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# THE IMPACT OF FINFLUENCERS ON CORPORATE GOVERNANCE IN INDIA: COMPARATIVE ANALYSIS OF COMPANY LAW PERSPECTIVES AND THE NEED FOR SEBI REGULATION

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## ABSTRACT

The aim objective of this paper is to investigate the possible impacts of Finfluencers on corporate governance in India within the scope of company law and the role of Securities and Exchange Board of <sup>1</sup>India (SEBI) in regulating it<sup>2</sup>. The paper further intends to provide clear and possible effects and problems on corporate governance in India caused by the emergence of new breed of influencers termed as Finfluencers <sup>3</sup>and how SEBI can induce policies <sup>4</sup>and take actions to promote accountability and transparency <sup>5</sup>in the corporate decision making.

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<sup>1</sup><https://www.thehindu.com/business/markets/why-is-sebi-tightening-norms-for-finfluencers-explained/article67251818.ece>

<sup>2</sup>[https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-\\_75932.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html)

<sup>3</sup><https://www.businesstoday.in/latest/in-focus/story/sebi-wants-regulated-entities-to-stay-away-from-unregistered-finfluencers-395682-2023-08-26>

<sup>4</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-performance-validation-agency\\_76220.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-performance-validation-agency_76220.html)

<sup>5</sup> <https://taxguru.in/sebi/sebis-consultation-finfluencers-regulation-2023.html>

## **Introduction**

The set of practices, rules, and procedures to direct and control and company and its affairs is called as Corporate Governance and the main objective is to protect or safeguard the interest of all stakeholders such as shareholders, workers, consumers, and people associated with the company's function and society.

But the emergence of Finfluencers (financial influencers or people providing financial advice through social media to their followers) has raised several serious issues in the corporate realm of the world and especially in India the "financial literacy rate is 6 % - 27 %" <sup>6</sup>below the global average rate thus making the major population of the population lacks sound and proper knowledge regarding financial subjects and investments instruments and are prone to fraudulent schemes, advertisements, etc especially if known public figures do it for the sake of to earn money for themselves but giving non-beneficial financial pieces of advice to their followers.

The Finfluencers as individuals or entities have a substantial power in influencing their follower's choices for the preference of stocks, securities, and their investment decisions. This is a pressing matter because Finfluencers are unregistered entities and cannot be held liable or accountable for their information and their information is not reliable and trustworthy enough to cater as sound financial advisers to the people, especially their followers who trust them blindly.

## **Emergence of Finfluencers**

In today's affordable and accessible digital world, to regulate the affairs in the financial sector the Finfluencers use platforms such as Instagram, YouTube, Twitter, and several mobile and gaming apps to spread their financial advisers, and investment ideas and even promote specific stocks or shares of certain companies for their (Finfluencers's) marketing and revenue point of view. These affect stock prices and investment choices of people by Finfluencers but the problem is that often their data is basically unreliable information and actions are unaccountable because they are not licensed and not qualified.

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<sup>6</sup> <https://startuptalky.com/regulations-for-finfluencers/>

## **Impact of Finfluencers**

Since the Finfluencers are not licensed and not qualified, they are like a bull in a china shop and they mislead investors put their money at risk, and involve themselves in stock manipulation by elevating prices of certain stocks by convincing their followers to buy them which increase the value of those stocks and in a ripple effects decrease the prices of stocks of rival companies thus degrading the integrity the status of the Indian Financial Markets.

The Finfluencers often find methods to escape the regulatory mechanism by using coded language and setting up partnerships with registered analysts, “for example in YouTube channels to convince people to buy and sell certain stocks while using phrases such as "hum chai pee rahe hain" (we are drinking tea) to indicate a fall in the market and "hum phal kha rahe hain" (we are having fruit)<sup>7</sup> to indicate a rise in the market. Another coded phrase used is "machli mar gayi" (the fish died) to signal when prices are likely to decrease and "murgi kha rahein hain" (we're having chicken) <sup>8</sup>to suggest when prices are likely to rise”.

Furthermore, they may deliver biased advice in order to get unlawful financial benefits from the promoters of certain items. Taking, example of Vault, a firm that claimed significant returns on bitcoin investments. Ironically, the firm went bankrupt, resulting in significant losses for many people. Several well-known influencers, including “Ankur Warikoo, Akshat Srivastav, and PR Sundar, have recommended others to invest in the firm in this instance”. However, it is crucial to realize that not all investment products are fundamentally undesirable; some may pose specific hazards. It is the obligation of financial advisors to warn clients about these risks. Sundar was accused of selectively sharing images of good trades while erasing unfavorable transactions. <sup>9</sup>

The Advertising Standards Council of India (ASCI) has developed criteria for influencers who might affect people's purchasing and investing decisions. Influencers must offer clear and visible disclaimers in their text or video material if they accept any kind of remuneration from a business or product they recommend.

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<sup>7</sup><https://www.msn.com/en-in/money/other/from-machli-to-murgi-and-chai-finfluencers-work-out-cryptic-phrases-to-escape-sebi-glare/ar-AA1cbnQA>

<sup>8</sup> <https://edtimes.in/murgi-machli-chai-finfluencers-create-code-words-to-escape-sebi/>

<sup>9</sup><https://www.livelaw.in/lawschoolcolumn/finfluencers-sebi-stock-market-reserve-bank-of-india-advertising-standards-council-of-india-hnlu-232998>

In real life “when people become unwell, they seek the help of doctors with MBBS degrees. They seek specialists with extra degrees for specialized conditions. Similarly, when obtaining advice from an influencer or finfluencers, it is critical to evaluate whether the individual is competent to do so. They should have the required training or certificates. It is best to get financial planning assistance from a professional financial planner or a SEBI-registered financial adviser who can be trusted. "Whether it's finfluencers or celebrities, exercise caution before making any decisions." Many celebrities are currently advocating things that are harmful to our health or pushing betting and casino applications”.<sup>10</sup>

Sp the viewers must conduct thorough research before making a decision, says Anant Ladha, founder of “Invest Aaj For Kal, a financial advising service. As a result, whenever you make a financial choice, you should always undertake extensive study and background research and apply due diligence”.

### **Need for Regulation on Finfluencers**

To safeguard investors and maintain market integrity, it is critical to bring finfluencers into the regulatory net to avoid additional fraudulent or financial scams.

“In the case of Sadhna Broadcast Limited and Sharpline Broadcast Limited, the promoters of these firms distributed incorrect and misleading information in collaboration with YouTube producers, resulting in the formation of fake interest in the scrip. The ads predicted exponential growth and pushed viewers to buy the company's stock right now. Once the investors had invested in the stock, the corporations behind the videos sold it at a loss. In its interim ruling, SEBI stated that such fraudulent activity artificially raised the price of the scrip, allowing major owners, promoters, and some key individuals to profit significantly”.<sup>11</sup>

In a similar case, a “Telegram channel was frequently used to provide false information and influence the market in order to gain illegal profits. Their strategy was to first purchase stock in a firm and then gets Telegram channel followers to invest in the same company. When the stock price rose, the finfluencers sold their shares for a profit. SEBI suspended the entities

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<sup>10</sup><https://www.livelaw.in/lawschoolcolumn/finfluencers-sebi-stock-market-reserve-bank-of-india-advertising-standards-council-of-india-hnlu-232998>

<sup>11</sup><https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/>

concerned from the securities market and issued a punishment of INR 5.68 crore in its interim ruling<sup>12</sup>”.

As a result, “the government is currently investigating new ways to regulate these influencers, particularly those who earn from offering advice on social media sites. SEBI's previous efforts, such as cracking down on celebrity cryptocurrency advertising, highlight the need to address this issue. Other nations have previously enacted some type of finfluencer regulation. In Australia, for example, offering financial advice without a license is punishable by up to five years in prison, while the European Securities and Markets Authority has released rules on investment suggestions made on social media”.<sup>13</sup>

Currently in “Australia, for example, offering financial advice without a license<sup>14</sup> is punishable by up to five years in prison,<sup>15</sup> while the European Securities and Markets Authority has released rules on investment suggestions made on social media”.<sup>16</sup>

In countries such as “China and Singapore have also implemented limits on cryptocurrency-related product marketing and issued rules for finfluencers. Experts and legal professionals in India are advocating for financial influencers to be regulated. Regardless of the hurdles, SEBI must identify efficient ways to control and manage these influences. Collaboration between finfluencers and domain finance experts should be investigated to reduce risks and improve consumer protection”<sup>17, 18</sup>

### **The Proposed Framework by SEBI**

On 25<sup>th</sup> August 2023 SEBI released a consultation paper titled "2023 Consultation Paper" “According to the 2023 Consultation Paper:

1. unregistered entities (finfluencers) are not allowed to work with registered intermediaries or regulated entities, or their agents or representatives, to promote or advertise their

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<sup>12</sup> <https://taxguru.in/sebi/sebis-consultation-finfluencers-regulation-2023.html>

<sup>13</sup> [https://www.business-standard.com/podcast/finance/is-it-time-to-regulate-financial-influencers-122110800269\\_1.html](https://www.business-standard.com/podcast/finance/is-it-time-to-regulate-financial-influencers-122110800269_1.html)

<sup>14</sup> [https://www.ey.com/en\\_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers](https://www.ey.com/en_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers)

<sup>15</sup> <https://www.bbc.com/news/technology-60787296>

<sup>16</sup> <https://www.afr.com/markets/equity-markets/asic-warns-finfluencers-get-a-license-or-risk-five-years-jail-20220321-p5a6fm>

<sup>17</sup> <https://www.insider.com/australian-finance-influencers-face-up-to-5-years-jail-crackdown-2022-4>

<sup>18</sup> <https://economictimes.indiatimes.com/news/economy/finance/eu-financial-regulators-disqualify-6-indian-counterparties/articleshow/95287617.cms>

services or products;

2. Finfluencers registered with SEBI or stock exchanges or Association of Mutual Funds in India (“AMFI”) in any capacity:
  - must include their registration number, contact information, contact number, investor grievance redressal helpline, and a disclaimer on any posts;
  - must make appropriate disclosure and disclaimer on any posts;
  - must adhere to the code of conduct outlined in terms of their relevant registration as well as any advertisement guidelines issued by SEBI, stock exchanges, or other SEBI-recognized regulatory authorities;
  - must not pay any trailing commissions based on the number of referrals as referral fees. However, stockbrokers shall be permitted to accept and pay referral fees for restricted referrals from retail clients;
  - entities registered/ regulated by SEBI or stock exchanges or AMFI shall not share confidential client information with any unregistered entities”.<sup>19</sup>

The “2023 Consultation document forbids RIAs from collaborating with finfluencers in any way. This blanket restriction may be detrimental by limiting the availability of investing advice to the general public. In Australia, AFS licensees can hire finfluencers as long as they oversee and audit their material and train them. When hired, finfluencers function as authorized agents of AFS licensees and are consequently subject to the same regulatory obligations. [

As the AFS licensees are accountable for the behavior of finfluencers, such an approach guarantees that an opportunistic alliance may be maintained while preserving the interests of investors”. SEBI should consider taking a similar approach.<sup>20</sup>

Many finfluencers focus primarily on “producing educational films about the fundamentals of finance rather than providing financial advice. The definition of "investment advice" under the IA Regulations fails to distinguish between investment advice intended to influence and just

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<sup>19</sup> <https://taxguru.in/sebi/sebis-consultation-finfluencers-regulation-2023.html>

<sup>20</sup> <https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=4&smid=35&ssid=38>

instructional information. SEBI should strive for a more comprehensive definition so that influencers can educate their audiences about financial goods without fear of responsibility”.

SEBI may impose minimum certification criteria to guarantee that quality advice reaches investors. Influencers have market expertise but may not be trained professionals such as a CA, CFA, or MBA, as is required for RIAs. As a result, influencers should simply be needed to satisfy a bare minimum of qualifications.<sup>21</sup>

With developments in technology and greater privacy features, “it is nearly impossible for SEBI to trace the activities of influencers on digital platforms in a complicated market like India. As a result, SEBI must work with ASCI to develop criteria for the publication of finance-related material. These standards for social media influencers might be patterned around INFO 269 and the FTC Disclosures 101. The use of examples and case studies would raise awareness among influencers while also establishing a self-check mechanism”.

The changing environment of digital media and the global character of financial markets will continue to pose challenges to SEBI and will necessitate agility, alertness, and coordination on a domestic and international scale.<sup>22</sup>

SEBI forbids registered organizations from paying a referral fee in the form of a trailing commission. “For example, if a consumer purchases a mutual fund product under the influence of a influencer via his or her referral link, no referral fee can be paid to the influencer as commission for the consumer owning the mutual fund product. This is intended to target influencers' primary revenue stream. Retail investors, on the other hand, are entitled to suggest products, services, and so on, and may continue to get referral fees in this respect from SEBI-registered organizations. Interestingly, the SEBI Consultation Paper does not define ‘retail investors,’ and in the lack of such a definition, it is impossible to determine if a influencer would not be within its purview”.

SEBI recommends mandating the posting of registration number, contact details, and investor grievance redressal helpline, as well as adequate disclosure and disclaimer on any posts by influencers registered with SEBI, stock exchanges, or AMFI. “They must follow the code of

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<sup>21</sup> <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2023/03/firstnotes-esg-sebi-supply-chain-disclosure.pdf>

<sup>22</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-proposal-for-introduction-of-the-concept-of-general-information-document-gid-and-key-information-document-kid-mandatory-listing-of-debt-securities-of-listed-issuers-and-othe-\\_67948.html](https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-proposal-for-introduction-of-the-concept-of-general-information-document-gid-and-key-information-document-kid-mandatory-listing-of-debt-securities-of-listed-issuers-and-othe-_67948.html)

conduct outlined in their respective legislation, as well as the advertisement guidelines provided by SEBI, stock exchanges, and SEBI-recognized regulatory bodies. This necessitates clarification as to whether the scope of registered finfluencers referred to herein is limited to entities registered under existing heads of regulated entities such as Investment Advisers (IAs), Research Analysts (RAs), stockbrokers, and so on, or if SEBI intends to create a separate registration requirement for finfluencers”.

Hence, “SEBI's strategy assumes the perversity of unregulated finfluencers and aims to remove them entirely. In reality, SEBI has issued the Consultation Paper on the method for fee collection by SEBI registered IAs and RAs, suggesting a distinct fee payment platform for them that would assist investors in identifying, isolating, and avoiding unregistered entities/influencers”.<sup>23</sup>

## **Case Studies**

### **Case Study 1: The Pump and Dump Scheme**

In a notable incident, a group of Finfluencers colluded to promote a small-cap stock through their social media channels. They touted the company's potential and encouraged followers to invest, driving up the stock price significantly. Once the price peaked, these influencers sold their shares at a profit, leading to a sharp decline in the stock price and significant losses for the followers who had invested late in the scheme.

While this resembles a classic pump and dump strategy, the involvement of Finfluencers adds a layer of complexity. Traditional regulatory provisions against market manipulation may not directly apply to social media influencers who do not hold a formal position within the company and may not have initiated the stock purchase with the intent to sell after an artificial price increase.<sup>24</sup>

### **Case Study 2: The Misleading Financial Advice**

A well-known Finfluencer with a large following provided specific stock recommendations

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<sup>23</sup>[https://www.khaitanco.com/thought-leaderships/Finfluencers\\_In\\_The\\_Crosshairs\\_SEBIs\\_Regulatory\\_Clampdown](https://www.khaitanco.com/thought-leaderships/Finfluencers_In_The_Crosshairs_SEBIs_Regulatory_Clampdown)

<sup>24</sup> [https://www.moneycontrol.com/news/trends/legal/sebi-order-penalising-youtube-pump-and-dump-scheme-is-a-precursor-to-finfluencer-regulations-10223451.html#google\\_vignette](https://www.moneycontrol.com/news/trends/legal/sebi-order-penalising-youtube-pump-and-dump-scheme-is-a-precursor-to-finfluencer-regulations-10223451.html#google_vignette)



based on purported inside information. The recommendations were not backed by comprehensive research or analysis and led to considerable market volatility for the mentioned stocks. Retail investors who acted on these tips faced significant financial losses.

This case brings to light the need for clear regulations that address the dissemination of investment advice by individuals who are neither registered analysts nor investment advisors. The current regulatory framework may not hold Finfluencers to the same standards of accountability as professionals who are formally part of the financial services industry.<sup>25</sup>

### **Regulation of Finfluencers in other countries**

- 1) United States - The actions of Finfluencers are heavily monitored by the U.S. Securities and Exchange Commission (SEC) and had instructed them to disclose all material and financial information, conflicts and associations regarding the promotion for any service, product or stock.
- 2) Australia - Australia, for example, offering financial advice without a license <sup>26</sup>is punishable by up to five years in prison, <sup>27</sup>while the European Securities and Markets Authority has released rules on investment suggestions made on social media”
- 3) China – The Cyberspace Administration of China (CAC) had implemented very strict limits on cryptocurrency-related product such as (Dogecoin, Ripple etc,) marketing and issued rules for finfluencers and restricted social media access by banning some platforms also.<sup>28,29</sup>
- 4) Singapore – Had also implemented limits on cryptocurrency-related product marketing and issued rules for finfluencers.<sup>30</sup>
- 5) Canada - The actions of Finfluencers are heavily monitored by the Canadian Securities Administrators by listing down fraudulent activities and accordingly taking legal actions

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<sup>25</sup> <https://conventuslaw.com/featured-content/india-end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/>

<sup>26</sup> [https://www.ey.com/en\\_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers](https://www.ey.com/en_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers)

<sup>27</sup> <https://www.bbc.com/news/technology-60787296>

<sup>28</sup> <https://www.weforum.org/agenda/2022/01/what-s-behind-china-s-cryptocurrency-ban/>

<sup>29</sup> <https://digichina.stanford.edu/work/behind-the-facade-of-chinas-cyber-super-regulator/>

<sup>30</sup> <https://www.zdnet.com/finance/banking/singapore-cautions-against-marketing-of-cryptocurrency-services-to-public/>

against them and warning the public against them.

### **Conclusion**

The sudden and rapid emergence and the impacts of Finfluencers have raised various legal and corporate issues and SEBI has a vital role in constructing proper guidelines needed to monitor, and regulate their acts and behavior and penalize accordingly to protect the Indian Financial Market and people involved and affected by it.