

# Legal Updates

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by Aretha Legal

## WHAT'S INSIDE

**Jan Vishwas (Amendment of Provisions) Bill, 2023**

**Digital Personal Data Protection Act, 2023**

**Electronic evidence under the Bharatiya Sakshya Bill, 2023**

**The Mediation Bill, 2023**

**SEBI's Consultation Paper on restrict the association with Finance Influencers**

**Additional Guidelines for Health and Wellness Celebrities, Influencers and Virtual Experts.**

## Monthly Bulletin:

- The Energy Conservation (Amendment) Bill, 2022 was presented in the Lok Sabha in August 2022. After being approved by the Lok Sabha, the Bill is currently awaiting consideration in the Rajya Sabha. The primary objective of the Bill is to support the realization of the goals set out in the COP-26 (Conference of the Parties 26) agreement and to introduce new concepts like the obligatory utilization of non-fossil sources and the trading of carbon credits.
- Amendment to tax online gaming at 28% under GST has been passed by both houses. The amendment seeks to cover foreign suppliers of online money gaming services that are not based in India will be liable to pay IGST for supplying such services to individuals in India. It also seeks to requirement for certain suppliers involved in online money gaming to obtain mandatory registration. Specifically, it mandates that individuals who offer online money gaming services from overseas to individuals within India must also register under the provisions of GST.
- Supreme Court launches '*Handbook on Combating Gender Stereotypes*' to assist judges and the legal community to identify, understand, and combat stereotypes about women in legal discourse. Identify language that promotes gender stereotype and offers alternative words and phrases. Identifying common reasoning patterns based on gender stereotypes particularly about women.

### **Jan Vishwas (Amendment of Provisions) Bill, 2023**

The Jan Vishwas (Amendment of Provisions) Bill, 2023 (Bill) was passed in Lok Sabha on 27 June 2023 and Rajya Sabha on 02 August 2023. The Bill envisages a thrust to businesses by eradicating the fear of criminal provisions for minor, technical, and procedural defaults and offenses. It would not only reduce the regulatory burden which possesses several deterrents for investors, but also increase the entrepreneurial spirit and benefit the costs related with the same and would also benefit the efforts towards ease of doing business in India.

The Bill proposes several changes to the existing laws, including but not limited to: (a) decriminalizing various offences; (b) revision of various fines and penalties; (c) appointment of adjudicating officers; (d) establishment of appellate authorities; and (e) increase in the fines and penalties periodically. Some major amendments carried out by introduction of Bill:

#### **Drugs and Cosmetics Act, 1940**

Use of government analyst report for purpose of advertising, which has inherent risk of misuse of forcing/ influencing prescriptions or self-medications etc. has been decriminalized and penalty has been increased. Further, provisions related to quality failure (other than spurious, adulteration or without license as the case maybe) with respect to manufacturing and sale of cosmetics and drugs has been made compoundable and have been decriminalized to that extent.

#### **Air (Prevention and Control of Pollution) Act, 1981**

Penal provisions mentioned under the aforesaid act, is proposed to be partially decriminalized by substituting it with penalty and additional penalties. However, violation of the provision for obtaining prior consent to operate/establish would still attract criminal liability. The central government has power to exempt certain industries such as green industries/ non-polluting industries which are mandated to obtain environmental clearance under EIA Notification, from obtaining prior consent before operating/establishing.

These changes are welcomed by the industries; however, the government needs to make sure that the future alterations and additions in compliances are divested of criminal provisions.

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### **Electronic evidence under the Bharatiya Sakshya Bill, 2023**

The Bharatiya Sakshya Bill of 2023 (Bill) seeks to replace the Indian Evidence Act, 1872 (Evidence Act) and introduce changes in the legal acceptance of evidence, particularly in relation to digital records like emails, digital documents etc. in court proceedings. Upon examination of the Bill, it becomes apparent that much of the existing stance on electronic evidence remains unchanged. The prior Evidence Act was amended in 2000 to incorporate provisions for electronic evidence, which have been retained in the current Bill. Whilst the definition of 'primary evidence' in Clause 57 (corresponding to the existing Section 62) remains unchanged, additional explanations have been included. These explanations clarify the scope of 'primary evidence' when dealing with electronic records. Clause 61 reinforces that electronic or digital records are equally admissible as paper records, holding the same legal validity and enforceability. However, changes regarding 'secondary evidence' have been extended to cover information generated or stored in communication devices. It also encompasses data created through intermediaries. However, Section 39 of the Bill (which corresponds to Section 45 of the Evidence Act) dealing with opinion of experts, now stands modified to specify that the opinion of examiner of electronic evidence as per Section 79A of the Information Technology Act, 2000 (IT Act) shall be a relevant fact for information stored digitally. The Bill suggests that both an operator's and an expert's certificate should be required. It refers to "expert (whichever is applicable)" instead of specifying an Examiner of Electronic Evidence, as defined in the IT Act. Therefore, individuals intending to present electronic evidence would need to involve an expert to obtain a certificate.

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### **Digital Personal Data Protection Act, 2023**

The Digital Personal Data Protection Act of 2023 (Act) was formally announced on August 11, 2023, with an aim to address the limitations of the Information Technology Act of 2000 and the Information Technology (*Reasonable security practices and procedures and sensitive personal data or information*) Rules of 2011. The Act intends to provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes.

The inception of this law traces back to August 2017 when the Supreme Court of India acknowledged privacy as a fundamental right in the case of *Justice K.S. Puttaswamy vs. Union of India*. Subsequently, a committee led by Justice BN Srikrishna was formed to assess matters relating to data protection.

The provisions of the Act shall apply when digital personal data (*defined as personal data in a digital form*) is processed within the territory of India under two circumstances: (i) when such digital personal data is collected from Data Principals in a digital format and (ii) when such digital personal data, initially collected in a non-digital format, is subsequently digitized. The Act also covers situations where digital personal data is handled outside of India, if it is connected to any actions involving offering goods or services to Data Principals in India. This means that the law is relevant to businesses operating from other countries that provide goods or services in India.

The transfer of personal data by a Data Fiduciary is permissible to all jurisdictions except those expressly prohibited by the central government through the issuance of notifications. Nevertheless, any stricter industry-specific limitation on data transfer will remain in effect.

### **The Mediation Bill, 2023**

Mediation is a process whereby a neutral third party, called a mediator, facilitates communication between the parties to a dispute and assists them in reaching a mutually agreeable settlement, in an efficient and cost-effective manner. The Indian Parliament passed the Mediation Bill, 2023 (Bill) on 01 August 2023. The Bill seeks to promote mediation as a means of resolving civil and commercial disputes and to provide a legal framework for the process.

The Bill provides that once the parties arrive at the terms of settlement, the same may be reduced in writing in the form of a mediated settlement agreement. Such mediated settlement agreement shall be enforceable in a court of law as per the provisions of the Code of Civil Procedure, 1908 as if it were a judgment or a decree passed by a court. A mediation proceeding is to be completed within a period of 180 days from the date of first appearance before the mediator. Key features included under the Bill are:

- Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals.
- The Bill contains a list of disputes which are not fit for mediation. These include disputes: (i) relating to claims against minors or persons of unsound mind, (ii) involving criminal prosecution, and (iii) affecting the rights of third parties.
- The Bill will apply to mediations conducted in India: (i) involving only domestic parties, (ii) involving at least one foreign party and relating to a commercial dispute (i.e., international mediation), and (iii) if the mediation agreement states that mediation will be as per this Bill. If the central or state government is a party, the Bill will apply to: (a) commercial disputes, and (b) other disputes as notified.
- Agreements resulting from mediation (other than community mediation) will be final, binding, and enforceable in the same manner as court judgments. They may be challenged on grounds of: (i) fraud, (ii) corruption, (iii) impersonation, or (iv) relating to disputes not fit for mediation.

The Bill is a positive step towards reducing the backlog of cases and will benefit businesses and individuals alike. It offers disputing parties a viable alternative to litigation and arbitration, which can often be expensive and time consuming.

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### **Additional Guidelines for Health and Wellness Celebrities, Influencers and Virtual Experts.**

The Department of Consumer Affairs, Ministry of Consumer Affairs on 10 August 2023 had released additional guidelines for celebrities, influencers, and virtual influencers in the field of health and wellness. These guidelines are an important extension to the guidelines based on prevention of misleading advertisements and endorsements for misleading advertisements which were released in the year 2022.

The additional guidelines which have been released play an important role in preventing false and misleading advertisements pertaining to health, wellness and medical products and ensure that there is transparency in advertisement and endorsements pertaining to health, wellness, and medical products. These guidelines regulate celebrities, influencers, and virtual influencers who present themselves as health or medical experts must provide a clear disclaimer that when promoting any health and wellness products or services a disclaimer should be included which states that the content which they are promoting must not be seen as a substitution for professional medical advice or treatment. When making such endorsements the endorsers shall also encourage the

### **SEBI's Consultation Paper on restrict the association with Finance Influencers**

Following SEBI Chairman's comment on role of Financial Influencers (Influencers), SEBI has released consultation paper to curb the illicit practices of these Influencers. These Influencers are usually unregistered entities providing catchy content, information, and advice on various financial topics to their several followers. While some of them may be genuine educators, many of them are effectively unregistered and unauthorized Investment Advisers (IAs) or Research Analysts (RAs). These unregistered IAs and RAs may effectively entice their followers to purchase, products services, or securities in return for undisclosed compensation from platforms or producers.

This paper seeks to restrict the association of SEBI registered intermediaries/regulated entities with such unregistered Influencers, to curb the flow of such compensation. The activities of Influencers may deal in areas regulated by financial sector regulators such as SEBI, RBI, PFRDA, and IRDA. Influencers not registered with the relevant financial sector regulator may not have requisite qualifications or expertise on the subject and they may not disclose any potential conflict of interest such as their association with or interest in the products, services, or securities that they promote.

According to the paper, entities registered/regulated by SEBI or stock exchanges shall not share any confidential information of their clients with any unregistered entities. Influencers registered with SEBI or stock exchanges in any capacity shall display their appropriate registration number, contact details, investor grievance redressal helpline, and make appropriate disclosure and disclaimer on any posts.

They shall also fully adhere to the code of conduct under the terms of their relevant registration. Such entities shall comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI recognized supervisory body from time to time. SEBI registered intermediaries/regulated entities shall not pay any trailing commission based on the number of referrals as referral fee. Limited referrals from retail clients, and payment of fees for such limited referrals by stockbrokers shall be allowed. SEBI registered intermediaries shall take active measures to dissociate themselves from any unregistered entity using their name, product or service. They shall take necessary action to bring it to the notice of enforcement agency concerned to take appropriate action, including filing case under section 420 of the Indian Penal Code, 1860 for impersonation and fraud, etc. as may be applicable.

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audience to seek professional medical advice before making any alterations to the diet, treatment etc. and shall conduct proper due diligence process to check whether the usage of the product or service is substantiated with proper facts or not.

The disclosures or disclaimers are necessary when endorsing or advertising topics related to disease, treatment, medical conditions, recovery process, immunity boosting etc. The instances of promoting general wellness and health advice such as “to stay hydrated, get enough sleep, reduce sitting and screen time, exercise regularly, etc.” are exempted from this regulation only as far as they are not associated with any specific product or services or not targeting any health conditions.

The Department of Consumer Affairs will actively monitor and enforce these guidelines. Any violations of these guidelines may lead to penalties under the Consumer Protection Act 2019 and other relevant provisions of the law. The new additional guidelines introduced by the Department of Consumer Affairs is a very important step as it would help the audience have a clear understanding about the health-related product or service and would reduce the number of fake advertisements and promotions related to health products and services which would protect public life.

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