

**ACCESSING THE ENFORCEABILITY GAPS IN ASCI'S PAID-PARTNERSHIP GUIDELINES FOR FASHION & LUXURY INFLUENCERS ON SOCIAL MEDIA**

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### **Abstract**

The Advertising Standards Council of India (ASCI) is a voluntary, self-regulatory body representing the advertising industry in India. It was established in 1985, and it is registered as a non-profit company under Section 8 Companies Act. The main task of ASCI is to promote responsible advertising and safeguard consumer interests. ASCI ensures that advertisements comply with its Code for Self-Regulation, which mandates that all advertising must be legal, decent, honest, and truthful, and must not be harmful or hazardous, while also maintaining fairness in competition. ASCI addresses complaints across all forms of media, including print, television, radio, outdoor advertising, SMS, websites, product packaging, brochures, promotional materials, and point-of-sale displays. Its role has been widely recognized by several Government bodies such as the Department of Consumer Affairs (DoCA), the Food Safety and Standards Authority of India (FSSAI), the Ministry of AYUSH, and the Ministry of Information and Broadcasting. The rate of influencer marketing, especially in the fashion and luxury industries of India, has been growing exponentially without the establishment of credible regulatory enforcing regulatory bodies. Although the Advertising Standards Council of India (ASCI) has set reasonable regulations that require paid partnerships to be reported, its self-regulatory nature restricts its enforcement abilities causing a high level of compliance loopholes. Recurring non-disclosure, as it is seen in the 2025 report released by ASCI where the rate of non-disclosure among the top influencers is 69 percent, compromises the autonomy of the consumer and destroys market trust. The study uses a multidisciplinary approach, which entails, the analysis of legal frameworks through doctrine, the comparative analysis of international regulatory models

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and empirical information acquired through semi-structured interviews with fashion and luxury influencers. The paper finds an essential lack of enforceability that is due to the absence of statutory sanctioning power of the formulation of guidelines by ASCI, operational issues in the work of guidelines, and perception among content creators.

Keywords- Advertisements, choices, consumer, economy, eco-system, fashion, social media

### **Synopsis**

The major issues that arise from such undisclosed advertisements are misleading or false representation, concealment of facts, and the endangerment of consumer rights. The deception is very high not only the masses are fooled but also many times their counterfeit products available in the market. To protect the rights of the consumer many enactments have come into existence. Such as The Consumer Protection Act 2019, The Consumer Protection Act 2019, addresses misleading acts under section 2(8) and imposes penalties that may be a fine for 10 Lakhs for the first offence and up to 50 lakhs <sup>2</sup> for repeated offences. The enforcement in the digital sphere is dependent on the Advertising Standards Council of India (ASCI), a voluntary self-regulatory organisation registered as a company under section 8 of the Companies Act. In the ASCI's Influencer Advertising and Discloser Guidelines <sup>3</sup> introduced in 2021 and later revised in 2023, mandate that influencers must clearly disclose paid partnerships through hashtags such as #ad or #sponsored. It however is important to note that the ASCI does not have enforcement powers, this makes it a challenge to ensure the effectiveness of the regulations. According to ASCI's 2025 Top Influencer Compliance Scorecard <sup>4</sup>69% of India's top 100 online influencers violate disclosure guidelines, along with fashion and lifestyle making up for 27.5% of violations. Moreover, the scope of this issue extends to all 11 crore followers <sup>5</sup> exposed to undisclosed brand promotions, making regulation even more complex.

As discussed above in the abstract that ASCI works in collaborations, ASCI works to co-regulate and curb misleading or objectionable advertisements in various sectors. In January 2017, the

<sup>2</sup> TaxTMI, Misleading Advertisements in India: A Legal and Ethical Perspective, TAXTMI (undated), <https://www.taxtmi.com/article/detailed?id=14226>

<sup>3</sup> ASCI, Guidelines for Influencer Advertising in Digital Media, Cl. 1.1 (Aug. 17, 2023).

<sup>4</sup> ASCI, Top Influencer Compliance Scorecard 2025: Compliance Review of Forbes Top 100 Digital Stars in India 2 (Feb. 2025).

<sup>5</sup>Campaign India, 69% of India's Top Influencers Violate Disclosure Guidelines: ASCI, CAMPAIGN INDIA (undated), <https://www.campaignindia.in/article/69-of-indias-top-influencers-violate-disclosure-guidelines>

Supreme Court of India affirmed ASCI's self-regulatory mechanism as an effective, pre-emptive measure supplementing statutory regulation of advertising content on television and radio. Internationally, ASCI is a member of the Executive Committee of the International Council on Ad Self-Regulation (ICAS). It has also received several accolades from the European Advertising Standards Alliance (EASA), including two Gold Global Best Practice Awards—one for its “ASCI online” mobile app (2016) and another for significantly reducing complaint-processing time (2013).

However, in the advent of the boom of social media, this paper seeks to analyse the extent of regulation that ASCI's paid partnership rules are able to regulate advertising on social media. Influencer marketing is defined as a paid collaboration between a brand aiming to promote their services and a content creator; this exists throughout different platforms like Reddit, Youtube, Twitter, Instagram and Pinterest.

## **Introduction**

In the rapidly growing digital economy, consumer choices are constantly shaped by the content they consume online. The choices of consumers are majorly influenced by social media. The world indeed has become a global village in terms of choices and tastes. People across the globe can easily purchase the goods of their choice. From trends like Stanley cups to satin pillowcases marketed for skin care; individuals, consciously or unconsciously, are often influenced by the endless stream of Instagram reels, Reddit posts, Twitter feeds. In this constant chase to live an aspirational lifestyle, consumers may not realise they are being sold an advertisement. Moreover, regulation becomes even more difficult as consumers are often being sold a lifestyle rather than a single product; glass skin routines, coordinated athleisure outfits, or the iconic Labubu keychain on handbags. Widely used formats like “Outfit of the Day” (OOTD) or “Get Ready with Me” often showcase luxury bags, beauty products or apparel without disclosing that these items are a part of a paid promotion.

## **Literature Review**

The rapid development of influencer marketing has triggered the emergence of a sophisticated and unclear regulatory environment in most jurisdictions worldwide. The academic discussion

demonstrates a profession that struggles with the contradiction between marketing creativity and consumer safety, in which enforcement, disclosure, and the essence of contemporary advertising are a great challenge. The Human Rights Law Review (2025)<sup>6</sup> conducts a comparative analysis of this landscape, highlighting its disjointed nature and suggesting three key challenges to creating a strong regulatory framework, including the ambiguous and unequal nature of disclosure policies themselves, the sheer amount and size of the content that micro and nano-influencers generate every day, and the impermanence of content formats such as 24-hour stories, which make it difficult to archive and review them. The power dynamic that is unique to the medium complicates this regulatory challenge. The marketing strength of the influencers, as discussed by Abidin (2016),<sup>7</sup> is the result of the so-called networked intimacy phenomenon, when the followers have the sense of spontaneous and personal engagement with the influencer, the boundary between advertising and personal recommendation is blurred. Abidin coinvents the term advertorials to refer to this hybrid content and also defines campaign blasts or multi-influencer marketing as an advanced industry technique where multiple influencers of the same agency are coordinated in doing promotional activities.

The necessity to have clear and identifiable advertising is one of the common themes in the literature. In a SSRN article (abstract 5261869)<sup>8</sup> it is passionately claimed that the relationship between followers and influencers resembles the relationships between worshiper and god and as such the follower-influencer relationship ought to be clearly identified by labelling it as the paid partnership, as is the case in the German system, to safeguard the consumer. Such a demand of transparency is reflected in the studies of the dark side of social commerce. The other SSRN article<sup>9</sup> (abstract 5315304) discusses the spread of fake products and fraudulent entries to such sites and the necessity to have effective watchdog bodies to monitor e-commerce fraud and safeguarding consumers against fraudulent transactions. To further explore the industry's pitfalls, a paper published in Tandfonline (2024) looks directly into malpractices like influencers

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<sup>6</sup>Vaishnavi P & Jyotirmoy Banerjee, *Influencer Marketing and the Law: Accountability for Misleading Endorsements*, 4 HUMAN RIGHTS L. REV. 832, 832 (2025).

<sup>7</sup>Crystal Abidin, "Aren't These Just Young, Rich Women Doing Vain Things Online?": Influencer Selfies as Subversive Frivolity, 2 SOC. MEDIA & SOC'Y 1, 3 (2016).

<sup>8</sup>Sanjay Kesavan, *Influence and Responsibility: Bridging Gaps in Legal Framework of India* (SSRN, Working Paper No. 5261869, 2025).

<sup>9</sup>Himanshu Yadav & Akhilesh Chhatiya, *Scroll, Buy, Manipulate: The Dark Side of Social Media Concerning E-Commerce* (SSRN, Working Paper, 2025).

spreading misleading information and making false claims, highlighting the potential harm to consumers.<sup>10</sup>

To address these pressures, a lot of jurisdictions have resorted to self-regulatory organizations (SROs). A research article published in the KIM Journal of Business Research <sup>11</sup>(2024) states the effectiveness of these types of bodies, such as the Advertising Standards Council of India (ASCI), in implementing policies and regulating is much quicker and easier by using these methods than by enacting laws via the legislative system. These SROs, however, are the subject of scrutiny due to their effectiveness. The examination of the Advertising Standards Authority (ASA) in the UK by Antoniou<sup>12</sup> indicates that there is a worrying lapse in imposing limitations on non-disclosure and this could weaken the preventive impact of the rules. The weaknesses of the self-regulation are also underlined in research of the Italian model<sup>13</sup>where it is determined that SROs do not suffice but have to be supported by even more serious governmental bodies that could decide to provide proper sanctions in the event of disobedience.

Influencer marketing has a very strong commercial rationale based on the psychology of the consumer and trust. The role of fashion influencers is deciphered by Karanikolova <sup>14</sup>who points out that the percentage of failure in influencer campaigns is very low (25%), which can be attributed to the fact that the brand has not correctly understood the medium. The paper concludes that transparent partnerships do not only create transparency but also enable the brands to better measure their prospects of return on investment because consumers relate to the true stories being crafted by the influencers. This association between the perceived credibility of

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<sup>10</sup>Alexandros Antoniou, *When Likes Go Rogue: Advertising Standards and the Malpractice of Unruly Social Media Influencers*, 16 J. MEDIA L. 74, 76 (2024).

<sup>11</sup>Pranjal Ojha & Nagaraj B V, *A Study on Impact of Strategic Communication Initiatives on A Self-Regulated Body (ASCI)*, 1 PHRONIMOS: THE KIAMS J. 1, 3 (2021).

<sup>12</sup>Alexandros Antoniou, *Place It So It's Hard to Miss: Advertising Regulation and Transparency in Influencers' Endorsements on Social Media*, 26 COMM'CNS L. 1, 3 (2021).

<sup>13</sup>Mariacristina Reale, *Digital Market, Bloggers, and Trendsetters: The New World of Advertising Law*, 8 LAWS 21, 23 (2019).

<sup>14</sup>Monika Karanikolova, *Fashion Influencers Decoded: The Role of Social Media Influencers in Luxury Fashion Houses Development, Marketing and PR Strategies* (July 2019) (unpublished thesis, Sapienza University of Rome).

an influencer, and their selling strength is empirically determined in a Swedish study,<sup>15</sup> which attracts a distinct association between brand image of an influencer and their selling effectiveness. The study validates that when the brand partnerships are truly disclosed, it will contribute to the value of the influencer brand, but when they post mostly promotional-related content, consumers will have a negative perception of them. Notably, such compensation is not restricted to the monetary compensation but extends to the free products and services, which expands the area of what can be considered as a material connection. A ProQuest dissertation<sup>16</sup> that discusses the seriousness of these digital influencers' persuasive power identifies their 'aspirational' appeal and their profound impact on consumer choice as a key motivator.

It is a special case study<sup>17</sup> in the Indian context in the process of evolution and regulation of this phenomenon. Gupta follows the emergence of the influencer in India as a kind of an Aam Aadmi (ordinary person), and he creates a following around a niche interest, but still acts outside the rules of ASCI. The paper draws attention to the sheer social power of such individuals, especially in highly sensitive areas such as health and finance, and the fact that they have facilitated consumerism by making it possible to affect the migration patterns and inflate the local real estate markets as it happened to destinations such as Bir and Goa during the COVID-19 pandemic. The critical importance of ASCI is further supported by a thorough analysis carried out in Rupkatha Journal<sup>18</sup> that makes the case study argument, based on a paradigm shift in marketing towards honest marketing instead of misleading advertising.

The theoretical relationship between the influencer transparency and consumer behavior is confirmed all the time by the empirical studies. According to a survey conducted on 400

<sup>15</sup>Anton Phan & Sinem Yedic, *"This Post Is a Paid Partnership" Do We Care? How Consumers Perceive Brands When Social Media Influencers Disclose Paid Partnerships* (May 25, 2018)(unpublished bachelor's thesis, Faculty of Economics, Sweden).

<sup>16</sup>Margarida Mateus Nave, *The Impact of Digital Communication on Luxury Fashion Brands' Reputation* (2023) (unpublished doctoral dissertation, Universidade Catolica Portuguesa, Portugal), ProQuest Dissertations & Theses, <https://www.proquest.com/openview/f2fb841ffe08dd16a916536798a2933/1?pq-origsite=gscholar&cbl=2026366&diss=y>

<sup>17</sup>Shambhavi Gupta, *Blurred Lines in Social Media Influencing: Exploring the Consequences of Using Personhood as a Platform*, in SOCIAL MEDIA AND SOCIETY IN INDIA PROCEEDINGS 73, 75 (University of Michigan ed., year).

<sup>18</sup>Yashmita Awasthi et al., *Ethics of Advertisement and Marketing Policies: An Indian Perspective*, 12 RUPKATHA J. INTERDISC. STUD. HUM. 1, 3 (2020).

individuals in India, which has been published in the Indian Journal of Marketing,<sup>19</sup> there was a direct correlation between the expertise, authenticity, and the disclosure practices of an influencer and the following consumer buying behavior. This observation is supported by the research<sup>20</sup> conducted in the Southern Punjab in Pakistan, which surveyed 275 people and found out that honest disclosures largely enhance the credibility and trustworthiness of an influencer and, therefore, have an influence on digital behavioral intentions. Legalities related to the implementation of these principles are described in a Mondaq (2024) article,<sup>21</sup> which gives a granular commentary on the guidelines of ASCI, defining the tests of when disclosure is needed, and detail the due diligence that both the influencers and brands must demonstrate.

Landscape is also complicated by the changing trends and novel marketing frontiers. The study by Keller<sup>22</sup> focuses on how social media has influenced the fashion journalism sector and the emergence of organic and non-sponsored posts and the changing nature of the media industry. The influencer reputation is examined as extremely vital in a ProQuest dissertation<sup>23</sup>, which concludes that luxury brands are especially selective, as they collaborate with almost no influencers whose reputation does not correspond to and strengthens the image of their own brand. The most complicated frontier is probably that of virtual influencers. The dissertation of Mouritzen<sup>24</sup> addresses the deep ambiguity that they bring up and asks where the liability is in regard to the promotions by a non-human actor and whether it is solely the responsibility of the brand that generated the virtual persona and has control over it. Lastly, a detailed research article<sup>25</sup> of the grey side of influencer marketing encapsulates all these issues and explains why

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<sup>19</sup> Charul Agrawal et al., *Analyzing the Correlation Between Social Media Influencers and Customers' Intention to Buy in the Luxury Market*, 53 INDIAN J. MGMT. 1, 3 (2023)

<sup>20</sup> Shanza Khan et al., *Identifying Digital Behavioral Intentions Through Source Credibility and Advertising Disclosure: Social Media Perspective*, 2 CONTEMP. J. SOC. SCI. REV. 1, 3 (2024).

<sup>21</sup> TrailBlazer Advocates, *An Insight Into ASCI Guidelines For Social Media Influencers*, MONDAQ (undated), <https://www.mondaq.com/india/social-media/1361274/an-insight-into-asci-guidelines-for-social-media-influencers>

<sup>22</sup> Madi Keller, *The Changing Face of Fashion Communication: A Comparative Analysis of Fashion Journalists and Digital Influencers* (Fall 2024) (unpublished undergraduate capstone project, Elon University)

<sup>23</sup> Margarida Mateus Nave, *The Impact of Digital Communication on Luxury Fashion Brands' Reputation* (2023) (unpublished doctoral dissertation, Universidade Catolica Portuguesa, Portugal), ProQuest Dissertations & Theses (Order No. 30860150).

<sup>24</sup> Simone L. T. Mouritzen, *Virtual Influencer Marketing: Opportunities, Challenges, and Ethical Implications in Consumer Brand Engagement* (2025) (unpublished doctoral dissertation, Aarhus University, Denmark).

<sup>25</sup> Anand Jhawar et al., *The Grey Side of Influencer Marketing: Content, Contexts, and Consequences*, 23 J. CONSUMER BEHAV. 1, 3 (2024).

disclosures are very critical, and how the content, contexts and effects of influencer marketing strategy determine the ethical limits of this potent marketing instrument.

### **Statement of Research problem**

In the rise of influencer marketing, particularly in India's fashion and luxury sectors regulation becomes a challenge. The Advertising Standards Council of India has laid out clear guidelines for disclosure of paid partnership; however, being a self-regulatory body with no actual enforcement mechanisms it faces several limitations. The core problem is the systematic ineffectiveness of ASCI's voluntary guidelines. This is prevalent in the numbers; 69% of India's top 100 online influencers violate disclosure guidelines, along with fashion and lifestyle making up for 27.5% of violations. This persistent gap between compliance and enforcement is a major point of contention. It is also the need of the hour to address this issue given the broad scope of the same.

### **Research Question**

1. To what extent do fashion and luxury influencers comply with ASCI's guidelines for paid partnerships and what are the prevalent causes for noncompliance?
2. How do enforcement gaps result from ASCI guidelines' lack of sanctioning authority, and can these gaps be closed by enacting specific sector regulations?
3. Does Information disclosure significantly impact consumer behaviour?
4. Is compensation sufficient remedy to deceptive frauds?

### **Research Objectives**

1. To critically examine the enforcement and coverage of ASCI's guidelines for luxury and fashion influencers.
2. To analyse and evaluate the challenges in regulation of disclosure of paid partnership.
3. To assess the perception of luxury and fashion influencers on disclosure of paid partnerships.
4. To compare the enforcement and regulation across various countries.
5. To recommend policies for strengthening enforceability.

## **Research Design**

This research adopts a doctrinal exploratory approach as it used both doctrinal sources and empirical methods such as interviews. Secondary sources include academic journals, policy papers, scholarly research and comparative analysis. It also includes interviews with an Indian fashion and luxury influencer to capture lived experiences and analyse the awareness of ASCI's guidelines.

## **Analysis of Objectives**

Case Study :JacquelineFernandes and Colour Bar Cosmetics ASCI violation case:

Background: Jacqueline Fernandez was announced as Colour Bar Cosmetics global ambassador in 2019. Later, in 2019 the brand launched a collaborative makeup collection called Colour Bar x Jacqueline<sup>26</sup>.

Violation of guidelines: ASCI revealed that during a screening of 5000 posts during the period of July- December 2021 on social media and 719 were *prima facie* violations of the said guidelines, Jacqueline Fernandez's content for Colourbar Cosmetics was also identified as a violation.<sup>27</sup>

Nature of noncompliance: Fernandez did not use obligatory disclosure tags like "#ad," "#sponsored," "#collaboration," or "#partnership" when advertising Colorbar products on her Instagram page, which boasts 57.7 million fans. The ads came across as organic posts and not paid ones, deceptive to consumers about the commercial partnership between the actress and the cosmetic company.

The case included various forms of guideline violations recognized by ASCI:<sup>28</sup>

1. Absence of Disclosures: Total lack of mandatory disclosure labels on promotional posts
2. Inconsistency of Disclosure: Certain Instagram stories included disclosures on the initial story but others that followed did not have proper labeling

<sup>26</sup>Colorbar Cosmetics, *Jacqueline by Colorbar / New Makeup Launch*, YOUTUBE (undated), <https://www.youtube.com/watch?v=23uoJicSKI4>

<sup>27</sup>ET BrandEquity, Ranveer, *Jacqueline in List of ASCI Non-Compliant Social Media Influencers*, ET BRANDEQUITY (undated), <https://brandequity.economictimes.indiatimes.com/news/advertising/ranveer-jacqueline-in-list-of-asci-non-compliant-social-media-influencers/89170152>

<sup>28</sup>CNBC-TV18, Ranveer Singh, Jannat Zubair Rahmani Among Defaulters of Influencer Guidelines, CNBC-TV18 STORYBOARD18 (Jan. 27, 2022), <https://www.cnbc18.com/storyboard18/storyboard18-ranveer-singh-jannat-zubair-rahmani-among-defaulters-of-influencer-guidelines-12267712.htm>

3. Incorrect Disclosure Placement: When disclosures were found, they were not prominently placed enough viewers needed to scroll down or click "read more" to view them
4. Fernandez is said to have "re-posted Colorbar's video of Colorbar x Jacqueline makeup" in a manner that lacked disclosure tags, giving it the appearance of mere content sharing rather than sponsored brand promotion.

#### *ASCI's Enforcement Process*

The complaints handling unit of ASCI had contacted Jacqueline Fernandez and Colorbar Cosmetics and requested that they adhere to the disclosure regulations. However, the brand and influencer did not adhere to disclosure labels at the time of its initial post and on the later periodic reviews.

Despite multiple warnings by ASCI, Fernandez remained non-compliant, and that is why, she became one of the people listed in official non-compliant list in January 2022. The case was one of the cases that were constantly being taken to the government due to non-compliance.

**Regulatory Context and Implication:** This violation occurred at an extremely critical moment as the ASCI guidelines regarding influencers, which were in operation since June 14, 2021, were being tested on the market. The case highlighted issues of enforcement in the rapidly growing world of influencer marketing, valued at USD 150 million a year in India at the time. Since Fernandez already had 57.7 million followers, there is a potential that the promotional messages that had not been revealed to anyone could have deceived millions of customers who viewed her share of Colourbar as a genuine word-of-mouth recommendation rather than sponsored material on their personal feed.

The Fernandez case was in one of the critical moments when the ASCI guidelines were inflicted, which could have established a crucial precedent of influencer marketing irregularities being relatively risk-free. This destroys consumer confidence within the fashion and luxury sector, where referrals have a significant influence in buying the item.

Considering the size of the influencer marketing industry in India USD 150 million annually, a high degree of non-adherence can deceive millions of shoppers who resort to social media to find and read about products. The Fernandez case was in a critical timing as the ASCI rules were recently implemented, potentially establishing the precedent of irregularities in influencer marketing being not that risky. This undermines the consumer confidence of the fashion and luxury industry, in which recommendations have a significant influence in the decision to buy.

The measures undertaken by ASCI: As a self-regulatory institution, ASCI lacks the legal authority to provide financial fines or other legal penalties. The body was only capable of issuing warnings and publishing names of violators at the public non-compliance lists. Warnings as well as publishing name of violators as well as referring to the government authorities are still the most important enforcement tools of the body. Tightening of the laws on influencer marketing came next in January 2023 with the Consumer Affairs Ministry releasing new guidelines that allowed a maximum fine of 50 lakh rupees in case of repeat offences and a maximum 6-year suspension of endorsement, which only came after the Fernandez-Colourbar case.

## **Recommendations**

Being a self-regulatory body, ASCI does not have statutory powers to impose financial penalties or legal sanctions. The body could only give warnings and list violators in public non-compliance lists. The body's chief enforcement instruments are still warnings, public listing of violators, and referral to the government authorities. The next step of tightening influencer marketing laws arrived in January 2023 when the Consumer Affairs Ministry issued new guidelines enabling fines of up to Rs 50 lakh for repeated offenses and possible six-year endorsement bans, but these only arrived after the Fernandez-Colourbar case.

## **Recent Developments**

The Consumer Affairs Ministry's January 2023 guidelines for endorsing became a major fortification of regulations around influencer marketing, bringing in statutory punishments and enforcement schemes addressing gaps laid bare by allegations such as that facing Jacqueline Fernandez-Colourbar. The rules created a tiered penalty system under the Consumer Protection

Act 2019. The first-time offenders attract penalties of up to Rs 10 lakh, while repeat offenders attract penalties of up to Rs 50 lakh. The Central Consumer Protection Authority (CCPA) enforces these penalties, which have the force of law, unlike in the case of ASCI.<sup>29</sup>

The regulations introduce incremental endorsement bans depending on history of contraventions. First-time offenders can be barred from making endorsements for a maximum of one year, while repeat contraventions can push the ban to three years. Other sources state that repeat offenders can be banned from making endorsements for as long as six years. In addition to civil sanctions, the guidelines offer criminal prosecution in extreme cases.<sup>30</sup> Repeat offenders can be imprisoned from six months to two years, especially for knowingly promoting harmful or deceptive products.

The Endorsement guidelines must be applicable to all social media influencers, celebrities, and virtual influencers (computer-generated characters) who have access to a market and can shape purchasing decisions. This comprehensive definition guarantees that no type of digital endorser is left behind. The rules require disclosure of any "material connection" with sponsors, such as financial payment, free products, rebates, gifts, contest entries, vacations, hotel accommodations, media exchanges, coverage, awards, or family/personal/employment relationships.<sup>31</sup>

Disclosures should be displayed prominently and obviously within endorsement messages so that they are "extremely hard to miss". They shouldn't be blended with hashtags or links and should be in simple, obvious language with words such as "advertisement," "sponsored," "collaboration," or "paid promotion." The rules also outline specific disclosure requirements for various content types. For images, disclosures have to be superimposed on the visual content.

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<sup>29</sup>Sanampreet Singh & Suraj Dhawan, *Legal Implications of Social Media Influencers: Endorsements and Disclosures in India*, KHAITAN LEGAL (undated), <https://khaitanlegal.com/legal-implications-of-social-media-influencers-endorsements-and-disclosures-in-india/>

<sup>30</sup>Deccan Herald, *Centre Issues Guidelines for Social Media Influencers; Hefty Fine for Violators*, DECCAN HERALD (Jan. 20, 2023), <https://www.deccanherald.com/india/centre-issues-guidelines-for-social-media-influencers-hefty-fine-for-violators-1182989.html>

<sup>31</sup>Times Now, *Social Media Influencers May Face 6 Months of Ban, Rs 50 Lakh Fine in New Endorsement Guidelines by Govt*, TIMES NOW (Jan. 20, 2023), <https://www.timesnownews.com/business-economy/industry/influencers-may-face-6-months-of-ban-rs-50-lakh-fine-in-new-govt-endorsement-guidelines-article-97188273>

For video, disclosures have to be in audio and visual form, not merely description. Live streams need to have ongoing and clear disclosure throughout the entire live stream.

Influencers need to have experienced or used products that they endorse and need to do due diligence to ensure claims made in endorsement are valid. This serves to tackle issues of influencers endorsing products with no real experience. The regulations mandate that influencers keep a record of endorsements for six years, ensuring accountability and facilitating regulatory control. The guidelines resonate with previous ASCI influencer guidelines released in 2021 but offer statutory support that lacked previously.<sup>32</sup> ASCI embraced the guidelines, citing they address the issue that influencer transgressions consist of nearly 30% of commercials evaluated by the association.

**Enforcement Authority:** In contrast to the self-regulatory methods of ASCI, the CCPA derives statutory powers in the Consumer Protection Act 2019 to investigate offenses, fine, and take suo moto action against offenders. This lends the legal mandate and enforcement bite missing from previous regulatory mechanisms. The 2023 guidelines are a structural shift from voluntary compliance to mandatory legislation, directly confronting the enforcement loopholes that enabled cases like Jacqueline Fernandez-Colourbar to persist in spite of repeated notifications. By offering monetary fines, endorsement bans, and criminal prosecution as alternatives, the guidelines create an all-encompassing regulatory framework for India's digital ad economy.

To further affirm the findings of the case study, a series of interviews was also conducted:

### **Interview Results and Observations**

The qualitative evidence obtained through the interview of three influencers of different demographics, namely, Preeti (45, approximately 250K followers), Viraaj (17-18, approximately 6K followers) and Arissa (19, approximately 5K followers) gives a complex picture in the context of Indian influencer marketing ecosystem. Although there is no doubt that the most high level of familiarity with the Advertising Standards Council of India (ASCI) guidelines is an undeniable fact, a deeper analysis of the testimonies casts a wide knowledge of the absence of

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<sup>32</sup>ASCI, *More than Two-thirds of India's Top Digital Stars In Violation of Influencer Disclosure Guidelines: ASCI Report*, Press Release (Feb. 6, 2025), <https://www.ascionline.in/wp-content/uploads/2025/02/Press-Release-Influencer-Disclosure-Guidelines-ASCI-Report.pdf>

multi-faceted enforceability that essentially underpins the achievement of true transparency. The given problems are not deeply rooted in the intentional breach, but are the results of a complex of non-homogeneous awareness, business imperative, and structural instability of the digital content creation sector.

*The Spectrum of Awareness:*

The interview respondents hold different positions on a spectrum of regulatory knowledge, which shows that there is a significant gap of initial enforceability. Preeti and Arissa show one of the patterns of Proactive Compliance where there is a clear and learnt understanding of the rules. The case of Arissa is instructive especially because her all-encompassing familiarity was only cemented after one of her earlier posts was flagged which means that the enforcement machinery is a powerful pedagogical instrument even though it is in a reactive mode. In comparison, Viraaj is an important category of Reactive and Influenced-by-Peers Adoption. His knowledge is ground level following the suggestions of what brands propose or what I observe others to do. This informal, self-governing method is a major weakness since it relies on a brand having a potentially self-serving understanding of the regulations as opposed to an objective, rooted understanding of the regulatory environment. This gap highlights that the strength of the guidelines provided by ASCI<sup>33</sup> will be determined by the weakest point in the chain of awareness, and unless an obligatory and systematic education of all creators is conducted, inefficiencies are bound to emerge.

*The Transparency-Trust Paradigm:*

One of the theoretical issues that disclosures could end the spell of networked intimacy is conclusively denied by the experience of the whole group of influencers. Their testimonies are unanimous as far as the principle of transparent disclosure enhances audience trust, as opposed to weakening it. Her transition to using the openly shown hashtag, according to Arissa, was well welcomed by her followers. The interviewees however admitted that this reluctance is a perception phenomenon to their peers. The enforceability gap in this case is behavioural and perceptual: the fear of being perceived to be too commercial might result in unconscious

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<sup>33</sup>ASCI, *ASCI Social / Influencer Advertising GuidelinesIndia*, <https://www.ascionline.in/social/> (last visited Oct. 7, 2025).

obfuscation, or even tagging in a minimal way; the letter of the rule (to disclose) may be met, but not the spirit (to disclose in a salient and non-obscure manner).

*The Contractual Chasm: Formal and the Informal Economy:*

The brand contract experiences reveal a sharp contrast indicating the most extreme structure enforceability gap. Preeti and Arissa are in the Structured Deals world where it is usually the contract which is supposed to detail the disclosure, and the influencers have the trust to decline to comply with the requests. On the other hand, the testimony of Viraaj throws more light into how the Informal Economy works. His discovery of the fact that, being a minor, most of the transactions are often made over DMs or emails, there is not something formal is a critical revelation. Such informality brings about a great power imbalance and young creators are deprived of any legal action, being mixed expectations and very susceptible to brand pressure to hide disclosures. The main dilemma in this situation is that the enforceability of ASCI guidelines is fatally weakened in cases where there is no formal contract against which compliance may be anchored.

*The Ambiguity of Implementation:*

Although the essence of the requirement to disclose is well known, one of the most common sources of operational disorientations is the how. The influencers found out consistent ambiguities in three aspects: the exact positioning of labels (i. e. in the first line of the caption versus the last line), the use of guidelines within different forms of platforms (i. e. Stories versus permanent feed posts), and the suitability of certain words (i. e. whether a hashtag like #collab is as effective as a hashtag such as #ad). It is this ambiguity, which Preeti pointed out in her varied treatment of feed posts and Stories that have led to inconsistent application even by good-faith participants. This operational enforceability gap is directly tackled by the idea of a single tool that would automatically verify compliance that Arissa proposes, which is why more specific, technologically offered guidance is needed.

*The Subjective Threshold of Non-Monetary Compensation:*

The interviewees subconsciously recognized that products or services with high value that are gifted should be disclosed. The definition of significant value is however, completely subjective,

as it is implemented in a case-by-case basis. Although the disclosure of even PR being practiced by Preeti is admirable, it is a personal code of ethics, which is not a universal or a rule to be followed. This has been caused by a gap in enforceability due to the absence of a quantitative, clear cut, and even qualitative gifted products threshold and where compliance depends on the subjective decision of influencer and through which another avenue of inconsistent interpretation of the guidelines is created.

**Analysis** The influencer marketing paradigm is a groundbreaking phenomenon in the sphere of consumer interaction on the planet with a huge set of resources due to the combination of intimacy, authenticity, and selectivity in targeting the target audience. This power is however a two-sided sword in that it has created a regulatory and ethical morass that the current self-regulatory frameworks are finding difficult to cope with. The main issue, which the primary research will shedding light on, is that there is an intrinsic conflict between the personal and spontaneous nature of social media and the business requirements that the latter is premised on.

The results culminate into three pillars that are indispensable in ensuring the integrity and sustainability of this ecosystem Transparency, Accountability, and Authenticity. First, the theme of universal support of clear disclosure becomes the liveliest one. The study shows consistently that unambiguous labelling is not a hindrance but a facilitator of trust. The positive experiences of the interviewed influencers, the UK, Sweden, and Pakistan, as well as the findings of the empirical studies, support the fact that open disclosure improves and does not weaken credibility and brand value. Such candor is the required cure to the so mysterious and inconsistent disclosure policies and the nature of the misleading character of the so-called advertorials that makes it difficult to distinguish between paid and opinion.<sup>34</sup> German system of clear identification including compulsory labelling of partnerships as paid is a model that other jurisdictions should consider in order to protect consumers strongly.

Second, there is the question of accountability which demonstrates a major gap in regulations. The inadequacy of self-regulation is highlighted in the literature and the data of the interviews.

<sup>34</sup>Pratima Singh Parihar, *Regulating Influencer Marketing and Misleading Advertisements in India: Legal Challenges and Consumer Protection*, INT'L J. L. & LEGAL REASONING (undated), <https://www.ijllr.com/post/regulating-influencer-marketing-and-misleading-advertisements-in-india-legal-challenges-and-consume>

Although such bodies as ASCI have shown sufficient nimbleness and urgency to self-regulate, comparative studies of the Italian system and the UK-based Advertising Standards Authority (ASA) have shown that decent regulation entails the assistance of the state-supported regulator that will have significant penalties to enforce, especially concerning the sheer volume and size of content. The need to track micro-influencers and disappearing posts makes implementation harder.<sup>35</sup> Moreover, due to the rise of virtual influencers and the spread of e-commerce fraud, the argument that the entire responsibility should be placed on marketing agencies and platforms is necessary. Sanctions were delayed, which has been observed in the analysis of ASA to deter and it creates a culture of non-compliance that is condoned.

Lastly, true connection is the currency of the influencer marketing game, which is a potent and dangerously dangerous commodity. This type of marketing is driven by the so-called networked intimacy, and the subscribers make contact with each other with the help of the story and a sense of spontaneity. However, with the lack of honest declaration the intimacy is essentially being manipulated and breeding consumer cynicism.<sup>36</sup> The study confirms that viewers are poor perceptionally of so-promotional influencers and a lack of perceived authenticity directly harms the trustworthiness and the brand to which the influencer is attached. An influencer aspirational value is a very persuasive force, which should be supported by real knowledge and sincerity to provide sustainability and practice ethics in the long-term.

### **Research Tool**

The research involves a qualitative, empirical approach to the research problem of on-the-ground implementation and enforcement of the Advertising Standards Council of India (ASCI) guidelines in the luxury and fashion influencer marketing industry in India. To get beyond the theoretical treatment of the regulatory structure, the main task would be to draw into scope the realities of operations, the perceived difficulties, and the practical problems of the main

<sup>35</sup>Economic Times, *Self-Regulatory Body to Fix Guardrails for Growing Influencer Marketing Business*, ECON. TIMES (undated),

<https://economictimes.indiatimes.com/tech/technology/self-regulatory-body-to-fix-guardrails-for-growing-influencer-marketing-business/articleshow/120261492.cms>

<sup>36</sup>Cyril Amarchand Mangaldas, *Understanding Regulatory Safeguards for Influencer Marketing of Nutraceuticals in India*, CYRIL AMARCHAND MANGALDAS BLOG (May 2025),

<https://corporate.cyrilamarchandblogs.com/2025/05/understanding-regulatory-safeguards-for-influencer-marketing-of-nutraceuticals-in-india/>

participants in this ecosystem: the influencers themselves. The methodology was therefore set to produce deep first-hand information that will give a detailed information about the disconnect between the regulatory policy and the industry practice.

#### *Data Collection Instrument and Research Design.*

A semi-structured interview protocol was the basis of the data collection. The instrument has been chosen because of its ability to guarantee a consistent line of questioning the participants as well as the ability to pursue possible emergent themes and customize the follow-up questions depending on the responses of the respondents. The interview outline was structured into six different sections:

#### *Part A: Introduction and Informed Consent.*

The introduction and consent script were standardized and used at the beginning of the session: “Thanks, for participating in this research. The objective of this interview is to get insights into what you think, what realities you face in your workplace and what are the realistic issues whenever it comes to applying ASCI rules in influencer marketing. The involvement of you is strictly voluntary; you can omit any question or drop out of the research without reprimand. To capture the right data, this interview will be recorded. All the information will be treated confidentially, and your anonymity will be maintained in the final research report. Do you agree to work under such conditions?”

#### *Part B: Interview Schedule*

##### Demographic and Work Experiences.

- Please describe your main platform/s and the number of followers (around) (e.g., Instagram: 500K-1M).

##### Consciousness and Perceptions of ASCI Guidelines.

- What are your familiarity levels with the specific ASCI disclosure requirements on influencer marketing, including the use of the terms: #ad, #collab or paid promotion?
- Which of these disclosure tools do you think will be the most effective in terms of transparency awareness by your audience?

### Operational Practices and Brand Relationships.

- It is a very common situation that your material is a mix of personal and promotional content. What is the distinction between a paid partnership and an organic, personal recommendation?
- To what extent are disclosure requirements (e.g., placement, specific hashtags, etc.) outlined in your contracts with brands? Have you ever been met with reluctance on the part of brands in terms of the salience of such disclosures?

### Impact on Audience Attention and Perceived Naturalness.

- According to some studies, truthful disclosure may also promote the brand value of an influencer. How have your experiences been? Have you ever noticed that audience trust or more engagement suffered when an explicit label has been used such as #ad?
- Networked intimacy is a notion which implies a perceived individual relationship with followers. Do you think this makes influencers or brands reluctant to use commercial disclosures because they are afraid to break the spell?

### Real-life Compliance Obstacles and Uncertainties.

- Other than financial compensation, gifts or services are also compensation. Which value does it take, in your opinion, to disclose such non-monetary compensation?
- One of the problems that have been noted is the inconsistency in disclosure policies. Which do you believe are the most significant areas of indecision or dispute over the interpretation of ASCI rules by people with influence in your circle?
- What do you consider are the main causes of non-compliant disclosures by certain influencers? What is the pressure of brands, deliberate obfuscation, lack of awareness, and so on?

### Open-Ended Elicitation.

- Does paid partnership have any other difficulties or are there any critical points of the ASCI guidelines we did not cover that you feel are essential in this study?

Note: Semi-structured format was chosen because it allowed the interviewer to ask spontaneous probing questions (e.g. Could you elaborate on that?). or "Can you give a specific example?": to receive more profound and detailed information regarding the answers of the participants.

## **Conclusion**

The analysis shows that the regulatory framework that regulates the practice of influencer marketing in India, especially in the fashion and luxury industries, is marked by a strong fact to enforcement gap. This gap is seen in the form of a severe mismatch between the official exposition of the rules and regulations and their actual implementation and effectiveness<sup>37</sup>. The combination of the knowledge gained in the literature review, the exemplary example of Jacqueline Fernandez, and empirically obtained data on interviews leads to the identification of a complex issue. The issue is enhanced by the structural, operational and perceptual obstacles which systematically weaken the regulatory nature of the Advertising Standards Council of India (ASCI).

### *The Structural Deficit: The Constraints of Self-Regulation.*

The root of the enforceability gap lies in the nature of ASCI as a self-regulatory organization. The case of Jacqueline Fernandez, and other recorded incidents, is a vivid example of how weak enforcement measures in ASCI have been since the early days, relying largely on warnings and social reprimand, that do not stand as a strong deterrent of high-profiled influencers and corporate brands. This is in line with the scholarly literature that has noted that in other comparative jurisdictions like the United Kingdom and Italy, the self-regulatory models have been found to be of limited effectiveness in the absence of a statutory framework. The so-called delay in sanctions as established by the academic discourse gives rise to a culture of impunity, according to which non-conformity will be not subject to any financial or legal penalty in the short term<sup>38</sup>. This organizational weakness directly contributed to the chronic rates of non-compliance that were reflected in the 2025 report released by ASCI that reported a 69 percent violation rate in leading influencers. A legislative intervention into this very gap is the further

<sup>37</sup>Swarup Mukherjee, *Social Media and E-Commerce: A Study of the Legal Issues in Influencer Marketing and Online Advertising with Special Reference to India*, 7 INT'L J. MULTIDISCIPLINARY RES. 1, 3 (2025).

<sup>38</sup>Rajat Sharma & Vikash Gautam, *New Age Digital Media Consumption: An Exploratory Study Based in India* (Indian Institute of Management Ahmedabad, Working Paper No. 2023-07-01, July 2023).

promulgation of the guidelines of the Consumer Affairs Ministry of 2023, which provides a more detailed system of penalties and the right to ban an endorsement. Nevertheless, this shift to a co-regulatory regime is so far but a nascent one, and the infiltration of awareness and regular application of these increased legal sanctions throughout the expansive and disjointed ecosystem of nano and micro-influencers is an uphill task.

*The Operational Uncertainty and Informality.*

In addition to the lack of a strong legal power, this study reveals a general sense of operational ambiguity that hampers consistency in enforcement. Interpretation of the qualitative data in the form of interview is essential enlightenment in this field. Although influencers like Preeti and Arissa show a positive attitude to following instructions, the case of Viraaj shows that there is still a major weakness: the very informal economy of influencer marketing, especially among younger and less-established influencers.

**Contractual Gray Areas:** The negotiations of Viraaj, which are formalized by direct messages, but formalized without the contract, is a major blind spot of its enforcement. When this happens, without the presence of a binding written form, and unequal power relationships in favor of brands, regulatory requirements are no longer enforceable contracts, but merely suggestions.

**Inconsistent Interpretation:** The interviews also indicated a high degree of uncertainty on how exactly disclosure requirements are to be applied (e.g., optimal placement, wording, and platform-based variants e.g., ephemeral posts (in the form of Stories) and permanent grid posts). It is this discrepancy that is a common thread across the literature that creates both good-faith errors and circumventions with intent and thus the very boundaries of compliance become unclear even to willing respondents. The idea of having one unified tool that Arissa advocates proves that more specific, automated and platform-integrated solutions are needed in the industry.

*The Perceptual Paradox: Resolve Trust and Networked Intimacy.*

The interview data indicated that they found a major finding that contradicted a major assumption in the industry. The theoretical fear of commercial disclosure ruining the networked intimacy and perceived authenticity of the relationships between the influencer and audience were refuted by the reality of the lived experience of the influencers. Preeti, Viraaj and Arissa all concurred that, through clear disclosure, in actual sense, strengthened their credibility and gave

greater trust to the audience. This observation fits with the global literature on the same setting like Sweden and Pakistan which has confirmed that authentic disclosure builds long-term brand loyalty on the part of the influencer. In spite of this, there is a perceptual disparity. The interviewees admitted that the fear of loss of authenticity still drives the non-compliance among their colleagues. This is a paradox: the same tool that creates sustainable transparency is shunned on the false assumption that this will destroy it.<sup>39</sup> It means that a significant part of the enforcement issue is not only juridical but also pedagogical, and a paradigm shift is necessary to bring the perception to the empirical reality.

#### *The Scale and Content Ephemeral challenge.*

The scholarly literature rightly recognizes the sheer scale of user-generated content and the growth of the so-called ephemeral media forms as their main hindrances to proper regulation<sup>40</sup>. The case study of Fernandez, in which several posts and temporary Stories were documented to violate, can be considered an ideal example. Monitoring the high and sustained output of millions of influencers, micro and nano creators, in particular, is a Herculean task to any regulatory body due to the logistics involved. The ephemerality of the work of 'Stories' makes the archival procedure of evidence-based complaints more difficult, establishing a very easy loophole to be exploited, as the sufficiency of disclosures was not uniform with her disappearing stories in the case with Fernandez.

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<sup>39</sup>Philipp K. Masur et al., *Behavioral Contagion on Social Media: Effects of Social Norms, Design Interventions, and Critical Media Literacy on Self-Disclosure*, 16 PLOS ONE 1, 3 (2021).

<sup>40</sup>AWM Legal, *The Rise of Influencer Marketing in India: Navigating the Evolving Legal Landscape*, AWM LEGAL (undated), <https://awmlegal.in/the-rise-of-influencer-marketing-in-india-navigating-the-evolving-legal-landscape/>

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