Vacation Edition

ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration

Cover Story

Arbitrating ESG: A New Era for Indian Dispute Resolution 04

KINGS & ALLIANCE LLP

LAW FIRM

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K&A INSIGHTS

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Editor's Note

Shifting Paradigms, but as our cover story this month reveals, these lines can sometimes blur. This edition of ARBITRA delves into **Arbitration's Role in India's Evolving ESG Landscape,** exploring how the burgeoning prominence of Environmental, Social, and Governance concerns is not only reshaping corporate India but also becoming a fertile ground for disputes increasingly finding their way to arbitration. We examine how this private and efficient mechanism offers a unique avenue for resolving complex conflicts arising from a company's impact on the planet, its treatment of people, and the integrity of its leadership.

This edition also brings you up to speed on other pivotal developments across the arbitration landscape. We highlight the **Delhi High Court's commendable initiative to curtail procedural delays by limiting the applicability of the Civil Procedure Code in enforcement proceedings,** a move poised to significantly boost efficiency. In a further affirmation of India's pro-arbitration stance, the **Supreme Court has underscored its commitment by upholding an award despite a belated objection related to the Madhya Pradesh Act.** Additionally, a significant victory for Micro, Small, and Medium Enterprises (MSMEs) comes with the confirmation that **ad-hoc arbitrators are now empowered to grant higher interest rates under the MSMED Act,** providing crucial support to these vital economic contributors. From the nuanced interplay between writ jurisdiction and arbitration clauses to the judiciary's measured approach in bank guarantee disputes, Indian courts continue to refine the boundaries of arbitral intervention.

Let's dive in.

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COVER STORY

Arbitrating ESG: A New Era for Indian Dispute Resolution

The burgeoning prominence of **ESG** concerns is undeniably reshaping the corporate landscape in India. What was once a niche interest has rapidly evolved into a critical lens through which investors, consumers, and stakeholders scrutinize businesses. This shift isn't merely about good corporate citizenship; it's about inherent value, long-term sustainability, and, increasingly, a fertile ground for **disputes**. And surprisingly, these disputes are finding an intriguing home in the seemingly private world of **arbitration**. Gone are the days when a company's financial sheet was its sole report card. Today, a firm's impact on the planet, its treatment of people, and the integrity of its leadership are equally, if not more, vital. This heightened awareness has inevitably led to friction. Consider the environmental front: a factory's unchecked emissions, improper waste disposal, or even the devastating consequences of deforestation. These aren't just regulatory infringements; they can be contractual breaches, sparking clashes over environmental compliance and remediation.

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PIVOTAL ISSUES

Defining Arbitrability: Key Indian Judicial Shifts

Arbitration, a private and efficient alternative to traditional litigation, stands on the foundational pillars of contract creation, party autonomy, and consensus ad idem. Yet, the very essence of its utility—its scope—has historically been shrouded in ambiguity. The question of **"arbitrability"**—whether a specific dispute can be resolved through arbitration—has been a persistent challenge, with limited statutory guidance in both international and Indian legal frameworks. This silence has thrust judicial interpretation into the limelight, shaping the contours of this crucial aspect of dispute resolution. This article embarks on a journey through the evolution of arbitrability in India, tracing the path from the **foundational Booz Allen test** to the expansive fourfold framework established in **Vidya Drolia,** ultimately aiming to illuminate the ongoing quest for clarity in this vital legal domain.

The Genesis: Unpacking the Booz Allen Test

The landmark Supreme Court decision in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors. marked a pivotal moment in defining arbitrability in India. Faced with the question of whether a suit for enforcement of a charge/mortgage could be settled through arbitration, the Apex Court, while answering in the negative, laid down three essential conditions for a dispute to be amenable to arbitration:

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PIVOTAL ISSUES

Arbitral Overreach Struck Down by Rajasthan High Court

In the evolving landscape of arbitration in India, a recurring challenge revolves around the delicate balance between upholding the finality of arbitral awards and ensuring that such awards remain within the bounds of the underlying contract and the law. Courts frequently grapple with appeals that question whether arbitrators have exceeded their jurisdiction or awarded reliefs that are not expressly permitted by the agreement between the parties. It is against this backdrop that a recent judgement by the Rajasthan High Court in **The State of Rajasthan, through District Collector Pali. & Ors. vs. Sanwariya Infrastructure Private Limited,** delivered by a bench comprising **Justice Avneesh Jhingan and Justice Bhuwan Goyal,** has reiterated a critical stance: an arbitral award that grants reliefs beyond the express terms of the contract, including compensation for losses and interest where no such entitlement exists under the agreement, is patently illegal and consequently liable to be set aside under **Section 37** of the Arbitration Act.

This decision emerged from an appeal against the dismissal of objections to an arbitral award in a BOT project concerning the Pali Bypass. The core of the dispute centered on the precise commencement date of the concession period, the respondent's right to retain collected toll, and claims for losses allegedly stemming from delays and the non-closure of a LRC, culminating in the arbitrator awarding substantial compensation and interest.

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PIVOTAL ISSUES

DPDP Act & Arbitration: Navigating India's Evolving Data Dispute Landscape

The digital age, while showering us with unprecedented conveniences, has also unveiled a Pandora's Box of challenges, chief among them being the pervasive issue of data privacy. As our lives increasingly migrate online, so too does our personal data, creating fertile ground for potential misuse and, consequently, a surge in data privacy disputes. In India, the judiciary has consistently championed the sanctity of personal data, recognizing its protection as a cornerstone of individual privacy. This commitment reached a zenith with the landmark 2019 Supreme Court ruling in **Justice K.S. Puttaswamy (Retd) vs Union of India,** which unequivocally declared the right to privacy a fundamental right. The Court, in its foresight, also underscored the pressing need for a comprehensive data privacy law, a vision that ultimately materialized with the enactment of the **DPDP Act.** Coincidentally, India's arbitration landscape has witnessed a remarkable evolution, positioning itself as a preferred mechanism for dispute resolution. A PwC report reveals a striking preference for arbitration over traditional litigation among Indian companies, with a staggering 91% favoring it. This growing inclination towards arbitration, marked by its efficiency and confidentiality, naturally leads us to a fascinating intersection: how do these two evolving legal frameworks – data privacy and arbitration – interact, particularly when it comes to resolving disputes arising from the digital realm?

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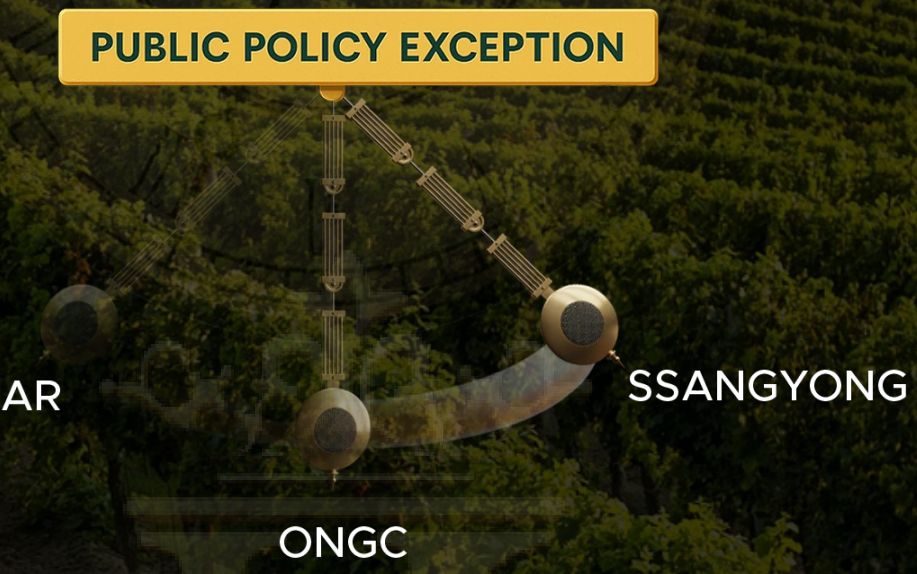
PIVOTAL ISSUES

Indian Arbitration: Is Public Policy its Shield or Its Shackle?



In the intricate tapestry of law, certain threads are woven with a purpose so fundamental they underpin the very fabric of society. **"Public policy"** is one such thread, an overarching principle that, at its heart, serves as a societal compass, guiding legal systems to invalidate agreements or actions detrimental to the common good. Think of it as an invisible guardian, ensuring that no contract, however meticulously drafted, can stand if it threatens the welfare of the public – be it through promoting illegal activities, stifling competition, or undermining basic human rights. This age-old concept, deeply rooted in common law, has perpetually evolved, oscillating between narrow interpretations that cautiously apply its tenets and broader ones that embrace its protective spirit.

This dynamic evolution finds a particularly fascinating battleground in the realm of Indian arbitration. Here, public policy transforms from an abstract legal concept into a tangible gatekeeper, capable of both opening the way for just outcomes and blocking the path of unjust ones. The journey of this principle within arbitration is a tale of judicial interpretation and legislative reform, punctuated by landmark cases like Renusagar Power Co. Ltd. v. General Electric Co. and ONGC v. Saw Pipes Ltd. These judicial pronouncements have not merely interpreted the law; they have actively shaped the contours of public policy in the arbitral landscape, dictating when and how this powerful exception can be invoked.

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SIGNIFICANT CASE LAWs

Ex Parte Order Not Final: MP High Court Emphasizes Full Hearing for Proper Adjudication

In a significant ruling, the Madhya Pradesh High Court, in the case of **Tricon Energy Uk Limited Through Its Authorized Signatory Mr. Santosh Koli Vs. Kriti Industries (India) Limited,** has clarified that an ex parte order is not sacrosanct and can be recalled under specific circumstances. Justice Subodh Abhyankar's decision underscores the principle of natural justice, emphasizing the necessity of a fair and comprehensive hearing for proper adjudication, especially when complex legal issues are at play. The High Court held that an ex parte order may be recalled if the concerned party subsequently appears, demonstrates compliance with the court's earlier directions, and the legal issues involved are intricate enough to necessitate a full hearing from both sides. This ruling provides a crucial safeguard against the potential for an ex parte order to lead to an unjust outcome, particularly in matters where the absence of one party at an earlier stage might have prevented a thorough examination of the facts and legal arguments. The judgment reinforces the judiciary's commitment to ensuring that all parties have a reasonable opportunity to present their case, thereby contributing to more equitable and effective dispute resolution.

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Gujarat HC Rules: Court Cannot Invalidate Arbitration Award on Merits Without Proper Jurisdiction Under S.34

In the case of **Yash Textiles Vs. Vinayak Fashions,** a significant ruling by the Gujarat High Court, through a bench comprising Chief Justice Sunita Agarwal and Justice D.N. Ray has clarified that a court lacking jurisdiction to entertain an application under Section 34 of the Arbitration and Conciliation Act, 1996, cannot proceed to set aside an arbitral award on its merits. The High Court emphasized that once an application under Section 34 is found to be time-barred, specifically beyond the limitation period prescribed under Section 34(3) and its proviso, any subsequent pronouncement on the validity of the arbitral award, even if deemed void ab initio, is rendered devoid of legal authority. The Court unequivocally stated that entertaining a time-barred application under Section 34 constitutes a grave error of law, underscoring the critical importance of adhering to statutory limitation periods in arbitration challenges. This decision reinforces the principle that jurisdictional competence is a prerequisite for a court to adjudicate on the substance of an arbitral award.

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SIGNIFICANT CASE LAWs

Fresh Start Mandated: Kerala High Court Rules New Arbitrator Must Re-Initiate Proceedings If Previous Appointment Was Void

In **M.I. Mohammed vs. HLL Life Care Ltd. & Ors.,** the Kerala High Court, through the bench of Justice M.A. Abdul Hakhim, made a significant ruling clarifying the procedural requirements when an arbitrator's appointment is deemed **void ab initio**. The Court established that if an arbitral award is set aside due to an invalid initial appointment of the arbitrator, rendering the entire arbitral proceedings **"non est"**, meaning they never legally existed, then any newly appointed arbitrator must initiate the proceedings completely afresh. This ensures the new arbitration is free from the taint of the void initial appointment. The Court further stipulated that it's the prerogative of the new arbitrator to determine the admissibility of any evidence that may have been recorded during the previous, invalid proceedings. This judgment underscores the principle that a fundamentally flawed initial appointment renders all subsequent actions by that arbitrator null and void, necessitating a complete restart to uphold the integrity of the arbitration process.

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Delhi High Court: Don't Use External Info to Explain Unambiguous Clauses – It's 'Patently Illegal'

Oil and Natural Gas Corporation Ltd. vs. JSIW Infrastructure Pvt. Ltd.: In a significant ruling, the Delhi High Court, through a bench of Justice Vibhu Bakhru and Justice Tejas Karia, has emphasized the sacrosanct nature of contractual language when it is "plain, clear and unambiguous." The Court held that in such instances, referring to external correspondences or negotiations to interpret a clause is not permissible. This amounts to "patent illegality" if an explicit contract term is ignored or contradicted. This judgment underscores the principle that the literal interpretation of a contract should prevail when its terms are clear, preventing the introduction of extraneous elements that could distort the original intent and agreement of the parties. This reinforces the importance of clear drafting and adherence to the written word in commercial contracts to avoid future disputes and maintain legal certainty.

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SIGNIFICANT CASE LAWs

Delhi High Court Rules MD's Sole Arbitrator Clause Invalid After Mutual Consent Failure

In **Ballarpur Industries Limited vs. SG Enterprises & Ors.,** the Delhi High Court, presided over by Justice Jyoti Singh, invalidated an arbitration clause that permitted the Managing Director of one party to unilaterally appoint a sole arbitrator if mutual consent failed. The High Court underscored that such a provision directly violates the core principles of **impartiality and independence** crucial to arbitration, as well as established Supreme Court precedents. The Court acknowledged that while the clause initially provided for arbitrator appointment through mutual consent, the problematic element arose from the subsequent provision granting the MD the power to unilaterally appoint a sole arbitrator in case of a deadlock. Justice Singh reasoned that a company, acting through its MD, inherently possesses an interest in the dispute's outcome. Consequently, bestowing the power of sole arbitrator appointment upon the MD would inevitably compromise the arbitrator's independence and impartiality, thereby breaching the **"foundational pillars of arbitration."** This judgment reaffirms the paramount importance of a neutral and unbiased arbitration process, ensuring that party autonomy doesn't undermine the fundamental tenets of fairness and independence in dispute resolution.

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Delhi High Court: Arbitration Applications Not Allowed After Written Statement Filing Closes

In **R. Santosh Vs. One97 Communications Ltd,** the Delhi High Court, with a bench comprising Justices Shalinder Kaur and Navin Chawla, clarified the procedural limitations for invoking arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The Court firmly held that an application seeking reference to arbitration under Section 8 is not maintainable once the defendant's **right to file a written statement has been closed.** This significant decision emphasizes the critical importance of adhering to the prescribed timelines for filing pleadings. It prevents the belated invocation of arbitration clauses from potentially derailing ongoing civil proceedings, effectively linking the opportunity to seek arbitration under Section 8 to the window available for filing the written statement. Once that window closes, so does the right to move such an application.

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SIGNIFICANT CASE LAWs

Arbitrator Appointment Not Automatically Forfeited After 30 Days, Rules Gauhati High Court

In **Druckgrafen India Limited Vs. The State Of Nagaland And 2 Ors,** the Gauhati High Court, through a bench led by Justice Yarenjungla Longkumer, recently clarified a pivotal aspect of arbitration law. The Court ruled that the right to appoint an arbitrator is not automatically forfeited simply because a party fails to do so within 30 days of a demand by the other party. While Section 11 of the Arbitration and Conciliation Act, 1996, indeed stipulates a 30-day period for such appointments, the High Court held that an appointment made after this period, but crucially, before the aggrieved party files an application under Section 11 for judicial intervention, remains legally valid. This significant decision provides a crucial window of opportunity for parties to rectify a delayed appointment, emphasizing that the forfeiture of the right to appoint is not automatic, but rather contingent upon the other party initiating a Section 11 proceeding to seek judicial intervention.

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"May" Doesn't Derail Arbitration Clause in Interconnected Pacts, Rules Telangana High Court

In the significant judgement of **Urbanwoods Realty LLP vs. Mrs. Uma Rastogi & Another,** the Telangana High Court, presided over by Justice K. Lakshman, delved into the intricate interpretation of arbitration clauses embedded within interconnected agreements. The central question before the court was whether the presence of the word "may" in the arbitration clause of an ancillary agreement could undermine a clear and unequivocal intention to arbitrate as articulated in the primary, or "mother," agreement. The Court decisively held that in such circumstances, where the overarching or main agreement expressly mandates arbitration for dispute resolution, the simple use of permissive language ("may") within a subordinate agreement's arbitration clause does not negate the parties' clear intent to pursue arbitration. This ruling serves to strengthen the principle that the holistic intention of the contracting parties, particularly as manifested in the primary contractual arrangement, takes precedence when construing arbitration clauses across a series of interconnected agreements. The decision highlights a pragmatic approach to contractual interpretation, prioritizing the spirit and overall aim of the agreement over a rigid, literal reading of isolated words, especially when the complete contractual framework points towards a specific mechanism for dispute resolution.

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SIGNIFICANT CASE LAWs

Telangana High Court Declines to Rule on MSME Works Contract Disputes in Writ Jurisdiction

In a definitive ruling, the Telangana High Court, in the case of **V.K.S. Constructions vs. The State of Telangana,** has held that the determination of whether a specific contract qualifies as a 'works contract' for the purposes of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, falls squarely within the purview of the MSME Council. Justice K. Lakshman, presiding over the bench, clarified that such intricate factual and legal questions are not amenable to resolution under the extraordinary writ jurisdiction of the High Court. This judgment underscores the principle of exhaustion of statutory remedies, directing parties to approach the specialized MSME Council for adjudication of disputes concerning the nature of contracts under the MSMED Act, rather than seeking direct intervention from the High Court through writ petitions.

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REGULATORY UPDATES

Delhi High Court's Draft Arbitration Rules 2023: A Leap Towards Efficient Dispute Resolution

Delhi High Court releases Draft Arbitration Rules of 2023, invites objections.

- Standardized Fee Structure and Documentation
- Emphasis on Institutional Arbitration
- Enhanced Procedural Discipline and Case Management
- Meticulous Record Keeping and Jurisdictional Clarity
- Advance Service Protocol and Structured Filing Requirements
- Repeal of Existing Practices

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TRAINING AND EVENTS

1. Introduction to International Arbitration

Date: July 19, 2025

Venue: Hyderabad

Organized by: Mumbai Centre for International Arbitration (MCIA)

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2. 4th Arbitrate In India Conclave 2025

Date: October 31, 2025

Venue: Multi-Purpose Hall, India International Centre, New Delhi

Organized by: Indian Dispute Resolution Centre (IDRC)

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3. ICC Institute of World Business Law Advanced Training on 'The Conduct of the Proceedings and Case Management – The Arbitrator's Perspective' – Mumbai 2025

Date: November 13, 2025

Venue: Mumbai, India

Organized by: International Chamber of Commerce (ICC)

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4. ICC India Arbitration Conference – Mumbai 2025

Date: November 14, 2025

Venue: Trident, Nariman Point, Mumbai

Organized by: International Chamber of Commerce (ICC)

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For over 22 years, Kings & Alliance LLP has been a trusted advisor to both corporations and individuals, combining traditional legal wisdom with modern innovation to deliver exceptional results. Our core values of expertise, excellence, and integrity drive our commitment to providing practical, client-focused solutions, underpinned by innovative strategies and deep industry insights.

We offer a comprehensive range of services, including general and corporate litigation, arbitration, insolvency and bankruptcy, taxation, and competition law. Whether addressing complex corporate matters or navigating intellectual property and regulatory challenges, we tailor our approach to meet the unique needs of each client. Our expertise also extends to high-growth industries such as fintech, healthcare, and infrastructure, where we help businesses succeed in these dynamic sectors.

In today's globalized market, we leverage strategic cross-border partnerships to guide our clients on ESG compliance, digital transformation, and international disputes, ensuring they are prepared for the evolving challenges of the modern business environment. Our goal is to enable businesses and individuals to operate with confidence, within a landscape that values fairness and security.

With more than two decades of experience, we have developed the foresight to anticipate challenges and craft solutions that protect and empower our clients—whether they are corporations, MSMEs, entrepreneurs, NGOs or indigent individuals, we ensure that regardless of their financial standing they receive equitable access to quality legal advice.

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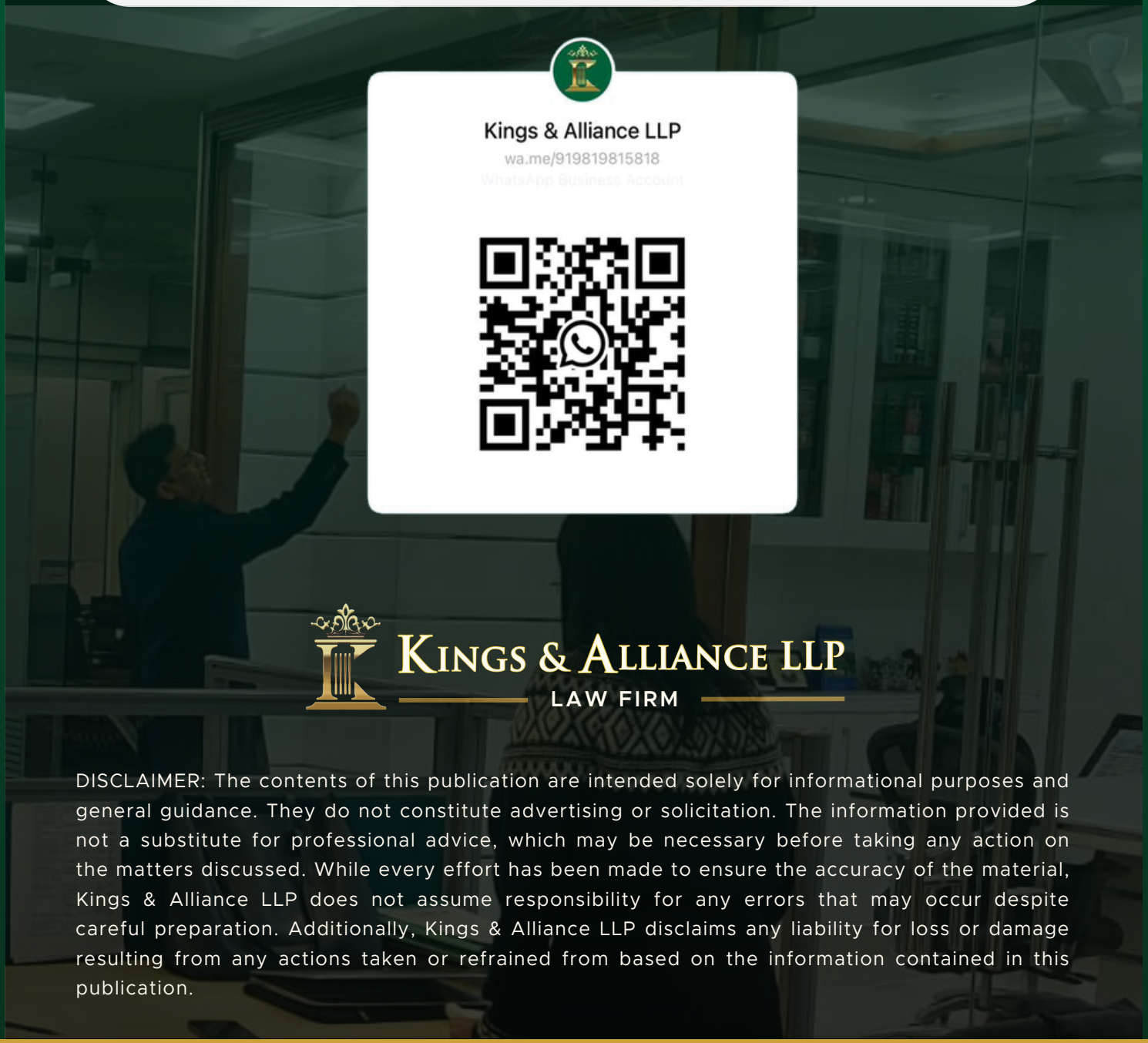

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