# Securities market code: end the current ambiguity over penalties

*The code's proposed revision is a chance to close space for adjudicatory interpretation and offer market participants certainty*

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India's securities enforcement framework has long faced a contradiction. Parliament has progressively introduced minimum penalties to strengthen deterrence. At the same time, it has retained broad adjudicatory discretion through mitigating factors. The coexistence of these two approaches has not produced balance; it has created uncertainty.

This fault line resurfaced in the split decision of the Securities Appellate Tribunal (SAT) in *Sukhraj Kaur Rajbans vs. Sebi* (January 2026). The issue is: where a statute prescribes a minimum penalty, can an adjudicator reduce it below that threshold, or impose none, based on mitigating circumstances?

The statutory framework appears, at first glance, to admit little ambiguity. Several provisions of the Securities and Exchange Board of India (Sebi) Act follow this familiar formulation: "not less than X, but which may extend to Y." This suggests: fix a minimum floor to ensure deterrence, while allowing discretion within a defined band. Yet, this structure sits alongside Section 15J of the Sebi Act, which requires adjudicating authorities to consider factors such as disproportionate gain, investor loss and the repetitive nature of a default. This is replicated in the Securities Contracts Regulation Act and Depositories Act.

The tension lies in reconciling these provisions. Are mitigating factors relevant only within the statutory range, or do they permit departure from the minimum?

The SAT's split verdict offers two competing answers. The majority adopts a purposive approach, treating Section 15J as a substantive safeguard against disproportionate punishment. It recognizes that rigid application of minimum penalties may produce unjust outcomes, particularly in cases involving technical violations, negligible impact, subsequent compliance or *bona fide* conduct, and therefore allows flexibility to reduce penalties below the statutory floor.

The dissent of the presiding officer takes a stricter view of legislative intent. Once Parliament has prescribed a minimum penalty, that threshold is binding. Section 15J mandates the determination of a quantum within the statutory band but does not authorize deviation below it. To hold otherwise would dilute the statute through interpretation.

Both approaches are defensible—and that is precisely the problem. The law permits two internally consistent but mutually incompatible readings.

In *Sebi vs. Bhavesh Pabari* (2019), the court held that once a violation is established, the imposition of a penalty is mandatory, though its quantum must reflect statutory factors. In *Sebi vs. Bharti Goyal* (2023), it cautioned against substituting statutory penalties with warnings or other measures. Yet, these decisions stop short of addressing whether mitigating circumstances can justify deviation from the statutory minimum.

Indian jurisprudence is clear that the power to impose a penalty is not an obligation to penalize in every case. Unless expressly barred by law, adjudicatory discretion extends to imposing a lesser penalty—or none at all—where circumstances justify it. Courts have repeatedly rejected mechanical enforcement, particularly where violations are technical, *bona fide*, non-repetitive, harmless, arise from regulatory ambiguity or evolving compliance frameworks, involve *de minimis* impact, reflect procedural lapses with substantive compliance but without market impact, or are promptly rectified.

This principle is not merely theoretical. In a diverse market, violations vary widely. In such situations, rigid application of minimum penalties may be disproportionate to both the conduct and its consequences.

It is precisely in these cases that Sebi officers have, in practice, stretched interpretive tools to avoid unjust outcomes. Some have imposed penalties below the statutory minimum; others have adhered strictly to the minimum despite recognizing mitigating circumstances. The result is a regime that is formally rigid but functionally inconsistent.

This inconsistency undermines predictability—the cornerstone of regulation. Market participants cannot assess enforcement risk with confidence when similar violations attract materially different outcomes depending on the adjudicator's interpretive approach.

The proposed Securities Market Code, 2025, before Parliament's Standing Committee of Finance, is an opportunity to resolve this ambiguity.

The Code retains the same structure. Its penalty provisions (Clauses 97 to 109) continue to prescribe minimum penalties, often linked to fixed amounts or multiples of unlawful gain. Clause 111 mirrors Section 15J, requiring consideration of gain, loss and nature of the default. Yet, the Code remains silent on the central question: are minimum penalties absolute, or can they yield to proportionality in exceptional cases?

This silence is not neutral. By carrying forward both rigid minimums and broad mitigating factors without clarifying their interaction, the Code ensures that these conflicts will persist. The question that divided the SAT in this case will continue to divide Sebi adjudicators.

The problem, therefore, is not one of interpretation but of legislative design.

Effective enforcement requires both deterrence and proportionality. But these objectives cannot be reconciled through *ex post* adjudication alone. They must be embedded in the law. The repeated reliance on adjudicatory discretion to correct disproportionate outcomes suggests that penalty provisions are not adequately calibrated.

A more coherent approach would involve clear legislative guidance. Parliament must decide whether minimum penalties are intended to operate as absolute floors or if limited departures (including no penalty) should be permitted based on clearly articulated factors such as absence of gain, harm or prompt rectification. This is significant, given the ₹10 lakh minimum in several provisions. Equally, penalty frameworks must evolve to reflect the diversity of market participants. Retail investors, intermediaries and systemic actors do not present identical risks and enforcement should not treat them as such. Uniform minimum penalties, applied without differentiation, risk being both over-inclusive and under-effective and may raise concerns under Article 14 of the Constitution.

The Securities Market Code must also move beyond *ex post* review mechanisms and incorporate structured, *ex ante* assessments of penalty design. Without such discipline, enforcement will continue to oscillate between rigidity and discretion, neither of which will operate with sufficient predictability.

The SAT's split decision is not an aberration. It reflects a deeper failure to reconcile certainty with fairness in the design of Indian securities law. If the Code does not address this ambiguity, it risks perpetuating a system where outcomes depend less on statutory clarity and more on interpretive preference. A market of India's scale and ambition should not have to live with this ambiguity.