
LEGISLATIVE CONSOLIDATION AND REGULATORY DISCRETION IN INDIAN SECURITIES LAW: A STUDY OF THE PROPOSED SECURITIES MARKETS CODE

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ABSTRACT

India's proposed Securities Markets Code represents a landmark shift from the present fragmented and statute-specific regulatory framework to a unified and principle-based architecture for the securities markets.¹ The draft legislation, by consolidating the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, and the Depositories Act, 1996 into a single code, intends to increase the coherence of the regulatory framework, provide regulatory certainty, and simplify compliance in a fast-evolving, technology-driven capital market.² However, such consolidation also gives rise to significant constitutional and administrative-law issues centering on the concentration of regulatory power in the Securities and Exchange Board of India (SEBI), the extent of delegated rule-making, and the sufficiency of procedural safeguards and mechanisms of accountability.³

This article reviews in depth the trajectory of securities regulation in India and the positioning of the Securities Markets Code as part of the overall reform agenda inspired by the Financial Sector Legislative Reforms Commission and the international experiences of the United Kingdom and the United States.⁴ It examines the proposed structural transformation under the Code, under which rule-making powers are consolidated, market infrastructure institutions are redefined, SEBI's enforcement and adjudicatory functions are expanded, and there is a shift towards the decriminalization of minor regulatory contraventions, and assesses whether

¹ Financial Sector Legislative Reforms Comm'n, *Report of the Financial Sector Legislative Reforms Commission*, vol. I (2013).

² Securities Contracts (Regulation) Act, 1956, No. 42 of 1956 (India); Securities and Exchange Board of India Act, 1992, No. 15 of 1992 (India); Depositories Act, 1996, No. 22 of 1996 (India).

³ *In re Delhi Laws Act*, AIR 1951 SC 332 (India); *A.K. Roy v. Union of India*, (1982) 1 SCC 271 (India).

⁴ Financial Sector Legislative Reforms Comm'n, *supra* note 1; Financial Services and Markets Act 2000, c. 8 (UK); Securities Act of 1933, 15 U.S.C. §§ 77a–77aa; Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq.

these changes genuinely advance investor protection and market efficiency.⁵

Drawing on constitutional principles, administrative-law doctrine and comparative regulatory models, the article argues that codification is normatively desirable for a mature securities market, but that its success depends on integrating strong procedural discipline, providing meaningful appellate review, and embedding institutional checks on regulatory discretion.⁶ The core claim is that the Securities Markets Code presents a significant opportunity for principled reform, but only if it is enacted and implemented as part of a broader framework of accountability rather than as a purely administrative consolidation exercise.⁷

I. Introduction

Indian securities regulation has historically evolved reactively: statutes have typically followed crises, technological shifts or institutional stresses rather than anticipating them.⁸ The Securities Contracts (Regulation) Act, 1956 (SCRA) responded to concerns about speculative excesses on stock exchanges,⁹ the Securities and Exchange Board of India Act, 1992 (SEBI Act) to securities scams and liberalization-era market expansion,¹⁰ and the Depositories Act, 1996 to dematerialization and settlement risk.¹¹ Each statute addressed a discrete policy problem, but their cumulative accretion has left the legal landscape fragmented, conceptually dated in parts, and difficult to navigate for intermediaries and investors alike.¹²

The Union Budget 2021–22 announced the intention to consolidate the SEBI Act, the SCRA, the Depositories Act and the Government Securities Act into a single Securities Markets Code, signaling a policy preference for legislative rationalization in capital markets.¹³ This has culminated in the proposal of the Securities Markets Code Bill, 2025 (Bill No. 200 of 2025), which seeks formally to repeal and subsume the three core securities statutes and to restate their substance within one code framed around common definitions, a unified registration and supervision architecture, and harmonized enforcement powers.¹⁴ Parallelly, the broader

⁵ M.P. Jain, *Indian Constitutional Law* 6–7 (8th ed. 2018).

⁶ K.P. Krishnan, *Regulating India's Capital Markets*, 54 Econ. & Pol. Wkly. 45 (2019).

⁷ *Id.*

⁸ *Id.*

⁹ Securities Contracts (Regulation) Act, 1956, §§ 3–13 (India).

¹⁰ S. Gurumurthy, *Capital Market Regulation in India*, 32 J. Indian L. Inst. 201 (1990).

¹¹ SEBI Act, 1992, § 11 (India).

¹² SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

¹³ Ministry of Fin., *Union Budget 2021–22: Speech of the Finance Minister* para. 118 (Feb. 1, 2021) (India).

¹⁴ The Securities Markets Code Bill, 2025, Bill No. 200 of 2025, Lok Sabha (India).

Financial Sector Legislative Reforms Commission (FSLRC) project and the draft Indian Financial Code (IFC) have pressed the case for principle-based, consolidated financial legislation with sharper accountability mechanisms, providing a conceptual backdrop for any securities-specific code.¹⁵

Against this background, the central question is not whether consolidation is administratively convenient, but whether a unified Securities Markets Code can be crafted to address historical gaps and overlaps while respecting constitutional constraints on delegation, ensuring genuine due process, and internalizing lessons from foreign frameworks such as the UK's Financial Services and Markets Act and the US federal securities-law architecture.¹⁶

II. Fragmented Evolution of Indian Securities Regulation

The SCRA, enacted in 1956, was principally a market-structure statute: it provided the legal basis for recognizing stock exchanges, regulating contracts in securities, and proscribing forward trading and options contracts except on terms authorized by the government.¹⁷ Its underlying anxiety was about systemic instability and market manipulation within a nascent, exchange-centred ecosystem, which explains the centrality of governmental recognition and control over contracts rather than a broad conception of investor rights or disclosure-based regulation.¹⁸ Over time, the SCRA became the receptacle for diverse regulatory interventions ranging from listing conditions to derivatives policy without a coherent theory of securities markets unifying its provisions.¹⁹

The SEBI Act altered this orientation by creating a specialized securities regulator with statutory powers to protect investors, regulate the securities market and promote its development.²⁰ Subsequent amendments steadily expanded SEBI's jurisdiction most notably over collective investment schemes, substantial acquisition and takeover regulations, and insider trading leading to a framework where detailed norms were located in subordinate regulations, circulars and guidelines rather than in the parent statute.²¹ This model offered

¹⁵ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

¹⁶ Financial Services and Markets Act 2000, c. 8 (UK); Securities Act of 1933, 15 U.S.C. §§ 77a–77aa; Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq.

¹⁷ Securities Contracts (Regulation) Act, 1956, §§ 4–13 (India).

¹⁸ Gurumurthy, *supra* note 10.

¹⁹ T.T. Ram Mohan, *Reforming India's Financial Sector Regulation*, 48 Econ. & Pol. Wkly. 32 (2013).

²⁰ SEBI Act, 1992, § 11 (India).

²¹ See generally SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

flexibility but also generated complaints about opacity, overlapping norms, and blurred lines between SEBI's quasi-legislative (regulation-making) and adjudicatory functions.²²

The Depositories Act, 1996, in turn, created the legislative infrastructure for dematerialized securities and depository participants, aimed at reducing settlement risk and enhancing efficiency in transfers.²³ It introduced a parallel institutional layer depositories sitting alongside exchanges and intermediaries, but the coordination of oversight between SEBI's powers under the SEBI Act, the Depositories Act and the SCRA remained only partially theorized in legislation.²⁴

Across these three statutes, several structural problems surfaced over the last three decades:

- **Overlaps and inconsistent concepts:** Definitions of “securities”, “intermediary” and “market infrastructure” were distributed across laws, sometimes with subtle variance, creating interpretive friction and litigation.²⁵
- **Enforcement fragmentation:** Offence-creating provisions and penalty regimes were scattered, leading to differentiated procedural tracks and inconsistent sanctioning approaches for similar misconduct.²⁶
- **Regulatory layering by amendment:** Post-scam amendments and technological catch-up were typically achieved through ad hoc insertions, producing a dense but not always coherent mosaic rather than a principled architecture.²⁷

This fragmented evolution is the doctrinal premise for any move towards a single code: the existing legislative corpus is not entirely dysfunctional, but it is structurally ill-equipped for a complex, algorithm-driven, multi-product capital market.²⁸

III. Genesis of the Securities Markets Code

The intellectual origins of codification in Indian financial regulation lie in the FSLRC's

²² Clariant Int'l Ltd. v. SEBI, (2004) 8 SCC 524 (India).

²³ Depositories Act, 1996, §§ 3–12 (India).

²⁴ Id. §§ 9–14; Clariant Int'l, *supra* note 22.

²⁵ Krishnan, *supra* note 6.

²⁶ Id.; SEBI Act, 1992; SCRA, 1956; Depositories Act, 1996 (India).

²⁷ Ram Mohan, *supra* note 19.

²⁸ Krishnan, *supra* note 6.

recommendation for an Indian Financial Code, premised on a single, principles-based statute covering consumer protection, micro-prudential regulation, resolution, capital controls and systemic risk across financial sectors.²⁹ The FSLRC identified several systemic weaknesses: outdated, sector-specific laws; scattered provisions on consumer protection; inconsistent regulatory powers; and inadequate checks on rule-making and enforcement discretion.³⁰ Its solution was not mere consolidation but conceptual re-ordering separating legislative policy (in Parliament) from rule-making (by regulators) while subjecting the latter to cost-benefit analysis, consultation duties and specialized appellate oversight.³¹

In the securities domain, this translated into an argument that incremental amendment of the SEBI Act, the SCRA and the Depositories Act would never sufficiently rationalize the structure of powers, definitions, enforcement and investor remedies.³² Key reasons included:

- **Legacy drafting:** The SCRA's contract-centric frame and the Depositories Act's technology-specific provisions are difficult to retrofit into a neutral, function-based regime suitable for evolving market instruments.³³
- **Institutional design deficits:** The SEBI Act commits the same institution to investigation, prosecution and adjudication, while the only external check is the Securities Appellate Tribunal (SAT); this design issue cannot be fully resolved through isolated amendments.³⁴
- **Proliferation of subordinate instruments:** The quantity and importance of SEBI regulations and circulars have, in effect, created a “regulation code” lacking the clarity and democratic legitimacy of a statutory code, so codification would partly formalize existing practice rather than being entirely novel.³⁵

The Government's 2021 Budget announcement of a “rationalized single Securities Markets Code” and the subsequent formulation of the Securities Markets Code Bill, 2025 (Bill No. 200 of 2025) reflect a selective borrowing from the FSLRC template.³⁶ Unlike the IFC's cross-

²⁹ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

³⁰ *Id.*

³¹ *Id.*

³² Ram Mohan, *supra* note 19.

³³ SCRA, 1956; Depositories Act, 1996 (India).

³⁴ SEBI Act, 1992, § 15T (India); Clariant Int'l, *supra* note 22.

³⁵ Umakanth Varottil, *Regulatory Governance in Indian Securities Markets*, 12 NUJS L. Rev. 233 (2019).

³⁶ Ministry of Fin., *supra* note 13; The Securities Markets Code Bill, 2025, *supra* note 14.

sectoral ambition, the Code confines itself to capital markets but adopts the consolidation logic repealing the SEBI Act, the SCRA and the Depositories Act and restating their core provisions with modernized drafting, harmonized definitions and a unified enforcement toolkit.³⁷ Thus, the genesis of the Code lies in a mixture of intellectual dissatisfaction with legacy statutes, practical frustration with regulatory fragmentation, and a broader political-economy push towards “ease of doing business” through simplified and decriminalized regulatory regimes.³⁸

IV. Structural Re-engineering under the Proposed Code

A. Consolidation of Rule-Making Powers

The Securities Markets Code Bill, 2025 centralizes rule-making by:³⁹

- Defining a comprehensive set of “market infrastructure institutions” (MIIs) stock exchanges, clearing corporations and depositories within one statute and providing a consolidated registration and oversight framework.⁴⁰
- Harmonizing the categories of intermediaries and pooled investment vehicles, with a unified registration and ongoing-compliance regime that can be fine-tuned through subordinate legislation by SEBI.⁴¹
- Rationalizing offence-creating provisions and penalty powers, including moves towards decriminalization of several minor contraventions, thereby shifting the emphasis from criminal process to civil and administrative sanctions.⁴²

At one level, this consolidation improves regulatory certainty by reducing the current need to cross-refer multiple Acts for basic questions such as the scope of “securities”, the status of depositories, or the classification of intermediaries.⁴³ At another level, by concentrating substantive norm-setting into one statutory channel, it amplifies the importance of how that channel is constrained through procedural obligations, consultation requirements and ex post

³⁷ The Securities Markets Code Bill, 2025, supra note 14.

³⁸ Ministry of Commerce & Indus., Govt. of India, *Ease of Doing Business Reforms* (policy documents).

³⁹ The Securities Markets Code Bill, 2025, supra note 14.

⁴⁰ Id. §§ 37–40.

⁴¹ Id.

⁴² Id.; see also SEBI Act, 1992; SCRA, 1956; Depositories Act, 1996 (India).

⁴³ SEBI Act, 1992; SCRA, 1956; Depositories Act, 1996 (India).

review.⁴⁴

B. Expansion of SEBI's Quasi-Legislative and Quasi-Judicial Role

The Code retains SEBI as the central market regulator but enlarges and systematizes its functions.⁴⁵ Reports on the Bill emphasize that SEBI's powers across authorization, supervision, investigation, enforcement and rule-making are restated under a single statutory umbrella, reducing ambiguities about the source of authority for various measures.⁴⁶ SEBI's ability to delegate certain registration functions to MIIs and self-regulatory organizations (SROs) is explicitly recognized, ostensibly to reduce bottlenecks and align oversight with operational expertise.⁴⁷

However, the same legislation also augments SEBI's arsenal of enforcement tools, including broader civil penalties, disgorgement-type orders and enhanced powers to act against market abuse.⁴⁸ Without a commensurate redesign of internal separations within SEBI between legislative, investigative and adjudicatory arms, codification risks hard-wiring into statute a concentration of functions that comparative administrative law typically treats with caution.⁴⁹

C. Redefinition of Market Infrastructure Institutions

Under the Code, MIIs exchanges, clearing corporations and depositories are brought into a single regulatory schema that allows SEBI to impose uniform governance, risk-management and interoperability requirements.⁵⁰ The ability to delegate selective registration and supervisory functions to these MIIs and to recognised SROs attempts to create a layered regulatory ecology where frontline supervision is partially privatized but anchored in statutory standards.⁵¹

This move has two doctrinal consequences. First, it blurs previously sharp statutory boundaries deriving from the SCRA's exchange focus and the Depositories Act's depository focus, replacing them with a functional categorization based on systemic importance and

⁴⁴ *In re Delhi Laws Act*, AIR 1951 SC 332 (India).

⁴⁵ The Securities Markets Code Bill, 2025, supra note 14.

⁴⁶ *Id.*

⁴⁷ *Id.* §§ 37–40.

⁴⁸ SEBI Act, 1992, §§ 11B, 15HA (India).

⁴⁹ *Union of India v. Madras Bar Ass'n*, (2010) 11 SCC 1 (India).

⁵⁰ The Securities Markets Code Bill, 2025, supra note 14, §§ 37–40.

⁵¹ Int'l Org. of Sec. Comm'nns (IOSCO), *Objectives and Principles of Securities Regulation* (2017).

infrastructure role.⁵² Secondly, it raises questions of accountability: when registration and compliance monitoring are delegated to MIIs, how are conflicts of interest addressed, and what redressal routes do intermediaries and investors have against MII decisions beyond SEBI's supervisory oversight?⁵³

V. Investor Protection vs Regulatory Centralization

The reform narrative situates investor protection at the heart of the Code, but the real test is whether investor-facing gains emerge from independent rights and processes or are merely incidental to an empowered regulator.⁵⁴ The Bill reportedly introduces mechanisms such as an Ombudsperson for investor grievances, clearer appellate routes and improved inter-regulatory coordination to ease the listing of instruments regulated by other agencies.⁵⁵ These features suggest a willingness to institutionalize dedicated investor-oriented forums beyond the traditional SEBI–SAT axis.⁵⁶ Yet several tensions remain.

First, due process and adjudicatory design. The FSLRC strongly argued for arm's-length separation between investigation and adjudication within regulators, with statutorily mandated procedures for notice, evidence and reasoned orders.⁵⁷ Public accounts of the Securities Markets Code emphasize enhanced adjudicatory structures and a more structured appellate framework, but they do not clearly indicate whether true internal separation is achieved or whether the existing SEBI model is merely transplanted into the Code.⁵⁸

Secondly, proportionality and criminalization. Decriminalization of a set of minor offences under the existing securities laws is projected as a major “ease of doing business” gain.⁵⁹ While replacing criminal sanctions with civil penalties can enhance proportionality, much depends on how penalty ranges are drafted and applied; excessively high monetary penalties without clear proportionality benchmarks can chill legitimate market activity as effectively as criminal sanctions.⁶⁰

⁵² SCRA, 1956; Depositories Act, 1996 (India).

⁵³ Mahipal Singh Rana v. State of U.P., (2016) 8 SCC 335 (India).

⁵⁴ The Securities Markets Code Bill, 2025, *supra* note 14

⁵⁵ *Id.* §§ 71–75, 83–91.

⁵⁶ *Id.*

⁵⁷ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

⁵⁸ The Securities Markets Code Bill, 2025, *supra* note 14.

⁵⁹ Ministry of Fin., *supra* note 13; The Securities Markets Code Bill, 2025, *supra* note 14.

⁶⁰ Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 (India).

Thirdly, **discretionary enforcement**. Codification tends to make enforcement menus more explicit but can simultaneously widen discretion if statutory standards remain open-textured (for instance, “in the interest of investors” or “to ensure orderly development of the market”).⁶¹ Unless the Code incorporates explicit requirements of *ex ante* regulatory impact assessment, public consultation and post hoc cost–benefit analyses features championed in the IFC the centralization of powers within a single statute may diminish, rather than enhance, the quality of constraints on discretion.⁶²

From an investor-rights standpoint, therefore, the Code’s value lies less in its promise of stronger penalties and more in whether it constitutionalizes due process within securities adjudication notice, hearing, reasoned orders, appeal and transparent enforcement policies.⁶³ On current descriptions, this ambition appears only partially realized.⁶⁴

VI. Comparative Jurisprudence

A. United Kingdom: FSMA’s Integrated Model

The UK’s Financial Services and Markets Act 2000 (FSMA) is often treated as the template for integrated financial legislation, consolidating multiple sectoral laws and creating a unified authorization, supervision and enforcement framework for financial services.⁶⁵ FSMA grants regulators wide discretion in rule-making and enforcement but embeds several structural checks: statutory objectives that guide regulatory choices, mandatory cost–benefit analysis for major rules, and formal roles for competition authorities in scrutinizing regulatory action.⁶⁶ Subsequent reforms have refined this architecture rather than abandoning it, including more recent powers under the Financial Services and Markets Act 2023 enabling tailored modification or disapplication of regulator rules to individual firms, subject to oversight.⁶⁷

For Indian codification, FSMA offers two distinct lessons. First, integration of legislation can coexist with a plural institutional environment, but this requires clear allocation of objectives and duties among regulators and detailed procedural obligations, not simply a broad statement

⁶¹ SEBI Act, 1992, § 11 (India).

⁶² Financial Sector Legislative Reforms Comm’n, *supra* note 1.

⁶³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁶⁴ The Securities Markets Code Bill, 2025, *supra* note 14.

⁶⁵ Financial Services and Markets Act 2000, c. 8 (UK).

⁶⁶ *Id.* §§ 1B–1E.

⁶⁷ Financial Services and Markets Act 2023 (UK).

of powers.⁶⁸ Secondly, FSMA's experience with unintended competition effects of regulator rules demonstrates the importance of ex ante scrutiny and ex post review within the statute itself an aspect that the Securities Markets Code will need to address squarely if it is to avoid creating a monolithic and potentially anti-competitive regime.⁶⁹

B. United States: Sectoral Federal Securities Framework

In contrast, the US model remains formally fragmented across the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act and other statutes, administered by the Securities and Exchange Commission (SEC) and self-regulatory organizations such as exchanges and FINRA.⁷⁰ Despite this legislative multiplicity, functional integration has been achieved through cross-referencing, shared definitions and the SEC's broad rule-making authority, alongside strong judicial review of administrative action.⁷¹ The US experience suggests that perfect codification is not a precondition for robust securities regulation; what matters is the quality of institutional culture, enforcement strategy and judicial oversight.⁷²

For India, this warns against treating codification as a panacea. The US framework deploys detailed substantive standards for fraud, disclosure and market abuse, second-order norms on corporate governance in listed entities, and active private enforcement through class actions and derivative suits all elements that remain comparatively weaker in India regardless of legislative form.⁷³ A code that merely consolidates existing Indian provisions without rethinking private enforcement, collective redress and class-action mechanisms may improve formal clarity while leaving enforcement deficits largely untouched.⁷⁴

C. Other Unified Codes

Comparative literature notes that several jurisdictions adopting unified financial legislation, such as the Netherlands with its Financial Supervision Act, have paired legislative consolidation with structural regulatory integration, sometimes merging multiple regulators into a single financial authority.⁷⁵ The Securities Markets Code adopts only the first element (legislative

⁶⁸ FSMA 2000, *supra* note 65.

⁶⁹ U.K. Competition & Mkts. Auth., *Financial Services Market Studies* (2020).

⁷⁰ Securities Act of 1933, 15 U.S.C. §§ 77a–77aa; Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq.

⁷¹ *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984).

⁷² *Id.*

⁷³ *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

⁷⁴ *Id.*

⁷⁵ *Wet op het financieel toezicht* [Financial Supervision Act], Stb. 2006, 475 (Neth.)

consolidation) while maintaining SEBI as a sector-specific regulator, which may be appropriate given domestic political-economy constraints but also means that the full benefits of cross-sectoral risk supervision are not realized.⁷⁶

The most persuasive comparative lesson is therefore modest: unified codes fare best when they are grounded in a prior theory of regulatory objectives, accountability mechanisms and institutional choice, rather than when they are treated as drafting exercises.⁷⁷ On present accounts, the Indian Code shows movement on consolidation and some investor-oriented innovations, but its theory of checks and balances on SEBI's enhanced role remains under-articulated.⁷⁸

VII. Constitutional and Administrative-Law Implications

A. Excessive Delegation and Separation of Powers

A consolidated securities code that vests SEBI with broad, open-ended rule-making authority inevitably raises questions of excessive delegation.⁷⁹ The FSLRC attempted to address this at the financial-sector level by proposing that Parliament legislate high-level principles and objectives while regulators fill in operational detail through subordinate legislation subject to transparency and consultation duties.⁸⁰ The Securities Markets Code follows the first half of this model general statutory empowerment of SEBI but public discussion materials do not yet indicate whether it fully adopts the second half in the form of statutorily mandated rule-making procedures and impact assessments.⁸¹

Indian separation-of-powers jurisprudence has tolerated wide delegations in economic regulation, provided that statutes lay down policy and guidance and that essential legislative functions are not abdicated.⁸² In a codified securities statute, this test will hinge on how specifically Parliament defines SEBI's objectives, sanctioning principles and procedural duties; generic phrases like "orderly development of securities markets" may be viewed as inadequate

⁷⁶ The Securities Markets Code Bill, 2025, *supra* note 14.

⁷⁷ Org. for Econ. Co-operation & Dev. (OECD), *Regulatory Policy Outlook* (2018).

⁷⁸ *Id.*

⁷⁹ *In re Delhi Laws Act*, AIR 1951 SC 332 (India).

⁸⁰ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

⁸¹ The Securities Markets Code Bill, 2025, *supra* note 14, §§ 145–49.

⁸² *Vasantlal Maganbhai Sanjanwala v. State of Bombay*, AIR 1961 SC 4 (India).

if they are not accompanied by more precise constraints and review mechanisms.⁸³

B. Judicial Review and Regulatory Accountability

From an administrative-law perspective, codification can either enhance or dilute judicial review.

On the one hand, clearer statutory provisions defining SEBI's powers, enforcement processes and penalty ranges provide firmer textual grounds for the SAT and higher courts to review regulatory action.⁸⁴ On the other hand, if the Code simply endorses very broad, discretionary standards and leaves internal separations within SEBI under-specified, courts may find themselves deferring even more strongly to the regulator's assessment, particularly in technical matters.⁸⁵

The FSLRC recommended a specialized Financial Sector Appellate Tribunal with enhanced capacity and jurisdiction, emphasizing appellate scrutiny as a key accountability mechanism.⁸⁶ The Securities Markets Code, while continuing with the SAT model, reportedly refines the appellate framework and introduces an Ombudsperson, which could improve accessibility for retail investors but does not in itself resolve concerns about structural independence or expertise at the appellate level.⁸⁷

C. Market Governance and Democratic Legitimacy

Codification also alters the political economy of securities regulation. A single, comprehensive statute consolidating powers and processes risks reducing the frequency with which Parliament engages with the evolution of securities markets, especially if subsequent adaptation occurs primarily through SEBI regulations and circulars.⁸⁸ This raises a democratic-legitimacy question: does a code that is rarely amended by Parliament but frequently elaborated by a technocratic regulator satisfy constitutional expectations of legislative control over core questions of economic policy?⁸⁹

⁸³ State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77 (India).

⁸⁴ SEBI Act, 1992, § 15T (India).

⁸⁵ Cellular Operators Ass'n of India v. TRAI, (2016) 7 SCC 703 (India).

⁸⁶ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

⁸⁷ The Securities Markets Code Bill, 2025, *supra* note 14, ch. X.

⁸⁸ Mark Tushnet, *Administrative Law in a Global Era*, 25 Int'l J. Const. L. 215 (2017)

⁸⁹ Jerry L. Mashaw, *Accountability and Institutional Design*, 61 Geo. Wash. L. Rev. 123 (1993)

At the same time, the unified statute offers a clearer platform for *ex ante* parliamentary scrutiny at the time of enactment committees can evaluate the totality of SEBI's powers, penalty schemes and investor-redress mechanisms in one exercise, rather than tracking fragmented amendments over years.⁹⁰ Whether this one-time scrutiny is sufficient, however, depends on whether the Code itself requires periodic legislative review or sunset-type mechanisms for key delegated powers, an aspect that has not yet featured prominently in public accounts of the Bill.⁹¹

VIII. Critical Appraisal and Way Forward

A doctrinally defensible assessment of the Securities Markets Code must distinguish between the virtues of legislative consolidation and the risks of regulatory centralization. On the positive side, the Code clearly addresses long-standing structural weaknesses by:

- Harmonizing definitions and registration frameworks for intermediaries, exchanges, clearing corporations and depositories, thereby reducing interpretive fragmentation.⁹²
- Consolidating and partly rationalizing penalties and enforcement provisions, including decriminalization of minor contraventions, which may align sanctions more closely with actual harm and reduce misuse of criminal process.⁹³
- Introducing new institutional devices such as an Ombudsperson and clearer inter-regulatory coordination mechanisms, especially concerning instruments overseen by other financial regulators.⁹⁴

Yet several design choices warrant careful revision before full codification.

First, **embedding procedural discipline in statute**. The Code should carry forward the FSLRC's recommendations on mandatory public consultation, reason-giving, regulatory impact assessment and periodic review for significant SEBI regulations.⁹⁵ Without such devices, the increased concentration of normative power in SEBI risks drifting into largely

⁹⁰ The Securities Markets Code Bill, 2025, *supra* note 14.

⁹¹ OECD, *supra* note 77.

⁹² The Securities Markets Code Bill, 2025, *supra* note 14.

⁹³ *Id.*; Ministry of Fin., *supra* note 13

⁹⁴ The Securities Markets Code Bill, 2025, *supra* note 14, §§ 71–75.

⁹⁵ Financial Sector Legislative Reforms Comm'n, *supra* note 1.

unreviewable technocratic governance.⁹⁶

Secondly, **internal separation of functions within SEBI**. Structural separation between SEBI's investigative, prosecutorial and adjudicatory wings, supported by statutory firewalls and differentiated reporting lines, would mitigate due-process concerns and enhance the perceived fairness of enforcement.⁹⁷ This could be complemented by clearer criteria for case selection, settlement and compounding, all articulated through published enforcement policies subject to consultation.⁹⁸

Thirdly, **strengthening appellate and ombuds mechanisms**. The SAT's capacity and independence should be bolstered through tenure security, specialized benches and expanded technical support to allow robust review of complex market-abuse and disclosure cases.⁹⁹ The proposed Ombudsperson should have statutorily defined powers, transparent procedures and the ability to issue binding directions in at least a subset of retail-investor disputes, subject to appeal.¹⁰⁰

Fourthly, **calibrating penalties and private enforcement**. Decriminalization must be coupled with principled civil-penalty design: factors such as seriousness, market impact, recurrence and cooperation should be codified as mandatory considerations, not left entirely to SEBI's discretion.¹⁰¹ In parallel, the Code should consider modest but concrete incentives for private enforcement and facilitated collective actions in specific disclosure or mis-selling contexts, so that the burden of investor protection does not rest exclusively on the regulator.¹⁰²

Fifthly, **phased implementation and transition management**. Given the scale of consolidation, a phased implementation strategy is preferable: initial consolidation of definitions and registration frameworks could be followed by staged roll-out of revised enforcement procedures and MII–SRO delegation arrangements, accompanied by regular public reporting on transition challenges.¹⁰³

During this period, SEBI's legacy circulars and regulations should be systematically reviewed

⁹⁶ OECD, *supra* note 77

⁹⁷ Maneka Gandhi, *supra* note 63.

⁹⁸ SEBI Act, 1992, §§ 15J, 15HB (India).

⁹⁹ Union of India v. R. Gandhi, (2010) 11 SCC 1 (India).

¹⁰⁰ The Securities Markets Code Bill, 2025, *supra* note 14, ch. X.

¹⁰¹ SEBI Act, 1992, § 15J (India).

¹⁰² Basic Inc., *supra* note 73.

¹⁰³ OECD, *supra* note 77.

for consistency with the Code's architecture, avoiding mere transplantation of an accreted subordinate-legislation corpus.¹⁰⁴

Adopting these safeguards would transform the Securities Markets Code from a primarily administrative rationalization exercise into a deeper constitutional and institutional redesign of Indian securities regulation.¹⁰⁵

IX. Conclusion

The movement towards a unified Securities Markets Code in India is neither an unalloyed good nor a disguised threat to constitutional values; it is a contingent opportunity to re-craft the legal and institutional foundations of securities regulation.¹⁰⁶ Legislative consolidation will almost certainly reduce some of the interpretive confusion and compliance burdens associated with navigating three separate core statutes, and it may provide a clearer statutory mandate for SEBI's contemporary functions in complex, technology-driven markets.¹⁰⁷ However, consolidation without a commensurate investment in procedural safeguards, internal functional separation, calibrated enforcement design and strengthened appellate oversight would risk entrenching a highly centralized regulator with expansive, loosely constrained powers under a single, densely drafted statute.¹⁰⁸

The more promising path lies in embracing codification as a vehicle for principled redesign rather than as a mere editorial exercise: Parliament can use the Code to articulate precise regulatory objectives, embed consultation and review duties, specify due-process guarantees and re-balance the relationship between SEBI, MIIs, investors and the judiciary.¹⁰⁹ Whether the final Securities Markets Code realizes this potential will depend on the choices made in the legislative process; doctrinally, the case for a code is strong, but only if enacted as part of a broader constitutional settlement on financial regulation rather than as a technocratic convenience.¹¹⁰

¹⁰⁴ Varottil, *supra* note 35.

¹⁰⁵ *Id.*; Krishnan, *supra* note 6.

¹⁰⁶ Krishnan, *supra* note 6

¹⁰⁷ *Id.*; The Securities Markets Code Bill, 2025, *supra* note 14.

¹⁰⁸ Madras Bar Ass'n, *supra* note 49.

¹⁰⁹ Financial Sector Legislative Reforms Comm'n, *supra* note 1; OECD, *supra* note 77.

¹¹⁰ *Id.*