REGULATORY LIABILITY FOR “FINFLUENCERS”: WHERE DOES ADVICE END AND EDUCATION BEGIN?

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ABSTRACT

The proliferation of “finfluencers”, social media personalities who disseminate financial content to lay audiences, has disrupted the traditional, licence-based architecture of Indian securities regulation. The Securities and Exchange Board of India (“SEBI”) has, since 2023, moved from isolated enforcement actions to a structured regulatory response, culminating in the October 2024 circular restricting associations between regulated entities and unregistered finfluencers, and the January 2025 circular that draws a bright line between “education” and “advice” through a three-month data-lag rule. This paper undertakes a doctrinal and comparative analysis of the legal boundary between investment education (which is unregulated) and investment advice (which requires registration under the SEBI (Investment Advisers) Regulations, 2013), tested against the enforcement record in the Baap of Chart, PR Sundar, and Ravindra Balu Bharti proceedings. It situates the Indian position within the parallel regulatory responses of the US Securities and Exchange Commission, the UK Financial Conduct Authority, the Australian Securities and Investments Commission, and the International Organization of Securities Commissions, before identifying structural gaps in the Indian framework, the absence of a statutory definition of “finfluencer,” the overbreadth risk inherent in bright-line disclosure rules, weak recovery enforcement, and the lack of platform-level accountability. The paper concludes with a tiered regulatory model designed to preserve genuine financial literacy content while closing the loopholes historically exploited through the “educational disclaimer” device.

Keywords: Finfluencer; Investment Adviser; SEBI (Investment Advisers) Regulations, 2013; Regulatory Perimeter; Unregistered Investment Advisory; Prohibition of Fraudulent and Unfair Trade Practices; Commercial Speech; Article 19(1)(a); Comparative Securities Regulation; Investor Protection.

1. Introduction

1.1 Background and Context[1]

The finfluencer phenomenon presents a doctrinally difficult problem for securities regulators everywhere: financial literacy content is socially valuable and constitutionally protected speech, yet the same platforms and formats are readily used to disguise unregistered investment advisory activity, and in the more serious cases, outright fraud, as “education.” The central legal question this paper investigates is therefore not whether finfluencers should be regulated, SEBI has already answered that question in the affirmative, but where, precisely, the line between protected education and regulated advice should be drawn, how that line has been operationalised through India's 2024-26 circulars, and whether the resulting framework is coherent, enforceable, and constitutionally sound.

1.2 Statement of the Problem

India's investment advisory framework was designed in 2013 for a world of registered intermediaries operating through structured client relationships. It did not anticipate an ecosystem in which a single YouTube video, viewed by millions, could function simultaneously as entertainment, education, and a de facto solicitation to trade. The resulting enforcement gap allowed a cohort of high-follower finfluencers to build large commercial operations, course sales, subscription groups, brand endorsements, while disclaiming any advisory relationship with their audience. SEBI's enforcement actions since 2023, and its 2024-25 circulars, represent an attempt to close this gap, but they do so through instruments (a data-lag rule, an association ban) that are blunt relative to the underlying legal test (the presence of a specific, consideration-based recommendation). This mismatch between the statutory test and the regulatory instrument is the central problem this paper examines.

1.3 Research Questions

- What is the precise legal test, under the SEBI (Investment Advisers) Regulations, 2013 and the PFUTP Regulations, 2003, that distinguishes regulated investment advice from unregulated financial education?

[1]SEBI study on retail F&O trading losses, cited in “SEBI Algo Trading Rules 2026: What Retail Traders Must Know,” noting net losses for individual traders widened by 41% to ₹1.05 lakh crore in FY25.

- How has SEBI operationalised this test through its enforcement orders (2023-25) and its October 2024 and January 2025 circulars, and are these instruments doctrinally consistent with the underlying statutory test?
- How do comparable regulators, the SEC, FCA, ASIC, and IOSCO, draw the same line, and what can Indian regulation learn from their approaches?
- Does the current Indian framework strike a constitutionally sound balance between investor protection and the commercial-speech rights of content creators under Article 19(1)(a)?
- What structural reforms would improve the coherence and enforceability of India's finfluencer regulation without over-deterring legitimate financial literacy content?

1.4 Objectives of the Study

This paper aims to (a) map the complete statutory and regulatory architecture applicable to finfluencers in India; (b) doctrinally analyse the advice/education distinction through SEBI's enforcement orders as case studies; (c) undertake a comparative analysis of four major foreign regulatory responses; (d) critically evaluate the coherence, enforceability, and constitutional soundness of the Indian framework; and (e) propose a reform model.

1.5 Scope and Limitations

The paper confines itself to the regulation of finfluencers under securities law; it does not undertake a detailed examination of the parallel consumer protection, advertising, or information technology intermediary liability regimes except insofar as they intersect directly with the securities law analysis. The comparative analysis is limited to jurisdictions with the most developed finfluencer-specific regulatory responses as of 2026 and does not purport to be an exhaustive survey of all IOSCO member jurisdictions. Because this is a rapidly evolving area, the paper's factual analysis is current as of mid-2026 and readers should verify subsequent regulatory developments.

2. The Indian Statutory and Regulatory Framework

India does not have a single, freestanding “finfluencer law.” Instead, finfluencer conduct is regulated through the interaction of general securities law provisions, subordinate regulations directed at investment advisers and research analysts, and a series of interpretive circulars issued specifically to address the finfluencer phenomenon. This section maps that architecture.

a) The SEBI Act, 1992

b) The SEBI (Investment Advisers) Regulations, 2013

c) The Purnartha Litigation and the Constitutional Backdrop

d) The SEBI (Research Analyst) Regulations, 2014

A parallel registration category exists for persons who prepare and publish research reports or issue buy/sell recommendations to the public, as distinct from advice tailored to an individual client's profile. The Research Analyst Regulations are relevant to finfluencer regulation because a number of enforcement targets have argued, unsuccessfully, that their content constituted public research commentary rather than personalised advice; SEBI's rejection of this characterisation in the Baap of Chart proceedings turned on the presence of private, personalised trading calls issued through closed WhatsApp and Telegram groups, which SEBI held could not be assimilated to public research dissemination.

a) The PFUTP Regulations, 2003

b) The October 2024 Circular: Severing the Regulated Ecosystem from Unregistered Finfluencers[2]

c) The January 2025 Circular: The Three-Month Data-Lag Rule

d) Self-Regulatory Overlay: The ASCI Guidelines

2.1 Ancillary Regimes

Two further regimes bear on finfluencer liability without being finfluencer-specific. First, the Consumer Protection Act, 2019 prohibits misleading advertisements and permits action against an "endorser" who fails to exercise due diligence in verifying the claims made in an advertisement, a provision of potential relevance to influencers who promote third-party

[2] Legal500, ibid., summarising the circular's compliance timeline and its annexed FAQ distinguishing investor education from prohibited advisory roles.

trading platforms or courses. Second, Section 79 of the Information Technology Act, 2000 confers a conditional safe harbour on intermediaries (social media and video platforms) that merely host third-party content, provided they observe due diligence and takedown obligations, a safe harbour that, is currently under-utilised as a lever for platform-level finfluencer accountability in the securities context.

3 The Advice/Education Distinction: A Doctrinal Analysis

3.1 The Core Statutory Test

Stripping away the various circulars and guidelines, the irreducible legal test for whether a finfluencer requires registration as an investment adviser has three cumulative elements, each drawn from Regulations 2(1)(l) and 2(1)(m) of the IA Regulations: (i) the content must relate to a specific security or investment product, rather than a general market trend; (ii) the content must be given for consideration, understood broadly to include indirect consideration such as course or subscription fees; and (iii) the activity must be carried on in the course of a business, rather than as an isolated act. Content that fails any one of these elements, for example, a free YouTube video offering only general macro-economic commentary, falls outside the perimeter and requires no registration.

3.2 The "Colourable Device" Doctrine

The recurring difficulty, illustrated by every major enforcement action, is that respondents structure their commercial offering as "education" specifically to avoid satisfying the first and third elements on their face, while in substance providing exactly the kind of specific, consideration-based recommendation the Regulations target. SEBI's enforcement orders take a 'colourable-device' doctrine similar to the 'substance over form' doctrine prevalent in Indian tax jurisprudence: In the more serious cases, a disclaimer that the content is 'for educational purposes only, not investment advice' is treated as evidentially irrelevant, and in the latter, as itself an aggravating attempt to whitewash an illegality; the surrounding facts, specific stock recommendations, private groups with personalised trading calls, and course fees linked to claims of trading performance, indicate that the true nature of what goes on is advisory.

3.3 The Three-Month Lag Rule as a Proxy, Not a Redefinition

It is important to be precise about what the January 2025 circular actually does. It does not redefine "investment advice" under the IA Regulations; that definition remains anchored in Regulation 2(1)(l). Instead, the circular creates an evidentiary proxy: the use of live or near-live price data in connection with a named security is treated as conclusive (or near-conclusive) evidence that the underlying activity is advisory rather than educational, because live-data commentary on a specific stock is functionally indistinguishable from a buy/sell signal, irrespective of the label attached to it. The regulatory gain is administrability, a compliance officer, or SEBI's own surveillance systems, can mechanically check whether a video used current price data, without having to reconstruct the finfluencer's commercial intent. The regulatory cost, is potential overbreadth: genuine, non-advisory market commentary that happens to reference recent price levels (for instance, a discussion of why a stock's valuation changed after an earnings announcement) may now be swept within the same evidentiary proxy as a disguised trading tip.

3.4 Consideration as the Analytical Fulcrum

Across the enforcement orders examined below, the presence of consideration course fees, subscription charges, or brand compensation, functions as the single most decisive fact. Content that is genuinely free and carries no commercial hook is rarely pursued, even where it strays close to specific stock commentary; content that is monetised, by contrast, is scrutinised closely for whether the underlying service is, in substance, advisory. This suggests that the practically operative Indian test, notwithstanding its formal three-element structure, functions in practice as a two-step inquiry: first, is there consideration; and if so, does the content go beyond general market commentary to a specific, personalised recommendation.

4 Case Studies in Enforcement

The three enforcement actions examined below are, as of the date of this paper, the leading publicly reported SEBI proceedings against finfluencers, and are analysed here as data points illustrating how the doctrinal has actually been applied.

a) In re PR Sundar / Mansun Consultancy Pvt. Ltd. (2023)

b) In re Mohammad Nasiruddin Ansari / "Baap of Chart" (2023–2025)[3][4][5]

[3]"Finfluencer Nasir Ansari Scam: The 'Baap of Charts' Controversy," ISFM (11 January 2025).
[4]Business Standard, ibid.
[5]"Sebi Launches Rs 18 Crore Recovery Proceedings against 'Baap of Charts' Finfluencer, Others,"

c) In re Ravindra Balu Bharti (2024)

In April 2024, SEBI proceeded against Ravindra Balu Bharti, who conducted paid training related to share trading, directing him to pay approximately ₹12 crore. Although not as extensively documented doctrinally as Baap of Chart, this situation is representative of a now consistent line of enforcement: paid trading "training" in which the paid advisor, in substance, acts as a traditional advisor may be subject to charges of registration failure and fraud in the same manner as Baap of Chart and PR Sundar, whether the language used to describe the offering is "course" or "training" or "mentorship".

4.1 Synthesis: Common Doctrinal Threads

Three patterns recur across all three matters. First, SEBI consistently disregards the label attached to the commercial offering ("education," "training," "advisory") in favour of an examination of the actual content delivered, particularly whether specific securities were named and specific trading action recommended. Second, SEBI treats a mismatch between a respondent's claimed track record and his or her actual, verifiable trading performance as strong evidence of fraudulent intent, converting what might otherwise be a pure registration case into a PFUTP fraud case with correspondingly higher penalties and disgorgement exposure. Third, and most troublingly from an investor-protection standpoint, the recovery record in Baap of Chart demonstrates that a favourable adjudicatory order is not self-executing: years after the original refund direction, the great majority of the ordered sum remained unrecovered from investors.

5 Comparative Regulatory Perspectives

Every major securities regulator has confronted a structurally identical problem: retail investors increasingly source investment information from unlicensed social media personalities, and the traditional advice/education boundary, drawn for a world of newsletters and licensed brokers, translates imperfectly to short-form video and livestream content. This part examines four leading comparative responses.

a) United States: The SEC, FINRA, and the "In the Business" Test [6]

CAalley.com.

[6] "The SEC Must Regulate Finfluencers," Better Markets (10 July 2025), noting the SEC's absence from the June

b) United Kingdom: The FCA's Financial Promotion Perimeter

c) Australia: ASIC's Content-Based Guidance

d) IOSCO: Towards a Harmonised Global Standard [7]

e) Comparative Synthesis

Four points of comparative contrast are salient for the Indian reform. First, India's October 2024 circular's firm-side association ban is functionally similar to the US SEC Marketing Rule and FINRA's firm-supervision approach, but India lacks an equivalent to the SEC's detailed, principles-based supervisory obligations for firms that do engage compliant influencers. Second, India's January 2025 data-lag rule is more mechanically bright-line than either the US, UK, or Australian tests, all of which remain primarily content- and intent-based, exposing India to a comparatively higher risk of both under- and over-inclusion at the margins. Third, the UK's willingness to pursue criminal charges against individual finfluencers, and its use of coordinated multi-regulator enforcement weeks, represents an enforcement intensity that India has not yet matched, notwithstanding the availability of comparable criminal provisions under the SEBI Act. Fourth, and most importantly for investor redress, none of the comparator jurisdictions examined here appear to suffer from India's specific recovery-enforcement gap, the multi-year non-payment of ordered refunds seen in the Baap of Chart matter, a gap that appears to be a distinctively Indian institutional-capacity problem rather than a doctrinal design flaw.

6 Critical Analysis: Gaps in the Indian Framework

6.1 Absence of a Statutory Definition of "Finfluencer"

India regulates finfluencer conduct entirely through general-purpose intermediary and anti-fraud provisions, supplemented by circulars that speak to specific fact patterns (the association ban, the data-lag rule) without ever defining the term "finfluencer" itself. This has two consequences. First, it creates interpretive uncertainty at the margins, a personal-finance content creator who discusses budgeting and insurance, but occasionally mentions a mutual

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2025 Global Week of Action Against Unlawful Finfluencers.

[7] Allen & Overy / aosphere, "Regulators Home in on Finfluencers," summarising BaFin's October 2024 advisory and the Canadian Securities Administrators' investor-education response.

fund scheme by name, must reconstruct the applicable test from at least three separate instruments (the IA Regulations, the October 2024 circular, and the January 2025 circular) with no single consolidated reference point. Second, and more structurally, the absence of a defined term makes it difficult for SEBI to calibrate differentiated obligations for different tiers of finfluencer activity, a point developed in the recommendations below.

6.2 Overbreadth Risk in the Data-Lag Proxy

The three-month data-lag rule substitutes a mechanically verifiable proxy for the underlying, more precise legal test of whether a specific, consideration-based recommendation was made. While this materially eases SEBI's enforcement burden, it risks capturing socially valuable content, for instance, a qualified equity analyst's YouTube explainer of why a company's quarterly results moved its share price, that involves no advisory relationship, no consideration from the viewer, and no forward-looking recommendation, but that nonetheless references contemporaneous price data. Comparative practice suggests that a purely content-based inquiry remains administrable elsewhere without resort to a blanket data-lag rule, indicating that the Indian rule's design reflects a specific institutional judgment, that a bright-line rule was necessary given the scale of India's retail finfluencer ecosystem and the demonstrated sophistication of respondents in exploiting a purely content-based standard, rather than a doctrinal necessity common to all jurisdictions.

6.3 The Recovery Enforcement Gap

The most concrete deficiency exposed by the case studies is not in the definitional architecture but in enforcement follow-through. SEBI's adjudicatory process in Baap of Chart moved with reasonable speed from show-cause notice (October 2023) to final order (December 2024), a little over a year. Yet more than a year after the final order, the bulk of the ordered ₹17.2 crore refund remained uncollected, requiring SEBI's Recovery Officer to escalate to asset attachment and, ultimately, formal recovery proceedings for a larger, interest-inflated sum. This gap between adjudication and actual investor restitution is arguably a more urgent policy problem than any definitional imprecision in the advice/education boundary, because it means that even a legally unimpeachable SEBI order may deliver limited practical relief to the defrauded investors it is meant to protect.

6.4 Absence of Platform-Level Accountability

Unlike the position increasingly seen in the United Kingdom and, to a lesser extent, the United States, the Indian framework places essentially no direct compliance obligation on the social media and video-hosting platforms (YouTube, Instagram, Telegram, X) through which finfluencer content is disseminated. Section 79 of the Information Technology Act, 2000 confers safe-harbour protection on such platforms conditional on the observance of due-diligence and takedown obligations, but this mechanism has not, on the public record, been systematically invoked by SEBI to compel proactive platform-level monitoring or expedited takedown of content flagging assured-return claims. The UK's June 2025 Global Week of Action, which generated more than 650 platform takedown requests through direct regulator-platform coordination, illustrates an alternative, more platform-integrated enforcement model that India has not yet adopted at comparable scale.

6.5 Multiplicity of Overlapping Instruments

A compliance-minded finfluencer today must simultaneously track the IA Regulations, the PFUTP Regulations, the October 2024 circular, the January 2025 circular, and the ASCI Guidelines, instruments issued by two different regulatory bodies (SEBI and ASCI) with overlapping but not identical compliance triggers and enforcement mechanisms. This multiplicity increases compliance costs for good-faith market participants seeking to operate within the law, while arguably doing little to deter the least scrupulous operators, who, as the case studies demonstrate, tend to disregard the entire framework until an enforcement action is already underway.

6.6 Under-Utilisation of Criminal Sanctions

Section 24 of the SEBI Act, 1992 makes contravention of the Act or regulations made thereunder punishable with imprisonment, in addition to the monetary penalties and disgorgement orders SEBI has thus far relied upon exclusively. No finfluencer enforcement action examined in this paper has resulted in a criminal prosecution, notwithstanding the presence, in the Baap of Chart matter, of findings closely resembling the elements of cheating and criminal breach of trust under the Bharatiya Nyaya Sanhita (concealment of actual trading losses while representing near-certain high returns to induce fee payment). The exclusive reliance on civil/administrative remedies may partly explain the persistence of repeat and serial non-compliance seen in the recovery history of the Baap of Chart matter.

7 Recommendations: Towards a Tiered Regulatory Model

Building on the doctrinal, comparative, and empirical analysis above, this paper proposes a five-part reform agenda.

7.1 A Statutory, Tiered Definition of Finfluencer Activity

SEBI should introduce, through amendment to the IA Regulations or a standalone regulation, a tiered statutory definition distinguishing (i) pure financial literacy content (no specific security named, no consideration from the audience, no forward-looking recommendation) which remains wholly outside the perimeter; (ii) monetised general commentary (sponsorship or affiliate income, but still no specific, personalised recommendation) which would attract disclosure obligations modelled on the ASCI guidelines but without a full registration requirement; and (iii) advisory activity proper (specific, consideration-based recommendations, whether disguised as "education" or not) which requires full IA or RA registration. This tiered structure would preserve a genuine safe harbour for literacy content while directly addressing the overbreadth concern.

7.2 Refining the Data-Lag Rule into a Rebuttable Presumption

Rather than an irrebuttable bright-line trigger, the three-month data-lag rule should operate as a rebuttable presumption of advisory activity, which a respondent may displace by demonstrating the absence of consideration and the absence of any specific, personalised recommendation, restoring the doctrinal link to Regulation 2(1)(l) while retaining the rule's administrability benefits as a first-line enforcement filter.

7.3 Strengthening Recovery Enforcement

SEBI's Recovery Officer mechanism should be supplemented with an interim escrow requirement, applied at the show-cause stage rather than only after a final order, requiring respondents against whom a prima facie case of fee-based fraud has been made out to deposit disputed course/subscription fees into an escrow account pending final adjudication. This would materially reduce the multi-year recovery lag observed in the Baap of Chart matter, in which funds had likely been substantially dissipated by the time formal recovery proceedings commenced.

7.4 Direct Platform Accountability

SEBI should formalise a structured takedown and information-sharing protocol with major social media platforms, modelled on the UK FCA's coordinated enforcement approach, using the conditional safe-harbour structure of Section 79 of the IT Act as the operative lever: platforms that fail to act on verified SEBI takedown notices concerning assured-return claims or unregistered advisory solicitation should risk losing safe-harbour protection for that specific content.

7.5 Calibrated Use of Criminal Sanctions

For the narrow category of repeat, high-value fraud (as in Baap of Chart, where trading losses were affirmatively concealed to induce fee payment), SEBI should refer matters to criminal prosecution under Section 24 of the SEBI Act and cognate provisions of the Bharatiya Nyaya Sanhita, both to create a meaningful deterrent absent from a purely civil/administrative enforcement track record, and to unlock criminal asset-tracing powers that may improve investor recovery outcomes beyond what SEBI's own Recovery Officer mechanism can achieve unilaterally.

8 Conclusion

The regulation of finfluencers is an issue that falls under three competing and valid, concerns: the constitutional value of the information that financial literacy content provides; the securities regulator's duty to protect investors; and the practical administrability of a rule aimed at a large, rapidly growing and often antagonistic population of content providers. India's regulatory approach, incrementally developed over the years, following enforcement orders 2023 and onwards and summarized in the October 2024 and January 2025 circulars, is a sensible, though incomplete, response to these concerns. The doctrinal foundation of the framework around the consideration and specific recommendation test in the IA Regulations is correct and has been applied in a fairly consistent way in the PR Sundar, Chart, Ravindra Balu Bharti matters; each of these has upheld that a statement of “educational intent” does not shield what is, in essence, a paid advisory relationship. Its principal weaknesses are not doctrinal; they are on the fringes of this doctrinal underpinning and in practice: a potential overbreadth of the data-lag rule, the lack of a consistent statutory definition, the continued disparity between the adjudication and actual recovery processes for investors, and a non-existent platform-level accountability mechanism similar to the one now in place in the United Kingdom. With a tiered regulatory model and tougher recovery enforcement and appropriate criminal punishment for the most egregious fraud, India should be able to continue to serve the undeniable public good of financial education without allowing a generation of so-called finfluencers to operate without fear of reprisal for the most egregious instances of fraud.

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