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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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INVESTOR PROTECTION IN INDIAN CORPORATE LAW - A COMPARATIVE ANALYSIS

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Abstract

This paper conducts a thorough investigation of investor protection under Indian corporate law, using a comparative approach to evaluate its effectiveness in a global setting. The article charts the development of laws protecting investors, highlighting significant turning points and oversight organizations. Setting the foundation for a comparative study is a thorough investigation of the existing legal environment, which includes the Companies Act, 2013, and SEBI rules. In this article, important aspects of Indian corporate law are critically evaluated by drawing comparisons with established rules in developed economies. The comparative research goes farther and investigates effective investor protection schemes throughout the world, offering suggestions for possible improvements for the Indian setting. The part on the future outlook forecasts developments in India's investor protection landscape and finishes with practical suggestions for decision-makers in government, business, and regulation.

Keywords: *Investor Protection, Corporate Governance, SEBI Regulation, Companies Act 2013*

Introduction

Preserving the rights and interests of investors is of utmost importance as it is a fundamental element in fostering trust and confidence in the financial system. This crucial element is an essential part of corporation law and is deeply ingrained in the structure of a healthy economy. Investor protection is more important than just following the law; it is a cornerstone for maintaining market integrity, building resilience, and improving the allure and stability of a country's economic climate.

Fundamentally, investor protection plays a key role in creating a climate in which domestic and international market players may interact with confidence. Strengthening the investor protection system may reduce risks and promote economic growth by guaranteeing that investors receive fair treatment, have access to clear information, and are protected from fraudulent actions. This framework establishes a foundation of stability and security that attracts significant investments from both domestic and foreign sources. An efficient system for protecting investors has far-reaching effects on the economy as a whole. It serves as a stimulant for creativity, motivating companies to conduct themselves honourably and take on projects that advance society.

In the context of a world economy that is changing quickly, India's corporate law system is crucial in determining the direction that the country would take economically. The Companies Act of 2013 and rules issued by the SEBI dominate the corporate legal landscape in India, which is comprised of several legislation and regulations. This legal framework reflects the delicate balance necessary to achieve sustainable economic development by outlining the rights and obligations of corporate entities as well as the criteria for investor protection.¹ Given India's current status as a rising economic power, it is critical to grasp the nuances of investor protection under the country's corporate law in order to fully appreciate the dynamics of its financial markets.

Research Questions

- What lessons may be learned from other countries' successful approaches to improve investor protections, and how does India's corporate law now regulate investor protection in relation to international standards?
- What are the main shortcomings and obstacles in the current Indian framework for protecting investors, and what specific changes and best practices, derived from worldwide experiences, can be suggested to improve the effectiveness of investor protection measures in the Indian business environment?

¹ Pradip Kumar Das, "Corporate Frauds and Crimes Are Stumbling Blocks to Investor's Protection in India: A Review from Legal Perspective," 4, *International Journal of Law Management & Humanities*, 557 (2021).

Research Objectives

- To determine the strengths, shortcomings, and potential areas for improvement in the present investor protection measures in Indian corporation law by doing a thorough comparison study with international norms.
- In order to provide light on the direction of investor protections in the Indian corporate environment, it is necessary to critically examine and analyse the historical development of investor protection laws in India. This will allow for the identification of significant legislative developments and their alignment with international trends.

Research Methodology

With a primary focus on a thorough examination and analysis of the body of extant legal literature, legislation, and regulations relevant to investor protection in Indian corporation law, the research technique used for this work is essentially doctrinal in character. This study attempts to give a detailed knowledge of the present regulatory framework, identify weaknesses, and provide a comparison analysis with international norms in order to evaluate the efficacy of investor protection measures in India through a thorough review.

Literature Review

Greeshma Jayakumar Patil, "Role of SEBI in Investor Protection," 4, *Indian Journal of Law and Legal Research*, 1 (2022)

This article demonstrates how SEBI has successfully improved the security and effectiveness of the Indian securities market. Numerous programs, including the Grievance Redressal Mechanism, Investor Education and Protection Fund, and Investor Awareness Program, have helped to achieve this. The all-encompassing actions implemented by SEBI are intended to protect investors against market intermediaries and issuers engaging in unethical or fraudulent acts. By conducting research and taking necessary action when resolution is not reached by the relevant sector within the allotted timeframe, SEBI is actively resolving investor issues.

Archana Mohanty, "A Brief of Investor Protection in USA: Comparison with Indian Scenario," 4, *International Journal of Law Management & Humanities*, 2236 (2021)

According to this article, investors have a significant impact on market activity levels in the financial and securities markets. For businesses and institutions to flourish, protecting investors is essential. An independent federal organization, the US Securities and Exchange Commission (SEC), is in charge of monitoring and controlling federal security laws, stock exchanges, and investor protection-related operations. The Securities Exchange Act of 1934 and the Securities Act of 1933 are two of the six federal acts that the SEC uses to administer its interests. The SEC is an administrative body with extensive judicial, legislative, and executive authority. Under its provisions, the Investor Protection and Securities Reform Act of 2010 addressed the connections between investors, broker-dealers, and consumers in an effort to strengthen investor protection and the authority of the SEC.

Legal Framework for Investor Protection in India

The main legislative framework that oversees investor protection in India is made up of important legislation and rules that are intended to guarantee responsibility, justice, and transparency in the corporate sector.

In India, the Companies Act of 2013 is a key piece of law that forms the foundation for the management and control of business enterprises. It covers many aspects of how corporations operate in detail, focusing especially on clauses that affect investor protection.² One of the most important parts, Section 166, carefully outlines the obligations of directors in a firm, with a particular focus on their fiduciary duty to shareholders. This section essentially provides a framework for guidance, emphasizing the need for directors to act in the best interests of the shareholders and encouraging responsibility and openness in company decision-making. Furthermore, class action lawsuits, a major new channel of investor recourse, are introduced by Section 245 of the Companies Act. This clause gives investors the ability to jointly seek compensation for any unfair or wrongdoing on the part of a firm, establishing a strong framework for holding companies responsible for their behaviour. This provision strengthens the defence of individual investor rights and advances the general integrity and equity of the business environment by enabling investors to unite in a lawsuit. The Companies Act's incorporation of these clauses shows a strong dedication to protecting investors' interests. It is evidence of the legislative goal to establish a regulatory framework that guarantees a balance between

² Archana Mohanty, "A Brief of Investor Protection in USA: Comparison with Indian Scenario," 4, *International Journal of Law Management & Humanities*, 2236 (2021).

the interests of corporate entities and the safety of shareholders, while simultaneously fostering the effective operation of enterprises.³ The purpose of the Act is to protect the principles of corporate governance and accountability while promoting an environment that is favourable to investment and growth. It does this by taking a nuanced and comprehensive approach. With the main duty of monitoring and regulating the operation of the securities markets in the nation while defending the rights and interests of investors, the SEBI performs a vital regulatory role. The SEBI (LODR) Regulations, 2015, which set strict disclosure requirements for companies listed on stock exchanges, are the cornerstone of SEBI's regulatory system. These rules are carefully designed to guarantee that investors receive timely and accurate information, encouraging openness and well-informed decision-making. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 contain measures aimed at limiting and preventing insider trading. Maintaining an equal and fair playing field for all investors is greatly aided by this collection of laws. The laws prohibit the misappropriation of confidential information for one's own benefit by laying forth strict guidelines and moral principles that organizations and market participants must follow. By doing this, SEBI promotes an atmosphere in which all investors, regardless of their size or power, may engage in the securities market with assurance, understanding that the market's integrity would be upheld. Beyond these particular rules, SEBI is dedicated to maintaining the integrity of the market and safeguarding investors. The regulatory organization has a multipronged strategy that includes enforcement, education, and monitoring to guarantee the general well-being and robustness of the Indian securities markets. SEBI modifies and improves its regulatory structure to meet new problems and be in line with international best practices through ongoing monitoring and sporadic reviews of market activities.⁴

The supervision and implementation of investor protection policies are greatly aided by regulatory organizations like SEBI. As the principal regulator, SEBI plays a variety of roles in establishing market regulations, supervising market intermediaries, and guaranteeing adherence to securities laws. Investor confidence is promoted and malpractices are discouraged by its strict oversight of business operations and enforcement capabilities. Additionally, SEBI regularly participates in programs aimed at educating investors so they may make knowledgeable judgments.

³ *Ibid.*

⁴ Greeshma Jayakumar Patil, "Role of SEBI in Investor Protection," 4, *Indian Journal of Law and Legal Research*, 1 (2022).

The regulatory environment pertaining to investor protection is periodically modified to accommodate the changing dynamics of the business environment. The Companies (modification) Act, 2020 is a notable modification that was introduced in recent years and includes features that improve corporate governance and accountability.⁵ Changes pertaining to the legalization of specific offenses and the establishment of the producer company idea represent a sophisticated strategy for striking a balance between investor protection and convenience of doing business. In addition, SEBI has proposed changes to the rules regulating alternative investment funds and mutual funds, bringing them into compliance with international best practices and tackling new issues in the world of investing. All of these changes help to make India's legislative framework for investor protection more modern and stronger.⁶

Comparative Analysis with International Standards

UK⁷

The protection of investor interests has been taken into consideration in the UK since the sixteenth century. The Gladstone Committee Report, the first report from the Select Committee on Joint Stock Companies, contained the first meaningful suggestions for investor protection. This paper emphasized how important it is for businesses to register and give shareholders access to key records such as balance sheets, accounts, auditor's reports, business specifics, and officer profiles. The disclosure of the company's main objectives, available funds, deed settlement, the number and value of issued shares, and the number and value of outstanding shares was also stressed.

The Financial Services and Markets Act of 2000, which underwent updates in 2010 and 2012, governs the current legal system. Notably, the 2012 amendments resulted in the creation of three regulatory bodies: the Financial Conduct Authority (FCA), which took over the majority of the responsibilities previously held by the Financial Services Authority (FSA), the Financial Policy Committee (FPC), and the Prudential Regulation Authority (PRA), which is based within the Bank of England. These three organizations are responsible for overseeing the regulatory framework that includes most legislation protecting investors.

⁵ *Supra* note 2.

⁶ *Supra* note 4.

⁷ "Investor protection in the UK", *Broker Chooser* (October 11, 2023), available at <<https://brokerchooser.com/safety/investor-protection-uk>> (last visited on November 29, 2023).

*USA*⁸

William Douglas was the pioneer of investor protection in the United States, and it dates back to March 1934. State governments had been in charge of regulating corporate securities for more than 20 years prior to federal action. In the United States, the number of shareholders increased from 4,400,000 to nearly 18,000,000 between 1900 and 1928. Congress responded to the 1929 stock market disaster by passing the Securities Act of 1933, the first federal securities law.

The Securities Act's validity was questioned by the Supreme Court in the seminal case of *Jones v. SEC*, which it decided to uphold after an appeals court ruling.⁹ Definitions of investment company and investment contract may be found in the Investment Companies Act of 1940 and *SEC v. W. J. Howey Co.*, respectively.¹⁰

A number of crucial laws were passed to protect investors in the wake of these events. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, and the Securities Exchange Act of 1934 are among the laws that are essential to guaranteeing investor protection.

*New Zealand*¹¹

The Securities Act of 1978, which granted it a number of authorities, is credited with the creation of the Securities Commission. The Financial Advisers Act of 2008, the Securities Market Act of 1988, and the Securities Regulation of 1983 are some examples of these regulatory frameworks. But the Financial Market Authority (FMA) assumed control of its duties on May 1st, 2011. The Financial Markets Conduct Act (FMCA) 2013 was created in response to the need for a stronger regulatory framework following the global crisis of 2008 and other financial crises, including the failure of finance corporations and the Blue-Chip scandal.¹²

⁸ "Investor protection in the US", *Broker Chooser* (October 11, 2023), available at <<https://brokerchooser.com/safety/investor-protection-us>> (last visited on November 29, 2023).

⁹ *Jones v. SEC*, 79 F.2d 617 (2d Cir. 1935).

¹⁰ *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946).

¹¹ Linda Cameron, "Investor Protection and the New Zealand Stock Market (PP 07/02)" (October 2007).

¹² *Hickman v. Turn and Wave Ltd.*, [2011] NZCA 100, [2011] 3 NZLR 318.

Early in the new millennium, public pressure to protect investors' interests became the catalyst for tighter regulation of the financial market. The Capital Markets Development Taskforce was formed in response to this requirement in order to evaluate the effectiveness, productivity, and international competitiveness of New Zealand's financial sector. The Taskforce was established in 2008 by Lianne Dalziel, the Minister of Economic Development for Labour, with the objective of formulating all-encompassing laws and regulations for the capital market that would include business, economics, finance, and law.

Singapore

Singapore's economy and financial industry have grown significantly and steadily since the country's independence in 1965. The need for more extensive and centralized regulation and control of the ever-more complex financial environment arose from the rise of Singapore's financial industry. Notably, there was no formal oversight of the Singapore Stock Exchange's operations previous to 1973. In reaction to the Pan-EI crisis, the regulatory environment saw a dramatic change that resulted in the Securities Industry Act of 1986 replacing the Securities Industry Act of 1973.

The Securities and Futures Act was enacted in 2001 and changed the regulatory balance of the market, among other revisions to the regulatory framework that became effective in 2002. The Securities and Futures Act (SFA) and the Financial Advisors Act are two important pieces of legislation that control how securities markets are run and how its participants behave. The Monetary Authority of Singapore Act, which was passed in 1970, was a significant milestone since it made it possible for MAS to be established on January 1, 1971. This legislative action gave MAS the ability to oversee Singapore's financial services industry.

Challenges and Gaps in the Indian Investor Protection Framework

Even though it is changing, the Indian Investor Protection Framework still faces a number of significant obstacles and has obvious shortcomings that need for careful examination in order to implement meaningful change.

- *Identification of Loopholes and Shortcomings in Existing Regulations* - When the current regulatory environment is examined closely, several gaps and shortcomings become apparent. For example, interpretive difficulties may arise from ambiguities in legal wording, especially in

the Companies Act of 2013. Furthermore, new company structures and emerging financial instruments could not be fully covered by the regulatory framework, opening up opportunities for dishonest businesses to take advantage of. The deterrent impact of current legislation is further diminished by the absence of strict fines for infractions and prompt enforcement measures.

- *Analysis of High-Profile Cases Demonstrating Failures in Investor Protection* - Analyzing well-known cases where investor protection has fallen short reveals important lessons. Famous financial frauds and business scandals (including the Harshad Mehta, M.S. Shoes, Sesa Goa, and C. R. Bhansali scams, among others) show how insufficient regulatory monitoring allowed wrongdoing to continue undetected. Systemic vulnerabilities are revealed via the investigation of situations such as insider trading, financial mismanagement, and poor disclosure methods. Furthermore, the effectiveness and resilience of the current framework for protecting investors are gauged by how the legal system and regulatory authorities react to these crises.
- *Comparison of Challenges Faced by Indian Investors with Those in Other Jurisdictions* - An analysis of the difficulties encountered by Indian investors in comparison to those of their international counterparts reveals both particular difficulties and common issues. Although India has obstacles such as inadequate shareholder activism, information asymmetry, and delays in dispute resolution, these concerns are present in different forms around the world. Cross-jurisdictional comparisons offer a sophisticated comprehension of institutional frameworks, enforcement strategies, and regulatory methods, enabling a well-informed assessment of the efficacy of the Indian investor protection regime. It is essential to comprehend the contextual subtleties of various regulatory regimes and draw lessons from global best practices when developing focused and flexible solutions.

Recommendations

India's investor protection landscape is expected to improve, with greater focus being placed on responsibility, transparency, and technology integration. First and foremost, it is expected that the regulatory environment would see an increased emphasis on utilizing financial technology breakthroughs to strengthen investor protections. The efficacy of investor protection systems is expected to be redefined by the combination of blockchain for secure transactions, artificial intelligence for regulatory compliance monitoring, and increased data analytics for risk assessment. Furthermore, it is anticipated that a sustained dedication to worldwide best practices and the

synchronization of regulatory frameworks with developing international standards will augment the allure of Indian markets for investors, both local and foreign.

A critical component of protecting investor interests is realizing that financial markets are dynamic and responding quickly to changing conditions. The capacity of the legal framework controlling investor protection to change in response to technology improvements and market complexity should be a defining feature. To quickly handle new dangers and difficulties, rules must be regularly assessed and revised. Additionally, it is important to promote a collaborative approach that involves stakeholders from a range of sectors, such as academics, professionals in the legal field, and members of the industry, in order to guarantee that a variety of viewpoints are taken into account while developing and improving the legal framework. The legal system should be proactive rather than reactive in addressing such dangers, stressing the need to do so in order to strengthen investor confidence in the stability and equity of the market.

Conclusion

A critical component of protecting investor interests is realizing that financial markets are dynamic and responding quickly to changing conditions. The capacity of the legal framework controlling investor protection to change in response to technology improvements and market complexity should be a defining feature. To quickly handle new dangers and difficulties, rules must be regularly assessed and revised. Additionally, it is important to promote a collaborative approach that involves stakeholders from a range of sectors, such as academics, professionals in the legal field, and members of the industry, in order to guarantee that a variety of viewpoints are taken into account while developing and improving the legal framework. The legal system should be proactive rather than reactive in addressing such dangers, stressing the need to do so in order to strengthen investor confidence in the stability and equity of the market.