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Regulatory Convergence in the Creator Economy: Assessing Intermediary Liability and SEBI–IT Rules Co-Regulation for Financial Content

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Regulatory Convergence in the Creator Economy: Assessing Intermediary Liability and SEBI–IT Rules Co-Regulation for Financial Content

ABSTRACT

The rapid democratization of India's capital markets has been accompanied by the exponential expansion of financial content creators, popularly termed 'finfluencers', whose algorithmic reach frequently outpaces statutory oversight. While digital platforms democratize investor education and access, they simultaneously expose millions of first-time retail investors to unverified trading strategies, unregistered investment advice, deceptive promotional schemes, and systemic market manipulation. This research article critically investigates the escalating institutional and jurisdictional friction between the Securities and Exchange Board of India (SEBI) and the Ministry of Electronics and Information Technology (MeitY). The central inquiry interrogates whether traditional safe harbour immunities under Section 79 of the Information Technology Act, 2000 remain legally defensible when modern digital intermediaries deploy engagement-maximizing recommendation algorithms that actively curate, monetize, and amplify unregistered financial promotions. Employing a rigorous doctrinal and comparative legal methodology, this study critically scrutinizes SEBI's recent regulatory pivot under the SEBI (Intermediaries) (Amendment) Regulations, 2024, its Specified Digital Platform framework, and directives compelling registered market intermediaries to terminate commercial relationships with unregistered creators. It evaluates India's siloed regulatory architecture against pioneering international co-regulatory models, including the United Kingdom's Digital Regulation Cooperation Forum and Financial Conduct Authority guidelines, the United States Securities and Exchange Commission's touting disclosure enforcement, and the European Union's Digital Services Act. The paper demonstrates that India's current reliance on post-facto enforcement and indirect market-access bans leaves algorithmic amplification largely unchecked. To bridge this governance gap, it proposes an integrated statutory SEBI–MeitY Co-Regulatory Protocol, mandatory algorithmic due diligence under the Information Technology Rules, 2021, verified credential whitelisting, and statutory investor restitution.

KEYWORDS

Algorithmic Governance, Creator Economy, Finfluencers, Intermediary Liability, Regulatory Convergence

I. INTRODUCTION

The democratization of India's capital markets marks a profound transformation in household savings. Between March 2020 and early 2025, individual demat accounts expanded from 4.09 crore to over 18.5 crore, reflecting an influx of retail participants seeking wealth accumulation.[1] Concurrently, this retail surge fueled the explosive growth of the creator economy, particularly financial influencers or 'finfluencers' across YouTube, Instagram, and Telegram.[2] While legitimate digital educators disseminate basic financial literacy, a substantial segment operates as an unregulated shadow advisory market, dispensing speculative trading tips, algorithmic strategies, and derivatives promotions without professional qualification or fiduciary accountability.[3] A substantial proportion of these new market entrants originate from Tier-2 and Tier-3 cities, possessing limited foundational financial literacy and relying extensively on digital platforms for market guidance.

The societal perils are severe. Empirical research by the Securities and Exchange Board of India (SEBI) reveals that over 93% of retail traders in equity derivatives (Futures and Options) incurred net financial losses between FY22 and FY24, accumulating losses exceeding Rs 1.81 lakh crore.[4] Despite these outcomes, engagement-driven platform algorithms optimize, rank, and amplify speculative trading content, leveraging behavioral biases and gamified interfaces to maximize user attention and advertising yields.[5] Over one crore individual retail traders suffered losses during this period, surrendering an average of ₹1.2 lakh per trader, inclusive of transaction costs.

This operational reality generates structural friction between capital market integrity and platform oversight. SEBI is statutorily empowered under the Securities and Exchange Board of India Act, 1992 to protect investors and regulate securities markets.[6] Conversely, digital platforms

[1] Securities and Exchange Board of India, *Annual Report 2023-24* 34 (SEBI, Mumbai, 2024).
[2] Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (ASCI, Mumbai, 2021, as amended 2023).
[3] Securities and Exchange Board of India, *Consultation Paper on Association of SEBI Registered Intermediaries with Unregistered Entities* 3 (SEBI, Mumbai, Aug. 25, 2023).
[4] Securities and Exchange Board of India, *Study on Analysis of Profit and Loss in Equity Derivatives Segment (FY22–FY24)* 7 (SEBI, Mumbai, Sep. 2024).
[5] European Securities and Markets Authority, *Technical Advice on Retail Investments Strategy*, ESMA35-42-1227, at 28 (ESMA, Paris, 2022).
[6] The Securities and Exchange Board of India Act, 1992 (Act 15 of 1992), s. 11.

operate under the Ministry of Electronics and Information Technology (MeitY) governed by the Information Technology Act, 2000,[7] which shields intermediaries through safe harbour immunity under Section 79.[8] These regulatory silos enable arbitrage: unregistered creators exploit algorithmic distribution to evade securities licensing, while platforms disclaim liability by professing passive intermediary status. This article examines this institutional impasse, interrogating whether Section 79 immunity remains viable when algorithms actively curate financial solicitations, and articulates an integrated co-regulatory model. Under established constitutional jurisprudence, commercial speech that is deceptive or promotes unlawful advisory services does not enjoy the protection of Article 19(1)(a) of the Constitution of India.

II. LITERATURE REVIEW AND RESEARCH GAP

Academic scholarship on platform governance has long examined intermediary liability. Early jurisprudence treated online platforms as passive conduits analogous to common carriers, justifying broad statutory immunities.[9] However, contemporary legal theorists argue algorithmic curation renders passive conduit doctrine obsolete, as platforms dynamically index, rank, and monetize content.[10] In India, scholarship on Section 79 of the Information Technology Act, 2000 has predominantly evaluated speech, defamation, and copyright following *Shreya Singhal v. Union of India*.[11] The application of intermediary liability doctrines to algorithmically amplified capital market fraud remains critically underexplored.

Concurrently, securities law scholars have scrutinized regulatory dilemmas surrounding digital financial promotions. Commentators highlight the structural limitations of SEBI's traditional disclosure-based regime when confronted with viral social media content.[12] Scholarly inquiries evaluate commercial incentives underpinning finfluencer operations, documenting how creators monetize audiences through affiliate brokerage commissions, revenue-sharing, and subscription-gated messaging groups.[13] Furthermore, literature analyzes licensing

[7] The Information Technology Act, 2000 (Act 21 of 2000).
[8] *Id.*, s. 79.
[9] Jack M. Balkin, "Free Speech in the Algorithmic Society", 51 *UC Davis Law Review* 1149 (2018).
[10] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press, Cambridge, 2015).
[11] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
[12] "Section 79 Safe Harbour and AI Platforms: Can an Algorithm Be an Intermediary Under Indian Law?", *Bhatt & Joshi Associates Law Review* (2024).
[13] "Evolution of Finfluencer Regulation in India: A Three-Pillar Association-Based Model", 7 *IJLMH* 112 (2024).

bottlenecks under SEBI's Investment Advisers and Research Analysts regulations, observing that onerous compliance thresholds inadvertently drive creators into the unregulated shadow economy.[14] Moreover, consumer protection scholarship examining digital 'dark patterns' emphasizes that manipulative interface designs and aggressive promotional hooks systematically exploit retail cognitive biases, subverting rational decision-making.

Despite these contributions, a profound research gap remains unaddressed. Existing literature treats securities regulation and platform governance as mutually exclusive silos. Securities scholars analyze finfluencers in isolation, proposing licensing or association bans while ignoring Section 79 immunities. Conversely, cyber scholars examine intermediary due diligence without addressing retail market harms. This paper bridges this divide, establishing that curbing unregistered promotions requires an enforceable co-regulatory synthesis between SEBI and MeitY.

III. RESEARCH METHODOLOGY

This research adopts a doctrinal legal methodology integrated with comparative institutional analysis. The doctrinal inquiry analyzes primary statutory frameworks, including the Securities and Exchange Board of India Act, 1992,[15] the Information Technology Act, 2000,[16] and subordinate legislation such as the SEBI (Investment Advisers) Regulations, 2013,[17] SEBI (Research Analysts) Regulations, 2014,[18] and the Information Technology Rules, 2021.[19] It further evaluates regulatory consultation papers, policy circulars, and enforcement orders issued by SEBI, alongside self-regulatory codes developed by the Advertising Standards Council of India (ASCI) and guidelines under the Consumer Protection Act, 2019.[20]

The comparative legal analysis investigates institutional models across three benchmark jurisdictions: the United Kingdom (Financial Conduct Authority promotions guidance under FSMA 2000, the Online Safety Act 2023, and the Digital Regulation Cooperation Forum),[21] the United States (Securities and Exchange Commission touting rules under Section 17(b)

[14] "Finfluencers and SEBI: Looking for the Right Regulatory Model", 7 *IJLMH* 345 (2024).
[15] Act 15 of 1992.
[16] Act 21 of 2000.
[17] Notification No. LAD-NRO/GN/2012-13/31/1778 (Jan. 21, 2013).
[18] Notification No. LAD-NRO/GN/2014-15/15/1737 (Sep. 1, 2014).
[19] G.S.R. 139(E) (Feb. 25, 2021, as amended).
[20] The Consumer Protection Act, 2019 (Act 35 of 2019), s. 21.
[21] Financial Services and Markets Act 2000, c. 8, s. 21; Online Safety Act 2023, c. 50.

of the Securities Act of 1933 and FTC endorsement guides),[22] and the European Union (the Market Abuse Regulation and the Digital Services Act).[23] These frameworks are comparatively synthesized to articulate an actionable co-regulatory architecture for India.

IV. DISCUSSION AND ANALYSIS

A. The Securities Law Architecture: Regulatory Silos and Association Bans

Under Sections 11 and 12A of the SEBI Act, 1992, the regulator exercises extensive authority to prohibit fraudulent market practices and regulate investment advisory services.[24] Traditionally, SEBI utilized the SEBI (PFUTP) Regulations, 2003 to penalize market manipulation and misleading inducements.[25] However, prosecuting digital finfluencers under PFUTP proved difficult due to evidential burdens required to establish fraudulent intent and investor inducement.[26] Simultaneously, rigorous net-worth mandates under the IA Regulations, 2013 operated as prohibitive barriers, driving digital commentators into informal advisory roles.[27] Unregistered creators capitalized on this regulatory bottleneck by establishing private subscription channels on Telegram and WhatsApp, charging substantial fees for intraday 'buy/sell' calls while styling the content as 'purely educational'.

Confronting viral unauthorized advice, SEBI initiated targeted enforcement actions, ordering substantial disgorgement in matters such as *Baap of Chart* (Rs 17.2 crore unlawful gains)[28] and *PR Sundar*.[29] Recognizing that retrospective enforcement could not keep pace with decentralized digital reach, SEBI executed a strategic shift toward an association-based regulatory model. Initiated through its August 2023 Consultation Paper[30] and codified in the SEBI (Intermediaries) (Amendment) Regulations, 2024,[31] SEBI prohibited registered intermediaries—such as stock brokers and mutual funds—from

[22] Securities Act of 1933, 15 U.S.C. § 77q(b); 16 C.F.R. § 255.
[23] Regulation (EU) 2022/2065, arts. 34-35; Regulation (EU) No 596/2014.
[24] Act 15 of 1992, ss. 11, 11B, 12A.
[25] Notification No. S.O. 823(E) (July 17, 2003), reg. 4.
[26] *SEBI v. Kanaiyalal Baldevbhai Patel*, (2017) 15 SCC 1.
[27] Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, regs. 6, 7.
[28] *In re Mansun Consultancy Pvt. Ltd. (Baap of Chart)*, SEBI Order No. WTM/AN/ISD/ISD-SEC-1/29965/2023-24 (Oct. 25, 2023).
[29] *In re PR Sundar*, SEBI Settlement Order No. SO/EFD-2/SD/383/MAY/2023 (May 25, 2023).
[30] Securities and Exchange Board of India, *supra* note 4.
[31] Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, Notification No. SEBI/LAD-NRO/GN/2024/195 (Aug. 1, 2024).

engaging in direct or indirect associations with unregistered entities dispensing financial advice.[32] Similarly, in *In re Asmita Patel Global School of Trading*, SEBI addressed expensive algorithmic training modules that falsely guaranteed high equity returns, underscoring the pervasive exploitation of retail aspirations.

Subsequent circulars in October 2024 and January 2025 mandated terminating commercial contracts, referral commissions, and acquisition partnerships between regulated entities and unregistered creators.[33] To protect genuine education, SEBI carved out an exemption for objective educational content avoiding real-time prices or prospective forecasts, enforcing a mandatory three-month historical price lag.[34] SEBI also formulated the 'Specified Digital Platform' (SDP) concept, permitting registered entities to associate with platforms possessing preventive AI/ML filtering to remove unauthorized advice.[35] However, because SEBI lacks direct statutory jurisdiction over digital platforms, this market-access lever cannot compel platform compliance.

B. Digital Intermediary Liability: Re-Examining Section 79 Safe Harbour

The primary impediment to platform accountability stems from Section 79 of the Information Technology Act, 2000.[36] Section 79 confers conditional immunity on intermediaries for third-party communications, provided they observe due diligence under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.[37] Under Rule 3(1)(b), intermediaries must inform users against hosting content that violates any law or deceives recipients.[38] However, the efficacy of this diligence is severely constrained by *Shreya Singhal v. Union of India*,[39] which read down Section 79(3)(b) to establish that intermediaries are only required to remove content upon receiving 'actual knowledge' through a court order or authorized government notification.[40] Consequently, platforms routinely disregard informal

[32] *Ibid.*
[33] Securities and Exchange Board of India, *Circular on Measures to Curb Association of Regulated Entities with Unregistered Entities*, Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/144 (Oct. 22, 2024).
[34] *Ibid.*
[35] Securities and Exchange Board of India, *Draft Circular on Recognition as Specified Digital Platform (SDP)* (SEBI, Mumbai, Aug. 2024).
[36] Act 21 of 2000, s. 79.
[37] G.S.R. 139(E) (Feb. 25, 2021), r. 3.
[38] *Id.*, r. 3(1)(b).
[39] 5 SCC 1.
[40] *Id.* at 18.

regulatory notices from SEBI, allowing speculative promotions to circulate until formal orders are secured.

This passive conduit defense is legally untenable in modern algorithmic environments. In *Christian Louboutin SAS v. Nakul Bajaj*, the Delhi High Court held that when an intermediary actively promotes, markets, or authenticates goods, it forfeits safe harbour immunity and becomes an active participant.[41] Applying this doctrine to social platforms reveals modern recommendation engines do not operate as passive conduits. Instead, they analyze behavioral telemetry, rank content, and amplify high-risk speculative trading promotions to maximize advertising revenue.[42] By actively optimizing and profiting from deceptive solicitations, platforms transcend the statutory character of a passive conduit under Section 79(2)(a).

Furthermore, while the Consumer Protection Act, 2019 and CCPA Guidelines, 2022 mandate commercial disclosures,[43] supplemented by ASCI's self-regulatory standards,[44] these instruments focus primarily on advertising transparency rather than systemic securities manipulation. Self-regulatory codes lack statutory enforcement power, creating an institutional gulf between consumer protection and market integrity.

C. Comparative International Frameworks: Convergence Across the UK, US, and EU

Leading global jurisdictions confronting digital financial fraud have increasingly embraced inter-agency co-regulation:

1. **United Kingdom**: Under Section 21 of the UK Financial Services and Markets Act 2000, unauthorized financial promotions constitute a criminal offense.[45] In March 2024, the Financial Conduct Authority (FCA) published *FG24/1*, establishing 'standalone compliance'—mandating that every post, meme, or reel must independently display balanced risk warnings without relying on hyperlinked disclosures.[46] Crucially, the UK Digital Regulation Cooperation Forum (DRCF) institutionalizes operational coordination between the FCA, Ofcom, CMA, and the

[41] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215.
[42] *Myspace Inc. v. Super Cassettes Industries Ltd.*, 2016 SCC OnLine Del 6382.
[43] Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements*, Notification No. F. No. J-25/14/2020-CPU (June 9, 2022).
[44] Advertising Standards Council of India, *supra* note 2.
[45] Financial Services and Markets Act 2000, c. 8, s. 21.
[46] Financial Conduct Authority, *FG24/1: Finalised Guidance on Financial Promotions on Social Media* 12 (FCA, London, Mar. 2024).

Information Commissioner's Office.[47] Furthermore, under the Online Safety Act 2023, fraudulent financial promotions are designated as 'priority illegal content', imposing statutory duties on platforms to proactively prevent their dissemination.[48]

2. **United States**: The Securities and Exchange Commission (SEC) strictly enforces Section 17(b) of the Securities Act of 1933 (the anti-touting provision), penalizing undisclosed consideration for stock promotions.[49] In December 2024, the SEC Investor Advisory Committee recommended enhanced coordination with the Federal Trade Commission (FTC), urging mandatory algorithmic transparency and treating engagement-driven gamification as unlawful inducement.[50]

3. **European Union**: The EU integrates the Market Abuse Regulation (MAR)—regulating social media investment recommendations under market manipulation frameworks[51]—with the Digital Services Act (DSA).[52] Articles 34 and 35 of the DSA require Very Large Online Platforms (VLOPs) to execute systemic risk assessments and implement algorithmic mitigations against illegal financial content, establishing structural platform accountability backed by significant administrative penalties of up to 6% of global turnover.[53]

V. FINDINGS

A synthesis of statutory frameworks, enforcement orders, and comparative models reveals four central findings:

1. **Institutional Fragmentation and Regulatory Arbitrage**: The jurisdictional divide between SEBI (market integrity) and MeitY (intermediary governance) generates a severe regulatory deficit. Unregistered creators exploit this bifurcation, utilizing algorithmic distribution to dispense unauthorized financial advice while evading securities oversight.

2. **Doctrinal Incongruity of Section 79 Safe Harbour**: The passive conduit defense under Section 79, as governed by the *Shreya*

[47] Digital Regulation Cooperation Forum, *Untangling the Regulatory Landscape: How DRCF Regulators Join Forces* (DRCF, London, Feb. 2024).
[48] Online Safety Act 2023, c. 50, s. 59.
[49] Securities Act of 1933, 15 U.S.C. § 77q(b).
[50] SEC Investor Advisory Committee, *Recommendations Regarding Finfluencers* 4 (SEC, Washington, D.C., Dec. 10, 2024).
[51] Regulation (EU) No 596/2014, art. 20.
[52] Regulation (EU) 2022/2065, arts. 34-35.
[53] *Ibid.*

Singhal actual knowledge standard, fails to address algorithmic platforms. Recommendation systems dynamically curate, index, and amplify speculative trading promotions to maximize commercial engagement, exceeding neutral conduit protections.

3. **Inadequacy of Indirect Association Bans**: While SEBI's contractual termination directives of October 2024 and January 2025 effectively discipline registered entities, they do not neutralize rogue creators, who increasingly migrate to closed messaging applications (Telegram, WhatsApp) and unregulated offshore brokerage platforms.

4. **Absence of Retail Restitution Mechanisms**: Administrative enforcement focuses predominantly on punitive disgorgement into SEBI's Investor Protection and Education Fund (IPEF). Defrauded retail investors incurring catastrophic losses from deceptive algorithmic promotions lack accessible private restitution avenues.

VI. RECOMMENDATIONS

To establish an effective co-regulatory ecosystem reconciling investor protection with digital speech, four legal reforms are recommended:

1. **Statutory SEBI–MeitY Co-Regulatory Protocol**: India should institute an inter-agency body modeled on the UK's Digital Regulation Cooperation Forum (DRCF). A permanent Standing Joint Committee on Digital Financial Products—comprising SEBI, MeitY, RBI, and CCPA—should be notified to facilitate real-time data sharing, coordinated investigations, and expedited takedowns.

2. **Algorithmic Due Diligence under Rule 4 of IT Rules, 2021**: The IT Rules, 2021 should be amended to impose algorithmic due diligence on Significant Social Media Intermediaries (SSMIs). Platforms must deploy AI/ML filtering to detect unregistered stock tips, enforce standalone risk warnings on financial content, and de-amplify non-compliant solicitations.

3. **Mandatory Platform Whitelisting via SEBI API Integration**: Under SEBI's Specified Digital Platform (SDP) framework, platforms should integrate automated API verification with SEBI's intermediary database. Creators dispensing specific trading advice must be required to display verified regulatory registration badges and licensing credentials prominently on their channels.

4. **Statutory Private Right of Action and Restitution Scheme**: The SEBI Act, 1992 should be amended to incorporate an express statutory right of action enabling retail investors to claim direct compensation from unregistered creators and non-compliant platforms. Disgorged funds from enforcement orders should be channeled into restitution funds rather than retained exclusively in educational corpuses.

VII. CONCLUSION

The intersection of the creator economy and capital market democratization presents an urgent regulatory challenge for India. While financial creators have broadened market awareness, algorithmic amplification of unregistered, speculative advice inflicts catastrophic harm on retail households. India's reliance on fragmented, retrospective policing and indirect commercial bans cannot resolve the technological dimensions of algorithmic market manipulation. Bridging the statutory divide between SEBI's market integrity mandate and MeitY's platform framework enables a globally pioneering co-regulatory model. Embedding algorithmic due diligence into platform governance while establishing direct investor restitution reconciles constitutional freedoms under Article 19(1)(a) with investor welfare, ensuring that the democratization of Indian finance remains an instrument of household empowerment rather than an algorithmic trap of speculative exploitation.