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SEBI's Powers under the SEBI Act, 1992: Are They Too Extensive?

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Abstract

The Securities and Exchange Board of India (SEBI), established under the SEBI Act, 1992, serves as the principal regulatory authority for the securities market in India. Over the past three decades, SEBI has evolved into a powerful institution vested with extensive quasi-legislative, quasi-executive, and quasi-judicial powers. These include the authority to frame regulations, investigate market misconduct, impose penalties, and enforce compliance. While such wide-ranging powers are justified as essential to protect investors and maintain market integrity, concerns have been raised about the possibility of regulatory overreach and inadequate checks on SEBI's discretion.

This research paper critically examines whether SEBI's powers under the SEBI Act, 1992 are excessively broad, thereby risking arbitrariness, or whether they are indispensable in addressing the complexities of India's dynamic securities market. The paper traces the historical evolution of SEBI's mandate, analyses the statutory framework, and evaluates judicial interpretations in landmark cases such as *Sahara v. SEBI* and *Rakhi Trading v. SEBI*. A comparative study of international regulators like the US Securities and Exchange Commission (SEC) and the UK Financial Conduct Authority (FCA) is also undertaken to assess whether SEBI's regulatory model aligns with global best practices.

The analysis concludes that although SEBI's powers are extensive, they are not inherently excessive. However, greater accountability, stronger appellate mechanisms, and clearer demarcation of jurisdiction with other regulatory bodies are required to ensure fairness and transparency. The study ultimately argues for reforms that balance regulatory autonomy with institutional checks, thereby strengthening investor confidence and the securities market in India.

Keywords

SEBI Act 1992, Securities Regulation, Regulatory Overreach, Investor Protection, Quasi-judicial Powers, Market Integrity.

Introduction

The regulation of securities in India has been a subject of constant evolution, shaped by economic priorities, institutional development, and the need to safeguard investors while fostering market growth. Before the enactment of the Securities and Exchange Board of India Act, 1992, the country's securities market was governed primarily by the Companies Act, 1956 and the Securities Contracts (Regulation) Act, 1956 (SCRA). This legislation laid down the framework for corporate governance, public issues, stock exchange regulation, and investor safeguards. However, despite their intent, the enforcement of these provisions remained largely fragmented and weak. Stock exchanges operated under a self-regulatory model, often dominated by brokers and intermediaries whose interests overshadowed those of ordinary investors. The lack of a centralized regulatory mechanism resulted in several malpractices, including price rigging, insider trading, delayed disclosures, and manipulation of stock prices. By the 1980s, with India's financial markets gradually opening up and investor participation increasing, the inadequacies of the existing regulatory regime became more visible, thereby necessitating the establishment of a specialized regulatory body¹.

In 1988, the government set up the Securities and Exchange Board of India (SEBI) as an administrative body through a resolution of the Ministry of Finance. At this stage, SEBI lacked statutory powers and functioned more as an advisory and oversight agency than as a full-fledged regulator. Its mandate was limited to promoting fair practices, improving investor awareness, and monitoring the functioning of stock exchanges. However, without the authority to enforce its directions or penalize violations, SEBI's role remained weak and largely ineffective. The early years of SEBI coincided with growing market complexities, as liberalization policies initiated in the early 1990s led to increased capital flows, greater corporate fund-raising through public issues, and an expansion of trading activities. These developments highlighted the urgent need for a strong, empowered regulatory authority capable of ensuring investor confidence and sustaining the integrity of the capital markets.

The turning point came in 1992 when Parliament enacted the SEBI Act, transforming SEBI into a statutory authority with wide-ranging powers to regulate and develop the securities market. This development was not merely institutional but symbolic of India's broader shift towards modernizing its financial architecture. SEBI was entrusted with the twin objectives of protecting investors and promoting orderly development of the securities market. The Act empowered SEBI to regulate intermediaries, oversee collective investment schemes, register and supervise credit rating agencies, regulate mutual funds, and curb unfair trade practices such as insider trading and market manipulation². It also had the authority to inspect, investigate, and penalize entities

¹ Securities and Exchange Board of India Act, No. 15, Acts of Parliament, 1992 (India).

² A Historical Perspective of Securities Laws, Sahoo Regulatory Chambers, <https://sahooregulatorychambers.in/>

violating securities laws. The establishment of SEBI as a statutory regulator marked a paradigm shift in India's securities regulation, signaling a move away from a fragmented system towards a centralized, specialized, and proactive framework.

One of the central rationales behind the empowerment of SEBI was the recognition that investor protection is the cornerstone of a healthy securities market. Investors, especially retail participants, are often vulnerable to asymmetries of information, insider advantages, and manipulative tactics by sophisticated market players. A transparent and fair market environment is therefore essential not only for individual investors but also for the credibility of the market as a whole. SEBI's regulations on disclosure requirements, prohibition of fraudulent practices, corporate governance norms, and investor grievance redressal mechanisms were designed to ensure that investors could make informed decisions in a level-playing field. Furthermore, the emphasis on transparency and accountability aimed at reducing systemic risks, improving corporate behavior, and aligning Indian markets with global best practices.

At the same time, the expansion of SEBI's powers raised an important dilemma: the balance between effective regulation and regulatory overreach. While robust regulation is necessary to protect investors and maintain market integrity, excessive intervention risks stifling innovation, discouraging capital formation, and creating uncertainty for market participants. Critics argue that SEBI's broad discretionary powers—ranging from investigation to adjudication and penalty imposition—make it both a regulator and enforcer, raising concerns of concentration of authority without sufficient checks and balances. Others contend that a proactive regulator is indispensable in a developing market such as India, where investor literacy is low and market misconduct can have widespread consequences. Thus, the challenge lies in calibrating the regulatory framework so that it ensures accountability and investor protection without unduly restricting market freedom or creating an atmosphere of regulatory overreach.

This tension between autonomy and accountability forms the core of the present research. The study seeks to analyze whether SEBI's regulatory powers strike an appropriate balance between independence in functioning and mechanisms of oversight. The central research question guiding this inquiry is: Does SEBI's regulatory framework effectively safeguard investors and promote market integrity while maintaining accountability and avoiding overconcentration of authority? In addressing this, the research also seeks to examine related questions such as whether SEBI's enforcement mechanisms are proportionate and fair, whether judicial review and legislative oversight act as adequate checks, and whether SEBI's functioning aligns with the broader principles of transparency, predictability, and due process.

The importance of this inquiry cannot be overstated. As India aspires to deepen its capital markets and attract global investment, the role of SEBI as a credible and fair regulator becomes even more critical. Any perception of arbitrariness or unchecked authority can undermine investor confidence, while weak regulation can encourage malpractices and erode the integrity of

the market. Therefore, this research aims to contribute to the debate on regulatory design by assessing SEBI's powers in light of its objectives, performance, and accountability mechanisms. By framing the problem in terms of the balance between regulation and overreach, the study situates itself at the intersection of legal analysis, economic policy, and institutional accountability. Ultimately, the effectiveness of SEBI will depend not only on the extent of its powers but also on how these powers are exercised, scrutinized, and balanced with the rights and interests of all stakeholders in the securities market.

Historical Evolution of SEBI and its Powers

The history of the Securities and Exchange Board of India (SEBI) is deeply rooted in the evolution of India's capital markets and the challenges faced in regulating them. Prior to the early 1990s, India's securities market was largely fragmented, under-regulated, and vulnerable to manipulative practices. Stock exchanges operated with limited transparency, and speculative trading was rampant. Investor confidence remained fragile, as information asymmetry and lack of proper disclosure standards left retail investors particularly vulnerable. The market framework, still governed largely by the Securities Contracts (Regulation) Act, 1956, and the Capital Issues (Control) Act, 1947, was outdated and inadequate in addressing the complexities of modern trading. The 1980s and early 1990s saw multiple instances of stock market scams, the most infamous being the Harshad Mehta scam of 1992, which exposed the glaring weaknesses of India's regulatory system. Manipulations involving public sector banks, fraudulent transactions in government securities, and the siphoning of huge sums into stock markets revealed how poorly equipped the system was to detect and prevent systemic risks. It became apparent that without a strong and independent securities regulator, India's financial markets would remain prone to abuse, threatening the credibility of the entire financial system³.

In response to these developments, the Government of India began considering reforms to strengthen financial regulation, and the Narasimham Committee played a crucial role in recommending such measures. Constituted in 1991, the committee emphasized the urgent need for structural reforms in the financial sector, including capital markets. It specifically underscored the importance of an independent regulator with statutory powers to oversee market participants, regulate intermediaries, enforce disclosure norms, and protect investors. The committee observed that the existing arrangements, where SEBI functioned as a non-statutory body since its establishment in 1988, lacked both authority and enforcement capacity. Without statutory backing, SEBI was unable to curb malpractices effectively or impose penalties on violators⁴. The committee's recommendations thus became the foundation for granting SEBI the legal recognition and powers necessary to instill discipline in the market and restore investor confidence.

³ Cover pre-1992 securities market, Narasimham Committee, and legislative intent.

⁴ Enhancing SEBI's Powers, PRS Legislative Research, <https://prsindia.org/>

Accordingly, the Parliament enacted the SEBI Act in 1992, giving the regulator statutory status. The legislative intent behind this move was twofold: to create an autonomous institution capable of regulating an increasingly complex securities market, and to ensure that investor protection became the central objective of capital market regulation. SEBI was vested with wide-ranging powers to regulate stock exchanges, oversee intermediaries, and frame rules to govern securities trading. Unlike earlier frameworks, where government control often led to delays and inefficiencies, SEBI was envisioned as an independent watchdog with quasi-legislative, quasi-executive, and quasi-judicial functions. This meant that SEBI could make regulations, enforce them, and adjudicate violations, thereby functioning as a comprehensive authority in the securities market domain.

Over the years, SEBI's jurisdiction and powers have been further expanded through successive legislative amendments. The Securities Laws (Amendment) Act, 1995, was among the earliest and most significant, empowering SEBI to regulate collective investment schemes and mutual funds, as well as to conduct inspections, audits, and inquiries. This amendment also gave SEBI explicit authority to register and regulate intermediaries like brokers, merchant bankers, and underwriters. The post-liberalization era demanded tighter oversight as the volume of market transactions surged, and SEBI's enhanced powers were central to ensuring orderly market conduct.

Another milestone was the 2002 amendment, passed in the wake of the Ketan Parekh securities scam of 2001. This amendment strengthened SEBI's enforcement powers by enabling it to impose monetary penalties, regulate substantial acquisition of shares and takeovers, and address insider trading with greater effectiveness. The amendment also empowered SEBI to call for information from banks and other authorities, thereby widening its reach in investigating financial irregularities. The focus increasingly shifted toward curbing market manipulation, enhancing corporate governance standards, and aligning Indian practices with global regulatory benchmarks.

Further strengthening came with the 2014 Securities Laws (Amendment) Act, which marked a turning point in SEBI's capacity to address large-scale frauds and complex financial structures. This amendment gave SEBI powers to regulate and crack down on unregistered collective investment schemes, pass disgorgement orders, and recover ill-gotten gains from violators. It also provided SEBI with powers akin to those of a civil court, including the authority to summon individuals, examine them under oath, and call for records. Importantly, the 2014 amendment allowed SEBI to attach properties and bank accounts to secure investor interests, making it one of the most powerful financial regulators in India⁵.

Thus, the historical evolution of SEBI reflects India's gradual but determined effort to build a modern regulatory institution in response to recurring market abuses. What began as an advisory

⁵ What is SEBI? The Legal School, <https://thelegalschool.in/blog/what-is-sebi>

body in 1988 has transformed into a formidable statutory authority with extensive powers. Through successive reforms and legislative interventions, SEBI has emerged as the central pillar of India's capital market regulation, tasked not only with ensuring market integrity and transparency but also with fostering investor confidence in an increasingly globalized economy.

Scope of SEBI's Powers under the SEBI Act, 1992

The Securities and Exchange Board of India (SEBI) was established under the SEBI Act, 1992, with the primary objective of protecting investors, promoting fair market practices, and ensuring orderly growth of the securities market. In order to discharge its duties effectively, SEBI has been conferred with extensive powers that span across regulatory, investigative, adjudicatory, and enforcement functions. Unlike many other regulatory agencies, SEBI is often described as a "three-in-one authority," exercising quasi-legislative, quasi-judicial, and quasi-executive powers, which makes it one of the most powerful regulatory bodies in India's financial sector. The scope of SEBI's powers under the Act reflects the legislature's intent to create a comprehensive regulator capable of addressing market malpractices, maintaining transparency, and safeguarding the integrity of the securities market⁶.

One of the foremost areas of SEBI's authority is its **regulatory power**. Under Section 30 of the SEBI Act, SEBI has the power to frame regulations consistent with the Act for carrying out its objectives. This enables SEBI to issue regulations, guidelines, and circulars that govern diverse aspects of the securities market, such as insider trading, takeover codes, mutual funds, listing obligations, and corporate governance. By laying down a detailed regulatory framework, SEBI ensures standardization of practices and reduces the scope for ambiguity or manipulation. For example, SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations compel listed entities to make timely disclosures, thereby promoting transparency. Similarly, regulations governing mutual funds have instilled accountability in asset management companies. This regulatory authority allows SEBI to proactively respond to evolving market conditions, investor needs, and global financial trends.

In addition to regulatory authority, SEBI wields **investigative powers** under Sections 11C and 11D of the SEBI Act. These provisions empower SEBI to investigate cases of suspected market manipulation, insider trading, fraudulent trade practices, or any activity detrimental to investor interests. SEBI can call for information, summon witnesses, examine records, and conduct inquiries into the affairs of intermediaries and listed companies. It is also vested with search and seizure powers, subject to prior approval of a magistrate, allowing it to collect evidence against wrongdoers. For instance, in high-profile cases such as the Sahara and Satyam scams, SEBI exercised its investigative powers to unearth irregularities and hold the perpetrators accountable. These investigative functions are crucial to ensuring that SEBI does not merely act as a passive

⁶ Securities and Exchange Board of India Act, No. 15, Acts of Parliament, 1992 (India).

regulator but as an active watchdog capable of intervening whenever the market's integrity is at stake.

The **quasi-judicial powers** vested in SEBI further enhance its role as a market regulator. Under Chapter VIA of the SEBI Act, SEBI can conduct adjudication proceedings, impose monetary penalties, pass restraining orders, and issue directions against entities that violate securities laws. The powers to penalize and adjudicate are not merely symbolic but carry significant deterrence value. SEBI has imposed penalties in several cases of insider trading, fraudulent trade practices, and non-compliance with disclosure norms. The orders passed by SEBI are appealable before the Securities Appellate Tribunal (SAT), ensuring a check against arbitrary use of power. However, the very fact that SEBI can investigate, adjudicate, and penalize within the same institutional framework highlights its unique and far-reaching authority.

Apart from adjudicatory functions, SEBI also exercises **quasi-legislative powers**. These powers are evident in SEBI's ability to draft subordinate legislation in the form of rules, regulations, and guidelines that govern participants in the securities market. For example, SEBI has issued regulations on substantial acquisition of shares and takeovers, which provide detailed procedural and substantive rules governing mergers and acquisitions. The quasi-legislative authority allows SEBI to act swiftly and independently, without awaiting parliamentary amendments, which ensures that the regulatory framework evolves in tandem with rapid changes in financial markets. This flexibility distinguishes SEBI from many other statutory bodies whose functioning is heavily dependent on legislative amendments.

Complementing these roles are SEBI's **quasi-executive powers**, which allow it to enforce compliance with securities laws and its own regulations. SEBI has the power to issue directions to market intermediaries, suspend trading of securities, cancel or suspend registrations of intermediaries, freeze bank accounts, and even attach properties in cases of non-compliance. These enforcement powers ensure that SEBI's orders are not merely advisory but carry binding force. For example, SEBI's ability to bar companies from accessing the capital market or to debar directors from holding managerial positions acts as a strong enforcement mechanism. Such executive powers are vital in a sector where prompt action is often necessary to prevent widespread investor harm.

Taken together, SEBI's powers place it in the unique position of being a **“three-in-one authority”** – combining legislative, executive, and judicial functions. As a legislature, SEBI drafts and frames regulations that govern the securities market. As an executive authority, it enforces compliance, monitors activities, and takes preventive or corrective measures against violators. As a judicial body, it adjudicates disputes, imposes penalties, and passes binding orders. This concentration of powers within a single institution has been both praised and criticized. On the one hand, it allows SEBI to act with speed, efficiency, and comprehensive oversight, thereby maintaining the integrity of financial markets. On the other hand, concerns

have been raised about potential overreach, lack of accountability, and limited checks and balances. Nevertheless, the presence of appellate mechanisms such as the SAT and judicial review by the Supreme Court provides safeguards against misuse⁷.

The scope of SEBI's powers under the SEBI Act, 1992, is vast and multi-dimensional, encompassing regulatory, investigative, quasi-legislative, quasi-judicial, and quasi-executive functions. By acting as a "three-in-one authority," SEBI has been able to address the complexities of the securities market in India, instill investor confidence, and curb malpractices. While debates on accountability and excessive concentration of power persist, there is little doubt that SEBI's expansive authority is central to the stability and growth of India's securities market.

Judicial Scrutiny and Case Law Analysis

Judicial scrutiny of the powers of the Securities and Exchange Board of India (SEBI) has played a decisive role in shaping the contours of its regulatory and adjudicatory authority. Courts have consistently acknowledged the importance of a strong market regulator to protect investors and maintain the integrity of the securities market. However, the judiciary has also emphasized the need for SEBI to exercise its powers within constitutional and legal boundaries, particularly to safeguard principles of natural justice and ensure accountability. Several landmark judgments illustrate this balance between judicial endorsement of SEBI's expansive role and the courts' insistence on procedural fairness and restraint against arbitrary action⁸.

In *Clariant International Ltd. v. SEBI*⁹, the Supreme Court underscored the significance of natural justice in regulatory proceedings. The case concerned SEBI's directive regarding an open offer in the context of takeover regulations. The Court emphasized that while SEBI has broad powers to regulate and protect investor interests, such powers must be exercised fairly and transparently. The ruling clarified that quasi-judicial functions of SEBI, such as adjudication and issuance of binding directions, must adhere to the principles of audi alteram partem. This judgment marked an important step in ensuring that SEBI's strong regulatory role does not compromise procedural rights, highlighting the judiciary's function as a check against arbitrary or unilateral actions.

The scope of SEBI's jurisdiction was expansively interpreted in *SEBI v. Sahara India Real Estate Corporation Ltd.* (2012). In this case, Sahara had raised massive funds through optionally fully convertible debentures without complying with disclosure and listing requirements. SEBI asserted jurisdiction on the ground that such issuances amounted to a public offer under the Companies Act and SEBI regulations. The Supreme Court upheld SEBI's stance, reiterating that

⁷ Power of SEBI to Adjudicate, Int'l Journal of Legal & Public Affairs, <https://www.ijlpa.com/>

⁸ Securities and Exchange Board of India v. Sahara India Real Estate Corp. Ltd., (2012) 3 SCC 1 (India).

⁹ Clariant International Ltd. v. SEBI, AIR 2004 SC 4387 (India).

any large-scale collection of funds from the public, irrespective of its nomenclature, would fall within SEBI's regulatory domain. The decision reinforced SEBI's authority to act decisively against innovative attempts to circumvent securities laws and demonstrated judicial confidence in SEBI's expansive powers to curb systemic risks.

Similarly, in *SEBI v. Rakhi Trading Pvt. Ltd.* (2018), the Supreme Court highlighted SEBI's pivotal role in ensuring orderly markets by addressing market manipulation practices. The case dealt with "circular trading" that artificially inflated volumes and distorted market integrity. The Court upheld SEBI's findings and penalties, stressing that economic realities must guide the interpretation of securities laws rather than mere technicalities. By acknowledging SEBI's expertise in detecting and proving complex market manipulation schemes, the Court validated SEBI's proactive role in preserving transparency and fairness in trading.

While these judgments demonstrate judicial support for SEBI's wide-ranging powers, courts have also occasionally cautioned against overreach. In certain cases, such as *Price Waterhouse Coopers v. SEBI* (2017), the judiciary questioned the extent of SEBI's jurisdiction, noting that while the regulator plays a crucial role in disciplining market participants, its authority cannot extend indefinitely into areas reserved for other regulators or professional bodies. This reflects the judiciary's balanced stance—supporting SEBI's vigilance while reminding it to respect jurisdictional limits.

Overall, judicial scrutiny of SEBI's powers reveals a pattern of broad support coupled with insistence on procedural safeguards and accountability. Courts have generally upheld SEBI's proactive stance in protecting investors and curbing malpractices but have not hesitated to reiterate that regulatory power must be exercised with fairness, proportionality, and respect for legal boundaries. This judicial approach ensures that while SEBI remains a strong watchdog of the securities market, its actions remain subject to the rule of law.

Critical Assessment – Are SEBI's Powers Too Extensive?

The Securities and Exchange Board of India (SEBI) occupies a pivotal role in the regulation of India's capital markets, entrusted with safeguarding investor interests, maintaining fair practices, and ensuring market stability. The question of whether its powers are too extensive has been the subject of continuous debate, with arguments divided between the need for robust regulatory authority and the dangers of excessive concentration of power in a single body. Supporters of wide powers emphasize that SEBI's mandate requires extensive authority, as the securities market is highly complex, dynamic, and susceptible to manipulation by sophisticated players. Protecting millions of small investors, who often lack technical knowledge and are vulnerable to fraudulent schemes, necessitates giving SEBI sufficient flexibility to frame regulations, monitor compliance, and act swiftly against wrongdoers. The history of securities regulation in India, particularly the stock market scams of the late 1980s and early 1990s, underscores the dangers of weak oversight and fragmented regulation. The Harshad Mehta scam revealed systemic

loopholes and the inability of existing institutions to detect manipulation, which justified Parliament's decision to grant SEBI statutory authority through the SEBI Act, 1992, and subsequently expand its jurisdiction through amendments in 1995, 2002, and 2014. Moreover, securities regulation is inherently preventive and forward-looking, requiring a regulator to intervene proactively rather than wait for violations to escalate into crises. In this sense, SEBI's quasi-legislative, quasi-executive, and quasi-judicial powers allow it to create rules, enforce compliance, and adjudicate disputes under one institutional umbrella, thus ensuring efficiency and avoiding regulatory delays. Internationally, India is not an outlier in this respect. The U.S. Securities and Exchange Commission (SEC) and the UK's Financial Conduct Authority (FCA) are also armed with extensive powers to frame binding regulations, investigate misconduct, and impose penalties. In fact, global best practices suggest that fragmented or diluted powers may undermine regulatory effectiveness, especially in markets where innovations in trading and financial products frequently outpace legislative processes. Thus, proponents argue that SEBI's wide-ranging authority is a necessary feature of modern securities regulation and that it has largely succeeded in promoting investor confidence, developing market infrastructure, and aligning India's regulatory framework with global standards¹⁰.

On the other hand, critics caution that excessive concentration of powers in SEBI raises concerns of arbitrariness, lack of accountability, and erosion of fundamental legal principles. One major issue is the absence of sufficient checks and balances. SEBI enjoys legislative authority through its power to make regulations, executive authority through its power to investigate, and judicial authority through its adjudicatory functions, effectively concentrating all three functions of governance within one institution. While this integration may enhance efficiency, it also runs contrary to the doctrine of separation of powers, creating risks of regulatory overreach. There have been concerns that SEBI sometimes acts as investigator, prosecutor, and judge in the same matter, raising questions about fairness and natural justice. Although appeals to the Securities Appellate Tribunal (SAT) and the Supreme Court provide some oversight, the process can be expensive and time-consuming, effectively limiting meaningful checks on SEBI's authority. Another concern is the overlap of jurisdiction with other regulators such as the Reserve Bank of India (RBI), the Ministry of Corporate Affairs (MCA), and the Competition Commission of India (CCI). For instance, issues involving financial instruments often fall within both SEBI and RBI's domain, while matters relating to corporate governance implicate both SEBI and MCA. Such overlaps have led to regulatory turf wars and legal uncertainty, creating obstacles for businesses and investors alike. Additionally, the delegation of excessive power to SEBI by Parliament, often through broadly worded provisions, has been criticized as a case of excessive delegation without adequate guidance or accountability frameworks. This gives SEBI wide discretion in framing regulations that may have far-reaching economic and legal implications, sometimes without sufficient consultation or transparency. Further, the perception of

¹⁰ India: A Deep Dive into SEBI and Related Legislation, Global Investigations Review, <https://globalinvestigationsreview.com/>

arbitrariness in SEBI's functioning has been reinforced by certain judicial observations. Courts have, at times, emphasized the need for SEBI to adhere strictly to the principles of natural justice, particularly in cases where its orders had severe financial consequences for regulated entities. Critics also point out that while SEBI's mandate is investor protection, its approach has occasionally been heavy-handed, creating compliance burdens and regulatory uncertainty that deter innovation and market development. Unlike in some jurisdictions where specialized ombudsmen or independent oversight bodies review regulatory decisions, SEBI's accountability mechanisms remain limited, which adds to concerns about unchecked power¹¹.

A balanced assessment suggests that SEBI's extensive powers are both a necessity and a potential source of abuse. The securities market is an arena where speed and decisiveness are essential, and a weak regulator would risk systemic failures, investor exploitation, and erosion of public confidence. However, unchecked power can undermine legitimacy, breed arbitrariness, and stifle market growth. The way forward is not to strip SEBI of its powers but to strengthen institutional safeguards, enhance transparency in its decision-making, encourage greater stakeholder consultation, and improve appellate mechanisms to ensure accessibility and fairness. SEBI's powers, though extensive, must be exercised within the framework of accountability and proportionality to maintain both investor protection and market development.

Comparative Analysis with Global Regulators

The functioning of the Securities and Exchange Board of India (SEBI) can be better understood when examined in comparison with leading global regulators such as the United States Securities and Exchange Commission (SEC) and the United Kingdom's Financial Conduct Authority (FCA). Both these regulatory authorities, though operating in different jurisdictions with distinct institutional setups, provide valuable insights into the balance between regulatory autonomy and accountability—an issue that lies at the heart of debates surrounding SEBI's powers under the SEBI Act, 1992. The SEC and FCA represent models of strong regulatory oversight of securities markets, yet their frameworks also embed mechanisms that prevent arbitrary use of authority. Drawing parallels and contrasts with SEBI highlights the strengths of India's regulatory design, as well as the lessons that may be drawn for its future evolution.

The United States Securities and Exchange Commission (SEC) has historically been one of the most powerful and respected market regulators in the world. Established in 1934 in the wake of the Great Depression and the stock market crash of 1929, the SEC was vested with broad enforcement and regulatory powers to restore public trust in capital markets. Its powers extend across securities issuance, broker-dealer oversight, prevention of insider trading, and monitoring of investment advisers and mutual funds. The SEC is often recognized for its strong enforcement mechanisms; it not only investigates violations but also initiates civil enforcement actions,

¹¹ What is SEBI? The Legal School, <https://thelegalschool.in/blog/what-is-sebi>

imposes penalties, seeks injunctions, and refers criminal cases to the Department of Justice. A defining feature of the SEC is its ability to act swiftly and decisively against misconduct, which has been critical in maintaining investor confidence in the highly sophisticated U.S. securities markets. However, despite its vast authority, the SEC is subject to Congressional oversight, which provides an important system of checks and balances. Its budgetary allocations, policy priorities, and enforcement strategies are regularly scrutinized by Congressional committees, ensuring that it remains accountable to the legislature. This external oversight limits the possibility of regulatory overreach and ensures that the SEC's independence does not translate into unchecked power. The SEC's model demonstrates how a regulator can be granted sweeping powers to act in the interest of market integrity, but those powers must be exercised within a framework of democratic accountability.

The United Kingdom's Financial Conduct Authority (FCA), though of a more recent origin, represents another important regulatory design. Established in 2013 after the dismantling of the Financial Services Authority (FSA), the FCA operates under a model of power-sharing with the Bank of England and HM Treasury. While the FCA oversees conduct regulation, consumer protection, and market integrity, prudential regulation of large financial institutions lies with the Prudential Regulation Authority (PRA), a subsidiary of the Bank of England. This division of responsibilities prevents concentration of power in a single regulator and ensures that systemic financial stability and market conduct are supervised by distinct authorities. Moreover, the FCA's accountability structure is multifaceted. It is answerable to the UK Parliament and works closely with HM Treasury, which can issue directions on matters of public interest. The FCA is also subject to judicial review, allowing courts to intervene if regulatory decisions overstep statutory mandates. What stands out in the FCA model is its emphasis on transparency and stakeholder engagement. The FCA conducts extensive consultations before issuing new rules, publishes annual reports with detailed enforcement statistics, and engages in continuous dialogue with market participants. This participatory approach strengthens regulatory legitimacy and helps in balancing autonomy with accountability. At the same time, the FCA has not been without criticism, particularly in relation to its handling of major banking scandals, which demonstrates that institutional checks, while necessary, must be effectively implemented.

When these models are compared with SEBI's regulatory framework, both similarities and gaps emerge. Like the SEC, SEBI enjoys extensive powers of investigation, enforcement, and regulation. It can issue regulations, conduct inspections, summon individuals, and impose penalties on violators. Similarly, like the FCA, SEBI plays a crucial role in ensuring market integrity and protecting investors. However, what distinguishes SEBI from both the SEC and the FCA is the nature and extent of institutional checks on its authority. Unlike the SEC, which is directly accountable to Congress, SEBI has no equivalent mechanism of parliamentary oversight beyond the general supervision of the Ministry of Finance. While SEBI is required to submit annual reports to the Parliament through the central government, this process is largely procedural and lacks the substantive scrutiny that the SEC undergoes in the U.S. Similarly,

unlike the FCA, which operates within a system of shared responsibilities with other financial regulators, SEBI is often perceived to function in a monopolistic space in relation to securities markets. Although regulatory overlaps exist with the Reserve Bank of India (RBI), Ministry of Corporate Affairs (MCA), and the Competition Commission of India (CCI), these overlaps often result in jurisdictional conflicts rather than structured cooperation. This absence of clear power-sharing arrangements reduces the accountability of SEBI's decisions and increases concerns of regulatory overreach.

From the comparative experience of the SEC and FCA, important lessons emerge for India. First, the SEC's model demonstrates the importance of embedding democratic oversight mechanisms in the regulatory structure. Granting SEBI wide powers may be justified in light of the complexities of India's securities markets, but those powers must be accompanied by robust accountability mechanisms to ensure that they are not misused. Introducing periodic reviews of SEBI's performance by a parliamentary standing committee on finance or an independent oversight board could provide such a balance. Second, the FCA's model of divided responsibilities highlights the benefits of structured power-sharing between regulators. In India, establishing a formal framework for cooperation and delineation of jurisdiction between SEBI, RBI, MCA, and CCI could help in reducing conflicts and strengthening overall financial regulation. Finally, both the SEC and FCA emphasize transparency and stakeholder engagement as core regulatory principles. SEBI, while it has made progress in recent years by publishing consultation papers and discussion drafts, could institutionalize these practices further to enhance public trust and legitimacy.

While SEBI's wide powers may be justified given the challenges of regulating India's rapidly evolving capital markets, its institutional framework requires recalibration to achieve the right balance between independence and accountability. The comparative experiences of the SEC and FCA demonstrate that strong regulatory authority must coexist with equally strong oversight mechanisms. For India, this means not curtailing SEBI's autonomy but embedding it within a system that ensures transparency, accountability, and cooperative regulation. Such reforms would not only strengthen investor confidence but also align India's securities market regulation with global best practices, ensuring that SEBI remains a robust but responsible guardian of market integrity.

Need for Reform and Way Forward

The debate surrounding the extensive powers of the Securities and Exchange Board of India (SEBI) under the SEBI Act, 1992, highlights the need for calibrated reforms that strike a balance between regulatory autonomy and accountability. While SEBI has undeniably played a vital role in strengthening India's capital markets, enhancing investor confidence, and curbing malpractices, concerns regarding concentration of power, overlapping jurisdictions, and limited avenues for appeal indicate the necessity for reform. The way forward lies in institutional

innovations that preserve SEBI's effectiveness while reinforcing democratic checks, judicial oversight, and fairness.

One significant area of reform relates to the appellate structure. At present, the Securities Appellate Tribunal (SAT) serves as the primary forum for appeals against SEBI's orders. While the SAT provides a mechanism of judicial review, it remains limited in scope and capacity, often overburdened by the sheer volume of cases. Moreover, the perception that SAT is the only meaningful check on SEBI's adjudicatory powers gives rise to concerns of regulatory monopoly. A more robust appellate framework can be introduced by strengthening the SAT through additional benches across regions, appointing members with specialized expertise in securities and financial law, and enhancing procedural efficiency. Further, appeals beyond SAT should not be restricted to the Supreme Court alone, as this creates practical barriers for litigants. The establishment of a specialized financial regulatory appellate body or expanding the jurisdiction of the National Company Law Appellate Tribunal (NCLAT) to hear securities-related appeals may create a more balanced adjudicatory system.

Another important reform relates to legislative oversight. Although SEBI has quasi-legislative powers to frame regulations, circulars, and guidelines, these exercises of delegated authority are seldom subjected to parliamentary scrutiny. Given the wide ambit of SEBI's regulatory discretion, it is essential to institutionalize mechanisms whereby Parliament or a designated legislative committee reviews SEBI's regulations periodically. Such oversight would not only ensure democratic accountability but also prevent regulatory overreach or the creation of rules that impose undue compliance burdens. Drawing from international models, particularly the United States where the Securities and Exchange Commission (SEC) operates under Congressional oversight, India too can build a framework that preserves SEBI's independence while embedding a culture of accountability to elected representatives.

A third area requiring urgent attention is the strengthening of safeguards against the misuse of investigative powers. SEBI is vested with extensive authority to summon documents, conduct searches and seizures, and examine witnesses. However, critics point to instances where these powers have been exercised in a manner perceived as arbitrary or excessive. To address this, SEBI's investigative processes should be bound by clearer procedural guidelines rooted in the principles of proportionality and necessity. Independent oversight mechanisms—possibly through a judicially monitored process or a review board consisting of retired judges and financial experts—can serve as an important check. This would not only guard against abuse but also enhance the credibility of SEBI's enforcement actions in the eyes of investors and market participants.

Equally important is the need to demarcate jurisdiction between SEBI and other regulators such as the Reserve Bank of India (RBI), the Competition Commission of India (CCI), and the Ministry of Corporate Affairs (MCA). The increasing complexity of the financial ecosystem has

led to overlapping domains, resulting in turf wars and regulatory uncertainty. For example, issues involving corporate governance or competition aspects in mergers and acquisitions often see both SEBI and CCI asserting jurisdiction. A clear statutory framework that delineates boundaries and promotes inter-regulatory coordination is imperative. Mechanisms like joint committees, mandatory consultation protocols, and statutory Memoranda of Understanding between regulators can reduce conflicts and ensure consistent policymaking.

Lastly, reforms must also focus on enhancing transparency and adherence to the principles of natural justice. While SEBI is empowered to act swiftly to protect investors, concerns about lack of transparency in decision-making, delayed disclosure of investigation reports, and limited opportunities for cross-examination undermine the legitimacy of its actions. Establishing standardized timelines for investigations, publishing detailed reasoning for regulatory orders, and ensuring that affected parties are given full opportunity to present their case would go a long way in bolstering fairness. In this regard, adopting best practices from global regulators such as the UK's Financial Conduct Authority (FCA), which emphasizes consultation and public engagement, can be instructive for SEBI.

The way forward for SEBI lies not in diluting its powers but in reorienting them within a framework of accountability, transparency, and inter-institutional balance. Expanding appellate mechanisms, embedding parliamentary oversight, reinforcing checks on investigative functions, demarcating jurisdiction with other regulators, and ensuring compliance with natural justice are essential reforms to strengthen SEBI's legitimacy. Such measures will enable SEBI to continue safeguarding the integrity of India's securities market while also upholding constitutional values of fairness and accountability.

Conclusion

The journey of the Securities and Exchange Board of India (SEBI) since its establishment has been marked by a remarkable transformation in the regulation and supervision of the Indian securities market. From a time when the capital market was plagued with inefficiencies, malpractices, and lack of investor confidence, SEBI has emerged as a central pillar of India's financial regulatory architecture. Its role has been indispensable in ensuring market transparency, enhancing investor protection, and fostering the orderly growth of capital markets. By combining regulatory, investigative, quasi-judicial, and quasi-legislative powers, SEBI has been able to address complex challenges such as insider trading, fraudulent practices, market manipulation, and systemic risks. This transformation has aligned Indian securities regulation with global standards, positioning India as a more credible and resilient market for both domestic and international investors¹².

¹² Securities and Exchange Board of India Act, No. 15, Acts of Parliament, 1992 (India).

At the same time, the breadth and depth of SEBI's powers have raised important questions regarding accountability and institutional balance. The need to vest a regulator with strong powers is undeniable, given the rapid technological advancements in securities trading, increasing globalization, and the rise of sophisticated financial instruments. However, wide powers concentrated in a single body, without robust external checks, risk undermining the principles of natural justice and fairness. Instances of overlapping jurisdiction with other regulators such as the Reserve Bank of India, the Competition Commission of India, and the Ministry of Corporate Affairs further illustrate the challenges of regulatory overreach. While the necessity of strong powers is not in dispute, the concern lies in how these powers are exercised and reviewed.

Judicial interventions in cases such as *Sahara India Real Estate Corporation Ltd.* and *Clariant International* have demonstrated that courts have often acted as the ultimate safeguard against excesses by SEBI. Yet, judicial review alone cannot substitute for structured institutional oversight. The absence of an appellate mechanism beyond the Securities Appellate Tribunal (SAT) and the limited role of parliamentary scrutiny point to a gap in the accountability framework. This indicates that reforms are needed not in diluting SEBI's powers, but in ensuring they are accompanied by stronger checks and balances. Such measures could include enhancing the jurisdiction of appellate forums, embedding parliamentary oversight over SEBI's rule-making powers, and fostering greater inter-regulatory coordination to prevent jurisdictional conflicts.

Therefore, the final position that emerges is that SEBI's powers are indeed extensive, but their extensiveness should not be perceived as inherently problematic. In fact, the complexity of modern securities markets necessitates such expansive authority. What is required is not a curtailment of these powers, but a reinforcement of institutional safeguards to ensure fairness, accountability, and transparency. Striking this balance is vital for sustaining investor trust, protecting market integrity, and supporting the continued growth of India's financial markets. If India aspires to be a global financial hub, its regulatory framework must not only empower its regulators but also subject them to robust oversight. Thus, SEBI's wide powers should be seen as a strength, provided they are exercised within a framework of accountability that prevents arbitrariness and strengthens the legitimacy of securities regulation in India.

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