

3. Regulating Digital Commercial Speech – Polity

Recently, the Supreme Court of India directed the Union Government to frame guidelines on regulating social media content, citing the rise of influencer-driven commercial speech that risks harming vulnerable groups like persons with disabilities (PwDs).

Background of the Case

Petitioners – Filed by Spinal Muscular Atrophy Cure Foundation against a few comedians.

Issue – Derogatory remarks about persons with disabilities, including mocking the treatment costs of Spinal Muscular Atrophy, violating dignity and inclusivity.

About Supreme Court Ruling on Social Media Conduct

Key Observations of the Bench –

1. **Commercialisation of Free Speech** – When speech is monetised, the responsibility of the speaker increases; influencers cannot profit while harming vulnerable groups.
2. **Limits of Humour** – Humour is important but cannot breach the dignity of disadvantaged communities.
3. **Mainstreaming Persons with Disabilities** – Remarks against persons with disabilities undermine the constitutional objective of inclusivity and equality.
4. **Proportionate Penalties** – Token or symbolic apologies are insufficient; effective and enforceable sanctions are required.
5. **Comprehensive Guidelines Needed** – Rules must be broad in scope, covering emerging platforms such as podcasts and online comedy shows.

Court's Directives –

1. **Apologies by Comedians** – Ordered to publicly apologise on their social media platforms and use their influence to spread awareness on disability rights.
2. **Framing of Guidelines** – Directed the Union Government, in consultation with the News Broadcasters and Digital Association and the Ministry of Information and Broadcasting, to draft social media conduct rules.
3. **Timeline** – Draft guidelines will be ready by November; they should be future-oriented and comprehensive, not just quick reactions to isolated incidents.

Wider Ethical and Social Implications –

Influencers as Ambassadors – Social media influencers act as opinion-shapers and must exercise moral responsibility.

Platform Accountability – Regulation must extend beyond individuals to digital platforms such as YouTube, podcasts, and online shows.

Balancing Rights – Freedom of Expression under Article 19 must align with the Right to Dignity under Article 21.

Blurred Boundaries – Social media blurs lines between free speech, commercial speech, and prohibited speech, necessitating regulation.

Significance of the Ruling –

Accountability for Influencers – Establishes a national precedent for digital responsibility.

Digital Ethics Framework – Pushes India toward codified digital ethics and accountability.

Institutionalised Consultation – Involving the Ministry of Information and Broadcasting and the News Broadcasters and Digital Association ensures legitimacy and broad acceptance.

Protection of Marginalised Communities – Reinforces constitutional values by safeguarding the dignity of persons with disabilities, women, children, minorities, and senior citizens.

About Commercial Speech

Definition – Commercial speech refers to expressions intended to promote commerce, such as advertisements, sponsored posts, and influencer endorsements. It differs from purely personal speech because it is profit-oriented and tied to consumer behaviour.

Digital Context – With the rise of YouTube, Instagram, Over-the-Top (OTT) platforms, and e-commerce sites, commercial speech has expanded massively. Influencers frequently monetise personal opinions, making it harder to distinguish genuine content from paid promotions.

Legal Evolution of Commercial Speech –

1. **Hamdard Dawakhana v. Union of India (1959)** – Purely trade advertisements were held not to fall under free speech if only profit-driven.
2. **Tata Press v. Mahanagar Telephone Nigam Limited (MTNL, 1995)** – Recognised commercial speech serving public interest (e.g., informing consumers) as protected under Article 19(1)(a).
3. **Suresh v. State of Tamil Nadu (1997)** – Stated that commercial expression must balance societal interest; private commercial motives harmful to society are not protected.
4. **Current Perspective** – Courts distinguish between commercial speech advancing consumer/public interest versus speech serving only private profit.

Concerns Associated with Commercial Speech in India

Consumer Protection – Misleading claims in ads, hidden promotions, and endorsements of unsafe products (junk food, betting, unverified medicines) endanger public interest.

Privacy Violations – Targeted advertising often relies on personal data collected without informed consent, creating risks of surveillance capitalism.

Social Harm – As seen in the Spinal Muscular Atrophy (SMA) case, derogatory content can stigmatise vulnerable communities. This raises questions about dignity, equality, and inclusiveness. The Spinal Muscular Atrophy Cure Foundation has taken action against top comedians and social media influencers for making derogatory remarks about persons with disabilities and mocking treatment costs, violating dignity and inclusivity.

Lack of Transparency – Influencers sometimes fail to disclose sponsorships, which deceives audiences.

Chilling Effect Risk – At the same time, overbroad regulation could discourage satire, comedy, artistic expression, and social critique, all of which are essential in a democracy.

Key Judicial Pronouncements on Free and Commercial Speech

Sakal Papers v. Union of India, 1962 – Struck down government restrictions on newspaper circulation, affirming the principle of free market of ideas.

Tata Press v. Mahanagar Telephone Nigam Limited (MTNL), 1995 – Recognised commercial speech as part of Article 19(1)(a), noting that advertisements serve the public's right to information.

Shreya Singhal v. Union of India (2015) – Struck down Section 66A of IT Act, 2000, holding that vague terms like "annoyance" or "insult" cannot justify criminalising online speech.

Subramanian Swamy v. Union of India (2016) – Upheld criminal defamation, linking it to individual dignity, but clarified dignity is not an independent restriction ground.

Kaushal Kishore v. State of Uttar Pradesh (2023) – Clarified that Article 19(2) grounds are exhaustive; new grounds like "dignity" cannot be added by judicial innovation.

Imran Pratapgadhi Case (2025) – Reaffirmed that speech causing discomfort or offence remains protected unless it violates Article 19(2) restrictions.

SC Order (August 2025) – Directed the government to draft new guidelines in consultation with the News Broadcasters and Digital Association (NBDA), but this raised concerns about over-regulation.

Constitutional Position – Where Does Commercial Speech Stand?

Protected Speech – Commercial speech is protected under freedom of speech and expression in Article 19(1)(a).

Restrictions – Any limitation must fall under Article 19(2), which allows restrictions for public order, decency, morality, security of the state, defamation, friendly relations with foreign states, incitement to an offence, or contempt of court.

‘Dignity’ Debate – While courts have linked dignity to defamation, it is not listed as an explicit ground under Article 19(2). Expanding it risks vague and arbitrary censorship.

Test of Proportionality – Any regulation must be lawful, necessary, and the least restrictive measure to achieve its aim.

India’s Initiatives and Actions

Consumer Protection Act (CPA), 2019 & Central Consumer Protection Authority (CCPA) Guidelines

– Ban misleading ads, allow penalties against influencers and endorsers.

Advertising Standards Council of India (ASCI) Guidelines, 2021 – Require mandatory disclosure of paid promotions by influencers.

Information Technology (IT) Act, 2000 & IT Rules, 2021 – Provide powers for takedown of unlawful content, but often criticised for opacity and lack of due process.

Digital Personal Data Protection (DPDP) Act, 2023 – Strengthens data privacy protections, especially against exploitative ad targeting.

Draft Broadcasting Services (Regulation) Bill, 2024 – Seeks to extend regulation to OTT and digital creators, though critics argue it may curb independent voices and increase state control.

Global Moves on Digital Advertising

United States – Federal Trade Commission (FTC) Guidelines – Mandate clear and conspicuous disclosures for influencer marketing and advertisements.

European Union (EU) – Digital Services Act (DSA), 2022 – Prohibits targeted advertising to minors, requires algorithmic transparency, and imposes heavy accountability measures on platforms.

Australia – Australian Competition and Consumer Commission (ACCC) – Cracks down on dark patterns and deceptive promotions in digital commerce.

Global Best Practices in Digital Ad Regulation

United Kingdom – Improving Access to Psychological Therapies (IAPT) – Tackles mental health harms from misleading ads by expanding affordable therapy access, showing the link between digital regulation and well-being.

European Union – DSA – Sets the benchmark for algorithmic transparency, ensuring users understand how ads are targeted.

United States – FTC Regime – Balances consumer protection with free enterprise, safeguarding transparency without stifling speech.

Way Forward

Define Scope Clearly – Differentiate commercial advertisements from satire, critique, or art, preventing overreach.

Ensure Transparency – Enforce labelling of sponsored content and disclosure of ad-targeting criteria.

Protect Data Privacy – Strictly apply the DPDP Act, 2023 to prevent exploitative advertising.

Narrowly Tailored Rules – Avoid ambiguous categories like “dignity”, which risk misuse.

Co-regulation Approach – Use ASCI’s self-regulation alongside government oversight for balanced control.

Inclusive Public Consultation – Involve creators, consumers, PwDs, civil society, and industry bodies in drafting rules to ensure legitimacy.

Conclusion

Commercial speech on digital platforms should be regulated carefully—to protect consumers, dignity, and vulnerable groups, while upholding freedom of expression. Such regulation must reflect constitutional values of justice, liberty, equality, and fraternity, ensuring balance between rights and responsibilities.

Source - [https - //www.thehindu.com/opinion/op-ed/should-commercial-speech-on-digital-platforms-be-regulated/article70010955.ece](https://www.thehindu.com/opinion/op-ed/should-commercial-speech-on-digital-platforms-be-regulated/article70010955.ece)

