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**Influencer Agreements as Modern Commercial Contracts: A Legal Vacuum in India?**

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## AUTHOR(S) DETAILS

#	Full Name	Affiliation & Country	Email Address	ORCID iD	Role
1	Rahul Maity	Department of Legal Science, Techno India University, Kolkata, India	<a href="mailto:rahulmaityprince@gmail.com">rahulmaityprince@gmail.com</a>	0000-0000-0000-0000	Corresponding

## CORRESPONDING AUTHOR

Name: Rahul Maity | Postal Address: Department of Legal Science, Techno India University, Full Address - EM-4, EM-4/1, EM Block, Sector V, Bidhannagar, Kolkata, Postcode - 700091, Country - India

Tel: +91-7439614970 | Email: [rahulmaityprince@gmail.com](mailto:rahulmaityprince@gmail.com)

# Influencer Agreements as Modern Commercial Contracts: A Legal Vacuum in India?

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## ABSTRACT

*This paper seeks to explore the regulatory landscape for influencer marketing contracts in India, covering the Indian Contract Act, 1872, the Consumer Protection Act, 2019, ASCI Guidelines, and IP laws in the context of the Orange Economy's rise.*

## KEYWORDS

Influencer • Agreement • Contract • Corporate Law • Business Law • Consumer Protection Act

## Introduction

The digital landscape in India has grown at a rapid pace in the last ten years, thanks to affordable smartphones and the increasing use of the internet. This has led to the emergence of content creators, also known as social media influencers, who have a huge following on platforms such as Instagram, YouTube, and LinkedIn. Worldwide, the number of social media users is expected to increase from 2.86 billion in 2017 to 4.41 billion in 2025. At the same time, increasing concerns about the environment, ranging from air pollution to the disposal of waste, have impacted the way people discuss issues, and Indian consumers have been forced to change their consumption patterns.

In the Indian market, influencer marketing has developed from being sporadic endorsements for brands to being full-fledged marketing campaigns, thanks in part to the cultural affinity for word-of-mouth endorsements. Influencers are considered accessible role models, particularly in categories such as beauty, fashion, and now sustainability.

For several decades, art, narrative, and digital production remained on the periphery of economic strategies—loved as culture but not as an economic factor. This is no longer the case. The "Orange Economy" refers to a set of industries that turn ideas into cultural products and services protected by intellectual property rights. This includes media, film, music, publishing, animation, gaming, advertising, design, fashion, digital content, and more, and more recently, independent producers. In the Union Budget of 2026-27, Finance Minister Nirmala Sitharaman announced a new scheme to promote the country's creative industries, now known as the "Orange Economy."

No, there is no total regulatory gap for influencers and content creators in India, although there are still some gaps in terms of overall licensing, enforcement, and industry-specific regulations for new creative sectors. However, there are already sufficient regulations from self-regulatory organizations and laws in place, especially for advertising and endorsement.

## Important Regulations

The influencer industry in India is regulated by a combination of statutory and self-regulatory regulations.

The Advertising Standards Council of India (ASCI) enforces rules that mandate the use of prominent notices for paid endorsements (such as "#Ad" or "#Sponsored"), do not allow misleading information, and make influencers jointly responsible with brands.

The Consumer Protection Act, 2019 gives the Central Consumer Protection Authority (CCPA) the power to investigate misleading advertisements, impose fines of up to ₹50 lakhs (or ₹10 lakhs for endorsers), ban advertisements, and seek joint liability.

Other regulations include data protection under the Digital Personal Data Protection Act and industry-specific bans, such as SEBI regulations against influencers.

## **Concept of Influencer Agreements**

### **Meaning and nature of influencer contracts**

**Influencer Agreement:** An influencer agreement is basically a contract between an influencer and a brand that outlines the terms of their collaboration. The objective is simple: influencers use their massive social media followings on platforms such as Instagram, YouTube, or TikTok to promote products through sponsored content.

Such collaborations may include product promotion, brand awareness, or being a brand ambassador for long-term engagement on various platforms and events. Regardless of the nature of the collaboration, it is important to outline all the terms clearly in the contract.

To ensure that the contract is legally valid, it is important to include major domestic laws on obligations, advertising, and consumer protection.

### **Parties Involved (Brand, Influencer, Agency, Platform)**

The main parties involved in an Indian influencer contract are the Brand, who employs the influencer, provides products, payment, and guidelines for content creation; the Influencer, who is the content creator of the sponsored content, utilizing their audience for promotion; the Agency, who may be an intermediary between the influencer and the brand, facilitating negotiations, logistics, and commission for the influencer, especially in tripartite agreements between the influencer, the agency, and the brand; and, lastly, the Platform, like Instagram or YouTube, who are mentioned for the purpose of content hosting, adherence to their terms of service, and resolution of disputes, but are unlikely to be direct signatories. These roles are in consonance with the Indian Contract Act, 1872, which states that all the parties involved in the contract should be clearly identified by name and address, so as to avoid any disputes, along with other elements like scope of work, IP, exclusivity, and ASCI disclosure requirements.

### **Key contractual Elements:**

#### **Consideration (Monetary / Barter)**

Consideration in the context of Indian influencer contracts is the exchange of value between the two parties, which is the basis of the contract, as defined by the Indian Contract Act, 1872, in Section 2(d). Consideration can be in the form of money, where the influencer is paid a lump sum, a certain amount for every conversion, etc., or can be in the form of bartering, where the influencer is provided free goods, services, etc., such as hotel stays, gadgets, etc., in lieu of cash, along with a small amount to make the contract legally valid, and the bartering amount is equivalent to the cash amount for the influencer, as per the ASCI guidelines, where the influencer must disclose all forms of consideration to maintain transparency in the promotion.

## Scope of Work

The scope of work in an Indian influencer contract specifies what exactly the influencer has to do. It forms the main part of the contract as per the Indian Contract Act of 1872. The scope of work usually specifies the number of content types created, for example, the number of Instagram Reels created, the number of YouTube videos created, the number of Stories created, and the timelines for creating and posting the content. It could also specify the messaging and hashtags that have to be included in the content. This clause in the contract has to be in line with the ASCI guidelines for transparent promotions. It could also specify other activities that the influencer has to do, for example, events and long-term ambassador roles.

## Deliverables & Timelines

Deliverables and timelines in Indian influencer contracts describe the precise content that an influencer has to create and submit and when they have to do it. This directly follows the scope of work and aligns well with the Indian Contract Act of 1872. The content of the deliverables usually includes the nature of content created, its quality, and the manner in which it has to be submitted. The timelines of creating content usually involve different phases of content creation. These phases include approval of a draft within a certain number of days, finalizing the content and posting it on a certain date, and a grace period for changes in content. This involves deductions for delays in content creation.

## Exclusivity Clauses

The Exclusivity Clauses in Indian influencer marketing contracts bind the influencer from promoting other brands, products, or services, which are in direct competition to the brand, for the agreed period of the contract, safeguarding the investment of the brand under the Indian Contract Act of 1872. Exclusivity clauses are clauses that are agreed upon for the duration of the contract, scope of the contract, platforms, and geography, which may be exclusive, semi-exclusive, or non-exclusive. It is important to note that for these clauses to be valid, they should be reasonable, avoiding overly restrictive clauses that may be considered restraints of trade under Section 27.

## Morality Clauses

The morality clause in influencer contracts in India allows the brand to exit the partnership in case the influencer is involved in immoral, offensive, or detrimental activities to the brand's reputation, such as scandals, legal violations, and offensive content, such as the rise in the inclusion of such clauses in influencer contracts in the case of controversies involving inclusions such as Samay Raina, among others, post-2025. The clause also allows the influencer to be held to the standard of public decency and propriety, thereby allowing the brand to exit the partnership at any time without incurring any further obligations in case the influencer's actions lead to ridicule and decreased association value, although such clauses are increasingly being included to offer mutual protection to the influencer in case of misconduct by the brand. Under the Indian Contract Act of 1872, the terms of the contract must be defined, reasonable, and certain, avoiding vagueness in the terms, such that disputes can be avoided in the enforcement of the clause.

## Termination Provisions

Indian termination clauses for influencers' contracts provide for termination of contracts in certain situations, thus protecting both parties under the Indian Contract Act of 1872, which includes clauses for termination on giving a certain period of notice (e.g., 15-30 days' written notice), breach of

delivery or exclusivity, as well as clauses for termination for major breaches such as non-compliance with ASCI or morality clauses. These clauses also include clauses for termination that deal with issues such as what happens after termination, including content removal, payment settlements (pro-rated fees less damages), return of products, as well as clauses for survival of contracts for confidentiality or IP rights, including cure clauses for termination (e.g., 7-day cure for minor issues).

## **Influencer Agreements under Indian Contract Law**

### **Applicability of Indian Contract Act, 1872**

The Indian Contract Act of 1872 completely regulates influencer contracts in India, which are legally binding contracts under Section 2(h) of the Contract Act. It includes basic requirements like free consent (Sections 13-19), lawful consideration (Section 2(d) of the Contract Act), competent parties (Section 11), and lawful object (Section 23) for its enforceability. Influencer contracts fall under legally valid contracts because they involve offer (brand brief), acceptance (commitment by influencers), and exchange (payment or bartering for services), which are legally valid. It is applicable when there is any non-performance or violation of contract by influencers, which courts will enforce under Section 10 or by awarding damages under Sections 73-75 of the Contract Act. It is applicable throughout India, including digital influencers, without the need for any written contract.

### **Offer, Acceptance, Lawful Consideration**

The basic pillars of influencer agreements are offer, acceptance, and lawful consideration as per the Indian Contract Act of 1872 under sections 2(a), 2(b), and 2(d). The offer occurs when the brand extends an offer of its content requirements in a brief agreement or MOA that is accepted in writing by the influencer. Lawful consideration occurs when the influencer agrees to promote their services in return for the brand's monetary fees, barter products, and commissions. This fulfills the requirements of lawful consideration as it has a lawful object as per section 23 of the Indian Contract Act of 1872.

### **Free consent (Coercion, Undue Influence, Misrepresentation)**

"Free consent" is vital for valid influencer agreements as outlined in Sections 13-19 of the Indian Contract Act, 1872, which demand an agreement "without coercion, undue influence, fraud, misrepresentation, or mistake." Coercion, as outlined in Section 15, makes influencer agreements void if brands use threats of "sign or lose future deals" for unfavorable clauses like low pay or excessive exclusivity. Undue influence, as outlined in Section 16, happens when brands take advantage of power imbalance, like pressuring emerging influencers for "big breaks," making clauses voidable unless proven voluntary. Misrepresentation, as outlined in Section 18, happens through false statements, like "inflated followers" or "guaranteed ROI," allowing for rescission if non-fraudulent but erroneous, ensuring mutual assent for these digital collaborations.

### **Validity and Enforceability**

The validity of the contract between the influencer and the brand is governed by the Indian Contract Act of 1872, which states in Sections 10-30 the need for competent parties (Section 11), free consent (Sections 13-19), a lawful consideration/object (Sections 23-25), and the certainty of terms (Section 29). The validity is also subject to the fact that the contract does not promote immorality (illegal endorsements) or is unreasonable in restraint of trade (indefinite non-competition clauses) (Section 27). The enforceability of the contract gives the courts the power to award damages for breaches such as the loss of ad revenue (Sections 73-75), injunctions on rival promotions, or specific performance of

unique deliverables, provided the contract is in writing/electronic with electronic signatures (IT Act of 2000). Even oral contracts are valid if proven, but written contracts minimize the possibility of evidentiary disputes. Violations of the ASCI also give the courts the power to impose penalties under the CPA.

### **Breach and Remedies (Damages, Specific Performance)**

Breach of contract and remedies for breach in Indian contracts for influencers are governed under Sections 73 to 75 of the Indian Contract Act of 1872 when either of the parties fails to perform their fundamental duties of not delivering posts, exclusivity, or promotions that breach ASCI norms.

Damages for breach of contract provide compensation to either party for losses suffered, wherein brands claim damages for loss of profit or ad spend incurred due to poor performance, while influencers claim their unpaid fees minus expenses of mitigation, which can be actual (direct losses), consequential (indirect losses that were foreseeable), or liquidated (pre-agreed amounts for convenience in calculation if actual estimate is difficult to calculate).

Specific performance of a contract is rarely granted but is provided for under Section 10 of the Indian Contract Act of 1872 for special talent that influencers possess, such as irreplaceable talent in a niche area, which is enforced through injunction orders issued by courts to create content or stop competing brands from doing so, as well as termination of contracts and return of products for swift action to be taken.

## **Regulatory Framework Governing Influencer Marketing in India**

### **Advertising & Consumer Protection**

#### **Consumer Protection Act, 2019**

The Consumer Protection Act, 2019, in the context of contracts for influencers in India, governs such contracts through regulations of advertisements as possible misleading advertisements under Section 2(28), holding influencers jointly liable with brands for failure to disclose promotions or for false claims through the Central Consumer Protection Authority (CCPA). Some of the key regulations include powers conferred upon CCPA to investigate offenses of non-disclosure or false claims, impose penalties up to ₹10 lakhs for a first offense or ₹50 lakhs for a second or subsequent offense, direct influencers to remove or alter content, or prohibit influencers for 1-3 years, as well as direct influencers to perform due diligence checks such as verification of products before promotion. This follows ASCI guidelines in contracts for influencers, which include clauses for Ad disclosures or true representations to avoid penalties for influencers or brands while protecting consumers from false digital marketing practices.

#### **Liability of Endorsers**

The liability of the endorser under the Consumer Protection Act of India, 2019 (Section 21 and 88), considers influencers as 'endorsers' and holds them jointly liable for any misleading advertisements, including failure to reveal sponsorships and false/unverified statements about products/services. The CCPA can impose a penalty of ₹10 lakhs for the first offense and up to ₹50 lakhs for subsequent offenses, along with other relief measures such as a cease order, content deletion, and a ban on endorsement for up to 3 years. This risk is managed through a contract in the form of an indemnity clause and a warranty of truthful content and ASCI-compliant Ad/Sponsored statements, as seen in

CCPA notices issued to influencers for unregulated advertisements of products such as crypto and health supplements.

## **Misleading Advertisements**

Misleading advertisements, as defined under Section 2(28) of India's Consumer Protection Act, 2019, are any advertisements that contain false depiction of a product/service, make false guarantees, are misleading regarding nature, quantity, or quality, conceal essential information, or are related to any form of unfair trade practices, which directly relates to influencers making false claims without revealing their sponsorships. In the case of influencers, misleading advertisements could include claims such as unverified efficacy claims, such as "miracle weight loss," or omissions such as "Ad," which could lead to investigations under the CCPA with fines up to ₹10 lakhs for first offense and ₹50 lakhs for repeated offenses, bans on content and influencers for 1-3 years, respectively. Contracts can help counter these issues through due diligence, warranty clauses, and disclosures that are aligned with ASCI guidelines to avoid any form of joint liabilities while maintaining consumer trust.

## **Advertising Standards Council of India (ASCI Guidelines for Influencer Advertising, 2021)**

It is now mandatory under the ASCI Guidelines for Influencer Advertising in Digital Media (2021) to ensure disclosures for all paid promotions made on social media platforms like Instagram and YouTube, from June 14, 2021, to differentiate them from other content and avoid deception of consumers. Influencers must use labels like Ad, Sponsored, Collaboration, or PaidPromotion that are visible for at least 2 seconds in videos, superimposed on images/Stories, and in English or regional languages, while brand owners ensure that they are compliant with other aspects of the ASCI Code, which includes conducting due diligence and having the authority to edit non-compliant content. Virtual influencers must be accompanied by disclosures that say "not a real person"; otherwise, it may lead to escalation under CCPA, which makes these guidelines contractually binding through warranty clauses.

## **IT & Digital Regulation**

### **Information Technology Act, 2000**

The Information Technology Act of 2000 regulates the digital part of influencer agreements in India through electronic records and signatures under Sections 4-5. This involves the validation of electronic contracts through Digital Signature Certificates or Aadhaar E-Sign through the IT Rules. The enforceability of electronic agreements, such as campaign briefs exchanged through emails and DMs, is established under Section 10A. The safe harbor of intermediary platforms for electronic agreements is provided under Section 79 of the IT Act. This indirectly puts pressure on influencers and brand marketers through the duty of takedown. The IT Rules of 2021 require grievance officers and content diligence for platforms. Influencers are required to avoid uploading defamatory and misleading content through the IT Act, particularly through Sections 66A (struck down but reflected in the IT Rules), 67 (obscene content), and intermediary guidelines. This requires a clause of indemnification for cyber law violations in the influencer agreement in accordance with the Contract Act and CPA.

### **Intermediary Liability**

Intermediary liability, as defined by the IT Act, 2000, in India, with its Section 79, provides a "safe harbor" for platforms such as Instagram and YouTube to not be held liable for third-party content,

such as influencer content, provided they act merely as a conduit, not sending the content, not specifying the receiver, and not altering the content, and also provided they exercise due diligence in the matter, as prescribed by the IT Rules 2021. The liability is triggered when they receive "actual knowledge" of the violation, such as that of the sale of deceptive advertisements, through court orders or government notifications, leading to the removal of such content within 36 hours, failure of which leads to legal action against the platform and the influencer/advertiser.

Here, the importance of the platform's clause, such as that requiring ASCI-compliant content, is evident, where the influencer is primarily responsible for the content, and the platform merely acts through its algorithms and grievance officers.

## **Role of Digital Platforms**

The Role of Digital Platforms in Indian Influencer Marketing involves hosting content under the safe harbor provisions of Section 79 of the IT Act of 2000, along with ensuring compliance through their terms of service provisions of requiring ASCI disclosure of #Ad and #Sponsored content and removing content in violation upon actual knowledge of infringement through CCPA notices and court orders. Digital platforms such as Instagram and YouTube are intermediary websites and not parties to the contract between influencers and advertisers. They shape influencer marketing through their algorithms favoring compliant content and their monetization policies for influencers, along with their grievance mechanisms under the IT Rules of 2021 requiring immediate action within 36 hours of receiving a complaint in order to remain eligible for safe harbor provisions. The contract between influencers and advertisers refers to the TOS of the platform in order to ensure that influencers upload content in compliance and advertisers do not suffer a spillover of liability for non-compliance.

## **Intellectual Property Issues**

### **Copyright in Created Content**

Copyright in created content under the Indian Copyright Act of 1957 ("Copyright Act") at Section 13 provides for the vesting of initial ownership in favor of the influencer as the "author" of original sponsored posts, Reels, videos, or images upon fixation, thereby granting exclusive rights in reproduction, distribution, adaptation, and moral rights such as those in attribution and integrity. The contract between the influencer and brand usually grants or exclusively licenses use rights over the content in favor of the brand through elaborate clauses in the IP section of the agreement, delineating the scope of use rights granted in terms of platforms, duration of use such as perpetual for a one-time fee, royalty-free use in all countries of the world, waiver of moral rights, and prior approval for brand changes. The influencer retains their performance rights and ownership of the raw footage. The moral right remains inalienable and thereby allows influencers to prevent distortion of their work. Registration of the agreement increases its enforceability in the event of a dispute.

### **Trademark Usage**

Trademark use in influencer agreements in India is covered by the Trade Marks Act, 1999, Sections 29-30, which requires express permission from the brand for the influencer to use their logos, names, slogans, or packaging in sponsored content to avoid any form of infringement by causing confusion or damage to the brand's reputation. The agreement will identify the scope of permitted use, including the exact form of logos, platforms, duration (often perpetual/royalty-free), etc., while also ensuring compliance with ASCI guidelines (#Ad) and providing indemnification against any claims of passing off, or damage to a well-known mark under Section 29(4). The influencer's rights to their personal trademarks will remain with them unless assigned.

## Corporate and Business Law Dimensions

### Influencer Agreements as Commercial Contracts

Influencer agreements are included in the category of commercial contracts under the Indian Contract Act of 1872, Section 2(h), which states that the Indian Contract Act applies to the creation of a valid bargain for promotional services in return for consideration. These are similar to service agreements but are designed specifically for digital marketing with terms related to the fulfillment of the contract, intellectual property rights, and compliance with regulations such as the ASCI. These agreements are legally binding on the parties involved and create a commitment on the part of the brand to compensate for the creation of content in return for the services provided by the influencers in the form of content creation along with the metrics for the same. These agreements are also legally valid in the sense that they are not mere endorsements and are in written/e-signed form in accordance with the Information Technology Act of 2000. These are legally valid and robust in the sense that the influence marketing industry is a new market and does not require the parties involved in the contract to be a merchant.

### Vicarious Liability of Companies

Vicarious liability of companies in Indian influencer marketing makes the brand liable for the wrongful acts of influencers, such as misleading advertisements or copyright infringement, when the influencer acts as an agent or an 'employee' in a 'master and servant' relationship, according to the principles of torts and Section 16 of the Indian Contract Act, 1872, including Consumer Protection Act violations when there is joint indemnification by the brand of the influencer. The test for liability is the control test, whereby direction by the brand of content, scripts, and approvals creates liability. Independent contractor status, which most influencers enjoy, limits liability unless there is ratification or failure of due diligence by the brand, as explained in the case of *Common Cause v. Union of India*. Contracts limit liability through clauses of indemnification, warranties, and ASCI-compliant clauses, which provide a safe haven to the brand unless there is gross negligence in the selection of influencers.

### Corporate Governance Concerns

Concerns of corporate governance in Indian influencer marketing prompt companies to ensure that ethical considerations are factored into boardroom strategies to ensure compliance with ASCI disclosures, CCPA endorser liabilities, and IP guidelines to avoid reputational risks from influencer scandals or misleading marketing campaigns. Boards must carefully examine influencer vetting criteria, including audience authenticity, controversies, and diligence, as vicarious liabilities under tort laws and the Companies Act, 2013, may result in penalties or litigation if agents are found to be marketing unregulated products like nutraceuticals. Self-regulatory organizations like the Indian Influencer Governing Council (IIGC) may prompt corporate governance mechanisms to ensure transparent rating systems, response mechanisms, and audit trails for campaigns to ensure that marketing budgets align with fiduciary responsibilities, while leveraging tools like sentiment analysis for proactive management of risks.

### The “Legal Vacuum” Debate

The “Legal Vacuum” Debate disputes early assertions of unregulated influencer marketing in India, as a comprehensive framework including Indian Contract Act, 1872, on enforceability; Consumer

Protection Act, 2019, on Endorser Liability and Misleading Ads; ASCI Guidelines 2021, on disclosures; Copyright Act, on Content IP Rights; and IT Act, on Digital Signatures/Intermediaries, ensures comprehensive oversight without the need for a specific legislation. While challenges exist with respect to inconsistent enforcement against micro-influencers, jurisdictional challenges, and proportionality with respect to fines up to ₹50 lakhs, CCPA's actions including notices against crypto endorsements and self-regulation through IIGC reflect a mature ecosystem, with a shift from “vacuum” to nuanced compliance. The proponents of influencer marketing argue that it promotes innovation while protecting consumers, with a push for integrated licensing under the Orange Economy's 2026-27 Budget.

## Practical Issues

- Enforcement Gaps: ASCI handles 80% complaints but has no legal power; CCPA fines are unfairly levied on small content creators despite the ₹50 lakh caps.
- Disclosure Evasion: Hidden Sponsored tags and "gifting" loopholes remain, risking platform bans for violating IT Rules.
- Cross-Border Challenges: Global influencers dodge Indian law; brands risk IP infringement over perpetual licenses without moral rights waivers.
- Audience Fraud: Fake followers in deals can trigger breach claims; contracts now require analytics audits for performance-based payments.

## Conclusion

India's influencer marketing regulatory framework is well-supported by a comprehensive legal framework, which includes the Indian Contract Act of 1872 for enforceability, the Consumer Protection Act of 2019 for endorser liability, ASCI Guidelines for disclosure requirements, and IP laws for content protection – putting the idea of a regulatory vacuum to rest once and for all.

## Key Takeaways

**Strong Foundations:** The contract must cover the following: the parties involved, the consideration in terms of monetary or barter terms, the scope of work or deliverables, exclusivity terms, morality and termination clauses, and compliance warranties to avoid CCPA fines of up to ₹50 lakhs and removal of content from platforms.

**Evolving Regulatory Landscape:** Self-regulation by ASCI and IIGC supports the regulatory framework, with the brand incurring vicarious liability for failing to exercise due diligence.

**Future Regulatory Landscape:** As the CCPA regulatory framework develops through enforcement rather than landmark judgements, the focus in the Orange Economy Budget boost should be on IP transfers, audience verification, and cross-border clauses.

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