

## PROTECTION OF INVESTORS IN INDIA

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### **Abstract:**

*It is usually not possible for a company to encounter any kinds of risks alone due to huge financial burdens upon them. Companies opting for huge projects usually face such kind of situation. To tackle these dangers furthermore to diminish monetary troubles a company in this way normally searches for aid from the public by indulging them to make investments through different ways. Therefore, the security laws came into being to protect the interest of those persons who invest in such a company as investors. Security laws or capital market which are of two types primary market, where securities are sold for the first time and secondary market, where previously issued securities are bought and sold investment protection is provided to them. Investors are protected through structural framework where the regulatory bodies empowered through various Acts, guidelines and regulations maintain smooth functioning and transparency in the security market and through legal framework where the statutory provisions like rules, guidelines circulars etc protect the interests of investors.*

*This paper will shed light upon the following points:*

- *Securities market*
- *Investor protection- Structural framework*
- *Investor protection- Legal framework*
- *Conclusions and suggestions*

*The author will be using non-doctrinal and empirical research technique of research methodology. The study adopts Oscola citation style format. The researcher will be using both primary sources such as legislations, treaties and conventions as well as secondary sources of data such as books, articles, journals, reports, cases and judicial interpretations.*

*Key words:*

*Investors, protection, securities law.*

## **Introduction:**

An 'investor' is a person who allocates capital with the expectation of a financial return. Generally, the primary concern of an investor is to minimize risk while maximizing return, as opposed to a speculator, who is willing to accept a higher level of risk in the hopes of collecting higher than average. In simple terms, investor is a person or group of persons who invest in a company through a security market while in wider terms an investor is an individual (either natural or artificial) or classes of persons or special entity who or which use to commit money or capital with intention to gain a financial return in terms of profit. In India, security market usually refers to capital market and capital market is broadly divided into primary market and secondary market.

Investment is time, energy, or matter spent in the hope of future benefits actualized within a specified date or time frame. Investment has different meanings in economics and finance. In economics, investment is the accumulation of newly produced physical entities, such as factories, machinery, houses, and goods inventories. In finance, investment is buying or creating an asset with the expectation of capital appreciation, dividends (profit), interest earnings, rents or some combination of these returns. Financial investment denotes a business where capitals are invested for procurement of shares of a company through a recognised SE and by which a company is also bound to pay the specified share of a profit to the persons who invested their money in the security market.

The term 'investor protection' means a process or a mechanism by which the interest of an investor is protected in the security market. Basically, it denotes the acts done with object to bring and also maintain transparency in procedural aspect while dealing with investor through some regulatory bodies by means of some suitable legislation. In order to protect the interest of the investors, various investors protection mechanisms have been established in India. There are mainly three means i.e mechanisms to protect the interest of investors in the security market-regulatory bodies like SEBI, various Acts and Judiciaries.

### **Securities market:**

A 'security' is a financial instrument that represents: an ownership position in a publicly-traded corporation (stock), a creditor relationship with governmental body or a corporation (bond), or rights to ownership as represented by an option. It is a fungible, negotiable financial instrument that represents some type of financial value. Section 2 (h) of the Security Control Regulation Act, 1956 defines 'security' and it includes shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities like derivative, government securities, various mutual funds etc.<sup>1</sup>

'Securities market' is a component of the wider financial market where securities can be bought and sold between subjects of the economy, on the basis of demand and supply. It is a place where trading take place with intention to raise money from the investors by the various companies to undertake their projects, expansion of business programmes as these require a huge amount of investments. In India, security market is usually known as 'capital market' which is broadly divided into primary and secondary markets. The primary market is that part of the capital markets that deals with the issue of new securities. The primary market is the market where the securities are sold for the first time. Therefore it is also called the new issue market (NIM). In a primary issue, the securities are issued by the company directly to investors as prescribed under Companies Act, 1956, Listing and other SEBI guidelines. The secondary market, also known as the aftermarket, is the financial market where previously issued securities and financial instruments such as stock, bonds, options, and futures are bought and sold. As secondary market is bigger than primary market therefore investment protection is mainly provided to secondary market.

### ***History of securities market:***

In India in 1875, The Native Share and Stock Brokers Association<sup>2</sup> was established. To control fraud and other illegal transaction in the securities market, the Bombay Securities Contracts Control Act, 1925 was enacted but it failed to do so. Thus, the concept of security market

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<sup>1</sup> Taxman's SEBI Manual (15<sup>th</sup> edn, Taxmann Publications 2010)

<sup>2</sup> Now known as Bombay Stock Exchange

prevailed in the pre- independent era i.e when India was under British rule. Therefore to tackle this problem the A.D Gorwala Committee was formed and based upon its recommendations the Securities Contracts (Regulation) Act, 1956 was enacted to prevent illegal transaction in the security market. The Capital Issue (Control) Act, 1947 was also enacted to regulate to control over issues of capital. After independence numerous attempts were made to control the activities under security markets through legal framework but it could not succeed to achieve it<sup>3</sup>. In 1991 when India adopted the liberalising policy in the industrial sector, it opened the door for the foreign investors in the security market and the concept of security market has been changed drastically. Moreover due to globalisation the business has flourished worldwide.<sup>4</sup> Though a number of scams like Harshad Maheta, Satyam Scam etc took place which directly affected the investors but it didn't stop the investors to invest money in the security market and they continued to do so. In the New Economic Policy adopted by the Government of India due importance was given to the security market by the reform made in the SE. Some of the objects of Indian Security market are as follows: to ensure nationwide trading facilities for all types of securities, provide equal opportunity and scope to all investors to invest their money with the help of advanced technologies, ensure the transparency and safety in the security trading by adopting adequate safety measures.<sup>5</sup> For bringing an economic reform in India, Government made some reforms in the structure of capital market to maintain the consistency between newly adopted liberalising industrial policy and capital market. Thus, the Narasimham Committee<sup>6</sup> was appointed and it made some recommendations like setting up a strong regulatory body by vesting immense power to regulate the capital i.e security market, vesting power to frame its own regulations as per requirement to control the capital market in a better way, free entry to capital market etc. Realising that the present Acts and regulations are not sufficient and an autonomous body must be established to regulate the security market, the Government accepted the recommendations made by the committee and enacted the SEBI Act in 1992. SEBI was established under the SEBI Act, 1992.

### **Investor Protection: Structural Framework-**

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<sup>3</sup> Tierney Robert B., 'New York City Landmarks Preservation Commission' <[http://www.nyc.gov/html/lpc/downloads/pdf/12-07\\_uws\\_extension\\_bkln\\_hd\\_3\\_landmarks\\_approved.pdf](http://www.nyc.gov/html/lpc/downloads/pdf/12-07_uws_extension_bkln_hd_3_landmarks_approved.pdf)> accessed 25 March 2015

<sup>4</sup> K.Sekhar, *Guide to SEBI capital issues debentures and listing* (3<sup>rd</sup> edn, Wadhwa &Company 2003)

<sup>5</sup> Objectives of Indian securities market <[http://wiki.answers.com/Q/Objective\\_of\\_Indian\\_securities\\_market](http://wiki.answers.com/Q/Objective_of_Indian_securities_market)> accessed 26 March 2015

<sup>6</sup> In the name of Shri M. Narasimham who was appointed as a chairperson of this committee.

'Structural framework' means the various regulatory bodies working in the capital market responsible for the protection of investors at various levels as entrusted by Acts, Regulations and Guidelines. These regulatory bodies provide smooth functioning, maintaining the reputation and transparency in the capital market.

The term 'investor protection' means those steps and measures which are required to protect the interest of the investors by enacting suitable legislation, establishing regulatory bodies or by passing of regulations or guidelines for protecting the interest of the investors in the capital market.

The term 'enforcement bodies' means the various regulatory bodies which can enforce the right guaranteed to the investors on account of infringement by imposing punishment through various Acts. The enforcement bodies are: SEBI, Central Government, SAT, Tribunal, Judiciary. The four main legislations governing the securities market i.e under which an approach can be made to various regulatory bodies are: (a) the SEBI Act, 1992 which established SEBI to protect investors and develop and regulate securities market; (b) the Companies Act, 2013 which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; (c) the Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions in securities through control over stock exchanges; (d) the Depositories Act, 1996 which provides for electronic maintenance and transfer of ownership of demat securities.

**SEBI:**

The main object of SEBI is to preserve the interest of the investor in the capital market<sup>7</sup>. Its head office is situated in Bombay and it has various branch offices in Kolkata, Delhi, Chennai and Ahmedabad, Jaipur and Bangalore. It has also opened its new offices in Guwahati, Bhubaneshwar, Patna, Kochi and Chandigarh.<sup>8</sup>

**Protection done by SEBI under the SEBI Act:<sup>9</sup>**

Nature of Grievance and against whom it	Mode of taking cognizance	Section	Remedies
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<sup>7</sup> The preamble of the SEBI says "... to protect the interests of investors in securities and to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto"

<sup>8</sup> 'Securities and exchange board of India' <[http://en.wikipedia.org/wiki/securities\\_and\\_exchange\\_board\\_of\\_india](http://en.wikipedia.org/wiki/securities_and_exchange_board_of_india)> accessed 28 March 2015

<sup>9</sup> Adjudication is done by a person i.e, who is not below the rank of divisional chief of the SEBI.

is made			
If any intermediaries or any person associated with security market engages himself for doing certain acts which amount to violation of any provision of SEBI Act or involved or will fully allowed to do any transactions which infringed the right of the investors	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 11C <sup>10</sup>	Appoint any person being an investigating authority to investigate the matter. It may summon to any intermediaries or any person associated with the security market to: furnish necessary information, produce all relevant documents, take custody of these documents, sought help of a judicial magistrate of 1 <sup>st</sup> class for search and seizure as per provision of CrPC on account of reasonable appreciation for being destroyed of any documents including records by any intermediaries or other person involved in the security market, can imposed punishment of

<sup>10</sup> The language of the provision given in section 11 C is not clear as the starting sentence clearly states “while the board has reasonable ground to believe”, Sumit Agarwal & Robin Joseph Baby, *SEBI Act* (Taxmann Publication 2011)

			Imprisonment upto 1yr or fine upto 1crore rupees or with both.
Failure to- furnish any information, return or report etc to SEBI, file any return or to furnish any information, books or other documents within the specified time under any regulation made by SEBI, maintain books of account or records.	Either by itself or upon any complaint made by anyone or upon complaint made by third parties <sup>11</sup>	Section 15 A	Penalty of Rs 1lakh shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less
If a registered intermediary has failed to enter into a contract with his client as per requirement of any Act, regulation or rules.	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties <sup>12</sup>	Section 15B	Penalty of Rs 1lakh shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less
Failure of a registered	Either by itself or	Section 15 C	Penalty of Rs 1lakh

<sup>11</sup> The language of the provision given in section 11 C is not clear as the starting sentence clearly states "while the board has reasonable ground to believe", Sumit Agarwal & Robin Joseph Baby, *SEBI Act* (Taxmann Publication 2011)

<sup>12</sup> The language of the provision given in section 11 C is not clear as the starting sentence clearly states "while the board has reasonable ground to believe", Sumit Agarwal & Robin Joseph Baby, *SEBI Act* (Taxmann Publication 2011)

intermediary after giving reasonable time to rectify investor's grievances	upon any complaint made by anyone or upon the complaint made by the third parties <sup>13</sup>		shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less
Commencement of business relating to collective investment schemes, mutual funds without obtaining a certificate from the SEBI, if a person registered for collective investment schemes, mutual funds failed to despatch unit certificate of any scheme and to invest money collected under those schemes.	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties <sup>14</sup>	Section 15D	Penalty of Rs 1lakh shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less
If an asset management company duly registered under this Act failed to comply with the rules and regulations provided for imposing restrictions on the	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 15 E	Penalty of Rs 1lakh shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

asset management companies while dealing with their business <sup>15</sup>			
If the registered stock broker failed to issue contract notes according to the specified manner given by SE of which he is a member, if the registered broker failed to deliver any security instrument or failed to make payment the amount to the investors entitled to get it.	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 15F	Penalty of Rs 1lakh shall be imposed upon the defaulter for each day during which such failure continues or Rs. 1 crore whichever is less
If in an insider trading any insider <sup>16</sup> either himself or on behalf of other dealt securities belonged to somebody corporate listed on a SE on the basis of any unpublished price-sensitive information	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 15G	Penalty of 25 crores rupees or three times of the profit made through such insider trading whichever is higher shall be imposed

<sup>15</sup> A company that registered with SEBI and steers the ship of decision relating to various investments/ disinvestments done by various mutual fund and also thereby manage the asset of mutual fund, however this type of company is registered under Section 11(2) (c) of the SEBI Act, 1992

<sup>16</sup> Insider means any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or has received or has had access to such unpublished price sensitive information. However for more information please refer the regulation 2(e) of the SEBI (Prohibition of Insider Trading) Regulation, 1992.

etc.			
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**Protection done by SEBI under SCRA Act:**

<b>Nature of Grievance and against whom it is made</b>	<b>Mode of taking cognizance</b>	<b>Section</b>	<b>Remedies available</b>
If any SE engaged itself to do certain act which is against the interest of trade or for the interest of investors	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties <sup>17</sup>	Section 5	Withdraw of recognition by stating the reason and after giving an opportunity of being heard
In case of occurrence of any emergencies if the situation has arisen under which the Central Government has no option except suspension of business of that SE	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties <sup>18</sup>	Section 12	Suspend the business of SE by stating the reason for initially 7 days which may for the public interest extend up to certain time as fixed by the Central Government by notification.

<sup>17</sup>The language of the provision given in concerned section is not clear as it didn't mention clearly, *SEBI Manual*, (15<sup>th</sup> edn, Taxmann publication 2010)

<sup>18</sup> Ibid.

<p>If any person enters into a contract which is against the provision of Section 13<sup>19</sup> and Section 16<sup>20</sup>, section 18 A<sup>21</sup> or the rules made under Section 30<sup>22</sup> or does any act in contravention to Section 17, 17 A<sup>23</sup> or 19<sup>24</sup>, 21, 21 A, 22<sup>25</sup> or against the orders of SAT</p>	<p>Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties</p>	<p>Section 23</p>	<p>Imprisonment up to 10 years or with fine up to 25 crore rupees or with both.</p>
<p>If a person failed to maintain books of account as per direction given in listing agreement or any by laws</p>	<p>Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties</p>	<p>Section 23A</p>	<p>Penalty of Rs. 1lakh per day during which such failure will continue or 1 crore rupees whichever is less.</p>
<p>If a person failed to redress i.e rectify the investor's grievances.</p>	<p>Either by itself or upon any complaint made by anyone or</p>	<p>Section 23 C</p>	<p>Penalty of Rs. 1lakh per day during which such failure will</p>

<sup>19</sup>Section 13 authorised the Central Govt considering the nature or volume of the transaction of the securities may prohibit certain transaction by Gazette notification.

<sup>20</sup> Section 16 says about the power of Central Govt to prohibit certain contract in certain cases.

<sup>21</sup> Section 18 A talks about contract in derivative and inserted by the Security Laws(Amendment)Act, 1999 which came into effect on 22<sup>nd</sup> Feb, 2007

<sup>22</sup> Section 30 confers the power on Central Govt to make rule with intention to achieve the better enforcement of this Act.

<sup>23</sup> Section 17 and 17A talks about licensing of dealers in securities in certain areas and public issue & listing of securities referred to in sub-clause (ie) of clause (h) of section 2. Section 17 A was inserted by the Security Contract Regulation (Amendment)Act, 2007 which came into effect on 28<sup>th</sup> day of May, 2007.

<sup>24</sup> Section 19 talks about the power of Central Govt. regarding prohibition of SE other than those which are not duly registered.

<sup>25</sup> These sections talks about the conditions for listing, delisting of securities & right to appeal against the refusal of listing of securities in a public company. Section 21 A inserted by Security Laws (Amendment)Act, 2004 which came into effect on 12<sup>th</sup> oct, 2004.

	upon the complaint made by the third parties		continue or 1 crore rupees whichever is less.
If a person dematerialised or deliver the unlisted securities in excess	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 23 F	Penalty in the form of fine will be imposed which shall not exceed 25 core rupees.

Under Section 11C,<sup>26</sup> in *K. Venkataeswarlu vs The Regional Manager SEBI & others*<sup>27</sup> observed that power vested under this section to SEBI purely discretionary and no one can challenge it. In this case investigation under this section was sought by constituting a technical body as the matter involves technicalities. The Delhi HC rejected that petition on the ground that such decision purely lies upon SEBI & couldn't be inferred unless arbitrary act or mala fide intention of SEBI has been challenged.

#### **Government of India:**

The central government along with SEBI has been given powers under the SCRA, 1956 to protect the interest of the investors.

<b>Nature of Grievance and against whom it is made</b>	<b>Mode of taking cognizance</b>	<b>Section</b>	<b>Remedies available</b>
If any SE engaged itself to do certain act which is against the interest of trade or for the interest of investors	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 5	Withdraw of recognition by stating the reason and after giving an opportunity of being heard

<sup>26</sup> It gives a discretionary power to SEBI to appoint any outsider if any person associated with security market does any act which amounts to violation of any provisions of SEBI Act or which violates either directly or indirectly the right of any investors to punish accordingly. Inserted by SEBI (Amendment) Act of 2002 which came into effect on 29<sup>th</sup> october, 2002.

<sup>27</sup> Writ petition (Cri.) No 1008/2007 decided on 7<sup>th</sup> day of August, 2007.

In case of occurrence of any emergencies if the situation has arisen under which the Central Government has no option except suspension of business of that SE	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 12	Suspend the business of SE by stating the reason for initially 7 days which may for the public interest extend up to certain time as fixed by the Central Government by notification.
In case opening any SE other than those duly organized	Either by itself or upon any complaint made by anyone or upon the complaint made by the third parties	Section 19	Prohibit certain SE from becoming operational.

***Security Appellate Tribunal (SAT):***

The provision relating to SAT is dealt with in Chapter VI B<sup>28</sup>. SAT was established to give relief to the investors and to maintain transparency in the security market. Before the SEBI (Amendment) Act, 2002<sup>29</sup> an appeal against the order of SAT lied to HC and then to SC but after this amendment now an appeal can be made directly to the SC against the order of SAT.

Section 15 deals with the procedure and powers of SAT. SAT acts a civil court but in Section 15 U (3) it has been mentioned that under certain circumstances under section 193, 196 & 228 of IPC and for the purpose of section 195 & chapter XXVI of Cr.P.C it got the power vested in a criminal court and is entitled to inflict punishment<sup>30</sup>. The powers that are entrusted to SEBI are also exercised by SAT as it comes for appeal against the order of SEBI. However, the power

<sup>28</sup> Inserted through Securities Laws (Amendment) Act, 1995 which came into effect from 25<sup>th</sup> January, 1995.

<sup>29</sup> Came into effect from 29<sup>th</sup> October, 2002

<sup>30</sup> Section 193, 196 & 228 respectively deal with punishment for giving false evidence, punishment for using evidence known to be false and punishment for intention insult or interruption to public servant sitting in the Judicial proceeding. Section 195 & chapter XXVI deal with prosecution for contempt of lawful authority of public servants for offence against public justice and for offence relating to documents given in evidence and offences affecting the administration of justice.

vested in SAT is not much effective as no provision like other statute<sup>31</sup> was made for the enforcement or execution of its orders and sometimes it is proved to be ineffective in respect of investors protection.<sup>32</sup>

In *State of Karnataka vs. Vishwabharati House Building Cop. Society*,<sup>33</sup> it was observed that it is now a settled principle that to render a proper justice and also to give an effective relief to the litigant, the tribunals which have been created to deal with the special matters must have vested power so that it can implement/execute its order properly.

***Tribunal:***

The Company Law Board also plays a vital role in protecting the interests of the investors in the capital market. The Companies Act, 2013 provides various provisions which give powers to the CLB for protecting the interests of the investors. They are as follows:

<b>Nature of Grievance and against whom it is made</b>	<b>Mode of taking cognizance</b>	<b>Section</b>	<b>Remedies available</b>
Any member <sup>34</sup> of a company reasonably suspected that the acts conducted by a company in a manner which is amount to an oppression and cause prejudiced the interest of the public(mainly investors)	Upon the complaint made by specified member of that company	Section 241	Pass a necessary order as it think fit for the purpose of protection of investors & before that, notice to be given to the Central Govt
When any member commits mismanagement of a	Upon the complaint made by specified member of that	Section 242	Pass a necessary order as it think fit for the purpose of protection

<sup>31</sup> Like section 19 of the TRAI Act, 2002 and section 53P of the Competition Act, 2002.

<sup>32</sup> Alkan Projects Pvt. Ltd vs SEBI

<sup>33</sup> AIR 2003 SC 1043

<sup>34</sup> The members who are entitled to file a complaint have been specifically provided under Sec 399 of the Act.

company that amounts to injurious to public interests	company		of investors & before that, notice to be given to the Central Govt
When any member commits mismanagement of a company by bringing materials changes	Upon the complaint made by specified member of that company	Section 242	Pass a necessary order as it think fit for the purpose of protection of investors & before that,notice to be given to the Central Govt

The Tribunal can pass the following orders:

- To regulate the company's affairs in future [ Sec. 242<sup>35</sup> ]
- To direct any other members to purchase the share of that company [ Sec. 242]
- Can terminate or modify or setting aside any agreement [Section 242] etc.

**Judiciary:**

The Judiciary also plays an important to protect the interests of the investors. Prior to Security Law (Amendment) Act, 2002 an appeal against the order of SAT can be made in the High Court but after this amendment an appeal against the order of SAT can be made directly to the Supreme Court. However, if a writ petition is filed under Article 226 of the Constitution then High Court plays an important role to protect the interests of the investors.

An aggrieved person can approach the SC by two ways:

Firstly, if a person is aggrieved by any decision passed by the SEBI he can approach the SAT and if he not satisfied by its decision he can approach the SC.<sup>36</sup>

Secondly, an investor can approach the HC by filing a writ petition under Article 226 and if he is not satisfied by the judgement passed by the HC he can move to the SC through an appeal filed under Article 133 (2) of the Indian Constitution.<sup>37</sup>

<sup>35</sup> Companies Act, 2013.

<sup>36</sup> Section 15 T, Section 15 Z of the SEBI Act, 1992.

<sup>37</sup> Article 133(2) - Notwithstanding anything in the article 132 any party appealing to the Supreme Court can under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongfully decided. However, prior to that as per provision of Article 132 (1) a certificate

Besides the above ways of approaching the SC, an investor can directly approach the SC under Article 136 of the Constitution. In *Jaswant Singh Mills vs. Lakshmi Chandra*,<sup>38</sup> the SC interpreted the word 'Tribunal' and laid down two conditions: firstly, it must be an authority or a body constituted by law with power to determine question or disputes affecting the right of a citizen and secondly such a body or authority must determine such question under a duty to act judicially and such duty must be imposed by law. Thus, SEBI is a tribunal as it fulfils both these conditions.

### **Investor Protection: Legal Framework-**

Legal framework includes the statutory provisions available for protection of the investors. The various rules, regulations, guidelines, schemes and various circulars passed by SEBI time to time for the protection of the investors:

#### ***SEBI (Stock Broker & Sub Broker) Regulation, 1992:***

As the investors are not directly connected with the SE and completely rely upon the stock brokers and sub brokers because they play as intermediaries between investors and SE, so for protecting the interest of investors it is necessary to keep regular monitoring on the regular activities of broker and sub brokers and thus this regulation was issued by SEBI. This regulation provides some requirements which must be fulfilled by the stock and sub brokers before starting its business like providing all personal details so that if any fraudulent act or malpractice is done it can be easily traceable. For prohibiting them from such mal practices some mandatory duties are being imposed and it must be followed by each and every stockbrokers. Under Chapter VI, pecuniary penalty can be imposed by SEBI in case of default.

#### ***SEBI Prohibition of Insider Trading Regulations 1992:***

Regulation 2 (e) of this regulation says that 'insider' means a person who having connection with a company reasonably expected to have accessed to unpublished price sensitive in respect of securities of company or has received or had access to such unpublished price sensitive information. The term 'insider trading' means certain activities which have been prohibited under regulation 3 i.e either directly or indirectly accessed to any unpublished price sensitive

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will have to be obtained from the concerned HC under Article 134-A. This article 134 A has been inserted by the Constitutional (44<sup>th</sup> Amendment) Act of 1978.

<sup>38</sup> AIR 1963 SC 677

information and communicates or counsel in lieu of money to any third person. To treat the information as price sensitive information, the aggrieved party will have to prove that such piece of information has effect the security market materially and substantially. As a precautionary measure this regulation has included some preventive measures under which it bounds the individual shareholder including company to disclose all the material information so that their intention can be scrutinised by the SEBI more effectively.

***SEBI (Prohibition of Fraudulent and unfair trade practices relating to Securities Market) Regulations, 2003:***

The main object of this Act is to protect the investors from the various fraudulent and unfair trade practices done in the security market. Therefore, SEBI enacted this regulation to prevent these practices in the security market. This regulation specifies the acts which can be amounted as fraud; it also gives a wide scope for investigation against the fraudulent practices along with the details procedure. Thus, strict penal measures can be taken by SEBI like cancellation of certificate, suspension of certificate on account of proof of practicing fraudulent act.

***SEBI (Ombudsman) Regulations, 2003:***

This regulation provides for the appointment of Ombudman who is a public officer which will deal with public grievances i.e he will investigate the complaints the complaints made by the public against the government officials on account of infringement of any right of individuals. The main duty of it is to make a proper investigation on complaints regarding non- receipt of share certificates, refund order, dividend and various other matters.

***SEBI (Investor protection and Education Fund) Regulation, 2009:***

The main object of this regulation is to protect the interests of the investors through education and by creating awareness among the investors by organizing seminar, research, publication etc. As to provide education requires a huge amount of money therefore a fund named "Investor Protection and Education Fund" was established in 2007. Besides, to improve the method of investor's education an advisory committee was also established.

***SEBI (Investment Advisers) Regulations, 2013:***

The main object of this regulation is to keep monitoring on the activities of investment advisors in the capital market. According to Regulation 2 (l) investment advise means advice relating to investing in purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written oral or through any other means of communication for the benefit of the client and shall include

financial planning and it was given through any newspaper, magazine or any other electronic mode and according to regulation 2 (m) investment adviser means a person who in lieu of consideration provide the investment advice to clients or other persons or group of persons. The regulation provides a detail procedure regarding registration of investment advisor and issue of registration certificate. It also casts some duties on the investment adviser like disclosure of all materials to the client, maintenance of records, to redress all client grievances. Besides it also empowers SEBI to conduct regulate investigation on the conduct of the investment adviser.

### **Conclusion:**

It can be seen that Indian Capital market has changed gradually and drastically since pre independent era to present scenario especially in post 1991 when the concept of liberalisation was adopted for the industrial sector which compelled the government to make changes in the security market prevailing in India. After liberalization policy and globalization was been adopted in India, it opened the door for the foreign investors and various trade practises in the security market. As a number of scams and illegal trade practises were been taking place in the capital market, the Government realized that the present Acts and regulations are not sufficient and an autonomous body must be established for regulating the security market. Thus, the Narasimham Committee was appointed and it made some recommendations like setting up a strong regulatory body by vesting immense power to regulate the security market. Consequently, SEBI was established under the SEBI Act, 1992.

Not only SEBI, other enforcement bodies like Central Government, SAT, Tribunal, Judiciary have been given wide powers to enforce the rights guaranteed to the investors on account of infringement by imposing punishment through various Acts.

Additionally, various statutory provisions like rules, regulations, guidelines, schemes and circulars which can be passed by SEBI from time to time for the protection of the investors are also been established and enacted. For example: SEBI (Stock Broker & Sub Broker) Regulation, 1992 was issued by SEBI to keep regular monitoring on the regular activities of broker and sub brokers for

protecting the interests of the investors, SEBI (Investment Advisers) Regulations, 2013 issued by SEBI to keep monitoring on the activities of investment advisors in the capital market etc.

**References:**

***Primary Sources:***

Statutes & Legislations-

- (1) Security Contract Regulation Act, 1956
- (2) Bombay Securities Contracts Control Act, 1925
- (3) Capital Issue (Control) Act, 1947
- (4) Security and Exchange Board of India, 1992
- (5) Companies Act, 1956
- (6) Companies Act, 2013
- (7) Competition Act, 2002
- (8) Depositories Act, 1996
- (9) Code of Criminal Procedure, 1973
- (10) Constitution of India, 1949
- (11) Security Act, 1933
- (12) Securities Exchange Act, 1934
- (13) Telecom Regulatory of India Act, 2002
- (14) Financial Services and Markets Act, 2000
- (15) SEBI (Stock Broker & Sub Broker) Regulation, 1992

- (16) SEBI Prohibition of Insider Trading Regulations 1992
- (17) SEBI (Prohibition of Fraudulent and unfair trade practices relating to Securities Market) Regulations, 2003
- (18) SEBI (Ombudsman) Regulations, 2003
- (19) SEBI (Investor protection and Education Fund) Regulation, 2009
- (20) SEBI (Investment Advisers) Regulations, 2013
- (21) SEBI( Amendment) Act, 2002
- (22) Securities Laws (Amendment) Act, 1995
- (23) Security Laws(Amendment)Act, 1999
- (24) Security Laws (Amendment)Act, 2004
- (25) SCRA (Amendment) Act, 2007

**Secondary Sources:**

Books-

- (1) SEBI Manual (15<sup>th</sup> edn, Taxmann Publications 2010)
- (2) Sekhar K., *Guide to SEBI capital issues debentures and listing* (3<sup>rd</sup> edn, Wadhwa &Company 2003)
- (3) Agarwal Sumit &Robin Joseph Baby, *SEBI Act* (Taxmann Publication 2011)

Websites-

- (1) Tierney Robert B., 'New York City Landmarks Preservation Commission'  
<<http://www.nyc.gov/html/lpc/downloads/pdf/12-07>> accessed 25 March 2015
- (2) 'Objectives of Indian securities market'  
<[http://wiki.answers.com/Q/Objective\\_of\\_Indian\\_securities\\_market](http://wiki.answers.com/Q/Objective_of_Indian_securities_market)> accessed 26 March 2015
- (3) 'Securities and Exchange Board of India'  
<[http://en.wikipedia.org/wiki/securities\\_and\\_exchange\\_board\\_of\\_india](http://en.wikipedia.org/wiki/securities_and_exchange_board_of_india)> accessed 28 March 2015

