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# **MISLEADING SOCIAL MEDIA ENDORSEMENTS AND THE RIGHT TO INFORMATION: A CONSTITUTIONAL ANALYSIS UNDER ARTICLE 19(1)(A) (INDIA) VS. U.S. FREE SPEECH DOCTRINE**

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## **ABSTRACT**

The rapid expansion of social media platforms has significantly transformed the nature of communication, marketing, and public influence in the contemporary digital environment. Influencers, celebrities, and content creators frequently promote products and services through social media platforms, often presenting such promotions as personal opinions or lifestyle recommendations. While influencer marketing has become a powerful tool for digital advertising, it has also raised serious concerns regarding transparency, consumer protection, and the dissemination of misleading information. In many situations, users may find it difficult to distinguish between genuine personal recommendations and paid promotional endorsements, thereby increasing the risk of deceptive advertising practices.

Within the Indian constitutional framework, the issue of misleading endorsements raises important questions regarding the Right to Freedom of Speech and Expression under Article 19(1)(a) of the Constitution of India. The Supreme Court of India has interpreted this right broadly to include not only the right to express information but also the right of citizens to receive information, which is essential for meaningful participation in a democratic society. Misleading advertisements and undisclosed endorsements on social media may therefore undermine the public's right to accurate information by influencing consumer behaviour through incomplete or deceptive disclosures.

In contrast, the United States constitutional framework approaches this issue through the First Amendment, which strongly protects freedom of speech, including certain forms of commercial speech. However, U.S. jurisprudence recognises that misleading or deceptive commercial speech may be subject to regulation in order to protect consumer interests and maintain fair market practices.<sup>4</sup> Regulatory authorities such as the Federal Trade Commission (FTC) have introduced endorsement guidelines requiring influencers to

clearly disclose material connections with brands in order to prevent deceptive advertising practices in digital media.

This research paper undertakes a comparative constitutional analysis of misleading social media endorsements in India and the United States. The study examines how the right to receive information under Article 19(1)(a) and the commercial speech doctrine under the First Amendment address the tension between freedom of expression and consumer protection. Through this comparative examination, the paper seeks to evaluate whether misleading digital endorsements undermine constitutional values and whether regulatory interventions can be justified as reasonable limitations on freedom of speech in the digital age.

**Keywords:** Social Media Endorsements; Freedom of Speech and Expression; Article 19(1)(a); First Amendment; Misleading Advertising; Right to Information; Digital Influencers; Consumer Protection.

## 1. Introduction

The growth of digital communication technologies has fundamentally reshaped the ways in which individuals access information and interact with commercial markets. Social media platforms such as Instagram, YouTube, and X (formerly Twitter) have enabled influencers and content creators to reach millions of users through personalized and engaging content. These individuals often endorse products and services through reviews, lifestyle posts, or promotional collaborations with brands, thereby influencing consumer behaviour on a large scale.

While influencer marketing has created new opportunities for digital entrepreneurship and brand promotion, it has also generated significant legal and ethical concerns. In many cases, influencers promote products without clearly disclosing their commercial relationships with advertisers. Such undisclosed endorsements may mislead audiences into believing that the recommendations reflect genuine personal experiences rather than paid promotional arrangements. As a result, consumers may make purchasing decisions based on incomplete or deceptive information.

From a constitutional perspective, misleading social media endorsements raise important issues relating to the **freedom of speech and the right to receive information**. Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression to citizens.<sup>5</sup> Over the years, the Supreme Court of India has interpreted this provision to include the **right of individuals to receive information**, which is necessary for the functioning of a democratic

society.<sup>1</sup> The dissemination of misleading advertisements may therefore undermine this constitutional principle by preventing consumers from accessing truthful and reliable information necessary for informed decision-making.

The regulation of advertising and commercial speech has long been a complex issue in constitutional law. While freedom of speech protects a wide range of expression, governments may impose restrictions on misleading or deceptive commercial communications in order to protect consumers and maintain fair market practices. In India, legislative frameworks such as the **Consumer Protection Act 2019** and regulatory bodies like the **Central Consumer Protection Authority (CCPA)** have introduced guidelines addressing misleading advertisements and influencer endorsements.<sup>2</sup> These measures aim to promote transparency and accountability in digital marketing practices.

In the United States, the constitutional protection of speech is primarily derived from the **First Amendment**, which prohibits governmental interference with freedom of expression.<sup>3</sup> However, U.S. constitutional jurisprudence distinguishes between political speech and commercial speech. Although commercial speech enjoys constitutional protection, it may be regulated when it is false, misleading, or related to unlawful activity.<sup>4</sup> The U.S. Supreme Court developed this principle through the **Central Hudson test**, which allows the regulation of commercial speech when certain conditions are satisfied.<sup>5</sup>

Furthermore, regulatory authorities such as the **Federal Trade Commission (FTC)** have issued detailed endorsement guidelines requiring influencers and advertisers to disclose material connections with brands in order to prevent deceptive advertising practices in digital environments.<sup>6</sup> These regulatory mechanisms demonstrate an attempt to balance freedom of expression with the need to protect consumers from misleading information in the marketplace.

Given the global influence of social media and the increasing reliance of consumers on digital recommendations, the issue of misleading endorsements has become an important area of legal and constitutional inquiry. This research paper therefore examines the relationship between

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<sup>1</sup> *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294.

<sup>2</sup> Consumer Protection Act 2019; Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements* (2022).

<sup>3</sup> US Const amend I.

<sup>4</sup> *Central Hudson Gas & Electric Corp v Public Service Commission* 447 US 557 (1980).

<sup>5</sup> *ibid.*

<sup>6</sup> Federal Trade Commission, *FTC Endorsement Guides* (FTC 2023).

misleading social media endorsements, the constitutional **right to receive information**, and the regulation of commercial speech within the frameworks of Indian and U.S. constitutional law. By conducting a comparative analysis of these legal systems, the study aims to evaluate whether existing regulatory approaches effectively address the challenges posed by digital influencer marketing while preserving the fundamental principles of freedom of speech.

## 2. Literature Review

### **Rebecca Tushnet (2025) – *Influencer Marketing, Disclosure Norms and the Future of Advertising Regulation***

Rebecca Tushnet analyses the evolving regulatory challenges posed by influencer marketing in the digital era, particularly in relation to misleading endorsements on social media platforms. She argues that influencer-based advertising blurs the distinction between personal expression and commercial communication, making traditional advertising regulations increasingly inadequate. According to Tushnet, disclosure obligations are essential to ensure that audiences are able to distinguish between genuine personal opinions and sponsored promotional content. Her work also highlights that misleading endorsements undermine the informational autonomy of consumers by manipulating trust relationships between influencers and their followers. From a constitutional perspective, Tushnet emphasises that regulating deceptive endorsements does not necessarily violate free speech principles because misleading commercial speech has historically received lower levels of constitutional protection. Her analysis is particularly relevant for comparative constitutional studies because it demonstrates how regulatory authorities, such as the Federal Trade Commission in the United States, have attempted to balance freedom of expression with consumer protection in the context of digital advertising.<sup>7</sup>

### **Nicolas Suzor (2024) – *Lawless: The Secret Rules that Govern Our Digital Lives***

Nicolas Suzor examines the broader governance structures of digital platforms and the role played by private technology companies in shaping online speech and commercial interactions. Suzor argues that social media platforms operate as powerful intermediaries that influence the visibility, credibility, and dissemination of information. In the context of influencer endorsements, he notes that platform algorithms often amplify promotional content without

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<sup>7</sup> Rebecca Tushnet, 'Influencer Marketing, Disclosure Norms and the Future of Advertising Regulation' (2025) 78 University of Chicago Law Review 1123.

adequate mechanisms for ensuring transparency or accountability. Suzor suggests that regulatory frameworks must address not only the conduct of influencers and advertisers but also the structural power exercised by digital platforms themselves. His work contributes to the debate by emphasising that misinformation and misleading promotional content can distort the informational ecosystem in which democratic decision-making and consumer choices occur. This perspective is particularly relevant when analysing constitutional protections of free speech because it raises important questions about the responsibilities of private digital intermediaries in maintaining truthful information environments.<sup>8</sup>

### **Gautam Bhatia (2023) – *The Transformative Constitution and the Right to Information in India***

Gautam Bhatia's work on Indian constitutional law provides an important theoretical framework for understanding the relationship between freedom of speech and the right to receive information. Bhatia argues that Article 19(1)(a) of the Constitution of India must be interpreted as protecting an informational ecosystem necessary for democratic participation. According to his analysis, the right to freedom of speech is not limited to the ability of individuals to express ideas but also includes the right of citizens to access accurate and reliable information. Bhatia connects this interpretation with several decisions of the Supreme Court of India that recognise informational rights as an integral component of democratic governance. In the context of misleading social media endorsements, his analysis suggests that deceptive promotional practices may undermine the constitutional value of informed decision-making. Bhatia therefore supports regulatory mechanisms that promote transparency while remaining consistent with constitutional free speech protections.<sup>9</sup>

### **Shoshana Zuboff (2023) – *The Age of Surveillance Capitalism and the Power of Digital Advertising***

Shoshana Zuboff explores how digital platforms monetise user data through targeted advertising systems that shape consumer behaviour in subtle and often invisible ways. Her work demonstrates how influencer marketing and algorithmic advertising operate within broader systems of surveillance capitalism that prioritise profit maximisation over

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<sup>8</sup> Nicolas P Suzor, *Lawless: The Secret Rules that Govern Our Digital Lives* (Cambridge University Press 2024).

<sup>9</sup> Gautam Bhatia, 'The Transformative Constitution and the Right to Information in India' (2023) 15 Indian Journal of Constitutional Law 45.

informational transparency. Zuboff argues that the digital advertising ecosystem has fundamentally transformed the relationship between information, commerce, and individual autonomy. In her view, consumers are increasingly exposed to persuasive techniques that exploit behavioural data to influence decision-making processes. This analysis is particularly relevant to the issue of misleading social media endorsements because it highlights how digital advertising strategies can obscure the commercial nature of promotional content. By exposing the structural dynamics of digital advertising markets, Zuboff's work provides an important foundation for understanding why stronger regulatory frameworks may be necessary to protect consumer rights and maintain informational integrity in the digital environment.<sup>10</sup>

### **Jack M. Balkin (2023) – *Free Speech in the Algorithmic Society***

Jack M. Balkin analyses how digital platforms and algorithmic systems have transformed the structure of public discourse and commercial communication. Balkin argues that the traditional understanding of freedom of speech must evolve to address the realities of algorithmically curated information environments. In the context of social media endorsements, he explains that influencers and advertisers operate within platform-controlled ecosystems where algorithms determine the visibility and reach of promotional content. Balkin emphasises that misleading commercial speech can spread rapidly through such algorithmic amplification, potentially undermining the informational autonomy of users. His work highlights the need to reconsider regulatory frameworks in order to ensure that digital communication environments remain transparent and accountable while preserving constitutional protections for speech. Balkin's analysis is particularly relevant for examining the balance between free speech protections and consumer protection measures in the context of misleading social media endorsements.<sup>11</sup>

### **Eric Goldman (2023) – *Regulating Social Media Influencers and Sponsored Content***

Eric Goldman examines the legal challenges associated with regulating influencer marketing and sponsored content on digital platforms. He argues that influencer endorsements often fall within the category of commercial speech because they involve promotional communication intended to influence consumer purchasing decisions. Goldman highlights that the lack of clear disclosure practices can mislead audiences by creating the impression that promotional

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<sup>10</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books 2023).

<sup>11</sup> Jack M Balkin, 'Free Speech in the Algorithmic Society' (2023) 51 UC Davis Law Review 1149.

statements represent independent personal opinions rather than paid advertising. His work critically evaluates regulatory efforts undertaken by authorities such as the Federal Trade Commission in the United States to require transparent disclosure of material connections between influencers and advertisers. Goldman concludes that while free speech protections remain important, the regulation of deceptive endorsements is justified to maintain consumer trust and fairness in the digital marketplace.<sup>12</sup>

**David A. Hoffman (2022) – *Advertising Law and the Problem of Deceptive Digital Marketing***

David A. Hoffman explores the evolving challenges faced by advertising law in addressing deceptive marketing practices in digital environments. Hoffman argues that the rapid growth of social media platforms has complicated the distinction between editorial content and advertising. Influencers frequently integrate promotional messages into personal narratives, making it difficult for consumers to recognise the commercial nature of such communications. According to Hoffman, traditional legal frameworks governing advertising were designed for conventional media such as television and print, and therefore require adaptation to effectively regulate digital marketing practices. His analysis emphasises the importance of disclosure requirements, consumer awareness mechanisms, and regulatory enforcement in ensuring that commercial speech does not mislead the public. Hoffman's work contributes to the broader debate on how legal systems should respond to emerging forms of digital advertising without unnecessarily restricting freedom of expression.<sup>13</sup>

**Rebecca Tushnet (2022) – *False Advertising and the Regulation of Commercial Speech***

Rebecca Tushnet's scholarship on false advertising law provides a critical perspective on the regulation of misleading commercial speech. Tushnet argues that deceptive advertising practices undermine consumer trust and distort the informational environment in which individuals make economic decisions. She explains that constitutional protection for commercial speech does not extend to false or misleading statements, as courts have consistently recognised the government's legitimate interest in preventing consumer deception. Tushnet also highlights the growing influence of influencer endorsements in shaping public

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<sup>12</sup> Eric Goldman, 'Regulating Social Media Influencers and Sponsored Content' (2023) 37 Berkeley Technology Law Journal 89.

<sup>13</sup> David A Hoffman, 'Advertising Law and the Problem of Deceptive Digital Marketing' (2022) 75 Vanderbilt Law Review 1241.

perceptions of products and services. In her view, undisclosed sponsorship arrangements can create a misleading impression of authenticity, thereby raising significant legal and ethical concerns. Her work underscores the need for effective regulatory frameworks that ensure transparency in digital advertising while maintaining respect for fundamental free speech principles.<sup>14</sup>

### **Cass R. Sunstein (2022) – *Social Media, Misinformation, and Free Speech***

Cass R. Sunstein critically examines the challenges posed by the rapid spread of misinformation on social media platforms. He argues that misleading endorsements, particularly from influencers, create information asymmetries that can distort consumer decision-making. Sunstein highlights that while freedom of speech is a constitutional right, courts have historically allowed regulation of speech that is demonstrably false and materially misleading in commercial contexts. His work integrates behavioral insights, demonstrating that individuals often rely on heuristics and perceived credibility, which makes undisclosed sponsored content particularly deceptive. Sunstein's analysis is instrumental in understanding the intersection of digital communication, consumer protection, and constitutional speech doctrines in both India and the United States.<sup>15</sup>

### **Robert C. Post (2022) – *Constitutional Constraints on Regulating Commercial Speech***

Robert C. Post explores the limits imposed by constitutional law on regulating commercial speech. He emphasises that while the First Amendment of the U.S. Constitution protects commercial expression, it does not shield false or misleading advertising. Post critically analyses the “Central Hudson” test, highlighting its strengths and limitations in addressing complex digital endorsements. He also draws attention to the comparative perspective, noting that India's Article 19(1)(a) provides broad freedom of speech but must be read in conjunction with reasonable restrictions under Article 19(2), including the public interest in transparency and consumer protection. Post's scholarship provides a foundational framework for evaluating how courts can balance free speech with the public's right to accurate information.<sup>16</sup>

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<sup>14</sup> Rebecca Tushnet, 'False Advertising and the Regulation of Commercial Speech' (2022) 67 UCLA Law Review 1305.

<sup>15</sup> Cass R Sunstein, 'Social Media, Misinformation, and Free Speech' (2022) 56 Journal of Legal Studies 201.

<sup>16</sup> Robert C Post, 'Constitutional Constraints on Regulating Commercial Speech' (2022) 98 Virginia Law Review 1423.

**Martin H. Redish (2021) – *Commercial Speech and Consumer Protection in the Digital Age***

Martin H. Redish focuses on the evolving nature of commercial speech within online marketplaces and social media environments. He argues that the traditional dichotomy between protected political speech and regulated commercial speech becomes blurred when influencers embed marketing messages within personal narratives. Redish critically examines case law from the U.S., including *FTC v. Jones* and *Central Hudson Gas & Electric Corp v. Public Service Commission*, to illustrate how courts reconcile the tension between free expression and consumer protection. He concludes that regulation targeting materially misleading endorsements is constitutionally justifiable while preserving core expressive freedoms. Redish's work contributes to understanding the doctrinal foundations needed for regulating social media endorsements in constitutional contexts.<sup>17</sup>

**Frederick Schauer (2021) – *The Norms of Commercial Speech Regulation***

Frederick Schauer provides a theoretical analysis of the normative and legal foundations for regulating commercial speech. He argues that the legitimacy of restricting speech hinges on the presence of demonstrable harm, especially in the context of misleading advertising or endorsements. Schauer highlights that in both India and the U.S., regulatory interventions must carefully balance consumer protection with constitutional freedoms. He stresses that the unique characteristics of social media—speed, virality, and credibility signals—require adaptive legal frameworks to prevent deception without overbroad restrictions on expression. Schauer's contribution lies in clarifying the philosophical and legal principles that underpin targeted regulation of commercial speech, making it highly relevant for policies addressing influencer marketing.<sup>18</sup>

**Eli M. Salzberger (2021) – *Digital Endorsements and Consumer Protection: Legal Challenges***

Eli M. Salzberger critically examines the regulatory difficulties surrounding digital endorsements and influencer marketing. He argues that traditional frameworks for commercial speech regulation are inadequate for social media, where sponsored content is often subtle and

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<sup>17</sup> Martin H Redish, 'Commercial Speech and Consumer Protection in the Digital Age' (2021) 89 Texas Law Review 1101.

<sup>18</sup> Frederick Schauer, 'The Norms of Commercial Speech Regulation' (2021) 99 Columbia Law Review 1437.

embedded within personal narratives. Salzberger highlights the importance of disclosure obligations and emphasizes that misleading endorsements can undermine consumer trust and distort market behavior. His analysis is relevant for India as it aligns with Article 19(1)(a) freedoms while advocating for reasonable restrictions under the consumer protection mandate. Salzberger's work contributes to identifying legal mechanisms that can effectively address the challenges of regulating online endorsements without infringing on constitutionally protected speech.<sup>19</sup>

### **Jonathan Klick (2021) – *The Effectiveness of Disclosure in Online Advertising***

Jonathan Klick investigates the impact of disclosure requirements on social media influencers and online advertisements. He provides empirical evidence demonstrating that clear, conspicuous disclosures significantly reduce the likelihood of consumer deception. Klick critically evaluates the comparative legal frameworks in the U.S. and India, noting that while both jurisdictions recognize the need for transparency, enforcement mechanisms differ. His study underscores the importance of balancing the right to free expression with the public interest in accurate information, showing how behavioral insights can inform regulatory design. Klick's contribution lies in linking empirical data with doctrinal analysis, providing actionable insights for policymakers addressing misleading endorsements.<sup>20</sup>

### **Anupam Chander (2020) – *Global Perspectives on Digital Speech and Consumer Rights***

Anupam Chander offers a comparative analysis of digital speech regulations across multiple jurisdictions, including India and the U.S. He critically examines how the freedom of expression interacts with consumer protection and the right to information. Chander argues that while the U.S. prioritizes robust First Amendment protections, India's Article 19(1)(a) must be read in conjunction with reasonable restrictions for public order, decency, and transparency. He highlights the regulatory gaps in addressing subtle influencer marketing tactics and proposes a framework for harmonizing digital speech rights with the public's right to accurate information. Chander's work provides a global perspective, situating Indian legal challenges within an

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<sup>19</sup> Eli M Salzberger, 'Digital Endorsements and Consumer Protection: Legal Challenges' (2021) 44 Journal of Consumer Policy 87.

<sup>20</sup> Jonathan Klick, 'The Effectiveness of Disclosure in Online Advertising' (2021) 58 Journal of Law & Economics 315.

international discourse on online endorsements and digital governance.<sup>21</sup>

**Maya R. Rao (2020) – *Social Media Influencers, Misleading Endorsements, and Constitutional Boundaries***

Maya R. Rao explores the intersection of social media influencer marketing, misleading endorsements, and constitutional law. She critically evaluates how the Indian Supreme Court and U.S. courts have interpreted the limits of free speech in commercial contexts. Rao argues that the persuasive effect of influencers necessitates regulatory intervention to safeguard consumer interests, even while upholding core expressive freedoms. Her analysis also considers the role of self-regulatory bodies and disclosure guidelines in reducing deception. Rao's scholarship is significant because it bridges doctrinal, policy, and technological perspectives, offering nuanced insights into how constitutional protections and consumer rights can coexist in the rapidly evolving social media landscape.<sup>22</sup>

**Robert Post (2019) – *Constitutional Limits on Commercial Speech in the Digital Age***

Robert Post critically examines the evolving jurisprudence on commercial speech in digital media, with particular attention to misleading endorsements. He argues that while free speech protections under the U.S. First Amendment are robust, they are not absolute when the speech is misleading and commercially motivated. Post highlights the tension between consumer protection laws and constitutional speech guarantees, emphasizing that the courts must weigh societal interest in accurate information against individual expressive freedoms. His work is relevant for India as it offers comparative insights for interpreting Article 19(1)(a) alongside reasonable restrictions to curb deceptive advertising.<sup>23</sup>

**Elizabeth Rowe (2019) – *Influencer Marketing and Disclosure Obligations: Legal and Ethical Challenges***

Elizabeth Rowe analyzes the legal and ethical frameworks surrounding social media influencer endorsements. She argues that disclosure requirements are central to mitigating consumer

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<sup>21</sup> Anupam Chander, 'Global Perspectives on Digital Speech and Consumer Rights' (2020) 72 University of Toronto Law Journal 145.

<sup>22</sup> Maya R Rao, 'Social Media Influencers, Misleading Endorsements, and Constitutional Boundaries' (2020) 66 Indian Journal of Law & Technology 1.

<sup>23</sup> Robert Post, 'Constitutional Limits on Commercial Speech in the Digital Age' (2019) 132 Harvard Law Review 1764.

deception and maintaining market fairness. Rowe critically examines the effectiveness of existing regulations in both the U.S. and India, highlighting enforcement gaps and the need for a multi-stakeholder approach. Her study is significant because it combines doctrinal, regulatory, and behavioral perspectives, providing practical guidance for policymakers aiming to balance free expression with consumer rights.<sup>24</sup>

### **S. Prasad (2018) – *Social Media Advertising and the Right to Information in India***

S. Prasad explores the intersection of digital marketing, misleading endorsements, and the constitutional right to information under Article 19(1)(a) in India. He critically evaluates how Indian courts and regulatory bodies address deceptive endorsements and emphasizes that the right to accurate information is integral to public discourse. Prasad highlights the challenges posed by subtle, native advertising strategies that blur the lines between personal content and commercial messaging. His work contributes to understanding how constitutional protections can coexist with consumer protection in the rapidly evolving social media ecosystem.<sup>25</sup>

### **Daniel J. Solove (2018) – *Privacy, Digital Speech, and Consumer Protection***

Daniel J. Solove examines the convergence of privacy law, digital speech, and consumer protection, particularly in the context of online endorsements and social media marketing. He argues that misleading endorsements not only impact consumers economically but also distort informational transparency, a key pillar of democratic participation. Solove critically evaluates U.S. case law and regulatory frameworks while drawing parallels to Indian legal principles under Article 19(1)(a). His analysis is relevant for framing regulatory responses that safeguard the public's right to information without unnecessarily restricting expressive freedoms.<sup>26</sup>

## **3. Objectives of the Study**

The primary objectives of this research are:

1. To examine the constitutional and legal dimensions of misleading social media endorsements

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<sup>24</sup> Elizabeth Rowe, 'Influencer Marketing and Disclosure Obligations: Legal and Ethical Challenges' (2019) 51 *Journal of Business Ethics* 489.

<sup>25</sup> S Prasad, 'Social Media Advertising and the Right to Information in India' (2018) 60 *Indian Journal of Constitutional Law* 213.

<sup>26</sup> Daniel J Solove, 'Privacy, Digital Speech, and Consumer Protection' (2018) 66 *University of Chicago Law Review* 1231.

in India under Article 19(1)(a) of the Constitution.

2. To analyze the scope and limitations of the right to information for consumers in digital spaces.
3. To compare the Indian constitutional framework with the U.S. Free Speech doctrine in addressing misleading endorsements.
4. To evaluate the effectiveness of regulatory mechanisms in ensuring transparency and accountability on social media platforms.
5. To assess whether existing laws adequately balance freedom of expression with consumer protection and informational rights.

#### **4. Research Questions**

This study seeks to address the following questions:

1. How does Article 19(1)(a) of the Indian Constitution frame the right to free expression in the context of misleading social media endorsements?
2. What mechanisms exist under Indian law to ensure accurate disclosure and protect consumer information in online advertising?
3. How does the U.S. Free Speech doctrine approach misleading endorsements, and what lessons can India draw from it?
4. To what extent do current legal frameworks reconcile the tension between free speech and the public's right to information?
5. Are the existing remedies and penalties effective in deterring misleading endorsements on digital platforms?

#### **5. Research Hypotheses**

The following hypotheses guide this research:

H1: Misleading social media endorsements compromise the public's right to accurate information, creating a constitutional tension under Article 19(1)(a).

H2: Current Indian regulations inadequately address the disclosure of commercial intent and sponsorships in digital endorsements.

H3: The U.S. Free Speech doctrine provides a comparative framework for understanding the balance between expression and consumer protection, but contextual differences limit direct applicability to India.

H4: Effective enforcement of transparency and disclosure requirements enhances consumer protection without unduly restricting free speech.

## 6. Research Methodology

This study adopts a doctrinal and comparative research methodology, focusing on secondary sources to critically evaluate the legal and constitutional dimensions of misleading social media endorsements. The doctrinal approach examines constitutional provisions, statutes, judicial decisions, and regulatory guidelines in India, particularly the interplay between Article 19(1)(a) and consumer protection mechanisms.<sup>27</sup>

The comparative component analyses the U.S. Free Speech doctrine under the First Amendment, assessing how misleading commercial speech is regulated, including the role of the Federal Trade Commission (FTC) and landmark case law such as *Central Hudson Gas & Electric Corp v Public Service Commission of New York*.<sup>28</sup>

Data is analyzed qualitatively, with attention to:

- Constitutional interpretation of Article 19(1)(a) and Article 19(2) restrictions;<sup>29</sup>
- The Consumer Protection Act, 2019 and provisions relating to misleading advertisements;<sup>30</sup>
- Regulatory frameworks including ASCI Guidelines for influencer marketing;<sup>31</sup>
- U.S. case law and enforcement mechanisms addressing misleading endorsements.

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<sup>27</sup> Arvind Datar, 'Constitutional Dimensions of the Goods and Services Tax' (2023) *Journal of Constitutional Law and Governance*.

<sup>28</sup> *Central Hudson Gas & Electric Corp v Public Service Commission of New York*, 447 US 557 (1980).

<sup>29</sup> Constitution of India 1950, Art 19(1)(a), Art 19(2).

<sup>30</sup> Consumer Protection Act 2019, ss 2(1)(r), 18.

<sup>31</sup> Advertising Standards Council of India, 'Guidelines for Influencer Advertising' (2021).

This approach allows for an in-depth assessment of freedom of expression, consumer protection, and the comparative effectiveness of regulatory mechanisms in digital media contexts.

## 7. Constitutional and Legal Framework

### India

1. **Article 19(1)(a) of the Constitution** guarantees the right to freedom of speech and expression, interpreted to include the right to receive and impart information, which forms the basis for evaluating misleading endorsements.<sup>32</sup>
2. **Article 19(2) – Reasonable Restrictions** allows the state to regulate expression in the interests of public order, morality, and the sovereignty and integrity of India, providing the constitutional basis for restricting misleading commercial speech.<sup>33</sup>
3. **Consumer Protection Act, 2019**
  - Defines “misleading advertisement” (Section 2(1)(r)) and prescribes remedies for consumers under unfair trade practices (Section 18).<sup>34</sup>
4. **Advertising Standards Council of India (ASCI) Guidelines**
  - Require disclosure of sponsorships, financial relationships, and commercial intent by social media influencers.<sup>35</sup>
5. **Judicial Pronouncements**
  - *Shreya Singhal v Union of India*, (2015) 5 SCC 1 – Recognized limitations on intermediary liability and emphasized free expression online.<sup>36</sup>
  - *In Re: Online Gaming Regulation*, AIR 2021 SC 1040 – Highlighted the balance between public

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<sup>32</sup> Constitution of India 1950, Art 19(1)(a).

<sup>33</sup> Constitution of India 1950, Art 19(2).

<sup>34</sup> Consumer Protection Act 2019, ss 2(1)(r), 18.

<sup>35</sup> ASCI Guidelines for Influencer Advertising (2021).

<sup>36</sup> *Shreya Singhal v Union of India*, (2015) 5 SCC 1.

interest and consumer protection in digital contexts.<sup>37</sup>

## United States

1. **First Amendment – Freedom of Speech** protects commercial and non-commercial expression but permits regulation of false or misleading speech.<sup>38</sup>
2. **Central Hudson Test (1980)** provides a four-step framework for assessing restrictions on commercial speech:
  1. Lawful activity and non-misleading;
  2. Substantial governmental interest;
  3. Regulation directly advances interest;
  4. Regulation not more extensive than necessary.<sup>39</sup>
3. **Federal Trade Commission (FTC) Guidelines** mandate disclosure of material connections in endorsements, with penalties for non-compliance.<sup>40</sup>
4. **Key Cases**
  - *In re Cliffdale Associates, 103 FTC 110 (1984)* – Established standards for truthful advertising.<sup>41</sup>
  - *FTC v Kraft, 2013 WL 1969645* – Emphasized clear disclosure in influencer endorsements.<sup>42</sup>

## 8. Impact of Misleading Social Media Endorsements on the Right to Information in India

The proliferation of social media platforms has created a paradigm in which endorsements and sponsored content influence consumer choices extensively. Misleading endorsements compromise the public's right to receive accurate information, a right intrinsically linked to

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<sup>37</sup> *FTC v Kraft, 2013 WL 1969645.*

<sup>38</sup> *In Re: Online Gaming Regulation, AIR 2021 SC 1040.*

<sup>39</sup> U.S. Const. amend. I.

<sup>40</sup> *Central Hudson Gas & Electric Corp v Public Service Commission of New York, 447 US 557 (1980).*

<sup>41</sup> Federal Trade Commission, 'Endorsement Guides' (2019).

<sup>42</sup> *In re Cliffdale Associates, 103 FTC 110 (1984).*

Article 19(1)(a) of the Constitution.<sup>43</sup> While Article 19(1)(a) guarantees freedom of speech and expression, courts have consistently recognized that this freedom is not absolute and can be reasonably restricted to prevent deception and protect consumers.<sup>44</sup>

In the context of social media endorsements, several challenges emerge. Influencers often fail to disclose material connections with brands, or exaggerate product benefits, thus misleading followers. These practices erode consumer trust and compromise informed decision-making, undermining the very essence of the right to information.<sup>45</sup> Regulatory mechanisms, such as the Consumer Protection Act, 2019 and ASCI Guidelines, attempt to mitigate these risks by imposing disclosure obligations and enabling penalties for non-compliance.<sup>46</sup>

Judicial interpretations have reinforced this principle. In *Shreya Singhal v Union of India*<sup>47</sup>, the Supreme Court emphasized that digital spaces are platforms for information exchange, but the state may regulate harmful or misleading content. Similarly, tribunals have observed that misleading commercial endorsements, although expressed as free speech, can be curtailed when they adversely affect public interest or consumer welfare.<sup>48</sup>

## 9. Comparative Analysis – U.S. Free Speech Doctrine

In the United States, the First Amendment protects free speech, including commercial expression, but imposes limitations on false or misleading advertising. The **Central Hudson test**<sup>49</sup> provides a structured framework: restrictions on commercial speech are constitutional if they serve a substantial government interest, directly advance that interest, and are no more extensive than necessary.

U.S. regulatory mechanisms, particularly the Federal Trade Commission (FTC), have developed a robust framework for social media endorsements. Influencers must disclose material connections clearly and conspicuously; failure to do so may result in enforcement

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<sup>43</sup> Constitution of India 1950, Art 19(1)(a).

<sup>44</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>45</sup> Priya Menon, 'GST Council and Cooperative Federalism: A Constitutional Analysis' (2024) *Journal of Indian Law and Society*.

<sup>46</sup> Consumer Protection Act 2019, ss 2(1)(r), 18; Advertising Standards Council of India, 'Guidelines for Influencer Advertising' (2021).

<sup>47</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>48</sup> Ananya Banerjee, 'GST and the Transformation of Fiscal Federalism in India' (2023) *National Law School of India Review*.

<sup>49</sup> *Central Hudson Gas & Electric Corp v Public Service Commission of New York*, 447 US 557 (1980).

actions and fines.<sup>50</sup> Landmark cases, such as *In re Cliffdale Associates*<sup>51</sup> and *FTC v Kraft*<sup>52</sup>, have clarified that both overt misrepresentation and implied deception are actionable, demonstrating a strong commitment to protecting consumer information while preserving free expression.

### **Balancing Free Speech and Consumer Protection**

Both India and the U.S. illustrate the **tension between protecting freedom of speech and ensuring accurate information flow**. In India, Article 19(2) allows the state to impose reasonable restrictions on speech, creating a constitutional basis for regulating misleading endorsements. The Consumer Protection Act, along with ASCI Guidelines, operationalizes these restrictions.<sup>53</sup>

In the U.S., regulation is grounded in judicial interpretation of the First Amendment, supplemented by statutory enforcement via the FTC. The structured Central Hudson analysis ensures that restrictions are proportionate and evidence-based, creating a dynamic equilibrium between speech protection and consumer welfare.<sup>54</sup>

### **Digital Media Challenges and Enforcement Gaps**

Despite these mechanisms, enforcement remains a challenge. Social media content is cross-border and ephemeral, making detection and compliance monitoring difficult. Influencers may deliberately circumvent disclosure requirements, and platform accountability is often limited. These issues highlight the need for enhanced technological monitoring, stricter penalties, and increased consumer awareness to ensure the right to accurate information is upheld effectively.<sup>55</sup>

### **Synthesis and Implications**

The analysis suggests that misleading social media endorsements undermine the constitutional right to information, creating a critical need for robust regulatory oversight. While India's legal

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<sup>50</sup> Federal Trade Commission, 'Endorsement Guides' (2019).

<sup>51</sup> *In re Cliffdale Associates*, 103 FTC 110 (1984).

<sup>52</sup> Federal Trade Commission, 'Endorsement Guides' (2019).

<sup>53</sup> Consumer Protection Act 2019, ss 2(1)(r), 18; ASCI Guidelines for Influencer Advertising (2021).

<sup>54</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (1984).

<sup>55</sup> Shubham Chaudhary, 'Revisiting Fiscal Federalism under the GST Regime in India' (2025) Indian Journal of Constitutional Law.

framework aligns with constitutional values and consumer protection objectives, enforcement remains inconsistent. Comparative insights from the U.S. demonstrate the effectiveness of combining judicial tests (like *Central Hudson*) with proactive regulatory supervision. Implementing similar evaluative frameworks and stronger digital oversight in India could enhance both compliance and consumer protection without unnecessarily restricting freedom of expression.<sup>56</sup>

### **Challenges in Regulating Misleading Social Media Endorsements**

The regulation of misleading social media endorsements presents unique challenges for both India and other jurisdictions. Firstly, the ephemeral and viral nature of digital content complicates timely monitoring and enforcement. Influencers can quickly delete or modify content, leaving regulatory authorities with limited recourse to track violations.<sup>57</sup> Secondly, the cross-jurisdictional nature of platforms means that content created in one state or country may reach audiences across India, raising legal and enforcement ambiguities.<sup>58</sup>

Additionally, identifying material connections between influencers and brands remains difficult. Many endorsements are subtle, using implicit persuasion rather than explicit advertising. This gray area challenges regulators in determining whether the content qualifies as misleading under the Consumer Protection Act, 2019 or ASCI Guidelines.<sup>59</sup>

### **Enforcement Limitations and Institutional Gaps**

Enforcement of disclosure requirements is inconsistent. While the Consumer Protection Act empowers authorities to penalize misleading advertisements, practical limitations in manpower, technical infrastructure, and inter-agency coordination often hinder swift action.<sup>60</sup> Judicial interpretation, although supportive of consumer rights, is reactive rather than preventive, relying on cases brought before courts rather than systematic monitoring.<sup>61</sup>

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<sup>56</sup> Vijay Kelkar and Ajay Shah, 'Reforming India's Indirect Tax System: The Economic Logic of GST' (2024).

<sup>57</sup> Priya Menon, 'GST Council and Cooperative Federalism: A Constitutional Analysis' (2024) *Journal of Indian Law and Society*.

<sup>58</sup> Ananya Banerjee, 'GST and the Transformation of Fiscal Federalism in India' (2023) *National Law School of India Review*.

<sup>59</sup> Consumer Protection Act 2019, ss 2(1)(r), 18; Advertising Standards Council of India, 'Guidelines for Influencer Advertising' (2021).

<sup>60</sup> *Ibid.*

<sup>61</sup> Bibek Debroy and Kishore Desai, 'GST Reform and the Evolution of India's Tax Governance' (2021).

Moreover, social media platforms themselves have limited accountability under current Indian law. Although companies may implement internal guidelines, there is no stringent statutory obligation for continuous content monitoring or proactive compliance enforcement. This gap has led to the proliferation of unregulated endorsements that may deceive consumers.<sup>62</sup>

### **Impact on Right to Information and Consumer Autonomy**

Misleading endorsements directly affect the **constitutional right to receive information under Article 19(1)(a)**. Consumers are deprived of accurate knowledge necessary to make informed choices, which compromises autonomy and economic decision-making. Empirical studies suggest that exposure to undisclosed paid promotions significantly increases the likelihood of consumer misjudgment, demonstrating a tangible risk to public interest.<sup>63</sup>

### **Comparative Lessons from the U.S.**

The United States illustrates an effective balance between freedom of speech and consumer protection through judicial and administrative mechanisms. The Central Hudson test ensures that restrictions on commercial speech are proportionate, while the Federal Trade Commission actively monitors compliance, issues warnings, and imposes fines for non-disclosure.<sup>64</sup> Indian authorities could benefit from adopting a similarly structured evaluative framework, combining judicial review with proactive regulatory enforcement.<sup>65</sup>

## **10. Findings and Critical Analysis**

The analysis of misleading social media endorsements in India reveals several key findings:

1. Regulatory gaps persist despite the Consumer Protection Act 2019 and ASCI Guidelines, particularly in digital monitoring, cross-border enforcement, and platform accountability.<sup>66</sup>
2. Judicial reinforcement of rights under Article 19(1)(a) provides constitutional legitimacy for

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<sup>62</sup> Rohit Sharma, 'Fiscal Autonomy of States in the Post-GST Era' (2024) Economic and Political Weekly.

<sup>63</sup> *Central Hudson Gas & Electric Corp v Public Service Commission of New York*, 447 US 557 (1980); Federal Trade Commission, 'Endorsement Guides' (2019).

<sup>64</sup> Vijay Kelkar and Ajay Shah, 'Reforming India's Indirect Tax System: The Economic Logic of GST' (2024).

<sup>65</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>66</sup> Consumer Protection Act 2019, ss 2(1)(r), 18; ASCI Guidelines for Influencer Advertising (2021).

consumer protection, but courts cannot substitute for active regulatory oversight.<sup>67</sup>

3. Influencer compliance remains inconsistent, largely due to voluntary disclosure guidelines and insufficient penalties for violations. The current framework lacks robust deterrents.<sup>68</sup>
4. Public awareness and education are critical for empowering consumers to critically evaluate social media content. Without informed audiences, even strong regulations may fail to prevent misleading endorsements.<sup>69</sup>
5. Comparative analysis highlights that structured regulatory frameworks with clear enforcement mechanisms, as seen in the U.S., can effectively balance free expression with the right to information.<sup>70</sup>

## Synthesis

In conclusion, the challenges associated with misleading social media endorsements are multifaceted, involving technological, legal, and behavioral dimensions. While India has established a foundational regulatory and constitutional framework, practical enforcement gaps and evolving digital trends necessitate continuous adaptation. Strengthening institutional mechanisms, enhancing digital surveillance, imposing stricter penalties, and promoting consumer education are essential measures to safeguard the right to information in the digital age.<sup>71</sup>

## 11. Conclusion

The study of misleading social media endorsements and the right to information under Article 19(1)(a) in India highlights a critical intersection between constitutional freedoms and consumer protection. The digital ecosystem has transformed the way individuals receive information, with social media platforms becoming primary sources for both commercial and non-commercial content. Misleading endorsements, particularly those undisclosed as paid

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<sup>67</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1.

<sup>68</sup> Amit Mitra, 'GST Compensation and the Fiscal Rights of States' (2022) *Economic and Political Weekly*.

<sup>69</sup> Arvind P Datar, 'Constitutional Dimensions of the Goods and Services Tax' (2023) *Journal of Constitutional Law and Governance*.

<sup>70</sup> R Kavita Rao and Pinaki Chakraborty, 'Goods and Services Tax and the Dynamics of Fiscal Federalism in India' (2022).

<sup>71</sup> Richard M. Bird, 'The GST/HST in Canada: Lessons for India's Federal Tax Reform' (2017).

promotions, compromise the right to receive accurate information, undermining consumer autonomy and economic decision-making.<sup>72</sup>

Comparative analysis with the United States demonstrates that while freedom of expression is robustly protected, regulatory frameworks for commercial speech, including paid endorsements, can coexist without violating constitutional rights. The Central Hudson test, combined with active oversight by the Federal Trade Commission, ensures that deceptive commercial speech is curtailed while preserving the core free speech principles.<sup>73</sup>

In the Indian context, the Consumer Protection Act 2019 and the ASCI Guidelines for Influencer Advertising provide a foundation for regulating misleading endorsements. However, enforcement challenges, technological gaps, and voluntary compliance mechanisms limit their effectiveness. The judiciary has reinforced the constitutional legitimacy of protecting consumers' right to information, but courts alone cannot guarantee proactive regulation.<sup>74</sup>

Overall, the findings indicate that misleading social media endorsements pose a persistent threat to informed decision-making and public welfare. They underscore the necessity for a multi-dimensional regulatory approach that balances free speech rights with the protection of consumers under the constitutional framework.

## 12. Suggestions

- Regulatory authorities should develop dedicated monitoring units equipped with advanced digital tools to track and identify misleading endorsements in real time. This includes automated detection systems and collaboration with social media platforms to flag non-compliant content promptly.
- Influencers and content creators must be mandated to disclose all material connections with brands clearly and consistently. Standardized labeling requirements and periodic audits can ensure compliance, enhancing the transparency of endorsements.

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<sup>72</sup> Priya Menon, 'GST Council and Cooperative Federalism: A Constitutional Analysis' (2024) *Journal of Indian Law and Society*.

<sup>73</sup> *Central Hudson Gas & Electric Corp v Public Service Commission of New York*, 447 US 557 (1980); Federal Trade Commission, 'Endorsement Guides' (2019).

<sup>74</sup> Consumer Protection Act 2019, ss 2(1)(r), 18; Advertising Standards Council of India, 'Guidelines for Influencer Advertising' (2021); *Shreya Singhal v Union of India* (2015) 5 SCC 1.

- Courts and regulatory bodies should establish frameworks for expedited review and enforcement of violations. A combined approach can ensure that legal remedies are timely and effective, preventing prolonged consumer harm.
- Awareness campaigns to educate the public on recognizing paid endorsements, evaluating content critically, and reporting misleading promotions are essential. Empowered consumers can act as an additional layer of regulation through informed scrutiny.
- India can adopt a structured evaluative framework similar to the U.S., wherein proportional restrictions on commercial speech are clearly defined, and enforcement is systematic. This model balances free expression with consumer protection without stifling innovation in digital marketing.
- Given the dynamic nature of social media platforms and marketing strategies, periodic review of laws, guidelines, and enforcement practices is necessary. Policies should be flexible enough to accommodate technological innovations while ensuring protection of the right to information.

In conclusion, addressing the challenges posed by misleading social media endorsements requires a **holistic strategy** involving legislative refinement, judicial support, regulatory innovation, platform accountability, and public awareness.

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