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Law Advisors

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Convergence of Regstreet's thinking with that of the Parliament

Twenty op-eds on the Code, three earlier columns, and the Committee's Report

Between December 2025 and July 2026, Sumit Agrawal, Managing Partner, Dr M. S. Sahoo, Advisor to the Firm, and Shri M. Damodaran, Mentor and Advisor to the Firm, published a series of twenty op-ed articles in Business Standard, Financial Express, Mint, Hindu BusinessLine and The New Indian Express. Most of these articles were jointly authored by the Partners and Advisers of the Firm, while a few were co-authored with other distinguished governance experts. The articles appreciated the transformational governance architecture embodied in the Securities Markets Code and suggested refinements to strengthen its institutional design, legislative drafting and implementation.

During the Committee's examination of the Code, both Advisers to the Firm, Shri M. Damodaran, former Chairman of SEBI, and Dr M. S. Sahoo, former Chairperson of the Insolvency and Bankruptcy Board of India, deposed before the Standing Committee on Finance on 10 April 2026 and 23 April 2026 respectively. Collectively, our work progressed from recognising the transformative vision of the Code to identifying specific drafting, governance and institutional improvements that would further enhance its effectiveness.

The Standing Committee on Finance adopted its Report on the Securities Markets Code on 21 July 2026 and presented it to Parliament on 23 July 2026. A reading of the Report reveals a striking convergence between the views expressed in our work and those reflected in the Committee's recommendations. On every important issue, both arrive at similar conclusions regarding the strengths of the Code and the refinements required to make it more effective. This convergence reflects a shared approach to the challenge of designing a modern, robust and future-ready framework for securities market governance.

The convergence extends across the breadth of the Code, from its opening provision to its closing assurance. We had argued that the long title should expressly articulate the statutory objective of the Code, and that the delegation architecture at the other end, which the Bill's own Memorandum Regarding Delegated Legislation had assured Parliament would be confined to matters of procedure and administrative detail, should not permit the delegation of essential legislative functions. The Committee has reached the same conclusion on both. Similar convergence is evident across the issues set out below.

The agenda set out before the Bill

The Firm's published work on this reform predates the Code itself. Between December 2023 and July 2025, Sumit Agrawal, Managing Partner, published three columns in Bar & Bench examining the judicial record of the regulator and setting out a legislative agenda for the Code that was then awaited. Those columns are listed at Annexure II and annexed to this note. Writing in December 2024, when the Code had been announced but not released, we set out six specific provisions that the legislation ought to contain. The Committee has since arrived at five of the six. The earlier column, of December 2023, had asked whether the Code would carry statutory safeguards for the accountability of the regulator itself, and questioned whether officers exercising quasi-judicial functions possessed the requisite capability. A third column, of July 2025, argued for the codification of adjudicatory procedure and for structural separation of the investigative and adjudicatory wings, as the Supreme Court's Expert Committee had recommended. Each of those points also finds an answer in the Report.

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What the earlier columns asked for	Where the Committee arrived	Para
Definitive time limits for the regulator to complete investigations and pass orders [22]	Investigation to be completed within one year, and the proviso permitting a matter to be reopened after eight years comprehensively redrafted	8.11, 10.13-10.15
Restrictions on the delegation of powers within the regulator and to stock exchanges and depositories [22]	Delegation under Clause 31 to be accompanied by a statutory accountability framework which "should not dilute the Board's primary responsibility and accountability as the statutory regulator"	61.8
Disclosure of conflicts of interest by the Chairperson and Whole-time Members [22]	Cooling-off period for the Chairperson and Whole-time Members extended from one year to two years	6.7-6.8
Independent review where the regulator expands its powers through its own subordinate legislation [22]	Comprehensive review of eleven enabling provisions, every delegation to define its scope, purpose and limits, and an explanatory statement where rights are materially affected	61.5-61.11
A clear and genuine separation between the adjudicatory and executive wings, as the Supreme Court's Expert Committee had also recommended [22, 23]	Framework for the designation, tenure and allocation of functions of Investigating and Adjudicating Officers, and the Adjudicating Officer not to be subordinate to the Investigating Officer in the same matter. Clause 17(4) read with Clause 146(2)(j) placed on the list of provisions requiring comprehensive review	11.6-11.9, 61.9-61.10
Greater transparency in annual reporting, commensurate with the regulator's expanded powers [22]	Addressed only in part. Clause 11(3) requires the Board to review its own performance and the proportionality of its regulations. No separate recommendation was made	11(3)
Codification of how evidence is appreciated, how cross-examination is treated and how defence submissions are evaluated [23]	Regulations to prescribe the manner of adjudication proceedings, with the Committee holding that essential procedural safeguards governing adjudication should rest on clear statutory principles, and guidelines to be framed on aggravating and mitigating factors	11.6-11.9, 12.5, 61.9
Capability of officers exercising quasi-judicial functions [21]	Adjudicating Officers to possess adequate legal expertise or undergo appropriate legal training, having regard to their quasi-judicial functions and enhanced powers	11.9
Proportionate penalties rather than mechanical orders, and effective handling of investor complaints [21, 22]	Methodology for quantification of unlawful gains, guidelines on aggravating and mitigating factors, penalties to be graded and proportionate, and "may" substituted with "shall" for the Investor Charter and the grievance redressal mechanism	12.5, 52.6, 44.5, 45.10

Where our thinking and the Committee's converge

Issue	Our published position	The Committee's recommendation	Para
Long title and Preamble	The Preamble records only the consolidation of three enactments and states no substantive objective. It should articulate the object of the regulator and of regulation. [7]	Consolidation is "the legislative mechanism adopted to achieve the broader policy objectives of the Code rather than an objective in itself". The Preamble to incorporate investor protection, market development, effective regulation, fair, transparent and efficient markets, prevention of undesirable transactions, and capital formation.	3.4-3.5
Separation of investigation and adjudication (Cl. 17)	Leaving adjudication procedure to regulations collapses norm-making and enforcement, and a common pool of officers serves both functions. [9, 14]	Regulations to govern the designation, tenure and allocation of functions of Investigating and Adjudicating Officers, so as to ensure institutional independence. The Adjudicating Officer not to be subordinate to the Investigating Officer in the same matter. Legal expertise or training for Adjudicating Officers.	11.6-11.9
Revisionary power (Cl. 21)	A power to enhance a penalty but never to reduce it is asymmetric and inconsistent with natural justice.	The asymmetry "may not be fully consistent with the principles of fairness and natural justice". The Board to be empowered, on merits and for reasons recorded in writing, to reduce or modify as well as enhance.	14.7-14.8
Limitation and investigation timelines (Cl. 13, 16)	Enforcement certainty requires firm outer limits on both the initiation and the completion of proceedings. [1]	The proviso to Clause 16 redrafted so that a reference by another agency is only a trigger and not by itself a ground to reopen a matter after eight years. Investigation to be completed within one year.	8.11, 10.13-10.15
Directions and interim measures (Cl. 23, 27)	Coercive and interim measures must be reasoned, proportionate and genuinely interim. [1, 14]	Reasons in writing mandatory for directions, including attachment, impounding and restraint on alienation of assets. Suspension directions to specify their duration. Interim orders extendable 180 days at a time within a two-year outer limit.	16.10-16.12, 18.5
Adjudication factors and penalties (Cl. 19, 109)	Enforcement discretion should be structured, and sanctions predictable,	The Board empowered to prescribe the methodology and criteria for quantification of unlawful gains and	12.5, 52.6

Issue	Our published position	The Committee's recommendation	Para
	reasoned and proportionate. [12, 14]	losses, and to frame guidelines on aggravating and mitigating factors. Penalties to be graded and consistent with proportionality.	
Settlement (Cl. 26)	Settlement must reflect the nature, gravity and impact of the contravention and operate within defined bounds. [1]	Clause 26(1)(b) to expressly confine the settlement mechanism to administrative and civil proceedings.	17.6
Market infrastructure institutions (Cl. 39, 40, 42)	Institutions exercising public regulatory power must meet public standards of consultation, transparency and governance. [3, 11, 15]	Public consultation to apply uniformly to the making and the amendment of bye-laws, with reasons where dispensed with, and bye-laws to continue to be laid before Parliament. Market participants on governing boards to be enabling and not mandatory, given conflicts of interest and the principle of demutualisation.	26.10, 27.9, 29.7
Exemption for listed public sector companies (Cl. 65(2))	An omnibus exemption by ownership class offends competitive neutrality and creates regulatory free riders. [5]	"Similar listing and disclosure requirements should apply equally to public sector and private sector listed companies". The blanket power to be replaced by exemption on a case-to-case basis, in the public interest, for reasons recorded in writing.	41.6-41.9
Investor protection (Cl. 71, 72)	An investor charter, a grievance mechanism and an ombudsperson expressed as options leave the burden of resolution on the investor. [7]	"May" substituted with "shall" for the Investor Charter and for the investor grievance redressal mechanism, the latter extending to market infrastructure institutions, intermediaries and self-regulatory organisations.	44.5, 45.10
Appeals (Cl. 85)	A restricted list of appealable orders leaves those under interim restraint without recourse.	Any person aggrieved by an order of the Board or the Adjudicating Officer, including an interim order, to have a right of appeal to the Tribunal. Outer limit of 45 days for condonation of delay. A separate bench of the Tribunal for ombudsperson matters.	48.24-48.27
Market abuse and criminal liability (Cl. 92, 93, 96)	Defining offences is an essential legislative function. The Code decriminalises and then permits the regulator to re-expand criminal liability by regulation. [9, 17, 18]	Clause 93(g) to be deleted. Conduct attracting criminal liability to be exhaustively specified in the Code. Regulation-making confined to operationalising the Chapter and "not for creating new categories of criminally punishable conduct", citing In re: Delhi Laws Act, 1912.	49.9-49.12
Money laundering consequences (Cl. 94)	Delegated criminalisation carries collateral consequences under the PMLA that were never separately debated. [18]	Clause 94 to be omitted from Schedule II to the PMLA. Non-compliance with an adjudication order "does not, by itself, constitute conduct involving market manipulation, insider trading or other substantive market abuse".	60.6-60.8
Delegated legislation (Chapter LXI)	Subordinate law-making was assured to be confined to procedure and administrative detail. The Code goes well beyond that assurance. [9, 18]	Substantive rights, criminal liability and adjudicatory safeguards "should ordinarily be incorporated in the Code itself". Comprehensive review of eleven enabling provisions. Every delegation to define its scope, purpose and limits, with an explanatory statement where rights are materially affected.	61.5-61.11

Bracketed numerals refer to the articles listed in Annexures I and II. Two rows carry no reference: the revisionary power under Clause 21 arises from our separate work on Section 15-I(3) of the SEBI Act, and the appeal provisions record a Committee recommendation consistent with the general thesis of the series rather than a specific article.

Where the convergence has not yet been carried into the text

Five of our submissions remain open, and on one of them the Report moves in the other direction. Each remains available at the Rajya Sabha stage and in the framing of the regulations that will follow.

Issue	Our position	Position in the Report
Territorial reach	The Code does not define its territorial scope. It should adopt an effects-based principle covering conduct outside India having a direct, substantial or reasonably foreseeable impact on Indian securities markets. [16]	Not addressed
Minimum penalties	Whether a statutory minimum is an absolute floor or may yield to proportionality remains unresolved, as the split verdict in Sukhraj Kaur Rajbans v. SEBI illustrates. [12]	Proportionality endorsed at 52.4 to 52.6; the floor question left open
Regulatory impact assessment	Ex ante impact assessment and its public disclosure should be a condition of rule-making. [8]	Not recommended; Chapter LIX

Issue	Our position	Position in the Report
Materiality and non-public information	The conjunction “or” between “material” and “non-public” should read “and”, failing which routine informed trading is caught. [17]	Recorded at 60.4; amendment to be carried at the drafting stage
Accountability for regulatory and delegated-authority failure	Failure should carry consequences whether it originates with a market participant or with the State. [13]	Chapter LVI moves the other way, extending good faith protection to market infrastructure institutions and the Tribunal

The question that remains

Read together, five recommendations disclose a direction of travel on market infrastructure institutions that no single chapter reveals. They are to be expressly empowered to act in the interim without a prior hearing (28.7); their officers and members are to receive good faith protection (56.4); conflicts on their governing boards are to be addressed on demutualisation grounds (29.7); their bye-laws remain before Parliament (26.10); and delegation to them is to carry a statutory accountability framework which “should not dilute the Board's primary responsibility and accountability as the statutory regulator” (61.8). The Report thus enlarges their authority and their protection, and defers the accountability architecture to a review yet to be undertaken. For institutions the Code treats as exercising delegated public power, that is the half of the bargain which remains unwritten.

For clients, the practical effect, if carried into the enacted Code, is a closed statutory list of criminally punishable conduct, narrower exposure under the PMLA, a revisionary power that can reduce as well as enhance, appealable and time-bound interim orders, a higher threshold for reopening stale matters, and an adjudicatory process whose composition can be tested. None of this is law yet; the amendments will be moved when the Bill is taken up.

We would be glad to discuss what the Report means for your regulatory exposure and to prepare a clause-wise impact note for your compliance and legal teams.

Annexure I: the twenty articles on the Code

The complete text of every article listed in this Annexure and in Annexure II is annexed to this note.

No.	Title	Authors	Publication	Date
1	Regulatory governance, finally codified (Part I of three)	M. S. Sahoo and V. Anantha Nageswaran	Business Standard	23 Dec 2025
2	Regulatory architecture 2.0 (Part II)	M. S. Sahoo and V. Anantha Nageswaran	Business Standard	24 Dec 2025
3	When market infrastructure institutions become the state (Part III)	M. S. Sahoo and V. Anantha Nageswaran	Business Standard	25 Dec 2025
4	Financial sector reforms: going beyond incrementalism	C. K. G. Nair and M. S. Sahoo	Hindu BusinessLine	27 Jan 2026
5	Securities Bill has a problematic Section	M. S. Sahoo and C. K. G. Nair	Hindu BusinessLine	27 Feb 2026
6	A fee must not become a tax	Sumit Agrawal and M. S. Sahoo	Financial Express	5 Mar 2026
7	New securities code misses its statutory purpose, leaves investors exposed	M. S. Sahoo and Sumit Agrawal	Business Standard	30 Mar 2026
8	Securities Markets Code: embed regulatory impact assessments	M. Damodaran and Sumit Agrawal	Mint	1 Apr 2026
9	A constitutional question	M. S. Sahoo and Sumit Agrawal	Financial Express	11 Apr 2026
10	A quiet revolution in depository architecture	M. S. Sahoo and Sumit Agrawal	Hindu BusinessLine	28 Apr 2026
11	Curious case of stock exchanges	C. K. G. Nair and M. S. Sahoo	Financial Express	1 May 2026

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No.	Title	Authors	Publication	Date
12	Securities Markets Code: end the current ambiguity over penalties	M. Damodaran and Sumit Agrawal	Mint	6 May 2026
13	The legal price of State failure	M. S. Sahoo and Sumit Agrawal	Business Standard	12 May 2026
14	One Code to discipline them all	M. S. Sahoo and Sumit Agrawal	The New Indian Express	25 May 2026
15	Unseen lawmakers of India's markets	M. S. Sahoo and Sumit Agrawal	Business Standard	10 Jun 2026
16	The SMC's blind spot	Sumit Agrawal and M. S. Sahoo	Financial Express	17 Jun 2026
17	A single word could criminalize every informed investor in India	Sumit Agrawal and M. Damodaran	Mint	28 Jun 2026
18	When regulators write criminal laws	M. S. Sahoo and Sumit Agrawal	Business Standard	29 Jun 2026
19	Fears of overlap misplaced	M. S. Sahoo and Sumit Agrawal	Financial Express	14 Jul 2026
20	SEBI's blind spot sits just above Tata Sons: it is time to address it	M. Damodaran and Sumit Agrawal	Mint	16 Jul 2026

Reproduced from respective publications.

Annexure II: the three columns preceding the Bill

No.	Title	Author	Publication	Date
21	Judicial scrutiny of SEBI: an obstinate regulator?	Sumit Agrawal	Bar & Bench	5 Dec 2023
22	SAT imposes costs on SEBI for passing another mechanical order: need for a Uniform Securities Code	Sumit Agrawal with Akarsh Tripathi	Bar & Bench	13 Dec 2024
23	Costs, compliance and course-correction: lessons SEBI must learn	Sumit Agrawal with Kavish Garach	Bar & Bench	3 Jul 2025

Reproduced from respective publications.

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This note is for general information and does not constitute legal advice. Paragraph references are to the Thirty-Sixth Report of the Standing Committee on Finance (2025-26) on The Securities Markets Code, 2025, adopted on 21 July 2026 and presented to Parliament on 23 July 2026. Views expressed in the referenced articles are those of the authors in their personal capacity.

Regulatory governance, finally codified

The Securities Markets Code embeds legitimacy, proportionality, and accountability into market regulation. The first of a three-part series

M S SAHOO &
V ANANTHA NAGESWARAN

The Securities Markets Code (SMC), 2025 consolidates the Securities and Exchange Board of India (Sebi) Act, the Securities Contracts (Regulation) Act, and the Depositories Act into a single, contemporary statute. More importantly, it brings regulatory governance to the forefront of market regulation. Drawing on lessons from the evolution of regulations, judicial scrutiny, regulatory experience spanning three decades among Indian regulators, and global best practices, the code addresses concerns around democratic legitimacy, proportionality in enforcement, and institutional accountability in securities regulations.

The code addresses a wide canvas: Board composition, independence and accountability, conflict management, transparency, regulatory sandboxing, investor charter, governance of market infrastructure institutions (MIIs), and ease of doing business, which are matters for another day. A regulator is a mini-state, having quasi-legislative, executive, and quasi-judicial powers. This piece focuses on how the SMC governs the delivery of these services.

Rule-making: In securities regulation, the volume of regulations vastly exceeds that of the statute, while subsidiary instructions — circulars, master circulars, and guidelines — often dwarf both. This has fuelled concerns about 'circular raj' and a democratic deficit in law-making. The SMC responds decisively by embedding transparency, consultation, and legitimacy into the rule-making to minimise unintended consequences and avoid unwanted regulations.

The code draws a clear and principled distinction between regulations and subsidiary instructions. Regulation-making begins with public consultation. Draft regulations, not just discussion papers, must be published, public comments invited, and a general response to such comments disclosed. Regulations can be made only by the governing board; this cannot be delegated. The board composition, allowing up to six independent members, ensures that regulation reflects voices beyond the executive and the regulator's full-time establishment. Participatory regulation thus becomes a statutory norm, not a discretionary courtesy. Periodic review is mandated to ensure continued relevance, while departures from consultation are permitted only in narrowly defined urgent cases.

Subsidiary instructions, by contrast, are confined to clarificatory and procedural matters, and cannot substitute for regulations. Even these may be issued by the chairperson with a whole-time member (WTM), or by two WTMs, underscoring that interpretative guidance also requires application of mind at the board level. Advisory committees are formally embedded, institutionalising expert and stakeholder input for subsidiary instructions. Though advisory, they enhance deliberation, regulatory quality, and public trust.

Governance discipline extends even to the bylaws of MIIs. The bylaws must promote the objectives of the code, ensure non-discriminatory access, foster transparency, minimise market abuse, and enable interoperability. They are subject to public consultation and require Sebi's approval, with limited, reasoned exceptions, aligning private rule-making with public regulatory values. Even rules made by the government require prior publication.

The architecture culminates in parliamentary scrutiny. All rules, regulations, bylaws, and subsidiary instructions must be laid before Parliament, anchoring regulatory autonomy firmly within democratic oversight. While the SMC mandates regulatory impact assessment studies, it could have mandated such assessment for making and reviewing regulations.

Adjudication: Securities laws provide for multiple, siloed proceedings — enquiries leading to suspension or cancellation of registration, and adjudication resulting only in monetary penalties. The flaw is structural: The regulator's mind is effectively made up about the type of sanction at the initiation stage, before the gravity of the contravention is fully established. Parallel proceedings sometimes lead to contradictory findings. The SMC corrects this infirmity by consolidating enforcement into a single proceeding, enabling appropriate outcomes — suspension or cancellation, cease and desist orders, monetary penalties, disgorgement, and remedial or preventive directions, once the contravention is finally determined.

The adjudication process is grounded in principles of natural justice. Proceedings begin with a show cause notice explaining the alleged violation and enclosing the documents and material relied upon, and providing an opportunity to respond within a specified time. The adjudicating officer (AO) exercises the civil court-like powers and must dispose of the show cause notice by a reasoned order.

Enforcement outcomes must be proportionate, considering intent, duration, frequency, unlawful gains, investor harm, and impact on market integrity, as well as aggravating and mitigating factors. Settlement of administrative and civil proceedings, too, must reflect the nature, gravity, and impact of the contravention. This shifts securities enforcement away from checkbox compliance, towards calibrated regulation, where sanctions are predictable, reasoned, and defensible, strengthening both deterrence and legitimacy.

The code disciplines the use of interim orders. The securities laws empower the regulator, pending or on completion of inspection/investigation, to issue interim orders to prevent further harm to investors and the market. At times, decades can pass between the interim order and the final order, making the accused suffer for much longer than what the contravention would otherwise warrant. The SMC allows interim orders, ordinarily preceded by a hearing, and valid for a maximum of 180 days, which can be extended only by a reasoned decision of designated board members, with an outer limit of two years. Interim measures thus remain truly interim, protective, not punitive.

Executive action: The SMC establishes a unified registration framework governing application, scrutiny, grant, conditions, refusal, and surrender, with due process embedded throughout. Inspection and investigation powers are similarly disciplined: They require written orders, must follow prescribed procedures, are subject to time limits, transparency, and proportionality, and require reasons for extension. Investigators must quantify unlawful gains or investor losses, ensuring outcome-oriented enforcement. Importantly, no inspection/ investigation may be initiated after eight years from the date of contravention.

The code addresses long-standing public law concerns arising from the fusion of regulatory functions. Drawing lessons from recent judicial interventions, it statutorily separates fact-finding from adjudication. Any person involved in inspection, investigation, interim orders, or settlement consideration is disqualified from acting as an AO in the same matter. It also prohibits the AO from investigating/ inspecting the person or considering its settlement application against whom it has issued the show cause notice. This firewall embeds institutional fairness directly into the statute.

IF IMPLEMENTED IN LETTER AND SPIRIT, THE CODE HAS THE POTENTIAL TO RECALIBRATE TRUST BETWEEN THE REGULATOR, THE MARKET, AND INVESTORS

Having raised the bar so decisively, the government will be entitled to expect regulated entities to reciprocate that trust by mature, fair and responsible conduct towards the public, while preserving market integrity, financial stability, and the national interest.

Sebi was India's first modern regulator; the SMC cements that leadership role in statutory form. In doing so, it offers a credible blueprint for regulatory governance within the financial sector and beyond. If implemented in letter and spirit, the code has the potential to recalibrate trust between the regulator, the market, and investors. Its real test, however, will be whether these governance disciplines become embedded in everyday regulatory practice, and whether they inspire similar reform across India's wider regulatory state.

Tomorrow, Part II: Regulatory architecture 2.0: Regulatory reform moves from discretion to institutional design

M S Sahoo is a former whole-time member, Sebi. V Anantha Nageswaran is chief economic advisor, Government of India. The views are personal

Regulatory architecture 2.0

Part two of a three-part series on the Securities Markets Code focuses on regulatory reform as it moves from discretion to institutional design

M S SAHOO &
V ANANTHA NAGESWARAN

The Securities Markets Code, 2025 (SMC/ Code), introduced in the winter session of Parliament and at present under examination by the Standing Committee on Finance, marks a decisive shift to what may be described as *regulatory architecture 2.0*. It replaces the *architecture 1.0* designed around the Securities and Exchange Board of India (Sebi) in the mid-1990s and subsequently replicated, with variations, across regulatory domains. Unlike its predecessor, which focused largely on functional empowerment, the new architecture places regulatory governance at the centre. This piece examines three core levers that the code uses to make that shift: Board composition, independence, and accountability.

Board composition: At the heart of any regulator lies its governing board (GB). Conceptually, the GB's primary responsibility is to act as a hands-on principal, holding management accountable for conduct and performance. Effective discharge of this role requires an external interface within the GB: Members who participate fully in decision-making, have a stake in outcomes, yet remain sufficiently detached from day-to-day operations and not beholden to management. Part-time members (PTMs) perform this function. They can do so meaningfully only when present in sufficient numbers; ideally, PTMs should be at least equal in number to whole-time members (WTMs), enabling them to shape decisions rather than merely legitimise managerial outcomes.

The SMC broadly reflects this governance logic. It provides for a board of 15 members comprising a chairperson, three ex-officio members, and 11 other members, of whom at least five are WTMs. The remaining members are expected to bring independent judgement, professional diversity, and an external perspective into board deliberations, strengthening internal accountability. This design would stand enhanced if the code were to specify that no more than five of the 11 members may be WTMs, reserving at least six positions for PTMs.

A persistent constraint in board design has been the availability of suitably qualified and independent individuals to serve as PTMs. Individuals in active employment, profession, or business are often unwilling to serve on a full-time basis, while stringent conflict-of-interest norms limit eligibility. In this context, the SMC's enhancement of the upper age limit for PTMs to 70 is a pragmatic and governance-enhancing reform. It recognises that regulatory oversight benefits from seasoned judgement and professional detachment, and materially expands the pool of eligible independent members.

Equally important is the composition of expertise. Given Sebi's mandate, the GB must reflect a balanced mix of disciplines, including law, economics, technology, and markets. The SMC accordingly requires representation from different disciplines, with an endeavour to include at least three members with securities-market expertise. For a modern, knowledge-intensive regulator, this could be refined further by mandating minimum representation across key disciplines, for instance, at least one WTM and one PTM with legal expertise, similar to Sebi's prescriptions for boards of market infrastructure institutions (MIIs).

ILLUSTRATION: BINAY SINHA

Independence: The SMC retains and reinforces Sebi's functional independence, enabling it to frame regulations, conduct inspections, and adjudicate contraventions without recourse to any organ of government. It also preserves autonomy over financial and human resources. Institutional independence is further supported through eligibility criteria, fixed tenures, removal safeguards, and post-tenure cooling-off restrictions on employment with governments, market intermediaries, and other securities market participants.

At a deeper level, however, regulatory independence depends on the professional strength of leadership, particularly the chairperson and WTMs, to withstand pressure from organised interests and the pulls of fear and favour, to avoid regulatory capture. A term of five years is insufficient to acquire deep domain mastery, institutional confidence, and decisional authority in complex markets; by the time such expertise is acquired, the term is often nearing completion. Further, individuals with demonstrated capability are unlikely to abandon established careers to join a regulator for a short, finite tenure.

Renewal-dependent tenures may dilute independence by making incumbents implicitly attentive to the preferences of the appointing authority. Regulatory independence would be better served by recruiting capable individuals at mid-career and offering tenures that run until a fixed retirement age, preferably aligned with government service, irrespective of the age at entry.

Nominee members, who are part-time, present a related concern. By design, they tend to reflect the perspectives and institutional preferences of the organisations they represent, diluting collective responsibility and blurring accountability. While the GB itself is expected to act as the principal, independent judgement is best preserved through individually appointed members (some of whom are part-time, and the others whole-time) rather than departmental representation. Legitimate coordination of interests is better achieved through structured inter-institutional cooperation mechanisms, which the code separately provides for.

Accountability: The SMC establishes an elaborate accountability framework for the exercise of Sebi's quasi-legislative, executive, and quasi-judicial powers (Part I, published on December 23, 2025). Beyond this, the code elevates transparency from a matter of good administration to a statutory obligation. Sebi is required to maintain a universally accessible electronic database on securities markets, and publish regulations, subsidiary instructions, and orders of adjudicating officers and ombudsmen. The code mandates Sebi to make regulations governing the meetings of the GB and publish its decisions. It also mandates Sebi to undertake periodic research, regulatory impact assessments, and audits of the functioning and performance of securities markets and service providers, and publish the results.

Reform efforts increasingly recognise the need for an objective, formal, and periodic assessment of the performance of regulators. The International Financial Services Centres Authority Act, 2019 mandates an annual performance review, and the Insolvency and Bankruptcy Board of India commissioned an external evaluation in 2021. The SMC requires Sebi to review its own performance, and the proportionality and effectiveness of its regulations. This framework would be significantly strengthened by mandating an independent external evaluation at defined intervals, consistent with Sebi's own requirements for MIIs.

The code addresses conflicts of interest comprehensively. Members of the GB are required to disclose any direct or indirect interests, including those of family members, and Sebi is mandated to frame regulations to govern the same. Members may be removed if they acquire interests likely to prejudice their functions.

THE CODE ADDRESSES CONFLICTS OF INTEREST COMPREHENSIVELY. MEMBERS OF THE GOVERNING BOARD ARE REQUIRED TO DISCLOSE ANY INTERESTS, INCLUDING THOSE OF FAMILY MEMBERS, AND SEBI IS MANDATED TO FRAME REGULATIONS TO GOVERN THE SAME

The code has another issue to address. Sebi is a board. The general superintendence, direction, and management of the affairs of this board vests in a board. This dual usage risks role confusion or reversal, making it difficult for the latter to steer the former.

Notwithstanding that, the regulatory architecture articulated in the SMC has relevance beyond the securities markets. Its provisions on institutional design, governance, transparency, and accountability could be distilled into a standalone regulatory governance code. Such a code could serve as a template for establishing new regulators and as a benchmark for modernising existing regulatory statutes, allowing sector-specific laws to focus on substantive regulation.

Tomorrow, Part III: When market infrastructure institutions become the state

MS Sahoo is a former whole-time member, Sebi. V Anantha Nageswaran is chief economic advisor, Government of India. The views are personal

OPINION

When market infrastructure institutions become the state

ILLUSTRATION: BINAY SINHA

The concluding part of a three-part series on the Securities Markets Code turns the spotlight on MIIs, which are no longer operating on the margins of the state. Nor are they quasi-private regulators straddling public and private law

M S SAHOO & V ANANTHA NAGESWARAN

The Securities Markets Code, 2025 (Code), quietly reconfigures India's regulatory state. For the first time, a parliamentary statute defines market infrastructure institutions (MIIs) to mean stock exchanges, clearing corporations, depositories, and other notified entities, and vests them with powers that are unmistakably public in character. What had earlier evolved through regulation, practice, and sporadic judicial recognition is now placed on a clear statutory footing. MIIs are no longer merely regulated market utilities; they are statutorily embedded organs of governance.

In their seminal work on regulatory delegation, political scientists Dietmar Braun and Fabrizio Gilardi describe the modern regulatory state as a hierarchy of principals and agents, authority flowing from the people to the legislature, to the executive, to specialised regulators, and further to subordinate bodies. By statutorily empowering MIIs to exercise regulatory, supervisory, and adjudicatory functions, the Code formalises the sixth layer in the chain, as statutory actors, exercising delegated state authority within a legally bounded framework.

This is reflected most starkly in the Code's provision enabling the Securities and Exchange Board of India (Sebi) to delegate to MIIs powers relating to the registration of intermediaries and investors. In exercising such delegated authority, MIIs must follow due process identical to Sebi's, adhering to fairness, confidentiality, and natural justice, including reasoned orders and the right of hearing. MIIs may also be entrusted with regulating classes of market participants. These are not auxiliary tasks; they are core regulatory functions.

The Code reinforces this transformation by insisting that MIIs be *registered*, not merely recognised. Recognition implies accreditation; registration confers statutory existence. An MII comes into being only upon registration *in the interest of trade and in public interest*, and remains subject to statutory conditions relating to governance, supervision, transparency, and even supersession. This decisively distinguishes MIIs from intermediaries, who serve clients, and from self-regulatory organisations, which represent sectional interests. MIIs do neither: They operate the market itself. They are not private bodies exercising discretion by regulatory tolerance; they are formal components of the state's market governance architecture.

Equally significant is the reconfiguration of *membership*. While exchanges and clearing corporations have long functioned through members, depositories are, for the first time, statutorily required to have members, namely, depository participants, who were previously treated as agents. Membership under the Code is no longer just a functional right to access infrastructure. Members may hold shares in the MII and participate in institutional decision-making. Coupled with mandatory dispersed shareholding norms and demutualisation, this elevates members from users of infrastructure to stakeholders in governance, strengthening internal accountability while mitigating the risk of dominance by any single interest.

The public character of MIIs is reinforced through stringent governance requirements. Members of governing boards must meet eligibility and fit-and-proper criteria, and boards must include independent directors. The governing board is expected to act not as a representative forum of sectional interests, but as a fiduciary steward of the market's integrity. Importantly, the Code imposes confidentiality obligations on MIIs and their officers with respect to regulatory data and commercially sensitive information, underscoring their quasi-sovereign role in handling market-critical information.

MIIs are empowered to make bylaws governing their operations, the conduct of members, and even market participants. These bylaws are not private rules. They require public consultation, prior approval by Sebi, publication, and have to be laid before Parliament. The process closely mirrors Sebi's own regulation-making powers. Even Sebi may make or amend the bylaws in specified circumstances. The bylaws thus assume the character of subordinate legislation exercised within a public-law framework. They must promote the objectives of the Code, ensure non-discriminatory access, prevent market abuse, foster transparency, and ensure interoperability across MIIs.

MIIS ARE EMPOWERED TO MAKE BYLAWS GOVERNING THEIR OPERATIONS, THE CONDUCT OF MEMBERS, AND EVEN MARKET PARTICIPANTS

MIIs also perform executive functions. They supervise members, enforce compliance, manage risk, and administer market operations. They have mechanisms to monitor and identify contraventions of the provisions of the Code, rules and regulations, or bylaws. When Sebi delegates registration or related regulatory tasks, MIIs act as the frontline regulators of securities regulation.

The Code vests MIIs with quasi-judicial powers. Contraventions of bylaws are addressed through structured proceedings grounded in natural justice, culminating in reasoned orders that may impose penalties, suspend or expel members, annul transactions, or direct payment of compensation. Sebi has concurrent enforcement powers for non-compliance with MII bylaws. A person aggrieved by an order or decision of an MII may prefer an appeal to the Securities Appellate Tribunal, and civil courts are barred from exercising jurisdiction over matters entrusted to MIIs.

Operational independence is integral to the MII framework. While MIIs remain subject to Sebi's oversight, their day-to-day regulatory, supervisory, and enforcement functions are insulated from ad hoc interference from any authority. The autonomy within a clearly defined statutory framework mirrors the design of modern regulators.

With power comes accountability. The Code subjects MIIs to a transparency and accountability regime: Publication of bylaws and decisions, submission of annual reports, fit-and-proper requirements for directors, and the ultimate sanction of supersession in defined circumstances. Supersession is a sovereign remedy, and its availability leaves no doubt that MIIs are treated as public institutions exercising delegated state power.

Taken together, these provisions complete a long arc of regulatory evolution. MIIs are no longer market utilities operating on the margins of the state. Nor are they quasi-private regulators straddling public and private law. They are statutory institutions exercising quasi-legislative, executive, and quasi-judicial powers within a constitutionally recognisable framework. The Code takes regulatory norms that had evolved piecemeal through circulars, bylaws, regulations, and earlier statutes, confers upon them an explicit state character, and elevates them to a higher statutory pedestal.

This recognition carries consequences. Institutions entrusted with state functions must meet state standards of governance, independence, transparency, and accountability, not as a matter of regulatory grace, but as a matter of constitutional discipline. The Code supplies much of this architecture, but its success will rely on implementation and institutional self-understanding. MIIs must now see themselves not merely as service providers to the market or platforms for commercial activity, but as public institutions exercising delegated sovereign authority in trust for investors and the market as a whole. Courts, regulators, and policymakers, in turn, must hold them to that standard. If this culture shift accompanies the shift in law, the Code will have achieved more than regulatory reform; it will have constitutionalised the infrastructure of India's securities markets.

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Financial sector reforms: Going beyond incrementalism

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January 27, 2026

By CKG Nair & MS Sahoo

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Union Budget 2026-27 is only days away. Financial sector reforms, as usual, are likely to feature prominently in the Finance Minister's Budget speech. Building on the reforms introduced by the government in recent months, it is time to move beyond incrementalism to harmonise financial sector regulatory governance.

A coherent and consistent regulatory template, supported by sound legal backing and aligned institutions, would enable the 'reform express' to gather speed and stay on course towards a mature financial system.

Recently, the Ministry of Finance initiated two major legislative reforms. One is the Securities Markets Code Bill (SMC), currently before Parliament, which consolidates three parent statutes into a Code. It seeks to address rigidities emanating from laws of different vintages, eliminate inconsistencies created by uncoordinated amendments over time, and provide a modern legislation for investor protection and capital formation suited to India's fast-growing economy.

The other is the insurance reforms through the Sabka Bima Sabka Raksha Act, 2025 (SBSR), which aims to accelerate the development of the insurance sector while strengthening policyholder protection.

The two reforms, however, adopt strikingly different legislative approaches. While the SMC replaces three statutes, the oldest dating back to 1956, the SBSR follows the conventional route of amending three separate laws, even though its principal statute traces its origins to 1938.

Divergent trend

This divergence in legislative policy within the same Ministry reflects the absence of a harmonised template and increases regulatory friction, compliance uncertainty, and institutional asymmetry across the financial sector. It is partly a consequence of fragmented ministerial and departmental responsibilities under the Allocation of Business Rules, and partly a reflection of insufficient internal collaboration in finding integrated solutions.

The experience with the Reserve Bank of India Act provides a cautionary illustration of the long-term costs of incrementalism. Enacted in 1934 as an inter-war measure, the Act made temporary provisions, as explicit in its preamble/long title. It recorded that permanent arrangements would be considered once the international monetary position became sufficiently clear and stable.

Over the decades, the Act has been amended, on average, nearly once a year, including once in 2025, with almost every page of the roughly 60-page statute now carrying more footnotes than substantive text. Yet, the Act continued to rest on its original 'temporary' foundation, as if 'the international monetary position was never considered sufficiently clear and stable to frame permanent' arrangements.

It was only in 2016 that even the word 'temporary' was removed from the Preamble, when it became necessary to graft a modern monetary policy framework. That the central bank of a large and rapidly growing economy functioned for decades on such a statute, with band-aids all over, underscores the costs of postponing holistic legislative reform. It also explains why the RBI alone, among financial regulators, continues to require prior government approval for its regulations.

Both the SMC and the SBSR seek to correct such outcomes by strengthening safeguards governing the prescription of legal norms by regulators. Statutes typically require that regulations be made only by the governing board and be laid before each House of Parliament. The new framework goes further by mandating transparency in the regulation-making process, public consultation through the publication of draft regulations with explanatory material, disclosure of the regulator's response to public comments, and periodic review of regulations.

Importantly, the legislature has brought within the statutory framework the instruments that regulators routinely use beyond formal regulations to articulate or clarify legal norms. These instruments, termed subsidiary instructions, and defined to include circulars, master circulars, guidelines, and similar instruments, are now subject to clear limits on purpose and scope. They may only clarify ambiguities in existing regulations or lay down procedural requirements ancillary to them. They must be issued in accordance with regulations framed for that purpose, and must be laid before each House of Parliament. This marks a decisive shift from informal regulatory governance to legally accountable norm-making.

To their credit, financial regulators have *suo motu* adopted internal frameworks governing their regulation-making process. In the case of the RBI, the framework extends to directions, guidelines, notifications, orders, policies, specifications, and standards. In some instances, it requires cost-benefit analysis or regulatory impact assessment, as well as reference to international standards and best practices. Such practices, however, cannot substitute for legislative coherence across the financial sector.

Harmonisation critical

Governance harmonisation is equally critical. Recognising the central role of governing boards in regulation-making, the SMC provides for a board of 15 members for the Securities and Exchange Board of India (SEBI) comprising the Chairperson, three nominee members, and 11 other members, of whom at least five must be whole-time members (WTMs). The remaining are part-time members (PTMs) expected to bring independent judgment, professional diversity, and an external perspective to board deliberations. A balanced mix of WTMs and PTMs is essential to the quality, credibility, and legitimacy of regulatory outcomes.

Board composition, however, varies widely across regulators. The International Financial Services Centres Authority has a Chairperson, six nominee members, and two other members; the Insurance Regulatory and Development Authority has a Chairperson, five WTMs, and four PTMs; and the Pension Fund Regulatory and Development Authority comprises a Chairperson, three WTMs, and three PTMs. In practice, many PTMs across regulators have been serving officials.

By contrast, despite being a full-service central bank with multiple and complex functions, the RBI is governed by a Central Board with the Governor, four Deputy Governors, and 15 PTMs (mostly industry and regional representatives and one central government official) nominated by the central government. Notably, the number of Deputy Governors was last increased from three to four more than six decades ago, even as the scope and complexity of the RBI's functions have expanded significantly.

While in SEBI, the number of WTMs increased from none in 1992 to five today. The result is a patchwork of governance structures, some dominated by nominees, others by executives, and still others by PTMs, reflecting the absence of a coherent governance template.

The time for harmonising legislative provisions and regulatory governance templates in the financial sector was yesterday. The forthcoming Budget should articulate this objective, clearly and decisively, signalling a commitment to coordinated reforms across departments and agencies, and to replace the fragmented, outdated statutes with a harmonised financial sector code fit for a modern economy, aspiring developed status in two decades.

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Securities Bill has a problematic Section

ANTI-MARKET. An omnibus exemption for public sector companies from governance norms risks weakening accountability and competitive neutrality

GETTY IMAGES

The Securities Market Code Bill, 2025 is a significant and overdue attempt to modernise India's securities law architecture. It has many positives. Yet, one provision, Section 65(2), risks diluting the reformist ethos that the Bill otherwise seeks to advance.

Section 65(2) empowers the Centre, in public interest, to exempt any listed public sector company (PSC) from any or all requirements relating to the issue of capital, minimum offer size, issue and transfer of securities, corporate governance, disclosures, substantial acquisition and takeover regulations, public shareholding norms, concentration and prudential norms, risk management, and incidental matters. In effect, it enables the executive to suspend core securities market disciplines for an entire ownership class. It strikes at the philosophical core of India's post-1991 reforms.

Economic liberalisation was not merely about allowing private entry; it was about redefining the state's role in markets. The doctrine of the 'commanding heights', where public enterprises dominated key sectors under preferential policy regimes, was gradually dismantled. Sectoral reservations were reduced and ultimately abolished; competition was introduced in banking, telecom, and insurance; and disinvestment diluted state ownership in commercial enterprises. The reform consensus rested on a simple proposition: the State would move from a privileged market participant to a rule-maker and referee. Section 65(2) unsettles that equilibrium by reintroducing regulatory asymmetry based purely on ownership.

SHORT SHRIFT TO NEUTRALITY

A central pillar of the reform has been competitive neutrality. Public and private enterprises operating in the same market have been subject to the same competition law, the same disclosure standards, and the same governance expectations. If an enterprise raises capital from public markets, it must submit to public market discipline. The proposed exemption provision departs from this fundamental logic. It creates a dual regime, one in which private companies remain fully bound by governance, disclosure, and takeover norms, while listed PSCs may be relieved from them through executive notification. That disturbs the level playing field and injects uncertainty into regulatory expectations.

More fundamentally, the provision creates an anomalous relationship between market access and market discipline. Listed PSCs access equity markets, attract institutional and foreign portfolio investors, benefit from liquidity and price discovery, and rely on market valuation to support disinvestment programmes. Yet, under Section 65(2), they may be exempted from the very rules that underpin investor confidence: public shareholding requirements, takeover protections, governance standards, and risk management norms.

Markets operate on reciprocity: access to capital is conditional upon transparency, predictability, and adherence to uniform standards. To enjoy the benefits of the market without being fully subject to its discipline is to create regulatory free riders. Over time, such asymmetry can irretrievably weaken confidence in the system, painstakingly built over decades.

The justification offered is 'public interest'. But public interest cannot be presumed solely from state ownership. Many listed PSCs operate in sectors where private firms of comparable scale compete directly: banking, insurance, energy, infrastructure, and financial services. If a public sector steel company and a private sector steel company serve the same customers and access the same capital market, the rationale for exempting one from governance norms while holding the other to full compliance becomes difficult to sustain.

> **To enjoy the benefits of the market without being fully subject to its discipline is to create** regulatory free riders. Over time, such asymmetry can irretrievably weaken confidence in the system

Several public sector entities already operate under special statutes that confer bespoke governance structures. Where differentiation was necessary, Parliament has consciously provided it. Section 65(2) adds a further, sweeping executive override atop these arrangements. Such a notification-based power inevitably raises questions about regulatory autonomy and predictability.

Independent securities regulation evolved precisely to ensure that rule-making is stable, transparent, and insulated from short-term pressures. The prospect of selective exemptions for an issuer or class of issuers may unsettle investor perception, particularly among global institutions that value consistency of regulatory treatment.

There is little evidence that regulatory relaxation enhances enterprise value. In recent decades, private peers in several sectors have commanded stronger valuation multiples than public sector counterparts of similar scale. Markets reward governance quality, board independence, disclosure rigour, and credible minority shareholder protection. Diluting these disciplines may not improve performance; it may simply increase perceived governance risk and the cost of capital.

NEED FOR SAFEGUARDS

Minority shareholders in listed PSCs, including retail investors, pension funds, and domestic institutions, rely on takeover norms, public float requirements, and disclosure standards for protection. When the state is both the controlling shareholder and rule-maker, such safeguards assume greater significance. Any measure that sidelines these standards runs counter to the stated objective of listing more PSCs and deepening divestment.

It is natural for the state to protect its enterprises, particularly where public resources and policy objectives are intertwined. But excessive protection can be counterproductive.

The Bill is an opportunity to reinforce India's commitment to deep, credible, and globally competitive capital markets. That commitment rests on equality before regulation, institutional clarity, and competitive neutrality. Section 65(2), in its present form, risks signalling that ownership may once again determine regulatory obligation.

If public enterprises seek capital from public markets, they must accept the discipline that accompanies it. Section 65(2), which permits the government to exempt listed PSCs from core securities market disciplines, risks reversing three decades of economic reform.Genuine sector-specific challenges can be addressed through transparent consultation, regulatory amendments applicable to all similarly situated entities, or targeted legislative changes debated in Parliament.

Ownership, by itself, cannot become the basis for differential regulatory treatment in competitive markets. A modern securities code must reinforce equal rules and institutional credibility, not dilute them.

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REGULATOR PURSE

SECURITIES MARKETS CODE HAS ADDRESSED A DOCTRINAL DISPUTE, BUT DEEPER INSTITUTIONAL ISSUE PERSISTS

A fee must not become a tax

SUMIT AGRAWAL
MS SAHOO

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FOR CONNOISSEURS OF India's regulatory state, three legislative moments stand out. The Securities and Exchange Board of India (Sebi) Act, 1992, marked the agencification of securities regulation; its 1995 Amendment empowered the regulator; and the proposed Securities Markets Code (SMC) turns to regulatory governance.

Yet across these transitions, one foundational issue has defied resolution: How should the regulator be financed? A regulator dependent on executive largesse may hesitate before confronting powerful interests; one insulated from all financial discipline may drift from its statutory purpose. The design of financial flows shapes its institutional character.

Sebi's financial history reflects evolution by accretion rather than conscious design. When constituted by executive resolution in 1988, it depended on contributions from public financial institutions. From 1991, it received a share of listing fees from stock exchanges. Though the 1992 statute authorised it to levy fees, the early years were financially uncertain—the fee regulations were challenged; recoveries were delayed; and the government did not extend grants. Instead, it advanced an interest-free loan of ₹115 crore, which Sebi repaid in full by 2009.

Judicial affirmation of Sebi's power to levy fees in 2001 decisively altered the landscape. Registration fees and market-linked charges, coupled with expanding market volumes, generated a stable revenue stream and, over time, a substantial surplus, enabling Sebi to emerge as a self-financing institution.

With financial comfort came constitutional unease. Through the Finance Act, 2019, Parliament amended the parent statute to mandate that 25% of its annual surplus be credited to a reserve fund, capped at two years' expenditure, with the remainder transferred to the Consolidated Fund of India (CFI), and to obtain government approval for capital expenditure. In August 2021, Sebi remitted ₹1,000 crore as a one-time measure while requesting reconsideration of the framework. Although notified, the government kept the operationalisation of the amendment in abeyance. The SMC largely carries this architecture forward, omitting only the requirement of approval for capital expenditure. It thus recognises a two-year financial buffer, signalling a measure of autonomy while asserting a sovereign claim over excess surplus.

Behind these legislative recalibrations lay a sustained dialogue rooted in the Constitution of India. Article 266 provides that all revenues received by the government form part of the CFI, and that other public money received "by or on behalf of" the government are credited to the Public Account of India. The executive contended that what the government could have done departmentally, it chose to do through a regulator. Money collected by Sebi and similarly placed Insurance and Regulatory Development Authority are therefore, in substance, governmental receipts and must ultimately enter sovereign funds.

> **Fiscal discipline must be attached to the architecture of the levy itself, not merely to the disposal of accumulated surplus**

Sebi's counter-position drew on corporate personality and statutory purpose. Despite being "state" within Article 12, they are not "government". They possess a distinct legal personality; are subject to taxation; may receive grants; and collect money not "for or on behalf of" the government but pursuant to the statutory authority for defined objectives. Funds so vested for specific purposes, they argued, cannot be submerged into sovereign funds.

The SMC has largely addressed the doctrinal dispute. But the deeper institutional issue persists. Financial control is intimately connected with regulatory independence. Even absent overt interference and fiscal dependence can induce subtle caution. Experience across sectors demonstrates this dynamic. Several regulators operate with thin revenue streams and rely on government grants. The application of executive financial rules to grants-dependent regulators illustrates how fiscal leverage can translate into administrative influence.

The government already derives substantial revenue from the securities ecosystem through securities transaction tax, goods and services tax, and income tax. Regulatory fees are distinct—they are levied to defray the cost of supervision and enforcement. If these fees are appropriated as general revenue, the boundary between regulatory charges and fiscal instruments blurs and regulators risk gradual departmentalisation.

The government's concerns, however, are not frivolous. Persistent accumulation of large reserves outside the fiscal framework invites legitimate scrutiny. Can excess statutory levies be indefinitely warehoused without parliamentary oversight? Should the regulated community fund an ever-expanding corpus unrelated to foreseeable regulatory need?

These questions lead to a core constitutional distinction between fee and tax. A tax is a compulsory exaction for public purposes without quid pro quo. A fee, by contrast, must bear a reasonable and demonstrable relation, not a mathematical equivalence, to the cost of services rendered. In BSE Brokers' Forum v. Union of India, the Supreme Court upheld Sebi's levy, rejecting the contention that it was a tax in disguise. Implicit in that affirmation was a discipline—regulatory fees must be commensurate with regulatory load. Surplus per se is not constitutionally fatal, but material and persistent over-recovery risks altering the character of the levy.

It is here that the SMC architecture warrants caution. If the levy is designed to generate revenue beyond the requirement and the sovereign structures are mechanisms for automatic appropriation of the excess into the CFI, the design effectively validates regulatory exaction for fiscal ends. Constitutional character is shaped at the point of imposition not by the subsequent routing or accounting treatment of funds. The regulator becomes the tax imposer; the government the appropriator.

Fiscal discipline must be attached to the architecture of the levy itself, not merely to the disposal of accumulated surplus. It must operate at the front end. Fee-setting must be anchored in transparent, periodically reviewed medium-term expenditure projections. Collections must align with regulatory load; reserves must be limited to clearly defined and publicly justified buffers; and rates must be recalibrated where sustained surplus indicates over-recovery.

Sufficiency of resources is integral to meaningful regulatory independence. The statute should secure adequate and predictable funding for the regulator but not generate a surplus for the sovereign. A regulatory levy must be normatively and constitutionally principled. It must remain what it is in law—a charge calibrated to the cost of regulation—and not imperceptibly harden into taxation through design or drift.

The tension exposed here is not peculiar to securities regulation. It reflects a broader design challenge in India's model of statutory regulation. The SMC, however, offers an opportunity to craft a balanced resolution. If carefully designed, this framework can serve as a template for other regulators navigating similar tensions in India's evolving administrative state, preserving autonomy without permitting a fee to quietly become a tax.

ILLUSTRATION: BINAY SINHA

New securities code leaves investors exposed

A missing statutory purpose and a flawed grievance architecture could erode investor trust

India's securities markets are now firmly in the retail era. Millions of first-time investors participate through digital platforms, mutual funds, and retirement-linked products. For them, trust in the regulatory framework is not an abstraction; it is the condition that makes participation possible. The Securities Markets Code Bill, 2025, (Code) must, therefore, be viewed through the prism of investor protection.

The Code is an ambitious attempt to consolidate three securities laws into a single, modern statute. By merging multiple legacy enactments, it seeks to reduce fragmentation, eliminate overlaps, and simplify regulatory processes. These are commendable legislative policy goals. But they cannot substitute for the substantive objectives of the legislation.

Parliament enacts laws to achieve defined public purposes. These purposes are typically reflected in the preamble of the statute and elaborated in the Statement of Objects and Reasons. The Code, however, articulates no substantive objective beyond consolidation and amendment. In doing so, it misses the foundational objectives embedded in the laws it seeks to replace.

M S SAHOO & SUMIT AGRAWAL

One of the statutes being subsumed is the Securities and Exchange Board of India (Sebi) Act, 1992, which established India's first modern regulator. The Act's preamble stated its purpose — to protect the interests of investors in securities. The articulation was deliberate: It recognised that investor confidence, especially among retail investors, is critical for a credible securities market. While the Code retains investor protection within Sebi's mandate, it no longer articulates it as the statute's animating purpose.

This is not a matter of drafting style; it is a shift in legislative emphasis. In public law, statutory purpose is critical. It guides interpretation, channels regulatory discretion, shapes institutional priorities, and enables meaningful evaluation of both the law and the regulator against the objectives they are expected to pursue. Its absence makes democratic accountability harder.

Investor protection has long been recognised by law and finance scholarship alike as the defining purpose of securities regulation. Securities laws are designed not only to protect investors from fraud and manipulation, but also, at times, from their own informational and behavioural limitations. Within this framework, the regulator acts as the representative of investors. Over time, the Act shaped Sebi's institutional identity as the investor's pillar of strength, captured in its tagline, "*Har investor ki taaqat*".

Against this backdrop, Chapter X of the Code, which designs investor grievance redress architecture, becomes especially revealing. The Code provides that the regulator "may" make an investor charter, "may" provide a grievance redress mechanism, "may" require service providers to establish similar mechanisms, and "may" designate one of its officers as an ombudsperson. The only obligation on the defaulting party is to acknowledge receipt of the grievance. The burden of resolution rests squarely on the aggrieved investor, who must steer the complaint through the process within 180 days.

If the grievance remains unresolved, the investor may approach the ombudsperson. At this stage, the grievance morphs into a complaint: The parties play complainant and respondent, the proceeding becomes adversarial, and the onus is on the investor to establish a deficiency in service by the defaulting party.

This design reflects a misunderstanding of how modern regulation works. Regulatory regimes are built on information, not private prosecution. They do not leave victims to fend for themselves against powerful intermediaries. Under the extant securities laws, an aggrieved investor brings the grievance to the regulator's notice, after which the regulator triggers an inquisitorial process in the public interest.

India's own experience elsewhere is instructive. The Competition Act, 2002, initially adopted a complaint-based, adversarial model. Recognising its incompatibility with modern regulation, Parliament amended the law in 2007, replacing "complaint" with "information" and shifting proceedings from adversarial to inquisitorial. This transformed the Competition Commission of India into a regulator acting in the public interest, rather than an umpire between unequal parties. The logic was institutional, not sector-specific.

Under the Code, however, investor protection risks being recast as access to an adversarial forum. Providing an ombudsperson to enable an investor to prosecute a complaint is, in substance, little different from establishing a civil court and asking the consumer to litigate. That is dispute resolution, not regulatory protection.

The design of the ombudsperson raises a deeper concern. Globally, an ombudsman derives legitimacy from independence, an institutional buffer between the citizen and the system. That legitimacy flows from distance: From executive control, regulatory hierarchy, and organisational incentives. The Code collapses this distance by requiring Sebi to designate one of its own officers as ombudsperson. This merely rebrands an internal officer as an ombudsperson, who remains subject to the same service rules, career progression, and institutional culture. Even where officers act with complete integrity, the perception of neutrality is inevitably weakened.

This matters because investor grievances are rarely private disputes. They are early warning signals of deeper market dysfunction: Mis-selling, disclosure failures, regulatory delay, supervisory gaps, or repeated tolerance of non-compliance by intermediaries. Such grievances point not only to private misconduct, but also to potential regulatory blind spots.

An ombudsperson process is, by design, complaint-led and party-driven. The regulator's duty, however, is broader: To probe what lies beneath individual grievances and act in the public interest. An insider ombudsperson is structurally ill-positioned to perform this function with the independence investors expect. Treating the ombudsperson as the primary response to investor complaints risks converting market supervision from a proactive, regulatory function into a reactive, dispute-resolution exercise.

The design flaws extend beyond conceptual coherence. The ombudsperson has no jurisdiction over complaints against Sebi itself. They cannot execute their own orders, requiring investors to return to Sebi for enforcement. At the same time, compliance with an ombudsperson's order does not bar Sebi from initiating parallel or subsequent proceedings, exposing respondents to multiple proceedings, appeals, and open-ended uncertainty.

Investor grievance redress must, in its design and operation, remain non-adversarial and regulator-led. Its purpose is not to arbitrate disputes between legally unequal parties, but to provide investors with a simple, credible, and confidence-building avenue of relief. If an ombudsperson must be retained, the institution must be demonstrably independent of the regulator and must follow a genuinely non-adversarial process.

The Code has the opportunity to correct course. Restoring investor protection as an explicit statutory lodestar and redesigning the ombudsperson as a genuinely independent institution would strengthen trust, the most valuable asset of any securities market.

The authors are legal practitioners and have previously worked at Sebi

Securities Markets Code: Embed regulatory impact assessments

Market regulation needs to evolve but every new rule should be tested for its necessity, proportionality and consequences

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are, respectively, chairperson, Excellence Enablers, and former chairman, Sebi, UTI and IDBI; and managing partner, Regstreet Law Advisors and a former Sebi officer.

MINT

India's capital markets have grown at a remarkable speed. Retail participation has surged, institutional capital has deepened and technology has transformed intermediation. Regulation has expanded alongside. The Securities and Exchange Board of India (Sebi) today administers over 44 principal regulations and 13 statutory rules, supplemented by more than 2,700 circulars (including master circulars), guidelines, FAQs, general orders and frequent amendments. These span listed companies, intermediaries, managers of portfolio management schemes, mutual funds and alternate investment funds, apart from rating agencies, disclosure norms, takeovers, insider trading, stock exchanges, clearing corporations and depositories. Each framework evolves constantly, often with multiple changes in a single year.

Regulatory evolution is inevitable. As products, risks and market structures evolve, regulation must keep pace. But accumulation raises a sharper question: Are we adding rules or improving outcomes? The answer lies in embedding regulatory impact assessment (RIA) into rule-making.

Regulation is essential. Markets face information asymmetry, agency conflicts and systemic risk. Investor protection and integrity are non-negotiable. But regulation is also an economic intervention. It imposes costs, alters incentives and shapes competition. Disclosure mandates require systems, personnel and audit trails. Governance mandates reshape board behaviour and liability exposure. Entry norms determine who participates. These effects compound.

Frequent amendments amplify this burden. Large institutions absorb it; smaller players struggle. The result is not just higher compliance cost, but distortions in competition, higher entry barriers and reduced market diversity. RIA does not dilute regulation. It disciplines it. It asks whether a proposed rule is a necessary, proportionate and effective response to a clearly defined problem.

The *first* step is clarity. What problem is being solved? Is it systemic or episodic? Is it evidenced or anecdotal? Regulation built on isolated events risks overreach.

Second, alternatives. Regulation is not the only tool. Supervision, enforcement, better disclosures or market incentives may achieve the same objective with lower cost.

Third, costs and benefits. Precision may be elusive, but direction is not. Compliance costs, technology investments, liquidity impact, barriers to entry and effects on capital formation must be weighed against gains in transparency and stability.

Fourth, consequences. Markets adapt. Tightening one segment could shift activity elsewhere. With every regulation, grey areas emerge. Higher compliance accelerates consolidation. Entry barriers dampen innovation.

Finally, post-implementation review. Regulations must be tested against outcomes. Periodic review, sunset clauses and outcome-based monitoring prevent regulatory accumulation from turning into regulatory inertia.

Globally, these principles are embedded in statutory frameworks. In the US, Sections 2(b) of the Securities Act of 1933, and 3(f) of the Securities Exchange Act of 1934 require the Securities and Exchange Commission (SEC) to consider efficiency, competition and capital formation. Rule-making requires detailed economic analysis. Courts enforce this. In *Business Roundtable vs SEC* (2011), the proxy access rule was struck down for inadequate economic assessment. Regulatory authority must be exercised through reasoned analysis, not assumptions.

In the UK, Section 138I of the Financial Services and Markets Act of 2000 mandates a cost-benefit analysis for proposed rules. The Financial Conduct Authority must explain expected costs, benefits and rationale. Australia follows a similar model through regulatory impact statements. These frameworks strengthen, not weaken, regulators.

India lacks this discipline. While Sebi follows a consultative process, economic analysis remains neither structured nor visible. Practitioners would readily point out that systemic discipline of the kind fostered by RIA, designed to evaluate the costs, benefits and alternatives to any regulation before it is framed, is largely absent in India's regulatory framework for securities. Under a regime where Sebi operates predominantly through delegated legislation, this gap matters. Without structured *ex-ante* assessments, rule-making risks becoming convenience-driven rather than consequence-oriented.

Even after the government nudged regulators towards better rule-making practices and Sebi notified a framework in February 2025 on how regulations should be made, amended and reviewed, its implementation is largely absent from the public domain. The proposed Securities Markets Code, intended to consolidate and modernize core securities laws, also omits any mandate for RIA or its disclosure. That is a significant omission.

The need is evident. Regulatory activity is frequent and wide-ranging. Each change may be justified. The combined impact of changes is rarely assessed. Market participants must constantly update systems, retrain staff and recalibrate processes. The cumulative cost is significant.

RIA introduces a simple test: Does the marginal benefit justify the cumulative cost?

This is not a deregulatory argument. Investor protection and systemic resilience remain non-negotiable. In fact, RIA strengthens these objectives. Evidence-based, proportionate regulation improves compliance and enhances enforcement credibility. Over-regulation, by contrast, risks diffusing regulatory focus and diluting effectiveness.

This is not deregulation but disciplined regulation. Evidence-based rules enhance compliance and sharpen enforcement, while unchecked procedural layering dilutes regulatory focus. If Sebi Chairman Tuhin Kanta Pandey's stated '4T' framework of 'Transparency, Trust, Technology and Teamwork' is to succeed, it must rest on a foundation of mandatory regulatory impact assessment and public disclosure.

Institutionalizing RIA will require investment in capacity. Regulators need analytical expertise and access to data. Collaboration with academia, economists and data specialists will help. Impact assessments should accompany draft rules, enabling informed consultation. A tiered approach is feasible. Major interventions warrant full analysis; minor changes, lighter scrutiny. The objective is discipline, not delay.

India aims to be a leading global capital market. Investors, domestic and global, value predictability as much as protection. Transparent, reasoned regulation builds confidence. The growth of India's regulatory framework reflects the dynamism of its markets. The issue is not whether regulation should evolve; it must. It is whether each rule is tested for necessity, proportionality and consequence. As regulatory density rises, discipline becomes critical. The strength of regulation lies not in its volume, but in its value. India does not need more rules. It needs better ones—measured, not merely made.

SECURITIES MARKETS RULES

REGULATIONS DEFINING OFFENCES AND ADJUDICATORY PROCESSES TEST THE LIMITS OF PERMISSIBLE DELEGATION

A constitutional question

MS SAHOO
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SINCE ITS ESTABLISHMENT in 1992, the Securities and Exchange Board of India (Sebi) has evolved into one of the most powerful financial regulators in India, exercising extensive quasi-legislative, executive, and quasi-judicial powers. This hybrid institutional design has been justified by the demands of investor protection, market integrity, and regulatory speed. The Securities Markets Code Bill, 2025 (SMC), now before Parliament, seeks to consolidate and extend this model. It, however, intensifies constitutional concerns about the limits of delegated legislation and the permissible concentration of regulatory power.

In a constitutional democracy, the primary responsibility for law-making rests with the legislature. This includes the articulation of policy, shaped through parliamentary deliberation and democratic accountability. Delegation to the executive is constitutionally permissible. But it is limited to filling in details and operationalising statutory policy, not determining its core content.

The line is especially firm when it comes to defining contraventions and prescribing punishment. These are core legislative functions: they delineate the boundaries of lawful conduct and directly affect liberty, property, and reputation, and must be determined by the legislature. When delegation extends to these matters, it risks crossing the line from permissible delegation into an abdication of core legislative responsibility. At its core, the issue is not regulatory power, but who defines its limits.

The history of securities regulation in India reflects this careful balance. When Sebi was first vested with the power to impose monetary penalties in the mid-1990s, the legislative framework retained primary control over the definition of wrongdoing, both criminal and civil, while permitting flexibility in enforcement. Contraventions were identified in the statute, adjudication was structured through rules framed by the central government, and appellate oversight lay with the Securities Appellate Tribunal.

The SMC departs from this discipline by allowing the regulatory authority to play a more active role in shaping contraventions and penalties. Clause 92 permits the addition of contraventions beyond those specified in the statute, thereby enabling their scope to evolve. Practices once regarded as legitimate may later be reclassified as violations, and vice versa. This regulatory flexibility, however, carries a deeper cost—it makes the boundary between lawful and unlawful conduct contingent on executive determination rather than legislative choice.

SMC departs from discipline by letting the regulatory authority to play a more active role in shaping contraventions and penalties

These concerns are acute in the realm of criminal liability, which entails stigma, coercion, and deprivation of liberty. Given the severity of these offences, including imprisonment of up to 10 years and fines up to ₹10 crore, constitutional discipline demands that the core content of such offences be defined by the legislature. Clause 93, however, enables the executive to create additional criminal contraventions and prosecute their breaches. The foundation of criminal liability thus shifts from parliamentary enactment to administrative fiat, militating against basic principles of legality. Courts, bound to give effect to valid subordinate legislation, may thus uphold convictions based on norms that have not undergone legislative scrutiny.

This shift of critical policy choices away from elected representatives undermines democratic accountability and unsettles the constitutional balance between the legislature and the executive. It also departs from the assurance in the memorandum of delegated legislation accompanying the SMC that subordinate lawmaking would be confined to procedural and administrative matters; empowering the executive to define contraventions goes well beyond that limit.

While the SMC seeks, in part, to rationalise and decriminalise securities law, it retains criminal liability for a category of conduct described as "market abuse". This appears to narrow criminal exposure and improve the ease of doing business. Yet it carries an inherent tension: even as Parliament signals restraint, it delegates to the regulator the authority to expand the scope of criminalisation. The result is not calibrated decriminalisation, but an open-ended architecture of criminal liability.

The SMC compounds these concerns by restructuring the adjudicatory framework. It empowers Sebi to prescribe, through regulations, the manner of conducting adjudication proceedings. This departs from the existing model, where such procedures are governed by the central government-framed rules. This shift collapses the distinction between rulemaking and enforcement: the same authority would define the norms, initiate proceedings, and design the process for their adjudication.

Under the proposed regime, Sebi would thus shape both substantive enforcement standards and the procedures governing adjudication, while also controlling the appointment of adjudicating officers. This concentration of functions may enhance regulatory efficiency, but it blurs the lines between norm creation, enforcement, and adjudication, lines that are central to preserving institutional balance.

The concern is not of institutional expertise or integrity. It is structural—such concentration can undermine the validity of enforcement itself. The consequences of failing to maintain institutional separation are real. In *Deloitte Haskins v. Union of India* (2025), Delhi High Court quashed multiple show-cause notices and final orders of the National Financial Reporting Authority on the ground that it failed to segregate audit quality review from disciplinary functions. The lesson is clear: structural safeguards aren't formalities; they are conditions of valid enforcement.

None of this suggests that securities regulation should be weakened or that regulatory agility is undesirable. Modern financial markets demand swift, expert-driven, and adaptive intervention. But constitutional design requires that such agility be anchored in accountability. When delegation extends into domains that shape the boundaries of liability and the processes of adjudication, it begins to resemble not flexibility, but institutional substitution.

The SMC thus raises a deeper constitutional question: How far can regulatory consolidation go before it begins to erode the foundational distinction between legislature and executive? Modern markets demand a strong regulator, but that strength must rest on a clearly defined legislative foundation. The legitimacy of regulation rests not only on expertise and efficiency, but also on its grounding in democratically accountable law-making.

The SMC presents a constitutional inflection point for securities regulation. It offers an opportunity to modernise and streamline the law, but also carries a risk of unsettling first principles. When the power to define offences, expand criminal liability, and design adjudicatory processes migrates to the regulator, the issue ceases to be one of regulatory efficiency and becomes one of constitutional design. Without careful recalibration, the result may not be better regulation, but a gradual erosion of the constitutional boundaries that sustain the rule of law.

A quiet revolution in depository architecture

TRANSFORMATIVE. Three structural shifts elevate depositories, but recasting its participants complicates investor protection

GETTY IMAGES/ISTOCKPHOTO

MS SAHOO
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Buried within the dense statutory language of the Securities Markets Code, 2025 (SMC), lies a shift that is easy to miss but difficult to overstate. A depository, long treated as an intermediary under the Depositories Act, 1996, is now recognised as a market infrastructure institution (MII). At the same time, the depository participant (DP), earlier an agent of the depository, is recast as its member. These changes reflect a deeper reconfiguration of the depository's role in India's market architecture. Three structural changes make the elevation of depositories to MIIs both logical and, perhaps, inevitable.

First, the expansion of function: Under the 1996 framework, depositories were essentially record-keeping utilities, responsible for the allotment and transfer of securities. The SMC significantly broadens this mandate. Depository services now include the distribution of monetary and securities-based benefits, facilitation of electronic voting, the exercise of interests and rights attached to securities, and such other services. Depositories are no longer passive ledgers. They are the institutional interface through which investors receive entitlements and participate in corporate governance. An entity that distributes dividends, enables voting, and administers rights issues is integral to market functioning in a way that far exceeds the role of an intermediary.

Second, the expansion of scope: The earlier regime largely confined depository services to securities within the securities market. The SMC expands this to 'other regulated instruments,' defined broadly to include instruments governed by any regulatory authority. This opens the door to the dematerialisation of a much wider class of assets, beyond traditional financial instruments, including small savings products, insurance policies, pension credits, loan contracts, warehouse receipts, carbon credit certificates, land records, and even testamentary instruments such as living wills. As the universe of dematerialised assets expands, so does the systemic importance of the depository. It moves from being a market utility to a foundational layer of the financial and potentially administrative architecture.

Third, the elimination of choice: The 1996 Act allowed investors to choose between physical and dematerialised holdings and opt in and opt out of the demat system. The SMC largely removes this choice, subject to limited grandfathering. Securities must now be issued and held in dematerialised form. The depository is no longer an efficiency-enhancing option; it is a compulsory gateway to the market. Once participation becomes mandatory, the institution's design, governance, and accountability assume far greater significance.

Taken together, these three structural changes transform the scale and centrality of depositories. The volume and diversity of transactions they handle are set to increase exponentially. Mandatory dematerialisation of mutual fund units, given the scale of folios and transaction frequency, would by itself multiply the system's footprint. When other regulated instruments follow, the growth would compound further. And once the depository layer extends across all services associated with the dematerialised universe, the effect would shift to an entirely different order of magnitude. In such a landscape, the emergence of multiple, possibly specialised, depositories is not inconceivable. The law, in recognising depositories as MIIs, appears to be catching up with this operational reality.

Depository participants are no longer agents; they are members of the depository. The architecture shifts from a principal-agent model to one of membership and institutional governance

FROM AGENTS TO MEMBERS

But does this transformation warrant a corresponding shift in the role of DPs? Under the earlier framework, DPs functioned as agents of the depository. This had substantive consequences for investor protection. Liability was centralised; risk was absorbed at the top. If an investor suffered a loss due to the negligence of either the depository or the DP, the depository was required to indemnify the investor upfront, with a right of recovery against the errant participant. This structure ensured that the investor dealt, in effect, with a single, well-capitalised institution that stood behind the system.

The SMC alters this conceptual foundation, even as it retains the indemnification outcome. DPs are no longer agents; they are members of the depository. The architecture shifts from a principal-agent model to one of membership and institutional governance. Depositories are recast along MII lines: they set eligibility norms, regulate admission and expulsion, and exercise disciplinary powers through their bye-laws, while members may hold limited ownership and governance rights. The result is a carefully constructed hybrid, membership in form, but with elements of centralised liability preserved. Over time, this architecture could also allow depositories to engage more directly with investors, potentially through their own service channels, reducing the degree of intermediation that has traditionally defined the DP's role.

The shift is historically resonant. Before the 1992 reforms, Indian securities markets were organised around membership-based institutions, in which ownership, trading rights, and governance were closely intertwined. Those reforms dismantled this structure, separating ownership from trading membership, and recasting members as regulated actors within institutional frameworks. The SMC does not revive the earlier model, but it does align depositories conceptually with the MII architecture, much like stock exchanges.

In the securities market, membership operates on a different logic from agency. Membership implies regulation and discipline within an institutional framework; it does not automatically attribute the conduct of members to the institution. Agency, by contrast, carries with it an element of attribution and responsibility. This creates a subtle but important tension. Is the SMC merely relabelling what remains, in substance, an agency relationship? Or does it mark the beginning of a gradual shift towards a model where depositories resemble exchanges, whose members are regulated but whose conduct is not attributable to the institution?

The question is not merely semantic. While the indemnification framework preserves investor outcomes, it shifts the underlying logic of the system. Over time, as the regulatory framework evolves and the system matures, this distinction may acquire practical significance. It goes to the heart of where trust is located: whether it remains concentrated in the institution or becomes more diffusely distributed across its participants.

In this sense, the SMC does more than modernise depository law. It redefines the institution. It expands its role, broadens its reach, embeds it within the core market infrastructure, and positions it at the centre of an increasingly digitised financial system.

The elevation of depositories to MIIs is easy to justify. Whether the parallel recasting of DPs strengthens or subtly dilutes the architecture of investor protection is less certain.

For now, the law attempts to hold both ideas together. Whether this balance endures will be the defining question this quiet reform leaves behind.

The writers are legal practitioners and former officials of SEBI

REGULATORY RECAST

THEIR STATUTORY ROLE RISKS COMING FULL CIRCLE, RAISING FUNDAMENTAL QUESTIONS ON MARKET REGULATION

Curious case of stock exchanges

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THE SECURITIES MARKETS Code (SMC) Bill, 2025, recasts stock exchanges, the bedrock of market infrastructure, as instruments of the state. It explicitly vests them with quasi-legislative, executive, and quasi-judicial powers—functions unmistakably public in character. Their rule-making is subject to parliamentary scrutiny and civil court jurisdiction is expressly barred.

The regulator may now delegate to exchanges the authority to register specified classes of intermediaries and investors and to regulate defined segments of market participants. In discharging these functions, exchanges are bound by the same due process—fairness, transparency, non-discrimination, confidentiality, and natural justice—that bind the regulator itself. In effect, the Bill positions exchanges as "mini-states" within the securities ecosystem, broadly analogous to the regulator.

This, however, revives a familiar dilemma: Can a for-profit commercial entity exercise sovereign authority, amplifying earlier debates over member-driven associations, without compromising market integrity? Can an exchange ensure that the private interests of shareholder-members do not eclipse its public mandate? In other words, can an exchange truly operate as a "regulatory chimera", simultaneously policing listed companies and intermediaries and the bulls and bears of the market, on which it relies for the creation of shareholder value?

The trajectory of India's exchanges resembles the story of the movie *The Curious Case of Benjamin Button*. Indian exchanges appear to age in reverse, not biologically, but statutorily—gradually reclaiming powers once ceded. Before Independence, they were self-regulatory broker associations that effectively governed the securities market through their own rules. The first, set up in 1875 as the Native Share and Stock Brokers' Association, framed and enforced its own norms. The Securities Contracts (Regulation) Act, 1956, later accorded this model formal recognition.

Each exchange functioned within a demarcated territory approved by the central government. Within this domain, it listed companies, admitted members, conducted trading, and oversaw clearing and settlement through its bye-laws, operating, in effect, as a compact democratic forum. Reporting obligations were modest—annual reports and occasional disclosures upon requisition. This regime of "distant supervision" allowed exchanges to function as member-driven institutions—of the members, by the members, and for the members.

That model endured for decades, but steadily eroded between 1990 and 2025, driven primarily by three interrelated developments. First, its limitations became evident—self-regulation gradually degenerated into insular "clubs", often privileging member interests at the expense of investors. Inherent conflicts of interest in the mutual structure, where members were both regulators and participants, undermined credible self-regulation. Episodes of misconduct, lenient enforcement, and collusive behaviour weakened investor confidence, prompting a shift of core functions to the regulator.

The SMC Bill positions exchanges as 'mini-states' within the securities ecosystem, broadly analogous to the regulator

Second, the rise of an empowered statutory regulator, Sebi, between the government and exchanges led to a steady migration of regulatory functions. In pursuit of comprehensive oversight, Sebi absorbed key areas such as listing, disclosures, and corporate governance, leaving exchanges with a narrower remit.

Third, as markets diversified with participants, activities, and borders, exchanges lacked the reach and capacity to regulate beyond their immediate domain. The regulator, with expanding and even extra-territorial authority, filled this gap, progressively diminishing the regulatory centrality of exchanges.

In parallel, core exchange functions were unbundled. Clearing and settlement, once integral to the exchange, shifted to specialised clearing corporations, while the custody and transfer of securities moved to depositories via dematerialisation. These entities, along with exchanges, are classified as market infrastructure institutions, effectively disaggregating what was once a unified exchange-centric architecture.

Governance reforms reinforced this hollowing out. Demutualisation diluted member control; over time, trading members disappeared from boards, and shareholder influence got moderated. While addressing conflicts, these measures distanced exchanges from both owners and users, leaving them with attenuated authority over markets they once ruled over. The 2019 amendment empowering the regulator to impose penalties of up to ₹25 crore on exchanges for non-compliance further inverted the earlier regime, where exchanges penalised constituents but were themselves largely immune.

Regulatory centralisation reduced exchanges to implementation arms. The listing agreement gave way to the Sebi (Listing Obligations and Disclosure Requirements) Regulations, 2015, with substantive norms prescribed directly by Sebi. Amendments to exchange bye-laws increasingly emanate from Sebi, while boards, dominated by public interest directors, decide matters with limited shareholder involvement. Even key managerial appointments, at times including the process, require prior regulatory approval. Collectively, these measures render exchanges akin to attached offices of the regulator, with constrained autonomy.

Yet, the SMC 2025 reverses this trajectory. Paradoxically, exchanges are being re-empowered when their for-profit, listed status makes them more susceptible to conflict. Delegating sovereign functions to a profit-seeking entity differs fundamentally from delegation to traditional broker associations or member institutes like the Institute of Chartered Accountants of India that do not pursue any bottom-line motive. The regime risks a dual regulatory state—the principal constantly disciplining the agent even as both exercise concurrent authority and parallel enforcement by exchanges and Sebi for the same violations, despite the intent to reduce overlap.

Reforms must reckon with this Benjamin Button scenario. One option is to shift regulatory functions to a separate not-for-profit entity, promoted by exchanges, Sebi, or third parties, on the lines of the Securities Exchange Commission—Financial Industry Regulatory Authority model in the US. Another alternative is to verticalise functions, with strict Chinese walls not just between business and regulation but also among the exchange's own legislative, executive, and adjudicatory roles. A third option is clearer jurisdictional demarcation, with surveillance and enforcement largely centralised in Sebi, or even a full transfer of regulatory functions to Sebi. A fourth (more structural) alternative is to revisit the for-profit model itself, reverting exchanges to not-for-profit entities with robust governance safeguards aligned to their regulatory role.

Operationalising the Sebi-exchange principal-agent framework under the SMC requires substantially more precision and legal certainty than currently evident in the Bill. Absent this, the regime risks overlapping proceedings and diffused accountability. If for-profit exchanges are mandated to perform quasi-state functions, the enabling law must also graft the wisdom of elders and the neutrality of judiciary into their souls. Lest they become an institutional mismatch—powerful in statute but conflicted in spirit.

Securities market code: end the current ambiguity over penalties

The code's proposed revision is a chance to close space for adjudicatory interpretation and offer market participants certainty

M. DAMODARAN & SUMIT AGRAWAL

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REUTERS

India's securities enforcement framework has long faced a contradiction. Parliament has progressively introduced minimum penalties to strengthen deterrence. At the same time, it has retained broad adjudicatory discretion through mitigating factors. The coexistence of these two approaches has not produced balance; it has created uncertainty.

This fault line resurfaced in the split decision of the Securities Appellate Tribunal (SAT) in *Sukhraj Kaur Rajbans vs. Sebi* (January 2026). The issue is: where a statute prescribes a minimum penalty, can an adjudicator reduce it below that threshold, or impose none, based on mitigating circumstances?

The statutory framework appears, at first glance, to admit little ambiguity. Several provisions of the Securities and Exchange Board of India (Sebi) Act follow this familiar formulation: "not less than X, but which may extend to Y." This suggests: fix a minimum floor to ensure deterrence, while allowing discretion within a defined band. Yet, this structure sits alongside Section 15J of the Sebi Act, which requires adjudicating authorities to consider factors such as disproportionate gain, investor loss and the repetitive nature of a default. This is replicated in the Securities Contracts Regulation Act and Depositories Act.

The tension lies in reconciling these provisions. Are mitigating factors relevant only within the statutory range, or do they permit departure from the minimum?

The SAT's split verdict offers two competing answers. The majority adopts a purposive approach, treating Section 15J as a substantive safeguard against disproportionate punishment. It recognizes that rigid application of minimum penalties may produce unjust outcomes, particularly in cases involving technical violations, negligible impact, subsequent compliance or *bona fide* conduct, and therefore allows flexibility to reduce penalties below the statutory floor.

The dissent of the presiding officer takes a stricter view of legislative intent. Once Parliament has prescribed a minimum penalty, that threshold is binding. Section 15J mandates the determination of a quantum within the statutory band but does not authorize deviation below it. To hold otherwise would dilute the statute through interpretation.

Both approaches are defensible—and that is precisely the problem. The law permits two internally consistent but mutually incompatible readings.

In *Sebi vs. Bhavesh Pabari* (2019), the court held that once a violation is established, the imposition of a penalty is mandatory, though its quantum must reflect statutory factors. In *Sebi vs. Bharti Goyal* (2023), it cautioned against substituting statutory penalties with warnings or other measures. Yet, these decisions stop short of addressing whether mitigating circumstances can justify deviation from the statutory minimum.

Indian jurisprudence is clear that the power to impose a penalty is not an obligation to penalize in every case. Unless expressly barred by law, adjudicatory discretion extends to imposing a lesser penalty—or none at all—where circumstances justify it. Courts have repeatedly rejected mechanical enforcement, particularly where violations are technical, *bona fide*, non-repetitive, harmless, arise from regulatory ambiguity or evolving compliance frameworks, involve *de minimis* impact, reflect procedural lapses with substantive compliance but without market impact, or are promptly rectified.

This principle is not merely theoretical. In a diverse market, violations vary widely. In such situations, rigid application of minimum penalties may be disproportionate to both the conduct and its consequences.

It is precisely in these cases that Sebi officers have, in practice, stretched interpretive tools to avoid unjust outcomes. Some have imposed penalties below the statutory minimum; others have adhered strictly to the minimum despite recognizing mitigating circumstances. The result is a regime that is formally rigid but functionally inconsistent.

This inconsistency undermines predictability—the cornerstone of regulation. Market participants cannot assess enforcement risk with confidence when similar violations attract materially different outcomes depending on the adjudicator's interpretive approach.

The proposed Securities Market Code, 2025, before Parliament's Standing Committee of Finance, is an opportunity to resolve this ambiguity.

The Code retains the same structure. Its penalty provisions (Clauses 97 to 109) continue to prescribe minimum penalties, often linked to fixed amounts or multiples of unlawful gain. Clause 111 mirrors Section 15J, requiring consideration of gain, loss and nature of the default. Yet, the Code remains silent on the central question: are minimum penalties absolute, or can they yield to proportionality in exceptional cases?

This silence is not neutral. By carrying forward both rigid minimums and broad mitigating factors without clarifying their interaction, the Code ensures that these conflicts will persist. The question that divided the SAT in this case will continue to divide Sebi adjudicators.

The problem, therefore, is not one of interpretation but of legislative design.

Effective enforcement requires both deterrence and proportionality. But these objectives cannot be reconciled through *ex post* adjudication alone. They must be embedded in the law. The repeated reliance on adjudicatory discretion to correct disproportionate outcomes suggests that penalty provisions are not adequately calibrated.

A more coherent approach would involve clear legislative guidance. Parliament must decide whether minimum penalties are intended to operate as absolute floors or if limited departures (including no penalty) should be permitted based on clearly articulated factors such as absence of gain, harm or prompt rectification. This is significant, given the ₹10 lakh minimum in several provisions. Equally, penalty frameworks must evolve to reflect the diversity of market participants. Retail investors, intermediaries and systemic actors do not present identical risks and enforcement should not treat them as such. Uniform minimum penalties, applied without differentiation, risk being both over-inclusive and under-effective and may raise concerns under Article 14 of the Constitution.

The Securities Market Code must also move beyond *ex post* review mechanisms and incorporate structured, *ex ante* assessments of penalty design. Without such discipline, enforcement will continue to oscillate between rigidity and discretion, neither of which will operate with sufficient predictability.

The SAT's split decision is not an aberration. It reflects a deeper failure to reconcile certainty with fairness in the design of Indian securities law. If the Code does not address this ambiguity, it risks perpetuating a system where outcomes depend less on statutory clarity and more on interpretive preference. A market of India's scale and ambition should not have to live with this ambiguity.

The legal price of State failure

Failure must carry consequences, whether by a market participant or the State

ILLUSTRATION: AJAY MOHANTY

Reportedly, the National Stock Exchange of India Ltd, the country's leading stock exchange, is set to settle with the Securities and Exchange Board of India (Sebi) long-pending allegations that it failed to conduct its business in accordance with applicable laws by paying ₹1,800 crore.

At one level, this is a settlement between a regulated entity and its statutory regulator. Significantly, however, it involves two agencies performing statutory regulatory functions. This assumes added significance in light of the proposed Securities Markets Code, which recasts stock exchanges as market infrastructure institutions (MIIs) and entrusts them with functions akin to those of the regulator.

It is now routine for MIIs to face monetary consequences for regulatory failures, through settlement or adjudication, occasionally accompanied by non-monetary sanctions. This reflects a policy preference: Serious structural measures, such as cancellation of authorisation, are often impractical, given regulatory entry barriers and the systemic implications. While such penalties may influence internal governance and compliance incentives, their deterrent effect is not unambiguous, particularly where the financial burden is ultimately borne by shareholders of the MII and investors in the wider market, the very constituencies the regulatory framework seeks to protect.

M S SAHOO & SUMIT AGRAWAL

This raises a deeper structural concern: An asymmetry in accountability. Economic laws typically distribute responsibilities across State actors (ministries, regulators, adjudicatory bodies) and private participants, including firms and individuals. Accountability mechanisms, however, are uneven. Private actors operate within a dense framework of clearly defined contraventions and calibrated penalties. By contrast, accountability for State actors is more diffuse, and not always designed to address regulatory failure directly or proportionately.

Securities law illustrates this contrast. The statute and its regulations meticulously enumerate contraventions by private entities and prescribe penalties, including a residual provision for unspecified violations. Yet, they do not establish a comparable framework for addressing failures by the regulator itself in discharging statutory functions, such as delays in decision-making or failure to act within prescribed timelines. Nor do they provide an equivalent regime of legal norms and consequences for lapses by public sector entities. Similar patterns are observable across sectoral regimes, where detailed compliance architectures for private actors coexist with relatively underdeveloped mechanisms for addressing lapses by public authorities.

In practice, this produces an imbalance. Contraventions are assessed not by their nature or impact, but by the identity of the actor. MIIs and Sebi both perform delegated regulatory functions that are often indistinguishable in substance, yet their accountability is fundamentally asymmetrical. When a private entity, such as an MII, defaults, consequences are structured and predictable. When a regulator or public authority falters in a similar role, consequences, if any, tend to arise through indirect and discretionary channels, such as judicial intervention or audit findings. Courts have, on occasion, imposed costs or directed compensation against State agencies, but such outcomes are case-specific rather than anchored in a statutory framework, and are often diluted or set aside on appeal.

Traditional objections to imposing monetary or personal liability on State actors are not without force. Financial penalties on government departments may reallocate public funds without generating meaningful deterrence, while personal liability for institutional failures may discourage decision-making in already constrained environments. Many failures, moreover, stem from systemic or policy-level limitations rather than individual misconduct.

Yet, these concerns justify calibration, not inertia. In sectors such as finance, telecommunications, and infrastructure, regulatory delays or lapses by public authorities can impose high costs on markets and citizens. For example, under the Insolvency and Bankruptcy Code, delays in approvals by adjudicatory bodies can materially affect resolution outcomes, even where market participants have fulfilled their roles. A framework that does not adequately account for such failures risks weakening overall regulatory discipline.

Enforcement frameworks do evolve with institutional roles. Stock exchanges operated for decades without a formal penalty regime; only through legislative changes in 2019 were they explicitly brought within the ambit of monetary penalties. This shift recognised that as exchanges assumed greater regulatory responsibilities, the accountability frameworks had to deepen. A similar evolution is now warranted for State actors performing comparable functions in a market economy.

What is required, therefore, is not an identical treatment of public and private actors, but a coherent and proportionate accountability framework that evolves with function. Such a framework could: (i) identify categories of regulatory or administrative failure by State actors; (ii) distinguish between systemic deficiencies and individual misconduct; and (iii) prescribe calibrated consequences, ranging from institutional corrective measures and compensatory remedies to, in cases of deliberate or grossly negligent conduct, disciplinary or pecuniary sanctions. Where individual culpability is clear and intentional, responsible officials should be held accountable, subject to appropriate safeguards.

The safeguards are critical. Good-faith actions taken within statutory bounds should be protected through clear safe-harbour provisions. Liability should attach primarily to clear, attributable failures that meet defined thresholds, such as bad faith, gross negligence, or wilful disregard of statutory duties, rather than to outcomes shaped by broader policy or resource constraints. This would help avoid excessive risk aversion while ensuring that accountability is meaningful.

Transparency can play a complementary role. The law could require periodic public reporting of penalties and adverse findings against government departments and agencies, alongside those levied on private participants. Such disclosure, in a clear and accessible manner, would enable citizens to assess patterns of compliance and institutional performance. This can shape electoral choices, with voters potentially favouring governments that incur fewer penalties, an indicator of more effective and lawful administration. Over time, it can also drive systemic improvements and reinforce a culture of responsibility without relying solely on punitive mechanisms. Equally important is ensuring that affected parties, market participants, professionals, or citizens have access to effective remedies where State action or inaction causes harm. This includes timely redress, appropriate compensation, and enforceable directions to perform statutory duties.

A framework of this nature would align responsibility with accountability across both public and private domains. It would preserve institutional autonomy while ensuring that the exercise of public power, whether by the State or by bodies performing regulatory functions, is matched by credible consequences for failure. Without such symmetry, the promise of equality before the law remains incomplete. Embedding it in practice would strengthen regulatory discipline, enhance institutional legitimacy, and affirm a simple principle: Accountability must keep pace with authority, and the rule of law must bind all who exercise it.

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ONE CODE TO DISCIPLINE THEM ALL


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THE proposed Securities Markets Code consolidates the three existing laws into a single legislative framework. There are good reasons for such a rationalisation.

Consider this. The Securities and Exchange Board can initiate three types of proceedings—under Section 11B of the Sebi Act, resulting in preventive and remedial directions; enquiry proceedings, which could lead to suspension or cancellation of registration; and adjudication proceedings, which could culminate in the imposition of monetary penalties. Comparable provisions exist under the other two securities enactments as well.

In practice, the same case often triggers parallel proceedings before different authorities within Sebi. Although these proceedings are legally independent, authorities lower in the institutional hierarchy generally tend to arrive at findings similar to those reached at higher levels. Conflicting findings remain possible, too. More fundamentally, the nature of the sanction is determined at the stage of initiating proceedings, before the gravity of the contravention is fully established.

The SMC seeks to address these concerns by consolidating the multiple enforcement tracks into a single adjudicatory proceeding. An adjudicating officer, who may be anyone from a division chief or the chairperson, may determine the contravention first and then impose appropriate outcomes. The framework embeds proportionality and deterrence by requiring consideration of factors such as intent, duration and frequency of the contravention, unlawful gains, investor harm, impact on market integrity, conduct of the noticee before and after the contravention, precedents, and aggravating or mitigating circumstances.

This is a significant improvement. Yet, the consolidation of proceedings also concentrates discretion in ways that may create new risks for consistency, predictability and credibility.

Under the earlier framework, monetary penalties could be imposed by a division chief, while more severe sanctions such as cancellation of registration or market restraints were generally imposed by a whole-time member. There was, thus, a broad correspondence between the seriousness of the contravention, the severity of the sanction and the rank of the authority imposing it. The SMC may enable subordinate legislation to prescribe the level of officer who may act as AO, depending on the case's gravity. Such calibration would strengthen institutional credibility and reinforce confidence in the outcomes.

The SMC also departs from the earlier model under which adjudication procedures were prescribed through rules framed by the government. It instead proposes that procedures be specified through Sebi regulations. This risks collapsing the distinction between rule-making and enforcement, since

PTI

The draft Securities Markets Code proposes a much-needed rationalisation of laws. But it leaves adjudication outcomes dangerously open to discretion. By proposing that procedures be decided according to Sebi norms, not government ones, it risks collapsing the wall between rule-making and enforcement

the same authority would frame the norms, initiate proceedings, appoint AOs, and prescribe the adjudicatory process. Retaining government-made procedural rules would preserve a healthier institutional separation.

The more serious concern, however, lies in the architecture of enforcement discretion. Under Clause 20, the AO may impose one or more of five broad categories of measures: suspension or cancellation of registration, cease-and-desist directions, monetary penalties, disgorgement, and other appropriate directions. The code does not indicate when one remedy should be preferred over another, or when multiple remedies should be imposed.

The discretion widens further once the AO enters a particular category. "Appropriate directions" alone contain a menu of 11 measures, including restraining a person from dealing in securities, suspending trading, annulling trades, and directing divestment of holdings. Each of these then requires further calibration.

These remedies are not interchangeable. Disgorgement is restorative, aimed at stripping away unlawful gains made or losses avoided. Monetary penalties are punitive and deterrent. Market-access restraints are preventive and protective. Suspension or cancellation of registration addresses institutional fitness. Corrective directions seek to restore market integrity or undo the effects of wrongful transactions. A serious contravention may, therefore, justify one remedy or several in combination.

This creates what may be called the code's cascading discretion problem. Even on a conservative estimate, the framework generates a very large matrix of possible enforcement outcomes. The AO must choose not only among sanctions, but also among their combinations, scope, duration and intensity. Without a structured framework, similar cases may attract materially different outcomes. Unless a differentiating principle is clearly articulated, enforcement risks appearing uneven and arbitrary.

The absence of ex ante guidance also weakens deterrence. Regulated entities cannot reliably anticipate regulatory consequences, and enforcement risks becoming less predictable and less normatively coherent. There is also a danger of over- or under-enforcement.

The solution is not to reduce regulatory discretion, but to structure it. A modern securities code should not merely list the medicines available to the regulator; it must also prescribe when, why, and in what combination they are to be administered.

(Views are personal)

Unseen lawmakers of India's markets

Institutions exercising public regulatory power must not remain outside meaningful oversight

M S SAHOO & SUMIT AGRAWAL

Imagine a commonly used algorithmic trading strategy suddenly being classified as manipulative. The consequences could be severe: Penalties, suspension, even criminal exposure. If Parliament or the Securities and Exchange Board of India (Sebi) were to create such a classification, it would ordinarily involve public consultation, legislative scrutiny, and a transparent law-making process. Yet market infrastructure institutions (MIIs) exercise comparable normative power through their rulebooks, without comparable democratic oversight.

India's securities market has historically operated through a layered regulatory architecture. Parliament enacts the statute; the government frames rules; Sebi issues regulations and subsidiary instructions; and MIIs operationalise the system through their rulebooks. This framework has largely balanced legislative intent, regulatory flexibility, and institutional execution. The proposed Securities Markets Code, 2025 (SMC), however, marks an important conceptual shift. It recognises MIIs as institutions performing public and regulatory functions that actively shape market behaviour through normative instruments.

MIIs are not ordinary private companies or mere transaction platforms. They perform public functions, derive authority from statutes, provide essential market infrastructure, and affect the rights of investors, intermediaries, and issuers. Their instruments determine market access, trade execution and settlement, risk management, surveillance, enforcement, and dispute resolution. They shape market conduct as much as Sebi regulations.

Consider the example of a stock exchange. It typically operates through a layered rulebook comprising rules, byelaws, regulations, and circulars. Together, they create a binding legal regime for market participants.

The rules form the constitutional backbone of the exchange, governing membership, disciplinary powers, and oversight of trading members. They empower the exchange to regulate members, impose penalties, and determine continued access to market infrastructure. Comparable matters, when exercised by Sebi, are governed by parliamentary statutes. If such matters require legislative treatment when exercised by Sebi, it is difficult to justify leaving analogous powers of MIIs outside comparable scrutiny.

The byelaws constitute the operating code of the market. They define the rights and liabilities of members and constituents, regulate contracts and settlements, and provide for arbitration, defaults, margins, and investor protection. The SMC prescribes, for byelaws, substantially the same procedural safeguards that apply to Sebi regulations.

Regulations and circulars translate this framework into operational requirements. They prescribe compliance obligations, technical standards, codes of conduct, inspections, and consequences for non-compliance. They function much like Sebi's subsidiary instructions. Yet, unlike Sebi's instruments, much of this normative framework remains outside equivalent procedural discipline and legislative scrutiny.

The importance of MII rulebooks has received judicial recognition. In *Rusoday Securities Ltd v. National Stock Exchange of India Ltd. (2021)*, the Supreme Court acknowledged the enforceability of exchange actions, including suspension and expulsion of members, when undertaken in accordance with its byelaws and rules. The decision reinforces that MII rulebooks are binding frameworks carrying public consequences.

Indeed, these instruments may even confer statutory sanctity on transactions notwithstanding inconsistencies with other laws. Clause 46 of the SMC provides that any contract traded on a stock exchange shall be legal and valid if entered into in accordance with the Code and the rules, regulations, or byelaws made thereunder, notwithstanding anything inconsistent contained in any other law. MII rulebooks, therefore, may effectively override conflicting legal restrictions through statutory recognition.

The constitutional dimension is equally significant. These instruments resemble subordinate legislation in both form and effect. Subordinate legislation falls within the discipline of Article 13 when it affects fundamental rights. MII instruments can restrict the right to carry on business under Article 19(1)(g), affect property interests protected under Article 300A, and impose serious civil consequences. Their normative character can no longer be treated as incidental or contractual.

Clause 148 of the SMC provides that every rule, regulation, byelaw, and subsidiary instruction made or issued under the Code shall be laid before Parliament. However, "regulations" in this context refer to regulations framed by Sebi, not those issued by MIIs. Likewise, "rules" refers to rules framed by the Union government, not rules of MIIs. "Subsidiary instructions" refers only to instruments issued by Sebi. Consequently, only MII byelaws are subject to comparable legislative visibility, while their rules, regulations, and circulars remain outside. This asymmetry creates the possibility of regulatory arbitrage. If parliamentary scrutiny applies only to byelaws, MIIs would naturally have an incentive to rely increasingly on rules, regulations, or circulars to achieve substantially similar outcomes with fewer procedural constraints.

The principal actors in the securities market ecosystem are the government, Sebi, and MIIs. The government is accountable to Parliament. Sebi is a statutory regulator and subject to statutory controls. MIIs, by contrast, are private corporate bodies, exercising significant public and regulatory functions. They possess the least democratic legitimacy among these actors.

The SMC identifies three categories of MIIs, but empowers the government to designate additional institutions as MIIs. Further, access to MII services is effectively compulsory. Securities trading can take place only on the platform of a stock exchange, and securities can be held only in dematerialised form through depositories. When investors and intermediaries are compelled by law to transact through these institutions, the case for legislative scrutiny of MII rulebooks becomes correspondingly stronger.

To be sure, MIIs require operational flexibility and agility to respond to market developments. Excessive legislative control could impair their efficiency. The goal, therefore, is not to restrict delegated norm-making, but to ensure minimum standards of transparency, accountability, and democratic oversight.

The SMC points to a more coherent normative structure. Sebi issues binding norms principally through regulations and subsidiary instructions. Similarly, MIIs may issue byelaws and circulars, which correspond to Sebi regulations and subsidiary instructions. Matters presently contained in MII rules and regulations may then be consolidated into byelaws. This would make the law available in one place, enhancing ease of doing business.

Consequently, the same procedural safeguards, transparency standards, and legislative scrutiny that apply to Sebi's instruments should apply symmetrically to their MII equivalents. The SMC cannot allow these norm-making structures to operate outside constitutional and parliamentary discipline.

The authors are legal practitioners and have worked for Sebi. The views are personal

SECURITIES MARKET REACH

SILENCE ON JURISDICTION IS NOT NEUTRALITY; THE LAW MUST TRAVEL AS FAR AS THE MARKET IT GOVERNS

The SMC's blind spot

SUMIT AGRAWAL
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THE PROPOSED SECURITIES Market Code (SMC) is a once-in-a-generation consolidation of India's securities laws. By subsuming the Sebi Act, the Securities Contracts (Regulation) Act, 1956, and the Depositories Act, 1996, it promises much-needed coherence in an increasingly complex market. Yet, in seeking to modernise, the Code overlooks a foundational issue: it does not define its own territorial reach.

Countries have borders; markets do not. Securities markets are inherently global, with participants, securities, capital, and information moving seamlessly across jurisdictions. Trading strategies may be executed offshore, derivatives structured abroad, and market-loving inputs, whether research reports or algorithmic signals, can originate anywhere.

Conduct undertaken entirely outside India can, and often does, affect Indian securities markets. In such a setting, the absence of an express territorial provision is a silence of consequence.

Indian constitutional doctrine already accommodates this reality. Article 245(2) makes clear that no law is invalid merely because it has extraterritorial operation. The judicial interpretation has refined this principle. In *GVK Industries Ltd* (2011), the Supreme Court held that Parliament may legislate on extraterritorial aspects that have, or are expected to have, an impact on or nexus with India, or its interests. This position was echoed in *Pan Asia Advisors Ltd* (2015), which upheld Sebi's action against overseas conduct affecting Indian securities markets. The Competition Act, 2002, adopts the same approach, expressly extending jurisdiction to conduct outside India that affects competition within the country.

Against this backdrop, the SMC's silence on territorial jurisdiction creates avoidable uncertainty. Market participants, domestic and foreign alike, rely on the assurance that misconduct affecting Indian markets will attract consequences, regardless of where it originates. When that assurance is unclear, deterrence weakens. The resulting uncertainty can unsettle investors, complicate compliance for intermediaries, and, over time, divert capital towards jurisdictions with clearer and more predictable regulatory frameworks.

This uncertainty is particularly acute in cross-border markets, where misconduct is often structured to exploit jurisdictional gaps. In the absence of statutory clarity, enforcement may appear inconsistent or ad hoc, especially when directed at foreign entities. This can undermine regulatory legitimacy and invite legal challenge. Recognising these concerns, modern securities law frameworks increasingly adopt an effects-based approach, ensuring jurisdiction attaches not to location but market impact.

This approach is also reflected in academic writing, which has long recognised this approach as both legitimate and necessary in an interconnected economy. The effects doctrine provides a pragmatic basis for jurisdiction where conduct produces substantial consequences within a state, reflecting the simple but central idea that jurisdiction should follow impact rather than formal territorial boundaries.

> **An effects-based framework remains the most practical response to cross-border market misconduct**

This principle is well established in practice. In the US, following *Morrison v. National Australia Bank* (2010), the Dodd-Frank Act reaffirmed enforcement jurisdiction on conduct-and-effects grounds. Statutory provisions in the Securities Exchange Act, 1934, and the Securities Act, 1933 explicitly cover (i) significant conduct within the country even where transactions occur abroad or involve only foreign parties, and (ii) foreign conduct that has a foreseeable and substantial domestic effect. The EU adopts a similarly clear position: the Market Abuse Regulation extends to acts and omissions both within the Union and in third countries where EU-traded instruments are concerned.

To be sure, such jurisdiction is not without limits. Its principal constraint lies in enforcement. Regulators do not exercise direct coercive authority over foreign entities or offshore assets; effective action depends on cooperation frameworks and calibrated domestic measures. International cooperation is facilitated through frameworks such as the International Organization of Securities Commissions' Multilateral Memorandum of Understanding (MMoU), introduced in 2002, which enables cross-border information-sharing and coordinated securities enforcement. The enhanced MMoU, adopted in 2016, strengthens this architecture by allowing access to and exchange of a wider range of investigative assistance, including audit papers, compelled testimony, freezing assets, and telecom or internet service data. Sebi is a signatory to these frameworks.

In addition, Sebi has entered into bilateral MoUs with foreign securities regulators across jurisdictions to deepen cooperation and the exchange of information for regulatory and enforcement purposes. India has bilateral civil mutual assistance arrangements, commonly referred to as Mutual Legal Assistance Treaties, to support cross-border cooperation in civil and commercial matters, including service of process, collection of evidence, and enforcement of foreign judgments.

Beyond formal arrangements, regulators rely on a range of practical enforcement levers. These include restricting or conditioning access to Indian markets, directing domestic intermediaries to disengage from identified foreign entities, and issuing public disclosures that affect reputation and market access. Regulators often seek comfort or no objection from the home jurisdiction regulator when processing applications involving foreign entities. Market participation, thus, carries an implicit expectation of adherence to its regulatory standards. Even so, constraints persist. Cooperation from foreign regulators is not always timely or assured. Investigations can be hampered by data access limitations, evidentiary barriers, and differing privacy regimes. Jurisdictional assertions may also create overlaps, raising concerns of duplication, inconsistency, and regulatory comity. The effectiveness of domestic levers ultimately depends on the economic significance of Indian markets to the entity in question.

The limitations, however, do not diminish the case for clarity. An effects-based framework remains the most practical response to cross-border market misconduct. Properly designed, it is not an overreach of sovereign power, but a calibrated, cooperation-driven mechanism. The SMC should, therefore, explicitly define its territorial scope by adopting an effects-based principle, bringing within its ambit conduct outside India that has a direct, substantial, or reasonably foreseeable impact on its securities markets. Anchoring this framework in proportionality, transparency, and due process will strengthen domestic credibility and international acceptance.

This also reflects settled international practice. In a globalised market, silence on jurisdiction is not neutrality: it is a regulatory blind spot. If India aspires to be a leading capital market, it cannot rely on implied powers or judicial reconstruction to define the reach of its securities law. It must say so clearly: a modern market requires certainty of reach, which must extend as far as the market it seeks to govern.

mint

A single word could criminalize every informed investor in India

Trading on information that's simultaneously material and non-public is mischievous—but is routine on either of the two

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The Securities Markets Code of 2025 contains a drafting error in Clause 93(b) so small that it is monosyllabic. The conjunction used is "or." It should be "and." In ordinary writing, this would be a copy-editor's note. In a provision that carries up to ten years of imprisonment, a fine of ₹25 crore and qualifies as a scheduled offence under India's Prevention of Money-Laundering Act (PMLA), the difference between these two words is the difference between a law that targets guilty traders and one that can ensnare every investor who reads the morning newspaper before placing a trade.

Clause 93(b) prohibits a person from dealing in securities "while in possession of material or non-public information that would affect the value of such securities." The target is obvious: front-running, or trading akin to insider dealing that exploits information asymmetry, corrupts price discovery and destroys investor confidence. The instinct is right. The drafting is not. As written, the clause creates two independent sufficient conditions, either of which by itself triggers the prohibition. A person who possesses information that is material but entirely public is caught. A person who possesses information that is non-public but wholly immaterial is caught too. On a literal reading, an institutional fund manager who trades after studying a company's publicly released quarterly results possesses information that is, beyond argument, material. If the market has not yet fully priced in those results, the information may also affect the value of the securities. Clause 93(b), read with 'or,' reaches that fund manager. Parliament surely does not intend this.

The real vice that securities law across every major jurisdiction has identified is the following combination: information that is simultaneously material and non-public. Trading mischief arises in this conjunction, not in either qualifier separately. An investor trading on public information, however significant, is doing precisely what efficient markets depend on. An investor trading on non-public information that is wholly immaterial gains no meaningful advantage and causes no market harm. The law is designed to catch only the person who trades while knowing something the market does not know and would care about if it did. That person can be identified only when both conditions are present together. 'Or' captures too much; 'and' captures exactly enough.

Every significant securities jurisdiction encodes this as a conjunctive standard. In the US, the concept is Material Non-Public Information (MNPI), a compound noun in which the conjunctive logic is embedded in the very terminology. The Securities and Exchange Commission's insider trading framework under Rule 10b-5 of the US Securities Exchange Act of 1934 has never treated materiality and non-public character as alternatives. They are a single, inseparable test. The UK's Market Abuse Regulation requires inside information to be both precise and not generally available—both conditions together. This reflects a considered understanding, refined over decades, of where harm lies and where not.

An irony is that this is not a new error in Indian securities law. Section 12A of the Securities and Exchange Board of India (Sebi) Act of 1992 carried the same formulation and the Securities Markets Code (SMC) has simply reproduced it without correction. Indian securities regulation had arrived at the right answer through its own regulatory evolution. The Sebi (Prohibition of Insider Trading) Regulations of 2015 built their framework around Unpublished Price Sensitive Information (UPSI), which captures information that is both price-sensitive and unpublished. The two qualities are not presented as alternatives anywhere in Sebi's prevention of insider trading (PIT) regulations. The Justice N.K. Sodhi Committee, constituted to review the PIT framework, recognized this alignment directly when it observed that MNPI in international usage and UPSI in Indian regulation are interchangeable concepts, both requiring materiality and non-public conditions to be met together. In other words, Indian regulation corrected through subordinate legislation what the parent statute got wrong. The SMC had an opportunity to codify that correction into the statute itself. It has instead carried forward the error of Section 12A, so the conjunctive understanding under PIT regulations survive only in subordinate legislation rather than in the Code that governs everything else. That is a significant step backward.

Clause 93(b) presents a second difficulty that compounds the first. The phrase "deal in securities" has been the subject of intense and unresolved judicial contest for years. Courts and the Securities Appellate Tribunal (SAT) have grappled repeatedly with whether "dealing" requires a completed transaction—an executed purchase or sale—or whether placing an order, instructing a broker or any preparatory step suffices. Sebi's whole-time members and adjudicating officers have on occasion held that dealing extends even to advising on securities, a reading that stretches the phrase well beyond its natural meaning. In front-running, which is the primary mischief Clause 93(b) is designed to address, harm occurs before any transaction is completed. A dealer who receives advance knowledge of a large client order and places personal positions ahead of it has already exploited information asymmetry at the moment those positions are placed. Whether profits are later realized is secondary. In multiple enforcement orders, Sebi has held that 'dealing' encompasses ordering and instructing. The SAT has not always agreed. These inconsistencies have generated contested enforcement that weakens deterrence while exposing intermediaries to unpredictable liability. The SMC could have resolved this by defining "deal in securities" for the purposes of Chapter XII, but has not. As ambiguity survives, litigation will continue.

Both difficulties are compounded by a third: Clause 93(b) is not a standalone provision. It sits within the market abuse chapter, whose violations, under Clause 96, attract criminal punishment and PMLA consequences. The interpretive latitude currently exercised by Sebi's enforcement officers and inconsistently reviewed by the SAT will now translate directly into criminal prosecutions and Enforcement Directorate attachment proceedings. The stakes of definitional imprecision are thus constitutional. A person imprisoned under Clause 93(b), or whose assets are attached under the PMLA, is entitled to know with certainty from the statute what conduct triggered this. The current text does not provide that certainty.

The fixes are not complex. Replace 'or' with 'and.' This correction will align the SMC with the UPSI framework Indian regulation developed. For "deal in securities," Parliament's Standing Committee on Finance should insert a definition for Chapter XII that expressly includes placing orders and instructing intermediaries, so that front-running is captured where it actually occurs rather than made contingent on transaction completion. Since these are technical rather than political fixes, India's legislative process should welcome them.

A provision governing criminal liability and PMLA consequences must say exactly what it means. Revisions need to be made before the Code is enacted.

ILLUSTRATION: BINAY SINHA

When regulators write criminal laws

The Securities Markets Code Bill assures delegation of procedure and detail, but also permits delegation of criminalisation

M S SAHOO & SUMIT AGRAWAL

The Securities Markets Code Bill, 2025 (Code), currently under examination by the Standing Committee, promises a modern and streamlined framework for securities regulation. Among its most welcome features is decriminalising securities market misconduct. Yet the promise is undermined by a provision that allows the Securities and Exchange Board of India (Sebi) to expand the category of criminal conduct through regulation. The result is a striking paradox: Parliament reduces the scope of criminal law while empowering the regulator to enlarge it.

Clause 93 of the Code prohibits "market abuse". Clauses 93(a) to 93(f) identify six categories of conduct as market abuse: Insider trading, fraudulent schemes to deceive investors, trading on material non-public information, disseminating false or misleading information to influence markets, market manipulation through abuse of position, and front-running ahead of substantial impending transactions. These are indeed serious forms of misconduct. Whether one agrees with every aspect of their formulation, they share an important characteristic: Parliament itself has chosen to define them.

The difficulty lies in Clause 93(g), which extends market abuse to "such other activities as may be specified by regulations which adversely affect the integrity of the securities markets". This is not merely a power to fill in details. It authorises Sebi to determine what additional conduct shall constitute market abuse. Since market abuse is the sole category of securities-market misconduct that remains criminal under the Code, the practical effect is that Sebi may expand the scope of criminal liability through subordinate legislation.

The phrase "adversely affects the integrity of the securities markets" provides little guidance. Market integrity is an important regulatory objective, but it is an inherently broad and flexible concept. Depending on future regulatory choices, a wide range of conduct could potentially be brought within its scope. Aggressive short-selling strategies, certain forms of algorithmic trading, activist investor campaigns, or research reports that significantly influence prices could all be characterised as affecting market integrity if regulations are framed broadly enough. Whether Sebi would do so is beside the point. The question is whether Parliament should confer such powers in the first place.

The consequences are significant. Under Clause 96, market abuse attracts imprisonment of up to 10 years, a fine of up to ₹25 crore, or both. A person may, therefore, face imprisonment not for conduct identified by Parliament as criminal but for conduct subsequently designated as market abuse by a regulatory notification.

The implications extend beyond the Code. Market abuse under the Code constitutes a scheduled offence under the Prevention of Money-Laundering Act, 2002. Consequently, conduct brought within Clause 93(g) by regulation may trigger the full machinery of money-laundering enforcement, including attachment of property, arrest, and stringent bail conditions. This is not delegated legislation in any constitutionally recognisable sense. It is delegated criminalisation.

The provision sits uneasily with the government's broader decriminalisation agenda. Through successive legislative reforms, including the Jan Vishwas Acts, Parliament has sought to reduce the role of criminal sanctions in economic regulation and replace them with civil penalties. Clause 93(g) moves in the opposite direction.

There is a constitutional concern. The creation of criminal offences has traditionally been regarded as an essential legislative function. In Vasu Dev Singh v. Union of India (2006), the Supreme Court held that delegating an essential legislative function is impermissible. More recently, in its judgment dated April 29, 2026, in Ashwini Kumar Upadhyay v. Union of India, the court reiterated that the creation of criminal offences and prescription of punishments lie squarely within the legislative domain. The principle is rooted in a constitutional premise: Deprivation of liberty must be authorised through a law enacted by Parliament, not through executive rule-making.

Democracies routinely permit regulators to prescribe standards, procedures and compliance requirements. They are considerably more cautious when it comes to permitting regulators to define conduct that may result in imprisonment. Criminal law occupies a unique position in the legal system because it authorises the state to deprive individuals of liberty. Decisions about what conduct warrants that consequence demand the highest degree of democratic accountability.

None of this is to question Sebi's competence. It is a sophisticated regulator staffed by individuals possessing expertise that few regulators can match. But expertise is not a substitute for legislative authority. Regulators are expected to administer and enforce the law; they are not ordinarily authorised to determine what conduct shall expose citizens to imprisonment.

Nor is regulatory agility a convincing justification. It is often argued that rapidly evolving markets require flexible powers and that waiting for Parliament to amend legislation may be impractical. Experience suggests otherwise. Securities laws have been amended frequently whenever new regulatory challenges have emerged. In any event, Sebi is not powerless in the interim. The Code already equips it with extensive civil enforcement powers, including the ability to ostracise someone from the market and impose substantial monetary penalties. Civil proceedings are often faster and more effective than criminal prosecutions. If a genuinely new form of market abuse emerges that warrants criminal sanction, Parliament can amend the statute to include it expressly.

The concern is reinforced by the Bill's own "Memorandum Regarding Delegated Legislation", which assures Parliament that the regulation-making powers relate to matters of procedure and administrative detail. A power to define additional forms of market abuse cannot plausibly be characterised as procedural or administrative. It goes to the heart of what conduct is criminal.

If such delegation is accepted here, it may become a template for other regulatory statutes, enabling regulators to define additional categories of criminal conduct through subordinate legislation. What appears today as an exception could become a precedent for the gradual transfer of criminal law-making from Parliament to regulators.

The issue is not whether market abuse should be punished severely. It should. Nor is the issue whether Sebi should possess strong enforcement powers. It must. The issue is who should decide what conduct constitutes a criminal offence. In a constitutional democracy, that responsibility belongs to Parliament.

The foundational elements of criminally actionable market abuse must, therefore, be set out in the principal legislation itself. Otherwise, courts may one day be asked to uphold convictions based not on offences enacted by Parliament but on offences created through regulatory notification. That would represent an unwarranted shift in the constitutional allocation of legislative powers.

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COMPLEMENTARY CODES

DEBATE OVER IBC & SMC INSTEAD EXPOSES A GAP OF RESOLUTION FRAMEWORK FOR FINANCIAL SERVICE PROVIDERS

Fears of overlap misplaced

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THE SECURITIES MARKETS Code (SMC), 2025, has generated considerable debate about its interface with the Insolvency and Bankruptcy Code (IBC), 2016. Concerns have been raised that SMC provisions on settlement finality, close-out netting, and collateral enforcement may conflict with the moratorium, waterfall, and estate provisions of the IBC. The presence of overriding clauses in both Codes has reinforced the perception of overlap and possible conflict.

The concern is understandable, but misplaced. What appears to be an overlap in fact conceals a fundamental gap in India's legal architecture: the absence of a specialised resolution framework for financial service providers (FSPs) that perform critical market functions and whose failure may have systemic consequences.

The two Codes largely operate in different domains. One seeks to prevent disruption of the securities market despite a participant's stress; the other seeks to resolve financial distress in an orderly manner. Using harmonious construction, courts confine overriding provisions to the specific field for which they were enacted.

Much of the perceived conflict disappears once the nature of assets handled by clearing corporations (CCs) and clearing members (CMs) is properly understood. These institutions routinely hold margins, collateral, securities, and funds that beneficially belong to investors, counterparties, and other market participants. Such assets are often held in custodial, fiduciary, or contractual capacities. They are not the proprietary assets of the CC or CM.

The IBC recognises this. Assets belonging to third parties but held by the debtor under trust, custody, bailment, or similar arrangements do not form part of the insolvency estate. Likewise, the Code recognises the special treatment of collateral, set-off, and multilateral netting arrangements. Consequently, a substantial portion of what the SMC seeks to protect is already outside the pool of assets available for distribution among creditors under the IBC.

The SMC's emphasis on settlement finality and collateral protection therefore does not undermine insolvency law; it largely operates in respect of assets and obligations that insolvency law itself treats differently. Viewed through this lens, the two Codes are better understood as complementary than competing regimes. The real challenge lies elsewhere: how should a CC or CM be resolved if it fails?

The SMC clearly contemplates such failures. Its provisions address the consequences of insolvency, liquidation, and resolution proceedings. They protect settlement finality, netting arrangements, and collateral enforcement even after insolvency proceedings commence. Yet the SMC does not itself provide a resolution framework for CCs and CMs. Nor does the ordinary framework of the IBC.

The SMC should neither be viewed as an alternative insolvency regime nor as a challenge to the IBC

FSPs are generally excluded from the IBC's scope. Parliament recognised, however, that some categories of FSPs may require the IBC's procedural architecture with modifications suited to their specialised functions. Section 227 of the IBC, therefore, empowers the central government, in consultation with the relevant regulator, to apply the insolvency framework to specified categories of FSPs with appropriate modifications.

Read together, the SMC and Section 227 demonstrate that a workable resolution framework can be constructed. The IBC supplies the procedural machinery, while the SMC identifies the modifications required to preserve settlement finality, close-out netting, collateral protection, and the continuity of critical market functions. This, however, is an interim solution at best. The policy question is whether India should continue to rely on the modified framework under Section 227 or establish a dedicated resolution regime for financial institutions.

CCs and CMs are unlike ordinary commercial enterprises. They handle client assets, intermediate transactions among market participants, and perform functions that are essential to the stability of financial markets. Their failure can have consequences that extend far beyond their shareholders and creditors. In many respects, they resemble banks, payment systems, and other systemically important financial institutions more than manufacturing companies or trading firms.

This points to a broader policy question. Not all FSPs are alike. Some hold substantial customer assets, perform critical infrastructure functions, or pose systemic risks. Others operate in a manner that is economically similar to ordinary commercial enterprises. Treating all FSPs identically may, therefore, be neither necessary nor desirable. India should adopt a differentiated resolution architecture.

Systemically important institutions should ideally be resolved under a financial resolution framework designed specifically for financial-sector failures. At the other end of the spectrum are FSPs whose business models and risk profiles closely resemble those of real-sector firms. There is little reason why such entities cannot continue to be resolved under the IBC's ordinary framework. Between these two categories lie institutions that require modifications to conventional insolvency rules but do not justify a separate resolution statute. Section 227 of the IBC provides an appropriate bridge for such entities.

Such an approach would preserve the coherence of India's insolvency architecture. Insolvency law functions best when it remains unified. Creating sector-specific insolvency exceptions through isolated provisions scattered across multiple statutes, as in the SMC, risks fragmenting the insolvency framework and misallocating resources. Any departure from the general insolvency regime should ordinarily be accommodated within the insolvency framework itself.

The SMC should therefore neither be viewed as an alternative insolvency regime nor as a challenge to the IBC. It identifies the market-stability safeguards that any insolvency framework applicable to securities market infrastructure institutions must respect. The IBC provides the institutional and procedural framework through which those safeguards can be implemented.

The debate therefore should move beyond the question of whether the SMC and the IBC overlap. The overlap is far smaller than commonly assumed, largely because much of the subject matter of the SMC concerns third-party assets and settlement arrangements that lie outside the insolvency estate itself. The more important issue is the gap that the debate has exposed: the absence of a comprehensive resolution framework for FSPs.

The SMC has not created that gap; it has merely exposed it. The challenge before policymakers is not to choose between the SMC and the IBC, but to design a resolution architecture that preserves market stability, protects client assets, and maintains the integrity of the insolvency process.

Sebi's blind spot sits just above Tata Sons: it's time to address it

Disclosure rules protect investors in 26 listed Tata companies but not from shocks at a level that actually controls their fate

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are, respectively, chairperson, Excellence Enablers, and former chairman, Sebi, UTI and IDBI; and managing partner, Regstreet Law Advisors and a former Sebi officer.

BLOOMBERG

On 18 August, Tata Sons will hold its annual general meeting (AGM) and only one of its two largest charitable trusts will be entitled to cast a vote. The Sir Ratan Tata Trust, which together with the Sir Dorabji Tata Trust accounts for just over half of the roughly 66% of Tata Sons held collectively by Tata Trusts, a network of some 15 family trusts, has been restrained from participating in trust decisions by the Maharashtra Charity Commissioner, pending an inquiry into the composition of its board, an order that Tata Trusts have publicly contested as procedurally irregular and issued without a hearing. A separate decades-old dispute, over the 1989 transfer of 833 Tata Sons shares from the Navajbai Ratan Tata Trust to the late Naval Tata, has since resulted in a formal complaint to the Commissioner and a remarkable demand from an incumbent Tata Trusts vice-chairman for an independent probe of his own institution.

Layer this onto the still-unresolved question of N. Chandrasekaran's third term as Tata Sons chairman, deferred at a board meeting in February and now pushed to the August AGM, and one has three live governance disputes with a direct bearing on who controls the promoter of 26 listed companies with a combined market value that Tata's own investor disclosures put at more than $328 billion as of March 2025.

None of it has triggered a single disclosure under the Securities and Exchange Board of India's (Sebi) Listing Obligations and Disclosure Requirements (LODR) regulations of 2015. None of it need have. And that is the point.

The LODR's disclosure architecture, while extensively amended in recent years, is built around one governing assumption: that the entity making disclosures and the one whose governance matters to investors are the same, or at most one step removed through a 'material subsidiary.' Regulation 30 requires listed companies to disclose material events concerning themselves and their subsidiaries. It says nothing about material events at the level of the promoter above them that may control their board composition, capital allocation and, not infrequently, their very existence.

For most listed Indian firms, this gap is academic, since the promoter is an individual, a family or a company that is itself listed or closely held in a legally uncomplicated way. Tata Sons makes the gap impossible to ignore as the control chain runs through an unlisted core investment company regulated by the Reserve Bank of India (RBI) for prudential purposes, sitting beneath charitable trusts governed by the Maharashtra Public Trusts Act and answerable to a charity commissioner, not Sebi, nor stock exchanges, and nor to shareholders of group companies in any formal sense.

Consider what this means in practice. When the board of Tata Sons deferred Chandrasekaran's reappointment on 24 February, a decision material enough to create a three-month leadership vacuum at the group's apex, not one of the 26 listed Tata companies was obliged to inform its own shareholders. When the charity commissioner restrained the Sir Ratan Tata Trust from functioning in May, pending an inquiry, the same silence applied. Investors in some of India's most widely held stocks learnt of both developments from newspapers, not from stock exchange filings because the LODR framework gave no listed company a legal hook on which to hang a disclosure.

This is not criticism of Tata Sons' compliance. Tata Sons has no LODR obligation to breach, because it is not listed. It is criticism of the framework. The Tata situation happens to be the clearest illustration that India's markets have produced of a structural blind spot that predates it and will outlast it. Every large business house built around a holding-company or trust structure above its listed operating companies, and there are several, sits in some version of the same gap. The difference is that at most of them, the upper layer stays quiet. At the Tata Group, three separate disputes have surfaced within months of one another, at three different points in the same control chain, making visible in real time exactly what the disclosure framework is not built to see.

The fix need not be as complicated as the problem looks. Sebi's regulatory toolkit already reaches deep into questions of beneficial ownership and control across entity lines: the concept of "persons acting in concert" under its Takeovers Regulations looks beyond immediate shareholders to connected parties, and LODR's related-party transaction framework looks beyond the immediate corporate entity to connected transactions. Both exist because control, not formal listing status, is what securities regulation is meant to police. There is no principled reason that logic should stop at the boundary of an immediate listed entity. A workable fix does not require Sebi to regulate charitable trusts or unlisted NBFCs directly, which would exceed its mandate and invite jurisdictional conflict with RBI and state charity authorities. It calls for something narrower: a disclosure trigger that sits with the listed entity and is activated when a person or entity which controls its promoter undergoes a change in control, a material governance dispute, or a regulatory restraint with a clear bearing on that control, and is reportable by the listed company on the basis of information it can reasonably be expected to seek from its promoter.

This is close to how LODR's existing disclosure obligations already function: the obligation sits with the listed entity, but the trigger can originate upstream in connected or controlling persons. Extending the same logic to promoter-level control events would not be a radical departure from the LODR's architecture, but would complete it.

The timing is apt. The government has already introduced the Securities Markets Code, 2025, now before a parliamentary standing committee, to consolidate and modernize the foundational statutes underlying India's securities regulation. A code-level provision addressing promoter-level material events, rather than a piecemeal circular, would ensure that the fix survives the next round of holding-company litigation, whichever conglomerate it involves next.

The Tata Group's minority shareholders—and there are millions who hold Tata equity either directly and through mutual funds and insurance policies—have a clear interest in knowing who controls their companies' ultimate promoter and whether that control is secure, contested or under regulatory scrutiny. That interest does not currently show up anywhere in the disclosure regime built to protect it. It must. The earlier, the better.

This is the first of a two-part series.

ANNEXURE II - ARTICLE 21

Judicial scrutiny of SEBI: an obstinate regulator?

This week, the actions of SEBI faced rigorous evaluation by the Bombay High Court and the Securities Appellate Tribunal, raising questions over its transparency and accountability.

Sumit Agrawal | Bar & Bench | 5 December 2023

This week, the actions and oversights of the Securities and Exchange Board of India (SEBI) faced rigorous evaluation by two judicial forums, shedding light on apprehensions regarding its compliance, transparency, and accountability.

Both the Bombay High Court and the Securities Appellate Tribunal (SAT) underscored that the regulator, often quick to accuse, is not beyond scrutiny and far from being regarded as sacrosanct.

Bombay High Court's rebuke (Ashok Dayabhai Shah v. SEBI)

In Ashok Dayabhai Shah v. SEBI, the High Court criticized SEBI for failing to comply with its October order stating that SEBI must act in public interest. The Court had previously directed SEBI to provide specific investigation documents to the petitioners, minority shareholders of Bharat Nidhi Limited, following their complaints about various non-disclosures and securities law violations by the company. Both the company and SEBI had challenged the order before the Supreme Court, but the appeals were dismissed in November.

The minority shareholders had alleged that SEBI's investigation into securities law violations by Bharat Nidhi Limited was a farce, also claiming that they were not provided with the investigation report or the relevant documents so as to ensure fair proceedings.

SEBI had quickly revoked the orders levelling such allegations against the company. It argued in the Bombay High Court that since the settlement order had been revoked, there was nothing left to address in the petitions. However, the High Court expressed dismay at the regulator's persistent non-compliance, emphasizing that as a public body, SEBI must act in public interest and adhere to court orders.

The High Court found SEBI's approach astonishing and suggested that it could erode investor confidence in the regulatory body. It was found that SEBI has resorted to all possible efforts not to comply with the Court's order. It is relevant to see what exactly irked the High Court:

> *"It is quite intriguing to note the approach of the SEBI, as clearly seen from the events which had transpired, and from the obstinate stand taken by the SEBI in not furnishing the documents to the petitioners in relation to respondent Nos. 2 to 9. There has been persistent non-compliance of such orders passed by the Court, despite the Special Leave Petition of the SEBI being rejected, is too far to be imagined nay totally unacceptable. SEBI is a public body, it is required to act in public interest, it needs to comply with the orders passed by this Court, more particularly, when the orders have attained finality in the facts and circumstances of the present case, cannot be countenanced that SEBI would resort to such actions only when and, or, as may be, commanded by respondent Nos. 2 to 9. Such approach of the SEBI, in our opinion, would cause a dent to the confidence, the investors would repose in the SEBI, which needs to function solely to further the object and purpose, for which it is created by the Act of the Parliament. We are constrained to make such observations being quite astonished by the stand taken by SEBI from time to time, in relation to the present proceedings. Even assuming that the petitioners are not correct on their contentions on the different stands being taken by the SEBI, however, the SEBI needs to be consistent and firm in whatever it proposes to do in such eventuality, and above all, such actions must inspire confidence of the investors as also of the Court."*

The High Court directed SEBI to expeditiously adjudicate the show cause notice issued to the company and ordered the immediate provision of documents to the petitioners, emphasizing SEBI's obligation to comply with the court's orders.

Securities Appellate Tribunal's criticism (Kirloskar Brothers Limited)

In October 2020, SEBI imposed a six-month market access restriction on the appellants in the Kirloskar Brothers Limited case. SAT stayed SEBI's order, provided the appellants undertook not to sell Kirloskar

Industries Limited (KIL) shares. On October 12, 2022, SAT quashed SEBI's order, lifting all restrictions on the appellants. Despite this, the appellants' KIL shareholding remained frozen for months. Unsuccessful attempts to unfreeze shares through the National Securities Depository Limited (NSDL) led the appellants to approach SAT again.

SAT criticized SEBI's lack of follow-up, highlighting unaddressed emails from NSDL and the appellants. This raised concerns about SEBI potentially neglecting investor interests, contrary to its mandate.

The judgment emphasized the importance of a proactive regulatory stance and imposed costs of ₹5 lakh on SEBI.

This case mirrored another recent case, Cynthia Pinto De Andrade v. SEBI, where SAT imposed costs on SEBI for not registering and hearing an investor complaint despite a direction by the Appellate Tribunal.

SEBI's frequent appeals to the Supreme Court, often seeking relief from costs, raise questions about regulatory accountability. The ongoing dispute between SEBI and SAT, discussed earlier, highlights the need for a comprehensive evaluation of SEBI's actions and structural changes to ensure accountability.

Drawing parallels with the concept of the corporate veil, the critique of SEBI's decision-making processes underscores the necessity for reforms in delegation and delegated legislation.

While the Supreme Court has been lenient in overturning or staying costs, the question arises whether such leniency should be considered a given by a regulatory body without learning from judicial forums.

From a policy perspective, India is still deliberating whether administrative officers or technical experts, who are expected to perform quasi-judicial functions, possess the necessary capabilities to handle the extensive powers granted to a regulator by statute. The Supreme Court has asserted in the past that only judges and advocates should be considered for appointment as judicial members of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

Not too long ago, SEBI engaged in contentious actions that led to an apology to the Supreme Court of India during contempt proceedings. SEBI was reprimanded for unjustly cherry-picking by selectively disclosing information and providing documents, contrary to the Supreme Court's direction. SEBI played with fire as it resisted providing complete documents even after the dismissal of its review petition by the highest court of the country.

The current legal scrutiny underscores the immediate need for SEBI to review its methodologies, guarantee transparency and accountability, and commit to safeguarding public interest. Essential reforms in regulatory frameworks are crucial to instill investor confidence and preserve the integrity of financial markets.

A draft of Finance Minister Nirmala Sitharaman's proposal for the Securities Market Code, aimed at consolidating all laws pertaining to the specific market, is pending release for public consultation. It is hoped that there are statutory safeguards within the code to ensure accountability of the markets regulator.

Sumit Agrawal is the Founder of Regstreet Law Advisors. He is the author of a book on the SEBI Act and a former SEBI Officer. Views are personal.

Source: barandbench.com/columns/judicial-scrutiny-of-sebi-an-obstinate-regulator

SAT imposes costs on SEBI for passing another mechanical order: need for a Uniform Securities Code

A Uniform Securities Code will enhance accountability, transparency, and fairness within the securities regulatory framework.

Sumit Agrawal | Bar & Bench | 13 December 2024

Bar & Bench previously published three articles titled: Imposition of costs: a tussle between SAT and SEBI; Playing with the fire: SEBI apologizes to the Supreme Court of India in contempt proceedings; and Judicial scrutiny of SEBI: an obstinate regulator? These analysed regulatory orders that attracted costs from the Securities Appellate Tribunal (SAT) and strong comments from the Bombay High Court. These instances highlighted occasions where the Securities and Exchange Board of India (SEBI) could have heeded judicial nudges but chose instead to defend its orders on technical grounds.

This quick article focuses on a recent SAT order where SEBI was admonished for passing a mechanical order. The case involved SRBC, a reputed CA firm which served as an auditor for a publicly listed company, Infibeam Avenues. SEBI's Adjudicating Officer (AO) imposed a ₹10 lakh penalty on SRBC in an order dated June 29, 2022. SAT set aside the penalty, imposed ₹1 lakh costs on SEBI, and advised SEBI authorities to examine facts holistically and exercise restraint in passing mechanical orders.

Case overview

The matter arose from an admitted inadvertent error by SRBC, where an email containing Infibeam's financial information was accidentally sent to an unintended recipient, another client of SRBC. SRBC promptly rectified the mistake by having the recipient delete the email and its attachments, by sending one of its employees personally to meet that unintended recipient.

SEBI, however, contended that this act violated Regulation 3(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), which mandates insiders to handle unpublished price-sensitive information (UPSI) with care and on a strict need-to-know basis. SEBI argued that SRBC failed to establish mechanisms to prevent such incidents, alleging a breach of its duties as Infibeam's auditor.

SAT observed that Regulation 3(1) does not explicitly prescribe any specific mechanism. It rejected SEBI's interpretation as imaginary and unsustainable. Moreover, SAT dismissed SEBI's assertion that penalties must be imposed irrespective of whether the violation was inadvertent or remedial measures were taken. It emphasised that such an approach would lead to absurd outcomes.

In the case of Piramal Enterprises Limited v. SEBI, a penalty was imposed on Piramal Enterprises Limited (PEL) and its directors for allegedly violating the need-to-know basis principle by sharing information with Anand Piramal, who held no position in the company but had prior knowledge of a decision to sell part of PEL to Abbott Laboratories Limited. It was found that Anand was signatory to a non-compete agreement as part of the business transfer agreement and hence needed to know. The SAT, while setting aside SEBI's order, emphasised that:

> *"SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty."*

Critique of SEBI's enforcement approach

SEBI's reliance on the Supreme Court judgment in SEBI v. Shri Ram Mutual Fund, particularly the phrase that penalty is attracted as soon as the contravention is established, has often resulted in rote and context-blind enforcement. SAT, in this order, underscored the importance of context and intent in regulatory adjudication.

This is not an isolated instance. SAT has previously criticised SEBI for its callous attitude, and actions amounting to judicial dishonesty. It has flagged SEBI's harsh and unwarranted orders and remarked on SEBI's conduct being detrimental to the interests of the securities market, in Umashankar Agarwal v. SEBI.

In some cases, SAT has noted gross negligence on part of various officials of SEBI including the concerned Whole-time Member of SEBI, and has either imposed costs or remanded matters, remarking, in Santosh Vishram Ghadshi v. SEBI, that it hoped that on remand SEBI would entrust the matters to some responsible officer who would apply his mind, in light of the serious irregularities observed.

Need for reform: towards a Uniform Securities Code

While SEBI's role in upholding market integrity is crucial, SAT's rulings highlight the need for proportionate and judicious penalties by the executive branch of the government. This decision is significant in protecting entities from arbitrary penalties while reinforcing accountability in enforcement actions.

In the framework of securities laws, the SAT serves as the primary check on SEBI's extensive enforcement powers and represents the sole judicial body reviewing SEBI's actions before matters reach the Supreme Court. However, addressing systemic challenges within this ecosystem requires structural reforms. The industry keenly anticipates the draft of the proposed Uniform Securities Code, as announced by the Finance Minister of India. It is hoped that this legislative initiative will include provisions to:

- establish definitive time limits for SEBI to complete investigations and issue orders;
- impose restrictions on the delegation of powers within SEBI and to stock exchanges and depositories;
- mandate disclosure of conflicts of interest by SEBI's Chairperson and Whole-Time Members (WTMs);
- enhance transparency in SEBI's annual reports, commensurate with its expanded statutory powers;
- require the Ministry of Law or the Law Commission of India to review instances where SEBI seeks to expand its powers through self-made subordinate legislation; and
- ensure a clear and genuine separation between SEBI's adjudicatory and executive wings.

These measures would substantially enhance accountability, transparency, and fairness within the securities regulatory framework. Simultaneously, statutory amendments should focus on strengthening SEBI's essential powers while curtailing underutilised or redundant powers, guided by data-driven analysis and public feedback.

It is hoped that the Ministry of Finance will take these issues into account and view SAT's advisory in this matter as an opportunity to strengthen the regulatory framework, rather than treating it as an isolated incident.

Sumit Agrawal is Founder of Regstreet Law Advisors and a former SEBI Officer. This article was prepared with the assistance of Akarsh Tripathi, Associate at Regstreet Law Advisors. The views expressed are personal.

Source: barandbench.com/columns/costs-imposed-on-sebi-by-sat-for-passing-another-mechanical-order

Costs, compliance and course-correction: lessons SEBI must learn

The late Justice Tarun Agarwala reminded us that SEBI is a watchdog, not a bulldog.

Sumit Agrawal | Bar & Bench | 3 July 2025

The Securities Appellate Tribunal (SAT) recently delivered a scathing indictment of the Securities and Exchange Board of India (SEBI) in Rajesh Mokashi v. SEBI, dated June 27, 2025.

The Tribunal quashed a SEBI order debarring Rajesh Mokashi, former MD and CEO of CARE Ratings, from associating with any SEBI-registered intermediary. The judgment, which imposed costs of ₹5 lakh on SEBI, panned the markets regulator for wasting judicial time pursuing the case.

Whistleblowers, audits and exoneration

At the heart of the matter are whistleblower complaints from December 2018, alleging that senior officials at CARE Ratings, particularly Mokashi and then Non-Executive Chairman SB Mainak, interfered with the credit rating process to benefit clients paying higher fees. These were related to instruments issued by Dewan Housing Finance Ltd (DHFL), Yes Bank Ltd (YBL), Infrastructure & Financial Services Ltd (IL&FS) and certain other companies. These allegations prompted SEBI to instruct CARE to conduct a forensic audit.

Ernst & Young LLP was brought in for this purpose, and following its forensic audit report, SEBI advised another full-fledged inquiry. CARE turned to former Supreme Court judge Justice BN Srikrishna to lead the investigation. His findings were also unequivocal: there was no evidence to support the claims of interference or misconduct by either Mokashi or Mainak.

Contradictions in SEBI's enforcement action

Notwithstanding these conclusions, SEBI proceeded to issue show cause notices to both individuals. The final order, dated April 20, 2023, presented an odd juxtaposition. It exonerated Mainak, while simultaneously debarring Mokashi for two years, relying heavily on WhatsApp messages and interpretive circumstantial evidence. What made the action more curious was that the same evidence, reviewed by both Ernst & Young and Justice Srikrishna, had previously led to a clean chit for both parties.

While Mainak was begrudgingly exonerated by SEBI due to non-availability on record of adequate and sufficient evidence to conclusively prove the involvement, Mokashi was left to face an enforcement action that, as the SAT later pointed out, lacked legal and evidentiary integrity.

SAT findings

The SAT's judgment is notable not merely for its outcome, but for the language it uses. The ruling states:

> *"SEBI embarked upon another misadventure to conduct one more proceeding through its WTM. The entire exercise has caused a colossal loss of judicial time and resources and above all a miserable trauma of irreparable damage to appellant's reputation besides financial loss and loss of further opportunity to him."*

The Tribunal found that SEBI had fundamentally misconstrued the Srikrishna report. SEBI had brought a technical argument that Justice Srikrishna merely examined whether the alleged interference affected the final rating outcome. However, SAT clarified that this was a complete mischaracterisation and distortion. The report, in fact, squarely addressed whether Mokashi interfered at all, and categorically concluded that he did not. Worse, SEBI's attempt to suggest that it had the benefit of cross-examination that Justice Srikrishna did not, was dismissed as reprehensible. Witnesses, when cross-examined by SEBI, had offered clear denials of any pressure or instruction from Mokashi. One of SEBI's own key witnesses admitted that rating decisions were taken on a consensus basis and that no dissent had ever been recorded.

Ironically, such judgments often prompt a regulator to send its officers for a week or two stints at judicial academies or observational visits to foreign regulators, a gesture more symbolic than substantive. At the same time, the deeper purpose of building institutional mechanisms for fairness and accountability is lost in the absence of meaningful reflection.

A pattern of overreach: SEBI under judicial scrutiny

This case is not a standalone episode. It is part of a pattern that has played out in multiple recent decisions where the SAT and the courts have had to step in to restrain SEBI's overreach. In previous cases too, SAT, the Bombay High Court and the Supreme Court of India have expressed concern over the regulator's conduct. Bar & Bench has chronicled these developments in a series of articles: SAT imposes costs on SEBI for passing another mechanical order; Imposition of costs: a tussle between SAT and SEBI; Playing with fire: SEBI apologizes to the Supreme Court of India in contempt proceedings; and Judicial scrutiny of SEBI: an obstinate regulator? The Supreme Court's caution in RT Agro Pvt Ltd v. SEBI (2022) is instructive: regulators must not adopt hyper-technical postures in enforcement. SEBI, in multiple instances, has refused to course-correct, even in the face of stern judicial nudging. It has continued to pursue matters on tenuous procedural grounds, appealing almost every adverse order to the Supreme Court, while often dismissing substantive exculpatory material in favour of selectively applied evidence.

Enforcement optics vs objectivity

In the Mokashi matter, the regulator's insistence on framing its case around a few internal messages, while dismissing the absence of any formal dissent, appears emblematic of an enforcement culture that has, at times, prioritised optics over objectivity. SEBI's role is not merely to enforce, but to enforce with fairness and proportion. By brushing aside the conclusions of various reports without introducing any new facts or analysis, SEBI not only undermined its own institutional integrity, but also demonstrated a troubling inability to self-correct.

In view of the recent SAT decision and others before it, there is a need for a reassessment of how SEBI approaches quasi-judicial functions and how it treats independent findings when they do not suit its narrative. The call for reform is not new. The lack of clear procedural codification, especially regarding how evidence is appreciated, how cross-examination is treated, and how defence submissions are evaluated, has led to inconsistent and frequently overturned orders. There is an urgent need for standardisation, and perhaps more importantly, for a new regulatory architecture to approach matters with procedural rigour and neutrality.

Structural fairness in regulatory adjudication

The message of institutional restraint and procedural fairness resonates far beyond SEBI. The United States Supreme Court recently, in SEC v. Jarkesy (2024), delivered a landmark 6-3 verdict questioning the constitutional legitimacy of enforcement actions conducted by administrative law judges without sufficient safeguards. The Court held that when the US SEC seeks civil penalties for securities fraud, the Seventh Amendment of the Constitution guarantees the right to a jury trial. Consequently, the ruling effectively stripped the SEC of its ability to unilaterally route such matters through in-house Administrative Law Judges (ALJs), thereby requiring adjudication in federal courts.

While India's regulatory structure may differ in form, the underlying concern, ensuring fairness in administrative adjudication, is a universal imperative that demands comparable scrutiny and reform. In the Adani-Hindenburg saga, an Expert Committee constituted by the Supreme Court had also critiqued the lack of separation between the investigative and adjudicatory functions, noting that this compromises institutional fairness and objectivity. The report submitted by the Committee had suggested that:

> *"A structural reform is needed to separate the investigative and adjudicatory wings. This will promote fair hearing, natural justice, and reduce the perception of bias."*

The road ahead: will SEBI course-correct?

SEBI wields enormous power, and rightly so. In a market-driven economy, safeguarding investor interests and upholding market integrity is a non-negotiable imperative. But enforcement is not an end in itself. It must be exercised with restraint, anchored in due process, transparency and proportional justice. This becomes all the more critical when an institution acts as judge, jury and executioner.

The late Justice Tarun Agarwala articulated this with memorable clarity in Piramal Enterprises Limited & Ors v. SEBI (2019), reminding us that SEBI is a watchdog, not a bulldog. That dictum is not just apt, it is urgent.

Regulatory power, no matter how well-intentioned, is not immune from scrutiny. Institutions must remain tethered to the rule of law. Whole Time Members (WTMs) and senior functionaries of regulatory bodies are subject to legal accountability. And when justice is obstructed by bureaucratic intransigence, it must nevertheless be pursued with clarity and courage, at any cost.

Yet, if precedent is any guide, SEBI's likely response will not be introspection, but escalation. SEBI's institutional muscle is rarely accompanied by institutional humility. When called out, it does not reform, it appeals. Expect a Special Leave Petition, a plea to expunge, or a stay application. In a system where courts often extend leeway to regulators, SEBI has grown comfortable relying on judicial deference, not internal reform.

Let us hope the new SEBI Chairman breaks this cycle.

Sumit Agrawal is the Managing Partner, Regstreet Law Advisors, a former SEBI Officer and an author of a book on the SEBI Act. The article was authored with assistance from Kavish Garach, a Senior Associate. The views expressed are personal. Disclosure: the author represented Mainak before SEBI.

Source: barandbench.com/columns/costs-compliance-and-course-correction-lessons-sebi-must-learn