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**REFORMING THE ARCHITECTURE OF INDIAN
SECURITIES REGULATION: COHERENCE, CAPITAL, AND
COMPLIANCE IN EVOLVING MARKETS SEMINAR PAPER**

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ABSTRACT

This seminar paper undertakes a critical examination of the structural architecture governing Indian securities markets, arguing that the existing regulatory framework assembled incrementally over several decades suffers from fundamental deficiencies in institutional coherence, adaptive capacity, and enforcement effectiveness. The paper maps the principal fault lines in the current framework: jurisdictional overlaps among the Securities and Exchange Board of India, the Reserve Bank of India, the Insurance Regulatory and Development Authority, and the Pension Fund Regulatory and Development Authority; the regulatory vacuum surrounding emergent financial instruments including crypto-assets, artificial intelligence driven trading systems, and tokenised securities; disparities in enforcement outcomes; and the persistent exclusion of retail and non-metropolitan investors from meaningful capital market participation. Drawing upon comparative analysis of regulatory models in the United States, the European Union, and Singapore, and situating the problem within an original analytical construct termed the Coherence-Capital-Compliance (CCC) Matrix, the paper proposes a reform agenda for Indian securities regulation that is legislative in orientation, institutionally grounded, and sensitive to India's constitutional architecture. The paper argues that meaningful reform requires not merely technical amendments but a structural reconceptualization of the regulatory enterprise itself.

Key words: Indian Securities Regulation, Regulatory Architecture, SEBI, Capital Markets, Regulatory Fragmentation, Fintech Regulation, Investor Protection, Comparative Securities Law.

I. INTRODUCTION

There is a particular kind of institutional paradox that characterises India's securities regulatory landscape: a framework that is, simultaneously, sophisticated enough to have produced one of the world's largest equity markets by capitalisation and yet insufficiently equipped to address the regulatory challenges that its own success has generated.¹ The story of Indian securities regulation is, in many ways, the story of reactive law making of statutes enacted in the wake of crises, circulars issued in response to market excesses, and regulatory institutions whose mandates have expanded far beyond what their original architects could have anticipated.

The foundational moment in modern Indian securities regulation was the enactment of the Securities and Exchange Board of India Act in 1992.² That legislation emerged directly from the wreckage of the 1991-92 securities scam, which had demonstrated, brutally and without ambiguity, that a market left to the governance of broker-dominated stock exchanges was a market perpetually susceptible to manipulation, settlement failure, and systemic collapse. The SEBI Act created a statutory regulator with extensive rule-making, investigative, and quasi-judicial powers a genuine departure from the anaemic, advisory body that the Securities and Exchange Board had been in its pre-statutory avatar.

Yet, as Professor Varma noted presciently in the late 1990s, the reform remained 'hostage to institutional path-dependence.'³ The legislative scaffolding accumulated over subsequent decades the Securities Contracts (Regulation) Act, the Depositories Act, the Companies Act of 2013, and a vast corpus of subordinate regulation produced a framework that was comprehensive in ambition but fragmented in execution.⁴ More critically, it was a framework designed for an analogue era, and it has struggled to keep pace with a market that has, over the past fifteen years, become irreversibly digital, algorithmically mediated, and globally interconnected.

This paper proceeds from three interconnected claims. First, that the Indian securities regulatory framework suffers from a structural coherence deficit a fundamental misalignment

¹National Stock Exchange of India, 'Market Capitalisation Data' (NSE, March 2024). India's equity market capitalisation crossed USD 4 trillion in late 2023, placing it among the top five globally a remarkable transformation from the sub-USD 100 billion figure of the early 1990s.

²Securities and Exchange Board of India Act, 1992 (Act No. 15 of 1992). The legislation was enacted in the wake of the Harshad Mehta securities scandal of 1991-92, which exposed grave systemic vulnerabilities in the Bombay Stock Exchange's settlement and clearing mechanisms.

³Jayanth R. Varma, 'Securities Market Regulation in India: Retrospect and Prospects' (1999) 24(8) Economic and Political Weekly M-72. Varma was among the earliest scholars to note that the 1992 reform, while significant, remained hostage to the institutional path-dependence of the pre-reform era.

⁴Securities Contracts (Regulation) Act, 1956 (Act No. 42 of 1956); Depositories Act, 1996 (Act No. 22 of 1996); Companies Act, 2013 (Act No. 18 of 2013). These three instruments, together with the SEBI Act, form what scholars have termed the 'legislative quartet' of Indian securities law.

between the institutional design of regulation and the actual structure of the markets being regulated. Second, that this coherence deficit has concrete and measurable consequences for capital formation, market access, and the allocation of financial risk. Third, that reform, when it comes, must be architecturally serious not merely a patching of specific regulatory gaps, but a reconsideration of the foundational design choices that have produced the present framework. The paper develops an analytical construct the Coherence-Capital-Compliance (CCC) Matrix as a tool for both diagnosing the existing framework's deficiencies and evaluating proposed alternatives.

The argument unfolds across seven parts. Part II traces the historical development of Indian securities regulation, locating the present framework within its legislative genealogy. Part III analyses the principal structural deficiencies of the existing framework through the lens of the CCC Matrix. Part IV addresses the challenge of regulating emergent financial technologies, with particular attention to algorithmic trading, crypto-assets, and ESG instruments. Part V undertakes a comparative analysis of regulatory models in the United States, European Union, and Singapore. Part VI examines the constitutional dimensions of SEBI's regulatory powers. Part VII proposes a reform agenda. Part VIII concludes.

II. OBJECTIVE OF THE STUDY

The present research is conceived as a rigorous multi-dimensional legal inquiry into the structural architecture, regulatory coherence, and enforcement efficacy of Indian securities regulation. The study is animated by the recognition that the existing statutory framework primarily the Securities and Exchange Board of India Act, 1992, read with allied legislation was conceived in a pre-digital, pre-globalisation era and requires critical reassessment in light of contemporary market realities, technological disruption, and India's stated aspirations as a global financial centre, particularly through the GIFT City International Financial Services Centre.

A. Primary Objectives

Objective 1: To critically examine the structural architecture of Indian securities regulation, with particular focus on identifying institutional overlaps, jurisdictional conflicts, legislative This paper proceeds from three interconnected claims. First, that the Indian securities

⁵Securities and Exchange Board of India Act, 1992 (Act No. 15 of 1992), Preamble. The Preamble identifies the three cardinal objectives of the legislation as: protection of the interests of investors in securities; promotion of the development of the securities market; and regulation of the securities market.

regulatory framework suffers from a structural coherence deficit a fundamental misalignment between the institutional design of regulation and the actual structure of the markets being regulated. Second, that this coherence deficit has concrete and measurable consequences for capital formation, market access, and the allocation of financial risk. Third, that reform, when it comes, must be architecturally serious not merely a patching of specific regulatory gaps, but a reconsideration of the foundational design choices that have produced the present framework. The paper develops an analytical construct the Coherence-Capital-Compliance include the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, and the Companies Act, 2013,⁶ together with the subordinate regulations and circulars issued thereunder.

Objective 2: To analyse the adequacy and adaptability of the current Indian securities regulatory framework in addressing emergent challenges posed by technological innovation including algorithmic trading, artificial intelligence-driven trading systems, crypto-assets, and tokenised securities⁷ as well as cross-border capital flows and novel financial instruments such as REITs, InvITs, and ESG investment products. In this regard, the study will examine the framework documents of the Financial Stability Board⁸ and the IOSCO Principles as normative benchmarks.

Objective 3: To develop and propose a coherent, comprehensive, and future-ready reform architecture for Indian securities regulation operationalised through the original analytical construct of the 'Coherence-Capital-Compliance (CCC) Matrix' drawing upon comparative models from the United States (Dodd-Frank framework⁹), the European Union (MiFID II¹⁰), and Singapore (MAS Regulatory Sandbox¹¹), and proposing targeted legislative amendments

⁶Securities Contracts (Regulation) Act, 1956 (Act No. 42 of 1956); Depositories Act, 1996 (Act No. 22 of 1996); Companies Act, 2013 (Act No. 18 of 2013). These statutes collectively constitute the primary legislative infrastructure of the Indian capital markets.

⁷Ministry of Finance, Government of India, Expert Committee on Crypto-Assets, Report (2019). The Committee recommended against recognition of private cryptocurrencies as legal tender while acknowledging the regulatory vacuum with respect to digital assets. See also International Monetary Fund, Global Financial Stability Report (April 2022), Chapter 2, on 'Cryptoization and Regulatory Responses'.

⁸Financial Stability Board, Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: International Standards and Principles (October 2022). The FSB framework sets out high-level principles for crypto-asset regulation applicable to both FSB member and non-member jurisdictions, including India.

⁹Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Dodd-Frank Act created the Financial Stability Oversight Council (FSOC) as an integrated macro-prudential oversight body, a model cited in the FSLRC Report as potentially instructive for India's regulatory architecture.

¹⁰Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments (MiFID II), OJ L 173, 12.6.2014. MiFID II introduced principles-led, harmonised securities regulation across the EU single market, with extensive product governance, transparency, and best execution requirements.

¹¹Monetary Authority of Singapore, FinTech Regulatory Sandbox Guidelines (2016, updated 2019). Singapore's regulatory sandbox model permits financial institutions and technology companies to experiment with innovative products and services within a controlled regulatory environment, subject to appropriate safeguards.

addressing the existing regulatory vacuum in crypto-assets, algorithmic trading, and ESG disclosures.

B. Secondary Objectives

Objective 4: To undertake a structured comparative legal analysis of securities regulatory frameworks in the United States, the European Union, the United Kingdom, and Singapore, with the specific aim of identifying normatively adaptable reform lessons for India, filtered through the socio-economic and constitutional specificities of the Indian context.¹²

Objective 5: To evaluate the constitutional dimensions of SEBI's legislative, quasi-judicial, and adjudicatory powers with particular attention to delegated legislation, procedural fairness in enforcement under Article 14 of the Constitution, the doctrine of proportionality in penalty imposition, and the constitutional validity of certain investigative mechanisms¹³ and to examine the adequacy of appellate mechanisms, including the Securities Appellate Tribunal.

Objective 6: To assess the empirical relationship between the architecture of securities regulation, market efficiency, and capital formation, with reference to quantitative indicators including market capitalisation growth, retail investor participation rates¹⁴, enforcement action frequency¹⁵, and penalty realisation statistics sourced from SEBI Annual Reports, RBI publications, and World Bank indicators.

Objective 7: To examine the regulatory treatment of retail and semi-urban/rural investors within the securities market framework, with particular attention to disclosure obligations and their comprehensibility, the prevalence of mis-selling, the adequacy of investor grievance redressal mechanisms, and the potential for a rights-based approach to financial inclusion and equitable capital access.

¹²See Ministry of Finance, Government of India, Report of the Financial Sector Legislative Reforms Commission (FSLRC), Vol. I (2013) (Justice B.N. Srikrishna, Chair), pp. 23–27, for a comprehensive critique of the multi-regulator architecture and its jurisdictional overlaps.

¹³Securities Laws (Amendment) Act, 2014 (Act No. 22 of 2014). The Amendment substantially enhanced SEBI's investigative powers, introduced disgorgement as a remedy, and raised the ceiling on monetary penalties to Rs. 25 crore or three times the profits made from the contravention, whichever is higher. See *SEBI v. Kishore R. Ajmera*, (2016) 6 SCC 368 (Supreme Court of India), on SEBI's enforcement powers.

¹⁴SEBI, Annual Report 2022–23, Chapter 4 (Market Development), Table 4.12 (Investor Category-wise Distribution of Market Participation). As of March 2023, retail individual investors constituted approximately 89% of the registered investor base by number, yet accounted for less than 38% of turnover on the NSE cash segment, reflecting persistent structural barriers to meaningful retail participation.

¹⁵SEBI, Annual Report 2022–23, Chapter 5 (Enforcement), Table 5.1 (Enforcement Actions Initiated). The data reveal significant concentration of enforcement actions among mid-sized listed entities, with relatively fewer actions taken against large institutional players despite disproportionate market impact.

A. Primary Hypothesis(H₁)

The current Indian securities regulatory framework, characterised by fragmented multi-regulator jurisdiction,¹⁶ reactive legislative responses to technological disruption, and asymmetric enforcement architecture, is institutionally incoherent and structurally inadequate to sustain the capital market demands and investor protection imperatives of a twenty-first century, digitally integrated, globally competitive economy — and, therefore, systemic architectural reform, including the introduction of a Unified Financial Regulatory Code¹⁷ and principles-based legislative instruments, is both necessary and constitutionally feasible.

This primary hypothesis proceeds from the central premise that the deficiencies of the Indian securities regulatory framework are not merely technical or operational in nature, but are rooted in a structural incoherence that cannot be remedied through incremental circulars or piecemeal amendments — a conclusion supported by the findings of the Financial Sector Legislative Reforms Commission.¹⁸ It posits that the resolution of this incoherence requires deliberate architectural redesign, and that such redesign is capable of being implemented within the existing constitutional framework through appropriate exercises of legislative competence under the Seventh Schedule of the Constitution of India.¹⁹

Another Important Factors

1. Regulatory Fragmentation and Jurisdictional Incoherence: The concurrent and often conflicting jurisdictions of SEBI, RBI, IRDAI, and PFRDA over hybrid financial instruments, foreign portfolio investments, and derivatives markets²⁰ generate systemic regulatory arbitrage, impair market predictability, and undermine investor confidence creating measurable distortions in the efficient allocation of capital across the Indian economy.

¹⁶FSLRC Report, Vol. I (2013), pp. 45–52. The Commission concluded that India's existing financial regulatory architecture is 'sector-based rather than function-based', resulting in regulatory arbitrage, inconsistent consumer protection, and systemic risk blind spots. The Commission recommended a shift to an objectives-based, twin-peaks regulatory model.

¹⁷FSLRC Report, Vol. II (Draft Indian Financial Code) (2013). The Draft Code remains the most comprehensive effort at legislative consolidation of Indian financial regulation, proposing a principles-based Unified Financial Regulatory Code that would replace or modify over a dozen existing statutes.

¹⁹Constitution of India, Seventh Schedule, List I (Union List), Entry 46 (Stock exchanges and futures markets); Entry 43 (Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations); List III (Concurrent List), Entry 26 (Commercial and industrial monopolies, combines and trusts). The distribution of legislative competence in the financial sector is complex and has generated significant litigation.

²⁰Reserve Bank of India, Report of the Inter-Regulatory Technical Group on Fin-Tech and Digital Banking (2018); see also SEBI, Consultation Paper on Algorithmic Trading (2016). The regulatory boundary between SEBI and RBI with respect to exchange-traded currency derivatives and interest rate derivatives remains a persistent source of jurisdictional ambiguity.

- 2. Legislative Inadequacy for Emerging Financial Instruments:** The existing statutory corpus governing Indian securities markets is fundamentally ill-equipped to regulate crypto-assets, tokenised securities, artificial intelligence-driven trading systems, and ESG investment products,²¹ insofar as regulatory responses in these domains have remained largely circular-based, ad hoc, and devoid of the legislative backing necessary for sustained and constitutionally robust enforcement in stark contrast to the comprehensive statutory frameworks adopted in the European Union under MiCA²² and the United Kingdom under the Financial Services and Markets Act, 2023.
- 3. Enforcement Asymmetry and Deterrence Deficit:** Notwithstanding the significant enhancement of SEBI's quasi-judicial and penal powers under the Securities Laws (Amendment) Act, 2014, empirical evidence²³ discloses persistent asymmetry in enforcement outcomes across market participants particularly in relation to insider trading²⁴, fraudulent and unfair trade practices, and corporate governance violations indicating that the existing penalties regime, calibrated against market capitalisation, fails to function as an effective deterrent.
- 4. Structural Inequity in Capital Market Access:** The concentration of capital market participation among institutional investors and urban affluent segments²⁵ reflects a structural inequity embedded within the regulatory design itself and the absence of affirmative regulatory mechanisms to incentivise retail participation among semi-urban and rural demographics constitutes a failure of the democratisation mandate implicit in SEBI's statutory objectives under section 11 of the SEBI Act, 1992.
- 5. Comparative Reform as Normative Benchmark:** Comparative securities regulatory frameworks in particular the post-Dodd-Frank integrated risk-based architecture of the United States, the principles-led harmonisation pursued under MiFID II in the European

²²Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (MiCA), OJ L 150, 9.6.2023. MiCA constitutes the world's first comprehensive legislative framework for crypto-asset regulation, providing a model for statutory intervention as opposed to the circular-based approach currently prevailing in India.

²³SEBI, Annual Report 2022–23, Chapter 5 (Enforcement), para 5.2.3 (Insider Trading Cases). The Report discloses 48 insider trading investigation orders in 2022–23, of which 31 resulted in cease and desist directions and 17 in monetary penalties. However, disgorgement proceedings a potentially more effective deterrent were initiated in only 9 cases.

²⁴Securities and Exchange Board of India v. Rakhi Trading Pvt. Ltd., (2018) 13 SCC 753 (Supreme Court of India). The Court held that SEBI's burden of proof in establishing fraudulent and unfair trade practices under Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, is the civil standard of preponderance of probabilities, not the criminal standard of beyond reasonable doubt.

²⁵SEBI, Consultation Paper on Investor Participation in the Securities Market (2022). The Paper acknowledges that geographic concentration of demat account holders with approximately 62% of accounts held in the top five metropolitan cities indicates structural barriers to retail market access among semi-urban and rural populations.

Union, and the technology-responsive regulatory sandbox model of the Monetary Authority of Singapore²⁶ offer normatively appropriate and contextually adaptable reform blueprints for India, subject to modification in light of India's constitutional structure, federal legislative competence, and socio-economic specificities.

- 6. Constitutional Validity of Proposed Reforms:** The architectural reforms proposed in this thesis including the consolidation of financial regulatory jurisdiction, the enactment of a Unified Financial Regulatory Code, and the creation of a statutory digital assets framework are constitutionally feasible within the existing distribution of legislative competences under the Seventh Schedule of the Constitution of India,²⁷ and are consistent with the constitutional jurisprudence on delegated legislation and the powers of quasi-judicial bodies as articulated by the Supreme Court of India.²⁸

III. SCOPE AND LIMITATIONS OF THE STUDY

A. Scope

The present study encompasses the entirety of the Indian securities regulatory framework, including primary legislation (the SEBI Act, 1992; the Securities Contracts (Regulation) Act, 1956; the Depositories Act, 1996; the Companies Act, 2013), subordinate regulations, SEBI circulars and guidelines, judicial and quasi-judicial pronouncements of the Supreme Court of India, the High Courts, and the Securities Appellate Tribunal,²⁹ as well as the reports of key legislative and executive committees including the FSLRC Report (2013) and the Expert Committee on Crypto-Assets.

The comparative dimension of the study encompasses securities regulatory frameworks in four jurisdictions: the United States (the Securities Exchange Act, 1934; the Dodd-Frank Act, 2010, the European Union (MiFID II; Market Abuse Regulation; ESMA structure), the United Kingdom (the Financial Services and Markets Act, 2000; FCA framework), and Singapore (the Securities and Futures Act; MAS regulatory framework and FinTech Regulatory Sandbox). The temporal scope extends from the enactment of the SEBI Act, 1992, to the most recent legislative and regulatory developments as of the date of submission.

²⁸Madras Bar Association v. Union of India, (2014) 10 SCC 1 (Supreme Court of India), on the constitutional validity of the National Company Law Tribunal. The judgment articulates the constitutional limits on the transfer of judicial functions to quasi-judicial tribunals, with direct relevance to the constitutionality of SEBI's adjudicatory architecture.

²⁹ Securities Appellate Tribunal v. SEBI: On the constitutional validity of SAT's jurisdiction, see SEBI v. Pan Asia Advisors Ltd., [2015] SAT Order dated 12 January 2015, and the analysis in Somasekhar Sundaresan, 'The Securities Appellate Tribunal: Jurisdiction, Powers and Practice' (2017) 2 Indian Journal of Law and Technology 45.

B. Limitations

The following limitations are acknowledged in the interest of intellectual honesty and transparency:

- The rapidly evolving regulatory landscape governing crypto-assets and digital securities — particularly in light of the global adoption of MiCA in the EU and the proposed Digital Assets (Regulation) Bill in India — may render certain findings subject to revision in light of subsequent legislative or regulatory action.
- Access to certain empirical data, particularly disaggregated SEBI enforcement data and retail investor demographic statistics, may be constrained by the availability and granularity of publicly disclosed information.
- The comparative analysis, while drawing upon four significant jurisdictions, does not purport to be exhaustive of all relevant international models, and emerging frameworks in jurisdictions such as Japan (FSA), Australia (ASIC), and the UAE (FSRA/ADGM) are referenced only peripherally.
- The constitutional law dimension of this study is doctrinal in nature and does not encompass empirical analysis of judicial behaviour or the attitudinal disposition of constitutional courts.

IV. RESEARCH METHODOLOGY

This study adopts a pluralistic methodological framework that integrates doctrinal, comparative, and empirical legal research, calibrated to the multi-dimensional nature of the central research problem.

A. Doctrinal Legal Research

The primary methodological approach involves a systematic and critical analysis of primary legal sources, encompassing statutes, subordinate regulations, SEBI circulars and guidelines, judicial decisions of the Supreme Court and the High Courts, and quasi-judicial orders of SEBI and the Securities Appellate Tribunal.³⁰ The interpretive methodology employed is a combination of textual analysis, purposive construction, and constitutional interpretation, drawing upon the principles enunciated by the Supreme Court in relation to delegated legislation, procedural fairness, and the separation of powers.

³⁰On doctrinal legal research methodology in the context of financial law, see Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 83.

B. Comparative Legal Research

A structured comparative analysis will be undertaken of the securities regulatory frameworks in four jurisdictions. The comparative methodology follows the functionalist approach³¹ identifying regulatory problems common across jurisdictions and comparing the legal solutions adopted while remaining attentive to the limitations of uncritical transplantation. Reform lessons will be filtered through the socio-economic, constitutional, and institutional specificities of the Indian context.

C. Empirical and Analytical Research

Secondary empirical data sourced from SEBI Annual Reports, the RBI's Financial Stability Reports, stock exchange disclosures, World Bank Doing Business and Global Financial Development indicators, and FSB surveillance reports³² will be deployed to contextualise and validate doctrinal findings. Quantitative indicators will be analysed to assess the practical effectiveness of the current regulatory architecture.

VI. THE LEGISLATIVE GENEALOGY OF INDIAN SECURITIES REGULATION

Understanding what is wrong with the current Indian securities regulatory framework requires first understanding how it came to be. The framework did not emerge from a single constitutional moment or a unified legislative vision. It accumulated, layer by layer, in response to specific market failures, political pressures, and the gradual recognition that what had been designed for one era was insufficient for the next.

The starting point, if one must have one, is the Capital Issues (Control) Act of 1947 a piece of legislation whose very title captures the economic philosophy of an era in which capital flows were treated as instruments of national planning rather than market allocation. Under this Act, the Controller of Capital Issues, a government functionary, held the power to approve the pricing and issuance of securities. For nearly forty-five years, this administrative apparatus served as the primary mechanism of capital market regulation an approach that was, in retrospect, fundamentally incompatible with market development.

³¹On the functionalist comparative legal method, see Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (3rd ed., Clarendon Press, 1998), pp. 32–47. The functionalist method identifies the social problem that a legal rule is designed to solve and compares how different legal systems resolve that problem — a methodology particularly suited to regulatory law.

³²SEBI Annual Reports (2015–2024), available at <https://www.sebi.gov.in/annual-reports.html>; RBI Financial Stability Reports (2015–2024), available at <https://www.rbi.org.in>; World Bank, *Global Financial Development Database*, available at

<https://www.worldbank.org/en/publication/gfdr/data>.

The liberalisation of 1991, triggered by a balance of payments crisis that was itself partly attributable to the distortions of the controlled-capital regime, precipitated a regulatory transformation. The abolition of the Capital Issues (Control) Act and the simultaneous empowerment of SEBI as a statutory regulator represented a genuine paradigm shift from administrative control to market regulation, from price control to conduct regulation. The SEBI Act of 1992 conferred upon the new regulator a broad mandate: the protection of investors, the development of the securities market, and the regulation of intermediaries.³³

What followed was a period of intense institution-building. The National Stock Exchange was established in 1992, bringing screen-based electronic trading and demutualisation to an exchange landscape previously dominated by the open-outcry Bombay Stock Exchange. The Depositories Act of 1996 enabled the dematerialisation of securities, eliminating the paper-based settlement system that had been a vector of the 1992 frauds. The Securities Laws (Amendment) Act of 2014 substantially enhanced SEBI's enforcement powers.³⁴ Each of these interventions addressed a specific identified deficiency. None of them reconsidered the overall architecture.

This piecemeal evolution has a characteristic that legal scholars have identified in several post-colonial regulatory systems: the accretion of formal institutions without a corresponding integration of regulatory purpose. The Financial Sector Legislative Reforms Commission, in its path-breaking 2013 report, identified this precisely.³⁵ The Financial Sector Legislative Reforms Commission (2013) identified a systemic lack of legislative cohesion in India's financial regulatory framework, noting that laws had evolved in a fragmented and time-layered manner, often reflecting divergent regulatory philosophies and operating without an integrated coordination mechanism. untenable The statutory establishment of SEBI in 1992 marked a decisive institutional shift in India's approach to securities market governance. This transition was catalysed by the systemic failures exposed during the 1991–92 securities scam, centralized oversight and enforcement authority.

Professor Varottil's concept of 'regulatory autochthony' the process by which transplanted legal which revealed the vulnerabilities of an exchange-dominated regulatory environment lacking

³⁴Securities Laws (Amendment) Act, 2014 (Act No. 22 of 2014). The Amendment significantly enhanced SEBI's enforcement arsenal, introducing disgorgement of unlawful gains, attachment of property, and enhanced penalties of up to Rs. 25 crore or three times the unlawful gains, whichever is higher.

³⁵Financial Sector Legislative Reforms Commission, 'Report of the Financial Sector Legislative Reforms Commission, Volume I' (Ministry of Finance, Government of India, 2013) ['FSLRC Report']. The Commission, chaired by Justice B.N. Srikrishna, proposed a sweeping consolidation of financial regulation into a unified code.

norms acquire indigenous institutional character is illuminating here.³⁶ Indian securities law has borrowed extensively from American and British models: SEBI's structure reflects the U.S. Securities and Exchange Commission; the insider trading regulations echo the American misappropriation doctrine; the disclosure-based regime for public offerings mirrors UK practice. But these borrowed forms have been absorbed into an institutional environment characterised by limited state capacity, judicial backlog, and a political economy that has historically been ambivalent about private capital markets. The result is a legal transplant that has taken root but not fully flourished.

VII. DIAGNOSING THE FRAMEWORK: THE COHERENCE-CAPITAL-COMPLIANCE-MATRIX

Any analytical framework for evaluating a regulatory system must begin with a theory of what good regulation is supposed to do. The International Organization of Securities Commissions identifies three primary regulatory objectives: investor protection, market fairness and efficiency, and systemic risk reduction.³⁷ These objectives are not independent they interact, sometimes synergistically and sometimes in tension. A regulatory framework that is excellent at investor protection but poor at systemic risk governance may inadvertently suppress the market development that makes investor protection worthwhile. Conversely, excessive attention to systemic stability can create conditions of regulatory capture that undermine fairness.

The Coherence-Capital-Compliance (CCC) Matrix, proposed in this paper as an analytical tool, organises these concerns into three evaluative dimensions. Coherence refers to the degree of institutional and normative alignment within the regulatory framework the extent to which different regulatory bodies, legislative instruments, and enforcement mechanisms are mutually reinforcing rather than contradictory. Capital refers to the framework's effectiveness in facilitating productive capital formation, enabling market access, and supporting financial inclusion. Compliance refers to the framework's capacity to secure adherence to its norms through effective enforcement, credible deterrence, and behavioural alignment.

³⁶Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 American University International Law Review 253. Varottil's framework of 'regulatory autochthony' the process by which transplanted legal norms acquire indigenous institutional character is useful for understanding SEBI's developmental trajectory.

³⁷International Organization of Securities Commissions, 'Objectives and Principles of Securities Regulation' (IOSCO, 2017) Principle 1. IOSCO identifies three overarching regulatory objectives: investor protection, ensuring fair and efficient markets, and reduction of systemic risk a tripartite framework that maps closely onto the CCC Matrix proposed in this paper.

A. The Coherence Deficit

The most structurally significant deficiency in the current Indian securities regulatory framework is its coherence deficit. Four regulatory bodies SEBI, RBI, IRDAI, and PFRDA have overlapping mandates in relation to capital market instruments.³⁸ The consequences of this overlap are not merely administrative. They are economically significant, generating regulatory arbitrage opportunities that sophisticated market participants exploit at the expense of market integrity.

The SEBI-RBI jurisdictional conflict is the most consequential. Its contours have been extensively and not always coherently delineated by judicial and quasi-judicial authorities. The Supreme Court's 2013 decision in *SEBI v. Sahara India Real Estate Corp.*³⁹ established that SEBI had jurisdiction over instruments that had the economic character of securities, regardless of how they were formally labelled by their issuers. But the decision did not resolve the boundary problem; it merely moved it. Hybrid instruments convertible debentures, structured notes with embedded derivatives, securitised receivables continue to inhabit a regulatory grey zone where SEBI and RBI issue conflicting guidance, and market participants are left to navigate a compliance environment that provides contradictory signals.

The academic literature, particularly the work of Burman and Roy, has attempted to quantify the economic cost of this regulatory fragmentation.⁴⁰ Their estimate that regulatory arbitrage and compliance burden asymmetry impose a deadweight loss equivalent to approximately 0.3-0.5% of GDP annually may be debated in its precise magnitude, but the directional argument is compelling. Markets function most efficiently when regulatory expectations are clear, consistently enforced, and imposed uniformly across economically equivalent activities. The current Indian framework satisfies none of these conditions with respect to its overlapping jurisdictions.

The SEBI-MCA overlap presents a different but equally significant problem. Listed companies are subject to the corporate governance requirements of both the Companies Act 2013 (administered by the Ministry of Corporate Affairs) and SEBI's Listing Obligations and

³⁸Reserve Bank of India, 'Report of the Internal Working Group on Digital Lending' (RBI, 2021) 67-71. The report candidly admitted that the RBI-SEBI boundary over certain structured finance products remained 'contested' and required inter-regulatory protocol.

³⁹Supreme Court of India in *SEBI v. Sahara India Real Estate Corp. Ltd.*, (2013) 1 SCC 1. The Court's extensive treatment of SEBI's jurisdiction over hybrid instruments specifically optionally fully convertible debentures remains the leading authority on the SEBI-Companies Act regulatory boundary.

Disclosure Requirements Regulations.⁴¹ These two frameworks are not identical they differ in their disclosure timelines, related-party transaction thresholds, and board composition requirements. The Government's own National Action Plan for Corporate Governance acknowledged in 2020 that the compliance burden generated by this duplication was paradoxically incentivising companies to avoid listing, thereby reducing the depth of public capital markets.

B. The Capital Formation Gap

The second dimension of the CCC Matrix concerns capital formation the framework's effectiveness in mobilising savings into productive investment and ensuring that this process is accessible to a broad range of participants. Here, the data tells a sobering story.

Despite the remarkable growth in aggregate market capitalisation India's equity market crossed USD 4 trillion in late 2023 participation in this growth has been deeply unequal.⁴² The World Bank's Global Financial Development Report notes that retail investor participation in emerging economy equity markets averages approximately 12-15% of the adult population.⁴³ India's figures, while improving with the growth of Systematic Investment Plans in the mutual fund sector, remain heavily skewed toward urban, educated, and financially literate populations. The semi-urban and rural demographic which represents the majority of India's population remains effectively excluded from equity capital formation.

This exclusion is not purely the result of market failures or investor preferences; it reflects regulatory design choices. The disclosure architecture for public offerings, while technically sophisticated, presupposes a level of financial literacy that the majority of potential Indian investors do not possess. The Securities and Exchange Commission in the United States has grappled with this problem for decades, developing the concept of 'plain English' disclosure as

⁴⁰Anirudh Burman and Shubho Roy, 'Why India Needs an Integrated Financial Regulator' (2018) Carnegie India Working Paper 12. The authors make a compelling economic argument that regulatory fragmentation imposes measurable deadweight losses on capital allocation efficiency.

⁴¹Ministry of Corporate Affairs, 'National Action Plan for Corporate Governance' (2020). The Plan acknowledged that the overlap between SEBI's corporate governance norms for listed entities and MCA's Companies Act provisions had created a compliance burden that, paradoxically, incentivised non-listing.

⁴³World Bank, 'Global Financial Development Report 2019/2020: Bank Regulation and Supervision a Decade after the Global Financial Crisis' (World Bank, 2020) 143. The Report notes that retail investor participation in emerging economy equity markets averages approximately 12-15% of adult population, compared to 55-60% in developed economies.

a partial corrective.⁴⁴ SEBI has taken steps in this direction simplified prospectus formats, Key Information Documents for mutual funds but these remain insufficient given the scale of the financial literacy deficit.

The concentration of market activity among institutional investors, while not inherently problematic, becomes structurally significant when the regulatory framework is calibrated primarily around institutional participation. Margin requirements, circuit breakers, settlement timelines, and disclosure standards have all been set with institutional actors in mind. The consequences for retail participants in terms of market access, information asymmetry, and vulnerability to mis-selling have received insufficient regulatory attention.⁴⁵

C. The Compliance Architecture

The third dimension compliance concerns the framework's capacity to secure adherence to its norms. SEBI's Annual Report 2022-23 reveals a troubling pattern: while the quantum of enforcement action has increased substantially in recent years, the actual realisation of penalties remains low.⁴⁶ Approximately 62% of ordered penalties in insider trading cases are actually recovered a figure that suggests the deterrence function of enforcement is being significantly compromised.

The Securities Laws (Amendment) Act of 2014 substantially enhanced the penalty regime permitting disgorgement of unlawful gains and enhanced penalties of up to Rs. 25 crore or three times the unlawful gain.⁴⁷ These enhancements were necessary, but they have not been sufficient. The problem, as empirical analysis of SEBI enforcement data reveals, is not merely the quantum of penalties but the probability of detection and prosecution. Insider trading, in particular, occurs in markets where information asymmetries are structural and surveillance technologies are finite. The probability that any given instance of insider trading will be detected, investigated, adjudicated, and penalised within a reasonable timeframe is low enough that the expected cost of violation remains well below the expected benefit for sophisticated market participants.

⁴⁴Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). The Act created the Financial Stability Oversight Council (FSOC) as a macro-prudential coordinator across previously siloed regulators a structural innovation with significant lessons for India.

⁴⁵Shyamala Gopinath Committee on Comprehensive Review of National Small Savings Fund (2011). The broader debate about channelling household savings into capital markets rather than government-backed small savings instruments reflects the structural inequity in India's financial intermediation architecture.

⁴⁶SEBI, 'Annual Report 2022-23' (SEBI, 2023) 89. Enforcement data reveals that penalty orders passed by SEBI's adjudicating officers in cases of insider trading recovered approximately 62% of the ordered amount a realisation rate that raises legitimate questions about deterrence.

The Securities Appellate Tribunal, which exercises appellate jurisdiction over SEBI's adjudicatory orders, adds another layer of complexity. SAT pendency data for 2022-23 indicates approximately 1,847 cases pending, with an average disposal time of over fourteen months.⁴⁸ This delay is not simply an inconvenience; it represents a structural failure of the compliance architecture. Extended appellate pendency means that enforcement orders are effectively stayed for extended periods, eroding their deterrent impact and creating an incentive to contest even meritorious orders.

VIII. THE CHALLENGE OF EMERGING FINANCIAL INSTRUMENTS

If the deficiencies described in Part III represent the inheritance of the past the accumulated consequences of historical design choices the challenges examined in this Part represent the pressures of the future. Three categories of emerging financial instruments pose particular regulatory challenges for the Indian framework: algorithmic and artificial intelligence-driven trading, crypto-assets and tokenised securities, and Environmental, Social and Governance investment products.

A. Algorithmic and AI-Driven Trading

Algorithmic trading the execution of securities transactions by computer programmes operating according to pre-defined parameters now accounts for a substantial proportion of trading volume on Indian exchanges. SEBI's own consultation paper of December 2021 acknowledged that existing regulatory provisions were 'inadequate' to address the nuanced risks of algorithmic execution.⁴⁹ This inadequacy has several dimensions.

First, existing regulations do not adequately address the systemic risk posed by the simultaneous activation of similar algorithms across multiple participants the so-called 'flash crash' phenomenon, which has produced temporary but severe market dislocations in several advanced markets. The Indian regulatory framework contains no equivalent of MiFID II's obligation to have 'kill-switch' mechanisms and mandatory stress testing of algorithmic systems.⁵⁰

⁴⁸Securities Appellate Tribunal, Annual Statement of Business, 2022-23. Pendency data indicates that approximately 1,847 cases were pending before SAT as of March 2023, with an average disposal time of 14.3 months raising concerns about the effectiveness of the appellate mechanism as a check on regulatory overreach.

⁴⁹SEBI Consultation Paper on Regulatory Framework for Algo-Trading, December 2021. The Board acknowledged that existing provisions under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 were 'inadequate' to address the nuanced risks of algorithmic execution.

⁵⁰Directive 2014/65/EU of the European Parliament and of the Council on Markets in Financial Instruments (MiFID II) [2014] OJ L173/349. MiFID II introduced requirements for algorithmic trading systems including kill-switch obligations and pre-trade risk controls that remain largely absent from Indian regulatory instruments.

Second, the emergence of artificial intelligence in trading where algorithms learn and adapt rather than executing fixed rules presents a more fundamental challenge to the existing conceptual framework of market manipulation. Traditional manipulation doctrine, as reflected in SEBI's Prohibition of Fraudulent and Unfair Trade Practices Regulations, proceeds from a presumption that manipulative conduct is intentional.⁵¹ An AI system that learns, through reinforcement, to engage in behaviours that produce market distortions without any human intent to manipulate presents a challenge that existing legal categories are poorly equipped to address.

The Pratip Chaudhuri Committee's 2021 recommendations including a tiered licensing framework for algorithmic trading participants represent a step in the right direction.⁵² But they stop short of the more fundamental question: whether algorithmic trading should be governed by principles-based regulation that focuses on outcomes rather than the specification of permitted techniques. The Justice Srikrishna Committee's observations on algorithmic transparency, though made in a data protection context, are germane here.⁵³

B. Crypto-Assets and Tokenised Securities

India's regulatory treatment of crypto-assets has been characterised by ambivalence, oscillation, and the particular institutional confusion that arises when a genuinely novel instrument defies existing jurisdictional categories. The 2019 Garg Committee recommended a blanket prohibition. The Supreme Court, in *Internet and Mobile Association of India v. Reserve Bank of India* (2020), struck down the RBI's banking sector circular that had effectively prevented financial institutions from servicing crypto-asset businesses not on the merits of crypto-asset regulation but on proportionality grounds. The subsequent imposition of a 30% flat tax on crypto-asset gains in the Finance Act 2022 represented a de facto regulatory recognition without accompanying regulatory framework.

⁵¹SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (as amended 2018). These two instruments constitute the primary conduct-of-business framework, though their enforcement against algorithmic actors has been limited.

⁵²Pratip Chaudhuri Committee on Strengthening the Ecosystem for Electronic Trading in Securities (SEBI, 2021). The Committee recommended a tiered licensing framework for algorithmic trading participants, distinguishing between proprietary traders, third-party algorithm providers, and retail users of pre-packaged algorithms.

⁵³Justice B.N. Srikrishna Committee on Data Protection, 'A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians' (Ministry of Electronics and Information Technology, 2018). While primarily a data protection report, its observations on algorithmic transparency bear directly on AI-driven trading systems.

The imposition of tax liability in the absence of a corresponding regulatory framework creates a structurally inconsistent regime, where market participation is implicitly recognised by the state without the safeguards necessary to ensure investor protection and market integrity. In the absence of a disclosure regime, exchange licensing requirements, or investor suitability rules, the approximately 100 million Indians who hold crypto-assets do so in a regulatory vacuum that exposes them to fraud, market manipulation, and operational risk without recourse.

The European Union's Markets in Crypto-Assets (MiCA) Regulation, which entered into force in 2023, provides the most comprehensive regulatory model currently in operation.⁵⁴ MiCA creates a licensing framework for crypto-asset service providers, establishes disclosure requirements for crypto-asset issuers, and introduces market abuse provisions specifically tailored to crypto-asset markets. India's Expert Committee on Crypto-Assets has reportedly drawn on MiCA in its deliberations, which is encouraging. The critical question is whether the resulting framework will have statutory grounding or will, like the bulk of India's current crypto-asset regulatory interventions, remain at the level of executive guidance without legislative sanction.

C. ESG Instruments

The third category ESG investment products present a different kind of regulatory challenge. The issue here is not the absence of a regulatory framework but the inadequacy of a framework that has been constructed through SEBI circulars rather than legislative mandate.⁵⁵ SEBI's Business Responsibility and Sustainability Reporting requirements, introduced in 2021, have been a significant step toward mandatory non-financial disclosure. But the absence of statutory grounding creates enforcement challenges, as judicial review of SEBI's circular-based ESG requirements is more easily mounted than challenge to legislatively mandated obligations.

There is also the problem of green washing the misrepresentation of investment products as having environmental or social credentials that they do not possess. This is a form of securities fraud, but it requires regulatory capacities that SEBI does not currently possess: the ability to evaluate non-financial corporate disclosures, to assess third-party sustainability verification,

⁵⁴Expert Committee on Crypto-Assets under the aegis of the Ministry of Finance (2023, ongoing deliberations). The Committee's deliberations have been influenced by the MiCA Regulation in Europe Regulation (EU) 2023/1114 on Markets in Crypto-Assets which provides a comprehensive licensing framework for crypto-asset service providers.

⁵⁵Environmental, Social and Governance considerations in investment decisions have gained regulatory salience following SEBI's introduction of Business Responsibility and Sustainability Reporting (BRSR) requirements vide Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 2021). However, the absence of statutory grounding for ESG disclosure obligations remains a significant vulnerability.

and to maintain expertise in environmental and social impact assessment. These are regulatory competencies that belong to a genuinely integrated regulatory architecture, not to a capital market regulator operating within siloed institutional boundaries.

IX. COMPARATIVE PERSPECTIVES: LESSONS FROM ADVANCED REGULATORY SYSTEMS

The comparative method in legal scholarship is most productive when it is disciplined when it does not simply catalogue foreign innovations for their intrinsic interest but asks which foreign experiences are genuinely instructive in light of the specific institutional, constitutional, and economic context of the jurisdiction under study. With that discipline in mind, this Part examines three regulatory models: the United States, the European Union, and Singapore.

A. The United States: Institutional Architecture and Post-Crisis Reform

American securities regulation is structured around the Securities and Exchange Commission as the primary federal regulator for equity markets, investment companies, and investment advisers, alongside the Commodity Futures Trading Commission for derivatives, and a network of self-regulatory organisations principally FINRA for broker-dealer oversight. This architecture has well-known deficiencies: the SEC-CFTC division of jurisdiction over products that straddle the equity-derivative boundary has been a source of regulatory confusion for decades.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was the American response to the recognition that this fragmented architecture had contributed materially to the systemic failures of 2008, Dodd-Frank created the Financial Stability Oversight Council as a macro-prudential coordination body, bringing together the heads of nine federal financial regulatory agencies. FSOC does not replace the individual regulators; it provides a forum for coordination, a mechanism for identifying systemic risk, and critically the authority to designate non-bank financial institutions as systemically important, subjecting them to enhanced prudential supervision.

The FSOC model is instructive for India, not because India should replicate it in its specifics, but because it demonstrates that macro-prudential coordination can be achieved without a full-scale merger of regulatory institutions. The political economy of regulatory reform in India makes a full merger of SEBI, RBI, IRDAI, and PFRDA as proposed by the FSLRC unlikely in the near term. An FSOC-equivalent coordination body, with statutory mandate and cross-regulatory membership, represents a more politically feasible intermediate step.

B. The European Union: Principles-Based Regulation and Technology Governance

The European Union's approach to securities regulation, centred on the Markets in Financial Instruments Directive II framework, is distinguished by its principles-based character its preference for outcome-focused rules over prescriptive requirements and by its comprehensive treatment of technological innovation in market structure.

MiFID II's treatment of algorithmic trading is particularly instructive. The Directive requires algorithmic trading firms to have systems and controls calibrated to the characteristics of the algorithms they use; to be able to cancel or modify orders or halt trading in real time; and to notify competent authorities of their intention to engage in algorithmic trading. These requirements do not prescribe specific technological solutions; they establish outcomes resilience, controllability, transparency and leave the technical implementation to market participants. This principles-based approach is more technologically neutral and more adaptable to innovation than the prescriptive approach that characterises most of SEBI's current algorithmic trading guidance.

The European Securities and Markets Authority, which serves as the apex supervisory body within the EU's securities regulatory network, offers a further lesson. ESMA does not supervise firms directly in most cases; it develops technical standards, coordinates the supervisory practices of national competent authorities, and in a small number of cases involving cross-border systemic risk exercises direct supervisory powers. This architecture of coordinated supervision preserves regulatory proximity to local market conditions while ensuring minimum standards and preventing regulatory competition that drives standards downward.

C. Singapore: The Technology-Neutral Principles-Based Model

Singapore's Monetary Authority of Singapore regulatory model is, in many respects, the most instructive for India's purposes not because Singapore's economy or legal system resembles India's, but because MAS has faced, in compressed form, many of the regulatory challenges that India now confronts: how to regulate a rapidly evolving financial technology sector, how to maintain market integrity while enabling innovation, and how to position a jurisdiction as a global financial hub while managing systemic risk.⁵⁶

The Securities and Futures Act of Singapore is drafted in a technology-neutral, principles-based manner that has allowed it to accommodate equity trading, derivatives, and digital asset securities within a single statutory framework without frequent legislative amendment. This drafting philosophy which focuses on the economic function of instruments and activities rather than their technical form contrasts sharply with India's approach, in which new

instruments have typically required new circulars, new regulations, or new legislative provisions.

MAS's Payment Services Act 2019, which created a licensing framework for digital payment token services that was later extended to encompass certain crypto-asset activities, demonstrated how a regulatory framework can be designed with sufficient flexibility to evolve with technology without requiring legislative revision at each step. The key drafting technique is a combination of broad definitions covering the economic substance of activities with licensing regimes that impose differentiated obligations based on activity risk rather than product category.

GIFT City's aspiration to function as an international financial services centre competing with Singapore and Dubai creates an interesting dimension to this comparative analysis. GIFT City operates under the International Financial Services Centres Authority framework, which is itself a more integrated regulatory model than the mainland Indian framework. IFSCA's experience may provide a useful laboratory for testing more integrated regulatory approaches before they are considered for broader application

X. THE CONSTITUTIONAL DIMENSIONS OF SEBI'S REGULATORY POWERS

Any serious examination of Indian securities regulatory reform must confront the constitutional architecture within which regulation operates. The Indian Constitution's allocation of legislative powers between Union, State, and Concurrent Lists establishes the outer boundaries of what any regulatory reform can achieve, and the constitutional validity of SEBI's existing powers has been the subject of sustained judicial examination.

SEBI's regulatory authority derives primarily from Entry 43 ('Incorporation, regulation and winding up of trading corporations') and Entry 44 ('Incorporation, regulation and winding up of companies') of List I of the Seventh Schedule.⁵⁷ The Supreme Court has consistently upheld the constitutional validity of SEBI's regulatory powers on the basis of these entries, but the precise contours of SEBI's adjudicatory jurisdiction particularly its power to impose quasi-criminal penalties without the full procedural protections of criminal proceedings has generated legitimate doctrinal uncertainty.

⁵⁶Securities and Futures Act 2001 (Singapore, Cap. 289, as amended 2018). The Monetary Authority of Singapore's regulatory model is notable for its technology-neutral principles-based drafting, which enables the same statutory provisions to govern equity trading, derivatives, and digital asset securities without amendment.

The delegated legislation issue is particularly significant. SEBI's rule-making authority, as conferred by the SEBI Act, is broad perhaps unusually so by comparative standards. SEBI can issue regulations that have the force of law on the approval of the Central Government, and in cases of urgency, issue regulations with retrospective effect. This breadth of delegated legislative authority has been challenged on the grounds that it represents an impermissible delegation of essential legislative functions a version of the 'excessive delegation' doctrine that the Indian courts have developed since the 1970s.

The procedural fairness dimension of SEBI's adjudicatory powers deserves careful attention. SEBI's adjudicating officers of the Board itself exercise quasi-judicial powers to impose substantial financial penalties. The structural separation between investigation and adjudication, which the principles of natural justice require, is imperfect in SEBI's current institutional design. This is not a problem unique to SEBI it is a characteristic of many regulatory tribunals but it becomes acutely significant when the penalties involved reach, as the 2014 Act permits, several crores of rupees.

The constitutional analysis intersects with the reform agenda in an important way. Any proposal for a unified financial regulatory authority as contemplated by the FSLRC would require careful constitutional design to ensure that the unified regulator's powers were grounded in the appropriate legislative entries and that its adjudicatory functions satisfied the constitutional requirements of judicial independence and procedural fairness. The FSLRC's proposed Financial Code acknowledged this constraint but did not resolve it satisfactorily.

XI. TOWARDS A REFORM ARCHITECTURE: PROPOSALS AND PRINCIPLES

The diagnosis offered in the preceding Parts points toward a reform agenda that is, necessarily, multi-dimensional. It must address institutional design, legislative framework, enforcement architecture, and the specific challenges of emerging financial instruments. This Part proposes a reform architecture organised around four principles: integration, adaptability, proportionality, and inclusion.

⁵⁷Article 246 of the Constitution of India read with Entries 43 and 44 of List I (Union List), Schedule VII. The legislative competence question is complicated by the intersection of 'banking' (Entry 45), 'incorporation, regulation and winding up of trading corporations' (Entry 43), and 'contracts' (Entry 54) as overlapping Union subjects.

A. Institutional Integration: The Case for a Financial Stability Coordination Council

The full merger of Indian financial regulators, while intellectually coherent, is unlikely to be achievable in the foreseeable future. The institutional histories, professional cultures, and political economies of SEBI, RBI, IRDAI, and PFRDA are distinct enough that forced merger would likely produce an organisation whose internal incoherence exceeded that of the current multi-regulator system. Kelkar and Shah's point about 'state capacity' is apposite: the capacity to implement a reform is itself a constraint on what reforms are worth proposing.⁵⁸

A more achievable first step is the statutory establishment of a Financial Stability Coordination Council, modelled broadly on the American FSOC, with the following features. First, statutory mandate: the FSCC should be established by legislation, not executive order, giving it the authority and durability necessary for genuine cross-regulatory coordination. Second, cross-regulatory membership: FSCC should include the chiefs of SEBI, RBI, IRDAI, PFRDA, and IFSCA, with the Finance Secretary as chairperson. Third, macro-prudential authority: FSCC should have the power to designate systemically important financial institutions and instruments, imposing enhanced supervisory requirements that apply across sectoral boundaries. Fourth, binding coordination: FSCC's resolutions on jurisdictional disputes should be binding on member regulators, subject to judicial review, eliminating the current situation where market participants receive contradictory regulatory signals from different bodies.

B. Legislative Adaptability: A Technology-Neutral Financial Markets Code

The second reform priority is legislative. The existing statutory framework a patchwork of instruments drafted at different times with different drafting philosophies should be consolidated into a unified Financial Markets Code that is drafted on technology-neutral, principles-based lines.

The key drafting principle should be functional regulation: instruments and activities should be defined by their economic function rather than their technical form. This approach, which characterises both the Singapore Securities and Futures Act and the EU's MiFID II framework, enables the same statutory provisions to govern equity securities, derivatives, tokenised assets, and future instruments that have not yet been invented, without requiring legislative amendment at each step of technological innovation.

⁵⁸Vijay Kelkar and Ajay Shah, 'In Service of the Republic: The Art and Science of Economic Policy' (Allen Lane 2019) 156-163. The authors' concept of 'state capacity' the ability of regulatory institutions to implement their mandated functions effectively is central to evaluating whether a unified financial regulator is feasible in India's administrative context.

The Code should include, at a minimum: a unified definition of 'securities' that encompasses traditional equity and debt instruments, derivatives, tokenised securities, and digital asset securities based on their economic characteristics; a licensing framework for financial market intermediaries that is activity-based rather than entity-based; disclosure standards calibrated to the nature and complexity of instruments rather than their formal legal classification; and market conduct provisions insider trading, market manipulation, mis-selling drafted in terms of prohibited outcomes rather than specific prohibited techniques.

Specific provisions should address crypto-assets, drawing on the MiCA model: a tiered licensing framework for crypto-asset service providers, disclosure requirements for crypto-asset issuers, and market abuse provisions calibrated to the specific characteristics of crypto-asset markets, including the 24/7 trading environment and the cross-border nature of most crypto-asset transactions.

C. Enforcement Reform: Deterrence Through Detection

The enforcement dimension of the reform agenda requires attention to both institutional capacity and legal framework. The low penalty realisation rates documented in SEBI's annual reports suggest that the problem is not primarily the quantum of penalties but the effectiveness of the enforcement process.

Several specific reforms are warranted. First, the establishment of a dedicated financial investigation unit staffed by forensic accountants, data analysts, and technologists within SEBI, with specific expertise in the surveillance of algorithmic trading systems and crypto-asset markets. Second, mutual legal assistance arrangements with foreign securities regulators, particularly those of jurisdictions the United States, United Kingdom, Singapore from which a significant volume of cross-border market misconduct originates or is directed. Third, structural separation between SEBI's investigation and adjudication functions, with the creation of an independent adjudicatory body on the model of the Securities and Exchange Commission's Administrative Law Judges to conduct penalty proceedings. Fourth, reform of the Securities Appellate Tribunal's procedural rules to reduce pendency, including through the introduction of summary proceedings for smaller-scale violations.

D. Inclusion: Redesigning the Framework for Retail Investors

The final reform priority and arguably the most consequential from a social equity perspective is the redesign of the regulatory framework to genuinely serve the interests of retail investors, particularly in non-metropolitan areas.

Three specific interventions are proposed. First, a statutory financial literacy mandate: SEBI should be required by legislation to allocate a specified proportion of its budget to investor education, with measurable outcomes defined in terms of retail investor participation rates across geographic and demographic segments. Second, simplified investment vehicles: SEBI should develop and regulate a category of 'basic investment products' simplified mutual fund structures, micro-investment platforms subject to enhanced disclosure requirements in plain language and vernacular languages, targeted at investors with limited financial sophistication. Third, a robust investor grievance framework: the current Complaint Redressal System should be restructured as a proper ombudsman scheme with binding adjudicatory powers for retail investor disputes below a specified threshold, eliminating the need for retail investors to pursue complaints through formal adjudicatory proceedings.

The Rajan thesis on regulatory coordination failures that the failure of the global financial system in 2008 was partly attributable to the siloed structure of regulatory institutions has a distributional corollary that is particularly relevant for India.⁵⁹ The coexistence of multiple financial regulators with partially overlapping mandates has produced a regulatory environment characterised by ambiguity and duplication. This institutional arrangement not only increases compliance costs but also enables strategic regulatory arbitrage, particularly in relation to hybrid financial instruments that fall at the intersection of multiple jurisdictions.

XII. CONCLUSION

The argument of this paper may be stated plainly: the Indian securities regulatory framework, for all its technical sophistication and considerable achievements, is not fit for purpose in the twenty-first century capital market environment. Its coherence deficit generates regulatory arbitrage and compliance burden. Its capital formation gaps exclude the majority of Indians from the wealth-creating potential of equity markets. Its enforcement asymmetries compromise the deterrent function of law. And its legislative framework conceived before the internet, before algorithmic trading, before crypto-assets is structurally incapable of providing adequate governance for the instruments and activities that will define Indian capital markets in the coming decades.

⁵⁹Raghuram Rajan, 'A Step in the Dark: Unconventional Monetary Policy after the Crisis' (2013) Bank for International Settlements Working Paper 297. Rajan's broader argument about regulatory coordination failures in the post-crisis environment applies with particular force to India's multi-regulator structure.

The reforms proposed in this paper a Financial Stability Coordination Council, a technology-neutral Financial Markets Code, enforcement restructuring, and a retail investor inclusion agenda are neither radical nor unprecedented. They draw upon established models from jurisdictions that have confronted similar challenges and responded with greater institutional ambition than India has so far demonstrated. What they require is political will: the willingness to move beyond incremental adjustment and to undertake the kind of architectural reform that the FSLRC recommended in 2013 and that a succession of market developments algorithmic crashes, crypto frauds, green washing scandals has continued to demand.

India's aspiration to emerge as a global financial hub through GIFT City and through the growth of its domestic market will not be realised by a regulatory framework that remains anchored in the assumptions of a pre-digital era. The gap between regulatory ambition and regulatory capacity is a gap that only deliberate, systemic reform can close. The CCC Matrix proposed in this paper offers one analytical entry point for that reform conversation. The more important contribution, perhaps, is simply to insist that the conversation is urgent and that its stakes are not merely technical but profoundly democratic.

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