Professor R.M. Joshi
Memorial Lecture

INVESTOR PROTECTION

By

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Let me right at the outset convey my sincere gratitude to the Sydenham College of Commerce and Economics for granting me the privilege to deliver today the Professor R.M. Joshi Memorial Lecture. Prof. Joshi was a visionary in the grand tradition of Dr. Dadabhyo Naoroji, Shri Romesh Dutt, Prof. K.T. Shah, Prof. C.N. Vakil and other eminent luminaries. Prof. Joshi laid emphasis more than anything on entrepreneurial talent for building up Mother India. It is this entrepreneurial talent that has contributed greatly for the economic development of the country, particularly after the dawn of Independence and more so since the beginning of the 80s when we had launched our own perestroika well ahead of the U.S.S.R. As entrepreneurial talent gets broadened with companies going public and creating a class of investors not linked with management, safeguarding their due and legitimate interests becomes a matter of vital concern. I am sure it would gladden Prof. Joshi in the High Heavens where his soul is resting in Eternal Bliss to know that the talk that is being delivered today in his memory is on "Investor Protection".

Investor Population

Investment in industrial securities is no more confined today to the urban elite. It
has already started seeping not only into the lower layers of the urban population but also into the semi-urban and rural areas. We have today, according to the latest study, nearly about 10 million shareholders in the country with each of them holding shares in 4.7 companies on an average. What is equally noteworthy is that between 1980 and 1990, the number of equity shareowners in India has more than trebled. India is, in fact, virtually the second largest country in the world next only to the United States in terms of shareholding population. We have, besides, one million exclusive holders of debentures.

Major Objective of Regulation

A major objective of regulation of Stock Exchanges in this country or any other country for that matter of fact is investor protection. The Big Bang which took place in U.K. in October, 1986 was preceded by the Financial Services Act basically designed towards protection of the interests of investors. In our own country, no Stock Exchange is granted recognition by the Government of India unless its Rules and Bye-laws are in conformity with such conditions as may be prescribed with a view to protecting the interests of the investors. In fact, investor protection is a prerequisite for the healthy and orderly development of the capital market. This was fully echoed when the Prime Minister observed in his 1987-88 Budget speech that "investors' rights must be fully protected" and also announced the decision of Government to set up a separate Board for the regulation and orderly functioning of Stock
Exchanges and the securities industry. Accordingly, the Securities and Exchange Board of India was established on the 12th April, 1988.

**Investor Protection from Companies**

Investors need protection not only from stockbrokers but also from companies. Investor protection from companies, however, has not received as much public attention as that from stockbrokers. Besides the provisions embodied in the Companies Act, 1956, the Listing Agreement, which a company seeking enlistment enters with the Stock Exchange before securities of the company are admitted for dealings on the Exchange, provides for a number of safeguards in this behalf. It is proposed to deal with some of the major ones incorporated in the Companies Act and the Listing Agreement.

**Interest on Excess Application Money**

Because of the inordinate delay in the admission of shares and debentures for dealings on the Stock Exchange, sub-section 2(A) was specifically incorporated in Section 73 of the Companies Act by the Companies (Amendment) Act, 1974 providing for payment of interest by the directors of the company at the rate of 12 per cent per annum on excess application money from the eighth day, the company becomes liable to pay. The Companies (Amendment) Act, 1988 amended this provision putting the responsibility for payment of interest on the company itself, in
addition to directors of the company who are officers in default and providing for payment of interest at such rate, not less than four per cent, and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

The rates of interest presently prescribed in this behalf are 4 percent, 5 percent, 12 percent and 15 percent for periods of delay upto 15 days, 16 days to 30 days, 31 days to 60 days and more than 60 days respectively. As the liability in this behalf has become rather difficult to be translated into practice, the Ministry of Finance issued a guideline on the 21st July, 1983 directing payment of interest on the excess application money at the rate of 10 per cent per annum for the delayed period beyond the 70th day from the date of closure of the subscription list till the date of posting of the refund orders. The rate of interest was raised by the Ministry of Finance to 15 per cent per annum on the 27th September, 1985.

Welcome as the above provisions are, in actual practice very few companies have so far paid interest on excess application money, although posting of the refund orders relating to excess application money after the 70th day from the date of closure of the subscription list is not uncommon. A well intentioned piece of legislation thus remains defeated by companies resorting to ante-dating of the refund orders.
Issue of Certificates in Market Lots

According to the listing requirements and Listing Agreement, companies are required to issue, unless the Stock Exchange agrees otherwise and the parties concerned so desire, Allotment Letters, Share Certificates, Call Notices and other relevant documents in market units of trading. Companies are also required to sub-divide and consolidate Allotment Letters, Share Certificates, etc. into market units of trading. Despite such clear cut provisions, a number of companies continue to ignore these provisions and issue these instruments in larger units thereby affecting adversely liquidity of these instruments as delivery of these instruments in the market has invariably to be in market lots.

The Listing Agreement also requires companies to sub-divide and consolidate Letters of Allotment and Share Certificates into denominations other than those fixed for the market units of trading on payment of a nominal fee. Even so, quite a few companies have chosen the liberty of amending their Articles of Association taking powers to refuse applications for transfer of shares in denominations less than the market lots except where transfer is made in pursuance of any provisions of law or statutory order or an order of a competent court of law or where the transfer of shares relates to the transfer of the entire holding of a member consisting of less than the marketable lot. A person holding shares in a lot higher than the market lot is, however, permitted to sell the market lot and retain the residual lot below the
marketable lot. The Bombay Stock Exchange has consistently taken the stand that there would be no objection to a company refusing to sub-divide a certificate into several scrips of very small denominations, or to consider a proposal for transfer of shares comprised in a certificate to several parties. Involving such sub-division, if on the face of it, such sub-division/transfer appears to be unreasonable or without a genuine need and not otherwise.

Transfer of Shares

Under Section 111 of the Companies Act, 1956, a company is given a period of two months from the date on which the instrument of transfer is delivered to the company for effecting the transfer and if a company refuses to do so, the company is required to send notice of the refusal to the transferee and the transferor giving reasons for such refusal. The transferor or the transferee has a right to appeal to the Company Law Board against any refusal of the company to register the transfer within a period of two months from the date of receipt of the notice of such refusal, or where no notice has been sent by the company, within four months from the date on which the instrument of transfer was delivered to the company. The Company Law Board may, after hearing the parties, either dismiss the appeal or by order direct that the transfer shall be registered and the company shall comply with such order within ten days of the receipt of the order.

Section 22A of the Securities Contracts (Regulation) Act, 1956, which became effective
from the 17th January, 1986 and which is applicable only to listed companies restricts the power of a company to refuse to register the transfer of any of its securities in the name of the transferee only on grounds that (a) the instrument of transfer is not proper or has not been duly stamped and executed or that the certificate relating to the security has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been completed with, or (b) the transfer of the security is in contravention of any law or (c) the transfer of the security is likely to result in such change in the composition of the Board of Directors as would be prejudicial to the interest of the company or to the public interest, or (d) the transfer of the security is prohibited by any order of any court, tribunal or competent authority. The company is required to inform its opinion with regard to refusal of registration on any of these grounds within two months from the date on which the instrument of transfer is lodged with it and effect the transfer if it has formed the opinion that such registration ought not to be refused. If it has, however, formed the opinion that such registration ought to be refused on the ground of (a) above, intimate both the transferee and the transferor about the requirements which need to be complied with for securing such transfer. If the company forms an opinion for refusal of transfer on any other ground mentioned above, the company is required to make a reference again within the period of two months to the Company Law Board under intimation to the transferor and the transferee.
The Listing Agreement has abridged the period of transfer to a month from the date of lodgement of the certificate.

Despite such clear cut statutorily laid down period of time for effecting transfers, instances of companies not adhering to these time schedules have become a matter of daily occurrence. While inability of companies to adhere to the time schedule due to reasons like pressure of work with the transfer agents, sudden strike by the employees, etc., is understandable, although not excusable, the practice of some companies wantonly delaying transfers with a view to diminishing the supply of stocks and to jacking up the prices is reprehensible. Action taken by the Bombay Stock Exchange against some of the companies by suspending dealings in their securities for a few days have had no doubt some effect in the matter but have not proved to be deterrent enough against those companies merrily continuing to indulge in such practices.

It is true that under Section 621 of the Companies Act, a shareholder can prosecute a company and its officers for any offence under the said Act. An ordinary investor has neither the time nor the money to launch such prosecution which has virtually rendered this Section ineffective.

**Payment of Dividend and Interest**

The Listing Agreement clearly provides that companies have to issue dividend warrants, interest warrants and also cheques for redemption money of redeemable shares or of
debentures and bonds payable at par in cities where Stock Exchanges are situated, State Capitals and other cities with a population of more than five lakhs (as per the 1981 census) and at centres where branches of the bankers to the company are located and collectable at par, with collection charges, if any, being borne by the company in the case of any bank in the country at centres other than these centres. There are thus 19 centres where recognised Stock Exchanges are situated, 15 State Capitals and 23 cities with a population of 5 lakhs (as per the 1981 census) i.e., 57 centres, besides the centres where branches of the bankers to the company, are located where these instruments are payable at par. This wholesome provision embodied in the Listing Agreement with the laudable objective of ensuring equity among the investors throughout the country stands defeated by quite a few companies, including the leading and well established ones, ignoring the same and making the provision of payable at par applicable only to a few centres and debiting the collection charges in respect of other centres to the investors.

Take - Overs

Pursuant to a directive issued by Government in April 1984, a new clause viz., clause 40 was inserted in the Listing Agreement by Stock Exchanges to take care of the interest of the non-management shareholders in case of take-overs. According to this clause, any acquisition of the shares of a company beyond 25 percent of the voting capital of the company or securing the effective
control of management of a company by acquisition of the shares of the existing Directors and others who effectively control or manage the company, irrespective of the percentage of their holding, should be preceded by an offer to the remaining members of the company to acquire their shares at a price not lower than the price at which the shares of the company are being acquired. This is, however, subject to the public shareholding not being reduced to less than 20 percent of the voting capital of the company.

There have been quite a few take-overs ever since this clause came into operation, particularly during the last three years. Unfortunately, this clause has not proved to be effective in taking care of the interests of the non-management shareholders because of four major reasons. First, acquisition of the shares is limited to 24.9 percent of the voting capital of the company, thus conforming to the letter of the law while totally violating its spirit and brazenfacedly arguing about the correctness of such a move. Secondly, acquisition of the shares would in actuality result in an effective change in the control of management of the company but would not ostensibly look so, as for example when only four of the eight directors change and there is no foolproof way of deciding that there is an effective change in the control of the management of the company. Thirdly, there would be no change in the shareholding pattern of the company but in the pattern of shareholding of the parent company holding shares in the company, as a result of which there is a change in the effective control of management of the
company. Finally, acquisition of shares ostensibly takes place at a price much below the ruling market price but in actuality at a much higher price, the difference being settled privately.

With a view to plugging the above loopholes, Government of India directed in May 1990 all the Stock Exchanges in the country to amend clause 40 providing for, *inter alia*, notification to the Stock Exchanges information about acquisition of shares exceeding five percent of the voting capital in any company by any party and an offer to the remaining shareholders of the company to acquire from them a minimum of 20 percent of the total shares of the company (subject to the public shareholding being not reduced to less than 20 percent of the total shares of the company) at a price not lower than either the highest price during the immediately preceding six months or the negotiated price whenever a party acquires shares which together with the shares already held exceed ten percent of the voting capital of the company or secures the control of management of the company by acquiring, irrespective of the percentage of the voting capital, the shares of the Directors or other members who by virtue of their shareholdings together with the shareholdings of their relatives, nomines, family interest and group control or manage the company. As these amended provisions have come into operation only recently, it is rather too early to pass any verdict on the same. Nonetheless it is felt that these amendments need large-scale modifications to ensure the interests of the minority shareholders and the authorities
concerned are currently on an exercise to effect these modifications. While we may wait for a while to watch the outcome of all these efforts, I personally feel that it is essential to have these provisions embodied in the Statute itself rather than have them in a piecemeal way in the Listing agreement with suitable penal provisions for violations of the provisions.

Mismanagement of Companies

A major cause of disenchantment of investment in industrial securities is the growing sickness in industrial units leading to a substantial erosion, often exceeding 50 percent of the par value, in market prices. At the end of June 1988, there were as many as 1,172 non-small scale sick units accounting for a bank credit of Rs. 3,025.9 crores i.e., 12.0 percent of the total bank credit to non-small scale units and securities of most of these sick units are listed on the Stock Exchanges with substantial public holdings.

While sickness due to unavoidable and unforeseen factors like changes in policy, power cuts, labour troubles, alterations in the demand for goods, technological advances, etc. is understandable, although not desirable, sickness due to mismanagement is abominable. Stringent action against the errants can help mitigate the severity of the problem and to that extent, however limited be it, prevent erosion of the confidence of the investing public in investment in industrial securities.
Investor Protection from Stockbrokers

Investor protection from stockbrokers has rightly been talked about and quite a few steps have been taken to guard the interests of the investors in this behalf. There are about 3,500 active stockbrokers who are members of Stock Exchanges and whose activities are subject to the Rules, Bye-laws and Regulations of Stock Exchanges.

Sub - Brokers

There is a fairly good measure of protection to the investors from the stockbrokers. While this has no doubt to be improved upon, the class of sub-brokers who have proliferated all over the country, both in the areas where recognised Stock Exchanges are situated and outside, pose a serious threat to investor protection and it is estimated that about 50 per cent of the complaints against the stockbrokers is because of this class of sub-brokers. On a rough reckoning, there are at least 50,000 such sub-brokers not subject to any regulations constantly posing serious threat to investor protection. Some of the sub-brokers in the jurisdictional areas of Stock Exchanges also commit the illegality of issuing contracts, bills, memos, etc, in their own names to lend authenticity to their operations and the gullible investors who are not normally aware that these can legally be issued only by a member of a Stock Exchange in the jurisdictional areas covered by the Stock Exchange fall a prey to such gimmicks of sub-brokers. It is quite a common occurrence seeing a sub-broker, who after getting
established, suddenly vanishes from the scene collecting the shares given for sale and the money given for purchase by his clients leaving the latter totally hapless. Since there is no nexus between the stockbroker and the clients of the sub-broker, the stockbroker pleads his inability to entertain the claims of the clients of the sub-broker.

In order to overcome this serious lacuna in regulation, a Working Group set up by the Securities and Exchange Board of India, has recommended a system of authorisation of these sub-brokers based on the criteria of professional competence, financial soundness and record of integrity and payment of suitable admission fee, security deposit and annual subscription. The Group has also recommended creation of a Customers' Protection Fund by earmarking 25 per cent of the sub-broker's annual subscription towards this fund. The Group has further recommended that while the sub-broker would be primarily responsible to the client, the principal broker would ultimately be responsible to the client in case of sub-broker's default. The Group was also of the opinion that over a period of time, sub-brokers must be authorised to issue contracts in their own names to their clients. This would obviously need an amendment to the Securities Contracts (Regulation) Act, 1956 which permits contracts to be entered into only between, with or through members of recognised Stock Exchanges in jurisdictional areas. There is an urgent need to implement these recommendations and any delay in this behalf will make serious inroads into investor confidence.
Rights of Investors Against Stockbrokers

Investors have certain rights embodied in the Rules, Bye-laws and Regulations of Stock Exchanges which most of them are not aware. These include consent of the client before a member enters into a contract with him as a principal, issue of a contract whether as a principal or as an agent after the contract is entered into, right of the client to close out an unfulfilled contract through any other member of the Exchange, lodging of a complaint against any member who fails to implement the stockbroking business with the Stock Exchange authorities who can take disciplinary action including suspension against the member if they are satisfied about the complaint, reference to arbitration, etc. Adequate publicity in this behalf needs to be undertaken, particularly by the Stock Exchanges, so that rights of investors do not go by default.

Arbitration

A client or a member can refer any claim, difference or dispute with a member or a client, as the case may be, for arbitration under the Rules, Bye-laws and Regulations of the Stock Exchange. Arbitration has to be conducted by two members of the Exchange, one to be appointed by each party. In case of any difference between the two arbitrators as to the award, they can appoint an umpire from among the members of the Exchange. During 1988, 1989 and 1990, 111, 59 and 71 arbitration cases have been filed at the Bombay Stock Exchange out of which 25,
22 and 12 cases respectively, have been disposed of.

Although arbitrators are normally required to give the award within four months, quite often there is delay due to the protracted nature of the proceedings, which has a frustrating effect on the claimants. A shorter system of these proceedings is required to be evolved so that justice is administered in time.

There is a feeling that members of Stock Exchanges, who alone are entitled to sit as arbitrators, may not always be as objective as is required. This is not normally true. Yet as dispensation of justice has not only to be objective but also appears to be so, the question of having outsiders like retired judges having the requisite expertise to act as arbitrators needs favourable consideration.

**Transparency of Transactions**

Lack of transparency of transactions is also a major shortcoming of our market. Investor is hardly allowed to know the actual rate of the transactions; he being forced to be content with a statement of net to pay in respect of purchases and net to receive with regard to sales, the brokerage amount being added to the former and deducted from the latter, without indicating the quantum of brokerage and more often than not the rate of the transaction given to the investor is the highest in the case of purchases and the lowest in respect of sales of the recorded transactions of the day. The issue is,
however, not so simplistic as this, as there is always the jobber's spread which the dealer cannot escape, and the recorded rates are the actual transacted rates, where the dealer could be a seller, in which case the rate would be lower of the bid and offer rates given by the jobber, or a buyer resulting in the rate being higher of the two rates quoted by the jobber. An ordinary investor is neither aware of this nor able to appreciate it. This ruse is often exaggerated as the gap is relatively narrow in the case of active scrips, while the daily range of fluctuations is often five to ten times this gap. The balance of advantage would lie in not only indicating the rate and the brokerage separately but also the time of the transaction, as is the practice in the developed markets of the world.

Odd Lots

Odd lots constitute a major bugbear for the Indian investors. Out of a total market capitalisation of over Rs. 60,000 crores, equities worth about Rs. 15,000 crores are in odd lots. Investors normally receive 15 percent to 20 percent less than the market price for their sales and have to pay 15 percent to 20 percent more than the market price for their purchases of odd lots. Schemes evolved by some of the agencies and companies to fetch a better price for the investors have not proved to be much of a success. Even the recent scheme launched by the Unit Trust of India for barter of odd lots against units cannot be said to be attractive as capital appreciation of units is generally negligible compared to equities which are bartered.
In a significant move to alleviate the hardship of investors, the Bombay Stock Exchange has appointed 16 members as authorised odd lot dealers with effect from the 1st September, 1987. According to the norms laid down by the Exchange, these dealers have to pay to the sellers at rates prevailing on the previous day minus 10% in case of securities whose prices are upto Rs. 40, minus 7.5% in case of securities whose prices are between Rs. 40 and Rs. 100, minus 5% in case of securities whose rates are between Rs. 100 and Rs. 300 and minus 5% or less in case of securities whose rates are more than Rs. 300. To begin with, the scheme is confined to companies whose registered offices are situated in Bombay. Later the scheme will be extended to companies whose registered offices are outside Bombay.

A separate trading session has also been arranged on alternate Saturdays beginning from January, 1988 to facilitate odd lot dealings amongst members themselves. These sessions, which help in consolidation of odd lots into trading lots dispensing with the requirement of sending odd lots to companies, proved to be quite popular in the beginning. Delhi and Calcutta Stock Exchanges have also initiated steps similar to those adopted by the Bombay Stock Exchange and other Stock Exchanges are expected to follow suit. The burgeoning growth of the market has, however, unfortunately resulted in these efforts not receiving as much attention as is warranted by the situation.

Laudable as these efforts are, they need to be supplemented for solving the problem.
fully. Companies may themselves be permitted to purchase the odd lots of their own shares, preferably at the ruling price, with the safeguard of prior approval of the General Body to prevent any misuse by the Board of Directors. These shares can then be re-issued in marketable lots, if need be. Similar provisions exist in countries like the U.S.A. and U.K. and there is no reason why we should not emulate the same. Companies Act will, of course, have to be amended for the purpose.

Lack of Liquidity

Although there has been more than a ten fold increase in the turnover in the secondary market during the last one decade, the Indian stockmarkets have not yet been able to develop the requisite degree of liquidity in all the listed securities. About 1,200 issues no doubt get traded at present out of a total of about 4,200 issues listed on the Bombay Stock Exchange as against about 600 issues out of a total of about 3,250 listed issues couple of years ago. Still over 80 percent of the turnover is confined to specified shares and even here the top ten scrips account for about 75 percent of the turnover. The Indian stock markets are thus a peculiar amalgam of high volatility in respect of a few scrips and low liquidity in respect of a vast majority of them.

No systematic efforts have been made till recently to generate liquidity in listed securities. Bid and Offer On-line System for Thinly Traded Securities (BOOSTS) launched by the Bombay Stock Exchange in January, 1988 has
not proved to be effective. Companies seeking enlistment on the Bombay Stock Exchange are now required to appoint market makers. Success of this experiment needs to be watched with interest and transplanted to other Exchanges. Creation of market makers in respect of issues already listed is a more formidable task. Financial institutions can and should take the lead in the matter. Reservation of say even half a percent of the new issues and grant of liberal bank finance to market makers would help greatly the process of improving liquidity in the Indian stockmarkets.

**Insider Trading**

Insider trading i.e., trading in securities by persons in possession of material non-public information relating to such securities, which is price-sensitive, strangely remains totally uncontrolled and has proved to be one of the biggest menaces to the investors. The provision contained in Section 307 of the Companies Act requiring shareholdings and debentureholdings of directors to be recorded and kept open for inspection of any shareholder or debentureholder during the period of 14 days before and 3 days after the Annual General Meeting of a company has proved to be totally ineffective in controlling such trading. Publication of half-yearly results by listed companies by clause 41 of the Listing Agreement in operation from the beginning of 1987 has also not minimised such trading. Not only insider trading needs to be prohibited with provision for deterrent punishment for offenders under a suitable statutory framework.
but also enforced strictly and rigidly. Till such time Government comes out with the legislation, it behoves stockbrokers as trustees of public welfare not to put in transactions of "insiders" if they realise that these are based on non-public information.

**Manipulation of Prices**

Prices are the outcome of a host of factors, fundamental and technical, simultaneously operating on the market. It is almost like a national poll being the outcome of the judgement of hundreds and thousands of people continuously buying and selling in the market. It is, therefore, not possible to say whether the price registered in the market at any point of time is a correct price. Even so, manipulation of prices, always to the detriment of investors, is a common occurrence on Stock Exchanges. Making a fast buck, ensuring success of the public issue, getting higher advances from banks, having lower wealth-tax assessments, etc., are some of the major objectives of manipulation of prices. While manipulation of prices in frequently and thickly traded securities may be difficult, it is easy to do so in infrequently and thinly traded securities.

Strangely, there is no effective deterrent against manipulation of prices in the Indian stock markets. Expunging the quotations and taking disciplinary action against members of Stock Exchanges are unfortunately the only available measures and even these are rarely resorted to by the Stock Exchange authorities. Drastic penal provision, including institution of
criminal proceedings in a court of law against the manipulators, be they members of Stock Exchanges or not, on the lines of similar provisions embodied in the statutes of several advanced countries, is, therefore, called for if the menace of manipulation of stock prices has at all to be effectively controlled.

**Volatility of Stock Markets**

Just as insider trading and manipulation of prices are to the detriment of investors, so is the volatility of the markets. Indian stock markets have by and large ruled quite stable in the 80s with the average annual volatility of the Bombay Stock Exchange Sensitive Index (1978-79 = 100) being of the order of 34.08 percent. Volatility is measured as a percentage of the range of fluctuation by the average of the same. The years 1985 and 1988 were, however, exceptions to this general trend as the volatility in these two years were of the order of 65.50 percent and 59.34 percent respectively. The beginning of the current decade i.e., the year 1990 witnessed the volatility to be of as high an order as 81.14 percent with the high and low of the BSE Sensitive Index touching 1559.43 and 659.30 respectively. While one could adduce reasons for such sharp fluctuations and also argue that there is hardly anything one can do about it for after all in a free market, although subject to suitable checks and balances, movement of prices as such cannot be physically controlled, a serious thought needs to be given to the concept of stabilisation by holders of large securities. They can and should unload in periods of booms and support
in periods of slump. Have they done it adequately, is a question that history alone can answer. I would like to mention in this connection that in May 1990, the securities firms, banks, insurance companies and listed companies in Korea collectively established a Stock Market Stabilisation Fund with won 4.1 trillion or 5.3 percent of the market capitalisation of that country for stabilising the markets. We need to take a lesson from our Asian brother.

**Customers’ Protection Fund**

Whenever a member of a Stock Exchange is declared a defaulter, the net assets remaining in the hands of the Defaulters' Committee, after defraying costs, charges and expenses relating to the realisation of these assets, are utilised to satisfy first the claims of the Exchange and the Clearing House run by the Exchange and then the admitted claims of members of the Exchange against the defaulter on a prorata basis. Only if any surplus is left thereafter, the claims of the clients of a defaulter member are considered by the Defaulters' Committee. The clients can, no doubt, go in for arbitration with the Exchange in respect of their claims and obtain awards in their favour and thereafter get the same filed in a Court of Law for decree. The decrees, however, cannot generally be executed as the defaulter invariably disposes of all assets before he is declared a defaulter.

Lack of suitable protection to the clients in the event of a member of a Stock Exchange being declared a defaulter has proved to be
a major bottleneck in the flow of funds into industrial securities. The Ministry of Finance had, therefore, directed the Stock Exchanges of the country to set up Customers' Protection Funds. The Bombay Stock Exchange was the first to set up such a fund. Established in July, 1986, the Customers' Protection Fund of the Exchange is patterned on the lines of the Securities Investor Protection Corporation of the U.S.A. The fund is financed partly by way of a levy on the turnover of members collected at the rate of one rupee for every Rs. 10 lakhs and partly by way of contribution from the listing fees collected at the rate of two per cent. The Fund had Rs. 35 lakhs to its credit as on the 28th February 1991 after having distributed Rs. 3.26 lakhs to the clients of one of the defaulter members. The Fund is being administered only for the benefit of the clients of the defaulter members of the Exchange and their beneficiaries in respect of genuine investment claims. The compensation that may be paid in respect of any single client which was earlier limited to Rs. 10,000 was raised to Rs. 15,000 in 1990. It is proposed to raise this figure progressively in future with the increasing flow of money into the fund. It is pertinent to observe in this connection that the Securities Investor Protection Corporation of the U.S.A. limits the payment to a single customer to $ 5,000,000 out of which claims on cash, as distinct from claims for securities, would not be more than $ 1,00,000. The Securities Investor Protection Corporation had $ 398.3 million to its credit at the end of 1988 besides a line of credit upto $ 500 million from the banks and $ 1 billion from the Securities and Exchange
Commission which in turn can borrow the same from the U.S. Treasury. A similar dispensation in this country can help in grant of increased compensation from the Customers' Protection Fund.

**Investors' Service Cell**

The Bombay Stock Exchange had established a complaints cell about 9 years ago to look specifically into the complaints of investors. In pursuance of a Government directive, the cell was not only rechristened as the Investors' Cell in 1986 to demonstrate clearly the service character of the cell but also strengthened with a senior officer heading the cell to render expeditious service to the investors. About 6,000 complaints are received by the cell every month and out of this about 98 percent are against listed companies and the balance against stockbrokers. In 1990, the Exchange received in all 70,136 complaints - 68,749 against listed companies and 1,387 against members.

The complaints against companies mainly relate to non-receipt of refund/allotment advice, non-receipt of securities, delay in transfer of securities, non-receipt of interest/dividend, non-receipt of brokerage and underwriting commission, etc. Against members, the complaints are primarily about non-receipt of securities bought and of sale proceeds of securities sold, non-payment of profits, etc.

The Investors' Service Cell tries its level best to redress the grievances as expeditiously as possible. In fact, in all the communica-
tions to the investors they are requested to contact the cell if their grievances are not redressed within a reasonable time, thereby clearly indicating to them the earnestness of the cell to resolve the problems of the investors. Out of the 70,136 complaints received by the cell in 1990, 67,162 complaints were disposed of.

The Investors' Service Cell is a bit handicapped while dealing with companies. The only powers the Stock Exchanges have against a delinquent company are suspension of dealings in the securities of the company and delisting of the same, both of which are not in the interest of the investors. The action of suspension of dealings for a few days taken by the Bombay Stock Exchange against a few companies, has, however, proved to be quite effective in as much as the public image of the companies concerned was damaged to a great extent. The Stock Exchanges need to be clothed with powers not only to fine the companies and the officers in default of these companies but also to launch both civil and criminal proceedings against them in a court of law in serious cases. As a safeguard against any misuse of these powers, Stock Exchanges may be permitted to do so only after obtaining prior approval of the Government in the matter.

With regard to disputes between members of the Stock Exchange and their clients, the Investors' Service Cell tries to resolve the dispute administratively as far as possible. Only when the cell is not able to do so due
to claims and counterclaims by the disputants, the client is asked to refer the matter to arbitration. Such cases are, however, relatively few.

It is heartening to observe in this connection that the Securities and Exchange Board of India has, although still not been clothed with statutory powers, addressed itself to investor complaints in right earnest. Publication of names of companies against whom complaints are received by SEBI once in a fortnight and taking up these matters directly with the companies concerned besides through the forum of authorities like the Company Law Board, Debenture Trustees, Consumer Protection Council, etc., seems to be having a satutory impact. As a result, redressal processes have got speeded up with quite a few companies themselves setting up separate cells in this behalf.

Conclusion

There is no stronger stimulus than investor protection to the growth of the market as the investor is the king of the market. This was clearly adumbrated by President Franklin D. Roosevelt when he remarked, while signing the Securities Act of 1933, that the goal of securities regulation is to change the law from *caveat empor* (buyer beware) to *caveat vendor* (seller beware).

Despite the unprecedented growth of the market during the last one decade, investments in corporate securities including units of the Unit Trust of India hardly account for 7% of
the financial savings of the household sector and we have a long way to go before we are able to tap about 25% of the household sector's financial savings as is being done by several of the advanced countries of the world. Stock Exchange administration which acts as a custodian of investor protection has a crucial role to play in this regard. It has not only to be competent and honest but also tough to withstand the pressures from the mighty corporate world on the one hand and the fast growing securities industry on the other both of which largely contribute for the finances of the Stock Exchanges. The Securities and Exchange Board of India will no doubt act as a citadel of investor protection preventing any hesitant Stock Exchange administration from detracting from the path of proper dispensation of justice.