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MISLEADING ADVERTISEMENTS IN INDIA: CONTENT-BASED LIABILITY TO PLATFORM GOVERNANCE IN THE DIGITAL AGE

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Abstract

In 2020 the digital economy has masked distinctions between traditional advertising, influencer marketing and immersive, sensory real time marketing, creating a playful ecosystem of commercial influence that evades regulation in India.

This chapter is in five parts. First, it provides the constitutional framework for regulating commercial speech under Article 19(1)(a) that evolves from the early ostracism of commercial expression in *Hamdard Dawakhana v. Union of India* to its recognition in *Tata Press Ltd. v. MTNL*, and its relation with the constitutional right of informational privacy in *K.S. Puttaswamy v. Union of India*. Second, it describes the flaws of the existing regulatory paradigm with respect to the emphasis on content-based definitions of misdemeanor, the platform safe harbor doctrine that exempts the most commercially important players from the regulatory net, the misleadingly low caps on penalties and institutional disjointedness that promotes rational non-compliance ("non-compliance").

It counters direct importation with smart adaptation: it promotes regulatory transplantation, but Indian adaptation of regulatory principles to its institutional characteristics and constitutional structures. At the heart of it lies the argument that, for India to manage commercial influence, a reconceptualization of India's digital content control from violation of content to ecosystem is crucial.

This requires a cohesive framework respecting graduated platform liability, binding traceability requirements of disclosure and transparency regarding the workings of algorithms, penalties aligned with turnover and the creation of a formal co-regulatory structure with the CCPA, the Data Protection Board of India and ASCI. Without this reframing, incremental legislative changes will continue to offer normative aspirations without efficacy norms on paper that have no teeth.

I. Introduction: The Problem of Misleading Advertisement in Digital India

Advertisements no longer appear in easily recognisable form. Rather, it takes the form of a combination of influencer marketing, sponsorships, co-branding and even event sponsorship that aims to look more like organic social promotion. These formats aren't linked by form, but by this role in influencing consumer attitudes, while often blurring or concealing their commercial purpose. Commercial influence can be thought of as a more effective way to

categorise the practices of modern forms of marketing, particularly in the digital age.

This poses a problem for law. The law typically categorises different forms of speech, such as advertising versus other speech, but it is getting harder to make distinctions like these. As several authors have argued, it is now more difficult to distinguish between commercial and non-commercial communication, especially in a digital platform where advertising is injected into consumer conversations. So, the challenge is no longer just how to categorise and characterise

marketing relationships, but whether they operate together to form a broader system of influence that existing laws do not properly account for.

The key regulatory problem identified by this paper is not the absence of regulations to control commercial influence, but the structural disintegration and "holes" in India's current regulations.

The Central Consumer Protection Authority (or SEBI in the case of influencers), the Ministry of Information and Broadcasting, self-regulators, and emerging data protection regimes each hold some degree of power or influence over advertising, influencer marketing in particular, platform-mediated influence and the event-based promotion of commercial activities.³⁹³

This results in fragmented accountability, jurisdictional uncertainty and constant enforcement loopholes, allowing parties to benefit from regulatory arbitrage and to consider it as a compliance formality rather than as a change of behaviour. So, this chapter suggests the primary problem is in not regulating commercial influence as an integrated, platform-mediated and data-driven environment, rather as a series of discrete, media-specific practices subject to diverse, uncoordinated rules and regulations.³⁹⁴

II. Constitutional Foundations: Commercial Speech Under the Indian Constitution

This chapter locates the phenomenon of misleading advertisements within the framework of the Indian state, to demonstrate that the regulation of commercial speech under Article 19(1)(a) is not a niche concern, but a constitutive one for consumer protection, informational equality and data protection.³⁹⁵ The regulatory landscape in India for 2025-26, marked by the introduction of new regulatory frameworks such as the Digital Personal Data Protection Act of 2023 (DPDP), growing debates

around the regulation of platforms, and evolving judicial interpretations of commercial speech, has posed the constitutional question: to what extent? How must the state regulate deceptive, data-driven and platform-moderated commercial influence, without compromising free speech?

II.1 Early Position: No Constitutional Protection

For a large part of the immediate post-Constitutional period, the Indian judiciary viewed misleading advertising as lying on the margins of Article 19(1)(a) protections. The rationale for this approach was to distinguish commercial speech from political or ideological speech, considering commercial speech as something akin to economic activity (and as such was presumed to be less worthy of widespread protection under the freedom of speech regime). In this view, deceptive or unfair advertising constituted a conventional consumer law or regulation problem, rather than a constitutional problem with regard to freedom of speech and expression.

The starting point reflected, in a somewhat simplistic form, the course of the U.S. constitutional law, as represented in *Valentine v. Chrestensen*, 316 U.S. 52 (1942), in which the U.S. Supreme Court categorized advertising, when purely commercial in nature, as outside the ambit of the First Amendment guarantee of freedom of speech. But the Indian judiciary did not pursue the latter explicit approach; its reluctance to consider commercial advertisements as being within the ambit of "speech" in terms of its significance led to the same outcome in that it permitted a regulatory context under which the state could exercise intrusive or oppressive regulation of advertising with little scrutiny under Article 19(2). As a result, an apparent doctrinal situation emerged where the position of the state to control, regulate, and even potentially ban commercial speech appeared to be uninhibited, except for the

³⁹³ <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection-act-2019>

³⁹⁴ <https://www.meity.gov.in/content/information-technology-intermediary-guidelines-and-digital-media-ethicscode-rules-2021>

³⁹⁵ <https://www.meity.gov.in/content/digital-personal-data-protection-act-2023>

rudimentary requirement for reasonableness prescribed in Article 19(2).³⁹⁶

II.2 Transition Towards Protection and Recognition

In India, the doctrinal developments gradually shifted from treating commercial speech as "purely" an economic transaction to recognising that the communicative and informational interest of commercial speech is worthy of constitutional protection. This shift is best traced through a line of cases that protected commercial rights under Article 19(1)(a), resulting in landmark Supreme Court decisions which explicitly brought commercial advertising under the ambit of free speech.

In the case 'Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India', AIR 1985 SC 2289, honourable Court rejected the argument that commercial advertising is essentially not a part of Article 19(1)(a). The Court declared that "not every commercial advertisement can be excluded from the ambit of Article 19(1)(a).³⁹⁷ It is not the source of the problem which is relevant but the purpose and content of the communication." This decision opened the door for commercial speech to be recognised as a subset of freedom of speech subject to the same constitutional principles of protection and restraint as other forms of speech.

This recognition signalled that new regulatory instruments to control commercial influence could no longer be treated as "purely" economic regulations fired from constitutional scrutiny. Rather, these needed to be protected under Article 19(2) as reasonable limitations in public interest.³⁹⁸ This chapter places misleading manipulative or confusing commercial influence, not merely advertising in the constitutional lot: the State can regulate, but only to meet the requirements for justification as apply to all speech.

II.3 Public Interest and the Regulation of Misleading Advertisements

Hamdard Dawakhana (AIR 1960 SC 554) is crucial to an argument that the State can regulate commercial speech in the public interest. The Court in *Hamdard Dawakhana* affirmed the power of the Government to regulate advertising of fraudulent medicines and patented remedies, due to the impact of this speech on public health, and potential for misleading vulnerable people.³⁹⁹ Here, the Court held that commercial speech that is misleading or deceptive is beyond the ambit of protection of Article 19(1)(a), because this speech conflicts with the public interest justification for protecting free information.

In this paper, the *Hamdard Dawakhana* logic has relevance for the current debate in the area of digital commercial influence. The Court's argument that the State is justified in banning advertisements that mislead the consumers about health or safety, can be analogised and doctrinally applied to advertisements and other influencer content that misleads consumers regarding products or services, or risks involved in investments. The paper argues that in the age of social media targeting and deepfake influencers, the *Hamdard Dawakhana* approach (a strong public interest plus consumer protection) justifies strong regulation, commensurate to the impact of digital platforms in our lives.

The case of *Hamdard Dawakhana* has substantial doctrinal ramifications for this chapter in two ways: it acknowledged that commercial speech is protected notwithstanding that misleading, deception and exploitation driven commercial speech is not protected. The Court's claim that the right to freedom of speech does not protect false, misleading and mischievous advertising justifies the constitutional validity of the 2019 Act's "misleading advertisements" provision, as well as

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<https://indiankanoon.org/search/?formInput=hamdard+dawakhana+v+union+of+india>

³⁹⁷ <https://indiankanoon.org/doc/223504/>

³⁹⁸ <https://legislative.gov.in/constitution-of-india/>

³⁹⁹

<https://indiankanoon.org/search/?formInput=hamdard+dawakhana+v+union+of+india>

the endorsement regulation in the 2022 Guidelines.⁴⁰⁰ For the purpose of the paper, the case is not cited as an historical precedent, but a doctrinal precedent which can be applied to digital influence. If the State can regulate false advertising for the nefarious pharmaceutical drug, then it can also regulate hidden, algorithmically-boosted influencer algorithms endorsing high-risk commercial financial products, or deepfake-based claims about health-related products, so long as they are proportional and based on public and consumer interest and protection objectives. Accordingly, the constitutional analysis in this chapter shows that a cohesive approach to regulating commercial influence isn't a doctrinal departure, rather it's a novelty and adaptation of *Hamdard Dawakhana's* analysis to the digital era.

III. The Misleading Advertisement Regime: Framework and Its Limits

India's overall advertising regulatory framework was set up primarily before the shift to digital mediation as the dominant mode of advertising. The two main statutory and quasi-statutory bodies, the Consumer Protection Act 2019 ("CPA 2019") and the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 ("2022 Guidelines"), alongside the self-regulatory framework administered by the Advertising Standards Council of India (ASCI), are the main instruments. Taken together, these frameworks show a persistent disjunction: a framework which was designed to address the problems of broadcasting era advertising, misleading claims, lack of disclosure and vulnerable populations applied in the same way in a new environment of algorithmic personalisation, synthetic media production and platform mediated behaviour shaping. The main claim made in this paper is that without radical rewrites and reforms of the conceptual and institutional framework in India, the existing framework, with some small

additions, does not address the overarching problems of digital advertising, even if it does so on the surface.

III.1 The Consumer Protection Act, 2019: Powers and Persistent Gaps

The Central Consumer Protection Authority (CCPA) under the CPA 2019 is responsible for regulating, promoting, and enforcing consumer rights, including the regulation of misleading advertisements, one of its main focuses. The key structural difference between the CCPA and consumer commissions laid out in the same act is drawn between a regulatory agency and a quasi-judicial forum: the commissions deal with bilateral disputes that stem from consumer complaints whereas the CCPA has the power to conduct investigations without the need for a consumer complaint, to order an amendment or removal of misleading advertisements and the imposition of fines, even in the absence of a consumer complaint.⁴⁰¹ This theoretically enables systemic responses to advertising harms that potentially can't trigger processes in the CCPA's consumer commissions.

Yet, the reality of this power is limited by a fundamental structural problem: the CCPA's regulatory powers vary according to consumer harm and relate only to advertisers, advertising agencies and endorsers. The online platforms that provide the substrate through which misleading advertising content is distributed, amplified and targeted completely escape the enforcement powers of the CCPA. For example, a platform that is able to target a misleading advertisement for a health product to consumers displaying symptoms of a chronic medical condition through artificial intelligence decision making is not accountable for their targeting, under the CPA 2019, despite the significant contribution to consumer harm that targeting plays. This is not simply a loophole that can be closed by means of interpretation but is rather a deliberate decision to control

⁴⁰⁰ <https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/right-to-commercial-speech-in-india-construing-constitutional-provisions-harmoniously-in-favor-of-public-health/1923573ABC356AEAF1B3B348EC97045D>

⁴⁰¹ <https://www.amsshardul.com/insight/consumer-versus-commerce-ccpa-walking-the-tightrope/>

advertising content but not the mechanisms of distribution.

III.2 Defining Misleading Advertisements Under Section 2(28)

A "misleading advertisement" is defined in Section 2(28) of the CPA 2019 as one that, in relation to a product or service, misdescribes the product or service; makes a false promise; is likely to mislead and deceive consumers about the nature, substance, quantity or quality of the product or service; fails to disclose significant information; or contravenes the Act or its rules.⁴⁰² The test is focused on the impacts on the consumer rather than the advertiser's intentions, and addresses both erroneous statements and implications. This approach mirrors the equivalent approaches in other countries, in that it emphasises the impact on an adequately-informed consumer of the advertisement, rather than the advertiser's intentions.

The weakness of this definition is that in conceptual terms it relates to the communicative product of advertising in terms of suggestion and inference, but it doesn't relate to the structure of advertising. The problem of oriented targeting is not the activity expressed by the advertising statement, but the use of circumstances, and psychological states surrounding the delivery of the advertising statement. Section 2(28) does not make this distinction and there is no way to interpret that language to fill the drafting gap. In this sense, the content-focused definition is a conceptual fence and a limitation.

III.3 The 2022 Guidelines: Scope, Endorsement Duties, and Structural Limits

The 2022 Guidelines are the latest, and the most significant, piece of conduct code for advertising in India, introduced by the CCPA under the powers granted to it under the CPA 2019 on June 9, 2022. They put the definitional scheme of Section 2(28) on concrete actionable terms for

the advertisers, advertising agencies, and endorsers. But they are most appropriately used as a tool for content regulation rather than a holistic approach to advertising regulation that focuses on what is said, but not how and to whom.

The 2022 Guidelines are media-neutral in their scopes by formally addressing all advertisements regardless of the platform (social media, search engines, streaming services and e-commerce). This apparent rigour is theoretically important, but difficult to execute as there are no platform-specific compliance and enforcement mechanisms.⁴⁰³ The substantive requirement on pre-publication substantiation requires that advertisers must have substantiation for all claims prior to the publication of the advertisement and represents an important analytical turn from an enforcement regime that is focused exclusively on ex post regulation.

The position taken by the 2022 Guidelines on endorsements is the most important way that they engage with the commercial digital economy.⁴⁰⁴ Endorsers, including social media influencers, must disclose any material relationship between the endorser and advertiser if they are aware of it (such as payment, equity interests, and benefits or prizes in goods and services). This disclosure is an individual responsibility of the endorser, and requires due diligence by the endorser to check the veracity of the claims being made and personal liability of the endorser under the CPA 2019 for breaches. The responsibilities of advertisers and agencies mirror those of endorsers with respect to ensuring that they are not promoting products through endorsers in campaigns that contain either unsubstantiated or deceptive statements.

The effectiveness of the influencer regulations is limited by two factors. Firstly, endorsers are not an accurate representation of the fragmented

⁴⁰² <https://consumeraffairs.nic.in/acts-and-rules/guidelines-prevention-misleading-advertisements-andendorsements-misleading>

⁴⁰³ <https://yalelawandpolicy.org/contractual-approach-social-media-governance>

⁴⁰⁴ <https://indianexpress.com/article/explained/explained-economics/trade-deal-india-non-tariff-barrier-on-us-tech-cos-10525943/>

nature of the influencer economy: nano-influencers and micro-influencers whose level of trust can greatly impact consumption behavior, are often not paid by agencies and may not follow the disclosure practices that characterise the for-profit influencer market. Secondly, the disclosure mechanism specified in the Guidelines is form-based, requiring a specific disclosure of "advertisement", "paid promotion" or "sponsored", without specifying that the platforms are required to "highlight" these disclosures by taking into account the visibility to which the related content is algorithmically displayed.⁴⁰⁵

The enforcement of the 2022 Guidelines highlights a significant normative-practical disconnect. Personal liability regulations rely on the reasonable assumption that individual advertising endorsers and advertisers can be successfully traced, monitored, and punished on a regular basis to create the types of deterrent effects needed in the context of a digital advertising economy that produces millions of commercial encounters every day. This is an implausible assumption in the enforcement regime of the CCPA. The Guidelines do not require platforms to monitor, authenticate or identify non-compliant advertising content; nor to delete habitual offenders or report to the CCPA on consumer complaints against advertising content. The 2022 Guidelines make no paradigm shift away from platforms as passive participants in the disclosure, enforcement and compliance system.

IV. Enforcement Failure and Under-Deterrence in Commercial Influence Regulation

There are two ways in which regulatory frameworks can fall short. Regulations can fail at the "design" stage, through problems such as gaps, mismatch or dis-integration in the definitions, concepts or design of the architecture, or at the "enforcement" stage, where the norms are still adequate but provide

insufficient deterrent effect due to the lack of capacity or coordination between the institutions responsible for their enforcement. The Indian system of regulating commercial influence fails on both aspects of regulatory failure and, as this chapter argues, transactions in enforcement failure are not only a consequence of regulatory design failure but are its product. This leads to a regulatory environment in which the expected penalties for noncompliance are so much lower than the expected commercial benefits gained from noncompliance.

IV.1 The Common Structural Flaw: Disclosure Without Deterrence

The structure of India's commercial influence regime hinges on the use of disclosure as an approach to consumer protection: it mandates that advertisers indicate commercial content; endorsers specify relevant affiliations with advertising content; and endorsements should be substantiated before publishing. The emphasis on disclosure is built on a theoretically plausible but empirically untested assumption that empowered consumers will be able to protect themselves from the manipulations of commercial interests, by weighing the motives of advertisers that are clearly disclosed. At best, even if this premise holds true, there is a huge enforcement problem: it promotes obligations that are often breached, and which must be monitored for compliance, and penalties that are miniscule compared to the income produced from undisclosed advertising.⁴⁰⁶

The problem is that the focus on disclosure is not a poor regulatory objective; rather it is a regulatory gesture. If the expected consequence of non-disclosure is that a fine will be imposed with the highest possible penalty being minuscule relative to the revenues generated by undisclosed advertising, then rational

⁴⁰⁵https://www.researchgate.net/publication/400201875_The_Dual_Effect_of_Social_Media_Information_Disclosure_on_Consumer_Purchase_Decisions_Evidence_from_the_Beauty_Industry

⁴⁰⁶<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=4130&context=facpub>

businesses will choose not to disclose.⁴⁰⁷ This is not a deceived inference, simply the application of very basic deterrence. Vanishingly small actions will be taken to comply with a law if the expected benefit of non-compliance (the chances of non-detection multiplied by the penalty) is greater than the expected costs.

IV.2 Platform Liability and the Conditional Safe Harbour

India's safe harbour regime for determining platform liability is laid out in Section 79 of the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021). It provides intermediary liability protection from third-party content hosted on the intermediary's platform under certain conditions of due diligence as set out in the IT Rules 2021.⁴⁰⁸ The analytical significance of this regulatory framework for advertising is that it was crafted based on outmoded ideas about the role of platforms: they were understood to host third-party material, and the safe harbour was a statement by the legislature about the idea that such passive hosts should not be held responsible for harms they did not produce and over which they had no control unless they review and pre-censor all content.

This is not the case when it comes to the world's largest digital platforms and advertising. A platform that relies on machine learning algorithms to decide which advertorial content to use, how to prioritise and display advertising to users is not passively hosting third-party content; instead, it is actively making editorial and commercial decisions about which advertising messages to show to which users, in which sequence, at which time of vulnerability and with which social multiplier effect.

This active role is protected by current set-up of the safe harbour by classifying it as passive

hosting, which produces the perverse outcome that the actor in the advertising environment who takes the most significant expressions of commercial decision-making is afforded the least regulatory oversight and accountability for impact.⁴⁰⁹ The fact that the safe harbour is only applicable if one complies with due diligence requirements to be immune from litigation does not overcome this problem, because the due diligence requirements do not include advertising governance. Therefore, an entity that complies with all of the obligations in the IT Rules 2021 will enjoy the safe harbour shield, no matter the consumer harm that results from its advertising systems.⁴¹⁰

IV.3 The Compliance Gap Between Law on Paper and Law in Action

The mismatch between the ideal outcomes of Indian regulations on commercial influence and its reality points to, at the level of the regulatory system, a disproportion between the regulatory "burden" and the regulatory "power". Since its creation, the Central Consumer Protection Authority (CCPA) has passed orders against a multitude of advertisers for misleading advertising, and the various enforcement actions include action against high-profile commercial players.⁴¹¹ Yet, millions of commercial communications are delivered to the Indian population annually on various channels, through influencer networks, within and outside the e-commerce platforms and through different programmatic advertising platforms. The enforcement record suggests, structurally, that the enforcement ratio is low, not because there is no enforcement, but because the enforcement structure is geared towards regulating a broadcasting model of advertising, in which the number of advertising entities was relatively fixed and the number of advertising content was finite.⁴¹²

⁴⁰⁷https://lawfaculty.du.ac.in/userfiles/downloads/LLBCM/IVth%20Term_Intellectual%20Property%20Rights%20Law_LB%204036_2023.pdf

⁴⁰⁸ <https://www.ascionline.in/wp-content/uploads/2026/03/The-AdLaw-Compendium.pdf>

⁴⁰⁹ <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1420&context=ijlr>

⁴¹⁰ <https://cis-india.org/internet-governance/blog/intermediary-liability-and-safe-harbour-on-due-diligence-and-automated-filtering>

⁴¹¹ <https://www.newsonair.gov.in/new-ccpa-guidelines-set-to-curb-false-advertising-ensure-consumer-protection/>

⁴¹² <https://www.newsonair.gov.in/new-ccpa-guidelines-set-to-curb-false-advertising-ensure-consumer-protection/>

This creates a compliance landscape where voluntary participation in compliance with the 2022 Guidelines for Prevention of Misleading Advertisements and Endorsements becomes a de facto reality for those who are correctly aware that the chance of enforcement sanctions being taken against any violation is remote.⁴¹³ Legal provisions that can't be observed, monitored and allocated in the manner necessary for legal enforcement are, essentially, non-operational law.

V. Comparative Models of Commercial Influence Regulation

The alteration of human behaviour through algorithmically targeted advertising, fake endorsements and social-media-platform-mediated behavioural profiling leads to regulatory problems that cut across legal orders. This section begins with the hypothesis that India's regulatory framework for digital advertising exhibits structural weakness, which is not exclusive to its legal tradition, and that a blueprint of the European Union's recent regulatory framework for digital advertising, complemented by isolated principles from the US Federal Trade Commission (FTC) and of the United Kingdom's co-regulatory model, present analytically transferable insights for the Indian legislative process.⁴¹⁴

V.1 Why the European Union Offers the Strongest Benchmark

The conclusions about the EU regulatory framework for digital advertising as a benchmark for India are not based on a comparative analysis of either the EU's political or commercial traditions: the EU is neither 'more' liberal nor 'more' capitalistic than other jurisdictions, but on the fact that its regulatory architecture for digital advertising is structurally most complete: it integrates platform-layer responsibility (Digital Services Act), content-

layer consumer protection (Unfair Commercial Practices Directive 2005/29/EC, as amended by Directive 2019/2161), data governance (General Data Protection Regulation, Regulation 2016/679), and artificial intelligence governance (AI Act, Regulation 2024/1689) into an integrated regulatory architecture that addresses harms arising from digital advertising at each structural level at which they emerge.⁴¹⁵ The EU is the only jurisdiction to have created such a high level of regulatory integration.

V.2 The Digital Services Act and Ad Transparency

The most important contribution that the DSA makes to the comparative study of digital advertising regulation is not any of its particular provisions but the conceptual step it takes as a whole in reclassifying online platforms from passive infrastructure hosting the content of others to active participants in the information environment whose technical design constitutes an exercise of regulatory-equivalent power over the public debate and user behaviour that calls for correlated regulatory control. This reclassification results in a different regulatory architecture to India's IT Rules 2021, which use the passive intermediary conception to confine platform obligations to "firefighting" content management.⁴¹⁶

Article 26 of the DSA requires online platforms to ensure that, for each ad displayed to their users, they can identify, in real time:

- (i) that the communication is an advertisement
- (ii) the name of the advertiser
- (iii) the parameters used to decide why the communication is being delivered to the specific user.⁴¹⁷

The tripartite disclosure is more intellectually challenging than any disclosure requirement currently in place in India. The disclosure of the targeting logic in particular is unique to Indian law: there is no provision in the CPA 2019, the 2022

⁴¹³ <https://www.khaitanco.com/thought-leaderships/CCPA-releases-guidelines-for-Prevention-of-Misleading-Advertisements-and-Endorsements-for-Misleading-Advertisements-2022>

⁴¹⁴ [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IP_OL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IP_OL_STU(2022)703350_EN.pdf)

⁴¹⁵ <https://laweconcenter.org/spotlights/digital-competition-regulations-around-the-world/>

⁴¹⁶ <https://dsa-observatory.eu/2025/08/01/what-does-the-dsa-mean-for-online-advertising-and-adtech/>

⁴¹⁷ https://www.eu-digital-services-act.com/Digital_Services_Act_Article_26.html

Guidelines, the IT Rules 2021 or the DPDP Act, 2023 to require advertisers or platforms to disclose to users the parameters used to determine their selection as the target of a commercial communication.⁴¹⁸ The analytical importance is that targeting logic disclosure transforms the algorithmic selection process from a transactional commercial process into a transaction that can be scrutinised by the consumer and therefore to potentially informed consent.

V.3 Platform Duties and Traceability

Perhaps the most significant design insight from the EU is that of extending substantive regulatory duties to "platforms" as a distinct responsibility separate from and as well as advertisers and endorsers. The Indian framework is architecturally not only analytically deficient, it is distorting because platforms shape the choices that are crucial to digital advertising: they build the infrastructure for targeting, set the auctions which determine the outcomes and the interface environments which determine how advertisements are experienced. Regulation of advertising while leaving platforms unregulated is a case of considering the effect and excusing the cause, in the digital arena.

We can adapt the DSA's architecture of platform duties through an amendment to the IT Rules 2021 to create a separate schedule in the rules that applies to major social media entities and governs advertising.⁴¹⁹ This need not be achieved by transplanting the DSA in its entirety, but merely by creating the idea that platform operators have positive regulatory responsibilities towards the commercial content which they algorithmically amplify, and not simply the due diligence responsibilities to remove organic user generated content at present required in the IT Rules.⁴²⁰

V.4 From Self-Regulation to Co-Regulation

The comparative evidence points to a common finding in terms of self-regulation in digital advertising: self-regulatory frameworks that owe their authority to voluntary participation and that administer reputation-based (rather than financial) punishments are institutionally incapable of regulating the digital advertising space, but whose institutional expertise, responsiveness and industry insights make them important elements of a more formally structured co-regulatory model.⁴²¹ The institutional positioning of the ASCI positions it precisely where the UK's ASA stands: a highly capable, respected self-regulatory entity that does a good job in its realm but lacks the jurisdiction, power and resources to provide effective governance of the systemic aspects of digital advertising harms.⁴²²

The instantiation of this model in India could be achieved through a statutory process of recognition of the self-regulatory agency under the CPA 2019: declaring ASCI a self-regulatory body for the purposes of CPA 2019 enforcement (such that any complaint adjudicated by ASCI will create a presumption of a CPA 2019 violation for the purpose of CPA 2019 enforcement) and a referral protocol under which CCPA-based concerns about systemic advertising conduct are made to ASCI for initial consideration while CCPA retains authority over the more serious and persistent violations.⁴²³

VI. Towards a Unified Framework: Recommendations and Concluding Reflections

VI.1 Commercial Influence as One Ecosystem

The paper's basic conceptual shift is quite simple: from conceptualising misleading advertisements not as a type of content violation to be tackled by consumer protection but as an ecosystem of people, technologies and economic relationships whose regulatory

⁴¹⁸ <https://backend.ndl.gov.in:8443/dlnluassam/api/core/bitstreams/1de5d7ca-2c20-40db-9d2b-0a71cb267cf4/content>

⁴¹⁹ <https://www.tandfonline.com/doi/full/10.1080/1369118X.2025.2590561>

⁴²⁰ <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

⁴²¹ https://www.ascionline.in/wp-content/uploads/guidelines/ASCI_Codes_Guidelines_Book.pdf

⁴²² <https://ascionline.in/index.php/influencer-guidelines.html>

⁴²³ <https://www.ascionline.in/wp-content/uploads/2024/03/CCPA-ASCI-Press-release.pdf>

governance demands an integrated approach.⁴²⁴ Under the current regime, an undisclosed endorsement by an influencer, an algorithmically targeted ad by a marketer, a bot-enabled scalping operation by a ticketing site, and an unregistered recommendation for an investment product by a finfluencer are four discrete regulatory problems to be solved by four discrete regulatory institutions under four discrete regulatory statutes. They are, in fact, four expressions of the same problem: the coordinated monkeying with trust and information asymmetry on a large scale for commercial purposes and the complicity of digital infrastructure both in scaling this phenomenon and making it more resistant to regulation.⁴²⁵

The ecosystem reframing also underpins integration among the currently isolated regulatory regimes. Consumer protection, data protection, and competition, financial services and information technology governance respectively regulate one facet of the misleading advertisement ecosystem. Their regulation is made more, not less, effective by formally consolidating their inter-relationships as their respective harms are causally interrelated: the data processing violation that permits targeted marketing, the content violation that deceives, and the design defect that magnifies are three specific steps in the commercial harm process.⁴²⁶

VI.2 Final Recommendations

The recommendations which flow from this paper are tailored to the three insights above and are explicitly designed for their legislative and administrative feasibility within the Indian constitutional and administrative system. They are not recommendations for institutional overhaul, but design recommendations aimed at collectively changing India's commercial influence governance from a system of content-

violation enforcement, with platform exemptions, to a system of ecosystem governance, with shared responsibility.

The first recommendation is a legislative one: the amendment of the IT Rules 2021 to set out an advertising governance schedule for significant social media intermediaries that sets out positive platform obligations regarding the creation and maintenance of an advertising repository; the verification of advertising claims; transparency of platform advertising parameters used for targeting; audit requirements; and reporting of complaints to the CCPA.⁴²⁷ This should be accompanied by a reform of the conditional safe harbour which conditions immunity from advertising liability on compliance with the advertising governance schedule, finally creating a commercial incentive effect for voluntary compliance that multiple recommendations to date have failed to achieve.

The second recommendation is institutional: the joint notification by the Ministry of Consumer Affairs and the Ministry of Electronics and Information Technology of a protocol between the CCPA, the Data Protection Board of India, and the Securities and Exchange Board of India (SEBI) outlining roles in commercial influence cases involving multiple regulatory duties. The protocol should determine lead authority assignment; coordination on information exchange and joint issuance of guidance and an inter-agency referral process in those cases where enforcement action by one authority produces information that becomes relevant to another's mandate. This proposal does not involve a change to primary legislation, being constitutionally power-ready in the context of each involved institution.

The third recommendation is: the amendment of the CPA 2019 to provide for scale-based maximum penalties when entities with annual

⁴²⁴ <https://acr-journal.com/article/consumer-protection-against-misleading-advertisements-and-deceptive-branding-interplay-between-consumer-law-and-intellectual-property-rights-in-india-1660/>

⁴²⁵ <https://humanrightslawreview.in/wp-content/uploads/2026/02/Misleading-Advertisements-and-the-Role-of-the-Central-Consumer-Protection-Authority.pdf>

⁴²⁶ <https://assets.kpmg.com/content/dam/kpmg/cy/pdf/2024/the-challenge-of-greenwashing-report.pdf>

⁴²⁷ <https://www.meity.gov.in/static/uploads/2024/02/35-1.pdf>

turnover in excess of a certain threshold are found guilty of advertising violations, complemented by the award of structural remedy powers for the CCPA to direct platform system changes in cases of systemic advertising governance deficiencies.⁴²⁸ This should be complemented by the addition of a provision on facilitation liability to the 2022 Guidelines, to impose disclosure compliance obligations on advertising agencies and talent management companies, as counterparties to the endorsement relationship.

The fourth recommendation is forward-looking: The Digital India Act (DIA) should, upon its enactment, explicitly integrate a dedicated chapter on commercial influence, setting up the network architecture proposed in this chapter as a legal home for commercial influence governance, rather than an ad-hoc composition of sections addressing disconnected components of the commercial influence governance problem.⁴²⁹ The comparative experience shows that coherent statutory architecture has a substantial benefit in regulatory outcomes over the statutory accretions of India's current approach to the governance of digital advertising.

VI.3 Concluding Reflections on Public Interest, Trust, and Regulatory Fairness

There is an element of the problem of regulating advertising for commercial influence that cannot be captured by statistical, comparative and structural critiques, and this paper would not be complete without drawing attention to it. The problem of regulatory architecture is pressed for us in a more straightforward way as a problem of the integrity of the information environment in which people make decisions of interest to them.⁴³⁰ The problem with consumers buying health supplements based on undisclosed commercial endorsements of an occasional influencer or buying tickets to a

music performance advertised with misleading claims, or investing in a scheme recommended by an unregistered influencer, is not just financial.

This consumer confidence issue is not a niche one in an emerging consumer economy. The consumer population of the digital era in India is facing increasingly complex, complexly manipulated, algorithmically swayed commercial environments, and it has a regulatory framework designed for a previous era, one which does not correspond to these realities.⁴³¹ The regulatory reform project advanced in this paper is in its basic form an argument to take that consumer population seriously: to create regulatory instruments that consider the integrity of their information environment as a public interest priority, not as something of marginal relevance to the residual application of broadcast regulation regime advertising standards.⁴³²

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⁴²⁸ https://ncdr.nic.in/bare_acts/CPA2019.pdf

⁴²⁹ <https://www.mckinsey.com/~media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/digital-india-technology-to-transform-a-connected-nation-full-report.pdf>

⁴³⁰ <https://harvardlawreview.org/print/vol-137/should-trees-have-publicity-rights-capturing-value-from-the-use-of-endangered-species-in-advertising/>

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