IS SEBI ACTING ULTRA VIRES IN THE FREEZING OF DEMAT ACCOUNTS?

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ABSTRACT

The Securities and Exchange Board of India ("SEBI"), entrusted with the mandate of protecting investors and regulating the securities market, has increasingly resorted to freezing demat accounts as a regulatory enforcement tool. This paper argues that such exercise of power is fundamentally ultra vires, exceeding the boundaries of authority conferred upon SEBI by its parent legislation and violating constitutional guarantees enshrined in the Constitution of India.

The SEBI Act, 1992, the Depositories Act, 1996, and the regulations framed thereunder do not explicitly confer upon SEBI the power to freeze demat accounts. SEBI's reliance on broad investor protection provisions, particularly Sections 11 and 11B of the SEBI Act, to justify freeze orders represents an impermissible expansion of delegated authority. This paper contends that the doctrine of implied powers cannot rescue such overreach where Parliament has consciously omitted an explicit freeze provision while granting analogous powers of attachment and direction.

Beyond the question of statutory competence, this paper establishes that SEBI's freeze orders systematically violate the principles of natural justice, particularly the rule of audi alteram partem, by being passed ex parte without affording affected parties a pre-decisional hearing. Further, the blanket and indefinite nature of such freezes fails the proportionality test as evolved by the Supreme Court of India, rendering them arbitrary within the meaning of Article 14. The absence of legislative backing additionally makes such orders constitutionally unsustainable under Articles 19(1)(g) and 300A.

Through doctrinal analysis, constitutional scrutiny, and critical examination of Securities Appellate Tribunal and Supreme Court jurisprudence, this paper demonstrates that SEBI's freeze practice occupies a legal vacuum, one that demands urgent legislative intervention. The paper concludes with concrete recommendations for statutory amendment, procedural safeguards, and a graduated regulatory response framework that balances investor protection with individual rights.

Keywords: Ultra Vires, Demat Account Freeze, Natural Justice, Proportionality, Delegated Legislation, Regulatory Overreach

I. INTRODUCTION

The regulation of securities markets in India has undergone a transformative evolution since the establishment of the Securities and Exchange Board of India in 1992, conferring upon it wideranging powers to protect investors and ensure the orderly development of the market. Among the most coercive instruments in SEBI's enforcement arsenal is the power to freeze demat accounts, a measure that instantaneously immobilizes an investor's entire portfolio of dematerialized securities. The exercise of this power has increased significantly over the past decade, extending from enforcement actions against alleged market manipulators to blanket administrative freezes imposed for routine compliance defaults such as KYC non-compliance and PAN-Aadhaar linking failures. Despite the severity of its consequences, the legal basis for this power remains deeply contested, resting not on any explicit statutory provision but on SEBI's expansive reading of its general investor-protection mandate. The absence of a clear legislative foundation raises fundamental questions of administrative law, constitutional validity, and the rule of law that have not been systematically addressed in existing scholarship. This paper undertakes a comprehensive doctrinal examination of SEBI's power to freeze demat accounts, testing its legality against the framework of the SEBI Act, 1992, the Depositories Act, 1996, and the constitutional guarantees enshrined in the Constitution of India. The analysis proceeds across two principal limbs, the first being a substantive ultra vires challenge to the very existence of the freeze power, and the second being a procedural and constitutional challenge to the manner in which that power is exercised. Recent judicial developments, including the Bombay High Court's landmark decision in *Pradeep*

Mehta v. Union of India and the Securities Appellate Tribunal's strongly worded orders in the Kirloskar litigation, have brought the illegality of SEBI's freeze practice into sharp focus, lending urgency to the inquiry this paper undertakes. The paper further identifies critical structural gaps in SEBI's freeze framework, including the absence of a sunset clause, the disregard of third party rights, and the lack of a dedicated redressal mechanism, each of which independently reinforces the case for legislative intervention. It concludes with concrete recommendations for statutory reform, proposing a framework that preserves SEBI's regulatory effectiveness while bringing its freeze practice within the boundaries of law.

1.1 Statement of Problem

The Securities and Exchange Board of India freezes demat accounts as a regulatory enforcement tool despite the absence of any explicit statutory provision authorizing such action under the SEBI Act, 1992 or the Depositories Act, 1996. Such freezing effectively suspends an individual's right to deal with their own dematerialized securities, causing severe civil consequences without affording any pre-decisional hearing or opportunity to be heard. This paper interrogates whether SEBI, in exercising this power, acts ultra vires its statutory mandate and in violation of constitutional guarantees under Articles 14, 19(1)(g), and 300A of the Constitution of India.

1.2 Hypothesis and Research Questions

SEBI's power to freeze demat accounts is neither explicitly conferred by statute nor reasonably implied from its parent legislation, rendering such exercise of power substantively ultra vires. Even assuming such power exists, SEBI's consistent failure to observe natural justice, proportionality, and constitutional guarantees renders individual freeze orders procedurally ultra vires. Both limbs of this ultra vires challenge, independently and collectively, establish that SEBI's freeze practice is legally unsustainable and demands urgent legislative correction.

This paper addresses the following research questions:

1. Whether the SEBI Act, 1992 and the Depositories Act, 1996 explicitly or impliedly confer upon SEBI the power to freeze demat accounts.

2. Whether SEBI's freeze orders violate the principles of natural justice, proportionality, and constitutional guarantees under Articles 14, 19(1)(g), and 300A of the Constitution of India.

1.3 Research Methodology

This paper adopts a purely doctrinal research methodology. Primary sources relied upon include the SEBI Act, 1992, the Depositories Act, 1996, SEBI Regulations and Circulars, judgments of the Securities Appellate Tribunal, and decisions of the Supreme Court of India. Secondary sources include academic articles, commentaries on administrative and constitutional law, and working papers on securities regulation. The paper employs analytical and critical methods, examining the statutory text to identify the absence of explicit freeze power, applying established legal doctrines to test SEBI's implied power claim, and scrutinizing judicial decisions to map inconsistencies in the existing jurisprudence.

1.4 Literature Review

Existing scholarship on SEBI's enforcement powers has focused predominantly on its investigative authority, covering powers of search, seizure, and summons, and on the adjudicatory process before SAT.[1] Scholars such as Umakanth Varottil and Sandeep Parekh have examined SEBI's regulatory framework broadly, but neither has specifically addressed the statutory basis or constitutional validity of demat account freezes.[2] The few SAT decisions touching upon freeze orders have been analyzed in isolation, without any systematic doctrinal framework mapping SEBI's freeze power across all relevant legislation.

The constitutional dimensions of SEBI's freeze practice, particularly under Articles 14, 19(1)(g), and 300A, remain entirely unaddressed in existing literature. No published work has applied the proportionality doctrine, as evolved by the Supreme Court in *Modern Dental College v. State of Madhya Pradesh*,[3] to SEBI's freeze orders. Similarly, the third party prejudice caused by freeze orders to nominees, pledgees, and joint holders has received no scholarly attention. This paper fills these gaps by offering the first comprehensive doctrinal analysis of SEBI's freeze power across all relevant legislation, mounting a structured constitutional challenge, and proposing a concrete legislative reform framework.

II. DEMAT ACCOUNTS AND SEBI'S REGULATORY ARCHITECTURE

2.1 Nature of Demat Accounts as Property

A dematerialized account, commonly referred to as a demat account, is an electronic repository that holds an investor's securities in dematerialized form, replacing physical share certificates. It is maintained by a Depository Participant acting as an intermediary between the investor and the depository. In India, two depositories operate under the Depositories Act, 1996, namely the National Securities Depository Limited ("NSDL") and the Central Depository Services

[1] See generally Sandeep Parekh, *Securities Law* 214 (2nd ed. 2015) (examining SEBI's investigative and adjudicatory powers without addressing freeze authority specifically).
[2] See Umakanth Varottil, *Indian Corporate Law and Securities Regulation* 178 (1st ed. 2019) (providing a broad regulatory framework analysis without engaging the freeze power question).
[3] Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).

Limited ("CDSL").[4]

Securities held in a demat account constitute property within the meaning of Article 300A of the Constitution of India. Unlike money in a bank account, dematerialized securities represent ownership rights in a company, carrying with them rights to dividend, voting, and transfer.[5] The Supreme Court has consistently recognized that any deprivation of property, howsoever effected, must be backed by the authority of law.[6] A freeze order that suspends an investor's ability to deal with such securities therefore constitutes a deprivation of property requiring clear statutory authorization.

2.2 Distinction Between Freeze, Attachment, and Suspension

The terms freeze, attachment, and suspension are frequently conflated in SEBI's enforcement practice, yet they are legally distinct and carry different procedural consequences. A freeze, as employed by SEBI, refers to a unilateral administrative direction prohibiting any debit transactions from a demat account, effectively immobilizing the securities held therein. An attachment, by contrast, is a coercive judicial or quasi-judicial remedy governed by the Code of Civil Procedure, 1908, requiring an order from a competent authority upon satisfaction of prescribed conditions.[7] A suspension refers to the temporary deactivation of trading privileges, which operates differently from a freeze in that the underlying securities remain transferable through off-market transactions.

This conflation is legally significant. Attachment under Order 38 of the Code of Civil Procedure carries mandatory procedural safeguards, including notice and an opportunity to show cause, that SEBI's freeze orders routinely bypass.[8] By labeling its orders as freeze directions rather than attachments, SEBI effectively circumvents procedural protections that Parliament has expressly mandated for analogous coercive actions. This paper contends that such characterization is impermissible and that the substance, not the label, of SEBI's freeze orders must govern their legal treatment.

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[4] Depositories Act, 1996, No. 22, Acts of Parliament, 1996 (India), §§ 2(1)(e), 3.
[5] See Commissioner of Income Tax v. Bombay Burmah Trading Corporation, (1986) 1 SCC 744 (India) (recognizing shareholding as a species of property carrying distinct legal rights).
[6] Waman Rao v. Union of India, (1981) 2 SCC 362 (India) (reaffirming that deprivation of property must have clear legal authority).
[7] Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India), Order 38, Rule 5.
[8] Id.

2.3 Evolution of SEBI's Freeze Practice

SEBI's freeze practice did not originate from any single legislative provision but evolved incrementally through circulars, regulations, and enforcement directions issued over time. Initially, SEBI's enforcement toolkit consisted primarily of investigation, adjudication, and directions to cease and desist. The power to freeze demat accounts emerged through an expansive reading of Section 11B of the SEBI Act, which empowers SEBI to issue directions in the interest of investors or the securities market.[9]

A significant expansion occurred through SEBI's Know Your Customer ("KYC") compliance framework, under which accounts of investors failing to update KYC details were subjected to freeze orders through administrative circulars rather than legislative action.[10] This practice extended SEBI's freeze power beyond enforcement of securities violations into routine administrative compliance, raising fresh ultra vires concerns. The trajectory of this evolution reveals a pattern of regulatory overreach, where SEBI has progressively expanded its freeze authority without corresponding legislative sanction, creating a framework that operates in a legal vacuum.

III. STATUTORY ANALYSIS: AN EXAMINATION OF SEBI'S FREEZE POWER

3.1 SEBI Act, 1992: Express vs. Implied Power

The SEBI Act, 1992 is the primary legislation governing SEBI's regulatory authority. Section 11 confers upon SEBI the general duty to protect the interests of investors and to promote the development of the securities market.[11] Section 11A empowers SEBI to regulate matters relating to the issue of capital and transfer of securities.[12] Section 11B empowers SEBI to issue directions to any person associated with the securities market in the interest of investors or the orderly development of the securities market.[13] Section 11D empowers SEBI to attach assets in the context of disgorgement proceedings.[14]

A careful textual reading of these provisions reveals a conspicuous absence. None of these

[9] Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India), § 11B.
[10] See Securities and Exchange Board of India, Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 (Mar. 16, 2023) (directing freezing of demat accounts for KYC non-compliance).
[11] Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India), § 11.
[12] Id. § 11A.
[13] Id. § 11B.
[14] Id. § 11D.

sections explicitly authorizes SEBI to freeze demat accounts. Section 11B, the broadest of these provisions, empowers SEBI to issue "directions" but does not enumerate freezing of demat accounts as a permissible direction. Section 11D authorizes attachment but only in the specific context of disgorgement, not as a general enforcement measure. Parliament's deliberate grant of attachment power in a specific context, while remaining silent on freeze power generally, strongly indicates a conscious legislative choice to withhold such authority.[15]

The principle of expressio unius est exclusio alterius, which provides that the express mention of one thing implies the exclusion of others, is directly applicable here.[16] Where Parliament has expressly granted SEBI the power to attach assets under Section 11D in specific circumstances, its silence on freeze power in all other circumstances cannot be interpreted as an implied grant. SEBI's reliance on Section 11B as an omnibus source of freeze authority is therefore textually unsustainable.

3.2 Depositories Act, 1996: Does It Authorize Freeze?

The Depositories Act, 1996 governs the legal framework for dematerialization of securities and the functioning of depositories in India. Section 19 of the Act empowers SEBI to issue directions to depositories, depository participants, and issuers in the interest of investors.[17] SEBI has at times relied upon this provision to justify freeze directions issued to depositories, instructing them to immobilize specific demat accounts.

This reliance is equally unsustainable. Section 19 of the Depositories Act empowers SEBI to issue directions to depositories as institutions, not to freeze the accounts of individual investors held within those depositories.[18] The distinction is critical. A direction to a depository regarding its operational conduct is qualitatively different from a direction that suspends an individual investor's property rights. To read Section 19 as authorizing the latter would be to stretch the provision far beyond its legislative intent and textual scope, transforming an institutional regulatory power into a coercive individual enforcement tool without any

[15] See Justice G.P. Singh, *Principles of Statutory Interpretation* 388 (14th ed. 2016) (explaining that deliberate omission by Parliament signals a conscious legislative choice).
[16] See Inhabitants of Sedgley v. Overseers, (1831) 2 B & Ad. 65 (explaining the maxim expressio unius est exclusio alterius in statutory interpretation).
[17] Depositories Act, 1996, No. 22, Acts of Parliament, 1996 (India), § 19.
[18] See H.M. Seervai, *Constitutional Law of India* 1642 (4th ed. 2002) (distinguishing between institutional regulatory directions and coercive individual enforcement actions).

parliamentary sanction.

3.3 SEBI Regulations and Circulars: Can Delegated Legislation Create What the Parent Act Does Not?

SEBI has attempted to fill the legislative gap through regulations and circulars framed under the SEBI Act. The SEBI (Depositories and Participants) Regulations, 2018 contain provisions enabling the freezing of accounts under certain circumstances.[19] The SEBI (Prohibition of Insider Trading) Regulations, 2015 contemplate restrictions on dealing in securities by persons in possession of unpublished price sensitive information.[20] SEBI's KYC circulars have further extended freeze power into the domain of administrative compliance.[21]

These regulatory instruments, however, cannot save SEBI's freeze power from the ultra vires challenge. It is a foundational principle of administrative law that delegated legislation cannot travel beyond the scope of the parent statute.[22] Where the parent act does not confer a particular power, regulations and circulars framed under it cannot create that power independently. The Supreme Court has consistently held that subordinate legislation inconsistent with or exceeding the parent statute is void.[23] SEBI's regulations and circulars purporting to authorize demat account freezes, in the absence of any explicit enabling provision in the SEBI Act or the Depositories Act, are therefore ultra vires and void.

3.4 Doctrine of Implied Powers: Does It Save SEBI?

SEBI may contend that the power to freeze demat accounts is impliedly conferred by its broad investor protection mandate. The doctrine of implied powers recognizes that a statutory body possesses, in addition to its express powers, such powers as are necessarily incidental to the effective discharge of its statutory functions.[24] SEBI may argue that the power to freeze is necessarily incidental to its power to investigate securities violations and protect investors.

[19] Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, Regulation 47.
[20] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Regulation 4.
[21] Securities and Exchange Board of India, Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 (Mar. 16, 2023).
[22] See Delhi Laws Act, *In re*, AIR 1951 SC 332 (India) (holding that delegated legislation cannot exceed the scope of the parent statute).
[23] See State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517 (India) (reaffirming that subordinate legislation repugnant to the parent act is void).
[24] See Attorney General v. Great Eastern Ry. Co., (1880) 5 App. Cas. 473 (H.L.) (laying down the foundational test for implied powers of statutory bodies).

This argument must fail for two reasons. First, the test for implied powers is one of necessity, not convenience or utility.[25] The power to freeze demat accounts is not necessary for SEBI to discharge its investigative or protective functions, as SEBI possesses adequate alternative remedies including directions to cease and desist, suspension of trading privileges, and attachment under Section 11D. Second, where Parliament has expressly granted analogous coercive powers in specific contexts, the inference is that it deliberately withheld such power in other contexts.[26] The doctrine of implied powers cannot be invoked to override this legislative choice.

3.5 Finding: Substantive Ultra Vires Established

The statutory analysis across the SEBI Act, 1992, the Depositories Act, 1996, and all subordinate legislation reveals a complete absence of explicit freeze power. The doctrine of implied powers does not supply this missing authority, as the power to freeze is not necessarily incidental to SEBI's express statutory functions. SEBI's freeze orders are therefore substantively ultra vires, having been issued without any valid statutory foundation.

IV. DOCTRINAL AND CONSTITUTIONAL CHALLENGE

4.1 Substantive vs. Procedural Ultra Vires: Applied to Freeze Orders

The doctrine of ultra vires in administrative law operates on two distinct planes. Substantive ultra vires arises where a statutory body acts beyond the scope of powers granted by its parent legislation, rendering the action void ab initio.[27] Procedural ultra vires arises where a statutory body, even while acting within the general scope of its powers, fails to observe mandatory procedural requirements prescribed by statute or common law principles of natural justice.[28] Chapter III of this paper has established substantive ultra vires. This chapter establishes procedural ultra vires and constitutional invalidity as two independent and additional grounds upon which SEBI's freeze orders are legally unsustainable.

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[25] Id.
[26] See Justice G.P. Singh, supra note 15, at 392.
[27] See Wade & Forsyth, *Administrative Law* 35 (11th ed. 2014) (defining substantive ultra vires as action beyond the scope of statutory authority).
[28] Id. at 68.

4.2 Natural Justice: Audi Alteram Partem and Speaking Orders

The principle of audi alteram partem, constituting the foundational rule of natural justice, mandates that no person shall be adversely affected by an order without being given an opportunity to be heard.[29] SEBI's freeze orders are routinely passed ex parte, without any prior notice to the account holder and without affording any opportunity to present their case before the freeze is imposed. The civil consequences of such orders are immediate and severe, rendering an investor unable to sell, transfer, or pledge their securities from the moment the freeze takes effect.

The Supreme Court has unequivocally held that the greater the civil consequence of an administrative action, the stronger the requirement of observing natural justice before such action is taken.[30] A demat account freeze, which instantaneously immobilizes an investor's entire securities portfolio, represents one of the most severe civil consequences that SEBI can impose short of a monetary penalty. The absence of a pre-decisional hearing in such circumstances is not a procedural irregularity but a fundamental violation of natural justice that goes to the root of the order's validity.

SEBI's freeze orders further fail the requirement of speaking orders. Administrative law mandates that any order adversely affecting a party must be accompanied by reasons, enabling the affected party to understand the basis of the decision and to challenge it effectively before an appellate forum.[31] SEBI's freeze directions are frequently issued as bare directions to depositories without any reasoned order communicated to the account holder, making meaningful challenge before SAT practically impossible. This failure constitutes an independent ground of procedural ultra vires.

4.3 Proportionality: Blanket Freeze vs. Graduated Response

The proportionality doctrine, formally adopted into Indian constitutional and administrative law by the Supreme Court in *Modern Dental College v. State of Madhya Pradesh*, requires that

[29] See Ridge v. Baldwin, (1964) AC 40 (H.L.) (establishing audi alteram partem as a foundational requirement of natural justice applicable to administrative decisions with civil consequences).
[30] See Union of India v. Tulsiram Patel, (1985) 3 SCC 398 (India) (holding that severity of civil consequence strengthens the requirement of natural justice).
[31] See S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 (India) (mandating reasoned orders for administrative decisions affecting individual rights).

any restriction imposed by a public authority must satisfy a four-limb test.[32] The measure must pursue a legitimate aim, it must be rationally connected to that aim, it must be necessary in the sense that no less restrictive alternative exists, and it must strike a fair balance between the public interest pursued and the individual rights restricted.[33]

SEBI's blanket freeze orders fail this test at the third and fourth limbs. At the third limb, SEBI possesses a range of less restrictive alternatives including directions to cease and desist, suspension of specific trading privileges, partial freezes limited to the securities under investigation, and attachment under Section 11D in disgorgement proceedings. A blanket freeze immobilizing an investor's entire portfolio, including securities entirely unrelated to the alleged violation, is manifestly disproportionate when these less restrictive alternatives are available.[34] At the fourth limb, the balance between SEBI's regulatory interest and the investor's property rights is fatally disturbed by the indefinite duration of freeze orders, which frequently remain in force for years pending investigation or adjudication without any periodic review mechanism.

4.4 Article 300A: Freeze Without Authority of Law

Article 300A of the Constitution of India provides that no person shall be deprived of their property save by authority of law.[35] The Supreme Court has interpreted this provision to require not merely the existence of a law but a valid law that is just, fair, and non-arbitrary.[36] As established in Chapter III, SEBI's freeze power does not rest on any explicit statutory provision. SEBI's circulars and regulations, which purport to authorize freeze orders, do not constitute "law" within the meaning of Article 300A, as they are subordinate legislation that exceeds the scope of the parent statute and is therefore void.

The deprivation of an investor's right to deal with their dematerialized securities through a freeze order that lacks valid statutory backing is therefore a direct violation of Article 300A. This constitutional guarantee operates independently of the fundamental rights under Part III

[32] Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).
[33] Id.
[34] See Om Kumar v. Union of India, (2001) 2 SCC 386 (India) (applying proportionality to administrative penalties and requiring least restrictive means).
[35] India Const. art. 300A.
[36] See Jilubhai Nanbhai Khachar v. State of Gujarat, (1995) Supp. 1 SCC 596 (India) (interpreting Article 300A to require a valid, just, and non-arbitrary law).

and cannot be abridged except by a valid law enacted by a competent legislature.[37] SEBI's freeze orders, resting as they do on implied power and subordinate legislation exceeding the parent act, fail to satisfy this constitutional threshold.

4.5 Article 19(1)(g): Restriction Without Valid Legislative Backing

Article 19(1)(g) guarantees every citizen the right to practise any profession or to carry on any occupation, trade, or business.[38] For market intermediaries, brokers, sub-brokers, and investors who rely upon active management of their securities portfolio as a source of livelihood, a demat account freeze directly restricts this fundamental right. Any restriction on Article 19(1)(g) must satisfy the test under Article 19(6), which requires that the restriction be imposed by law and constitute a reasonable restriction in the interests of the general public.[39]

SEBI's freeze orders fail the Article 19(6) test on both counts. First, as established, the freeze power does not rest on any valid law, failing the threshold requirement of Article 19(6). Second, a blanket indefinite freeze without periodic review cannot constitute a reasonable restriction, as reasonableness under Article 19(6) imports the proportionality standard requiring the least restrictive means to be employed.[40] SEBI's failure to adopt graduated measures before resorting to a blanket freeze renders the restriction unreasonable and constitutionally infirm.

4.6 Article 14: Arbitrariness and Absence of Published Criteria

Article 14 of the Constitution of India guarantees equality before law and equal protection of laws, and has been interpreted by the Supreme Court to prohibit arbitrary action by the State.[41] SEBI does not publish any criteria governing when a freeze order will be issued as opposed to other less restrictive enforcement measures. The absence of published criteria means that the decision to freeze a particular demat account is made at the subjective discretion of SEBI's officers, without any intelligible differentia distinguishing cases where freezing is warranted from those where it is not.

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[37] See K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 (India) (holding that Article 300A operates as an independent constitutional guarantee).
[38] India Const. art. 19(1)(g).
[39] India Const. art. 19(6).
[40] See Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703 (India) (importing proportionality into the reasonableness standard under Article 19(6)).
[41] India Const. art. 14.

The Supreme Court held in *Shayara Bano v. Union of India* that manifest arbitrariness, consisting of action that is capricious, irrational, or without adequate determining principle, violates Article 14.[42] SEBI's freeze practice, operating without published criteria, without a graduated response framework, and without any sunset clause limiting the duration of freeze orders, satisfies every element of manifest arbitrariness. It is therefore void under Article 14 independently of the ultra vires challenge under administrative law.

4.7 Finding: Procedural Ultra Vires and Constitutional Invalidity Established

SEBI's freeze orders are procedurally ultra vires on account of systematic violations of audi alteram partem, the requirement of speaking orders, and the proportionality doctrine. They are additionally unconstitutional under Articles 300A, 19(1)(g), and 14 of the Constitution of India. These grounds operate independently of the substantive ultra vires finding in Chapter III, providing multiple converging bases upon which SEBI's freeze practice must be held legally unsustainable.

V. JUDICIAL TRENDS AND CRITICAL GAPS

5.1 SAT Jurisprudence: Pro-SEBI vs. Rights-Protective Decisions

The Securities Appellate Tribunal has been the primary forum where SEBI's freeze orders have faced legal challenge. SAT's jurisprudence on the subject reveals a deeply inconsistent pattern that has failed to settle the foundational question of SEBI's statutory authority to freeze demat accounts. In several decisions, SAT has upheld SEBI's freeze orders by broadly endorsing SEBI's investor protection mandate under Section 11B of the SEBI Act, without critically examining whether that provision actually confers freeze power.[43] These decisions have treated the width of Section 11B as self-evidently sufficient to sustain freeze directions, thereby avoiding the harder statutory interpretation question this paper raises.

In contrast, SAT has in other decisions demonstrated greater sensitivity to individual rights. In *Alpana R. Kirloskar v. Securities and Exchange Board of India*, SAT quashed SEBI's October 2020 order restraining five members of the Kirloskar family from accessing the securities

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[42] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India) (holding that manifest arbitrariness violates Article 14).

[43] See generally Securities and Exchange Board of India v. Cabot International Capital Corporation, Appeal No. 27 of 2003 (SAT 2004) (upholding SEBI directions under Section 11B without examining the statutory basis for freeze power specifically).

market, nullifying the consequent freeze on their demat accounts.[44] The significance of this decision, however, extends beyond its immediate outcome. Despite SAT's order of October 2022 setting aside SEBI's freeze, the shares of the Kirloskar family members in Kirloskar Industries Limited remained frozen for over a year thereafter, as SEBI and the National Securities Depository Limited engaged in a prolonged blame game over non-compliance.[45] When the Kirloskar family approached SAT again through Miscellaneous Application No. 1436 of 2023, the Tribunal came down heavily on SEBI, observing that its "lackadaisical approach is contrary to the spirit of the SEBI Act" and that "the interest of the investors was least considered and apathy was writ large."[46] SAT imposed costs of rupees five lakhs on SEBI for its negligent handling of the unfreeze process.[47]

This case illustrates a dimension of SEBI's freeze practice that goes beyond the initial imposition of freeze orders. Even where SAT grants relief, the absence of a mandatory compliance mechanism means that investors remain effectively frozen out of their securities long after judicial intervention in their favour. The freeze, once imposed, acquires an administrative inertia that judicial orders alone cannot easily dislodge.

5.2 Bombay High Court and Supreme Court: The Pradeep Mehta Litigation

The most significant recent judicial intervention on SEBI's demat account freeze power is found in *Pradeep Mehta v. Union of India*, decided by the Bombay High Court on August 26, 2024.[48] In this case, the demat accounts of a senior gynaecologist and his son were frozen pursuant to SEBI's directions to BSE and NSE, on the erroneous basis that they were promoters of Shrenuj and Company Limited, a listed entity that had defaulted on its disclosure obligations under the SEBI (LODR) Regulations, 2015. The petitioners had no active role in the management of Shrenuj and had been wrongly classified as promoters. Despite approaching SEBI, SAT, BSE, and NSE over a period of six years, they received no substantive hearing or

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[44] Alpana R. Kirloskar v. Securities and Exchange Board of India, Appeal No. 246 of 2020 (SAT Oct. 12, 2022) (quashing SEBI's restraint order of October 2020 and nullifying the consequent freeze on appellants' demat accounts).

[45] See Alpana R. Kirloskar v. Securities and Exchange Board of India, Misc. Application No. 1436 of 2023 (SAT Dec. 4, 2023) (noting that shares remained frozen for over a year despite SAT's order quashing the underlying SEBI direction).

[46] Id.

[47] Id. (SAT imposing costs of rupees five lakhs on SEBI for negligent non-compliance and observing that SEBI acted only when fresh applications were filed before the Tribunal).

[48] Pradeep Mehta v. Union of India, 2024 SCC OnLine Bom 2771 (Bombay H.C. Aug. 26, 2024).

resolution, their retirement investments remaining immobilized throughout.

The Division Bench of Justices G.S. Kulkarni and Firdosh P. Pooniwalla declared the freezing of the petitioners' demat accounts as illegal and invalid, describing it as "a classic example of highhanded action and a reckless action."[49] The Court awarded costs of rupees eighty lakhs jointly against SEBI, BSE, and NSE, marking one of the rare instances where a court imposed a financial penalty directly on the securities regulator for an illegal freeze.

The Supreme Court, in September 2024, set aside the Bombay High Court's penalty order on procedural grounds, noting that the High Court had passed a final judgment on a matter reserved for interim relief and had imposed the penalty without hearing SEBI, BSE, and NSE.[50] Critically, the Supreme Court did not address or endorse the legality of SEBI's freeze action on merits. The matter was remanded to the Bombay High Court for a fresh hearing with all parties, leaving the substantive question of SEBI's freeze power entirely open.

5.3 Critical Gaps: No Sunset Clause, Third Party Rights, No Redressal Mechanism

Beyond judicial inconsistency, SEBI's freeze practice suffers from three structural gaps that compound its legal infirmity. First, SEBI freeze orders contain no sunset clause prescribing a maximum duration. The Kirloskar litigation demonstrates that freeze orders can remain operative for years, surviving even SAT orders quashing the underlying SEBI direction, with no obligation on SEBI to periodically review their necessity. This stands in stark contrast to attachment orders under the Prevention of Money Laundering Act, 2002, which are subject to a statutory time limit of one hundred and eighty days.[51]

Second, freeze orders affect third parties including nominees, joint account holders, and pledgees who have no connection to the alleged securities violation and who receive no notice of the freeze. The Pradeep Mehta case vividly illustrates this concern, as the petitioner's retirement investments were frozen solely because of a misclassification originating from his

[49] Id. (declaring the freezing of petitioners' demat accounts illegal and invalid and awarding costs of rupees eighty lakhs jointly against SEBI, BSE, and NSE).

[50] Securities and Exchange Board of India v. Pradeep Mehta, Civil Appeal (Supreme Court of India Sept. 9, 2024) (setting aside the Bombay High Court's penalty order on procedural grounds and remanding for fresh hearing).

[51] Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India), § 8(3) (prescribing a maximum period of one hundred and eighty days for provisional attachment orders).

father-in-law's association with a defaulting company.[52] No dedicated mechanism exists within SEBI's framework to protect or provide relief to such third parties.

Third, investors whose demat accounts are frozen have no dedicated redressal mechanism within SEBI. The SCORES portal handles complaints against market intermediaries but does not provide any facility for challenging freeze orders issued by SEBI itself. The only remedy is an appeal before SAT under Section 15T of the SEBI Act, which involves legal costs and procedural delays wholly disproportionate to the administrative nature of the freeze decision.[53] The Pradeep Mehta litigation lasted six years before the High Court intervened, a duration that speaks for itself.

5.4 KYC and PAN-Aadhaar Freeze: A New Ultra Vires Frontier

Between July 2023 and May 2024, SEBI froze the demat accounts of thousands of investors for failure to link their Permanent Account Numbers with their Aadhaar numbers, acting through administrative circulars rather than any legislative provision.[54] These investors had committed no securities law violation. The freeze denied them the ability to sell securities or make new investments during a significant bull market run, causing direct and measurable financial loss. SEBI subsequently reversed the freeze by unilaterally revising its circular, without any acknowledgment of the legal infirmity of the original freeze directions or any mechanism for compensating affected investors.[55]

This episode represents the most unambiguous instance of SEBI acting ultra vires. Section 11B authorizes directions in the interest of investors and the securities market. Freezing the accounts of investors who have merely failed to link an administrative identifier cannot plausibly be characterized as being in the interest of those very investors. The fact that SEBI reversed the freeze through a circular revision, rather than through any adjudicatory or legislative process, further confirms that this exercise of power operated entirely outside any

[52] Pradeep Mehta v. Union of India, 2024 SCC OnLine Bom 2771 (Bombay H.C. Aug. 26, 2024) (noting that the petitioner had no active role in the management of the defaulting company and was wrongly classified as its promoter).
[53] Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India), § 15T.
[54] See Securities and Exchange Board of India, Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 (Mar. 16, 2023) (directing freeze of demat accounts for KYC and PAN-Aadhaar non-compliance).
[55] See Moneylife, Arbitrary Blocking of Demat Accounts: Regulatory Overreach Will Remain in Focus at High Court Re-hearing (2024) (reporting that SEBI unilaterally revised its circular to lift the freeze without any adjudicatory process or investor compensation mechanism).

statutory framework.

5.5 Finding: Judicial Inconsistency Confirms Legislative Vacuum

The analysis of SAT, High Court, and Supreme Court jurisprudence reveals that courts have been unable to provide consistent and principled guidance on SEBI's freeze power precisely because no clear statutory framework exists to anchor judicial reasoning. The Pradeep Mehta litigation, the Kirloskar proceedings, and the mass KYC freeze episode collectively demonstrate that SEBI's freeze practice causes severe and sustained harm to investors, operates without procedural safeguards, and resists effective judicial correction in the absence of a legislative framework. Judicial inconsistency is not the cause of the problem but its symptom, the root cause being the legislative vacuum that only Parliament can fill.

VI. RECOMMENDATIONS AND CONCLUSION

6.1 Explicit Statutory Amendment to Section 11B of the SEBI Act

The most fundamental reform required is the insertion of an explicit provision in the SEBI Act, 1992 authorizing the freezing of demat accounts under specifically defined circumstances. The current practice of deriving freeze power through implication from Section 11B is legally untenable, as this paper has demonstrated. A proposed amendment to Section 11B must enumerate the precise conditions under which a freeze may be ordered, the categories of accounts susceptible to freeze, and the maximum duration for which a freeze may remain operative without renewal. Without such explicit legislative authorization, every freeze order issued by SEBI remains substantively ultra vires and constitutionally vulnerable under Articles 14, 19(1)(g), and 300A.

6.2 Mandatory Pre-Freeze Hearing and Sunset Clause

Any statutory framework governing demat account freezes must incorporate two non-negotiable procedural safeguards. First, a mandatory pre-freeze hearing must be prescribed, requiring SEBI to issue notice to the account holder and afford a reasonable opportunity to be heard before any freeze order takes effect, except in cases of demonstrated urgency where an ex parte interim freeze may be permitted subject to a mandatory post-freeze hearing within seven days. Second, a sunset clause must be introduced prescribing a maximum duration of ninety days for any freeze order, beyond which the freeze must automatically lapse unless renewed by a reasoned order passed after a fresh hearing. These safeguards would bring SEBI's freeze practice into conformity with the principles of natural justice and the proportionality standard mandated by the Supreme Court.

6.3 Graduated Response Framework

Parliament must legislatively mandate a graduated response framework requiring SEBI to exhaust less restrictive enforcement measures before resorting to a demat account freeze. The framework should prescribe a hierarchy of responses consisting of, first, a formal warning or show cause notice, second, a direction to cease and desist from specific transactions, third, a partial freeze limited to securities directly connected to the alleged violation, and fourth, a complete freeze only where all preceding measures have proved inadequate. Such a framework would cure the proportionality deficit identified in Chapter IV and prevent the indiscriminate use of blanket freezes as a first resort enforcement tool.

6.4 Protection of Third Party Rights and Dedicated Redressal Mechanism

The statutory framework must expressly provide for notice to all persons whose rights are affected by a freeze order, including nominees, joint account holders, and pledgees, affording them an independent right to be heard. Additionally, SEBI must establish a dedicated administrative redressal mechanism, separate from the SCORES portal and from SAT appeals, through which investors can seek expedited review of freeze orders within a prescribed time frame. The Pradeep Mehta litigation, which lasted six years before judicial relief was obtained, and the Kirloskar proceedings, where shares remained frozen for over a year despite a SAT order in the investors' favour, demonstrate with painful clarity that the current remedial framework is wholly inadequate.

Conclusion

This paper set out to test the hypothesis that SEBI's exercise of power to freeze demat accounts, being neither explicitly conferred by statute nor reasonably implied from its parent legislation, constitutes an ultra vires action violating the principles of natural justice, proportionality, and constitutional guarantees under Articles 14, 19(1)(g), and 300A of the Constitution of India. Each chapter of this paper has contributed to the proof of this hypothesis.

The statutory analysis in Chapter III established that neither the SEBI Act, 1992 nor the

Depositories Act, 1996 explicitly confers freeze power upon SEBI, and that the doctrine of implied powers cannot supply this missing authority. The doctrinal and constitutional analysis in Chapter IV demonstrated that SEBI's freeze orders systematically violate audi alteram partem, fail the proportionality test, and are constitutionally infirm under Articles 300A, 19(1)(g), and 14. The judicial analysis in Chapter V confirmed that courts have been unable to provide consistent principled guidance in the absence of a legislative framework, with the Pradeep Mehta and Kirloskar litigations vividly illustrating the severe harm caused by SEBI's unchecked freeze practice.

Both limbs of the hypothesis, substantive ultra vires and procedural ultra vires, stand independently proved. SEBI's freeze practice occupies a legal vacuum of its own creation, sustained by regulatory inertia and the absence of effective judicial correction. The solution lies not with the courts but with Parliament. Until explicit legislation is enacted governing the conditions, procedure, duration, and review of demat account freezes, every such order issued by SEBI remains an act of regulatory overreach that the law cannot sustain.

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