ABSTRACT

Securities market in India has witnessed tremendous growth during the last fifteen years in terms of number of companies, capitalisation, increase in number of investors, stock exchanges, turn over, and mutual funds etc. The economic liberalisation and various reforms in the country have also acted as catalyst in the development of securities market. The liberalization measures taken by government have also facilitated the globalization of the Indian securities market. This has brought notable changes in securities market and has changed investment scenario in the country. On the other hand, ever-expanding investors population and market capitalisation has also led to variety of malpractices on the part of the companies, brokers, merchant bankers and many other market participants in new shares and stocks in India.

Thus, the government felt a strong need of a regulatory body which could monitor and supervise securities market. SEBI was constituted in 1988 and it obtained its statutory character in 1992 after the enactment of SEBI Act, 1992. SEBI is primarily constituted to regulate and promote securities market. Concurrently, it is also the duty of SEBI to protect the interest of investors. Thus, SEBI is operating and functioning in the market from almost last fifteen years (after having its statutory character). How far it has achieved its goals?

It is, in this context that this study has been carried out. The study has used doctrinal method of research. Accordingly data has been collected from various journals, magazines, committee reports, statutory material of India and other countries, published books, internet etc. The method is used to
analyse different enactments, regulating securities market in India. The study has focused on Indian securities market particularly the market regulator SEBI. The study has aimed to ascertain how far SEBI removed the abusive corporate activities and malpractices from securities market and to evaluate the functioning of SEBI. Therefore, in this study historical scenario of securities market and its regulation has been discussed to identify the present status of market. This study is an attempt to discover the facts like whether SEBI is adequately empowered to discharge its responsibilities and duties? And how far is it exercising those powers? The study has also focused on the reforms made by SEBI in primary as well as in secondary market to increase transparency and stability in the market.

For above purposes the study has provided a formal discussion on securities market, which consists of two interdependent and inseparable segments; primary and secondary market, as without understanding securities market it will not be possible to understand the role and functions of SEBI in market. The primary market deals with the new securities and the secondary market provides liquidity to the investments made in the primary market. The issuers of securities issue new securities in the primary market to raise funds for investments or to discharge some obligations. The funds in primary market may be raised through offer for sale, private placement, right issues and public issues. It is a public issue in which any body and every body can subscribe for the securities.
Secondary market enables participants who hold securities to adjust their holdings in response to changes in their assessment of risk and return. They also sell securities for cash to meet their liquidity needs. Secondary market further has two components, namely over the counter (OTC) market and stock market. OTC markets are essentially informal markets where trades are negotiated. Most of the trades in government securities are in OTC market. The securities traded in the stock market are freely transferable. It enables the investors to sell or purchase the securities at fair prices, which is determined by the supply and demand factors.

Securities market facilitates transfer of resources from savers to the users means the actual utilisation of savings for the purpose of economic growth of the country. The market assists in mobilizing the funds from the savers and transfers these funds to the borrowers for the purpose of production i.e. an important requirement of economic growth. However, the market does not work in vacuum and it requires the services of various intermediaries like brokers, sub-brokers, merchant bankers, underwriters, registrars to an issue, bankers to an issue, share transfer agents etc.

The problem chosen for the study is how far SEBI has succeeded in removing the malpractices from securities market and improving the trading conditions in market. In view of this, the present study has been divided in seven chapters.
Chapter one deals with the growth of securities market during 1990-91, earlier studies related to this study, present study, objectives of this study and the methodology of the study.

Chapter two contains the general idea of securities market. It deals with the functions of the primary market i.e. origination, underwriting and distribution of securities. It also deals with the players in securities market, their regulation by SEBI and the methods of the floating of securities in the primary market. A discussion on the legal provisions and SEBI guidelines regarding the issue of securities has also been made.

Chapter third devoted to the discussion on the secondary market or stock market. It deals with the origin of stock market in India. The functions and role of the stock exchanges have also been discussed. It deals with the procedure of trading in stock exchanges, reforms made by SEBI regarding secondary market and the regulation of securities market in India, both historical as well as present statutes governing securities market in India.

The constitution, management, powers and functions of SEBI under different acts have been discussed in the fourth chapter. It also undertakes a critical analysis of the constitution of the SEBI and inadequacies in the functioning of SEBI. It also shows the condition of securities market in India before and after 1992.

The fifth chapter highlights the existing abusive corporate activities and the other problems in securities market, the manner in which SEBI is
exercising its powers and a critical analysis of the role of SEBI in the recent securities market scams.

The sixth chapter deals with general aspect of regulation of securities market in USA and UK. It deals with the statutes, which substantially regulate securities market in USA and UK. It also has a discussion on the powers and functions of SEC and FSA.

The last chapter contains the findings and suggestions. In the light of the findings various suggestions have been made for the better functioning of SEBI and for improving the regulatory framework of securities market.

The history of securities market discussed shows that without regulation of securities market it cannot work in an efficient manner. The Indian securities market is primarily govern through the four main legislations i.e. the SEBI Act, 1992 which establishes SEBI to regulate and promote securities market and to protect investors from the market abuses, the Companies Act, 1956 which sets out the requirements of issue, allotment, disclosures to be made in the public issue etc., the Securities Contract (Regulation) Act, 1956 which provides regulation of transactions in securities through control over stock exchanges and the Depositories Act, 1996 which provides electronic maintenance and transfer of ownership of demat securities. The responsibility of regulating securities market is shared by DCA, DEA, RBI and SEBI. However, SEBI is primary body particularly constituted for the regulation of securities market.
The study reveals that SEBI is not an autonomous or independent body though it is intended as one and it is working under the strict control of central government. Excessive government control leads to arbitrary decisions making corruption. Moreover, the powers entrusted to SEBI are actually vested in one person that is chairman of SEBI. Thus, there are erroneous chances of misuse of powers and it also diminishes the authenticity of SEBI’s orders and decisions.

The study highlights that originally SEBI was entrusted a bundle of responsibilities and duties however, it was not adequately authorised and empowered to discharge those responsibilities and functions. It was not efficient to deal with market abuses and defaulters or offenders. Hence, SEBI’s powers extended at various stages to make it competent to achieve the assigned objectives. Now it has gigantic powers to regulate the market and prevent the abusive corporate activities prevailing in the market. The powers having been conferred on SEBI much depend upon the manner in which these powers are exercised. Misuse as well as non-use as also the belated use of such powers may virtually frustrate the legislative objective. The study reveals that SEBI is not very successful in dealing with market misconducts and defaults and it hesitate in imposing penalties on the offenders even though empowered to do so. The study also discloses that SEBI has made various reforms in the market, which have transformed securities market to some extent; but, there are some reforms pioneered by SEBI which are really pathetic in the manner they are set up. For example, it has established CLA which is not sufficiently authorised to
perform its duties and moreover it made repetition of efforts on the parts of applicants, it also directed the market participants/intermediaries to appoint compliance officer who is of no use etc.

The study also shows that SEBI’s surveillance and investigation division is extremely meager and unskilled and failed in detecting irregularities and abnormalities in securities market prior to irreparable damage done to market and initiating timely actions against such defaults and defaulters. Therefore, various malpractices and abusive corporate activities continue to exit in securities market and offenders virtually left unpunished after giving the warning even if they are alleged to be involved in price manipulations, insider trading etc.

It is revealed that securities market is still not free from abusive corporate activities and market witnesses regular violations of securities laws, rules and regulations. There are frequent attempts by market participants to manipulate securities prices through circular trading or some other illegal means. SEBI, which is constituted particularly for regulation of securities market and investor protection, has failed to enforce the laws. But SEBI is promoting securities market on the pattern of international standard by introducing various reforms in the market but is not very successful in dealing with the defaulters and preventing the abusive corporate activities in the market. It has prescribed rules, regulations and guidelines for securities market and market participants. Today securities market does not need clogging rules and regulations which will slow business, but a suitable machinery for quickly
identifying and tracking down speculators who are indulging in malpractices, before irreparable damage is done to market. Thus, making rules, regulations and guidelines for the regulation of securities market and its participants does not make any difference until their violations are prevented. SEBI has failed in leaving any deterrent effect on the market participants. It is not sensible to suggest that a new regulatory body or super regulatory body should be constituted for this purpose but there are following suggestions which may be considered for improving the structure, functioning of SEBI and regulatory framework of securities market.

The central govt. should reconsider the independent character of SEBI. At present SEBI is not an autonomous regulatory body. There are various provisions under SEBI Act 1992 which suggest that it is working under complete and strict control of central govt. Excessive government control leads to lobbying, arbitrary decisions making corruption. SEBI is constituted of nine members, of which chairman and five other members are appointed by the central govt. as provided under section 4 of the Act. In this regard it is suggested that all the members of SEBI should be appointed by govt. in consultation with the chief justice of India.

Further, section 5 authorises central govt. to terminate the services of the members of SEBI including chairman at any time. It gives arbitrary powers to central govt. to terminate services of the members. Therefore, it is suggested that the chairman of SEBI should not be removed by central govt. unless on a ground of proved misbehaviour or incapacity after an inquiry by SC
judge whereas other members should only be terminated only on the specified grounds under section 6 of the Act.

The chairman of SEBI has been entrusted with wide powers and there is enormous chance of misuse of those powers. For this purpose it is suggested that all the orders and decision should be taken or passed by a majority votes of the members present and voting.

The post of Adjudicating Officer should be created within SEBI on the pattern of Administrative Law Judge in USA to adjudicate the matters. At present he is appointed by SEBI only if any investigation indicates that violations of the securities laws have been occurred. Qualifications for adjudicating officers should also be prescribed.

SEBI should first develop faith among market participants and they must believe that it is working in a fair and impartial manner. At present, most of SEBI’s orders are challenged by the parties and Securities Appellate Tribunal (SAT) does not always agree with the market regulator. Recently, SAT set aside an order of the SEBI against an investment arm of Swiss banking giant UBS. The order of SAT extended the already long list of cases where the tribunal did not agree with the market regulator. Prior to that in 2002, SAT had set aside SEBI’s order banning Sterlite Videocon International and BPL from accessing the capital market for alleged price manipulation as discussed. Therefore it should work in an impartial manner.

SEBI should be more sensitive to investor’s needs and problems. The market’s growth and healthy functioning depend on the confidence, which
investors have in the market’s mechanism. Genuine investor’s participation in the market can be increased only by building his confidence that he will be effectively protected against market abuses and lapses. Such confidence continues to be weak in India despite the reforms made by SEBI so far.

The investors should also come within the purview of SEBI. The investors / clients giving false information regarding their financial status should also be punished. Many a times they mention the wrong particulars in the registration form with the brokers.

Under SEBI Act 1992 two alternative types of punishment for violations of the provisions of the Act in addition to prosecution and directions have been provided. They are suspension or cancellation of certificate of registration to be imposed by SEBI and monetary penalties to be imposed by an adjudicating officer to be appointed by SEBI. Therefore, if the violation is assigned to an adjudicating officer, SEBI loses control over the case and the adjudicating officer decides the case on merit. The adjudicating officer can at best impose monetary penalty even if he finds that the violation really warrants suspension or cancellation of registration. Similarly, if SEBI initially considers a case for suspension or cancellation, it cannot impose monetary penalties even if it concludes that the violation warrants monetary penalties. This happens because SEBI does not have power to impose monetary penalty and the adjudicating officer does not have the power to suspend or cancel a certificate of registration. Thus, adjudicating officer should also be authorized to award suspension and cancellation of registration certificates.
Today, apart from the Companies Act 1956 securities market is governed by the provisions of Securities Contract (Regulation) Act 1956, The SEBI Act 1992 and various rules, regulations, notifications made thereunder and Depositories Act 1996 etc. leaving alone the compliance aspect, even in administering of these provisions, there arises an unnecessary duplication. Therefore, there is an urgent need to bring about a comprehensive law integrating the different provisions in different statutory enactments into one unitary law. Similarly, securities market is regulated by many regulators i.e. SEBI, RBI, DCA, DEA, ROC etc. Therefore, as a first endeavour SEBI should be given its autonomous status as discussed and thereafter it should be the only authority to regulate securities market.

Lastly, securities market supervision is labour intensive and relies for success on the commitment, judgment and skill of the personnel involved. Conferring additional powers on SEBI would not make much difference unless it has right quality and quantity of people to administer the Act. It presently has 217 officers and 147 staff members at different branches that is not sufficient in view of the duties and responsibilities it has to perform. The staff strength at SEBI should be increased to meet the challenges and rigors of administering a securities market.