

**SEBI: CHALLENGES, RESPONSE AND WAY FORWARD****AUTHOR –** ANCHITA DATTA & BIDISHA MANNA

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**ABSTRACT**

*The Securities Exchange Board of India (SEBI) although plays a pivotal role in regulating and stimulating an efficient, explicit and sturdy capital market in India yet, it faces few challenges and complexities including market volatileness, insider trading, technological disruptions, price manipulation and growing complications of investment instruments.*

*All the years SEBI has strengthened the surveillance and enforcement reforms to improve transparency and instil good governance, Its Global engagement, collaborations and coordination's with other regulations streamlined IPO and Mutual fund regulations. Furthermore, it provided investors awareness and education schemes as well.*

*Looking ahead, SEBI must prioritize innovation and technological growth while addressing regulatory gaps in emerging sectors such as cryptocurrency and fintech. It must bring regulatory sand book reforms and reformation in the enforcement mechanisms and investors centric rules and regulations.*

*This paper explores SEBI's role in encountering challenges, its strategic response and the blueprint for a flexible and inclusive financial system.*

**Keywords:** market volatileness, insider trading, technological disruptions, price manipulation, collaborations, cryptocurrency and fintech

**INTRODUCTION:**

The Capital Market of India has emerged as dynamic components of the Nation's financial ecosystem. It plays a crucial role in monitoring economic growth, mobilizing savings and supporting investors. The Capital Market is basically a platform where buyers and sellers come together to trade stocks, bonds and other assets. Capital Market is divided into Primary Market (To develop and promote issuing of securities) and Secondary Market (where trading of securities is done). Due to rapid expansion of Indian Economy including technological expansion, the regulators faces difficulties in preventing scams, monitoring

every segment of the financial market. In respect of all these, the Securities and Exchange Board of India has played a great role in controlling the system in a systematic and proficient manner.

**SEBI**

SEBI which is also known as The Securities and Exchange Board of India is a non-statutory body established on 12<sup>th</sup> April, 1988 through a resolution of government of India to ensure smooth and transparent functioning of India's financial ecosystem. The Board is enforceable through an ordinance issued on 30<sup>th</sup> January, 1992 to protect the interest of the investors investing in securities, prevent any kind of

malpractices along with other regulatory and development functions. The ordinance issued conferred a wide range of powers on the SEBI, including the authority to regulate Capital Market, Stock Exchange and other intermediaries. Further it also prohibits Insider trading and Market Manipulation.

The SEBI Act, 1992 as amended on March 25, 1995 by the Securities Laws Act 1995 has empowered SEBI to regulate new intermediaries in the Capital Market. Additional powers have been conferred upon SEBI, to regulate listing and trading of securities. SEBI operates as an autonomous body as it is allowed to file suit and issue regulations without prior approval of the Central Government. Accordingly, SEBI is empowered to appoint adjudicating officers for the purpose of settlement of disputes through the way of imposing monetary penalties on a wide range of violation.

#### **ORGANISATIONAL STRUCTURE:**

SEBI is administered by a hierarchy in general. It has 20 departments in total and all of which are supervised by their departmental heads. The body consist of the following:

- The chairman is nominated by the Union Government of India.
- Two members from the Union Finance Ministry
- One member from the Reserve Bank of India
- The remaining five members are nominated by the Union Government of India.

#### **Challenges faced by SEBI**

Few of the challenges faced by SEBI while operating in the market are –

##### **• Market Manipulation and Insider Trading**

Market Manipulation is a way of manipulating the prices of the stocks to increase or fall, leading to artificially affecting the supply and demands of the securities. Despite various regulations, price rigging is an issue faced by SEBI. Market Manipulation also involves the spreading of false or misleading information

about the company and engaging in most series of transactions to make a security appear more actively traded.<sup>1096</sup>

Insider trading is nothing but sharing or trading valuable information about the company's insights, which is not available to the public and such information is price sensitive about the prices of the securities. In the context of the Securities and Exchange Board of India (SEBI), insider trading is defined as trading in securities of a listed company based on material, non-public information, also known as Unpublished Price Sensitive Information (UPSI)

##### **• Technological Advancements and Globalization of Markets**

Globalization had led to technological advancement in recent years which affected the Indian firm's collaboration with the international regulations due to the cross-border cash flow and oversea listing. The trading platforms and investor's data are facing cybersecurity threats.

High-frequency trading (HFT) and algorithmic trading regulations pose threats and monitoring challenges. Algorithmic trading (or "algo" trading) is the computer algorithms use for trading large blocks of stocks or other financial assets while minimizing the market impact of such trades<sup>1097</sup>.

##### **• Investors protection and Good Governance Issues**

Due to the low financial literacy among the retailer investors and less knowledge about technology affected the investors, leading to mis-selling and getting defraud of the financial products. Inadequate redressal mechanisms in SEBI along with lack of transparency and flexibility leading to poor good governance. Cases of corporate fraud has also been reported which challenged the SEBI's role. Not

<sup>1096</sup>Investor.gov, <https://www.investor.gov/introduction-investing/investing-basics/glossary/market-manipulation#:~:text=Market%20manipulation%20is%20when%20someone%20rise%20or%20to%20fall%20dramatically>.

<sup>1097</sup> Elvis Picardo, Big Risks of Algorithmic High-Frequency Trading, Investopedia.

only have that but poor disclosures by listed companies undermined investor confidence.

### • **Regulatory Arbitrage**

It refers to the practice of exploiting differences in regulations between jurisdictions or within a single regulatory framework to gain a competitive advantage or reduce compliance costs. It occurs when the structure of any kind of financial entity and their activities fall under jurisdictions or areas of favorable regulations. For instance, a company may shift operations to a country with less stringent tax laws or establish subsidiaries to bypass local financial restrictions.

- Regulatory arbitrage in ODIs and FPIs is a complex issue posing several problems leading to lack of transparency and the veil that hides the actual beneficiaries of companies hinders compliance with Anti-Money Laundering (“AML”) as well as Know Your Customer standards. There is also difficulty in regulating hybrid regulations due to the overlapping with the other regulators like RBI, IRDAI, PFRDA, and MCA leading to regulatory gaps or turf wars.<sup>1098</sup>

### • **Enforcement and Adjudication Delays**

Long procedural timings and that of investigation dilute the bidding effect of SEBI. The lack of banking and financial services also creates a gap leading to hundreds of complaints from the aggrieved investors. Due to the delays in procedure SEBI has faced a lot of challenges from the investors.

## **Responses to the challenges by SEBI**

### **1. Strengthening surveillance and monitoring mechanism:**

Steps were taken during 1997-1998 under the oversight of SEBI to improve their surveillance capacities, which includes detecting market manipulation, insider trading and fraudulent transactions. The tools employed are Integrated Market Surveillance System (IMSS) and Data

Warehousing and business Intelligence System (DWBIS)

IMSS is a smooth surveillance technology. It started from 2013 and it is used to collect data from abnormal market activities, including its network systems at exchanges and depositories. Further it helped SEBI in monitoring movements of stock pricing, patterns of trading and detect serious market violations.

The other tool launched by SEBI is DWBIS and the main objective of data warehousing tool is to leverage the power of modern technology in terms of computation and speed of data analysis. Further the investigation and surveillance capacity of SEBI has also been increased through the implementation of this system, it helps in early detection of market abuse.<sup>1099</sup>

### **2. Tackle Insider Trading and Market Manipulation:**

Insider trading can be understood as an illegal trading of securities in a company which is certainly influenced by Unpublished Price Sensitive Information (UPSI) which is known to a public at large. It is very important to efficiently regulate the insider trading for more transparency and fair returns to the shareholders of the company, maintain public confidence in the share market along and to protect the interest of investors<sup>1100</sup>. The Companies Act, 1956<sup>1101</sup> did not have provision for insider trading and hence SEBI Act, 1992 owns the authority to keep in check the incidents of insider trading. SEBI is empowered to publish regulations for regulating Insider trading and since, this power is confer on SEBI by the virtue of Section 12-A<sup>1102</sup> of the SEBI Act, 1992, in consequenc the SEBI (prohibition of Insider Trading Regulations) 2015<sup>1103</sup> came into effect. The key measures of the 2015 regulation includes SDD (Structured Digital Database)

<sup>1099</sup> [Sebi.gov.in, https://www.sebi.gov.in/sebi\\_data/docfiles/17129\\_t.html](https://www.sebi.gov.in/sebi_data/docfiles/17129_t.html), February 24, 2011.

<sup>1100</sup> Armaan patkar, Insider Trading: Law & Practice (1<sup>st</sup> Edn., Eastern Book Company, 2019) Ch. 5, 7.2.1.

<sup>1101</sup> Companies Act, 1956.

<sup>1102</sup> Securities and Exchange Board of India Act, 1992, S.12-A.

<sup>1103</sup> SEBI (Prohibition of Insider Trading) Regulation, 2015.

<sup>1098</sup> Regulatory Arbitrage in Financial Markets: A Critical Analysis, Gravitas Legal, Dec 9, 2024, <https://www.linkedin.com/pulse/regulatory-arbitrage-financial-markets-critical-analysis-ip5vc/>



which requires to main records of a person who is in possession of UPSI of the company as mandated by Regulation 3(5). This ensures no Insider trades are being harmful to the company and other shareholders. This also serves as an evidence in the court while deciding cases on violation of the regulations<sup>1104</sup>. The SEBI Act, 1992 provides for an inclusive definition of UPSI, trading, designated persons and connected persons. Further under Section 15-G<sup>1105</sup> of the Act it provides for penalty also for the violation of the regulations.

In Samir c. Arora v. SEBI, the court held that to hold an insider responsible for insider trading, the UPSI needs to be true. If upon disclosure the UPSI turns to be false it will not be coming under the scope of Prohibition of Insider trading regulation as it does not fulfil the test of an information to qualify as an UPSI, that is, it does not affect the price of the securities in consideration<sup>1106</sup>.

### 3. Cybersecurity and Technological Resilience:

SEBI is responsible for regulating India's Financial Market. Business entities are at utmost risk of cybercrime as they deal with sensitive data, transactions, personal details and even records of regulatory enforcement. An attack could potentially have an adverse effect among clients, stakeholders and Indian securities Market system as a whole. SEBI mandates investor's protection, facilitating Market development, Market regulation and Safeguarding Market Fairness. To negate all these SEBI has been strengthening its Cyber Security and Cyber

Resilience since 2015 as risks are gradually evolving<sup>1107</sup>. Cyber Security and Cyber Resilience Framework (CSCRF) is a statutory body approached by SEBI to maintain integrity and

confidentiality of sensitive information. The goal of this body is to improve cyber security, improve incident reporting, and assure periodic returns. It requires submission of detailed Business Continuity plans (BCPs) and Disaster Recovery strategies. SEBI requires a cyber-security committee responsible for developing and managing Cyber Security policies be established by all Regulated Entities and shall also include Senior Management and IT experts. SEBI also mandates the CCI (Cyber Capability Index) framework under CSCRF to assess the cyber resilience security framework<sup>1108</sup>.

### 4. Investor Protection and financial Literacy:

The Government of India under Section 125 of Companies Act, 2013<sup>1109</sup> established Investor protection and Education Fund. The authority promotes investors education, awareness and protection. It allows investors to lodge complaint online and to check their status by offering a platform which is (SEBI Complaints Redress System). It organizes awareness programmes in Urban and Semi-urban regions for purpose of enhancing investors awareness. The awareness programme focused of various issues, that is, importance of investing, Primary and Secondary Capital Markets, dos & don'ts of investing in the Capital Market, various types of investment option available like mutual funds, debentures, equity, company fixed deposit and etc. In Urban area the programmes are conducted in association<sup>1110</sup>. Collaboration have also been made with educational institutions, self-regulatory organizations and non-profit entities to promote financial literacy.

### 5. Enhancing disclosure norms and Corporate Governance Standards:

Transparency, Accountability, Fairness and Responsibility are the four pillars of corporate governance. It is the framework of rules system and process within and by which authority is

<sup>1104</sup> Bhumika Indulia, SEBI (Prohibition of Insider Trading) regulation, 2015: An Understanding of Insider Trading Regulations in India and Major Obstacles in its Implementation, SCC Times.

<sup>1105</sup> Securities and Exchange Board of India Act, 1992, S.15-G.

<sup>1106</sup> 2004 SCC Online Sat90.

<sup>1107</sup> Chandramohan Nair, Overview of SEBI Cyber security and Cyber resilience framework: Strengthening Financial Market Defenses, incorpadvisory.

<sup>1108</sup> Sanika Mehra & Antra Ahuja, Cyber security and Cyber Resilience Framework by SEBI: A Step Towards Digital Safety, BarandBench, Sep 24, 2024.

<sup>1109</sup> Companies Act, 2013, S.125, Acts of Parliament, 2013 (India).

<sup>1110</sup> Ministry of corporate affairs, <https://www.icpf.gov.in/content/icpf/global/master/Home/AboutUS/about-us/KeyInitiatives.html>.

exercised and controlled within a corporation. It is the mechanism by which company and those in controlled shall be accountable for their assigned task. It is used to describe the process, customs, policies, laws, regulations that directs the organization and corporation to act in a proper manner. It works to achieve the goals of organization and manages the relationship with stakeholders including Board of directors and shareholders of the company. Timely disclosure to stakeholders is one of the important canon of good corporate governance. Through the third amendment of SEBI that is SEBI (Listing Obligation Disclosure Requirements) Regulations 2015, it focuses on strengthening corporate governance. The LODR Regulation stress on accountability, transparency, disclosure practices and mechanism for shareholder protection. The regulation now ensures thorough check on the independence of Non- executive directors and their tenures<sup>1111</sup>

### **SEBI'S ROLE IN WAY FORWARD**

#### **• Technological Embracement**

SEBI must make the use of AI and machine learning more to detect the fraudulent activities and for surveillance. Technology must be made readily understandable and usable by the investors. Block-chain based technology and regulations must be made. Real time monitoring must be implemented for the betterment of the investors.

#### **• Educating the investors**

Moving forward with the technological growth Investors must be educated with the growth and use of AI to cope up to the tech world. SEBI must make the retailers aware of the risks in the new age investment relating to F&O trading, crypto assets, etc. SEBI must expand its digital literacy programs more. The cybersecurity infrastructure of exchanges and intermediaries must be strengthened.

#### **• Reforming Investors mechanism and strengthening Corporate Governance norms**

SEBI must bring reformation to the investor's mechanism by implementing fast-track adjudication mechanisms for speedy redressal of cases. Under Sections 15HA and 15HB, SEBI is empowered to impose money or fine penalties for unfair trades, fraudulent cases, and contraventions where no specific penalty is described, and amendments must be made to that.<sup>1112</sup>

More accountable and transparent reforms must be implemented for independent directors and auditors. Whistleblower protection mechanisms must be strengthened. More stringent corporate governance regulations must be employed. Sandbox approach must be implemented within the SEBI to promote innovation in fintech to promote testing of new things.

#### **• Global Corporation**

SEBI is collaborating with international regulators further for a smooth cross border surveillance and standards. SEBI must adopt more from global markets to align Indian markets with global standards to attract foreign investments. Collaboration with various other Global laws can increase the number of investors trust.

#### **• Green Finance and ESG**

The Amendment Regulations introduced the concept of 'Environmental, Social and Governance Debt Securities' ("**ESG Debt Securities**") under Regulation 2(1)(oa) of the NCS Regulations, which effectively included not only social and sustainable bonds but sustainability linked bonds, and green debt securities.<sup>1113</sup>

Moving forward SEBI issues green bonds and ESG by corporate entities. It is developing robust

<sup>1111</sup> Palomita Sharma & Harshita Srivastava, Adapting to change: SEBI updating listing regulation framework for listed entities, NishitDesai Associates, Jan 06, 2025, <https://www.nishithdesai.com/generateHTML/15240/4>

<sup>1112</sup> Srishti Mukherjee, SEBI's power of Investigation and enforcement: Procedure safeguards and legal challenges, iPleaders Blog, Sep 21, 2024.

<sup>1113</sup> Aakanksha Joshi & Aastha Bhandari, SEBI's New Framework for Sustainable Finance: A Review Beyond Environmental Sustainability, S&R Associates, Dec 24, 2024.

ESG ratings framework promoting sustainable investments.

### **CONCLUSION**

SEBI plays a beneficial role in maintaining the probity of Indian monetary markets. Although provocation continues due to speedy technical and economical inventions, SEBI's dynamic managerial prospective, technological adoption, and capitalist-central strategies place for the upcoming future. Constant improvisation, activeness and surveillance will ensure a unbiased, lucid and systematic market environment.

