

PRIMARY AND SECONDARY MARKETS UNDER SECURITIES LAW

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ABSTRACT

In India, primary and secondary securities markets are major institutions in terms of capital formation and successive trading activities. This paper is a critical analysis of regulatory framework that is set under the SEBI Act, 1992, the SCRA, 1956 and Companies Act, 2013. Using a doctrinal methodological approach, the paper assesses the overall contribution of disclosure requirements, market conduct rules and enforcement in creating efficient capital formation and securities market operation.

Disclosure requirements are the major type of investor protection in the primary market, comprising a prospectus liability, due diligence by those acting in the middle of the transaction, and regulatory oversight to the extent that the market is able to address information asymmetry at the point of issue. The secondary market, on the other hand, is more dependent on surveillance and enforcement mechanisms that focus on the prohibition of insider trading, manipulation of markets, and the effectiveness of institutional market infrastructure including exchanges, clearing corporations and depositories.

The paper concludes that the Indian securities market is normatively, but operationally, conditional. This leads to the necessity of balanced reforms to align disclosure standards, improve real-time surveillance provisions, and better redressal of grievances by investors.

Keywords: Primary Market; Secondary Market; Disclosure Obligations; Insider Trading; Investor Protection; Regulatory Enforcement

CHAPTER-1: INTRODUCTION

1.1 Background

The securities market is architecture around the primary and secondary markets where capital is mobilized and redistributed in the contemporary economies. The primary market known as the new-issue market and is place where issuers raise new funds in the form of public offers, rights issues and placements. It is where securities are issued and first disclosure obligations occur. The secondary market is the trading venue where securities that had been issued previously are traded among investors, which offers liquidity, price discovery and

investor exit mechanisms. These two markets are mutually dependent in the sense that primary issuance requires credible secondary-market liquidity, and efficient secondary trading requires credible primary-issue disclosures and market infrastructure.

Under Indian law, these markets are regulated through a statutory and regulatory matrix that incorporates securities-market enabling statutes and regulatory instruments that enable market infrastructure, require disclosure, and provide enforcement mechanisms that connect issuer duties to market conduct regulation. The three primary policy objectives of this legal

overlay are: (i) supporting capital formation (ii) protecting investor interests with disclosure and market-conduct policies and (iii) ensuring systemic integrity by market infrastructure and enforcement.

1.2 Research Objectives

- To examine framework governing primary and secondary securities markets in India.
- To evaluate disclosure obligations, market conduct norms and enforcement mechanisms.
- To identify regulatory gaps and propose reforms to strengthen transparency, accountability and efficiency.

1.3 Research Questions

- Do existing disclosure obligations in public offerings sufficiently safeguard investor interests?
- Whether insider trading and market manipulation regulations effective in maintaining fair secondary markets?
- How can regulatory coordination between issuance and trading stages be improved?

1.5 Literature Review

Frank H. Easterbrook and Daniel R. Fischel tells that mandatory disclosure reduces information asymmetry and agency costs between issuers and investors, thereby improving allocative efficiency in capital markets.¹²⁹⁷ Expanding this perspective, John C. Coffee Jr. highlights the importance of public enforcement and gatekeeper liability, contending that intermediaries such as auditors and underwriters play a critical deterrent role in securities offerings.¹²⁹⁸

In the Indian context, academic commentary traces the strengthening of securities regulation following economic liberalization and the empowerment of the statutory regulator. Umakanth Varottil notes the gradual

consolidation of minority shareholder protections and disclosure standards, reflecting a shift toward internationally aligned governance norms.¹²⁹⁹ Similarly, Afra Afsharipour's comparative study situates India's disclosure regime within broader institutional reforms designed to enhance investor confidence and market credibility.¹³⁰⁰

CHAPTER 2: PRIMARY MARKET: LEGAL FRAMEWORK

2.1 Regulations & Statutes

The regulation related to India's primary securities market depends on a statutory and institutional framework to balance capital formation with investor protection. At the core of this is the SEBI, which is constituted under the SEBI Act, 1992. SEBI is given the duty to protect investor interests and regulate the securities market, while exercising rule-making, supervisory and enforcement powers in relation to public issues and market intermediaries.¹³⁰¹

The Companies Act, 2013 provides the key corporate law principles governing the issuance of securities. It recognizes different modes of raising capital, including public offers and private placements and prescribes procedural and substantive safeguards.¹³⁰² Sections 23 to 42 tells framework for public offerings and private placements while Sections 34 and 35 imposes liability for misstatements in prospectuses, thereby reinforcing the disclosure based model of regulation.¹³⁰³

The operational details are supplied by delegated legislation, particularly the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.¹³⁰⁴ The ICDR Regulations specify eligibility criteria, disclosure standards, pricing norms and procedural requirements for

¹²⁹⁹ Umakanth Varottil, *The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony*, 31 U. Pa. J. Int'l L. 253 (2010)

¹³⁰⁰ Afra Afsharipour, *Corporate Governance Convergence: Lessons from the Indian Experience*, 29 Nw. J. Int'l L. & Bus. 335 (2009)

¹³⁰¹ Securities and Exchange Board of India Act, 1992, No. 15 of 1992, § 11.

¹³⁰² Companies Act, 2013, No. 18 of 2013, §§ 23–42

¹³⁰³ Id. §§ 34–35.

¹³⁰⁴ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, SEBI (ICDR) Regs., 2018, Gazette of India, Extraordinary, Part III, § 4 (Sept. 11, 2018).

¹²⁹⁷ Frank H. Easterbrook & Daniel R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 Va. L. Rev. 669 (1984).

¹²⁹⁸ John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance* 3–5 (2006).

public issues and rights issues to protect the investor's interest. Together working with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015,¹³⁰⁵ they create continuity between pre-listing disclosures and ongoing compliance obligations.

2.2 Prospectus, Disclosures, and Prospectus Liability

The prospectus is the heart of primary market regulation, which functions as the crucial and important document through which an issuer invites the public to subscribe to its securities for capital formation. Under Indian securities law, the legal basis of prospectus regulation is found in the Companies Act, 2013 r/w the SEBI(ICDR), 2018.¹³⁰⁶ These provisions collectively mandate that a prospectus must contain true, fair and adequate disclosures concerning the issuer's financial position, risk factors, management, related-party transactions and intended use of proceeds.¹³⁰⁷

The ICDR framework regulates this disclosure philosophy by prescribing detailed schedules on financial statements, management discussion and analysis, litigation disclosures and promoter background.¹³⁰⁸ Merchant bankers are required to undertake due diligence and certify that disclosures are accurate and are not misleading, which embodies the gatekeeper accountability within the offer process.¹³⁰⁹

Liability for misstatements or omissions in a prospectus reinforces the integrity of the disclosure regime. Section 34 of the Companies Act, 2013 criminalises fraudulent misstatements, while section 35 imposes civil liability on directors, promoters and experts who authorise the issuance of a misleading prospectus.¹³¹⁰ SEBI

may initiate enforcement proceedings, including monetary penalties and market access restrictions under the SEBI Act, 1992.¹³¹¹

2.3 Intermediaries in the Primary Market

Intermediaries have an important position in the regulation of primary issuances which function as gatekeepers between issuers and investors. Merchant bankers which are registered under the SEBI (Merchant Bankers) Regulations, 1992, are primarily responsible for due diligence, drafting of offer documents and ensuring compliance with disclosure norms.¹³¹² Their certification obligations impose a professional duty to verify the accuracy and completeness of disclosures, which reduces the asymmetry related to information. Registrars to an issue supervise application processing, allotment and refund mechanisms by ensuring procedural integrity.¹³¹³

The SEBI exercises supervisory and disciplinary control over these intermediaries, including suspension or cancellation of registration for non-compliance of norms.¹³¹⁴

2.4 Pricing, Allotment Methods and Book-Building

Prices of securities in the primary market are regulated by the SEBI (ICDR) Regulations, 2018. Public issues may be undertaken either as fixed price issues or through the book-building process. In a fixed price issue, the issuer determines the issue price prior to the opening of the offer and discloses it in the prospectus, enabling investors to make decisions with full knowledge of the price.¹³¹⁵ On the other side, book-building, price discovery by inviting bids within a disclosed price band, allowing market demand to determine the final issue price.¹³¹⁶

The ICDR framework requires detailed disclosure

¹³⁰⁵ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (LODR) Regs., 2015, Gazette of India, Extraordinary, Part III, § 4 (Sept. 2, 2015)

¹³⁰⁶ Companies Act, 2013, No. 18 of 2013, §§ 23–41 (India); Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Gazette of India, Part III, § 4 (Nov. 11, 2018)

¹³⁰⁷ Companies Act, 2013, § 26.

¹³⁰⁸ SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, scheds. VI–XI.

¹³⁰⁹ Id. reg. 24.

¹³¹⁰ Companies Act, 2013, §§ 34–35.

¹³¹¹ Securities and Exchange Board of India Act, 1992, No. 15 of 1992, §§ 11, 15HA.

¹³¹² Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, §§ 13–25

¹³¹³ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, §§ 23, 24.

¹³¹⁴ Securities and Exchange Board of India Act, 1992, No. 15 of 1992, § 11B.

¹³¹⁵ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, §§ 26–29.

¹³¹⁶ Id. § 6(1), 28.

of the price band, bidding procedure, basis of allotment, and category-wise reservation to ensure transparency and prevent arbitrary allocation.¹³¹⁷ A specified proportion of shares must be reserved for qualified institutional buyers, non-institutional investors and retail individual investors, thereby which promotes broader participation and distributive fairness.¹³¹⁸

2.5 Investor Protection and Enforcement in Primary Issues

Investor protection in the primary market is secured in mandatory disclosure and layered enforcement. The SEBI requires issuers to make full and fair disclosures in offer documents under the ICDR framework, which enables informed investment decisions and reducing information asymmetry.¹³¹⁹ Civil liability is attached to misstatements in a prospectus under the Companies Act, 2013, which provides compensation to investors who suffer loss due to misstatements or omissions.¹³²⁰ Criminal liability may also arise for doing fraud and misrepresentation in securities transactions. SEBI possesses wide investigative and remedial powers which includes directions, monetary penalties and market access restrictions which helps to deter misconduct and protect market integrity. Judicial recognition of SEBI's broad mandate to safeguard investors further reinforces this framework.¹³²¹

CHAPTER 3- SECONDARY MARKET: LEGAL FRAMEWORK

3.1 Market Infrastructure

The secondary market operates through a legally recognized market infrastructure which consists of the stock exchanges and clearing corporations. Under the Securities Contracts (Regulation) Act, 1956, stock exchanges require

recognition from the Central Government and performs function subject to regulatory oversight by the SEBI.¹³²² Recognized exchanges provides the trading platform to investors, frame bye-laws which are subject to approval and ensure compliance with trading norms.

Clearing corporations performs the critical post-trade function of novation, by interposing themselves between buyer and seller to guarantee settlement and reduce counterparty risk.¹³²³ The statutory framework mandates risk management mechanisms as margins, settlement guarantees and default procedures.¹³²⁴

3.2 Trading Mechanisms and Post-Trade Processes

Secondary market trading in India is conducted through screen-based, order-driven systems which are operated by recognised stock exchanges, where price discovery occurs through anonymous matching of buy and sell orders on a time priority basis. This modern structure replaced earlier floor-based trading and has very significantly enhanced transparency. The statutory foundation for such trading is provided by the Securities Contracts (Regulation) Act, 1956, which governs recognised stock exchanges and the validity of securities contracts.¹³²⁵

The Depositories Act, 1996 institutionalised dematerialisation by recognising depositories as registered owners for the limited purpose of effecting transfers, while beneficial ownership remains with investors.¹³²⁶ This separation reduces transfer delays, forgery risks and bad deliveries, which strengthens market integrity. The role of depositories such as NSDL and CDSL, which are operating under SEBI supervision ensures electronic record-keeping and settlement finality.¹³²⁷

¹³¹⁷ Id. §§ 30–33.

¹³¹⁸ Id. §§ 32–34.

¹³¹⁹ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, §§ 4, 26

¹³²⁰ Companies Act, 2013, No. 18 of 2013, § 35.

¹³²¹ *Sahara India Real Estate Corp. v. Securities & Exchange Board of India*, (2013) 1 S.C.C. 1.

¹³²² Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, §§ 3–4.

¹³²³ Id. § 8A.

¹³²⁴ Securities and Exchange Board of India (Stock Exchanges and Clearing Corporations) Regulations, 2018, §§ 37–44.

¹³²⁵ Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, §§ 3–9.

¹³²⁶ Depositories Act, 1996, No. 22 of 1996, § 10

¹³²⁷ Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, §§ 5–7.

Settlement cycles have progressively shortened in India with SEBI mandating a T+1 rolling settlement framework to minimise counterparty risk and enhance liquidity. Clearing corporations guarantees the settlement by acting as central counterparties, thereby novating trades and reducing systemic risk.

3.3 Regulation of Intermediaries and Market Conduct

Intermediaries form the operational backbone of the secondary securities market and their regulation is central to maintaining the market integrity and investor confidence. Under the SEBI Act, 1992, no intermediary such as a stock broker, sub-broker or other market participant can't operate in securities market without registration and compliance with prescribed conditions.¹³²⁸ SEBI's regulatory framework imposes duties upon brokers which includes maintenance of capital adequacy, segregation of client funds and securities, proper risk disclosure and adherence to a code of conduct.¹³²⁹

The Securities Contracts (Regulation) Act, 1956, further empowers recognized stock exchanges to frame bye-laws for governing trading practices and member conduct, which are subject to SEBI oversight.¹³³⁰

Judicial interpretation has consistently affirmed SEBI's wide remedial authority to suspend or cancel registrations in cases of misconduct, enhancing stability in the secondary market.¹³³¹

3.4 Insider Trading, Manipulation & Surveillance

The regulations related to market abuse in the secondary market is anchored in the prohibition of insider trading and fraudulent or manipulative practices. In India, insider trading is governed by the SEBI (PIT) Regulations, 2015, which define "unpublished price sensitive information" (UPSI) and also restrict trading by

insiders while in possession of such information which is considered to be UPSI. The framework imposes disclosure obligations, trading window restrictions and codes of conduct to reduce information asymmetry and protect market integrity for the protection of the investors and also maintain their confidence in the market. The Supreme Court has affirmed that insider trading affects investor confidence by permitting unfair informational advantages.¹³³²

Market manipulation is addressed under the SEBI (PFUTP) Regulations, 2003. These regulations prohibit deceptive devices, circular trading, price rigging and misleading information which further leads to insider trading or price manipulation. The standard applied focuses not only on intent but also on the effect of the conduct on market integrity.¹³³³

3.5 Grievance Redressal & Dispute Resolution

An effective grievance redressal mechanism is central to sustaining confidence of investors in the secondary securities market. In India, investors may approach stock exchanges for complaint resolution through designated investor service cells and arbitration mechanisms framed under the Securities Contracts (Regulation) Act, 1956.¹³³⁴ In parallel, the SEBI administers the SCORES (SEBI Complaints Redress System) platform, which enables the electronic filing, tracking and regulatory follow-up of investor complaints which are against listed companies and intermediaries.¹³³⁵ While SCORES facilitates administrative oversight, it does not substitute adjudicatory remedies. Aggrieved investors may additionally invoke statutory remedies before SEBI adjudicating officers under the SEBI Act, 1992,¹³³⁶ or pursue arbitration as mandated by exchange by-laws.

¹³²⁸ Securities and Exchange Board of India Act, 1992, No. 15 of 1992, § 12.

¹³²⁹ Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, regs. 9–13.

¹³³⁰ Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, §§ 9–10.

¹³³¹ *Sabara India Real Estate Corp. v. Sec. & Exch. Bd. of India*, (2013) 1 S.C.C. 1.

¹³³² *SEBI v. Kanaiyalal Baldevbhai Patel*, (2017) 15 S.C.C. 1.

¹³³³ *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 S.C.C. 753.

¹³³⁴ Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, § 9.

¹³³⁵ Securities and Exchange Board of India, SEBI Complaints Redress System (SCORES).

¹³³⁶ Securities and Exchange Board of India Act, 1992, No. 15 of 1992, §§ 11, 15-I.

CHAPTER-4: FINDINGS, CONCLUSION AND RECOMMENDATIONS

4.1 Findings

The securities law of India follows a disclosure model in the primary market, which guarantees informed investor decision and information asymmetry between all participants of the market. The Companies Act, 2013 and SEBI (ICDR) Regulations have vast prospectus and disclosure requirements, thus constitute a preventive measure to protect the investors in market. However, enforcement of liability against misstatements is largely reactive and requires regulatory action or investor action.

The secondary market regime is more surveillance and enforcement-driven. Regulating intermediaries and minimizing insider trading and market manipulation. In this case, SEBI exercises powers under Section 11 of the SEBI Act, 1992 to uphold market integrity as opposed to controlling disclosure which allows investors to remain confident. The results indicate that although the regulatory framework is extensive, practice issues continue to be problematic in regards to adjudicatory delays and forums multiplicity. A hybrid model is followed in India for the protection of the investor through disclosures, supervision and enforcement.

4.2 Conclusion

This study concludes that Indian securities law system is a strong regulatory framework that is based on enforcement. The primary market is supported by a philosophy of informed consent, mandatory disclosure and prospectus liability as opposed to other alternative methods in that the primary market is supported by a philosophy that underlies the cornerstone of investor protection. However, disclosure alone cannot eliminate informational asymmetries which still exist in the large retail participation and in the financial illiteracy of most investors. The enforcement model is more surveillance-

based in the secondary market, which depends on the continuous disclosure of trading activity, and monitoring and punitive actions, such as punishments on insider trading and market manipulation. This is a sharp contrast to the transparency that prevails systemically in the primary market to the more subdued regulatory stance in the secondary market.

4.3 Recommendations

- To identify insider trading and price manipulation earlier in the process, the SEBI ought to combine exchange-level surveillance and centralized data analytics, which is consistent with its statutory mandate to ensure investor interests in Section 11 of the SEBI Act, 1992. Regulatory fragmentation in the secondary market may be reduced by improving coordination between SEBI, the stock exchanges, and the depositories.
- Interpretative inconsistencies may arise in the Companies Act, 2013 and the SEBI (ICDR) Regulations, 2018. A centralized disclosure system would thus enhance transparency among issuers and minimize compliance confusion in primary issues.
- Delay in the adjudication of cases under Section 15-I of the SEBI Act undermines deterrence. The efficiency can be enhanced by the introduction of statutory timelines or even special benches that are devoted to securities issues to enhance the investor confidence and to promote more investment in the securities market.
- Even though the SCORES platform has been established, it relies on investor awareness and follow-through to work. Accountability in primary and secondary markets would be improved through structured investor education programs and the compulsory reporting of outcome of grievances by the intermediaries.

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