

Regulating Capital Markets

(A Comparative Legal Analysis of SEBI and SEC)

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Abstract:

In today's complex financial ecosystems, robust capital market regulation is critical for safeguarding investor interests, ensuring fair market conduct, and fostering economic growth. India's securities regulator, the Securities and Exchange Board of India (SEBI), plays a pivotal role in this regard, yet continues to face institutional limitations in areas such as enforcement, accountability, and stakeholder engagement. This paper undertakes a comparative study of SEBI and its American counterpart—the U.S. Securities and Exchange Commission (SEC)—to explore how legal and institutional frameworks shape regulatory performance. Drawing upon administrative law doctrines and the economic analysis of law, the article evaluates how the SEC's emphasis on regulatory independence, integrated enforcement mechanisms, consultative rulemaking, and performance measurement has contributed to deepening market trust and capital formation. The analysis does not advocate for legal transplantation but rather contextualizes lessons from the SEC experience within India's socio-legal environment. The article proposes six focused reforms for SEBI: enhancing prosecutorial autonomy, strengthening whistleblower protections, ensuring budgetary independence through a fee-based structure, embedding technology in regulatory functions, formalizing public consultation processes, and instituting performance audits tied to transparency metrics. These reforms aim to transform SEBI into a more agile, credible, and investor-centric regulator. At a time when India is poised to emerge as a global capital hub, aligning SEBI's architecture with principles of rule of law, economic rationality, and institutional legitimacy is essential. A calibrated reform strategy rooted in comparative insights can help SEBI evolve from a compliance enforcer to a trusted guardian of market integrity and economic stability.

Keywords: Securities Regulation, Investor Protection, SEBI, SEC, Financial Regulation, Whistleblower Protection Laws, Market Efficiency, Institutional Reform in Financial Governance, etc.

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1. Introduction:

In the architecture of modern financial systems, the regulation of securities markets plays a pivotal role in ensuring investor protection, preserving market integrity, and facilitating efficient capital formation. Effective regulation not only prevents market failures such as fraud, insider trading, and systemic risk but also fosters public trust in the financial ecosystem—an essential precondition for sustainable economic growth. In jurisdictions like India, where capital markets are expanding and retail participation is surging, the demand for a credible and adaptive regulatory regime has become more pronounced than ever. The Securities and Exchange Board of India (SEBI), as the central market regulator, holds the institutional mandate to oversee this evolving financial landscape. However, recent instances of regulatory delay, inadequate enforcement, and limited procedural transparency have raised critical questions about the strength of its institutional design and legal framework.

Against this backdrop, a comparative analysis with the United States Securities and Exchange Commission (SEC)—widely regarded as one of the most mature and proactive financial regulatory bodies—provides a meaningful reference point. The SEC’s emphasis on enforcement autonomy, robust internal checks, and procedural legitimacy offers valuable insights into what constitutes effective and accountable market oversight. This article employs two key analytical lenses to undertake this comparison: first, administrative law doctrines, especially those relating to delegated legislation, regulatory independence, and rulemaking procedures; and second, the economic analysis of law, which evaluates how institutional rules and incentives shape investor behavior, market efficiency, and systemic resilience.

Through these interlinked perspectives, the article examines the regulatory capacity of SEBI not merely as a legal authority but as a functionally adaptive mechanism within a rapidly changing financial ecosystem. The study critiques both the structural gaps and functional constraints embedded in SEBI’s existing regulatory toolkit, particularly in areas of enforcement, stakeholder responsiveness, and technological adaptability. Simultaneously, it draws on the SEC’s institutional innovations to highlight practical reforms that can enhance transparency, credibility, and enforcement efficiency in Indian securities markets.

Ultimately, this inquiry does not argue for wholesale adoption of foreign regulatory models. Rather, it seeks to distill context-sensitive lessons that can strengthen SEBI’s institutional legitimacy and operational effectiveness. The aim is to contribute to a reform-oriented discourse that positions SEBI as a globally credible market regulator—responsive to

investor interests, insulated from political capture, and committed to India's constitutional vision of economic governance rooted in the rule of law.

2. Evolution and Legal Foundation:

The development of securities market regulation in the United States and India reflects their distinct historical trajectories, economic imperatives, and institutional priorities. The United States Securities and Exchange Commission (SEC) was established in 1934 as a direct response to the catastrophic Wall Street Crash of 1929 and the ensuing Great Depression. The financial crisis exposed widespread malpractices in stock market operations—rampant insider trading, opaque disclosures, and manipulative schemes—that deeply eroded investor confidence. The U.S. Congress enacted the *Securities Exchange Act of 1934*, a landmark legislation that not only created the SEC but also granted it broad authority to regulate and oversee the entire securities market ecosystem. The SEC was empowered with quasi-legislative, executive, and quasi-judicial powers, including the authority to frame rules, investigate violations, and initiate enforcement actions. This comprehensive mandate made the SEC a paradigmatic example of a specialized administrative agency designed to balance market freedom with investor protection, underpinned by a philosophy of regulatory deterrence and transparency.²

In contrast, India's regulatory journey in the securities domain evolved more gradually and was shaped by its post-colonial economic development. For decades following independence, the Indian capital market remained underdeveloped and fragmented, governed largely by the *Capital Issues (Control) Act of 1947*, which prioritized state control over capital allocation rather than investor protection. The need for a modern, autonomous market regulator became apparent in the wake of India's economic liberalization in 1991. The liberalization reforms exposed systemic gaps in the market's regulatory architecture, especially following scams such as the Harshad Mehta securities fraud, which highlighted the risks of an unregulated or loosely regulated market. In response, the *Securities and Exchange Board of India (SEBI)*, initially constituted in 1988 as a non-statutory body, was granted statutory powers under the *SEBI Act, 1992*. The Act conferred upon SEBI the responsibility to protect investors' interests, regulate the securities market, and promote its orderly development. However, unlike the SEC's formation out of a deep financial crisis that justified a sweeping grant of powers, SEBI's

² *Securities Exchange Act of 1934*, Pub L No 73-291, 48 Stat 881 (1934); see also Joel Seligman, *The Transformation of Wall Street* (3rd edn, Aspen Publishers 2003).

statutory architecture was initially modest, and its authority expanded incrementally through legislative amendments and judicial reinforcement over the years.³

A key difference between the SEC and SEBI lies in their legislative origins and institutional independence. The SEC was designed from inception to be a robust, self-sufficient body with clear separation from political interference. It reports directly to the U.S. Congress and is funded through fees collected from market participants, which reinforces its financial autonomy. In contrast, SEBI, while statutorily autonomous, remains under the administrative oversight of the Ministry of Finance, Government of India. Its budgetary allocations and personnel appointments are influenced by the executive, which may limit its operational independence in practice.⁴ Furthermore, the SEC's powers to initiate civil and criminal enforcement actions through its internal mechanisms and the U.S. federal court system represent a significant strength, whereas SEBI, although empowered to pass orders, must depend on special courts and coordination with other enforcement agencies for criminal prosecutions.⁵

Despite these foundational differences, both institutions share a commitment to investor protection, market integrity, and regulatory modernization. SEBI has increasingly adopted global best practices, drawing inspiration from the SEC's emphasis on disclosure-based regulation, electronic filing systems, and risk-based surveillance. Yet, critical gaps persist. For instance, while the SEC enjoys public legitimacy due to its institutional transparency and rigorous enforcement record, SEBI has at times faced criticism for regulatory inertia, selective enforcement, and lack of stakeholder consultation in rulemaking processes.⁶ These differences in origin and institutional design underscore the importance of context-sensitive reforms in strengthening SEBI's framework, rather than mechanical transplantation of foreign models.

3. Powers, Functions & Institutional Architecture: A Comparative View:

The legal foundations of both SEBI and the SEC have given rise to regulatory institutions with expansive powers and pivotal responsibilities in shaping their respective capital markets. Yet, despite their common commitment to market integrity and investor

³ Securities and Exchange Board of India Act 1992, No 15 of 1992; see also P Chidambaram, *Standing Guard: A Year in Opposition* (Rupa Publications 2016).

⁴ U.K. Sinha, *Going Public: My Time at SEBI* (Penguin Random House India 2020).

⁵ *Sahara India Real Estate Corp Ltd v Securities & Exchange Board of India* (2012) 10 SCC 603.

⁶ Jayshree P Upadhyay, 'In an edgy market, Sebi faces its big test' *LiveMint* (Mumbai, 19 August 2020) <https://www.livemint.com/market/stock-market-news/in-an-edgy-market-sebi-faces-its-big-test-11597763300037.html> accessed 7 June 2025.

protection, the design and exercise of their powers reveal critical contrasts in institutional philosophy and operational autonomy. This section undertakes a comparative examination of the core components of their functioning — including rulemaking authority, enforcement mechanisms, and investor protection frameworks — to illuminate how structural choices and governance models influence regulatory outcomes. In doing so, it reflects on the underlying administrative logic that defines their institutional architecture.

A. *Rulemaking and Regulatory Powers:*

The rulemaking and regulatory functions of the Securities and Exchange Commission (SEC) in the United States and the Securities and Exchange Board of India (SEBI) are foundational to their roles as capital market regulators. Although both institutions possess quasi-legislative authority, the scope, exercise, and institutional constraints of these powers reflect differing constitutional frameworks, administrative traditions, and accountability mechanisms.

The SEC derives its authority primarily from the *Securities Exchange Act of 1934*, which provides it with broad powers to issue binding rules governing securities markets in the United States.⁷ The SEC’s rulemaking operates within the framework of the *Administrative Procedure Act 1946*, which mandates procedures for public notice, comment, and reasoned justification for proposed regulations.⁸ These procedural safeguards are emblematic of a mature administrative state, ensuring transparency, accountability, and responsiveness in financial regulation. Furthermore, SEC rules are subject to judicial review under the Chevron doctrine, which allows courts to assess whether the agency’s interpretation of law is reasonable, reinforcing the checks and balances embedded in the U.S. constitutional architecture.⁹

In contrast, SEBI exercises its rulemaking powers under the *Securities and Exchange Board of India Act, 1992*, and allied statutes such as the Securities Contracts (Regulation) Act, 1956.¹⁰ Over time, SEBI has been conferred expansive powers to issue legally binding regulations across a wide array of market domains, including listing obligations, insider

⁷ Securities Exchange Act of 1934, Pub L No 73-291, 48 Stat 881 (1934), § 4.

⁸ Administrative Procedure Act 1946, 5 USC §§ 551–559; see also Jerry L Mashaw, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law* (Yale UP 2012).

⁹ *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 US 837 (1984).

¹⁰ Securities and Exchange Board of India Act 1992, No 15 of 1992, ss 11(1), 11(2).

trading, mutual funds, and takeover codes.¹¹ However, until the recent past, SEBI lacked a standardized consultative framework for public participation in regulation-making. In response to longstanding concerns about opacity, it adopted the *SEBI (Procedure for Making, Amending and Reviewing of Regulations) Regulations, 2025*, which formalize public consultation, internal committee scrutiny, and post-regulatory impact assessment.¹² Yet scholars and practitioners have critiqued the discretionary nature of this framework and the lack of institutionalized ex ante cost-benefit analysis, especially when compared to the U.S. model.

A key distinction lies in the institutional separation of powers. The SEC, while exercising significant authority, operates within a tri-partite model where rulemaking (legislative), enforcement (executive), and adjudication (judicial) functions are institutionally differentiated or subject to external checks.¹³ SEBI, on the other hand, amalgamates all three functions within a single body, raising concerns over the concentration of regulatory authority without sufficient internal separation.¹⁴ Indian legal scholars have increasingly called for reforms that would either introduce internal firewalls or judicially supervised checks to address this democratic deficit.¹⁵

In sum, while SEBI and SEC share a common commitment to effective regulation, their approaches to rulemaking diverge in terms of procedural rigor, stakeholder engagement, and institutional design. Aligning SEBI's framework with global best practices — particularly in regulatory consultation, impact analysis, and separation of functions — remains essential for strengthening its legitimacy and functional autonomy.

B. *Enforcement Mechanisms:*

The enforcement architecture of the SEC is notably robust, centered around its strong investigative capabilities and civil and criminal enforcement powers. Empowered under the Securities Exchange Act of 1934, the SEC's Division of Enforcement conducts confidential

¹¹ Varottil, Umakanth, *Capital Markets and the Regulatory State in India* (March 11, 2019). “Securities Markets” in Devesh Kapur & Madhav Khosla (eds), *Regulation in India: Design, Capacity, Performance* (Hart Publishing, 2019), Available at SSRN: <https://ssrn.com/abstract=3350424>.

¹² Securities and Exchange Board of India, *SEBI (Procedure for Making, Amending and Reviewing of Regulations) Regulations, 2025*, Notification No SEBI/LAD-NRO/GN/2025/229 (13 February 2025).

¹³ Elena Kagan, ‘Presidential Administration’ (2001) 114(8) *Harvard Law Review* 2245, 2256–60.

¹⁴ Palak Shah, ‘No Checks and Balances? SEBI Requires “Separation of Powers”’ *Regstreet Law Advisors* (9 June 2023) <https://regstreetlaw.com/news/no-checks-and-balances-sebi-requires-separation-of-powers/> accessed 7 June 2025.

¹⁵ Jayshree P Upadhyay, ‘In an edgy market, Sebi faces its big test’ *LiveMint* (Mumbai, 19 August 2020) <https://www.livemint.com/market/stock-market-news/in-an-edgy-market-sebi-faces-its-big-test-11597763300037.html> accessed 7 June 2025.

fact-finding investigations, issues subpoenas, and can initiate administrative proceedings or litigate in federal courts.¹⁶ Its institutional structure empowers it to impose disgorgement, civil penalties, trading suspensions, and referrals for criminal prosecution.¹⁷ The SEC also operates a leading whistleblower programme, which has proved instrumental in uncovering fraud and incentivising compliance.¹⁸ As evidence of its effectiveness, the SEC pursued nearly 800 enforcement actions in a recent year—a 12% increase over previous tallies—demonstrating its capacity to respond to misconduct at scale.¹⁹ One prominent case is the *Enron scandal*, where the SEC uncovered accounting fraud, filed charges, and facilitated both internal reforms and criminal prosecutions—culminating in substantial criminal sentences for executives.²⁰

In contrast, SEBI's enforcement toolkit, while substantially strengthened in recent years, remains more constrained, particularly in terms of criminal prosecutorial autonomy. Originally limited to civil penalties and administrative sanctions, SEBI received bolstered powers under the *Securities Laws (Amendment) Act 2014*, including enhanced search-and-seizure authority related to collective investment schemes.²¹ SEBI can suspend trading, prohibit directors from re-entering markets, and award disgorgement.²² However, its ability to initiate criminal prosecution depends on coordination with courts and central agencies—a step-down from the SEC's integrated, direct approach. Furthermore, SEBI lacks a statutory-level whistleblower protection scheme, diminishing its investigative leverage.

The *Satyam scandal* in 2009 offers a potent case study. Driven by massive accounting fraud, it drew parallel comparisons to Enron's modus operandi yet showcased different enforcement dynamics. SEBI launched investigations, barred auditors like PwC for two years, imposed over ₹13 crore in disgorgements, and disqualified board members.²³ These actions,

¹⁶ SEC Enforcement and Litigation, SEC.gov (last updated 21 April 2025) <https://www.sec.gov/enforcement-litigation> accessed 8 June 2025.

¹⁷ *Ibid.*

¹⁸ 15 USC § 78u-6 (Dodd-Frank Wall Street Reform & Consumer Protection Act 2010).

¹⁹ PwC, 'Trends in SEC Enforcement Actions' *Viewpoint* (2024) https://viewpoint.pwc.com/dt/us/en/pwc/in_depths/2024/id2024/id202403.html accessed 7 June 2025.

²⁰ *Scandal at Satyam: Truth, Lies and Corporate Governance* Wharton/University of Pennsylvania (2009) <https://knowledge.wharton.upenn.edu/article/scandal-at-satyam-truth-lies-and-corporate-governance/> accessed 7 June 2025 (comparing underlying fraud mechanisms); see also US Securities and Exchange Commission, *Litigation Release No 21915* (2011) <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-21915> accessed 7 June 2025.

²¹ The Securities Laws (Amendment) Act 2014 (No 27 of 2014).

²² Awaneesh Kumar and Tanya Gangwar, 'Strengthening SEBI's Enforcement: Analyzing the Enhanced Powers Post the 2014 Amendment' (September 01, 2024) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5145885 accessed 7 June 2025.

²³ 'Satyam scandal' Wikipedia (last updated 6 March 2025) https://en.wikipedia.org/wiki/Satyam_scandal accessed 7 June 2025; see also US Securities and Exchange Commission, 'SEC Charges India-Based Affiliates

while significant, lacked integrated criminal prosecution until CBI and other agencies intervened separately. Conversely, the *Enron case*, via SEC enforcement, directly facilitated criminal charges, resulting in prison sentences for Kenneth Lay and Jeffrey Skilling—demonstrating the U.S. system’s seamless enforcement architecture.²⁴

Ultimately, while SEBI has made notable strides in civil enforcement, its restricted criminal authority and fragmented prosecution pathways limit its deterrent impact compared to the SEC. A comprehensive enforcement regime should ideally combine strong administrative enforcement, protected whistleblowing, and integrated criminal mechanisms—reflecting the SEC’s model. India would benefit from adopting such integration to elevate SEBI’s efficacy and investor trust.

C. *Investor Protection and Transparency:*

The commitment to investor protection and transparency lies at the core of both the SEC’s and SEBI’s regulatory missions, yet their mechanisms diverge significantly both in design and impact. In the U.S., the SEC operates a robust whistleblower programme grounded in Dodd–Frank Section 21F, which offers monetary awards ranging from 10–30 percent of sanctions recovered if tips lead to successful enforcement action.²⁵ As of fiscal year 2023, it had awarded nearly \$2 billion to approximately 400 whistleblowers and received record submissions exceeding 18,000 tips—remarkable testimony to its effectiveness in incentivising internal disclosures.²⁶ SEBI, by contrast, lacks a comparable statutory incentive framework and has only recently implemented limited confidentiality protections, meaning its redressal mechanisms largely depend on voluntary disclosures via intermediaries—an area still termed “underdeveloped” by industry experts.²⁷

Transparency in public company disclosures also reveals marked contrast. The SEC’s EDGAR system—a comprehensive, real-time electronic database—mandates timely filing of

of PwC for Role in Satyam Accounting Fraud’ (Press Release, 5 April 2011) <https://www.sec.gov/news/press/2011/2011-82.htm> accessed 7 June 2025.

²⁴ *United States v Lay and Skilling* (S.D. Tex. 2006); see also US Department of Justice, ‘Former Enron Chief Executives Ken Lay and Jeff Skilling Convicted on Fraud and Conspiracy Charges’ (25 May 2006) https://www.justice.gov/archive/opa/pr/2006/May/06_crm_328.html accessed 7 June 2025.

²⁵ 15 USC § 78u-6 (Dodd-Frank Wall Street Reform and Consumer Protection Act 2010).

²⁶ Whistleblower Program, SEC.gov (last updated 17 March 2025) <https://www.sec.gov/enforcement-litigation/whistleblower-program> accessed 8 June 2025.

²⁷ SEBI (Prohibition of Insider Trading) Regulations 2015, r 7A (establishing informant mechanism), r 7B–7E (rewards and protections); SEBI, *Grant of Reward to Informant under Recovery Proceedings Guidelines 2023*.

prospectuses, annual and quarterly reports, insider-trading statements, and more.²⁸ In India, SEBI's counterpart portal provides standardised filing, yet suffers from latency in data updates, limited machine-readability, and weaker enforcement for incomplete submissions.²⁹ These systemic limitations hamper investors' ability to perform timely due diligence, particularly in smaller and mid-cap segments, further accentuating information asymmetries in India's markets.

Another concern in India pertains to financial literacy and market access. Despite SEBI's initiatives—such as the Investor Charter for advisers and the versioned SCORES complaint management system, which resolved over 4,200 grievances in April 2025—the actual investor understanding of risk and redressal pathways remains low.³⁰ Many retail investors remain unaware of their rights or how to engage with regulators effectively. Conversely, the SEC complements its operational systems with public education campaigns, investor alert platforms, and synergy with FINRA, bolstered by a culture of independent financial journalism and investor advocacy groups, which together reinforce market integrity.³¹

Case comparisons bring these structural differences to life. In the *WorldCom* and *Enron* cases, SEC whistleblowers played decisive roles in early detection, disclosure of wrongdoing, and judicial outcomes.³² In India, the *NSEL crisis* (2013) and other market disruptions caused widespread investor losses. However, SEBI's response largely relied on post-event civil orders and administrative corrections, rather than proactive internal surveillance or whistleblower-led disclosures. The *Securities Appellate Tribunal*, in *National Spot Exchange Ltd v SEBI*, specifically highlighted SEBI's lack of early-market intelligence and informant mechanisms in

²⁸ US Securities and Exchange Commission, 'About EDGAR' (SEC.gov) [https://www.sec.gov/edgar/searchedgar/aboutedgar.htm#:~:text=EDGAR%2C%20the%20Electronic%20Data%20Gathering,and%20Exchange%20Commission%20\(SEC\)](https://www.sec.gov/edgar/searchedgar/aboutedgar.htm#:~:text=EDGAR%2C%20the%20Electronic%20Data%20Gathering,and%20Exchange%20Commission%20(SEC).). accessed 8 June 2025.

²⁹ *Podcast: Why SEBI Should Implement India's EDGAR and More* (Capitalmind Premium Podcast, 24 September 2022) <https://premium.capitalmind.in/2022/09/sebi-should-implement-edgar/> accessed 8 June 2025 (advocating for improved data warehousing, real-time disclosures, and machine-readable filings).

³⁰ *Times of India*, 'SEBI resolves 4,239 investor complaints via SCORES portal in April' (Mumbai, 17 May 2025) <https://timesofindia.indiatimes.com/business/india-business/sebi-resolves-4239-investor-complaints-via-scores-portal-in-april/articleshow/121240020.cms> accessed 7 June 2025; see also SEBI, *Investor Charter Circular* (June 2025) <https://www.sebi.gov.in> accessed 7 June 2025.

³¹ SEC, 'Investor Alerts and Bulletins' (Investor.gov) <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins> accessed 8 June 2025.

³² SEC *Issues Largest-Ever Whistleblower Award* (press release, 5 May 2023) <https://www.sec.gov/newsroom/press-releases/2023-89> accessed 7 June 2025.

its critique of the regulatory response.³³ These disparities highlight how differing institutional designs influence not only regulatory outcomes, but ultimately market credibility.

In essence, while SEBI has made significant strides in investor protection and transparency, its mechanisms do not yet match the SEC's integrated model—one where financial incentives, real-time disclosures, and public mobilisation converge to sustain investor trust. For SEBI to elevate its protective architecture, introducing a calibrated whistleblower reward system, modernising digital disclosure platforms, and reinforcing mass financial literacy through independent engagement are essential next steps.

4. Jurisprudential and Economic Reflections:

The interplay of jurisprudence and economics deeply influences the efficacy and legitimacy of securities regulation in both India and the United States. From an administrative law perspective, the principle of delegated legislation lies at the heart of modern regulatory design. Indian courts have scrutinized SEBI's delegation of powers, invoking the foundational constitutional doctrine of *separation of powers* as elaborated in *Kesavananda Bharati v State of Kerala*, where the Supreme Court affirmed that substantive policy must rest with Parliament—even as the executive or regulators may fill procedural lacunae.³⁴ Yet SEBI's use of frequent regulations and circulars—alongside its broad delegation under Section 19—has raised concerns about accountability.³⁵ Contrastingly, U.S. jurisprudence under *Chevron U.S.A. Inc v NRDC* empowers agencies like the SEC to interpret ambiguous statutes within their mandate, often granting them deference.³⁶ This doctrinal framework underpins the SEC's autonomous rulemaking, while also binding it to accountability standards mandated by the APA.

The economic lens sharpens this discourse: proactive, predictable regulation is critical to fostering investor trust, efficient capital formation, and reducing market failures like adverse selection.³⁷ The SEC's robust mechanisms, such as EDGAR and its Whistleblower Program,

³³ *National Spot Exchange Ltd v SEBI* Appeal No 214 of 2019 (Securities Appellate Tribunal, 9 June 2022) <https://indiankanoon.org/doc/121626473/> accessed 8 June 2025.

³⁴ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461, 1973 4 SCC 225.

³⁵ *Attorney-General for India v SEBI* (Delegation Order case) (Kerala HC, 2 June 2023) <https://www.livelaw.in/high-court/kerala-high-court/delegation-quasi-judicial-functions-sebi-229901> accessed 8 June 2025.

³⁶ *Chevron U.S.A. Inc. v NRDC* 467 U.S. 837 (1984).

³⁷ Rajesh Chakrabarti, 'Financial Markets and Investment Finance in India: Implications for Monetary Transmission' in Chetan Ghate and Kenneth M Kletzer (eds), *Monetary Policy in India* (Springer 2016) <https://ssrn.com/abstract=3200710> accessed 8 June 2025.

are evidence-based interventions that mitigate asymmetric information and moral hazard—encouraging greater voluntary market participation. In contrast, research shows India’s financial sector, while expanding since 1991, still suffers from limited liquidity and structural inefficiencies due to regulatory opacity and engagement gaps.³⁸

A notable jurisprudential parallel from India is *Maneka Gandhi v Union of India*, where the Supreme Court expanded the scope of due process under Article 21, emphasizing fair procedures as essential even in economic regulation.³⁹ Such safeguards are crucial for SEBI’s legitimacy, especially where its powers—encompassing rulemaking, investigation, and adjudication—reside within one institution. Without clear procedural firewalls, there is heightened risk of arbitrariness and reduced policy certainty.

Economically, when regulators lack mechanisms like transparent consultation or ex ante impact assessments (as seen in the U.S.), investors face regulatory risk, leading to market inefficiencies or capital flight.⁴⁰ In contrast, India’s post-liberalization reforms, incorporating measures like the Investor Charter and limited public consultation in the 2025 regulations, have improved transparency—but the absence of structured cost-benefit assessments continues to dampen full-scale capital market confidence.

In real-world terms, the *Enron and Satyam scandals* serve as instructive counterpoints. The SEC’s proactive approach in Enron—facilitated by institutionalized whistleblowing and disclosure systems—enabled timely detection, criminal action, and market restructuring.⁴¹ SEBI, in Satyam and NSEL cases, relied predominantly on reactive, civil enforcement, lacking early-warning mechanisms or whistleblower-driven intelligence, thereby proving less efficient in restoring investor confidence.⁴²

Combining these reflections underscores that jurisprudential clarity and economic efficiency are two sides of the same coin. For SEBI to evolve, it must reinforce procedural independence, imbed cost-benefit analysis institutionalized in law, and develop economic rationales for reforms as concrete as in developed systems. Only then can Indian capital

³⁸ Chakrabarti (n 37).

³⁹ *Maneka Gandhi v Union of India* AIR 1978 SC 597, 1978 SCR (2) 621.

⁴⁰ John Armour et al., *Principles of Financial Regulation* (Oxford University Press 2016) 11–12; also available as ECGI Law Working Paper No. 306/2016 <https://ssrn.com/abstract=2735390> accessed 8 June 2025.

⁴¹ *United States v Lay and Skilling* (S.D. Tex. 2006); see US Department of Justice, ‘Former Enron Chief Executives ...’ (25 May 2006) https://www.justice.gov/archive/opa/pr/2006/May/06_crm_328.html accessed 8 June 2025.

⁴² *National Spot Exchange Ltd v SEBI* Appeal No.214 of 2019 (SAT, 9 June 2022) <https://indiankanoon.org/doc/121626473> accessed 8 June 2025.

markets fully leverage their potential within a transparent, efficient, and accountable regulatory architecture.

5. **Reforming SEBI: Legal and Institutional Recommendations:**

To strengthen SEBI's capacity to govern India's capital markets, a multi-layered reform agenda is essential—combining legal empowerment, institutional autonomy, technological edge, and transparent governance—drawing on lessons from the SEC while tailoring solutions to India's unique context.

First, SEBI must be granted *stronger enforcement autonomy*, including the *power to initiate criminal prosecutions directly* or via a structured prosecutorial wing. The 2014 amendments enhanced SEBI's civil enforcement capabilities, but they stopped short of enabling autonomous criminal prosecution—an area where institutional clarity remains lacking. In contrast, the U.S. Securities and Exchange Commission (SEC) operates within a well-coordinated enforcement framework, wherein civil violations are prosecuted by the SEC itself, while criminal matters are formally or informally referred to the Department of Justice (DOJ) through structured cooperation mechanisms.⁴³

Next, a *comprehensive whistleblower protection and incentive framework* is vital. The SEC's whistleblower initiative has consistently led to early exposure of fraud, receiving over 18,000 tips and disbursing nearly US \$2 billion in awards.⁴⁴ In contrast, India's system remains piecemeal, centered on rule 7A of the PIT Regulations 2015 and non-statutory informant guidelines.⁴⁵ The Law Commission's 289th Report (March 2024) recommends incorporating a statutory whistleblower immunity clause in forthcoming trade secrets legislation—granting protections from civil and criminal liability to ensure disclosures cannot be silenced or hindered by NDAs or other constraints.⁵ This aligns with the Commission's broader view that India lacks a robust statutory framework incentivising internal reporting, confidentiality protection, and safe reporting channels comparable to global standards.⁴⁶

⁴³ SEC Enforcement Manual (SEC, Section 5.6.1, last updated 2021) <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf> accessed 10 June 2025 (noting that the SEC refers potential criminal violations to the DOJ under formal coordination procedures).

⁴⁴ Whistleblower Program, SEC.gov (last updated 17 March 2025) <https://www.sec.gov/enforcement-litigation/whistleblower-program> accessed 10 June 2025.

⁴⁵ SEBI (Prohibition of Insider Trading) Regulations 2015, r 7A–7E; SEBI (Grant of Reward to Informant under Recovery Proceedings) Guidelines 2023.

⁴⁶ Debby Jain, 'Law Commission Recommends Whistleblower Protection, Says Amendments May Be Brought to Mandate Test Data Disclosure' *LiveLaw* (9 March 2024) <https://www.livelaw.in/top-stories/law-commission-of-india-289th-report-trade-secrets-economic-espionage-251731> accessed 10 June 2025.

Third, *budgetary independence through a market-linked fee structure* would help insulate SEBI from executive budgetary control. Like the SEC, which funds itself through fees on securities offerings and exchange activities, SEBI could adopt a similar mechanism. Such an arrangement would give SEBI financial autonomy, strengthen its perception as an unbiased regulator, and enable investments in capacity-building.⁴⁷

Fourth, implementing *RegTech and tech-enabled market surveillance tools*—such as AI-driven anomaly detection and blockchain-based trade monitoring—can significantly enhance regulatory efficacy. The SEC has significantly upgraded its investigative capabilities by incorporating data analytics via its Market Abuse Unit’s Analysis & Detection Center, along with tools like ARTEMIS and its Inspector General’s automated triage systems—enabling the rapid identification of anomalous or suspicious trading patterns using vast datasets.⁴⁸ India, with SEBI’s limited predictive analytics, should develop a unified data lake and implement AI tools to process vast datasets including trading, filings, and social media patterns. This would support both preventive and detective regulation.

Fifth, *formalizing public consultation in rulemaking*—mandating cost-benefit analysis and stakeholder engagement in every regulatory proposal—will improve transparency and legitimacy. SEC rulemaking under the Administrative Procedure Act obliges publication of economic impact assessments and written responses to comments.⁴⁹ Although SEBI’s 2025 Regulations introduced a consultative process, these provisions can be deepened by embedding economic analysis and mandatory review timelines.

Finally, SEBI should adopt *regular performance audits and transparency metrics*, aligned with global standards like IOSCO’s Principles for Financial Market Infrastructures (PFMI). These frameworks recommend that regulators and market infrastructures set quantitative benchmarks and publish self-assessments to ensure consistent operational effectiveness—such as tracking enforcement timelines, incident resolution, and investor

⁴⁷ US Securities Act of 1933, § 6(b).

⁴⁸ Daniel M. Hawke, ‘SEC Data Analysis in Insider Trading Investigations’ *CLS Blue Sky Blog* (21 August 2019) <https://clsbluesky.law.columbia.edu/2019/08/21/sec-data-analysis-in-insider-trading-investigations/> accessed 11 June 2025.

⁴⁹ Administrative Procedure Act 1946 (5 USC §§ 551–559); see also Jerry Mashaw, ‘Creating the Administrative Constitution’ (Yale UP 2012).

grievance redressal.⁵⁰ Disclosing these metrics publicly in annual reports would reinforce accountability and help calibrate regulatory responsiveness in Indian markets.

Together, these reforms—strengthened legal powers, autonomous funding, advanced surveillance, inclusive policymaking, and transparent accountability—would align SEBI more closely with global standards while respecting India’s legal and institutional norms. The result would be a regulator that is robust, independent, and trusted—capable of nurturing a world-class capital market grounded in rule of law and efficiency.

6. Conclusion:

As India’s capital markets evolve amidst increasing integration with global finance, the imperative to reinforce the governance, credibility, and institutional resilience of the Securities and Exchange Board of India (SEBI) becomes ever more urgent. The regulatory architecture must not only ensure investor protection and market integrity but also uphold the broader constitutional promise of economic justice. While SEBI has made commendable progress since its inception, persistent concerns about enforcement asymmetry, regulatory capture, and procedural opacity continue to constrain its full potential. These challenges underscore the need for a deeper recalibration of its legal and institutional framework—one that is grounded in the principles of transparency, accountability, and functional independence.

However, meaningful reform must be approached with contextual sensitivity. Merely emulating foreign regulatory blueprints such as that of the U.S. Securities and Exchange Commission (SEC) without accounting for India’s institutional realities and market specificities would be both impractical and counterproductive. For instance, while the SEC benefits from prosecutorial autonomy and advanced surveillance systems, transplanting such features into SEBI’s framework requires careful legal and administrative adaptation. India’s regulatory journey must thus be informed by comparative insights, yet remain firmly anchored in its democratic and developmental ethos.

At this juncture, India has a historic opportunity to position itself as a trusted and rules-based financial jurisdiction. By strengthening SEBI’s enforcement capabilities, institutional autonomy, and stakeholder engagement mechanisms, India can bolster investor confidence and attract long-term capital flows. A regulator that embodies integrity, responsiveness, and

⁵⁰ CPSS-IOSCO, *Principles for Financial Market Infrastructures* (April 2012) 16 <https://www.bis.org/cpmi/publ/d101a.pdf> accessed 10 June 2025 (recommending that financial market infrastructures establish, review, and publicly disclose performance standards and metrics).

foresight will not only elevate domestic market efficiency but also enhance India's stature in the global financial order. The path forward lies not in mimicry but in crafting a regulatory regime that balances innovation with oversight, agility with accountability, and economic ambition with constitutional morality.

