CHAPTER - IV

THE PROBLEM OF CORPORATE CRIME IN INDIA

As in the case of several other countries of the world, in India also the problem of corporate crimes has created lots of problems to the authorities of State; further, it has caused damage to the business interests on the one hand and caused damage to public interest on the other. In this chapter a study has been made of the problems involved in corporate crimes in India. Like the corporations of the other countries in the world the companies and corporations in India also carry out a number of activities; therefore we find a variety of companies involved in corporate crimes. The private institutions undertake different types of functions for the government and involve the governmental institutions into criminal activity. They undertake the work on the basis of a contract or a lease or some such commercial relationship which ultimately affects the reputation and credibility of the governmental institutions. As in the previous chapter concerning the foreign governments of various countries this chapter also follows the methodology of giving first the legal framework of the law on corporate crimes and then highlights the problems which have arisen in our country on account of corporate crimes. The development of law through legislation and judicial decisions has been highlighted first and then the specific cases which have arisen causing damage to the business interests of the relevant institutions and damage to the reputation of the government has been highlighted. Such an approach brings to light the nature of law on the one hand and the nature of the crime existing at present in various institutions on the other hand. In the selection of cases the pattern followed is to present such of the cases which have raised an alarm against the companies or corporations which were involved in the crime, whether intentional or negligent. Selection has also been made of such of the cases in which the parties were individuals working in their officially responsible position as ministers but they abused their position and caused harm to social interest besides getting involved in the crime. What is noticed in the cases arising in India is that the problem of corporate crime is not just due to the neglect or default of the company managers, but owing to the collusion of the government officials and others from the civil society with the officials of the companies. The various provisions of law and the various institutions which are functioning for the purpose of enforcing the law have been discussed in this chapter.

The substance of the subject under study is analysed into the following Two (2) categories namely, the law relating to corporate criminal liability and the cases of corporate
liability. Based on this analysis, the Chapter is so devised as to cover Section I the law on the subject of companies and their corporate criminality; and Section II describes the cases in which the business interests of the companies and the society are affected.

**Section I: Law on Companies and the Corporate Criminal Liability**

With regard to the provisions of law on companies and their criminal liability may be made first to the Indian Penal Code which defines the term company or corporation; according to the Penal Code the term ‘person’ as defined in Section 11 of the Penal Code and Section 2 of the General Clauses Act includes clearly within its fold a Company which is a juristic person. The general law thus wipes out the distinction between natural persons and abstract entities as far as the application of the provisions of the Penal Code is concerned. The Penal Code also contains provisions with regard to liability of companies and corporations for certain offences defined in the Penal Code. But there are certain principles and procedures which are relevant to the subject of corporate liability.

The Penal Code is a general law of crimes, and with regard to certain special subjects, places or things there are the provisions of the special laws. Thus, apart from the provisions of general law there are a plethora of Statutes which constitute the body of special laws. These special laws deal with specific matters; if a company is to be brought to book under the criminal law then the provisions of the special laws need to be followed. Mention may be made at this stage of the provisions of Companies Act which defines what a company is and what are its powers and functions. The Act has been amended several times to introduce certain new provisions and to cover certain new situations. The most important aspect of these special laws is the approach adopted by it towards the functioning of regulatory agencies.

In short, the structure of law on corporate criminal liability in India is not only similar to that in English law, but has been greatly influenced by the English Law. At one point of time, “corporations were viewed as a convenient shield to evade liability. Of all the legislative instruments on the subject of corporate liability the fundamental law dealing with the institution and which has been amended several times is the Companies Act, the key provisions of the Companies Act which deal with company matters are the following:-

Chapter IVA of the Companies Act, 1956 deals with the Powers of Central Government to remove managerial personnel from office on the recommendation of the Company Law Board.

Under section 388B the Central Government has the power to refer to the Company Law Board (CLB) any complaint against any managerial personnel under the following
circumstances;
a) When any person concerned with the management of the affairs of the company is guilty of fraud misfeasance persistent negligence or default in carrying out his obligations and functions under the law;
b) When the business of the company has not been conducted by the person as per sound business principals;
c) Section 388 C of the Companies Act provides that during the pendency of the case the Company Law Board has the power to pass an interim order on the application of the Central Government in the interest of its members this interim order can direct the concerned managerial person not to discharge his duties till further order. The CLB can also order an appointment of a suitable person to perform the duties of the person concerned and can also specify the terms and rules regarding the same.

Section 388 D provides that at the conclusion of the hearing the CLB shall record its findings indicating whether the person is fit and proper to hold the office of director or any other office concerned with the conduct and management of the company.

Under section 388 E, the Central Government may remove the delinquent person from his office and after his removal he shall not hold any managerial office of any company for a period of five years from the date of the order of removal nor will he be paid any compensation for loss of office as a result of removal

Chapter VI deals with Prevention of Oppression and Mismanagement of Companies and the Powers of Company Law Board. Section 397 provides that relief against the Oppression will be provided by the CLB on application when it is under the following opinion That the company’s affairs are conducted in a manner that is oppressive to any member or members and the just conclusion would have been to wind up the company However doing so would unfairly prejudice such a member or members. As per section 398 reliefs against mismanagement will be provided by the CLB on application when it is under the following opinion.

Then there are the Statutes like the Prevention of Corruption Act, the Foreign Exchange Management Act, the Prevention of Money Laundering Act, the National Stock Exchange Act, etc. which talk about the prevention and prosecution of corporate crimes.

Section II: Illustrative Cases of Corporate Crimes

In this Section the discussion covers the cases that have appeared before the courts and the law enforcement agencies in which the parties were the corporate bodies or governmental
institutions of our country, whose conduct affected the business interests as well as the social interests.

1. **Bhopal Gas Disaster**

   This is a case in which an American based company (Union Carbide) was involved and as a result of the negligence of the factory staff there was leakage of poisonous gas from the factory which caused the death of over two thousand persons. This particular incident resulted in prolonged litigation between the victims of the disaster and the foreign company as well as the victims and the Government of India.

   The Bhopal disaster, also referred to as the Bhopal tragedy, was gas leak incident in India, considered the world's worst industrial disaster. It occurred on the night of 2–3 December 1984 at the Union Carbide of India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh. Over 500,000 people were exposed to methyl isocyanate gas and other chemicals. The toxic substance made its way in and around the shanty towns located near the plant. Estimates vary on the death toll. The official immediate death toll was 2,259. The government of Madhya Pradesh confirmed a total of 3,787 deaths related to the gas release. Others estimate 8,000 died within two weeks and another 8,000 or more have since died from gas-related diseases. A government affidavit in 2006 stated the leak caused 558,125 injuries including 38,478 temporary partial injuries and approximately 3,900 severely and permanently disabling injuries.¹

   UCIL was the Indian subsidiary of Union Carbide Corporation (UCC), with Indian Government controlled banks and the Indian public holding a 49.1 percent stake. In 1994, the Supreme Court of India allowed UCC to sell its 50.9 percent interest in UCIL to Eveready Industries India Limited (EIIL), which subsequently merged with McLeod Russel (India) Ltd. Eveready Industries India, Limited, ended clean-up on the site in 1998, when it terminated its 99-year lease and turned over control of the site to the state government of Madhya Pradesh. Dow Chemical Company purchased UCC in 2001, seventeen years after the disaster.

   Civil and criminal cases were pending in the District Court of Bhopal, India, involving UCC and Warren Anderson, UCC CEO at the time of the disaster. In June 2010, seven ex-

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employees, including the former UCIL chairman, were convicted in Bhopal of causing death by negligence and sentenced to two years imprisonment and a fine of about $2,000 each, the maximum punishment allowed by Indian law. An eighth former employee was also convicted, but died before the judgment was passed.

**The pre-event phase** The UCIL factory was built in 1969 to produce the pesticide Sevin (UCC's brand name for carbaryl) using methyl isocyanate (MIC) as an intermediate. A MIC production plant was added in 1979. After the Bhopal plant was built, other manufacturers including Bayer produced carbaryl without MIC, though at a greater manufacturing cost. However, Bayer also uses the UCC process at the chemical plant once owned by UCC at Institute, West Virginia, and USA.

The chemical process employed in the Bhopal plant had methylamine reacting with phosgene to form MIC, which was then reacted with 1-naphthol to form the final product, carbaryl. This "route" differed from the MIC-free routes used elsewhere, in which the same raw materials were combined in a different manufacturing order, with phosgene first reacting with naphthol to form a chloroformate ester, which was then reacted with methylamine. In the early 1980s, the demand for pesticides had fallen, but production continued, leading to build-up of stores of unused MIC.

**Earlier Leaks** In 1976, two trade unions complained of pollution within the plant. In 1981, a worker was splashed with phosgene. In a panic, he removed his mask, inhaling a large amount of phosgene gas which resulted in his death 72 hours later. UCC was warned by American experts who visited the plant after 1981 of the potential of a "runaway reaction" in the MIC storage tank. Local Indian authorities had warned the company of the problem as early as 1979, but constructive actions were not undertaken by UCIC at that time.[In January 1982, a phosgene leak exposed 24 workers, all of whom were admitted to a hospital. None of the workers had been ordered to wear protective masks. One month later, in February 1982, a MIC leak affected 18 workers. In August 1982, a chemical engineer came into contact with liquid MIC, resulting in burns over 30 percent of his body. Later that same year, in October 1982, there was another MIC leak. In attempting to stop the leak, the MIC supervisor suffered intensive chemical burns and two other workers were severely exposed to the gases. During 1983 and 1984, there were leaks of MIC, chlorine, monomethylamine, phosgene, and carbon tetrachloride, sometimes in combination.
Contributing Factors  Factors leading to the magnitude of the gas leak mainly included problems such as; storing MIC in large tanks and filling beyond recommended levels, poor maintenance after the plant ceased MIC production at the end of 1984, failure of several safety systems due to poor maintenance, and safety systems being switched off to save money—including the MIC tank refrigeration system which could have mitigated the disaster severity. The situation was worsened by the mushrooming of slums in the vicinity of the plant, non-existent catastrophe plans, and shortcomings in health care and socio-economic rehabilitation.

Other factors identified by the inquiry included: use of a more dangerous pesticide manufacturing method, large-scale MIC storage, plant location close to a densely populated area, undersized safety devices, and the dependence on manual operations. Plant management deficiencies were also identified—lack of skilled operators, reduction of safety management, insufficient maintenance, and inadequate emergency action plans.

Work Conditions  Attempts to reduce expenses affected the factory's employees and their conditions. Kurzman argues that "cuts...meant less stringent quality control and thus looser safety rules. A pipe leaked? Don't replace it; employees said they were told... MIC workers needed more training? They could do with less. Promotions were halted, seriously affecting employee morale and driving some of the most skilled... elsewhere". Workers were forced to use English manuals, even though only a few had a grasp of the language.

By 1984, only six of the original twelve operators were still working with MIC and the number of supervisory personnel was also halved. No maintenance supervisor was placed on the night shift and instrument readings were taken every two hours, rather than the previous and required one-hour readings. Workers made complaints about the cuts through their union but were ignored. One employee was fired after going on a 15-day hunger strike. 70% of the plant's employees were fined before the disaster for refusing to deviate from the proper safety regulations under pressure from the management. In addition, some observers, such as those writing in the Trade Environmental Database (TED) Case Studies as part of the Mandala Project from American University, have pointed to "serious communication problems and management gaps between Union Carbide and its Indian operation", characterised by "the parent companies [sic] hands-off approach to its overseas operation" and "cross-cultural barriers".
Equipment and Safety Regulations The MIC tank alarms had not been working for four years and there was only one manual back-up system, compared to a four-stage system used in the United States. The flare tower and several vent gas scrubbers had been out of service for five months before the disaster. Only one gas scrubber was operating: it could not treat such a large amount of MIC with sodium hydroxide (caustic soda), which would have brought the concentration down to a safe level. The flare tower could only handle a quarter of the gas that leaked in 1984, and moreover it was out of order at the time of the incident. To reduce energy costs, the refrigeration system was idle. The MIC was kept at 20 degrees Celsius, not the 4.5 degrees advised by the manual. Even the steam boiler, intended to clean the pipes, was non-operational for unknown reasons. Slip-blind plates that would have prevented water from pipes being cleaned from leaking into the MIC tanks, had the valves been faulty, were not installed and their installation had been omitted from the cleaning check-list. The water pressure was too weak to spray the escaping gases from the stack. They could not spray high enough to reduce the concentration of escaping gas. In addition to it, carbon steel valves were used at the factory, even though they were known to corrode when exposed to acid.

According to the operators, the MIC tank pressure gauge had been malfunctioning for roughly a week. Other tanks were used, rather than repairing the gauge. The build-up in temperature and pressure is believed to have affected the magnitude of the gas release. UCC admitted in their own investigation report that most of the safety systems were not functioning on the night of 3 December 1984. The design of the MIC plant, following government guidelines, was "Indianized" by UCIL engineers to maximise the use of indigenous materials and products. Mumbai-based Humphreys and Glasgow Consultants Pvt. Ltd., were the main consultants, Larsen & Toubro fabricated the MIC storage tanks, and Taylor of India Ltd. provided the instrumentation. In 1998, during civil action suits in India, it emerged that the plant was not prepared for problems. No action plans had been established to cope with incidents of this magnitude. This included not informing local authorities of the quantities or dangers of chemicals used and manufactured at Bhopal.

The Release The 1985 reports give a picture of what led to the disaster and how it developed, although they differ in details. In November 1984, most of the safety systems were not functioning and many valves and lines were in poor condition. In addition to this, several
vent gas scrubbers had been out of service as well as the steam boiler, intended to clean the pipes was non-operational. Other issue was that, Tank 610 contained 42 tons of MIC which was much more than safety rules allowed. During the night of 2–3 December 1984, water entered Tank E610 containing 42 tons of MIC. A runaway reaction started, which was accelerated by contaminants, high temperatures and other factors. The reaction was sped up by the presence of iron from corroding non-stainless steel pipelines. The resulting exothermic reaction increased the temperature inside the tank to over 200 °C (392°F) and raised the pressure. This forced the emergency venting of pressure from the MIC holding tank, releasing a large volume of toxic gases. About 30 metric tons of methyl isocyanate (MIC) escaped from the tank into the atmosphere in 45 to 60 minutes.

Legal Proceedings Leading to The Settlement

Throughout 1990, the Indian Supreme Court heard appeals against the settlement from "activist petitions". In October 1991, the Supreme Court upheld the original $470 million, dismissing any other outstanding petitions that challenged the original decision. The Court ordered the Indian government "to purchase, out of settlement fund, a group medical insurance policy to cover 100,000 persons who may later develop symptoms" and cover any shortfall in the settlement fund. It also requested UCC and its subsidiary UCIL "voluntarily" fund a hospital in Bhopal, at an estimated $17 million, to specifically treat victims of the Bhopal disaster. The company agreed to this.

Government of India was anxious to ensure that the interests of the victims of the disaster are fully protected and that the claims for compensation or damages for loss of life or personal injuries or in respect of other matters arising out of or connected with disaster are processed speedily, effectively, equitably and to the best advantage of the claimants. The legal position was examined carefully with reference to the laws obtaining in the United States of America and in out country and in the light of the examination it was felt that special provisions should be made for processing the claims. Accordingly, the President promulgated on the 20th day of February, 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, 1985 to confer powers on the Central Government to represent the claimants and take all necessary steps for the processing of the claims. The Ordinance also provided for the appointment of a Commissioner for the
welfare of the victims of the disaster and for the formulation of a Scheme to provide for various matters necessary for processing of the claims and for the utilization by way of disbursal or otherwise of amounts received in satisfaction of the claims.

The aggrieved persons approached the American Courts for a remedy in a Tort action against the Union Carbide which was an American company. But the American Court applying the doctrine of Forum Non Conveniens declined to exercise jurisdiction in the matter. Judge Keenan, who decided the case said,

The Lex Loci Delicti analysis used in other jurisdictions indicates that the law of the State where the tort occurred should be applied. The place in which the tort occurred was, to a very great extent, India. An India Court would be better able to apply the controlling law than would this United States Court.

In conclusion, Mr. John F. Keeman, the Judge said:

“It is difficult to imagine how a greater tragedy could occur to a peace time population than the deadly gas leak in Bhopal on the night of December 2-3, 1984. The survivors of the dead victims, the injured and others who suffered, or may in the future suffer due to the disaster, are entitled to compensation. This Court is firmly convinced that the Indian legal system is in a far better position than the American Courts to determine the cause of the tragic event and thereby fix liability further; the Indian Courts have greater access to all the information needed to arrive at the amount of the compensation to be awarded the victims. The presence in India of the overwhelming majority of the witnesses and evidence, both documentary and real, would by itself suggest that India is the most convenient forum for this consolidated case. The additional presence in India of all but the less than handful of claimants underscores the convenience of holding trial in India. All of the private interest factors described in Piper and Gilbert weight heavily forwards dismissal of this case on the grounds forum non convenience….”

2. Bofors Scandal

The Bofors scandal was a major corruption scandal in India in the 1980s and 1990s, initiated by Congress politicians and implicating the prime minister, Rajiv Gandhi and several others who were accused of receiving kickbacks from Bofors AB for winning a bid to supply
India’s 155 mm field howitzer. The scale of the corruption was far worse than any that India had seen before and directly led to the defeat of Gandhi’s ruling Indian National Congress party in the November 1989 general elections. The Swedish company paid ₹640 million (US$9.8 million) in kickbacks to top Indian politicians and key defence officials. The case came into light during Vishwanath Pratap Singh’s tenure as defence minister, and was revealed through investigative journalism by a team led by N. Ram of the newspaper The Hindu. The journalist who secured the over 350 documents that detailed the payoffs was Chitra Subramaniam reporting for The Hindu. Later the articles were published in The Indian Express and The Statesman when The Hindu stopped publishing stories about the Bofors scandal under immense government pressure and Chitra Subramaniam moved to the two newspapers. In an interview with her, published in "The Hoot" in April 2012 on the 25th anniversary of the revelations Sten Lindstrom, former chief of Swedish police discussed why he leaked the documents to her and the role of whistle-blowers in a democracy.²

On 24 March 1986, a $285 million contract between the Govt of India and Swedish arms company, Bofors, was signed for supply of 410 155mm Howitzer field guns. About a year later, on 16 April 1987, Swedish Radio alleged that Bofors paid kickbacks to top Indian politicians and key defence officials to seal the deal. The middleman associated with the scandal was Ottavio Quattrocchi, an Italian businessman who represented the petrochemicals firm Snamprogetti. Quattrocchi was reportedly close to the family of Rajiv Gandhi and emerged as a powerful broker in the 1980s between big businesses and the Indian government.³ While the case was being investigated, Rajiv Gandhi was assassinated on 21 May 1991 for an unrelated cause by the LTTE. In 1997, the Swiss banks released some 500 documents after years of legal battle. On 22 October 1999 (when National Democratic Alliance government led by the Bharatiya Janata Party was in power) the Central Bureau of Investigation (CBI) filed the first chargesheet against Quattrocchi, Win Chadha, Rajiv Gandhi, the defence secretary S. K. Bhatnagar and a number of others. In second half of 2001, Win Chadha and S. K. Bhatnagar died.

On 10 June 2002, Delhi High Court quashed all proceedings in the case so far. However, this was reversed by Supreme Court of India on 7 July 2003.

² What the Bofors scandal is all about, IBN Live, 16th September, 2012.
³ ‘Bofors Story’, 25 ears after, Thehoot.org, 16th April, 1987
Meanwhile the central government changed and Indian National Congress came to power after 2004 Lok Sabha elections. On 5 February 2004, the Delhi High Court quashed the charges of bribery against Rajiv Gandhi and others. On 31 May 2005, the Delhi High Court dismissed the allegations against the British business brothers, Shrichand, Gopichand and Prakash Hinduja, but charges against others remain. In December 2005, Mr B. Daat, the Additional Solicitor General of India, acting on behalf of the Indian Government and the CBI, requested the British Government that two British bank accounts of Ottavio Quattrocchi be unfrozen on the grounds of insufficient evidence to link these accounts to the Bofors payoff. The two accounts, containing €3 million and $1 million, had been frozen. On 16 January, the Indian Supreme Court directed the Indian government to ensure that Ottavio Quattrocchi did not withdraw money from the two bank accounts in London. The CBI, the Indian federal law enforcement agency, on 23 January 2006 admitted that roughly Rs 210 million, about US $4.6 million, in the two accounts have already been withdrawn by the accused. The British government released the funds later.

However, on 16 January 2006, CBI claimed in an affidavit filed before the Supreme Court that they were still pursuing extradition orders for Quattrocchi. The Interpol, at the request of the CBI, has a long-standing red corner notice to arrest Quattrocchi. Quattrocchi was detained in Argentina on 6 February 2007, but the news of his detention was released by the CBI only on 23 February. Quattrocchi was released by Argentinian police. However, his passport was impounded and he was not allowed to leave the country.4

As there was no extradition treaty between India and Argentina, the case was presented in the Argentine Supreme Court. The government of India lost the extradition case as the government of India did not provide a key court order which was the basis of Quattrocchi's arrest. In the aftermath, the government did not appeal this decision because of delays in securing an official English translation of the court's decision.

A Delhi court provided temporary relief for Quattrocchi from the case, for lack of sufficient evidence against him, on 4 March 2011. However the case is still going on. On 12th July 2013, Quattrochi died of a heart attack in Milan.

Despite the controversy the Bofors gun was used extensively as the primary field artillery during the Kargil War with Pakistan and gave India 'an edge' against Pakistan according to

4 Chronology of the Bofors Scandal' daily News and Analysis.
battlefield commanders.

**Allegations against CBI** CBI has been criticised by experts, social workers, political parties and people at large for the manner in which it has handled this case. Some points to note are:

1. Delay in lodging an **FIR**
2. Delay in sending **letter rogatories**
3. Not appealing against the judgement of the **Delhi High Court** in 2004
4. De-freezing of Quattrocchi's bank account in London by saying to the Crown Prosecutor that there is no case against Quattrocchi
5. Putting up a very weak case for Quattrocchi's **extradition** from Argentina. Subsequently, no appeal against lower court's verdict
6. The withdrawal of the **Interpol** Red Corner notice
7. Finally, withdrawal of its case against Quattrocchi. Reacting to this, Chief Metropolitan Magistrate Vinod Yadav said that, "I agree that there are certain malafide intentions in the case and there is no doubt in that"

**3. The Hawala Scandal**

The Hawala scam or the hawala fraud was the Native Indian governmental scandal such as expenses purportedly obtained by governmental figures through 4 hawala agents, Jain bros. It was the US$19 thousand bribery scandal that suggested as a factor some of nation's major governmental figures.

In 1991, a police arrest connected to militants in the Kashmir led to the raid on hawala agents, exposing proof of the large-scale expenses to many nationwide governmental figures. Those charged involved V. C. Shukla, Shiv Shankar, L. K. Advani, Balram Jakhar, P Yadav, and Madan Khurana. The justice that followed got partially persuaded through community attention situation (see Vineet Narain), and yet judge situations of Hawala scandal gradually all flattened without beliefs. Mr.Advani was Deputy Primary Minster. Many were found innocent in year 1997 and year 1998 and this was because hawala information was assessed in judge to be insufficient as primary proof. The Main Institution of Investigation's part got criticised. In finishing Vineet Narain situation, Superior Court of the Native Indian instructed that Main Cautious Percentage should have given the supervisory part over CBI. There have been many such acts in which numerous political figures have been involved and this is one of them and government bodies need to have the strict policies in this The Hawala Scandal.
The Hawala scandal or hawala scam was an Indian political scandal involving payments allegedly received by politicians through four hawala brokers, the Jain brothers. It was a US$18 million bribery scandal that implicated some of the country's leading politicians.

In 1991, an arrest linked to militants in Kashmir led to a raid on hawala brokers, revealing evidence of large-scale payments to national politicians. Those accused included L. K. Advani, V. C. Shukla, P. Shiv Shankar, Sharad Yadav, Balram Jakhar, and Madan Lal Khurana. The prosecution that followed was partly prompted by a public interest petition (see Vineet Narain), and yet the court cases of the Hawala scandal eventually all collapsed without convictions. Mr. Advani was the Deputy Prime Minister at the time. Many were acquitted in 1997 and 1998, partly because the hawala records (including diaries) were judged in court to be inadequate as the main evidence. The Central Bureau of Investigation's role was criticised. In concluding the Vineet Narain case, the Supreme Court of India directed that the Central Vigilance Commission should be given a supervisory role over the CBI.

4. 2G Spectrum Scam

The 2G spectrum scam involved politicians and government officials in India illegally undercharging mobile telephony companies for frequency allocation licenses, which they would then use to create 2G subscriptions for cell phones. The shortfall between the money collected and the money that the law mandated to be collected is estimated to be ₹1766.45 billion (US$27 billion), as valued by the Comptroller and Auditor General of India based on 3G and BWA spectrum auction prices in 2010. However, the exact loss is disputed. In a charge sheet filed on 2 April 2011 by the investigating agency, Central Bureau of Investigation (CBI), the loss was pegged at ₹309845.5 million (US$4.7 billion) whereas on 19 August 2011 in a reply to CBI, Telecom Regulatory Authority of India (TRAI) said that the government gained over ₹30 billion (US$460 million) by giving 2G spectrum. Similarly Kapil Sibal, the Minister of Communications & IT, claimed in 2011, during a press conference, that "zero loss" was caused by distributing 2G licenses on first-come-first-served basis. It has to be pointed out, however, that "zero loss" can simply mean that frequencies were not sold for less than cost. The phrase indicates nothing about whether the sale was a scam.

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All the speculations of profit, loss and no-loss were put to rest on 2 February 2012 when the Supreme Court of India delivered judgement on a public interest litigation (PIL) which was directly related to the 2G spectrum scam. The Supreme Court declared allotment of spectrum as "unconstitutional and arbitrary" and quashed all the 122 licenses issued in 2008 during tenure of A. Raja (then minister for communications & IT) the main official accused in the 2G scam case. The court further said that A. Raja "wanted to favour some companies at the cost of the public exchequer" and "virtually gifted away important national asset." The "zero loss theory" was further demolished on 3 August 2012 when as per the directions of the Supreme Court, Govt of India revised the base price for 5 MHz 2G spectrum auction to ₹140 billion (US$2.1billion), which roughly gives the value of spectrum to be around ₹28 billion (US$430 million) per MHz that is close to the CAG's estimate of ₹33.5 billion (US$510 million) per MHz.

The original plan for awarding licences was to follow a first-come-first-served policy to applicants. A. Raja manipulated the rules so that the first-come-first-served policy would kick in – not on the basis of who applied first for a license but who complied with the conditions. On 10 January 2008, companies were given just a few hours to provide their Letters of Intent and cheques. Those allegedly tipped off by Raja were waiting with their cheques and other documents. Some of their executives were sent to jail along with the minister.

In 2011, Time magazine listed the scam at number two on their "Top 10 Abuses of Power" list (just behind the Watergate scandal).

**Parties Accused of Involvement** The selling of the licenses brought attention to three groups of entities – politicians and bureaucrats who had the authority to sell licenses, corporations who were buying the licenses and media professionals who mediated between the politicians and the corporations.

1. **Politicians Accused**

Politicians named as accused in the chargesheet filed by the Central Bureau of Investigation (CBI) and the Directorate General of Income Tax Investigation in the Special CBI Court, allegations levelled against them by CBI and charges framed against them by the Special CBI court.

**A. Raja**
- **Political Career** – Political party DMK, former DMK MLA in Nilgiris, Tamil Nadu, former Union Minister of State (Rural Development – 1999), former Union Minister of State (Health and Family Welfare – 2003), former Union Government Minister (Environment & Forests – 2004), former Union Cabinet Minister (Communication and Information Technology – 2007 & 2009)

- **Allegation** – In a joint investigation report prepared by Central Bureau of Investigation (CBI) and Income Tax Department the agencies allege that A.Raja could have received ₹30 billion (US$460 million) as bribe for bringing forward the cut-off date for applications for spectrum from the initial 1 October 2007 to 25 September 2007. The deadline switch eliminated many applications, enabling Raja to favour a few with spectrum. The agencies also alleged that he used bank accounts under his wife’s name in Mauritius and Seychelles to channelise the kickbacks he received. A chargesheet filed by CBI alleges that Raja conspired with the accused, subverted the first-come first-served (FCFS) policy and waywardly redefined it to ensure that Swan and Unitech got 2G licences. He didn’t auction the 2G spectrum or adopt some other market-determined methodology to determine its real valuation and instead benchmarked it to a rate discovered in 2001, when the telecom sector was at a nascent stage.

- **Charges** – Criminal breach of trust by a public servant under section 409, criminal conspiracy under section 120-B, cheating under section 420 & forgery under sections 468 and 471. Booked under the Prevention of Corruption Act for accepting illegal gratification.

- **Status** – Taken into custody (arrested) by CBI on 2 February 2011. On 9 May 2012 he applied for bail for the first time since his arrest. And was granted bail on 15 May 2012. As of August 2012, trial is being conducted in Special CBI Court.

**M. K. Kanimozhi**

- **Political Career** – Daughter of five-time Chief Minister of Tamil Nadu, M. Karunanidhi. Political party DMK. She is a Member of Parliament, representing Tamil Nadu in the Rajya...
Allegation – As per the chargesheet filed by CBI Kanimozhi has 20% stake in her family owned Kalaignar TV, her step-mother Dayalu Ammal owns 60% stake in the same channel. CBI alleges that Kanimozhi was an "active brain" behind the channel's operations and she worked along with former telecom minister A. Raja to get DB Realty promoter Shahid Balwa to circuitously route ₹2 billion (US$31 million) to Kalaignar TV. According to CBI, Kanimozhi was in regular touch with A Raja regarding launching of Kalaignar TV channel and its other pending works. CBI alleges that A Raja was further pursuing the cause of Kalaignar TV not only for getting registration of the company from Ministry of Information and Broadcasting but also for getting it in the DTH operator TATA Sky's bouquet. She was also summoned by the Income Tax Department, Chennai for alleged tax evasion charges.

Charges – Criminal conspiracy to cause criminal breach of trust by a public servant, criminal conspiracy under section 120-B, cheating under section 420 & forgery under sections 468 and 471. Booked under the Prevention of Corruption Act.

Status – Taken into custody (arrested) by CBI on 20 May 2011. Granted bail on 28 November 2011 after spending 188 days in judicial custody. As of August 2012, trial is being conducted in Special CBI Court.

Pramod Mahajan

CBI decided to include the name of late Pramod Mahajan in a separate column of the charge sheet to be filed by it soon against three cellular companies and former officials in connection with alleged irregularities in spectrum allocation during NDA regime causing a loss of Rs 5.08 billion to the exchequer.

5. The Coal Allocation Scam

This is a scandal concerning the Indian government's allocation of the nation's coal deposits to private companies by Prime Minister Manmohan Singh, which cost the government ₹10673.03 billion (US$160 billion). CBI director Ranjit Sinha submitted an affidavit in the Supreme Court that the coal-scam status report prepared by the agency was shared with Congress
Party law minister Ashwani Kumar “as desired by him” and with secretary-level officers from the prime minister’s office (PMO) and the coal ministry before presenting it to the court.

**Autonomy**

Demanding independent investigations, the CBI said that although it deferred to the government's authority in non-corruption cases the agency felt that sufficient financial and administrative powers (including minimum three-year tenure to ensure “functional autonomy”) were required by the director.

"As such, it is necessary that the director, CBI, should be vested with ex-officio powers of the Secretary to the Government of India, reporting directly to the minister, without having to go through the DoPT," the agency said, adding that financial powers were not enough and it wanted a separate budget allocation.

In a draft report issued in March 2012, the Comptroller and Auditor General of India (CAG) office accused the Government of India of allocating coal blocks in an inefficient manner during the period 2004–2009. Over the summer of 2012, the opposition BJP lodged a complaint resulting in a Central Bureau of Investigation probe into whether the allocation of the coal blocks was in fact influenced by corruption.

The essence of the CAG's argument is that the Government had the authority to allocate coal blocks by a process of competitive bidding, but chose not to. As a result both public sector enterprises (PSEs) and private firms paid less than they might have otherwise. In its draft report in March the CAG estimated that the "windfall gain" to the allocatees was {INR|10,67,303|c}. The CAG Final Report tabled in Parliament put the figure at {INR|1,85,591|c} On 27 August 2012 Indian Prime Minister Manmohan Singh read a statement in Parliament rebutting the CAG's report both in its reading of the law and the alleged cost of the government's policies.

While the initial CAG report suggested that coal blocks could have been allocated more efficiently, resulting in more revenue to the government, at no point did it suggest that corruption was involved in the allocation of coal. Over the course of 2012, however, the question of corruption has come to dominate the discussion. In response to a complaint by the BJP, the Central Vigilance Commission (CVC) directed the CBI to investigate the matter. The CBI has
named a dozen Indian firms in a First Information Report (FIR), the first step in a criminal investigation. These FIRs accuse them of overstating their net worth, failing to disclose prior coal allocations, and hoarding rather than developing coal allocations. The CBI officials investigating the case have speculated that bribery may be involved.

The issue has received massive media reaction and public outrage. During the monsoon session of the Parliament, the BJP protested the Government's handling of the issue demanding the resignation of the prime minister and refused to have a debate in the Parliament. The deadlock resulted in Parliament functioning only seven of the twenty days of the session. The Parliamentary Standing Committee report on Coal and Steel states that all coal blocks distributed between 1993 and 2008 were done in an unauthorized manner and allotment of all mines where production is yet to start should be cancelled.

**Firms Eligible for Coal Allocation** Historically, the economy of India could be characterized as broadly socialist, with the government directing large sectors of the economy through a series of five-year plans. In keeping with this centralized approach, between 1972 and 1976, India nationalised its coal mining industry, with the state-owned companies Coal India Limited (CIL) and Singareni Collieries Company (SCCL) being responsible for coal production.

This process culminated in the enactment of the Coal Mines (Nationalisation) Amendment Act, 1976, which terminated coal mining leases with private lease holders. Even as it did so, however, Parliament recognised that the nationalised coal companies were unable to fully meet demand, and provided for exceptions, allowing certain companies to hold coal leases:

1. 1976. Captive mines owned by iron and steel companies.
3. 1996. Captive

**The Coal Allocation Process** “In July 1992 Ministry of Coal, issued the instructions for constitution of a Screening Committee for screening proposals received for captive mining by private power generation companies.” The Committee was composed of government officials from the Ministry of Coal, the Ministry of Railways, and the relevant state government. “A number of coal blocks, which were not in the production plan of CIL and SSCL, were identified in consultation with CIL/SSCL and a list of 143 coal blocks were prepared and placed on the website of the MoC for information of public at large.” Companies could apply for an
allocation from among these blocks. If they were successful, they would receive the geological report that had been prepared by the government, and *the only payment required from the allocatee was to reimburse the government for their expenses in preparing the geological report.*

**Coal Allocation Guidelines** The guidelines for the Screening Committee suggest that preference be given to the power and steel sectors (and to large projects within those sectors). They further suggest that in the case of competing applicants for a captive block, a further 10 guidelines may be taken into consideration:

- status (stage) level of progress and state of preparedness of the projects;
- net worth of the applicant company (or in the case of a new SP/JV, the net worth of their principals);
- production capacity as proposed in the application;
- maximum recoverable reserve as proposed in the application;
- date of commissioning of captive mine as proposed in the application;
- date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;
- technical experience (in terms of existing capacities in coal/lignite mining and specified end-use);
- recommendation of the administrative ministry concerned;
- recommendation of the state government concerned (i.e., where the captive block is located);
- track record and financial strength of the company.

The response to the allocation process between 2004 and 2009 was spectacular, with some 44 billion metric tons of coal being allocated to public and private firms. By way of comparison, the entire world only produces 7.8 billion tons annually, with India being responsible for 585 million tons of this amount. Under the program, then, captive firms were allocated vast amounts of coal, equating to hundreds of years of supply, for a nominal fee.

Given the inherent subjectivity in some of the allocation guidelines, as well as the potential conflicts between guidelines (how does one choose between a small capacity/late stage project and a large capacity/early stage project?) it is unsurprising that in reviewing the allocation process from 1993 to 2005 the CAG says that "there was no clearly spelt out criteria for the allocation of coal mines." In 2005 the Expert Committee on Coal Sector Reforms provided recommendations on improving the allocation process, and in 2010 the Mines and Minerals (Development and Regulation) Act (MMDR Act), 1957 Amendment Bill was enacted,
providing for coal blocks to be sold through a system of competitive bidding.

The foregoing supports the following conclusions:

(i) The allocation process prior to 2010 allowed some firms to obtain valuable coal blocks at a nominal expense
(ii) The eligible firms took up this option and obtained control of vast amounts of coal in the period 2005–09
(iii) The criteria employed for awarding coal allocations were opaque and in some respects subjective.

First CAG charge: the Government had the legal authority to auction coal blocks:
The most important assertion of the CAG Draft Report is that the Government had the legal authority to auction the coal, but chose not to do so. Any losses as a result of coal allocations, then, between 2005 and 2009 are seen by the CAG as being the responsibility of the Government. The answer to this question turns on whether the Government could institute competitive bidding by an administrative decision under the current statute or whether it needed to amend the statute to do so.

The CAG devotes ten pages of its report to reviewing the legal basis for an auction, and comes to the following conclusion:

"In sum there were a series of correspondences with the Ministry for Law and Justice for drawing conclusion on the legal feasibility of the proposed amendments to the CMN Act/MMDR Act or through Administrative order to introduce auctioning/competitive bidding process for allocation of coal blocks for captive mining. In fact, there was no legal impediment to introduction of transparent and objective process of competitive bidding for allocation of coal blocks for captive mining as per the legal opinion of July 2006 of the Ministry of Law and Justices and this could have been done through an Administrative decision. However, the Ministry of Coal went ahead for allocation of coal blocks through Screening Committee and advertised in September 2006 for allocation of 38 coal blocks and continued with this process until 2009."
Other parts of the report, however, suggest that while an administrative decision might be sufficient legal basis for instituting competitive bidding, the "legal footing" of competitive bidding would be improved if the statute were amended to specifically provide for it. i.e. there were some questions around the legality of using an administrative decision as the ground for an auction process under the current statute. Quoting the Law Secretary in August 2006:

"There is no express statutory provision providing for the manner of allocating coal blocks, it is done through a mechanism of Inter-Ministerial Group called the Screening Committee ... The Screening Committee had been constituted by means of administrative guidelines? Since, under the current dispensation, the allocation of coal blocks is purely administrative in nature, it was felt that the process of auction through competitive bidding can also be done through such administrative arrangements. In fact, this is the basis of our earlier legal advice. This according to the administrative Ministry has been questioned from time to time for legal sanction. If provision is made for competitive bidding in the Act itself or by virtue of rules framed under the Act the bidding process would definitely placed on a higher level of legal footing."

So while the CAG certainly makes the case that the Government had legal grounds on which to introduce competitive bidding into the coal allocation process, saying that there was "no legal impediment" to doing so perhaps overstates their case.

**Second CAG charge: "windfall gains" to the allocatees were ₹1,067,303 crore (US$180 billion)** If the most important charge made by the CAG was that of the Government's legal authority to auction the coal blocks, the one that drew the most attention was certainly the size of the "windfall gain" accruing to the allocatees. On pp. 32–34 of the Draft Report, the CAG estimates these to be ₹10,673.03 billion (US$180 billion).

On 22nd March, the ‘Times of India’, broke the story on the contents of the Draft CAG Report:

About 16 months after it rocked the UPA government with its explosive report on allocation of 2G spectrum and licences, the Comptroller & Auditor General's draft report titled 'Performance Audit Of Coal Block Allocations' says the government has extended "undue
benefits”, totalling a mind-boggling Rs 10.67 trillion (short scale), to commercial entities by giving them 155 coal acreages without auction between 2004 and 2009. The beneficiaries include some 100 private companies, as well as some public sector units, in industries such as power, steel and cement. The Income Tax Department was also roped in to look into the financial frauds and follow the money trail.

In September 2012, several news reports alleged that family of S Jagathrakshakan, Minister of State for Information and Broadcasting in the UPA government is a part of a company named JR Power Gen Pvt Ltd which was awarded a coal block in Odisha in 2007. It was the same company which formed a joint venture with a public sector company, Puducherry Industrial Promotion Development and Investment (PIPDIC), on 17 January 2007. Barely five days after, was PIPDIC allotted a coal block? According to the MoU, JR Power enjoyed a stake in this allotment. However, JR Power had no expertise in thermal power, iron and steel, or cement, the key sectors for consumption of coal. Later, in 2010, JR Power sold 51% stake to K.S.K. Energy Ventures, an established player with interests in the energy sector. In this way, the rights for the use of the coal block ultimately passed on to KSK.

Reacting to this, Jagathrakshakan admitted to getting a coal block, and said that, "It is true that we got a coal allocation but it was a sub-contract with Puducherry government and then we gave it away to KSK Company. Now, we have got nothing to do with the allocation but if the government wants to take back the allocation it can do so."

**Allegations against Subodh Kant Sahai** In September 2012, it was revealed that Subodh Kant Sahay, Tourism Minister in the UPA government sent a letter to prime minister Manmohan Singh trying to persuade him for allocation of a coal block to a company, SKS Ispat and Power which has Sudhir Sahay, his younger brother, as honorary Executive Director. The letter was written on 5 February 2008. On the very next day, Prime Minister's Office (PMO) sent a letter to the coal secretary on 6 February 2008, recommending allotment of coal blocks to the company. However, Sahay denied these allegations, citing that the coal block was allocated to SKS Ispat, where his brother was only an "honorary director".

On 15 September 2012, an Inter Ministerial Group (IMG) headed by Zohra Chatterji (Additional Secretary in Coal Ministry) recommended cancellation of a block allotted to SKS Ispat and Power.
Allegations against Ajay Sancheti and his link with Nitin Gadkari

Ajay Sancheti’s SMS Infrastructure Ltd. was allegedly allocated coal blocks in Chhattisgarh at low rates. He is a BJP Rajya Sabha MP and is believed to be in close relation with Nitin Gadkari. According to the CAG, the allocation of the coal block to SMS Infrastructure Ltd. has caused a loss of Rs.10 billion.

Allegations against Vijay Darda and Rajendra Darda

Vijay Darda, a Congress MP and his brother Rajendra Darda, the education minister of Maharashtra, have been accused of direct and active involvement in the affairs of three companies JLD Yavatmal Energy, JAS Infrastructure & Power Ltd., AMR Iron & Steel Pvt. Ltd, which received coal blocks illegally by means of inflating their financial statements and overriding the legal tender process.

Allegations against Premchand Gupta

UPA partner Rashtriya Janata Dal’s leader Premchand Gupta's sons' company, new in the steel business applied for a coal block when Premchand Gupta was the Union minister for corporate affairs and bagged it about a month after his tenure ended along with that of his government. The company in question is IST Steel & Power – an associate company of the IST Group, which is owned and run by Premchand Guptas two sons Mayur and Gaurav. IST Steel, along with cement majors Gujarat Ambuja and Lafarge, was allocated the Dahegaon/Makardhokra IV block in Maharashtra. The company, which applied for a block on 12 January 2007, and was awarded it on 17 June 2009, is sitting on reserves of 70.74 million tonnes. The reserves it controls are more than the combined reserves held by much larger companies – Gujarat Ambuja and Lafarge. Gupta, who belongs to the Rashtriya Janata Dal headed by Bihar leader Lalu Prasad Yadav, was the minister of state for corporate affairs in UPA-I when his party was a constituent of the Congress-led coalition with 21 seats in Lok Sabha. However Mr Gupta maintains he had no involvement in IST Steel and denies influencing the coal-block allocation process.

Allegations against Naveen Jindal

Congress MP, Naveen Jindal's Jindal Steel and Power got a coal field in February 2009 with reserves of 1500 million metric tones while the government-run Navratna Coal India Ltd was refused.

On 27 February 2009, two private companies got huge coal blocks. Both the blocks were in Orissa and while one was over 300 mega metric tones, the other was over 1500 mega metric
tones. Combined worth of these blocks was well over Rs2 trillion (short scale) and these blocks were meant for the liquification of coal. One of these blocks was awarded to Jindal. Naveen Jindal's Jindal Steel and Power was the company which was allotted the Talcher coal field in Angul in Orissa in 2009, well after the self-imposed cut off date by the Centre on allocation of coal blocks. The Opposition alleged that the Government violated all norms to give him coal fields. Naveen Jindal, however, denied any wrongdoing. On 15 September 2012, an Inter Ministerial Group (IMG) headed by Zohra Chatterji (Additional Secretary in Coal Ministry) recommended cancellation of a block allotted to JSW (Jindal Steel Works), a Jindal Group company. On June 11, 2013, CBI has booked former Minister of State for Coal Dasari Narayan Rao and Congress MP Naveen Jindal for alleged cheating, graft and criminal misconduct in its 12th FIR in the coal blocks allocation scam.

In response to the Times of India story there was an uproar in Parliament, with the BJP charging the government with corruption and demanding a court-monitored probe into coal allocations:

"The CWG scam is (to the tune) of Rs 700 billion, 2G scam is Rs 1.76 trillion (short scale). But, now the new coal scam is Rs 10.67 trillion (short scale). It is a government of scams... from airwaves to mining, everywhere the government is involved in scams,' party spokesperson Prakash Javadekar told reporters."

**Supreme Court Hearing** On April 26, 2013 the CBI Director, Ranjit Sinha, submitted an affidavit in the Supreme Court stating that the coal scam status report prepared by the investigating agency was shared with the Law Minister, Ashwani Kumar, “as desired by him”, joint secretary-level officers from the Prime Minister’s Office (PMO) and the coal ministry before presenting it to the court on March 8. It contradicts the claim made by CBI counsel in SC that the coal scam scam report was not shared with any member of the government. On April 29, CBI stated to SC that 20% if its original report was changed by Government. Additional Solicitor-General Harin Raval resigned for having misled the Supreme Court.

Ranjit Sinha said SC that CBI is part of government and hence not autonomous. The three-judge Bench of Justices R.M. Lodha, Madan B. Lokur and Kurian Joseph directed the CBI to file an affidavit by May 6 regarding the changes that were made in the status report, at whose instance the changes were made, and the effect of these changes on the entire investigation. Counsel Prashant Bhushan said there were efforts to shield PM. He said “the Central Vigilance
Commission can at least be asked to direct the CBI to show the final report. If the CVC feels there are a few things left out and if there are things not done then it can ask the CBI to change the Investigating officer. The reason why the CVC can interfere is because of this administrative control. The CBI Director who has statutory status can be pressurised by promising post retirement jobs etc. Thus government manage to control the CBI.” Adv Prashant Bhushan said “companies are trying to operationalise and then they can say so much investment is being done. Every delay will lend them the contention of equity.” He requested court to appoint a retired judge and police officer of impeccable integrity to overlook the investigation. SC said that it will liberate CBI from political interference to make CBI credible, impartial and independent.

According to sources, while Union ministers Salman Khurshid and V Narayanasamy recommended minor changes at the meeting, Finance Minister P Chidambaram - who heads the GoM - and Law Minister Kapil Sibal said that the mood is for an overall change in the way the CBI functions to give it greater autonomy. The government panel is reportedly not in favour of banning post-retirement government jobs for CBI chiefs, an issue that has been a bone of contention between the government and the Opposition. The CBI has reportedly demanded financial and functional autonomy, which includes a special statutory mechanism for the removal of the CBI director. The CBI has also reportedly asked for a 3-month time period for sanction of investigation and wants to be controlled less by the Central Vigilance Commission (CVC). The CBI is said to have asked for five-year tenure for its chief and powers to curtail or extend the tenure of officers up to the Deputy Inspector General or DIG level. Earlier this month, the Supreme Court had sharply criticised the Union government for interfering in the CBI's investigations in the coal scam. A livid court had observed that the agency is a "caged parrot that has many masters." The court's reprimand came after the CBI admitted that former Law Minister Ashwani Kumar and officials from the Prime Minister's Office and the Coal Ministry made changes to the agency's draft report on its investigations, which was meant to be submitted in confidentiality to the Supreme Court. The Supreme Court had asked the Centre whether it was contemplating a law to make the working of the CBI independent and insulate it from extraneous intrusion and interferences. After the severe reprimand, Prime Minister Manmohan Singh constituted a Group of Ministers to decide the plan of action to secure the autonomy of the CBI. At least five parliamentary panels have submitted reports on how to secure the CBI's autonomy since 2008. The parliamentary panels have recommended a statutory position for the CBI, which would give it status equivalent to other autonomous bodies like the Election Commission and Comptroller and Auditor General. The argument that CBI chief should be forbidden from
taking up assignments post-superannuation may not find favour with the government which fears that such a prohibition may deter the best among police officers from joining the premier investigating agency.

The Finance Minister, Mr. P. Chidambaram argued that any requirement for the CBI chief not to accept any assignment post-retirement may shrink the talent pool. Participating in the deliberations of the maiden meeting of the group of ministers set up to discuss ways to provide autonomy to the CBI, Chidambaram, according to sources, argued that IPS officers may like to work with chief ministers in the expectation of post-retirement engagements rather than join the agency. The proceedings saw CBI pushing for transparent rules for dealing with its requests for sanction of prosecution of officers of the rank of joint secretary and above. In its representation to the GoM, the agency demanded a statutory 90-day deadline for disposal of requests for sanction of prosecution and changes in the statute to ensure that reasons for denial of go-ahead to the agency are clearly spelt out through a "speaking order". CBI is not empowered to launch prosecution of officers of the rank of joint secretary and above who are covered by the so-called "single line directive". Though designed to protect officials against malicious prosecution, the "single line directive" has turned into a major hindrance on effective investigation into graft cases, with CBI's pleas for sanction often languishing indefinitely and with no clarity about the reasons for delay. Under the current scheme, CBI's plea first goes to the secretary of the ministry of the official concerned before being referred to a screening committee comprising the cabinet secretary and secretaries of the ministry concerned and the department of personnel and training. The screening committee is required to get back to the agency with its response within 90 days and, in case they feel that CBI's case is not compelling enough, with a "speaking order" lying down in detail the reasons for the divergence with the agency's estimate of culpability of the bureaucrat concerned. However, in practice, this is rarely the case, with the bureaucracy sitting upon requests for prosecution for durations which in many cases can stretch to more than a year.

The requirement to list the reasons for denial of request is also disregarded, with the ministry very often getting back with a cryptic "permission denied" response. In his presentation to the GoM, CBI chief Ranjit Sinha pushed for strict compliance with the three-month deadline as well as the imperative to clearly record reasons for denial of requests. According to sources, Sinha
suggested a simplification of procedure by doing away with the intervening stage where the secretary of the ministry to which the official facing corruption charges belongs also gets to vet the plea for prosecution. Sinha said such requests should be sent straight to the screening committee on which the secretary of the ministry concerned is also represented. The CBI chief factored in the possibility of cases where the screening committee may find it difficult to come to a determination within the stipulated 90-day timeframe. He suggested that in such cases, the panel could take another two months to give its opinion, provided it put on record the reasons for its inability to meet the deadline. Although CBI's grouse against delay in grant of sanction is old, Sinha's pitch takes on significance because of its timing: he has put it on the table when Supreme Court has emphasized the need for doing away with hurdles which impede the agency's functioning. In government circles, it is being seen as a test case of whether the bureaucracy goes along with move to grant autonomy to the agency.

The Centre today faced the ire of the Supreme Court for not aiding the CBI with documents in its probe in coal scam and was directed to file a comprehensive affidavit "justifying" allocation of 164 coal blocks. The apex court, which perused the latest status report filed by the CBI in a sealed cover, said that the agency was "struggling" in its probe in the absence of documents not being supplied to it relating to the allocation of 204 coal blocks out of which 40 have been de-allocated.

A bench headed by Justice R M Lodha said there was "lack of transparency" in the coal blocks allocation and "there was no system in place to verify the application of the companies and working of the screening committee appears to be sketchy". "Regarding everything there is nothing on record. CBI is struggling as there are no documents in its possession," Justice Lodha said, adding, "I am sorry to say that the Union of India does not have basic documents." "Had it been with you (Centre), it would have helped the CBI in its investigation," the judge said. The probe report indicated "a lot of deficiencies and infirmities" in the coal blocks allocation," he added. The bench asked Attorney General G E Vahanvati to respond to its two queries "why sanction of government is necessary in respect of court-monitored or court-directed investigation." "This query is put to Attorney General in view of a categorical stand taken by the CBI before the Delhi High Court in a matter in which CBI counsel submitted that as the investigation was directed by the court, grant of sanction for prosecution is not necessary under section 6 of the Delhi Special Police Establishment (DSPE) Act," the bench said. The bench also wanted to know from the Attorney General "why clarification should not be made that sanction
for investigation of offences alleged to have been committed under the Prevention of Corruption Act is necessary from the government when the government's stand is that the power of supervision for investigation has already been shifted from government to CVC pursuant to direction issued by this court in Vineet Narain case. "The hearing in the matter was not free from controversy as Additional Solicitor General Siddharth Luthra, who replaced senior advocate U U Lalit, withdrew from appearing for CBI after the Attorney General opined that no law officer should be involved with the agency in this case. Vahanvati said he was not in the favour of law officers being engaged by the CBI in view of the controversy of sharing of probe report which forced the then ASG Haren Raval to resign. He said CBI should independently choose its lawyer to represent it in the matter.

6. The Fodder Scam in Bihar

The Fodder Scam involved hundreds of millions of dollars in alleged fraudulent reimbursements from the treasury of Bihar state for fodder, medicines and husbandry supplies for non-existent livestock.

The Fodder Scam was a corruption scandal that involved the embezzlement of about ₹ 9.5 billion (equivalent to ₹ 20 billion or US$340 million in 2013) from the government treasury of the eastern Indian state of Bihar. Among those implicated in the theft and arrested was then Chief Minister of Bihar, Laloo Prasad Yadav, as well as former Chief Minister, Jagannath Mishra. The scandal led to the end of Laloo's reign as Chief Minister. There is also allegation on Nitish Kumar and Shivanand Tiwari of receiving 1 crore and 60 lakh Rupees respectively from S.B. Sinha.

The theft spanned many years, and allegedly involved numerous Bihar state's administrative and elected officials across multiple administrations of the Indian National Congress and the Janata Dal parties. The corruption scheme involved the fabrication of "vast herds of fictitious livestock" for which fodder, medicines and animal husbandry equipment was supposedly procured. Although the scandal broke in 1996, the theft had been in progress, and increased in size, for over two decades. Besides the magnitude and duration of the theft, the scam was and continues to be covered in Indian media due to the extensive nexus between tenured bureaucrats, elected politicians and businesspeople that it revealed, and as an example of the mafia raj that has penetrated several state-run economic sectors in the country.
As of May 2013, the trial has completed in 44 cases out of a total of 53 cases. More than 500 accused have been convicted and awarded punishments by various courts.

The scam had its origins in small-scale embezzlement by some government employees submitting false expense reports, which grew in magnitude and drew additional elements, such as politicians and businesses, over time, until a full-fledged mafia had formed. Jagannath Mishra, who served his first stint as the chief minister of Bihar in the mid-1970s, was the earliest chief minister to be accused of knowing involvement in the scam.

In February 1985, the then Comptroller and Auditor General of India, T.N. Chaturvedi, took notice of delayed monthly account submissions by the Bihar state treasury and departments and wrote to the then Bihar chief minister, Chandrashekhar Singh, warning him that this could be indicative of temporary embezzlement. This initiated a continuous chain of closer scrutiny and warnings by Principal Accountant Generals (PAGs) and CAGs to the Bihar government across the tenures of multiple chief ministers (cutting across party affiliations), but the warnings were ignored in a manner that was suggestive of a pattern by extremely senior political and bureaucratic officials in the Bihar government. In 1992, Bidhu Bhushan Dvivedi, a police inspector with the state's anti-corruption vigilance unit submitted a report outlining the fodder scam and likely involvement at the chief ministerial level to the director general of the same vigilance unit, G. Narayan. In alleged reprisal, Dvivedi was transferred out of the vigilance unit to a different branch of the administration, and then suspended from his position. He was later to be a witness as corruption cases relating to the scam went to trial, and reinstated by order of the Jharkhand High Court.

1. Exposure and Investigation

Laloo Prasad Yadav, then chief minister of Bihar, was a prime accused in the fodder scam investigation. On 27 January 1996, the deputy commissioner of West Singhbhum district, Amit Khare, acted on information to conduct a raid on the offices of the animal husbandry department in the town of Chaibasa in the district under his authority. The documents his team seized, and went public with, conclusively indicated large-scale embezzlement by an organised mafia of officials and businessmen. Laloo ordered the constitution of a committee to probe the irregularities. There were fears that state police, which is accountable to the state administration, and the probe committee would not investigate the case vigorously, and demands were raised to transfer the case to the Central Bureau of Investigation (CBI), which is under federal rather than
state jurisdiction. Allegations were also made that several of the probe committee members were themselves complicit in the scam. A public interest litigation was filed with the Supreme Court of India, which led to the court's involvement, and based on the ultimate directions issued by the supreme court, on March 1996, the Bihar High Court ordered that the case be handed over to the CBI.

An inquiry by the CBI began and, within days, the CBI filed a submission to the High Court that Bihar officials and legislators were blocking access to documents that could reveal the existence of a politician-official-business mafia nexus at work. Some legislators of the Bihar Legislative Council responded by claiming the court had been misinformed by the CBI and initiating a privilege motion to discuss possible action against senior figures in the regional headquarters of the CBI, which could proceed similar to a contempt of court proceeding and result in stalling the investigation or even prosecution of the named CBI officials. However, U. N. Biswas, the regional CBI director, and the other officials tendered an unqualified apology to the Legislative Council, the privilege motion was dropped, and the CBI probe continued. As the investigation proceeded, the CBI unearthed linkages to the serving chief minister of Bihar, Laloo Prasad Yadav and, on 10 May 1997, made a formal request to the federally-appointed Governor of Bihar to prosecute Laloo (who is often referred by his first name in Indian media). On the same day, a businessman, Harish Khandelwal, who was one of the accused, was found dead on train tracks with a note that stated that he was being coerced by the CBI to turn witness for the prosecution. The CBI rejected the charge and its local director, U. N. Biswas, kept the appeal to the governor in place.

A few days of uncertainty followed the CBI's request to the state governor to prosecute the chief minister. The governor, A. R. Kidwai, was accountable to the federal government, and had already stated that he would need to be satisfied that strong evidence against Laloo existed before he would permit a formal indictment to proceed. The federal government, led by newly appointed prime minister Inder Kumar Gujral who had just succeeded the short-lived government of the previous prime minister HD Deve Gowda, consisted of a coalition that depended on support from federal legislators affiliated with Laloo for its survival. It was also unclear why the CBI had sought the governor's consent in the first place and, when the High Court demanded to know why it was being sought, the CBI stated that it was a "precautionary measure." The High Court, questioning the tactic, warned that it would allow some time for the permission to transpire, but if it sensed a delay, it would force a prosecution on its own authority.

On 17 June, the governor gave permission for Laloo and others to be prosecuted. Five
senior Bihar government officials (Mahesh Prasad, science and technology secretary; K. Arumugam, labour secretary; Beck Julius, animal husbandry department secretary; Phoolchand Singh, former finance secretary; Ramraj Ram, former AHD director), the first 4 of whom were IAS officers, were taken into judicial custody on the same day. The CBI also began preparing a chargesheet against Laloo to be filed in a special court. Expecting to be accused and imprisoned, Laloo filed an anticipatory bail petition, which the CBI opposed in a deposition to the court, listing the evidence against Laloo. Also, on 21 June, fearing that evidence and documentation that might prove essential in further exposing the scam were being destroyed, the CBI conducted raids on Laloo's residence and those of some relatives suspected of complicity.

On 23 June, the CBI filed chargesheets against Laloo and 55 other co-accused, including Chandradeo Prasad Verma (a former union minister), Jagannath Mishra (former Bihar Chief Minister), two members of Laloo's cabinet (Bhola Ram Toofani and Vidya Sagar Nishad), three Bihar State Assembly Legislators (RK Rana of the Janata Dal, Jagdish Sharma of the Congress party, and Dhruv Bhagat of the Bharatiya Janata Party) and some current and former IAS officers (including the 4 who were already in custody). Mishra was granted anticipatory bail by the Bihar state High Court. Laloo's anticipatory bail petition, however, was rejected by the same court, and he appealed to the Supreme Court, which resulted in a final denial of bail on 29 July. On the same day, Bihar state police were ordered to arrest him. The next day, he was jailed. Later, the Bihar Director General of Police, SK Saxena, justified the one-day delay in arresting Laloo by stating in court that "any precipitate action would have led to police firing and killing of a large number of people."

2. **End of Laloo's Chief Ministership**

As it became evident that Laloo would be engulfed in the scandal and its prosecution, demands for him to be removed from the chief ministership had gained momentum both from other parties, as well as within Laloo's own party, the Janata Dal. On 5 July, Laloo formally parted ways with the Janata Dal and formed his own party, the Rashtriya Janata Dal (or RJD), taking with him virtually all the Janata Dal legislators in the Bihar state assembly, and winning a vote of confidence in the state assembly a few days later. The RJD continued to support the coalition federal government, however. With demands for his resignation continuing to mount, on 25 July, Laloo resigned from his position, but was able to install his wife, Rabri Devi as the
new chief minister on the same day. On 28 July, Rabri's new government won another vote of confidence in the Bihar legislature by 194–110, thanks to the Congress and Jharkhand Mukti Morcha parties voting in alignment with the RJD.

7. Satyam Scandal

The Satyam Computer Services scandal was a corporate scandal that occurred in India in 2009 where Chairman Ramalinga Raju confessed that the company's accounts had been falsified. The Global corporate community was shocked and scandalized when the chairman of Satyam, Ramalinga Raju resigned on 7 January 2009 and confessed that he had manipulated the accounts by US$1.47-Billion.

Satyam Computer Services Ltd. was a listed company having about 3 lack shareholders promoted by Shri Ramalinga Raju. It had over 53,000 employees and is the 4th largest IT Company in India with clients in 60 countries 3 Reputation and credibility of the company has suffered after the Board of Directors approved a proposal to acquire stakes in Maytas owned by close relatives of Mr Raju at huge costs with a view to benefit these companies 4 Subsequently 4 independent directors from the Board of Directors resigned and the share prices crashed from Rs 188 to Rs 38 40 5 By a written statement dated 7th Jan 2009 addressed to the Board of Directors SEBI and the Stock Exchanges. Mr Raju admitted to manipulation of the financial statements of Satyam Computer Services Ltd. that runs into hundreds of crores of rupees 6 This has led to serious damage to the reputation of the Indian Corporate Sector and the regulatory mechanism in the eyes of the world 7 Therefore the Central govt has formed the opinion that the company will not be safe in the hands of the present Board of Directors and they should be restrained from performing further duties as directors Also the central government should be authorised to appoint 10 new directors for the company. Therefore, a petition was filed by the Union of India on 9th January 2009 against Satyam Computers invoking the provisions of Sections 388 B, 397, 398, 401 and 408 of the Companies Act 1956. On 09th Jan 2009 on hearing of the application of the Union of India against Satyam Computers Limited the Company Law Board (CLB) passed the following orders:

After considering the alleged facts put before the CLB the chairman Mr S Balasubramanian made the following observations The petitioner has sufficient grounds to evoke the Sections 388B 397 398 401 408 of Companies Act 1956 The promoter group led by Mr Raju
hold less than 4 shares in the company and more than 60 of the shares are held by various financial institutions 4 of the independent directors in the board of directors had resigned after the decision to invest in Maytas came to public knowledge And after the resignation of Mr Raju only 4 remain who were also party to the decision which led to the downfall of Satyam Computers Services.

The admission of Mr Raju firmly establishes the fact that there has been financial misrepresentation with a view of misleading the shareholders which accounts as serious fraud. The need of the hour is to create confidence in the minds of all connected with the company and also to assure that the regulatory judicial system in India is alive and active to take any required steps in times of need.

Finally the present state of affairs of Satyam Computer Services ltd is such that there could not be a better case for the CLB to enforce its powers under the various sections mentioned above to regulate the affairs of the company on an urgent basis.

The board of directors present at that time were suspended with immediate effect None of those directors should represent themselves to be a director of the company and should not exercise any powers as a director On the authority of this judgement in the name and on the behalf of the board the Central Government should immediately constitute a fresh board of the company with not more than 10 persons of eminence as directors The Central Government may also designate one of them as the Chairman of the Board This board is entitled to exercise and discharge all powers vested in the board by the Articles and the Act The newly constituted board should meet within seven days of its constitution and take necessary immediate action to put the company back on road It should submit periodical reports to the Central Government with a copy to this board on the state of affairs to the company As per the previous ruling on the 9th of Jan the board of directors had been dissolved and replaced with 6 new independent directors appointed by the Central Government.

(α) The new board has taken several steps for the financial revival of the company detection of and investigation into the various misdeeds of the erstwhile management.

(β) In addition to all this the board has also managed to rise above Rs 600 crores to meet the immediate financial requirements of the company.
Also the board has come to a conclusion that to meet the long term financial needs of the company it is important to find a strategic investor for Satyam Computer Services Ltd. This to not only pump in sufficient equity capital but to also provide managerial expertise.

To induct a strategic investor for the company the Board has already sought for relaxations in the Take Over code regulations from the SEBI.

It is further stated that to rope in a strategic investor it is imperative that the Authorised Share Capital be increased from 160 to 240 crores subsequently preferential allotment to be made to that investor to create his stake in the company.

Also the Board has requested the CLB to exempt the Board Company to seek the approval of the shareholders to increase the authorised share capital and also to preferentially allot it to the strategic investor chosen on 19th Feb 2009 on hearing of the application of the Union of India against Satyam Computers Limited the CLB passed the following orders:

To pass a resolution to amend the capital value of the Memorandum of Association to increase the authorized equity share capital of the company from Rs 160 crores comprising of 80 crores equity shares of Rs 2 each to Rs 280 crores comprising of 140 crores equity shares of Rs 2 each.

The resolution so passed shall be deemed to be a one passed in a general meeting in terms of Section 17 of the Act To pass a resolution authorizing itself to make a preferential allotment of equity shares at par or at a premium and the said resolution shall be deemed to be a special resolution passed in a general meeting in terms of Section 81 1A of the Act To induct a strategic investor subject to Devising a plan which provides for a transparent open and competitive process without furthering the interests of any particular acquirer o Obtaining of requisite approvals from SEBI in terms of SEBI Takeover Code; The process of selecting being transparent open and by way of a competitive price bid auction overseen by a retired Judge of the Supreme Court a former Chief Justice of India o Obtaining the approval of this board before actually allotting the shares on a preferential basis with full details on the process adopted in selecting the strategic investors These orders are discussed with respect to the various Chapters
and Sections under the Companies Act Chapters and Sections that were applicable for these judgments:

Chapter IVA Powers of Central Government to remove managerial personnel from office on the recommendation of the Company Law Board;

Section 388 B Under section 388B the Central Government has the power to refer to the Company Law Board CLB against any managerial personnel under the following circumstances;

d) When any person concerned with the management of the affairs of the company is guilty of fraud misfeasance persistent negligence or default in carrying out his obligations and functions under the law;

e) When the business of the company has not been conducted by the person as per sound business principals;

f) When the business of the company has been conducted by the person in a manner which is likely to cause or has caused serious injury or damage to the interest of trade industry or the business to which the company pertains d When the business of the company has been conducted in a manner with an intent to defraud its creditors members or any other person or otherwise for a fraudulent purpose which is against public interest Application of Section 388 B to the Satyam Case In the case of Satyam the business of the company has been conducted in a way that is against sound business principles b The board can be found guilty of misfeasance and an intention to defraud a The actions of some members of the board namely Mr Ramalingam Raju and Mr Rama Raju can also be found guilty of fraud d These actions of the board are also liable to cause serious damage to the interests of the Indian IT industry and the whole Indian business sector at large c In such a scenario the CLB can enquire into the case to identify if the person is fit to hold the office of Director or any other office associated with the conduct of the business The CLB is also allowed to authorize the Central Government to prevent the concerned people namely the Board of Directors from discharging their duties

Section 388 C During the pendency of the case the CLB has the power to pass an interim order on the application of the Central Government in the interest of its members This interim
order can direct the concerned managerial person not to discharge his duties till further order. The CLB can also order an appointment of a suitable person to perform the duties of the person concerned and can also specify the terms and rules regarding the same.

Sections 388 D and Section 388 E Under section 388 D at the conclusion of the hearing the CLB shall record its findings indicating whether the person is fit and proper to hold the office of director or any other office concerned with the conduct and management of the company. Under section 388 E the Central Government may remove the delinquent person from his office and after his removal he shall not hold any managerial office of any company for a period of five years from the date of the order of removal nor will he be paid any compensation for loss of office as a result of removal.

Chapter VI Prevention of oppression and mismanagement A Powers of Company Law Board Sections 397 and 398 As per section 397 relief against the Oppression will be provided by the CLB on application when it is under the following opinion That the company's affairs are conducted in a manner that is oppressive to any member or members and The just conclusion would have been to wind up the company However doing so would unfairly prejudice such a member or members. As per section 398 relief against mismanagement will be provided by the CLB on application when it is under the following opinion That the company's affairs are conducted in a manner that is prejudicial to the interests of the company or That a material change has taken place in the management or control of the company by means of alteration of board of directors or ownership of companies' shares or in its membership and because of this change it is likely that the affairs of the company is prejudicial to the interests of the company. Application of Sections 397 and 398 to the Satyam Case The actions of the board can be found to be oppressive because the actions of the board and specific actions of Mr Ramalingam Raju involves a lack of fair dealing in the matter of the properties rights of the shareholders and members. These actions also come under mismanagement because they go against the interests of the company which is to maximize shareholders' wealth.

Sections 399 401 and 402 An application can be filed by its members under section 399. Only members meeting the criteria defined in this section can file such an application. The Central Government may also authorize any member or members to file an application under sections 397 or 398. Under section 401 the Central Government itself may apply to the CLB for an order under sections 397 or 398. Any person authorized to do so on its behalf by the Central Government may also apply under this section. Under section 402 the power of the tribunal
provides for an order which includes the regulation of conduct of companies affairs in the future

Application of Sections 401 and 402 to the Satyam Case Using section 401 the Union of India
had applied to the CLB in the case of Satyam It was under the section 402 that the CLB passed
an order allowing the Government to take control of the company by replacing the Board of the
company with suitable people This was to regulate the affairs of the company and bring it into
order

B Powers of Central Government under Section 408: The Section 408 is important here
because it provides the powers to the Central Government to prevent oppression and
mismanagement by allowing it to appoint directors to the delinquent company

As per this section Refer to the Addendum for complete details The Central Government
may appoint as many people as directed by the CLB to hold the offices of directors The number
of people will be as necessary to effectively safeguard the interests of the company or
shareholders or public interest The period of appointment of such directors shall not exceed 3
years on any one occasion Until new directors are appointed in pursuance to the earlier order the
number of people as directed by the CLB shall hold offices as additional directors The Central
Government shall appoint such additional directors Such a person who has been appointed as
director or additional director by the Central Government shall not be required to hold any
qualification shares nor shall his period of office shall be liable to determination by retirement of
directors by rotation However such a director can be removed by the Central Government from
his office at any time and another person may be appointed by the Government to take his place
The company cannot change the composition of the board of directors after such appointments
have taken place unless confirmed by the CLB As long as such persons appointed by the
Government hold the offices of directors the Central Government may issue directions to the
company which it thinks to be appropriate in regard to its affairs This may include giving
directions to remove the existing auditor and replace the auditor with another The Central
Government may require the persons appointed as such directors or additional directors to report
to the Central Government from time to time with regard to the affairs of the company
Application of Section 408 to the Satyam Case Under this section the CLB permitted the Union
of India to appoint 10 of its nominees to function as directors of Satyam with one nominee
functioning as the Chairman of the Board It also directed the Government to ensure that the
newly constituted board meet within 7 days and take stock of the situation. The new board was also vested with all the powers as entitled in the board by articles and acts. Why Government had to intervene. Earlier common belief was that private sector companies could take care of themselves on their own. Corporate governance is capable of handling any eventuality. Representatives of public sector financial institutions and independent directors have always been on the board of directors of these private sector companies. In addition to this various regulatory board of directorsies such as Company Law Board, Securities and Exchange Board of India, SEBI also keep vigil on the activities of the companies. For all these reasons corporate governance was claimed to be complete in itself and it was argued that there is no need for any intervention in the management of these companies on the part of the government. In addition to the well placed institutional mechanism as enumerated above these companies get their accounts audited from auditors of international standards. Thus in this process accounts of these companies are also thoroughly inspected. However this well placed faith in corporate governance was shattered by the exposes of Satyam.

Reputation of Brand India as a global market and Brand IT Services in particular was at stake. For years Satyam and larger rivals such as Tata Consultancy Services, Infosys and Wipro were feted as among the new ambassadors of Indian industry with their corporate governance practices winning accolades around the world and their strong growth rates luring investors. All this was set to change after the scam and it was set to worsen the economic crisis already in place. Government had to step in to assure credibility of Brand India to the foreign investors. Many of Satyam’s 53,000 employees were expecting unemployment as the dimensions of the scandal unfolded and investors withdrew. Therefore it was the government’s responsibility to provide warmth and assurance to the future of the country’s 53,000 young minds.

Impact of this case: The Government decided to reintroduce the Companies Bill 2008 as the Companies Bill 2009 without any change except for the Bill year and the Republic year. While it is debatable as to whether the Government has missed an opportunity to strengthen basic corporate governance norms under company law by taking Satyam Computer Services Limited now Mahindra Satyam is a leading global business and information technology services company that leverages deep industry and functional expertise leading technology practices and an advanced global delivery model to help clients transform their highest value business processes and improve their business performance. Service Verticals: The company’s professionals...
excel in enterprise solutions supply chain management client relationship management business intelligence business process quality engineering and product lifecycle management and infrastructure services among other key capabilities Inception The company was founded as a Private Limited Company in 1987 by the promoters Mr Rama Raju and Mr Ramalingam Raju In 1991 it became a public company and issued its equity shares to the public in 1992 It employees close to 50 000 employees and was among one of the big four I T Industry players in India Profits and Awards Since inception it has reported excellent profits On April 2008 it reported excellent financial figures with Revenues of Rs 8473 49 crore a growth of 30 7 over fiscal 2007 It had got close to 670 clients including some in the Fortune 500 It is also listed on the NASDAQ and has received several awards including the Golden Peacock Global award for Excellence in Corporate Governance Maytas Infra Maytas is a group of companies controlled by Mr Ramalingam Raju It includes Maytas properties and Maytas Infra Limited In 2008 the Satyam board approved a US 1 6 billion acquisition of the Maytas Infra 300 million and Maytas Properties 1 3 billion controlled by the Raju family The acquisition attempt was seen as an attempt by the Raju family to exploit Satyams cash resources as the transaction would have left Satyam in a debt of around 400m After protests from the institutional shareholders the deal was abandoned

Such industrial accidents have not only caused damaged to individuals but have also caused harm to the interests of the investors. There have been several incidents of Bank closures owing to the collapse of business. Because of such incidents the investors had to suffer a lot. A very unfortunate even that occurred in Hyderabad due to the failure of banking business was the case of the Charminar Bank in which the Chairman of the Bank disgusted by the collapse of the business committed a suicide and killed himself.

8. Uphaar Cinema Fire

The Uphaar Cinema fire has been one of the worst fire tragedy in recent Indian. Fire occurred at Uphaar Cinema on Friday, June 13, 1997 at the Green Park, Delhi, during the premiere screening of the movie, Border. Trapped inside, 59 people died, mostly due to suffocation, and 103 were seriously injured in the resulting stampede.7 The fire broke out at 5:10 pm. According to reports, it was caused when a 1000 kVA electricity transformer, maintained by

7 Uphaar cinema verdict A Breakthrough in Compensation Law, Legal View, Laws in India.
the Delhi Vidyut Board (electricity Board) (DVB), and housed in the theatre’s overcrowded basement car park, burst, and engulfed some 20 cars, where some 36 cars were parked instead of the admissible 18. The fire eventually spread to the five-storey building which housed the cinema hall and several offices. Most of the victims were trapped on the balcony and died due to suffocation as they tried to reach dimly marked exits to escape the smoke and fire, and found the doors locked. An off-duty Capt. Manjinder Singh Bhinder of the 61st Cavalry of the Indian army and a talented horse-rider, out celebrating his success at a recent national games with his family and a junior officer at the movie hall, gave his and his family's lives up saving over a 150 people, on his personal initiative.

Rushing out along with his family at first, realising the gravity of the unfolding tragedy, he and his people went back inside, and tried to set order and guide people out to safety. Fire services were delayed due to the heavy evening traffic and the location of the cinema hall, situated in one of the busiest areas of South Delhi. At least 48 fire fighters were pressed into service at 5.20 p.m. and it took them over an hour to put out the fire. Later the dead and the injured were rushed to the nearby All India Institute of Medical Sciences (AIIMS) and Safdarjung Hospital, where scenes of chaos and pandemonium followed, as relatives and family members of the victims scurried around to look for known faces.

A small fire had earlier broken out in the morning hours in the electrical transformer, which was soon put out and repairs carried out by DVB officials. Hour’s later oil spilled from the transformer and caught fire.

After the transformer caused a fire at 'Gopal Towers', a high-rise in Rajendra Place, New Delhi in 1983, the licences of 12 cinemas, including that of Uphaar, were cancelled. The Deputy Commissioner of Police (Licensing) who inspected Uphaar, had listed ten serious violations, and all remained uncorrected until the fire 14 years later.

**The Investigation and Trial** In the beginning a magisterial probe took place which submitted its report on July 3, 1997, wherein it held cinema management, Delhi Vidyut Board, city fire service, the Delhi police's licensing branch and municipal corporation responsible for the incident saying "it contributed to the mishap through their acts of omission and commission",

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8 Reduff.com June 14, 1997
9 The Indian Express (PTI Report) June 15, 1997
it also blamed the cinema management for losing precious time in alerting the fire services, and also for not maintaining proper distance between the transformer room and the car park. It also said that, "when the fire broke out at 1645 hours, the movie was not stopped nor any announcement made to evacuate the audience. Exit signs were not battery-operated and once the lights went out, panic-struck people had to grope in the dark for exits, many of which were blocked by seats". Subsequently the courts issued non-bailable warrants against Sushil Ansal, his brother Gopal, a Delhi Vidyut Board inspector and two fire service officials. After evading arrest for many days, Sushil and his son Pranav Ansal, the owners of Ansals Theatres and Club Hotels Limited, which owned the Uphaar cinema were finally arrested in Mumbai on July 27, 1997, and sent to judicial custody, though were later released on bail. Also amongst those arrested was the company's director V K Aggarwal

Following the inquiry, Union Home ministry transferred the probe to the Central Bureau of Investigation (CBI) amidst charges of cover-up by victims families, which on November 15, 1997, filed charge sheets against 16 accused, including theatre owners Sushil and Gopal Ansal, for causing death by negligence, endangering life and relevant provisions of the Cinematography Act, 1952. By 2000, the prosecution completed the recording of evidence with the testimony of its 115 witnesses. The court case ran for over a decade, and the court had over 344 hearings during the first seven years. Four of the accused died, and eight witnesses, mostly relatives of Ansals turned hostile witness, despite High court responding to AVUT's plea and asking trial court in 2002, to expedite the case. Meanwhile as the criminal trial dragged on, in 2003, a presiding judge commented upon the repeated requests (for adjournment) as being intended to delay the case.

Almost nine years after the tragedy, a trial court judge visited the Uphaar cinema hall in August, 2006, accompanied by CBI officials who investigated the case to get a first hand look at the seating and fire safety arrangements, which have been blamed for the tragedy. The site had been preserved as “material evidence” since the tragedy. The visit followed a High Court order in which the trial court was asked to examine all available evidence in the matter, and as the courts proceeding were coming to an end. In its report the court observed that on the second floor

10 Indian Express, June 14, 1997
balcony of the theatre, where victims were asphyxiated, “the space provided for exhaust fans on the walls was found blocked with the help of a cardboard”.

**Evidence Tampering Case** In 2003, the public prosecutor in the case reported that several important documents filed along with the charge sheet were missing from the court record of the case or had been tampered with or mutilated. The court ordered an inquiry and dismissed the court clerk. In 2006, the Economic Offences Wing (EOW) of the Delhi Police registered the case on a Delhi High Court direction on a petition by 'Association of the Victims of Uphaar Tragedy' (AVUT) convener Neelam Krishnamurthy.

In February 2008, on the basis of the charge-sheet filed by the Economic Offences Wing of the Delhi police for allegedly removing, tampering and mutilating important documents of the Uphaar fire tragedy case in conspiracy with a clerk in a trial court there in 2003, a Delhi court summoned Uphaar cinema hall owners Sushil Ansal and Gopal Ansal and four others in the evidence tampering case, under Sections 120-B (criminal conspiracy), 201 (causing disappearance of evidence or giving false information to screen offenders) and 409 (criminal breach of trust) of the Indian Penal Code.

**The Verdict** The final verdict came four years later on November 20, 2007, and the quantum of sentences were given out on November 23, 2007, in which 12 people, including the two Ansal brothers, were found guilty, and later convicted for various charges including, causing death by negligent act, and were given the maximum punishment of two years’ rigorous imprisonment. They were also fined Rs.1,000 each for violating Section 14 of the Cinematography Act. The court also directed the CBI to investigate the role of other officials who had been giving temporary licences to the Uphaar cinema hall for 17 years.

The other seven accused, three former Uphaar cinema managers, cinema's gatekeeper and three DVB officials, were all given seven years' rigorous imprisonment, under Section 304-A (culpable homicide not amounting to murder) of the Indian Penal Code (IPC), and housed at the Tihar Jail. The court also fined all the 12 accused with Rs.5,000 each, and also sentenced all of them to two years’ rigorous imprisonment, as they were found guilty of endangering personal safety of others, both the sentences however were to run concurrently.

**Civil Compensation Case** The victims of the tragedy and the families of the deceased
later formed 'The Association of Victims of Uphaar Fire Tragedy' (AVUT), which filed the landmark civil compensation case. It won Rs 25 crore (Rs 250 million) compensation for the relatives and families of the victims in the case, now considered a breakthrough in civil compensation law in India. However the Supreme Court on 13/10/2011, nearly halved the sum of compensation awarded to them by the Delhi high court and slashed punitive damages to be paid by cinema owners Ansal brothers from Rs 2.5 crore to Rs 25 lakh.

In a connected civil court case, 'The Association of Victims of Uphaar Fire Tragedy' (AVUT) sought civil compensation from Ansal Theatre and Clubotels Ltd., which owned the theatre, and the Delhi government alleged 'negligence' on their part led to the fire in the cinema hall. The verdict of this case came on April 24, 2003, and the Delhi High Court found owners of the Uphaar cinema, Municipal Corporation of Delhi (MCD), Delhi Vidyut Board (electricity Board) (DVB) and the licensing authority 'guilty of negligence', and awarded Rs 25 crore (Rs 250 million) civil compensation to the relatives of victims, which included Rs 15 lakh each to the relatives of the victims, less than 20 years at the time of the tragedy and a sum of Rs 18 lakh each to those, above 20 years. The compensation included Rs 2.5 crore for development of a trauma centre near New Delhi’s Safdarjung Hospital, situated close to the cinema hall. The court directed the cinema owners to pay 55 per cent of the compensation since they were the maximum beneficiaries of the profit earned from the cinema, the remaining 45 per cent was to be borne equally by MCD, DVB and licensing authorities, each contributing 15 per cent of the amount.

The Supreme Court on October 13 2011 reduced the amount of compensation to be paid to the victims of 1997 Uphaar Cinema fire tragedy. The compensation to family of deceased above 20 yrs cut from Rs 18 lakh to Rs 10 lakh each; for those below 20 yrs, from Rs 15 lakh to Rs 7.5 lakh each.

9. Fire Accident Cases in Sivakasi

Sivakasi is a place located at Madras where a match factory is operated by private individual.1 but an unfortunate aspect of this industry is that most of the time there has been incidents of abrupt fire being caused in the factory which results in heavy causalities. People who make dazzling crackers in Sivakasi work in the most appalling conditions, which pose a constant threat to their lives. In the latest incident. The following is a brief account of major accidents at
Sivakashi.

**Chronology of major fire accidents in Sivakasi**

Here is a look at major fire accidents till date.

(a) **April 19, 2005**: Two persons were killed in an explosion at a cracker manufacturing unit near Madurai.

(b) **July 2, 2005**: 12 persons were killed and 22 injured in a fire accident at Anuppankulam in Sivakasi.

(c) **July 25, 2005**: Six employees of a private fireworks unit were injured in an accidental fire at a cracker unit at Anuppankulam near Sivakasi.

(d) **April 20, 2006**: Four people including a woman were killed in a blast in a cracker unit in Sivakasi.

(e) **July 7, 2009**: Seventeen workers of a cracker factory were burnt to death in a fire accident in the Madurai district of Tamil Nadu.

(f) **July 20, 2009**: Eighteen people were killed and 33 injured 23 of them seriously, when a fire swept through the unit which makes crackers at Namaskarichanpatti in Virudhunagar District.

(g) **July 28, 2009**: Three workers were killed in the mishap at Anil Fireworks in Keezha Tiruthangal village in Sivakasi.

(h) **August 3, 2009**: One died in the accident at Classic Fireworks in Meenampatti in Sivakasi.

(i) **August 29, 2009**: Two workers were killed and three others injured in a fire accident at a cracker unit in Sattur.

(j) **March 30, 2010**: One person was killed and six others injured in a blast at a country-made cracker unit on South Car Street in Dindigul.

(k) **August 5, 2010**: An eight-year-old boy was killed in a fire accident reportedly at an illegal cracker unit functioning in a house near Sivakasi.

(l) **August 10, 2010**: Eight state government officials suffered severe burns when firecrackers stored at an illegal godown they raided exploded accidentally at D Durai samypuram village, near Sivakasi.
(m) **August 26, 2010:** A fireworks employee was killed in a fire accident in a cracker unit near Virudhunagar.

(n) **October 17, 2010:** Three persons were charred to death and three others suffered burns when a godown of a cracker manufacturing unit at Ellappan Pettai village, near Cuddalore.

(o) **January 21, 2011:** Eight workers were charred to death and sixteen, including five women, were injured in an explosion that took place at a fireworks unit near Virudhunagar.

(p) **March 22, 2011:** Crackers worth lakhs of rupees were destroyed in a fire that broke out in a godown at A Lakshmiapuram, near Sivakasi.

(q) **June 5, 2011:** A woman worker was killed and another injured in a fire accident at a cracker unit near Sattur.

(r) **August 6, 2011:** Six women workers were killed in an accident following an explosion that took place in a fireworks factory near Sivakasi.

(s) **Oct 3, 2011:** Two workers were killed in an explosion that took place in a fireworks factory near Sattur.

(t) **December 28, 2011:** Four workers were killed on the spot and two others injured in an explosion at a cracker-manufacturing unit near Sivakasi.

(u) **February 3, 2012:** A worker was injured in a fire accident at a fireworks unit in Sevalpatti on Friday.

(v) **Feb 28, 2012:** Two labourers of a firecracker-manufacturing unit, who were seriously injured in a blast died at a private hospital in Madurai.

(w) **March 7, 2012:** A blast at a fireworks unit in Sivakasi claimed the life of one worker and left another seriously injured. The incident occurred at National Paper Caps in Aiyanar Colony.

(x) **May 10, 2012:** A 70-year-old man was burnt to death in an explosion at a firecracker manufacturing unit in Sivakasi in Virudhunagar district.

(y) **March 27, 2012:** Two workers who sustained serious burn injuries in a blast at a fireworks unit in Sankarapandiapuram near Sattur succumbed to the injuries at a private hospital in Madurai.

(z) **Aug 10, 2012:** A worker at a cracker unit was critically injured in a fire accident at a
fireworks unit at Thulukkakurichi near Vembakottai.

(aa) Aug 13, 2012: A woman employee of a fireworks unit was killed in a fire accident at a cracker unit in Maraneri near Virudhunagar.11

(bb) Sept 05, 2012: At least 38 people were killed and over 60 injured in one of the worst fire tragedies in Om Sakthi Fireworks, a private cracker manufacturing unit in Mudhalipatti.

(b) Three fire accidents in a span of a week at Sivakasi

An accident took place at Parasakthi Fireworks at Konampatti on the Sivakasi-Sattur Road on Thursday, claiming three lives.

Another accident on Sunday claimed five lives at New Rathna Fireworks at Naranapuram near here. A few days back, two persons were killed when they carried out maintenance work in a shed in a fireworks factory. All incidents took place in a span of a week.

The frequency of accidents is alarming but there are no signs of any alarm at the nearby villages or in the town. People treat such fire accidents as a routine and life is as usual in this dry belt. However, officials and the government machinery could not keep quiet.

Soon after a major fire accident at Om Sakthi Fireworks at Mudalipatti last year, in which over 40 persons were killed and more than 70 injured, the State government announced a slew of measures such as stringent enforcement of rules and regulations, improvement of roads and establishment of a sophisticated burns ward at the Government Hospital here.

The burns ward has almost come up and all the sanctioned posts are filled and officials have increased the number of inspections.

But in the factory where the accident took place recently 38 people were killed and over 60 injured in the powerful explosion that tore through one of the biggest fireworks factories in Tamil Nadu. In the accident that occurred on this fateful day there were many violations: the workers were found working under a tree, 12 men were working together, there were iron objects all around the work spot and the workers were mixing chemicals beyond the stipulated time.

Moreover, they were not permitted to work on holidays like Sunday. If necessary, the management should have either intimated the Deputy Chief Inspector of Factories or obtained permission from him. But they do not seem to have followed this norm.

11 Times of India, dated 6th September, 2012
Self-regulation  A.P. Singh, Deputy Chief Controller of Explosives, and R. Venugopal, Controller of Explosives, who inspected the accident spot at Naranapuram on Sunday, said self-regulation was the need of the hour. There were over 750 fireworks units in and around Sivakasi. “Physical inspection of each unit every day is quite impossible,” Mr. Singh said when asked whether the shortage of inspection staff could be attributed to the increase in fire accidents. In fact, licences of 108 units were suspended for six months and licences of three units were cancelled during the last financial year. Yet, violations continue to take place and there seems to be no end to fire accidents. 12

Major Fire Accidents Rock Sivakasi Two major fire accidents rocked the fireworks hub of Sivakasi on Thursday. However, no casualties or any major injuries were reported since the accidents occurred during the lunch break, when the workers were away.

At around 1.10pm, an explosion occurred at the Chidambaram Fireworks in M Duraisamypuram - 8 km from Sivakasi - causing heavy damage to the factory. In a short while, the fire spread to Sri Krishnasamy Fireworks, 200m away from the first factory where nearly 10 buildings were razed to the grounds due to the explosions. Other than a 50-year-old woman who suffered bruises from a fall while fleeing for her life, the others had a narrow escape.

The fire and rescue services department, which was alerted immediately, deployed five vehicles from Sivakasi, Virudhunagar, Sattur and Srivilliputhur and pressed 50 personnel into service. "The fire was put out after one hour of struggle. The explosion in the first factory caused rocket type of fireworks to fly in the air and thus triggering the next explosion in the adjacent firework unit. While there were no loss of life or injuries, we are estimating the loss of property," said M Manikandan, assistant divisional fire officer.

According to the officials, the timing of the incident was very crucial role, which could have otherwise ended up as one of the worst fire accidents that had occurred ever. "Fortunately, all the workers in Chidambaram Fireworks had come out of the factory premises for lunch that time and they fled from the spot upon hearing the sounds from the explosion," stated Michael Raj, Sivakasi tahsildar who inspected the spot. Only one woman, P Kanipappa, 50, from Achamthavirthan village injured herself while running out and suffered bruises on her hands and legs, he said.

The friction caused on the drying ground is said to be the cause of accident. The chemical

12 The Hindu, April 29, 2013.
composition for 12 shots rocket type firework was being dried on the grounds and the heavy wind during that time caused the friction of the material with the ground, the officials said. The explosion spread to the manufacturing unit first and then to the processing rooms quickly. Seventeen processing rooms suffered damages in Chidambaram fireworks in which five to six buildings were completely damaged. The rocket type fireworks stored in the unit, started flying in the air and it fell on the adjacent factory, Sri Krishnasamy Fireworks where 10 rooms suffered severe damage and were razed down. As per the protocol followed among the workers, all those in the second factory evacuated the campus as soon as they heard the first explosion and were saved. "If it had occurred during work hours, the causality rate would have been nearly 80, worse than the Mudalipatti accident last year," 13

At the incident which took place on 22nd August, 2013 r at least 36 people were charred to death and 73 injured in a devastating fire that swept through a fireworks factory complex at Mudhalipatti near the country’s fireworks hub in Sivakasi.

- Firemen spray water after a massive blaze swept through the Om Siva Shakti fireworks factory in Sivakasi.
- An injured person is rushed for treatment after a massive blaze swept through a fireworks factory in Sivakasi.
- Family members mourn for their relatives, who died in the fireworks factory fire in Sivakasi.
- Firefighters work at the scene of a fire at the fireworks factory in Sivakasi.
- A view of the damaged fireworks factory is seen after a fire broke out at Sivakasi town.
- Relatives of victims of Sivakasi cracker factory cry outside a government hospital in Madurai.
- Fireworks lie in the foreground as policemen arrive at the scene after a massive blaze swept through the Om Siva Shakti fireworks factory in Sivakasi.

Relatives of victims of Sivakasi cracker factory cry outside a hospital in Madurai. Several people died and many injured at a major fire accident in a fire crackers manufacturing unit...

The remains of a building that was razed after a massive blaze swept through the Om Siva Shakti fireworks factory in Sivakasi. Large amounts of firecrackers and raw materials

The toll might go up with 45 of the injured stated to be in a serious condition at various hospitals. The fire that broke out when workers were mixing chemicals to make fancy fire crackers was so intense that the factory and 48 sheds in the complex exploded in flames, trapping many in the inferno, police and fire brigade.

Officials said most workers were amateur and some trained in West Bengal were not fluent in Tamil to warn the people.

The Sivakasi cracker factory fire killed at least 40 people. Cracker units at Sivakasi, accounting for 90% of firecracker production in the country, function at 'breakneck speed' ahead of the Diwali festival, Virudhunagar district SP Najmul Hoda said. A factory official said 300 persons were at work at the unit at the time of the incident. Ministers Panneerselvam and others were gheraoed by the relatives of the victims when they visited the injured at the hospital in Sivakasi.

They were protesting lack of adequate facilities and medicines at the hospital.

In another development, foreman of the cracker unit was arrested in connection with the mishap. Rohit Sharma, an Official of the Controller of Explosives, visited the fire mishap site. He said the accident could have occurred due to friction while mixing the chemicals. Another official said a sensitive chemical which should be kept in the store room was stocked in the work shed leading to the fire. The ill-fated unit was not supposed to accommodate 300 workers and this could be another reason for the high toll, he said.

Industrial accidents of this type have become a normal feature of the units working in India. The unfortunate aspect of these incidents is that the victims do not get adequate relief from the owners or managers of the industrial establishments where such accidents take place and cause harm to the life and property of the individuals. One of the worst disasters in India was the Bhopal Gas Tragedy in which an American based company was involved.

10. The closure of Banking business at Charminar Bank in Hyderabad and the Suicide committed by its Chairman

The Chairman of the Hyderabad-based Charminar Bank, Mr Syed Alamdar Hussain Sajjad Aga, shot himself with a revolver in the early hours of Monday, ringing panic bells for lakhs of depositors of urban co-operative banks. Mr Aga, who is said to have shot himself in his
car, in front of his residence at around 9.15 am, was immediately rushed to the emergency medicine department of Apollo Hospitals at Jubilee Hills here.\textsuperscript{14} It was not clear as to whether there was any foul play in the incident as the police officials maintained that there were no indications in that direction so far. While the city was agog with wild rumours on the condition of the Charminar Bank chief, police announced that Mr Aga was on the ventilator. According to reports that could not be confirmed despite repeated attempts, the Charminar Bank board had a prolonged meeting last night till the wee hours of Monday. As news of the shooting spread in the city, thousands of frantic depositors thronged the Charminar Bank's 21 branches in the city in an attempt to withdraw their deposits. Police are learnt to have prevented entry of depositors at some of the branches. The Urban Bank Directory ranked the bank, with a deposit base of over Rs 500-crore, number one among the State-based urban cooperative banks and 25th among the co-operative banks for the year 2000-01. The exact reasons for the alleged suicide attempt were not clear. The police said investigations would throw light on the issue and establish whether Mr Aga had attempted suicide due to financial troubles in the bank or due to personal reasons.

According to the City Police Commissioner, the officials of the Reserve Bank of India and the Registrar of Co-Operative Societies had stepped in and had begun auditing the accounts of the bank. ``We are not sure whether there are any financial irregularities in the bank. However, we see no reason for a run on the bank as deposits of up to Rs 1 lakh are insured by the RBI's Deposit Credit and Insurance Guarantee Corporation,''.

11. Rs. 5,500-crore National Spot Exchange Scam

Commodity spot trading is about buying and selling a commodity, paying cash for and receiving your goods on the ‘spot’. Which signifies that the buyer and seller agree on a price and ‘deliver’ their side of the contract immediately. NSEL was a spot exchange designed to help this activity, with the added feature of being electronic (so buyers and sellers can be in different locations) and anonymous (the buyer and seller don’t know who the other side is). The important feature of any such exchange is that the exchange has to stand guarantee to either party that it will ensure the contract is settled. If the buyer can’t bring in the money for any reason, the exchange should then sell the goods to someone else and recover the money (and make up the difference). And a similar exercise if the seller defaults. Now, when the seller and buyer are far

\textsuperscript{14} The Hindu, February 23, 2002
away from each other, how does the exchange guarantee delivery? The idea is that the seller must come to an exchange-designated warehouse and give his goods, which are then tested and verified for quality and weight. He then gets a warehouse receipt (WR) that is used for electronic trading. When he sells on the exchange, the warehouse receipt is transferred to the buyer; this receipt entitles the buyer to take the goods out of the warehouse, or if he chooses, to retain the goods there (to sell them later) by paying the warehouse rental charges.

There are rules governing commodity trading, which is regulated firmly by the Forward Market Commission (FMC). Under the Forward Contracts Regulation Act, any contract that is called “spot” must be settled within 11 days – that is, both delivery of goods and transfer of money must happen within 11 days (called “T+11”). The 11 days give the buyer and seller time to complete the contract. Thus, this would then not become a “forward” contract.

Spot contracts, by their nature, were deemed to be out of the Forward Markets Commission (FMC) regulation by a small notification in 2007 by the Department of Consumer Affairs. This exemption was given specifically for one-day duration contracts – or, technically those contracts that complete both delivery of goods and transfer of money within two days, called “T+2”.

An innocuous-looking notification from the Forward Markets Commission (FMC) came in on July 12, 2013. And in the offices of the National Spot Exchange Limited (NSEL), a commodities exchange promoted by the Jignesh Shah-led Financial Technologies (FinTech), things began to change. The notification restricted NSEL from making fresh contracts available as they were likely in contravention of the Forwards Contracts Regulation Act. NSEL first changed its contract duration to comply, and then when it found customers leaving in droves, threw up its arms and shut down the exchange. More than Rs 5,500 crore was due, and over the next few days it became evident that there was neither the money nor the underlying ‘spot’ goods to settle trades by over 15,000 investors. Since then, the story has unravelled, slowly. The scale of this default dwarfs the last big exchange crisis, the Rs 600 crore settlement problem at the Calcutta Stock Exchange in 2001.