



When regulators write criminal laws

The Securities Markets Code Bill assures delegation of procedure and detail, but also permits delegation of criminalisation

The Securities Markets Code Bill, 2025 (Code), currently under examination by the Standing Committee, promises a modern and streamlined framework for securities regulation. Among its most welcome features is decriminalising securities market misconduct. Yet the promise is undermined by a provision that allows the Securities and Exchange Board of India (Sebi) to expand the category of criminal conduct through regulation. The result is a striking paradox: Parliament reduces the scope of criminal law while empowering the regulator to enlarge it.

Clause 93 of the Code prohibits “market abuse”. Clauses 93(a) to 93(f) identify six categories of conduct as market abuse: Insider trading, fraudulent schemes to deceive investors, trading on material non-public information, disseminating false or misleading information to influence markets, market manipulation through abuse of position, and front-running ahead of substantial impending transactions. These are indeed serious forms of misconduct. Whether one agrees with every aspect of their formulation, they share an important characteristic: Parliament itself has chosen to define them.

The difficulty lies in Clause 93(g), which extends market abuse to “such other activities as may be specified by regulations which adversely affect the integrity of the securities markets”. This is not merely a power to fill in details. It authorises Sebi to determine what additional conduct shall constitute market abuse. Since market abuse is the sole category of securities-market misconduct that remains criminal under the Code, the practical effect is that Sebi may expand the scope of criminal liability through subordinate legislation.

The phrase “adversely affects the integrity of the securities markets” provides little guidance. Market integrity is an important regulatory objective, but it is an inherently broad and flexible concept. Depending on future regulatory choices, a wide range of conduct

could potentially be brought within its scope. Aggressive short-selling strategies, certain forms of algorithmic trading, activist investor campaigns, or research reports that significantly influence prices could all be characterised as affecting market integrity if regulations are framed broadly enough. Whether Sebi would do so is beside the point. The question is whether Parliament should confer such powers in the first place.

The consequences are significant. Under Clause 96, market abuse attracts imprisonment of up to 10 years, a fine of up to ₹25 crore, or both. A person may, therefore, face imprisonment not for conduct identified by Parliament as criminal but for conduct subsequently designated as market abuse by a regulatory notification.

The implications extend beyond the Code. Market abuse under the Code constitutes a scheduled offence under the Prevention of Money-Laundering Act, 2002. Consequently, conduct brought within Clause 93(g) by regulation may trigger the full machinery of money-laundering enforcement, including attachment of property, arrest, and stringent bail conditions. This is not delegated legislation in any constitutionally recognisable sense. It is delegated criminalisation.

The provision sits uneasily with the government’s broader decriminalisation agenda. Through successive legislative reforms, including the Jan Vishwas Acts, Parliament has sought to reduce the role of criminal sanctions in economic regulation and replace them with civil penalties. Clause 93(g) moves in the opposite direction.

There is a constitutional concern. The creation of criminal offences has traditionally been regarded as an essential legislative function. In *Vasu Dev Singh v. Union of India* (2006), the Supreme Court held that delegating an essential legislative function is impermissible. More recently, in its judgment dated April 29, 2026, in *Ashwini Kumar Upadhyay v. Union of India*,

the court reiterated that the creation of criminal offences and prescription of punishments lie squarely within the legislative domain. The principle is rooted in a constitutional premise: Deprivation of liberty must be authorised through a law enacted by Parliament, not through executive rule-making.

Democracies routinely permit regulators to prescribe standards, procedures and compliance requirements. They are considerably more cautious when it comes to permitting regulators to define conduct that may result in imprisonment. Criminal law occupies a unique position in the legal system because it authorises the state to deprive individuals of liberty. Decisions about what conduct warrants that consequence demand the highest degree of democratic accountability.

None of this is to question Sebi’s competence. It is a sophisticated regulator staffed by individuals possessing expertise that few regulators can match. But expertise is not a substitute for legislative authority. Regulators are expected to administer and enforce the law; they are not ordinarily authorised to determine what conduct shall expose citizens to imprisonment.

Nor is regulatory agility a convincing justification. It is often argued that rapidly evolving markets require flexible powers and that waiting for Parliament to amend legislation may be impractical. Experience suggests otherwise. Securities laws have been amended frequently whenever new regulatory challenges have emerged. In any event, Sebi is not powerless in the interim. The Code already equips it with extensive civil enforcement powers, including the ability to ostracise someone from the market and impose substantial monetary penalties. Civil proceedings are often faster and more effective than criminal prosecutions. If a genuinely new form of market abuse emerges that warrants criminal sanction, Parliament can amend the statute to include it expressly.

The concern is reinforced by the Bill’s own “Memorandum Regarding Delegated Legislation”, which assures Parliament that the regulation-making powers relate to matters of procedure and administrative detail. A power to define additional forms of market abuse cannot plausibly be characterised as procedural or administrative. It goes to the heart of what conduct is criminal.

If such delegation is accepted here, it may become a template for other regulatory statutes, enabling regulators to define additional categories of criminal conduct through subordinate legislation. What appears today as an exception could become a precedent for the gradual transfer of criminal law-making from Parliament to regulators.

The issue is not whether market abuse should be punished severely. It should. Nor is the issue whether Sebi should possess strong enforcement powers. It must. The issue is who should decide what conduct constitutes a criminal offence. In a constitutional democracy, that responsibility belongs to Parliament.

The foundational elements of criminally actionable market abuse must, therefore, be set out in the principal legislation itself. Otherwise, courts may one day be asked to uphold convictions based not on offences enacted by Parliament but on offences created through regulatory notification. That would represent an unwarranted shift in the constitutional allocation of legislative powers.

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