CHAPTER VII

CONCLUSION AND SUGGESTIONS

Every Year There is new Fraud emanating in corporate world. More importantly India is in top list of Frauds. These Frauds expose the loopholes in regulatory system and need to impose stringent penalty on defaulters. The Fraud in Market affects not only the company’s reputation, the investor’s interest but also the development of country. As if there will be fraud then the common people would not invest in a company and hence there will be shortage of finance which in turn will affect development of the country. Like other countries India has also enacted various legislations and established various authorities to regulate the market and protect the interest of investors as we have discussed in chapter 6. These legislation will ensure the accountability of Board of Directors, bring transparency i.e. Good corporate governance which is necessary as the corporate owes responsibility toward owners, shareholder that their money shall not be misused and they will get interest or profit at the rate on which they are entitled. Management of the company also undertakes to comply with laws, rules and regulations which may be made time to time by legislation. The existence of sound and healthy financial system is a pre requisite for the economic development of a nation. Capital market facilities mobilization of saving of individuals and pool them into reservoir of capital which can be used for the economic development of country unless the interest of investors are protected, the smooth flow of capital in corporate is not possible. An efficient and healthy capital market provides for mechanism for rising of capital and also for protecting the interest of investors. In the last two decade, far reaching development have taken place in the working of capital market.

With increasing competition in market, companies want to make high and quick profit. They want sustainable competitive advantage in the market for which they start looking to short cuts to the basic business fundamental which provide them competitive advantage like differentiation in price,
product, service and promotion, cost leadership, market forces etc. As a short cut to price differentiation, CEOs may reduce the good but may at the same time also reduce the quality of good by buying raw material from the known supplier\(^1\). While supplier gets an order, the CEOs get his share from the supplier. Such practices become long term habits of the CEOs resulting in the long term loss of profit and goodwill of the companies.

As these problems become rampant, there arose the need to form committees to look into financial and non-financial irregularities of the firm and bring the business back the age old value based management system based on cultural and ethical belief. The formation of such committees to look into the problem of companies came to be known as corporate governance.

Several legislation were enacted in Indian capital market to create a healthy and efficient atmosphere and to protect the interest of investors. The primary object of these legislation is to protect the interest of investors and to inspire the confidence in the mind of those who actively involved in it by controlling fraudently and unfair trade practices. The legislation also regulated various financial intermediaries like mutual funds, venture capital, underwriters, merchant banker etc. The Companies Act 2013 which has recently repealed the Companies Act 1956 makes provision for E-Governance. It provides for one Man Company. Section 211 makes provision for serious fraud investigation office. In the earlier Act no such office was created. This provision was incorporated to prevent fraud in Capital market. Section 29 further strengthen this provision which provides that the securities offered to public shall be in dematerlised form by complying with the provisions of the Depositories Act, 1996 and the regulations made there under. And it further lays down that any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made there

\(^1\) [www.mca.gov.in](http://www.mca.gov.in) visited on 27\(^{th}\) Sept 2012
under. In companies Act 1956 this provision was contained in Sect 66 B. this provision was incorporated to ensure transparency and liquidity in market. Further The Companies Act, 1956 under Section 36 makes provision for punishment for fraudently inducing person to invest money. It provides that any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into an agreement. Section 75 provides for damages for fraud. If a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

All modern economies, therefore, recognize the need for sound regulation of securities markets. This is needed not just for proper functioning of these markets, but also for their very survival. It will ensure that markets are safe and perceived to be safe by the public at large and necessary information is available to the public so that they can take informed decisions about investments. It will further ensure that while engines of growth are allowed to move at full speed, there is no space for manipulators in the system. Today securities market regulation has evolved to include three principal objectives: (a) Fair, efficient and transparent markets; (b) Investor protection; (c) Reduction of systemic risk. SEBI shouldering the responsibility in all these three areas with great deal of efficiency and commitment. The Securities and Exchange Board of India (SEBI) was constituted on 12 April 1988 as a non statutory body through an administrative Resolution of the Government for dealing with all matters
relating to development and regulation of the Securities market and investor protection and to advise the government on all these matters. SEBI was given statutory status and powers through an ordinance promulgated on January 30, 1992. SEBI was established as a statutory body on 21 February 1992. The ordinance was replaced by an Act of Parliament as 4th April 1992. The Preamble of SEBI Act, 1992 enshrines the objectives of SEBI - to protect the interest of investor in securities market and to promote the development of and to regulate the securities market. The SEBI has issued various regulations in respect of each of the intermediaries such as stock brokers and sub broker, share transfer agents and registrars to an issue, banker to an issue, debenture trustees, merchants bankers, underwriters portfolio manager, depositories, participants, custodian of securities, foreign institutional investors, credit rating agencies, venture capital funds, collective investment schemes including mutual funds, etc to regulate and ensure fair play by these intermediaries. SEBI has also issued regulations to prohibit insider trading and to regulate substantial acquisition of shares and take over of companies. All these rules and regulations, circulars and guidelines serve the objective of affording necessary protection to the investors. Over and above this, various penalties and adjudications which could be imposed on persons including the various intermediaries who are held to have contravened provisions of the enactment and committed defaults. The Act thus provides sufficient deterrents to those who may indulge in defaults and illegalities and malpractices on the market to the detriment of the investors.

The DP is required to provide the investor, at regular intervals, a statement of account, which gives the details of the securities holdings and transactions. The depository system has effectively eliminated paper-based certificates, which were prone to be fake, forged, counterfeit resulting in bad deliveries. CDSL offers an efficient and instantaneous transfer of securities.

The Depository Act which provides for the establishment of depositories like NSDL and CDSL to curb the irregularities in the capital market and protect the interests of the investors and paved a way for an
orderly conduct of the financial markets through the free transferability of securities with speed, accuracy and transparency. Earlier the transactions which takes a lot of time now takes only a second. This Act has increased the liquidity in Market.

The objective of Securities Contract (Regulation) Act, 1956 is to regulate the working of stock exchanges or secondary market with a view to prevent undesirable transactions or speculation in securities, and thereby to build up a healthy and strong investment market in which public could invest with confidence. It empowers the Government of India to recognize and derecognize the stock exchanges, to stipulate laws and bye-laws for their functioning, and to make the listing of securities on stock exchanges by public limited companies [PULCOS] mandatory. It prohibits securities transactions outside the recognized stock exchanges. It is administered by the Ministry of Finance, Department of Economic Affairs, Government of India. The provision of segregation of management from trading would ensure sound decision.

The IRDA acts not only a watchdog but also an advisor and with reference particularly to erring companies by constantly committing act of malfeasance and misfeasance to act as a bloodhound. It is also to act as an advisory board to develop healthy and prosperous trends in insurance market. To have a constant vigil over their activities, registration is made renewable every year. The Registration only serve as visiting card and make the IRDA only to know about its existence and the fact that it is doing insurance. This has been discussed in detail in chapter 6.

The RBI originally set up as a shareholder bank was owned and fully nationalized by Govt. of India in 1949. is also the regulator and supervisor of the financial system and prescribes broad parameters of banking operations within which the country's banking and financial system functions. Its objectives are to maintain public confidence in the system, protect depositors' interest and provide cost-effective banking services to the public. The

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Banking Ombudsman Scheme has been formulated by the Reserve Bank of India (RBI) for effective addressing of complaints by bank customers. The RBI controls the monetary supply, monitors economic indicators like the gross domestic product and has to decide the design of the rupee banknotes as well as coins.

The central bank manages to reach the goals of the Foreign Exchange Management Act, 1999 i.e. to facilitate external trade and payment and promote orderly development and maintenance of foreign exchange market in India.

In well-developed economies, central banks use open market operations—buying and selling of eligible securities by central bank in the money market—to influence the volume of cash reserves with commercial banks and thus influence the volume of loans and advances they can make to the commercial and industrial sectors. In the open money market, government securities are traded at market related rates of interest. The RBI is resorting more to open market operations in the more recent years.

The Reserve Bank of India is also entrusted with the responsibility of regulating and supervising the Non-Banking Financial Companies by virtue of powers vested in Chapter III B of the Reserve Bank of India Act, 1934. A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump

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sum or in installments by way of contributions or in any other manner, is also a non-banking financial company (Residuary non-banking company).

FERA was repealed in 1998 and Foreign Exchange Management Act (FEMA) was enacted to facilitate external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. No unauthorised person would be allowed to deal in foreign exchange. The authorised person could sell; draw foreign exchange from any authorised person on current Account transaction, subject to approval of R.B.I. RBI has exclusive authority to regulate supply; use of foreign exchange, R.B.I, if thinks fit at the compelling situation can prohibit use of foreign exchange for any specific purpose. R.B.I.’s decision on borrowing, lending, issue, deposit, export of foreign exchange is final.

With an aim to provide a structured platform to the Banking sector for managing its mounting NPA stocks and keep pace with international financial institutions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was put in place to allow banks and FIs to take possession of securities and sell them.

In case of Sharda chit fund fraud, Fraud could have been prevented if the government took notice and take proper action. But the state government did not take any action even SEBI has directed it. As the SEBI was also aware of its limitation that chit fund are regulated by state government. Moreover the investors were also negligent as they didn’t inquire about the affair of the company. Even in 2009 SEBI has issued notice to Sharada Group for not complying with law as not issuing prospectus and not obtaining permission before issuing securities. Investors didn’t pay attention to this fact. Moreover

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5 Foreign exchange market is market where money in one currency is exchanged for another currency.
6 "foreign exchange" means foreign currency and includes,- (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
7 Non performing Assets.
the investors should understand everything that brights is not gold. No one take notice of SEBI warning till confessional letter by Sen. Now he has fled. No one knows where he is. Once again the Scammer has taken advantage of loopholes in the system.

After this case new amendment has been introduced in SEBI Act, Depository Act, and Security Contract Act, 1956. These amendment i.e. “The Securities Laws (Amendment) Act, 2014” has been introduced after the shardha chit fraud fund. The SEBI, which is the regulator of capital market or securities in India Can ask for any information from any authority which it consider necessary for any matter of investigation or inquiry by the board in respect of any transaction in securities. Now even the SEBI can require furnishing of information to other authorities even outside India, having similar functions to the Board in the matter relating to the prevention or detection of violation of securities laws and for that purpose the Board may enter into agreement with such authority outside India with the prior approval of central government. The punishment has been increased. The law has been made stricter. Sect 28A has been Added which provides for attachment of property movable or immovable, arrest and detention and appointment of receiver in case of failure to comply with any of direction Of SEBI. In Section 19 of The Depository Act, 1996 a explanation has been added which provides that power to issue directions include the power to direct any person, who made profit or loss by indulging in any transaction or activity in contravention of provision of this Act.

Every company is required to comply with it and various authorities has been established to keep a watch on Companies and impose penalty if they fails to comply with law. Various authorities has been constituted to regulate the market and corporate Governance. These are-Central Government, National company Law appellate Tribunal, The National Company Law Tribunal, Regional Directors, Registrar of Companies, Office Liquidator, SEBI etc. Despite establishment of various authorities like SEBI, Company law Board and by enactment of various law like companies Act various scandals has been committed which affect the whole society.
especially the investor. The spate of recent scandals reveals involvement of all the players. The Board fingers Management, Management blames the auditor and the auditor blame the rules. They all pass the buck on other making it difficult to fix accountability.

In 1992, the Bombay Stock Exchange (BSE) the leading stock exchange in India witnessed the first major Scam mastermind by Harshad Mehta. Market collapsed. Harshad Mehta has taken advantage of loopholes in the system. Moreover the banks were also negligent in dealing as they never try to find out whether the bank receipt issued was forged or not. Had the bank not negligent the fraud could have prevented. Harshad Mehta invested the money in equity market which was against the norm of bank. Banks were not allowed to invest the money in equity market. Bank of karad and Metropolitan Cooperative bank does indirectly what they cannot do directly as they have issued fake bank receipt with the knowledge that Harshad Mehta is investing money in equity Market. Harshad Mehta fraud has affected the whole of nation. The Market was collapsed. Several investors have lost their money. The Government liberalization policy came into criticism and a voice was raised to create a regulatory bodies to keep a watch on corporate fraud and The SEBI was constituted. This case has been discussed in detail in Chapter 4. At That time it was felt that if more powers had been given to SEBI that would not have happened. As a result, the Government of India brought in a separate legislation by the name of 'SEBI Act 1992' and conferred statutory powers to it. Since then, SEBI had introduced several stock market reforms. These reforms significantly transformed the face of Indian stock markets. SEBI introduced on-line trading and demat of shares which did away with the age-old paper-based trading, thus bringing more transparency into the trading system In spite of SEBI's capital market reforms and increasing regulatory powers over the years, it had failed miserably in stopping stock market scams. In the ten years after the Mehta scam, several scams came to light, casting doubt on the efficiency of SEBI as a regulatory body.
In 1994 M.S. Shoes Fraud was committees. Pawan Sachdeva who was behind the fraud manipulated the share prices. This Fraud once again affected the whole nation. Question on the efficiency of SEBI was raised which was just created 2 year before the fraud and after the Harshad Mehta fraud. The markets had to be closed for three days after this fraud. More than Rs2.7 billion was lost. Once again the investor has to lose their money.

In CRB fraud which is discussed in detail in chapter 4 the auditors of the Company never pointed out any irregularities in CRB's operations. The company-auditor nexus is suspected to be fairly common in the country's financial services industry. The RBI gave an in-principle banking license to CRB which is a rare honour. The RBI inspection showed massive irregularities, but did nothing about it while CRB happily went on collecting FDs. In December, RBI put the banking license on hold, but turned a blind eye to CRB raising money for its bank. Only when reports started appearing in the media Then RBI cancel the license and stop CRB from collecting FDS. The SEBI remained a bystander while CRB managed scores of shady share issue to become the number one merchant banker in the country. SEBI gave CRB permission to start a mutual fund and a share custodial service. In 1996, when SEBI discovered irregularities in CRB's mutual fund, it barred it from launching any new schemes for just two months. THE SBI CRB's depositors encashed their interest warrants and refund orders through SBI. CRB was supposed to deposit the amounts in advance with SBI every three months. Then CRB stopped this pre-funding and continued to issue warrants and orders, which SBI faithfully honoured, perhaps reassured by the fact that a former SBI chief was on the CRB board. Only when the unpre-funded payouts hit a staggering Rs 60 crore did the bank wake up. Once again investor's faith was broken and they have no option for returning their money back. Here if the SEBI and Auditors would have alert fraud would not have committed. Due to this fraud many of the investor has become insolvent and committed suicide.
In Ketan Parekh fraud the small investors who lost their life's savings felt that all parties in the functioning of the market were responsible for the scams. They opined that the broker-banker-promoter nexus, which was deemed to have the acceptance of the SEBI itself, was the main reason for the scams in the Indian stock markets. SEBI's measures were widely criticized as being reactive rather than proactive. SEBI's market intelligence was very poor. Moreover KP's arrest was also not due to the SEBI's timely action but the result of complaints by BoI. In this fraud India has lost 200 billion. Many investors have committed suicide and hundreds of investors were driven to brink of bankruptcy. The Fraud shook the investor’s confidence in the overall functioning of stock markets. Badla system was banned.

In 2009 Satyam Company was awarded Golden Peacock award for its corporate governance Standards. This is the highest award for corporate governance. It was the irony of situation that a company which was considered the best in IT industry has low corporate Governance and founded guilty of committing Fraud. The Chairman, Ramalinga Raju has admitted that the company had been cooking figures in its financial statements and showing higher revenues and lower liabilities. It has been overstating its profits and reserves. From September 2007 to December 2008, the company's bank balance was overstated by Rs. 5.040 crore and accrued interest by Rs. 376 crore. Liabilities were understated by its. 1,720 crore. Thus, the overall financial statement was overstated by Rs. 7,136 crore. The purpose of the scam was to keep the financial position of the company look good. The fraud affected the whole of nation and many investors have committed suicide. And around 45,000 employees were left jobless, huge losses were incurred on the investors and creditors of the company, and the stock market collapsed with the Sensex falling by nearly 750 points. This case has also been discussed in detail in Chapter 4.

In 2012 Sahara India Real Estate Corporation Ltd. Collected huge amount of money amounting to 19400 frauds by issuance of OFDS to more than 50 person without listing its securities in any of the stock exchange
which is a complete violation of Companies Act, 2013 which requires the securities to be listed, if a Company issue securities to more than 50 peoples. This fraud has shake the investors in trust once again in investing securities market.

The Saradha Chit fund fraud, another scam came into highlight after the collapse of a Ponzi scheme run by the Saradha group, a consortium of over 200 companies running a wide variety of collective investment schemes mainly in West Bengal, Assam and Odisha. The group collapsed in April 2013, causing an estimated loss of about Rs. 10,000 crore to over 1.7 million depositors. The entire Dakshin Bahart today looks like it was hit by a cyclone\(^8\). Every home has a bankrupt depositor or a fugitive agent\(^9\). People who were friends have turned enemies. Happy households have become miserable. Students have stopped going to school. Traders have lost interest in opening shutters. There is a sense of treachery that has replaced the warmth of a neighbourhood\(^10\). Suddenly everything has become vicious\(^11\).

Whatever be the fraud every time it has affected the whole of nation. Every fraud requires that there should be good corporate governance. No one can deny the existence of corporate Governance. As every company claims good Corporate Governance in its affair. Every company is aware of the fact that investor will invest only when there would be transparency and accountability.

Corporate governance is a key element in improving the economic efficiency of firm. Good corporate governance also helps ensure that corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate. Further, it ensures that their Boards are accountable to the shareholders. This, in turn, helps assure that corporations operate for the benefit of society as a whole. While large profits can be made taking advantage of the asymmetry between

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\(^8\) Times Of India, 20th April 2013  
\(^9\) Ibid.  
\(^10\) Ibid.  
\(^11\) Ibid.
stakeholders in the short run, balancing the interests of all stakeholders alone will ensure survival and growth in the long run. This includes, for instance, taking into account societal concerns about labor and the environment.

The failure to implement good governance can have a heavy cost beyond regulatory problems. Evidence suggests that companies that do not employ meaningful governance procedures can pay a significant risk premium when competing for scarce capital in the public markets. In fact, recently, stock market analysts have acquired an increased appreciation for the correlation between governance and returns. In this regard, an increasing number of reports not only discuss governance in general terms, but also have explicitly altered investment recommendations based on the strength or weakness of a company's corporate governance infrastructure.

The credibility offered by good corporate governance procedures also helps maintain the confidence of investors – both foreign and domestic – to attract more “patient”, long-term capital, and will reduce the cost of capital. This will ultimate induce more stable sources of financing.

Moreover Auditor represents the shareholders. As the shareholders are not in direct control. Some arrangement is required who inform the shareholder where there money is going to be utilised, how the affair of the company stand and what the present value of their investment is. To safeguard their interest companies Act provide the employment of auditor. However the role of auditor was also in question in Satyam scam as the auditor external and internal both should have known the fraud, however the internal auditors can be hand in glove with the management but what happened to the external auditors as to why they did not suspect something wrong.

Shareholder has no control over the director except in Annual General meeting to remove them which is to be held in one year. There is possibility of misusing their power for their benefit.
Shareholder only interested in dividend. So long as they get satisfactory dividend they take little interest in Management.

Fraud in market is common and the word corporate Governance has remained only a word. Good Corporate Governance which is the responsibility of corporate world toward society which ensures accountability, transparency has failed to fulfil its responsibility toward society. The corruption in private sector is also rampant. It is not limited to bribing the government to get contract but also rampant even in its dealing with contractors, consultants and its hiring practices. It is fairly widespread in India’s best companies but never admitted or discussed publicly. The reason is obvious, while the central vigilance or comptroller and auditor General of India provide scope for investigation, action and whistle bowling in government or public sector organisation, there is no oversight mechanism in private companies. The fat payment to directors on corporate Boards only encourage silence rather than good governance. The investors tend to be more favourable toward big companies without inquiring into the affair of the company they invest their whole money into it.

Whatever be the Scam whether it may be Harshad Mehta Scam in 1990 or Satyam Scam or 2G Scam, Every Time the Scammer has taken the advantage of loopholes in our legal system and till today no Scammer has been convicted whatever be the reason whether it be the death in jail or the hand of politicians behind the scammer but one thing is clear that our law is not adequate to deal with these criminals and the punishment which is provided in the law is not stringent. The Auditing & Assurance Standards are in place, but when a company like Satyam with its Herculean size operations is required to be audited, these standards are applied, but only to a small percentage of the operations. It is not within the Auditors power to detect Fraud, if prime facie, every thing appears to be genuine. In Satyam Fraud, if fake receipts & invoices were printed and shown to the Auditors, they were not in a position to detect the Fraud. But they should have gone for Debtors & Bank Confirmation - this would be the normal course of action for any auditor
in place. It was done till some extent, but even the negligence of duty on the part of the Auditor was evident.

What with the independence of the Auditor: It is a very serious question in these changing times. This is because; auditors are engaged and paid by the same managers who may be responsible for misreporting. They have the incentives to comply with these managers to protect their fees.

The auditor has a duty to inquire into certain matters and seek any information required for the audit, from the company. This could be in relation to security on loans and advances made by the company, any transactions entered into by the company and whether they are prejudicial to the interests of the company, whether personal expenses are recorded and charged to proper accounts, any transaction with respect to sale of shares and whether the position depicted in the books and balance sheet is correct, honest and proper. If there are any suspicious circumstances or unusual transactions like unavailability of original documents, or sudden increase or decrease in shareholdings or debt, employees given the liberty to access unauthorized documents etc., then the auditor is under a clear duty to “probe into these transactions” and ensure that they are proper and legal. At all times, auditor has to act with care and skill of a professional of reasonable competence. The degree of care and skill required however, varies from case to case. There are different types of fraud which can be committed in a Company. They are-

Management fraud - This involves the senior management, as they are basically involved in manipulating the financial statements and deceiving the readers of the financial statements with misrepresenting the real picture, or theft or improper use of company resources.

Employee fraud - This involves non-senior employee theft or improper Use of company resources and carrying out of practices and transactions under the table.

External fraud - This involves theft or improper use of resources by people who are neither management, nor employees of the firm. Internal audit staff and external auditors have to perform an essential function of fraud
prevention and deterrence as they are up to speed, experienced and trained in the same and can see to it that the loopholes in the system and the risk areas are identified and investigated. Once they are identified, quick action has to be taken to address and rectify them. The internal processes and programs have to be tested at regular intervals to test their effectiveness.

In order to do this, the auditor needs to ensure that effective anti fraud programs are in place, which not only prevents fraud but also assists in its detection and cure.

Some of the factors that indicate the existence of fraud are unavailability of original documents, unusual relationships, unauthorized transactions, and unexplained items in the accounts, sudden increase or decrease in trends, employees given liberty to access system and records, disparities in accounts and spur of the moment adjustments in the books.

Among non-banking financial intermediaries, development finance institutions (DFIs) operated in an over-protected environment with most of the funding coming from assured sources at concessional terms. In the insurance sector, there was little competition. The mutual fund industry also suffered from lack of competition and was dominated for long by one institution, viz., the Unit Trust of India. Non-banking Financial Companies (NBFCs) grew rapidly, but there was no regulation of their asset side. Financial markets were characterized by control over pricing of financial assets, barriers to entry, high transaction costs and restrictions on movement of funds, participants between the market segments. Apart from inhibiting the development of the markets, this also affected their efficiency. Financial markets in India comprise the money market Government securities market, capital market, insurance market, and the foreign exchange market. Recently, the derivatives market has also emerged. With banks having already been allowed to undertake insurance business, bane assurance market has also emerged in a big way.

Till the early 1990s most of the financial markets were characterized by controls over the pricing of financial assets, restrictions on flows or
transactions, barrier to entry, low liquidity and high transaction costs. These characteristics came in the way of development of the markets and allocative efficiently of resources channeled through them. From 1991 onward, financial market reforms have emphasized the strengthening of the price discovery process easing restrictions on transactions, reducing transaction costs and enhancing systemic liquidity.

Financial sector reforms in India were grounded in the belief that competitive efficiency in the real sectors of the economy will not be realized to its full potential unless the financial sector was reformed as well. Thus, the principal objective of financial sector reforms was to improve the allocative efficiency of resources and accelerate the growth process of the real sector by removing structural deficiencies affecting the performance of financial institutions and financial markets. The main thrust of reforms in the financial sector was on the creation of efficient and stable financial institutions and markets. Reforms in respect of the banking as well as non-banking financial institutions focused on creating a deregulated environment and enabling free play of market forces while at the same time strengthening the prudential norms and the supervisory system. In the banking sector, the focus was on imparting operational flexibility and functional autonomy with a view to enhancing efficiency, productivity and profitability, imparting strength to the system and ensuring accountability and financial soundness. The restrictions on activities undertaken by the existing institutions were gradually relaxed and barriers to entry in the banking sector were removed. In the case of non-banking financial intermediaries, reforms focused on removing sector-specific deficiencies. In the case of the insurance sector and mutual funds, reforms attempted to create a competitive environment by allowing private sector participation. Reforms in financial markets focused on removal of structural bottlenecks, introduction of new players/instruments, free pricing of financial assets, relaxation of quantitative restrictions improvement in trading, clearing and settlement practices, more transparency, etc. Recently Government has allowed 49% FDI in Insurance Sector. Reforms encompassed regulatory and legal changes, building of institutional infrastructure, refinement of market
microstructure and technological upgradation. In the various financial market segments, reforms aimed at creating liquidity and depth and an efficient price discovery process.

During the last four decades, particularly after the first phase of nationalization of banks in 1969, there have been distinct improvements in the banking activities which strengthened the financial intermediation process. There have been many fold increases in aggregate deposits and credit indicating existence of a vibrant bank-based financial system. First, an important indicator of bank-based financial deepening, i.e. Private sector credit has expanded rapidly in the past five decades thereby supporting the growth momentum. Second, financial innovations have influenced velocity circulation of money by both reducing the transaction costs and enhancing the liquidity of financial assets. A relatively increasing value of velocity could be seen as a representative indicator of an efficient financial sector. In case of India, the velocity circulation of broad money has fallen since 1970s partly reflecting the fact that, in the midst of crisis, money injected to the system could not get distributed efficiently from the banking system to non-banks. Sharper fall in the velocity of narrow money reflected reluctance among banks as well as the public to part with liquidity. Third, the market-based indicator of financial -10-deepening, i.e., market capitalization-to-GDP ratio has increased very sharply in the past two decades implying for a vibrant capital market in India. Various reform measures undertaken since the early 1990s by the Securities and Exchange Board of India (SEBI) and the Government of India have brought about a significant structural transformation in the Indian capital market. Although the Indian equity market has become modern and transparent, its role in capital formation continues to be limited. Unlike in some advanced economies, the primary equity and debt markets in India have not yet fully developed. The size of the public issue segment has remained small as corporate have tended to prefer the international capital market and the private placement market. The private corporate debt market is active mainly in the form of private placements. However, the domestic credit provided by the Indian banks still remains at an
abysmally low as compared with major emerging market and developing economies

Furthermore, the level of credit disbursement is also far below the world average levels. Therefore, there is scope for the Indian banks to expand their business to important productive sectors of the economy.

The Financial Sector Legislative Reforms commission (FSLRC) was constituted by the Finance Department. It presented its report to the Finance Minister in March, 2013. The Commission looked at two important aspects of the Financial Sector that is- the numerous laws governing the financial sector and the multiple regulatory set ups across the sector and after considering these sector it has made following recommendation12 -

1. The decision to merge the roles of the Securities and Exchange Board of India, the Forward Markets Commission, Insurance Regulatory and Development Authority, and Pension Fund Regulatory and Development Authority into a single regulator called the “Unified Financial Agency” (UFA), on the grounds that all financial activity other than banking and the payments system, which would continue to be regulated by the Reserve Bank of India (RBI), should be brought under a single authority.

2. The continuation of the Financial Stability Development Council (FSDC) with the mandate to monitor and which is to be led by the finance ministry.

3. The creation of a Resolution Corporation that would identify institutions that are threatened by insolvency and resolve the problem at an early stage.

4. The creation of a Public Debt Management Agency that would take the responsibility of public debt Management away from the RBI 13 .The Commission believes that this proposed financial regulatory architecture is a modest step away from present practice, embeds important improvements, and will serve India well in coming years.

India has been a late starter in the process of reforming financial markets. Nevertheless, beginning the 1990s, a package of reforms comprising

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13 Redistributing Regulatory Power ; Financial Sector Legislative Reform Commission by C. P. Chadrasekhar, Economic and Political Weekly, dated 18.5.2013
measures to liberalize, regulate, and develop the country’s financial sector by adopting best international practices has been initiated. The results of these reforms have been encouraging and the country now has one of the most vibrant and transparent capital markets in terms of market efficiency, transparency, and price discovery process. However, there are still certain challenges in the development of the Indian financial sector which need to be addressed to make it an important avenue for productive channelization of savings by domestic investors and a preferred investment destination for international investors.

Other things which are needed for improving financial market is-

(1) A reasonably well-developed corporate bond market is very much required in any economy to supplement banking credit and the equity market and to facilitate the long term funding requirement of corporate sector as well as infrastructure development in the country.

(2) There is a need to draw up a road map for a structural shift from a bank-dominated financial system to a more diverse financial system where top-rated corporate access finance from capital markets strengthening of the legal framework for regulation of corporate debt by necessary amendments in rules/regulations, and relaxation of investment guidelines for pension, provident, and insurance funds to enable the participation of long term investors in the corporate bond market.

(3) Long-term finance for infrastructure projects is another issue that needs to be looked into in the context of the limitation of banks to finance such projects. Infrastructure projects, given their long pay-back period, require long-term financing in order to be sustainable and cost effective. The enactment of the Banking Laws Amendment Act 2012 is expected to make the regulatory and supervisory powers of the RBI more effective and facilitate banks in raising funds from the capital market required for expansion of banking business. They will not only facilitate the flow of long-term savings for development but also help establish a credible and sustainable social security system in the country.
(4) As far as the insurance products are concerned, limited choice and high cost of providing covers and assessing claims are some of the issues that need to be suitably addressed to make insurance funds an effective means of channelizing savings to investments. The recent global financial crises have raised certain issues relating to governance of financial intermediaries and awareness of investors.

(5) As investors' awareness is a pre-condition for their protection, attempts are being made to address this issue through the financial literacy campaign. A simultaneous and coordinated effort on both fronts is needed to enable investors, especially the small investors, to take informed decisions and ensure orderly conditions in the market. The ongoing efforts need to be scaled up in a coordinated way for spearheading financial literacy and promoting investors' protection.\textsuperscript{14}

(6) The need of the hour is to ensure that our unbanked population gains access to formal sources of finance, their reliance on informal channels and on the shadow banking system subsides, and, in the process, consumer exploitation is curbed. A glaring example is the recent case of a chit fund defrauding poor people of their hard earned savings. The fact that people have to rely on such entities for their saving needs indicates a failure on the part of the formal financial system to reach out to such groups and earn their trust and confidence through a transparent and responsive customer service regime. Hence, the financial sector architecture that we aspire for should be one that is most conducive to meeting the objectives of financial inclusion and financial literacy, besides meeting the goals of customer service.\textsuperscript{15} Keeping in view India's growing integration with global financial markets, external-sector vulnerabilities have an increasingly large impact on India through the trade and capital account channels. It is therefore important that the development of an efficient and healthy financial market should also be accompanied by an effective regulatory mechanism that keeps track of external vulnerabilities.

\textsuperscript{14} India. Ministry of Finance, Economic Survey 2012-2013, pp.128-129
\textsuperscript{15} www.rbi.com, speech on Regulation for Financial Consumer Protection, by Shri K.C. Chakrabartty, dated 29.4.2013
(7) There is a need of growing and increasing complex market oriented economy and its rising integration with global trade and finance.

(8) The Companies Act, 2013 seeks to ensure better corporate governance and reduction of corporate delinquency which has led to the introduction of Clause 36(c). This Clause envisages punishment for fraud for ‘any person’ who either recklessly or knowingly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution. This Clause is expansive as it includes not only those parties related to the company but, also include, any person not having any co-relation to the company. and it also make a person liable if he make a statement recklessly. In country like India where the most of the population is illiterate, which may not have any knowledge of the company make a statement and may be liable for punishment. So the word recklessly should be removed and in place of “any person” the word “any person connected with the company in any way” should be incorporated. The liability of the person hereunder is extremely strict as any statement made under any circumstances, any projections or forecasts for the company that result in the entering into an agreement by a bank or financial institution may result in punishment which may extend upto ten years of imprisonment and fine up to a maximum of three times the amount of the fraud.

(9) Under The Companies Act after amendment 2013 The Central Government is empowered to establish National Financial Reporting Agency (“NFRA”). The authority will have all powers relating to scrutiny and compliance of accounting and audit standards. The Companies Act 1956 only gave powers to the Central Government to form a committee for giving recommendations on Accounting Standards, i.e., the National Advisory Committee on Accounting Standards. The composition of the NFRA includes a Chairperson appointed by the Central Government and a maximum of fifteen members to be appointed in a manner as prescribed by the Central Government. The Authority is to be headquartered in New Delhi and is meant
to make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards, monitor and enforce the compliance with accounting and auditing standards and oversee the quality of service of the professionals associated with ensuring compliance with such standards. The NFRA under the Companies Act, 2013 will have wide powers, inter alia, the power to investigate, powers of a civil court related to discovery and seizure of books and examination of witnesses. Furthermore, the NFRA will also have the power to impose penalties on individuals and firms and may even go to the extent of debarring errant persons. The Bill grants the Central Government the power to formulate an appellate authority that has the jurisdiction to hear appeals from the decisions of the NFRA. There is little clarity regarding whether NFRA is to function in combination with the Institute of Chartered Accountants of India ("ICAI") or is visualized as superseding the powers of the ICAI. So it should be made clear.

The Indian primary market has not yielded favorable returns for investors over the last few years compared to the listing premium they enjoyed before. Companies are currently trading below their issue price. Pricing of securities should follow the basic model of demand and supply, but there are various factors which may distort the efficient functioning of the model. Firstly, there is the issue of promoters and private equity players exiting via public offers demanding higher price for the securities offered. Secondly, there is the issue of investments bankers’ fee being linked to the pricing of securities which may cause some distortions to the effective pricing of securities. An aggressive pricing model may be helpful for short-term gains but is not advisable for the sustenance of investment appetite for a long run in the primary market. There is need for change not only in the mindset of promoters and private equity players towards a more market efficient pricing model but also in the regulatory framework providing more flexibility to issuers in pricing their securities. The existing book-building system is only a relative price discovery model since the floor and cap price of securities is determined by the issuers and underwriters and the issue price determined is within a set price band and time period, which may not lead to a true price
discovery. This may be the reason why we have seen high amount of fluctuations on the day of listing of securities, when the market participants are not restricted by a set price band. The Indian regulators may think of introducing the Dutch auction method wherein the issuer is allowed to freely price its securities and is allowed to lower the fixed price till all the securities offered by it are subscribed. The issue price would be the price at which the last subscriber purchases the securities. This method may be a more effective pricing model as there would be a much longer time period for determination of price and as it would be more aligned to the demand supply system of pricing. In addition, for better price discovery of securities offered in public offer, Indian regulations should lay down clear and liberal rules governing distribution of research reports and road shows, which play a crucial role in the determination of price bands of public offers\(^\text{16}\).

(11) The Companies Act, 1956 suffers from some defects in the provision relating to audit. These were revealed after various scams and fraud that shocked the corporate world. Therefore, it was important that the entire audit standards and systems were upgraded to bring them in line with globally accepted practices and make auditors more liable. Therefore, Companies Act, 2013 provides for certain reformed provisions in respect thereof. The auditors can now be appointed for 5 years with yearly ratification by the shareholders in the annual general meeting. As far as the listed companies and such other classes of companies as may be prescribed by the Central Government are concerned they will not be able to appoint an ‘individual’ as auditor for more than one term of 5 consecutive years and ‘audit firm’ for more than 2 terms of 5 consecutive years. However, re-appointment can be made only after the expiry of 5 years from their last term of appointment. This will ensure that after a certain period a new watchdog will look at the company’s financials. The Companies Act, 2013 also permits shareholders to rotate an auditor partner and his team at such interval as desired by the shareholders. The appointment of auditor will have to be made after taking into account the recommendation of the audit committee. The Companies Act, 2013 provides that casual vacancy in the office of auditor has to be filled by the board of

\(^{16}\) www.nishithdesai.com visited on 20\textsuperscript{th} Sept 2014.
directors within 30 days. In case of casual vacancy arising because of ‘resignation’ of an auditor, it will need to be filled by the shareholders within 3 months from the date of recommendation of the board of directors. There is no such time limit to fill the vacancy under the Companies Act, 1956. A change which will have a far reaching effect is to punish an auditor if found guilty of acting in a fraudulent manner or abetting or colluding in any fraud. An errant auditor will be removed and not be eligible to act as auditor of any other company for a period of 5 years. In such cases, both the firm and the partner concerned will be jointly and severally liable. Further, for certain violations of their obligations, auditors could be sentenced to imprisonment and made liable to pay damages to the company, statutory bodies or authorities, etc. In order to ensure independence, no auditor will be allowed to provide non-audit services. One extremely important change is a duty cast on the auditor to report to the Central Government offence involving fraud if the auditor has reason to believe that such an offence has been committed against the company by officers or employees of the company. Clause 149(8) of the Companies Act, 2013 provides that an independent director shall not be entitled to any stock options, but is entitled to get payment of fees and profit subject to the specified limits as remuneration. However, there was no such requirement under the Companies Act, 1956 while Clause 49 of the listing agreement applicable to all listed companies allowed shareholders to fix the maximum number of stock options to be given as remuneration to an independent director. Thus, at present, there is a conflict between the applicable provisions of the Companies Act, 2013 and the listing agreement. Such an inconsistency in law will only create an avoidable yet disturbing confusion on the exact regulatory prescription applicable to independent directors in listed companies. So this inconsistency should be removed.

Role of a regulatory authority in a particular market depends on the stage of development that particular securities market is in. In an emerging market like India, the role of a regulatory body is not confined to regulation of the market but it extends to creation of condition that will nurture development of the market through effective discharge of its function of
regulation. It is a paradox with both ends tied up. Effective regulation has to be the primary objective, but regulation must pave the way for development of the market. The success of a regulatory authority has to be scaled in terms of these parameters. This dual role will ensure market development along with discipline and fairness in the market along with high degree of market integrity. In 1992, the Securities and Exchange Board of India (SEBI) Act was enacted giving statutory status as an apex regulatory body. Thus, in India SEBI is the apex regulating body, with the twin objects of regulating and developing the capital market. In spite of a multitude of reforms brought into force by it, it has been criticised for its repeated failure to apprehend and prevent major capital market scams time and again. From Ketan Parekh to recent Satyam fraud, time and again SEBI has failed to prevent major capital market scams, in spite of bringing security reforms each time. Surveillance by SEBI it seems has failed one too many times. It is about time the fundamental gaps in regulation by SEBI, that have plagued SEBI from Ketan Parekh to Chain Roop Bhanshali (CRB), and Satyam Frauds, are fixed.

Throughout the whole experience of capital market scams, the pattern of failure of SEBI as a regulating authority has more or less remained constant. Poor market vigilance and lack of market intelligence have been the primary cause of failure of SEBI to prevent capital market scams. Lack of vision and foresight in vigilance appears to be one of the primary weaknesses in regulation by SEBI. The fraud in capital market can be prevented by taking following measure-

(1) Framing of independent investigating agencies to be headed by professionally trained capital market analysts.

(2) For dealing with market manipulators in real time, the enforcement procedure needs to be eased significantly, providing much needed flexibility in operation. Stricter punitive measures such as heavy fines seem to be

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17 www.ukessays.com
18 Ibid.
19 Ibid.
20 Ibid.
necessary. The inception of disgorgement as a remedial civil action is also necessary for recovering manipulated amount.

(3) The SARFAESI Act has been structured to enable security receipts (SR) to be issued and held by Qualified Institutional Buyers (QIBs). It does not include NBFC or other bodies unless specified by the Central Government as a financial institution (FI). For expanding the market for SR, there is a need for increasing the investor base. In order to deepen the market for SR there is a need to include more buyer categories.

(4) In case of cross-border securitisation transactions where the assets and investors belong to different countries, there is a risk to the investor in the form of non-payment or imposition of additional taxes on the income repatriation. This risk can be mitigated by having a foreign guarantor.

(5) Sometimes the collateral against which credit is sanctioned to the obligor may undergo a severe deterioration. When this coincides with a default by the obligor then there is a severe risk of non-payment to the investors. So the provision should be made for payment to investor.

(6) Payments made in excess of the scheduled principal payments are called prepayments. Prepayments occur due to a change in the macro-economic or competitive industry situation. Competitors offering better terms could also be a reason for prepayment. In a declining interest rate regime prepayment poses an interest rate risk to the investors as they have to reinvest the proceedings at a lower interest rate. This problem is more severe in case of investors holding long term bonds. This can be mitigated by structuring the tranches such that prepayments are used to pay off the principal and interest of short-term bonds.

(7) There should be a fixed tenure beyond which an independent director should not be associated with a company. An aggregate limit of nine years has been prescribed under clause 49 VII (ii) of the equity listing agreement, but such a requirement is not mandatory. So this should be mandatory.

(8) Regarding the remuneration of the independent directors the pecuniary payouts are usually incommensurate with the onerous role they perform. Adequate remuneration may ensure that the directors discharge their duty
with care and diligence rather than just playing an ornamental role in the organization.\textsuperscript{21}

(9) Another step that might ensure a better working is that the independent directors should meet separately without any member in the management to discuss the affairs of the company. This would help them to make decisions on matters without being euphemistically ‘guided’ by the management.\textsuperscript{22}

(10) There should be a clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/ CEO. The Roles of Chairman and CEO should be separated to promote balance of power. A “comply or explain” approach should be adopted.\textsuperscript{23}

(11) Moreover, in India, there is no supervisory structure like the PCAOB\textsuperscript{24} in US which is an independent body which supervises the audit of public firms…. a similar structure should be mandated for Indian audit.\textsuperscript{25}

(12) Companies need to frame a strong risk management framework to systematically manage and regularly review the risk profile at a strategic, operational and functional level. Whistle blowers policy which is ingrained in the model code of conduct of a few corporations in India should be made mandatory for all the listed companies to encourage transparency.\textsuperscript{26}

(13) Listed companies must have a nominating/corporate governance committee composed entirely of independent board members. The committee must have a written charter that addresses its purpose and responsibilities, which include (i) identifying qualified individuals to become board member;


\textsuperscript{22} Dr. C.S. Bansal, Corporate Governance Law Practice & Practice (Taxmann Allied Services P. Ltd. 2005 ed.), p 116

\textsuperscript{23} Ibid.

\textsuperscript{24} Public companies accounts oversight board, The PCAOB is a private sector, nonprofit corporation, created by the Sarbanes-Oxley Act of 2002, to oversee the auditors of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair and independent audit reports

\textsuperscript{25} www.asialaw.com

\textsuperscript{26} http://meetjohndoe.sulekha.com visited on 23\textsuperscript{th} April 2010
(ii) selecting, or recommending that the board select, the director nominees for the next annual meeting of shareholders; (iii) developing and recommending to the board a set of corporate governance principles applicable to the company; (iv) overseeing the evaluation of the board and management; and (v) conducting an annual performance evaluation of the committee\textsuperscript{27}.

(14) The constitution of Corporate Compliance Committee should be made mandatory in respect of all public limited companies having a paid-up capital of Rs.5 crores or more\textsuperscript{28}.

(16) Directors’ Responsibility Statement should be included that proper systems are in place to ensure compliance of all laws applicable to the company.

(17) Constitution of Investor Relations Cell should be made mandatory for Listed Companies. The Investor Relations meet after declaration of financial results should be compulsorily in case of companies having a market capitalization of Rs.1000 crores or more.

(18) Sect 34 Provision of Indian Companies Act 2013 lays down that if a statement in prospectus is untrue or misleading and that is likely to mislead and the person proves that he had reasonable ground to believe and did up to the time of issue of prospectus believe the statement true he shall not be liable for that. Here the liability provided is strict. The liability should made absolute.

(19) Sect 141 (3)\textsuperscript{29} lays down that a person shall not be eligible for appointment as auditor in a company if his relative or partner hold any security or interest in the company or its subsidiary or of its holding or associate company or a subsidiary of such holding company of value exceeding 1000 Rs. This provision does not appear sound. No doubt this

\begin{footnotesize}
\textsuperscript{27} www.caclubindia.com visited on 23th April 2010.
\textsuperscript{28} www.riskadvisory.net visited on 23\textsuperscript{rd} April 2010.
\textsuperscript{29} The Companies Act 2013
\end{footnotesize}
provision is incorporated with a view to ensure independence of the auditor. However it is not necessary that a auditor’s duties would be affected by such relation. Here there is also possibility that he may take more interest in company if his any of relative is shareholder in company. The word relative is a vague term. It should be defined.

(20) Sect 141(3)( g)\textsuperscript{30} provides that a person can become auditor for 20 companies. Auditor acts on behalf of shareholder. The maximum limit provided is too much. By giving license to auditor for acting 20 companies at the same time would adversely affect his efficiency and interest. As he may take interest only in remuneration and not actively in the company. Further a company may have more than one branch and he may audit the account of that branch also. Then in that case the all branches shall be deemed to be one company.

(21) Sect 188\textsuperscript{31} deals with related party transaction. There is no need of this Section. As there is also Sect 184\textsuperscript{32} where the director has to disclose interest in all contract in which he is interested. The word “contract” is wide enough to include all related party transaction.

(22) Sect 196 provides that a person may be appointed or employ as Managing Director or Manager till the age of 70 year. The age of 70 year is too much. As in most of the jobs a person retire at the age of 60. So the age of 70 should be decreased to 60. And there should be no reappointment after that age as provision to Sect 196 provides that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person. This proviso should be deleted.

(23) The Act is soft on Directors and harsh on employees. Sect 54 deals with issue of sweet equity shares. It lays down that employee should have a

\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
minimum one year employment in order to be eligible for Sweat Equity Shares. The Act also says that one year should lapse from the date of commencement of Business in order to issue Sweat Equity by the Company. It means only Promoter Directors become eligible immediately as the Company would take time to recruit employees. So the one year time should be removed.

(25) The Ministry of Corporate Affairs (MCA) based on Satyam fraud investigation has worked out new parameters for scrutiny of companies. In instructions to the Registrar of Companies (RoC), MCA has pointed to ‘cash at bank’ as a vital parameter for scrutiny. Till now, the auditor’s certificate was sufficient. After the Satyam episode, it has been decided that the RoC should not only look at the balance sheet but also check the veracity of the certificates. This could be done either internally or in coordination with other regulators. The RoC will now not only verify cash at bank but also cross-check. In the case of Satyam, which had shown Rs 3,800 crore as cash at bank, the auditors had relied on a bank statement provided by the company. The auditors are required to confirm from the bank to verify the amount. It is important to check this parameter, as it indicates the financial health of the company, based on which company shareholders; analysts and other outsiders make an assessment.

(26) Certain reforms are needed to improve the quality and timeliness of corporate disclosure of most listed companies in India. Such reforms would provide investors with more useful information on which to make investment decisions and would strengthen the reputation of the Indian capital market.

(27) Listed companies are to be encouraged to provide both cash flow statements and balance sheets with their quarterly reports.

34 www.docs.google.com visited on 11th April 2010
(28) Corp Filing and EDIFAR\textsuperscript{35} should be merged into one database, with the structure following the organisation of EDIFAR, but with further thought being given as to how information could be even more easily accessible.

(29) The scope for the misuse and abuse of preferential warrants in India is considerable. Regulation of their issuance to promoters needs to be tightened. The issuance of preferential shares, warrants or other securities to promoters and other connected persons must be prohibited (as in other markets), except under the limited circumstances envisaged in markets\textsuperscript{36}.

(30) Companies are required to seek shareholder approval at their annual general meetings for the issuance, over the subsequent 12 months, of any new shares at a discount to a limited group of (non-controlling) shareholders. Strict rules should govern the size and discount of such offerings. Listed companies should review the way they use warrants and limit their application to forming part of a wider issue of debt or equity securities (i.e., where warrants act as sweeteners for investors).

The Satyam incident, though unfortunate, exposed some big loopholes in the system. Just as the United States needed the Enron Scandal to clean up its act, perhaps India needed the Satyam fiasco to introduce sweeping changes in its own financial reporting system. It cannot be denied that the Satyam episode was a stark failure of the code of Corporate Governance in India. Corporate governance refers to an economic, legal and institutional environment that allows companies diversify, grow, restructure and exit, and do everything necessary to maximise long term shareholder value. It is not something which can be enforced by mere legislation; it is a way of life and has to imbibe itself into the very business culture the company operates in. Ultimately, following practices of good governance leads to all round benefits for all the parties concerned. The company’s reputation is boosted, the

\textsuperscript{35} Electronic Data Information Filing and Retrieval System: This is an automated system for filing, retrieval and dissemination of time sensitive corporate information which till now were being filed physically by the listed companies with the stock exchanges in India. Data Information Filing And Retrieval System.

\textsuperscript{36} www.acga-asia.org visited on 3\textsuperscript{rd} August 2011.
shareholders and creditors are empowered due to the transparency Corporate Governance brings in, the employees enjoy the improved systems of management and the community at large enjoys the fruits of better economic growth in a responsible way. The loyalty of a typical Indian investor is far greater than his counterparts in the USA or Britain. But, our companies must not make the mistake of taking such loyalty as a given. To nurture and strengthen this loyalty, our companies need to give a clear-cut signal that the words “your company” have real meaning. That requires well functioning boards, greater disclosure, better management practices, and a more open, interactive and dynamic corporate governance environment. Quite simply, shareholders’ and creditors’ support are vital for the survival, growth and competitiveness of India’s companies. Such support requires us to tone up our act today.

Now here what are needed is not more laws but their implementation and removal of loopholes in existing laws. The problem lies with the implementation. If a crime is committed it does not mean that there is no law but it means that there is violation of law. So if fraud is committed in market then it means that there is violation of corporate laws. And authority should take timely action for preventing such further fraud in future and must impose stringent penalty for their violation. Moreover the investor should also take interest in the affair of firm and not only in dividend. And primary equity and debt market should be fully developed. The investor must invest their money only after inquiring the whole of the affair of company. They should take action interest in the affair of company rather than becoming silent spectator. They should realize that they are the owner and it is their responsibility to take timely action for preventing fraud in companies.

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