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RECALIBRATING SEBI'S REGULATORY APPROACH: ADDRESSING LEGAL GAPS IN THE OVERSIGHT OF FINFLUENCERS IN INDIA

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Abstract

This paper is an attempt to critically examine the current regulatory framework in India that regulates the finfluencers behaviour in the social media platforms. The doctrinal study aims at bringing a regulatory framework governing the finfluencers conduct in reference to the global best practices such as in U.S, Australia and France and to revoke the existing blanket ban on finfluencers in India. The analyses of the provisions of SEBI (Investment Advisers) Regulations 2023 and SEBI (Research Analysts) Regulation 2014 makes it clear that these regulations fail to address finfluencers conduct in the social media platforms. Also, the SEBI Consultation paper on Association of SEBI Registered Intermediaries/ Regulated Entities with Unregistered Entities (including finfluencers), 2023 and ASCI Guidelines for Influencer Advertising in Digital Media, 2023 are not sufficient to regulate the finfluencer's activities, as it fails to address the restrictions imposed on non-resident finfluencers in Indian market, fails to provide a monitoring mechanism to regulate their conduct and follows a blanket ban of finfluencers instead of regulating them. Analysing from a global perspective makes it clear that France, United States and Australia are having well-structured legislative framework to regulate finfluencers which involves providing training to financial influencers, certifications, disclosure mandates, monitoring mechanism etc... which need to be adapted to India for better regulation of finfluencers.

Keywords: Finfluencers, SEBI regulations, Investor protection, Disclosure mandates, Cross-border regulation

1. Introduction

In today's digital era, technology plays a greater role in our day-to-day life. Social media has been emerging as an integral part of our daily routines. Social networking sites like Facebook, WhatsApp, X (formerly Twitter), Instagram, and LinkedIn have created a virtual world which enable us to connect people, hear, see and get influenced on the thoughts of others and view and share the content created by many through these platforms. Finfluencers are the users of networking sites such as Instagram, snapchat and twitter to share, advice and drive the platform users towards the contents by conveying information's, advisory opinions, recommendations and experiences on various investments, stock market trends, insurance and other finance related aspects.¹ SEBI Consultation paper on Association with Unregistered entities 2023 define the term finfluencers as; "unregistered entities providing catchy content, information and advice on various financial topics to their followers".² It does have two sides, if proper advice is provided by these influencers, it will benefit the people and if wrong or biased information is provided, it may lead to wrong decision making which will adversely affect them and may end up in financial or investment loss as a result.³ It is true that the activities of the finfluencers have democratized investment education and have widened the access of these information's even to the people who doesn't know these facts, but however it poses various challenges such as increase in misleading investment advice, lack of accountability, fraudulent and biased information's and non-disclosure of conflicts of interests.⁴

Finfluencers have emerged to be as one of such categories of content creators or investment information providers who lacks adequate qualification and authority to provide such advisory opinions through social media platforms. India does not have a unified legislative framework that governs the activities of finfluencers. Nonetheless, other global best practices are in existence in nations such as US, Australia & UK in order to control finfluencers and their operations.

This doctrinal research study inquiries into the following research questions such as; whether SEBI IA Regulations, 2023 and SEBI RA Regulation, 2014 adequately regulate finfluencers conduct in the digital platforms, whether SEBI Consultation paper on Association with

¹ Dr Sujata Roy & Sri Hari Mangalam, Finfluencers- Questionable Legitimacy and Legislative Outlook, 10 NLSBLR 1, 1-2 (2024).

² Id.

³ Siddant Choudhary & Mahak Agarwal, Finfluencers- The Financial Influencers, 4 IJALR (2024).

⁴ Id.

Unregistered entities 2023 and ASCI Influencer Advertising Guideline in Digital Media 2023 are sufficient to regulate finfluencer's activities and thereby to protect the investors, whether the finfluencer's regulatory models of countries such as US, the United Kingdom and the Australia provide a best practice that India should adapt to regulate finfluencer's conduct in social media platforms and what legislative reforms are necessary to strengthen the investor protection by effectively bridging the regulatory gaps existing with regard to finfluencers conduct in the social media platforms.

2. SEBI Regulations on Governing the Conduct of Finfluencers in Virtual Platforms

Investment advises provided by the investment advisers are being dealt under the SEBI IA Regulation 2023.⁵ Section 2(1)(l)⁶ of this legislation defines investment advice as those advices which are connected with the purpose of investing, purchasing, selling or any other things which are related to securities. The provision clearly mentions that the investment advises that are provided to the public as a whole through newspapers, magazines or any other electronic means or telecommunication channels cannot be treated as investment advices within the purview of this legislation. Section 2(1)(m) of the SEBI IA Regulation 2023 defines "investment advisors" as any person who is engaged in a business of providing advices related to investment to the clients for a consideration.⁷

From the definition of investment advisors under the Section 2(1)(m) of the said regulation, it is evident as to the nature of the people who can be brought under the ambit of financial advisors.⁸ The definition mentions certain essential ingredients to be satisfied so as to treat a person to be as an investment advisor. They are; the person should provide advice, related to investment and for a consideration. In the case of finfluencers, they post their contents related to various investment or financial aspects through different networking platforms. In most cases they don't charge payment for that from each of the customers. In most of the cases they get the amount from these digital platforms based on the views that they receive. Hence, the finfluencers who provide investment advises with the help of these digital media platforms cannot be brought within the purview of investment advisors under section 2(1)(m) of the said

⁵ The SEBI (IA) Regulations, 2023.

⁶ The SEBI (IA) Regulations, 2023, Reg. 2(1)(l).

⁷ The SEBI (IA) Regulations, 2023, Reg. 2(1)(m).

⁸ Siddant Choudhary & Mahak Agarwal, Finfluencers- The Financial Influencers, 4 IJALR (2024).

regulation. From the term “investment advice” given under Section 2(1)(l) it is well clear that the investment advices do not include the advises provided to the public through electronic means or through telecommunication channels.⁹ Finfluencers are the people who provide financial contents and investment advices through different online spaces. The meaning of “investment advice” provided under section 2(1)(l) clearly excludes the investment advices provided by the finfluencers through different online spaces.

The SEBI (Research Analysts) Regulations, 2014¹⁰ is the SEBI regulation which focus on bringing a greater transparency and increased professionalism aiming at investor protection in India. The legislation mandates the registration of the people who want to engage into research analysis related to financial related aspects and also prescribed mandatory qualification that are necessary for a research analysts to hold on to that position.

According to section 2(u) of the legislation, research analysts are people who engage in preparing or publishing of any content related to research report or anyone who provide a research report, any person who gives a price target or a person who buy or sell or hold a recommendation or offer any opinion to a public officer with regard to securities which are listed or will be listed in the recognized stock exchanges and it include anyone who performs such kind of research analysis or issues research report.¹¹ As per the explanation of the provision, anyone who provide such research related information’s to the research analysts will also be included under the ambit of the provision. By analysing this provision, we may have an assertion as to include fin-fluencers under the purview of research analyst as is stated under section 2(u), as finfluencers also performs the same functions as is listed under section 2(u) of this regulation.¹² There are finfluencers who prepares and publishes the content regarding research report, who provides recommendations regarding securities related matters, who offer opinion or gives price targets with regard to listed or to be listed securities in the stock exchanges. The strength of the presumption increases as we analyse the provision section 2 (r), which defines the term “public media” which includes radio, television, internet, web or any print media.¹³ Finfluencers provide the contents in the online spaces which is an important

⁹ The SEBI (IA) Regulations, 2023, Reg. 2(1)(l).

¹⁰ The SEBI (RA) Regulation, 2014.

¹¹ The SEBI (RA) Regulation, 2014, Reg. 2(u).

¹² Gurtej Walia, The Role of SEBI in Regulating Social Media Influencers in the Indian Securities Market, 7 IJSRED 1089 (2024).

¹³ The SEBI (RA) Regulation, 2014, Reg. 2(r).

element of internet, hence further strengthens the presumption as to the inclusion of finfluencers under the ambit of the term “research analysts” under the said legislation.

All the presumptions regarding the inclusion of finfluencers as research analysts under the said regulation fails when comes to the plain reading of chapter II which deals with the registration of research analysts in which section 6 deals with the eligibility criteria of a research analysts¹⁴, section 7 which deals with the qualification and certification requirement¹⁵ and section 9 which mentions about the grant of certificate of registration.¹⁶ Section 3 of the regulation deals with the application for grant of certificate which mandates the registration with SEBI for becoming a research analyst. Finfluencers means those having no registration as is specified in this provision. Section 7 of the legislation specifies the qualification to become a research analyst.¹⁷ The minimum qualification prescribed here is professional qualification or postgraduation or post graduate diploma in finance, business management, commerce, capital market, financial service or markets. Finfluencers may not have such qualifications as is specified in the regulation. Even though the definition clause of research analysts under the SEBI RA Regulations, 2014 gives us a presumption regarding the inclusion of financial influencers within the purview of this regulation. Further analyses of chapter II of the legislation clarifies that the finfluencers cannot be brought within its ambit, as finfluencers lack the registration requirements, qualifications or eligibility criterion as is specified in this regulation.

In the case, *Re: Stock Recommendations via Social Media Channel*¹⁸ it has been mentioned that influencers who are offering financial advices or investment advices through telegram platforms cannot be said to be as “Research Analysts” under the SEBI RA Regulations, 2014¹⁹ or “Financial Advisors” under the SEBI IA Regulation 2023.²⁰ In *Sadhna Broadcast Ltd. Case*,²¹ the SEBI has imposed restriction upon actor Arshad Warsi and his wife by hindering their ability to participate in the securities market because of their alleged use of dubious YouTube videos through their channel and posts in the social media pages to promote certain stocks. However, the SEBI Appellate Tribunal have subsequently given interim relief to them.

¹⁴ The SEBI (RA) Regulation, 2014, Reg. 6.

¹⁵ The SEBI (RA) Regulation, 2014, Reg. 7.

¹⁶ The SEBI (RA) Regulation, 2014, Reg. 9.

¹⁷ Aryaman Dubey, The Impact of Finfluencers on Corporate Governance in India: Comparative Analysis of Company Law Perspectives and the need for SEBI Regulation, 6. IJIRL 1 (2023).

¹⁸ In Re Stock Recommendations using Social Media Channel (Telegram), (2022) WTM/SKM/54/201-22 (India).

¹⁹ The SEBI (RA) Regulation, 2014.

²⁰ The SEBI (IA) Regulations, 2023.

²¹ Re: Sadhna Broadcast Limited, (2022) TM/AN/ISD/ISD-SEC-1/24333/2022-23 (India).

Similarly, in *Marco Limited vs Abhijith Bhansali case*,²² held about the necessity impose specific regulations to regulate financial influencers. The court noted that financial influencers who are promoting various investment and finance related contents are having the capacity to influence a large group of audience and their acts will also influence the social media followers which consists of a huge group of audience.

However, provision 12A of SEBI Act 1992 gives SEBI the power to investigate and then subsequently prosecute the entities which are involved in fraudulent conduct also applies to finfluencers. This provision grants SEBI with the power to impose fines and necessary measures to curb unfair practices in the securities market which also governs the finfluencers practices and conduct. In *Mithani Investment vs the Securities Board of India*,²³ the Securities Appellate Tribunal, Bombay held that section 12 of the said legislation is much wider even to cover the grey areas or situations in which the law is silent on the penalties.

3. The Role of SEBI's Consultation Paper (2023) and ASCI Guidelines in Regulating Finfluencers

The Advertisement Standard Council of India has introduced guidelines to regulate the influencers in the virtual platforms, known as the "Guidelines for Influencer Advertising in Digital Media". The guidelines came into force on 27th May 2021.²⁴ The guidelines define the term influencer as anyone who is having an access and power to make an impact upon the audience and is having the ability to influence their purchasing decisions for buying a product, availing a service, preferring a brand etc...The preamble of the guideline highlights about the increasing practices of the influencers where the consumers get confused to demarcate whether it is a content or an advertisement. In most cases consumers fails to demarcate between a promotion videos and experience sharing videos. The preamble also addresses the misleading contents by way of omission and also about the abuse of trust of consumers or to exploit their inadequacy of knowledge and experience.²⁵ The guidelines then talk about the material connection between an influencer and an advertiser as it includes any whether in terms of money or otherwise which the influencer receives to give promotion for the advertisers'

²² Marico Limited v Abhijit Bhansali Commercial Appeal, (2020) No. 31 (India).

²³ Mithani Investment v SEBI, (2003) Appeal No. 12 (India).

²⁴ Yash Parekh & Dr. Mayura Sabne, Assessing the Efficacy of Sebi in Regulating Capital Markets: A Critical Analysis of Investor Behaviour and Market Integrity, 5. IJLR, 605-617 (2025).

²⁵ Malini Mukherjee, SEBI's Finfluencer Legal Frameworks: Gaps in Enforcement and Investor Education, INDIACORPLAW (2024).

products. The guidelines also insist the necessity of making specific disclosures by the influencers while promoting such contents.²⁶

The Addendum 2 has been added to the guideline to cover the health and financial influencers conduct. The addendum initially points out the substantial and serious losses that are caused to the consumers as a result of wrong advices or improper advices which are provided in the area in connection with banks, finance, BFSI, insurance, health, nutrition products and services.²⁷ The guidelines insist that the influencers who are promoting these investment products or financial products or health products should be having necessary qualification to avoid the adverse effects which will be caused to the consumers as a result of that.²⁸

The addendum further says about the necessary qualifications that the influencers must have to provide advices and or information's or contents related to financial or investment related aspects. The guidelines insist that in the area related to stocks or investment, the influencers providing advice or contents or information's should be compulsorily registered with SEBI and the finfluencers need to showcase their SEBI registration number with their name and their qualification in the videos or the posters that they wish to publish. In case of financial advices other than those related to stocks or investment related aspects, the influencers should possess certain qualifications such as CA or CS or IRDAI Insurance licence etc... to continue posting their contents. The guidelines also mandate the complying of disclosure requirements by these influencers.²⁹

With regard to the disclosure requirements, the guidelines necessitate the disclosure in terms that the content is a promotion or advertisement or for introducing a new player etc... and it should be properly placed so that an average consumer does not miss that disclosure. Hence, the disclosure should be pasted in a proper manner as it is easy to be seen by the consumers, and it should not be given in links or hash tags etc... The guidelines also says that if the videos last for fifteen seconds or less, then the disclosure should be displayed for a minimum of five seconds and if the video is more than fifteen seconds and less than two minutes then, the

²⁶ Utkarsh Gupta & Sumangala Bhargava, In the Realm of Finfluencers: Understanding the Indian Framework, Regulations, And Future Trends, 13. NULJ, 51-64 (2023).

²⁷ Id.

²⁸ Shruti Tejwani, Navigating the Digital Currents: Unmasking the Mirage of Financial Influencers, 6. IJLMH, 1008-1013 (2023).

²⁹ Id.

disclosure should be showed for at least one -third of the length of the entire video. If the contents that are uploaded is greater than 2 minutes then the disclosure should be included for around full time as the brand which is promoted is mentioned and in live streams the disclosures should be shown at the initial stage of the streams. For audio media, disclosures must be announced before the audio content started being broadcasted. However, the guidelines fail to mention about what all are the disclosures that has to be made to comply with the disclosure requirements under this guideline.³⁰

It is evident from the combined reading of the addendum 2 and the disclosure requirements under the said guideline that the finfluencers conduct are regulated to a certain extend through this. It mentions about the finfluencer's mandatory disclosure requirements, registration with SEBI, need of necessary qualifications etc... However, the finfluencers have utilized the loopholes that are existing in this guideline and have rented the SEBI registration number from the financial advisors and also started working together with the financial advisors by sharing profits together. There are also cases when some finfluencers sign contracts according to which the profits are divided between the financial advisors and research analysts registered with the SEBI.³¹

To eliminate the shortcoming that are existing in the Influencer's Advertising in Digital Media Guideline for regulating the finfluencers conduct, SEBI has published a consultation paper on 25th August 2023 which is known as the Consultation paper on Association of SEBI Registered Intermediaries/ Regulated Entities with Unregistered Entities.³² The objective of the consultation paper is to stop the unregistered finfluencers to be associated with the above-mentioned entities. The consultation paper defines the term finfluencers under clause 2.2 as unregistered entities which provides catchy contents, information's and advices on various financial topics to several followers. The consultation paper is completely against the publishing of finance related or investment related contents by the finfluencers. The paper not only prohibits the finfluencers been associating with these entities or intermediaries, but also prevents them from sharing any sort of confidential information's concerning the clients, registration number or any such information's with the finfluencers. Hence, it aims at

³⁰ Aryaman Dubey, The Impact of Finfluencers on Corporate Governance in India: Comparative Analysis of Company Law Perspectives and the need for SEBI Regulation, 6. IJIRL 1 (2023).

³¹ Utkarsh Gupta & Sumangala Bhargava, In the Realm of Finfluencers: Understanding the Indian Framework, Regulations, And Future Trends, 13. NULJ, 51-64 (2023).

³² Id.

preventing the SEBI registered entities from paying any sort of commissions, profit sharing, or any trailing fees for the customers that they receive from the finfluencer's endorsements.

The consultation paper under clause 3.2 covers the ambit of information's provided by the finfluencers. It includes, personal finance, investment related aspects, bank products, investment related to real estate business, insurance related aspects etc...The paper also mentions that the finfluencers provides their contents in the form of reels, videos, posts, stories through various networking online spaces such as face book, what's app, telegram, you tube, twitter, link din, Instagram etc...The paper states that finfluencers share these contents related to various finance and investment products by charging a referral fee, non cash benefits such as free usage of products or service, amount received from these networking sites for promoting such contents, profit sharing with the platform or channels, money received according to the viewership from the platforms etc...³³

The consultation paper forces the SEBI registered intermediaries to take distance from the unregistered finfluencers. The paper insists that none of these registered intermediaries or controlled entities should maintain any sort of relationship with the finfluencers by accepting any monetary or non-monetary considerations in relation to promotion of any products or services. Also, these registered entities should not share any sort of confidential details with these unregistered finfluencers. This confidential information's includes contact details, registration number, etc... It also mandates that the financial advisors who are registered should disclose his/her name, number showing the registration, contact information's, qualifications etc... in the content being displayed.³⁴ The consultation paper also expects the registered intermediaries to take appropriate actions by involving the enforcement agencies and by filing cases under section 420 of the Indian Penal Code.

The consultation paper although tries to reduce the finfluencers reach in the social media platforms, it is having issues pertaining to implementation and jurisdiction. The first place where the Consultation paper fails is where it does not specify how contravention of this ASCI Guideline and SEBI Consultation paper will be penalized. At present, online content on platforms such as You tube, Facebook and Instagram are regulated under the IT Act, 2000

³³ Yash Parekh & Dr. Mayura Sabne, Assessing the Efficacy of Sebi in Regulating Capital Markets: A Critical Analysis of Investor Behaviour and Market Integrity, 5. IJLR, 605-617 (2025).

³⁴ Id.

along with the IT (Procedure and Safeguards for Blocking of access of Information by the Public) Rules, 2009 and IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.³⁵ The regulatory steps prescribed under these frameworks are often complex and time-intensive. As a result, initiating content takedown proceedings under the IT Act can become cumbersome, slowing down effective enforcement of the measures proposed in the consultation paper. By the time the procedural requirements are completed, significant and often irreversible damage particularly to retail investors may already have occurred.

The Consultation paper lacks monetary mechanism to check the influencers conduct and the contents posted by them in various digital networking platforms like you tube, face book, what's app, telegram etc... This lack of monetary mechanism on the part of SEBI itself make the consultation paper fails as it only remains as a theoretical conceptual framework which lacks practicality. The consultation paper also fails to consider the issue of placing restrictions on non-resident financial influencers who create content, targeting the Indian audience. In *Securities and Exchange Board of India vs Pan Asia Advisors Ltd.*,³⁶ the SC clarified that SEBI's jurisdiction is not confined to India's territory and can extend to foreign nationals or individuals residing outside India if their actions adversely impact the legitimate interests of Indian citizens. Despite this precedent, the consultation paper neglects the critical aspects of regulating or imposing liability on overseas financial influencers. Given that the internet operates without geographical limitations, content shared by foreign social media figures can significantly shape the choices and behaviour of Indian consumers. Therefore, such influencers must also be included within the ambit of regulatory oversight.

4. Comparative Regulatory Models and Reform Proposals for India

5.1 Australia

In Australia the Corporation Act, 2001 is the legislation which primarily regulates and governs the influencers.³⁷ The enforcement of this legislation is performed by the Australian Securities and Investments Commission.³⁸ ASIC ensures that the financial advice providers who provides financial and investment advices to the public, complies with the licence requirements and

³⁵ Sana Saima, Dr Sachin Parappagoudar and others, 'The Power of Instagram's Algorithm in Boosting the Visibility of Startups & Small Businesses' (2023) 13 Int J Engin and Man Res 59.

³⁶ SEBI v Pan Asia Advisors Ltd, (2013) Civil Appeal No 10560 (India).

³⁷ Stephen Bottomley, 'The Notional Legislator: The Australian Securities and Investments Commission's Role as a Law-Maker', 39(1) FLR 1 (2011).

³⁸ Burton Ong and Ding Jun Toh, 'Digital Dominance and Social Media Platforms: Are Competition Authorities Up to the Task?' IRIC 527 (2023).

consumer protection laws.³⁹ ASIC Information Sheet 269 mandates the necessity of Australian Financial Service Licence for any individual who is acting as a social media influencer and providing financial advices or promoting financial products which includes making recommendations or opinions that influences public decisions regarding the purchase of those financial products or investment and those who facilitate or arrange for the third parties to participate in financial services activities, which includes actions like using affiliate marketing links with unique identifiers on social media or receiving sponsorship payments in exchange for promoting financial products.⁴⁰

If a finfluencer provides financial advises without having this AFS certificate then, he is liable to be prosecuted and punished with imprisonment upto 5 years and a fine. In *Australian Securities and Investments Commission vs. Scholz (No.2) FCA 1542*⁴¹, the Court held that, Tyson Robert Scholz who is a social media finfluencer is found guilty as he has contravened the provision of section 911A of the Corporations Act, 2001 as he has carried out financial service business and provided financial advices without holding an Australian Financial Services Licence (AFSL).

5.2 France

France also has a well-advanced system of legislative framework to deal with the finfluencers conduct. Law No. 2023-451 is the legislation which is enacted by the French Parliament on June 9, 2023 to deal with the commercial influence activities which is done through electronic means. The legislation defines the term influencers as those individuals or entities leveraging their notoriety electronically for promoting goods, services or causes in exchange for a remuneration, extending its provisions to influencer agents, advertisers and content hosting platforms. This legislation explicitly regulates the conduct of finfluencers, the advertisers etc... in the electronic media platforms. One of the important aim of the legislation is to eliminate scams, fraudulent practices and abuses which are happening in the digital media platforms to the consumers under the influence of these fin-fluencers who promote these products or services. It introduces the joint liability of the influencers, advertisers and agents in case of any damages caused as a result of making into practice of these advises provided by these

³⁹ Siddhant Choudhary & Mahak Agrawal, Finfluencers - The Financial Influencers, 4. IJALR (2024).

⁴⁰ Id.

⁴¹ Australian Securities & Investments Comm'n v. Scholz (No. 2), FCA 1542 (Austl.).

influencers.⁴² The legislation also mandates the meeting of disclosure requirements by the influencers with regard to promotional content, registration, edited images etc...It also restricts the promotion or posting of contents related to certain financial products such as digital assets, non-AMF approved digital token and also certain other products such as tobacco products, cosmetic surgeries etc...⁴³

Autorite des Marchés Financiers (AMF) and Autorite de Regulation Professionnelle de la Publicite' (ARPP) have jointly launched a "Responsible Influence Certification for influencers".⁴⁴ It offers training programme to the financial influencers and promote a responsible promotional conduct among them. A 75% of marks are necessary to pass this certification. However, Autorite de Regulation Professionnelle de la Publicite' (ARPP) is having the authority to revoke this certificate in case if the influencers fail to comply with the rules and code of conduct.⁴⁵ The French Monetary and Financial Code under Article L. 533-12-7 prohibits the influencers from promoting digital assets and other financial instruments that have a greater risk, initial coin offerings etc...⁴⁶

5.3 United States

In U.S, Federal Trade Commission generally regulate the influencers conduct. 'Disclosure 101 for Social Media Influencers' and 'the guide concerning the use of endorsement and Testimonials in Advertising' are the necessary directives which regulates influencers conduct. As per these guidelines the influencers are entitled to make mandatory disclosure of certain things such as whether the content is promotional or not, whether he is associated with a company or not etc...⁴⁷ The regulations aim at protecting the viewers and the consumers who makes the financial or investment decisions depending upon the matter given by these influencers. After SEC has amended the Investment Advisors Marketing Regulations under the Investment Advisors Act of 1940, all the financial advisor must ensure the contents and endorsement be properly disclosed. FIRA have also given the direction to the brokerage firms to give training to the influencers, keep records of the communication made to the influencers,

⁴² Varun Jain and Mozammil Ahmad, 'The Influencing Industry: Balancing Power, Ethics, and Protection' (Livelaw, 9 August 2023) accessed 12 July 2025.

⁴³ Id.

⁴⁴ 'The French Advertisers' Self-Regulation Authority Forbids Two False Advertisements' (Journal of Regulation and Compliance, 25 September 2012), <<https://thejournalofregulation.com/fr/article/ii-34-the-french-advertisers-self-regulation-auth/>> accessed 12 July 2025.

⁴⁵ Id.

⁴⁶ Code monétaire et financier art. L. 533-12-7 (Fr.).

⁴⁷ Stasia Skalbania, 'Advising 101 for the Growing Field of Social Media Influencers' 97 Wash L Rev 667 (2009).

their background etc...⁴⁸

5.4 Regulatory Gaps in India

By analysing the regulatory frameworks governing the countries like United States, Australia and France, it can be clearly evident that India is far behind in regulating the influencers conduct. In none of these countries, they have opted for a blanket ban on influencers. But in India the ASCI Guidelines and the Consultation paper together blindly prohibits the influencers from posting the financial related contents or investment related contents in the networking websites. The said guideline clearly prohibits the influencers from providing financial advices and makes it mandatory that only people registered with SEBI, who qualify as per the requirements such as CA, CS etc... should give financial advices. The Consultation paper prevents the influencers from associating and working with the SEBI registered intermediaries or entities. In none of the above-mentioned countries such a blanket ban of influencers conduct in the social media can be found.⁴⁹

The blanket ban of influencers will ultimately reduce the financial and investment literacy among the common man who cannot spend huge amount of money to visit and get advices of SEBI registered financial advisors or other SEBI registered entities. Thus, there is the necessity to follow the legislative approaches of such countries as United States, France and Australia where, rather than a blanket ban, influencers are provided with guidelines and certifications to practice and compulsory adherence to the disclosure requirements.

There is also no attentive and effective monitoring system in India to monitor and rectify the social media materials and activities of the influencers in the social media platforms. Through the examination of the global best practices of countries such as United States, demonstrates the urgency of the need to have a stronger monitoring mechanism with regard to preventing the impact of some wrongful or misleading contents uploaded by influencers which the consumers are influencing. Rather than the consultation paper of SEBI that does not allow the influencers to be affiliated with the SEBI registered entities, here we need a legislative framework like the Law No. 2023-451 of France wherein the social media activism of the influencers can be controlled much better than a blanket ban that have other unforeseen and

⁴⁸ Id.

⁴⁹ Indian Association of Investment Professionals, 'Comments on Consultation Paper (8 September 2023), <<https://cfasocietyindia.org/wp-content/uploads/2023/09/CFA-Society-India-Response-to-Consultation-Paper-on-Association-of-SEBI-Registered-Entities-with-influencers.pdf>> accessed 20 October 2025.

more adverse effects on the society. The liability of digital media platforms over the contents posted on the platform by the finfluencers should be brought clarity in order to avoid the current ambiguity on the platform liability on the contents posted by the finfluencers who mislead the consumers.

India should also focus on giving training and certifications as like the Responsible Influence Certification for finfluencers of the France so that they will be well aware of their responsibilities and mandatory measures which they have to comply to do their jobs in a proper legal and ethical manner.⁵⁰

5. Conclusion and Suggestions

The rapid growth of finfluencers in digital media platforms is having its own positive effects and negative results.⁵¹ In one way it will increase the financial awareness of the public, while it can also create a situation where there exist chances of misleading and fraudulent conduct where these finfluencers may engage which will adversely affect the consumers and will ultimately have an impact upon their confidence in financial products and investment. The analyses of SEBI (Investment Advisers) Regulations, 2023 and SEBI (Research Analysts) Regulation, 2014 makes it clear that these regulations fail to address finfluencers conduct in the social media platforms as these legislations doesn't define the term finfluencers nor bring finfluencers conduct within its ambit.

The SEBI Consultation paper and the said ASCI Influencer Advertising Guideline 2023 are not sufficient to regulate finfluencer's activity and thereby to grant investor protection. Neither the ASCI Influencer Advertising guideline nor the SEBI Consultation paper 2023 provides a monitoring mechanism to evaluate or to check the contents posted by the finfluencers in these social media platforms. Also, both this guideline and consultation paper even though prohibits the finfluencers acts of posting contents and providing advices in the social media, it failed to address how the publication of these contents in violation of these guidelines will be penalized by the SEBI. Also, most importantly the SEBI Consultation paper has failed to address the

⁵⁰ Gaargi Singh, 'Power of Influence: Regulating Financial Influences in India' (SCC Online, 30 August 2023), <<https://www.sconline.com/blog/post/2023/08/30/power-of-influence-regulating-the-financial-influencers-in-india/>> accessed 12 March 2025.

⁵¹ The SEBI Act 1992 (India), s 11; Namita Shetty and Adya Garg, 'End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers' (Cyril Amarchand Mangaldas, 13 September 2023) <<https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/>> accessed 12 August 2025.

aspect of imposing restrictions on the non-resident finfluencers who are publishing the content relevant to the Indian financial market.

The finfluencer's regulatory models of countries like U.K, U.S and Australia are the finest practices which India may adopt to regulate finfluencer's conduct on online platforms. Certifications provided to the finfluencers, training programs, mandatory disclosure norms, regulations, monitory mechanism for evaluating their conduct etc... of these countries are the best practices which India can adopt in strengthening its legislative framework in regulating the finfluencers.

India can bring a new legislation to resolve the ambiguities and errors in the existing legislative measures adopted by India. As like U.S, U.K and Australia; India should regulate finfluencers instead of applying a blanket ban through the ASCI Influencer Advertising Guideline 2023. The SEBI Consultation paper 2023 should be revoked and the finfluencers should be allowed to work in association with the SEBI registered entities such as the SEBI registered financial advisors or research analysts and these entities should be made to act as a monitoring machinery in checking and correcting the finfluencers conduct.⁵² The newly proposing legislation should also address the possibility of imposing restrictions on the non-resident finfluencers who are publishing the content relevant to the Indian financial market and should give clarity with regard to the penalty for publishing misleading or fraudulent content or for not following the mandatory disclosure requirements.

⁵² Krisjan Liivamagi, 'Investor Education and Trading Activity on the Stock Market' (2016) 16 Baltic J Econ. 220 Securities and Exchange Board of India, 'Awareness Program', <<https://investor.sebi.gov.in/awar-program.html>> accessed 12 March 2025.