

# Regulatory Independence in Financial Markets (SEBI vs SEC & FCA)

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## Abstract

Regulatory independence is a foundational element of effective financial market governance, particularly in jurisdictions experiencing rapid market expansion and increasing integration with global capital flows. This article undertakes a comparative analysis of the institutional independence of the Securities and Exchange Board of India (SEBI) with that of the U.S. Securities and Exchange Commission (SEC) and the U.K. Financial Conduct Authority (FCA). It examines the constitutional and administrative dimensions of regulatory autonomy, focusing on appointment processes, enforcement powers, judicial oversight, accountability mechanisms, and susceptibility to executive influence. The study situates SEBI's regulatory framework within India's constitutional structure, assessing whether its extensive delegated powers are balanced by adequate safeguards against arbitrariness and regulatory capture. By drawing on comparative regulatory practices, the article identifies structural limitations in India's current model and advances context-sensitive reform proposals aimed at strengthening SEBI's independence without undermining democratic accountability. The analysis contributes to contemporary legal scholarship by demonstrating how regulatory independence, when constitutionally grounded and institutionally reinforced, enhances investor protection, market integrity, and regulatory credibility in emerging market economies.

**Keywords:** Regulatory Independence; SEBI; Securities Regulation; Comparative Financial Regulation; Constitutional Governance; Investor Protection; Market Integrity; Democratic Accountability; Regulatory Reform; Global Capital Markets etc.

## 1. Introduction:

Financial markets play a critical role in modern economic systems by mobilizing capital, facilitating investment, and promoting economic growth. The effective functioning of these markets depends significantly on the presence of strong and credible regulatory institutions capable of ensuring transparency, fairness, and investor protection. In this context, regulatory independence has emerged as a central principle of securities market governance, as regulators are expected to operate free from undue political or commercial influence while exercising extensive powers that affect market participants and public confidence. In India, the Securities and Exchange Board of India (SEBI) occupies a pivotal position as the primary regulator of the securities market, entrusted with wide-ranging legislative, executive, and quasi-judicial functions. The expanding scope of SEBI's authority, coupled with the increasing complexity

of financial markets, has intensified debates concerning the appropriate balance between regulatory autonomy, constitutional accountability, and democratic oversight.

This article undertakes a comparative examination of regulatory independence in financial markets by analyzing the institutional frameworks of SEBI, the U.S. Securities and Exchange Commission (SEC), and the U.K. Financial Conduct Authority (FCA). These regulators represent distinct yet influential models of securities regulation shaped by differing constitutional structures, administrative traditions, and market conditions. By situating SEBI within this comparative landscape, the study seeks to assess the extent to which India's regulatory model aligns with global best practices while remaining consistent with constitutional principles such as equality, fairness, and the rule of law. The comparative approach enables a deeper understanding of how appointment mechanisms, financial and operational autonomy, enforcement powers, judicial oversight, and accountability structures contribute to or constrain regulatory independence in practice.

The primary aim of this article is to critically evaluate whether SEBI's institutional design adequately supports independent and effective market regulation without compromising democratic legitimacy. In pursuing this objective, the article examines the constitutional implications of SEBI's delegated powers, the role of judicial oversight in disciplining regulatory discretion, and the impact of regulatory independence on investor protection, market integrity, and global investor confidence. It also identifies key challenges, including executive influence, regulatory capture, and transparency deficits, that affect the credibility and effectiveness of securities regulation in India. Drawing on comparative insights from the SEC and FCA, the article advances reform-oriented recommendations aimed at strengthening SEBI's independence through structural and procedural improvements rather than curtailing its authority.

The article is structured to provide a coherent and progressive analysis of the subject. It begins by outlining the theoretical foundations of regulatory independence, followed by an examination of the institutional frameworks of the three regulators. A detailed comparative analysis then evaluates the dimensions of independence and accountability, supported by a discussion of judicial oversight and market governance outcomes. The latter sections address emerging challenges and propose best practices and policy reforms tailored to the Indian constitutional context. Through this integrated analysis, the article seeks to contribute to contemporary legal and policy discourse by demonstrating that regulatory independence, when constitutionally grounded and institutionally balanced, serves as a vital instrument for sustainable and trustworthy financial market governance.

## 2. Theoretical Framework of Regulatory Independence:

The theoretical framework of regulatory independence in financial markets acquires distinct constitutional significance in the Indian context, particularly in relation to the Securities and Exchange Board of India (SEBI), which exercises extensive legislative, executive, and quasi-judicial powers. Regulatory independence, in this sense, refers to the functional and institutional autonomy of SEBI to regulate securities markets free from undue executive or political interference, while operating within the constitutional scheme of governance under the Indian Constitution. The creation of SEBI as a statutory regulator under the SEBI Act, 1992 reflects the State's recognition that securities regulation involves complex, technical, and dynamic considerations that are ill-suited to direct ministerial control. From a

constitutional perspective, SEBI's autonomy must be understood as a form of permissible delegation of powers, justified on grounds of administrative efficiency, expertise, and the need for credible market supervision, while remaining subject to the principles of legality under Articles 14 and 21 of the Constitution of India. Scholars have noted that independent regulatory agencies enhance regulatory credibility by insulating decision-making from short-term political compulsions, thereby promoting long-term market stability and investor confidence, objectives that are closely aligned with the constitutional values of fairness, reasonableness, and non-arbitrariness.

However, the Indian constitutional framework does not endorse absolute regulatory independence, and SEBI's autonomy must necessarily be balanced with accountability mechanisms to prevent arbitrariness and ensure democratic legitimacy. Regulatory independence, therefore, operates in tandem with constitutional safeguards such as judicial review, parliamentary oversight, and adherence to principles of natural justice. The Supreme Court of India has consistently held that while delegated regulatory bodies may exercise wide discretionary powers, such powers must be structured, guided, and subject to review to satisfy constitutional standards. In the context of SEBI, this balance is reflected in appellate oversight by the Securities Appellate Tribunal and the Supreme Court, transparency obligations, and statutory limits on regulatory discretion. Comparative regulatory theory supports this approach, suggesting that market efficiency is best achieved not through unrestrained autonomy but through a calibrated model in which independence enhances enforcement credibility, while accountability ensures legal certainty and procedural fairness. In financial markets, this equilibrium directly influences market discipline, compliance behavior, and global investor confidence, thereby reinforcing the constitutional objective of orderly economic governance. Consequently, the theoretical foundation of regulatory independence, when applied to SEBI, underscores its role as a constitutionally compatible instrument for effective market regulation rather than an exception to democratic control.

### **3. Institutional Framework of Securities Regulators:**

The institutional framework of securities regulators reflects the manner in which States structure regulatory authority to balance market autonomy, accountability, and constitutional governance. In India, the Securities and Exchange Board of India (SEBI) was established under the SEBI Act, 1992 as a statutory body entrusted with protecting investor interests, regulating securities markets, and promoting market development. SEBI's institutional design grants it wide-ranging powers, including delegated legislative authority to frame regulations, executive authority to investigate and enforce compliance, and quasi-judicial authority to adjudicate violations. From a constitutional standpoint, this concentration of powers raises important questions concerning separation of powers and permissible delegation under the Indian Constitution. However, Indian constitutional jurisprudence has consistently recognised that in specialised and technical fields such as securities regulation, such delegation is justified to ensure effective governance, provided it is accompanied by statutory guidance, procedural safeguards, and judicial oversight. SEBI's accountability to Parliament through the Central Government, coupled with appellate scrutiny by the Securities Appellate Tribunal and the Supreme Court, situates it within a constitutionally acceptable framework that seeks to harmonise regulatory independence with the rule of law and the guarantees of fairness and non-arbitrariness under Articles 14 and 21 of the Constitution.

In contrast, the institutional structure of the U.S. Securities and Exchange Commission (SEC) reflects a model of independent regulatory governance deeply embedded within a system of checks and balances. Established under the Securities Exchange Act, 1934, the SEC operates as an independent federal agency, insulated from direct executive control through fixed tenure of commissioners, bipartisan composition requirements, and budgetary autonomy approved by Congress. The SEC's independence is constitutionally reinforced by the separation of powers doctrine, while its accountability is ensured through congressional oversight, judicial review by federal courts, and strict adherence to administrative law principles. The American model demonstrates a clear distinction between executive influence and regulatory decision-making, enabling the SEC to function with substantial autonomy while remaining democratically accountable. Comparative regulatory scholarship often cites the SEC as an example of how institutional independence can enhance enforcement credibility and market confidence without undermining constitutional legitimacy.

The United Kingdom's Financial Conduct Authority (FCA) represents a comparatively modern regulatory model grounded in statutory independence and outcome-based regulation. Established under the Financial Services and Markets Act, 2000 and restructured following the 2008 financial crisis, the FCA operates independently of direct ministerial control while remaining accountable to Parliament and the Treasury. Its institutional framework emphasizes principles-based regulation, transparency, and proportionality, allowing flexibility in responding to market innovation while maintaining regulatory discipline. Unlike SEBI, which combines developmental and enforcement objectives, the FCA's mandate is more explicitly focused on consumer protection, market integrity, and competition. The UK model demonstrates how regulatory independence can coexist with strong accountability through parliamentary scrutiny, public consultations, and judicial review. For India, the comparative institutional analysis of the SEC and FCA offers valuable insights into strengthening SEBI's structural autonomy while refining accountability mechanisms to address constitutional concerns relating to discretion, transparency, and democratic control.

#### **4. Comparative Analysis of Regulatory Independence:**

The comparative analysis of regulatory independence among SEBI, the U.S. Securities and Exchange Commission (SEC), and the U.K. Financial Conduct Authority (FCA) reveals that institutional autonomy is shaped not merely by statutory declarations but by the practical design of appointment processes, financial control, operational discretion, and insulation from political influence. In India, the appointment, tenure, and removal of SEBI's Chairperson and Members are vested in the Central Government, reflecting a model of executive-dominated selection that raises constitutional concerns regarding independence, particularly in light of SEBI's extensive quasi-legislative and quasi-judicial powers. While statutory tenure provides a measure of stability, the absence of a transparent, participatory appointment mechanism comparable to those in the U.S. or U.K. has attracted scholarly critique on grounds of potential executive influence. From a constitutional perspective, however, Indian courts have upheld such arrangements as permissible delegation, provided that regulatory discretion remains structured and subject to judicial review, thereby satisfying the requirements of Articles 14 and 21 of the Constitution.

Financial and operational autonomy further distinguishes the three regulatory models. SEBI enjoys a significant degree of financial independence through fee-based funding derived from market participants, which reduces its reliance on direct budgetary allocations and enhances its functional autonomy. Nevertheless, statutory oversight by the Central Government over policy directions introduces a layer of executive supervision that tempers complete independence. In contrast, the SEC's funding mechanism, though subject to congressional approval, operates within a robust framework of institutional independence reinforced by constitutional separation of powers and legislative oversight rather than executive control. The FCA, similarly, is financed largely through industry levies and operates independently of ministerial direction in day-to-day regulation, though it remains accountable to Parliament and the Treasury. Comparative regulatory theory suggests that such financial autonomy, when combined with legislative rather than executive oversight, strengthens regulatory credibility and minimizes risks of regulatory capture.

The scope of rule-making and enforcement powers constitutes another critical dimension of regulatory independence. SEBI's authority to frame binding regulations, conduct investigations, impose penalties, and issue market directions places it among the most powerful regulators in the Indian administrative framework. This concentration of powers, while functionally justified, intensifies constitutional concerns relating to separation of powers and due process. Indian jurisprudence has responded to this concern by emphasizing appellate review by the Securities Appellate Tribunal and the Supreme Court as essential safeguards against arbitrariness. The SEC's rule-making authority is similarly expansive but is constrained by the U.S. Administrative Procedure Act, which mandates public participation, reasoned decision-making, and judicial scrutiny. The FCA adopts a principles-based regulatory approach, emphasizing proportionality and transparency, thereby allowing flexibility without compromising accountability. These comparative models illustrate that regulatory independence is most effective when enforcement authority is matched with procedural safeguards that reinforce legitimacy and market trust.

**Comparative Table**

Dimension	SEBI (India)	SEC (USA)	FCA (UK)
Appointment Authority	Central Government	President with Senate confirmation	Treasury with parliamentary oversight
Tenure Security	Fixed tenure, executive-controlled removal	Fixed tenure, protected removal	Fixed tenure, statutory safeguards
Financial Autonomy	Fee-based funding, limited govt oversight	Congressional budget approval	Industry levy-based funding
Rule-Making Power	Extensive delegated legislation	Extensive, APA-governed	Principles-based regulation
Enforcement Power	Civil penalties, directions, bans	Civil & administrative enforcement	Administrative & civil enforcement

<b>Executive Influence</b>	Moderate, policy direction power	Minimal executive interference	Minimal, parliamentary accountability
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Executive control and political influence remain the most contested aspects of regulatory independence, particularly in the Indian context. SEBI's statutory subjection to governmental policy directions, though limited in scope, raises concerns about indirect political influence over market regulation. While such control is constitutionally defensible within India's parliamentary system, excessive executive intervention risks undermining investor confidence and regulatory neutrality. By contrast, the SEC's commissioners enjoy protection from arbitrary removal, and the agency operates independently of presidential directives in enforcement matters, while remaining accountable to Congress. The FCA similarly functions without direct ministerial interference in regulatory decisions, relying instead on parliamentary scrutiny and public accountability mechanisms. For India, the comparative experience underscores the need to recalibrate SEBI's institutional design by strengthening transparency in appointments and limiting executive influence, without disrupting the constitutional balance between regulatory independence and democratic accountability.

## **5. Judicial Oversight and Accountability Mechanisms:**

Judicial oversight and accountability mechanisms constitute the constitutional fulcrum upon which the legitimacy of independent financial regulators such as SEBI rests. In the Indian constitutional framework, judicial review functions as a critical safeguard against arbitrariness, excess of jurisdiction, and abuse of discretionary power by regulatory authorities exercising delegated legislative, executive, and quasi-judicial functions. SEBI's regulatory actions, including rule-making, enforcement orders, and adjudicatory decisions, are subject to scrutiny by the Securities Appellate Tribunal and, ultimately, the Supreme Court of India under Articles 136 and 226 of the Constitution. The scope of such review, while restrained in matters involving technical and economic expertise, extends to examining violations of statutory mandate, procedural impropriety, proportionality of sanctions, and adherence to constitutional guarantees of equality and fairness. Indian courts have repeatedly emphasized that regulatory discretion, however wide, cannot operate in a constitutional vacuum and must conform to the standards of non-arbitrariness under Article 14, thereby reinforcing the principle that independence does not imply immunity from constitutional discipline.

Closely linked to judicial oversight is the requirement that SEBI's decision-making processes comply with due process and the principles of natural justice, which derive constitutional force from Articles 14 and 21. Given SEBI's power to impose civil penalties, debar market participants, and issue directions affecting livelihood and reputation, procedural fairness assumes heightened importance. The Supreme Court has clarified that even administrative and regulatory actions with civil consequences must observe the *audi alteram partem* rule, provide reasoned orders, and ensure proportionality between misconduct and sanction. In the context of SEBI, deficiencies such as inadequate disclosure of investigation material, excessive reliance on *ex parte* interim orders, and delayed adjudication have raised concerns regarding procedural fairness. While courts have generally shown deference to SEBI's expertise,

they have also intervened where regulatory action transgresses the boundaries of natural justice, underscoring the constitutional imperative that efficiency cannot override fairness. From a reform perspective, codifying clearer procedural safeguards within SEBI's enforcement framework would strengthen regulatory legitimacy without diluting effectiveness.

Transparency and public accountability represent the final, and often weakest, pillar of regulatory governance in India's securities market framework. Although SEBI is subject to statutory reporting obligations and the Right to Information Act, 2005, meaningful transparency in policy formulation, enforcement priorities, and settlement decisions remains limited. Unlike regulators in jurisdictions such as the United States and the United Kingdom, where extensive public consultation, published enforcement rationales, and legislative testimony are integral to accountability, SEBI's engagement with public reasoning is comparatively restrained. This opacity raises constitutional concerns regarding democratic accountability, particularly given SEBI's expansive influence over economic governance. Indian constitutional theory does not reject independent regulation but demands that such independence be balanced by openness, reasoned decision-making, and institutional answerability. Strengthening parliamentary scrutiny, institutionalizing impact assessments for major regulations, and enhancing transparency in settlement and consent mechanisms would align SEBI's functioning more closely with constitutional values of responsible governance. Ultimately, judicial oversight can correct individual excesses, but sustainable regulatory legitimacy requires structural reforms that embed accountability within SEBI's institutional culture rather than relying solely on post-hoc judicial intervention.

## 6. Impact of Regulatory Independence on Market Governance:

The independence of securities regulators has a direct and measurable impact on market governance, particularly in advancing investor protection and preserving market integrity, which are core objectives of the Indian securities regulatory framework. In the context of SEBI, regulatory independence enables decisive enforcement against market abuse, insider trading, and manipulation, thereby reducing information asymmetry and safeguarding the interests of retail and institutional investors alike. From a constitutional standpoint, such regulatory action contributes to the realization of substantive equality under Article 14 by ensuring a level playing field in capital markets and preventing the concentration of economic power through unfair practices. However, excessive executive influence or inconsistent enforcement undermines these objectives by eroding predictability and procedural fairness. Indian regulatory experience demonstrates that where enforcement actions are perceived as selective or opaque, investor confidence suffers, particularly among small investors who rely on the credibility of the regulator rather than market sophistication. Strengthening SEBI's functional autonomy while embedding clearer standards of proportionality and reasoned decision-making would therefore enhance market integrity without compromising constitutional safeguards.

Regulatory independence also plays a crucial role in shaping regulatory credibility and global investor confidence, especially in an era of integrated financial markets and cross-border capital flows. International investors assess not only the substantive content of securities regulations but also the institutional reliability of the regulator enforcing them. SEBI's credibility as an independent regulator affects India's attractiveness as an investment destination and its alignment with global best practices in

financial governance. Constitutionally, this dimension intersects with the State's obligation to ensure orderly economic governance while respecting the rule of law and legal certainty. Comparative experience indicates that jurisdictions with transparent, autonomous, and predictable regulatory regimes command higher levels of foreign investment and lower risk premiums. In India, lingering concerns regarding executive oversight, ad hoc policy interventions, and regulatory reversals have occasionally diluted SEBI's institutional standing. Reform efforts aimed at enhancing appointment transparency, insulating enforcement decisions from policy considerations, and strengthening institutional accountability would reinforce SEBI's credibility while remaining consistent with constitutional principles of democratic control. Ultimately, regulatory independence should be conceived not merely as an administrative convenience but as a constitutional instrument that fosters market trust, economic stability, and India's integration into the global financial system.

## **7. Challenges and Emerging Concerns:**

One of the foremost challenges confronting independent financial regulators is achieving an appropriate balance between functional autonomy and democratic accountability, a tension that is particularly pronounced in the Indian constitutional framework. SEBI's extensive regulatory and enforcement powers, though necessary for effective market supervision, raise concerns regarding democratic legitimacy when exercised without adequate transparency or parliamentary engagement. Unlike the United States and the United Kingdom, where securities regulators are embedded within mature systems of legislative oversight through regular congressional or parliamentary scrutiny, India's mechanisms for holding SEBI publicly accountable remain comparatively limited and episodic. From a constitutional perspective, this deficit is problematic because regulatory independence, while administratively desirable, cannot be permitted to dilute the principles of representative governance and public reasoning that underlie India's parliamentary democracy. Comparative constitutional practice suggests that democratic accountability need not compromise regulatory effectiveness; rather, structured oversight, transparent appointment processes, and reasoned justification of regulatory choices enhance both legitimacy and compliance. For India, strengthening institutionalized parliamentary review of SEBI's regulatory performance would align market governance with constitutional values without undermining regulatory autonomy.

A related and equally significant concern is the risk of regulatory capture and the institutional constraints that impede truly independent decision-making. Regulatory capture, whether by powerful market participants or through subtle executive influence, poses a serious threat to the credibility and effectiveness of securities regulation. In India, SEBI operates within a dense network of governmental, corporate, and financial interests, which increases the possibility of both industry-driven influence and policy-driven intervention. Comparative experience from jurisdictions such as the U.S. and the U.K. demonstrates that capture risks are mitigated through institutional safeguards such as fixed tenure, post-employment restrictions, transparent enforcement priorities, and robust internal governance structures. Indian constitutional theory recognizes regulatory capture as a form of arbitrariness that undermines the equality principle under Article 14 by privileging certain economic actors over others. Addressing this concern requires moving beyond judicial correction of individual cases toward structural reforms that enhance institutional resilience, including clearer conflict-of-interest norms, greater disclosure of

regulatory interactions, and insulation of enforcement decisions from policy pressures. Without such reforms, regulatory independence risks becoming nominal, constrained by structural vulnerabilities that weaken market trust and constitutional legitimacy alike.

## 8. Best Practices and Lessons for India:

Comparative experience from the United States and the United Kingdom offers valuable institutional lessons for strengthening the independence of SEBI while preserving democratic accountability within India's constitutional framework. The U.S. Securities and Exchange Commission demonstrates the importance of transparent, merit-based appointment processes combined with fixed tenure and protection from arbitrary removal, which collectively insulate regulatory decision-making from transient political pressures. Similarly, the U.K. Financial Conduct Authority illustrates how statutory clarity of objectives, principles-based regulation, and structured parliamentary oversight can coexist with high levels of regulatory autonomy. Both models emphasize that independence is not merely a function of formal statutory status but is sustained through procedural transparency, public consultation, and consistent legislative engagement. For India, these comparative insights underscore the need to recalibrate SEBI's institutional design by reducing executive discretion in appointments and strengthening legislative scrutiny, thereby aligning regulatory governance more closely with constitutional values of accountability, fairness, and the rule of law.

Building on these comparative lessons, several targeted policy reforms may be proposed to enhance SEBI's functional and institutional independence without disrupting India's constitutional balance. First, introducing a transparent, multi-stakeholder selection mechanism for SEBI's leadership, involving parliamentary committees or independent expert panels, would reduce perceptions of executive dominance and strengthen institutional credibility. Second, statutory clarification of the scope and limits of governmental policy directions would help prevent indirect political influence over regulatory enforcement, thereby safeguarding SEBI's decisional autonomy. Third, embedding enhanced procedural safeguards in enforcement actions, including clearer guidelines on proportionality and settlement mechanisms, would reinforce due process and reduce reliance on judicial correction. Finally, institutionalizing regular parliamentary review of SEBI's performance, coupled with mandatory publication of regulatory impact assessments, would promote transparency and democratic accountability. These reforms, grounded in comparative best practices, would transform regulatory independence from a formal attribute into a substantive constitutional instrument that advances market integrity, investor confidence, and sustainable economic governance in India.

## 9. Conclusion:

The comparative analysis of regulatory independence in financial markets demonstrates that effective securities regulation depends not merely on statutory authority but on a carefully calibrated institutional balance between autonomy, accountability, and constitutional legitimacy. The examination of SEBI alongside the SEC and the FCA reveals that while India has made significant strides in empowering its securities regulator, structural vulnerabilities remain in appointment processes, executive oversight,

and transparency mechanisms. From a constitutional perspective, SEBI's wide-ranging regulatory and enforcement powers are justifiable only when exercised within a framework that respects the principles of equality, reasonableness, and procedural fairness embedded in Articles 14 and 21 of the Constitution. Comparative experience underscores that regulatory independence, when supported by transparent governance structures and meaningful democratic oversight, enhances market integrity, investor protection, and global confidence. For India, the path forward lies not in diluting SEBI's authority but in strengthening its institutional design through reform-oriented measures that reinforce autonomy while deepening accountability. Such an approach ensures that regulatory independence functions as a constitutional instrument for sound market governance rather than an exception to democratic control, thereby aligning economic regulation with the broader objectives of constitutional governance and sustainable development.

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