

PalArch's Journal of Archaeology
of Egypt / Egyptology

GROWTH OF SEBI AS A REGULATOR OF THE INDIAN CAPITAL MARKET¹

*Ipsita Das, Assistant Professor II, KIIT School of Law, KIIT Deemed to be University

** Dr. Prof Pradip Kumar Sarkar, Professor, KIIT School of Law, KIIT Deemed to be University

***Pratiti Nayak, Assistant Professor II, KIIT School of Law, KIIT Deemed to be University

****Dr. Kyvalya Garikapati, Assistant Professor II, KIIT School of Law, KIIT Deemed to be
University

**Ipsita Das, Dr. Prof Pradip Kumar Sarkar, Pratiti Nayak, Dr. Kyvalya Garikapati,
GROWTH OF SEBI AS A REGULATOR OF THE INDIAN CAPITAL MARKET -
PalArch's Journal Of Archaeology Of Egypt/Egyptology 17(12), ISSN 1567-214x**

Securities Exchange Board of India is the regulator of the capital market and is responsible for overseeing the fair functioning of the capital markets. SEBI was not developed in a day. It was first established as a non-statutory body and then slowly built into a strong regulator by spreading its wings in the market by making various rules and regulations. It was established as a statutory body in the year 1992. By plugging various loopholes in the previous law, SEBI is trying to protect the interest of the investors. This paper describes the growth of SEBI in the Indian Capital Market in various phases of economic growth and fall in India. The financial market is growing at a rapid speed, therefore it is also getting more complex. SEBI has various rules and regulations to tackle the complexity in the market but how far it is successful is a big question. The last few months have seen a dramatic swing in the capital market due to Covid 19 virus pandemic. It becomes imperative that regulatory bodies like SEBI are vigilant to keep investors protected and informed about the risk of capital markets. This paper explains the

current rules and regulations of the regulator in the capital market and how far the investors are aware of it and they are protected by SEBI and the Government of India.

Keyword: Securities Exchange Board of India, Capital Market, Investors, Regulator, Awareness

Introduction

The Indian economy has seen a quantum change from our past since independence. The financial market has slowly evolved and so has been the regulators. The increase in privatization, globalization, and liberalization in India has to lead to the framing of new laws and recommendations for the development of the capital market of India. The evolution of the capital market and its regulators are discussed in this chapter through various phases in India.

1830 to 1899 Phase

At the close of the 18th century, the historical records references to the securities Capital Issue (Control) Act Market in India are evident by the trading of the loan, securities of the East Indian Company were done. In India, the banks initiated the trading in shares in the 1830s and only six persons were involved as sharebrokers. Later in the 1850s many brokers joined and started trading shares on various banks, securities of the East India Company in Mumbai. This was done initially under a sprawling Banyan Tree which was in front of Town Hall and was called Horniman Circle Park. There was also a tower named the majestic Phiroze Jeejeebhoy Towers at Horniman Circle. The concept of limited liability was initiated by the enactment of the companies Act, 1850 and it was an era of Joint-stock companies in India.² Meanwhile, the American Civil War broke out in 1861 and so the cotton supply to Europe by the USA was stopped, for which there was the demand for cotton in India. There was a 'share mania' in every place as the cotton prices increased and the number of brokers increased drastically. In the period 1863 to 1865 the trading raised to crores and demand was high. The trading of cotton continued on a piece of paper called allotments. Scrips and shares of

² P.M.Dileep Kumar Raju G., Capital Market Investment in India, Ed. 2004, Chap. 3 - Indian Capital Market - an Overview, Pg. 43

trading activities flourished with a boom in share prices.³ On ending of the American Civil war the trading suddenly went down and people started selling their securities in large numbers but there weren't enough buyers. The boom collapsed, the premiums vanished, prices dropped to a discount, and the investing public was left holding a huge mass of unsaleable paper. The nadir of depression was reached on 1st July 1865 popularly known as the Black Friday, when hundreds of time bargains matured which no one was in a position to fulfill. The depression was so high that it made to create a formal market in India which is now known as Dalal Street. This scanty description of investor behavior was difficult to explain by the economic model.⁴ A group of brokers formed an informal association in the year 1875 which was later established as the "Native Share and Stock Brokers Association" as the oldest stock exchange in India, on 3rd December 1887.⁵ "Native Share and Stock Association" was formally established as the Bombay Stock Exchange in 1899.

After the share mania episode, the Indian stock market remained almost stable throughout the next 50 years. The 1st World war effect created new demand for Indian products in the foreign market and to satisfy the growing demand with the prevailing production capacity, factories, and workshops in India started increasing. A tremendous rise in profit was followed by a declaration of unbelievable dividends by some industries to its shareholders. The Indian economy was gradually entering into an era of liberalization from the early 80s. So many measures were taken for the unprecedented growth and prosperity of the private corporate sector.

Before World War I

The Bombay Cotton Fraud Act was passed in 1863, to prevent the adulteration of cotton and a better suppression of frauds in the cotton trade in

³ A Historical Perspective of the Securities Market Reforms in India, speeches in Mar 23, 2004, https://www.sebi.gov.in/media/speeches/mar-2004/a-historical-perspective-of-the-securities-market-reforms_2882.html accessed in 22.2.2017 at 5:55 pm

⁴ Madhusudan Karmakar, Bubble: A Study of Scam, scandal and corruption in Indian Stock Market, Regency publication, New Delhi, 1999, ISBN 81-86030-95-6

⁵ <https://www.sebi.gov.in/History/HistoryReport1924.pdf> accessed in 21.3.2019 at 5:12 pm

the Presidency of Bombay. The Bombay Cotton fraud Act 1863 was in force for four years and after which the Cotton Fraud bill 1867 was introduced by Hon'ble Shaw Stewart⁶ on 20th December 1867.

Indian Securities Bill 1885 - The securities in India were dealt with Contracts in the early days.

1900 to 2000 Phase

After World War I - 1918 to 1938

(i) The report in 1924 of Bombay Stock Exchange inquiry Committee by Sir Wilfred Atlay

In 1924, a report was framed by the Sir Wilfred Atlay Committee relating to the functions of the Indian capital market.⁷ Bombay Stock market crash raised the public voice for which a committee was framed to enquire into the working of the Bombay Stock Exchange. The committee was framed to enquire the rules, regulations, methods of business, and practices of the Native Share and Stock Brokers Association of Bombay. It recommended major reforms related to the functioning of the association and protection of the public. This was a voluntary association dealing in stocks and securities. The aim of the association was the protection of the interests of the members by making various provisions in the market for members to buy and sell the securities, as there were 400 members at that time.⁸ The Atlay committee also recommended that there should be constituted a controlling authority on which the various commercial association in Bombay should represent.

(ii) In 1925, the law for controlling the Bombay Securities

The Government enacted legislation for safeguarding the interest of the public by passing the Securities Contracts Control Act 1925, which came into force on 1st January in 1926. This Act was introduced to manage and regulate certain contracts for the purpose and sale of securities in the City of Bombay

⁶ *ibid*

⁷ <https://www.sebi.gov.in/History/HistoryReport1924.pdf> accessed in 27.3.2019 at 10:43 am

⁸ The Committee was constituted by the GOVERNMENT Resolution No. 2628, in the Finance Department in 14th September 1923. The members of committee were - Sir Wildfried Atlay (Chairman), Sir Fazubhoy Currimbhoy, Sir Purshotamdass Thakurdas, Mr Bhulabhai J. Desai.

Presidency.⁹ This act was applied to the whole of the presidency of Bombay.¹⁰ In May 1927, the Bombay Securities contract Control Act came as legislation to regulate the Bombay stock exchange as there was no law previously to regulate the stock exchange. India has the Bombay Stock Exchange as Asia's first exchange which has the highest intensity of trading in the world.¹¹

(iii) The report in 1937 of the Stock exchange Enquiry Committee by Walter B Morison

There were various crises in the years 1928, 1930, 1933, 1935, and 1936 resulting in huge losses to the investing public even if the Bombay Securities Contract Control Act of 1925 was regulating the stock exchange. Therefore there was a lot of criticism against the Bombay Stock exchange and the association. The government made a general invitation to the association of persons who were wishing to make proposals for the Bombay Stock Exchange on formulating the method of working by sending a written statement for their views to the Secretary of the committee.¹² In 1937, a committee under the chairmanship of Mr. W. B. Morison gave various recommendations and suggestions.¹³ This Committee suggested that the Bombay Securities Contracts Control Act of 1925 should be amended and a new set of rules were placed for government approval.

After World War II Impact:

World War -II started in 1939 and ended in 1945

In the early years of World War II, there were many fluctuations in the security market in India. The post-war there was a boom in share prices in September 1925 and grew into serious proportions towards the middle of 1946. The British Government was never interested in the growth of the

⁹ Section 1 of the Bombay Securities Contracts Control Act, 1925

¹⁰ Section 2(1) of the Bombay Securities Control Act 1925

¹¹ Bombay Act No. VIII of 1925, first published, after having received the assent of the Governor General in the Bombay Government Gazette on 29th Dec 1925.

¹² <https://www.sebi.gov.in/History/HistoryReport1937.pdf> accessed in 27.3.2019 at 10:44 am

¹³ Report on the regulation of the stock market in India by P.J Thomas(1948) chapter I - History and present position of the Indian Security Market - A historical survey para 14.

Indian capital market, so the capital market which was regulated under them was not well organized and underdeveloped.

- (i) ***The report in 1948 on the regulation of the Stock Exchanges in India by PJ Thomas*** - The report was relating to the regulation of the Indian market, stock exchanges, and private dealers. It was recommended to regulate the stock market by licensing stock exchanges and other dealers in stocks, to make rules and bye-laws. It also recommends registering securities in the stock exchanges and impose restrictions on the bank transfer. To administer laws relating to the securities trade by setting agencies and many more recommendations and suggestions.¹⁴ According to the committee report, various measures were suggested as relating to Central Legislations and the setting of competent public authority to administer Law.
- (ii) ***The Capital Issues (Control) Act 1947-*** Before the Capital Issue(Control) Act 1947, the securities were dealt through the Defence of India Rules in 1943 under the Defence of India Act 1939. Then after the independence, it was replaced by the Capital Issues (Continuance of Control) Act in 1947.¹⁵ The mandate of the law was to provide control over issues of capital.¹⁶ Capital Issue (Control) Act provided various ways to rule and control the Indian capital market. Before taking any decision on issuing of capital the companies had to take the consent from the Central Government and therefore it was very strict and stringent for the companies.¹⁷ All powers were in the hand of the Central Government. Private sector corporations were restricted and access to equity was only through the Controller of Capital Issues (CCI). According to the Supreme Court case of Narendra Kumar Maheshwari v. Union of India¹⁸, while discussing the validity of the consent, of granting consent, by the CCI for shares and debentures by Reliance Petrochemicals Ltd, the Supreme Court focused on the purpose of the Capital Issue (Control) Act. CCI was the regulatory authority of the capital market of India which was very strict as it

¹⁴<https://www.sebi.gov.in/History/HistoryReport1948.pdf> accessed in 27.3.2019 at 10:47 am

¹⁵ *ibid*

¹⁶ The capital Issues (Control) Act , 1947(act no. 29 of 1947) 18th April 1947.

¹⁷ Section 4 of the Capital Issues Control Act 1947

¹⁸ 1989 AIR 2138,1989 SCR (3) 43

supervised and controlled the new issues. The public sector companies were not listing their securities on the stock exchange even though they were much healthier than private companies in terms of paid-up capital.¹⁹ As CCI was very strict, so many companies were demotivated due to such strict and stringent regulations by the regulator for which the investment and economic progress were slow. So there was a need to repeal the Capital Issue (Control) Act so that the companies can become more liberal.²⁰

- (iii) ***Report of A.D Gorwala Committee in 1951*** - The stock exchanges of India were regulated by the Bombay Securities Contract Act but still, there were various deficiencies in the regulation. In 1951 a committee was framed known as the A.D. Gorwala committee which recommended the Securities Contract (regulation) Act, 1956. Henceforth the stock exchanges were regulated, controlled directly, and indirectly all the aspects of securities trading. The law was created to prevent undesirable transactions in the securities.²¹ The development of financial institutions and state financial corporations was the need of the hour for which the government enacted the Securities Contracts (Regulation) Act 1956.
- (iv) ***The Law relating to the Securities Contract (Regulation) Act*** - The definition of securities²² and the powers of government on the stock exchange is discussed by the Act. In 1995 the Securities Contract (Regulation) Act (SCRA) was amended for better risk management of market participants through hedging, speculation, and arbitrage. In 1999, the SCRA was amended to expand the definition of securities and to include derivatives. In between 1956 to 1999, there were various committees created for the better functioning of the capital market like in 1986 G.S Patel committee for managing stock

¹⁹<https://www.livelaw.in/valuation-shares-importance-disclosures-indian-securities-market/> accessed in 28.3.2019 at 11:51 pm.

²⁰ Balkrishan and Nartha, S.S. Security Markets in India. Delhi :Kanishka Publishers, Distributors, pg.273

²¹ Section 2(3) of the Securities Contract (Regulation) Act 1956 defines a stock exchange “as any body of individual whether incorporated or not, established for the purpose of assisting, regulating and controlling business of buying selling and dealing in securities”.

²² Section 2(h) of Securities Contract Regulation Act 1956 defines the term Securities which includes shares, scrips, stocks, bonds, debentures, debenture-stock or other marketable securities of a like nature of any incorporate company or body corporate.

exchanges, in 1989 Abid Hussain Committee for development of the capital market, in 1991 Pherwani committee for the establishment of new stock exchanges, and in 1992 Nadkarni committee for trading in mutual funds and public sector bonds. During this period the committees took various steps for financial intermediaries like merchant bankers, underwriters, mutual funds, custodial service, etc. Another big development was the establishment of the Securities Exchange Board of India (SEBI) as a non-statutory body in 1988.²³

- (v) ***Report of M. Narasimham Committee in 1991*** - In 1991, under the chairmanship of Shri. M. Narasimham a special committee was set up for recommendations to improve flexibility, operational efficiency of banking, and the non-banking financial sector. The committee emphasized strengthening the power of SEBI and the powers of CCI to be vested in SEBI. This committee also recommends extending the power of SEBI and give SEBI the full power of supervisory, regulatory, and making it a statutory body for the capital market.

After 1992 the position of the financial market

Formation of SEBI as a Supervisory, Administrative, Statutory and Regulatory Body

The Cabinet Committee on Economic Affairs (CCEA) initiated the process for the establishment of SEBI by approving some features in 1987. On 12th April 1988, SEBI was set up as a non - statutory body by getting administrative power from the Government for dealing with matters of the securities market.²⁴ On 12th April 1988, SEBI was set up as a non-statutory body through an administrative resolution of the Government for dealing with all matters relating to the development and regulation of the securities market.²⁵ The corporate sector was paralyzed after the various scam in the capital market for which the investor confidence was shattered.

²³ P.M.Dileep Kumar Raju G., Capital Market Investment in India, Ed. 2004, Chap. 3 - Indian Capital Market - an Overview, Pg. 45-46

²⁴ SEBI Annual Report, 1988-89, pg-1

²⁵https://www.sebi.gov.in/sebi_data/attachdocs/1293096997650.pdf accessed in 16.4.2019 at 7:52 pm

As SEBI was a non-statutory body in 1988, it was the need that SEBI should be given more power to become a vigilant regulatory body.²⁶In 1992, a major initiative of liberalization was evolved in the capital market by repealing the Capital Issues(Control)Act, 1947, and establishing SEBI as a statutory body. The Narasimham Committee and Parliamentary committee recommended that SEBI should make rules, regulations and examine the trading practices for the stock exchange. This urgency of giving SEBI more power like sufficient legal and administrative powers was because of Harshad Mehta Scam.²⁷ The Supreme court of India in *Swedish Match AB v. SEBI*²⁸ explained the objective of SEBI. SEBI has the Doctrine of separation of powers, as it performs all the powers in the capital market like Legislative, Administrative and Judicial powers.

The objective of the Securities Exchange Board of India Act 1992

The preamble of the Act says the objective of the Act as “ to provide the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and matters connected therewith or incidental thereto”²⁹ The SEBI Act 1992 was created as a regulator of the Indian capital market.³⁰ The objective of SEBI emphasis on³¹ :

- (i) The Protection of Investors
- (ii) Development and promotion of Capital Market
- (iii) Regulation of the Securities Market

²⁶ SEBI Guidelines on capital issues and merchant banking, 1994, Mumbai, Securities Exchange

²⁷ Observations/conclusions/recommendations of 10th Lok Sabha - Joint Committee to enquire into irregularities in securities and banking transactions (Joint Parliamentary committee report 1992 - Harshad Mehta) .

²⁸ (2004) 11 SCC 641, Paras 46 and 51

²⁹Dr. K.R Chandratre, Bipin Acharya, Dr. S.D Israni, K. Sethuraman, Mahavir Lunawat, SEBI Compendium (A guide to listed companies), vol.1, 4th Ed., 2010, Chap. 11, pg. 870

³⁰ Delhi Business Review/ Vol 8 No.1 (January - June 2007)

³¹ SEBI Annual Report, 1991-1992

In *SEBI v. Ajay Agarwal*³² it was observed that as the preamble of the Act emphasizes upon ‘investor protection’, the Supreme Court has noted that the Act is “pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors” and “that its provisions should be interpreted in a manner to further the purposes of law and if possible eschew the one which frustrates it”³³ SEBI is a body corporate having a separate legal personality as per Section 3 of the Act. SEBI has been statutorily constituted to be an autonomous regulator with independent legislative, executive, and quasi-judicial powers.³⁴

Power, functions, guidelines, and regulation of SEBI for the evolution of the capital market

The supreme court observed that “The Board exercises its legislative power by making regulations, executive power by administering the regulation framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof.” This view of the supreme court was from *Clariant International v. SEBI*³⁵. On June 11, 1992, SEBI framed some guidelines for the issuer relating to disclosure and investor protection. The issuers of securities must be responsive to the grievances of the investors and institute adequate redressal mechanisms continuously. Disclosure is one of the key instruments of investor protection and fairness and the success of the free pricing regime depends to a considerable extent on it. Therefore, SEBI’s constant endeavor to bring about improvement in this are through constant dialogue and periodical meetings with the leading managers. For raising capital, SEBI made the issuers more

³² (2010) 3 SCC 765

³³ It may perhaps not be accurate to brand the Act as a social welfare legislation merely because a part of the investors whose protection is an avowed objective of the statute comprises of retail investors. Instead, the Act could possibly be termed as an economic legislation distinct from fiscal legislation without derogating from the purposive interpretation. It has been noted that the Act should not be interpreted like a penal statute or fiscal statute as per case *SEBI v. Alka Synthetics Limited* AIR 1999 Guj 221 (Later set aside by the Supreme Court in *Alka Synthetics v. SEBI* [2005] 62 SCL 82 (SC))

³⁴ Sumit Agarwal, Robin Joseph Baby, edited by Amit Agarwal, Agarwal & Baby on SEBI Act : A legal commentary on Securities & Exchange Board of India Act, 1992, Taxmann, ed. 2011 pg. 10

³⁵ AIR 2004 SC 4236

liberal and they no longer require consent from any authority for making any issue or pricing any securities. Section 11 of the SEBI Act was amended from time to time in 1995 to bring some more intermediaries into the capital market.³⁶

To protect the interest of investors SEBI framed a guideline for the Disclosure of Information of Investor Protection. If investors have any grievances relating to the disclosure then SEBI has a grievances redressal mechanism forum for the investors.³⁷ Under Section 11B of the SEBI Act, it was said that any person associated with the securities market found fraud then the board must take action against that person and the action should be taken in the interest of investors.³⁸ SEBI had proposed an Investor protection bill that can consider claims for compensation made by investors for companies that defraud them. It should also have to power to debar directors and trace the assets of the companies.³⁹ According to SEBI, the bill was drafted when there was a vanishing company problem. Even if SEBI identified those companies and their directors, still the problem could not be solved and SEBI could not take any action against them as there was no power given to SEBI. The lack of any clear regulations prevents SEBI from moving against fraudulent or vanishing companies.⁴⁰ But the Investor protection Bill was rejected by the government on the ground that there is enough legal provision in the Companies Act as well as under SEBI where a separate law is not required.

In January 2003, SEBI launched the Securities Market Awareness Campaign (SMAC) to bring back the confidence of the small investors who are the backbone of the securities market as there was series of the stock market scam which has frightened the small investors in the Indian business community.⁴¹

³⁶ Supra Note 29, pg. 896

³⁷ Gopalsamy N. , Capital Market: The Indian Financial Scene, Mac Millan India Ltd. Edition, 2005, Pg. 243, 268-276.

³⁸ *ibid*, pg 243

³⁹ *ibid*

⁴¹ *ibid*, pg 246

Various Law Committees role in shaping SEBI's objective towards Investor Protection

There are many notable committees set up by SEBI to review various aspects of the SEBI Act but few which are related to investor protection are discussed in this chapter such as Malegam Committee, Kumar Birla Committee, N.L.Mitra Committee, Joint Parliamentary committee, Irani Committee, Kania Committee, Committee on the Report of Investor awareness, Achuthan Committee, Bimal Jalan Committee, etc.

- (i) ***The Report of Malegam committee in 1995*** - Malegam Committee recommended introducing the concept of book building to protect the interest of investors. In 1996 SEBI initiated the book building process as an alternative device to the capital market system of fixed pricing of shares. The Book Building process gives a better price of the shares in which the issuing company mentions the indicative price of the securities. So the investors get an opportunity to bid collectively so that a consensus price will be finalized and agreed upon.
- (ii) ***The Report Kumar Mangalam Birla Committee for Corporate Governance in 2000*** - SEBI tried to promote and raise the standard of corporate governance for listed companies by setting up a committee under the chairmanship of Shri Kumar Manglam Birla. The Committee decided to make the amendments to the listing agreement and advised to incorporate a new clause named clause 49.⁴²The Kumar Mangalam Committee recommended the main groups of corporate governance such as the board, the financial management, the internal auditor, and the external auditor. It also recommends adding an audit committee to promote the credibility of financial disclosure and transparency performed by the audit committee. The issue of the board remuneration and the disclosure relating to covered. On February

⁴²SMDRP/POLICY/CIR-10/2000, February 21, 2000, https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html accessed in 15.4.2019 at 12:09 pm

21, 2000, SEBI made it mandatory for corporate boards to comprise not less than 50% of non-executive directors if it is headed by an executive chairman and to set up independent audit committees.

(iii) ***The report of N.L. Mitra Committee on Investor Protection in 2001*** - In April 2001, a committee was framed under the chairmanship of Dr. Prof N.L. Mitra which submitted a report on Investor protection with many recommendations such as:

- The committee recommended an Investor protection Act to specifically protect the interest of Investors. It also mentions that the new Act should codify, and consolidate the laws and practices to protect the interest of investors in corporate investment.
- An aggrieved investor should get proper justice for which there must be the establishment of a judicial forum to award compensation to them.
- The provision under the Companies Act 1956 relating to investor education and protection fund should be administered by SEBI Act 1992.
- The sole administer and investigation powers should be given to SEBI as a single capital market regulator.
- The insurance company should ensure all the IPO's under third-party insurance with a differential premium based on the risk and as per SEBI regulations.
- There should be an amendment of the SEBI Act 1992 for providing standing committees on investor protection, market operation, and standard-setting.
- The law relating to Stock exchanges known as the securities contract regulation 1956 should be amended to provide corporation and good corporate governance.

(iv) ***The report of the Joint parliamentary committee in 2001 (JPC)*** - The Joint parliamentary committee was introduced for various stock market scams and related issues. Action Taken Report(ATR) form was suggested by the committee and also introduced an itemized examination of the nature and

measurements of money markets trick in 2001.⁴³ The JPC suggested the immediate resolution of investor's complaints against companies and market intermediaries after the stock market scam. Therefore to solve the issues immediately the committee recommended the concept of Ombudsman in the capital market.

- (v) ***The report Irani Committee for the Protection of Interest of Small Investors in 2004*** - Even though SEBI was trying to improve the state of governance in the country by trying some of the recommendations of the above reports, there was a feeling that the companies Act of 1956, considered as the bulkiest enactment in this country needs a thorough overhaul. The demand for simplification of the rules and procedures applicable to companies was overdue. and with this objective, an expert committee under the chairmanship of J.J. Irani was constituted on Dec 2, 2004. It is noteworthy that the Irani Committee recommended the initiation of effective measures for protecting the interests of investors including small investors and other stakeholders. The focus appeared to be on the shareholders mostly, and there was a suspect that the interests of the small investors, were not well protected. The committee suggested that preventive measures should be taken during the registration stage of companies. Regular and mandatory filing of statutory documents are required so that companies cannot vanish. The committee also had a view that proper compliance law should be maintained and the filing of returns and disclosures should be strictly dealt with.
- (vi) ***The report by Kania Committee in 2004*** - Kania Committee was constituted in August 2004 by SEBI which recommended establishing a “separate Investor Protection Fund on the lines of subscriber Education and Protection Fund under PFRDA Ordinance 2004”⁴⁴. Investor education, Investor awareness, and compensation to the investors for any fraud,

⁴³ A.J. Magendiraverman and Murugan Ramu, A study on Investors Protection with reference to SEBI, International Journal of Pure and Applied Mathematics, Vol 119, No.17, 2018, pg. 529-535

⁴⁴ Changes in SEBI Act: Comprehensive and balanced report by Kania Committee, An investor protection fund under the Act suggested for investor education, The Hindu, Monday, Aug 8, 2005 <https://www.thehindu.com/biz/2005/08/08/stories/2005080800461600.htm> accessed in 22.4.2019 at 5:29 pm

misrepresentations, and misstatement in the prospectus by companies or intermediaries were suggested by the committee. Investor Protection Education Fund was initiated by SEBI with an initial corpus of Rs 10 crore from SEBI General Fund.⁴⁵

- (vii) ***Report of Expert Committee on company law in 2005*** - The growth of the number of investors in the Indian capital market is increasing day by day. Apart from Institutional investors, small investor's growth makes the experts of the corporate world think about their protection and their confidence in the capital market.⁴⁶The concept of investor protection has to be checked through various ways of requirements as there are different types of investors such as investors in equity, large institutional investors, foreign investors, investors in debentures and small investors, etc. The committee also discussed some steps that the government has taken for investor protection.⁴⁷
- The committee suggested that an Investor Protection Act as a separate Act is not required as it can very well be dealt with effectively in the companies Act. The committee suggested orientation in the corporate law for the investor for their awareness as a recognized stakeholder.
 - Investor protection can be achieved if various regulators bring coordination among themselves through effective actions.
 - Both in Indian and International scenarios, the legal framework should be developed in a balanced manner for better investor protection.
 - To enable the protection of investor's interests, the committee examined the utility of credit rating. It is not mandatory by law for the credit rating of companies but generally, it is beneficial for the investors as it is a good evaluation mechanism. But credit rating agencies are not accountable for the investment decisions that the investor makes after seeing the rating.

⁴⁵<http://journal.lawmantra.co.in/wp-content/uploads/2016/04/13.pdf> accessed in 19.4.2019 at 5:06 pm

⁴⁶The expert committee report on company law

<http://mca.gov.in/MinistryV2/investor+education+and+protection.html> accessed in 10.4.2019

⁴⁷ Expert Committee on Company Law 31st May, 2005, New Delhi, Part - 3, Chapter VII : Investor Education and Protection.

- The committee also discussed the insurance protection for the depositors and felt that it was not possible for equity investors.
- Committee also discussed the issues relating to compensation to investors. The committee suggested that where there is an established fraud through judicial process or lifting of the corporate veil, the investors must get compensation.
- The Committee also took note that because of vanishing companies the investor confidence is diminishing. It suggested that an effective investor grievance redressal mechanism at a corporate level need to ensure the protection of investor's interests through timely interventions. The committee recommends that a stakeholders relationship committee should be mandatory for companies having combined shareholders/deposit holders/ debenture holders base of more than 1000.
- Committee also discussed the redressal forum of the complaints of the investors. As shares and securities are legal terms deemed to be “goods” under the Consumer Protection Act, 1986, so any investors can approach consumer courts for its redressal of grievances. Due to the increase of no of investors and awareness, the dispute resolution mechanism must be strengthened and the institution of Ombudsman for the capital market which is regulated by SEBI must be given more powers.
- The committee finds that the fund created by the government known as the Investor Education Protection Fund as under the provision of the Companies Act should be utilized effectively. Programs should be conducted for Investor protection at school /college level, online and distance learning, support through the non-governmental sector, information collection, research analysis on small investors, enabling the capacity building of adjudicators such as consumer courts for redressal of investor complaints.
- The committee encourages various NGO’s who are engaged in investor protection activities and suggests that government and various corporate entities must support these NGOs. And the committee also suggests that the

small investors should be encouraged to participate in the mutual fund mechanism.

- The committee considered the concept of class action suits and analyzed the issues relating to minority rights.
- The committee also suggests that to safeguard the investor interests there must be proper, timely, continuously and inequitable disclosures by companies regarding investment through legal provisions.
- According to the committee, a company becomes defaulters in disclosure, there should be penalties both civil and criminal in law.⁴⁸

(viii) ***The Report of the Committee on Investor Awareness in 2009*** - Consumer well-being can only be possible if there is both Investor awareness and Investor Protection in the financial market of the country. To strengthen the impact of financial education and promoting investor protection the High-Level Coordination Committee on Financial Markets(HLCCFM) recommended constituting an inter-regulatory committee to suggest measures to the Ministry of Finance, Government of India.⁴⁹

The committee also made detailed research by surveying over 100 financial sector companies. The research seeks the advice of top professionals in the financial market, regulators, other experts, and also surveying regulatory models in the U.S, the UK, and Australia. The committee suggested a transparent methodology of consultation with all stakeholders.

Investor Protection Strategy made by SEBI

SEBI has four elements of the investor protection strategy.⁵⁰ Those four elements are

⁴⁸ Site is owned by Ministry of corporate Affairs and last updated in 12.3.2019.

⁴⁹ Financial Well being, Report of the Committee on Investor Awareness and Protection, F.No. 5/26/CM2006, Ministry of Finance, Department of Economics Affairs (Capital Market Division), New Delhi, March 17, 2009, High Level Coordination Committee on Financial Markets (HLCCFM) in its meeting held on 22nd December, 2008 among other things, desired to set up a Committee to re-examine the issue of regulating investment advice including the regulations thereof, by various financial sector regulators in the larger context of investor awareness and protection.. This committee was headed by Shri D. Swarup, Chairman, PFRDA(Pension Fund Regulatory and Development Authority) .

⁵⁰ Investor Protection Measures of SEBI, <https://investor.sebi.gov.in/ipms.html> accessed in 13.4.2019 at 5:48 pm

- (i) to enable an investor to make an informed decision through education and awareness of the investment. The investor should deal with registered intermediaries and also should know about the grievances cell. Therefore SEBI is making various awareness workshops, investor associations to organize various educational programs for investors. It is also publishing through media, solves problems through phones, emails, letters, and person personally who goes tot SEBI office i.e Office of Investor Assistance Education (OIAE).
- (ii) SEBI makes the disclosure mechanism strong by giving every relevant detail of investment in the public domain. Investors can make informed decisions only if the issuers and the intermediaries make all kinds of initial or continuous disclosure to the public.
- (iii) SEBI has made various rules and regulations for the safety transactions of investors such as dematerialization of securities and screen-based trading system and legal provisions for intermediaries so that the investor's interest can be protected.
- (iv) To facilitate investors SEBI has also focused on the redressal mechanism of investor grievances. An arbitration mechanism was established in stock exchanges and depositories to solve the investment disputes of an investor.⁵¹

The requirement of strong legislation to protect the interest of investors and strengthening the existing Regulator's power

Because of the series of capital market scams in India, there was a need to establish strong legislation and it was a requirement that SEBI's power has to be extended. The SEBI Act contains 35 sections. The main provisions of SEBI are as such Section 3,4,5 and 6 deals with the establishment of SEBI. Section 15K to 15Q deals with the establishment of Securities Appellate Tribunal (SAT). According to Section 11⁵² of the SEBI

⁵¹ ibid

⁵² Section 11(1) of SEBI Act 1992 provides the main powers of SEBI

Act, SEBI has been vested powers to appropriate measures to discharge its function and duties. The quasi-judicial power of SEBI is extended to Section 11(4), 11B, Section 12(3), and Chapter VIA.⁵³ SEBI has given financial autonomy by incorporating Section 14 as it relates to a separate fund. Section 16 is dealing with the issue of directions by the Central government, Section 17 supersedes SEBI, Section 18 deals with the fixes on SEBI to submit certain returns and reports. Section 29 deals with the rulemaking power of SEBI. According to Section 15T, all the quasi-judicial actions of SEBI can be appealed before an expert tribunal comprising of three members which are referred to the Securities Appellate Tribunal (SAT). Section 15U deals with the appellate powers of the SAT.

SEBI has many committees and recently another new committee was added on 9th January 2019. These Committees are⁵⁴ :

- (i) DWBIS Technical cum Project Management Advisory Committee
- (ii) High Powered Advisory Committee on settlement orders and compounding of offense
- (iii) Technical Advisory Committee (TAC)
- (iv) Qualified Audit Report Review Committee
- (v) Takeover Panel
- (vi) Commodity Derivatives Advisory Committee
- (vii) Advisory Committee for SEBI Investor Protection Fund (IEPF)
- (viii) Risk Management Review Committee (RMRC)
- (ix) SEBI Committee on Disclosures and Accounting Standards (SCODA)
- (x) Commodity Derivatives Advisory Committee (CDAC)
- (xi) High Powered Steering Committee on Cyber Security (HPSC-CS)
- (xii) Committee on Corporate Governance
- (xiii) Committee on Financial and Regulatory Technologies (CFRT)
- (xiv) Members of the Advisory Committee on Mutual Funds

⁵³ Under Chapter VIA , SEBI can impose monetary penalties through a process of adjudication.

⁵⁴<https://www.sebi.gov.in/sebiweb/about/AboutAction.do?doCommittee=yes> accessed in 1.5.2019 at 12:22 pm

- (xv) Review of regulations and relevant circulars about Market Infrastructure Institutions
- (xvi) Committee on fair market conduct
- (xvii) Secondary Market Advisory Committee (SMAC)
- (xviii) Corporate Bonds and Securitization Advisory Committee (CoBoSAC)
- (xix) Alternative Investment Policy Advisory Committee(AIPAC)
- (xx) Primary Market Advisory Committee
- (xxi) Research Advisory Committee (RAC)

To investigate the matters of capital market and participants, SEBI uses both human resources and technological tools. Its market surveillance systems are consistently been updated. An Integrated Market Surveillance System (IMSS)⁵⁵ is launched by SEBI to implement the Data Warehousing and Business Intelligence System (DWBIS) so that there will be proper investigation and the surveillance functions will provide speed for data analysis.⁵⁶As per the Annual Report 2009-2010, there were many complaints lodged by investors against the companies and trading members which were listed on the website of stock exchanges. So the grievances redressal mechanism of the stock exchanges became more transparent. SEBI has an objective to abolish financial frauds so has the power to conduct an inspection of books of accounts of listed companies for contravention of any securities law and also take direct action against the fraudsters.⁵⁷ If any person or company trying to alter, destroy, conceal or falsify any records and documents then SEBI proposes heavy penalties.⁵⁸In September 2017, SEBI constituted a

⁵⁵ IMSS was made operational with effect from 1.12.2006. IMSS assists in detecting abnormalities, if any in trading patterns and market behaviour in a timely manner, and facilities in taking corrective actions. This also enables SEBI to oversee the performance of stock exchanges as regards their surveillance activities. SEBI Annual Report, 2006-2007 pg. 90

⁵⁶ SEBI Press Release No. 28/2011 dated 14.2.2011

⁵⁷SEBI seeks powers to inspect books of companies, Monday, March 25 2019, The Times of India, the Times Business page

⁵⁸Fond, MARK L. De and Mingyi Hung, “ Evidence from worldwide CEO Turnover” Investor Protection and Corporate Governance University of Southern California:SSRN Resource, www.ssrn.com

committee to review the regulations and relevant circulars about market infrastructure institutions(MIIs)⁵⁹. Due to the rise in cyber threats in the financial market across the globe, SEBI had laid down a detailed framework about cybersecurity which will be adopted by stock exchanges, clearing corporations, and depositories.⁶⁰ SEBI has implemented the SHARE portal (Shared Hub for All Resources) to digitally transform the organization. The main components of SHARE Portal that was implemented in the year 2017-2018 are⁶¹:

- (i) SEBI's Complaint Redressal System (SCORES) - It is an online web-based complaint redressal forum against intermediaries and listed companies.
- (ii) E-registration - Intermediaries are registered online as initiated by SHARE Portal to accept applications for registration in electronic form.
- (iii) Electronic Workflows - Public issues, right issues, institutional placement complaints can be filed in this system through online mode.
- (iv) Case Management System - If any investigation, litigation, adjudication takes place then an online process starts from the beginning of every stage of the case which is electronically recorded.
- (v) Enterprise Resource Planning - SEBI carries out customization and integration of enterprise resource planning.

SEBI has evolved with regulating various aspects and elements of the capital market from time to time. The regulation of credit rating agencies, depositories, intermediaries, various schemes, funds, takeover code, disclosure mechanism, and many more changes have been made by SEBI with many reforms to protect the interests of the investors. In 2007, the settlement mechanism for violation of laws related to securities was introduced. SEBI provided law relating to its enforcement mechanism known as SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014. SEBI initiated various criminal proceedings, civil - quasi proceedings, settlement or

⁵⁹ MIIs are those institutions such as stock exchanges, clearing corporations and depositories which are collectively referred to as Market Infrastructure Institutions.

⁶⁰ Annual report 2017 - 2018 https://www.sebi.gov.in/reports/annual-reports/aug-2018/annual-report-2017-18_39868.html accessed in 1.5.2019 at 10:55 am

⁶¹ *ibid*

compounding, and recovery types of proceedings under this law. In September 2018, few changes in the settlement mechanism were agreed upon by SEBI by approving SEBI (Settlement Proceedings) Regulations 2018 by replacing the Settlement Regulations of 2014 and the new law has come into effect in January 2019. SEBI adopted the settlement of the proceedings concept from US laws and introduced a term called “Settlement schemes”. SEBI thus intent for timely settlement of proceedings related to securities law and mainly preventing negative impact on the market and providing relief to investors.⁶²

Investor Education and Awareness by SEBI

SEBI from time to time organizes and takes various steps for investor awareness programs by conducting many seminars, workshops, and conferences. SEBI has maintained a website for investors as <http://investor.sebi.gov.in>, where all kinds of information are available about the investors and their queries. Investor's grievances can be filed online through SCORES. This website also explains the rights and obligations of the investors and tried to educate and protect the investors as well.

Investor Education and Awareness by Ministry of Corporate Affairs

The main objectives of the Ministry of Corporate Affairs are also similar to that of SEBI, i.e to effectively protect the interest of investors as promised in the National Common Minimum Programme (NCMP). MCA's motive for a simplified, transparent, corporate-friendly environment in the Indian economy. MCA initiated various reforms relating to professional Institutes by proposing various changes. MCA initiated an e-governance project as “MCA21 e-Governance Project”. The MCA21 system also helped investors/depositors to lodge complaints using the website of the Ministry as www.mca.gov.in under “Investor Services”⁶³. In the MCA 21 System, the

⁶² SEBI Revisits the settlement mechanism, Ambika Mehrotra is a Manager in the Corporate Law Services Division of Vinod Kothari & Company

⁶³<http://www.mca.gov.in/MinistryV2/investorservices.html> accessed in 2.1.2021 at 10.46 pm

investor grievances redressal has become more effective and responsive after restructuring the complaint module on the MCA21 system⁶⁴. On 7th September 2016, the Govt of India established the Investor Education Protection Fund Authority for better administration of Investor Education and Protection Fund which is under the provision of Section 125 of Companies Act 2013.⁶⁵ The authority has the responsibility of administering the IEPF, refunds of shares, unclaimed dividends, matured deposits, etc of investors and also promoting awareness among the investors.⁶⁶

Conclusion

The trading of shares started way back in the 18th century which created the Indian capital market and the stock exchanges in India for trading shares. Initially, there was no legislation or regulations in the market and dealt based on the contract Act. But the Government started making various committees, legislation, and specific regulations for the smooth functioning of capital market transactions. Many legislation was created to regulate the capital market but the strongest legislation to date is the Securities Exchange Board of India Act 1992 and others were repealed. The SEBI was established as an administrative body in early time but because of series of scams in the capital market the SEBI was given the power of statutory, judicial as well as administrative power. There was a need to handle the technicality of the capital market by developing it and protecting the interest of the investors. So SEBI has been provided powers to handle the investor grievances and give protection to the investors through new rules and regulations from with time. The investor protection is visible not under SEBI Act and SEBI regulations but different other legislation also tried to handle investors by protecting their

⁶⁴ According to the annual report of 2011-12 to 31.12.2011, the ministry has conducted around 806 investor awareness programmes with the collaboration of professional bodies namely ICAI, ICSI and ICWAI.

⁶⁵<https://www.iepfportal.in/about-iepf-authority.html> accessed in 3.1.2021 at 5:50 pm

⁶⁶ibid

interest. SEBI and Government of India has taken various measures to protect the investors but the attempt of Separate Legislation has not been realized