INDIA POLITICAL ECONOMY PROGRAM ESSAY

EVOLUTION OF THE INDIAN SECURITIES MARKET REGULATOR

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SUMMARY

This essay explores the development of the Securities and Exchange Board of India (SEBI) as a critical regulator of the securities market, from its inception in 1988 to its robust role today. It discusses the legislative background, pivotal legal battles, and major regulatory reforms that have shaped its trajectory and impact on India's financial market regulation.

Keywords: SEBI; securities market; financial regulation; India political economy; legal reforms

JEL codes: G18, K22, N25, O53, P11, B29

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On the cover: Pillar of Ashoka (detail) at Sanchi, Madhya Pradesh, India. The pillars of the emperor Ashoka the Great (268–232 B.C.), renowned for their polished sandstone and intricate carvings, were dispersed throughout the Indian subcontinent and carried imperial edicts promoting moral and ethical conduct. The Lion Capital of Ashoka, which tops the pillar at Sarnath, Uttar Pradesh, has been adopted as India's national emblem. Twenty of the pillars of Ashoka still survive.

If we must analyze where the Securities and Exchange Board of India (SEBI) stands today, we would be amiss not to trace this significant regulator's evolution and history, especially the post-1991 reforms. After banks, securities markets are the most significant means of transforming savings into investments. Given this and SEBI's extensive power, its actions—however minute—deserve scrutiny. Rigorous scrutiny often involves revisiting fundamental questions about why SEBI was created and whether it has achieved its purpose. This paper offers the reader food for thought by providing a bird's-eye view of SEBI's trajectory and expansion in its three decades of existence.

HISTORY

According to legend, between 1830 and 1850, six individuals, referring to themselves as "share brokers," exchanged shares and stocks of banks and the East India Company under a huge banyan tree close to what is now the Horniman Circle Park in Mumbai, India—the country's financial capital. It should, therefore, come as no surprise that this is the location of the Phiroze Jeejeebhoy Towers in Horniman Circle, which houses the Bombay Stock Exchange, the oldest stock exchange in India. It was not until decades after the meetings under the banyan tree that securities markets began to be regulated.

The Bombay Securities Contracts Control Act of 1925 (BSCCA) is the earliest legislative attempt to regulate the stock market. From 1887 until then, the Native Share and Stock Brokers' Association of Bombay, a voluntary association, protected the status of brokers and the interests of members and provided a marketplace for the transaction of securities as per its rules and regulations. The association received heavy criticism because of a spurt in the levels of market manipulation. Consequently, the legislative council formed the Bombay Stock

Exchange Enquiry Committee in October 1922, which in 1924 submitted the first report inquiring into the business of the association.[1]

BSCCA, a short law with six sections, was introduced with the intent to regulate contracts of purchase and sale of securities other than ready-delivery contracts (i.e., those that need to be performed immediately or within a reasonable time frame). Originally, the act extended to Bombay city and the Bombay presidency. The operative provision of BSCCA (i.e., section 4), however, dealt with the recognition of stock exchanges, which, in turn, were required to introduce rules governing the purchase and sale of securities, essentially making BSCCA more a law for the regulation of stock exchanges. In the decade that followed, stock exchanges in other locations—including Allahabad, Punjab, and rival exchanges in Calcutta and Bombay—were established.

Immediately following World War II, the Capital Issues (Control) Act of 1947 (CICA) was enacted, which made the central government the sole authority to regulate the raising of capital by companies inside and outside of India. The CICA was primarily a law to ensure, first, that national resources served the aims and priorities of the central government and, second, that investor interests were safeguarded.

Under the Constitution adopted on January 26, 1950, stock exchanges and markets were solely in the purview of the central government. The central government appeared to be focusing its attention on securing direct control.[2] In 1951, however, the Indian government created the A. D. Gorwala Committee to draft legislation governing stock exchanges and securities transactions,[3] leading to the Securities Contracts (Regulation) Act of 1956 (SCRA), intended to establish uniformity and a centralized authority in the functioning and regulation of stock markets.

BIRTH OF SEBI AND ITS POWERS

It would take another three decades after the introduction of SCRA for the contours of a regulatory body for the securities market to emerge.

1. Wilfrid Atlay et al., Report of the Bombay Stock Exchange Enquiry Committee (Bombay: Government Central Press, 1924).
2. Perhaps the most significant government action affecting the financial sector during this period was the nationalization of banks in 1969, reflecting the general policy of direct control. See Shrikrishna A. Pandit, "Nationalization of Banks in India," *Finance and Development* 10, no. 1 (1973): 32–36, https://www.elibrary.imf.org/view/journals/022/0010/001/article-A008-en.xml.
3. "Gorwala Committee Report," *Economic Weekly*, October 13, 1951, https://www.epw.in/system/files/pdf/1951_3/40/gorwala_committee_report.pdf.

SEBI was originally established in 1988 as a nonstatutory body with limited authority. It primarily regulated the securities market and aimed to ensure growth of the public markets, but it was without teeth. It did not have jurisdiction over transactions between brokers and investors (neither did any other regulatory body). Once the Securities Exchange Board of India Act (SEBI Act) was passed into law in 1992—repealing CICA effective May 29, 1992—SEBI went with guns blazing to execute its mandate as per the SEBI Act's preamble: protecting investor interests, promoting the development of the securities market, and regulating the securities market and other incidental matters. The repeal of CICA was significant as permissions were no longer required to raise capital. Alongside the new act came regulations for participants in the stock markets: stockbrokers, merchant bankers, share transfer agents, debenture trustees, and, later, custodians. The SEBI Act also enabled creation of the Securities and Appellate Tribunal (SAT), where an aggrieved party could appeal against orders passed by SEBI.

THE FIRST DECADE

In the 1990s, SEBI was priming itself to be viewed as a protector of the investor, alongside the other financial regulator, the Reserve Bank of India (RBI). But because SEBI's primary and secondary market reforms in the first decade were marked by its lack of nimbleness on market manipulations, stock markets as an investment avenue continued to look suspect to ordinary retail investors. SEBI introduced mutual fund regulations to attract more retail investors. But around that time, the retail market was also abuzz with news about numerous Ponzi schemes masquerading as "lucrative" opportunities with attractive returns. These schemes were unregulated even by RBI. SEBI also introduced regulations around "collective investment schemes," which helped identify such schemes with the law being clearly defined over time. It's not surprising that SEBI took on a socialistic approach, especially with the infamous scam perpetrated by Harshad Mehta. Mehta's scam contributed heavily to a milieu that was incompatible with the application of a free-market model in the operation of the stock markets.

SEBI nevertheless shined in its first decade, with the introduction of foreign investors to the Indian market through the SEBI Foreign Institutional Investors (FII) Regulations of 1995, which shaped the private investment landscape. Earlier, SEBI had also introduced the SEBI Insider Trading Regulations in 1992 (1992 PIT). The 1992 PIT regulations did not define "insider trading," but an early landmark judgment by SAT in the matter of *Hindustan Lever Limited*

v. SEBI in 1998 introduced the concept of "price sensitive information" and amended the definition of "unpublished," which became established principles for insider trading determinations.[4] The Securities Laws (Amendment) Act, which was enacted in 1995, extended SEBI's authority over intermediaries and persons associated with the securities market, not just companies issuing capital to the public.

SEBI's powers under the SEBI Act also withstood heavy scrutiny. Two significant judgments that set the tone for determining and establishing SEBI's wide extent of powers under section 11B of the SEBI Act were the Gujarat High Court decision in the case of Alka Synthetics[5] and the Bombay High Court case in the matter of Anand Rathi.[6] Both judgments dissect sections 11 and 11B of the SEBI Act, underpinning the unequivocal authority and duty of SEBI to protect the public and consequently empowering SEBI to issue interim orders on account of manipulations and other market vagaries. Yet, somehow, SEBI was unable to shake away its image of being broker centric and regulated in a way that created barriers hindering free markets.

THE SECOND DECADE

SEBI started off its second decade on the back foot, and several committees were set up to reassess key regulations. For instance, for corporate governance, the K. M. Birla Committee was established. The Birla Committee was followed by another committee headed by Narayana Murthy. The A. K. Lahiri Committee was formed to make recommendations on regulations for investments by foreign institutions and to curtail fears of a volatile market and ensure the transparency of foreign market participants (who could previously remain unknown and hidden entities and be subscribed through participatory notes). Yet another committee, the Bimal Jalan Committee, was tasked with providing recommendations on governance and ownership of stock exchanges.

SEBI was also at the epicenter of the widely known Ketan Parekh scam. At the start of the millennium, from mid-February to mid-March 2001, volatility in the index movements of stock exchanges was high. SEBI's subsequent investigations into the affairs of two brokers between April 1, 2000, and March 31, 2001,

4. Hindustan Lever Limited v. Securities and Exchange Board of India (1998) 18 SCL 311 MOF.
5. Securities and Exchange Board of India v. Alka Synthetics Ltd., https://indiankanoon.org/doc/1812954/#:~:text=1%20to%20the%20petition%2C%20i.e.,not%20involved%20in%20the%20alleged.
6. Anand Rathi and Others v. Securities and Exchange Board of India, https://indiankanoon.org/doc/14263/.

revealed that certain entities had sold the shares of certain companies through these brokers. The shares were bought either by the same entities or by various other entities connected with or controlled or managed by the two brokers, and the brokers placed all the buy and sell orders on behalf of these entities under their instructions. SEBI noted that this practice represented circular trading in a synchronized manner. Many fictitious trades had been executed this way in the scrips of different companies, thereby artificially inflating trading volumes. This aspect of circular trading was examined in an appeal to SAT (*Ketan Parekh v. SEBI*).[7] Admitting that he had executed those trades, one of the brokers, Ketan Parekh, contended, among other things, that the transactions were legal and legitimate. Dismissing the appeal and upholding SEBI's order, SAT held that the trades were synchronized trades executed in a circular manner to artificially create high volumes. In its order, SAT considered the frequency of the transactions (how often the trades were conducted), their value (how much they were worth), and their volumes (what the quantum of the trades was). The SAT order identified the trades as being circular (i.e., without a change in the beneficial ownership, or ultimate owner, in common parlance) and without an intent to trade. It declared the transactions to be nongenuine and fictitious, executed to create an artificial market for the scrips. SAT observed that Parekh had raised short-term finance by distorting the exchange mechanism. It concluded that if he and his entities were allowed to continue their operations, they would pose a serious threat to the integrity of the securities market and endanger the investors' interests.

Is synchronization a fraudulent or an unfair trade practice per se? SAT held that it is not illegal to engage in a synchronized transaction between genuine parties that intend to transfer beneficial interest in the trading stock and that undertake the transaction only for that purpose and not for rigging the market. Therefore, "synchronization," or a negotiated deal, per se, is not illegal. But SAT observed that a synchronized transaction violates the Regulations on Prohibition of Fraudulent and Unfair Trade Practices (PFUTP Regulations) if it (1) is executed to manipulate the market, (2) results in circular trading, (3) is dubious in nature and executed to avoid regulatory detection, (4) does not involve change of beneficial ownership, or (5) is executed to create false volumes and upsets the market equilibrium. SAT held that any transaction, negotiated or not, that is executed to defeat the market mechanism is illegal. Whether a transaction was executed with the intent to manipulate the market or defeat its mechanism

7. Ketan Parekh v. Securities and Exchange Board of India, https://indiankanoon.org/doc/1501711/.

depends, of course, on the intention of the trading parties. This intention will often need to be inferred from the attending circumstances if direct evidence is unavailable. Some of the circumstances that suggest intent are the nature of the transactions executed, their frequency, their value, whether they involved circular trading, and whether there was a real change of beneficial ownership and the market conditions. It is from the cumulative effect of these circumstances that the inference is made.

In its second decade, therefore, SEBI had multifaceted functions, including introducing new regulations around market intermediaries and associated persons; issuing clarifying circulars and notifications from time to time; and dealing with various aspects of the securities market, such as insider trading, fraudulent and unfair trade practices, and substantial acquisition of shares and takeovers. Lawmaking by circulars also became an easy route of subdelegated legislation.

Nevertheless, SEBI's authority came with a silver lining. SEBI faced considerable setbacks, with SAT setting aside many of its orders. For instance, in the infamous initial public offering (IPO) scam around 2008, SAT, on an appeal by National Securities Depository Limited and other depository participants (intermediaries through which consumers trade in the stock exchange), set aside a disgorgement order passed by SEBI to the tune of Rs 11.582 million.[8]

The scam appeared to have exposed system leakages in IPOs involving various stakeholders. Between 2003 and 2005, SEBI, during its surveillance activity, investigated transactions related to buying, selling, and dealing in shares through IPOs of 21 companies. As a part of this surveillance, it initiated a probe and advised the Bombay Stock Exchange and National Stock Exchange to investigate dealings in the shares allotted in IPOs before their listings on the stock exchanges. The investigation revealed that many entities (key operators) had acquired shares of these companies by making fictitious (*benami*) applications as retail investors through the medium of thousands of fictitious and benami applications for IPOs. On allotment of the shares, they were transferred to dematerialized accounts (where physical shares were converted into digital or electronic form) of the key operators. Thereafter, the key operators transferred the shares through off-market deals to the ultimate financiers.

National Securities Depository Limited and other depository participants were investigated. The allegations pertained, among other things, to the entity's

8. *Businessline*, "Public Issue Scam: Tribunal Sets Aside SEBI Order against NSDL," March 12, 2018, https://www.thehindubusinessline.com/markets/stock-markets/public-issue-scam-tribunal-sets-aside-sebi-order-against-nsdl/article20645836.ece1.

alleged failure to regulate and monitor dematerialized accounts under fictitious names.

Even while the investigation was ongoing, SEBI passed an ex parte order under sections 11 and 11B of the SEBI Act, directing the depository and the depository participants to jointly and severally disgorge Rs 11.582 million, which, according to SEBI, was the loss borne by the investors within six months from the date of the order. SEBI passed the order without issuing any notice to the appellants to show cause and without first determining their guilt or whether they had made any illegal gains. SAT had held that the order clearly violated the principles of natural justice (that is, equitable principles that have evolved through jurisprudence over time to ensure that fair treatment is meted out to all parties), expressing that the issues should have been resolved only after a final order was passed on alleged wrongdoings for which proceedings were still pending.

Thus, despite its efforts to plug loopholes by introducing and amending existing laws, SEBI failed to rise as the heroic young Dutch boy; instead, the number of holes in the dyke seemed to magnify. One constant criticism of SEBI concerns its perennially belated responses to market scams. Former SEBI Chairman U. K. Sinha, in his book *Going Public: My Time at SEBI*, observes that the unusually long time for the regulatory and judicial system to restore justice and money to the investors propelled an ordinance empowering SEBI with search and seizure powers without going to a court of law, the power to call for relevant information from any authority or any individual, and powers of disgorgement.[9]

THE THIRD DECADE

In its current avatar, SEBI is significantly empowered to pass directions against market intermediaries and persons associated with the securities market; to regulate entities such as mutual funds, merchant bankers, and alternate investment funds; and to prevent manipulative or fraudulent transactions. Sections 11(2)(a)–(e) of the SEBI Act enlist the functions of SEBI, which even extend SEBI's inspection powers over unlisted public companies intending to list their securities on a recognized stock exchange.

Time and again, sections 11 and 11B of the SEBI Act have proved to be the most potent weapons in SEBI's armory. Even the Supreme Court of India has repeatedly held that the powers under those sections are broad. For example,

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

in the infamous *Sahara* judgment, the Supreme Court reiterated multiple times SEBI's powers and scope embedded in sections 11 and 11B, providing the term "securities" with a wide-ranging meaning and extending SEBI's powers over unlisted entities.[10] These powers of SEBI, while remedial and not punitive or penal, extend extraterritorially, as was confirmed in a 2015 landmark judgment by the Supreme Court in *SEBI v. Pan Asia Advisors Ltd.*,[11] which held that interim or final orders passed by SEBI operate outside India. The question in *Pan Asia* was, did SEBI have jurisdiction under the SEBI Act to debar and prohibit lead managers (i.e., bankers appointed to carry out the process of the issuance of global depository receipts) from working on capital market transactions, since the global depository receipts were issued by entities from outside India, simply because the lead managers had defrauded Indian investors? The Supreme Court opined that if a false pretext or misleading information was circulated to lure both foreign and Indian investors and, in that process, the very purpose of issuing the global depository receipts was found to be mala fide, SEBI could not turn a blind eye on the grounds that it could not extend its statutory arm beyond the Indian territory. Furthermore, the Supreme Court reasoned that no statutory prohibition under the Foreign Exchange Management Act of 1999 or the Reserve Bank of India Act of 1934 prevented SEBI from taking action in exercising its powers under sections 11, 11B, and 12A of the SEBI Act.

In the recent past, SEBI has even attempted to proceed against professionals, including chartered accountants, who are ordinarily regulated by a different regulator and statute. In the Satyam scam, SEBI proceeded against the chartered accountants auditing Satyam Computers Limited, a company based in Hyderabad that was listed on the New York Stock Exchange. In 2009, the promoter and founder of Satyam, in a moment of epiphany, admitted to submitting to the stock exchange fabricated or "fudged" accounts of the company that did not reflect the true state of its financial affairs. Whether SEBI had jurisdiction or authority over a chartered accountant acting in a professional capacity and regulated by a specialized body (namely, the Institute of Chartered Accountants of India) was the question that came before the Bombay High Court.[12] The court held that SEBI could pass directions against a chartered accountant only if it established

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10. Sahara India Real Estate Corp. Ltd. and Others v. Securities and Exchange Board of India, https://indiankanoon.org/doc/158887669/.
11. Securities and Exchange Board of India v. Pan Asia Advisors Ltd., https://indiankanoon.org/doc/130310136/.
12. Economic Times, "Sebi Can Probe Price Waterhouse in Satyam Fraud Case, Rules HC," August 6, 2010, https://economictimes.indiatimes.com/tech/software/sebi-can-probe-price-waterhouse-in-satyam-fraud-case-rules-hc/articleshow/6436483.cms?from=mdr.

that the chartered accountant participated in the fraud and had the necessary knowledge of the fraud. Therefore, the criterion was not the quality of audit conducted or whether the auditing standard was complied with but instead whether the chartered accountant knowingly and intentionally participated in the fraud.

In its third decade, SEBI's objective has also been to develop a system of disclosure and transparency. Building on its basic corporate governance architecture, SEBI introduced regulations on listing obligations and disclosure requirements in 2015, requiring listed entities to regularly disclose material information to maintain information symmetry. It also introduced the alternative investment fund regulations that are superimposed on the foreign investment architecture.

In 2013, a committee chaired by Justice N. K. Sodhi was set up to examine the 1992 regulations on insider trading and make comprehensive recommendations. As a result, the SEBI (Prohibition of Insider Trading) Regulations of 2015 (PIT Regulations) replaced the 1992 regulations. The PIT Regulations preserve market integrity and ensure fairness to all shareholders by providing parity of access to information, thereby penalizing insiders who misuse unpublished price-sensitive information.

In a recent judgment, *SEBI v. Abhijit Ranjan*, the Supreme Court considered whether an insider dealing with securities, Abhijit Ranjan, was attempting to take undue advantage of nonpublic information.[13] Ranjan was the chairman and managing director of Gammon Infrastructure Projects Limited until September 20, 2013. He was involved in a resolution passed by Gammon's board of directors of on August 9, 2013, that authorized the termination of certain shareholders' agreements. Ranjan sold 14.4 million of his shares in Gammon on August 22, 2013, a month before he resigned from his position with the company. The termination of the shareholders' agreements was disclosed to the stock exchanges on August 30, 2013. SEBI argued that Ranjan's sale constituted insider trading under 1992 regulations. The Supreme Court, while observing that the information regarding the termination of the shareholder agreements counted as unpublished price-sensitive information, analyzed whether the motive was profit seeking. The Supreme Court observed that the sale was on account of pressing necessity, thereby ruling out the profit motive.

Regarding the PFUTP Regulations, the Supreme Court had, in two landmark judgments, upheld SAT's position in the Ketan Parekh scam. In the first, *SEBI v. Kishore R. Ajmera*, the Supreme Court had, regarding adjudication of civil liability arising out of the violation of the SEBI Act or PFUTP Regulations,

13. Securities and Exchange Board of India v. Abhijit Rajan, https://indiankanoon.org/doc/165051678/.

laid down a test to determine whether a synchronized trade was legal.[14] In the absence of direct proof of a meeting of minds, the court ruled, a "preponderance of probabilities" would be used in adjudication of civil liability arising out of the violation of the SEBI Act or the PFUTP Regulations.

In the second, *SEBI v. Rakhi Trading Pvt. Ltd.*, the Supreme Court observed that as the market grows, ingenious means of manipulation are developed.[15] Thus, SEBI must keep up with the times and develop principles for good governance in the stock market that ensure free and fair trading. The Supreme Court held that the question of whether fictitious transactions were creating illegal synchronization had to be determined on the basis of the facts and circumstances and intention of the parties. The court observed that, although trading is shown on a screen, prior arrangements could occur that might very well be out of view; thus, SEBI has the power to lift the veil of such transactions to show whether they are nongenuine.

Following, therefore, from the test laid down in the *Ajmera* judgment, in the *Rakhi Trading* judgment, the Supreme Court laid down that SEBI had to deal sternly with those who indulge in manipulative trading and deceptive devices to misuse the market while striking a balance toward market development. SEBI, the court held, ought to investigate trading practices when a synchronized trade is conducted in a fraudulent manner that adversely affects the value of a security.

CONCLUSION

The term "securities" has been redefined around eight times since its introduction into Indian law, a possible measure to show SEBI's nimbleness even as the market regulator only recently celebrated its 35th anniversary. SEBI has evolved as a regulator, learning from and adapting to the dynamic needs of changed circumstances.

In recent years, SEBI has appeared to adapt faster, as demonstrated by its response to COVID-19. On December 31, 2021, soon after a Supreme Court order, in a country where even the courts lacked reliable 21st-century streaming infrastructure, SEBI amended various rules so that notices and orders could be served by fax, email, and instant messaging services in addition to the existing modes

14. Securities and Exchange Board of India v. Kishore R. Ajmera, https://indiankanoon.org/doc/116485203/.
15. Securities and Exchange Board of India v. Rakhi Trading Pvt. Ltd., https://indiankanoon.org/doc/63300860/.

of service (namely, courier, speed post, and registered post).[16] Furthermore, the amendments required that a notice be sent through email or instant messaging services after being digitally signed by the competent authority.

Even more recently, in July 2023, SEBI introduced an alternate dispute resolution mechanism, amending existing regulations to bring within its fold mediation, conciliation, and arbitration as resolution modes for aggrieved investors. This change ought to bring a ray of hope to complainants. Previously, companies would sometimes respond to complaints on the SCORES (SEBI Complaints Redress System) platform without necessarily offering a solution but because they are required to mandatorily respond to close complaints. The July 2023 amendment should offer respite for complainants by providing another forum for their grievances.

Just see the plethora of reforms across the SEBI regulations. In the primary market, where IPOs used to take more than 40 days for settlement, the period has been reduced to 3 days with money not even leaving the account. There are now reports that same-day settlements may soon be possible. In the secondary markets too, a recent consultation paper discusses making instant settlements in the equity cash segment.[17] Dematerialization has been made mandatory, providing a repository and an easy way to establish the genuineness of owners. Mutual fund and alternative investment fund regulations have seen continual amendments recently that have increased transparency and lowered costs to consumers. SEBI also oversees insurance when reflected as an investment product, as well as overseeing the commodities market.

But SEBI has many miles to go to fine-tune its regulations. For example, can it strengthen the construct of insider trading? Would people merely speaking on the phone or connecting on a public platform be appropriate for gauging insider trading? How can SEBI wield its authority over overzealous social media influencers to protect investor interests? Its experiments are sometimes construed as overreaching. For example, per the proviso to regulation 30(11) of the listing obligations regulations, listed entities are expected to verify market rumors. How would such verification even be operationally practical in a world

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16. These rules included the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules 1995, the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules 2005, and the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules 2005.
17. SEBI, "Consultation Paper on Introduction of Optional T+0 and Optional Instant Settlement of Trades in Addition to T+1 Settlement Cycle in Indian Securities Markets," December 22, 2023, https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-introduction-of-optional-t-0-and-optional-instant-settlement-of-trades-in-addition-to-t-1-settlement-cycle-in-indian-securities-markets-_80204.html.

of ubiquitous social media? In September 2023 and later in January 2024, SEBI pushed the timelines for verification of market rumors.[18] SEBI has now invited public comments through a consultation paper on materiality thresholds to verify market rumors, which seems like a more reasonable approach.[19]

Perhaps one of the biggest challenges before SEBI is enhancing its image as a more effective dynamic regulator. SEBI's orders often appear severe (e.g., banning entry into the securities market, restraining access for a limited period, imposing monetary penalties, or prosecuting wrongdoers for disgorging ill-gotten gains). In exceptional cases, where there has been a necessity for emergent action, SEBI has also passed ex parte orders (i.e., orders in which a party to a transaction is not present or heard) containing directions for actions by the parties. At the moment, however, the quantum of SEBI's orders being overturned by SAT and the adverse observations that SEBI earns from various higher courts eclipse its seemingly proactive approach and proretailer attitude. Take, for example, a bench of the Supreme Court, which recently deprecated SEBI for appealing every action of SAT.[20]

Some critics advocate for preferential training for SEBI's officers so they can keep abreast of the latest regulations and standards of courts and tribunals so that the adjudicating orders passed will be more likely to comply with these standards. There is also a dearth of statistics on how the investor protection fund has been used and whether the disgorged amounts have been repaid to the investors. Is it possible to quantify the success rate of the various amendments, the increase in investor confidence, or the number of possible violations that have been averted by SEBI? In the first 15 years of SEBI's existence, although there have been landmark judgments that have served as positive affirmations strengthening the various regulatory amendments, the SEBI Act has been amended multiple times through ordinances and very few times through the normal legislative procedure.[21] Added to this, SEBI's circulars, which are bind-

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18. SEBI, "Extension of Timeline for Verification of Market Rumours by Listed Entities," Circular SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162, September 30, 2023, https://www.sebi.gov.in/legal/circulars/sep-2023/extension-of-timeline-for-verification-of-market-rumours-by-listed-entities_77488.html.
19. SEBI, "Consultation Paper on Amendments to SEBI Regulations with Respect to Verification of Market Rumour," December 28, 2023, https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-amendments-to-sebi-regulations-with-respect-to-verification-of-market-rumours_80237.html.
20. "SC Dismisses SEBI Appeal against SAT's Decision to Quash Penalty Imposed on Apollo Tyres," *The Economic Times*, December 4, 2023, https://legal.economictimes.indiatimes.com/news/litigation/sc-dismisses-sebi-appeal-against-sats-decision-to-quash-penalty-imposed-on-apollo-tyres/105731849.
21. Sinha, *Going Public*.

ing executive instructions, often draw heavy criticism, especially since circulars cannot be appealed, and the remedy is only possible if the circulars violate the principles enshrined in the Constitution.[22] Even then, the remedy must be pursued through the extraordinary jurisdiction of writ courts. Ordinarily, laws are tabled before Parliament and are up for discussion for market feedback.

Hence, the questions remain: Do policymakers need to draw the line somewhere? Does SEBI have too many functionalities and goals, or does the inclusion of the term "incidental matters" within its preamble provide a justification for its broad powers? Even commodities fall within its jurisdiction—something that perhaps no other regulator anywhere else in the world is required to monitor. Maybe the answers are a mixed bag but worth some introspection. Overarching or overreaching: Say, whatever happened to that huge banyan tree?

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22. Jayshree P. Upadhyay, "Sebi Circulars Can't Be Challenged in SAT, Rules Supreme Court," *Mint* (blog), April 4, 2017, https://www.livemint.com/Industry/Dm4b96Wd9VDqebx0bEXELN/Sebi-circulars-cant-be-challenged-in-SAT-rules-Supreme-Cou.html.

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