CHAPTER- II
TOWARDS REINFORCEMENT OF CORPORATE GOVERNANCE AT NATIONAL AND INTERNATIONAL LEVEL

Corporate governance has been generating a lot of debate and thereby an enormous literature in the arena of company law. The term ‘corporate governance’ itself raises a debate of being an analogy or just a metaphor. Whether, it could be referred to as discipline on its own or as part of the business ethics; is a question which ought to be debated in the annals of etymology rather than corporate legalese. \(^1\) WT Gossett, Vice-President in General Council of the Ford Motor Company, once said:

“The modern corporation is a social and economic institution that touches every aspect of our lives. During the past fifty years industry in corporate form has moved from the periphery to the very centre of our social and economic existence. Indeed it is not inaccurate to say that we live in corporate society.”

When the development was at its incipient stage only, corporate was taken as a preferred and most favored mechanism for business venture because it had the capacity to the capital and dissipates the risk with that venture. Risk was innate in the business within and outside the state- which slowed down the progress in societal trade of those days- where answer was developing large ‘borough of business’, could involve in overseas trading and would earn a fortune for the country. Need was arising for collection of a huge fund either from the merchants or the society at large.

Faces of that ‘borough of business’ has changed into a joint stock company. The corporations are no longer affair of certain individuals or a group of people who are involved in a trade or a business for profit making or to achieve success in a business venture. Rather, in the present day corporate touches more than 99 percent of activities of an individual and the society. For example when a child is born in a hospital or a nursing home which is run by a corporate which deals in providing day to day utility services from cooking gas to food retailing,

medical facility, financial or banking service, house building etc. corporate, today, touches every aspect of life, from birth to death, providing essential services required to live life with dignity within the social frame, rule our senses and affect our life in all possible ways.

For the purpose of wealth management or wealth enhancement the influence of corporate on individual’s life is inevitable. Also, control of management by shareholders is completely obliterated in the matters of the business, finance and social responsibility of the company. That way there is complete concentration of power in the hands of management to determine the future of millions within and outside the sovereign boundary.

Corporate law, operating within in restricted areas of business, mostly avoided to interfere much in the business mode: structure of the apex management of the company plus information related to business that was kept away of the public domain. Gradually questions were raised by management critics that the company has to carry out the business by complying with all the ethical rules of business, because the activity of management not only affects the shareholders but also other people like employees, creditors, consumers and even individuals who do not have any formal relation with the company. Structure of apex management has become important because the shareholders have lost effective control over the publicly held companies. So, remodeling the structure with developed internal checks and balances will pave the path for effective decision making process. Company has taken the shape of social institution and its activities should be disclosed in the public domain. Further, discloser will create the environment of accountability on part of the company within the social frame. Corporate governance came into existence from the day corporate have come into existence. Since corporate are required to be managed by a number of persons, the concept of corporate governance has emerged and become popular owing to the fact that ownership and control have been separated.

The concept of corporate governance came in 1980’s when several companies collapsed in the U.K. because of inadequacy of operating control. The

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2 Indrajit Dube, Corporate Governance 2-4 (Lexis Nexis Butterworths Wadhwa, New Delhi, 2009).
genesis of corporate governance lies in business scams and failures. The failure of Maxwell, BCCI and Polypeck in U.K. resulted in setting up of the Cadbury committee on corporate governance in 1991 by The London Stock Exchange and Financial Reporting Council (which is responsible for Accounting Standards in Britain) to look into financial aspects of corporate governance. The basic reason for creation of Cadbury Committee was the loss of confidence in reports and accounts of companies and the audit statements attached to them, following the collapse of so-called financially effluent companies. The cause of anxiety of the London Stock Exchange, and others, was not that these companies collapsed but no forewarning of the true state of their financial affairs. The recommendations of the Cadbury Committee resulted in creation of the Code of Best Practices (published in 1992). The code identified the ways of governance in order to achieve and maintain balance between economic and social goals and between individual and community goals. It laid emphasis on the fact that the success and growth of a company should no longer be measured by the magnitude of its operations and income earned by it but by the degree of adoption of good governance practices aiming at transparency in reporting and accountability to stakeholders. In words of Sir Adrian Cadbury, chairman Cadbury Committee, “exercise of power in a responsible way is good corporate governance.” The concept of corporate governance hinges on total transparency, integrity and accountability of the management. Corporate governance focuses on building trust and confidence among all stakeholders. The guiding principle being “transparency and ethics” should govern the corporate world.3

The focus on the need for corporate governance arose in the United States also. In the year 1979, the U.S. Securities and Exchange Commission proposed the mandatory reporting of internal financial controls. Its role was to determine main causes of misrepresentation in financial reports and to recommend ways to reduce the incidence thereof.

In India also, the concept of corporate governance is very old. At that time, there was neither corporation nor CEO; there was a king and subjects. Today, the

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3 M.C. Kuchhal, Modern Indian Company Law 379 (Shree Mahavir Book Depot, New Delhi, 25th edn., 2009).
corporate and shareholders replace them. In fact, Indian economy started in the last decade of the 20\textsuperscript{th} century. The liberalization, privatization and globalization have started in the Indian economy along with the world economy in terms of product, labour and capital market. This capitalization has developed the factors like demand, supply, efficiency of all factors of production, corporate culture, code of conduct, and business ethics for the survival of corporate in all over the world market.

Active monitoring by the financial institutions of corporate activities has steepened up because of the changes in corporate ownership on account of growth of capital market, of late. The investors are demanding more transparency in business operations and more accountability of board of directors and management of the company to their shareholders and other stakeholders. Because of corporate scams there is an outcry for corporate governance.

2.1 Some Recent Corporate Scams

The failure of HIH Insurance Limited, Harris Scarfe Limited, Enron Inc., Xerox Corporation and WorldCom Inc. etc are the examples of the extent to which directors, senior management or even auditors may have failed to pay due regard to proper corporate governance practices. Conflicts of interest seem to have prevailed over the proper and independent consideration of relevant issues to the detriment of the company, the shareholders and other interested stakeholders. Some of these corporate failures are:-

2.1.1 Tagrus Group International Scam

William Anthony Lloyd, the then CFO of Targus embezzled over $40 million by utilizing the company's credit facilities and cash for his personal benefit. In order to hide his embezzlement unknown to the company, Lloyd created false and fraudulent entries on the company's books and records, all of which went undetected by KPMG during numerous audits for the company.\footnote{http://www.accounting-malpractice.com/accounting-malpractice/news/kpmg-one.html (Visited on November 5, 2014).} Lloyd pleaded guilty in 2001 and was sentenced to 37 months in federal prison.\footnote{http://ethisphere.com/page/4/?s=guilty (Visited on November 2, 2014).}
2.1.2 Tyco Scam

The former CEO Kozlowski Tyco’s and former CFO Mark Swartz of Tyco were convicted of looting more than $600 million. They were accused of lying about Tyco’s finances and enriching themselves by nearly $600 million by taking unauthorized pay and bonuses, abusing loan programs and selling their company stock at inflated prices. They hid their alleged thefts by failing to disclose the bonuses and loan forgiveness in company prospectuses and federal filings, and bought the silence of underlings with outsized compensation. According to prosecutors, they used Tyco’s money to buy extravagant lifestyles that featured art, jewelry and real estate, prosecutors said. Kozlowski spent $2 million on wife Karen’s 40th birthday in organizing toga party on the Mediterranean island of Sardinia. They were sentenced to up to 25 years in prison for stealing hundreds of millions of dollars from the company and were eligible to parole after serving eight years and four months.

2.1.3 Computer Associate International Scam

Sanjay Kumar, Former chief of the California-based company, was sentenced to 12 years in prison and fined $ 8 million in 2006 after being charged with securities fraud and obstruction of justice following a 2-year investigation of an improper accounting scheme. According to investigators, the scheme resulted in a shareholder loss of more than $ 400 million. He tried to obstruct justice by tampering with a laptop in an attempt to conceal evidence, lying to federal investigators and directing company employees to also provide false information.

2.1.4 Smith Technologies Scam

Gilbert N. Holloway, as president of Basic, pleaded guilty to conspiracy to commit mail and wire fraud. He began raising investor funds even though he knew the company had assigned away its rights to the so-called Smith technologies. He also knew that investor funds had not been accounted for, and

some had been diverted to Hronopoulos, Smith, and Scheibe. Kirsten Hronopoulos, widow of Hronopoulos, Patricia Smith Wife of Stephen Smith, Richard Boyer Former CFO and Accountant, also pleaded guilty to fraud. Lawrence Taggart, a San Diego lawyer who solicited funds as president of Basic Research, later became in–house legal counsel former California S&L Commissioner in the 1980s. He also pleaded guilty to tax conspiracy, wire and mail fraud.

2.1.5 Xerox Corporation Scam

Xerox Corporation from the year 1997 to 2000 appears to have pursued a scheme, directed and approved by its senior management, to disguise its true operating performance by using undisclosed accounting maneuvers. The effect of these actions was to accelerate the recognition of equipment revenue by over $3 billion and increase earnings by approximately $1.5 billion. The Xerox corporation portrayed itself as a business that was meeting its competitive challenges and increasing its earnings every quarter. Many of the accounting actions taken by Xerox appear violated the established standards of General Accepted Accounting principles (GAAP). The Securities and Exchange Commission of the United States filed a complaint against Xerox Corporation for defrauding investors. The Securities Exchange Commission has alleged that certain accounting standards of Xerox Corporation defrauded the investors and led to non disclosure to true and fair view of the state of affairs of the corporation.

2.1.6 Enron Scam

Enron was based in Houston, Texas and was the seventh biggest company in United States in terms of revenue and a provider of products and services related to natural gas, electricity and communications to wholesale and retail customers.
Kenneth Lay, the former chairman of the board and CEO and Jeffrey Skilling, former CEO and COO, went on trial for their part in the Enron scandal in January 2006 that led to the downfall of the company. It admitted on November 8, 2001 for overstating its earnings by $600 million in previous 4 years. Lay and Skilling were indicted for securities and wire fraud in July 2004, leading to a highly-publicized trial in which Lay was convicted on all six counts and Skilling on 19 of 28 counts on May 25, 2006. On July 5, 2006, Lay died at age 64 while vacationing in Colorado, after suffering a heart attack on July 4. Skilling was convicted and sentenced to 24 years, 4 months in a federal prison on October 23, 2006. As well as his sentence of 24 years, 4 months, he was ordered to restore the Enron pension fund with $26 million out-of-pocket. In addition, the scandal caused the dissolution of Arthur Andersen, which at the time was one of the five largest accounting firms in the world.\textsuperscript{13}

The major problem of the Enron was the issue of transparency and adequate disclosure. Enron’s stock was worth more than $80 per share in January 2001 and was worth less than a dollar per share in December 2001.\textsuperscript{14}

2.1.7 HIH Insurance Limited Scam

In Australia, HIH Insurance Limited (HIH) together with its group companies was the second largest general insurance company. It consisted of 217 subsidiaries with operations in a number of countries. The last published accounts for the HIH Group showed that as at 30 June 2000 it had net assets of approximately $940 million. The HIH Group collapsed on 15 March 2001 when provisional liquidators were appointed to the main companies of the group. The liquidators have now estimated the HIH Group deficiency at between $3.6 billion and $5.3 billion. A Royal Commission was established to provide a report on the failure.

Former HIH director, Rodney Adler, HIH Chief Executive Officer, Ray Williams, and former HIH Chief Financial Officer Dominic Fodera have been sued by ASIC in the Supreme Court of New South Wales. ASIC was successful with Mr Justice Santow finding that all their officers had breached their duties

\textsuperscript{13} Supra n. 10.
\textsuperscript{14} Supra n. 11.
under the Corporations Act. Rodney Adler was found to have breached his director’s duties under section 180 – duty of care and diligence, section 181 – duty to exercise good faith, section 182 – duty not to improperly use position and section 183 – duty not to improperly use information. Ray Williams was found to have breached sections 180 and 182 and Dominic Fodera was found to have breached section 180. The breaches related to a payment of $10m by an HIH subsidiary, HIH Casualty and General Insurance Ltd to a company of which Rodney Adler was a director.

Additionally, the Court found that the payment of the $10m to a related party breached the related party provisions and the provisions of the Corporations Act 2001 dealing with providing financial assistance in the purchase of its parent’s shares.15

2.1.8 WorldCom Inc. Scam

WorldCom Inc. is a major global communications provider operating in more than 65 countries. It provides data transmission and internet services for businesses and through its MCI unit provides telecommunication services for businesses and consumers.

As the United States economy cooled in 2001 WorldCom’s earnings and profit similarly declined, making it difficult for the company to keep its earnings in line with the expectations of market analysts. Starting in 2001, WorldCom engaged in an accounting scheme to manipulate its earnings and thereby support WorldCom’s stock price.

WorldCom engaged in improper accounting scheme intended to manipulate its earnings to keep them in line with Wall Street’s expectations and to support World Com’s Stock Price. Thus it seems that WorldCom materially understated its expenses and materially overstated it earnings. Action was brought against WorldCom Inc. by U.S. Securities and Exchange Commission.

WorldCom Inc. is another example of a high profile public company desperately trying to meet institutional expectations. Failures to meet such projections are unmercifully punished by the market. This debacle suggests that

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some of the blame should be accepted by market analysts who pushed the corporation for unrealistically high profit forecasts. These forecasts put pressure on the companies to either face the market’s brutal reckoning or strive to achieve these financial goals.\(^\text{16}\)

### 2.1.9 Harris Scarfe Limited Scam

Harris Scarfe Limited was a discount department store chain with a 150 year history in the retail sector. In April 2001, its collapse occurred after revelations of serious financial irregularities over a six year period. The Harris Scarfe accounts for December 31 2000 showed net assets of $108m. The correct figure was close to $60m. Inventories were shown as $97m. The true figure was between $75m and $78m. Trade creditors were shown as $64m but they were closer to $90m. Operating cash flows for the half year to December 31 2000 were reported as $5.5m but were thought to be negative.

By its own admission, the Harris Scarfe board lost track of the group’s stock position. Discrepancies were discovered in the company’s stock position in March 2001 and the auditors were asked to investigate the deterioration of the company’s net asset position. The auditors advised the board that the irregularities had been occurring for up to six years. Neither the board nor the auditors picked up on the irregularities during the prior six years. The board announced that it was totally unaware of the irregularities and had acted in good faith on financial information provided to it by senior management. The end result was that the board appointed voluntary administrators to the company in April 2001.\(^\text{17}\)

### 2.1.10 M.S. Shoes (Insider Trading) Scam

The promoter of M.S.Shoes, Pawan Sachdeva, allegedly used company funds to buy shares of his own company and rig prices, prior to a public issue. The dominant shareholder of the firm, Pawan Sachdeva, took large leveraged positions through brokers at both the Delhi and Bombay Stock Exchanges to manipulate share prices prior to a rights issue. He is alleged to have colluded with officials in the Securities Exchange Board of India and SBI Caps, which lead-managed the issue, to dupe the public into investing in his Rs 699-crore public-cum-rights

\(^{16}\) Ibid.
\(^{17}\) Ibid.
issue. When the share prices crashed, the broker defaulted and BSE shut down for three days as a consequence.\textsuperscript{18}

\subsection*{2.1.11 Harshad Mehta Scam\textsuperscript{19}}

A major scam in securities market was uncovered in April 1992 in India. Harshad Mehta illegally led a cartel of bull players in the stock market to use liquidity provided by interbank credit and debit receipts to drive up the prices of certain company shares. The cartel succeeded in driving up the Bombay Stock Exchange sensex index by almost 150\%, due to the lack of depth and width of the Indian stock market as well as to the herding mentality of investors in the market. Specifically, he had diverted funds from the public sector firm Maruti Udyog Limited to his own accounts, provoking a record fall in the index.\textsuperscript{20}

He and his associates draw off funds from inter-bank transactions and bought shares heavily at a premium across many segments, triggering a rise in the Sensex. When the scheme was exposed, the banks started demanding the money back, causing the collapse. The broker was dipping illegally into the banking system to finance his buying. The amount that was involved in this scam was approx. to Rs. 4000 crores.

Harshad Mehta worked on the mechanism of Ready Forward (RF) Deals. It's a secured short-term (typically 15-day) loan from one bank to another. The bank lends against government securities. The borrowing bank actually sells the securities to the lending bank and buys them back at the end of the period of the loan, typically at a slightly higher price. The deal was done between the banks through brokers for commissions. In this settlement process, deliveries of securities and payments were made through the broker. That is, the seller handed over the securities to the broker, who passed them to the buyer, while the buyer gave the cheque to the broker, who then made the payment to the seller. Thus, both the parties may not know each other. It was this idea that made the mind of

\textsuperscript{18} http://archives.digitaltoday.in/businesstoday/20020120/stockmarkets4.html (Visited on December 15, 2014).
\textsuperscript{19} Jyoti Harshad Mehta and Ors. vs. Custodian MANU/SCOR/46930/2014.
\textsuperscript{20} Jill Solomon and Aris Solomon, \textit{Corporate Governance and Accountability} 170 (Wiley India (p.) Ltd., New Delhi, 2004).
Harshad to involve into the modus operandi. Harshad in his scam took the help of Bank Receipts.\textsuperscript{21}

2.1.12 CRB Scam

CRB scam was a typical case bringing out how easily the CRB group was able to defraud the investors and the regulatory authorities with utmost convenience.\textsuperscript{22}

C.R. Bhansali, a chartered accountant, created a group of companies, called the CRB Group, which was a conglomerate of finance and non-finance companies. The Bhansali scam resulted in a loss of over Rs 1,200 crores. He first launched the finance company CRB Capital Markets, followed by CRB Mutual Fund and CRB Share Custodial Services. He ruled like a financial wizard 1992 to 1996 collecting money from the public through fixed deposits, bonds and debentures. The money was transferred to companies that never existed.

CRB Capital Markets raised a whopping Rs 176 crores in three years. In 1994 CRB Mutual Funds raised Rs 230 crores and Rs 180 crores came via fixed deposits. Bhansali also succeeded to raise about Rs 900 crores from the markets. However, his good days did not last long, after 1995 he received several jolts. Bhansali tried borrowing more money from the market. This led to a financial crisis. It became difficult for Bhansali to sustain himself. The Reserve Bank of India refused banking status to CRB and he was in the dock. SBI was one of the banks to be hit by his huge defaults.\textsuperscript{23} Market manipulation was an important focus of the activities of the group. The non-finance companies routes funds to finance companies to manipulate prices. The finance companies would obtain funds from external sources using manipulated performance numbers. The CRB episode was particularly important in the way it exposed failure of supervision on the part of RBI and SEBI.

2.1.13 Ketan Parekh Scam\textsuperscript{24}

\textsuperscript{22} Dr. Sumit Sharma, \textit{Corporate Crimes & Financial Frauds} 173 (Authorspress, New Delhi, 2013).
\textsuperscript{23} http://www.drishtikone.com/blog/indias-top-10-scams (Visited on September 5, 2014).
\textsuperscript{24} \textit{HB Stockholdings Limited V. Securities and Exchange Board of India} MANU/SB/0039/2013.
The financial market of the country was taken by a shocker with the 176 point Sensex crash on the first day of March. This unexpected crash in the stock markets prompted the Stock Exchange of India to launch immediate investigations into the unpredictability of stock markets.25

Ketan Parekh is a former stock broker from Mumbai, India, who was convicted in 2008, for involvement in the Indian stock market manipulation scam in late 1999-2001. He was involved in rigging up the stock prices. A chartered accountant by training, Parekh came from a family of brokers, which helped him create a trading ring of his own. Between 1999 and 2000, when technology bubble was seen in the world, the Indian Markets at that time were also flourishing, he started rigging up stock prices. He rigged up the prices by borrowing from big banks and Investment firms. By the time he became famous to rig the prices everyone be it investment firms, promoters of listed companies, overseas corporate bodies etc, all were ready to hand the money to him. Scrips like Visualsoft rose from Rs 625 to Rs 8,448 per share and Sonata Software from Rs 90 to Rs 2,150. The inflated stocks had to be dumped to someone in the end, and Parekh used the financial institutions like the UTI to control the situations. This Scam know as Keitan Parikh Scam, was triggered off by a fall in the prices of IT stocks globally, Ketan Parekh was seen to be leader of this episode, with leveraged positions on set of stocks called the K-10 stocks. A bear cartel started disrupting Parekh's party by hammering prices of the K-10 stocks, it was this that led to the collapse of the market and the scam discovered.26

2.1.14 UTI Scam

The Unit Trust of India is the largest mutual fund in the country created in 1964. For more than two decades it remained the sole vehicle for investment in the capital market.27 The UTI (of which the US-64 scheme is the largest) was set-up specifically to channel small savings of citizens into investments giving relatively large returns/interest. The investments of the individuals were basically done in debt, but after the liberalization of the economy more allocation was made

25 Supra n.22 at 184.
27 Dr. Sumit Sharma, Corporate Crimes & Financial Frauds 202 (Authorspress, New Delhi, 2013).
to equity investments. The US-64 did not come under SEBI regulations, its investment details were kept secret and the chairman has arbitrary powers to personally decide its investment. This led Mr. P.S. Subramanyam the chairman to involve himself in the fraud. Small investor's funds were used to promote big business houses, shower favours to politicians, and invest huge amounts in junk bonds all for a fat commission. He was a key player in the Ketan Parekh scam. Huge amount of UTI funds were channelled into the infamous K-10 list of Ketan Parekh stock, such as Himachal Futuristic, Zee Telefilms, Global Tele, DSQ, etc. The UTI continued to buy these shares even when their market value began to crash in mid-2000, in order to prop up the share values of these stocks. This whole story led to the ultimate decline of the fund.\textsuperscript{28}

\textbf{2.1.15 Satyam Fraud}\textsuperscript{29}

Satyam Computers was the fourth largest IT Company in India. Serious questions were raised about corporate governance and integrity of the independent directors.\textsuperscript{30} Interestingly the disclosure of the fraud was made by Chairman Ramlinga Raju himself in his so called resignation letter.\textsuperscript{31} His admission that Satyam Computer Services Ltd’s Balance Sheet was completely fabricated got the stock crashing down by 66.5 per cent to Rs 60 from Wednesday’s high of Rs 188.70. The share hit a low of Rs 58, as details of the extent of fraud perpetrated by the promoters shook the stock market and cast a grim cloud over the corporate practices of companies. The BSE Sensex crashed 470.23 points or 4.55 per cent to 9,865.70, after rising to a high of 10,469.72 earlier Wednesday. Investors aggressively cut their positions. The BSE IT Index plunged 7.70 per cent and BSE Realty tumbled 11.20 per cent. IT and other sectoral stocks were beaten down badly as the Satyam fraud raised question over corporate governance of other companies also, especially IT.

Raju’s letter to the company board revealed a fraud of unprecedented proportions. He states that Satyam’s balance sheet as on Sep 30, 2008, carries an

\begin{itemize}
  \item \textsuperscript{28} http://www.capitalvia.com/admin/report-id/upload/295.pdf (Visited on September 19, 2014).
  \item \textsuperscript{29} Union of India v. Satyam Computers Services Ltd. & Ors (2009) 1Comp LJ 308(CLB).
  \item \textsuperscript{30} Dr. Sumit Sharma, \textit{Corporate Crimes & Financial Frauds} 166-167 (Authorspress, New Delhi, 2013).
  \item \textsuperscript{31} Press Trust of India, January 2009.
\end{itemize}
inflated (non-existent) cash and bank balances of Rs 5,040 crores as against Rs 5,361 reflected in the books. Further, it carries an accrued interest of Rs 376 crores which is non-existent. The books carry an understated liability of Rs 1,230 crores on account of funds arranged by Raju, and an over stated debtors position of Rs 490 crores as against Rs 2,651 crores in the books. This has resulted in artificial cash and bank balances going up by Rs 588 crores in the second quarter alone.\textsuperscript{32}

2.1.16 Evolution of Corporate Governance in India

Corporate governance was the most important topic of popular academic debate in the 1980 and the 1990s. In the coming years too, interest in this topic is not likely to wane. The interest in corporate governance is primarily due to two factors curious happiness in the corporate world and globally on mobile capital.\textsuperscript{33} India has a unique and epochal background of governance in the ancient times; the king was always considered the representative of the people. The wealth of the state was not the personal wealth of the king. The principle of trusteeship was also followed. Rules of corporate governance were first specified in this country thousands of years back through Rigveda, the oldest book on record in the whole world. In that historic context, “harmony” was the watchword and “symphony” amongst all stakeholders was the modus operandi. That is to say “prosperity for all” was the common corporate goal, thus obviating the dangers of divergence and chances of conflict between individual and organizational objectives. Kautilya’s Arthashastra, written well over two thousand years back (some three hundred years before the beginning of Christian era), presented more of operational details with regard to corporate governance.\textsuperscript{34} In India, the initiative on corporate governance was not a result of any major corporate scandal, like Enron, World Com, etc. It started as a self-regulatory move from the industry rather than the rule of law. The management is believed to be a trustee of shareholder’s capital and


\textsuperscript{33} Dr. Sunil Deshta, Vikram singh Jaswal, et.al., “Corporate Governance: A Legal Realism” 47 CMLJ 7 (2011).

\textsuperscript{34} Neetu Jain, “Towards Indian Perspective of Corporate Governance: Need For Spiritual Regeneration” 4 FJIM 69 (2007).
business is a trustee of all resources, including the environment. As trustees the primary goal of management is to protect the interest of the owners and also, not to exploit resources for short term profits. The need for Corporate Governance has become highlighted by the scams brought high almost as an annual feature ever since the liberalization of the economy in 1991, To cite a few Harshad Metha, ketan Parikh scam, UTI scam, the vanishing company scam, the Bhansali scam and so on. There is a need to learn lessons from the countries like USA and UK where companies are exposed to lot of hardships and failures due to misgovernance and unethical business practices. In the Indian corporate scenario, it has become imperative to induct good global standards so that the scope for scams is minimized. The most important development in the field of Corporate Governance and Investor protection in India has been the establishment of the Securities and Exchange Board of India in 1992 and its gradual empowerment since then. It was established primarily to regulate and monitor stock trading, it has played a crucial role in establishing the basic minimum ground rules of corporate governance in the country. Concerns about corporate governance in India were, however, largely triggered off by a spate of crises in the early 1990’s as already noted. This concerns about Corporate Governance stemming from the several corporate scandals, coupled with a perceived need to open up to the forces of competition and globalization, gave rise to several investigations into ways to fix the Corporate Governance situation in India. In the beginning of the last century, though the academia attempted to shape the concept of corporate governance, but the corporate governance as a business practice was adopted only two decades back. Corporate governance as a method of business practice was examined several times by different expert business committees across several jurisdictions. The committees attempted to describe and provide the meaning of and define corporate governance based on the social, economic and political culture of the state. Some of them did not give any definition of corporate governance, whereas others described the attributes of corporate governance.\footnote{Indrajit Dube, corporate governance 8 (Lexis Nexis Butterworths Wadhwa, New Delhi, 2009).}

One of the first such endeavors was the confederation of Indian Industry (CII) code for Desirable Corporate Governance, developed by a committee.
chaired by Rahul Bajaj, this committee was formed in 1996 and submitted its code in April 1998. Later the Securities and Exchange Board of India (SEBI) constituted two committees to look into the issue of Corporate Governance. The first was chaired by Kumar Mangalam Birla, which submitted its report in 2000, and the second by Narayana Murthy, which submitted its report three years later. These two committees have been instrumental in bringing crucial changes in Corporate Governance in India through the formulation of clause 49 of listing agreements. Concurrent with the Initiatives by the SEBI, The Ministry of Corporate Affairs, The Ministry of Finance of the Government of India also began contemplating improvements in Corporate Governance. These efforts include the establishment of a study group to operationalize the Birla Committee recommendations in 2000, the Naresh Chandra Committee on Corporate Audit and Governance in 2002, and the expert committee on Corporate Law (The J.J. Irani Committee) in 2004. All these efforts were aimed at reforming the existing Companies Act of 1956 still forms the backbone of corporate law in India.

2.2 Reports of Various Committees on Corporate Governance

2.2.1 National Reports

2.2.1.1 Confederation of Indian Industry Code on Corporate Governance

The Confederation of Indian Industry was the pioneer body in India which came out with the first ever code on corporate governance. The code received an overwhelming response from the corporate sector in India and various recommendations made in this code were included in the regulations and became part of the regulations. The important features of Confederation of Indian Industry’s code are:

I. As the key to good corporate governance lies with the well functioning of the Board of Directors, the full board which should be single tiered, should meet at least six times a year with a gap of 2 months.

II. The non-executive directors should comprise 30 percent of the board and one of them being the chairman.

III. The non-executive directors should comprise at least 50 percent of the board if the chairman and managing director is the same person.
IV. Non-executive directors should be paid commission and offered with stock options for their professional inputs beside their setting fees.

V. Non-executive directors must be active, have defined responsibility and be conversant with profit and loss account, balance sheet, cash flow statement, financial ratios and have some knowledge of company laws.

VI. The board should be informed of the operating plans and budget, long term plans, quarterly divisional results and internal audit reports.

VII. Directors who have not been present for at least 50 percent of the board meetings should not be re-appointed.

VIII. Details of defaults, payments for intangibles and foreign exchange exposures should be reported of the board.

IX. In audit committee comprising at least three non-executive directors should be set-up and given access to all financial information.

X. Disclosure norms and levels followed at home should be the same as those required for GDR issues.

XI. While accepting the corporate disclosure norm as recommended by the working group on companies act regarding financial and non-financial information, draft code recommended for disclosure of additional information in the annual report on the monthly average share prices, value-added and financial performance of divisions and segments should be adopted.

XII. Major Indian stock exchanges should gradually insist upon compliance certificate signed by CEO and the CFO clearly stating that accounting policies and standards have been followed.

XIII. In case multiple credit ratings are obtained all the ratings should be disclosed with comparisons explaining their significance.

XIV. The government must allow for greater finding to the corporate sector against the security of shares and other papers.

XV. Recommending for reducing the number of companies having nominee directors, the draft envisages that financial institutions should withdraw from company boards where their individual shareholding is 5 percent or less.
XVI. Companies that default on fixed deposits should not be permitted to accept further deposits, make inter-corporate loans or investments and declare dividends unless default is made good.\(^{36}\)

2.2.1.2 Kumar Mangalam Birla Committee on Corporate Governance\(^ {37} \)

In 1991, Stock Exchange Board of India constituted a committee in India to appraise the standards of corporate governance. The committee was formed with the objective to provide various changes to the listing agreement being implemented by various stock exchanges to promote and enhance the standard practice of corporate governance companies listed in India. The committee was also executed with the task of drafting an effective code of corporate best practices and provide various safeguards to deal with insider trading by the companies. A large number of the recommendations made by the committee were incorporated in the listing agreement under clause 49. Some of the recommendations with respect to board of directors of the company are:

I. Board of a company should have an optimum combination of executive and non-executive directors with not less than fifty percent of the non-executive directors. (Mandatory)

II. A qualified and independent audit committee comprising minimum three members, all of them being non-executive directors, with majority being independent and at least one having financial and accounting knowledge, should be set-up by the board of the company. (Mandatory)

III. The board should set-up a remuneration committee comprising of at least three directors, all of them being non-executive directors to determine the remuneration packages of the executive directors. The board will decide the remuneration of non-executive directors. (Mandatory)

IV. The board meeting shall be held at least four times a year, with the maximum gap of four months between any two meetings. (Mandatory)

V. The board shall clearly define the role of management. As a part of the director’s report or as an addition thereto. A management Discussion and


\(^{37}\) Kumar Manglam Birla committee on Corporate Governance (1999).
Analysis Report should form a part of the annual report to the shareholders. (Mandatory)³⁸

2.2.1.3 Naresh Chandra Committee Report on Corporate Audit and Governance:³⁹

The Naresh Chandra Committee (2002) was constituted by the Department of Corporate Affairs (DCA) by the central government to analyze various corporate governance issues. The recommendations made by the committee were included in the Companies (Amendment) Bill 2003.

2.2.1.4 Narayana Murthy Committee Report:⁴⁰

In 2003, Stock Exchange Board of India constituted this committee to examine the level of performance corporate governance and to determine the effective role to be played by the companies in India towards the price sensitive issues prevailing in the business environment in order to assure reliability and increase transparency in the financial market.

2.2.1.5 J.J. Irani Committee:⁴¹

The committee, chaired by Dr J.J Irani, was charged with undertaking a comprehensive review of the 1956 Act and its recommendations led to a rewrite of the law and a new Companies Bill, 2008.

2.2.1.6 Confederation of Indian Industry (CII) Taskforce on Corporate Governance

In spite of formulating Code of Best Practices by various bodies and committees all round the developed and developing nations there were instances of corporate misconduct in US, UK, France, Germany, Italy, Japan, South Korea and in many other Organization for Economic Cooperation and Development nations with India too rocked itself in the list through the Satyam scandal. Apart from the Satyam incident, corporate in India are well managed and regulated. Business is conducted within a solid legal framework. However, the Satyam episode forced the Indian regulators to have a new look at the prevailing corporate governance guidelines for making improvement within industry by application of

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³⁹ Naresh Chandra Committee on Corporate Audit and Governance (2002).
⁴⁰ N.R. Narayana Murthy committee on Corporate Governance (2003).
some voluntary measures. In this connection, a task force under the leadership of Mr. Naresh Chandra was set up for suggesting methods and ways to improve the status of corporate governance standards and practices.

The task force in its report recommended a series of additional principles to improve the standards of corporate governance in spirit and in practice. The report highlighted a series of voluntary recommendations for the corporate in India which if followed sincerely would be able to raise standards of in corporate governance the country. According to the report, “much of best-in-class corporate governance is voluntary - of companies taking conscious decisions of going beyond the mere letter of law. The spirit of this Task Force Report is to encourage better practices through voluntary adoption - based on a firm conviction that good corporate governance not only comes from within but also generates significantly greater reputational and stakeholder value when perceived to go beyond the rubric of law.”

2.2.1.7 Corporate Governance Voluntary Guidelines 2009

A new set of Corporate Governance Voluntary Guidelines 2009 was designed and published by Ministry of Corporate Affairs (MCA) for companies to adopt better practices in the area of corporate governance which mainly focused on guidelines for operations of boards and board committee’s appointment of external auditors and their rotation and development of a whistle blowing mechanism. In brief these guidelines can be broadly classified in areas of:

I. Board of Directors
II. Responsibilities of the Board
III. Audit Committee of the Board
IV. Auditors
V. Secretarial Audit
VI. Institution of mechanism for Whistle Blowing (www.acga-asia.org).

The above guidelines provided code and conducts for good practices which were to be adopted by both the public and private companies voluntarily. The guidelines were not intended to be a substitute for or additions to the existing laws but were recommendatory in nature. Despite these wide-ranging developments in regulation and policy, what becomes increasingly apparent in
India is that the reform process has not addressed, or effectively addressed, a key challenge at the heart of the governance problem, namely the accountability of promoters to other shareholders. Even though most listed companies have large controlling shareholders, typically a family, the regulation of related-party transactions in India is minimal. Promoters have considerable freedom of action in undertaking such transactions and are subject to only limited regulatory controls. They are also permitted to issue preferential warrants to themselves at an effective discount to the market price—something that would not be condoned in more developed markets. In this context, relying largely on independent directors (appointed by controlling shareholders), independent board committees and greater corporate disclosure as the primary mechanisms to check abuses of power by promoters and to safeguard the interests of minority shareholders is likely to prove weak and insufficient (as indeed it did in the Satyam case). Board reform is fundamentally important and is a major issue of concern to institutional investors, but it needs to be complemented by other regulations that directly address the relationship between controlling and minority shareholders—in other words, a proper regime for the regulation of related-party transactions.

2.3 The Companies Act, 2013

The main provisions of the act to provide transparency and good corporate governance are:

I. Introduced investor democracy and addresses public concern over corporate accountability;
II. The scope of officer under default has been broadened;
III. Stringent penalties;
IV. More powers to auditors and changing the auditors every 5 years;
V. Duties of directors are specified and breach of duties are penalized;
VI. Accounting standards are prescribed;
VII. The mandate and role of independent directors defined along with the term of their office as maximum 10 years;
VIII. The maximum number of members, which a private company can have is increased from 50 to 200;
IX. Compulsory appointment of at least one women director is provided;
X. The concept of one person company has been introduced;
XI. Introduction of provisions to set up Serious Fraud Investigation Office (SFIO);
XII. Valuation of assets of the company should be done by a registered valuer;
XIII. Limited the number of holding companies;
XIV. Some restrictions on companies to act as groups;
XV. Clear provisions of corporate governance;
XVI. Insider trading of company directors made as a criminal offence.\(^42\)

2.4 International Reports

2.4.1 Cadbury Report\(^{43}\)

The Cadbury Committee was set up with a twin objective to raise the level of financial reporting and auditing and to enhance the standards of corporate governance. The committee reviewed and addressed various financial aspects of corporate governance. It also reviewed and assigned the role and responsibilities of board of directors and defined the powers and responsibilities of shareholders and the duties of auditors in the area of corporate governance. The committee also provided a series of recommendations in the accountancy profession.

2.4.2 The Paul Ruthman Committee

This committee was set up with an aim to overcome the controversial issues of Cadbury Report. The committee proposed to restrict the requirement of reporting of internal financial controls towards the effectiveness of the system of internal control as laid down by the Code of Best Practices contained in the Cadbury Report. The report also suggested some important factors mainly for extending the responsibility of directors to responsibilities in order for controlling business risk.

2.4.3 The Greenbury Committee\(^{44}\)


\(^{43}\) Cadbury Committee Report : A report by the committee on the financial aspects of corporate governance. The committee was chaired by Sir Adrian Cadbury and issued for comment on (May, 1992).

\(^{44}\) Greenbury Committee Report (1994) investigating board members' remuneration and responsibilities.
This committee was set up in UK with an objective to identify good practices in determining director’s remuneration by the public limited companies under the Confederation of British Industry (CBI). The committee was also entrusted with the task of preparing a specific code of practice which can be used by the public companies of U.K. It also focused on the general concerns and provided answers in the areas of ascertaining directors' remuneration, accountability and responsibility, issues of reporting towards stakeholders and openness in the reporting process. The Code of Best Practice recommended by the committee focused mainly on the areas of Disclosure, Remuneration policy, Remuneration Committee and legal Contracts. The committee was in favour that entity in UK shall implement the code honestly to its full extent and it should be practiced in letter and spirit. It also recommended that individual investors, institutional investors and global investors should exercise their power to full extent in order to comply that the best practice is adopted.

2.4.4 The Hampel Committee:45

It was formed to increase the level of standards of corporate governance in view to provide protection to the investors and raise the status of the companies that were listed on London Stock Exchange (LSE). It improvised Cadbury report and made recommendations that auditor should report to the directors about the internal control systems and the Directors from time to time should review the functions of internal audit and internal control. The committee came out with the combined code which was the consolidation of report of Cadbury and Greenbury.

2.4.5 The Combined Code:46

All the companies listed in U.K. were mandatorily required to make compliance of the combined code which was appended to the listing rules of the LSE. The combined code required, board of directors to safeguard the interest of the stakeholders and the company’s assets within effective system of internal control. This committee also recommended that the directors once in a year should review the effectiveness of all controls whether financial or operational at least

once in a year. The directors in their report should also make reference about the compliance to the above in their report.

2.4.6 **Blue Ribbon Report:**\(^47\)

The Securities Exchange Commission of U.S. constituted this committee focus on the effectiveness of audit committees. The committee recommendations were made mandatory to be adopted by all the companies listed in U.S Stock Exchange. The recommendations were obligatory for issuers of other nations subject to their own national laws.

2.4.7 **Calpers' Global Governance Principles:**\(^48\)

“With the goal of encouraging a continual debate on best governance practices globally, in 1997 CalPERS' Board adopted a set of Global Governance Principles. In late 1999, the CalPERS Investment Committee analyzed other newer global governance principles and with the goal of supporting a single set of global governance principles, the investment committee revised CalPERS' Global Governance Principles to parallel the International Corporate Governance Network's statement on Global Governance Principles. The International Corporate Governance Network (ICGN) was founded with the objective to facilitate international dialogue and thereby helping companies to compete more effectively. The International Corporate Governance Network welcomed the Organization for Economic Cooperation and Development principles as a remarkable convergence on corporate governance common ground among diverse interests, practices and cultures. While the International Corporate Governance Network considered the Organization for Economic Cooperation and Development principles the necessary bedrock of good corporate governance, it held that amplifications were required to give them sufficient force.”

2.4.8 **Sarbanes-Oxley Act, 2002:**\(^49\)

This Act was introduced in U.S. after the series of scandals which took place in U.S. The act brought about the recommended fundamental changes in the


\(^{48}\) Calpers Global Principles of Accountable Corporate Governance(1999).

area and scope of corporate governance. These changes were mainly in the area of independence of auditor, conflict of interest, enhance disclosure practices and corporate responsibility.

### 2.4.9 King Committee on Corporate Governance:50

The King committee was constituted in South Africa for development of corporate governance. The committee made an attempt to balance between the corporate governance standards in South Africa with the other counterparts. All the companies were which were listed on Johnsberg Stock Exchange were compulsory required to comply the provisions as laid down in the report.

### 2.4.10 The Turnbull Committee:51

In order to assist and guide the companies in implementing the provisions of internal control as mentioned in the Combined Code. The committee laid the responsibility on the board of directors that the companies in which the functions of the internal audit was not carried out by the board was required to develop the need of internal audit.

### 2.4.11 Higgs Report:52

This committee was formulated with an objective to examine and review the governance of non-executive director in U.K. in meeting out the responsibilities.

### 2.4.12 ASX Corporate Governance Council Report:53

In order to provide a concrete framework of corporate governance in Australia this council was constituted with the aim of developing and delivering a sound framework of corporate governance. The council realized “Principles of Good corporate governance and Best Practice Recommendations”. Though recommendations were not made mandatory for compliance initially but later on all the companies were required to make a reference in their annual report with reasons about the implementation of the said recommendations.

### 2.4.13 World Bank on Corporate Governance

50 King Committee on Corporate Governance (2002).  
51 The Turnbull Committee Report on The combined code of Best practices in Corporate Governance, (1998).  
In spite of the various committees being formed at national and international level to discuss the issues of corporate governance, the leading monetary organizations were also involved to deal with the issues of corporate governance and provide specific guidelines to raise the standards of corporate governance. One of the significant financial institutions which took the task was the World Bank. In its report, the World Bank was more concern on the conceptual framework issues related to the principles of corporate governance. It recommended that there should be uniformity in principles related to transparency, accountability, fairness and responsibility so that it can be applied universally. World Bank was more concern that the aim of corporate governance should be of aligning the economic, social, individual and communal goals and society at large. The report stated that corporate governance system is based on the sound foundation of disclosure. The funds will automatically flow within the economic entity if there is greater disclosure and transparency which can bring about the trust and raise public confidence in the corporate system.

2.4.14 Organization for Economic Cooperation and Development Principles:

In the area of corporate governance one of the milestones was the development of Organization for Economic Cooperation and Development principles and practices on corporate governance. The organizations focused that the principles of corporate governance should be able to direct corporate in their goal of achieving long term shareholder value creation. “The Organization for Economic Cooperation and Development formulated the Code of Best practices which included the areas broadly classified as:

i) rights of shareholders,
ii) Equitable treatment of shareholders,
iii) Role of stakeholders,
iv) Disclosure and Transparency and
v) Responsibilities of the board”.

2.4.15 Common Wealth Association for Corporate Governance (CACG)
Guidelines Principles for Corporate Governance in the Common
Wealth

The CACG\(^55\) was established in April 1998 in response to the Edinburgh
Declaration of the Commonwealth Heads of Government meeting in 1997 to
promote excellence in corporate governance in the Commonwealth. The CACG
has two primary objectives:

I. to promote good standards in corporate governance and business practice
   throughout the Commonwealth;

II. to facilitate the development of appropriate institutions which will be able
    to advance, teach and disseminate such standards.\(^56\)

The CACG Guidelines were agreed by the Commonwealth Business
Council (CBC) in 1999 and presented to Commonwealth Heads of Government at
their 1999 Summit, which endorsed them. The guidelines have been designed with
particular focus on the emerging and transitional economies, making up a large
part of the Commonwealth, but also meet the needs of international investors and
multilateral international agencies. The CACG Guidelines also explore some of
the complex issues relating to public and state enterprises, business ethics and
corruption, and the role of international professions operating in emerging and
transitional economies.\(^57\)

The CACG Guidelines recommend that the board should

I. Exercise leadership, enterprise, integrity and judgment in directing the
corporation so as to achieve continuing prosperity for the corporation and
to act in the best interest of the business enterprise in a manner based on
transparency, accountability and responsibility.

II. Ensure that through a managed and effective process board appointments
are made that provide a mix of proficient directors, each of whom is able

\(^{55}\) Common Wealth Association of Corporate Governance, 1998.

\(^{56}\) See CACG Guidelines Principles for the Corporate Governance in Common
Wealth, 1999, Common Wealth Association for Corporate Governance available at:

\(^{57}\) Steve Godfrey, “Benchmarks and Indicators for Corporate Governance: A Private Sector
to add value and to bring independent judgment to bear on the decision-making process.

III. Determine the corporation’s purpose and values, determine the strategy to achieve its purpose and to implement its values in order to ensure that it survives and thrives, and ensure that procedures and practices are in place that protects the corporation’s assets and reputation.

IV. Monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans.

V. Ensure that the corporation complies with all relevant laws, regulations and codes of best business practice,

VI. Ensure that the corporation communicates with shareholders and other stakeholders effectively,

VII. Serve the legitimate interests of the shareholders of the corporation and account to them fully.

VIII. Identify the corporation’s internal and external stakeholders and agree a policy, or policies, determining how the corporation should relate to them.

IX. Ensure that no one person or a block of persons has unfettered power and that there is an appropriate balance of power and authority on the board which is, inter alia, usually reflected by separating the roles of the chief executive officer and Chairman, and by having a balance between executive and non-executive directors.

X. Regularly review processes and procedures to ensure the effectiveness of its internal systems of control, so that its decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times.

XI. Regularly assess its performance and effectiveness as a whole, and that of the individual directors, including the chief executive officer.

XII. Appoint the chief executive officer and at least participate in the appointment of senior management, ensure the motivation and protection of intellectual capital intrinsic to the corporation, ensure that there is adequate training in the corporation for management and employees, and a succession plan for senior management.
XIII. Ensure that all technology and systems used in the corporation are adequate to properly run the business and for it to remain a meaningful competitor.

XIV. Identify key risk areas and key performance indicators of the business enterprise and monitor these factors;

XV. Ensure annually that the corporation will continue as a going concern for its next fiscal year.

Corporate governance has assumed crucial role in the Indian context because of the scams that occurred since liberalization from 1991, for e.g. the UTI scam, Ketan Parekh scam, Harshad Mehta scam & the latest & the biggest of them all the Satyam Fraud scam. Recent corporate frauds and the outcry for transparency and honesty in reporting have given rise to two outcomes. First, forensic accounting skills have become very crucial in untangling the complicated accounting maneuvers that have obfuscated financial statements. Second, public demand for change and subsequent regulatory action has transformed corporate governance scenario across the globe. In fact, both these trends have the common goal of addressing the investors’ concerns about the transparent financial reporting system. The failure of the corporate communication structure, therefore, has made the financial community realize that “there is a great need for skilled professionals that can identify, expose, and prevent structural weaknesses in three key areas: poor corporate governance, flawed internal controls, and fraudulent financial statements. In addition, the corporate governance framework needs to be first of all strengthened and then implemented in “letter as well as in right spirit”. The increasing rate of white-collar crimes, without doubt, demands stiff penalties and punishments. Comprehensive legislation combined with strong enforcement can be a big deterrent to fraud. The majority of the survey respondents agreed that the potential for prosecution and enforcement is a strong deterrent against fraudulent conduct. The legal plus administrative environment in India provides excellent scope for corrupt practices in business. However it should be noted that the corporate governance problems in India are different from that in U.S. or U.K. The governance issue in U.S. or U.K. is that of disciplining the management while

58 dx.doi.org/10.4236/ojacct.2013.22006 (Visited on October 31, 2014).
the problem in the Indian corporate sector is that of disciplining the dominant shareholder & protecting the minority shareholders.\(^5^9\) Further it is noticed, that nowadays, in emerging market like India when investments take place on a large scale, investors verify that not only the capital markets or the companies on which they have invested run competently but they also have good corporate governance.\(^6^0\) Good corporate governance practices reduce this risk by ensuring transparency, accountability, and enforceability in the marketplace.\(^6^1\) Moreover, well-governed firms are likely to obtain capital more cheaply than firms that have poor corporate governance practices because investors will require a smaller “risk premium” for investing in well governed firms.\(^6^2\) While the presence of a good corporate-governance framework ensures neither stability nor success, it is widely believed that it can “raise efficiency and growth,” especially for countries that rely heavily on stock markets to raise capital. Thus, in an efficient capital market, investors will invest in firms with better corporate-governance frameworks because of the lower risks and the likelihood of higher returns.

On account of the interest generated by Cadbury Committee Report, The CII, ASSOCHAM & SEBI constituted committees to recommend initiatives in Corporate Governance. KPMG in its survey on State of Corporate Governance in India has stated that, the Good corporate governance is characterized by a firm commitment and adoption of ethical practices by an organization across its entire value chain and in all of its dealings with a wide group of stakeholders encompassing employees, customers, vendors, regulators and shareholders (including the minority shareholders), in both good and bad times. To achieve this, certain checks and practices need to be whole-heartedly embraced. In India, corporate governance initiatives have been undertaken by the Ministry of

\(^{5^9}\) J. Varma, “Corporate Governance in India : Disciplining the Dominant Shareholder” IIMB MR 5-18(1997).

\(^{6^0}\) N.Vittal, “Issues in Corporate Governance in India” Paper for publication in the 5th JRD Tata Memorial Lecture Series.


Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI).\textsuperscript{63}

With this background, the Corporate Governance regime in India is more towards, legalizing the norms than leaving it to the ethical conscience of the company. Furthermore, the corporate governance landscape in the country has been changing very fast over the past decade, particularly with the enactment of Sarbanes-Oxley\textsuperscript{64} type measures in Clause 49 of the listing agreements, and legal changes to improve the enforceability of creditor’s rights.\textsuperscript{65}

The last decade has seen significant coverage of corporate fraud in the Indian media. While the Indian government has passed several laws aimed at curbing fraud,\textsuperscript{66} poor enforcement has diluted the intended impact. With the rise of new business models backed by technology, fraud has spawned new variants and seems to be on the rise. Insufficient mechanisms to prevent and detect fraud, as well as limited enforcement of internal controls are likely to be the reasons that organizations continue to experience traditional fraud. Specifically in the area of bribery and corruption, organizations have, in the past, considered bribery as the ‘cost of doing businesses, and hence demonstrated a degree of acceptability towards this practice. But with increased scrutiny by foreign regulators, and the Indian government taking a tough stand on bribery by enforcing legislations like the Prevention of Corruption Act while passing judgments on cases, we are seeing several companies taking efforts to address the risk of bribery and corruption.

With the sophistication of fraud, companies need to take a long term view of fraud risk management and adopt comprehensive frameworks to mitigate fraud. As organizations strive to create a high performance culture, they must back these efforts by creating strong controls, pro-active supervision through use of

\textsuperscript{63}Amit K Kashyap and Dr. Anjani Singh Tomar “Corporate Governance In Indian Capital Market: An Appraisal” 2 JBM&SSR 6 (2013).

\textsuperscript{64}Sarbanes Oxley Act of 2002 passed by the congress of the United States of America on 23rd January, 2002.

\textsuperscript{65}http://borjournals.com/Research_papers/May_2013/1229M.pdf (Visited on November 13, 2014).

\textsuperscript{66}In the last decade and a half India has enacted the following legislations aimed to curb fraud - the Prevention of Corruption Amendment Act 2011, the new Companies Act, 2013, The Whistleblowers Protection Act, 2011, The Right to Information Act, 2005 (RTI), The Information Technology Act 2000 (IT Act), and The Prevention of Money Laundering Act, 2002 (PMLA).
technology and independent monitoring of key performance parameters to create
deterrence for misbehaviour. There is no gainsaying the fact that challenges in
fraud prevention and detection are enormous so far as external factors such as
regulation coupled with law enforcement are concerned. It is understandable that
any change or changes come from within and the companies have amply
demonstrated this by showing business can be done in India ethically.\textsuperscript{67}

In this context, India’s position on legislations to curb corporate fraud is
still evolving. The Companies Act 2013 is a significant development in the
evolution of India’s regulatory environment. This law is the first in the country to
focus comprehensively on fraud risk management and prescribes stringent
punishment upon the violation of its provisions. The Act includes specific
provisions to address the risk of fraud, alongside prescribing greater responsibility
and increased accountability for independent directors and auditors. It goes
beyond professional liability for fraud and extends to personal liability,
prescribing penalties for directors, key management personnel, auditors and
employees. The Companies Act 2013 calls for the establishment of a vigil
mechanism for directors and employees to report concerns about unethical
behavior, suspected fraud or violations of the company’s code of conduct or ethics
policy. However, the effectiveness of a vigil mechanism is not guaranteed by its
mere existence, but by the confidence that stakeholders place in its functioning.
According to the Deloitte India’s Whistle blowing Survey 2014\textsuperscript{68}, it was felt that
a whistleblower program, should necessarily have anonymity and confidentiality,
Adequate whistleblower protection, Transparency and Independence, as required
by the legislation, and to provide for an objective view a dedicated team to
handle whistleblower complaints (third party or internal) and a well-documented
process of addressing complaints, feedback and communication.\textsuperscript{69}

