

The Legacy Outreach

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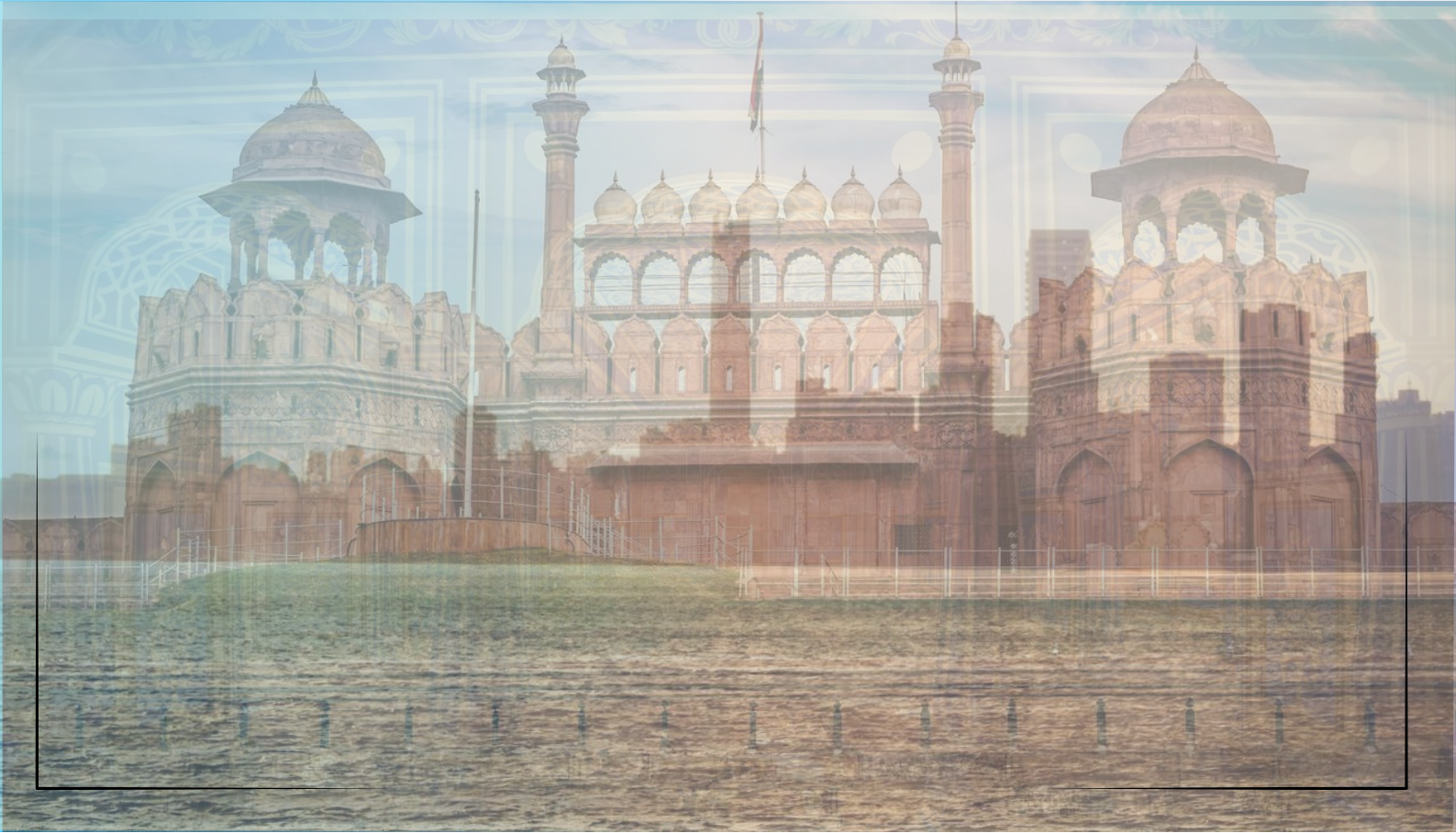
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The Fate of FinFluencers: A Brief of Existing Guidelines

In May 2023, the Securities and Exchange Board of India ('SEBI') passed an order against Mansun Consultancy and its Promoters, Mr P.R. Sundar, and Ms Mangayarkarasi Sundar for rendering investment advisory services in the absence of necessary licenses/ registrations as required under the SEBI (Investment Advisors) Regulations, 2013. As per the investigation conducted by SEBI, Mr P.R. Sundar was falsely portraying himself to be a qualified and registered investment advisor and charging a fee for providing expert investment advice through his blog and YouTube channel.

A month prior to this order, another Delhi-based financial social media influencer had come under the radar after SEBI issued a show cause notice to her for allegedly duping investors out of their money in return for investment advice, in the absence of appropriate registrations.

This recent crackdown by the Indian regulatory agency against financial influencers or 'finfluencers' has raised a vital issue with respect to the need for specific rules/guidelines to regulate the popularization of similar practices in the social networking domain, where various unqualified individuals have been rendering regular 'professional advise' on Indian markets and investments, whether in the garb of sponsorships or merely for increasing their social outreach.

The problem, however, lies in the fact that due to a scarcity of financial literacy in India, these unsolicited advisories are being widely followed by many viewers, who have a bona fide belief in the fact that the advice being offered by the influencer is backed by vast expertise in the field, even if the said influencer is penalised by the authority.

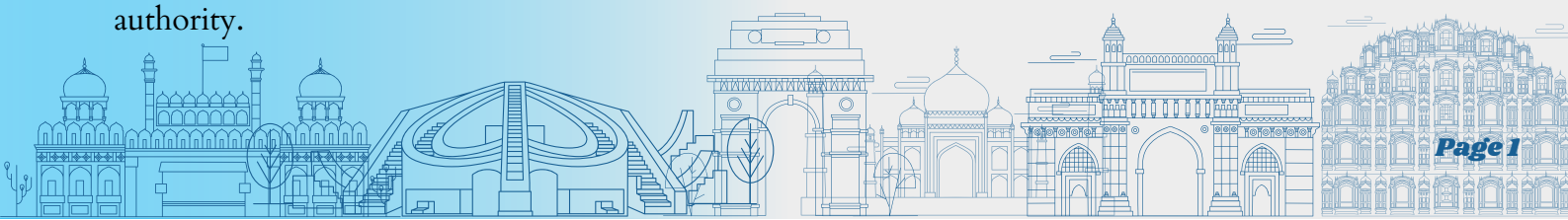
This may also be apparent from the aforementioned case of PR Sundaran, who, even after being fined with a penalty of INR 6 crores alongwith a ban from trading in stocks for a year, continues the practice of rendering financial advice and conducting paid workshops, through his online blog.

The Over(Reach) of Finfluencers

SEBI statistics show that only 27% Indian adults and 16.7% Indian teenagers are financially literate. With such unimpressonable rates, it may be understandable that a considerable part of the population feels comfort in abiding by the advice offered by self-proclaimed experts, whose way of imparting such information is rather simple and comprehensible.

However, it is also necessary to note that such simple information may only prove to be relevant if the same is correct and based on an acquired knowledge in the field. While there may not be any harm in providing basic information about the Indian banking and market systems, issues usually arise when finfluencers use their 'proven knowledge' in providing quips about the relevant stocks and companies, thereby prompting their viewers to invest in or otherwise refrain from investing in certain companies.

A form of such unqualified encouragement is also known as 'pump and dump scheme', where influencers or other well-known personas promote a particular stock as a high-return investment opportunity, thereby driving many of their followers to invest in bulk, ultimately driving the stock prices up by a high margin.



In the pump & dump scheme, the influencers, after facilitating the inflation in stock price, sell their own stocks in the company, thereby attaining illicit profits at the cost of their bonafide follower investors' money.

Owing to schemes like the aforementioned, SEBI has cautioned many individuals against taking advice online and has even passed advisories directing actually registered investment advisors from associating with influencers for promoting business transactions.

An International Perspective

The influencer issues, being non-exclusive to India, have been subjected to a number of regulations like the Information Sheet 269 issued by the Australian Securities and Investment Commission (ASIC) and the Unfair Commercial Practices Directive (UCPD) issued by the European Securities and Markets Authority (ESMA).

Information Sheet 269: The information sheet, issued in March 2022, reminded the influencers about the Corporations Act, 2001, as per which, the carrying of a financial business without an AFS license was held to be an offence.

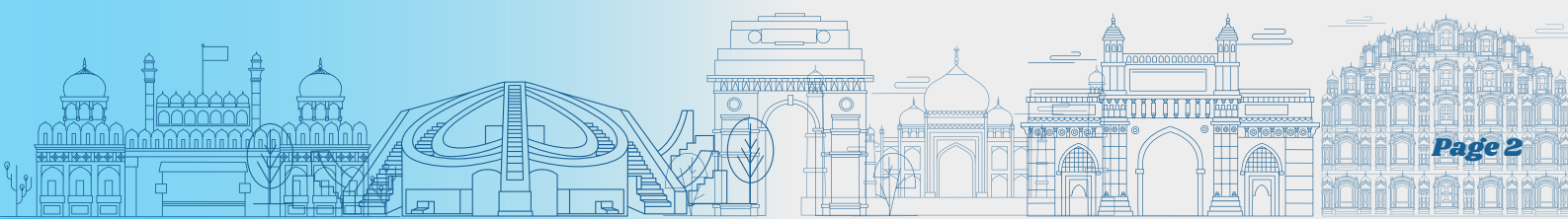
To facilitate ease of understanding, the sheet offered detailed case studies seeking to promote caution while rendering financial product advisories, promoting dealing arrangements, and engaging in misleading or deceptive practices.

While the sheet did not entirely prohibit registered AFS license holders from utilizing influencers to advertise their services, directives were issued asking incumbents to conduct their due diligence and carry out risk mitigation while indulging in such form of advertising.

ESMA's Statement on Investment Recommendations on Social Media and the Unfair Commercial Practice Derivatives (UCPD): As per the European Union, the term 'investment recommendation' includes the information which seeks to suggest an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public. [1] The Statement on Investment Recommendations requests the concerned people who provide investment recommendations, to acknowledge their ability to mislead investors and thus, to abide by the regulations provided under the European Union.

The UCPD, on the other hand, raises the issue concerning the increasing feature of commercial practice on social media websites and 'hidden advertising'. As per the UCPD, failure to clearly declare the commercial element in an influencer's content or practice will amount to misleading advertisements and thus, lead to a liability under Articles 6 and 7. [2]

New Zealand's Guide to Talking About Money Online: On June 21, 2021, the Financial Markets Authority of New Zealand published an article laying down a set of guidelines for influencers and their followers to consider while providing or taking advice through online channels. This guide also cautions the influencers against referring to themselves as 'financial advisors' or providing regulated financial advice, which was against the FMA's regime. [3]



Indian Regime

On August 25, 2023, SEBI, on account of the growing menace caused by the self-proclaimed investment advisors, published a consultation paper on Association of SEBI registered Intermediaries/ Regulated Entities with Unregistered Entities (including Finfluencers). The paper described finfluencers as unregistered entities providing catchy content, information, and advice on various financial topics to their several followers. While it was acknowledged that a certain portion of these finfluencers were genuine educators, it described the other social media personnel to be *'effectively enticing their followers to purchase products, services, or securities in return for undisclosed compensation from platforms and providers'*. [4]

Thus, to control such unregulated practices, SEBI proposed the setting up of an online platform which would help in the identification of registered investment advisors and further proposed to restrict the latter from associating with influencers.

The Consultation Paper further proposed to prohibit registered/regulated entities from sharing confidential information with finfluencers, thereby completely disrupting the revenue model for the latter.

Conclusion

Finfluencers, who seek to provide investment advice in the garb of attaining illicit monetary gains are undoubtedly a menace for any market, however, the misacts of a few should not be considered to be a bane on others.

While the Consulting paper may be considered to be a step, possibly in the right direction, its stringency towards completely prohibiting registered investment advisors from associating with finfluencers may have an adverse impact. This is stated on the basis of the fact that in the era of a growing need for accessibility, social media is emerging as the go-to method for any individual to avail advice in relation to the majority of subjects, thus, in the Indian market, which is known to have a lessening number of investment advisors per individual, a more adaptive approach may be to introduce certain regulations for associations between both professions, in order to maintain the legality of the advice while simultaneously promoting its accessibility.

Such an approach may also aid in a substantial increase in the financial literacy rate of India, which may be an essential quality for furthering an increase in investments in the country.

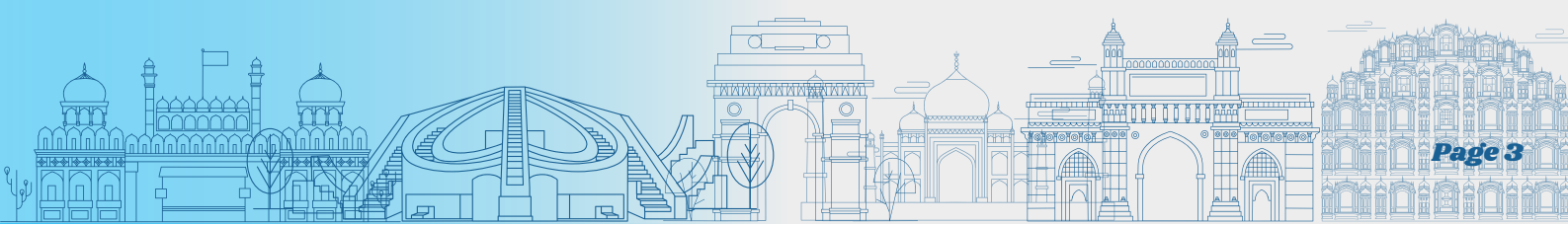
End-Notes:

[1]https://www.esma.europa.eu/sites/default/files/library/esma70-154-2780_esmas_statement_on_investment_recommendations_on_social_media.pdf.

[2]Clause 4.2.5., UPCD, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

[3]Financial Market Authority, A guide to talking about money online, Jun 21, 2021, <https://www.fma.govt.nz/library/articles/guide-to-talking-about-money-online/>.

[4]SEBI registered Intermediaries/ Regulated Entities with Unregistered Entities (including Finfluencers).



Around the World in 90 Days

This segment seeks to cover the various notable legal developments that took place across the globe in the past 90 days.

India

- A law concerning the other half of Alternate Dispute Resolution, the Mediation Bill, 2023, received assent from the President of India and became a law on September 15, 2023. The Act repeals Part III of the Arbitration and Conciliation Act, 1996 amongst other acts, provisions, and rules which deal with mediation or conciliation.
- The Competition (Amendment) Act, 2023 came into force on July 18, 2023. The Act has repealed the earlier enactment dated 2002.
- During the period of September 8, 2023 – September 10, 2023, India, being the rotational President of the G20, acted as the host for the G20 Summit, which was attended by the heads of various member nations. The conference marked the signing of various Memorandums of Understanding (MoUs) between India and other nations, including the following:
 - Three MoUs between India and Bangladesh concerning Digital Payment Mechanisms, Cultural Exchange Programs, and other reforms;
 - Over 2 dozen MoUs signed between India and the Kingdom of Saudi Arabia concerning aspects like ICT, entrepreneurship, chemicals, energy, investments; and
 - MoU between Bharat 6G Alliance and Next G Alliance, for strengthening public-private participation.

- On August 11, 2023, India passed the Digital Personal Data Protection Act, 2023, which regulates the processing of personal data of Indian citizens.

United Kingdom

- India-UK FTA Key Updates: The UK-India Free Trade Agreement negotiations have been ongoing for a while, with a total of 12 rounds having taken place since the beginning of the negotiations in January 2021. The possible provisions within the agreement, nearing culmination may include the following:
 - India may agree to cut the tariff to upto 75% on cars.
 - Matters concerning the dairy industry have been precluded from the agreement as the same may affect the domestic Indian industry;
- As per reports, the FTA may be finalized by the end of the year 2023.

Kingdom of Saudi Arabia

- During the G20 Summit, Indian EXIM Bank and Saudi EXIM Bank entered into an MoU to boost the export of goods and services. This agreement will be a milestone for easing the export-import channels of both countries.
- Vision 2030-Doing Business in Saudi Arabia: As part of Vision 2030, the Government of the Kingdom has promulgated many laws which ease the entrance of foreign companies into the country. These laws include the reduction of taxes on real estate deals from 15% to 5% and the reduction of the maximum payable fee for examination of economic concentrations.



AI and Deep Fakes - The Anil Kapoor Case

On September 9, 2023, the Hon'ble High Court of Delhi passed a 'John Doe' order in the case of **Anil Kapoor vs. Simply Life India & Ors**, [1] whereby an interim injunction was passed against the Defendants from using the *"name, likeness, image, voice, personality, or any other aspects of the Plaintiff to create any merchandise, ringtones, ring back tones, or in any other manner misuse the said attributes using technological tools such as Artificial Intelligence, Machine Learning, deep fakes, face morphing, GIFs either for monetary gains or otherwise to create any videos, photographs, etc., for commercial purposes, so as to result in the violation of the Plaintiff's rights."*

This interlocutory order holds a distinctive relevance in the present ongoing trend, where the use of artificial intelligence (AI) and deep fakes has increased to an unregulated percentage, leading to a gross violation of the personality rights as well as the right to privacy of well-known as well as private individuals. Through such usage, individuals, organizations and companies attain the ability to morph pre-existing images and videos or even create such media from scratch, where celebrities/ famous personas are depicted in various forms with/without a morphed real-like voice, which may in turn fail to portray the actual opinion of such celebrities and may even be offensive to the public in general.

Recently another such deep fake took rounds over social media where the likeness of the former President of the United States of America was illegally used to develop a morphed video wherein the deep fake was made to pass derogatory comments against another former President.

In light of such illicit use of the machine learning technology, a question arises in relation to whether India is in need of a law, which governs the use and regulates the misuse of the upcoming technology and its underlying potential.

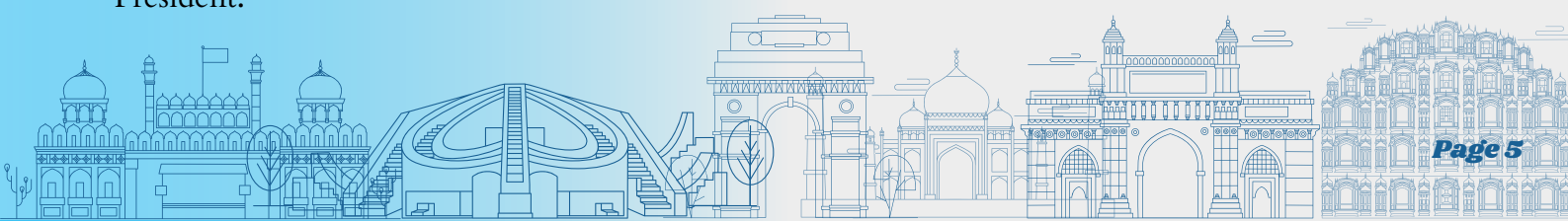
The Generation of Deep-Fakes

The term deep fake has recently been added to the common parlance and is thus, yet to be assigned a legal definition. In its everyday usage, deep fakes are loosely categorized to be the manipulation of a facial appearance to create a life-like humane digital form.

In the **Anil Kapoor case**, the Plaintiff was successful in proving that the Defendants were using the AI to create his deep fakes by morphing his image with that of female celebrities and creating videos for monetary gains, thereby causing a gross infringement of his personality rights as well as his right to privacy.

It is however, needful to note that the potential usage of deep fakes is not restrained merely to the aforementioned infringement but has even extended to the commission of a criminal offence, where the accused use AI to morph their voice and dupe people out of their hard-earned money.

While India is yet to pass legislation which deals with the deep fake usage as categorized in the aforementioned case, Section 66D of the Information Technology Act, 2000, which deals with the offence of identity theft by use of a computer resource or a communication device may apply to the latter criminal use of the technology.



Freedom of Speech and Deep Fakes

In terms of the right to freedom of speech, celebrities and public officials have been known to have drawn a short straw. This is due to the public availability of the content which involves them alongwith the basic nature of their profession.

Even thereafter, the Hon'ble Courts in India have repeatedly upheld the personality rights and limited privacy rights of such public personas, which is apparent from the landmark case of **R. Rajagopal vs. State of Tamil Nadu** [2], where the Hon'ble Supreme Court of India held that,

“In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties.....

Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above.”

In the case of deep fakes, although the case may not always include any animosity or malice, the use may prove to be equally detrimental to public officials and celebrities, whose primary source of income is their reputation and in some cases, their face and voice.

Furthermore, in terms of the use of deep fakes for private individuals, such use may even lead to a complete contravention of their fundamental right to life, including the right to privacy, which in their case is absolute.

Conclusion

“There can be no doubt that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism. However, when the same crosses a line, and results in tarnishment, blackening or jeopardises the individual's personality, or attributes associated with the said individual, it would be illegal.” [3]

AI has been a revolutionary technology in terms of streamlining a number of services and activities at a global level, however, like any other piece of technology, there are certain aspects of AI, where the disadvantages grossly minimize the minuscule effect of the potential advantages. Deep fakes, being one such aspect, tend to completely deceive the viewer about the reality of the image or video, with its dangerously life-like formulations, thereby providing a treacherous ground for the rights of individuals, particularly, well-known individuals.

However, it may be pertinent to note that a complete disregard for the benefits of the technology, by imposing a blanket ban, may also not be considered to be an optimal solution.

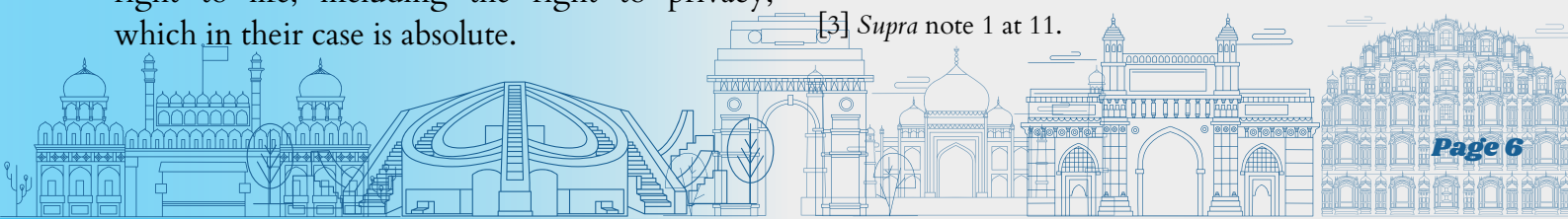
Presently, with the unhinged pace, the only possible solution may be the utilization of the existing knowledge on AI in enforcing a law, which may aid in a swift regulation of the misuse.

End-Notes:

[1] Anil Kapoor vs. Simply Life India & Ors., C.S. (COMM) 652/2023.

[2] R. Rajagopal vs. State of Tamil Nadu, AIR 1995 SC 264.

[3] *Supra* note 1 at 11.



Quarterly Judicial Recap

The past quarter has been witness to a number of noteworthy judgments and orders, which may have changed the ways in which various laws are interpreted. This section covers some of such major judicial updates.

Hon'ble Supreme Court

- Larsen Air Conditioning & Refrigeration Company vs. Union of India [2023 INSC 708].

Facts: In a dispute relating to a tender, the Arbitral Tribunal passed the award in favour of the Appellant (Claimant), directing the Respondent to pay 18% pendent lite and future compound rates. The Hon'ble High Court of Allahabad, in the appeal filed by the Respondents, reduced the percentage from 18 to 9. Aggrieved by the reduction, the Appellants moved the Hon'ble Supreme Court.

Judgment: The Hon'ble Court held the case in favour of the Appellants and specified that owing to the fact that arbitration commenced in the year 1997, the Court was not bound by Section 31 (7) (b) which came into force on October 2015. Under the earlier provision, the statutory interest rate was fixed at 18% in cases where the award did not specify otherwise. Thus, the impugned order reducing the interest rate was set aside,

- M/s RPS Infrastructure Ltd. vs. Mukul Kumar & Anr. [2023 INSC 816].

Facts: The Appellant entered into an agreement with M/s KST Infrastructure Pvt Ltd. (the Corporate Debtor), disputes in relation to which led to the institution of arbitration proceedings, where the award was passed in favour of the Appellant.

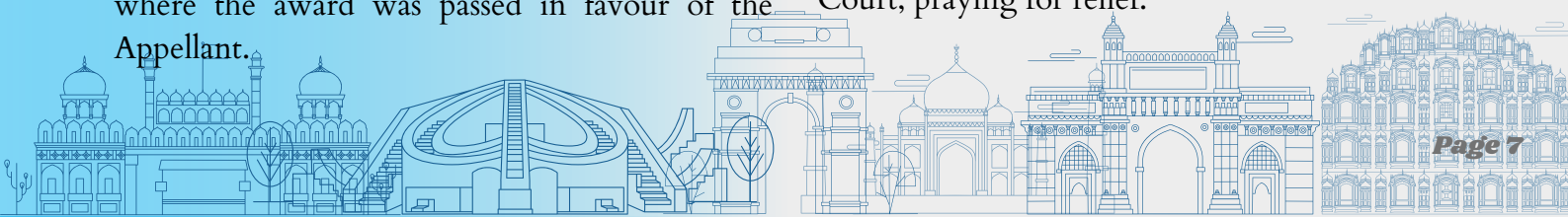
Aggrieved by the award, the Corporate Debtor preferred an Appeal under Section 34 of the Arbitration and Conciliation Act, 1996, subsequent to which another appeal under Section 37 of the Act was filed when the former was again decided in favour of the Appellant.

During the pendency of the aforementioned cases, the Insolvency Resolution Process (IRP) was initiated against the Corporate Debtor in relation to three real estate properties by certain investors. The Insolvency application was accepted by the Adjudicating Authority and a Resolution Professional (RP) was appointed.

Soon thereafter, the IRP issued a public announcement inviting claims from the creditors. A resolution plan submitted by the Committee of Creditors (COC) for one of the properties was approved by a majority vote and was then submitted to the Adjudicating Authority for approval.

At this stage, the Appellant approached the RP to submit their pending claims of Rs. 35,67,05,337/-, which were a result of the arbitral award. However, the claim was rejected by the RP, owing to a delay of over 287 days in the filing of the claim and due to the fact that the plan had since been approved by the COC.

Aggrieved, the Appellant filed a case before the Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, which was decided in their favour. When, in an appeal filed by Respondent No. 1 (RP) before the National Company Law Appellate Tribunal, the case was held in favour of the latter, the Appellant approached the Hon'ble Supreme Court, praying for relief.



Judgment: The Hon'ble Court decided in favour of Respondent No. 1 and held that the defence adopted by the Appellant about a lack of awareness about the publication of the insolvency notice could not be accepted as the RP had duly abided by the provision of Section 15 of the Insolvency and Bankruptcy Code, 2016, and thus the knowledge was implied.

It was further held that even though the Adjudicating Authority had yet to approve the plan, it would be wrong to send the plan back to the COC, as the same would open the floodgates for a plethora of litigations.

Thus the Hon'ble Court found it difficult to 'unleash the hydra-headed monster' and dismissed the case.

Hon'ble High Courts

- **Delhi High Court:** Satluj Jal Vidyut Nigam vs. Jaiprakash Hyundai Consortium [2023 SCC OnLine Del 4039]

Facts: The parties entered into a dispute when, through a simultaneous change in the rates of minimum wages, the Respondent claimed to have incurred an additional expenditure than the one expected and added to the financial bid at the time of tender submission.

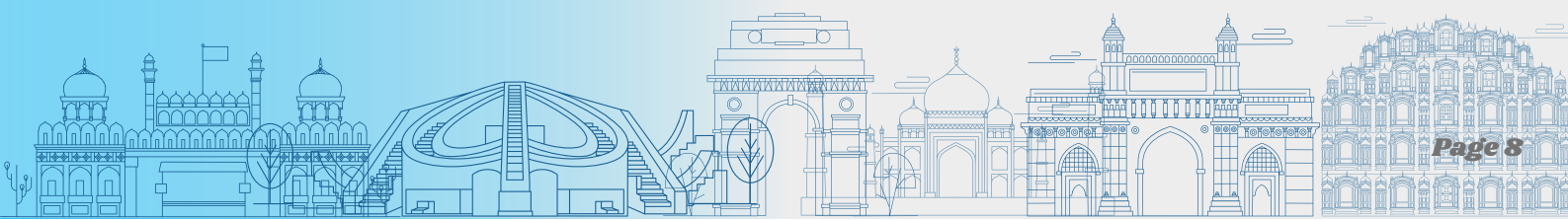
During the arbitral proceedings, the Respondents claimed that the mathematical derivation provided in the contract, for calculating the expenses in case of the aforementioned case, was not correct and thus, requested that the same be tweaked. With reference to such change, the Respondent submitted a claim of 77.26 crores, however, failed to provide supporting evidence for the expenses, so claimed to have been incurred.

While the arbitrator refused to accept the amendment of the formulae, he proceeded to accept the resultant amount of expenses claimed by the Respondent and passed an award in favour of the latter.

Aggrieved, the Appellants filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996.

Judgment: The Hon'ble Court held that there was simply no basis for the Arbitrator to accept the plea submitted by the Respondent, in the absence of any proof. It was held that entertaining financial claims based on novel mathematical derivations, without proper foundation in the pleadings and/or without any cogent evidence in support thereof can cause great prejudice to the opposite party. Especially in the context of construction contracts where amounts involved are usually astronomical, any laxity in evidentiary standards and absence of adequate diligence on the part of an arbitral tribunal in closely scrutinizing financial claims advanced based on mathematical derivations or adoption of novel formulae, would cast serious aspersions on the arbitral process.

The case was thus, decided in favor of the Appellant.



Online Dispute Resolution and the Mediation Act, 2023

In the year 2019, when the world formed victim to a global pandemic, a need was felt to introduce innovative methods of adjudicating disputes, in order to not only reduce the increasing caseload but also to regulate the anticipated delay in providing justice. In light of such needs, the option of online dispute adjudication ('ODR'), whether in the form of court hearings or alternate dispute resolutions was made available to the general public in India.

After the resumption of normalcy, various incumbents continued to advocate for maintaining the availability of such online forums on account of the attached accessibility and easement. While there was no specific legislation providing for the promotion of such a manner of dispute redressal, on August 1, 2023, the Rajya Sabha paved the way for a formal inclusion of ODR by passing the Mediation Bill, 2023, which received the assent from the President on September 15, 2023.

The Mediation Act, 2023 ('Act of 2023'), which was initially introduced in the House on December 20, 2021, was drafted in accordance with the reports submitted by two Standing Committees, in addition to the NITI Aayog Report on ODR and was further based on the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019 ('UNISARM') (also known as the Singapore Convention on Mediation), to which India is a signatory.

Such an exhaustive background with the added benefit of compliance to international best practices increased the expectations from the Act of 2023 in relation to its ability to promote ODR in terms of an efficient way to resolve disputes.

ODR and the Indian Adjudicatory System

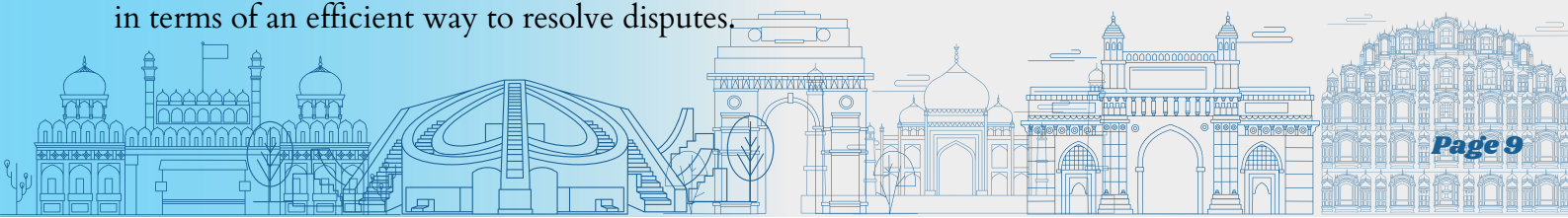
ODR is not a new concept and has been widely accepted in various countries and international organizations, as a method of efficiently adjudicating disputes. In fact, in the year 2016, the United Nations Commission on International Trade Law (UNCITRAL), in tandem with the sharp increase in online cross-border transactions, even adopted the Technical Notes on Online Dispute Resolution ('Technical Notes') to assist countries in developing and using ODR systems, which was followed by the publication of 2021 Guidelines on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings, by the European Committee on Legal Co-operation.

In India, while the concept of ODR was promoted and delved into, by various agencies, its acceptance was observed only after the pandemic struck the nation, whereafter, organizations including NITI Aayog, and the Securities and Exchange Board of India ('SEBI'), promoted the inclusion of ODR in the existing legal framework.

Designing the Future of Dispute Resolution: Report Published by the NITI Aayog

In the year 2021, the aforementioned report was published by NITI Aayog ('NITI') with the objective of advocating for the 'future of justice to be conceptualized beyond the confines of brick and mortar'.

NITI promoted ODR as a cost-effective, and convenient way to resolve disputes and further advocated for the adoption of ODR at a grassroots level.



Within its study, NITI proposed the following major themes for encouraging ODR in India.

1. Structure and Models: In line with its research, NITI proposed two basic models, the classification of which was made on the basis of the institutions which adopt them. These included the 'Thread Dispute Resolution Model' and the 'Hybrid Model'. Whereas the first model was based on the Hong Kong Three-Tiered ODR Model where disputed parties have the option to negotiate, mediate and then arbitrate their disputes, the hybrid model worked as per its namesake and promoted the idea of not supplanting, but supplementing the idea of dispute resolution.
2. Role of the Private Sector: As per the research conducted by NITI, a feasible plan for promoting ODR was provided by the establishment of a collaboration between private players having experience in rendering ODR and the government.
3. Good Practices in ODR mechanisms: NITI emphasized the fact that ODR is much more than an online version of ADR and that it was necessary to spread education in relation to the same. Other recommendations with respect to good practices were provided to be the inculcation of technological solutions, appropriate enforcement of final agreements, alongwith a rapid development of the field.

SEBI ODR Mechanism

On July 31, 2023, SEBI published a circular providing guidelines for "Online Resolution of Disputes in the Indian Securities Market".

The circular, issued in furtherance of the SEBI (Alternate Dispute Resolution Mechanism) (Amendment) Regulations, 2023, sought to further streamline the existing mechanism by directing the Market Infrastructure Institutions ('MII') to establish a common Online Dispute Resolution Portal ('ODRP').

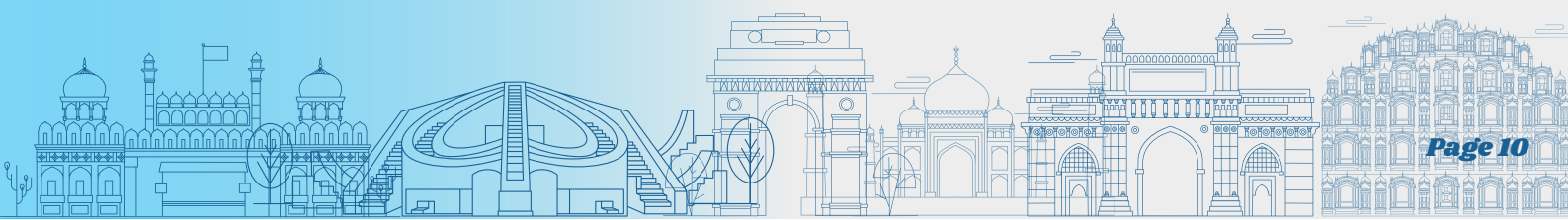
It has been specified that the MIIs, in consultation with their empanelled ODR institutions, shall establish and operate a common ODRP and shall make joint efforts to operationalize the same. Furthermore, the circular also lays down various provisions relating to the initiation of the dispute resolution process, forms, fees and charges of the proceedings, alongwith certain specific guidelines relating to arbitration and conciliation.

UNISARM and the Technical Notes

Being a signatory of UNISARM, India has actively promoted ADR as an effective mode of dispute resolution, which is further proven by the manner of design and implementation of the Arbitration and Conciliation Act, 1996 ('Arbitration Act'). It is, however, needful to note that the convention fails to provide for any provisions dealing with ODR as a manner of facilitating ADR.

To tackle such absence of provisions, UNCITRAL published the Technical Notes, specifically designed for developing countries like India, to aid them in the enhancement and structuring of ODR.

The Technical Notes describe ODR to be a simple, fast, flexible and secure manner of resolving disputes, which does not require a physical presence at a meeting or a hearing[1].



Being a non-binding document, the Technical Notes have been formulated as an inclusive and merely directive document. Their premise is to basically promote the principles of fairness, transparency, due process, and accountability in the ODR mechanisms of developing nations.

The Mediation Act, 2023 and Online Mediation

Two of the major primary objectives enshrined within the preamble of the Act of 2023 include its endeavours to promote and facilitate mediation, for the resolution of disputes, commercial or otherwise, and to make online mediation, an acceptable and cost-effective process.

In fact, even Section 4 of the Act of 2023, defines the expression 'mediation' to include 'online mediation' alongwith pre-litigation mediation, community mediation, and conciliation. Furthermore, Chapter VII containing Section 32 of the Act of 2023 specifically deals with 'online mediation', and offers an option to the parties to conduct mediation 'by the use of electronic form or computer networks but not limited to an electronic mail service, secure chat rooms or conferencing by video or audio mode or both'. [2]

In view of such provisions, it may be needful to reiterate that the Act of 2023 is the first piece of central legislation, which explicitly provides for provisions pertaining to ODR in India, thus, making it an innovative and needed step for promoting the idea of including such provisions under other laws as well.

Conclusion

India is a land with a rich history, whether in the matter of the development of the country or concerning the legal domain. Such history was also marked in the year 1996, when the enforcement of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act'), still upheld to be a great and well-thought-out piece of legislation, took place. While there have been many more milestones since the enforcement of this Act, the Act of 2023 may be considered to have a more distinctive history, owing to the many provisions which seek to make it unique, including those seeking to inculcate ODR in the dispute resolution process.

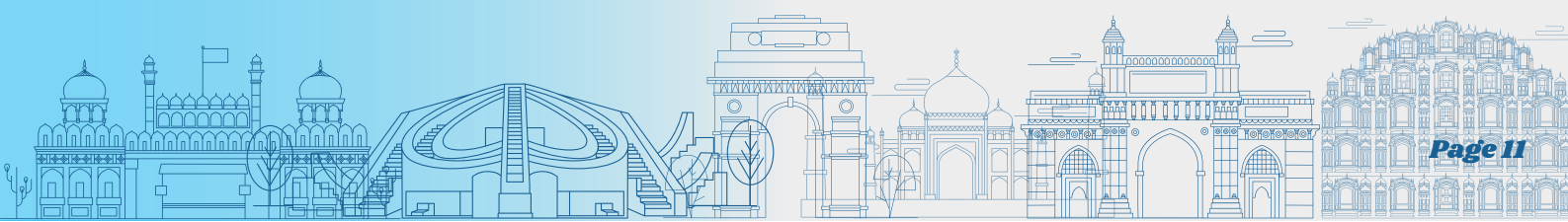
However, whether such ODR will be accepted and implemented to its full potential is entirely dependent on adequate enforcement of the law. Needless to mention, another aspect which is required to be taken into consideration, is the realization of the NITI report, which is based on proven practices undertaken in developing and developed countries.

Thus, while the Act of 2023 must be lauded for the step, the optimal actualization of ODR still remains.

End-Notes:

[1] Clause 2, Section I, Technical Notes on Online Dispute Resolution, pg. 15.

[2] Section 32 of the Mediation Act, 2023.



Legacy Updates

This quarter has brought in a number of success stories for Team Legacy. Here is a celebration of our growth, which would not be possible without our clients.

Arbitration Win for Our Client

The Arbitration team of Legacy Law Offices LLP, headed by **Mr. Gagan Anand**, Managing Partner and **Ms. Sadiqua Fatma**, Senior Partner, attained a highly favourable award amounting to over **INR 455 Crores** for our client in a matter concerning the construction of an alternate route in the prestigious Ghat-ki-Guni Tunnel.



FIDIC Global Infrastructure Conference 2023

In the month of September 2023, **Mr. Gagan Anand**, Managing Partner and **Ms. Vandana Randhawa**, Director of the Firm attended the FIDIC Global Infrastructure Conference 2023. The Conference witnessed the participation of well-reputed FIDIC professionals from across the globe and proved to be extremely insightful for Legacy.



AsiaLaw Rankings 2023-24

In the recent publication of the rankings of AsiaLaw, a prestigious global legal directory, Legacy Law Offices LLP was ranked as a Recognized Firm, for the second year, in a row. The rankings celebrated the work conducted by the Law Firm in the practice areas of Construction, Labor & Employment and Dispute Resolution, alongwith the Infrastructure Sector.

Mr. Gagan Anand, Managing Partner of Legacy Law Offices LLP was ranked as a 'Distinguished Practitioner' in the Construction Law Practice Area/Infrastructure Sector.



Listing of a Company

On September 21, 2023, **Mr. Gagan Anand**, Managing Partner and **Ms. Shalini Munjal**, Co-Managing Partner of the Firm, attended the Listing Ceremony of EMS Limited. Legacy Law Offices LLP was the Legal Advisor for the company.

In its initial public offering, the construction company raised investments of over **INR 355 crores**, wherein companies like Morgan Stanley Asia and Bank of America were some of its anchor investors.



Influential Men to Follow 2023

Mr. Ankit Konwar, Principal Associate Advocate of Legacy Law Offices LLP, was recently featured in the list of Influential Men to Follow in 2023, published by Insights Magazine.

The magazine featured his detailed interview and celebrated his success story as a rising star in the field of litigation.



Webinar on Construction Disputes

On August 9, 2023, Legacy Law Offices LLP, in association with the Indo-French Chambers of Commerce & Industry organized a Webinar on the Fundamentals of Construction Disputes.

Ms. Sadiqua Fatma, Senior Partner of the Firm and **Mr. A. Shankar (MRICS)**, JLL India were the Panelists while **Mr. Ishan Khanna** acted as the Moderator.

The webinar was attended by over 80 people and entailed a discussion on the intricacies of construction disputes, the different types of contracts, their clauses and the related consequences.



Greetings



August 15, 2023



August 20, 2023 - August 31, 2023

happy गणेश
chaturthi



September 18, 2023

*The Climate Action Plan and Sustainability in Construction**

*This executive summary and the accompanying article was submitted by Mr Gagan Anand, Managing Partner for the IABSE Congress, Delhi.

It is a universal truth that infrastructure and construction are the driving force of any economy and that the development of a country is primarily judged through its infrastructural development. However, with the rampant rate of climactic adversities, a dire need to change the processes and end – results of construction have arisen. During the United Nations Conference of Parties (hereinafter referred to as ‘CoP26’), the Indian ambassador expressed the country’s intention of attaining net zero carbon emissions by 2070 and of reducing these emissions by at least 1 billion tonnes by 2030.

The Ministry of Environment, Forest and Climate Change (MoEFCC), through its submission to the United Nations Framework Convention on Climate Change (UNFCCC) highlighted the contribution of building stocks up to 40% in the total national energy consumption of the country. Focusing upon the major polluting sectors of power, steel and cement industries, the Government of India aims to curb the amount of carbon emission being generated within these energy-intensive units to reduce dependency upon coal for 70% of power generation in India. The Indian Government also aims to enhance the usage of non-fossil fuels within the energy generation sector to control the amount of carbon emission from bulk coal burning. In addition to this, the Global 2022 Building Status Report published by the United Nations Environment Programme, the building construction stocks amounted to a total of 39% energy consumption while the carbon emissions were considerable.

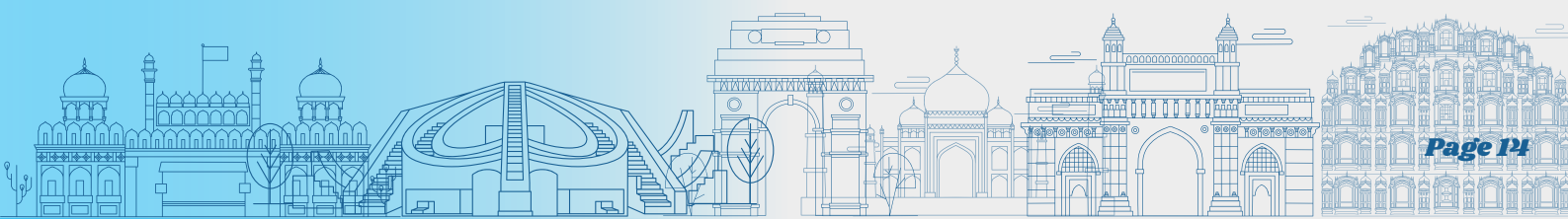
To attain these targets, India would have to take drastic steps to incorporate the values of sustainability within all its sectors, including that of construction. While most of the construction companies are currently more inclined towards managing capital costs, this goal may force them to look for more environmentally feasible and sustainable options.

NITI Aayog, in its report titled, Indian Infrastructure Body of Knowledge, which was published well before the newly created ambitions of the country, appropriately acknowledged this fact and provided a comprehensive guidebook on how some values of sustainability be included within the construction process.

Additionally, the Energy Conservation Building Code, 2017, published by the Bureau of Energy Efficiency for voluntary adoption by many states in India, also provides for detailed directives for compliance by commercial buildings, to enable them in attaining energy efficiency.

However, the most important question arising out of the aforementioned and the other existing measures pertains too their implementation, which, in effect is lagging, when compared to the rate of global warming.

When in 2015, the United Nations Environment Programme established the 17 Sustainable Development Goals, they sought to include industry and infrastructure, as well as sustainable cities and communities, as specific goals. These goals were sub-divided into individual targets, wherein, sustainable construction was made to be an essential element.



It is although essential to mention, that the Sustainable Development Goal Index, developed by the NITI Aayog for tracking the adoption of these goals, the target of such sustainability in construction, lost its place to various other targets.

At this juncture, it is also needful to note that in all the targets set by the Sustainable Development Goal Index, India is now in the green, which can provide for ample opportunity for the country to start another journey towards adding new targets, including that of imbibing construction. The International Institute for Sustainable Development published a report proving accountancy of fossil fuels for almost 76% of the total primary energy supply in India. Reflecting upon such dependency on non-renewable resources, the Energy Conservation (Amendment) Bill, 2022 was passed into law on 8th August, 2022 to validate the regulatory framework for establishing carbon markets in India.

The Bill primarily sought amendments in the Energy Conservation Act, 2001 as an endorsement of Panchamrit towards efficient decarbonisation of Indian economy. Additionally, the amendment provides legal recognition of the draft blueprint of 'National Carbon market for Stakeholders Consultation' published by Bureau of Energy Efficiency (BEE) in 2021.

With the intention to curb the amount of carbon emission and to achieve the goal of net zero carbon emission by 2070 pronounced within the Paris Agreement, the Gujarat Government on 23rd May 2022 signed a Memorandum of Understanding with Energy Policy Institute at the University of Chicago Trust in India (EPIC India)

and the Abdul Jameel Poverty Action Lab (J-PAL) to setup and execute cap and trade system for establishing domestic cap and trade market in India.

Over the years, rampant unplanned urbanization in the country has resulted in unrepairable environmental damage. With the realization pertaining to the over-exploitation of resources, frequent progressive measures have been inculcated within already established legislation to ensure compulsory implementation within the country. Focusing on curbing the impact of exponentially increased carbon emissions on climate change with a majority contribution from the construction sector of India, periodical amendments in the building codes and policies have ensured positive changes within the present regime. However, even though regular revisions ensure the successful implementation of sustainable components within the industry, economists and users have detected significant loopholes in amended policies' execution mechanisms.

Notably, flourishing economic development can efficiently be achieved through striking a strategic balance between economic, social, and environmental components of sustainability. The recent developments and innovative construction policies, either through the employment of sustainable components or technology, have enabled the reformation of primitive infrastructure practices in the building sector of India. Recently amended buildings codes and policies for construction of residential and commercial buildings by eminent authorities try to ensure inclusion of operative and widely accepted sustainable components to cull out innovative sustainability goals with major concern towards amending climatic conditions.



Disclaimer

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The views expressed in this or any other newsletter do not necessarily constitute the final opinion of Legacy Law Offices LLP on the issues reported herein.

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