



**KAMARAJ IAS ACADEMY**  
Only IAS Academy by Grandson of "Perunthalaivar Kamarajar"

# Should Commercial Speech on Digital Platforms Be Regulated?

Published On: 05-09-2025

## Introduction

Commercial speech refers to speech that proposes a commercial transaction, including advertisements, influencer promotions, and sponsored digital content.

With the rise of social media and digital platforms, commercial speech has acquired unprecedented reach and influence.

The question is whether and how such speech should be regulated without undermining freedom of expression under Article 19(1)(a) of the Constitution.

## Constitutional Dimension of Regulating Commercial Speech

### 1. Freedom of Speech and Expression (Article 19(1)(a))

Commercial speech is recognized as a part of the freedom of speech.

The Supreme Court in *Tata Press Ltd. v. MTNL* (1995) held that advertisements are a form of speech because they disseminate information and help consumers make informed choices.

Hence, digital commercial speech—advertisements, influencer endorsements, paid promotions—falls under constitutional protection.

### 2. Reasonable Restrictions (Article 19(2))

Regulation is permissible only under grounds listed in Article 19(2):

Decency or morality.

Defamation.

Contempt of court.

Incitement to offence, public order, sovereignty & integrity of India, etc.

For instance, misleading health-related advertisements (e.g., miracle cures) or derogatory content can be restricted under decency/morality or public order.

### 3. Doctrine of Proportionality

Any restriction on speech must be:

**Kamaraj IAS Academy**

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: 044 4353 9988 / 98403 94477 / Whatsapp : 09710729833

unbacked by constitutional grounds, It is Necessary to protect public interest.

Proportionate: not excessive, least restrictive means.

Thus, blanket bans on digital commercial content would be unconstitutional; narrowly tailored regulations are preferable.

## Legal-Institutional Dimension

### Existing Framework:

- Information Technology Act, 2000.

- Rules under the IT Act like the Intermediary Guidelines and Digital Media Ethics Code, 2021.

- Consumer Protection Act, 2019 – requires disclosures for endorsements.

- ASCI (Advertising Standards Council of India) guidelines for influencer marketing

### Judicial Precedents

**Hamdard Dawakhana v. Union of India (1960):** Misleading or deceptive advertisements do not enjoy protection as “free speech.”

**Sakal Papers v. Union of India (1962):** State cannot curb press freedom under the garb of regulating business.

**Tata Press v. MTNL (1995):** Affirmed commercial speech as part of Article 19(1)(a).

**Indian Express Newspapers v. Union of India (1985):** Press freedom includes protection against indirect curbs like excessive taxation, which can extend to digital advertising.

**Recent cases: Re: Prajapati (2023)** – SC acknowledged limits of satire/stand-up when it crosses into derogatory territory, opening ground for regulating speech in public interest.

## Why Regulation of Commercial Speech on Digital Platforms is Necessary?

### 1. Misleading and False Advertisements

- Many online ads make false health or financial claims, exploiting vulnerable users.

- Example - The Centre banned over 100 betting and loan apps from China for misleading Indian consumers with fake promises and usurious loan traps.

### 2. Protection of Vulnerable Groups

- Children, elderly, and digitally illiterate are more prone to manipulation.

- Example - ASCI flagged surrogate advertising in IPL cricket (alcohol and betting companies using proxy ads targeting youth).

### 3. Consumer Rights & Informed Choice

- Hidden paid promotions by influencers mislead buyers.

- Example - The Central Consumer Protection Authority (CCPA) issued guidelines mandating influencers to disclose paid partnerships on Instagram/YouTube.

#### **4. Hate Speech and Derogatory Content**

- Commercial speech is sometimes disguised as humour/satire but promotes stereotypes or insults dignity.
- Example : The Gujarat Police filed a case against stand-up comic Manan Pratapgarhi for derogatory remarks on people with disabilities during a monetised show.

#### **5. National Security Concerns**

- Unregulated foreign apps and advertisements can spread fraudulent investment schemes or malicious links.
- Example: RBI recently warned against illegal loan apps that steal data and harass borrowers.

#### **6. Algorithmic Targeting & Manipulation**

- Big Tech platforms use AI-driven targeted advertising, sometimes manipulating consumer behavior and even elections.
- Example: Facebook–Cambridge Analytica scandal (though global, showed the dangers of micro-targeting).

#### **7. Data Privacy Concerns**

- Ads often rely on user profiling, risking privacy violations.
- Example : Concerns were raised about digital health apps selling user health data to third parties for pharma advertising.

#### **8. Lack of Accountability of Platforms**

- Influencers and platforms frequently escape liability, leaving consumers unprotected.
- Example: The IT Rules (2021) introduced grievance officers for platforms, but enforcement remains weak.

#### **9. Upholding Constitutional Values**

- Commercial speech that insults dignity or morality may conflict with Article 21 (Right to Dignity).
- Example: Ads with sexist stereotypes (e.g., ASCI banned a perfume ad in 2022 for promoting sexual harassment mindset).

### **Challenges in Regulating Commercial Speech on Digital Platforms**

#### **1. Constitutional Balancing**

- Freedom of speech (Article 19(1)(a)) vs. reasonable restrictions (Article 19(2)).
- Over-regulation risks state overreach and censorship.
- Example: Debate around the IT Rules, 2021 – critics argue they may curb free expression while government defends them as necessary for accountability.

#### **2. Ambiguity in Legal Definitions**

**Kamaraj IAS Academy**

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477** / Whatsapp : **09710729833**

- No clear legal definition of “commercial speech,” “misleading ad,” or “digital endorsement.”
- Leads to arbitrary interpretation and inconsistent application.

### **3. Jurisdictional & Cross-Border Issues**

- Ads originate from foreign platforms beyond Indian jurisdiction.
- Difficult to enforce Indian consumer protection laws on offshore companies.
- Example: Online gambling/betting ads often hosted by servers abroad.

### **4. Enforcement Deficit**

- Regulatory bodies (CCPA, ASCI, MIB) lack manpower and tech expertise to monitor millions of online ads.
- Cases pile up but action is slow

### **5. Technological Complexity**

- AI-driven, micro-targeted advertising makes tracking personalised ads extremely difficult.
- Algorithms evolve faster than regulatory frameworks.

### **6. Platform Resistance**

- Big Tech companies often delay compliance or resist disclosure norms.
- Example: Meta and Google have repeatedly faced criticism for being slow in removing misleading financial and health-related ads.

### **7. Self-Regulation vs. State Regulation**

- Industry bodies like ASCI issue guidelines but enforcement is voluntary.
- Over-reliance on self-regulation risks ineffectiveness; excessive state regulation risks censorship.

### **Conclusion**

Commercial speech on digital platforms sits at the intersection of free expression, consumer rights, and economic growth. While its regulation is necessary to curb misleading practices, protect vulnerable groups, and ensure accountability of digital platforms, excessive state control risks sliding into censorship and chilling free speech. The way forward lies in a balanced, multi-stakeholder approach—combining constitutional safeguards, strong but proportionate regulations, technological tools, and enhanced consumer awareness. Such a calibrated framework will not only protect the dignity and rights of citizens but also nurture a trustworthy and innovative digital economy.