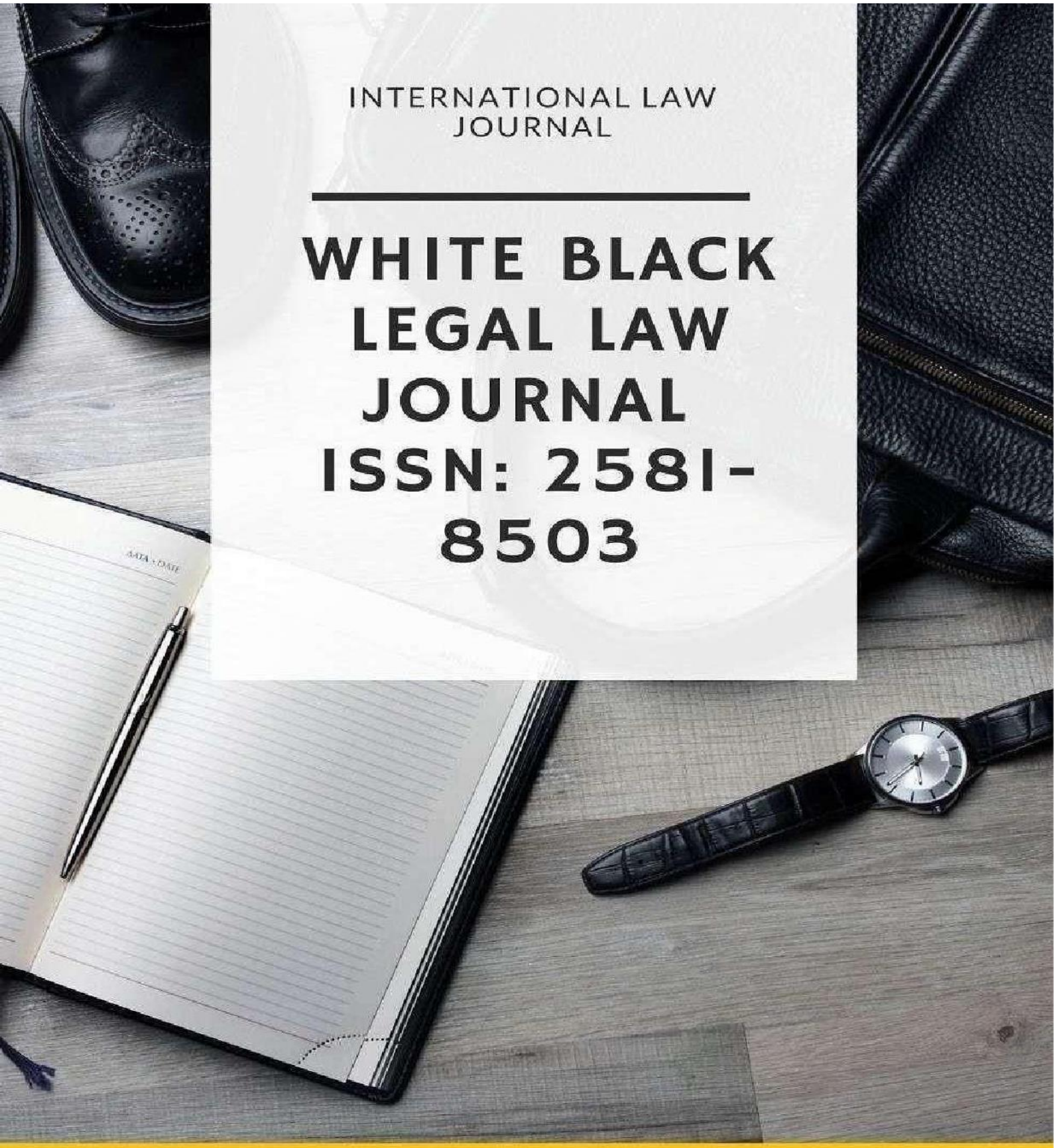


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SEBI AS THE REGULATOR OF THE INDIAN CAPITAL MARKET: POWERS, ACCOUNTABILITY AND THE MOVE TOWARDS A SECURITIES MARKETS CODE

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Subject: Financial Market Regulation | Topic: Regulators of the Capital Market (SEBI)

Abstract

A capital market works only when investors trust it. In India that trust is underwritten by the Securities and Exchange Board of India (SEBI), a statutory body that makes the rules, supervises the participants, investigates wrongdoing and adjudicates the result. This article explains how SEBI is constituted under the Securities and Exchange Board of India Act, 1992, what powers the Act gives it, how those powers are exercised through regulations, interim orders, adjudication and prosecution, and how they are checked by the Securities Appellate Tribunal and the Supreme Court. It then looks at two live developments, the Securities Markets Code Bill, 2025 and the Jane Street proceedings, and argues that the concentration of legislative, investigative and adjudicatory functions in one body is the central design question for the regulator. The article ends with suggestions for strengthening procedural fairness without weakening SEBI's ability to act quickly.

Keywords: SEBI; capital market; securities regulation; SEBI Act, 1992; Securities Appellate Tribunal; insider trading; Securities Markets Code.

I. INTRODUCTION

The capital market is the place where long-term money meets long-term need. Companies raise equity and debt in the primary market, and investors trade those securities in the secondary market through stock exchanges. The arrangement rests on trust. An investor who buys a share cannot inspect the company, check its accounts or watch the trade being made on the other side of the screen. The investor depends on disclosure, on honest intermediaries and on a referee

who will act when the rules are broken. Economists call this the problem of information asymmetry, and it is the reason that every serious capital market has a securities regulator.

In India that regulator is the Securities and Exchange Board of India (SEBI). The preamble of the SEBI Act, 1992 states its object as protecting the interests of investors in securities, promoting the development of the securities market and regulating it.[1] The three aims pull in different directions. Protecting investors calls for strict rules and quick punishment, development calls for light rules and room for new products, and regulation calls for steady supervision of the market as it stands. How SEBI balances them is the subject of this article.

The article is doctrinal. It relies on the SEBI Act, 1992 and the other statutes that bear on the securities market, the regulations framed by SEBI, decisions of the Supreme Court and the Securities Appellate Tribunal, and published reports on recent developments. Part II traces how SEBI came into being. Part III describes its constitution. Part IV sets out its functions and powers. Part V explains the regulatory architecture. Part VI examines enforcement and the checks on it. Part VII discusses current developments, Part VIII offers a critical assessment and suggestions, and Part IX concludes.

II. EVOLUTION OF THE REGULATOR

Before the reforms of 1991 the Indian capital market was controlled rather than regulated. The Government decided whether a company could raise capital and at what price, and the stock exchanges were left largely to govern themselves. When the economy was liberalised and the volume and variety of trading grew, that arrangement could not cope.

SEBI was first set up on 12 April 1988 as an administrative body by a resolution of the Government of India, without a statute behind it.[2] It had little power to compel anyone, and the securities scam of 1991-92 exposed how weak that position was. The Government gave it statutory status by an Ordinance in January 1992, which was replaced by the SEBI Act, 1992. From then on SEBI was a body corporate with powers to register intermediaries, make regulations, investigate and penalise.

The Act has been strengthened in stages in response to market failures. The amendment of 1995 created the Securities Appellate Tribunal (SAT) and added penalty and adjudication provisions. The amendment of 2002, which followed the market manipulation scandals of 2001, enlarged the power to give directions and investigate and raised penalties. The

[1]Preamble, Securities and Exchange Board of India Act, 1992 (Act 15 of 1992) (SEBI Act).
[2]SEBI, "About SEBI" (sebi.gov.in), which records the establishment of the Board on 12 April 1988 and its statutory status from 30 January 1992.

amendment of 2014 was a further step, giving SEBI power to attach assets, to regulate collective investment schemes, to order disgorgement of unlawful gains and to settle proceedings by consent. Each amendment followed a crisis, which is a pattern worth remembering when the present proposals for a new Code are judged.

III. CONSTITUTION OF SEBI

SEBI is a body corporate with perpetual succession and a common seal, with power to hold property and to sue and be sued in its own name (section 3). Its Board is made up under section 4 as follows:[3]

Member	Appointed by / nominated from	Number
Chairman	Central Government	1
Members from the Union Ministry dealing with finance	Central Government	2
Member from the Reserve Bank of India	Reserve Bank	1
Other members (at least three of them whole-time)	Central Government	5
Total		9

Table 1: Composition of the SEBI Board under section 4 of the SEBI Act, 1992.

Two features of this composition deserve notice. First, every appointment is made by the Central Government, and the Act gives the Government further control through its power to issue directions on policy and, in defined cases, to supersede the Board. SEBI is therefore independent in its day-to-day decisions but not insulated from the Government in the way that, for example, a constitutional body is. Second, the presence of a Reserve Bank nominee and two officials of the finance ministry builds in a measure of coordination with other parts of the financial system, which matters because the securities market is linked to banking and to monetary policy.[4]

The 2025 Bill discussed in Part VII proposes to enlarge the Board from nine to fifteen members, which shows that the present size is regarded as too small for a regulator of the present market.[5]

[3]SEBI Act, 1992, s 4(1).
[4]Tuhin Kanta Pandey took charge as Chairman of SEBI in March 2025, as reported at the time; the current Board is listed on sebi.gov.in.
[5]Securities Markets Code Bill, 2025 (Bill No. 200 of 2025), introduced in the Lok Sabha on 18 December 2025; see PRS Legislative Research, "The Securities Markets Code, 2025: Bill Summary" (prsindia.org).

IV. FUNCTIONS AND POWERS

A. The statutory mandate

Section 11(1) of the Act casts on SEBI the duty to protect the interests of investors in securities and to promote the development of, and regulate, the securities market by such measures as it thinks fit. Section 11(2) then lists the measures. They include regulating stock exchanges and other securities markets, registering and regulating stock brokers, merchant bankers, registrars, portfolio managers, investment advisers and other intermediaries, registering and regulating depositories, custodians and credit rating agencies, regulating collective investment schemes including mutual funds, promoting self-regulatory organisations, prohibiting fraudulent and unfair trade practices and insider trading, regulating substantial acquisition of shares and takeovers, promoting investor education, and calling for information and conducting inspections and inquiries.[6]

The functions are usually grouped under three heads, which are protective, developmental and regulatory.[7]

Function	What SEBI does	Source in the Act
Protective	Prohibits insider trading and fraudulent and unfair trade practices; educates investors; protects against mis-selling by intermediaries	s 11(2), s 12A, s 15G, s 15HA
Developmental	Promotes self-regulation, trains intermediaries, supports new instruments and research	s 11(2), s 11(2)(e), (g)
Regulatory	Registers and supervises exchanges, intermediaries and funds; regulates takeovers; frames regulations; inspects and investigates	ss 11, 11C, 12, 30

Table 2: The three groups of SEBI's functions.

B. Three kinds of power in one body

SEBI exercises three kinds of power that in a classical scheme would be divided among Parliament, the executive and the courts.

- **Quasi-legislative power.** Section 30 empowers the Board to make regulations consistent with the Act and its rules, and section 31 requires them to be laid before Parliament. SEBI

[6]SEBI Act, 1992, s 11(2), in particular clauses (a) to (d) on exchanges, intermediaries, depositories and collective investment schemes, (e) on self-regulatory organisations, (f) on fraudulent and unfair trade practices, (g) on investor education, (h) on insider trading, (i) on takeovers and (j) on inspection and inquiry. Section 12 requires registration before certain intermediaries may operate.

[7]Section 11(1) and (2). The three-fold grouping is a standard teaching classification and is not found in the Act itself.

also issues circulars and guidelines under its general powers in section 11. The regulations are the real working law of the market. Examples are the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- **Executive and investigative power.** SEBI registers intermediaries (section 12), inspects and audits them, and may investigate where it has reasonable ground to believe that a violation has occurred (section 11C). Since the amendment of 2014 it has been able to seek search and seizure through the court and to call for records of communications in an investigation.
- **Quasi-judicial power.** SEBI issues directions after hearing the parties (section 11B), and an adjudicating officer imposes monetary penalties under section 15I after an inquiry. The Board can also settle proceedings on consent under section 15JB, in the manner the regulations provide.

Section 11(4) goes further and allows SEBI, pending investigation or inquiry, to pass interim orders that can suspend trading in a security, restrain a person from the market, prohibit a person from associating with intermediaries and impound proceeds of suspected violations. Section 11(4A) allows it to impose the penalties listed there by order.[8] These interim powers are the regulator's sharpest tool, because they operate before guilt is found.

C. Overlap with other statutes and regulators

SEBI does not work from the SEBI Act alone. The Securities Contracts (Regulation) Act, 1956 (SCRA) governs the recognition and working of stock exchanges and the definition of "securities" in section 2(h), and SEBI exercises powers under it by delegation or by direct conferment. The Depositories Act, 1996 provides the legal framework for holding securities in dematerialised form. The Companies Act, 2013 gives SEBI the administration of the provisions on issue and transfer of securities and non-payment of dividend in the case of listed companies and companies that intend to list (section 24), so company law and securities law meet at SEBI's door.[9]

[8]SEBI Act, 1992, s 11(4) and s 11(4A). Interim and ex parte orders must be followed by a hearing and are subject to appeal to the Securities Appellate Tribunal.

[9]Companies Act, 2013, s 24; Securities Contracts (Regulation) Act, 1956, s 2(h) and Chapter on recognition of stock exchanges; Depositories Act, 1996.

Other regulators cover the adjoining ground. The Reserve Bank of India regulates the money market and government securities, the Insurance Regulatory and Development Authority of India regulates insurers, the Pension Fund Regulatory and Development Authority regulates pension funds, and the International Financial Services Centres Authority regulates financial services in the GIFT City centre. Because products and firms cross these lines, coordination matters. The Financial Stability and Development Council, a non-statutory body, is the forum used for it.

V. THE REGULATORY ARCHITECTURE

It is useful to see the capital market as four groups of actors and to note how SEBI reaches each of them.

Group	Who they are	Principal SEBI instrument
Issuers	Companies raising or listing securities	ICDR Regulations, 2018; LODR Regulations, 2015
Market infrastructure institutions	Stock exchanges, clearing corporations, depositories	Recognition and supervision under SCRA and the SEBI Act, with rules for governance and risk management
Intermediaries	Stock brokers, merchant bankers, investment advisers, research analysts, portfolio managers, credit rating agencies	Registration under section 12 and the respective regulations
Investors and funds	Retail and institutional investors; mutual funds; alternative investment funds; foreign portfolio investors	Mutual Funds Regulations, 1996; AIF Regulations, 2012; FPI Regulations

Table 3: Actors in the capital market and SEBI's tools of regulation.

Three features of this structure explain much of how SEBI works. The first is **disclosure-based regulation**. SEBI does not judge whether a company is a good investment. It requires the company to disclose what a reasonable investor would need and then holds it responsible for the truth of that disclosure. The second is **registration and conduct regulation of intermediaries**, because most investors meet the market through a broker, adviser or fund, and the standard of conduct of those persons decides what the investor experiences. The third is **reliance on market infrastructure institutions** as front-line regulators. Exchanges and depositories run surveillance and enforce their own rules under SEBI's oversight, and the Securities Markets Code Bill would give a statutory role to this delegation.

SEBI also relies on prohibition of market abuse. The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 prohibit manipulation and deception, and the Insider Trading Regulations, 2015 prohibit trading on unpublished price sensitive information. These rules, together with sections 12A, 15G and 15HA of the Act, are the core of the protective function.

Insider trading in detail

Insider trading is the clearest example of how SEBI turns a broad statutory prohibition into workable rules. Section 12A of the Act forbids dealing in securities on the basis of unpublished price sensitive information and communicating such information, and section 15G fixes the penalty. The Insider Trading Regulations, 2015 then supply the detail. They define unpublished price sensitive information as information not generally available which, if it became available, would be likely to materially affect the price of the securities, and they cover results, dividends, changes in capital structure, mergers and similar events. They reach "connected persons", such as directors, officers and professional advisers, and persons deemed connected because of their access to the information. They also require listed companies to maintain a code of conduct, a structured digital database of those with whom information is shared and a trading window that closes before price sensitive events.

The framework has two practical consequences. The first is that the offence does not depend on a proved contract between the insider and the person who receives the tip, since a pattern of communication and trading can be enough in a civil proceeding in line with the standard of proof stated in *Kishore R Ajmera*. The second is that a company's internal controls become part of the law: a listed company that keeps no database of recipients or no trading window is itself in breach of the regulations.

Investor grievance redress

A regulator that only punishes does not help the investor who has lost money on a particular trade. SEBI therefore runs an investor grievance mechanism through the SEBI Complaints Redress System (SCORES) and an Online Dispute Resolution platform for disputes with market participants. Exchanges and depositories handle complaints against their members first, and unresolved complaints can be escalated to SEBI. The Securities Markets Code Bill proposes a statutory Investor Charter and an Ombudsperson, which would move grievance redress from administrative practice to statute.[10]

[10]Reported provisions of the Securities Markets Code Bill, 2025, as summarised in press and policy commentary in December 2025; to be confirmed from the Bill's text.

VI. ENFORCEMENT AND THE CHECKS ON SEBI

A. The enforcement route

A violation found by surveillance, by inspection or on a complaint can pass through a number of stages.

Stage	Authority	Statutory basis
Surveillance, inspection, investigation	SEBI departments; investigating authority	ss 11(2)(j), 11C
Interim or ex parte directions	Whole-time member or the Board	ss 11(4), 11B
Show cause notice and hearing; final directions	Whole-time member	s 11B
Monetary penalty	Adjudicating officer	ss 15I and 15J, with penalty provisions such as ss 15A to 15HB
Settlement by consent	Board, on application	s 15JB
Appeal	Securities Appellate Tribunal, within 45 days	s 15T
Further appeal on a question of law	Supreme Court, within 60 days	s 15Z
Prosecution	Special Court on SEBI's complaint	ss 24 and 26A

Table 4: The enforcement ladder under the SEBI Act, 1992.

The penalties are substantial. For insider trading, section 15G provides a penalty up to twenty-five crore rupees or three times the profit made, whichever is higher. For fraudulent and unfair trade practices, section 15HA provides a penalty of not less than five lakh rupees which may extend to twenty-five crore rupees or three times the profit, whichever is higher.[11] The criminal route in section 24 carries imprisonment up to ten years. Because penalty, directions and prosecution can run in parallel, a single act of manipulation can expose a person to all three.

B. Appeals and judicial review

The Securities Appellate Tribunal is the first appellate forum and hears appeals against SEBI orders and those of adjudicating officers within forty-five days (section 15T). A further appeal on a question of law lies to the Supreme Court within sixty days (section 15Z). SAT can reverse SEBI on facts and on law, and its decisions on fairness of procedure and proportionality of

[11]SEBI Act, 1992, ss 15G and 15HA. The criminal offence under s 24(1) is punishable with imprisonment up to ten years, or a fine up to twenty-five crore rupees, or both.

penalty are a main check on the regulator.

C. What the courts have said

The Supreme Court has built the doctrine of SEBI's powers case by case. Four decisions give a sense of the whole.

- In *Clariant International Ltd v SEBI* the Court treated SEBI as a statutory body whose duty is to protect investors' interests and regulate the market, and read its powers purposively.[12]
- In *SEBI v Shriram Mutual Fund* the Court held that mens rea is not an essential ingredient of a contravention for which a civil penalty is imposed, so that breach of a regulatory obligation attracts the penalty without proof of intention.[13]
- In *Sahara India Real Estate Corporation Ltd v SEBI* the Court upheld SEBI's jurisdiction over a public raising of funds through optionally fully convertible debentures by unlisted companies and directed refund to investors, which is the best known example of SEBI protecting investors by direct action.[14]
- In *Kishore R Ajmera v SEBI* the Court said that in a civil proceeding for market manipulation the standard of proof is preponderance of probabilities, and that circumstantial evidence and the pattern of trades may establish fraud.[15]

Taken together, the cases favour a regulator that can act on probability and without proof of intention. That is a wide power, and it is the reason the procedural checks of notice, hearing, disclosure of material and reasons for orders carry so much weight.

VII. CURRENT DEVELOPMENTS

A. The Securities Markets Code Bill, 2025

The Securities Markets Code Bill, 2025 was introduced in the Lok Sabha on 18 December 2025. It proposes to repeal and replace three statutes, the SCRA, the SEBI Act and the Depositories Act, with a single code.[16] The case for consolidation is that the three Acts were passed at different times for different purposes, and their overlaps and gaps have been handled by regulations and circulars rather than by a coherent statute.

Reports on the Bill identify several changes: a larger Board, conflict-of-interest disclosure by

[12]Clariant International Ltd v Securities and Exchange Board of India (2004) 8 SCC 524.
[13]Securities and Exchange Board of India v Shriram Mutual Fund (2006) 5 SCC 361.
[14]Sahara India Real Estate Corporation Ltd v Securities and Exchange Board of India (2013) 1 SCC 1.
[15]Kishore R Ajmera v Securities and Exchange Board of India (2016) 6 SCC 368.
[16]PRS Legislative Research, Bill Summary, "The Securities Markets Code, 2025"; the Bill is described there as retaining most of the existing provisions with certain changes.

members, a statutory Investor Charter and grievance redress, civil penalties in place of criminal liability for minor lapses, a time limit of eight years on inspections and investigations, and a statutory basis for regulatory sandboxes.[17] The Bill was referred to the Parliamentary Standing Committee on Finance, and the Committee has been reported to have tabled its report. On the material consulted for this article the Code has not yet been enacted, and the SEBI Act, 1992 therefore remains the governing statute. Whether that is so at the time of reading should be checked.

B. The Jane Street proceedings

On 3 July 2025 SEBI passed an interim order against the Jane Street group, alleging manipulation of the Bank Nifty index through a two-part trading strategy, barring the group from the market and directing a deposit of Rs 4,843.57 crore as unlawful gains, which the group deposited in July 2025.[18] Jane Street appealed to SAT in September 2025 and challenged SEBI's refusal to share additional records. By October 2026 the Tribunal had heard arguments on that request and reserved its order, and a final decision on the merits of the allegations is still awaited.

The case matters for this article for a reason that does not depend on who is right. It displays all of SEBI's powers at once: an ex parte interim order under section 11(4) and 11B, a very large impounding, an appeal to SAT, and a dispute about how much of the regulator's investigative material the accused is entitled to see. The outcome will shape the practice of interim action against sophisticated and high-frequency traders.

C. Technology and new forms of misconduct

The growth of algorithmic and high-frequency trading and of social-media investment advice has put pressure on rules written for an older market. Unregistered advice by online influencers, mis-selling through apps and trading strategies that exploit small timing advantages are all areas where SEBI has had to extend its existing powers to new facts. The principle-based drafting proposed in the Code is intended to make that adjustment easier.

[17]Reports on the Bill's provisions are summarised in PRS Legislative Research (above) and press coverage including the Indian Express and Business Standard from December 2025. Details should be confirmed from the Bill's text.

[18]Reported in Business Standard, Business Today and Outlook Business, July 2025 to October 2026. The allegations are SEBI's and are contested; no final finding has been made at the time of writing.

VIII. CRITICAL ASSESSMENT AND SUGGESTIONS

A comparison with the United States

A comparison with the Securities and Exchange Commission (SEC) of the United States shows the design choice clearly. The SEC was created by the Securities Exchange Act of 1934, is led by five commissioners with fixed terms and a rule against more than three from one political party, and cannot impose civil penalties for securities fraud on its own authority in the same way as SEBI can. In *SEC v Jarkesy* (2024) the United States Supreme Court held that when the SEC seeks civil penalties for securities fraud, the defendant is entitled to a jury trial in a court, and the SEC cannot ordinarily keep the case in its own administrative forum.[19] The Indian position is different. Parliament has given SEBI the power to adjudicate and to penalise, subject to appeal, and the Indian Constitution has no equivalent of the Seventh Amendment. The comparison does not show that the Indian design is wrong. It shows that the question of who decides, and in which forum, is a choice that other mature markets have also had to confront.

SEBI has a creditable record. Disclosure standards have risen, settlement cycles have shortened, large frauds have been prosecuted, and the Act has been amended when failures showed gaps. The criticisms are not about whether SEBI is needed but about how it is built.

- **Concentration of functions.** SEBI makes regulations, investigates, issues directions and, through its whole-time members, decides cases. A body that frames the rule, brings the case and judges it will be seen as acting in its own cause even when it is fair in fact. The appeal to SAT is a remedy after the event and not a substitute for separation at the first stage.
- **Ex parte interim orders.** Section 11(4) is needed when delay would let money disappear. But an order that restrains a person from the market before a hearing can cause irreversible harm to reputation and business. The use of this power should be limited to cases of real urgency, the reasons should be recorded in full and the final hearing should be held within a fixed period.
- **Disclosure of investigative material.** The Jane Street dispute shows the tension between the accused's right to know the case and the regulator's need to protect an ongoing probe. A clear rule on what must be disclosed at the interim stage would reduce litigation.
- **Capacity of the Tribunal.** An appellate forum that is short of members or slow loses its value as a check. The Securities Markets Code Bill has been criticised for not doing

[19]SEC v Jarkesy, 603 US 109 (2024). The comparison is offered only to illustrate design alternatives; the Indian Constitution and the Seventh Amendment rest on different foundations.

enough to strengthen SAT, and this deserves attention in its passage through Parliament.

- **Consultation and accountability.** Regulations bind the market, and so SEBI should publish draft regulations, the reasons for them and a response to comments, as a matter of statutory duty and not only of practice. The conflict-of-interest provisions in the Bill are a welcome step in the same direction.
- **Proportionality.** The move to civil penalties for minor lapses is sound, provided that the line between a minor lapse and a serious violation is drawn clearly in the statute and not left wholly to regulations.

These suggestions do not weaken SEBI. A regulator whose orders are known to be reasoned, proportionate and fairly reached is obeyed more readily and defeated less often on appeal.

IX. CONCLUSION

SEBI began as an administrative body without power and became, through the Act of 1992 and its later amendments, one of the most powerful regulators in India. It makes the law of the capital market through regulations, supervises the participants, investigates wrongdoing and decides cases, with an appeal to SAT and the Supreme Court as the check. The Supreme Court has read its powers broadly and has not required proof of intention for civil penalties. The proposed Securities Markets Code would consolidate the three governing statutes, enlarge the Board and move minor lapses to a civil regime, while the Jane Street proceedings test how far an interim order can go before a hearing. The design question for the next phase is not whether SEBI should be strong. It is whether the strength is matched by clear procedure, adequate appellate capacity and open reasoning. A capital market earns the trust of its investors only when its regulator is both effective and fair, and the reforms now under discussion should be judged by that test.

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