

Due Process in the Dock: SEBI's Charge-Sheet Trigger Under Scrutiny

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[Ayush Tandon](#) [Jan 30, 2026](#)

Fit and proper person test

At the heart of the challenge lies a fundamental reconfiguration of SEBI's long-standing "fit and proper person" test.



The constitutional validity of charge-sheet-based disqualification under the Securities and Exchange Board of India's "fit and proper person" framework is presently under challenge before the Bombay High Court in a batch of writ petitions. The petitions assail amendments introduced in 2021 to the SEBI (Intermediaries) Regulations, which prescribe automatic disqualification upon the filing of a criminal charge-sheet by an enforcement agency in relation to specified economic offences, without awaiting adjudication, conviction, or even the commencement of trial. Significantly, SEBI has acknowledged before the Court that the impugned framework is under review and has indicated restraint in enforcement pending judicial consideration.

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At the heart of the challenge lies a fundamental reconfiguration of SEBI's long-standing "fit and proper person" test. Traditionally conceived as a holistic and discretionary suitability assessment, the test evaluated integrity, reputation, competence, financial soundness, and past regulatory conduct, without treating any single factor as determinative. The 2021 amendments mark a departure from this approach by converting specified events, most notably the filing of a criminal charge-sheet, into hard-wired triggers for automatic disqualification. In effect, serious regulatory and economic consequences now flow not from any adjudicatory finding, but from the existence of an allegation that an investigative agency considers sufficient to proceed.

This transformation raises concerns that go to the core of constitutional governance. By treating the filing of a charge-sheet as sufficient to trigger disqualification, the framework effectively equates allegation with a determination of wrongdoing. While the objective of safeguarding market integrity is undoubtedly legitimate, the imposition of exclusionary consequences at the stage of accusation engages foundational principles of fairness, proportionality, and non-arbitrariness under Article 14 of the Constitution, while also implicating the freedom to carry on business under Article 19(1)(g) and reputational and livelihood interests protected under Article 21.

The Charge-Sheet Trigger and Its Consequences

Once a charge-sheet is filed in relation to specified economic offences, the regulatory consequences follow immediately. Intermediaries are required, within compressed timelines, to remove affected directors or key managerial personnel and ensure divestment of shareholding or control, as applicable. For regulated businesses, this is far from a technical compliance obligation; it mandates fundamental changes in ownership, governance, and management structures on the basis of the initiation of criminal proceedings rather than any judicial determination of wrongdoing.

This design gives rise to several practical and systemic difficulties. First, a charge-sheet is a procedural step, not a finding of guilt, and many such proceedings ultimately result in discharge, acquittal, or quashing after prolonged litigation. Yet the regulatory consequences are immediate and, from a business perspective, often irreversible. Second, forced changes in management or shareholding may trigger breaches of shareholder agreements, lender covenants, and other control-linked contractual arrangements, destabilising the enterprise in ways that extend well beyond the individual concerned. Finally, the designation of a person as "not fit and proper" carries a serious and enduring reputational stigma, the effects of which are rarely undone even where criminal proceedings ultimately fail.

Investor Protection versus Constitutional Discipline

To be clear, SEBI's underlying concern is legitimate. Capital markets are trust-based systems involving public participation and justify a higher threshold of integrity than ordinary licensing regimes. However, heightened regulatory standards do not require presuming guilt, nor do they justify collapsing the distinction between accusation and adjudication. Constitutional guarantees under Articles 14, 19(1)(g), and 21 exist precisely to ensure that even well-intentioned regulation remains fair, proportionate, and procedurally sound. A risk-based and individualised assessment taking into account the nature of allegations, the person's role, the nexus with market activity, and available safeguards can protect investors without resorting to blanket, accusation-based exclusion.

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Ayush Tandon is a lawyer, chartered accountant and CFA; specialising in regulatory and enforcement-related disputes. His work covers corporate governance matters, class action suits, sanctions-related issues, as well as private wealth and succession planning, including wills and trusts. He combines legal analysis with deep financial and commercial insight. He is a Partner at AZB & Partners.

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