisement’, ‘sponsored’ or paid promotion.

In February 2025 the ASCI have made study and found out that more than 69% of the influencers are not adhering to the guidelines²⁶.

The application and requirements for a legitimate advertisement are specifically discussed in the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022²⁷. The principles apply to all advertisements, regardless of their format, medium, or form.

INTELLECTUAL PROPERTY

Determining who owns content created on social media networks is one of the fundamental factors in the copyright domain. This question is whether such content is acknowledged as the intellectual property of the platforms that host it or its producers. Indian copyright law grants the same protection to works created on social media platforms as it does to content from non-social media platforms. As intellectual property, the content is protected by this legislation. The Indian Copyright Act's Section 17 states that, absent a clear transfer, the author maintains both moral and commercial rights. As a result, influencers automatically own their artistic compositions, edited reels, and uncut material. When companies collaborate with these artists, they usually obtain a license to utilize the artwork instead of ownership.

Copyright protection becomes operational at the time of creation and is valid without registration or monetization. Regardless of the conditions of the platform, the amount of

²⁵ Department of Consumer Affairs, *Know-hows! Endorsements for Celebrities, Influencers and Virtual Influencers on Social Media Platforms* (Government of India 2023) https://consumeraffairs.gov.in/public/upload/admin/cmsfiles/whatsnews/Know-hows_Endorsements_For_CelebritiesInfluencers_Virtual_Influencers_on_Social_Media_Platforms_whatsnews.pdf accessed 27 May 2026.

²⁶ ‘Two-thirds of “digital stars” on social media violating influencer guidelines: ASCI’ *The Economic Times* (online, 6 February 2025) <https://economictimes.indiatimes.com/industry/services/advertising/two-thirds-of-digital-stars-on-social-media-violating-influencer-guidelines-asci/articleshow/117989889.cms> accessed 27 May 2026.

²⁷ Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements*, 2022 <https://thc.nic.in/Central%20Governmental%20Schemes/Guidelines%20for%20Prevention%20of%20Misleading%20Advertisements%20&%20Endorsements%20for%20Mislaeding%20Advertisements.%202022.pdf> accessed 27 May 2026.

followers, or the creator's earnings from the work, this protection is in place. Therefore, content is not immune from copyright rules even in an online setting. Therefore, before publicizing an author's content, influencers must implement the necessary safety precautions, such as procuring permits. Additionally, fair use on social media is limited to certain non-commercial exceptions, such as criticism and educational dissemination.

Numerous social media networks have put in place systems to keep an eye out for possible intellectual property rights violations. For instance, copyright holders can register their content on YouTube using the 'Content ID' method²⁸.

Influencers must obtain express written approval before using any names, logos, or product characteristics on social media. It is advisable to register the work under the Copyright Act of 1957²⁹ or other applicable laws in order to avoid intellectual property issues. This reduces the possibility of disagreements and guarantees official recognition.

CASE STUDY

Munaway Faruqi, a comedian, was arrested in 2021 for making jokes about Hindu dieties while performing live. a complaint in accordance with Indian Penal Code section 295A. He and four other people were detained and accused of inciting religious sentiment. As the case progressed, there was a great deal of indignation, with many claiming that he had made no mention of religious feelings. Later on, the police acknowledged that they had no proof that the offensive joke was made by the comic³⁰.

A social media influencer was arrested for posts against Sunjay Kapur's family in 2026³¹. It was alleged that a post made about the death of the business man. In 2025, Another influencer was arrested for promoting enmity between different groups and outrage religious acts, for making post on Instagram in which she alleged about Bollywood actors, however later she deleted the post and issued an apology about the same³².

²⁸ 'Content ID and Fair Use' [YouTube Official Blog](#) (online, 22 April 2010) accessed 27 May 2026.

²⁹ Copyright Act 1957.

³⁰ 'India orders blocking of BBC documentary on PM Modi' *BBC News* (online, 22 January 2024) <https://www.bbc.com/news/world-asia-india-68137660> accessed 27 May 2026.

³¹ 'Influencer Arrested For Social Media Posts Against Sunjay Kapur's Family' *NDTV* (online, 14 May 2026) <https://www.ndtv.com/india-news/influencer-arrested-for-social-media-posts-against-sunjay-kapurs-family-11491703> accessed 27 May 2026.

³² *Hindustan Times* (online) <https://epaper.hindustantimes.com/Home/ShareArticle?OrgId=16df14278a&imageview=0> accessed 27 May 2026.

CONCLUSION

The primary obstacle affecting the influencer industry is the lack of certain laws that specify their rights, regulate their behaviour, and specify their obligations. The establishment of responsibility within their profession is hampered by this absence of regulation. Strict checks and balances must be enforced due to the emergence of technologies like deepfakes and AI-generated content. The government must formulate relevant legislation owing of the constantly shifting nature of this industry and the rise in the number of people participating in influencer activities. Influencers and content consumers should both be protected by such regulations, guaranteeing fairness for both sides.

In summary, it is essential for India to adopt these emerging trends by establishing appropriate services to address the swift and dynamic changes occurring in this sector. Protection measures should extend not only to consumer privacy but also to the definition of rights and liabilities. As influencers continue to attain significant influence, and given the trust placed by the audience in their content, rigorous regulations should be introduced. These should prevent influencers from addressing sensitive subjects or promoting products related to health, financial services, or legal advice without accountability.

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