

Abstract

The emergence of new technologies in the era of globalization and liberalization entirely changed the nature of business transactions. By the evolution of business life cycles business transactions became very complex and managing risk became a challenging task for the organizations. Concerns about corporate governance in India were, however, largely triggered by Harshad Mehta stock market scam of 1992 followed by incidents of companies allotting preferential shares to their promoters at deeply discounted prices and also the recent scam of sat -yam. The aim of "Good Corporate Governance" is to ensure commitment of the board in managing the company in a transparent manner for maximizing long-term value of the company for its shareholders. The paper intends to present the various corporate scam occurred in India and also highlight the regulatory framework for regulating the corporate governance in India and failure of regulatory Framework in governing the corporate which leads to occurrence of scam and also the recommendations for better corporate governance practices in India.

Key words: *Corporate Governance, Governance, Mechanism, Scam, Regulating, India.*

Introduction

“In the happiness of the subject lies the benefit of the king, and in what is beneficial to the subjects is his own benefit”.—India’s Journey of Corporate Governance” - Kautilya’s Arthashastra

It is a process set up for the firms based on certain systems and principles by which a company is governed. The guidelines provided ensure that the company is directed and controlled in a way so as to achieve the goals and objectives to add value to the company and also benefit the stakeholders in the long term. . It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the Management of the Company.

Corporate Scam is one of the Most Bad Things Happen in Corporate World. It Totally Destabilizes the Corporate Sector and Makes a Untruthful environment for investors in the corporate world. In India, there are lots of big corporate scams happened in the Past. The high profile corporate governance failure scams like the stock market scam, Ketan Parikh scam, Satyam scam, which was severely criticized by the shareholders, called for a need to make corporate governance in India transparent as it greatly affects the development of the country. Nearly Over 250 Scam have Occurred in India Since 1947 and Approximately Rs.910,603,234,300,000 Which is Equal to 20.23 Trillion US Dollar has been lost.

Indian Scam History Started from the 1940's When in 1948 – Jeep scandal case and in 1947 – INA treasure chest disappearance Scam Happened. To achieve the objectives of ensuring fair corporate governance, the Government of India has put in place a statutory framework and various committees have been formed globally to improve the effectiveness of corporate governance.

Objectives of the study

1. To highlight the various corporate scams occurred in India.
2. To highlight the regulatory framework for regulating the corporate governance in India
3. To highlight the Failure of Regulatory framework in governing the corporate this leads to occurrences of scam.
4. To give Recommendations for better corporate governance practices in India.

Corporate Scams Occurred in India

1. Harshad Mehta Scam(1992).

It is one of the most technical and done with very cleverness Scam in the year 1992. This scam takes all the advantage of loopholes in the Indian share market. Harshad Mehta was an intelligent Broker and he knew the exact loopholes with the Indian economy and the banking system. In terms of Value, This Scam is About a sum of Rs 4000 crore. The Immediate impact of Harshad Mehta scam was sharp fall in share prices and indices. Due to Harshad Mehta scam market loss 0.1 million crore loss in terms of market capitalization. Then Government liberalization policy comes under various criticisms. SEBI Postponed sanctioning of Private sector Mutual Fund. The Euro-Issues Planned by various companies were delayed due to Harshad Mehta scam.

2. C. R Bhansali Scam(1992-1996)

Chain Roop Bhansali Shortly known as C.R Bhansali scam occurred in 1995. The C.R Bhansali scam was of Rs.1200 Crore, Which is the huge amount of the time of 1995. C.R Bhansali Collecting all money through his mutual fund company and transferring all amount to Non-Existing Company. Bhansali had floated 133 companies to pull in funds and suck them out.

3. Cobbler Scam (1995).

Borrowing Loan From Banks in the Names of Fictitious/Non-Existence Cooperative Society of Shoe Makers. The Cobbler Scam is one of the biggest million dollars scams in Indian History, is nicknamed The Great Cobbler Scam. This Great Cobbler Scam was that various businessman & politicians had siphoned around \$600 million US dollars from a scheme that was running by the Government of India meant to benefit the poor cobblers of Mumbai.

The money of the scheme was meant to provide low-interest loans and tax grants to the Mumbai's poorest – cobblers who work 16-hours a day for less than \$2. Not single money reached these cobblers.

4. Ketan Parekh Scam(1999-2001)

Ketan Parekh is also Described as Pied Piper of Dalal Street. Ketan Parekh was Trainee of Harshad Mehta. Currently, Ketan Parekh debarred from trading in Indian share market till 2017. His financing method was very simple. he bought a share when they traded at a low price and when the price was high enough he pledges to share with the bank as collateral for Funds and he also borrowed from various companies like HCFL. The amount involved in the scam was Rs.1500 crore. Impact:-One of the biggest falls in Bombay stock exchange-700 points, short selling was banned for 6 months, options and future index derivatives were introduced.

5. Sanjay Agrawal Scam(2001)

Sanjay Aggarwal was CEO Of Home Trade Company. He Launched Home Trade in the year 2000. He Spends nearly Rs.240 million on advertising and advertisements were done by big stars like Shahrukh khan,Sachin Tendulkar's and Hrithik Roshan. After Gaining Trust and Popularity he Swindled rs. 600 crore from more than 25 cooperative banks. The government securities (gilt) scam of 2001 was exposed when the Reserve Bank of India checked the accounts of some cooperative banks following unusual activities in the gilt market. Co-operative banks and brokers acted in collusion in a bid to make easy money at the cost of the hard earned savings of millions of Indians.

6. Dinesh Dalmia Scam(2001)

Scam Industry-Information Technology, amount Involved in Scam-595 crores. Trading in Share Which is not listed in Stock Exchanges. Dinesh Dalmia was a promoter and managing director of DSQ Software limited. Dinesh Dalmia was involved of criminal breach of trust, cheating, and fraud is claimed to have induced National Securities Depository Limited (NSDL) to dematerialize and credit 130 lakh equity shares of the software company as fully paid shares.The shares were transferred allegedly by Mr. Dalmia to his front companies and entities without payment of sale considerations.

7. Satyam Scam (2009)

It is regarded as “Debacle of Indian Financial System”. This scam was clear cut example of how an investor can lose is money by simply misstating the Balance Sheet of the company. Protagonist – B Ramalinga Raju & others, Amount – Rs. 8000 Cr. Satyam was one of the biggest accounting scandals where protagonist Ramalinga Raju Accepts that he Cooked up Accounts of Satyam Computers and inflated Satyam computers bank balances and Accounting Entries. He and his family members have also been accused of money laundering through hundreds of companies.

8. Speak Asia Scam (2011)

Protagonists: Harinder Kaur, Manoj Kumar Sharma, Tarak Bajpai & others, Amount – Rs. 2000 + Cr. An online business survey firm that collected thousands of crores of rupees from over 24 lakh investors, asking them to fill surveys and guaranteeing to quadruple their income in one year, [speak Asia](#) was accused of running a Ponzi scheme. Some accounts frozen and its business shutdown.

9. Saradha Chit Fund Scam(2013)

Protagonist – Sudipta Sen Amount – Rs.4000 crore. It's about fake collective investment scheme and it is one of the biggest Ponzi schemes. Shraddha scam also enjoys big political patronage. The chit fund ultimately collapsed leading to defaults after a crackdown by SEBI and the Reserve Bank of India. The default, apart from leaving small depositors high and dry, also led to 10 media terminals owned by Saradha being forced to wind up, leaving 1000 journalists jobless.

10. PACL Scheme Scam.(2015)

Lures near 55 million investors by the technique of raising money against bogus and allotment letters. Money Involved-Near Rs.47000 crore. The matter involves the alleged collection of about 450 billion rupees (\$6.8 billion) from roughly 55 million investors across the country.

Regulatory framework on corporate governance

1. **The Companies Act, 2013** *inter alia* contains provisions relating to board constitution, board meetings, board processes, independent directors, general meetings, audit committees, related party transactions, disclosure requirements in financial statements, etc.

2. **Securities and Exchange Board of India (SEBI) Guidelines:** SEBI is a regulatory authority having jurisdiction over listed companies and which issues regulations, rules and guidelines to companies to ensure protection of investors.

3. **Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI):** ICAI is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information. Section 129 of the New Companies Act *inter alia* provides that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under s 133 of the New Companies Act. It is further provided that items contained in such financial statements shall be in accordance with the accounting standards.

4. **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI):** ICSI is an autonomous body, which issues secretarial standards in terms of the provisions of the New Companies Act. So far, the ICSI has issued Secretarial Standard on "Meetings of the Board of Directors" (SS-1) and Secretarial Standards on "General Meetings" (SS-2). These

Secretarial Standards have come into force w.e.f. July 1, 2015. Section 118(10) of the New Companies Act provide that *every company* (other than one person company) shall observe Secretarial Standards specified as such by the ICSI with respect to general and board meetings.

5. The Companies Act, 2013: The Government of India has recently notified Companies Act, 2013 ("New Companies Act"), which replaces the erstwhile Companies Act, 1956. The New Act has greater emphasis on corporate governance through the board and board processes. The New Act covers corporate governance through its following provisions:

- Introduce significant changes to the composition of the boards of directors.
- Every company is required to appoint 1 (one) resident director on its board.
- Nominee directors shall no longer be treated as independent directors.
- Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.
- The first time codifies the duties of directors.
- The Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.
- SEBI has amended the Listing Agreement with effect from October 1, 2014 to align it with New Companies Act. Clause 49 of the Listing Agreement can be said to be a bold initiative towards strengthening corporate governance amongst the listed companies. This Clause intends to put a check over the activities of companies in order to save the interest of the shareholders. Broadly, clause 49 provides for the following: Board of Directors, Audit Committee, Disclosure Requirements CEO/CFO Certification, Report and Compliance.

Failures of regulatory framework in governing the corporate which leads to occurrence of scam

1. No Proper Structure

It is true that the 'corporate governance' has no unique structure or design and is largely considered ambiguous. There is still lack of awareness about its various issues, like, quality and frequency of financial and managerial disclosure, compliance with the code of best practice, roles and responsibilities of Board of Directories, shareholders rights, etc. There have been many instances of failure and scams in the corporate sector, like collusion between companies and their accounting firms, presence of weak or ineffective internal audits, lack of required skills by managers, lack of proper disclosures, non-compliance with standards, etc. As a result, both management and auditors have come under greater scrutiny.

2. No Government Support

Recent corporate scandals have led to public pressure to reform business practices and increase regulation. The public outcry over the recent scandals has made it clear that the status quo is no longer acceptable: the public is demanding accountability and responsibility in corporate behavior. The recent scandals themselves demonstrate that lax regulatory institutions, standards, and enforcement can have huge implications for the economy and for the public.

3. Insider Trading

Corporate insiders like officers, directors and employees by the virtue of their position have access to confidential information about the corporation and may misappropriate that information to reap profits. In most countries, trading by corporate insiders such as officers, key employees, directors, and large shareholders may be legal, if this trading is done in a way that does not take advantage of non-public information.

Section 17 Securities Exchange Act, 1933 contained prohibitions to deal with the fraud in the sale of the securities in the most stringent manner possible. The Act addressed insider trading directly through Section 16(b) and indirectly through Section 10(b). Section 16(b) of the Securities Exchange Act, 1934 prohibits the purchase and sale of the shares within six month Period involving the directors, officers, stock holders owning more than 10% of the shares of the company. The rationale behind the incorporation of this provision is that it is only the substantial shareholders and the persons concerned with the decision and management of the company who can have access to the price sensitive information and therefore there should be bar upon them to transact in securities.

4. Other Weaknesses

- Family-owned business- Family-owned companies are characterized as organizations in which the shareholders belong to the same family and participate substantially in the management, direction, and operation of the company. A family business refers to a company where the voting majority is in the hands of the controlling family; including the founder(s) who intend to pass the business on to their descendants.
- Many Indian businesses are old family establishments and while controlling shareholders may welcome cash infusions by outside investors, but they may hesitate to relinquish control. It becomes difficult for outsiders to track the business realities of individual companies. Family control also brings governance problems – not least of which are a lack of checks and balances over executive decision making and behavior, and a lack of transparent reporting to the outside world.
- Compliance with disclosure norms and even the failure of auditor's reports to conform to the law attract nominal fines with hardly any punitive action. The Institute of Chartered Accountants in India has not been known to take action against erring auditors.
- While the Companies Act provides clear instructions for maintaining and updating share registers, in reality minority shareholders have often suffered from irregularities in share transfers and registrations – deliberate or unintentional.
- Sometimes non-voting preferential shares are used by promoters to channel funds and deprive minority shareholders of their dues.
- Minority shareholders have sometimes been defrauded by the management undertaking clandestine side deals with the acquirers in the relatively scarce events of corporate takeovers and mergers.
- Misleading financial statements- There are many ways to present factually accurate information on a financial statement in a manner that is misleading to investors

- The Harshad Mehta stock market scam of 1992 concerns about corporate governance stemming from the corporate scandals as well as opening up to the forces of competition and globalization gave rise to several investigations into the ways to fix the corporate governance situation in India
- One of the big problems with Indian corporate governance is that too many listed companies and directors follow the letter of the law, rather than the spirit.
- ‘Good people are very few’ partly because there is a legal limit on the amount companies can pay non-executives. They are not allowed to receive a salary and can only be paid for attendance at board meetings that gives the non-executives little incentive to fulfill their obligations properly.
- Directors’ remuneration needs a rethink, as does the process of appointing directors. Currently, non-executives are generally selected by the board, with little input from shareholders – they should become more active.

Recommendations (Improving Standards)

- Preventing insider trading by devising an internal procedure for adequate and timely disclosures and specific rules for the conduct of insiders and the power to punish offenders. SEBI should show seriousness about checking insider trading and there should be a separate code by itself.
- Organisation for Economic Co-operation and Development (OECD) lays down certain principles for reforming corporate governance. They are-
The right of shareholders- These include a set of rights including secure ownership of their shares, the right to full disclosure of information, voting rights, participation in decisions.
- The Equitable Treatment of Shareholders- Here the OECD is concerned with protecting minority shareholders rights by setting up systems that keep insiders, including managers and directors, from taking advantage of their positions.
- The Role of Stakeholders in Corporate Governance- the OECD recognizes that there are other stakeholders in companies in addition to shareholders whose rights needs to be protected on being associated with the company.
- New method for the appointment of Independent Director is required.
- Independent directors- selection criteria must be transparent; also process of appointment of BOD must be reconsidered.
- It is important to focus on not just Quantity or profits but on the sustainability of business models.
- Need for having supervising the functions of management and make them accountable and transparent to shareholders.
- To revise clause 49 of SEBI listing Agreement.
- Codes of conduct and whistle blower policies must be framed in such a way as to be possible to put in to practice.

Conclusions

At present, corporate governance reforms in India are at a crossroads. One must, however, understand that no matter how strong a regulatory system is, it cannot always prevent frauds. Despite the enormous increase of disclosures and stringent risk management systems scams do take place. Moreover, strong measures often lead to expensive regulations and defiance. There are limits to legislations as a lot depends on the integrity and ethical values of various corporate players such as directors, promoters, executives and shareholders. The key lies in management decisions and its commitment to establish and follow rigorous governance systems while corporate governance codes have been drafted with a deep understanding of the governance standards around the world, there is still a need to focus on developing more appropriate solutions that would evolve from within and therefore address the India specific challenges more efficiently.

References

- Vaish Associates Advocates (2016). India: Corporate Governance Framework In India: <http://www.mondaq.com> [online] January 8, 2016 available from <http://www.mondaq.com/india/x/456460/Shareholders/Corporate+Governance+Framework+In+India> [Accessed: January 8, 2016]
- Sourav Pathak 10 Biggest Corporate Scam of India <http://googleweblight.com> [Online] Available from <http://googleweblight.com/i?u=http://www.thecsclubindia.com/10-biggest-corporate-scam-of-india/&grqid=BILkPi-U&hl=en-ln> .
- Nikhil Inamdar (2013) India's top 5 corporate scams stuck in judicial quagmire <http://www.business-standard.com> [Online] October 30, 2013 Available from http://www.business-standard.com/article/companies/india-s-top-5-corporate-scams-stuck-in-judicial-quagmire-113103000230_1.html [Accessed: Oct 30, 2013]
- www.investopedia.com/terms/c/corporategovernance.asp
- S. Chaitanya Shashank, Nilika Kumar (2015) Weaknesses of Corporate Governance in India <http://www.lawctopus.com> [Online] January 12, 2015 Available from <http://www.lawctopus.com/academike/corporate-governance-in-india/> [Accessed : january12, 2015]
- RUJITHA T R (2012), 'CHALLENGES TO CORPORATE GOVERNANCE: ISSUES AND CONCERNS'. International Journal of Marketing, Financial Services & Management Research review, Vol.1, december2012, pp 96-101.
- Eravandi (2009) Corporate Governance in India <http://eravandi.blogspot.in> [Online] October 26, 2009 Available from <http://eravandi.blogspot.in/2009/10/corporate-governance-2.html> [Accessed: October