



February, 2024



Dear Readers,

Greetings from SA Law!

We are excited to present the second edition of our Newsletter "Salah".

This newsletter is our attempt to bring industry-wide curated updates for our trusted clients and partners who look to us for timely inputs regarding their industry. We aim to cover the latest updates in law, policy and regulatory landscape through this endeavour.

We hope that you find this newsletter enlightening and insightful.

Regards,

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Expert Committee of Insolvency and Bankruptcy Board of India to Examine Scope of Mediation under IBC

The Expert Committee, appointed by the Insolvency and Bankruptcy Board of India (IBBI) to evaluate the feasibility of incorporating mediation into the Insolvency and Bankruptcy Code of 2016 (IBC), has submitted its report. On January 31, 2024, Dr. T. K. Viswanathan, the committee's chairperson, presented the report to Mr. Ravi Mital, IBBI's chairperson, at the IBBI office in New Delhi. Members Mr. Sudhaker Shukla, Mr. Sumant Batra, and Mr. Santosh Kumar Shukla were also present.

The report outlines a proposal for integrating mediation into the IBC's dispute resolution processes. The committee's recommendation is to establish a self-contained mediation framework within the IBC that operates independently, ensuring that the IBC's core objectives, such as timely reorganization and value maximization, are preserved. The framework will align with the Mediation Act of 2023 and operate on a voluntary basis.

In its recommendations, the committee has carefully balanced the IBC's core principles with the autonomy of parties to engage in out-of-court mediation. The committee suggests a phased introduction of voluntary mediation while maintaining existing timelines for insolvency resolution processes. The framework's key features are its independence and flexibility, allowing for quick adaptation based on implementation experiences.

This proposal reflects a cautious approach to integrating mediation into the IBC, aiming to enhance the efficiency of insolvency resolution processes while safeguarding the IBC's fundamental principles.

Insolvency and Bankruptcy Board of India introduces monitoring committee for effective implementation of Resolution Plan

The Insolvency and Bankruptcy Board of India (IBBI) issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 on February 15, 2024, amending the 2016 regulations. These new provisions became effective on the same day.

Key amendments include:

Regulation 4-D: The interim resolution professional/resolution professional must maintain a separate bank account for each real estate project if the corporate debtor has any such projects.

Regulation 18: Committee meetings must now be convened 30 days from the last meeting, with an extended interval between meetings to ensure at least one meeting per quarter.

Regulation 25: The period for voting on circulated minutes has been extended by the committee, with a minimum period of 24 hours and a maximum of 7 days. The voting window can be extended up to 24 hours upon request by a creditor.

Regulation 31-B: The resolution professional must present the corporate debtor's operational status and seek the committee's approval for all costs related to the insolvency resolution process.

Regulation 36-A: A clarification allows the resolution professional, with committee approval, to invite a resolution plan for each real estate project or group of projects of the corporate debtor.

Regulation 38: The committee can consider forming a monitoring committee for the resolution plan's implementation, with the resolution professional possibly being a member. The resolution professional's monthly fee for this role will not exceed the fee received during the corporate insolvency resolution process.

Assets handed over to allottee excluded from liquidation proceedings in Real Estate projects

The Insolvency and Bankruptcy Board of India (IBBI) announced the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024 on February 12, 2024, amending the 2016 regulations. These new provisions became effective on the same day.

Key amendments include:

Proposal of Compromise/Arrangement: The liquidator will now file the proposal of compromise or arrangement, as per Section 230 of the Companies Act, 2013, only if recommended by the committee under regulation 39-BA of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The compromise or arrangement should be completed within 90 days of the liquidation order.

Stakeholders' Consultation Committee: Sub-regulations 6-A and 6-B have been inserted. The liquidator must seek the advice of the consultation committee before initiating or continuing any legal proceeding, presenting the economic rationale for the proposal. Additionally, the liquidator must present the actual liquidation cost, reasons for exceeding the estimated cost, and the consolidated status of all legal proceedings in every meeting.

Valuation of Assets or Business: In cases where a fresh valuation is undertaken, the liquidator must facilitate a meeting with registered valuers to explain the valuation methodology to the consultation committee.

The liquidator will share the valuation reports with the committee after obtaining a confidentiality undertaking.

In case of a 25% deviation in valuation, the registered valuers must explain the reasons for the difference.

Corporate Liquidation Account: Stakeholders claiming to be entitled to any amount in the Corporate Liquidation Account can apply to the liquidator for withdrawal. Before dissolution, the liquidator will request the Board to release the amount. After distribution, the liquidator will inform the Adjudicating Authority. If any person other than the stakeholder claims to be entitled to any amount after dissolution, they must provide evidence to the liquidator or the Board.

Exclusion of Certain Assets: Assets given possession to an allottee in a real estate project will not form part of the liquidation estate of the corporate debtor.

Proforma for Reporting Consultations with Stakeholders: The revised Form A will be used for reporting consultations with stakeholders.

These amendments aim to streamline the liquidation process and ensure transparency and accountability in handling stakeholders' interests during the insolvency process.



Insolvency and Bankruptcy Board of India introduces amendment to the IBBI (Liquidation Process) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI) recently announced the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024, amending the 2016 regulations. The amendments aim to enhance the regulatory framework of the liquidation process by introducing several key changes.

One significant amendment allows the liquidator to reduce the reserve price of assets by up to 25% with the Stakeholders' Consultation Committee's (SCC) approval.

Additionally, for assets undergoing fresh valuation during liquidation, the reserve price can be reduced by up to 10% with SCC's approval

Another important change requires liquidators to convene SCC meetings every 30 days to ensure timely decisions and oversight. However, the SCC may reduce the frequency of meetings if necessary, as long as at least one meeting is held per quarter. Furthermore, liquidators must consult the SCC before initiating or continuing any legal proceedings, presenting the economic rationale. They must also consult the SCC before deciding to run the affairs of the corporate debtor as a going concern and before applying for early dissolution.

Other amendments include the modification of Form H, capturing additional details regarding the realization and distribution process, and the exclusion of assets where the corporate debtor has given possession to an allottee in a real estate project from the liquidation estate. Overall, these amendments are designed to streamline the liquidation process, promote transparency, and ensure accountability, thus enhancing stakeholders' confidence in the process.

Hon'ble Supreme Court of India

Ld. NCLT to recall resolution plan approval despite misclassification of claim: Hon'ble Supreme Court of India

In a recent legal development, the National Company Law Appellate Tribunal (NCLAT) faced twin appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016 (IBC) challenging its judgment and order dated 24-11-2022. The Apex Court allowed the appeal to recall the orders passed by Hon'ble NCLAT and Ld. NCLT against the provisions of the IBC.

The appellant, a statutory authority under the U.P. Industrial Area Development Act, 1976, submitted a claim of Rs. 43,40,31,951 towards premium installments. However, the Resolution Professional (RP) treated the appellant as an operational creditor instead of a financial creditor and requested the appellant to submit another form. The Committee of Creditors (CoC) approved a plan, and it was presented to the Ld. NCLT and approved on 04-08-2020. The appellant filed an IA on 6-10-2020 questioning the resolution plan, the RP's decision, and recalling Ld. NCLT's order.

The applications were rejected by Ld. NCLT, and the appeal was rejected by Hon'ble NCLAT. The Court held that the resolution plan did not meet the requirements of the IBC and directed the resolution plan to be resubmitted to the CoC after satisfying the parameters set out under the IBC.

Hon'ble High Court of Delhi



Hon'ble High Court directs IBBI to frame Code of Conduct for Committee of Creditors

In a recent pronouncement by the Hon'ble High Court of Delhi, the Bench expressed the need for a code of conduct for the Committee of Creditors (CoC) in insolvency cases. The CoC plays a significant role in the Corporate Insolvency Resolution Process (CIRP), and it is entrusted with fiduciary duties. The court emphasized the importance of circumscribing power with responsibility and ensuring that the CoC's decisions align with the objectives of the Insolvency and Bankruptcy Code, 2016 (IBC).

It was noted that there was no code of conduct or guidelines framed by the Insolvency and Bankruptcy Board of India (IBBI) for the CoC's effective functioning, despite the IBBI's wide powers and functions under the IBC.

The court directed the IBBI to frame/finalize a code of conduct/guidelines within a reasonable period, preferably within three months, to ensure the CoC's effective functioning without diluting its commercial wisdom or the legislative intent of the IBC. The court also stressed the importance of fairness, reasonableness, and adherence to the principles of natural justice in the decision-making process of the CoC. This directive aims to provide a grievance redressal mechanism and ensure the CoC's decisions are fair and objective in insolvency cases.

Kunwer Sachdev vs. IDBI, W.P.(C) 10599 of 2021
(12.02.2024)

Miscellaneous

The Hon'ble Supreme Court declares Electoral Bonds unconstitutional

The Hon'ble Supreme Court of India, through a unanimous verdict by a 5-judge Constitution Bench, has struck down the controversial Electoral Bond Scheme. The scheme, which allowed for anonymous financial contributions to political parties, was found to be violative of the right to information under Article 19(1)(a) of the Constitution. The court held that disclosure of political funding is essential for an informed voter to exercise their right to vote effectively. Additionally, the court noted that the scheme failed to fulfil the least restrictive means test in curbing black money in electoral financing. It also emphasized the importance of protecting the privacy of political affiliation. Consequently, the amendments to the Income Tax Act, the Representation of Peoples Act, and the Companies Act have been declared unconstitutional. The court has directed the State Bank of India (SBI) to immediately stop issuing Electoral Bonds and provide details of all bonds purchased by political parties. The Election Commission of India (ECI) is instructed to publish this information on its official website. Electoral Bonds within the validity period but not encashed by political parties must be returned to the issuing bank for a refund to the purchaser's account.

Association for Democratic Reforms vs. Union of India
W.P. (C) 880 of 2017 (15.02.2024)

Delay in appeal against Acquittal can be Condoned

The Hon'ble Supreme Court, recently clarified that Section 378 of the Criminal Procedure Code, 1973 (Cr.P.C.) does not exclude the applicability of Section 5 of the Limitation Act, 1963. The case involved an appeal against the dismissal of an application challenging the condonation of delay for an appeal against acquittal. The Appellant was one of the four accused in a case under Section 135(1)(b) of the Customs Act, 1962, who was acquitted by the Trial Court. The acquittal was appealed under Section 378 of the Cr.P.C. before the Hon'ble High Court with a delay of 72 days, and condonation was allowed by the Hon'ble High Court of Delhi. The Appellant moved an application under Section 482 of Cr.P.C. seeking to recall the order challenging the condonation of delay. However, the Hon'ble High Court dismissed the application. The Appellant then challenged this dismissal, arguing that the Hon'ble High Court had no power to condone the delay as Section 378 is a self-contained Code for limitation purposes. The Hon'ble Apex Court analyzed the provisions of the Limitation Act and the CrPC, comparing the old and new Acts. Hon'ble Supreme Court concluded that there was no exclusionary provision under Section 378 Cr.P.C.

Mohd. Abaad Ali v. Directorate of Revenue Prosecution Intelligence, CrI.A. No. 1056 of 2024 (20.02.2024)



ZEE Business: SEBI's Investigation holds violation of SEBI Regulations

A recent investigation conducted by the Securities and Exchange Board of India (SEBI) has uncovered a complex network of insider trading and manipulative practices involving guest experts, profit-making entities, and enablers on Zee Business. The investigation, which covered the period from February 1, 2022, to December 31, 2022, aimed to determine if there were violations of SEBI regulations governing insider trading and fraudulent trade practices.

The investigation revealed that certain entities, referred to as "Profit Makers," allegedly received advance information about stock recommendations from guest experts before they were broadcasted on Zee Business. This advanced information enabled the entities to initiate trading positions in the recommended stocks or contracts. Following the broadcast, there was a noticeable increase in trade volumes and favorable price movements aligned with the recommendations. The entities would then close their positions, often at prices more favorable than those at which they were initiated, thereby generating profits.

Furthermore, the investigation found instances where trading actions were initiated prior to the broadcast of recommendations, followed by subsequent profit-taking after the broadcast. Such practices were deemed manipulative, exploiting the anticipated impact of recommendations on stock prices and trading volumes.

As a result of the investigation, SEBI has imposed restraining orders on the entities involved, prohibiting them from engaging in securities trading until further notice. Additionally, the court has directed the preservation of relevant records, including social media accounts, maintained by the guest experts involved.

The SEBI's investigation highlights the importance of maintaining integrity and transparency in the securities market. It underscores the need for strict adherence to regulations governing insider trading and fraudulent trade practices to ensure a fair and level playing field for all market participants.

Chandigarh Mayor Election Crisis

In a significant ruling, the Hon'ble Supreme Court overturned the Chandigarh Mayor election results, declaring Kuldeep Kumar as the rightful winner.

The decision came after it was found that eight votes, initially invalidated, were actually cast in Kumar's favour, giving him a majority over the BJP candidate.

The case stemmed from allegations of electoral malpractices by the presiding officer, Anil Masih, during the election process. The Court highlighted the importance of maintaining the integrity of the electoral process and ensuring that elections are free and fair. It also invoked its jurisdiction under Article 142 of the Constitution to rectify the situation and uphold the principles of democracy.

“Classic Case of Arbitrary Action” Says the Hon'ble Supreme Court

The Hon'ble Supreme Court has overturned the Pandit Deendayal Upadhyaya Institute for Persons with Physical Disabilities' denial of appointment to a primary school teacher, calling the matter a "classic case of arbitrary action." The Institute's advertisement for the position required applicants to hold a senior secondary qualification along with a two-year diploma or certificate course in ETE/JBT or B.El.Ed., with the final selection based on an interview.

However, the appellant, despite holding a Post Graduate Degree, was denied marks for his qualification on the grounds that it was not in the relevant subject. The Single Judge and Division Bench had previously upheld the Institute's decision, citing academic discretion. However, the Hon'ble Supreme Court found that the Institute's actions were arbitrary and set aside their judgments. The Court ordered the Institute to pay the appellant Rs. 1,00,000/- as compensation for the denial of his appointment. This case highlights the importance of institutions exercising discretion judiciously and the need for courts to ensure fairness and accountability in such matters.

Manoj Kumar vs. Union of India Civil Appeal No. 2679 of 2024 (20.02.2024)

MoHFW allows one donor Gamete for undergoing Surrogacy subject to certain conditions

The requirement for "Consent of the Surrogate Mother and Agreement for Surrogacy" has been updated, allowing for one donor gamete if the District Medical Board certifies that either intending parent has a medical condition. Previously, both gametes were required from the intending couple. Now, the child must have at least one gamete from the intending couple, in addition to the donor gamete if necessary.

Vichaar- Thought Leaders Conclave 2024

SA Law organised Vichaar- Thought Leaders Conclave 2024 on 29th February 2024 from 4:00 pm to 6:00 pm virtually through Google Meet. This was the second edition of the conclave. Last year the conclave was focused on the Union Budget and analysed the issues and challenges for Amritkaal.

This year's conclave focused on analysing two vital areas– the Foreign and Economic policies of India and the efficient intersection of Law and Technology in the context of India's goals for the future. The government has earmarked significant milestones in this regard. The optimum realisation of such milestones requires constant dialogues between experts, stakeholders and policy makers. The conclave brought together thought leaders from the fields of law, policy and technology and discuss strategies through which the vision for 2047 can be achieved.

Ms. Shruti Iyer, Founding Partner, SA Law stated that, through *Vichaar*, the intent is to foster such collaboration and to analyse and provide suggestions on the existing policies and regulatory framework.

Session 1: Politik

The first panel discussion facilitated a dialogue between experts of the panel on India's Law, Foreign and Economic Policies in light of the recent geopolitical events and discussed over various issues of national and international significance.

The panellists were optimistic about India's foreign and economic policy and suggested some corrective measures which may be taken by the government.

Mr. Anandh K, Managing Partner, SA Law spoke about the legislative and judicial reforms required in the future for the growth of our country.

Session 2: TECHspeak

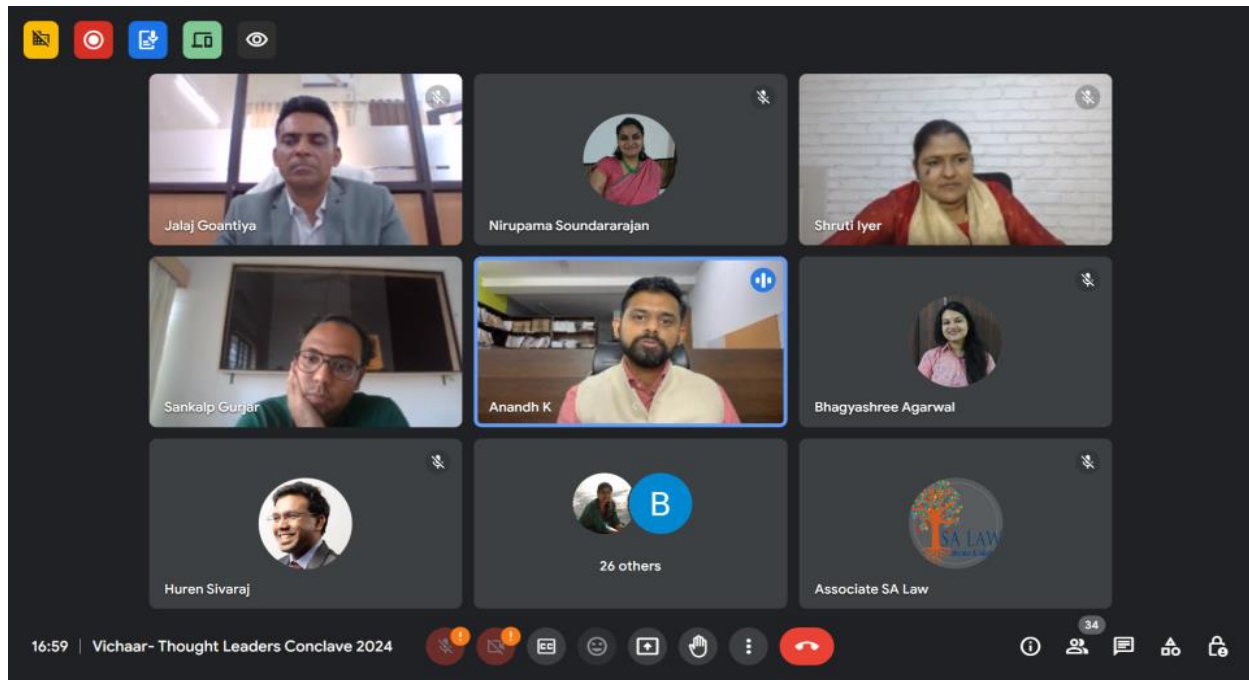
With the insights of various industry experts, the second panel discussion analysed the impact of integration of law and technology on the overall business environment in the country and simplification of regulatory/ compliance mechanism to foster a better future.

The speakers were optimistic about the ease of doing business in India and the overall business environment in the country. They also suggested some changes in the regulatory landscape as well as amendments to some laws which can aid in this cause.

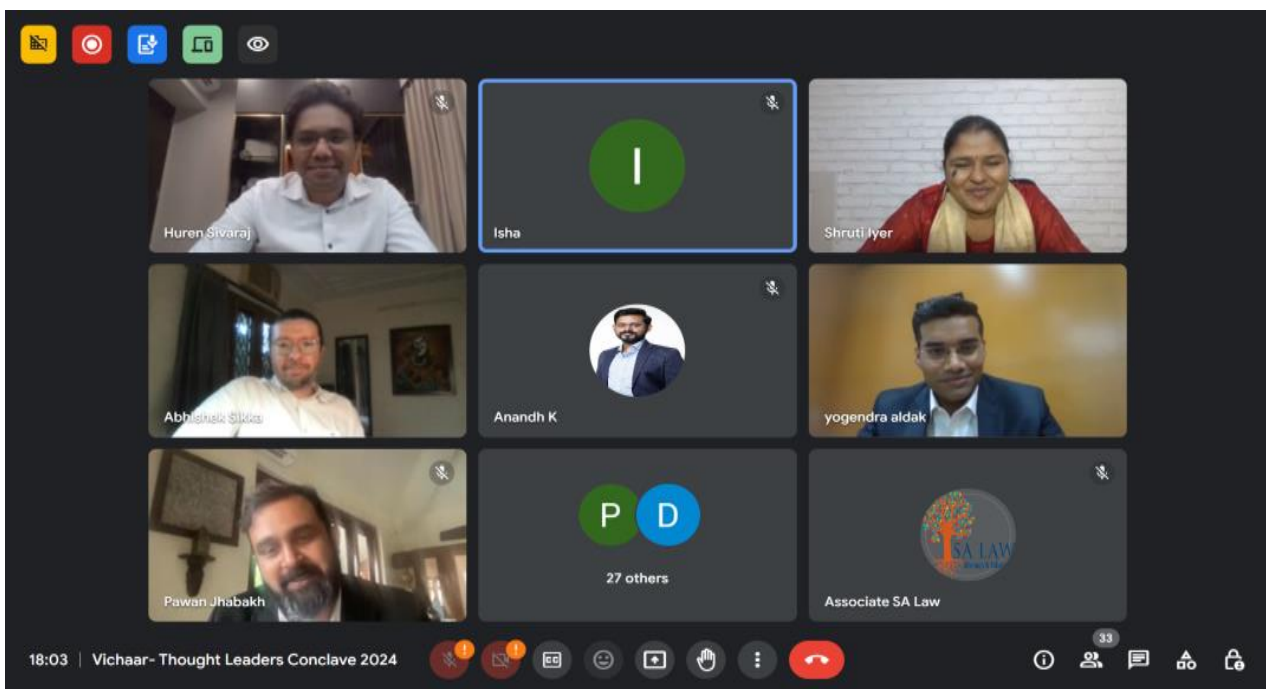
Our esteemed panellists included:

- **Ms. Nirupama Soundararajan**, Co-Founder and Partner, Policy Consensus Centre
- **Dr. Sankalp Gurjar**, Assistant Professor, Department of Geopolitics and International Relations, Manipal Academy of Higher Education, Karnataka
- **Dr. Jalaj Goantiya**, Assistant Professor of Political Science, Dharmashastra National Law University, Jabalpur, Madhya Pradesh
- **Mr. Anandh K.**, Managing Partner, SA Law; and Advocate on Record, Supreme Court of India
- **Mr. Pawan Jhabakh**, Advocate, Madras High Court
- **Mr. Yogendra Aldak**, Partner, Lakshmikumaran & Sridharan
- **Ms. Isha Sinha**, Chief Legal and Compliance Officer, Medcover Hospitals
- **Dr. Huren Sivaraj**, CEO and Co-founder, Oncoshot; Medical Oncologist, National Medical Center, Singapore
- **Mr. Abhishek Sikka**, Chief Product and Technology Officer, DriveO

GALLERY



Session 1: Politik



Session 2: TECHspeak

ABOUT THE FIRM



SA Law is a full service law firm based in New Delhi with a focus on dispute resolution. We offer services throughout India and our services include Litigation, Transactions, Arbitration, Mediation, Conciliation, Compliance and Regulatory matters We handle myriad legal issues including Domestic and International Arbitration, Anti-Trust, Competition Law, Civil and Commercial Laws, Family Law, Insolvency and Bankruptcy Laws, Intellectual Property Laws, Tax Laws, Criminal Laws, Service Law, Family Law, Property Laws, etc to name a few.

Our Partners oversee legal services for several clients located pan India. Our practice areas extend to key judicial forums including the Supreme Court, High Courts, NCLAT, NCLT, Electricity Appellate Tribunals (APTEL), Competition Commission of India, NCDRC, and various Trial courts at Delhi and at several other locations in India.

Over the years, our team has handled several high stakes litigation from the Trial Court up to Supreme Court and before several other forums and tribunals. We have carved a niche for ourselves and advise several Fintech, Edutech and Meditech companies for their various requirements including regulatory advice, compliance, transactions and litigation. We have several corporate companies as our clients who turn to us for our counsel on legal challenges faced by them. SA Law has also advised several Start-Ups to build their companies from scratch starting from the founders' agreement to raising capital or day to day running of the companies. Our core value is to offer most practical and legally sound advice in the most affordable and time-bound manner.

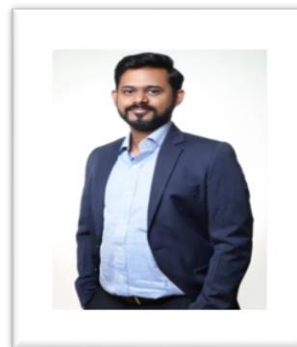
SA Law also believes in giving back and collaborates with several law colleges to train future lawyers on latest nuances of the law.



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