ILLUSTRATION: BINAY SINHA

New securities code leaves investors exposed

A missing statutory purpose and a flawed grievance architecture could erode investor trust

India's securities markets are now firmly in the retail era. Millions of first-time investors participate through digital platforms, mutual funds, and retirement-linked products. For them, trust in the regulatory framework is not an abstraction; it is the condition that makes participation possible. The Securities Markets Code Bill, 2025, (Code) must, therefore, be viewed through the prism of investor protection.

The Code is an ambitious attempt to consolidate three securities laws into a single, modern statute. By merging multiple legacy enactments, it seeks to reduce fragmentation, eliminate overlaps, and simplify regulatory processes. These are commendable legislative policy goals. But they cannot substitute for the substantive objectives of the legislation.

Parliament enacts laws to achieve defined public purposes. These purposes are typically reflected in the preamble of the statute and elaborated in the Statement of Objects and Reasons. The Code, however, articulates no substantive objective beyond consolidation and amendment. In doing so, it misses the foundational objectives embedded in the laws it seeks to replace.

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One of the statutes being subsumed is the Securities and Exchange Board of India (Sebi) Act, 1992, which established India's first modern regulator. The Act's preamble stated its purpose — to protect the interests of investors in securities. The articulation was deliberate: It recognised that investor confidence, especially among retail investors, is critical for a credible securities market. While the Code retains investor protection within Sebi's mandate, it no longer articulates it as the statute's animating purpose.

This is not a matter of drafting style; it is a shift in legislative emphasis. In public law, statutory purpose is critical. It guides interpretation, channels regulatory discretion, shapes institutional priorities, and enables meaningful evaluation of both the law and the regulator against the objectives they are expected to pursue. Its absence makes democratic accountability harder.

Investor protection has long been recognised by law and finance scholarship alike as the defining purpose of securities regulation. Securities laws are designed not only to protect investors from fraud and manipulation, but also, at times, from their own informational and behavioural limitations. Within this framework, the regulator acts as the representative of investors. Over time, the Act shaped Sebi's institutional identity as the investor's pillar of strength, captured in its tagline, "*Har investor ki taaqat*".

Against this backdrop, Chapter X of the Code, which designs investor grievance redress architecture, becomes especially revealing. The Code provides that the regulator "may" make an investor charter, "may" provide a grievance redress mechanism, "may" require service providers to establish similar mechanisms, and "may" designate one of its officers as an ombudsperson. The only obligation on the defaulting party is to acknowledge receipt of the grievance. The burden of resolution rests squarely on the aggrieved investor, who must steer the complaint through the process within 180 days.

If the grievance remains unresolved, the investor may approach the ombudsperson. At this stage, the grievance morphs into a complaint: The parties play complainant and respondent, the proceeding becomes adversarial, and the onus is on the investor to establish a deficiency in service by the defaulting party.

This design reflects a misunderstanding of how modern regulation works. Regulatory regimes are built on information, not private prosecution. They do not leave victims to fend for themselves against powerful intermediaries. Under the extant securities laws, an aggrieved investor brings the grievance to the regulator's notice, after which the regulator triggers an inquisitorial process in the public interest.

India's own experience elsewhere is instructive. The Competition Act, 2002, initially adopted a complaint-based, adversarial model. Recognising its incompatibility with modern regulation, Parliament amended the law in 2007, replacing "complaint" with "information" and shifting proceedings from adversarial to inquisitorial. This transformed the Competition Commission of India into a regulator acting in the public interest, rather than an umpire between unequal parties. The logic was institutional, not sector-specific.

Under the Code, however, investor protection risks being recast as access to an adversarial forum. Providing an ombudsperson to enable an investor to prosecute a complaint is, in substance, little different from establishing a civil court and asking the consumer to litigate. That is dispute resolution, not regulatory protection.

The design of the ombudsperson raises a deeper concern. Globally, an ombudsman derives legitimacy from independence, an institutional buffer between the citizen and the system. That legitimacy flows from distance: From executive control, regulatory hierarchy, and organisational incentives. The Code collapses this distance by requiring Sebi to designate one of its own officers as ombudsperson. This merely rebrands an internal officer as an ombudsperson, who remains subject to the same service rules, career progression, and institutional culture. Even where officers act with complete integrity, the perception of neutrality is inevitably weakened.

This matters because investor grievances are rarely private disputes. They are early warning signals of deeper market dysfunction: Mis-selling, disclosure failures, regulatory delay, supervisory gaps, or repeated tolerance of non-compliance by intermediaries. Such grievances point not only to private misconduct, but also to potential regulatory blind spots.

An ombudsperson process is, by design, complaint-led and party-driven. The regulator's duty, however, is broader: To probe what lies beneath individual grievances and act in the public interest. An insider ombudsperson is structurally ill-positioned to perform this function with the independence investors expect. Treating the ombudsperson as the primary response to investor complaints risks converting market supervision from a proactive, regulatory function into a reactive, dispute-resolution exercise.

The design flaws extend beyond conceptual coherence. The ombudsperson has no jurisdiction over complaints against Sebi itself. They cannot execute their own orders, requiring investors to return to Sebi for enforcement. At the same time, compliance with an ombudsperson's order does not bar Sebi from initiating parallel or subsequent proceedings, exposing respondents to multiple proceedings, appeals, and open-ended uncertainty.

Investor grievance redress must, in its design and operation, remain non-adversarial and regulator-led. Its purpose is not to arbitrate disputes between legally unequal parties, but to provide investors with a simple, credible, and confidence-building avenue of relief. If an ombudsperson must be retained, the institution must be demonstrably independent of the regulator and must follow a genuinely non-adversarial process.

The Code has the opportunity to correct course. Restoring investor protection as an explicit statutory lodestar and redesigning the ombudsperson as a genuinely independent institution would strengthen trust, the most valuable asset of any securities market.

The authors are legal practitioners and have previously worked at Sebi