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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FROM EXPERTISE TO ENDORSEMENTS: REGULATING INFLUENCER CONTENT AND ADVERTISEMENTS IN INDIA

AUTHORED BY - BHARATHI N

3rd year BA LLB student at Christ (Deemed to be) University

Abstract

With the advent of social media, individuals using these platforms to influence the public has also come to a rise in recent years. Social media influencing by way of content creation ranges from showcasing talents, spreading awareness, providing professional advice, advertisements and much more. This has created opportunities for several people to find a niche and livelihood. However, certain unregulated contents tend to have negative implications on the general mass of people. Professionals like doctors, lawyers and therapists create content by providing expert advice and opinion, and at most times it is difficult to trace their credibility. There is a thin line between what amounts to real expertise and illegitimate opinion, where influencers without proper qualifications offer advice in specialised areas like nutrition, skincare, or financial investments creating risk for viewers who rely on such information. Further, with influencers engaging in paid and unpaid promotions, a question arises as to whether such an endorsement amounts to advertisement and to what extent it is subjected to the advertisement regulations of India. This paper shall analyse the impact of junk advice and promotions on the viewers and consumers and if the regulatory framework of social media platforms is adequate to check such content circulated. Further, the paper shall look into the existing consumer protection laws and check if it is able to accommodate paid promotions and the problems arising as a result. Lastly, the paper shall trace the liability with regards to spread of misinformation and misleading advertisements. To aid in the process of research and to obtain the objectives sought by the paper secondary sources of data shall be used, forming the basis for doctrinal research. In conclusion, the paper shall seek to fill in the gaps in the existing framework by suggesting amendments and various policy recommendations.

Keywords: Social media, Content Creators, Paid promotions, Misleading information, Consumer laws

1. RESEARCH OBJECTIVES

- To identify and analyse existing framework regulating the authority of content posted on social media platforms
- To evaluate the application of advertisement regulations on influencer endorsement in India
- To trace and analyse the incidence of liability with regard to spread of misinformation and misleading advertisements
- To formulate policy recommendations to fill in the gaps in the existing framework

2. METHODOLOGY

This research paper addresses the role of social media influencers in spreading information and endorsements. Further, it analyses the existing legal frameworks governing such areas of media and entertainment law. To go about the same, doctrinal research methodology was used. Secondary sources of data were used in the research process of this paper and the same was done by collecting and analysing the statistics and data from existing literature like reports, journals, articles, and other research papers.

3. INTRODUCTION

In today's age of information and technology, social media such as YouTube, Instagram, WhatsApp, and Twitter have become a powerful platform for content creators, in other words, influencers who have found a ground for themselves. The Oxford Dictionary defines the term "influencer" as "A person with the ability to influence potential buyers of a product or service by promoting or recommending the items on social media."¹ Owing to the steps towards the vision of Digital India, Internet access has become ubiquitous and has created a boom in the social media user base. This new opportunity is harnessed well by the Indian user base, and India has become a top player for influencer marketing where popular figures and other experts leverage their popularity and skill to endorse a product or service. Content creation has thus become a marketing strategy and influencing has emerged as a career in itself. Top brands and companies today have their own social media wing where content heads consistently post to attract consumers. In fact, political parties have social media wings that help the party patronise

¹ Influencer noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at [OxfordLearnersDictionaries.com, https://www.oxfordlearnersdictionaries.com/definition/english/influencer?q=influencer](https://www.oxfordlearnersdictionaries.com/definition/english/influencer?q=influencer)

support and also to pick on the opposition parties. The ambit for content creation is breathtaking as it spans from fashion to health, self-help, product endorsements, parenting, technology, and much more, giving space for people from multiple walks of life to establish themselves. Influencers manage to interact with their audiences across these numerous niches by creating engagement, and they emerge successful to a good extent in shaping consumer decisions. Endorsements by influencers range from small mentions to large-scale campaigns.

With an increase in the influence of content creators, there is a corresponding call for guidelines and regulations that are crucial to protect consumers from misinformation, misleading advertisements, and false endorsements. Misinformation is the unintentional spread of fake or misleading information that mainly emerges from knowledge gaps.² Disinformation, on the other hand, is false or misleading information that is intentionally spread to mislead people. Disinformation campaigns are often seen in a political context where state actors create them for political gains.³ Multiple researchers have identified various domains in which misinformation is majorly spread on social media. Domains such as health are identified by almost all researchers. When content creators who may or may not be licensed practitioners spread information on social media platforms, the onus of checking the credibility of the information falls on the audience, who may not always possess the resources to do so, thus leading to misled consumers. In traditional media, information was subjected to the scrutiny of an editorial board before being published, hence, controlling the spread of misinformation. There is an absence of a regulatory framework to vet the information or content posted on social media and it continues to be an unregulated space for the spread of information.

Apart from just spreading information by way of content creation, influencing is also used for endorsing brands, products, and services. This form of endorsement comes within the purview of paid promotion. Paid promotions include paid product placements, endorsements, sponsorships, or other commercial relationships that might have influenced the content.⁴ Influencers such as social media personalities who manage to gain popularity and celebrities, who collaborate with sellers get paid to promote their products and services. Such

² Liang Wu et al., *Misinformation in Social Media: Definition, Manipulation, and Detection*, 21 SIGKDD Explor. Newsl. 80 (2019), <https://dl.acm.org/doi/10.1145/3373464.3373475>

³ Sadiq Muhammed T & Saji K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, 13 Int J Data Sci Anal 271 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8853081/>

⁴ Watching videos with paid product placements, sponsorships & endorsements - YouTube Help, <https://support.google.com/youtube/answer/10588440?hl=en#:~:text=Paid%20promotions%20include%20paid%20product,Paid%20product%20placement>

collaborations are one of the main elements that attract people to take up social media influencing, as they can earn a livelihood by making use of their content creation skills, already existing followers, and trust built over time. But such paid promotions may violate the advertisement standards set by law and there is no appropriate body to check the violation. Thus, there is potential for misleading advertisements that shall affect consumer rights. The Consumer Protection Act, 2019 defines Misleading Advertisements in relation to any product or service, as an advertisement, that falsely describes such product or service, or gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity, or quality of such product or service, or conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice, or deliberately conceals important information.⁵ Traditional forms of advertisements such as television commercials and newspaper ads in India are regulated by various laws such as the Consumer Protection Act of 2019, and the Cable Television Networks (Regulation), Act of 1995. In addition to these statutory regulations, is the Advertising Standards Council of India, which is a non-governmental, independent, self-regulatory organisation, that aims to ensure that advertisements in India are fair, honest, and compliant with the ASCI Code.⁶ The statutory regulations are not sound enough to accommodate the modern forms of advertisements such as influencer endorsements. Though the ASCI code has evolved to include such paid promotions, it is not as authoritative as a statute. There is thus an urgent need for policies to regulate the same.

This paper shall navigate through the intricacies of misinformation and misleading advertisements as a result of content creation and analyse the gaps in the existing framework to regulate the same.

4. RESEARCH ANALYSIS

I. THE CHALLENGE OF MISINFORMATION IN SOCIAL MEDIA

Social media's explosive growth has eased information distribution and made it possible for anyone to express their thoughts and offer guidance on a variety of subjects, from entertainment to health and wellness. By the end of January 2020, approximately 86% of India's 1.38 billion citizens have a mobile phone subscription. 687 million people utilise

⁵ The Consumer Protection Act, 2019, § 2(28)

⁶ The Advertising Standards Council of India, ASCI, <https://www.ascionline.in/>

mobile devices to access the Internet and news, making up the vast majority of Internet users. Facebook is the dominant social networking site in India with over 400 million monthly active users, while WhatsApp is the most widely used chat app⁷.

The ease of access has also contributed to the unrestricted circulation of false information, especially in fields that call for specialised knowledge, including financial planning, legal guidance, and medical advice. The negative aspect of this ability is that lies and rumours can travel far and cause havoc. Digital disinformation is one of the largest challenges to global society, according to the World Economic Forum⁸. In contrast to traditional media, where content is usually reviewed by editors, social media sites let users pose as authorities even though they lack the necessary credentials.

There has been an increase in influencers and celebrities providing health care and financial advices based on personal experiences and not on professional expertise. However, followers of such influencers rarely check the credibility of the information and blindly follow them. Six main subjects of fake news on social media are: health, religion, politics, crime, entertainment, and miscellaneous. Fake news about health is at the top of the list⁹. Physicians are increasingly using platforms such as X (previously Twitter) to fight against phony products, unreliable medical advice, and name-bombing. There are frequent reports of injury, including poisoning and serious health issues brought on by taking advice that is not supported by science. Experts warn about purchasing unlicensed medical supplies online and stress the importance of using credible sources. In an effort to resist these risky practices, medical experts are now aggressively promoting accurate health information online¹⁰.

One such instance of celebrities promoting dangerous health advice is when famous Indian actress Samantha Ruth Prabhu recommended the use of Hydrogen peroxide nebulisation for common viral, and the same worked like magic for her. However, doctors took to social

⁷ Gandharv Madan, *Understanding misinformation in India: The case for a meaningful regulatory approach for social media platforms*, (2020)

⁸ World Economic Forum, Digital wildfires in a hyperconnected world (2016) <http://reports.weforum.org/global-risks-2013/risk-case-1/digital-wildfires-in-a-hyperconnected-world/>

⁹ Al-Zaman, *Social Media Fake News in India*, 9 Asian Journal for Public Opinion Research, 25–47 (2021). <https://doi.org/10.15206/ajpor.2021.9.1.25>

¹⁰ Sonali Acharjee, *How doctors are taking to social media to counter fake medical news*, India Today, (2024) [How doctors are taking to social media to counter fake medical news - India Today](https://www.indiatoday.in/health/story/how-doctors-are-taking-to-social-media-to-counter-fake-medical-news-2024-03-25)

media to immediately critique her recommendation and called her ‘a health and science illiterate’. Hydrogen peroxide is listed by the American Agency for Toxic Substances and Disease Registry as a chemical that can be harmful if swallowed or inhaled¹¹. Generally speaking, it serves as a disinfectant. Effects of hydrogen nebulisation include sore throat, coughing, lung tissue damage, infection risk, and shortness of breath. Social media platforms are filled with such situations where fitness and healthcare influencers recommend diet plans, medical advice not backed by any scientific proof that results in causing more damage to the viewers. Many medical professionals advise the viewers to do their own research before following anything posted by non-professionals.

Social media has become a strong medium for enabling open talks about mental health, decreasing stigma, and establishing supportive groups. Users may readily find mental health information and exchange personal experiences. It also poses a problem since unskilled people frequently give inappropriate advice that could be damaging or misleading. False information on diagnosis or treatments for mental health issues might keep people from getting the right kind of professional assistance, which could make their condition worse. These wellness influencers usually share their personal experiences. Anecdotal advice and personal experiences often oversimplify the complexities of mental health issues, prompting individuals to self-diagnose based on one person’s narrative. When people in comment sections make assumptions about diseases like ADHD and autism based on unsubstantiated experiences given by content creators, it's a particularly worrisome trend¹².

The presence of these ‘mindfulness’ and ‘mental health’ coaches on Instagram have increased in the recent years. Between 2022 and 2023, the number of Instagram accounts talking about mental health and wellbeing increased by about 70%, from 5,062 to 8,562 to 11,894¹³. The number of YouTube influencers has also increased, rising from 629 in 2022 to 950 in 2023 and 1,224 at now. However, because Instagram makes it so simple to upload and edit videos, the platform has a larger absolute number of influencers than YouTube¹⁴.

¹¹ See, [Agency for Toxic Substances and Disease Registry \(cdc.gov\)](https://www.cdc.gov/toxsub/)

¹² David Rassiaky, *Psychologists say mental health advice shared on social media is often misleading*, Medical News Today (2023) <https://www.medicalnewstoday.com/articles/experts-express-concern-over-mental-health-advice-posted-on-social-media-platforms>

¹³ See. <https://qoruz.com/>

¹⁴ *Id.*

@Hemant_Mahajan18 has more than 15,000 followers in Instagram and testimonials of helping several thousand people whose anxiety was treated "permanently without medicine". The "Happy Living" program by Mahajan guarantees a 100% refund if there was no improvement and promised to "cure stress/anxiety in 28 days from its roots." However, experts claim that methods employed by these influencers are never going to work, as it is essential to diagnose a person with anxiety first, which can be done by a qualified professional only¹⁵. Despite making extravagant claims, such as "say no to stress forever" without the need for "expensive therapies" or "addictive medications," the majority of these "life coaches" lack a psychology degree¹⁶. Though his experience is in marketing and communication, Alok Taunk, who has roughly 83,000 Instagram followers, provides classes for Rs 99 to help people eliminate stress "without investing in expensive programs and therapies."

Another field of misinformation is in the area of finance. Influencers in the field of personal finance use blogs, podcasts, and social media to provide their followers with financial advice and tactics. If millennials and Gen Zers want to do better financially, they often go to YouTube, Reddit, Instagram, TikTok, and other outlets. While it may be cost-effective to receive free financial advice from influencers, it's crucial to recognise potential scammers, fakers, and frauds. Personal finance influencers are frequently regular folks who assist others in resolving their financial issues by drawing on their personal financial experiences. It's not necessary to work in financial services, though some influencers may have experience in the field through employment in banks or as financial advisors¹⁷. Financial influencers popularly known as "finfluencers" are using these social media platforms to provide stock market and investment advice. Finfluencers might not be qualified or knowledgeable enough about the topic, and they might not declare any potential conflicts of interest with respect to a certain security or product. These finfluencers may overstate their guarantees of large profits or returns, enticing investors with irrational expectations.

¹⁵ Apoorva Mittal, *Playing with the mind: perils of unqualified mental health advisors on social media*, The Economic Times (2024) <https://economictimes.indiatimes.com/tech/technology/ettech-in-depth-why-concerns-are-rising-over-unqualified-mental-health-advice-on-social-media/articleshow/111890293.cms?from=mdr>

¹⁶ *Id.*

¹⁷ Rebecca Lee, *Personal Finance Influencers Red Flags* (2024) [Personal Finance Influencer Red Flags \(investopedia.com\)](https://investopedia.com/personal-finance-influencer-red-flags)

Pump-and-dump is a way used by influencers to manipulate the stock market prices by feeding misinformation to the public through social media. "Pump and dump" incentivise investors to purchase company stock in order to artificially raise share prices. It can be used to increase stock prices by making recommendations based on inaccurate or deceptive data. They propagate false information or hype, start rumours, and generate interest in securities by using social media platforms and messaging applications, which in turn raises the price of the shares¹⁸. The market regulator SEBI has seized illicit gains totalling Rs12.41 crore obtained from manipulating the Sharpline Broadcast Ltd scrip in another instance of stock manipulation. In this instance, videos on YouTube were utilised to disseminate incorrect and misleading information in order to advocate a scrip. Manish Mishra and Manjari Tiwari were discovered by SEBI to be misleading message disseminators (MMDs) disseminating fraudulent information on their two YouTube channels, ProfitYatra and Midcapcalls. These two YouTube channels are spreading false information about the Adani group acquiring Sharpline Broadcast and the company inking large deals with Sony Pictures and Zee. During an independent probe, SEBI discovered that Mr. Mishra was employing the same strategy to disseminate misleading content via YouTube channels and entice investors to purchase scrips, which would subsequently result in affiliated companies selling their shares at exorbitant rates¹⁹. The price of the scrip climbed by 150% from the closing price of Rs9.35 on April 7, 2022, to the closing price of Rs23.42 on May 19, 2022, according to the patch-wise study of the scrip. Between May 20, 2022, and June 14, 2022, the average volume in the second patch climbed from 53,261 to 9,13,590 shares. Videos featuring fraudulent content were posted during this time. Additionally, Manjari Tiwari and Manish Mishra bought and sold 9,295 shares and 27,770 shares, respectively²⁰.

II. EXAMINING EXISTING METHODS TO COMBAT MISINFORMATION IN SOCIAL MEDIA

The Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021²¹, aim to curb misinformation by holding social media platforms accountable

¹⁸ *Explained: What the pump and dump Sadhana scam is about and what role does Arshad Warsi have to play* (2023) [Explained: What the pump and dump Sadhna scam is about & what role does Arshad Warsi have to play - Times of India \(indiatimes.com\)](https://www.indiatimes.com/Explained-What-the-pump-and-dump-Sadhna-scam-is-about-what-role-does-Arshad-Warsi-have-to-play-)

¹⁹ *When YouTube Videos Are Used for Stock Manipulation! SEBI Impounds Rs12.41 Crore Earned by Manipulating Sharpline Broadcast Scrip*, (2023) <https://www.moneylife.in/article/when-youtube-videos-are-used-for-stock-manipulation-sebi-impounds-rs1241-crore-earned-by-manipulating-sharpline-broadcast-scrip/70021.html>

²⁰ *Id.*

²¹ Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 (Rules)

for content monitoring. Platforms must appoint grievance officers and implement technology-based tools to flag fake news, illegal content, and fake user accounts. This framework encourages timely action against misinformation, including that related to health and finance²².

A wide range of organisations are considered intermediaries since they help with the data flow on the internet. These consist of messaging services, social media websites, payment websites, telecom service providers, internet service providers, and search engines. They also include online markets. Some intermediaries might be aware of the user-generated content on their platform, but many intermediaries are just conduits or storage providers and are unaware of the content being sent or stored on their platform. This raises the question of how much intermediaries should take responsibility for the content created by users on their platform.

Intermediaries are subject to regulations under the safe harbour paradigm in certain jurisdictions, including the European Union and India. As long as they meet specific criteria, intermediaries are exempt from accountability for any unlawful user-generated content under this approach. Until they are aware of the illegality and fail to take appropriate action to halt it, the intermediaries are not liable. They have "duty of care" and "notice and take down" duties to take down unlawful content²³.

In accordance with the IT Act, an intermediary is not accountable for the third-party data it transmits or holds. It must, however, abide with the IT Act's due diligence obligations as well as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (which supersede the previous 2011 Rules) in order to assert such an exemption. The 2011 Rules stipulated that service agreements had to: (i) list the types of content that users could not upload or share; (ii) remove content within 36 hours of a court or government order; (iii) support law enforcement; (iv) keep blocked content and related records for 90 days; and (v) offer a grievance redressal mechanism for users and affected parties.

²² Gandharv Madan, *Understanding misinformation in India: The case for a meaningful regulatory approach for social media platforms*, (2020)

²³ See <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

Social media platforms have put in place a number of self-regulation mechanisms to stop the spread of false information because they understand the possible harm that it can do to people and the wider community. Using algorithms to identify and restrict the exposure of fraudulent content is one main tactic. These platforms frequently use machine learning and artificial intelligence approaches to detect content that are deceptive based on predetermined criteria, including flagged keywords or user reports.

Furthermore, a lot of social media businesses work with independent fact-checkers to evaluate the veracity of content that is posted. In an effort to lessen the impact of false information, platforms may identify it, provide context, or connect users to reliable sources. Transparency is another priority, as evidenced by the frequent reports they release outlining their attempts to counter false information and the amount of content that has been detected.

Self-regulation is greatly aided by user education. Numerous platforms fund campaigns to educate users on how to spot misleading material and the value of confirming sources before sharing anything. Social media platforms enable users to actively stop the spread of false information by fostering media literacy. In general, social media platforms aim to establish a more dependable online environment by utilising a blend of technological, collaborative, and educational strategies.

III. THE CHALLENGE OF MISADVERTISEMENT IN INFLUENCER ADVERTISING

Product endorsement by way of celebrities and famous personalities promoting a product in India is not a new phenomenon. The start of celebrity endorsement in the Indian market can be traced back to the year 1941, when an Indian actress Leela Chitnis was hired to endorse the soap brand, Lux.²⁴ With time, such endorsements proved to be a very influential form of marketing as people wanted to associate themselves with brands and products that their favourite celebrities associated with. Marketers carefully used movie actors and cricketers who had a large fan base among people and whom people trusted as one among them. Every generation has its own iconic endorsers. A classic example of this would be the advertisement of the Malt-based energy drink Boost. In the 1980s, Kapil Dev endorsed Boost, in an advertisement that was a first of its kind. Ahead of that various Indian Cricket

²⁴ Kritika Shrivastava & Divya MV, Evolution of Celebrity Endorsement in Indian Market, 7 (2019)

team captains such as Sachin Tendulkar, Mahendra Singh Dhoni, and Virat Kohli have endorsed Boost, keeping in line with the changing generation of cricket fans. Over the years, with an evolution in media and entertainment, such endorsements have also evolved. With the incoming of the digital era, social media platforms have become a new stage for marketing. This has brought about a new trend of influencer endorsements. While traditional endorsements were more expensive, tedious, and limited to superstars and big-shot celebrities, influencer endorsements are much cheaper for brands and a much simpler process. This is because, with the advent of social media, many small influencers have come into the limelight and gained fandom and popularity. Each of these influencers has his or her own niche and audience. Further, collaborating with these creators does not require an advertisement agency and a dedicated team to write scripts and shoot. Influencers take care of much of these processes themselves, reducing the burden on the brands and sellers. Lastly, these influencers on social media are connected to the consumers on a more personal level, whereby there is an increased “trust” factor for consumers to try emerging brands and small businesses that don’t yet have their base.

The use of endorsements over social media, however, has blurred the line between direct advertisement and endorsement. Further, the use of product endorsement marketing over social media has also blurred the lines between marketers and influencers. A question arises as to who is liable under consumer laws and other regulations pertaining to markets and advertisements, between the marketer and social media influencers.²⁵ Traditionally, advertisements featuring endorsers were prepared and broadcast by brands, advertising agencies, and production companies as part of the brand’s overall marketing strategy. The commercials were well edited and would air over mainstream media outlets, like television and newspapers. The brands and their agents controlled all the aspects of the advertisements. This meant the brands were usually held responsible for any misrepresentations or confusion resulting from the statements made during the endorsement. The same is not always true when it comes to endorsements on social media since social media influencers have more control over their posts than endorsers in a traditional commercial. Further on, many social media influencers want to remain unscripted so they can be viewed as authentic by their audience.²⁶ This is highly

²⁵ Tamany Vinson Bentz & Carolina Veltri, *The Indirect Regulation of Influencer Advertising*, 75 FOOD AND DRUG LAW JOURNAL (2020), <https://www.jstor.org/stable/10.2307/27007729>

²⁶ *Id.*

problematic as then there shall be a lack of transparency from the side of the influencer. Consumers may be tricked into believing that they are looking at the personal experience of the influencer with a product, while in reality, it is a promotion strategy. Such problems can more often be seen in domains such as finance, fitness, and health, as these areas may leave customers more exposed to dishonest advertising.

There are many instances of influencers recommending eateries, clothing shops, skin care products, and other commodities whereby viewers are misled to believe that the opinions of these influencers are out of personal experiences and genuine, but in reality, plenty of times, there is a paid collaboration between the seller and the influencer. Social media users who make decisions based on these recommendations sometimes tend to have extremely varied experiences in reality and many come back to comment on their real experiences on these pseudo-recommendational videos. This is yet another issue with endorsement on social media as influencers sometimes make exaggerated claims. They often promote products without fully understanding their implications or conducting due diligence on their effectiveness. This can cause serious implications for the consumers.

Mama Earth is an infant and women's skincare brand founded in 2016 that largely depends on influencer marketing strategies. Big celebrities such as actress Samantha Ruth Prabhu as well as small influencers such as @gowtisowbi who has 1,83,000 Instagram followers and @livingflavourswithsunitha who has 1,67,000 Instagram followers have endorsed various products of Mama Earth. These influencers talk extensively about how they personally used a product and how they could see positive results. But of late, consumers have raised several complaints regarding Mama Earth products. A user in June 2024 posted on X that Mama Earth products were of poor quality and chemicals used.²⁷ Several other users shared their bad experiences about the brands as well. This is one of the numerous such instances on social media.

In traditional forms of advertisements, whether endorsed or not, rational consumers could distinguish whether a said piece of information was an advertisement or not. Consumers thus knew to take the information communicated in any advertisement with a pinch of salt.

²⁷ Sounak Mukhopadhyay, 'Throw Mamaearth Products in Dustbin': CEO Ghazal Alag Responds to Netizen's 'Hateful' Complaint | Today News, mint (2024), <https://www.livemint.com/news/trends/throw-mamaearth-products-in-dustbin-ceo-ghazal-alag-responds-to-netizen-s-hateful-complaint-11717480441222.html>.

A survey based on interviews with nearly 9,500 consumers throughout the EEC, including Britain confirms that although believing that advertising provides useful information, they are still skeptical of it.²⁸

IV. PITFALLS IN THE REGULATION OF INFLUENCER ADVERTISEMENTS

The only way to tackle such pitfalls of influencer endorsements would be to have a strong regulatory framework that checks these endorsements. There is further a need for strict guidelines to restrict misleading advertisements on social media platforms. In India, statutory provisions such as the Consumer Protection Act²⁹, Competition Act³⁰, Drugs and Magic Remedies (Objectionable Advertising) Act³¹, Cable Television Networks (Regulation) Act³², regulate advertisements. However, such laws are scattered across various statutes and do not accommodate influencer endorsements.

The Advertising Standards Council of India is currently the only regulatory body in India that has formulated guidelines for influencer advertising in digital media. However, ASCI is a self-regulatory body registered as a not-for-profit company under section 25 of the Companies Act. Such bodies in India do not have direct penal powers in the sense of imposing legal sanctions or fines.³³ The judiciary in several of its judgements such as in the case of Procter and Gamble Home Products Private Limited vs. Hindustan Unilever Ltd³⁴ has held that it can only recommend the advertiser to remove the advertisement but has no mechanism to compel removal of the advertisement or to grant any interim relief or to award damages.³⁵ There is thus a serious need for a statutory intervention in the area of social media advertisements.

²⁸ Farooq Ahmad, *False and Misleading Advertisements — Legal Perspectives*, 38 Journal of the Indian Law Institute 168 (1996), <https://www.jstor.org/stable/43927467>.

²⁹ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019).

³⁰ The Competition Act, No. 12 of 2003, INDIA CODE (2003).

³¹ The Drugs and Magic Remedies (Objectionable Advertisements) Act, No. 21 of 1954, INDIA CODE (1954).

³² The Cable Television Networks (Regulation) Act, No. 7 of 1995, INDIA CODE (1995).

³³ Priya Mangain Kapadia Antra Ahuja, Sakina, *Power(s) of Self Regulation: Looking through the Prism of ASCI, Bar and Bench - Indian Legal news* (2024), <https://www.barandbench.com/law-firms/view-point/powers-of-self-regulation-looking-through-prism-of-asci>.

³⁴ AIR ONLINE 2017 DEL 2

³⁵ *Supra* at 10

5. SUGGESTIONS

Controlling the distribution of false information is difficult because of its quick spread, the enormous amount of content it contains, and the variety of factors for it is created. Furthermore, it can be difficult to discern between truth and lies, and strict regulations run the risk of restricting freedom of speech and making it more difficult to create sensible policies and enforcement protocols.

Global practice changes point to a stronger drive for responsible, cooperative self-regulation to combat false information. For example, a self-regulatory strategy has been suggested by the Australian Communications and Media Authority ('ACMA') to allow platforms to recognise dangers or "acute harms from misinformation" and create their own design solutions to empower consumers³⁶. According to ACMA, the results include less exposure of users to damaging disinformation on the site, a strong method for reporting misinformation, and availability of an efficient "complaints handling process." The proposal makes the case that efforts to combat disinformation must remain consistent and use "industry-wide" inputs for risk assessment. It also attempts to force platforms to set shared objectives to reduce misinformation, but give them the ability to build their own methods to meet the objectives, and provide a system of "performance reporting". This system is in line with the "positive state approach," in which governments establish organisations that provide incentives for private actors to take on a problem instead of implementing a system that is based on fines and penalties. This can be compared to a "negative state" strategy used in nations like Singapore and Germany, where users' right to free speech is threatened by onerous regulations.

The absence of a legal framework for platform governance in India makes the implementation of an outcomes-based self-regulatory framework essential for stakeholders to collaborate in the fight against disinformation on the internet. Its implementation is dependent on the platforms' cooperation in the lack of enforcement instruments. Nonetheless, this strategy could help close the gap between the government and social media companies and possibly avoid restrictive laws like the Intermediary Liability Rules changes, which are more dangerous for user rights. This approach should, at the very least, encourage platforms to act comprehensively in the short term to combat misinformation and foster an atmosphere of increased transparency regarding

³⁶ *Misinformation and news quality on digital platforms in Australia - A position paper to guide code development*, Australian Communications and Media Authority (2020), <https://www.acma.gov.au/sites/default/files/2020-06/Misinformation%20and%20news%20quality%20position%20paper.pdf>.

their activities in this area³⁷.

Moving on to the regulation of influencer advertisements, the lack of statutory provisions regarding the same is highly concerning. Owing to the nature of social media platforms, it is difficult to regulate influencers' activities. It is difficult to draw a line with respect to influencer advertisements as there is a very porous line between promotion and personal experience. Further, social media platforms allow influencers to operate across platforms, where thousands of such content get posted daily just in India. Many times, the agreements between the brands and the influencers are informal, all of which lead to traceability issues. Moreover, In India, influencer advertising is still new, and consumers may not yet be fully aware of the nuances of paid promotions. Educating both consumers and influencers about the importance of transparency and ethical advertising is crucial to creating a more accountable ecosystem.

But these difficulties do not mitigate the need for statutory intervention. The Advertising Standards Council of India's Guidelines for Influencer Advertising in Digital Media is the only framework in India to regulate influencer advertisements. The guidelines of ASCI focus on ensuring transparency in paid promotions. Key requirements include clear disclosures of paid partnerships by usage of indicators such as #ad and #sponsored. These disclosures must be visible, prominent, and unambiguous in all types of content. Further, influencers must ensure that claims are truthful and not misleading, especially for products related to health or finance. The guidelines also hold influencers and brands accountable for compliance. The aim is to protect consumers from deceptive practices. Though the guidelines are a great initiative, a violation of ASCI's code or guidelines cannot attract penal liability as it is not a statutory authority.

One suggestion put forth by this paper is that the legislature can make a policy whereby all laws governing advertisement in India are brought under one general legislation, instead of being scattered across multiple acts. Each of those special laws can enjoy primacy over this general act or rules. Further, the general legislation shall contain provisions similar to that set out in the ASCI Guidelines for Influencer Advertising in Digital Media. The law must be able to accommodate newer forms of advertisement that may emerge in the future. The legislation

³⁷ Gaur, *Towards policy and regulatory approaches for combating misinformation in India*, Yale Law <https://law.yale.edu/isp/initiatives/wikimedia-initiative-intermediaries-and-information/wiii-blog/towards-policy-and-regulatory-approaches-combating-misinformation-india>

must further clearly trace the incidence of liability in various circumstances, including the liability of the social media platform for failing to regulate content. These suggestions may improve the issue of misleading advertisements caused by influencer endorsements.

6. CONCLUSION

Social media's explosive growth has completely changed the way information is disseminated, giving influencers enormous influence on public perception and purchasing patterns. In India, where there has been an unparalleled boom in mobile internet usage, the consequences of false information, particularly with regard to health, finances, and psychological welfare, have been more pressing. The problem is made more complex by the interaction between influencer marketing and celebrity endorsements, since unqualified individuals can readily spread bad advice while posing as experts.

Influencers are becoming more and more like go-to people for financial, lifestyle, and health advice, which increases the risk of misinformation. These problems are made worse by the absence of a strong regulatory framework controlling the development of content on social media platforms, which leaves users open to deceit and manipulation.

Social media and celebrity endorsements have changed advertising in India, bringing with them both opportunities and difficulties. Influencer marketing raises serious issues about deceptive promotions and the possibility of consumer deception, though it can democratise brand visibility and create real connections with customers. Clear norms and a transparent culture are essential for protecting consumer interests in influencer marketing. In order to preserve advertising's integrity and accountability in the face of constant change and safeguard consumers' interests in a more intricate market, it is imperative that regulators, influencers, and brands collaborate.

Setting up thorough policies that make influencers responsible for the content they distribute is crucial given the state of the industry. Stronger laws, similar to those governing traditional advertising, can be put in place to lessen the dangers of false endorsements. Furthermore, while maintaining the fundamentals of freedom of speech, a cooperative self-regulatory approach—as demonstrated by projects in other nations—may encourage a more responsible atmosphere for content makers.