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Legislative Framework for Capital Market Regulation in India and USA: A Comparative Study

Abstract

A capital market a set of complex and closely connected financial institutions, instruments, agents, markets and so on which are interdependent and interlinking with each other to produce the economic growth within the country. The legislative framework for the capital market regulation mainly developed in the USA, the US economy having the most deepening capital market in the world therefore mainly developing and developed economies in the world followed the US capital market legislative framework for the purpose of regulation of the capital markets in their economies. The present research paper on focuses the comparative study of the legislative framework in the US and the Indian. In this research paper researcher pay due considerations on the effectiveness of the legislations made for the purpose of the capital regulation in India with the working of the law made for the same purpose in the USA and to find out how the Indian legislation could be more efficient.

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Introduction

The legislative and regulatory framework for the capital market regulation in India has been growing in order to develop a capital market in the tune with the International behavior of the securities and derivative markets, therefore, in India there are various laws which are friendly with the capital market regulation and attracts the more and more participation in the such markets. In order to regulate capital market in India has enacted the Securities and Exchange Board of India Act, 1992 (SEBI) and the Indian Companies (Amendment) Act, 2013. The Securities and Exchange Board of India is the main regulatory body in the India which has power to make rule and regulations in India in order to orderly and smoothly function of the capital market in India. It has enacted by the Act of 1992 since its inspection the Indian capital market and securities market have been growing tremendously[1]. The capital market regulation and the legislative framework are correlated in the development in the capital market regulation as the changing characters of the capital market along with the international degree of capital integration in the capital market of India. The legislative framework on the foreign listed companies in the Indian capital market has been also growing with a high degree of integration of finance capital after the introduction of the Indian Depository Receipts in 2000. The another important reforms that Indian Capital market requires is that ignoring the multiplicity of the legislative framework which may be a hurdle in the growth of the capital market in order to attract the foreign capital market. In this paper researchers will compare the legislative frame work of USA and India and try to find out certain suggestions on this issue.

Objectives of the Study

1. First objective of the research work is to find out the effectiveness of the legislative framework for the capital market in India with a comparison of legislative framework for the capital market in United States of America.
2. Second objective of the research work is to find out the challenges arising out due to the fast changing nature of the capital market

caused by the globalization and deepening of capital markets in both countries.

Review of Literature

Baumol (1965) made a principal contribution to a better comprehension of the performance of the stock market. His book constitutes a synthesis of past research and contemporary thinking on the subject. It analyses the detail of both the short-run and long-run price equilibrating processes and points out major departures from the competitive ideal and the inferences of these departures to stock market efficiency quite considerably. Besides, Baumol extended his own hypothesis on the pricing of securities, and he sheds new light on the overall efficiency of the stock market as a mechanism for allocating the nation ' s capital resources.

Bhatia (1970) has done an evaluative study of the New Issue Market (NIM) for the period 1958-1973. The role of the financial institutions in the NIM has been recounted and evaluated. The study manifests that a new class of middle - income individual investors have become apparent as an important supplier of the risk in the risk capital.

Gupta (1972) in his book has considered the working of stock exchanges in India and has stated a number of propositions to improve its working. The study highlights the' requirement to regulate the volume of speculation so as to serve the needs of liquidity and price continuity. It recommends the enlistment of corporate securities in more than one stock exchange at the same time to enhance liquidity. The study also suggests the cost of issues to be low, in order to protect small investors.

Mc Kinnon and Shaw (1973) advocate liberalisation of financial market,. They argue that state intervention in setting interest rates and quantitative measures of resource allocation adversely affect, not only allocative efficiency but also depress the aggregate saving rate in less developed economies.

Blume and Friend (1978) state that the percentage of stocks owned by institutional investors in America has increased sharply, on the other hand that owned by individual investors has decreased. They inspect the effects of the shift in stock ownership from individuals to institutions on the coherence of equity market. The pros and cons of countless proposals are also examined by them for improving the market securities. Transactions by individuals have always been contemplated as indispensable to both liquidity and the efficiency of the market.

Gupta (1981) in a voluminous study titled `Return on New Equity Issues' states that the investment performance of contemporary issues of equity shares, especially those of new companies, deserves discrete analysis. The aspect which is significantly influencing the rate of return on new issues to the original buyers is the `fixed price' at which they are issued. The return on equities incorporates dividends and capital appreciation. Title study accords sound estimates of rates of return on equities, and scrutinize the variability of such returns over time.

Cho (1986) argues that financial market liberalisation may remain, deficient without an efficient market for equity capital as a means of extending risk and reward.

Feldman and Kumar (1995) explore the potential benefits of equity markets to developing countries. They assert that several constraints avert banks from providing funds for long-term investment. Upgrading the functioning of secondary market trading has the added edge of facilitating the primary issuance of equity shares.

Shirai (2004) analyses the influence of financial and capital market reforms on corporate finance in India. India’s financial and capital market reforms since the early 1990s have had a pragmatic impact on banking sector as well as capital markets. Nevertheless, the capital markets remain superficial, peculiarly when it comes to differentiating high-quality firms from low-quality ones (and thus lowering capital costs for the former compared with the latter). While some high-quality firms (e.g., large firms) have replaced bond finance for bank loans, this has not happened to any remarkable degree for many other types of firms (e.g., old, export-oriented and commercial paper-issuing ones). This contemplates the fact that most bonds are privately placed, exempting issuers from the rigorous accounting and disclosure requirements requisite for public issues. As a result, banks remain crucial financiers for both highand low-quality firms. The paper argues that India should build an infrastructure that will stimulate sound capital markets and strengthen banks’ incentives for better risk management.

Chhaochharia (2008) arrives at the inference that India has a more modern financial and banking system than China that assigns capital in a more efficient manner. However, the study is skeptical about who would come out with the stronger capital market, as both the countries are facing challenges in respect of their capital markets.

Weaver (2011) examines trading in more than 4,000 U.S. stocks and concludes that increased dark trading is incorporated in a linear fashion with wider spreads and higher volatility.

Jiang, McInish, and Upson (2012) and O’Hara and Ye (2011) address off exchange fragmentation in U.S. equities during a time period when off-exchange volume comprises a significant amount of volume from both lit venues and dark venues. Both the papers discover that increased levels of off-exchange fragmentation are related with refined market quality. Interpretation of their results is difficult, however, because their computation of fragmentation encompassed a large amount of both lit and dark venue volume. Each paper evaluates fragmentation as the degree of off-exchange trading in U.S. equities during the first six months of 2008, when two lit venues appear to have executed approximately 50% of off-exchange volume.24 The papers inevitably do not allow finer distinctions regarding the respective effects of visible and dark fragmentation on market quality.

Hatheway, Kwan, and Zheng (2013) analyze a sample of 116 U.S. stocks also stratified across market capitalization. They discovered that non-block dark trading volume is associated with lofty market-wide business controlling costs, but only when controlling for the level of informed trading on a particular day. Particularly, when they pertain to one of the models used in O'Hara and Ye (2011) to their data sample (which does not include remarkable amounts of lit trading volume, as did the O'Hara and Ye (2011) sample discussed above), they figured out that dark trading volume is associated with restricted effective spreads. But, while controlling for the level of informed trading on a particular day, they found out that non-block dark trading volume is associated with extensive effective spreads and lower price efficiency.

Lauren Cohen & Christopher J. Malloy (2018) The most comprehensive information windows that firms provide to the markets—in the form of their mandated annual and quarterly filings—have changed dramatically over time, becoming significantly longer and more complex. When firms break from their routine phrasing and content, this action contains rich information for future firm stock returns and outcomes.

(Sheng Cao & Xianjie He) 2018 This study is the first to examine analysts' incentives vis-à-vis the government in a context where government has the ability and motives to influence capital market institutions. The paper highlights the role of government incentives in analysts' behavior and output.

Rebecca Henderson & Karthik Ramanna (2018) In whose interests should managers act, particularly when structuring market regulations in highly technical or specialized matters that are largely outside public purview? This paper raises questions about the role of managers in sustaining the conditions for market capitalism to achieve its normative objectives.

Legislative framework in India

The Securities Contracts (Regulation) Act, 1956

The Parliament of Indian enacted the Securities Contracts (Regulation) Act, 1956 in order to avoid the undesirable transaction in the capital market in India to bring the uniformity and transparency in the capital and securities market in the India. The transactions, shares, equity, securities, debenture stock and other tradable instruments in the capital market age traded according this Act.

The concept of Ombudsman

Section 11 of the SEBI Act it is one of the duties of SEBI to protect the interests of investors in securities market by taking necessary measures and steps as it deems fit. SEBI had been receiving complaints from the investors and financers against listed companies in the capital market particularly in matters of non receipt of refund orders, non receipt of shares certificates/ unit certificates, non receipt of dividend etc. A large number of complaints in the capital market are against intermediaries regarding deficiency of service. Therefore, issue of an alternative reprisal mechanism which is cheap, fast, informal and efficient has gained attention of SEBI. SEBI is exploring various avenues such as a scheme of Ombudsman.[1] The Joint Parliamentary Committee on Stock Market Scam and Matters Relating Thereto in its Report recommended that there is need to have an independent look at resolution of investor complaints against companies and market intermediaries. The Committee recommended that the concept of Ombudsman, which is already being used in the Banking Sector, should also be extended to the capital market. The issue of power, duties and responsibilities of the Ombudsman should be suitably worked out. As regards, investors complaint against broker and other market intermediaries, Arbitration Councils at exchange level can be used for resolution of investors complaints. Such body would be independent of market intermediaries, particularly the brokers.

Restructuring of Management of Subsidiaries

Some deficiencies were revealed in the functioning and risk management systems of the subsidiaries of stock exchange during their inspection[2].

Willful Defaulters Restrictions

"The Master Circular on 'Willful Defaulters' issued by the Reserve Bank of India lays down certain protection principles to be exercised by banks and financial institutions from time to time to contain the financial activities of willful defaulters Restrictions of Access to Willful Defaulters from Accessing Funds from the Public" [3].

Legislative framework in USA

The stock exchange markets in USA have been emerging since 1790s, popularly known as Buttonwood Agreement in May 17, 1972 which was signed by 24 stock brokers those were not the member of the New York Wall Street. Later on this Buttonwood Agreement came to known as Big Board.

The U.S. Securities and Exchange Commission

1. The United States Security and Exchange Commission: It was established in 1934 by the US Congress. It is the first federal agency to regulate the capital, security and derivative markets in USA. The United States Security and Exchange Commission is an independent federal agency which is fully responsible for the protection of the interest of the investors in the capital markets. It regulate and maintains orderly, smoothly and fairly functioning of the capital and its derivative markets. It is the largest agency in the US which facilitates investment and both capital formation and capital accumulation. It is one of the institutions in US which is the main source of economic growth both for the federal and the states. The United States Security and Exchange Commission has three main important functions;

i. Protect the interest of the investor**:** by protecting the interest of the investor the United States Security and Exchange Commission increases the participation and extent of the US securities and derivative markets.

ii. Maintain Fair and Efficient Market: the United States Security and Exchange Commission has maintained the markets in order to increase the fairplay in the market, promotes healthy environment with minimum speculation and reduces the unnecessary risk in the capital and derivative markets.

© Promote Capital Formation: the United States Security and Exchange Commission by channelizing and maobilising available savings and funds both in the domestic and international markets promotes capital accumulation and capital formation, further, this amount of capital formation increases the productivity in the US economy..

The Securities Act of 1933

"The Securities Act of 1933 and the Securities and Exchange Act of 1934 provided the basic statutory framework for the SEC's regulatory efforts to acts together and to enforce both the disclosure of financial data for new issues of securities and the regular reporting of data by any company with publicly traded securities in the secondary markets and it forms part of the 1933 Securities Act, the SEC was given the authority to set accounting standards for reporting financial information"[4].

U.S. Securities Exchange Act of 1934

"Registering a class of securities under the U.S. Securities Exchange Act of 1934 (the "Exchange Act") in connection with a U.S. stock exchange listing; and meets reporting obligations under the Exchange Act, Readers are encouraged to refer to the Appendices to this publication for some practical guides and answers to some of the more frequent questions that arise during the course of an offering, It also discusses some typical challenges that may arise in connection with these transactions based on our experiences".[5] In addition, Section 14A (a) of the Exchange Act requires the following in annual proxy statements:

1. not less frequently than once every three years, a separate resolution subject to shareholder vote to approve the compensation of the named executive officers, often referred to as "say-on-pay"; and
2. not less frequently than once every six years, a separate resolution subject to shareholder vote to determine whether votes on "say-on-pay" will occur every one, two or three years, furthermore, Section 14A(b) of the Exchange Act requires, in connection with any proxy statement demanding a shareholder vote to approve an acquisition, merger, consolidation or proposed sale or other disposition of all or substantially all the assets of the company, a separate resolution subject to shareholder vote to approve any socalled "golden parachute compensation", i.e. agreements or understandings that the company has with any named executive officer concerning any type of compensation (whether present, deferred or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale or other disposition of all or substantially all the assets of the company and the aggregate compensation that may be paid or become payable to or on behalf of such named executive officer."[6]

U.S. Congress as the U.S. Sarbanes-Oxley Act of 2002

Both the Congress securities laws and rules of the principal U.S. stock exchanges contain directives with respect to the structure, operation and disclosure in respect of a company's corporate governance. Many of these directives were implemented through such seminal acts of the U.S. Congress as the U.S. Sarbanes-Oxley Act of 2002.

Internal Control over Financial Reporting

An Annual Report on Form 10-K must contain a report of the company's management on the company's internal control over financial reporting, which are compliance oriented controls meant to ensure that the company has a formal system of policies in place to ensure acceptable bookkeeping under generally accepted accounting principles in the United States (GAAP). The need to implement appropriate internal control over financial reporting, as well as periodic reviews and updates to those internal controls over financial reporting, well in advance of an IPO is important because a public company is subject to a strict deadline to file its annual report and faces significant negative consequences for failure to file on a timely basis.[7]

A Comparative Study of Indian and American Capital market regulations

"Not only in Asia but also at the global stage the Indian stock exchanges hold a prominent place. The Bombay Stock Exchange (BSE) is one of the oldest exchanges across the world, while the National Stock Exchange (NSE) is among the best in terms of sophistication and advancement of technology. The Indian stock market scene picked up pace after the opening up of the economy in the early nineties. The whole of nineties were used to experiment and fine tune an efficient and effective system."[8]

After the enactment of the SEBI, All Indian companies desirous of affecting a buyback have to abide by the provisions of Sections 77A, 77AA and 77B of the Companies (Amendment) Act, 1999 as modified subsequently. Of these three Sections, Section 77A lays down the eligibility criteria for buyback and outlines the requirements to be fulfilled on buyback like :

1. authorization in the company's articles;
2. special resolution in general meeting where buyback is more than 10% of the total of paid-up capital and free reserves or otherwise board resolution [such a clause inserted by the Companies (Amendment) Act, 2001 has amended the earlier provisions of 1999 Amendment Act which required the companies to pass a 'special resolution irrespective of the percentage of paid-up capital and free reserves bought back;
3. Buyback not being more than 25% of the total paid-up capital and free reserves provided that buyback of equity shares in any financial year

does not exceed 25% of its total paid0up equity capital in that financial year;

4. financing of buyback out of the company's free reserves or securities premium account or proceeds of any shares or other specified securities not being an earlier issue of the same kind as those bought back;
5. The securities purchased again by a company through any of the above methods may either be treated as "cancelled" and hence compulsorily extinguished and physically destroyed after completion of buyback or they may be held in treasury for reissue at a later date. However, Section 77 A does not permit treasury operations on securities bought back and requires the Indian companies to cancel and physically destroy such securities within 7 days of the last date of completion of buyback.

Capital Market Regulation and Insider Trading

Insider trading is the economic activity which is usually undisclosed transaction in the capital market and on the basis of the information which is sensitive and non public while dealing in capital market. All most all the countries which having the developed capital market in their economic life practicing insider trading every day.[9]

Generally, insider trading means when the transactions are made on the basis of the information which is not accessible to the general public[10].

US Insider Trading Laws

Securities and Exchange Commission (SEC), subject to the regulation of multiplicity, ambiguity and complexity of U.S. law in the insider trading area, the regulatory and legislative framework on insider trading suggested by the Congress and the Securities and Exchange Commission(SEC). It suggested assessing that in certain other countries and determining their feasibility by the following to the U.S. system. It may eventuate and key principles readily can be implemented, advised and suggested from favored securities market jurisdictions in order to enhance and stable the clarity and efficiency of the U.S. framework.

The Securities Exchange Act of 1934**,** was the first Congress law to regulate securities trading. It was passed by Congress and signed by President following the 1929 stock market crash during the great depression. Under this Act, the US Securities Exchange Commission (SEC) was created to regulate, supervision and oversee the US securities markets transaction and to prescribe rules and regulation to protect investor’s interest and keep the markets free from fraud and unlawful.

In Salman v. United States,[11] the Supreme Court of USA mentioned, “the taking unfair advantages by the insiders by disclosing the material information which is non public and sensitive to the market price which held or obtain mainly to take unfair advantages by acting in the personal or by holding the any key position in the company and decision making, although the decision of the Supreme court was very surprisingly and its alignment set as a clear precedent from a narrow resolution to the wider resolution and set standards and measures to tackle the problem of insider trading, the sensitive information sharing which is non public in nature and sought guiding to the market amounts to the insider trading”.

United States v. Newman[12] that, “insider trading liability required more Specifically, the government needed to show “proof of a meaningfully close personal relationship” between the tipper and the tippee “that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.”

The Supreme Court’s in recent years shaping the doctrine began shortly thereafter in Chiarella v. United States[13] **“**when it rejected this parity approach in favor of one focused on the breach of a duty The Court’s mission since has been to define the exact contours of the duty breached when insider trading occurs. In Chiarella, the Court took its first crack at defining the doctrine by announcing what has come to be known as the “classical” theory.”

Regulation regarding the Insider trading in India

The Security Contract Regulation (Rules) 1957 also transfer to SEBI and all power under these rules also transferred to the SEBI and decided to empower the SEBI more power required in the near future. Majority of the countries promoting the security regulation with primarily aim to fair and full disclosure of the sensitive information and material information which are the specific to the security market. It required the all financial reporting system to act together in the consolidation manner as to present all the investor and participant ot the capital market to act in the regulation framework. Insider trading activities could undermine confidence of securities market.[14] A series of committee reports and study groups advised and recommended its strict regulation; as a result, a regulatory authority was set up in 1992.[15]

There are following the some important committees which suggested time to time different measures, the important recommendations of the committees as followings;

Sachar Committee (1979), “the High-powered Expert Committee on Companies and Monopolies and Restrictive Trade Practices Act (MRTP) (Sachar Committee) was constituted in June 1977 for reviewing of the Companies Act, 1956 and the MRTP Act, 1969, in 1979, the Sachar Committee submitted its report, the Committee made two-fold recommendations - one relating to full disclosure of transactions by those who have made price sensitive information and another; prohibition of transactions by such persons during certain specified period unless there are exceptional circumstances, among the insiders, a company director, statutory auditor, accountant, tax and management consultant or advisor and legal advisor etc. could indulge in such activities, they were prohibited from purchasing or selling shares prior to and after two months of the close of the accounting year unless permitted by the Board” [16].

B. Patel Committee (1987), “the Government of India constituted a High-powered Committee (Patel

Committee) in May 1984, to make a comprehensive review of the functioning of the stock exchanges and to make recommendations in the matter, the committee's final report took a serious view of the absence of specific legislation in India curbing misuse of insider information and recommended strict penalties for the offence of insider trading, in its report it has been found that insider trading is rampant in stock exchanges in the country and is one of the principal cause of excessive speculative activity, to establish healthy and transparent practice in stock exchanges and to sustain the confidence of the investors such trading should be regulated by law".[17]

Abid Hussein Committee (1989), "the insider trading should be made as a major offence punishable with civil penalties as well as criminal proceedings, the problems of insider trading and secret take-over bids could be tackled largely by appropriate regulatory measures, it was suggested that the SEBI might be asked to formulate the necessary legislation and be equipped with the authority to enforce the provisions"[18].

Self Regulatory Organisations and Insider Trading Regulations

Self regulatory mechanism that an organization develop and implement the system which enforced and monitors against the company's own internal administrative and other decision making agents in order to ignore the insider trading practice or any other practice which is amount to insider trading. Self regulatory agencies such as the internal set up for the company's own or any organization's own mechanism to prevent their decision or transaction from any activity which is directly or indirectly amounts to insider trading in the capital market.

Insider Trading and the Stock Exchange Board of India

The Security and Exchange Board of India (SEBI) established in 1991 earlier authority was the Controller of Capital Issue which was regulating the capital market in India, it was established in the 1947. SEBI was also first set up by the order of the president in 1988.

SEBI (Prohibition of Insider Trading Regulations) 1992

SEBI is empowered to take measures to prohibit and prevent the insider trading in order to protect the interests of the both investors and companies in India capital market under Section 11(2)(g). Regulation No. 4 deals with the insider trading practice in Indian capital market and defined the insider trading as the offence in capital and derivative markets in India, further SEBI defined definition of the insider in capital market dealing and transaction made in the derivative markets which are amount to the insider trading under the Regulation No. 3. SEBI defined that that who dealing in the capital market or securities market with the prohibited communication, prohibited counseling and prohibited dealing, for the purposes to take the unfair advantage in the Capital market on the basis of the unpublished price sensitive information.

Penal Provisions for committing insider trading in Indian Capital Market

Chapter 6A of the Securities and Exchange Board of India Act 1992 laid down the provisions regarding the fines, cash penalties as well as penal provisions. Offenders in capital market and derivative markets or violation of any rule and regulation of the law on the insider trading may be punished by the SEBI also.

Section 24 of the SEI Act is dealing with the criminal offences in capital market and also laid down the penalization of the offender. Section 15A of the SEBI Act laid down the procedure on the failure of the companies, individual and organization to furnish the information of their transaction amounted to insider trading and covered under the penal provisions of the whole act.

"Section 15G of SEBI Act, 1992 has empowered SEBI to impose penalty for committing insider trading by the insiders where in any insider who on his own behalf or on behalf of any other person deals in securities on the basis of any unpublished price sensitive information or communicate any unpublished price sensitive information to any person with or without his request or counsels or procures any other person to deal in any securities of anybody corporate on the basis of unpublished price sensitive information shall be liable to a penalty of rupees twenty five core or three times of the amount of profits made out of insider trading whichever is higher and it was rupees five lacks before amendment of the regulation in 200 which made this amount quite meager in relation to profit earned or loss avoided by the insiders from the insider trading"[i].

Securities Appellate Tribunal is bound to follow the provisions of the Code of Civil Procedure, 1908 and also entertain a suit in the following matters:

1. enforcing and summoning the attendance of any person and examining the oath in the connected usual course of the business, and
2. dismissing application on the occurrence of the default or dispute decided as ex parte,
3. issuing commissions in order to conduct the examination of the documents and the witnesses,
4. setting aside any order and decision of dismissal of any application for the default and any order passed as ex parte,
5. any aggrieved person under the provision laid down by the SEBI has right to make an appeal in the Securities Appellate Tribunal.

SEBI (Prohibition of Insider Trading) Regulations, 2015

"The new Regulations chalk out a comprehensive manner, stricter and more focused regulatory regime and have put in place a stronger legal and enforcement framework for prevention of Insider Trading wherein the penalties imposed under the Companies Act, 2013 and the SEBI Act, 1992 for non-compliance and contravention of these Regulations are huge and this has also been uploaded on the MMFSL intranet portal"[ii].

The important Provision of the Regulation 2015

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"There shall be prohibition on all designated persons for exercise of ESOPs during the trading window closure period and there shall be prohibition on all designated persons for exercise of ESOPs for six months after sale of shares, and vice versa and there shall be no contra trade even in case of ESOP, while the Regulations prescribe that every employee shall disclose to the Company (*Compliance Officer*) details of the trade within two trading days of the transaction.

Conclusion

The capital market regulations in India have been developing since the Securities and Exchange Board Act, 1992 and other agencies such as Deposit Insurance and Credit Guarantee Corporation which was subsumed into Resolution Corporation and Public debt Management Agency and Financial Redressal Agency along with Financial Sector Development Council these are agencies playing an important role in the capital, securities and debenture markets. The capital market regulation and the legislative framework are correlated in the development in the capital market regulation as the changing characters of the capital market along with the international degree of capital integration in the capital market of India.

The legislative framework on the foreign listed companies in the Indian capital market has been also growing with a high degree of integration of finance capital after the introduction of the Indian Depository Receipts in 2000. The another important reforms that Indian Capital market requires is that ignoring the multiplicity of the legislative framework which may be a hurdle in the growth of the capital market in order to attract the foreign capital market.

The Qualified Institutional Placement (QIP) scheme started by the Security and Exchange board of India in 2006 to attract the foreign capital in India which is now the major source of the raising of the capital in India. Under this scheme a foreign company listed in the India stock market can easily convert their shares and other securities such as equity shares in the Indian capital market to Qualified Institutional Buyer (QIB).

The legislative, regulatory and authoritative framework as discussed in this research work provides a picture that there are lack of implementation and enforcement of the framework. As far as legislative framework for Indian capital is concerned it mainly imported from other developed capital market economies which are not suitable for Indian capital markets conditions which is less deepening comparatively.

A comprehensive assessment of the factors affecting to the regulation of capital market along with the different measure attempted to tackle the problems of capital market regulation shows that there is no single factor that can affect the regulation but there are so many economic, social and political factors also. The Indian capital market faces multidimensional problems from policy paralysis to the legislative, executive and delayed in judiciary proceedings.

Suggestions

It should be suggested that there is no single solution and platform for building the breadth and depth of participation in the Indian capital market. Instead, the Assessment indicates there are several and numerous parallel actions and transactions that can be taken, that should result in objective progress. Because these initiatives and measures cut across several institutions, transactions and subject matters, it is also recommended that the SEBI forms a working group of experts to address these reforms / improvements in an integrated such a manner. By including the private sector as well as the interested public bodies, the working group of experts can address these questions not only just from a policy and architectural viewpoint, but also how such changes can be implemented in a practical, effective and impactful way at the business operational level in capital market. It should also be considerable that these suggestions are made against the current backdrop of high volatility and liquidity in the financial system, and the low yields and borrowing rates. Thus, some of these suggestions and measures apply and some are proposed to be prepared for a change in the financial market climate. These suggestions are organized around several broad focus areas.

Emphasis should be on transactional and compliance costs during technical discussions, there appears to be an immediate, urgent and critical need for India policy makers to explore how regulatory framework can be responsibly reduced. At the US level, SEC is encouraged to be proactive in the process, in such a role in defense of the US capital market specificities and transactional, but also recognizing that the Indian capital market which is the largest among the thirteen most recent entrants to the India capital market.

The structure of the SEBI a first goal of the strategy could be increasing the number of corporate securities handled by the capital market. It will build financial strength I the capital market within the infrastructure. A second target could be increasing trading on the organized capital market. The strategy might also seek to harness the strong areas of the financial sector including the banking system and government securities market. In order to stimulate interest in the equity and share and other derivative market, the Government is encouraged and allowed to examine the remaining inventory of Public enterprises listed as companies to see which can be privatized, with a view to enhance and tranche reserved for retail investors.

Regulation regarding the insider trading in India not as strong as the changing international capital market. The regulations are weak and the implementation of the regulation is also weaker the many developing countries in the world which are below the standards of the international standard.

The SEBI guideline on the credit rating agencies in order to maintain the efficiency of such credit rating agencies which impact the international capital inflow and outflow in India. SEBI directed the rating agencies that they must be unbiased, fair and

take care of the conflict of interest of the different player and investors in the capital market. SEBI after inviting the broad level suggestions and on the credit rating agencies, directed to the agencies that rating must be unbiased and the methodology of the rating agencies must be suitable to international standards and in such manner which should be according to the national framework on the implementation and legislative frame on the rating agencies.

The framework on the insider trading in the in by SEBI is defined as the practice which is the not according to the information as 'generally available information' regarding the insider trading. The administrative delayed regarding the decision making process in the Securities and Exchange Commission is very serious problem in the USA even there is provisions of the online interaction with the authorities but there are delayed on the part of the authority which is responsible for the dealing in the particular capacity in the USA capital market.

There are several laws dealing in the securities markets in USA such as Commodity Futures Modernization Act, which established the regulatory framework on products traded in the future trading market along with the Commodity Futures Trading Commission in order to stabilization the capital market in USA. The commission adopted the "Security future products exchanges" to take precautionary measures in the capital market.

Alternative Trading System under the Securities (Exchange) Act established the reporting and record keeping standards for the Alternative trading system and appointed the authorities accordingly. Alternative Trading System is a good mechanism developed by the USA securities market and especially by the the dealing agencies in such markets.

Commodity Futures Trading Commission approved the National Association of securities Dealers Exchange and the New York Stock exchange in order to avoid and prohibit the customer to customer dealing in the capital market the USA.

Another important weakness of the US capital market is the weakness of the and need for the amendment in the Securities Act, 1933 which is not sufficient to regulate the capital market in the USA. The main problem in the US capital market is the registration process of the companies in the national stock exchanges. The meaning of the term 'Registration' is different in the Securities Act and the same is mentioned in the Securities and Exchange Commission in USA. The record keeping on the company side is very difficult and a lengthy process in order to reduce the cost of the company on the name of the regulation and record maintenance in the US capital market.

The major developments have undertaken in the USA capital market after the financial crisis in the USA and Europe after the collapse of the Layman Brothers in the US Financial sectors which change the nature of the issuing of the population which have been the incremental and didn't result in the material change the present structure in the capital market.

The liability in the USA capital market according to the Securities Act, 1933 regime are bifurcated in the occurrence of the insider trading or the regulatory failure of the authority in the present market structure in the capital market regulation.

The Wallman Report on the capital market regulation in the US recommended that registration of the should be optional when companies reached a certain level of threshold and having the a considerable numbers of the shareholder in that company. Further the Wallman Report recommended that all material information should be updated as soon as possible as the company updates its status in the capital

Registered companies while issuing the public offering the capital market the should be maintained the minimum standards for the eligibility for the investor in the capital market that investor should be able in the dealing in the capital market and also understand the prospectus of the companies. The capital market works on the assumption that those investors are the eligible to understand the disclosure of the prospectus of the company. It is further provided that all relevant information which is the disclosure-based regulation must be relied on the investor's eligibility in the capital market.

After the world financial crisis of 2008 the capital markets have been growing all over the world with complexities and more strong rule and regulation in the capital market regulatory and legislative framework in the which is very lengthy and sophisticated which is not corresponding to the increasing population of the investors in the capital market participation.

The Securities Act, 1933 imposes a liability standard in the regulation of the capital market to apply the norms and ethic in the dealing in the capital market regulation in the US security market. The registrations of the companies are the liability of the company for any kind of the loss to the investors in dealing capital market.

There is need to amend the Securities Act, 1933 and to make it more friendly in the tune of the changing capital market nature, participation, extent and global nature of the capital markets not only in the USA but to also attracts the international finance capital all over the world and most importantly the regulation of the capital and derivative markets. The US Capital market should be the ideal and role model of the world capital market by adopting the capital market friendly regulating and legislative framework.

End Notes

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