

Securities Code: parliament must rethink Sebi's revisionary power

The regulator shouldn't judge its own order. Replace this authority with a right to appeal to the Securities Appellate Tribunal



SUMIT AGRAWAL & M. S. SAHOO

are, respectively, founder, Regstreet Law Advisors and a former Sebi officer, and former chairperson, Insolvency and Bankruptcy Board of India.

The Securities Markets Code Bill, 2025 (Code), promises a cleaner and more accountable enforcement architecture for India's securities markets.

It separates investigation from adjudication, times out stale cases, and requires adjudicating officers (AOs) to consider prescribed factors before imposing a penalty.

Clause 21 sits uneasily within this architecture. It carries the provision over from the Sebi Act, but expands it. The earlier provision allowed the Securities and Exchange Board of India (Sebi) to revise only the quantum of a monetary penalty. Clause 21 permits it to call for the record of any order passed by its AO within 30 days and, if it considers that order "not in the interest of the securities markets," enhance the penalty or severity of any direction. There is no equivalent power to reduce it or otherwise modify the order.

The Standing Committee on Finance (SCF), in its report presented to the Lok Sabha on 23 July 2026, recognized the problem. It described the power as "one-sided" and an "asymmetrical revisionary mechanism" that "may not be fully consistent with the principles of fairness and natural justice". It recommended that Sebi be empowered, on merits and with recorded reasons, to reduce or otherwise modify an order as well as enhance it, and that it should not call for records once an appeal has been filed before the Securities Appellate Tribunal (SAT).

The record shows why the SCF was right to intervene. Of the 25 reported revision orders passed since 2014, 13 converted an AO's exonerations into a fresh penalty, five enhanced a penalty the AO had imposed and seven left the order unchanged. None reduced what the AO had decided, because the law does not let Sebi do so. Every order that changed, changed in the same direction.

The deeper problem, however, is structural: who revises, on what trigger and with what consequences for the finality of a quasi-judicial order? Sebi can call for the record only when the outcome of the adjudication is lighter than what it considers appropriate. Thus, even before the AO hears and decides the matter, the regulator has, in parallel, formed a view, at least implicitly, of what the adjudication should produce. If the AO reaches a less severe outcome, Sebi can recall the matter for revision. Further, only Sebi can set the revision process in motion; a notice has no corresponding right to seek review of an adverse order. Its only recourse is an appeal to the SAT, which the SCF noted is costly and congested.

The asymmetry also affects the AO in advance. An AO who knows that leniency invites review, while severity does not, is not operating under symmetrical incentives. Even without any conscious pressure, the institutional design may encourage more severe outcomes than an AO



would otherwise consider appropriate. That can inflate sanctions in general, not merely in cases that are subsequently reviewed. The hierarchy can become particularly awkward where the chairperson sits as the AO and the Sebi review of that order involves members junior to him.

The second problem is finality. In *SEBI vs Ram Kishori Gupta* (2025), the Supreme Court held that Sebi cannot claim exemption from *res judicata*: once one of its authorities has finally decided an issue on the given facts, another cannot revisit it and reach a different conclusion. Clause 21 creates a specific statutory mechanism through which an internal Sebi authority can reopen an AO's order. The 30-day window limits the period of uncertainty. A favourable order that may still be reopened gives the regulated entity limited certainty, whether for complying with the order or for investing in systems and controls to prevent recurrence.

Every regulator needs a means of correcting an adjudication that has been too lenient. The question is whether Sebi's mechanism is the appropriate institutional model. The insurance and pension sector regulators follow Sebi's adjudicating-officer model, but neither has been given an equivalent power to enhance an AO's order. Appeals of their orders also go to the SAT. Where closer analogues exist in income-tax and GST laws, the reviewing authority may modify or annul an order as well as enhance it, or may remand the matter. Under customs law, a reviewing committee cannot revise an order at all; it can only direct the department to appeal to an independent tribunal.

The finance ministry told the SCF that Sebi has no power to appeal its own AO's order and that a

two-way revision power could turn Sebi into a parallel appellate forum to the SAT. Both propositions point towards a better solution: not enlarged internal revision power, but an appellate route. If Sebi considers an AO's order too lenient, it should challenge that order at the SAT, just as a regulated person can challenge an order it considers too harsh.

The asymmetry extends to the appellate stage. The SAT may confirm, modify or set aside an order, but not enhance a penalty. The Supreme Court noted in *Nagarajan vs State of Tamil Nadu* (2025) that a person should not be placed in a worse position merely for exercising his right of appeal. The statutory architecture should not permit the regulator, through an internal revision mechanism, to achieve an outcome that the independent appellate tribunal itself cannot impose on an appeal.

Left uncorrected, this will not remain confined to securities laws. The insurance and pension fund regulators are due for their own legislative overhauls, built on Sebi's template. A power Parliament validates for Sebi today may become the default model for other regulators tomorrow. The institutional choice therefore matters beyond Clause 21.

The SCF has opened the door. Parliament should walk through it. Adopting merit-based, two-way revision is the minimum. The better course is to remove Sebi from the revisionary chair altogether and give it a statutory right, like any aggrieved party, to take an AO's order it considers too lenient to the SAT. Let one independent tribunal decide whether an order was too lenient or too harsh.

Sebi needs a check on lenient adjudication. It does not need to be the sole author of that check, sitting in judgement on its own accusation.

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