New Vision IAS Academy
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**CLASS NOTES**
**SECURITY & EXCHANGE BOARD OF INDIA**

- The Securities & Exchange Board of India was established by the Government of India on 12 April 1988 as an interim administrative body to promote orderly & healthy growth of securities market & for investor protection.
- It was to function under the overall administrative control of the Ministry of Finance of the Government of India
- The SEBI was given a statutory status on 30 January 1992 through an ordinance.
- The ordinance was later replaced by an Act of Parliament known as the Securities & Exchange Board of India Act, 1992.

REASONS FOR ESTABLISHMENT OF SEBI

- The capital market has witnessed a tremendous growth during 1980's, characterised particularly by the increasing participation of the public.
- This ever expanding investors population & market capitalisation led to a variety of malpractices on the part of companies, brokers, merchant bankers, investment consultants & others involved in the securities market.
- The glaring examples of these malpractices include existence of self – styled merchant bankers unofficial private placements, rigging of prices, unofficial premium on new issues, nonadherence of provisions of the Companies Act, violation of rules and regulations of stock exchanges and listing requirements, delay in delivery of shares etc.

REASONS OF HIGH GROWTH RATE IN 1980s

- The fragile but faster growth during the 1980s took place in the context of significant reforms throughout the decade but especially starting in 1985.
- While this liberalization was ad hoc & implemented quietly, it made inroads into virtually all areas of industry & laid the foundation of the more extensive reforms in July 1991.
- The liberalization pushed industrial growth to a hefty 9.2% during the crucial high growth period of 1988–91.
- Growth was propelled by fiscal expansion financed by borrowing abroad & at home. But this was unsustainable & led to the crisis of June 1991.
- The financial malpractices & unfair trading practices have eroded investor confidence & multiplied investor grievances.
- The Govt & the stock exchanges were rather helpless in redressing the investor's problems because of lack of proper penal provisions in the existing legislation
- The Government of India decided to set-up a separate regulatory body known as Securities & Exchange Board of India.

ROLE OF SEBI

- The basic purpose of SEBI is to create an environment to facilitate efficient mobilisation & allocation of resources through the securities markets
- It also aims to stimulate competition & encourage innovation.
- This environment includes rules & regulations, institutions & their interrelationships, instruments, practices, infrastructure & policy framework.
- This environment aims at meeting the needs of the three groups : – the market, viz, the issuers of securities (Companies), the investors & the market intermediaries.
- To the issuers, it aims to provide a marketplace in which they can confidently look forward to raising finances they need in an easy, fair and efficient manner.
- To the investors, it should provide protection of their rights & interests through adequate, accurate and authentic information and disclosure of information.
- To the intermediaries, it should offer a competitive, professionalised & expanding market with adequate & efficient infrastructure
- To regulate stock exchanges & the securities industry to promote their orderly functioning.
- To prevent trading malpractices & achieve a balance between self regulation by the securities industry & its statutory regulation.
- To regulate & develop a code of conduct & fair practices by intermediaries like brokers, merchant bankers etc.
- SEBI was entrusted with the twin task of both regulation & development of the securities market.
- Registration of brokers & sub brokers and other players in the market.
- Registration of collective investment schemes and Mutual Funds.
- Regulation of stock brokers, portfolio exchanges, underwriters and merchant bankers & the business in stock exchanges and any other securities market.
- Regulation of takeover bids by companies.
- Calling for information by undertaking inspection, conducting enquiries & audits of stock exchanges & intermediaries.
- Levying fee or other charges for carrying out the purposes of the Act .

- Performing & exercising such power under Securities Contracts (Regulation) Act 1956, as may be delegated by the GoI.
- Training of intermediaries of the securities market.
- Conducting research & publishing information useful to all market participants.
- Undertaking measures to develop the capital markets by adapting a flexible approach.
- Controlling insider trading & imposing penalties for such practices
- Undertaking steps for investor protection.
- Promotion of fair practices & code of conduct in securities market.

ORGANISATIONAL STRUCTURE

- As SEBI is a statutory body there has been a considerable expansion in the range & scope of its activities.
- Each of the activities of the SEBI now demands more careful, closer, co-ordinated & intensive attention to enable it to attain its objectives.
- Accordingly, SEBI has been restructured & rationalised in tune with its expanded scope.
- It has decided its activities into five operational departments.
- Each department is headed by an executive director.
- Apart from its head office at Mumbai, SEBI has opened regional offices in Kolkata, Chennai, and Delhi
- The SEBI also formed two advisory committees : Primary Market Advisory Committee & Secondary Market Advisory Committee.
- These committees consist of the market players, the investors associations recognised by the SEBI & the eminent persons in the capital market.

OBJECTIVES OF THE COMMITTEES

- To advise SEBI on
  1)Matters relating to the regulation of intermediaries for ensuring investors protection in the primary market.
  2) Issues related to the development of primary market in India.
  3)On disclosure requirements for companies.
  4) Changes in legal framework to introduce simplification & transparency in the primary market.
  5)In matters relating to the development & regulation of the secondary market.
- The committees are however non-statutory in nature and the SEBI is not bound by the advise of the committee.
- These committees are a part of SEBI's constant endeavor to obtain a feedback from the market players
- Sebi is run by its board of members. The board consists of a Chairman and several other whole time and part time members.
- The chairman is nominated by the union government.
- The others include two members from the finance ministry, one member from Reserve Bank of India and five other members are also nominated by the Centre.
- Before Sebi came into existence, Controller of Capital Issues was the regulatory authority; it derived authority from the Capital Issues (Control) Act, 1947.
- Securities Appellate Tribunal (SAT) has been constituted to protect the interest of entities that feel aggrieved by Sebi's decision.
- SAT consists of a presiding officer and two other members.
- It also established the Financial Stability Board in 2009, in response to the global financial crisis, giving the board a broader mandate.

SOME ACHIEVEMENTS

- The SEBI got rid of physical certificates, leading to inefficiencies and process slow-downs.
- It also dealt with the market of fake share certificates and made way for electronic trading.
- The SEBI has exercised several efforts to increase the popularity of mutual fund products and prevent fraud.

ANALYSIS OF FUNCTIONING

- Critics say SEBI lacks transparency & is insulated from direct public accountability.
- The only mechanisms to check its power are a Securities Appellate Tribunal, which consists of a panel of three judges, and the Supreme Court of India.
- Both bodies have occasionally censured SEBI.
- The function of protecting investors, development of the securities market & regulating the market are self-conflicting in many cases.
- It gets overlapping experiences in functions many times
- The report of the Joint Parliamentary Committee constituted to examine the stock market scam in April 2001 indicted Sebi for all-round failure in properly regulating the market.

SYSTEMS IN USA

- The processes are simple , it has The Securities and Exchange Commission (SEC)
- It states that all investors, should have access to certain basic facts about an investment product or service prior to buying it.
- According to American law the objective of market regulation are
  - ➢ The companies whose securities are publicly traded or are being offered to the public for sale, must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing

- ➢ The people who sell & trade securities – brokers, dealers, & exchanges – must treat investors fairly & honestly, putting investors' interests first.

SYSTEMS IN UK

- The Financial Services Authority (FSA), UK claims its focus on the "fit and proper" intermediaries and service providers and educating the customers of financial services to take care of their interests.
- The FSA is the single statutory regulator directly responsible for the regulation of deposit-taking, insurance and investment business.
- The Financial Services & Markets Act 2000 (FSMA) requires the FSA to pursue four objectives
- To maintain confidence in the UK financial system;
- To promote public understanding of the financial system;
- to secure an appropriate degree of protection for consumers whilst recognising their own responsibilities; and
- to reduce the scope for financial crime

ISSUES WITH SEBI

- To make it more effective , rationalisation of its functions & responsibilities is essential
- Financial illiteracy is one of the major issue of Indian markets - public scrutinisation of market players is not possible under such illiterate environment
- Sec. 2(f) of the RTI Act empowers SEBI to call for information from intermediaries under it. However, it has failed to take any action against those who refuse to provide the information.
- There is a shocking instance where SEBI appellate authority held the hearing at 8pm, when officials of the intermediary refused to come for a hearing scheduled during office hours citing office work.
- During the pandemic, Sebi adopted an out-of-the-ordinary approach to ensure the survival of corporates, mutual funds and brokers.
- Every regulation currently stands relaxed, particularly for fundraising.
- In some cases, existing regulations have seen quick, successive tinkering. For instance, the regulations for Real Estate Investment Trusts (REITs) & Infrastructure Investment Trusts (InvITs) have seen five amendments in the past three-and-a-half years.
- Norms for credit rating agencies have gone through more than six tweaks in the past four years.
- But of its 700-employee workforce, only about 200 employees are in investigations & enforcement.
- Clearly, Sebi doesn't have the bandwidth to tackle each & every disclosure violation.
- For comparison, the US Securities and Exchange Commission (SEC) has close to 1,500 employees doing this role.
- As per the latest data, a whopping 408 enquiry proceedings are pending with the Board.
- These are over and above the close to 1,400 probes and investigations pending with individual officers at Sebi.
- Sebi has also come out with a settlement scheme 2020 for entities which misused the stock exchange platform for tax evasion.
- This one-time settlement scheme could reduce the case backlog at Sebi by at least 10-15%.
- If we look at the past three Sebi chairman, they have all ushered in big reforms.
- Under M Damodaran, it was cracking down on the opaque system governing participatory notes (p-notes).
- CB Bhave reformed mutual fund distribution & curbed mis-selling.
- Taking a cue from the Sahara scam, UK Sinha successfully lobbied with the centre to get the market regulator more powers to pass orders on collective investment schemes (CIS).
- The SEBI (Prohibition of Insider Trading) Regulations, 2015 intends to regulate the rights of insiders to trade in the stocks of their company, not to banish them completely from holding and selling any stocks in their companies.
- SEBI does not have the power to wiretap phone calls, a crucial tool used by other jurisdictions such as U.S. in obtaining evidence against insider trading suspects for the purposes of investigation and successful conviction.
- In some ways SEBI has more powers than the SEC, but it has failed to utilize it to the fullest.
- While it is fair that SEBI has demanded additional powers from the Government to conduct searches and seizures, obtain call records, wiretap suspects.
- SEBI has the power under section 15G of the SEBI Act to impose a penalty of up to INR 25,00,00,000 (approximately USD 3,905,000) or three times the amount of profits made, whichever is higher.
- However, the maximum penalty SEBI has ever imposed is only INR 60,00,000
- SEBI has the power to petition before a criminal court and institute criminal proceedings against a person. If convicted, the person can be imprisoned for a period of up to 10 years. However, no one has ever been sent to prison for insider trading, even in the fairly big cases.
- SEBI does not have the human resources to conduct a thorough investigation
- The regulator & the citizens must have a cordial and mutually respectful relationship
- Grievance redressal should be achieved through dialogue, mutual trust and confidence.

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