



**Research Article**

## **CORPORATE FRAUDS AND LEGAL MECHANISM IN INDIA-AN OVERVIEW**

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### **ABSTRACT**

A corporation, being a congregation of various stakeholders at the micro and macro levels, must be fair and transparent to its stakeholders in all its transactions. Corporate frauds and misconduct remains a constant feature posing a threat both from the macro and micro prospective of the economy. Corporate frauds have become a global phenomenon with the advancement of commerce and technology. In recent decades, fast-growing economies observed an enormous increase in corporate frauds, posing serious questions before the academicians, researchers and professionals on the effectiveness of corporate governance mechanisms, government regulation mechanism and the role of corporate and individual ethics. Moreover, the recognition of issues relating to good corporate governance is due to various frauds in market i.e Harshad Mehta fraud, Satyam fraud, Sahara estate Corporation fraud and Sharda Chit Fraud Fund etc. Every year there is new fraud in corporate world. More importantly India is in top list of fraud. These frauds expose the loopholes in regulatory system and need to impose stringent penalty on defaulters. India's new Companies Act, 2013 has introduced several new provisions which change the face of Indian corporate business. One of such new provisions is Corporate Social Responsibility. SEBI's primary goal is to cater to the needs of the market, which include investors, issuers of securities and any third parties involved. To an extent, SEBI has successfully made tangible. It is clear that in corporate world financial scams can be committed silently in connivance with concerned corporate employees. In most of the cases their own employees play tricks and secure illegal gains. Sometimes big investors also take advantages of loop holes in concerned corporations and commit frauds.

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### **INTRODUCTION**

A corporation, being a congregation of various stakeholders at the micro and macro levels, must be fair and transparent to its stakeholders in all its transactions. In a globalised scenario, corporations need to access resources and compete in a global marketplace that essentially requires that it must embrace and demonstrate ethical conduct to grow and prosper in the long run. Recent decades have witnessed the sharp increase in the greed of individuals and organisations and have acquired an inevitable presence in our lives and society. Corporate frauds and misconduct remains a constant feature posing a threat both from the macro and micro prospective of the economy. Liberalisation process in developing economies has typically witnessed a series of scams almost with sickening regularity. Corporate frauds have become a global phenomenon with the advancement of commerce and technology. In recent decades, fast-growing economies observed an enormous increase in corporate frauds, posing serious questions before the academicians, researchers and professionals on the effectiveness of corporate governance mechanisms, government regulation mechanism and the role of corporate and individual ethics.

Recently, a number of studies in the finance, economics and law literature have been conducted on the understanding of incentives and monitoring deterrents of corporate frauds and the loopholes in the government control systems.<sup>1</sup> After every scam, the government and regulatory machinery have been strengthened to reduce the number of frauds that essentially impose a check on the nexus between the company and professionals and between banks and bureaucrats, which may be achieved through more disclosures, by putting and fixing responsibilities on each party involved in the fraud.<sup>2</sup>

Corporate governance is the current buzzword in business jargon. It has become a subject of discussion in corporate boardrooms, academic circles, and governments around the globe. High profile corporate collapses in India (for example, Harshad Mehta's securities scam, the Ketan Parikh scam, the C. R. Bansal scam, and, most recent of all, the Satyam fraud) and overseas (for example, the Junk Bond scam, Qwest, Global Crossing, Andersen, Enron, and WorldCom), have shattered the dreams of various investors, shocked governments and regulators alike and led to a questioning of the accounting

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<sup>1</sup> Gupta, P.K. and Sanjeev Gupta, "Corporate frauds in India – perceptions and emerging issues," *Journal of Financial Crime*, Emerald Insight, (2015), Vol. 22, Iss 1, p. 03. <https://www.scribd.com/document/358471904/corporate-frauds-in-india-pdf> retrieved on March 28, 2018.

<sup>2</sup> Gupta, P.K. and Sanjeev Gupta, "Corporate frauds in India – perceptions and emerging issues," *Journal of Financial Crime*, Emerald Insight, (2015), Vol. 22, Iss 1, p. 03. <https://www.scribd.com/document/358471904/corporate-frauds-in-india-pdf> retrieved on March 28, 2018.

practices of statutory auditors and of corporate governance norms. Unethical business conduct and behavior, failure of boards of directors, flaws in external audits, failure in corporate strategies, unfettered power in the hands of the chairman/chief executive officer (CEO), lack of transparency, inadequate disclosures, fraud, lack of proper internal audits, weak internal control, the dubious role of rating agencies and inadequate regulatory mechanisms are the most common governance problems or flaws noticed in all such corporate failures in India, US, UK and other parts of the world.<sup>3</sup>

Moreover, the recognition of issues relating to good corporate governance is due to various frauds in market i.e Harshad Mehta fraud, Satyam fraud, Sahara estate Corporation fraud and Sharda Chit Fraud Fund etc. Every year there is new fraud in corporate world. More importantly India is in top list of fraud. These frauds expose the loopholes in regulatory system and need to impose stringent penalty on defaulters. The fraud in market affects not only the company's reputation, the investor's interest but also the development of country as if there will be scam then the common people would not invest in a company and hence there will be shortage of finance which in turn will affect development of the country. Like other countries, India has also enacted various legislations and established various authorities to regulate the market and protect the interest of investors. This legislation will also ensure the accountability of Board of Directors and bring transparency. But despite a lot of legislations, frauds are rampant in India.<sup>4</sup>

### Corporate fraud Definition

Fraud essentially involves using deception to make a personal gain for oneself dishonestly and/or create a loss for another. Although definitions vary, most are based around these general themes. The term 'fraud' commonly includes activities such as theft, corruption, conspiracy,<sup>5</sup> embezzlement, money laundering, bribery and extortion.

### Corporate fraud can be classified in three broad areas<sup>6</sup>

1. Financial fraud or Accounting fraud consists of falsifying financial information by fudging the books thereby misleading the investors. The most popular accounting schemes are capitalising expenses, side deals, swap transactions, channel stuffing, accelerated revenues and deferred expenses. This is usually perpetuated by management.
2. Self-dealing by corporate insiders is mostly related to misappropriation of corporate assets by senior executives such as loans granted to senior management that are never intended to be repaid, failure to disclose forgive loans, reimbursed personnel expenses and extra ordinary personnel expenses charged to the company. Other such frauds are insider trading, misuse of

corporate property for personal gain, kickbacks and individual tax violations related to self-dealing.

3. Obstructive conduct is falsifying testimony to regulators, erasing computer files, shredding documents, creating or altering document to support illegal conduct

### Some of the key risks to the organisations are as follows

#### Fraudulent Financial Reporting

Financial statement fraud is deliberate mis-representation, mis-statement or omission of financial statement data for the purpose of misleading the reader and creating a false impression of an organisation's financial strength. Irrespective of the size and worth of any company and organisation, frauds occur regardless of their for-profit or nonprofit status. Most of the smaller level frauds are never reported or discussed in the media or comes in the public eye. This is because of their size and very often because of the investigative design. Fraud can be grouped in various categories. For example, from a legal perspective, frauds can be distinguished between: frauds by the organisation and frauds against the organisation. Fraud committed by the organisation carry legal risk, that is, potential civil, regulatory and criminal liability. Fraud committed against the corporation carry financial risk, that is, the loss of income or assets. External and internal misappropriations of assets are by far the most common fraud against the organisation.<sup>7</sup>

In this regard, the recent giant bank fraud case committed in India is worth mentioning here. Punjab National Bank stumbled upon the scam on January 25, 2018 and submitted a fraud report with the Reserve Bank of India on January 2, 9 2018. On that day, a criminal complaint for registration of FIR was also made with the CBI. Stock exchanges were informed of the fraud on February 5, 2018. On February 13, 2018 an FIR was filed with the CBI against Nirav Modi Group, Gitanjali Group and Chandri Paper & Allied Products Pvt. Ltd. and a complaint was also filed with Enforcement Directorate. Stock exchanges were informed the next day. In the complaint, PNB alleges that Modi and companies linked to him colluded with some of its officers including a former Deputy General Manager Gokulnath Shetty who was posted in the Foreign Exchange Department of its Mumbai branch. They fraudulently acquired guarantees worth \$1.77 billion or Rs 11,400 crore to obtain loans from the overseas branches of Indian banks, claiming to need the cash to import pearls. On January 16, 2018 the partnership firm of Nirav Modi group approached our branch at Brady House, Mumbai and presented a set of import documents with a request to allow buyer's credit for making payment to the overseas suppliers as claimed by Punjab National Bank. This happened after Shetty had retired and since there was no sanctioned limit for the firms, the branch officials asked them to furnish at least 100% cash margin for issuing Letter of Undertaking (LoU) for raising buyer's credit. On denial, the firms contested that they have been availing such transactions since past several years. On scrutiny, it was found that earlier LoUs were issued previously and internal messaging system was bypassed by placing instructions via the SWIFT global payment system asking

<sup>3</sup> Priyanka Kaushik Sharma [https://link.springer.com/chapter/10.1057/9781137519368\\_1](https://link.springer.com/chapter/10.1057/9781137519368_1) retrieved on March 27, 2018.

<sup>4</sup> Prevention And Control Of Corporate Frauds : A Socio-Legal Study Of Financial Market In India [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/7/07\\_abstract.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/7/07_abstract.pdf) retrieved on March 28, 2018.

<sup>5</sup> [http://www.cimaglobal.com/Documents/ImportedDocuments/cid\\_tg\\_corporate\\_fraud\\_may09.pdf.pdf](http://www.cimaglobal.com/Documents/ImportedDocuments/cid_tg_corporate_fraud_may09.pdf.pdf) retrieved on March 28, 2018.

<sup>6</sup> "Financial and Corporate Frauds", Grant Thornton, (July 2016), New Delhi, p.08. <http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/financial-and-corporate-frauds.pdf> retrieved on March 28, 2018.

<sup>7</sup> "Financial and Corporate Frauds", Grant Thornton, (July 2016), New Delhi, p. 08. <http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/financial-and-corporate-frauds.pdf> retrieved on March 28, 2018.

overseas branches of Indian banks to fork out the cash as loans.<sup>8</sup>

### **Related party transactions**

There are many types of related party transactions that might potentially be used to mis-state financial reports. The most frequent type of transactions that require regulatory action are concessionary loans to related parties, payments to company officers for services that were either unapproved or non-existent, transfer of funds through overvalued purchases of assets/ investments, and sales of goods or services to related entities in which the existence of the relationship was not disclosed.<sup>9</sup>

### **Procurement fraud**

Procurement fraud can be of multiple types and is one of the most widely used modus operandi for siphoning off funds and window dressing the financial statements. Often defined as any illegal conduct through which the offender gains advantage, avoids an obligation or causes damage to an organisation. Procurement fraud can also be defined as the unlawful manipulation of the procurement process to acquire goods /services, obtain an unfair advantage, avoid an obligation or cause a loss to public property during the procurement process by public servants, contractors, or any other entity involved. Some of the methods to do so are:

- Bid rigging/bid splitting;
- Creation of shell companies to facilitate fraudulent payments;
- Collusion between employee and suppliers;
- Purchase order and contract variation orders;
- Unjustified single source awards;
- False invoices for products and services for suppliers who do not exist

### **Payroll fraud**

Payroll fraud is the theft of cash from a business via the payroll processing system. There are several ways in which a payroll fraud can occur such as:

- Advances not paid back
- Buddy punching
- Ghost employees
- Pay check diversion
- Pay rate alteration
- Unauthorised hours<sup>10</sup>

### **Tax evasion and money laundering**

Money laundering is a criminal offence aimed at presenting wealth of illicit origin or the portion of wealth that has been illegally acquired or concealed from the purview of tax and other authorities, as legitimate, through the use of methods that

hide the identity of the ultimate beneficiary and the source of the ill-gotten profits.

### **False employment credentials**

Falsified credentials are a growing concern for organisations, as job applicants fill their resumes with bogus academic degrees and job titles. The real risk comes when these applicants get the job and perhaps land in high-profile positions, as in the case of former Yahoo CEO Scott Thompson, whose four-month tenure ended after controversy over whether he had embellished his official bio.

### **Fraudulent expense claims**

This is the easiest means of stealing some money from an organisation. Employees inflate their expense reimbursements and derive gains from the company.

### **Misappropriation of Assets**

Asset misappropriation schemes include both theft of company assets, such as cash or inventory, and the misuse of company assets, such as using a company car for a personal trip.<sup>11</sup>

### **List of Corporate Scams in India<sup>12</sup>**

The above table shows the different financial frauds which were committed in India. It is clear that financial irregularities can be committed easily in the corporate sector by their own employees and by their own management by playing tricks in order to gain illegal benefits. In order to take stringent actions against clever minded corporate giants there is need of a legal mechanism. A well organised legal control system can be helpful for preventing financial frauds within various corporations. Hence, the researcher throws light on the functioning of legal mechanisms in India.

### **Legal Mechanism in India**

The universally emerging legal recourse to combat economic crimes which is popularly getting characterized as money laundering and dealing in proceeds of crime is by enacting legislations bringing under its ambit powers to attach and confiscate proceeds so as to deny the monetary advantage illicitly achieved. Some of the existing legislations of the country provide scope for confiscation of the proceeds of crime and forfeiture of assets. These include the following:

1. Criminal Law (Amendment) Ordinance, 1944
2. Customs Act, 1962 (Sec. 119 to 122)
3. Law of Criminal Procedure Code 1973 (Sec. 452)
4. Foreign Exchange Regulation Act, 1973 (Sec. 63)
5. Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act, 1976<sup>13</sup>

### **Companies Act, 2013**

India's new Companies Act, 2013 has introduced several new provisions which change the face of Indian corporate business. One of such new provisions is Corporate Social

<sup>8</sup> <https://www.hindustantimes.com/business-news/nirav-modi-case-pnb-details-how-early-signs-of-fraud-blew-up-into-rs-11-400-cr-scam/story-9NnxCGWcryhtWkgPLwLfEL.html> retrieved on March 28, 2018.

<sup>9</sup> "Financial and Corporate Frauds", *Grant Thornton*, (July 2016), New Delhi, p.09. <http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/financial-and-corporate-frauds.pdf> retrieved on March 28, 2018.

<sup>10</sup> "Financial and Corporate Frauds", *Grant Thornton*, (July 2016), New Delhi, p.10. <http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/financial-and-corporate-frauds.pdf> retrieved on March 28, 2018.

<sup>11</sup> "Financial and Corporate Frauds", *Grant Thornton*, (July 2016), New Delhi, p.10. <http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/financial-and-corporate-frauds.pdf> retrieved on March 28, 2018.

<sup>12</sup> Sharma, Pooja, "Impact of Securities and Financial Scams on Regulatory Framework," *International Journal of Business Management*, (2016), Vol. 1 (1), Science Arena Publications, pp. 79-82. <http://www.sciencearena.com/J/List/1/iss/Volume%201%202016/Issue%201/11.pdf> retrieved on April 3, 2018.

<sup>13</sup> Khan, Aqueeda, "Problem of White Collar Crimes in India," *Plebs Journal of Law*, (July 2016), Vol. 2, No.1, Haryana, pp. 191-92.

Responsibility. The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc. from the society. By performing the task of CSR activities, the companies are giving something back to the society. Section 135 of the Companies Act, 2013 provides that the threshold limit for

applicability of the CSR to a Company i.e (a) net worth of the company to be Rs. 5000 crore or more;  
(b) Turnover of the company to be Rs 5 crore or more;  
(c) Net profit of the company to be Rs 5 crore or more.

Further as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but also applicable to branch and project offices of a foreign company in India.

Sr. No	Perpetrator	Fraud	Method	Amount
1.	Harshad Mehta, Broker	Responsible for the securities scam of 1992	Accused of diverting funds from banks to the tune of over rs.4,000 crore to stock brokers between 1991-1992 .	Rs.4,000 crore
2.	Sohin Daya of Dawood Shoes, Rafique Tejani of Metro Shoes, and Kishore Signapurkar of Milano Shoes	Multi-crore shoes scam	Created a fictitious cooperative society of cobblers to take advantage of government loans through various schemes.	\$600 million US
3.	Virendra Rastogi chief executive of RBG Resources	Deceiving banks worldwide & duty-drawback scam	Five companies, whose directors were the four Rastogi brothers-Subhash, Virendra, Ravinder and Narinder exported bicycle parts during 1995-96 to Russia and Hong Kong by heavily over invoicing the value of goods for claiming excess duty drawback from customs.	Deceiving worldwide estimated \$1 billion duty-drawback the tune of Rs (Rs 430 million)
4.	CR Bhansali, Founder, CRB capital markets	Cheated public of over 1,000 crore and the sbi of 57 crore.	Raised money from public and transferred it to non-existent companies.	Rs.1,200 crore
5.	Uday Goyal, managing director of Arrow Global Agritech Ltd.	The plantation scam	Cheated investors promising high returns through plantations.	Rs. 210 crore
6.	Abdul Karim Telgi	The fake stamp racket	Abdul Karim Telgi acquired a stamp paper license from the Indian government and began printing fake stamp papers.	Rs. 171.33 crore
7.	Ketan Parekh Promoter, NH securities	Accused of price rigging	Used to trade in shares under fictitious names	Rs.1,500 crore
8.	Dinesh Dalmia former MD, DSQ Software	Dalmia resorted to illegal ways of making money	Dalmia resorted to illegal ways of making money through the shares of DSQ software.	Rs.595 crore
9.	Former UTI chairman P S Subramanyam and two executive directors -- M Kapur and S K Basu -- and a stockbroker Rakesh G Mehta	UTI scam	UTI had purchased 40,000 shares of Cyberspace between Sept. 25, 2000, for about Rs 3.33 crore from Rakesh Mehta when there were no buyers for the scrip. The market price was around Rs 830. The CBI said it was the conspiracy of these four people.	Rs.32 crore
10.	Sanjay Agarwal, Ketan Sheth (a broker), Nandkishore Trivedi and Baluchan Rai (a Hong Kong-based Non-Resident Indian)	Home Trade scam	Home Trade had created waves with celebrity endorsements. But Sanjay Agarwal's finance portal was just a veil to cover up his shady deals. He swindled a whopping Rs 600 crore (Rs 6 billion) from more than 25 cooperative banks.	Rs. 92 crore
11.	P S Saminathan, the promoter of digital cinema chain Pyramid Saimira, stock market operator Nirmal Kotecha in the Securities Exchange Board of India (SEBI) & journalist Rajesh Unnikrishnan who works with India's leading pink newspaper Economic Times	Pyramid Saimira Theater scam	Co. announced that SEBI had asked to make an open offer to acquire 20% of shareholding at a price of more than 4 times the ruling market price. The information was passed through media. The purpose was to disseminating false information and manipulating the share price of the company.	
12.	Ramalinga Raju , Founder, Satyam Computers	Cooked up account books of his company	Inflated revenues and hide liabilities.	Rs.8,000 crore
13.	Suresh Kalamadi, Sheila Dixit- the then Chief Minister of the State	Common Wealth Games Scam	It was estimated that out of Rs. 70000 crore spent on the Games, only half of the said amount was spent on Indian sportspersons. The Central Vigilance Commission, involved in probing the alleged corruption in various Commonwealth Games-related projects, has found discrepancies in tenders – like payment to non-existent parties, willful delays in execution of contracts, over-inflated price and bungling in purchase of equipment through tendering – and misappropriation of funds.	Rs. 70,000 crores
14.	Kunal Ghosh, Ramchandra Hansda, Subarna Naik, Hitesh Kumar Bagarti , Srinjay Bose , Madan Mitra	Saradha Group financial scandal	Financial scam caused by the crumple of a Ponzi scheme of Saradha Group. It was a group of more than 200 private companies that was believed to be running collective investment schemes.	Rs. 40,000 crores
15.	Comptroller and Auditor General of India, the coal ministry, many electricity boards and private companies	Indian coal allocation scam	Coal blocks allotted, not auctioned, leading to estimated losses as per the Comptroller and Auditor General of India Supreme Court cancels all 214 coal blocks allocations since 1993. Government to e-auction the coal blocks now.	Rs.185,591 crore
16.	Nirav Modi and Mehul Choksi <sup>1</sup>	PNB fraud	According to the complaint filed by PNB with the CBI on January 28, the fraudulent issuance of Letters of Undertakings (LOU) was detected at the Mid Corporate Branch, Brady House in Mumbai. A set of partnership firms-Diamond R US, Solar Exports and Stellar Diamonds -- approached the bank on January 16, 2018 with a set of import documents and requested for Buyer's Credit to make payments to overseas suppliers. The firms have Nirav Modi, his brother Nishal Modi, Mr. Nirav's wife Ami Nirav Modi, and Mehul Chinubhai Chokshi as partners.As there was no sanctioned limit in the name of the firms, the branch officials requested the firms to furnish 100% cash margin for issuing the LOU for raising the Buyer's Credit. At this, the firms contested that they have been availing this facility in the past; but the branch records do not corroborate this. On digging further, the bank officials discovered that two of its employees had fraudulently issued LOUs in the past without following prescribed procedures and approvals. The employees had then transmitted SWIFT instructions to the overseas branches of Indian banks for raising Buyer's Credit without making entries in banking system to avoid detection. The complaint also said that the funds so raised for the payment of the Import Bills have not been utilised for such purposes in many cases.	Rs. 11, 400 crore

Every qualifying company will be required to constitute a committee of the Board of Directors consisting of 3 or more directors. The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken; recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR policy of the company. The Board shall take into the account the recommendations made by the CSR Committee and approve the CSR policy of the company. The activities that can be done by the company to achieve its CSR obligations include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.<sup>14</sup> Section 36 of the Companies Act, 2013 provides that any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

1. Any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
2. Any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
3. Any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, shall be liable for action under Section 447.<sup>15</sup>

Section 211 of The Companies Act, 2013 provides for establishment of the Serious Fraud Investigation Office to investigate frauds relating to a company by central government and Section 212 of The Companies Act, 2013 provides procedure for investigation and also bars the investigation by other agency. Section 229 of The Companies Act, 2013 provides that if a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate or makes or is a party to the making of, a false entry in any document concerning the company or body corporate or provides an explanation which is false or which he knows to be false, he shall be punishable for fraud under Section 447. The punishment provided under Section 447 is without

prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force. If any person is found to be guilty of fraud he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.<sup>16</sup>

The Companies Act, 2013 has also made mandatory for a company to have independent director. Sect 149 lays down that every company shall have at least one third of total number of directors as independent directors and Central Government may prescribe the minimum number of independent directors in case of any public companies.<sup>17</sup> Other major reform is Section 211 of The Companies Act, 2013 which provides for establishment of Serious Fraud Investigation. This provision was not incorporated in earlier Act. This provision is incorporated to investigate the corporate fraud and Section 75 of The Companies Act, 2013 makes the personal liability of a person who fails to repay the deposit or commit frauds which cause damage. The Act also includes the provision of corporate Socio Responsibility i.e. responsibility of corporate world toward society.<sup>18</sup> Section 408 of The Companies Act, 2013 provides for constitution of National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary.<sup>19</sup>

Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information. Section 129 of the New Companies Act, 2013 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 Section 133 of the New Companies Act, 2013. It is further provided that items contained in such financial statements shall be in accordance with the accounting standards. Secretarial Standards issued by the Institute ICSI has issued Secretarial Standard on Meetings of the Board of Directors and Secretarial Standards on General Meetings. These Secretarial Standards have come into force on July 1, 2015. Section 118(10) of the New Companies Act, 2013 provides 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.<sup>20</sup>

#### Securities and Exchange Board of India

In accordance with Section 11(1) of the Securities and Exchange Board of India Act 1992, SEBI is required to protect the interests of investors in securities and regulate and promote

<sup>16</sup> Chapter-Vi Legislations And Regulatory Bodies For Prevention Of Corporate Frauds In India, pp. 212, 213. [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf) retrieved on March 28, 2018.

<sup>17</sup> Chapter-Vi Legislations And Regulatory Bodies For Prevention Of Corporate Frauds In India, p. 213. [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf) retrieved on March 28, 2018.

<sup>18</sup> Chapter-Vi Legislations And Regulatory Bodies For Prevention Of Corporate Frauds In India, p. 215. [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf) retrieved on March 28, 2018.

<sup>19</sup> Chapter-Vi Legislations And Regulatory Bodies For Prevention Of Corporate Frauds In India, p. 219. [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf) retrieved on March 28, 2018.

<sup>20</sup> Thapar, Meghna, "Corporate Governance In India: An Analysis," *Journal of Economic and Social Development*, (March 2017) Vol 4. No 1. Hidayatullah National Law University, Raipur, Chhattisgarh, India, p. 83. <http://www.jes-nd-online.com/dokumenti/upload/separated/Vol%204%20No%201Paper8.pdf> retrieved on April 3, 2018.

<sup>14</sup> Sharma, S.K. and Reema Agarwal, "Corporate Social Responsibility: An Overview," *Prabandhan Guru*, (January- December 2014) Vol. V, Issue:1 &2, Muzaffarnagar, pp. 78, 79.

<sup>15</sup> Section 36 of The Companies Act, 2013.

the development of the securities market. Established in 1988, the Securities and Exchange Board of India (SEBI) was instituted as the official regulator of Indian markets but was only given statutory powers through the SEBI Act in 1992 by Indian Parliament. SEBI's primary goal is to cater to the needs of the market, which include investors, issuers of securities and any third parties involved. Its functions include, but are not limited to, regulating the stock market, preventing insider trading, managing company takeovers and acquisition of shares, and investigating fraudulent activities in the securities market. To an extent, SEBI has successfully made tangible changes in the market. It did away with inefficiencies and delays by passing the Depositories Act, which eliminated the need for physical documents and certificates and played a major role in moving markets toward an electronic and paperless platform. Administrative achievements aside, SEBI also made strict changes that demanded corporate promoters disclose more information. That being said, SEBI has its fair share of problems as well. Many perceive, and perhaps rightly so, the regulatory body is all bark, no bite. One of the major criticisms against the SEBI Act was it did not provide SEBI with sufficient powers. The government, particularly the Finance Ministry, has an unnecessarily constrictive hold on SEBI, which makes the regulator extremely susceptible to political interference for three main reasons. Firstly, although SEBI has the right to create rules and regulations by which capital markets abide, it does not have the right to implement them without the approval of the federal government. Arguably, the Finance Ministry may have a say in the framework of market regulations, and it can have the power to make recommendations. The process of obtaining the government's authorization invariably causes needless delays and results in watered-down versions of the rules being implemented. Secondly, SEBI still does not have the power to prosecute without the consent of the government. Its powers are restricted to recommending action to the government, rendering it unable to take direct action against any errant company. This is a major reason why the Sahara-SEBI war dragged on for as long as it did. Were SEBI allowed to prosecute without having to constantly answer to the government, the Sahara investor fraud would have been an open-and-shut case. SEBI must have the independent power to prosecute government interference, like the Securities Exchange Commission (SEC) in the United States. Finally, and perhaps most importantly, the appointment process of the members of SEBI is flawed. The board has eight members: the chairman, who is nominated by the Central Government; one member from the Reserve Bank of India; two officials from the Finance Ministry; and five remaining members who are recommended by the Union Government. The fact the Finance Ministry is directly or indirectly responsible for almost all of these key appointments greatly compromise the legitimacy of SEBI as an independent, unbiased watchdog. A Public Interest Litigation (PIL) challenging the legitimacy of this appointment process has been filed in the Supreme Court.<sup>21</sup>

### ***Reserve Bank of India***

The institution is also the regulator and supervisor of the financial system and prescribes broad parameters of banking operations within which the country's banking and financial system functions. Its objectives are to maintain public

confidence in the system, protect depositors' interest and provide cost-effective banking services to the public. The Banking Ombudsman Scheme has been formulated by the Reserve Bank of India (RBI) for effective addressing of complaints by bank customers. The RBI controls the monetary supply, monitors economic indicators like the gross domestic product and has to decide the design of the rupee banknotes as well as coins. The central bank manages to reach the goals of the Foreign Exchange Management Act, 1999 i.e. to facilitate external trade and payment and promote orderly development and maintenance of foreign exchange market in India.<sup>22</sup>

It is clear that in corporate world financial scams can be committed silently in connivance with concern corporate employees. In most of the cases their own employees play tricks and secure illegal gains. Sometimes big investors also take advantages of loopholes in concerned corporations and commit frauds. It means there are deficiencies in systems of these corporations. The management of the corporations should be vigilant while making transactions with their investors and should also keep a watch on their employees in order to prevent financial frauds.

## **CONCLUSION AND SUGGESTIONS**

The corporate frauds in India are not a recent phenomenon. From time to time, various frauds in corporate sectors were detected and culprits were punished. These financial frauds cause huge loss to the investors and government. Although, culprits face punishments but public who has invested their money suffers huge loss in a long run. The victims of corporate financial frauds cannot get back their invested money easily. It takes years to recover loss. The new Companies Act, 2013 provides harsh punishments and strict the responsibilities of the corporations. It seems that laws alone cannot eradicate these frauds as every year new frauds are being detected in corporations. In a move after the huge Nirav Modi-PNB Scam and the failure of the auditors to detect the fraud, the Union Cabinet has approved formation of National Finance Reporting Authority (NFRA). NFRA will be an independent regulator which will not need parliamentary nod and will get sweeping powers to act against erring auditors and auditing firms who are found to have helped economic offenders. The NFRA would act as a watchdog and take away a large part of powers currently vested with the Institute of Chartered Accountants of India or ICAI. The move was being resisted by the institute which, till now had sole power to govern and discipline auditors. The creation of NFRA will end the monopoly and self-regulation of the accounting profession by the ICAI on training, qualifying CAs and giving them license to practice and regulating them.<sup>23</sup> Moreover, there is need strict enforcement of code of conduct, zero tolerance of corruption, whistle blower mechanism with complete confidentiality and security to whistleblowers, non interference of government at time of punishing to culprits, speedy and impartial judiciary in order to curb financial frauds from Indian Corporations.

<sup>21</sup> <https://sevenpillarsinstitute.org/corporate-fraud-india-case-studies-sahara-saradha/> retrieved on April 3, 2018.

<sup>22</sup> Chapter-Vi Legislations And Regulatory Bodies For Prevention Of Corporate Frauds In India, p. 251. [http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45803/13/13_chapter%206.pdf) retrieved on March 28, 2018.

<sup>23</sup> PNB Scam aftermath: Government approves formation of regulating body to oversee auditors <http://www.india-today.in/india/story/pnb-scam-aftermath-government-approves-formation-of-regulating-body-to-oversee-auditors-1180563-2018-03-02> retrieved on 5 April, 2018.