Table-2.3: The investors who purchase shares with the help of finance

Response	Size	Frequency (%)
Yes	07	09.46
No	67	90.54
TOTAL	74	100

Table-2.4: The investors who sell shares after allotment on the listing day

Response	Size	Frequency (%)
Yes	40	54.05
No	34	45.95
TOTAL	74	100

Table-2.5: Factors affecting primary market: The ranks obtained factor affecting the primary market situations are given as below:

Factors	Ranks
Issue Price	7
Information Available	3
Market Price (in case of FPO)	4
Secondary Market Condition	5
Liquidity	1
Regulatory Environment	2
Lead Manager Image	8
IPO Grading	6

CORPORATE GOVERNANCE & BUSINESS ETHICS

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Abstract

Business ethics deals with ethical rules and principles necessary for a successful business. It explains the various moral or ethical problems that can arise in a business setting and the responsibilities of persons who are engaged in an organization. The ethical rules are derived from ethical values, which are based on six pillars of character, namely, trustworthiness, respect, responsibility, fairness, caring and citizenship. These values are inseparable from one another and are closely interlinked with each other. They enhance one's own judgment to take right and good decisions to benefit all sections of civic society.

Good corporate governance is an integral part of business ethics where a corporate is characterized by its ethical culture, which remains paramount in its daily operations. In the present complex and competitive corporate world it is regrettably observed that quite a number of corporate units do not attach much importance to ethical values and principles. There are number of scandals rocking the corporate world including the USA, the UK, France, Germany, Japan, South Korea and India involving various types of corporate frauds and malpractices such as, falsification of accounts by showing inflated profits, embezzlement of company funds by dubious means, siphoning of company's funds through fictitious transactions, etc. Every such corporate fraud is a heinous crime against humanity as it adversely affects and ruins the fortunes of large segments of innocent people.

In this paper, the researcher tries to give a review of major Indian companies which were involved in different kinds of financial scams due to their unethical business practices. The researcher also tries to analyze the remedial measures adopted by the Government of India to terminate such malpractices and how effective these measures proved to be with her concluding remarks for suggestions.

Key Words: Business ethics, Corporate Governance, Scams.

Introduction

Corporate governance basically denotes rule of law, transparency, accountability and protection of public interest in the management of a company's affairs in the prevailing global, competitive and digital environment. It calls for an enlightened investing community and strict regulatory regimes to protect the rights of the investors and companies to improve productivity and profitability without recourse to any means which will offend the moral, ethical and regulatory framework.

The genesis of corporate governance lies in business scams and corporate failures. The concept of corporate governance hinges on total transparency, integrity and accountability of the management. Corporate governance is a process to ensure that company is managed to suit the best interests of all stakeholders, yet the maximization of shareholder's wealth is the corner stone of good corporate governance. It is about, how a company fulfils its obligations to investors and other stakeholders. It is about commitment to values and ethical business conduct. The best practices of corporate governance should include – a definition of practices that define good governance; a code of best practices covering the constitution of the board, its various committees, defining their goals and responsibilities, exploring preferential internal systems and disclosure requirements.

Corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfillment of the requirements of law but in ensuring commitment of the board in managing the company in a transparent manner for maximizing long-term shareholder value.

After 1990 the transition from central planning to market driven economies, particularly the privatization of state-owned companies, and the need to provide governance rules for the emerging private sector, brought the issue of corporate governance to the centre stage.

In the Indian context, the need for corporate governance has been highlighted because of the scams occurring frequently since the emergence of the concept of liberalization from 1991 such as the Harshad Mehta Scam, Ketan Parikh Scam, UTI Scam, Vanishing Company Scam, Bhansali Scam and so on. In the Indian corporate scene, there is a need to induct global standards so that at least while the scope for scams may still exist, it can be at least

reduced to the minimum.

Practice of Corporate Governance in India

From the time India embarked upon the path of accelerated Liberalization, development of the capital market has became an integral part of India's economic restructuring strategy. Major modernization of the stock exchanges took place to bring them in line with world standards in terms of transparency and reliability which was necessary if foreign capital is to be attracted on any significant scale. The past ten years have witnessed to many changes in line with this objective. Trading and settlement procedures have been improved. New instruments have been introduced. Disclosure levels have been enhanced. Measures to protect investors' interest and educate them have been initiated at least on paper. A code of Corporate Governance has been put in place. Steps were initiated to change the organizational structure of the stock exchanges.

In India, the fundamental concern of corporate governance is to ensure the means by which a company's managers are held accountable to capital providers for the use of assets. The past five years has witnessed a proliferation of corporate governance guidelines, reports and codes designed to improve the ability of corporate directors to hold management accountable. Although, the board of directors provides an important mechanism for holding management accountable, effective corporate governance is supported by and is dependent on market for corporate control, securities regulation, company law, accounting and auditing standards, bankruptcy laws, stock exchange listing rules and judicial enforcements.

In order to improve the corporate performance, a number of government and industry initiatives have been taken to lay down the necessary laws, bodies and guidelines for corporate governance. The most notable are the voluntary Code of Corporate Governance

of the Conferadation of Indian Industry (CII), the Kumar Mangalam Birla Committee Report, the Naresh Chandra Committee Report, the Narayana Murthy Committee Report. A number of proposals have been made to improve corporate governance. The various suggested reforms include strengthening the position of internal and outside auditors; allowing mergers and acquisitions approved by a panel; requiring more independent outside directors on boards; introducing the supervisory board or two-tier system; allowing banks to own greater equity in shares of the companies; enhanced disclosure through consolidated balance sheets and enforcement of accounting standards.

However recent events in Indian stock exchanges have exposed the hollow ethics of many of the Indian corporates and revealed following malpractices and frauds:

(i) Rampant insider trading by the promoters in league with big market players.
(ii) Massive price rigging/ manipulation by the promoters in league with big market players prior to mergers and takeovers.
(iii) Gross misuse of bank funds for clandestine stock market operations.
(iv) Criminally motivated investment in violation of laid down norms.
(v) Many companies, which raised money from the capital market through public issues, have not paid any dividend for more than five years.
(vi) The total amount of money duped by the vanishing companies (companies vanished after collecting monies through the public offerings) is calculated to be Rs.668,610 millions.
(vii) Non-performing assets of scheduled commercial banks amounted to Rs 585,540 millions as on 31st March, 2003.

In addition small investors have lost their hard earned money in the stock markets for the following reasons:

(i) Lack of ethics, selfish conscience, and breach of trust on the part of the promoters.
(ii) Lack of adequate compliance mechanism, supervision, proper inspection, effective regulation and preventive action by regulators like Department of Company Affairs, Registrar of Companies, Board of Stock Exchanges as well as SEBI.
(iii) Lack of professional ethics on the part of professionals like Chartered Accountants, Company Secretaries etc, who are holding prominent positions in companies.
(iv) Inadequate powers of SEBI – the premier market regulator to punish the violators.

Thus, no matter that most of the companies may be fully complying with the corporate governance norms laid down by clause 49, but the spirit and good conscience on the part of the promoters to observe ethical practices remained only on paper.

Major Scams in India

1. Harshad Mehta

This is perhaps the most well known of all financial scams – probably because it happened in a highly visible period – economic reforms had just been started in 1991.

Harshad Mehta, commonly known as the "Big Bull" of the stock market, with his associates triggered a securities scam, diverting funds to the tune of Rs 4000 crore (Rs 40 billion) from the banks to stockbrokers between April 1991 to May 1992.

He was quick to understand the weaknesses of the banking system, and exploited these weaknesses to the hilt. He managed to procure huge amounts of money using the so called Ready Forward (RF) deals, and used this money to purchase large amounts of shares at hugely inflated prices.

The RF is a secured short-term (typically 15-day) loan from one bank to another. Crudely put, the bank lends against government securities just as a pawnbroker lends against jeweller. The borrowing bank actually sells the securities to the lending bank and buys them back at the end of the period of the loan, typically at a slightly higher price." It was this Ready Forward deals that Harshad Mehta and his cronies used with great success to channel money from the banking system.

Another instrument used in a big way was the Bank Receipt (BR). In a Bank receipt, securities were not moved back and forth in actuality. Instead, the borrower, i.e. the seller of securities, gave the buyer of the securities a BR.

Having figured this out, Mehta approached two small banks - the Bank of Karad (BOK) and the Metropolitan Co-operative Bank (MCB) – that were ready to issue fake BRs as and when required, for a fee. Once these fake BRs were issued, they were passed on to other banks and the banks in turn gave money to Mehta, obviously assuming that they were lending against government securities when this was not really the case. This money was used to drive up the prices of stocks in the stock market. When time came to return the money, the shares were sold for a profit and the BR was retired. The money due to the bank was returned. The game went on as long as the stock prices kept going up, and no one had a clue about Mehta's modus operandi. Once the scam was exposed, a lot of banks were left holding BRs which did not have any value - the banking system had been swindled of a whopping Rs 4,000 crore

The securities scam of 1992 was the mother of all Indian financial scandals. It exposed the utter lawlessness and absence of supervision in the money markets; it allowed funds to be transferred with impunity from banks and corporate houses into the equity markets and saw thousands of crores of bank funds to move in and out of brokers' bank accounts in what was later claimed as an "accepted market practice"

2. C R Bhansali

This scam took place in the years 1992-1996, the period immediately following the Harshad Mehta fallout. This makes the scam even all the more daring and surprising.

CR Bhansali, the perpetrator of this scam, was the owner of a public limited company, CRB Capital Markets (CRB Caps). The company offered various services including merchant banking, leasing and hire purchase, bill discounting and corporate funds management, fixed deposit and resources mobilization, mutual funds and asset management, international finance and forex operations. CRB Caps was also very active in stock-broking having a card both on the BSE and the NSE. He further launched CRB Mutual Fund and CRB Share Custodial Services Bhansali was reported to have specialized in setting up dummy investment companies. He used to sell these dummy companies to buyers. He floated around 133 subsidiaries and unlisted companies. The primary purpose of these companies was to attract huge funds from the public by promising high rates of interest. This interest was later paid from further borrowings, and so on. He ruled like financial wizard 1992 to 1996 collecting money from the public through fixed deposits, bonds and debentures. The money was transferred to these companies that never existed. . CRB Capital Markets raised a whopping Rs.176 crore in three years. In 1994 CRB Mutual Funds raised Rs.230 crore and Rs 180 crore came via fixed deposits. Between 1992 and 1995, when the market was in the post-Harshad Mehta phase, Bhansali managed to raise close to Rs 900 crore. The Bhansali scam resulted in a loss of over Rs 1,200 crore (Rs 12 billion).

Another major impact of this scam was faced by SBI. In May 1996, CRB Caps opened a current account in SBI's main Mumbai branch, for payment of interest, dividend and redemption cheques. The payment warrants could be presented at any of the 4,000 SBI branches for payment. However, Bhansali was granted only a current account facility and did not enjoy any overdraft facility. He was expected to deposit cash upfront into the current account, along with a list of payments that had to be honored. Claming that the logistics of payment were very complex and that it was not possible for every branch to check with the head office before honoring a dividend warrant, the branches gradually began treating these instruments just like a demand draft. For about nine months, the setup worked very well. However, in March 1997, SBI realized that the

account had been overdrawn to the extent of a few crores. CRB was then accused of using its State bank of India's accounts to siphon off the bank funds by encashing interest warrants and refund warrants. Millions of investors lost through fixed deposits and mutual funds. The Unit trust of India and Gujarat government also incurred heavy losses

However, his good days did not last long, after 1995 he received several jolts. Bhansali tried borrowing more money from the market. This led to a financial crisis. It became difficult for Bhansali to sustain himself. The Reserve Bank of India (RBI) refused banking status to CRB and he was in the dock.

The collapse of the CRB group seemed to be a fraud allowed by supervisors despite the regulations in place. The lack of clear communication channels between the banks, RBI and the government seemed to have worked to Bhansali's advantage to a great extent

3. Dinesh Dalmia

Mr.Dinesh Dalmia, Managing Director of DSQ Software was accused of dubious acquisitions and biased allotment in the year 2000 and 2001.The amount involved in the Scam was Rs.595 Crores (Rs 5.95 billion).

Dalmia took advantage of the euphoria in 2000-01 to increase DSQ's capital and introduced around 1.3 crore (13 million) shares in the market without getting these listed on any stock exchange. He allotted these shares to companies like DSQ Holdings Ltd, Hulda Properties and Trades Ltd, and Powerflow Holding and Trading Pvt Ltd., which were part of Dalmia's own group of companies. So the ultimate beneficiary of this allotment was Dalmia himself.

Though this scam was modest in terms of money involved (only Rs 600 crores), and did not affect the general public to a great extent, yet it is notable for how such a scandal of insider trading came into being. The Securities and Exchange Board of India (SEBI) has debarred DSQ Software Ltd (DSQ) and its Managing Director, Dinesh Dalmia, from the securities market for 10 years.

4. Ketan Parekh

Ketan Parekh, who followed Harshad Mehta's footsteps to swindle crores of rupees from banks, was involved in the shares scam of the year 2000/01.

He was a qualified CA, and a stock broker. He targeted smaller exchanges like the Allahabad Stock Exchange and the Calcutta Stock Exchange, and bought shares in fictitious names. His dealings revolved around shares of ten companies like Himachal Futuristic, Global Tele-Systems, SSI Ltd, DSQ Software, Zee Telefilms, Silverline, Pentamedia Graphics and Satyam Computer and were popularly called as K-10 scrips. For this purpose, he managed to borrow Rs.250 crore from Global Trust Bank and Rs.1,000 crore Madhavpura Mercantile Cooperative Bank.

There was evidence of price rigging in the scrips of Global Trust Bank, Zee Telefilms, HFCL, Lupin Laboratories, Aftek Infosys and Padmini Polymer which caused the prices of these selective shares to increase constantly. The investors who bought the share at higher prices thought that the market prices were genuine. Soon after the discovery of the scam of 1999-2000, the price of the stocks came down to the fraction of value at which they were purchased. The investors lost heavily. Even the banks faced a tremendous loss. The extent of the scam was estimated to be around Rs 1,500 crores.Ketan Parekh was arrested in the year 2002.

5. UTI Scam

The Unit Trust of India is the largest mutual fund in the country created in 1964 through an act of parliament. Mutual Funds are financial institutions that invest people's money in various schemes, giving a 'guaranteed' return to the investor. The UTI (of which the US-64 scheme is the largest) was set-up specifically to channel small savings of citizens into investments giving relatively large returns/interest. The US-64 scheme has 2 crore investors, the bulk of whom are small savers, retired people, widows and pensioners. This was the most popular scheme which gave returns as high as 18% in 1993 and 94.

However Liberalization of the economy immediately led to the liberalization of the UTI, throwing it to the mercy of the stock market. In 1992, itself the US-64 scheme was changed from a debt-based fund to one linked to equity. . By the mid-1990s, equities exceeded debt in its portfolio. Huge amount of UTI funds were channelled into the infamous K-10 list of Keten Parekh stock, such as Himachal Futuristic, Zee Telefilims, Global Tele, DSQ, etc. The UTI continued to buy these shares even when their market value began to crash in mid-2000, in order to prop up the share values of these stocks. The Trust saw its Rs. 30,000 portfolio (value of stocks) lose half its value within a year since Feb. 2000.

Further due to liberalization all government nominees from the board of the UTI were removed in 1997. Besides, the US-64 does not come under SEBI regulations, its investment details were kept secret (ever depositors did not knew where their funds were

being parked) and the chairman had arbitrary powers to personally decide an investment unto a huge amount of Rs 40 crores. Due to such 'liberalization' policy, not surprisingly, within one year, in 1998, the UTI crashed and the Government was forced to announce a huge bailout of about Rs 3,500-4,000 crores in an order to prevent default in payments to the investors. Later, it turned out that the UTI Chairman appointed at this time, Mr. P S Subramanyam, along with a couple of executive directors, acted wrongly to selectively benefit a powerful coterie of brokers and industrialists, while at the same time, jeopardizing the interest of lakhs of small investors. With knowledge that the UTI was in a state of collapse, the Chairman organized a high profile propaganda campaign promoting UTI (spending crores of rupees on the top advertising company, Rediffusion), while at the same time leaking information to the big corporates to withdraw their funds. The Chairman thereby duped the lakhs of small investors through false propaganda, while allowing windfall profits to the handful of big corporates who had invested in UTI.

So, in the two month prior to the freezing of dealings in UTI shares, a gigantic sum of Rs. 4,141 crores was redeemed. Of this Rs.4,000 crores (97%) were corporate investments. What is more, they were re-purchased at the price of Rs. 14.20 per share (face value Rs.10) when in fact its actual value (NAV — net asset value) was not more than Rs.8. As a result UTI's small investors lost a further Rs. 1,300 crores to the big corporates.

In fact these huge withdrawals further percolated the crisis. On July 4, 2001 the board of UTI took the unprecedented step of freezing the purchase and sale of all US-64 UTI shares for six months. Simultaneously it declared a pathetic dividend of 7% (10% on face-value), which is even lower than the interests of the banks and post office saving schemes. Such freezing of legally held shares is unheard of and is like overnight declaring Rs. 100 notes as invalid for some time. In other words the 2 crore shareholders could not re-invest their money elsewhere and would have to passively see their share price erode from Rs. 14 (at which they would have purchased it) to Rs 8 and get interest at a mere 7% on their initial investments. Fearing a back-lash, the government/ UTI later announced the ability to repurchase UTI shares at Rs. 10 i.e. at 30 % below the purchase price.

Imagine the plight of a retired person who would have put a large part of his/her PF, gratuity etc. in the US-64 scheme, considering it the safest possible investment. Not only has the person's income (interest/dividend) halved overnight, he/she also stands to lose a large part of the investment. So, a person who invested Rs. 1 lakh would now only get back Rs 70,000.

Of all the recent encounters of the Indian public with the much-celebrated forces of the market, the Unit Trust's US-64 debacle is the worst. Its gravity far exceeds the stock market downswing of the mid-1990s, which wiped out Rs. 20,000 crores in savings

The US-64 crisis is rooted in plain mismanagement. US-64 was launched as a steady income fund. Logically, it should have invested in debt, especially low-risk fixed-income government bonds. Instead, its managers increasingly invested in equities, with high-risk speculative returns

The US-64 debacle, then, is not just a UTI scam. It is a governance scam involving mismanagement by a government frustrated at the failure of its macroeconomic calculations.

6. Satyam Computers

The biggest corporate scam in India has come from one of the most respected businessman, Satyam founder B.Ramalinga Raju who resigned as its chairman after admitting to cooking up the account books. On 8th January, 2009, he admitted of creating falsification in the company accounts and manipulating the balance sheet for several years to show huge inflated profits and fictitious assets. The estimated fraud was Rs.700 Crore billion, one of the highest committed frauds since 1996.

The scam sheet of Satyam is as follows:

1. When the actual cash with the company was only Rs.139 crore, the accused had shown an inflated figure of Rs. 5160crore.
2. Raju claimed an interest of Rs. 375 crore on that inflated cash figure, while the actual interest accrued was only Rs. 7 lakh.
3. Even the tax figure was inflated to Rs. 30 crore whereas the tax that was deducted on interest income was only Rs. 1.5 lakh.
4. Number of fake invoices Raju generated was 7,561 amounting to Rs. 5,117 crore.
5. Sales of the company were also inflated by 18% from Rs. 23,434 crore to Rs. 27,691 crore and the figure under the debtors account was shown as Rs.481 crore.

Thus we see that the. country's fourth largest IT company was for several years cooking its books by inflating revenues and profits, thus boosting its cash and bank balances; showing interest income which were not in existent; understating liability; and

overstating debtors' position, under the very vigilance of SEBI. Such a size and scope of the fraud raised several questions about regulatory oversight in India and beyond. This also raised disconcerting questions about corporate governance, the role of auditors (in this case Pricewaterhouse Coopers) and independent directors.

The three important issues for consideration in the Satyam cases include the following :

1. What is the role/responsibility of independent directors? Are they rubber stamps to affirm the decisions already reached by the promoters or to examine the proposal before approval?
2. Have the auditors exercised due diligence in performing audit?
3. How do we check and prevent corporate frauds in future?

It is a collective failure of directors, auditors and regulatory agencies in ensuring transparency and accountability.

Measures & remedies to control Corporate fraud

Development of norms and guidelines are an important first step in a serious effort to improve corporate governance. The bigger challenge in India, however, lies in the proper implementation of those rules at the ground level. Even the most prudent norms can be hoodwinked in a system plagued with widespread corruption. Nevertheless, with industry organizations and chambers of commerce themselves pushing for an improved corporate governance system, the future of corporate governance in India promises to be distinctly better than the past.

Corporate Governance depends upon two factors. First is the commitment of the management for the principles of integrity and transparency in the business operations and the second are the legal and administrative framework created by the Govt. In the last few years, series of corporate governance codes and committees have been formed be it Confederation of Indian Industry (CII) code, Birla Committee or Narayanmurthy Committee. Though such committees help in strengthening the internal process but what is required is the focus on values of the organization, its ethics, value for people, attitude towards excellence, quality as well as processes and understanding of the outcome.

Here we give an overview of the major recommendations over the last decade.

Confederation of Indian Industry (CII) had set a taskforce to design a voluntary code of governance in 1995 and finally, "Desirable Corporate Governance: A code" was released in 1998. The committee was headed by Shri Rahul Bajaj. Its recommendations included the following:

(i) No need to adopt two-tier boards. A single board, if it performs well, can maximize long-term shareholder value.
(ii) A listed company with turnover of Rs.100 crore and above should be professionally competent and acclaimed non-executive directors who should constitute 30% of the Board, if the Chairman is a non-executive director; but 50% of the Board if the Chairman and Managing Director is the same person.
(iii) No single person to hold directorship of more than 10 companies.
(iv) In the reappointment of a director, his attendance record should be explicitly stated in the resolution if he has not been present at 50% or more of the board meetings.
(v) All the key information must be placed before the board.
(vi) Listed companies with a turnover of Rs.100 crore or PUC of Rs.20 crore whichever is less, should set up an Audit Committee.
(vii) Consolidation of accounts should be optional.
(viii) In case of companies with a paid-up capital of Rs.20 crore or more, the quality and quantity of disclosures that accompany a GDR issue should be the norm for domestic issues.
(ix) Major Indian stock exchanges should gradually insist on a compliance certificate by CEO and CFO.

In 1999, SEBI had constituted a Birla Committee under the Chairmanship of Shri Kumarmangalam Birla, then Member of SEBI board, to promote and raise the standard of Corporate Governance. The committee observed in its report that Corporate Governance extends beyond corporate laws. The fundamental objective of Corporate Governance is not near fulfillment of requirements of law but in committing the board to manage the company in a transparent manner for maximizing shareholder value. These recommendations have been included in Clause 49 of the listing agreement. Its recommendations included the following:

(i) At least 50% non-executive members.
(ii) For a company with an executive Chairman, at least half of the board should be independent directors', else at least one-third.
(iii) Non-executive Chairman should have an office and be paid for job related expenses.
(iv) Maximum of 10 directorships and 5

chairmanships per person.

(v) Audit Committee:

(a) A board must have a qualified and independent audit committee, of minimum 3 members, all non-executive, majority and chair independent with at least one having financial and accounting knowledge.

(b) Its chairman should attend AGM to answer shareholder queries.

(c) The committee should meet at least thrice a year.

In 2000, certain amendments were done in the Companies Act. The object of this amendment was to provide certain measures of good Corporate Governance and to ensure meaningful shareholders democracy in the working of companies. Following is a brief list of some of the provisions introduced through this amendment:

(i) Abolition of the concept of "deemed Company".

(ii) Setting up of Audit Committee by companies having PUC of not less than Rs.5 crore.

(iii) Introduction of postal ballot and shelf prospectus.

(iv) Prohibition on auditor to hold securities carrying voting rights.

(v) Restricting on holding of more than 15 directorships by an individual.

(vi) Deletion of redundant provisions relating to managing agents and secretaries and treasures.

(vii) Increase in penalties to ten-fold of the existing limits.

(viii) Making the default of acceptance of deposits a cognizable offense under code of criminal law.

On January, 2003 N.R. Narayanmurthy, then Chairman of Infosys Technologies headed another committee on Corporate Governance, comprising of representatives from the stock exchanges, chambers of commerce, investor associations and professional bodies. The recommendations included the following:

(i) Training of board members suggested.

(ii) There shall be no nominee directors. All directors to be elected by shareholders with same responsibilities and accountabilities.

(iii) Non-executive director compensation to be fixed by board and ratified by shareholders and reported.

(iv) The board should be informed every quarter of business risk and risk management strategies.

(v) Audit Committee should comprise entirely of "financially literate" non-executive members with at least one member having accounting or related financial management expertise.

Further, on February 2009, the Satyam episode has prompted a re-look at our corporate governance norms and to go a step further through some voluntary measures, the CII set up a Task Force under Mr Naresh Chandra to recommend ways of further improving corporate governance standards and practices both in letter and spirit.

The report suggested certain voluntary recommendations for industry to adopt. They are as follows:

1. Appointment of independent directors

An active, well-informed and independent Board is necessary to ensure highest standards of corporate governance. Getting the right people is crucial; as is the process of seeking, vetting and appointing such people.

2. Duties, liabilities and remuneration of independent directors

The Task Force felt that there must be some formality in the appointment of Non Executive Directors (NEDs) and independent directors that goes beyond the ratification by the shareholders. It thus makes the following recommendation.

- The listed companies should issue formal letters of appointment to NEDs and independent directors - just as it does in appointing employees and executive directors. The letter should:
- Specify the expectation of the Board from the appointed director;
- The Board-level committee(s) in which the director is expected to serve and its tasks;
- The fiduciary duties that come with such an appointment;
- The term of the appointment;
- The Code of Business Ethics that the company expects its directors and employees to follow;
- The list of actions that a director cannot do in the company;
- The liabilities that accompany such a fiduciary position, including whether the concerned director is covered by any Directors and Officers (D&O) insurance;
- The remuneration, including sitting fees and stock options, if any.

The letter stating the terms and conditions of appointment of any NED or independent director should form a part of the disclosure to shareholders at the time of the ratification of his/her appointment or re-appointment to the Board.

3. Audit Committee of the Board

In its present form, Clause 49 of the Listing Agreement contains detailed mandatory provisions for the Audit Committee of the Board. Even so, it has one flaw that needs immediate remedy. In the

earlier version of Clause 49, only NEDs could be members of the Audit Committee. The revised Clause 49 omitted this requirement. Under the present dispensation, two-thirds of the members of the Audit Committee must be independent directors as must the chairman, but the rest may be either NEDs or executive directors. This is clearly a mistake, and runs counter to a fundamental operating principle of good corporate governance, namely that the Audit Committee must comprise entirely of non-executive directors with independent directors forming the majority. Another counter-view that the Task Force also considered was that the presence of executive directors on the audit committee needs to be appreciated since they are well versed with the internal working of the company and bring first hand information to the table which helps an objective and meaningful analysis of the discussions by the Committee. The Task Force, however, suggests that for bolstering the independence of the internal as well as the external auditors and ensuring a free and frank discussion with the audit committee, it is important that the Audit Committee must necessarily constitute of NEDs. The executive directors can be invited to attend the audit committee meetings to provide the necessary clarifications.

6. Attending Board and Committee Meetings through Tele-conferencing and video conferencing

E-presence of a director would ensure larger participation at Board/Committee meetings and shall also step up the frequency of such meetings as well as the interaction of Board members, while at the same time bringing down the cost of holding physical meetings. The Companies Bill, 2009 has also proposed participation of Directors in board meetings through electronic means. Even prior to the adoption of the Companies Bill, in a meeting in relation to matters which do not require a physical meeting, directors ought to be able to participate through e-presence (where they would otherwise not be able to attend). The decisions may be subsequently recorded as a circular resolution signed by the directors physically present and those participating through audio or video-conferencing.

7. Executive Sessions of the Independent Directors

While the independent directors are kept updated of all business-related issues and new initiatives by the management, it is imperative that the independent directors have executive sessions (as their internal discussion and debating process to evolve a consensus among independent directors). Having such interactions without the presence of any of the non-independent directors would promote open discussions among independent directors and also assist in independent appraisal of corporate performance, strategic issues, determining a “smell test” for “grey” or “border line” proposals.

Thus we see that after every scam, a series of measures and remedies were followed .However, the real problem in Corporate Governance is not the lack of proper guidance and policies but it is the problem of the ground execution of such measures. Not all Corporate Governance norms can be translated into legislations, as these are determined very often by market forces, the dynamics of the corporation’s business and scale. Many principles are based on internal controls, independence of entity of auditors and functioning & transparency by the board of directors for which the key lies in self-regulation. Tight governance can protect firms and investors from fraud, error and undue risk but it can also threaten innovation. The research shows that one does not always need legislation to take action. The fact is we are already over legislated. What is required is the transparency about company’s governance policies. As long as key players within the company understand and approve governance policies and as long as investors and shareholders are then given clear and accessible information about these policies, the market can’t work in a tension free environment. Moreover, Corporate Governance is not just a legal formality. It is an instrument of business and social transformation our biggest challenge lies in replacing greed for running corporate to the aim of making a difference to the community. Companies have to find innovative ways to contribute to broader needs of society and at the same time improve the revenue & cut operating cost. It is not important whether the business has a role in social change but how it should play this role and Corporate Governance has to be a catalytic for that change.

Conclusion

Despite the regulatory efforts of SEBI to discipline the corporate, yet we are still in the journey towards the achieving quality in management of companies. On one track reforms take place for tuning of corporates and on the other many scams are unearthed despite many regulations. Good corporate governance would help to maintain the confidence of investors. Hence, a company can contribute to the wealth and health of the investors and society not only by just adhering to the regulations on

corporate governance but also by sticking to the principles of ethics and self-discipline.

Corporate Governance represents the value framework, the ethical framework and moral framework under which business decisions are taken. It is beyond the realm of law. It stems from the culture and mindset of management and cannot be regulated by legislation alone. Corporate Governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. The long-term solution is to inculcate an ethical code of conduct in the minds of people especially to all the stake holders in corporate world. Though many committees have been made and they have given number of solution for good governance and there are many laws to confirm that corporations maintained all the records required for good governance. But the focus should be on the implementation and execution of the recommendation. There are no easy answers as to what is the best solution for good governance. But corporates should look for a balance between achieving necessary levels of accountability and ensuring that governance arrangements do no repress flexibility, innovation and collaboration.

Although corporate governance is the legal framework, the ethical framework and the moral framework within which business decisions are taken; the focus in India continues to be largely around the legal framework. Since there is no dearth of legislation relating to corporate governance, it is the latter two aspects that need more focus in India. The challenge for policy makers in India is to reach an appropriate balance of legislative and regulatory reform, taking into consideration international best practices that augur well with the growth climate in India, while also fostering greater enterprise and enhancing competitiveness in a manner that can stimulate further investments.

While some of the current laws and regulations in India are possibly amongst the best in the world, there are several others which are some what archaic. India also need greater focus and more proactive, yet a simplified monitoring and enforcement framework to ensure effective levels of compliance with regulations. Undoubtedly, unless there is a genuine intention within an organization to incorporate, compliance in principle as opposed to compliance in legal form into corporate strategy and operations, regulations will only have a limited effect.

We must also look at the cultural dimensions of corporate governance. There are cultural divergences and cultural specificities that need to be taken into account as we develop. There are different structures to businesses like the traditional family business, the non-traditional family business. There are some with written constitutions, others with conflict resolution, exit routes and buffer zones.

However, the voluntary guidelines of corporate governance draw upon very high aspirational standards. We feel these will be acceptable and necessary as far as the mandatory laws are concerned

Corporate Governance and corporate social responsibility (CSR) need to be brought closer. CSR is been associated with humanism for long but now it has to be something that is quantified and definite. Three years profits have to be committed to CSR in the corporate sector. Moreover, CSR Credits can bring greater balance between intrinsically hazardous and intrinsically unwelcome kind of services. Corporate Governance is not simply about how you run your business as per prescribed rules but about how ethics govern your business.

We know too much of government control is not good hence we plan to bring in self regulation and autonomous independent regulation. This will need to be enlightened, transparent and must be strongly supported by share holder activism and participation. Committees need to be formed that will look at remuneration, nomination, audit and the role of the independent director. There are huge problems with independent directors, especially in case like Satyam, where they have come under a question mark.

The problem with independent directors is that there is no defined structure or clarity on the skills that they are required to have and the role they need to play. As a result, because they have no clear agenda, they don't know what they focus on .We should have to be clear that independent directors are the pivotal point of corporate governance. Without them, any type of corporate governance is unimaginable. They can not be mollycoddled but need to be provided protective gear and training. They also need clarity on their roles. Independent directors need to go through orientation and declaration of their duties and obligations. They must not go beyond those duties under any public pressure. They need to work only as per expectations. This is the only way to get the best minds to be independent directors and it is necessary that the pool of these independent directors must grow. Will rotation help? Will better remuneration, training or some other methodology improve the size of the pool? These are answers we

still need to find.

Ultimately, there is no one-size fits –all solution. Understanding the role of culture is critical to providing a successful regulatory framework; India will have to develop her own unique solutions. As for the regulations themselves, it is perhaps not necessary to bring in new regulations by the dozen- it is more important to understand the mindset of the Indian fraudster, bring in meaningful regulations that are not aped versions of their US and European legal counterparts, to administer and implement them more effectively.

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