

News

Media Law Column: Influencers on social media who are now politically active



Influencer partnerships were apparently a key component of online marketing across parties in India's 2024 general election, with producers endorsing partisan themes.

The foundation of democratic engagement is the right to vote. It is a substantive right that influences democratic results rather than just a procedural entitlement. Elections must be well-informed in order to be significant.

Voters must have access to clear, unbiased, and transparent information in order to make an informed decision. The process of democratic participation is jeopardized if the information that sways a voter's opinion and influences her decisions is sponsored, whether overtly or secretly.

The constitutional protection of freedom of expression is the source of the voter's "right to know." The fundamentals of democracy are undermined by ignorant or uneducated citizens. The Supreme Court ruled in *Association for Democratic Reforms v. Union of India* (Electoral Bonds case):

"The right to vote is a statutory and constitutional right, based on Article 19(1)(a) of the Constitution, since voting is the voter's way of expressing their opinions. This particular right is the source of the citizens' right to know, since voting effectively demands knowledge. In addition to enacting new laws and amending existing ones, representatives who are chosen based on votes cast in their favor also make policy decisions. For citizens to have a say in how their lives are impacted, they must have access to information that can significantly influence their decisions. Therefore, the right to know is essential for democracy and free and fair elections.

Money's place in political discourse

The Supreme Court emphasized the significance of campaign money in affecting democratic results in the campaign Bonds case:

The fundamental idea behind the legal framework governing electoral finance is that funding is essential to the continuation and advancement of electoral politics.

It is thought that people vote, not money. Nonetheless, research has shown how money affects electoral politics both directly and indirectly. [...] Election results are the main way that money directly affects politics.

Vote buying is one way that money affects election results. Incurring electoral expenditures for political campaigns is another method. Because of the impact of television commercials, campaign events, and individual canvassing, campaigns have a quantifiable effect on voting behavior. Election campaigns provide more information about candidates, which makes them far more persuasive to an uninformed voter.

In the election Bonds case, voters were kept in the dark about the identities of contributors and their payments to political parties, much along the underlying quid pro quo. This was a novel form of camouflaged election finance. The plan was declared unconstitutional. The Court's worries about unreported influence in electoral finance are consistent with a broader trend in which clandestine players have influenced political results through targeted digital campaigns and data manipulation.

There have been reports that Cambridge Analytica affected elections in a number of nations, including the United States (2016), Kenya (2017), Nigeria (2015), and the Brexit vote in the United Kingdom. The business obtained and exploited Facebook users' personal information and created a profiling system to employ psychological targeting to affect users' reactions, feelings, or actions in order to accomplish desired results. These incidents demonstrate how "corrupt practices" in the context of elections have transcended their conventional manifestations. Innovation and inventiveness have been fostered by time and technology. One such "corrupt practice" of the new era could be social influencers selling political influence.

The law and political advertising

Political advertising and spending have long been a difficult problem for electoral legislation. The current legislation governs radio, print, and television commercials. The Representation of the People Act of 1951, the Conduct of Election Rules of 1961, and the Model Code of Conduct all contain regulations that mandate disclosures, accounting of expenditures, and other transparency obligations.

In order to stop proxy advertising, Section 176 of the Bharatiya Nyaya Sanhita (BNS) and the former Section 171H of the Indian Penal Code forbid spending on a candidate's promotion without that candidate's consent. In a same vein, the Press Council and Election Commission have recognized "paid news," or secret political material passed off as reporting, as an election malpractice that goes against transparency standards.

The battlefield has recently moved to the digital sphere, where political parties are able to avoid exposing spending on social media influencers who propagate political narratives under the pretense of personal opinion. Digital political advertisements are now subject to the same disclosure and certification standards as traditional media, according to the Election Commission. Nevertheless, these provisions have been inconsistently and ineffectively enforced. Aside from that, current policies don't deal with social media influencers' surrogate political advertising.

The emergence of social media influencers in political campaigns

Influencers on social media are vital in forming political narratives. Compared to typical political advertising, their content has a much higher recall value because it is brief, viral, and emotionally impactful. They are particularly successful for political parties because they

already have devoted followings, personal brands, and an authenticity that inspires confidence.

Influencers are relatable, ordinary voices that followers may relate to. They make politics understandable to audiences who might disregard traditional news sources by using humor, storytelling, or an emotional connection to explain complicated policy problems. The power of digital artists is genuine and the potential reach of such advertising is immense in nations like India, where a sizable and youthful voting populace frequently depends on social media for news.

According to studies, influencers' political posts can result in up to 70% more interaction than their non-political ones, demonstrating their persuasiveness. Influencer marketing is significantly more appealing than typical campaign materials to young voters, whose attention spans are oriented to short-form videos and memes. Influencer partnerships were apparently a key component of online marketing across parties in India's 2024 general election, with producers endorsing partisan themes. Election campaigns are changing quickly because to these trends, but the law is far behind.

Political parties and influencers benefit

Political parties benefit from using social media influencers in their campaigns in two ways. On the one hand, it makes it easier to avoid disclosing spending. Conversely, it makes traditional media more and more obsolete. Instead of using traditional media like print or television, politicians and influencers can now interact directly with large audiences. While social media influencers are mostly exempt from accountability and oversight, media outlets are (at least apparently) subject to regulations. Since social media influencers lack journalistic training, they are not subject to editorial control, professional ethics, or accountability standards. Nonetheless, they have a significant impact on public opinion.

Political candidates might also benefit from recruiting social media influencers because they are more willing to sell biased promotional content, whereas traditional media may prefer to appear at least somewhat impartial. Influencers on social media are particularly helpful in reaching specialized audiences that political parties might not otherwise be able to reach. They are especially good at connecting with communities in a particular area, with linguistic or other minorities, or with organizations who share a certain ideology or social or political inclination. This causes the campaign to become *hyperlocalized*, something that a political

party would not be able to accomplish on its own.

Influencers that participate in political campaigns have access to better chances, such as bigger fan bases, greater sponsorships, and contracts. Aside from that, an influencer is typically paid or given additional favors by the political party or candidate in secret.

Digital political influence's hidden costs

The distinctions between lobbyists, advertisers, journalists, influencers, and celebrity endorsers are becoming more hazy. These borders' ambiguity may result in widespread manipulation, misinformation, and possible foreign meddling.

Social media influencers serve as paid stand-ins for political figures all around the world, resulting in what has been called a "black market" for "information." There are several repercussions if they are paid in kind or cash without disclosure:

Election-related expenditures that go unreported. Large sums of money are spent without showing up in campaign accounts.

a betrayal of confidence in the voter, who believes the support is sincere.

concealed benefits that might never be discovered. Influencers may occasionally be compensated with visibility, special access, or other advantages. Such arrangements are similar to paid news due to the lack of openness around them.

The playing field is distorted by the financial incentive. Generally speaking, a dominant party would have much more financial leverage to entice or even force influencers to sell their influence.

The approach results in a "dumbing down" of democracy since the more powerful influencers are, the less important real journalists and subject matter experts are, the less independent thinking occurs, and the inclination to "follow the herd" increases.

Regulation's difficulties

Regulation is desperately needed, yet there are several challenges in enforcing it.

First of all, defining "political content" is challenging. Everyone has the right to voice their opinions, including political ones. Therefore, it is impossible to prevent influencers on specialized topics like cuisine or fashion from expressing or promoting political opinions. Therefore, it becomes difficult to define political advertising in the context of social media influencers.

Second, enforcing financial or other incentive disclosures is challenging. Influencers worry that if it is discovered that they have accepted favors or money, they would lose their credibility, authenticity, and face. Influencers will probably do all in their power to prevent political parties from rewarding them.

However, consumers have a right to know if their influencers have been "influenced" by other factors.

In 2023, the Department of Consumer Affairs released guidelines mandating that celebrities who receive compensation for endorsing goods or services provide the necessary disclosures. However, there are no such regulations when it comes to social media influencers' political advertising. Influencers are required to declare material ties with marketers under the Advertising Standards Council of India (ASCI) Guidelines, which form the rule for self-regulation in advertising. However, there are no similar regulations for political advertisements.

Requiring influencers to disclose whether or not they have accepted financial or other remuneration from any candidate or party for a political endorsement is one way to address this issue, especially while the Model Code of Conduct is in effect. Encouraging digital platforms to demand disclosures and include such requirements in their rules is another option.

Social media influencers' political advertising is a problem that requires serious attention. After all, political communication is a valuable democratic right, and it is important to strike the right balance between protecting political speech and preventing voters from being duped by surrogate political campaigns.

In the era of social media, the title of Edward S. Herman and Noam Chomsky's groundbreaking 1988 book on propaganda and mass manipulation through the media, *Manufacturing Consent*, has never had more meaning.

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