 DOI: *https://doij.org/10.10000/IJLMH.11437*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

A Brief of Investor Protection in USA: Comparison with Indian Scenario

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ABSTRACT

Investors are pillar of the financial and security market. They determine the level of activity in the market. Investor protection is the basic and incentive step for the growth and development of companies and institutions in today's Era. The protection is established to protect the interest of the investors.

The U.S.A Security and Exchange commission being the primary regulator and financial authority is an independent agency of the United States federal government regulates authorization of federal security laws, rules, regulates security industry, stock exchange and other activities regarding the investors and investment protection in various sector of institutions.

SEC administers its interest through six federal statutes. The applications of the commission is in form of administrative agency with the widest executives, also occurs in form of legislative and judicial functions protecting and tackling problems of security regulations. Those federal statutes are The Securities Act 1933, Security exchange Act 1934, The public utility holding company Act 1935, The Trust Indenture Act 1939, Investment Company Act , Lastly the Bankrupt Act of 1938 which basically includes the provisions over company's winding up under chapter 10 of this Act.

In order to alter and correct some of the powers of SEC for better protection of interest of securities and investors Investor Protection and Securities Reform Act 2010 was introduced. It also regulates the relation between customers, broker- dealers or investment advisors. The IPSRA includes various concepts under the title.

Keywords: *Investor, Sec, Sebi, Regulation, Insolvency.*

I. INTRODUCTION

Investment is the core procedure right now in the world economy to make it stronger and keep it developing. All those industrial and business activities are governed and regulated by commercial code or law.US being the stepper over the name of a developed country have widespread rules and regulations regarding all its business activities so as regarding the

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investment procedure. The commercial law includes some part of the law of obligations and the law of property. The transactions occurring for business requires the investment and the application of law of contract with its contractual obligations and it is observed that the investment activity is governed by commercial laws so the commercial law is developed through state retrieving legal system.

II. SEC

Before the creation of federal law and security protection Acts there was a existence of so called Blue Sky Laws in USA for all its purpose which was enacted and applied to the territories with objective of protecting people from fraud and to regulate the offering and sale of securities eventually it turned ineffective after that the Securities Act of 1933 came into play which was known as "Truth in Securities Act" or" the Federal Securities Act".

The USA Security and Exchange Commission (SEC)[2] are recognized as the widespread regulator of securities and investor protection. It has the application as an administrative agency with the widest executive, legislative and judicial functions, after all it regulates in tackling all the problems regarding investor rights and protection. The SEC includes six Regulating Acts or federal statutes which governs all the rules and regulations in different sector of practice in business era. Those are the securities Act of 1933, the security Exchange Act 1934, the public utility holding company Act 1935, the trust indenture Act 1939, Investment Company Act 1940 and lastly Bankruptcy Act 1938.

The security exchange Act of 1934 which is created SEC under Section 4 , SEC also enforces Investment Company Act of 1940 and the investment Advisory Act of 1940.The SEC comes with the objective divided into three categories which are- to protect investors , maintenance of an coordinated and efficient market and also to consider capital formation

In order to eradicate the regulatory and controlling approach of SEC also to increase the influence of investors and their protection in regard The investor protection and securities reform act came into play. The investor protection and improvements to the regulation of Securities is a United state act of congress which form Title IX, section 901 to 991 of the much boarder and larger Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[3]

III. INVESTOR PROTECTION ACT

This act is designed to increase the powers of the Securities and Exchange Commission. This

[2] Security exchange and commission Act
[3] Dodd-Frank Wall Street Reform and consumer Protection Act 2010

act increased liability for aiding and abetting, established whistle blower rewards for reporting financial fraud, and doubled funding to sec for five year period. The act was part of regulator's attempt and it was to prevent some of the problems that caused the financial crisis from occurring again in the future.

IV. History

Before 1938 there was little protection existing for customers of a bankrupt stockbroker unless they could trace cash and securities held by failed stockbrokers. Following a period during 1960's, there was great expansion in the securities industries. In that period a serious business contraction hit the industry in 1969-1970. This situation led to voluntary liquidation, mergers, receiverships and bankruptcies of a number of brokerage houses. The cash and securities that the customer had deposited with these failed firms were dissipated or tied up in lengthy proceedings of bankruptcy. Congress enacted the Securities Investor Protection Act in reaction to this growing concern. The goal was prevention of failure of more brokerage houses, restoring confidence in the capital market and upgrading the financial responsibility requirements for registered brokers and dealers. Securities Investor Protection Corp. v. Barbour. Congress designed the securities investor protection act to apportion responsibility for carrying out the various goals of legislation to several groups, among them are the Securities and Exchange Commission, many securities industry self-regulatory organizations, and the SIPC. This act was designed to create a new form of liquidation proceeding. It can applied only to member firms and was designed for the formation of new form of liquidation proceeding.

V. Understanding the Investor Protection Act

The investor protection act established the Investor Advisory Committee to consult with SEC. this committee meets at regular interval each year and advises on the topics as regulatory priorities and issues that surround new financial products, fee structures, and trading strategies. The act also increased safeguards and rights for whistleblowers, who can bring claims against employees after discovering a violation. It also provides consultation on initiatives to protect investor interest and to promote investor confidence in the market's integrity by requiring the disclosure of conflicts if the interest and risk associated with investment products.

This act includes granting SEC the authority to recommend granting whistle blowers monetary rewards. The law also establishes the SEC's Investor Protection Fund which awards payments to whistle blowers.

Another key element of this act is it deals with the regulation of credit rating agencies because of the critical role they play in the market, because of the rise of the conflicts of interest and other problems that arose during the mortgage crisis on the part of these agencies, many banks end up in mismanaging risk, posing a threat to investors.

VI. COMPARISON BETWEEN REGULATORIES IN INDIA AND USA

(A) Securities Exchange Board of India

1. What is SEBI?

SEBI is a statutory regulatory body established on the 12th of April, 1992. It monitors and regulates the Indian Capital and Securities Market while ensuring to protect the interests of the investors formulating regulations and guidelines to be adhered to. The Head Office of SEBI is in Bandra Kurla Complex, Mumbai.

2. Organizational Structure of SEBI

SEBI has a corporate framework comprising various departments each managed by a department head. There are about 20+ departments under SEBI. Some of these departments are corporation finance, economic and policy analysis, debt and hybrid securities, enforcement, human resource, investment management; commodity derivatives market regulation, legal affairs and more. The hierarchical structure of SEBI consists of the following members:

1. The Chairman of SEBI is nominated by the Union Government of India.
2. Two officers from the Union Finance Ministry will be a part of this structure.
3. One member will be appointed from the Reserve Bank of India.
4. Five other members will be nominated by the Union Government of India.

3. Functions of SEBI

1. SEBI is primarily set up to protect the interests of investors in the securities market.
2. It promotes the development of the securities market and regulates the business.
3. SEBI provides a platform for stockbrokers, sub- brokers, portfolio managers, investments advisers, share transfer agents, bankers, merchant bankers, trustees of trust deeds, registrars, underwriters and other associated people to register and regulate work.
4. It regulates the operations of depositories, participants, custodians of securities, foreign portfolio investors and credit trading agencies.
5. It prohibits inner trades in securities, i.e., fraudulent and unfair trade practices related to the securities market.
6. It ensures that investors are educated on the intermediaries of securities markets.

7. It monitors substantial acquisitions of shares and take-over of companies. SEBI takes care of research and development to ensure the securities market is efficient at all times.

(B) Securities Exchange Commission in U.S.A.

1. What is S.E.C.?

The S.E.C. has a three-part mission: to protect investors: maintain fair, orderly and efficient markets and facilitate capital formation[4]. To achieve its mandate, the SEC enforces the statutory requirement that public companies and other regulated companies submit quarterly and annual reports, as well as other periodic reports. In addition to annual financial reports, company executives must provide a narrative account, called the “management discussion and analysis” (MD&A) that outlines the previous year of operations and explains how the company fared in that time period. MD&A will usually also touch on the upcoming year, outlining future goals and approaches to new projects.

2. Organizational Structure of S.E.C.

The Commission has five Commissioners who are appointed by the President of the United States. The Commission is kept non-partisan as no more than three Commissioners may belong to the same political party. Their terms last five years and staggered so that one commissioner’s term ends on June 5 each year. Service may continue up to eighteen additional months past term expiration. The President also designates one of the Commissioners as Chairman, the SEC’s top executive.

Within the SEC, there are five divisions headquartered in Washington D.C. [5]

- Corporation Finance
- Trading and Markets
- Investment Management
- Enforcement
- Economic and Risk Analysis

3. Functions of SEC

1. **Creating Fair Markets -** the SEC has a special division that is designed to provide a daily overview of the activities of the market. The major participants, including the clearing agencies, exchanges, credit rating agencies and security firms, are all watched

[4] "The Role of the SEC". *Investor.go*
[5] Organization of the SEC U.S. Securities and Exchange Commission

by this division of the SEC. It also helps establish new rules and policies by examining and interpreting matters that affect operations within the securities markets.

2. **Ensuring Corporate Disclosure -** the Division of Corporation Finance works with the SEC to implement the rules and regulations established in the Securities Act of 1934. The main objective of this division is to make sure that corporations provide investors with honest information regarding securities. Without this protection, there would be a great deal more fraud surrounding transactions. The SEC reviews documents, such as yearly reports that are sent out to shareholders.

Protecting Investors- Along with making sure that corporations provide full disclosure, the SEC also looks after the investors themselves. The Division of Investment Management handles this duty. They regulate businesses that are engaged in investing and protect individual investors with mutual funds by making sure that the information about the investment is fully disclosed.

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