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# INFLUENCER ADVERTISING REGULATION IN INDIA: A COMPARATIVE ASSESSMENT OF DISCLOSURE, ENFORCEMENT, AND INSTITUTIONAL ACCOUNTABILITY

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## ABSTRACT

The rapid expansion of influencer marketing has transformed digital advertising into a decentralized ecosystem in which commercial promotion is embedded within personal content, complicating traditional frameworks of liability, attribution, and consumer protection. Unlike conventional advertising models that clearly identify corporate advertisers as primary accountable actors, influencer marketing diffuses responsibility across influencers, brands, intermediaries, and digital platforms.

This paper conducts a doctrinal and comparative analysis of India's regulatory framework governing influencer advertising, focusing on the hybrid model of self-regulation under the Advertising Standards Council of India (ASCI) and statutory enforcement under the Consumer Protection Act, 2019, through the Central Consumer Protection Authority (CCPA). ASCI's Influencer Advertising Guidelines, 2021 require clear disclosure of material connections through labels such as "Ad" or "Sponsored,"<sup>1</sup> while Section 21 of the Consumer Protection Act, 2019 empowers the CCPA to penalize misleading advertisements and hold endorsers liable where due diligence is not exercised. However, enforcement remains largely complaint-driven, and overlapping institutional jurisdiction weakens deterrence effectiveness.<sup>2</sup>

By comparing the United States and the United Kingdom, the study argues that regulatory credibility depends not only on disclosure rules but also on consistent enforcement and clear institutional escalation. In the United States, influencer advertising is governed under Section 5 of the Federal Trade Commission Act, which prohibits deceptive practices and authorizes sanctions for nondisclosure of material connections.<sup>3</sup> The Federal Trade Commission's Endorsement Guides further specify disclosure obligations

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<sup>1</sup> Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021)

<sup>2</sup> Consumer Protection Act, 2019, No. 35 of 2019, § 21

<sup>3</sup> Federal Trade Commission Act, 15 U.S.C. § 45 (2018)

and require truthful representations in endorsements.<sup>4</sup> Similarly, the United Kingdom combines self-regulation through the CAP Code with statutory enforcement under the Consumer Protection from Unfair Trading Regulations 2008, which prohibits undisclosed paid promotions as unfair commercial practices.<sup>5</sup>

By situating India within this comparative framework, the paper argues that institutional coordination, enforcement transparency, and substantive claim verification are essential to transforming India's hybrid model from a procedurally progressive structure into an effectively deterrent regulatory regime.

**Keywords:** Influencer Regulation; Digital Advertising; Consumer Protection; ASCI; CCPA; Comparative Law; Disclosure Enforcement; Institutional Fragmentation.

## INTRODUCTION

The rapid rise of social media influencers has transformed the landscape of communication, marketing, and public opinion formation. Influencers today function as opinion leaders whose reach extends into commerce, politics, and even journalism. The problem arises when we realise that influencer ads differ from traditional advertising. While traditional advertising allowed us to pin liability on the advertiser or the brand, this is not the case with influencer ads, where liability is diffused across multiple parties. The nature of influencers' ads also makes it difficult for consumers to comprehend that they are actual paid promotions and not authentic recommendations.

A Pew Research Center study highlights that nearly one-fifth of adults in the United States rely on influencers for news consumption, a striking departure from traditional media reliance.<sup>6</sup> This shift in trust and information flow, however, coincides with mounting concerns over accountability, as a majority of influencers fail to verify information before disseminating it, contributing to the spread of misinformation.<sup>7</sup>

Globally, the influencer economy has been recognized as a powerful yet precarious space.

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<sup>4</sup> Fed. Trade Comm'n, *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 C.F.R. pt. 255 (2023)

<sup>5</sup> Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, sched. 1 ¶ 11

<sup>6</sup> Daysia Tolentino, 1 in 5 U.S. Adults Get Their News from Social Media Influencers, According to Pew Report, NBC NEWS (Nov. 18, 2024), <https://www.nbcnews.com/tech/news-influencers-social-media-pew-report-rcna179786>

<sup>7</sup> Liam Reilly, Majority of Social Media Influencers Don't Verify Information Before Sharing It, Study Finds, CNN (Nov. 26, 2024), <https://www.cnn.com/news/influencers-misinformation-study>

Studies demonstrate that users often trust influencers almost as much as personal acquaintances,<sup>8</sup> amplifying both the effectiveness and risks of influencer-driven communication. While platforms such as Instagram, TikTok, and YouTube have democratized fame and commerce, they have also blurred the boundaries between authenticity and advertising, creating fertile ground for hidden sponsorships, deceptive endorsements, and exploitative arrangements. Countries like the United States and the United Kingdom in response to this have developed structured regulatory frameworks, most notably through the Federal Trade Commission (FTC) guidelines and the Advertising Standards Authority (ASA), rules that place disclosure and consumer protection at the center of influencer marketing regulation.<sup>9</sup>

In India, however, the regulatory landscape remains fragmented and relatively nascent. The Advertising Standards Council of India (ASCI) has issued guidelines on influencer advertising disclosures, but enforcement challenges and the informal nature of much influencer activity weaken compliance.<sup>10</sup> Moreover, the absence of comprehensive statutory backing has left significant grey areas, particularly concerning political endorsements, misinformation, and liability for consumer harm.<sup>11</sup>

With India emerging as one of the largest markets for digital content creation, the regulatory lag raises important questions about consumer protection, free expression, and the roles of influencers and platforms. While much discussion has focused on the disclosure of paid collaborations, there has been less engagement with issues such as misleading claims and negative promotional practices that shape consumer trust. This paper examines the crisis of influencer accountability through a comparative lens, focusing on India while drawing on the regulatory experiences of the United States and the United Kingdom. It argues that India's current framework, though a step forward, requires clearer rules, stronger enforcement, and greater attention to these concerns to balance innovation with accountability in the influencer

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<sup>8</sup> Marty Swant, *Twitter Says Users Now Trust Influencers Nearly as Much as Their Friends*, ADWEEK (May 10, 2016), <https://www.adweek.com/socialmarketing/twitter-says-users-now-trust-influencers-nearly-much-their-friends-171367/>

<sup>9</sup> Press Release, Fed. Trade Comm'n, *FTC Releases Advertising Disclosures Guidance for Online Influencers* (Nov. 5, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/11/ftc-releashapesses-advertising-disclosures-guidance-online-influencers>

<sup>10</sup> Advert. Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021), <https://ascionline.in/guidelines/influencer-advertising>

<sup>11</sup> See *id.*; see also Meizhi Pan, Markus Blut, Arezou Ghiassaleh & Zach W.Y. Lee, *Influencer Marketing Effectiveness: A Meta-Analytic Review*, 53 J. ACAD. MKTG. SCI. 52 (2024).

economy.

## INFLUENCERS AND THEIR GROWTH IN INDIA

The rise of social media influencers (SMIs) reflects one of the most significant shifts in digital markets over the last two decades. While we earlier saw social media influencers being defined as ‘a new type of independent third-party endorser who shape audience attitudes through blogs, tweets, and the use of other social media’<sup>12</sup>, the definition hasn’t changed much but only expanded, with its core elements remaining the same. Since the early 2000s, what began as a niche, home-based pursuit has evolved into a global industry, with influencers now occupying professional spaces once reserved for traditional media personalities. Many have successfully leveraged their online popularity to enter mainstream fields such as film, television, and fashion.<sup>13</sup>

Recent research, a 2024 UNESCO-sponsored global study, defined digital creators as individuals who “regularly post content online for public consumption and have more than 1,000 followers,” thereby establishing the baseline for nano-influencers.<sup>14</sup> Within this spectrum, influencers are commonly categorized by follower count: Mega-influencers (over one million followers) are typically celebrities with vast visibility, while macro-influencers (100,000–1 million followers) often include semi-celebrities or professionals with broad appeal. Within the mid-tier, micro-influencers (1,000–100,000 followers) are valued for their authenticity and deeper audience engagement. At the grassroots level, nano-influencers (fewer than 10,000 followers, typically between 1,000 and 10,000).<sup>15</sup>

The Indian influencer ecosystem has expanded at a staggering pace, transforming from a niche digital trend into a mainstream marketing industry. Reports by Qoruz and The Goat Agency/Kantar indicate that the number of influencers in India grew from 9.6 lakh in 2020 to 40.6 lakh by the end of 2024, reflecting a 322% surge in just four years.<sup>16</sup> This explosive growth

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<sup>12</sup> Karen Freberg, Kristin Graham, Karen McGaughey & Laura A. Freberg, *Who Are the Social Media Influencers? A Study of Public Perceptions of Personality*, 37 Pub. Rels. Rev. 90 (2011)

<sup>13</sup> C. Fornell & D.F. Larcker, *Evaluating Structural Equation Models with Unobservable Variables and Measurement Error*, 18 J. Marketing Rsch. 39, 40 (1981)

<sup>14</sup> Louisa Ha, *Behind the Screens: Insights from Digital Content Creators; Understanding Their Intentions, Practices and Challenges*, UNESCO, C1/FMD/MIL/2024/7 (2024) aged 20-

<sup>15</sup> Victor Moono, *Nano-Influencers: What, Why, & How-to Use Them (+ Key Steps)* (Aug. 23, 2024), <https://influencermarketinghub.com/nano-influencersaged-20/>

<sup>16</sup> FP Explainers, *Like, Subscribe and Share: How India’s Influencer Count Has Risen 3 Times in 4 Years* (Jan. 31, 2025), <https://www.firstpost.com/explainers/india-influencer-count-3x-growth-2025>; DeepBrief, *India Influencer Report 2025 — India’s Influencer Count Hits 40.6 Lakh with 322% Growth Since*

has translated into significant market value, with the industry crossing ₹3,600 crore and projected to expand further at an annual rate of 25% this 2025.<sup>17</sup>

A 2021 study conducted in Chennai surveyed 100 millennial respondents between the ages of 20 and 35 to examine their perceptions and attitudes towards Instagram influencers. The findings revealed that while nearly half of the participants initially claimed they were “not influenced,” 65% admitted to purchasing at least one product based on influencer recommendations. This paradox underscores the subconscious impact of influencer culture, where relatability, aspirational branding, and personal connection outweigh the respondents’ conscious rejection of “advertising”.<sup>18</sup> This survey highlights the depth of influencer advertising in India, from a mere marketing trend to a structural feature of consumer choice.

### *EMERGING RISKS OF INFLUENCER CULTURE*

The meteoric rise of India’s digital creator space, marked by a 322% growth in the influencer population between 2020 and 2024, has outpaced the regulatory frameworks intended to govern it.<sup>19</sup> While this expansion offers immense economic potential, it is shadowed by three primary emerging risks: non-disclosure, misleading high-stakes promotions, and the rise of negative advertising.

### **The Transparency Gap: Non-Disclosure and Covert Marketing**

With the increase in influencers and their impact on consumers, it is followed by risks that are not sufficiently regulated. The largest concern is the non-disclosure of paid partnerships. While the Advertising Standards Council of India (ASCI) introduced *Influencer Advertising Guidelines* in 2021, requiring clear labelling of sponsored content, compliance has been uneven.<sup>20</sup> Many influencers either bury disclosures within hashtags or omit them altogether, leading to covert advertising blurring the line between authentic recommendations and commercial promotions. This lack of transparency compromises consumer autonomy and

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2020 (June 24, 2025), <https://mediabrief.com/deepbrief-india-influencer-report-2025>

<sup>17</sup> DeepBrief, supra note 13

<sup>18</sup> D. Raj, A. Thiyagarajan, G. Vasanth and M. Raj, ‘Perception and Attitude of Millennials on Influencer Marketing through Instagram in India’ (2021) *Vidyabharati International Interdisciplinary Research Journal (Special Issue)* 101

<sup>19</sup> Qoruz Report (2024), cited in Firstpost Explainers, “Like, Subscribe and Share: How India’s influencer count has risen 3 times in 4 years,” 31 January 2025 <https://www.firstpost.com/explainers/india-influencers-risen-report-marketing-13858081.html>

<sup>20</sup> ASCI, *Guidelines for Influencer Advertising in Digital Media*, 2021

directly conflicts with ASCI's objective of fostering informed consumer choice.<sup>21</sup>

This practice exploits the "para-social intimacy" described by Horton and Wohl, in which followers view influencers as trusted peers rather than commercial agents. By presenting a paid endorsement as an "authentic recommendation," influencers bypass the consumer's natural skepticism.

### **High-Stakes Misinformation: Finance and Health**

Beyond simple transparency, the veracity of promotions presents a systemic risk, particularly in "High-Stakes" sectors. The 2023 SEBI crackdown on "finfluencers" highlighted a dangerous trend: unverified stock tips and financial "advice" disseminated to millions of retail investors.<sup>22</sup> Unlike regulated financial advisors, these influencers often lack the credentials to manage the market volatility they encourage.

A parallel crisis exists in the health and wellness sector. Influencers frequently promote "miracle cures" or untested beauty products by exploiting consumer vulnerabilities.<sup>23</sup> Kumar observes that the "authority" granted to these figures allows them to perpetuate misinformation with alarming efficiency.<sup>24</sup> When an influencer promotes a medical product without oversight, the potential for public harm is magnified by India's massive digital user base, which now exceeds 524 million people.<sup>25</sup>

### **The Weaponization of Trust: Negative Advertising**

A newer, more insidious risk is negative advertising, where influencers are leveraged to disparage a competitor's product. This "attack marketing" weaponizes the trust built with an audience to fuel toxicity for engagement or profit. Such strategies do not merely hurt individual brands; they "corrode the credibility" of the entire digital ecosystem.<sup>26</sup> When persuasion turns

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<sup>21</sup> Kumar, S. (2024). *Changing Face of Authority Figures and Influencers in the New Age: A Study of New Emerging Practices in the Indian Advertising Industry*. *Journal of Corporate Secretaryship Studies*, 1(1), 28–33.

<sup>22</sup> Firstpost Explainers (2025). "No more stock tips on Instagram: Why is SEBI cracking down on finfluencers? what could be the impact-13857769.html" <https://www.firstpost.com/explainers/no-more-stock-tips-on-instagram-why-is-sebi-cracking-down-on-finfluencers-what-could-be-the-impact-13857769.html>

<sup>23</sup> Abidin, C. (2015). "Communicative intimacies: Influencers and perceived interconnectedness." *Ada: A Journal of Gender, New Media, and Technology*, 8(8)

<sup>24</sup> Kumar (2024), p. 30

<sup>25</sup> Comscore Report (2024), cited in Firstpost Explainers, 31 January 2025

<sup>26</sup> Oliveira, T., et al. (2017). "Modelling and testing consumer trust dimensions in e-commerce." *Computers in Human Behavior*, 71, 153–164

into manipulation through coordinated takedowns, the foundational trust required for a healthy market evaporates.

### **Why Accountability is Non-Negotiable**

Ensuring accountability is not merely a matter of commercial regulation but a safeguard for democratic trust. A survey of Indian millennials found that 65% made purchases based on influencer recommendations, even when they believed they were not influenced.<sup>27</sup> This "subconscious persuasion" means that without strict enforcement of disclosure and truthfulness, the Indian consumer is left vulnerable to exploitation. For India's influencer economy to be sustainable, it must transition from an unregulated frontier to a practice rooted in fairness, transparency, and consumer dignity.

## **OVERVIEW: THE US, UK, AND INDIA MODEL**

### **The UNITED STATES MODEL**

The regulatory landscape in the United States serves as a global benchmark for influencer accountability, characterized by a sophisticated interplay between federal oversight and stringent transparency mandates. The primary architect of this framework is the Federal Trade Commission (FTC), which operates under the broad mandate of Section 5 of the FTC Act to prohibit "unfair or deceptive acts or practices in or affecting commerce". This statutory authority allows the FTC to regulate the rapidly evolving digital marketing landscape by treating undisclosed influencer promotions as deceptive advertising.

#### **1. The FTC and FDA Regulatory Framework**

The cornerstone of US influencer regulation is the FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising" (Endorsement Guides). These guides, significantly updated in 2023, provide the functional definitions of modern advertising ethics by requiring the disclosure of "material connections". A material connection includes anything of value, such as monetary payment, gifted products, or personal relationships, that might affect the weight or credibility consumers give to an endorsement. Under the "clear and conspicuous" standard, disclosures must be prominent enough that they are unavoidable; for instance, they

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<sup>27</sup> Raj, D., et al. (2021). "Perception and Attitude of Millennials on Influencer Marketing through Instagram in India." *International Virtual Conference on Innovation in Multidisciplinary Studies*

must appear before the "more" button in social media captions and avoid ambiguous terms like "#sp".<sup>28</sup>

Furthermore, the FTC stipulates that endorsements must reflect the influencer's honest opinions, beliefs, or experiences. Influencers are legally barred from making claims about a product that the brand itself could not legally make, and any depicted results must represent what a typical consumer can generally expect. The Food and Drug Administration (FDA) complements this by monitoring influencers who promote pharmaceuticals or weight-loss supplements, mandating the disclosure of potential health risks. Failure to comply with these health-specific mandates can result in legal action against both the influencer and the brand for promoting products without proper medical disclaimers.<sup>29</sup>

## 2. Enforcement Powers and Individual Liability

The US model is notable for its willingness to hold individual influencers personally liable, marking a shift from historical practices that focused solely on the sponsoring corporations. Regulators utilize a tiered enforcement strategy: warning letters often serve as the first formal notice, followed by monetary settlements and formal litigation. These enforcement actions frequently involve substantial financial penalties and long-term compliance monitoring to ensure influencers adopt a permanent framework of truthfulness.<sup>30</sup>

## 3. Landmark Case Studies

The following cases illustrate the practical application of US law and the severe consequences of non-compliance:

- *FTC vs. CSGOLotto (2016)*: This landmark case involved the owners of a gambling site, who were also popular YouTubers, failing to disclose their ownership stake while promoting the platform. The settlement banned them from misrepresenting that their endorsements were independent and mandated strict, prominent disclosures in all

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<sup>28</sup> Federal Trade Commission Act, 15 U.S.C. § 45; Vaishnavi P & Jyotirmoy Banerjee, *Influencer Marketing and the Law: Accountability for Misleading Endorsements*, 4 Int'l J. Hum. Rts. L. Rev. 831, 837 (2025)

<sup>29</sup> FTC, *Disclosures 101 for Social Media Influencers* (2019); Sanjay Kesavan, *Influence and Responsibility: Bridging Gaps in Legal Framework of India*, SSRN Scholarly Paper No. 5261869, 7 (2025)

<sup>30</sup> Prof. Saroja S., *The Ethics of Influencer Marketing: Transparency and Disclosure*, 12 Journal of Emerging Technologies and Innovative Research (2025)

future content.

- *FTC vs. Teami (2020)*: This case involved the tea company Teami, LLC, and several high-profile influencers who made unsubstantiated health claims, including claims about the product's ability to prevent cancer, without disclosing paid partnerships. The resulting settlement included a \$15.2 million judgment (partially suspended) and required influencers to provide "corrective disclosures" to their followers to undo the misinformation.<sup>31</sup>

By combining detailed guidelines with aggressive enforcement, the US model creates a strong deterrent against deceptive marketing, prioritizing public trust over short-term promotional engagement.<sup>32</sup>

## THE UNITED KINGDOM MODEL

The United Kingdom is a constitutional monarchy composed of four countries, England, Wales, Scotland, and Northern Ireland, functioning under three distinct legal jurisdictions. England and Wales operate under a common law system grounded in legislation and judicial precedent.<sup>33</sup> Northern Ireland similarly follows common law, with appeals to the U.K. Supreme Court.<sup>34</sup> Scots law, however, is a mixed system influenced by Roman law traditions.<sup>35</sup> Legislation in the United Kingdom consists of primary legislation (Acts of Parliament) and secondary legislation (statutory instruments issued under delegated authority).<sup>36</sup> The U.K. Parliament remains the supreme legislative authority with power to enact laws applicable across the country.<sup>37</sup>

This structure is essential in understanding influencer marketing regulation, which is largely governed through statutory instruments rather than standalone primary legislation.

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<sup>31</sup> *In re CSGOLotto, Inc.*, FTC File No. 162 3184 (2016); *FTC v. Teami, LLC*, No. 8:20-cv-00518 (M.D. Fla. 2020)

<sup>32</sup> Vaishnavi P & Jyotirmoy Banerjee, *supra* note 26, at 843; Sanjay Kesavan, *supra* note 27, at 9.

<sup>33</sup> Gary Slapper & David Kelly, *The English Legal System* 77–204 (15th ed. 2014)

<sup>34</sup> Supreme Court of the United Kingdom, GOV.UK, <https://www.gov.uk/government/organisations/supreme-court-of-the-united-kingdom>

<sup>35</sup> William M. Gordon, *Roman Law, Scots Law and Legal History* 141 (2013)

<sup>36</sup> Primary Legislation, UK Parliament, <https://www.parliament.uk/site-information/glossary/primary-legislation/>

<sup>37</sup> About Parliament, UK Parliament, <https://www.parliament.uk/about/>

## 1. Institutional Framework: ASA, CAP, and CMA

Advertising regulation in the United Kingdom is primarily administered through a co-regulatory system involving the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP). The ASA was established in 1962 following industry collaboration coordinated by the Advertising Association. CAP drafts and maintains the U.K.'s advertising codes, while the ASA investigates complaints and enforces compliance.<sup>38</sup> The principal non-broadcast code governing marketing communications is the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code).<sup>39</sup> Alongside the ASA operates the Competition and Markets Authority (CMA), an independent non-ministerial department established under the Enterprise and Regulatory Reform Act 2013.<sup>40</sup> The CMA functions as the United Kingdom's primary competition and consumer protection authority.<sup>41</sup> However, it typically addresses systemic market distortions rather than individual complaints, often relying on the ASA as the frontline regulator due to resource constraints.<sup>42</sup> Scholars have observed that the U.K.'s self-regulatory system operates efficiently as a first-instance mechanism for resolving advertising disputes.<sup>43</sup>

## 2. The Consumer Protection from Unfair Trading Regulations 2008

The primary statutory instrument governing influencer marketing practices is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Enacted as a statutory instrument (SI 2008/1277), the CPRs establish:

1. A general prohibition on unfair commercial practices;
2. Specific prohibitions on misleading and aggressive practices; and
3. A blacklist of 31 prohibited practices under Schedule 1.

Regulation 3(3)(a) prohibits practices that contravene the requirements of “professional

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<sup>38</sup> Our History, Advertising Standards Authority, <https://www.asa.org.uk/about-asa-and-cap/our-history.html>

<sup>39</sup> Committee of Advertising Practice, *The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing* (2010)

<sup>40</sup> Enterprise and Regulatory Reform Act 2013, c. 24 (UK)

<sup>41</sup> Competition and Markets Authority Annual Plan 2022–2023, GOV.UK

<sup>42</sup> How the CMA Handles Information and Complaints About Businesses, GOV.UK.

<sup>43</sup> Vaishnavi P. & Jyotirmoy Banerjee, Influencer Marketing and the Law: Accountability for Misleading Endorsements, 4 Int'l J. Hum. Rts. L. Rev. 831, 838 (2025).

diligence,” defined under Regulation 2(1) as the standard of skill and care reasonably expected of a trader consistent with honest market practice or good faith. Most significantly, Schedule 1, paragraph 11 prohibits:

“Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content.”

This provision directly captures undisclosed influencer advertising (advertorials). Accordingly, hidden paid promotions constitute an unfair commercial practice under U.K. law. Further, Regulation 5(3)(b) establishes that failure to comply with commitments contained in a code of conduct, where the trader indicates adherence, may constitute a misleading action. This provision creates statutory cohesion between the CPRs and the CAP Code.<sup>44</sup>

### **3. CAP Code**

The CAP Code functions as a detailed rulebook governing non-broadcast marketing communications. Although not legislation, compliance with the CAP Code generally ensures alignment with statutory consumer protection standards. Section 1 of the CAP Code establishes that marketing communications must be “legal, decent, honest and truthful.” Rule 2.4 specifically mandates that advertorials must be clearly identifiable as marketing communications, for example, by labeling them “advertisement feature.” The CAP Code defines an advertorial as promotional content controlled by the marketer and disseminated in exchange for payment or a reciprocal arrangement. In response to the growth of online advertising and social media marketing, the CAP Code expanded its remit in 2010 to cover digital content, including influencer marketing.

To clarify disclosure obligations in digital contexts, CAP and the CMA jointly issued the Influencers' Guide to Making Clear That Ads Are Ads (2018). The Guide provides detailed explanations regarding when disclosure is required. “Payment” is broadly defined to include monetary compensation, free products, ambassadorial relationships, services, travel, hotel stays, or any reciprocal arrangement. The Guide emphasizes that both influencers and brands share responsibility for ensuring transparency. It recommends clear and prominent disclosures, such as “Ad,” “Advert,” or “Advertisement,” placed upfront so that consumers understand the

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<sup>44</sup> Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277 (UK)

content's commercial nature before engaging with it.<sup>45</sup> Although the Guide is advisory rather than statutory, it bridges interpretative gaps in the CPRs and the CAP Code, providing practical clarity for influencers and reducing opportunities for regulatory evasion.

## THE INDIAN MODEL

India's regulatory framework for influencer marketing represents a hybrid model combining industry self-regulation with statutory consumer protection enforcement. While the Advertising Standards Council of India (ASCI) establishes disclosure norms through soft-law guidelines, statutory enforcement powers are vested in the Central Consumer Protection Authority (CCPA) under the Consumer Protection Act, 2019. Although the framework has evolved significantly in response to the rapid expansion of digital advertising, questions remain regarding institutional coordination, enforcement capacity, and the overall deterrent effect of regulatory sanctions.

### 1. The ASCI Framework

India's primary regulatory body addressing influencer marketing practices is the Advertising Standards Council of India (ASCI), a self-regulatory organization established in 1985 to promote responsible advertising standards.<sup>46</sup> ASCI operates through a voluntary compliance model in which advertisers, agencies, and media platforms agree to follow ethical advertising standards developed by the industry itself. Although the body has played an important role in shaping advertising norms in India, its authority ultimately derives from reputational enforcement rather than statutory power.

In 2021, ASCI introduced the Guidelines for Influencer Advertising in Digital Media, which specifically address the growing role of social media influencers in online advertising. These guidelines require influencers to disclose paid partnerships clearly and prominently using labels such as "Ad," "Advertisement," or "Sponsored." The guidelines further clarify that disclosure is required whenever an influencer receives any form of consideration from a brand, including monetary payments, free products, discounts, travel benefits, or other incentives.<sup>47</sup>

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<sup>45</sup> Committee of Advertising Practice, *The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing* (2010)

<sup>46</sup> Advertising Standards Council of India, *Code for Self-Regulation in Advertising* (2021)

<sup>47</sup> Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021)

ASCI's guidelines attempt to address a central problem in influencer marketing: the difficulty consumers face in distinguishing between genuine personal recommendations and paid promotional content. Empirical studies suggest that consumers frequently perceive influencer endorsements as authentic opinions rather than commercial messages, particularly when disclosures are absent or obscured.<sup>48</sup> The persuasive power of influencer marketing is therefore closely linked to social trust and perceived authenticity. Influencers often cultivate long-term relationships with their audiences through relatable narratives, lifestyle content, and continuous engagement, creating what communication scholars describe as parasocial relationships, one-sided emotional bonds between audiences and media personalities.<sup>49</sup>

Because influencer marketing operates through these trust-based dynamics, the absence of transparent disclosure can significantly distort consumer decision-making. Influencers may promote products while presenting their endorsements as personal experiences rather than commercial transactions. This practice effectively blurs the boundary between advertising and personal communication, raising concerns regarding deceptive marketing practices.

ASCI's guidelines attempt to address these concerns through a structured disclosure regime. The guidelines require that disclosures be clear, prominent, and placed in a location where consumers are likely to notice them before engaging with the promotional content.<sup>50</sup> For example, disclosures must appear within the first two lines of a caption on platforms such as Instagram and must not be hidden within hashtags or placed at the end of lengthy descriptions. In video content, disclosures must appear both visually and verbally to ensure viewers recognize the commercial nature of the endorsement.

Despite the clarity of these standards, ASCI's regulatory capacity remains fundamentally limited by its non-statutory nature. As a self-regulatory body, ASCI does not possess the authority to impose monetary penalties or legal sanctions. Instead, it primarily relies on corrective measures such as requiring advertisers or influencers to modify or withdraw non-compliant advertisements.<sup>51</sup> While these measures may be effective in traditional advertising contexts where brands are sensitive to reputational risk, their effectiveness in the digital

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<sup>48</sup> N. J. Evans et al., *Disclosing Instagram Influencer Advertising: The Effects of Disclosure Language on Advertising Recognition, Attitudes, and Behavioral Intent*, 17 *J. Interactive Advert.* 138 (2017)

<sup>49</sup> Alice Audrezet, Gwarlann de Kerviler & Julie G. Moulard, *Authenticity Under Threat: When Social Media Influencers Need to Go Beyond Self-Presentation*, 117 *J. Bus. Res.* 557 (2020)

<sup>50</sup> Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media*, *supra* note 42

<sup>51</sup> Vaishnavi P. & Jyotirmoy Banerjee, *Influencer Marketing and the Law: Accountability for Misleading Endorsements*, 4 *Int'l J. Hum. Rts. L. Rev.* 831, 837 (2025)

influencer ecosystem is less certain.

One significant limitation arises from the decentralized structure of social media advertising. Influencers operate across multiple platforms, frequently creating large volumes of content in short periods. Monitoring such content in real time is extremely difficult, particularly when enforcement relies primarily on consumer complaints or voluntary reporting. Consequently, many undisclosed promotional posts may remain undetected.

Another limitation stems from the voluntary nature of compliance. Influencers who are not directly affiliated with advertising agencies or major brands may be unaware of ASCI guidelines or choose to disregard them. Unlike statutory regulators, ASCI cannot compel compliance through legal enforcement mechanisms.

Scholars have therefore observed that self-regulation alone may be insufficient in digital advertising environments characterized by rapid content production and decentralized actors.<sup>52</sup> Although ASCI provides valuable ethical guidance, its enforcement tools remain relatively weak compared to statutory regulatory authorities in other jurisdictions.

These limitations highlight a broader structural challenge within India's regulatory model: the reliance on soft-law frameworks to govern complex digital advertising practices.

## **2. Central Consumer Protection Authority (CCPA) and Statutory Enforcement**

To address misleading endorsements more directly, India introduced statutory oversight through the Consumer Protection Act, 2019, which established the Central Consumer Protection Authority (CCPA).<sup>53</sup> The CCPA functions as a government authority empowered to investigate and penalize unfair trade practices, including misleading advertisements.

Section 21 of the Consumer Protection Act authorizes the CCPA to issue directions against misleading advertisements and impose penalties on manufacturers, advertisers, and endorsers. Notably, the Act allows the authority to impose monetary fines and even prohibit endorsers from making future endorsements for a specified period. These provisions represent a significant shift from purely voluntary advertising regulation toward legally enforceable

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<sup>52</sup> Prof. Saroja S., *The Ethics of Influencer Marketing: Transparency and Disclosure*, 12 J. Emerging Techs. & Innovative Res. h285, h291 (2025)

<sup>53</sup> Consumer Protection Act, 2019, No. 35 of 2019, § 10

consumer protection mechanisms.

Under the statutory framework, influencers may be treated as endorsers and held responsible for the claims they promote. If an influencer endorses a product that contains misleading or unverified claims, the CCPA may impose penalties unless the influencer can demonstrate that they exercised due diligence in verifying the product's claims.<sup>54</sup> This due diligence requirement introduces an important accountability mechanism by recognizing that influencers are not merely passive communicators but active participants in marketing campaigns.

In theory, this statutory framework significantly strengthens India's regulatory capacity. The CCPA possesses investigative powers, the ability to order the discontinuation of misleading advertisements, and the authority to impose financial penalties. These tools create a legal deterrent that does not exist within ASCI's purely self-regulatory framework.

However, despite these formal powers, enforcement in practice remains relatively limited. Influencer marketing in India has expanded rapidly across platforms such as Instagram, YouTube, and short-video applications, creating a vast ecosystem of digital endorsements. Monitoring this ecosystem requires substantial institutional resources and technological capabilities. Regulatory authorities must identify potentially misleading content, investigate the underlying commercial relationships, and establish liability across multiple actors.

Given the scale of digital advertising activity, the CCPA's enforcement capacity remains constrained. Many cases involving misleading endorsements are still addressed through ASCI's complaint mechanism rather than formal statutory proceedings. As a result, the legal penalties under the Consumer Protection Act are rarely applied in influencer marketing.

Another challenge arises from the overlapping jurisdiction between ASCI and the CCPA. While ASCI functions as an industry regulator responsible for ethical standards, the CCPA operates as a statutory authority enforcing consumer protection laws. In practice, this dual structure can create uncertainty regarding which institution should address particular cases of misleading influencer advertising.

For example, a misleading endorsement may simultaneously violate ASCI's disclosure guidelines and the statutory provisions governing deceptive advertising under the Consumer

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<sup>54</sup> Consumer Protection Act, 2019, No. 35 of 2019, § 21

Protection Act. In such situations, enforcement may depend on institutional coordination between the two bodies. Without clear procedural mechanisms defining their respective roles, regulatory responses may become inconsistent.

Legal scholars have therefore described India's regulatory model as a "layered but fragmented system" in which different institutions address overlapping aspects of digital advertising.<sup>55</sup> While this structure allows specialized expertise in certain areas, it may also create gaps in enforcement where responsibility becomes diffused.

## COMPARATIVE ANALYSIS

The preceding discussion establishes that India has developed a hybrid regulatory structure that combines self-regulation through the Advertising Standards Council of India (ASCI) with statutory enforcement by the Central Consumer Protection Authority (CCPA). However, the existence of regulatory institutions does not automatically translate into regulatory effectiveness. A closer structural examination reveals that India's framework suffers from institutional fragmentation, weak deterrence incentives, and an overemphasis on disclosure compliance rather than substantive harm prevention. When compared with the regulatory models of the United States and the United Kingdom, these limitations become more apparent.

### *Fragmentation and Institutional Overlap*

One of the most significant structural weaknesses in India's influencer marketing regulation is institutional fragmentation. Influencer advertising may fall simultaneously under the jurisdiction of ASCI (ethical compliance), the CCPA (statutory enforcement), and sector-specific regulators such as SEBI for financial content or FSSAI for health-related endorsements.<sup>56</sup> This overlapping authority creates formal coverage but practical ambiguity.

In theory, layered oversight ensures comprehensive regulation. In practice, however, overlapping mandates often result in delayed enforcement and unclear accountability. When a misleading endorsement is identified, questions arise: Should the complaint first be processed by ASCI through its complaint mechanism? Or should it directly trigger statutory proceedings

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<sup>55</sup> Sanjay Kesavan, *Influence and Responsibility: Bridging Gaps in Legal Framework of India*, SSRN Scholarly Paper No. 5261869, at 7 (2025)

<sup>56</sup> Consumer Protection Act, 2019, No. 35 of 2019 (India); Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements (2022)

before the CCPA? If both institutions examine the matter, coordination delays may occur. If neither acts proactively, enforcement becomes complaint-driven rather than preventive.

By contrast, regulatory systems in the United States and the United Kingdom exhibit greater institutional clarity. The Federal Trade Commission (FTC) in the United States operates as a centralized enforcement body responsible for consumer protection and deceptive advertising under Section 5 of the FTC Act.<sup>57</sup> Even though sectoral regulators may exist, the FTC retains primary authority over misleading advertising claims. Similarly, the United Kingdom's co-regulatory structure functions with a clearer hierarchy: the Advertising Standards Authority (ASA) acts as the frontline regulator, but its decisions operate within a framework supported by statutory consumer protection enforcement mechanisms.<sup>58</sup>

India's diffusion of authority weakens regulatory predictability. Influencers and brands may strategically exploit institutional ambiguity by anticipating that violations will either result in mild self-regulatory action or remain unaddressed due to enforcement gaps. The absence of clearly defined escalation pathways between ASCI and the CCPA reduces systemic efficiency. Moreover, fragmentation increases transaction costs for complainants. Consumers must determine which authority to approach depending on the nature of the violation. This complexity discourages reporting and reduces regulatory visibility. Effective regulation requires not only legal provisions but also an accessible enforcement architecture.

### ***Soft Law, Voluntary Compliance, and Weak Deterrence***

A second structural challenge concerns India's reliance on soft-law governance through ASCI. Although the 2021 Influencer Guidelines significantly improved disclosure standards, they remain non-statutory.<sup>59</sup> Compliance is encouraged but not legally compelled. Soft law can be effective when reputational incentives align with enforcement expectations. Established brands often comply because reputational damage can translate into measurable financial loss. However, influencer ecosystems differ structurally from corporate advertising environments.

First, influencers often operate as independent economic actors rather than institutional entities. Many micro- and nano-influencers generate revenue through multiple small sponsorships

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<sup>57</sup> Federal Trade Commission Act § 5, 15 U.S.C. § 45

<sup>58</sup> Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277 (UK); CAP Code (UK)

<sup>59</sup> Advertising Standards Council of India, Guidelines for Influencer Advertising in Digital Media (2021)

rather than long-term brand partnerships. The risk calculus for such actors differs from that of corporations. The reputational consequences of ASCI findings may not significantly affect their income streams unless enforcement is accompanied by broader platform visibility or statutory sanctions. Second, ASCI lacks the power to enforce coercively. It cannot impose fines, suspend operations, or directly prohibit future advertising activity. Its primary tools include recommending content removal and publishing non-compliance reports. While reputational pressure matters, it does not equate to legal deterrence.

This structural weakness contrasts sharply with the enforcement model in the United States. The FTC's authority to impose monetary penalties, negotiate consent decrees, and initiate litigation creates tangible legal consequences for non-compliance.<sup>60</sup> Even when settlements occur, they frequently include corrective disclosures and long-term monitoring obligations. The existence of enforceable sanctions enhances deterrence. Similarly, in the United Kingdom, although the Advertising Standards Authority operates through self-regulation, non-compliance can escalate into statutory enforcement under consumer protection law.<sup>61</sup> This escalation pathway strengthens the credibility of the regulatory system.

India's hybrid model theoretically mirrors this approach but lacks consistent enforcement activation. The CCPA possesses statutory sanctioning authority under the Consumer Protection Act, 2019, including fines and endorsement bans.<sup>62</sup> However, enforcement remains infrequent relative to the scale of influencer marketing activity. Without consistent application of statutory penalties, the regulatory framework risks becoming symbolic rather than deterrent.

### ***Disclosure-Centric Regulation vs Substantive Harm Regulation***

Another structural limitation in India's framework is the dominant emphasis on disclosure compliance. Both ASCI guidelines and statutory regulations prioritize transparency by requiring influencers to disclose material connections with brands. Transparency is essential, but disclosure alone does not address broader categories of consumer harm. Influencer marketing risks extend beyond hidden sponsorships to include:

- Misleading financial advice

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<sup>60</sup> Federal Trade Commission, Endorsement Guides, 16 C.F.R. pt. 255.

<sup>61</sup> Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, sch. 1 (UK)

<sup>62</sup> Consumer Protection Act, 2019, § 21 (India)

- Unsubstantiated health claims
- Exaggerated product performance representations
- Negative advertising disguised as authentic criticism

Disclosure may mitigate deception regarding commercial relationships, but it does not guarantee the truthfulness of content. For example, “finfluencers” who promote stock recommendations without appropriate qualifications may disclose sponsorships properly yet still provide inaccurate or risky financial guidance. Regulatory intervention in such cases must address substantive claim accuracy, not merely transparency. Similarly, health and wellness influencers may comply with disclosure standards while promoting products with unverified therapeutic effects. The harm arises from misinformation, not merely undisclosed sponsorship.

Comparatively, the FTC framework directly targets both disclosure failures and misleading claims. Its enforcement actions frequently address unsubstantiated health assertions and deceptive performance guarantees, not solely non-disclosure.<sup>63</sup> This broader enforcement scope strengthens consumer protection. India’s statutory provisions under Section 21 of the Consumer Protection Act theoretically empower the CCPA to address misleading advertisements substantively.<sup>64</sup> However, enforcement activity remains limited relative to market expansion. Without active monitoring and systematic investigation of claims accuracy, disclosure regulation becomes the primary visible enforcement dimension. Thus, the regulatory focus risks becoming procedural rather than substantive.

### ***Enforcement Capacity and Practical Constraints***

Even when statutory authority exists, practical enforcement capacity remains constrained. India’s influencer ecosystem has grown exponentially. Reports indicate that influencer numbers have increased dramatically in recent years, reflecting the rapid commercialization of digital platforms. Monitoring millions of posts across multiple platforms requires technological infrastructure, algorithmic detection tools, and dedicated investigative resources. The CCPA operates within institutional limitations regarding manpower and technological monitoring capability. Enforcement actions typically occur after complaints or public controversy rather

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<sup>63</sup> FTC v. Teami, LLC, No. 9:19-cv-81899 (S.D. Fla. 2020)

<sup>64</sup> Consumer Protection Act, 2019, § 21(1)–(5) (India)

than proactive surveillance. This reactive enforcement model reduces preventive deterrence. In contrast, regulatory agencies in the United States often combine complaint-based enforcement with proactive investigations and strategic industry sweeps. The presence of publicly documented enforcement cases signals regulatory vigilance. Furthermore, enforcement visibility matters. High-profile penalties against influencers or brands send normative signals to the market. In India, statutory penalties under the Consumer Protection Act remain underutilized in the influencer context, weakening their signaling function. Without consistent enforcement data and published decisions clarifying interpretation, regulatory uncertainty persists.

### ***Negative Advertising and Emerging Manipulation Risks***

An underdeveloped dimension within India's regulatory debate concerns negative advertising and coordinated reputational attacks disguised as influencer commentary. Influencers increasingly engage in comparative criticism, competitor analysis, or negative product reviews that may be sponsored by competing brands. Such content may appear as an independent critique but function economically as strategic marketing. This phenomenon raises two regulatory concerns: first, consumers may not recognize that negative content is financially incentivized. Second, competitive manipulation may distort market fairness by weaponizing influencer trust to suppress rival products.

Current disclosure guidelines primarily target positive endorsements. They do not clearly define regulatory treatment for sponsored criticism. This gap creates ambiguity regarding whether negative promotional content must disclose sponsorship in the same manner as positive advertisements. Compared with broader regulatory systems, narrower regulatory systems treat paid promotional speech, whether positive or negative, as requiring transparency. The key legal test focuses on material connection and commercial motivation rather than tone. India's framework would benefit from explicit clarification that sponsored negative commentary constitutes advertising, requiring disclosure and substantiation of claims. Without such clarification, regulatory loopholes may persist.

### ***Structural Lessons for Reform***

The comparative evaluation suggests three core structural improvements for India:

First, institutional coordination must be formalized. Clear referral mechanisms between ASCI

and the CCPA would enhance enforcement efficiency. When serious violations are identified through self-regulation, automatic escalation pathways should activate statutory review.

Second, enforcement visibility must increase. Publishing detailed enforcement actions, penalties, and reasoning would strengthen deterrence and clarify legal interpretation.

Third, regulatory attention must expand beyond disclosure toward substantive claim accuracy and algorithmic amplification risks. Platforms themselves could be integrated into compliance monitoring frameworks by requiring enhanced transparency tools and automated detection of undisclosed sponsorships.

Ultimately, regulatory effectiveness depends not merely on normative guidelines but on enforcement credibility. India's hybrid framework represents progress but remains institutionally fragmented and under-enforced.

## CONCLUSION

India's regulatory response to influencer advertising reflects an important yet incomplete transition from soft governance to a structured and enforceable legal framework. The combined operation of the Advertising Standards Council of India (ASCI) and the Central Consumer Protection Authority (CCPA) demonstrates institutional recognition that influencer marketing is no longer peripheral to commerce but constitutes a dominant mode of digital advertising. Through statutory authority under the Consumer Protection Act, 2019 and self-regulatory disclosure standards under ASCI's Influencer Advertising Guidelines, 2021, India has established a hybrid model that attempts to balance industry flexibility with consumer protection.<sup>65</sup> However, the existence of regulatory provisions does not automatically translate into effective enforcement.

The statutory power of the CCPA to penalize misleading advertisements and impose sanctions on endorsers represents a significant development in extending liability beyond traditional corporate advertisers to digital content creators.<sup>66</sup> In theory, this framework creates meaningful deterrence by enabling monetary penalties and restrictions on future endorsements. Similarly, ASCI's guidelines mandate clear disclosure of material connections through labels such as

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<sup>65</sup> Consumer Protection Act, 2019, No. 35 of 2019, § 21 (India); Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021).

<sup>66</sup> Consumer Protection Act, 2019, § 21(2)–(3)

“Ad,” “Sponsored,” or “Advertisement,” thereby addressing the core transparency gap that blurs the line between authentic content and paid promotion.<sup>67</sup> Yet enforcement remains largely complaint-driven and reactive. Without systematic monitoring and consistent penalty imposition, regulatory credibility risks dilution.

Comparative jurisdictions illustrate that stronger regulatory impact arises when statutory enforcement mechanisms are actively used. In the United States, influencer advertising falls under Section 5 of the Federal Trade Commission Act, which prohibits deceptive practices and empowers the FTC to impose corrective measures and monetary settlements for nondisclosure of material connections.<sup>68</sup> The FTC’s Endorsement Guides further clarify disclosure obligations and emphasize the requirement that endorsements reflect truthful experiences and substantiated claims.<sup>69</sup> Similarly, the United Kingdom integrates self-regulation through the CAP Code with statutory backing under the Consumer Protection from Unfair Trading Regulations 2008, which explicitly prohibits undisclosed paid promotions as unfair commercial practices.<sup>70</sup> These systems demonstrate that enforcement visibility and legal certainty strengthen compliance incentives.

In contrast, India’s framework suffers from institutional fragmentation and limited transparency in enforcement. Although statutory tools exist, public reporting of penalties and adjudicatory decisions remains limited, reducing deterrence signaling within the influencer ecosystem. Moreover, regulatory attention continues to focus predominantly on disclosure compliance rather than substantive verification of claims in high-risk sectors such as finance and health. For India’s influencer economy to mature sustainably, reform must prioritize clearer coordination between ASCI and the CCPA, enhanced technological monitoring capacity, and greater platform accountability in detecting undisclosed sponsorships. Regulatory evolution must move beyond procedural transparency toward substantive accountability. Only through consistent enforcement, institutional integration, and visible sanctions can the framework transform from symbolic governance into an effective mechanism for protecting consumer trust in the digital marketplace.

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<sup>67</sup> Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2021)

<sup>68</sup> Federal Trade Commission Act, 15 U.S.C. § 45 (2018)

<sup>69</sup> Fed. Trade Comm’n, *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 C.F.R. pt. 255 (2023)

<sup>70</sup> Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, sched. 1 ¶ 11