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Corporate Frauds Vis-À-Vis Criminal Liability: A Critical Analysis Concerning India, US, and UK

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The development of corporate governance in India and the world has been through a multitude of corporate scams. After the Liberalization, Privatization, and Globalization in the 1990s, the laws governing these bodies were inadequate and had visible loopholes exacerbated by a lack of awareness and corruption. Globally, corporate frauds are rising, and as a result, new and more stringent laws have been enacted. The rapid growth of a country's economy and industrial expansion is to blame for the significant increase in corporate fraud in recent decades. This article elucidates the timeline of corporate frauds and the course of actions that have changed the governance and criminal liability system in the world, specifically in India, the U.S, and the U.K. Additionally, it discusses the drawbacks of the current system and steps taken to remedy the obstacles for a meticulous and thorough approach towards the future.

Keywords: *administration, compliance, corruption, fraud, globalization, liberalization, privatization.*

INTRODUCTION

The beginning of liberalisation in India, with the emergence of a new economic policy, highlighted the need for corporate governance as a solution to the failure of several high-profile corporations in India and around the world. The scope and depth of illegal and unethical

corporate practices astounded the business world. In India, the majority of the country's industrial and business organisations were governed by corrupt marketplace practices. When dealing with its shareholders, employees, and other stakeholders, it demonstrated little regard for timeless human and organisational values.

Industrial growth in India and corporate culture development started only after the country became independent in 1947. However, with the country's governance continuing to be feudalistic and its political system degenerating to be pseudo-democratic, the management of the country's industrial and business organisations thrived on unethical practices in the marketplace, disregarding their employees, shareholders, and customers. The government's corruption and various services had kept the management of the country's industrial and business organisations above answerability for their misdeeds, encouraging them to indulge in more unethical practices. The state-owned organisations occupying a dominant position in the country's economy and being monopolistic passed on the costs of their corporate Misgovernance to the helpless consumers of their products and services. [1]

Barring a few, organisations in the private sector indulged in all possible unethical practices to fleece their customers on the one hand and deny the state on the other. In India, many privately owned business organisations indulge in corporate Misgovernance. The difference is that while in state-owned organisations, employees at all levels are seen to indulge in, or contribute to, corporate Misgovernance, in privately owned business organisations, only employees at top levels are seen to be indulging in corporate Misgovernance, indicating that in privately held business organisations employees at the lower levels of the corporation are better controlled.

Corporate governance has been defined as a set of incentives and monitoring mechanisms to assure good management for the Company, its shareholders, and other stakeholders. It should build an environment of trust, transparency, and accountability for investments. Corporate governance refers to how and for what purpose companies are governed. It establishes who has power and responsibility and who makes decisions. It is, in essence, a toolkit that enables

[1] AC Fernando, *Corporate Governance: Principles, Policies and Practices* (2nd edn, Pearson)

management and the board to deal with the challenges of running a business more effectively. Corporate governance ensures that organisations have appropriate decision-making processes and controls to balance the interests of all stakeholders (shareholders, employees, suppliers, customers, and the community).

COMPARATIVE STUDY OF CORPORATE FRAUD LEGISLATIONS CONCERNING INDIA, U.S. & U.K.

INDIAN SCENARIO

History and Development

In India, there are several government agencies involved in the regulation and prevention of corporate fraud, which is briefly described below: The Special Police Establishment (S.P.E.), established by the Government of India in 1941, is the forerunner of the Central Bureau of Investigation. During World War II, the S.P.E.'s role was to investigate cases of bribery and corruption in transactions with India's War and Supply Department. The necessity for a Central Government body to examine accusations of bribery and corruption by Central Government workers was realised even after the War ended. In 1946, the **Delhi Special Police Establishment Act** went into effect. The S.P.E.'s supervision was shifted to the Home Department, and its powers were expanded to include all departments of the Indian government. The S.P.E.'s jurisdiction extended to all Union Territories and might be expanded to States with the agreement of the respective State governments.

Initially, the Central Government's notification of offences was limited to corruption by Central Government employees. With the establishment of a vast number of public-sector undertakings, personnel of these organisations was eventually placed within the C.B.I.'s jurisdiction. Similarly, when commercial banks were nationalised in 1969, public-sector banks and their employees were brought under the C.B.I.'s jurisdiction.

The Enforcement Directorate is responsible for enforcing the Law

The Directorate of Enforcement is responsible for enforcing the *Foreign Exchange Management Act, 1999 (FEMA)* and specific provisions of the *Prevention of Money Laundering (P.M.L.) Act*, which was established in 1956 and had its headquarters in New Delhi. The Enforcement Directorate has investigated and prosecuted cases under the P.M.L. For operational purposes, the Directorate is under the administrative control of the Department of Revenue; policy aspects of the FEMA, its legislation, and amendments are under the jurisdiction of the Department of Economic Affairs. The Department of Revenue, on the other hand, oversees policy concerns relating to the P.M.L. Act.[2]

The following are the critical functions of the Directorate of Enforcement in a nutshell:

1) Intelligence inputs come from a variety of places, including central and state intelligence agencies, complaints, and so on.
2) To examine alleged violations of the FEMA's requirements, including 'hawala' foreign exchange racketeering, non-realisation of export revenues, non-repatriation of foreign exchange, and other FEMA infractions.
3) To hear instances involving FEMA violations.
4) Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, process and propose cases for preventive detention (COFEPOSA)
5) Conducting surveys, searches, seizures, arrests, and prosecutions of PMLA violators, among other things.

The Central Vigilance Commission (CVC) is a government-run organisation. The Central Vigilance Commission (CVC) was established in 1964 as an apex body of the Indian government to combat governmental corruption. It is an autonomous body, free of administrative supervision, overseeing all vigilance activity under the Central Government and advising various authorities in Central Government organisations on how to plan, execute, review, and reform their vigilance work.[3]

[2] Department of Revenue, 'Prevention of Money Laundering' (*Government of India, Enforcement Directorate*) <https://dor.gov.in/preventionofmoneylaundering/ed-enforcement-directorate> accessed 10 September 2022
[3] Central Vigilance Commission, *Vigilance Manual* (7th edn, CVC 2017)

The CVC's annual report details system failures that led to corruption in numerous agencies and organisations and system improvements, preventive actions, and incidents when the Commission's advice was disregarded. The Central Vigilance Commission is in charge of overseeing corruption charges in government agencies. It has supervisory jurisdiction over the C.B.I. but no capacity to punish individuals.

Bureau of Economic Intelligence

It is a well-known truth that avoidance of one tax almost always leads to evasion of another. Strong coordination between the authorities executing different tax laws is vital for successful information collecting, collation, and distribution. As a result, the Central Economic Intelligence Bureau (CEIB) was established to create a body that would coordinate and reinforce all of the organisations that enforce economic laws' intelligence collection and investigation operations. As a result, the CEIB has been tasked with the following responsibilities:

1. To gather intelligence and information about aspects of the black economy that need to be closely monitored and investigated. In addition, the Bureau is obligated to collect information and deliver monthly and special reports to the interested authorities, bearing in mind the scene of economic crimes.
2. To keep an eye on different forms of economic crimes and the advent of new ones. The Bureau was tasked with developing countermeasures to effectively deal with existing and future forms of economic crimes.
3. Act as the nodal agency for international cooperation and coordination in economic crimes with other customs, narcotics, law enforcement, and other authorities.
4. To put into effect the **COFEPOSA** *(Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1971),* which allows for the pre-trial custody of anyone involved in smuggling and foreign exchange rackets under certain conditions.
5. To serve as the Secretariat of the Economic Intelligence Council, which serves as the primary organisation responsible for ensuring full coordination among the different agencies, including the Central Bureau of Investigation, the Reserve Bank of India, and the Intelligence Bureau.

The CEIB keeps track of economic crimes and collaborates with international authorities to combat them.

Council For Economic Intelligence

The Government of India has established a two-tier system with an Economic Intelligence Council at the Centre, chaired by the Union Finance Minister, and 18 Regional Economic Intelligence Committees across the country to facilitate coordination and ensure operational coordination among the enforcement agencies dealing with economic offences.[4]

The Economic Intelligence Council is the premier venue for coordination, information sharing, and the development of joint tactics to combat economic crime.

The following are the broad **goals** of the Economic Intelligence Council:

(a) To explore ways to combat economic crimes and to develop a coordinated enforcement strategy including several enforcement agencies;

(b) To consider significant inter-agency coordination cases;

(c) Propose steps to improve the effectiveness of the Ministry of Finance's different enforcement agencies;

(d) Examine the changing dynamics of economic crime, including new modes of operation that have emerged, and propose ways for successfully combating these crimes;

e) To provide advice on how to alter laws and procedures to close loopholes and prosecute economic offenders;

f) To serve as a clearinghouse for intelligence on major economic crimes; and

[4] Department of Revenue, 'Financial Intelligence Unit India – (FIU-IND)' (*Government of India*) <https://dor.gov.in/preventionofmoneylaundering/financial-intelligence-unit-india-fiu-ind> accessed 09 September'2022

(g) Propose steps to combat black money creation and laundering, as well as a plan to target black money operators and tax evaders*

India's Legal Administration

An Overview of the Legal Administration System in India has a well-developed legal administration system for enforcing union legislation, redressing citizen problems, and resolving disputes. Understanding the Indian legal administration system is necessary to understand better the legal mechanism for combating corporate fraud in India. This section aims to give an outline of India's legal administration system.

India's current judicial system is a continuation of the British legal system. The Judiciary is a separate and independent branch of the government that is charged with administering and dispensing justice to the people. It is critical to advancing law and order, human rights, social justice, morality, and good government. It has changed with time, just like the individuals for whom the system was created in the first place. The Indian judicial system has been shaped by changing requirements and events. It does, however, keep its core structure and base. In India, the Constitution is the source of all legislation. Because India is a sovereign democratic republic governed by a single integrated system of statutes and laws, it is governed by a federal system, with Central and State Acts in their respective geographic circles.[5]

Lok Adalats

Lok Adalats are a type of local government. Lok Adalats were established as an adjunct to District Courts to relieve the latter's workload. The necessity for a court like the Lok Adalat was recognised since subordinate courts had a large backlog of cases, impeding the prompt disposition of rulings. Civil issues concerning consumer rights, fraud, and offences that can be resolved via a settlement are heard here. These courts facilitate a legal resolution between conflicting parties without requiring any side to take legal action. This is referred to as an A.D.R. (Alternative Dispute Resolution) measure.

[5] *State of West Bengal v Union of India* 1963 AIR 1241

Lok Adalats are open to the general public and do not charge legal fees. Furthermore, the Lok Adalats' awards are legitimate and binding as a civil court's decision. Criminal and civil courts are the two types of subordinate courts. The District Court first hears appeals against these courts' orders, then by the High Court.

Other quasi-judicial tribunals have been established, such as Labour Tribunals to settle labour issues and the **Central Administrative Tribunal (C.A.T.)** to address government servant grievances.

U.S.A SCENARIO

In the United States, there is a Regulatory Framework for Corporate Fraud.

The Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002, also known as the 'Public Company Accounting Reform and Investor Protection Act (in the Senate) and the 'Corporate and Auditing Accountability and Responsibility Act' (in the House), and commonly referred to as Sarbanes Oxley, Sarbox, or SOX[6], is a United States federal law enacted in July 2002, that established new or enhanced standards for all U.S. public company boards, The law was passed in response to many significant business and accounting scandals, including those involving Enron, Tyco International, Adelphia, Peregrine Systems, and WorldCom. These scandals damaged public faith in the nation's securities markets, costing investors billions as the share prices of involved businesses plummeted. The Sarbanes-Oxley Act was enacted to restore investor trust in capital markets and assist in eliminating financial statement fraud in publicly listed firms while dramatically raising the penalty for corporate accounting fraud.

Privately held businesses are exempt from the SOX. It has 11 titles or parts, ranging from increased corporate board duties to criminal penalties. It compels the Securities and Exchange Commission (S.E.C.) to provide judgements on the new law's provisions.

[6] Sarbanes–Oxley Act 2002

The following are the most significant changes brought about by the Act:

1. The creation of the Public Company Accounting Oversight Board;
2. Requirement for top financial officials to certify S.E.C. filings;
3. New audit committee independence criteria;
4. Financial disclosure standards that be more stringent;
5. Whistle-blowers in the workplace now have new safeguards; and
6. White-collar offences will face harsher sanctions.

Internal Control Evaluation

In the SOX (ICOFR), the administration and the audit to report the appropriateness of the Company's intramural command over-reporting is the disputed part. This is the most expensive part to adopt and demands tremendous effort, disproportionately impacting smaller businesses due to the substantial fixed cost of completing the evaluation. There are two primary responsibilities:

(1) Officers must assess and disclose "significant vulnerabilities" in their Company's control system, which must be personally certified by the chief executive officer and chief financial officer; and
(2) Outside auditors "attest" to such disclosures by agreeing with the officers or expressing a qualified or negative judgement.

The **Statement of Auditing Standards (S.A.S.) 99** is a set of auditing standards

S.A.S. No. 99 defines standards and gives direction to external auditors in carrying out their responsibilities in an audit of the Company's financial statements when it comes to fraud. S.A.S. No. 99 addresses a variety of topics, including but not limited to:

1) It defines fraud and its features and aspects of fraud that are particularly important to a financial statement audit.
2) It necessitates a discussion among the audit team members as part of the audit preparation process to examine the entity's financial statements' susceptibility to

substantial misrepresentation due to fraud and to emphasise the significance of maintaining a professional scepticism mentality.

3) It necessitates the gathering of information by the auditor to detect the severe risks of misstatement due to fraud.

Standard 2 of the Public Company Accounting Oversight Board (PCAOB)

It specifies the rules and guidelines that an auditor must follow when they are hired to audit a company's financial statements, as well as management's assessment of the effectiveness of internal control over financial reporting. Financial reporting is defined as:

1) A process designed by, or under the supervision of, the Company's chief executive and chief financial officers, or persons performing similar functions, and carried out by the Company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes under generally accepted accounting principles.

2) Provide reasonable confidence that transactions are documented as necessary to support the production of financial statements under generally accepted accounting standards and that the Company's payments and expenditures are made solely with management and director approval; and

3) Assure the prevention or prompt identification of unauthorised purchase, use, or disposal of the Company's assets that might significantly impact the financial statements.

Control at the corporate level

It contains methods for totalling transactions in the ledger, initiating, authorising, recording, processing journal entries, and recording recurring and non-recurring financial statement adjustments. Auditors should grasp the processes' results as part of management's process. Furthermore, investigating by itself is insufficient to conclude any component of effective internal control over financial reporting, and the documentation provided by management is helpful in this respect.

Foreign Corrupt Practices Act of 1977 Applicable Provisions

In the United States, the Foreign Corrupt Practices Act of 1977 provides an avenue for potential exporters and small businesses that cannot seek specialised advice on connected matters. [7]It outlines the anti-bribery laws, which declare that it is illegal to bribe foreign government officials to gain or keep business. The following are *the five factors* that must be present for this Act to be violated:

(1) **Who**: This Act applies to any person, Company, officer, Director, employee, or agent of a company, as well as any shareholder acting on the Company's behalf.

(2) **Corrupt Intent:** A person must have corrupt intent, but unethical conduct does not need to succeed.

(3**) Payment:** It is illegal to pay, offer, promise, or authorise the payment or offer of money or anything of value under this Act.

(4**) Recipient:** It only applies to corrupt payments made to a foreign official, a foreign political party or party official, or a foreign political candidate.

(5**) The Business Purpose Test** determines whether a payment was made to assist the firm in obtaining or retaining business for or with, or in directing business to, any person. In case of a breach of this Act's anti-bribery provisions, the relevant authorities may enforce criminal fines or civil actions. Other government measures are available in this respect, such as prohibition from doing business with the federal government, suspension of business rights, ineligibility for export permits, and so on.

UNITED KINGDOM SCENARIO

Bribery Act of 2010[8] Provisions That Are Important in the U.K.

[7] US Foreign Corrupt Practices Act 1977
[8] Bribery Act 2010

The Bribery Act of 2010 extends extraterritorial jurisdiction to deal with bribery committed outside the country and applies to the entire United Kingdom. The Act covers all forms of corruption, but it places a particular emphasis on commercial bribery, as seen by the fact that two of its four offences include a business component. Briefly stated, the Act:

1. It provides a revised framework for combating bribery in the public and private sectors, which eliminates the need to prove acts were committed in a corrupt or dishonest manner;

2. The Section 17[9] and Schedule 2[10] repeal the common law and statutory bribery offences in the Public Bodies Corrupt Practices Act 1889[11] and the Prevention of Corruption Act 1906[12];

3. It creates two general offences: bribing someone else ("active bribery") (section 1)[13] and being bribed ("passive bribery") (section 2)[14];

4. It establishes a separate crime of bribery of a foreign public official (section 6)[15];

5. It introduces a new crime of commercial organisations failing to prevent bribery by anyone connected to them (section 7)[16];

6. The Act requires the Secretary of State to issue recommendations on processes that relevant commercial organisations can use to avoid bribery by anyone connected to them (section 9)[17];

7. It substitutes the necessity for the permission of the Attorney General (for the statutory offences eliminated) with the consent of the Director of the competent prosecuting body (for the new violations under the Act) (section 10)[18];

[9] Bribery Act 2010, schedule 17
[10] Bribery Act 2010, schedule 2
[11] Public Bodies Corrupt Practices Act 1889
[12] Prevention of Corruption Act 1906
[13] Bribery Act 2010, s 1
[14] Bribery Act 2010, s 2
[15] Bribery Act 2010, s 6
[16] Bribery Act 2010, s 7
[17] Bribery Act 2010, s 9
[18] Bribery Act 2010, s 10

8. For all offences, the maximum penalty is ten years in jail or an unlimited fine for individuals and an unlimited fine for commercial organisations alone (section 11)[19];

9. It provides jurisdiction to prosecute bribery committed abroad by anyone (individual or corporation) with a "close connection" to the United Kingdom (section-l2)[20];

10. It offers a limited justification for some actions committed by a spy agency or the armed forces (section l3)[21];

11. It provides that if an offence is proven to have been committed by a corporate body with their consent or connivance, senior officers of a corporate body may be prosecuted (section 14)[22];

12. Individuals in the Crown's public service are covered the same way as other individuals (section-l6)[23], but Crown bodies are not.

Public Bodies Corrupt Practices Act, 1889: Relevant Provisions

The Public Bodies Corrupt Practices Act of 1889 was passed by the United Kingdom of Great Britain and Ireland's Parliament (as it was then). It has been changed a few times throughout the years. Bribery of a member, officer, or servant of a public body, whether active or passive, is illegal under the Act.

It specifically prohibits a person from corruptly soliciting or receiving, or agreeing to receive, any gift, loan, fee, reward, or advantage of any kind as an inducement to, or compensation for, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is involved, whether alone or in conjunction with another person. A person is prohibited from corruptly promising or offering any gift, loan, fee, reward, or advantage to any person, whether for that person's or another person's benefit, as an

[19] Bribery Act 2010, s 11
[20] Bribery Act 2010, s 12
[21] Bribery Act 2010, s 13
[22] Bribery Act 2010, s 14
[23] Bribery Act 2010, s 16

inducement or reward for doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is involved.

Relevant provisions of the 1906 Prevention of Corruption Act

The Prevention of Corruption Act 1906 regulates corruption prevention in the United Kingdom.

Section 1 makes the following actions an offence (formerly categorised as a misdemeanour):

1. For an agent to obtain a consideration as an enticement or reward for executing any act or displaying favour or disfavours to any person regarding his principal's affairs.
2. For any person to offer consideration to an agent to induce him to undertake an action concerning his principal's interests.
3. Any person or agent who purposefully falsifies receipts, accounts, or other papers to deceive the principal.

Relevant provisions of the U.K. Companies Act, 2004

Section 213A of the Companies Act of 2004[24] deals with the complainant's right to seek redress in the event of persecution. The legal responsibility for statements in the prospectus is highlighted in *Section 44.*[25] *Section 45* of the legislation makes it illegal to make false information in a prospectus (CA, 2004). The effect of winding up on antecedent and other transactions is highlighted in *Sections 312*[26] *and 313*[27] of the U.K. Companies Act, 2004. The term "fraudulent preference" is defined in *Section 312* as follows:

(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other Act relating to property that would be deemed a fraudulent preference in an individual's bankruptcy, or a fraudulent conveyance, assignment, transfer, sale, or disposition if made or done by or against an individual, shall be deemed a fraudulent preference of its creditors, or a fraudulent

[24] UK Companies Act 2004, s 213A
[25] UK Companies Act 2004, s 44
[26] UK Companies Act, s 312
[27] UK Companies Act, s 313

conveyance, assignment, transfer, sale, or disposition if made or done by or against a company, in the event of its being wound up.

(2) For this section, the start of the winding up is regarded to coincide with the filing of a bankruptcy petition in the case of a person.

(3) A company's transfer or assignment of all of its property to trustees for its creditors' benefit is invalid to all intents and purposes.

Section 313 of the U.K. Act spells out the obligations and privileges of some fraudulently favoured persons.

If in the case of a company wound up on the Island, anything made or done after the appointed day is void under *Section 312* as a fraudulent preference of a person interested in the property mortgaged or charged to secure the Company's debt, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had agreed to be personally liable as a director of the Company.

The value of that person's interest is calculated as of the date of the fraudulent preference transaction and as if the claim were free of all encumbrances other than those to which the charge for the Company's debt was subject at the time.[28]

The legal system across different continents has been laid down differently, keeping in mind the circumstances of each country. The way a crime is perpetrated differs under various supremacies based on existing laws, enforcement, redressal mechanism, economic condition, people's mindset, and literacy, and the factors are endless.

PRE-EMINENT CORPORATE FRAUDS IN INDIA

These cases received much media attention because of the significant money at stake and the public's higher stakes.

[28] *Anuj Jain Interim Resolution v Axis Bank Ltd* (2020) 2 AIR 942

Satyam's Case (2009)[29]

B. Ramalinga Raju created Satyam Computer Services Ltd. in 1987. The New York Stock Exchange, the National Stock Exchange of India, and the Bombay Stock Exchange all provide trading in the Company. It provides diverse businesses with consulting and information technology (I.T.) services (India). After B Ramalinga Raju, the founder of Satyam, admitted to faking the Company's books and exaggerating the Company's earnings in January 2009, Satyam fell into disarray. After informing the board of directors and the Securities and Exchange Board of India (SEBI) that the Company's accounting had been manipulated, Satyam Chairman Ramalinga Raju announced his resignation on January 7th, 2009.

Raju acknowledged that the following details were included in Satyam's September 2008 balance statement:

- Inflated cash and bank account balances of Rs 5,040 crore (US$1.04 billion) (as opposed to Rs 5,361 crore (US$1.1 billion) on the books).
- Rs 376 crore (US$ 77.46 million) in fictitious interest accruals
- He overstated the amount of money needed, budgeting instead for Rs. 1,230 crores ($253.38 million).
- An overestimation of the debtors' position in the accounting, which was Rs 490 crore ($100.94 million) rather than Rs 2,651 crore ($546.11 million).

In the same letter, Raju argued that neither he nor the Managing Director had benefited monetarily from the inflated earnings. He asserted that none of the other board members was aware of the Company's situation. He added, "What started as a modest mismatch between genuine operating profit and that represented in the financial accounts."

As the Company's operations have dramatically increased (annualised revenue run rate of Rs. 11,276 crores (US$ 2.32 billion) and official reserves of Rs. 8,392 crores (US$ 1.73 billion) in the third quarter of 2008), the books of accounts have grown to unsustainable dimensions. It was

[29] *M/S Satyam Computer Services v Directorate of Enforcement* Writ Petition No 37487 of 2012 & WAMP No 155 of 2016 in WA No 133 of 2013

feared that poor performance might trigger a takeover, revealing the disparity since the promoters owned such a small portion of the Company. The failed Maytas transaction was a desperate attempt to swap out the false assets for real ones.[30]

Consequences

The founder of Satyam was detained two days after admitting to tampering with the Company's documents. He is charged with forgery, criminal conspiracy, and breach of trust, among other things. In the days before the accounting fraud was revealed, Raju organised a task group to handle the Maytas matter. When the issue surfaced, the board of directors of Satyam named Ram Mynampati as the interim chief executive officer of the Company. According to a statement posted on Satyam's website by Mynampati, "The contents of the letter have undoubtedly astonished us." Senior executives of Satyam are steadfast in their commitment to all shareholders, employees, and suppliers. In light of this unexpected development, we have gathered in Hyderabad to determine the next course of action.

The Law Board has decided to dissolve the current Satyam board of directors and install ten nominal directors in their place. The Chartered Accountants Institute of India (ICAI) has given Satyam's auditor, Price Waterhouse Coopers, a show-cause notice in relation to the accounting fraud (PwC). On the same day, Vadlamani Srinivas, Satyam's then-CFO, was held and questioned by the Crime Investigation Department (C.I.D.). He was later apprehended and placed in protective custody. The government appointed well-known banker Deepak Parekh, former NASSCOM president Kiran Karnik, and former SEBI member C Achuthan to Satyam's board of directors on January 11th. Satyam.

Price Waterhouse Coopers, Satyam's auditing company, is also likely to face scrutiny for its involvement in the occasion. SEBI, India's stock exchange regulator, has also said that if the corporation is found guilty, its operating licence in India may be revoked. Satyam received the prestigious Golden Peacock Award for Corporate Governance in the Risk Management and

[30] Rajora Varsha Mansingh, 'Corporate Frauds in the World of Corporate Sector: A Critical Analysis' (*SSRN*, 19 January 2010) <https://ssrn.com/abstract=1539013> accessed 10 September 2022

Compliance Issues category in 2008; it was cancelled after the scandal.[31] As of January 7th, 200918, Satyam's shares were delisted from the New York Stock Exchange. According to the National Stock Exchange of India, Satyam will be delisted from the S&P CNX Nifty 50-share index on January 12th.

On January 10th, 2009, Satyam's shares fell to 11.50 rupees, its lowest level since March 1998. The rupee hit an all-time high of 544 rupees in 200820. Satyam's shares peaked at US$ 29.10 on the New York Stock Exchange in 2008 before falling to under $1.80 by March 2009. The Indian government has hinted that it may provide short-term direct or indirect financial support to the firm. However, it is questionable if employment will recover to pre-crisis levels, particularly among new hires. Due to its reliance on possibly misleading information from Satyam's management, Price Waterhouse Coopers' Indian Company announced on January 14th, 2009, that its audit conclusions may have been "inaccurate and untrustworthy." On January 22nd, 2009, C.I.D. testified in Court that the actual number of workers is just 40,000, not the 53,000 previously stated and that Mr. Raju had lied to the Court.

Controversies

Maytas Infra was founded by Teja Raju, the eldest child of Satyam Computer Services. It was investigated because of its connections to B. Ramalinga Raju. Reports claim that Satyam's monies were transferred to Maytas, prompting government officials to double-check the records of the infrastructure company. Maytas Infra later asked for an extension of its quarterly results as a result of these inquiries.

Ramalinga Raju's family developed Maytas Infrastructure and Maytas Properties, which Satyam wanted to acquire in 2008. The board of directors of Satyam paid $1.6 billion for Maytas Infra ($300 million) and Maytas Properties ($1.3 billion). The Raju family is to blame for this. It was believed that the Raju family was attempting to take advantage of Satyam by making the planned acquisition because the sale would have left Satyam with a $400 million debt.

[31] *Price Waterhouse & Co & Ors v SEBI,* Appeal No 6 of 2018

As a result, the government looked into the agreement, India's vice president expressed a subtly critical opinion, and Satyam's clients thought twice about working with the Company. Panic selling caused investors at Satyam to lose almost INR 3,400 crore. As a result of the scepticism around the USD 1.6 billion (INR 8,000 crore) purchase, Satyam's stock fell by 55% on the New York Stock Exchange. On December 29th, 2008, three board of directors members submitted their resignations.

For the previous eight years, Satyam has been prohibited from conducting business with the World Bank. The World Bank accused Satyam of providing its (the bank's) workers with improper incentives and failing to keep records to support payments made to its subcontractors in connection with incorrect World Bank employee payments. On the other hand, Satyam said it had not been involved in any data theft or hostile attacks on the bank's computer systems.

Satyam is being sued for more than $1 billion in damages by Upaid Systems, a mobile payments business located in the United Kingdom, for fraud, forgery, and breach of contract. The action is currently underway, and the business has stated that it will defend itself following U.S. law. Chairman Raju resigned on January 7th, 2009, in addition to other Satyam issues, after making his participation in an investigation known in public. Currently detained in Hyderabad are Ramalinga Raju, his brother Rama Raju, a former board member, and former C.F.O. Vadlamani Srinivas.

Following the Satyam scam, Citizens for Better Public Transportation in Hyderabad (CBPTH) has asked the C.B.I. to look into how Maytas obtained the Hyderabad Metro Rail project. C. Ramachandraiah, the CBPTH's leader, alleged that Maytas had received preferential treatment from the state government for infrastructure projects. The Andhra Pradesh government has reportedly paid Maytas Infra Rs. 1,800 crores for work on the irrigation department's Jalayagnam project, according to the Economic Times. The irrigation minister, Ponnala Lakshmaiah, reported that Maytas Infra had received an additional Rs 11,000 crore in work since Y S Rajasekhara assumed his position.

In 2004, Reddy was appointed chief minister. The state government of Andhra Pradesh was

compelled to stop its historically generous giving and cancel the concession agreement on the Rs 12,132 crore Hyderabad Metro Rail project after the Maytas Infra-led consortium failed to achieve financial closure and provide a performance guarantee. In accordance with Sections 406 (criminal breach of trust) and 420 (cheating) of the Indian Penal Code, the Hyderabad police filed a criminal complaint against the proprietors of the Company on July 21st, 2009.

The Case of Harshad Mehta (1992)[32]

Harshad Shantilal Mehta was raised in a Gujarati Jain home with limited resources. His father worked as a small company owner in Mumbai, where he spent his boyhood. To become a stockbroker at the Bombay Stock Exchange, Harshad Mehta rose through the ranks. In the stock market, he was creating waves. Since the beginning of 1990, he has been purchasing shares in considerable quantities. The most significant interest was seen in the stock of Associated Cement Company (A.C.C.). The amount for the A.C.C. has been raised to Rs 10,000. Mehta provided the replacement cost theory as a response to every query. According to the idea, previous businesses should be valued in accordance with the amount of money needed to start a new one. Mehta received the nickname "Big Bull" and was hailed as the "Big Bull" who "launched the bull run" in the second half of 1991. He promised a true "rags to riches" tale.[33]

The questionable actions of Harshad Mehta were exposed by journalist Suchita Dalal in a Times of India article on April 23rd, 1992. To pay for his purchases, the broker was using unauthorised access to the banking system. When I broke the story about the Rs 600 crore he took from the State of Bank in 1992, I added, "It was his excursions to the bank's headquarters in a fancy Toyota Lexus that tipped me off." Importation was challenging at the time because the Lexus had only recently been released on the global market.

In one of her writings, Dalal later noted, "It came as a beautiful bundle."

"The ready forward (R.F.) contract was the main means by which the scam was committed," the

[32] *Harshad Mehta v Union of India* ILR 1993 Delhi 274
[33] Akarsh Sharma, 'Harshad Mehta Offences' (*Law Communicants*, 25 November 2020) <https://thelawcommunicants.com/harshad-mehta-offences> accessed 07 September 2022

authors write. The R.F. is a secured short-term loan given by one bank to another (usually 15 days). Put another way, the bank lends against government securities as a pawnbroker lends against jewellery. The borrowing bank sells the assets to the lending bank and then repurchases them at a higher price at the end of the loan period." Harshad Mehta and his pals used this ready-forward arrangement to route money out of the banking system effectively. A third party brought two banks together in a standard ready forward arrangement.

A broker is utilised instead of a commission, and the broker is no longer in command of the funds or securities, which was not the situation before the heist. In this settlement method, securities were delivered, and payments were made through the broker. To put it another way, the seller handed the securities to the broker, who then passed them on to the buyer, who gave the broker the check and paid the seller. During the settlement process, the buyer and seller may not even know who they traded with, with the broker being the only one who knows who they negotiated with.

The brokers were able to control it since they had already started trading on their accounts as market makers. They purported to be acting on behalf of a bank in order to maintain a veneer of legitimacy over the transactions. The bank receipt was another device that was frequently used (B.R.). There was not a straightforward back-and-forth exchange of securities. Instead, the borrower or seller of securities gave the buyer a B.R. . "The sale of securities is confirmed," claim the writers. It serves as a receipt for the money paid to the selling bank and guarantees delivery of the securities to the customer. In the interim, the seller holds the securities in trust for the buyer.

When Mehta discovered this, he needed banks that could issue fraudulent B.R.s or B.R.s that were not backed by anything. government-sponsored securities "Two small and unknown banks - the Bank of Karad (B.O.K.) and the Metropolitan Co-operative Bank (M.C.B.) - were instrumental in achieving this goal. These institutions were "ready to issue B.R.s as and when asked for a price," according to the authors.

The fraudulent B.R.s were distributed to other banks, giving Mehta money, assuming they were

lending against government assets when they weren't. This money was used to boost stock market values artificially. The shares were profitably sold when it came time to repay the funds, and the B.R. was retired. The bank received the money that was owed to them. The game went off without a hitch.

Globalisation and the change in digital technology have given criminals a free hand, and they now operate with few restrictions. An outstanding illustration of this is the rise and demise of the Bank of Credit and Commerce International (BCCI). Agha Hasan Abedi, the evil genius who created it, was born in India but later emigrated to Pakistan. He started his own business bank, United Bank Ltd., which grew until Zulfikar Ali Bhutto took control of it in 1972. Abedi, on the other hand, was adamant about keeping his current workspace. He valued the global stage more than the borders of Pakistan. He learned that he had a lot of options and opportunities thanks to offshore banking, which is unregulated by any central bank. No previous experts on current finance, from Walter Bagehot to R. S. Sayers, had ever imagined it to be a completely unregulated financial environment.

Abedi had established the BCCI, which had two main branches built in Luxembourg and the Cayman Islands, with the help of $ 2.5 million in seed money provided by Bank of America. However, the majority of its top administrators were based in London. It proliferated and without interruption, became one of the greatest privately held financial organisations in the world with assets of $ 20 billion and branches in 72 nations in less than two decades. It served 3,000 clients worldwide, the majority of whom were dishonest and corrupt, although there were a few careless and innocent individuals as well. World-famous businesses and politicians were among its clients.

He successfully invaded China and the Soviet Union out of a desire for high profits, and on the Chinese mainland, he founded the first bank in a western manner. Abedi presented himself as a supporter of Islamic countries in particular as well as the Third World in general. He travelled to leaders in developing nations to persuade them of the importance of bolstering and supporting the BCCI in order to meet their needs for finance and modern technology. The bank

was thriving[34] in its own right, syphoning billions for the ruling class's affluent and corrupt elite. Because most agreements and activities were effectively hidden, Before the early 1980s, no one had any reason to suspect the BCCI's operations. Following that, all caution and moral rectitude were abandoned, and BCCI slipped into crisis after crisis. Since the bank had kept substantial sums of money in banks, the C.I.A. had first-hand knowledge of both its covert and overt operations.

The C.I.A., the I.S.I., terrorists, arms dealers, drug traffickers, and a number of corrupt tyrants around the world are all connected to the bank. Islam was used as a cover. Everyone, including Khashoggi, Noriega, and the C.I.A., reportedly marvelled at its effectiveness. Noriega proposed the bank's services to a U.S. drug organisation looking to wash the money after depositing at least $ 33 million there. Former Peruvian President Alan Garcia utilised the Panama branch to steal money from the country's coffers. Given how skillfully the bank falsified its account books, not even a respected organisation like Price Waterhouse was able to uncover anything false on the first try. It received a lot of made-up data to use in its audit reports. Abedi allegedly kept up to 6500 different clients' flies in his possession, and auditors were denied access to them.

The con artists were terrific. Top bank executives received payments in return for their quiet; in 1987–88 alone, they received $53.1 million. Price Waterhouse claimed that the BCCI covered up one lie with another. The riddle could only be solved when a former top executive of the bank offered to help. Depositors found they were devastated when the Bubble burst and Muslims made up a sizable portion of that group. It soon became apparent that crooks, whether they wore blue or white collars, made no distinction based on their religious beliefs. Even the Peruvian Central Bank and American Express suffered losses of over $30 million.

The BCCI was shortly thereafter referred to as the "Bank of Crooks and Criminals International" or the "Bank of Criminals and Conmen International." Numerous influential people around the world made vain attempts to keep it from being exposed and crumbling. Amounts of up to $ 17 billion were found to be missing. When it fell, a lot of people in the Third World were shocked.

[34] *Ibid*

They believed that its closure, as well as Abedi's being sought in the United States for trial as the leader of the "largest bank fraud in the world of financial history" and his being sentenced to an 8-year prison term by a court in the United Arab Emirates, were all a part of a western plot to demolish a dynamic entrepreneur from the Third World.

REVOLUTIONARY CORPORATE FRAUDS ABROAD

The Enron Investigation (1985)[35]

Enron Corporation, situated in Houston, Texas, was an American energy corporation. Enron employed over 22,000 people before filing for bankruptcy in late 2001. With reported revenues of around $101 billion in 2000, it was one of the most significant oils, natural gas, pulp & paper, and communications firms in the world. Enron held the title of "America's Most Innovative Company" for Fortune magazine for six years. At the end of 2001, the "Enron Scandal" revealed that the Company's purported financial situation was primarily supported by institutionalised, systematic, and deftly crafted accounting fraud. Since then, Enron has come to represent deliberate corporate deceit and misconduct. The Sarbanes-Oxley Act of 2002[36] was passed in reaction to the crisis, which raised concerns about the accounting practices used by a number of American businesses.

On October 16th, 2001, Enron, the seventh-largest Company in the U.S., reported third-quarter losses of $638 million. On November 8th, 2001, the corporation openly acknowledged overstating earnings by $586 million for the previous four years and using limited partnerships to mask $3 billion in debt. Enron stock, valued at as much as $90 per share in 2000, had plunged to less than $1 per share as investors lost faith in the corporation. Numerous Enron employees lost their jobs and retirement savings, which were invested in the Company's stock under a 401(k) plan. Banks and lenders lost millions of dollars in loans as a result of Enron's fictitious profit claims.

[35] Bratton William, 'Does Corporate Law Protect the Interests of Shareholders and Other Stakeholders : Enron and the Dark Side of Shareholder Value' (2002) Tulane Law Review 1275
[36] Sarbanes-Oxley Act 2002

Timeline:

February 20th, 2001: A Fortune article claims that Enron is a very hard-to-crack company that is amassing debt while keeping Wall Street in the dark.

October 12th, 2001: Arthur Anderson's legal counsel advises Enron's auditors to shred everything except the essential records.

Enron announced a $618 million third-quarter loss on October 16th, 2001. C.F.O. Andrew Fastow, who oversaw several contentious S.P.E.s, was replaced on *October 24th, 2001.* The Company restated its earnings for the previous four years on November 8th, 2001, in a highly uncommon action. It acknowledged accounting irregularities that resulted in a $586 million increase in revenue from 1997. It admitted to inflating earnings by hiding debts via complex partnership structures.

Enron filed for Chapter 11 bankruptcy protection on December 2nd, 2001, and launched a $10 billion breach-of-contract lawsuit against Dynegy Corp. on the same day.

December 12th, 2001: Anderson C.E.O. Jo Berardino says that his Company found suspected Enron unlawful actions.

The US Justice Department opened a criminal inquiry on January 9th, 2002. As a result, Enron went from a firm with assets worth about £62 billion to bankruptcy in under three months. Its stock price plummeted from around $95 to less than $1.

Consequences

The corporation's stock value increased as a result of the clever management strategies used to inflate earnings and hide debt, enabling the Company to expand and take on additional debt. Additionally, it generated a profit of over a billion dollars by selling the stock owned by a few top executives. These former leaders are currently dealing with numerous civil lawsuits from pension funds and former employees after being later accused of fraud, money laundering, and conspiracy. After realising that the S.E.C. was looking into Enron, the accounting firm for the

Company, Arthur Andersen, acknowledged destroying records related to the Company. The accounting firm lost hundreds of clients and staff when it was found guilty of obstructing justice and forced out of business.

Investigation

A flurry of investigations into allegations that some of the Company's top executives were engaged in different unlawful activities began as a result of the 2001 bankruptcy of Enron Corporation. The United States Justice Department announced in January 2002 that it had established an Enron Task Force made up of a group of federal prosecutors, agents of the Federal Bureau of Investigation, and employees of the criminal division of the Internal Revenue Service. The incident served as a case study for business fraud, poor management choices, and poor accounting.

Financial reporting procedures were the focus of much of the early inquiry into the Enron scandal. Despite adhering to 'Generally Accepted Accounting Principles (GAAP), the Company's procedures generated the misleading impression that it was more lucrative and secure than it was. The corporation stated sales were monies passing through connected entities through transitional transactions. Furthermore, Enron disguised its losses and obligations via partnerships that were not included in the Company's financial filings. Anderson was also found guilty of doctoring a document and misrepresenting an Enron press release. In June 2002, the firm was found guilty of obstructing justice. As of September 2003, an appeal was still pending. He was sentenced to five years of probation and had to pay a fine of $500,000.

Enron's accounting company, Arthur Andersen, L.L.P., was the first to face criminal charges. The Justice Department accused the accounting company of destroying thousands of documents connected to its interactions with Enron, including computer files. Anderson was also found guilty of doctoring a document and misrepresenting an Enron press release. In June 2002, the Company was found guilty of Obstruction of Justice; as of September 2003, an appeal was still pending. It was sentenced to five years of probation and ordered to pay a fine of $5,000.

$500,000. Analysts questioned if the accounting company would be able to continue operating

following the conviction. Arthur Andersen has functioned as a consultant to Enron for several years in addition to their job as an accountant, prompting conflict of interest concerns. As the Justice Department did not pursue criminal charges against crucial Enron executives, some critics asserted that the federal government was shielding them under President GEORGE W. BUSH. Several of these executives were questioned by the Senate Commerce Committee in February 2002, but no charges were brought. It was claimed that a number of Enron's top executives had personal investments in a number of high-risk ventures. Even though they were trying to convince workers to keep their shares, these executives sold Enron stock. The board of directors of the Company is also charged with failing to exercise meaningful control over the audits and reporting of the Company.

The first criminal severe claims against an Enron executive were brought against Michael Copper, who had served as Andrew Fastow's advisor and served as Enron's chief financial officer. Copper entered a guilty plea to conspiracy to commit fraud and money laundering in August 2002. Copper, who claimed that Fastow had carried out transactions for Enron in order to gain from Fastow's third-party agreements, brought Fastow into the situation.

When Fastow was allegedly in possession of $12.8 million in cash and was constructing a $2.6 million mansion, the Justice Department focused its attention on him. Authorities claim that Fastow and Copper amassed $22 million through illegal Enron activities. Fastow was charged with 78 counts of fraud, money laundering, and obstruction of justice by the Justice Department in November 2002. Former C.E.O. Kenneth Lay, former C.E.O. Jeffrey Skilling, and other key executives were not named in the criminal case. The Justice Department also stated that a superseding indictment with additional counts might be filed. Additional defendants may be called in this superseding indictment.

Fastow appeared before the Securities and Exchange Commission in December 2002, but he defended himself by citing his Fifth Amendment privilege against self-incrimination. In numerous trade periodicals in the late 1990s, Fastow described his accounting procedures at Enron, specific methods for keeping money off the Company's books. Fastow might be the "fall guy" for the Enron scandal, according to some critics, because other executives and board

members were probably aware of the Company's reporting methods.

Criminal charges were also brought against other parties connected to Enron's operations. In July 2002, three British bankers were charged with wire fraud as a result of their interactions with Enron. The Internet division of the Company, Enron Broadband Services, was the focus of the Justice Department's subsequent investigation. According to the Houston Chronicle, in April 2003, executives from that branch were anticipated to face charges for insider trading, fraud, and money laundering. As of April 2003, just seven business executives had been accused, despite the fact that twelve charges related to the Enron crisis had been brought.

Case of World Com (2012)

WorldCom, the second largest long-distance phone provider in the United States, exaggerated earnings by putting $3.8 billion in typical operational expenditures (essentially standard maintenance charges) as capital spending in March 2002, the world learned. They were able to spread out the costs over a number of years using this tactic, which led to significantly higher earnings and artificially inflated the Company's value to meet Wall Street expectations. Following the disclosure, WorldCom shares, which peaked in 1999 at $60 per share, fell to 20 cents each. A total of 17,000 WorldCom employees were laid off. Richard Breeden, the former Chief Financial Officer, has been charged with bank fraud, securities fraud, conspiracy, and making false claims in S.E.C. filings by the Justice Department. Four additional former WorldCom executives have agreed to participate in the investigation after pleading guilty to securities fraud. The Securities and Exchange Commission (S.E.C.) has initiated a civil lawsuit against the corporation. The Securities and Exchange Commission (S.E.C.) has discovered approximately $9 billion in false accounting as of 2003. WorldCom filed for the world's biggest bankruptcy in July 2002. Former WorldCom C.E.O. Bernie Ebbers has been charged with participating in an $11 billion accounting scam

Aftermath

Following the revelations of Enron and WorldCom's deceptive accounting procedures, news of further major accounting problems flooded. Global Crossing was detected falsifying sales and

burning papers containing accounting information in February 2002. Adelphia Communications made news in April 2002 when it was discovered that the Company's founding family had received $3.1 billion in hidden loans—some of whom were subsequently arrested—and that revenues had been inflated. In May 2002, Tyco International, Ltd. charged three former top executives for borrowing money from the Company without permission and failing to pay it back. The men are also charged with rewarding themselves and other employees without the approval of the Company's board of directors. The S.E.C. has since accused the three of fraud and theft, and the corporation is being looked into to determine whether it knew about their deeds. AOL Time Warner exaggerated their sales projections in July 2002, and the Company confessed throughout the investigation that it may have overstated sales by $49 million. The other companies facing accusations of corporate accounting fraud are Bristol-Myers Squibb, Kmart, Qwest Communications International, and Xerox. In addition to the corporate scandal, Martha Stewart, the television personality and home decorating maven was indicted for allegedly selling 3,928 ImClone Systems stock for a profit of $227,824, based on an insider trading tip she received from the Company's founder, Samuel Waksal.

POLICY IMPLICATIONS AND SUGGESTIONS: CONCLUDING REMARKS

The following are some recommendations and policy implications:

1. Internal Audit Department and Audit Committee Strengthening:

Appointing skilled and experienced employees in the internal audit department would boost it. The Companies Act, as well as the listing agreements of many Indian stock exchanges, call for the formation of an audit committee. However, no requirements for such members' qualifications or experience have been established. Companies frequently conduct fraud while complying with the rules of several regulations due to a lack of knowledge and expertise. It is recommended that the Audit Committees be allowed to function independently of the executives and that at least one member of the Internal Audit Committee has recent and relevant financial expertise and experience.

2. Scrutiny of the Auditor's Role Regulations and Rotation Provisions:

The Companies Act should include measures that allow regulatory authorities to examine the function of statutory auditors in companies to ensure that they meet the needs of investors, management, and society. Because statutory auditors are now appointed non-rotating, they must be established on a periodic rotational basis to avoid a nexus between the auditors and the Company's management.

3. Corporate Governance Implementation in Small and Medium Enterprises (S.M.E.s):

After agriculture, the Small and Medium Enterprise sector is the second largest employer. Corporate governance's applicability in S.M.E.s may provide a way for businesses to grow or attract additional investors as an alternative to high-cost bank loans, and Corporate Governance in their sector may improve internal control systems, better accountability, and higher profitability, as well as reduce conflicts between business owners and management. As a result, legal measures for S.A. should be incorporated. Standalone seminars, workshops, training programmes, and director orientation programmes should be held to promote corporate governance principles, compliance culture, and social and environmental discipline among S.M.E.s**.**

4. International Financial Reporting Standards (IFRS) adoption:

Because the Indian economy is still developing and foreign entities are partnering with Indian entities, proper disclosure in financial reports is required based on globally accepted disclosure standards. Therefore, it is recommended that IFRS be mandated in each class of Company and that reporting regulations be strengthened to make detecting corporate fraud easier. Aside from that, more excellent SEBI supervision and better disclosure to the Stock Exchange linked to the controlling group's sale/purchase of shares may help to avoid corporate fraud.

5. Banks and Financial Institutions Conducting Due Diligence:

Banks and financial institutions are essential stakeholders in businesses since they offer capital. To protect their interests, banks and financial institutions should conduct adequate due diligence by independent professionals and agencies before sanctioning working capital

facilities or other financial assistance to companies or investors because the money lent to corporations is deposited with banks and financial institutions under various saving schemes.

6. Shareholders choose independent professionals and define their responsibilities:

The board of directors and so-called shareholders have the power to employ auditors and other compliance specialists under the current statute. To ensure that proper disclosures are made in structured deals where money flows from one end to another and then back to an entity connected to the Company's Director, the Institute of Chartered Accountants of India (ICAI) should issue guidelines to its members who work as Statutory Auditors, Auditors, C.F.O.s, and Corporate Consultants. Professionals shouldn't make the usual excuse that they are unaware of a pass-through transaction, which is used in many financial frauds and scams. Legislation must specify the duties of professionals, and those who violate these duties should be subject to harsh sanctions.

7. Establishment of a Corporate Offense Wing with Criminal Authority:

There is currently no special authority with arrest powers to deal with corporate fraud. As the principal regulatory jurisdiction for listed firms, SEBI only has civil authorities, which corporate fraud criminals take advantage of. It is recommended that a Corporate Offence Wing, similar to the Economic Offence Wing, be established to prevent and identify corporate fraud and prosecute offenders and conspiracies involved in corporate fraud.

8. Provisions for Specific Committee Approval of Related Party Transactions:

The Firms Bill of 2011[37] eliminated the need for the federal government's consent for related party transactions in companies with a paid-up capital of Rs. 1 crore or more. Related party transactions are covered under the bill, but only shareholders must approve them. As these transactions are camouflaged by raising debit/credit notes to give a favourable price to the related party, it is suggested that each Company form a separate specific committee consisting

[37] Firms Bill 2011

of one independent Director and one minority shareholder representative for approving related party transactions, subject to shareholder approval.

9. Policy on Fraud Prevention Publication:

The lack of uniformity in fraud prevention policy publishing standards leads to the idea that such firms should be required to publish a uniform fraud prevention policy, which should be covered in detail in the board of directors' report. The Company's fraud prevention strategy should be widely distributed among its workers and stakeholders and make it mandatory to report suspected fraud through a well-structured system.

10. Companies are Recognised for Improved Corporate Governance:

Good corporate governance is one of the essential components of a company's economic success. Corporate governance influences a company's profitability, growth, and long-term viability. Corporate governance is addressed under clause 49 of the listing agreement. The Institute of Company Secretaries of India (ICSI) has been awarding companies with better corporate governance for several years. It is suggested that the government or other authorities should also encourage companies and professionals to adopt better corporate governance, which will ultimately affect business growth and sustainability.

11. Collaboration between different regulatory agencies:

Regulatory agencies/authorities in India are increasingly identifying potential corporate fraud risks and taking proactive steps to address them. For example, the Indian government recently established the Competition Commission to assess antitrust and monopolistic risk before prominent mergers and acquisitions and during operations. The R.B.I has also tightened anti-money laundering measures, and many regulatory agencies must work together correctly.

12. Investing the SEBI with Punitive Powers:

SEBI has only a civil court and, to some extent, global jurisdiction. SEBI should be granted the authority of a criminal court to penalise people who engage in insider trading regularly. All

professional organisations that govern Chartered Accountants, Company Secretaries, and Brand Assets Valuers should make it a point to hold their members accountable if they are found guilty of not executing their jobs professionally.