

CORPORATE GOVERNANCE

EMERGING ECONOMIES



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CORPORATE GOVERNANCE: EMERGING ECONOMIES

Editor

Dr. Ashu Maharshi

Vidhi Aagaz – Inking Your Brain

Maihar

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PREFACE

Corporate governance represents a set of “rules of the game” through which companies are managed internally and supervised by Boards of directors, aiming to protect the interests of corporate stakeholders. It specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing so, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance

The last three decades’ ground-shaking bankruptcies, financial crises and the gap between executive compensation and corporate performance results have demonstrated that instituting corporate governance is not only a means to survive in today’s world, it is a strategy to prosper. Corporate governance helps companies to attract investments and to enhance economic performance and competitiveness on the long term. A sound system of corporate governance ensures that transparency is maintained in relation to all significant transactions of a company, especially through the adoption of disclosure standards in dealing with investors and creditors. Moreover, corporate governance aims to enhance the managerial attributes of a company, by limiting the abuse of power from insiders and by safeguarding the resources of companies, through a monitoring system insuring corporate accountability

Corporate governance is recognized as a key element in attracting investment and increasing economic performance and competitiveness in the long term. Globalization of financial markets has contributed to reducing the gap between advanced and emerging economies, in terms of corporate governance implementation. However, due to cultural, economic and social factors, emerging economies cannot yet speak of a comprehensive approach, especially when compared with developed economies.

Corporate Governance involves the building of a set of relationships between the company, its board, the management, the shareholders and other stockholders by putting in place a structure and a system through which the established goals of the company may be achieved. The Corporate boards, as the apex governing organizations, are responsible for practicing good governance. The quality of governance is reflected in many ways, inter alia, investors’ willingness to invest, customer satisfaction or dissatisfaction, and whether company’s equity is trading at prices well above or below the real economic value of the company. The recurrent corporate failures and corporate misconduct are a symptom that corporate governance mechanism has failed to come up to the expectations of various corporate

constituencies. There is perceptible lack of public confidence in the develop governance structures and tools that are capable of thwarting attempts to undermine norms of good governance.

The present book is an attempt to analyse the current discourse of Corporate Governance in

The book will be useful for academicians, Students & Research scholars.

Dr. Ashu Maharshi

Acknowledgement

The book is a result of long hard work and persistence. First and foremost I would like to thank God Almighty who has given me enough strength to take up such a huge responsibility of converting a small idea into a book form. I am highly grateful towards my Mentor and Guide Dr.V.K Sharma Sir for his constant inspiration and words of encouragement. I would also like to thank Dr. Sanjula Thanvi Ma'am for her guidance and valuable insights which she provided time to time for the completion of this book. I am deeply thankful to all the contributors who has penned down their valuable thoughts for this book I would like to express my gratitude towards my Family without their support and inspiration this book would have never seen the light of the day.

Dr. Ashu Maharshi

Foreword

It is indeed a privilege to write a foreword to this book “Corporate Governance: Emerging Economies” edited by Dr. Ashu Maharshi. Corporate Governance research in the context of budding economies has received increasing awareness in recent years. Academics and practitioners are becoming conscious that the nature of governance troubles and the firm-level governance machineries at work in different countries are embedded in their own national business system and influenced by political, social, and legal macro-institutions. Specifically developed economies tend to have their roots in governance problems as of dispersed ownership, market-based transactions, prevalence of standalone companies, and small managerial shareholdings. On the other hand, emerging economies are illustrated by concentrated ownership, dominance of business groups, pyramidal ownership structures, and high levels of related-party transactions. As an upshot, for corporate governance principal-principal conflicts are a major concern in developing countries. For understanding of the relevant issues, Dr. Ashu Maharshi edited a special issue book on “Corporate Governance: Emerging Economies”. In this book, she set up peculiarities of corporate governance in emerging economies and reviews the ten articles that were eventually accepted for inclusion in the special issue. It has been really a pleasant experience to go through all articles. I appreciate every contributor’s spirit of writing as it’s difficult to pen down the thought, an art which only few possess. All articles are distinct and meticulously selected by the editor. I hope that the articles selected for publication in this book will help the students, academicians and researchers to highlight and dwell upon the various aspects of Emerging Economies & Corporate Governance. I wish that the support and academic cooperation of all the contributors goes a long way to make this book a grand success.

Dr. Sanjula Thanvi

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ABOUT THE BOOK:

Analysing corporate governance of companies in emerging markets can be really tough. Despite that, emerging markets trends continue to have a unique set of characteristics which require special attention when assessing corporate governance at the national level and at the company level. This present book primarily focuses on the current discourse of Corporate Governance (CG) in emerging economies. In addition to its corporate governance theories, a plethora of concepts has been originated in present times. These concepts are varied in their meaning and application. The book focus on concepts like Cybercrimes, merger and Acquisition, Corporate Social responsibility, Digital responsibility, Insolvency and bankruptcy, Corporate Governance Ratings, Law and Governance in India, Corporate Crimes against Women, Environment and sustainability.

ROLE OF GLOBALIZED TRADE IN TRANS-NATIONAL ACQUISITION OF CORPORATES AND INVOLVEMENT OF GOVERNMENTS IN IT- A STUDY FROM THE PERSPECTIVE OF INDIA

Indraneel Banerjee and Ajayraj Singh¹

Mergers and Acquisitions are considered to be the most efficient and intelligent choice for multi-national corporate bodies for both- sustaining in a fierce competitive world market and have a constant aggrandizement in terms for their existence in the global scenario. In the business environment of the modern world, mergers and acquisition deals have drastically increased both in terms of their number and the amount of money to be dealt with by the corporates through the same. However, at the same time, it is also recurrent for a lot of corporates to experience major implosion arising out of the deal of cross-border mergers particularly. It is alarming that, the failure of these broddingnagians of any market creates a lot of collateral damage to all the others whether individual or body incorporated associated with the same. With respect to these, we experience government interference for both pre-combination and post-merging stages where along with giving a proper guidance to merger-aspirants, they also enact rules and regulations to protect not only those corporates going for the merger but also those who are at the risk of being on the receiving end of any probable set-back coming out of the combination. Many a times, such protectionism approaches of the states also pose an embankment before the companies wishing to go global. In the light of such a dichotomy, the instant research paper shall endeavor to find proper instances where such contradictions have been happened and shall try to find some suitable solutions to end the predicament experienced by the corporates.

Keywords: *Mergers and Acquisitions, Government interference, Global markets, Problem of choice*

I. Introduction

The recession of 2008, a result of the world-wide financial institution crisis which immediately preceded it, has contributed to a renewed surge in national economic policy decisions supporting trade protectionism². Such protectionism “*involves assisting domestic industries either by imposing barriers to foreign competitors or by subsidizing or compensating domestic industries in some other way to assist them against international competition*”³. Needless to say that, to some extent such protection measures are helpful for a number of sectors, corporations and common people and the same time they allow the governments to boast their confidence among the people regarding their existence as guardian for their object.

¹ Both the Authors are Assistant Professor at Amity Law School, Noida, India

² Albert, S. & McGrath, B. 2009. United Kingdom: Overview. European Antitrust Review. Global Competition Review: The International Journal of Competition Policy and Review. Available at: <http://globalcompetitionreview.com/reviews/10/sections/42/chapters/498/united-kingdom-overview> (Last visited on 05.04.2019, 02:15PM)

³ Annan, R., Schacter, J. & Koch, M. 2009. Amendments to the Competition Act and the Investment Canada Act granted swift passage, 31 March [accessed 23 June 2009]. Available at: http://www.monday.com/article.asp?article_id=772181&k=1 (Last visited on 05.04.2019, 02:35PM)

World Trade Organization (WTO) Director-General *Pascal Lamy* warns that, “*The danger today is of an incremental buildup of restrictions that could slowly strangle international trade and undercut the effectiveness of policies to boost aggregate demand and restore sustained growth globally*’ (Shin, 2009). *Lamy further characterizes this ‘new protectionism’ as ‘low-intensity’, as most of the policy measures deployed are legal under WTO regulations and do not violate trade agreements, but nevertheless harm free trade.*”⁴

Free trade advocates are expressing increasing concern about non-tariff barriers (including broad enforcement of competition policy) arbitrarily impinging on the international flow of foreign direct investment (FDI) — specifically, cross-border mergers and acquisitions (M&A). There is a concern among many leaders of emerging economy nations of their vulnerability to anti-competitive practices from export cartels and cross-border M&A used as a tool of corporate restructuring.

It is worth highlighting that the 1980’s economic policy reforms have initiated across the world, where in, the idea of “*economic deregulation, financial liberalization and national integration*” engulfed from developed economies institutions to developing countries. Consequently, a number of developing countries have noticed a significant growth in international trade and capital flows, foreign exchange reserves, technological transformation and development of local businesses, among others. On the other hand, a number of economic researchers have noticed a substantial growth in the market for inward direct investment curving from developed markets to emerging markets due to easing of foreign direct investment policies. As a result, business enterprises have gained access to wider markets with their varieties of products and services.

Thus, emerging markets, Brazil, Russia, India, China (BRIC), Indonesia, South Africa and others have become important contributors to today’s global economy. For instance, the combined output of these markets have accounted for 38% of world GDP in 2010, twice its share in 1990. According to the United Nations Conference on Trade and Development (UNCTAD), the cumulative international direct investment has reached about US\$1,244 billion in 2010, while a significant amount of rise is attributed to high-growth emerging markets. The Asian market was seen a severe economic crisis in 1997, which had high-minded qualms in the securities market and the collision of IT bubbles in 2000. Being influenced by the crisis experience, local firms have chosen various corporate inorganic

⁴ Baldwin, R. & Evenett, S. eds. 2009. *The Collapse of Global Trade, Murky Protectionism, and the Crisis: Recommendations for the G20*. London: Centre for Economic Policy Research.

strategies include acquisitions and alliances. we realize that there is a considerable increase in international investments, where it is being reversed from emerging markets to developed markets. This investment behavior was identified in the aftermath of the 2007-08 global financial crisis due to lower asset valuations, attractive investment and tax policies offered by the host country, and home country institutional constraints with regard to inward overseas investment.

In case of India, mergers, takeovers and other corporate restructuring activities are uncommon prior to the New Industrial Policy reforms-1991, later, they occurred due to regulatory shocks. The actual merger wave was started after 1994 where the necessity of formulating a new takeover code felt by the regulating agencies⁵. This momentum lucratively changed the business scenario from back-end mapping to front-end strategies, which also motivated consolidation activities. Eventually, global competition has prompted the Indian MNEs to choose M&A as an important strategic choice for gaining operating and financial synergies. For example, the period 2000-07 has noticed a phenomenal growth in India's outbound M&A transactions.⁶

Thus, in the light of the observations mentioned above, it can surely be understood that, there is no dearth of the number of mergers and acquisitions being taken place in India, however, the real issue to be pondered upon here is that, whether the by quoting such a number we are establishing the fact that, the corporations are having no problems in going for cross-border mergers despite having been bound by voluminous rules and regulations or there are real problems being faced by them when so ever the corporations are getting interested to go for a cross-country re-construction of companies. In the instant research paper, the aim of the researcher(s) is to endeavor finding proper instances where such antipodal instances have been happened and shall try to find some suitable solutions to end the predicament experienced by the corporates.

II. Nature of Trans-national Acquisitions in India:

Indian M&A Activity has seen an exponential growth and touched a new peak in the year 2016. The year recorded a total of 1,195 announced transactions worth \$69.75 billion, which

⁵ The first privatization occurred in 1999, when 74% of the equity of Modern Foods India Ltd. (a public sector bread-making company) was sold to Hindustan Lever, an Indian subsidiary of the Anglo-Dutch multinational Unilever. Other disinvested public sector enterprises include BALCO, Computer Maintenance Corporation, Hindustan Zinc, IPCL, Maruti Udyog, VSNL, and so forth (Ahluwalia, 2002, p. 84)

⁶ Between 2000 and 2007, there were over 521 overseas acquisitions from India out of which 133 (25.5%) happened in the IT sector; and 12% of these CB-M&A deals were done by the firms that are less than five years old at the time of acquisition (Varma, 2011, p. 352)

was almost double compared to 2015, where 1,306 M&A deals worth \$36.68 billion were recorded. Reforms and policy changes by government and its agencies along with the global interest in tapping abundant talent available in India are the driving force behind the improved buoyancy in India's economic growth prospects⁷. Merger and acquisition (M&A) activity in India is booming. In particular, the percentage of cross-border transactions has risen significantly. Flow of FDI's is greatly encouraged with enactment of new laws and tweaking of existing policies. In the IT sector phenomenal growth of cross-border transactions is recorded.

Thus, from the perspective of the amount invested for the cross-border mergers and the number of firms participated in it, we don't seem to have any problem, however, the problem lies in the fact of regulation and as has been mentioned earlier- the protectionism of the governments.

According to Feito-Ruiz and Menéndez-Requejo, *"A country's regulatory and political environment is imperative for multinational business enterprises when preparing and assessing various investment proposals referring to developing markets as a host. Previous studies in strategy, finance and international business streams suggested that foreign direct investment through acquisition mode is usually influenced by host country's institutions, legal, economic, political and cultural factors. In fact, the risk of these institutional dichotomous variables increases when a firm from developed market wants to acquire a firm in developing market"*.

Traditionally, acquisitions and takeovers are found to be uncommon in emerging markets, but the number, frequency and value of various inorganic strategies (mergers, acquisitions, joint ventures, and private equity investment) have shown a gradual rise in line with policy reforms, especially after 1991. In particular, both inward and outward investments through the acquisition route have seen a momentous growth in the aftermath of the global financial crisis due to lower valuations and easing foreign investment laws. In a recent analysis by economists, Kim and Lu, *"it is also a fact that Indian institutional laws, mechanism and governance are weak compared to advanced countries and of course, other emerging markets like China and Brazil. Further, there is no coordination between various regulatory authorities, for example, the existence of an overlap between the CCI and the regulatory authorities leads to the possibility of contradictory decisions which will hinder future deals."*

⁷ E-Book: M&A in India: Lexology Navigator Q&A Available at: <http://www.lexology.com/library/detail.aspx?g=2b0872fc-cf86-440d-8149-a49a42956abb> Last visited on 07.04.2019, 03:30PM.

In fact, one would argue that India has become less favored or riskiest locations for investment due to information problems, imperfect contract enforcement, inability to enforce property rights, and flawed regulatory structures. For instance, Aircel-Maxis deal has been delayed by seven months due to personal involvement of the Ministry of Finance. For example, Bharti Airtel-MTN telecom deal had been failed on the account of dual listing and open offers guidelines. Vedanta-Cairn India energy deal had been delayed for immaterial causes due to open offers and involvement of state-owned enterprise.

Therefore, it can safely be said that, many a times we disregard problems when everything seems to go right and then at difficult times those minor issues comes back being giant which should not be the case of the cross-border M&A in India. Making a judgment on the basis of proposed deals and amount of investments shall be likely to be termed as erroneous in actual situation. And what is more worrisome is the fact that, the government of India, like all other governments believe that, to protect their market and as such the economy they are supposed to stick to those measures mentioned above.

III. Involvement of Governments in the Process: Whether a Disguised Boon or An Unnecessary Interference:

“Pursuing protectionism is just like locking one's self in a dark room: Wind and rain might be kept outside but so are light and air.” — Xi Jinping

From the Indian experience, it is clear that, when states try to put the measures of protectionism, rather than clearing up the problems, it creates rather negative consequences in the market. In India, more than the conceptual dilemma, the problem was rather aggravated in terms of the rules and regulations attached with the mergers and acquisitions.

For instance, it is pertinent to note the new notification on cross border deals from ministry of corporate affairs shows the intent of the government to put India on the global M&A hub. In the year 2017 the ministry had notified *Section 234 of Companies Act, 2013*. The new Amendment in the Rule 17 specifically focuses on the merger aspects of foreign company with an Indian firm. Rules erstwhile to the instant one, prevented Indian company merging with foreign company (*Section 394, Company Act 1956*) thereby making it impossible for merging of an Indian company to a foreign company. However certain tax provisions on merger with foreign company (which is taxable) need more clarity. The amendments of course, are welcome, however as reported by SKP Group – a leading Indian firm working

with M&A deals – the amendment does not provide detailed provisions for merger or amalgamation from an implementation perspective.

Compared to all its neighbors in the region, India has adopted a quite liberal merger review regime. There is no preferential treatment to the SOEs or the Government in the Act. Public sector enterprises and Government departments are covered within the ambit of the competition law in India, unless they are performing regulatory or sovereign functions. In fact, all provincial Governments have been held to be covered within the statute where the functions were commercial and not sovereign.⁸ The CCI has adopted a strictly uniform approach without discrimination between public and private sector enterprises in antitrust enforcement. The merger review regime is barely three years into enforcement in India. Notification of the merger is mandatory where certain thresholds are met. To date, the CCI has received close to 200 notifications. However, the CCI has not issued any prohibition or commitments as of yet.⁹

However, at the same time, it is pertinent to understand some practical aspects related to M&A of Indian corporations as well. Not all the regulations are company-friendly like the one mentioned above.

Under the title **“New Dawn for India’s Cross Border Merger Regime”** famed group on M&A of Cyril Amarchand Mangaldas Law firms – states, *“the need vigor among deal makers for India specific M&As after the amendments were passed. It highlights the old issue of merge with a foreign company within the court sanctioned merger framework set out under Indian corporate law and its final change in April 2017, when the company law provisions that govern cross border mergers were brought into force. The Reserve Bank of India (RBI) recent issuance of draft regulations for deemed approval from the RBI for cross border mergers was very much welcomed. Now, companies in India desirous of merging with a foreign company may do so in specified jurisdictions – those eligible jurisdictions are:*

(a) those whose securities market regulator is a signatory to the Multilateral MoUs of the International Organization of Securities Commission (IOSC) or to the Bilateral MoU with the SEBI; or

⁸ Jupiter Gaming Solutions vs Govt. of Goa and Anr. CCI Case 15/2010

⁹ Maharashtra State Power Generation Company Ltd. vs M/s Mahanadi Coalfields Ltd & Ors CCI Case 03/2012. To compare the uniformity of the approach, the decision of the CCI in the matter of Faridabad Industries Association vs M/s Adani Gas Limited [CCI Case 71/2012] may also be referred to.

(b) jurisdictions whose central bank is a member of the Bank of International Settlements; and jurisdictions not identified in the public statement of the Financial Action Task Force (FATF) for deficiencies relating to anti-money laundering or combating terrorism financing or jurisdictions without an action plan developed with the FATF to address the deficiencies. USA, China, Mauritius, and Cyprus etc. are countries that fall under the eligible jurisdiction. For any Inbound/outbound transactions – Indian foreign exchange regulations should be applied for receiving the „deemed“ approval from RBI.”

In particular, India may offer direct incentives such as, reducing tariffs and quantitative restrictions, tax benefits, and investment subsidies, to attract technological-developed MNCs for establishing sophisticated R&D facilities. In addition, political leadership will be the critical factor in implementing the second wave of economic reforms, and major efforts shall be required to eliminate (control) the culture of bribery and corruption by imposing a set of penalties and incentives. Altogether, would improve the economic freedom and global competitiveness of the country that will likely persuade other countries to make investments in growing industries include education, retail, and other product-based sectors.¹⁰

The bottom line of any economy depends upon its policy administration and plan implementation than a policy-making, and therefore countries like India should contemplate public administration aspects including skill development.

IV. Perspectives of Multinational Corporates: Challenges and Solutions

The crave for “going global” is not a new phenomenon in the corporate world. In fact, it was time-immemorial when business-men used to jump into the seas to find a better place where they can establish their commercial activities and make fortunes out of it. Therefore, at times, when the corporate bodies are forced by express governmental policies or their protectionist perspectives not to go beyond the line of control put by the state, it surely becomes difficult of companies to explore overseas markets, nevertheless, that can’t stop them to get along with the world trade.

- (1) After the outbreak of global financial crisis, nationalism of host countries has been increasingly distinct. Besides, cross border acquisition itself is a topic with high sense of politics, so emerging markets suffers from more serious discrimination and treatment than developed countries in cross border merger and acquisition. For the

¹⁰ Pandey, A. (2012) “Policy makers need to revisit prudent approach of the 90s”, June 1, *The Financial Express*, p. 12.

past few years, with expansion of the scale of cross border acquisition of corporations in the world, they have been suffered from more problems of foreign boycott in the process of overseas merger and acquisition. Demand on resources is the critical factor to drive the behavior of acquisition of companies both at home and abroad. Acquisitions of these resource industries and some infant industries have received high attention from the government of host countries, and administrative intervention of the government has naturally become one of the major means to prevent foreign corporations from competing with their own corporations by the means of acquisition.

- (2) Resource acquisition is one of the important targets for corporations to conduct overseas merger and acquisition and decline of resources price exactly caters to this requirement. Thus, investment of corporations in the Section of Resources has been on a continuous increase in recent years. Obviously, if the market price of resources after acquisition continues to rise, then acquisition and investment of corporations will bring generous profit returns.
- (3) Existence of economic externality requires corporations to assume corresponding social responsibility, such as protection of the environment, maintenance of natural harmony, realization of sustainable development of saving of resources, etc. In addition, host countries also pin their hope on foreign corporations which conduct overseas merger and acquisitions to bring capital, technology and talents, help them resolve the issue of employment, improve their capacity of scientific innovation and increase financial revenue of host countries.

V. Conclusion:

Globally, most countries have enacted laws and instituted public policy processes that regulate FDI and 89.3 per cent of all FDI is in the form of cross-border M&A (United Nations, 2008). Given the global movement to increase the flow of cross-border trade and investment that culminated in the establishment of the WTO, it is reasonable to presume that the resulting reduction in tariff and non-tariff barriers has encouraged increased trade in goods and services and FDI. Empirical data supports this conclusion, as FDI rose to an all-time level of \$1,833 billion in 2007, well above the previous record established in 2000¹¹.

¹¹ United Nations. 2008. World Investment Report: Transnational Corporations and the Infrastructure Challenge, United Nations Conference on Trade and Development, September, New York

Nevertheless, the apparent complexity of what constitutes a ‘protectionist-barrier’ to international investment and trade remains an elusive construct. When applied to cross-border M&As, legally recognized areas of national industrial policy review include competition policy, national security policy, economic competitiveness policy, and cultural policy — all areas that could be broadly interpreted to block such FDI under a non-tariff criteria of domestic protectionism.

As per the Indian situation is concerned, M&A activities are speeding up considering India’s consistent track record of growth fueled by large-scale domestic consumption and attractive middle class consumers. Yet, there is a need to ensure the regulatory framework which is well suited to attract more investments from M&A and prosper the booming economy to much higher levels. India's tax system is undergoing significant changes. Positive changes and much needed provisions were added to tax laws and framework. Tax administration’s efforts to broaden the tax base, increase the tax revenues and combat the tax evasion must be continued. However, the taxation policies need to be fair and practical. There is no doubt regarding the fact that, despite a shallow, protectionist approach, cross-border mergers and acquisitions are a blooming reality for the corporate bodies and the governments. Thus, it is better to make such regulations which will have lesser dichotomies and more fructuous for all.

CORPORATE GOVERNANCE RATINGS: EFFECT ON COMPLIANCE NORMS

Mr. Deepankar Sharma¹² and Mr. Amit Yadav¹³

I. Introduction

The Corporate world constitutes a significant amount of capital flowing across the economy of a country. When a corporation collapses, it submerges a lot of money, assets and leaves the investors devastated. Often, it is seen that, the whole burden of loss falls upon the investors, in particular, the shareholders, and the insiders are able to escape from the tragedy as they have access to information beforehand.

Often, in order to possess a bright prospect in the market, the companies had resorted to a malpractice which develops a false perception of company boasting of high profits. The series of corporate scams leading to an adverse effect on a huge segment of relevant stakeholders, have compelled us to ponder upon the reasons. Most of the time, it has been found that the major reason was insufficient corporate governance practice within the corporation.

Before we move ahead, let us understand Concept of Corporate Governance. It is, though understandably difficult to define still a common understanding can be laid in words such as “effective accountability to all shareholders is the essence of corporate governance.”¹⁴ The concept can be culled out from the following definition given by Cadbury Committee, as “*It is the system by which companies are directed and controlled.*” According to ICSI, “We may define, ‘Corporate Governance is a blend of rules, regulations, laws and voluntary practices that enable companies to attract financial and human capital, perform efficiently and thereby maximize long term value for the shareholders besides respecting the aspirations of multiple stakeholders including that of society. But there is a global consensus, that objective of ‘good corporate governance: maximizing long-term shareholder value’. Further, the Kumar Mangalam Birla Committee constituted by SEBI has observed that, “Strong corporate governance is indispensable financial reporting structure.”

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¹⁴ N. Gopalaswamy, A guide to Corporate Governance, New age International Publishers, First Edition 2006, Page 20

Now, after series Corporate Scams, as mentioned above, the rating agency came up with new product, that is, Corporate Governance ratings, CGR, in order to evaluate the CG practices and help the investors assess the odds of investing in the company. Since, there is a agency cost or, a opaqueness in decision making which the shareholder doesn't has access to so, CGR is one such method through which they can know the efficiency of CG practices in the company.

Meaning of Corporate Governance Ratings?

According to CARE, *“Corporate Governance Rating (CGR) is an opinion on relative standing of an entity about adoption of corporate governance practices. It provides information to stakeholders about the level of corporate governance practices of the entity. It enables corporate entities to obtain an independent and credible assessment of the quality and extent of their corporate governance. The rating process would also determine the relative standing of the entity vis-à-vis the best practices followed in the domestic as well as international arena. Companies can also use these ratings as reference and set benchmarks for further improvements. Investors and other stakeholders get benefited as they can differentiate companies based on degree of corporate governance.”*¹⁵

II. Methods of Measuring the Corporate Governance: - Ratings by Different Agencies.

(A) Standard & Poor's: - Their primary tool is *Standard and Poor's Corporate Governance Score*. It is the result of a calculation based on detailed analyses of annual reports and other company documents including interviews with key company persons. S&P discloses a score for the following four components in addition to the overall CGS: (1) ownership structure and external influences, (2) shareholder rights and stakeholder relations, (3) transparency, disclosure, and audit, and (4) board structure and effectiveness. A score is constructed either on a confidential basis for intended use only by the company or for use externally, allowing the company to show their governance standards to a wider audience.¹⁶

Standard and Poor's (S&P) provides Corporate governance rankings using two different approaches. S&P applies 98 disclosure items in their Transparency and Disclosure (T&D) studies, while their CG Scores (CGS) are based on 80–100 They argue that “*interactive*

¹⁵ CARE Ratings, Available At <<http://www.careratings.com/market-segments/corporates-governance-rating.aspx>> , Last Accessed on August 13th 2019.

¹⁶ ‘Morten Balling and Thomas Poulsen, Corporate governance ratings as a means to reduce asymmetric information’, Available At <<https://www.tandfonline.com/doi/full/10.1080/23322039.2014.919235>>, Last Accessed on August 13th, 2019

*corporate governance scoring service is a much more detailed in-depth analysis of the corporate governance practices of companies”.*¹⁷

(B) Institutional Shareholder Services: ISS is working as an expert advisory and consulting research body catering to the needs of institutional investors. The core topics included in the ISS CGQ ratings are: (1) board structure and composition, (2) audit issues, (3) charter and by-law provisions, (4) laws of the state of incorporation, (5) executive and director compensation, (6) qualitative factors, (7) director and officer stock ownership, and (8) director education. The score for each core topic reflects a set of key governance variables.

(C) ICRA: - The key variable in ICRA’ rating methodology for corporate Governance includes shareholding structure, governance structure and management process , board structure and process, stakeholders relationship, transparency and disclosures and financial discipline. ICRA had carried out a survey of 35 leading institutional investors and large brokerage houses during 2003. Companies such as ITC, Wipro, Godrej Consumer Products, PNB, Gilts, ESSAP Ltd and Infosys Technology Ltd. Have gone ahead with such ratings. It was for the first time, CGR was done and an overwhelming majority felt that contrary to the apprehensions aired by the corporate sector, the current emphasis on corporate governance is desirable and play a major role in making capital markets a safer place for investors.¹⁸

(D) CARE –CARE undertakes perusal of various documents like agenda papers and Minutes of Board and Board committees, Minutes of the Annual General Meeting and Extraordinary General Meeting, Annual Return and other documents filed by the company with ROC, SEBI, stock exchanges (domestic and international) and all other regulatory bodies, prospectus (if applicable) and offer documents. CARE’s team will interact with the Chairman, MD/CEO and independent directors, key officials of the company, Statutory Auditors, Internal Auditors, Lenders and Institutional/major shareholders. Thus, for rating, all such information is made use of.¹⁹

¹⁷ ‘Morten Balling and Thomas Poulsen, Corporate governance ratings as a means to reduce asymmetric information’, Available At <<https://www.tandfonline.com/doi/full/10.1080/23322039.2014.919235>>, Last Accessed on August 13th, 2019

¹⁸ N. Gopalaswamy, A guide to Corporate Governance, New age International Publishers, First Edition 2006, Page 121

¹⁹ Harneet Singh, Business Ethics & Corporate Governance Ratings, Available At <https://www.slideshare.net/HarneetSingh13/business-ethics-and-corporate-governance-rating>, Last Visited on August 14th, 2019

(E) CRISIL CG Rating- A CRISIL GVC rating indicates the relative capability of a firm with respect to creating wealth for all its stakeholders, while adopting sound corporate governance practices measures the balanced creation of value amongst all stakeholders using a judicious mix of qualitative and quantitative parameters. One can find the GVC ratings on CRISIL website of several known companies like Bharti Airtel Limited, HDFC Bank Ltd., Infosys Ltd., Mahindra & Mahindra Limited etc.²⁰

The Corporate Rating is an opinion backed by adequate research and due diligence process carried out by competent professional with appropriate skills and reflects a dispassionate view. In India, S&P did the CGR first time in 2003 of the company Infosys. But ever since, that various agencies have done CGR of over more than 35 companies but b, only 19 chose to disclose it so far. The CGR is often apprehended by companies to increase their compliance cost and those who go for it are sure of their command over CG practices. Hence, CGR is very voluntary as of now.

Now, that the Satyam Fiasco has taken place, it raises pertinent questions on CGR relevancy. Satyam Computers had won the Golden Peacock award for Excellence in corporate governance given by Indian Institute of Directors, right before the scam was unearthed. This phenomenon suggests that, Corporate Governance ratings are being carried out more in “**form**” and less in “**substance**”.

III. Should CGR be made compulsory in India?

Ever since, CGR has been started in 2003 by ICRA, it has received a positive response from analysts and investors, but, there has been a debate over it , if at all should be made compulsory.

In 2013, SEBI and ICSI brought a consultation paper which proposed to make CGR compulsory, wherein, it had designated two types of ratings of the model: India Mandatory and ICSI Desirable. India Mandatory will be given to companies who comply with India’s mandatory corporate governance requirements in their entirety. Since one might imagine that this should be the vast majority of companies, ICSI Desirable offers companies a chance for distinction, this rating will be awarded to companies going beyond mandatory requirements.²¹ But, no progress has been achieved over the concerned matter so far.

²⁰ supra

²¹ Corporate Governance Ratings Coming to India, Available At <<http://www.pgsadvisors.com/2013/03/corporate-governance-ratings-coming-to-india>> Last Accessed on 15th August, 2019.

We can argue in favor of making CGR compulsory in following way: -

The two rating agencies of India, ICRA and CRISIL, have developed well thought criteria for measurement taking into account ratings on wealth creation, management and wealth sharing and are not only based on data available in public domain but also detailed interview with management and stakeholders. Secondly, it has been proved from repetitive scams that merely complying is not suffice, but it must be compliance in substance. The company resorts engineer hypothetical transactions to make companies look better than they actually are. Therefore, the box-ticking approach won't suffice. Thirdly, all stakeholders should have the right to obtain the benefit of an independent opinion on all specific areas. Particularly, the equity investors can derive enough comfort in their investment making process, so why should they be deprived of? Fourthly, it would bring in light some of the excellent corporate governance standards followed being followed by some company. Also, those who make such claims, it can be verified. Rating agencies help in comparing them and monitoring them.

Certain unfavorable sides of CGR are:- The most pertinent issue is that there is no well-defined criteria to measure it. A company may fare well in one CGR and fare badly in other one. Secondly, the criterion like wealth creation may be due to market effect and not related to Corporate Governance. Thirdly, the intention was to popularize the Corporate Governance Practices, but this intention could have been better served by directing all efforts on strengthening fundamentals of corporate governance in India. Fourthly, it puts an additional pressure on CEO, and he lives in a mortal fear of quarterly results. In addition to that, it increases the compliance cost and even after may not be well received due to lack of financial education among investors.

IV. Conclusion and Suggestions

Rating of corporate governance compliance is a relatively emerging concept in India where emphasis on compliance norms is laid extensively. On the contrary in foreign jurisdictions rating agencies like S&P and Moody perform social and environmental ratings which is based on the UN initiative on the Principles for Responsible Investment. The change brought in Indian laws were majorly adapted from Sarbanes-Oxley Act where similar provisions of mandatory corporate governance compliances have been enforced.

Unfortunately, the nature of goals they intend to achieve makes it critical in attainment and hence makes the process of corporate governance susceptible to criticism. The change in law has made the compliance norms of governance not only mandatory but even it has

incentivized the same, which means that if it is accepted, then all listed companies will have to mandatorily get rated again by a rating agency on corporate governance and simultaneously has the provision of incentivization whereby enhance stakeholders' value and trust is developed. Upon becoming mandatory, there is speculation of around 5,000 listed companies getting rated, making it a benchmark of standardization in terms of compliance procedures. Though it may initiate a likelihood of bias if the same is tested again and made a ground of mandatory notification.

It is suggested that an accreditation agency should be made, wherein objective criteria should be laid down. Secondly, I believe that more than agency cost it would infuse the capital cost more because it would give importance to transparency. However, the idea should not be discarded completely, and it should be introduced with certain amendments.

MERGERS AND ACQUISITIONS: IMPACT ON INDIAN AND GLOBAL MARKET

Dr. Ashu Maharshi²²

In the early 1990s with the emergence of the LPG policy in India the policies becoming more liberalized in the field of mergers, acquisitions, and other corporate restructuring strategies, heating up in India and are growing with an ever increasing cadence. They are not confined to a particular type of business. The list of past and anticipated mergers covers every size and variety of businesses. Mergers are on the increase over the whole marketplace, providing platforms for the small companies being acquired by bigger ones. The basic reason behind mergers and acquisitions is that organizations merge and form a single entity to achieve economies of scale, widen their reach, acquire strategic skills, and gain competitive advantage.

In simple terminology, mergers are considered as an imperative tool by companies for purpose of expanding their operation and increasing their profits in the home country and foreign countries too, which in façade depends on the kind of companies being merged. Indian markets have witnessed a burgeoning trend in mergers which may be due to business consolidation by large industrial houses, consolidation of business by multinationals operating in India, increasing competition against imports and acquisition activities. Therefore, it is the right time for business houses and corporate to watch the Indian market and grab the opportunity.

Keywords: *Acquisitions, Companies, Mergers, Indian Market, Policies*

I. Introduction

The foreign trade and investment policy of the Indian government until the early nineties comprised of stringent regulations and controls limiting the exposure with the foreign economies. Prior to 1991, there were a number of Legislations regulating the Indian trade industry including Monopolies and Restrictive Trade Practices Act (MRTP), 1969, Foreign Exchange Regulation Act (FERA), 1973, Industries (Development and Regulation) Act, 1951, Imports and Exports (Control) Act, 1947, Import (Control) Order 1955, and the Exports (Control) Order 1962, Industrial Licensing Policy etc. The legal framework before 1991 promoted a regressive economy and created hindrance in the growth and development of the Indian financial system.

However, post - LPG model was applied in the Indian context; a paradigm shift was made in the government policies which paved a way to opening up of the economy and decentralizing ownership patterns in the organizations. With the promulgation of New Industrial Policy, 1991, Foreign Exchange Management Act, 1999, Competition Act, 2002, SEBI Takeover Code, 1997 etc, the regulatory environment unfastened easily and called for use of corporate restructuring strategies. These economic reforms exposed the Indian companies to competition from both national and international organizations and therefore, reorganizing of

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business became a much - needed strategy to fight the competition and to improve the operational efficiency.

A sea-change was observed in service sectors like financing, communication, hospitality, banking, insurance, retail, real estate and entertainment etc with the increase in overseas investment in the last two decades.²³ Overseas direct investments made in India are majorly preferred through M&A (Merger and Acquisition) transaction and keeping this mind, remarkable amendments in FDI Policy, Competition Act, 2002 and Takeover Code have been introduced since 2011. In March 2011, the government enhanced the value of assets and turnover as prescribed in Section 5 of the Competition Act, 2002 by 50 percent.²⁴ On September 30, 2011, the FDI policy released under the provisions of Foreign Exchange and Management Act, 1999 constrained the foreign investors from exercising call and put option in the shares of any Indian company. Any agreement with call or put option was deemed as a debt in lieu of equity instrument and consequently, External Commercial Borrowing (ECB) guidelines issued under FEMA which helped in guiding such agreements.²⁵

However, after receiving oppositions from industry players, foreign investors and stakeholders, Department of Industrial Policy and Promotion (DIPP) promptly deleted this provision ensuring FDI and M&A activity in India. Later in October 2011, a comprehensive Takeover Code was released by SEBI to develop both capital market and M&A space in India.²⁶ To build the confidence in foreign investors, Insolvency and Bankruptcy Code, 2016 has been introduced. In April, 2017, Foreign Investment Promotion Board (FIPB) was also abolished to facilitate the approval process for foreign investment in different sectors in India. Now, the concerned Ministry and their sub-Departments are empowered to clear foreign direct investment proposals in consultation with Department of Industrial Policy and Promotion (DIPP). Reforms and relaxation in FDI policy can also be expected to enhance the value of M&A activity in India.

²³Negotiated M&A Guide, Corporate and M&A Law Committee, Juris Corp, 2017, available at <<https://www.ibanet.org/Document/Default.aspx?DocumentUid=966A8448-E735-45C3-BBF9-6E260A976882>>

²⁴ Ministry of Corporate Affairs, Vide notification S.O. 480 (E) dated 4th March, 2011, available at <http://www.cci.gov.in/sites/default/files/notification/SO479%28E%29%2C480%28E%29%2C481%28E%29%2C482%28E%29240611.pdf>

²⁵ 'Regulatory conundrum over put and call options', PSA Legal Counsellors, December 21, 2011, available at <http://psalegal.com/wp-content/uploads/2017/01/Regulatoryconundrumoverputandcalloptions.pdf>

²⁶ Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011, Securities and Exchange Board of India (SEBI), Notification, Mumbai, 23rd September, 2011, available at https://www.sebi.gov.in/sebi_data/commondocs/acquistionofshares.pdf

The terms 'mergers', and 'acquisitions' are frequently utilized conversely. Be that as it may, there are contrasts. While merger implies unification of two elements into one, procurement includes one element purchasing out another and engrossing the same. There are a few points of interest in M&A — cost cutting, effective utilization of assets, obtaining of fitness or ability, charge preferred standpoint and shirking of rivalry are a couple. The initial segment manages the purchasers and merchants point of view with respect to lack of bias of Tax. The Income-Tax Act alludes to amalgamations to mean merger of at least one organization with another organization or the merger of at least two organizations to frame another organization.

The Indian law begins on the note that exchange of capital resources in a plan of amalgamation by the amalgamating organization to the amalgamated organization will pull in capital increases charge. Be that as it may, if the amalgamated organization is an Indian organization, it is exempted from capital additions charge. The exchange of capital resources by the amalgamating organization won't be considered as exchange to absolve the exchange from capital increases impose. The investor is likewise gave exclusion as long as the two substances are Indian organizations. Be that as it may, exclusion isn't accessible at the point when cross-outskirt or cross-border M&A takes place, unless the resultant organization is an Indian outfit. One of the real contemplations will be the convey forward of expense misfortunes of the obtained organization in order to lessen the taxation rate in the hands of the benefit influencing acquirer to organization.

II. Historical Backdrop Of Mergers & Aquisitions

The historical backdrop can be quoted in the waves form as M&A has been around for a very long time; it is no longer a new concept that has just been introduced in the business world. It has started making its presence felt as early as the latter part of the 1800s, find its way in India more from 1990s and the increasing competitiveness in the global business landscape was largely instrumental in its widespread application²⁷.

The evolution of M&A has been broken down in six stages or “waves”, and we will look into those waves as follows:

First Wave (1893-1904) The first wave of M&A came to be known as the “great merger movement” in the US business scene, particularly the manufacturing sector. This wave was characterized by horizontal mergers, where firms that operate within the same industry or

²⁷ <https://www.cleverism.com/historical-analysis-ma-waves-mergers-acquisition/>

field – often as competitors or rivals – combine together. This is often brought about by larger corporations that are aiming for more efficient economies of scale since the companies joining together are providing the same products or services. Thus, forming trusts became the norm. This was particularly attractive to companies that wanted to establish monopolies and market dominance, seeing as the combinations resulted to larger combined market shares.

The period between 1893 and 1904, and immediately before the beginning of World War I, saw the rise of manufacturing and transportation giants in the United States, particularly in the industries of steel, oil, mining and railroads. The telephone industry also benefited from horizontal mergers. IHC is a prime American manufacturer of machinery and equipment for agricultural and construction purposes, and commercial and household products. It was formed with the merger by J.P. Morgan of five agricultural equipment firms, including the Deering Harvester Company and the McCormick Harvesting Machine Company.

Second Wave (1919-1929)

The monopolies created through horizontal integration during the First Wave resulted to the government intervening and enacting laws that ban or prohibit what they referred to as “anticompetitive behavior”. This led to the company switching over to vertical integration, which was the identifying facet of the Second Wave of the M&A. Vertical mergers are more efficiency-oriented; rather than increasing revenue, the goal is to reduce costs and improve a company’s overall efficiency. This type of merger involves two companies that are not competitors but collaborators, in the sense that they used to purchase from each other in the past. Thus, it is a common sight to see a bidder or buyer expanding the company’s operations towards the resource (upstream) or the end-user (downstream).

Third Wave (1955-1970)

Expansion and diversification became the main drivers of the decisions made by companies when the Third Wave rolled around. When neither horizontal nor vertical integrations provided the solutions that these large companies were looking for, they turned their attention to conglomerate mergers and acquisitions.

Conglomerate mergers and acquisitions involve companies or corporations that belong to various fields of business, often unrelated to each other. They do not have to belong to the same industry or space, and their products or services may be vastly different or have nothing to do with one another. It did not last long, however the crash in share prices, amplified by the oil crisis in the first part of the 1970s, resulted in the end of the Third Wave.

Fourth Wave (1974-1989)

The Fourth Wave saw the arrival of corporate raiders on the scene, and hostile takeovers and concentric mergers became commonplace. The moniker “corporate raider” has been granted to any investor or financier who seeks to take control of a business or a company by acquiring large shareholdings or a controlling interest, often in a less than congenial manner. Hence, the term “hostile takeover”, which is a type of acquisition or merger made without the wishes or even the consent of the owners, shareholders, or management of the company being acquired. As the word “hostile” implies, this takeover is on the unfriendly side, and involves a lot of friction for everyone involved.

Fifth Wave (1993-2000)

The ‘90s welcomed the entry of the “mega deals”, where businesses had displayed greater greed for bigger economies of scale. The result was the creation of multinational companies and conglomerates which have become massive. After all, they were of the belief that the bigger they are, the more dominant they will be in the market.

As such, foreign investors began entering the US market (and vice versa). The type of acquisition or merger that involves foreign investors obtaining controlling interest in the acquired or merged company became known as “cross-border mergers”. They involve two countries with the rules or laws of the Home Country (where the acquiring company is) prevailing over the acquisition and control of the acquired or merged company in the Host Country. This was seen by many businesses as the perfect opportunity to enter markets in other countries and establish dominance on an international and even global scale.

If you look at the biggest M&A deals in history, many of them took place during the Fifth Wave. One example of a cross-border merger is UK’s Vodafone Air Touch purchase of Germany’s telephone and internet giant Mannesman in 1999. This wave didn’t last very long, either. It came in with a huge bang, but also went out fettered with scandals that involved the filing of bankruptcy of huge names such as WorldCom and Enron. The bursting of the dot-com bubble also sealed the deal.

Sixth Wave (2003-2008)

Globalization, private equity, and shareholder activism were the key features that characterize what took place during the Sixth Wave, which took place on the heels of the recovery period of the dotcom bubble.

Shareholders became more involved, leading to shareholder activism, where they displayed more influence and power over the actions and behavior of a corporation by the simple exercise of their ownership rights over the management. They do not directly run the company, but they do get to have a say on how the board of directors or the management run it.

Of course, this proactive stance taken by shareholders led them to take action in spreading ownership with the management and the investors of the company. This resulted to the influx of private equity.

Seventh Wave (2011-onwards)

Things didn't look too good for M&A during the next few years immediately following the end of the Sixth Wave. It did not help any when AOL Time Warner reported an almost US\$100 billion loss after just one year from the historic merger. The merger went on to become known as the "biggest mistake in corporate merger history". The year 2004 was a particularly harsh time for M&A, no thanks to the downturn that the economy took.

Still, all hope is not lost, as M&A activity seemed to start stirring in 2011, with fanning flames of hope that the Seventh Wave is about to start. In this Wave, the BRICS are taking to the forefront of M&A activity. BRICS stands for Brazil, Russia, India, China, and South Africa, five of the emerging national economies of the world. They are either developing countries or have just become newly industrialized, and they also happen to be five of the most populous countries.

One thing is for sure, however: we still see trends and patterns that originally arose during the earlier Waves. But Cross-border mergers and industrial consolidations will still flourish. Hostile takeovers, co-generic mergers, and concentric mergers will also remain to be prevalent in the economy. At present market aims for economies in scale along with providing the resources to the best of its utilization for the country where these can be flourished.

III. Current Scenario Of Mergers And Acquisitions In India

In earlier years, India was a highly regulated economy. To set-up an industry various licenses and registration under various enactments were required. The scope and mode of corporate restructuring were, therefore, very limited due to restrictive government policies and rigid regulatory framework. Consequent upon the raid of DCM Limited and Escorts Limited, the role of the financial institutions became quite important. In fact, Swaraj Paul's bids were a forerunner and constituted a 'watershed' in the corporate history of India. The Swaraj Paul

episode also gave rise to a whole new trend. Financially strong entrepreneurs made their presence felt as industrialists – Ram Prasad Goenka, M.R.Chabria, Sudarshan Birla, Srichand Hinduja, Vijay Mallya and Dhirubhai Ambani and were instrumental in corporate restructuring. Today, a restructuring wave is sweeping the corporate sector over the world, taking within its fold both big and small entities, comprising old economy businesses conglomerates and new economy companies and even the infrastructure and service sector. Mergers, amalgamations, acquisitions, consolidation and takeovers have become an integral part of new economic paradigm. Conglomerates are being formed to combine businesses and where synergies are not achieved, Demergers have become the order of the day. With the increasing competition and the economy, heading towards globalization, the corporate restructuring activities are expected to occur at a much larger scale than at any time in the past, and are stated to play a major role in achieving the competitive edge for India in international market place.

Future Outlook

India is becoming a highly sought after destination for M&A deals. This also means that it is now more vulnerable to the impulses and uncertainties of the global economic scenario. Considered to be the lifeblood of Indian business now, it needs the support and constancy to ensure that it remains progressive in the coming years.

India must concentrate upon refining the processes, increasing the simplicity in doing business abroad and the legalities involved in them. It is not wrong to say that the mergers and acquisitions in India and the system related to that are in the infant stage but this economy is huge enough to provide opportunities to foreign investments.

The key to success keeping fundamentals in place i.e. to bring into line acquisitions to the entire business plan and execute a vigorous integration process and take adequate awareness of all relevant regulatory norms.

IV. Cross-Border Mergers & Acquisitions:

In globalization period, Cross-border mergers and acquisitions (M&As) have increased radically over the last two decades. Cross-border mergers and acquisitions (M&As) is in increment trend in contemporary business environment. It is often specified that cross-border capital reallocation is partly the result of financial liberalization policies, government policies and regional agreements. Conventionally, developed countries, and in particular the developed countries of the European Union and the United States, have been the major

acquirer and target countries of M&As. During 2003-2005 periods, developed countries accounted for 85% of the USD 465 billion cross-border M&As, 47% and 23% of which respectively pertain to EU and US firms either as acquirer or as target countries (UNCTAD (2006). Cross border Mergers and Acquisitions deals between foreign corporations and domestic firms in the target country. The trend of increasing cross border M&A has become faster with the globalization of the world economy. Definitely, the 1990s were an important period for cross border M&A with a nearly 200 percent jump in the volume of such deals in the Asia Pacific region. This region was favoured for cross border M&A as most nations in this region were opening up their economies and liberalizing their policies, which provided the much needed boost to such deals. It has been observed in current scenario that Latin America and Africa are attracting more cross border M&A. This is due to a combination of political congestion in countries like India that are unable to decide on whether the country needs more foreign investment, the saturation of China, and the rapid emergence of Africa as an investment destination. Additionally, Latin America is being favoured mainly due to the rapid growth rates of the economies of the region.

Multinational enterprises undertake cross-border mergers and acquisitions for various reasons. The drivers are strategic responses by Multinational enterprises to protect and augment their global competitiveness by

Gaining access to strategic proprietary assets.

Gaining market power and dominance.

Achieving synergies in local/global operations and across industries.

Becoming larger, and then reaping the benefits of size in competition and negotiation.

Diversifying and spreading their risks wider.

Exploiting financial opportunities they may possess and others desire.

V. Conclusion And Recommendations

With the FDI strategies becoming more liberalized, Mergers, Acquisitions and other corporate restructuring strategies are warming up in India and are developing with a regularly expanding rhythm. They are not any more constrained to one specific sort of business. The rundown of past and expected mergers covers each size and assortment of business - mergers are on the expansion over the entire commercial center, giving stages to the little organizations being procured by greater ones.

CORPORATE CRIMES

Tanisha Goyal²⁸

I. Introduction

(A) What is corporate crime?

Corporate crimes allude to criminal practices by individuals that have the legal authority to have a word for a corporation or company. These can include presidents, managers, directors and chairman, shareholders and agent or anyone within a company that has the authority to act on behalf of the firm. In Criminology, corporate crime alludes to crimes perpetrated either by a corporation or by individuals following up in the interest of a corporation or different business entity. Some negative behaviour by corporations may not actually be criminal; laws vary between jurisdictions. The Australian criminologist John Braithwaite defined corporate crime as "the conduct of a corporation or employees acting on behalf of a corporation, which is proscribed and punishable by law. This definition stands the test of time as these crimes can be categorised into two sub-sects. In the first subset, the employees or the company commits the wrong and in the second subset, the company faces the wrong against itself.

The corporate environment of any company today, effects and includes many aspects. Every aspect here is indeed affected when this environment gets vitiated. The first parties that get affected are the consumers or stakeholders who are its main beneficiaries and are at maximum risk.

(B) Nature of Corporate Crime

Corporate crimes are considered to be general varieties of the White Collar Crime. Another significant aspect of corporate crime is that while the response of the criminal justice to the individual crime is prompt and aggressive it is lacking or mild to the corporate crime. At the same time oblivious societal response also tends to minimize the seriousness of the corporate crime.²⁹ Therefore corporate crime has acquired a new meaning which is required to be understood and addressed, if we are to control and combat this emerging form of criminality.

(C) White Collar Crimes and Corporate Crimes

Edwin Sutherland³⁰ introduced the terms 'White Collar Crime' 'Mainly Sutherland brought into focus the arena of criminal acts which are committed by the people in upper class of the

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²⁹ Brian K. Pyne Susannah Tapp, Corporate Crime, Oxford Bibliographies at www.oxfordbibliographies.com.

³⁰ Defined concept white collar crime.

society in contrast to the belief the criminal acts are only committed by persons belonging to lower strata of society. Since white collar crimes are linked to professional and elite class the corporate crime have a link to white collar crime. It benefits the corporation as a whole which may include investors and individuals in the high position in the company. White collar crime and corporate crimes are similar as both are involved with business. The difference is that white collar crime benefit individual and corporate crime benefit the corporation. Corporate crime as generally understood is committed through responsible executive of the corporation for the benefit of the corporation within the structure of corporate activities. In a way corporate crime is akin to white collar crime. The theory of white collar crime was propounded by Edwin Sutherland³¹ to state that it a crime committed by the person of respectability and of high social status in the course of his occupation.³² The two forms of crime overlap each other because they all happen within similar environments in which incentives are high for an individual or group to engage in bribery, money laundering, inside trading, forgery and embezzlement etc.

II. Types of corporate crime:

1. Environment Crime
2. Economic Crime
3. Corporate Bribery

1. **Environmental Crime:** The term 'corporate environmental crime', which may be defined as any environmental crime that has been committed by any corporate body The crime may occur because the business concerned is ignorant of its environmental obligations. But perhaps the most depressing cause is when corporate environmental crime is the result of a deliberate and intentional illegal act, a decision taken in the full knowledge that the act is illegal and will result in environmental crime. The biggest corporate environmental crime includes **Bhopal Gas Tragedy**³³. Being the worst industrial disaster it fulfils the need to concern about it. The brutality of the incident can be fairly stated by a "comment given by a 'Bhopal resident that Mothers didn't know their children had died, children didn't know their mothers had died and men didn't know their whole families has died' " simply after the unpleasant incident people said that "We were choking and our eyes were burning. We could

³¹ Sutherland, White Collar Crime, 1st Ed. 1949.

³² Id., p. 9.

³³ 1984.

barely see the road through the fog, and sirens were blaring."We didn't know which way to run. This is the most tragic environmental crime in the history.

2. **Economic Crime:** Economic crimes are crimes against property, involving the unlawful conversion of the ownership to one's own personal use and benefit. These crimes also involve fraud (cheque fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, securities fraud (including insider trading), criminal misappropriation, payment corruption, scams or confidence tricks. The most known economic scam is of **Harshad Mehta scam**³⁴. In this scam an Indian stockbroker, well known for his wealth and for having been charged with numerous crimes that took place in 1992. In this Mehta was alleged in the massive stock manipulation. Mehta was convicted by the Bombay High Court and Supreme Court of India for his part in scandal worth Rs. 50 Billion.

3. **Corporate Bribery:** This is a type of crime, where many a time's state also becomes a party. Huge monetary benefits exchange hands between private/public individuals to grab hold of a deal. Multinational corporations pay the governments to secure their business. The developing countries and the under developed countries are the biggest playgrounds for the companies to play with the rules of corporate bribery. There operates a huge nexus between the government and the companies where bribery is concerned. Nixon's Resignation³⁵ for the Watergate scandal brought the issue in spotlight and after that many corporations and public individuals have been tried for this offence.

III. Indian Scenario

There are a number of corporate crimes that have come into the light nowadays. One of the major havoc that is created in present times is because of the mysterious disappearance of corporations. Of the 5,651 companies listed on Bombay Stock exchange, 2750 have vanished. It means that one out of two companies that come to the stock exchange to raise crores of rupees from investor's loot and run away. We have Securities Exchange Board of India, Reserve Bank of India and Department of Companies Affairs to monitor the stock exchange transactions but none has documented the whereabouts of these Many of the promoters and merchant bankers who are responsible for these are roaming without punishment. There is a serious need to battle this shrewdness of corporate crime as has been belatedly perceived in numerous jurisdictions; corporate crime causes far more noteworthy harm than fierce street crimes. It, therefore, deserves more attention from the law enforcement community.

³⁴ 1954

³⁵ 1973.

According to the FBI's 2001 report, the United States reportedly lost USD17.2 billion from robbery, burglary, theft and motor-vehicle theft while the Enron fiasco alone cost investors, pensioners and The United Kingdom estimates that in 2004, £78 million (USD139 million) was lost to healthcare fraud, a reduction from £171 million (USD305 million) in 1999. In 2004, Transparency International estimated that at least USD400 billion was lost per year worldwide due to bribery in government procurement alone. In any case, because of the shortage of combined and organized insights on corporate crime, it is difficult to decide the general expense of corporate crime to national economies

IV. Typical Features of Corporate Crime

Other than those mentioned above there are four more corporate crimes which shows how those crimes are related to corporate crime. These are:

1. White collar crime
2. Occupational crime
3. State corporate crime
4. Organised crime

1. **White Collar Crime:** It is a small part of a corporate crime which is defined by Edwin Sutherland. White-collar crime refers to financially motivated nonviolent crime committed by business and government professionals. White collar crimes cover a wide range of activities, but generally, the crimes are committed by people who are involved in otherwise lawful businesses. The most common types of white collar crime include fraud, insider trading, and bribery. White collar crimes can often be difficult to prosecute, as the perpetrators take sophisticated steps to ensure their illegal activities are difficult to detect. Example of white collar crime includes Ponzi scheme. The term white collar crime covers a wide array of crimes, but they all involve crimes committed through deceit for the purpose of gaining money or other assets. The most well-known kinds of crime incorporate misrepresentation, insider exchanging, and bribery. White collar crimes can often be difficult to prosecute, as the perpetrators take sophisticated steps to ensure their illegal activities are difficult to detect. Even small consumers were spurred to take extra care in trusting their financial wellbeing to another, whether a small time advisor, or huge corporations.

2. Occupational Crime: Individuals or small groups in connection with their jobs commit an occupational crime. Corporate crimes are committed by collectivises or aggregate of the discreet individual on behalf of the corporations. As such individuals or groups commit occupational or elite crimes for their own purpose or enrichment, rather than for enrichment of the organisation on a whole.³⁶ Occupational crimes can be labelled as crime against the organization. As such corporations become victims of crime when they suffer a loss as a result of an offence committed by anyone including employees and managers. In the criminological context the occupational crime are linked to the individualistic approach to attribute the criminality. Corporate crime may be attributed to system failure. The second kind of crime is defined as that which is committed 'in the course of activity in a legitimate occupation' and is meant to apply to offences involving persons at all levels of the social structure.³⁷

3. State Corporate Crime: State corporate crime is a concept which refers to crime which is committed in relationship with policies of the State and the policies and practices of commercial corporations.³⁸ All States rely on business to provide an economic base consistent with each government's political policies. Without supportive policies economic activity, businesses will not be profitable and will not be able to provide the economic support that the State desires. In some cases the symbiosis may lead to crime. There acts include all 'socially injurious acts' and not merely those that are defined by the local jurisdiction as crime.³⁹ Harper and Israel commenced that 'societies create crime because they construct the rules whose transgression constitutes crime. The State is a major player in this process.⁴⁰

4. Organised Crime: The organized crime generally involve illegal street activities such as kidnapping or cross border operations like drugs trafficking whereas corporate crime involves 'clean jobs' like manipulation of accounts, insider trading, misappropriation of funds, tax evasion etc. There can be money connection between corporate crime and organized crime. Goroupa⁴¹ brought out the difference between corporate crime and organized crime by

³⁶ Hansen, L.L., *Journal of Financial Crime*, 16 (1) (2009), 28-40.

³⁷ Vijay Kumar Singh, *Corporate Power to Corporate Crimes: Understanding Corporate Criminal Liability in India*, Satyam Law International (2013) at p. 147 quoted Clinard, Marshal B. and Richard Quinney, *Criminal Behavior Systems: A Typology*, 2nd Ed. (1973).

³⁸ The term was coined by Kramer and Michalowski (1950) and redefined by Autette and Michalowski (1993) see en.wikipedia.org/wiki/state-corporate-crime.

³⁹ www.en.wikipedia.org/wiki/state_corporate_crime.

⁴⁰ Harper, Ainsley and Israel Mark, "The Killing of the Fly: State Corporate Victimization in Papua, New Guinea" (1999).

⁴¹ Goroupa N., *Journal of Economic Behavior and Organisation*, 63 (2007), 461-474.

saying that organized crime is carried out by illegal organization with no legal status. Criminal market is their primary market and legitimate markets are secondary markets. Whereas corporate crime is committed by legal entities with legal status, the legitimate market is their primary market and criminal market their secondary market.

V.Examples of Corporate Crime

Some of the most important **scams and scandals** which are listed under corporate crime are mentioned below:

1. One of the most awaited and well knows scam which happened recently is the **PUNJAB NATIONAL BANK SCAM.:** Punjab National Bank⁴² Fraud Case relates to alleged fraudulent⁴³ Letter of Undertaking worth ₹11,600 crore (USD\$ 1.77 billion dollars)that took place at its branch in Brady House, Mumbai, making Punjab National Bank potentially liable for the amount. The fraudulent transactions are allegedly linked to designer and jeweller Nirav Modi of [fire star diamonds], against whom a complaint has been filed with the Central Bureau of Investigation. The transactions were first noticed by a new employee in the bank. Nirav Modi, Ami Modi, Neeshal Modi, Mehul C Choksi committed this scam.

2. Abhishek Verma Arms deals scandal⁴⁴: Defence scandal caused by an American attorney who turned whistleblower⁴⁵ after hacking into emails and documents retained on the US based servers of arms dealer Abhishek Verma who is globally known as 'Lord of War'⁴⁶and his wife former Miss Universe Romania Anca Verma's global weapons companies SIG SAUER and GANTON. Leaked documents were sent to Indian politicians Arvind Kejriwal & Prashant Bhushan who released these to the press as a result CBI and Enforcement Directorate arrested Abhishek and his wife Anca in multiple cases of defence sector purchases related corruption & money laundering aggregating to US\$12 billion (₹80,000 crores). Presently, Abhishek and his wife Anca are incarcerated in Tihar Jail Delhi awaiting trial.

3. **2G case:** The **2G spectrum**⁴⁷ case was an alleged scam by the politicians and government officials under the United Progressive Alliance (Congress) coalition government

⁴² 2018

⁴³ "The Nirav Modi Case: How The \$1.8 Billion Fraud Detected At PNB Unfolded". Bloomberg Quint.

⁴⁴ 2012.

⁴⁵ "American Whistleblower who exposed Abhishek Verma and Anca Verma's defence deals and corruption."

⁴⁶ "Swiss Magazine: Abhishek Verma known as Lord of War".

⁴⁷ 2008.

in India. The Union Government of that time was accused of undercharging mobile telephone companies for frequency allocation licenses, which they used to create 2G spectrum subscriptions for cell phones. The Government chose NM Rothschild & Sons to design a first-of-its-kind e-auction mechanism in the world, a US\$2.27 billion landmark deal.

4. **Hawala scandal**: The **Hawala scandal**⁴⁸ or **Hawala scam** was an Indian political scandal involving payments allegedly sent by politicians (black money) through four Hawala brokers, the Jain brothers. It was a US\$18 million bribery scandal that implicated some of the country's leading politicians. In 1991, an arrest linked to militants in Kashmir led to a raid on Hawala brokers, revealing evidence of large-scale payments to national politicians. Those accused included L. K. Advani, V. C. Shukla, P. Shiv Shankar, Sharad Yadav, Balram Jakhar, and Madan Lal Khurana.

5. **Saradha Chit Fund**: The **Saradha Group financial scandal**⁴⁹ was a major financial scam and alleged political scandal caused by the collapse of a Ponzi scheme run by Saradha Group, a consortium of over 200 private companies that was believed to be running collective investment schemes popularly but incorrectly referred to as chit funds in Eastern India.⁵⁰ The group collected around ₹200 to 300 billion (US\$4–6 billion) from over 1.7 million depositors⁵¹ before it collapsed in April 2013. In the aftermath of the scandal, the State Government of West Bengal where the Saradha Group and most of its investors were based instituted an inquiry commission to investigate the collapse. The State government also set up a fund of ₹5 billion (US\$77 million) to ensure that low-income investors were not bankrupted. The central government through the Income Tax Department and Enforcement Directorate launched a multi-agency probe to investigate the Saradha scam and similar Ponzi schemes.⁵² In May 2014, the Supreme Court of India, inter-state ramifications, possible international money laundering, serious regulatory failures and alleged political nexus, transferred all investigations into the Saradha scam and other Ponzi schemes to the Central Bureau of Investigation (CBI), India's federal investigative agency. Many prominent personalities were arrested for their involvement in the scam including two Members of Parliament (MP) - Kunal Ghosh and Srinjoy Bose, former West Bengal Director General of

⁴⁸ 1998.

⁴⁹ 2013.

⁵⁰ PTI. "More Saradha entities under SEBI scanner". The Hindu. Retrieved 25 April 2013.

⁵¹ Dutta, Romita (20 June 2013). "Saradha raised deposits from 1.7 mn people, probe finds". LiveMint. Retrieved 19 August 2013.

⁵² Dasgupta, Mithun (26 April 2013). "60 firms like Saradha Group operating in Bengal". The New Indian Express. Retrieved 29 April 2013.

Police Rajat Majumdar, a top football club official Debabrata Sarkar, Sports and Transport minister in the – Madan Mitra.

6. Jeep scandal case: The **jeep scandal**⁵³ was first major corruption case in independent India.⁵⁴ V.K. Krishna Menon, the then Indian high commissioner to Britain, ignored protocols and signed a Rs 80 lakh contract for the purchase of army jeeps with a foreign firm.⁵⁵ V. K. Krishna Menon, then the Indian high commissioner to Britain, bypassed protocol to sign a deal worth Rs 80 lakh with a foreign firm for the purchase of 200 army jeeps.⁵⁶ While most of the money was paid upfront, just 155 jeeps landed, the then Prime Minister Nehru forced the government to accept them.⁵⁷ Govind Ballabh Pant the then Home Minister and the then Government of Indian National Congress announced on 30 September 1955 that the Jeep scandal case was closed for judicial inquiry ignoring suggestion by the Inquiry Committee led by Ananthasayanam Ayyangar.⁵⁸ He declared that "as far as Government was concerned it has made up its mind to close the matter. If the opposition was not satisfied they can make it an election issue". Soon after on 3 February 1956 Krishna Menon was inducted into the Nehru cabinet as minister without portfolio.⁵⁹ Later Krishna Menon became Prime Minister Jawaharlal Nehru's trusted ally and the defence minister.

7. Lalit Modi money laundering scam:⁶⁰ SINCE 2010, Lalit Modi has been under investigation by the Directorate of Enforcement (DoE) primarily on charges relating to Foreign Exchange Management Act (FEMA) violations. These relate to four cases—the World Sports Group (WSG) contract, transfer of funds to South Africa for the Indian Premier League (IPL) Season II held in 2009, guarantee for IPL players in 2008, and consultancy payments abroad. The FEMA violations cited by the DoE run to several crores of rupees. According to the DoE cases, the total amount involved is about Rs.1,975 crore. The DoE sent 15 show-cause notices between 2013 and 2015 but Lalit Modi did not respond to any of them. There is yet another money-laundering case against Lalit Modi on the basis of the first information report filed in Chennai by the former Board of Control for Cricket in India (BCCI) chief, N. Srinivasan. The biggest of these cases in terms of money involved is the one

⁵³ 1948.

⁵⁴ "On Your Marks". Outlook. India. 1 February 2010.

⁵⁵ Dipankar Paul (30 April 2011). "The Republic of Scams: Jeep purchase (1948)". MSN. Retrieved 20 December 2011.

⁵⁶ "Media support crusade against corruption". The Hindu. India. 18 April 2011.

⁵⁷ "India bruised and shrunk". Times of India. India. 6 February 2008.

⁵⁸ Abdul Gafoor Abdul Majeed Noorani (1970). India's Constitution and politics. Jaico. p. 174.

⁵⁹ "Worst political scandals of independent India". India TV News. Retrieved 15 January 2013.

⁶⁰ 2015.

relating to the transfer of funds to South Africa. The FEMA notice on this cites violations to the tune of Rs.1,350 crore. This essentially relates to the absence of the Reserve Bank of India's (RBI) approval while transferring the funds to South Africa and not remitting foreign exchange earnings back to India from the proceeds of the IPL second edition. The second biggest case in terms of money involved is the WSG contract, where there is a FEMA notice of Rs.425 crore. This is related to the contract Lalit Modi, as IPL commissioner, gave to Mauritius-based WSG at 3 a.m. on March 15, 2009. He cancelled the telecast rights (in the subcontinent) which were originally with Sony's subsidiary Multi Screen Media (MSM) before granting the new contract. The other two cases involving sums of Rs.160 crore and Rs.88.5 crore are related to the guarantee for IPL players in the game's first edition in 2008 and consultancy payments abroad respectively. The ED subsequently invoked PMLA along with sections 420 (cheating) and 120-B (criminal conspiracy) of IPC to probe if BCCI-IPL and the exchequer had been cheated in the award of telecast rights for the T-20 tournament in 2009.

8. **Wakf Board:**⁶¹ The Karnataka Wakf Board Land Scam concerns the alleged misappropriation of ₹2,000 billion (US\$31 billion) in Indian property funds, made public by a report submitted by the Karnataka State Minorities Commission in 2012. In March 2012, Anwar Maniappady, the Chairman of the Karnataka State Minorities Commission submitted a report to the chief minister of Karnataka state, D.V. Sadananda Gowda, which alleged that 27,000 acres of land controlled by the Karnataka Wakf Board had either been misappropriated or allocated illegally. The value of the land has been estimated at Rs. 2 trillion (US\$39 billion). The Karnataka Wakf Board is a Muslim charitable trust that manages and oversees property that has typically been donated for the use of the poor. The report commissioned by Maniappady alleges that the Karnataka Wakf Board had allowed almost 50% of its land to be misappropriated by politicians and board members, in collusion with the real estate mafia for a fraction of its market value. Maniappady has recommended that the government established a committee to investigate corrupt activities on the Wakf Board and appoint a task force to recover properties that have been illegally sold by the Wakf Board. The Income Tax Department has already initiated a probe into this.

VI. Conclusion

Corporate crime is referred to as the conduct of a corporation or employees acting on behalf of a corporation which is prescribed or punishable in law. Thus corporate crimes are

⁶¹ 2012.

committed for corporate gain or to bring harm to any other person or body corporate. Such crimes are committed in a quiet environment. These are also considered to be general varieties of white-collar crimes. Corporate crimes are socially injurious or blameworthy acts which cause financial, physical or environmental harm or harm caused to the workers and the general public. It is believed that corporate criminal behaviour is also a result of the learning process from the working of the corporations. This behaviour is also attributed to major social and moral change. In a pursuit to meet targets or goals, there could be the adoption of unlawful means. Lack of adequate control could also promote criminal behaviour. In the corporate control, there is criminality of the corporation itself and also the liability of the responsible persons which can be vicariously fixed. Law in this repeat needs to be more clearly defined. Furthermore, why are these crimes committed by these individuals that seem to make large sums of money, but finding themselves wanting more, but overall why they do this to consumers who legitimately turn to them in an effort to better their own lives and of their families by investing or saving with that business that could be seen as a form of trust that is thought of was there, but the business is actually being deceitful, but is performing deals that are there on paper, but are not actually finding any form of value. The evidence of findings that these crimes are committed is known as the white-collar crimes, as no one is actually physically injured, but there is some evidence of mental damage to the victim of this business that thought they were in a trust binding relationship. In the end, I hope that I understood this question as well as I think I did, but in the end, knowing where and how to find the victim and criminal of a business or white-collar crime is the development of learning the criminal justice systems.

CORPORATE DIGITAL RESPONSIBILITY- A CATALYST FOR BUSINESS SUSTAINABILITY

Dr. Aparajita Bhatt⁶²

The need for responsible business and the need for sustainability go hand in hand. To achieve corporate sustainability, the need for responsible business is more critical than ever. In the present time, digitization has raised new concerns for the companies about their social responsibility. Corporate Digital Responsibility is a new and extended version of the corporate social responsibility. This new responsibility of the companies is about being digitally ethical, about engaging in technology and yet providing services to the citizens in a manner that is fundamentally creating an environment of trust and confidence and leading us towards a positive future. The philosophy underlying this concept manifests that businesses must show the capability as well as the efficiency to protect the data that is entrusted to them by their clients, customers or investors. Failing to do so would be a big deterrent in achieving the objective of corporate sustainability in the future age of digitization. Leading companies around the globe have conceived the idea of their digital responsibility and are reshaping the concept of CSR. It is emerging as a domineering and forceful factor for ensuring corporate sustainability in the coming times. With this background, the paper highlights the role of Corporate Digital Responsibility (CDR) in achieving corporate sustainability and analyses the strategies of CDR for growth of the companies as well as for boosting consumer confidence that act as a booster to the growth of the companies in the digital world. The paper argues that how CDR principles must necessarily be adopted by the companies for sustainability in the long run. The paper also looks into various challenges which the companies face in operationalizing CDR mechanisms and finally discusses the present legal provisions which may possibly be applicable to the newly evolved concept of CDR. In the paper an attempt has been made to establish that CDR enhances consumers' confidence and contributes in building conducive environment.

Keywords: Corporate Digital Responsibility, Corporate Social Responsibility, corporate sustainability

Hypothesis: As sustainability of business is also dependent on the environment of mutual trust and confidence in the corporate sector, companies adopting CDR practices are likely to be more established and stable in context of their business sustainability in the future.

I. Introduction

The famous quote that “market knows no morality”⁶³ is perilous for the health of the economy and its sustainability. For businesses are supposed to possess the core qualities of trust, transparency, confidence and honesty. In the words of Courtney Pratt⁶⁴ “Business has a responsibility beyond its basic responsibility to its shareholders; a responsibility to a broader constituency that includes its key stakeholders: customers, employee, NGOs, government - the people of the communities in which it operates.” Corporate digital responsibility or digital corporate social responsibility is a build-on of corporate social responsibility and requires the same level of commitment from the companies and businesses which is there in Corporate Social Responsibility. If CSR has been considered as a form of giving back to the society,

⁶² Dr. Aparajita Bhatt is working as Assistant Professor at National Law University, Delhi

⁶³ <https://jessicahof.blog/2016/07/18/market-and-morality/comment-page-1/>

⁶⁴ Former CEO, Toronto Hydro, available at <https://www.csr-company.com/resources-corner/words/memorable-quotes-ethics-csr-and-sustainability>

CDR would essentially be giving back through the digital medium in the digital world. “Corporate Digital Responsibility is about protecting people’s rights around data and ensuring that trust is maintained.”⁶⁵ The paper starts with a hypothesis that for better corporate sustainability and increasing customer confidence, companies and business houses have to actively undertake corporate digital responsibility. CDR, which is an extension of CSR is the future, for if the companies do not honestly commit to it, their survival in the long run shall be challenged by those companies which would engage in CDR mechanisms. Some companies like Atos also find corporate digital responsibility as a solution to bridge the digital divide. Through CDR, companies can play a big role in addressing the digital distress and distrust of the common masses.⁶⁶ CDR aims to provide a better, effective and trusted connect between the digital technology and society. The responsibility to connect both these is to be borne by the corporate sector. CDR is more of an ideology which rests upon the belief to protect people’s data, to stretch technological commitments towards people’s welfare in the online world and to follow the underlying basic principles of doing business—transparency, accountability and upkeeping the trust of people. CDR is all about following business ethics in the online world and protecting the people against any unethical practices by the companies using technology. Financial Times define Corporate Digital Responsibility in the following words: “CSR is a business approach that contributes to sustainable development by delivering economic, social and environmental benefit for all stakeholders.”⁶⁷ Being digitally responsible means “the responsibility to use technology in a way that doesn’t harm others and to be aware of the impact that technology has on our health, environment and society at large.”⁶⁸ CDR emphasizes on the corporate houses’ responsibility to use technology in a way that doesn’t harm others and to be aware of the impact that technology has on different aspects of our life.

II. CDR and Sustainability- Establishing Relationship

The relationship between CDR and sustainability is based on the fundamental premise drawn from the definition of sustainable development given by World Council for Economic Development. WCED defines sustainability as the “development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁶⁹

⁶⁵ <https://atos.net/en/blog/closing-the-digital-divide-through-corporate-digital-responsibility>

⁶⁶ <https://atos.net/en/blog/corporate-digital-responsibility-principles-guide-progress>

⁶⁷ <https://digitalmindfulness.net/corporate-digital-responsibility/>

⁶⁸ <http://www.digitalresponsibility.org/digital-prviacy/>

⁶⁹ <http://lexicon.ft.com/Term?term=business-sustainability>

CDR is emerging as a new face of corporate sustainability at both micro and macro levels. It is the new best practice for fostering business sustainability. Companies, by committing to its customers and investors to upkeep their confidential and sensitive personal data, are likely to cultivate a new norm of business ethics which would ultimately lead to business sustainability. Customers are always dreadful of insecure online transactions, of sharing their sensitive personal information, of sharing their tastes, preferences and interests in the online world. Even those who are willing to share their choices, tastes, preferences and interests believe that the information provided by them shall not be leaked or misused by the companies. In the digitalised world, a trusted and safe environment for the customers where they can transact without any fear of identity theft or impersonation, where they can safely share their data or choices and preferences without any fear of its leak or misuse forms the bedrock of business sustainability. Digital world offers all possibilities of unethical business practices by the use of high-end technology. If that is not checked, businesses would not be able to achieve sustainability as such practices are drastically hinder the obligation of companies to pay back to the society. Nuala O. Connor, the President and CEO of Centre for Democracy and Technology believes that “companies should view protecting their customers’ personal information as their digital corporate social responsibility (CSR). As with all CSR efforts, this is good for society and good for business.”⁷⁰

Corporate Digital Responsibility, being a new build on to Corporate Social Responsibility, has been perceived by companies in different ways. Few corporate houses perceive CDR as a tool to ensure digital safety in the present times for their employees and the next generation, so that they can acquire the required technological skills.⁷¹ While some others perceive it as a tool for ensuring a secured digital environment for the customers and investors. It is the later perception that applies to CDR. CDR requires the companies to act towards ensuring that new technology and customers’ data is handled with utmost care and companies use reasonable security procedures and mechanisms to keep their customers’ data safe.

Businesses today are looking forward to gain from the opportunities in the digital era. Hence, they have to necessarily perform their part of responsibility first and follow a strategy to optimally utilize the sustainability opportunities in the digital world. According to Thomas

⁷⁰ <https://www.uschamberfoundation.org/article/ushering-digital-corporate-social-responsibility>, *The essay is part of a series of articles relating to the Internet of Everything project. Read more at uschamberfoundation.org/ioe.*

⁷¹ The Rise of Corporate Digital Responsibility, available at www.i-cio.com/management/best-practice/item/the-rise-of-corporate-digital-responsibility

Tschersich⁷², if the companies that are influenced by digitization, fail to apply digital responsibility strategy, they will lose in the long run.⁷³

III. Need for Corporate Digital Responsibility

Corporate digital responsibility is emerging as new facet of business sustainability in the digital world. The rise of corporate digital responsibility is seen as a new façade of business sustainability in the future. There has been a change of trend with respect to data handling and data sharing in last few years. As a consequence, the corporate sector is entering into a new domain of its social responsibility in the digitalized world. The change in the global trend indicate the concern towards the way companies handle the data of others, the increasing crisis of distrust in information security, the changing rules of data collection by companies, the misuse or wrongful use of data by companies, the raising of concern by customers' about their privacy and digital security, the role of government and business sector (state and non-state actors) in creating a safe digital environment. There are concerns raised towards the safety mechanisms and reasonable security practices adopted by companies to deal and handle with the customers' data. The report by many companies including Accenture identifies several trends affecting the outlook of business using personal data. This changing trend and raising concerns globally require the companies to emerge as a fundamental channel of digital security and actively engage in the policy making towards the digital responsibility.

The idea of use of information technology or digital technology to improve customer satisfaction has been discussed long back by David Salb, Hershey H. Friedman and Linda Weiser Friedman (2011)⁷⁴. They have explained that internet has become a tool for relationship marketing. Companies have a practice of creating online communities for their products and services and in the process they not only provide information about their products but also collect information from their customers regarding their choices and preferences.

Necessary to mention, corporations in Europe have a broader perspective of CDR. They have come to believe that CDR is much beyond data and its digitization. It is infusing and

⁷² Head of Group Security Services Deutsche Telekom AG

⁷³ <https://www.telekom.com/en/corporate-responsibility/data-protection-data-security/archiv-datenschutznews/news/why-companies-need-a-digital-responsibility-strategy-497422>

⁷⁴Salb, D., Friedman, H. H., Friedman, L.W. (2011). *The role of information technology in fulfilling the promise of corporate social responsibility*. *Computer and Information Science*, 4(4), 2-9, July 2011

deploying the technological solution in better way in the corporate way of life. To them Corporate Digital Responsibility is Corporate Social Responsibility.⁷⁵

IV. CDR Strategy of Companies- Factors

Corporate Digital Responsibility is a voluntary business commitment by companies to its customers and employees that it will not make any misuse of technology to harm anyone and to make business sustainable by using technology in ways which are not illegal and unethical. CDR in other words, is simply upkeeping digital ethics by the companies. According to the European Business Network for CSR, the implications of CDR on the businesses and its sustainability include “building a fully digitalized and agile workforce of the future, increasing the employer- employee engagement and setting the industry standard for CDR.”⁷⁶

V. Expectations from companies

CDR as a concept is increasingly being adopted by many companies. Those companies which have acknowledged CDR as an important channel of business sustainability have proposed broad parameters to be followed by the companies taking up CDR actively. In the world of digitalization, companies may exhibit their digital responsibilities by adopting the following mechanisms as a part of their CDR:

1. **Acknowledging the digital identity of its customers-** Acknowledging the digital identity of the customers and providing them with a secure system where they can transact without the fear of their identity being misused by anyone is the most important requirement towards which companies must adopt strong mechanisms. A robust digital identity system creates a congenial environment enabling people to establish their identity without the need of showing any document, to log into the websites securely without passwords and to confirm the identity of people they transact with online.⁷⁷ Companies are expected to create or develop a secure mechanism where an operative balance between security, privacy and convenience can be hit.⁷⁸

2. **Following transparency, openness and honesty in business transactions with its customers-** Transparency, openness and honesty are sine qua non to business ethics. Companies use personal data of their employees and customers. Therefore, it is required that

⁷⁵ https://www.csreurope.org/interview-tommi-raivio-corporate-digital-responsibility-not-just-about-data#.XTUy_egzY2w

⁷⁶ <https://www.csreurope.org/corporate-digital-responsibility-cdr>

⁷⁷ <https://www.thenewsminute.com/article/why-secure-digital-identity-system-needed-here-are-benefits-86486>

⁷⁸ *ibid*

they must adopt utmost transparency, openness and honesty in their business transactions and adopt best practices to keep the data handled by them safe and secure. This way they can build trust and grow their business at the same time.

3. Following reasonable security practices to keep the sensitive personal data of its customers safe- Following reasonable security practices and adopting similar mechanisms to keep the sensitive personal data is also a legislative mandate under many jurisdictions. In India, the need to observe reasonable security practices while handling and dealing with someone's sensitive personal data has been laid down under the Information Technology Act 2000.⁷⁹

4. Refrain from sharing or leaking the data without proper authority by the owner of the data- Another requirement of delivering digital responsibility and respecting others' digital identity is to refrain from sharing or leaking the employees or customers' data without seeking their proper consent. The Information Technology Act 2000 imposes civil as well as criminal liability on the person including a company for negligent or intentional leaking of data for undue wrongful gain.

5. Take due permission from the customer regarding its collection, usage, processing, sharing, storage and retention- The GDPR and the European Directives lay down the detailed procedure for the collection, usage, processing, sharing, storage and retention of data by the data processor and data controller. Similar provisions find place in the Data Protection Bill 2018 in India also. The companies as a part of their digital responsibility, striving towards better business sustainability must ensure that they do not use the data in any manner they like without taking due permissions of the data owners.

VI. Principles of CDR

Since last few years, research and survey by many MNCs is being done to find out whether corporate sector is ready to undertake this new digital responsibility. According to a survey done by Accenture, "77 percent of businesses have agreed to the responsible and secure use of data has become a strategic, board level issue."⁸⁰ Accenture has given five basic principles for the companies to undertake their digital responsibility⁸¹:

⁷⁹ Sec 43-A, Information Technology Act 2000

⁸⁰ <https://www.accenture.com/in-en/insight-outlook-doing-well-doing-good>

⁸¹ Tim Cooper, Jade Siu, Kuangyi Wei, Corporate Digital Responsibility-Doing Well by Doing Good, available at: <https://www.accenture.com/in-en/insight-outlook-doing-well-doing-good>

1. **Digital Governance-** Digital governance or stewardship by the companies to ensure that their customers' data is being handled properly, taken care of and is being processed according to the legal framework laid down for each country. In India, Sec 43A of the IT Act 2000 mandates the body corporates to undertake reasonable security practices for keeping their customers' data or information secure. In case the body corporate is negligent in observing reasonable security practices, it shall be fined with a penalty to pay back the damages to the affected party. Thus, in the digital world, the companies will have to scrupulously practice digital stewardship.

A research conducted by the Accenture Institute for High Performance included a survey of nearly 600 global business professionals across 80 industry groups. Nearly 90 percent of the respondents said that digital stewardship is the most important principle in terms of improving their business reputation and being responsible managers of personal data. About 74 percent of the respondents said that their businesses are acting on this principle.

2. **Digital transparency-** It is the most important factor in building trust and confidence among the online customer. Better managerial and technological strategies are required for achieving greater transparency in digital transactions. Promising information transparency to the data owners is the fundamental obligation of the corporates towards performance of their CDR. Businesses striving to make and develop their brand necessarily have to be more accountable, open and transparent in the manner it functions, especially in the digital space. As it is quintessential to a sustainable business and consumer protection, the GDPR in Europe as well as the provisions of the Personal Data Provision Bill 2018 in India ensure digital transparency to the data principal at all levels of data collections and data preprocessing.

3. **Digital empowerment-** Digital empowerment is digital enablement or digital authorization in the control of the customers. The customers or investors must have the entire control over the data or information provided by them. Such digital empowerment would help them to make better choices and informed decisions regarding matters that interests them.

4. **Digital equity-** Digital equity or digital justness is an extension of digital empowerment. The companies should be ready and willing to share the benefits earned by them through the customers' data with them. It is defined as "equal access and opportunity to digital tools, resources, and services to increase digital knowledge, awareness, and skills."⁸² In order to achieve an egalitarian society and community, it is important that all the members

⁸² Davis, T.; Fuller, M.; Jackson, S.; Pittman, J.; Sweet, J., A National Consideration of Digital Equity, available at <https://eric.ed.gov/?id=ED497214>

of the community get equal access to the digital platform for equal and full participation in the digitalised world. Digital equity is imperative for all aspects of life whether cultural, social, legal or multidimensional.

5. Digital embodiment – The objective of digital embodiment or inclusiveness is to multiply the impact of their digital assets for social good. The data collected by companies for commercial purpose is required to be shared with research organisations with the consent of the data owners or data principals. Of course, this needs to be subject to the procedure given under the regulatory framework and in the interest of the data principal. Such as data collected by a baby products company may be shared with the pediatric department of hospitals for more R&D about the child health.

VII. UNSDG focus on CDR

The United Nations Sustainable Development Goals have opened a new area for companies to reinforce their commitment for sustainability. Interestingly, the United Nations Sustainable Development Goals have signified a need to focus on digital responsibilities of the companies in order to achieve its goal towards sustainable development. SDG 16 is promotion of peace, Justice and strong institutions. Companies like Worldline adopt techniques such as E-banking or Acquiring Processing solutions to decrease fraud and corruption risks and to prevent cyber threats, thus contributing to the achievement of the SDG 16.⁸³ In literal sense, Worldline is involved in sustainable business by way of climate action (SDG 13) through its Cloud, Online and Digitization services. It delivers environmental benefits including paper use reduction, travel minimization to access services or energy consumption optimization.

VIII. Legal Provisions

The customers, employees, investors and other stakeholders in a business expect it to be organized and show the capability as well as efficiency to protect the data that is entrusted to them. The nations across the world are thriving and dedicatedly committed to grow their businesses in safe digital environment. It is believed that providing safe digital environment to the customers and investors, would provide better stability for businesses. Companies' Digital Responsibility, although a new origin in the sector, already has a legal recourse to follow. In 2018, the UK announced its digital charter as a response to the opportunities and

⁸³ https://worldline.com/en/home/newsroom/press-releases-general/2017/pr-2017_10_24_01.html

challenges arising from new technologies.⁸⁴ If the businesses fail to do so, then there are legal provisions to take care of such a situation under the Information Technology Act 2000.

The EU General Data Protection Regulations, enforced in May 2018, applies to companies or entities which processes personal data as part of the activities of one of its branches established in the EU.⁸⁵ Interestingly, the GDPR makes all such companies accountable which process personal data of individuals in Europe, regardless of the fact where it is incorporated. Privacy and confidentiality have been greatly emphasized in the GDPR and it has reshaped the corporate responsibility of companies. Companies such as Symantec have come to consider data privacy as one of the pillars of corporate responsibility.⁸⁶ These corporate have come to realize that data privacy, data collection and data handling must be done in an appropriate manner and that there are adequate safeguards to ensure the same.

In India, the Companies Act 2013 does not directly lay emphasis on CDR, however the IT Act 2000 lays down a strict liability on the body corporates to follow reasonable security practices and procedures to safeguard sensitive personal information which they are handling or dealing with.⁸⁷ Sensitive personal information has been explained in detail in the Information Technology (Reasonable Security Practices & Procedures and Sensitive Personal Data & Information) Rules 2011⁸⁸.

Nations are witnessing a gradual transition from the traditional world to the world of AI, IoT and blockchain technology. Thus, it is quintessential for all the actors- state and non-state, especially the corporate sector to consider the issue of digital ethics as their primary responsibility.

However, the Information Technology Act in India is not considered to sufficiently address the issues related to the companies' digital responsibility. Recognizing the need to strengthen the legal framework related to this, India is soon to get its Personal Data Protection Act.⁸⁹ The Bill, presently pending to be passed has been drafted with an aim of developing a robust mechanism of data collection and data processing by individuals, companies and the

⁸⁴ <https://www.gov.uk/government/publications/digital-charter>

⁸⁵ https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/who-does-data-protection-law-apply_en

⁸⁶ <https://www.symantec.com/blogs/corporate-responsibility/crandgdpr>

⁸⁷ Sec 43-A Information Technology Act 2000

⁸⁸ Rule 3 of the Information Technology (Reasonable Security Practices & Procedures and Sensitive Personal Data & Information) Rules 2011

⁸⁹ Personal Data Protection Act 2018

government (data fiduciary). It sets up the Data Protection Authority of India to supervise and monitor the data fiduciaries.

IX. The New Way Forward for Business Sustainability- Rethinking Corporate Responsibility

The wave of digitisation has already shown its massive influence on the world. The need for survival and sustenance for the corporate or business sector necessitates the adopting and adaptation to new strategies by the companies. “Corporate Digital Responsibility is about protecting people’s rights’ around data (in line with regulation), about ensuring that trust is maintained because they see that products and services save them personal time, help them with their health and ageing, and protect them from less acceptable or threatening uses of those same technologies.”⁹⁰ The term digital enfolds within itself much more than mere data. It entails within itself the ethical and the right way of handling the data on different digital platforms. CDR not only envisions safeguarding data and privacy by the companies, it also shares the responsibility with the state to minimise the digital divide, to facilitate greater and better digital experience for individuals by creating an environment of trust and confidence. The new era casts a duty upon the companies to imbibe the principles of digital responsibility for their business sustainability in the long run. A business without digital ethics would be a business without stability and solidity. Therefore the need is to rethink the CSR from a digital perspective in the digital world. Companies already taking a lead in the digital responsibility have sown the seeds of sustainable business and are all set to reap the fruits of sustainable business in future in contrast to those companies which cannot predict what lies in the future.

⁹⁰ <https://www.mca.org.uk/news/updates/closing-the-digital-divide-through-corporate-digital-responsibility>

LAW AND GOVERNANCE IN INDIA

Deepesh Katariya and Harshvi Chaumal⁹¹

The need for responsible business and the need for sustainability go hand in hand. To achieve The emergence of corporate governance as a fair and transparent mechanism to run and administer corporations in a manner that would result in long term shareholder value and benefits to the entire society has been fairly a recent phenomenon. Although India has been rather slow in establishing corporate governance principles over the last two decades, 2012 was a positive year for progression in the Indian corporate governance arena.

According to Catherwood – “A Corporate Governance means that a company manager manages its business in such a manner that it is accountable and he or she is responsible to the shareholder.”

CG is more than a company administration, it refers to a fair efficient and transparent functioning of the corporation and management system. This paper will discuss the need of CG in recent scenario as well as the four pillars of Corporate Governance this paper will also focus on some basic Theories of Corporate Governance and its importance. There are some big corporate disasters and corporate crimes which shakens the Indian economy which are also discussed in this paper along with the recent case laws.

I. Introduction

The Law & Governance aims to provide a forum for discussions on governance with the intention to make contribution to the inter- and intra-regional discourse amongst all the stakeholders of society. Nevertheless, it addresses individuals and readers from all sections of society. Corporate Governance is a multidimensional subject and difficult to comprehend in a concise definition. The main principle of corporate governance is to integrate sound management policies in the corporate framework in such a manner to achieve twin goals of profit maximization and shareholder welfare.

It has a wide range. This includes social as well as structural dimensions. Corporate governance is the mechanism that directs and manages businesses. It affects how the company's targets are set and accomplished, how risk is managed and assessed, and how efficiency is optimized. Corporate governance is a system of principles, rules, processes and clearly defined roles and accountabilities used by stakeholders to resolve conflicts of interest inherent in the corporate form. Corporate governance is the relationship between various stakeholders (Shareholder, Board of Directors and Corporate Management) in influencing the performance of the company and the way it's going to.

Corporate governance addresses how effective strategic decisions can be taken and develops added value for stakeholders.

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Corporate governance guarantees accountability that makes economic development effective and balanced. This also guarantees the safeguarding of the interest of all shareholders (majority and minority shareholder).

Corporate governance impacts a corporation's financial instability and therefore its profitability.

The level of corporate governance of a corporation determines the corporation's risk and benefit.

For the efficient functioning of markets, effective, strong corporate governance is necessary.

II. Emergence of Corporate Governance⁹²

Corporate Governance is the new golden term coined inside the corporate world in the late 1990's by the Industry Association On Confederation of Indian Institute which was the primary initiative in India as a voluntary measure to be followed by Indian companies. It has highlighted a sequence of recommendations to combine best-in-class practices of corporate governance in listed companies which touches the four cornerstones of fairness, transparency, accountability and responsibility in managing the affairs of the company. The second key initiative was taken by Security Exchange of India (SEBI) as Clause 49 of the Listing Agreement. The third major initiative to successfully introduce Corporate Governance was taken with the aid and advice of Naresh Chandra Committee and Narayana Murthy Committee who previewed Corporate Governance model working in companies from the point of view of shareholders, investors and other stakeholders of the company. Corporate governance guidelines both mandated and voluntary have advanced since 1998, due to the honest efforts of several committees appointed by the Ministry of Corporate Affairs (MCA) and the SEBI. The real change in the corporate sector could be felt with the introduction of 2009 Mandatory Corporate Governance Voluntary recommendations which must be comply by companies listed under stock exchange by Clause 49 of Listing Agreement including mandatory codes to be accompanied by companies pertaining to board of directors, audit committees and various disclosures with respect to related party transactions, whistleblower policies and so forth. The very last assent to Corporate Governance practices in the effective management of the company may be visible as advent to new significant provisions in the Companies Act, 2013 in form of independent directors, women directors on the board,

⁹² P. (2018, June 20). Corporate Governance in present times in India - An Analysis. Retrieved from <https://blog.ipleaders.in/corporate-governance-india/>

corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

III. Corporate Governance in India

Corporate governance is set of rules and regulations on which a company is governed. It guarantees that the organization works in a way in which it is supposed to work to achieve the desired goals. It makes the corporations accountable to each stakeholder including, directors, shareholders, employees, customers etc. The term governance itself defines the meaning that it is an act of managing a corporate organization. The corporation is separate from its officials which makes corporate governance a separate important subject to study. Corporate governance plays an important role to protect the rights of thousands of shareholders, who have ownership in the company but do not play an active role in governing day to day business activities.

Corporate governance is a part of Indian corporate sector since the beginning but corporate governance failure and fraud of Satyam Computer Services Limited increased the concerns about corporate governance in India.

The Cadbury Committee U.K, defined corporate governance as follows-*“It is a system by which companies are directed & controlled”*.⁹³

(A) Corporate Governance Frameworks in India⁹⁴

The Indian framework on Corporate Governance has been vastly in sync with the international standards. Broadly, it can be described in the following:

- **The Companies Acts 2013** has provisions concerning Independent Directors, Board Constitution, General meetings, Board meetings, Board processes, Related Party Transactions, Audit Committees, etc.
- **SEBI (Securities and Exchange Board of India) Guidelines** ensure the protection of investors and have mandated the companies to adhere to the best practices mentioned in the guidelines.
- **Accounting Standards issued by the ICAI** (Institute of Chartered Accountants of India) wherein the ICAI is an autonomous body and issues accounting standards. The

⁹³ <https://www.corpgov.net/library/corporate-governance-defined/>

⁹⁴ S. (2017, October 10). Corporate Governance under the Companies Act, 2013. Retrieved from <https://blog.ipleaders.in/corporate-governance-companies-act-2013/>.

disclosure of financial statements is also made mandatory by the ICAI backed by the Companies Act 2013, Sec. 129.

- **Standard Listing Agreement of Stock Exchanges** applies to the companies whose shares are listed on various stock exchanges.
- **Secretarial Standards Issued by the ICSI** (Institute of Company Secretaries of India) issues standards on 'Meetings of the board of Directors', General Meetings', etc... The companies Act 2013 empowers this autonomous body to provide standards which each and every company is required to adhere to so that they are not punished under the Companies Act itself.

1. Corporate Governance under Companies Act 2013⁹⁵

The word Governance is derived from the Latin Word Gubernare which means to steer usually applying to the steering of a ship. Similarly the application of Governance in Corporate Houses is known as Corporate Governance. The term Governance refers to a set of systems, by which an organization is run. Corporate Governance under the new companies act 2013 has broadened its meaning. They are a complete module for fixing a liability on the corporate entity. It is a landmark piece of legislation and likely to have far reaching consequences on all companies incorporated in India. The repealed act Companies Act, 1956 was in existence for well over fifty years and was lately seeming quite ineffective at handling present day challenges of a growing industry and the complexities related with the growing stakeholders' interests and segregation of ownership from management.

The 2013 Companies Act also intends to improve corporate governance by requiring disclosure of nature of concern or interest of every director, manager, any other key managerial personnel and relatives of such a director, manager or any other key managerial personnel and reduction in threshold of disclosure from 20% to 2%. The term 'key managerial personnel' has now been defined in the 2013 Act and means the chief executive officer, managing director, manager, company secretary, whole-time director, chief financial officer and any such other officer as may be prescribed.

One of the important areas of corporate governance introduced in Companies Act, 2013 has been introduction of⁹⁶:

⁹⁵ K. (2015, January 12). Weaknesses of Corporate Governance in India. Retrieved from <https://www.lawctopus.com/academike/corporate-governance-in-india/>.

a. Independent Director

Under the Companies Act, 2013 the strength of number of Independent directors for the prescribed companies under Section 149(4) read with Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014

B. Woman Director

Section 149 (1) of the Companies Act, 2013 prescribes the following classes of companies to have at least one woman director. I. All listed company's ii. Non-listed public companies having paid up share capital of Rs.100 crores or more or having turnover of Rs.300 crores or more.

c. Audit Committees

The Companies Act, 2013 has increased the ambit of companies to constitute audit committees. The constitution of audit committee has also seen change as compared to clause 49 with minimum three independent directors. The Chairperson should be able to read and understand the financial statement. It shall be applicable to all the listed companies or non-listed public companies having paid up share capital of Rs.10 crores or more, Turnover of Rs.100 crores or more, aggregate outstanding loan of Rs. 50 crores or more.

d. Composition of Nomination & Remuneration Committee & Stakeholder relationship Committee

Section 178(1) of the Companies Act prescribes appointment of Nomination and Remuneration committee. The duty of the Committee shall be to identify the persons who are qualified to become directors and who can be appointed in the senior management and carry out the evaluation of directors. Section 178(5) prescribed appointment of stakeholder relationship Committee to resolve grievances of security holders of company

e. Internal Audit

Companies Act, 2013 has mandated the internal audit for certain classes of companies under Section 138. These companies includes all the listed companies, All listed companies having paid up share capital of Rs. 50 crores or more, all the non-listed companies having paid up share capital of Rs.50 crores or more, turnover of Rs.200 crores or more in the preceding financial year, outstanding loans or borrowings from the banks or public financial institutions of Rs.100 crores or more.

⁹⁶ COMPANIES ACT, 2013

f. Serious Fraud Investigation Office (SFIO)

Section 211 (1) of the Companies Act, 2013 shall establish an office called the Serious Fraud Investigation office to investigate fraud relating to Company. SFIO can investigate into the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government.

g. Corporate Social Responsibility

Section 135(1) of Companies Act, 2013 prescribes that every company shall constitute Corporate Social Responsibility Committee constituting of three or more directors with at least one independent director. These companies includes companies having net worth of Rs. 500 crores or more, turnover of Rs.1000 crore or more, or net profit of Rs.5 crores or more during any financial year.

The Companies Act, 2013 empowers independent directors with proper checks and balances so that such extensive powers are not exercised in an unauthorized manner but in a rational and accountable way. The changes are a step forward in the right direction to smoothly run the management and affairs of the companies in the interest of stakeholders. These are all welcome changes in the globalised corporate world of today and they will strengthen the core corporate machinery by instilling strong corporate governance norms in a company leading to economic efficiency and higher ethical standards which will always inspire the company's management to work in the direction to uphold its goals of maximization of wealth of stakeholders backed with good corporate repute.⁹⁷

IV. Benefits of Corporate Governance

The Benefits to Shareholders

1. Effective Corporate Governance can provide the board and management with the necessary opportunities to achieve strategies that benefit the company and shareholders, as well as promote successful control.
2. Good Corporate Governance can also provide greater security for the savings of shareholders.
3. Better Corporate Governance also ensures that shareholders are sufficiently informed about decisions on fundamental issues such as amendments to statutes or articles of incorporation, the sale of assets, etc.

⁹⁷ *ibid*

The Benefits to the National Economy

1. Empirical evidence and research conducted in recent years supports the proposition that it pays to have good Corporate Governance. It has been found that more than 84 percent of global institutional investors are willing to pay a premium for a well-run company's shares over one deemed poorly managed but with a comparable financial record.
2. Adopting the principles of Corporate Governance—as good practice of Corporate Governance has already shown in other markets—can also play a role in maximizing corporations ' corporate value.
3. Corporate governance advocates say there is a direct correlation between good practices in corporate governance and long-term shareholder value.
4. Some of the key benefits are:
 - a) High-performance boards of directors;
 - b) Responsible management and strong internal controls;
 - c) Increased shareholder engagement;
 - d) Strengthened risk management; and
 - e) Efficient performance monitoring and assessment.

V. Weakness of Corporate Governance in India⁹⁸

Nowadays, the relations between the ownership and management have become the basis of Modern Corporation. While corporate governance for all intents and purposes lays down the skeleton for creating long term trust between companies and the external providers of capital, it would be untrue to think that its importance lies exclusively in better access of finance. The key aspects of good corporate governance include transparency of corporate structures and operations, the accountability of managers and the boards to shareholders; and corporate responsibility towards stakeholders. While companies around the world are realizing that better corporate governance adds considerable value to their operational performance, India still needs to improve its standard of the same and cover up for the weaknesses.

VI. Improving Corporate Governance In India⁹⁹

⁹⁸ K. (2015, January 12). Weaknesses of Corporate Governance in India. Retrieved from <https://www.lawctopus.com/academike/corporate-governance-in-india/>.

Many, if not most, of the listed companies in India are majority-owned by families with varied business interests, and, related party transactions are prone to misuse by controlling shareholders for their personal interest. Motivated by the owners' financial gain and desire for perpetual control, the abusive transactions can range from the transfer of assets/liabilities or sale of securities at an unfair price to an outright bailout of related parties on unreasonable terms. Thus, in India, related party transactions endanger the interaction between majority and minority shareholders, with serious implications for the development of financial markets. The India-OECD Policy Dialogue explored these issues in depth and highlighted the need for a comprehensive definition to identify related party transactions. In view of the need for wider coverage, including of indirect RPTs, coupled with the ease of enforcement, it was suggested to advance a hybrid definition for RPTs. The conference also discussed the need to support private-sector enforcement, requiring the immediate disclosure of RPTs and improving the effectiveness of the approval framework by requiring approval by a majority of disinterested shareholders. Strengthening the role of independent directors and introducing a whistleblower mechanism were also suggested as effective measures to tackle abusive RPTs. The meeting also suggested increasing the quality of disclosure of RPTs to shareholders and improving shareholder participation through e-voting. Finally, it was suggested that SEBI carry out certain changes in the listing agreement to address these and other concerns.

VII. Incidents In Indian Corporate Senario¹⁰⁰

1. Reebok India Case
2. Vodafone wins \$2.2 Billion Tax Bill Battle
3. Diageo's \$2.1 billion deal for Mallya's United Spirits
4. Emkay Global's bad orders trigger brief halt on NSE
5. Kingfisher Airlines Loses License to fly
6. Axis Bank Partners with Tata General Insurance
7. INR 1,800 crore wiped off Adani Enterprise Ltd stocks after rumour fuelled by blogger
8. Hero Motors finally drops Honda

⁹⁹ Dash, B. (2016, May 21). Provisions relating to Corporate Governance under new companies act 2013. Retrieved from <https://www.linkedin.com/pulse/provisions-relating-corporate-governance-under-new-companies-dash>.

¹⁰⁰ <https://taxguru.in/sebi/corporate-governance>

9. Sahara told to repay small investors

10. Cyrus Mistry remove from the post of chairman- TATA GROUP

- **Cyrus Mistry v. Tata Group**

Mistry who was dismissed as Tata Sons chairman on October 24 by its board alleged “**lack of corporate governance**” and “failure on the part of directors to discharge the fiduciary duty” owed to shareholders of Tata Sons and other Group companies. Following Mistry’s e-mail, proxy advisory firms feel that the reporting and governance structures between Tata Trusts, Tata Sons and other operating companies needs to be clearly defined. The e-mail seems to be suggesting that Ratan Tata regards Tata group as a fiefdom, and Independent Directors aren’t truly independent and assertive. Minority investors of listed operating companies need the reassurance that Tata Sons is just the dominant shareholder and one individual isn’t running the whole group, said Shriram Subramanian, founder and managing director of In Govern Research Services.

Mistry’s e-mail has alleged that despite making losses of Rs 1000 crore, Tata’s low-cost Nano has not been shut down due to emotional reasons and also due to the fact that it will “stop the supply of the Nano gliders to an entity that makes electric cars and in which Ratan Tata has a stake”.

Mistry also said that the amendments to articles of association of Tata Sons have created a flux in the decision-making process. “I have often presented to the trustees, before and after Tata Sons board meetings. This has created alternative power centres without any accountability or formal responsibility....” Mistry added. Apart from this, Mistry has alleged that the conduct of two directors of Tata Sons-Nitin Nohria and Vijay Singh has “created the added risk of contravening insider trading regulations”. Both Nohria and Singh could not be contacted.

J N Gupta, managing director of Stakeholders Empowerment Services (SES) said that governance issues raised by Mistry if true will not only impact the shareholders but will also hit the Tata brand. He said Mistry’s e-mail has raised important questions on the independence of the independent directors and their conduct on all the boards of Tata firms.

“Sebi (Securities and Exchange Board of India) may have to examine the allegations of insider trading in his (Cyrus Mistry’s) e-mail. Governance at present is lip service be it in India or the US. Independent directors typically take up such roles for monetary

compensation. And independence is a character that the law cannot infuse. Law can only infuse fear,” said Gupta.

Experts feel that the boardroom battle between Ratan Tata and Cyrus Mistry and the corporate governance issues emanating from this dispute will hurt corporate India.

“The way the events have unfolded, it seems that it is a case of oppression of minority shareholders and the board has failed to perform its duties. It is a palace coup because some independent directors were appointed in the last six months. The right thing would have been to follow correct corporate norms and value systems by appointing a committee to look at all the allegations and counter allegations and then take a decision,” said Mohandas Pai, chairman of Manipal Global Education.

- **Reebok India Scam**

FACTS:

Reebok India, owned by Adidas AG, alleged a Rs.870 crore fraud by its former managing director (MD) Subhinder Singh Prem and former Chief Operating Officer (COO) Vishnu Bhagat, in a criminal complaint filed at the Gurgaon police’s Economic Offence Wing in May, 2012. In March 2013, Adidas, the parent company, announced a 153 million Euros loss on account of the Reebok India episode.

The two were accused of criminal conspiracy and fraudulent practices including stealing products by setting up “secret warehouses”. There has been a grave failure of corporate governance as well since the company has also alleged that the former officials fudged accounts and indulged in fictitious sales causing a multi-crore dent to the company. In its FIR, Reebok has said that it carried out an internal investigation after certain fraudulent activities were noticed – which again points to the importance of internal checks for malpractices and corruption.

Gurgaon police had arrested Singh and Bhagat along with three others — Sanjay Mishra, Prashant Bhatnagar and Surakshit Bhat. Allegedly, these individuals have been siphoning off funds by creating ghost distributors across the country and generating forged bills over the last five years.

JUDGEMENT

Agencies probing the alleged Rs 870 crore corporate fraud in the operation of Reebok India have detected a systemic “mismanagement” in the business planning and running of the company.

The Income Tax department has alleged tax evasion of Rs 140 crore in the case. The IT department's first goal is to ensure that the company later does not claim any "bad debt". A bad debt is that amount that is owed to a business or individual and has to be written off by the creditor as a loss because the debt cannot be collected because of a host of reasons.

As soon as the scam came to light, affairs of the company came under close government scrutiny. While the IT department documents investigated the accounts and imports of the firm, the Serious Fraud Investigation Office is probing the entire governance affairs of the company under Section 235 of the Companies Act. A forensic audit was conducted by the German arm of Ernest & Young – which revealed many falsifications of documents and books.

It is interesting to note that accounting officials of the firm and the auditors were not held liable for their "deliberate" or "mistaken oversight" in identifying the irregularities in the account books which led to the alleged financial irregularities.

- **SEBI V. Sahara India Real Estate Ltd.**

FACTS:

Unlisted conglomerate Sahara, one of India's biggest business groups was ordered by the Supreme Court of India after a prolonged legal battle with capital markets regulator SEBI to refund 174 billion rupees raised by "dubious" means from 22 million small investors. From 2008-11, they received 174 billion rupees through what is known as an optionally fully convertible debentures. The Sahara was also asked to pay 15 percent interest to the investors of the fund which has been illegally raised from the public without resorting to proper legal procedure.

JUDGEMENTS:

The Supreme Court, whose order reaffirmed an earlier ruling that the fundraising did not meet the rules, ordered two unlisted Sahara group firms to refund money they had raised with the interest within three months. The judgment closed a much exploited loophole of the corporate fundraising laws in India and underscored an increasing assertiveness by India's judiciary and regulators as businesses and financial markets expand at a fast pace in Asia's third-largest economy.

VIII. Conclusion

The Companies Act, 2013 certify self-regulating directors with suitable checks and balances

so that such broad powers are not exercised in an illegal manner but in answerable way. The changes are a step ahead in the right direction to evenly run the companies in the interest of stakeholders. These are all new changes in the globalised corporate world of today and they will reinforce the core corporate machinery by disseminate strong corporate governance norms in a company leading to economic efficiency and more advanced ethical standards which will always inspire the organization's system to work in the direction to uplift its objective of maximization of wealth of stakeholders aided with good corporate dignity.

CORPORATE CRIMES AGAINST WOMEN

Ms. Preeti Sanger¹⁰¹

The Indian society has developed. The mind-sets have changed over the years but what remains the same is crime against women. Crime is hidden at the corporate levels. The crime against women has increased over the years. The fear of crime has become a concern for the women while choosing the place to work. The paper deals with the crime against women at the corporate levels and problems faced by women at all levels to work at different locations. The traditional stigma against victims of sexual crimes is an hindrance for the development of the women's position in the society. Not only does it stops the development but it also forces such victims to fight against such crimes. Corporate , an important component of the society has left no stone unturned to commit crime. Such crimes forces the women society to choose the place of work . how to safeguard the society is the main objective of the authors.

Keywords: corporate , crime against women, violation of human rights, harassment.

I. Introduction

The Indian society has developed. The mind-sets have changed over the years but what remains the same is crime against women. Crime is hidden at the corporate levels. It is due to industrialisation and modernisation of the society that the women stepped out of their houses and started earning their living to support the family. Being educated it was the best way the women could make the best use of their knowledge. The women has always been considered the weaker section and the men not only suppress them but also exploit them. The National Organization for Women in United States worked as a pressure group and made a case for the Government to enforce Title 7 of the Civil Rights Act of 1964, which says that there should be no sexual discrimination in the workplace. (Menand, 2014) The doors at the workplace were opened for women. The society acknowledged the working women concept but now there was another challenge for women, they were exploited, victimised, and sub-ordinated which is a form of sexual harassment at the workplace.

II. “The Harassed Worker”

Carroll M. Brodsky (1976) as cited in Vicki Schultz (1998) refers to sexual harassment not only as sexual advances but also to other non-sexual forms of harassment. According to him sexual harassment is not only between boss and supervisor but from supervisor to subordinate, peer to peer and from subordinate to boss (Schultz, 1998). According to the thinkers, the concept of sexual harassment has emerged due to unequal power relations between men and women at workplace. (Sarpotdar, 2017) Women have been the most vulnerable and weaker section of the society and are always been looked down as a

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commodity which can be used, re-used and abused. It is the hard reality of the society that the women's dignity is always bruised and has always been ill-treated ever since the beginning of the civilization. Women are at times deprived of their rights, beliefs and existence. Women have always been dependent on men for their livelihood and restricted only to certain places, mainly involved in domestic work since ages but in current time of globalization, the sphere of women has broadened and women are now well educated, working in all spheres of life and demanding equal status to men. Despite this development, access to education and employment and awareness of their rights, women are still faced with humiliation, discrimination, cruelty and violence at every step inside their home as well as at their work place. They are often dominated by men in the society and thus violence against women has also increased. In most cases the sexual harassment cases are not reported which gives the men greater opportunity to commit the crime continuously. The women have started taking these activities as their fate and keep suffering. At the corporate level these crimes done at the high ends. There are laws but still the women become prey to such hunters.

III. Evolution of the Concept in India:-

Women constitute half the humanity. Despite being endowed with certain peculiar features both physical and temperamental, men and women are complementary to each other. Their diverse physical and temperamental qualities together form a complete race. Hence, logically both should have equal status. The Indian concept of Ardhanarishwara very well depicts this view. Ardhanarishwara divides himself / herself in the form of Adipurush (Male form) and Prakriti (Female form) for the task of creation. None of them can perform the task without the involvement of the other. The male and female are the equal partners in the creation, development and progress of the society. Both should be given equal importance and opportunities and should be treated equally. If this balance is lost, it will be detrimental to the whole society. Unfortunately, this balance has not been maintained in human society. Woman everywhere in the world has been subjected to various injustices. In India, ruthless male domination over women has been continuing since pre-historic times. There has been unjustifiable discrimination between the male and female child, man and woman. Women are considered as cattle's and objects of sense gratification. The history of women suppression in India is very long. Women have suffered and are suffering with discrimination in silence. Everywhere women have been subjected to inequities, indignities, inequality and discrimination (Madhu Kishwar v. State of Bihar, 1996). Every human has the right to live freely, then who has given men authority to suppress women of their rights to live freely. The

mother nature has created interdependence between men and women and this relation should not be disturbed. Discrimination on any basis is not healthy in any form for any society. Women are not only mentally powerful but they are also physically. They are the creators who bear the child in their womb and still get the discrimination. The women perform two-third work of the world, receive one tenth of the income. This is injustice, believe me women have all the strength in the world to manage the house, the kids and work. Not only they work but also excel in it. In return women just need appreciation and recognition in the society for the work done by them.

Present day lifestyle compels the women to work for better standard of living, as the cost has increased significantly and single income is not sufficient. As the traditional Indian society is opening up, females are taking up more and more jobs in various sectors. Here, again the employers adopt a discriminating attitude towards women as regards providing safety, equal opportunities, promotions, equal wages and various social benefits. At the place of work, women are also suffering from sexual harassment, eve teasing and molestation. The situation is worse where women come from the lower socio-economic group and are placed in the unorganised sector. The crime of sexual harassment is committed with the intention to cripple women, who are articulating new ideas for themselves,

In order to overcome issue pertaining to sexual harassment at work place, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁰² was enacted in our Indian Legal System. The intention is protecting and preventing sexual harassment of women in our country. In recent times, several harassment cases at workplace & rape incidents are occurring, so, it is a mechanism enacted to solve and prevent these issues.

The concept of sexual harassment in India evolved after the Vishakha v. State of Rajasthan (Vishakha v. State of Rajasthan, 1997) court case. This judgement was delivered on 13 August 1997. The judgement was a milestone in itself as it acknowledged the fact that sexual harassment at workplace was a violation of fundamental rights of women. The case involved a brutal gang rape of a social worker(Bhanwari Devi) in the village of Rajasthan. The message was clear, Bhanwari Devi was gang raped because she challenged the Traditional notion of Indian Women as poor and disempowered , rather she was seen as a torchbearer of change . The petition was an outcome of public pressure created by social activists and non-

¹⁰² The Bill was passed by Lok Sabha (on Sep 2012), and then by Rajya Sabha (on Feb. 2013). But it got the consent of our President on April 2013. Soon after that, it came into effect on 9th Dec, 2013, by special power of the Supreme Court.(for more details see Appendix-2)

governmental organizations which said that proper judicial safeguards need to be adopted for checking sexual harassment to ensure that there is gender equality at workplace. (Vishakha v. State of Rajasthan, 1997)

A survey regarding sexual harassment by All India Democratic Women's Association (AIDWA) revealed that only 22% of the offices had a grievance redressal cell. However, more than 80% of the women employees in offices were unaware of those cells. Only 2% of women working in various Government offices had an idea about the Vishakha judgement. (All India Democratic Women's Association , 2008)

The Constitution of India guarantees a lot of rights to achieve the goal enshrined in Preamble but due to inadequate law¹⁰³ this goal could not be achieved very well. In sexual harassment case, generally, Sec. 354 & 509 of Indian Penal Code, 1860 are applied which are not able to safeguard the working women against their ill- treatment. Where the sexual harassment is caused by electronic communication, e.g.-email, SMS, MMS, etc, the Information Technology Act 2000 may be applied. De facto, 'improper use of e-mail and the Internet can create a hostile work environment. (Kleiner, 2000) This Act is enacted 'to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.'¹⁰⁴ This Act is enacted to the whole of India and, save as otherwise provided therein, applies also to any offence or contravention there under committed outside India by any person¹⁰⁵.

SECTION 2(n)¹⁰⁶ - "SEXUAL HARASSMENT" The provision narrows the scope of what may be construed as sexual harassment for application of this Act. Acknowledgement of technological advancements could have also been noted, so as to include all possible electronic means of sexual harassment. Interpretation concerns are enhanced with the use of the phrase "unwelcome" in clause (v). Legislators have failed to note that the definition of

¹⁰³ Hon'ble Supreme Court accepted in Vishaka case that law in India to tackle the menace of sexual harassment is not adequate.

¹⁰⁴ Statement of Objects and Reasons of the Act

¹⁰⁵ Sec.1(2) of Information Technology Act, 2000.

¹⁰⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

“unwelcome” will be construed in a vastly different manner from each woman’s perspective. The subjective perception of different women ought to have been included in determination of whether the act is “unwelcome” or not. The definition of “sexual harassment” has also neglected to grant protection against potential victimization of the complainant by an employer. The timeline between making of complaint till a decision is made can be effectively misused by the employer to exert undue pressure on the employee of any nature whatsoever. Alternatively, the definition of “aggrieved woman” may have included the same.

SECTION 2(o)¹⁰⁷ - “WORKPLACE” The definition includes “any place which arises within the course of employment”, thereby including clients’ offices, taxis, hotels, etc. Hence for the purpose of this Act, the areas over which the employer has no access or control are deemed to be a workplace, and the liability of occurrence of any untoward incident of sexual harassment is directly attributed to the employer. This provision seems to be extending the scope of the Act more than required, i.e. the „workplace“ is being used to incorporate exceedingly unnecessary venues thus putting the employer in a position where in his liability continues irrespective of his presence or control over the situation.

This law is framed mainly keeping in mind workplaces like offices, organisation, other institutions and enterprises, where complaints can be referred to committees. But the problem arises as a majority of Indian women do not work in institutions or enterprises, or in developed cities. They work in the informal sector such as fields, on the roads, or as self-employed producers or vendors. Their workplaces are everywhere, and there is no mechanism to prevent the everyday forms of sexual harassment that they may undergo.¹⁰⁸

It took 16 years for the Act to be a reality. The intent of the Act is to protect woman against sexual harassment at work place. The beginning paras of the Act lay down the intent explicitly.

“Sexual harassment is a woman’s fundamental right to equality.. her right to life and to live with dignity...and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.”

The Act mandates every office with 10 or more employees to have an internal compliant committee for grievance redressal.

¹⁰⁷ Ibid.

¹⁰⁸ BLURRED LINES available at <http://indianexpress.com/article/opinion/columns/blurred-lines-2/> (last visited February 18, 2019).

The Act is not gender neutral and provides protection only to women employees. The ambit of the Act includes organised as well as unorganised sector, women working in organisations or as domestic help.

IV. Conclusion

The laws does provide safeguard to the women who are sexually harassed but this harassment can be verbal and not only is it necessary that the male counterpart are the ones who commit it. These days change in the society and mind-sets of the people has become a reason where women also tend to sexually harass. The education is the only way to make people aware of their rights and to encourage them to take forward their and reach out to the agencies or committee so formed to solve such problems. The society needs to broaden their thought and not look down upon the people who raise their voice for this heinous crime. Such crimes if unreported give an opportunity to the offenders to move ahead with their cruel activities. This is not a healthy way for the human society. The laws also gives an opportunity to women to exploit the men at the corporate. The men cannot raise their voice such exploitation as law supports the women. The Indian legal system needs to incorporate laws which can safeguard the people of sexual harassment at the work place irrespective of their sex.

The companies have strengthened the women safety rules. The women who travel company cabs do get a call to cross check if they have reached safely or not, but what about the safety at workplace. The workplace should have easy going atmosphere where the victims can approach the concerned person with their problems. They should not only be heard but also seek remedy. Employees are the backbone of any company, if they are not secure, they won't get the belonging feeling.

It is important that the corporate houses raise awareness about sexual harassment at regular intervals. Awareness about sexual harassment and sensitivity towards female colleagues may be developed through training programs where attendance of all the employees should be mandatory. If the employees are exposed to such training sessions, male employees/managers are likely to behave in civilized manner while interacting with their female colleagues. Further, training sessions on sexual harassment may also raise awareness about rights of female employees in case such unfortunate incident occurs.

ENVIRONMENT AND SUSTAINABILITY: NEED OF HOUR

Dr Vartika Arora¹⁰⁹

Social responsibility the term which is attracting all our attentions now a day, is a central concept in human ecology and the study of the environment, and can be used to view a variety of commons related problems, such as population growth, environmental pollution, groundwater basins, forest management, mining, climate change, fishing, wildlife habitats, and traffic congestion.

The idea behind concept of CSR (corporate social responsibility) is that the corporations can no longer act as isolated economic entities operating in detachment from broader society. Initially there were concept of competitiveness, survival and profitability but these have no place in today's era of social responsibility. Corporate social responsibility is predominantly considered as a western phenomenon, due to strong institutions, standards, and appeal systems which were considered weak in developing countries. The way we shown our growth in recent times in every field, it became must to make CSR as essential for every business.

Keywords: *Corporate social responsibility, sustainable development, environment and legal application.*

I. Research Methodology

This paper will focus on the corporate responsibility on environment, how the corporate world can help in the environment protection and reducing the environment pollution and legal application for the protection of environment from the corporate world through doctrinal research. Few legislations, Indian as well as foreign judgement would be referred in this regard.

II. Research Question

This research would be carried out to find answer of the following questions

1. Whether Indian legislation on environment needs a redraft?
2. Role of supreme court is as per need of hour or not?
3. Indian traditional system was more apt in this regard?

III. Introduction

The term corporate prima facie resembles or synonymous to the earning economic gains and to concentrate on the profits of the corporate giants. But with the advent of corporate social responsibility, the corporate chambers are more inclined towards the social and charitable causes towards the human need, human values and human rights. When these terms have been attached to it the right to healthy environment has automatically comes into picture,

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which has been enshrined in the fundamental rights guaranteed by the Article -21 of Constitution of India.

The concept of the corporate social responsibility is not new one but the great philosophers like *KAUTILYA* and other Pre- Christian scholars have laid down the environment friendly ethical doctrines of business. Even thinking in ancient India represented this approach (and the guilt) as may be seen from the following quotation from the *ATHARVA VEDA*:

“Oh Earth, whatever we dig out from you must have to be filled up again, and restored as fast as possible. Oh Pure one we do not intend to hit you at your heart of hearts”

Definition of corporate social responsibility

Corporate social responsibility (CSR) is about understanding your business impact on the wider world and considering how you can use this impact in a positive way. Social responsibility and accountability of corporate world towards the society and community for the protection of environment in public interest.

Historically, a narrow view of corporate responsibility has been enforced whereby a corporation's responsibility extends only to maximizing profits.

In **Dodge v Ford Motor Co**¹¹⁰ The Michigan Supreme Court upheld the shareholders' claim that a corporation is carried on primarily for the profit of the shareholders and therefore the powers of the directors are to be exercised on this basis. The decision of the directors not to declare a dividend to facilitate the expansion of the business and increase the number of employees was considered to be inappropriate.

However, subsequent cases have taken a more flexible approach, in cases like

Teck Corp v Millar¹¹¹ Decision was made to benefit consumers, the community, employees and the environment have been considered as not breaching directors' duties where shareholders' interests have not been completely disregarded and emphasis placed on the corporation's future.

In this context the statement of **Mrs. Indira Gandhi** would like to quote in which she was emphasized on environmental security for sustainable development.

At the UN Conference on Human Environment at Stockholm in 1972 she said that,

¹¹⁰ 170 NW 668 (1919)

¹¹¹ (1973) 33 DLR (3d) 28.

“The removal of poverty is an integral part of the goal of an environmental strategy for the world. Sustainable development ensures the well-being of individual by integrating social development, economic development, and environmental conservation and protection.”

In INDIA also the companies follow the Corporate Social Responsibility and if they don't follow it than they are liable under environment Act. In other words, if any company harm or pollute the environment than liable under Indian law and have to pay damages. Indian law has adopted the principle Of **Precautionary Principle, Inter Generation Equity, Public Trust Doctrine, Polluter Pays Principle** etc., all these principals are the species of the basic principle of Sustainable development.

Justice Kuldip Singh while delivering the judgment on **M.C Mehta v. Kamal Nath**¹¹² relied extensively on the doctrine of public trust. The Judge touched up the history of the doctrine of public trust. He pointed out that ancient Roman Empire legal theory came about on the idea that certain common properties such as rivers, seashore, forests and air were held by the government in trusteeship for the free and unimpeded use of the general public. The contemporary concern about the environment bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (Res Nullius) or by everyone in common. Under the English law however the sovereign could own these resources but the ownership was limited in nature and the crown could not grant these properties to private owners if the effect was to interfere with the public interest in navigation or fishing.

The Supreme Court pointed out that our legal system is based on the English common law which in turn includes the doctrine of public trust intrinsic to its jurisprudence. The State is the trustee of all natural resources which are by nature meant for the use and enjoyment of the general public. Public at large is the beneficiary of the seashore, running waters, airs forests and ecologically fragile lands they have the right to access and enjoyment of such resources. The state is the trustee to such public resources and consequently it is under a legal duty to protect the natural resources. The court also pointed out that if there is a law made by the Parliament or the State legislature the courts can serve as an instrument of determining the legislative intent in the exercise of its powers of judicial review under the Constitution.

There are many definitions of ‘sustainable development’ According to the definition of Brundtland Commission in 1987.

¹¹² WP 182/1996 (2002.03.15)

“sustainable development” is that pattern of development which “meets the needs of the present without compromising the ability of the future generations to meet their own needs.”

In addition to emphasizing the intergenerational equity, this broad definition also covered two other key concepts. The first is the concept of “needs”, especially the needs of the world’s poor which are seen to have overriding priority. The second concept is the idea of “limits” on the ability of the environment to meet the present and future needs. The Brundtland Commission also saw sustainable development as a process of change rather than a fixed state of harmony.

Subsequent global conferences on the themes of development and environment, in particular the 1992 United Nations Conference on Environment and Development (the Earth Summit) in Rio de Janeiro, Brazil

The 2002 World Summit on Sustainable Development held in Johannesburg, South Africa further elaborated the definition through its inclusion of

“economic development, social development and environmental protection — at the local, regional and global levels” as the “interdependent and mutually reinforcing pillars of sustainable development”.

The term “sustainable development” is defined as development to achieve the needs of present generation without compromising future generation’s needs, while we are misusing the resources in a very vital manner, which is not good for the present generation and as well as to the future generation. ‘Future Generations’ is mainly related to the environmental problems of resource consumption and pollution and their distribution over long time horizons.¹¹³

Corporate social responsibility can be taken as practical approach to the principle of sustainable development. In fact, modernization and belief in progress are defined in terms of human capacities to harness and use nature for mankind’s benefit. It has been felt that the development strategies, often actively supported by international and national development institutions, with their focus on industrialization, urbanization and income growth, failed to screen out policies and programmes that harmed the environment, failed to address the problems of poverty and empowerment and failed to sustain local communities and indigenous people. There is increasing concern that by not acting sustainably, economic progress is being achieved at the expense of such significant damage to natural resources,

¹¹³ Report of planning commission on sustainable development 2012

environment and social justice that future generation will be worse off than the present one.¹¹⁴

In our society, every material is either derived from a mineral product or made using intermediate goods produced out of minerals (such as steel, aluminium, fertilizer and energy). It is, therefore, not possible to survive and develop without drawing mineral resource from our environment. What, however, needs to be done is to limit the negative impact on the environment and local population and undo the damage to the maximum extent possible through appropriate technological and management practices and procedures. This is what the concept, principles and practices of “sustainable development” are designed to achieve.

IV. Environment and Legal Application

India has an elaborate legal framework with a large number of laws relating to environmental protection. Of these, the following four are the main statutes which impact on and regulate environment related activity in the country:

- (i) The Water (Prevention and Control of Pollution) Act 1974;
- (ii) The Air (Prevention and Control of Pollution) Act, 1981;
- (iii) The Forest (Conservation) Act, 1980 and
- (iv) The Environment (Protection) Act 1986

The Water Pollution Act, 1974 provides for the prevention and control of water pollution and the maintenance or restoration of wholesome quality of water. For this purpose, it vests power

in the State Pollution Control Boards (SPCB) to lay down and enforce effluent standards for “trade effluents” i.e. any liquid, gaseous or solid substance discharged by industrial establishments including mines and processing plants. The legislation requires a person to take prior consent (permit) from the State Pollution Control Board for the establishment of any operation in which discharge of effluents into a stream, well or sewer or on to land (section 25) prohibits such discharge beyond the prescribed standards and lays down penalties (fines /imprisonment) for non-compliance. Prior to 1988, enforcement was done only through criminal prosecution in the appropriate court. After an amendment of the law in 1988, the SPCB may close down a defaulting unit or withdraw its supply of power and water

¹¹⁴ <http://www.chillibreeze.com>

by an administrative order. The penalties are also more stringent; and a provision for citizens' initiative to make complaints to the court strengthens the enforcement machinery.

The Air Pollution Act of 1981 similarly seeks to prevent, control and abate air pollution. Its framework is similar to that created by the Water Pollution Act, 1974 and it utilizes the institutional mechanisms of the Central and State Pollution Control Boards for administration of its provision. Under this Act, all industries (including mines) operating within designated air pollution control areas must obtain permits (consent) from SPCBs. The state boards lay down the standards of emission of air pollutants into the atmosphere from industries and vehicles after consulting the central board and noting its ambient air quality standards. The Act empowers the authorities (SPCBs) to enforce the provisions of the Act including measures to close down a defaulting unit and /or stop its supply of electricity and water. A board may apply to a court to restrain emissions that exceed the prescribed standards. There are also provisions for a citizens' initiative and for prosecution and penalties for non-compliance

The Forest (Conservation) Act of 1980 requires the approval of the Central Government before a State 'dereserves' a reserved forest, uses forest land for new forest purposes, assigns forest land to a private person or corporation or clears forest land for the purpose of reforestation. An advisory committee known as the Forest Advisory Committee constituted under the Act – advises the central government on these approvals. Contravention of the Act attracts up to 15 days in jail. The Forest (Conservation) Rules 2003 framed under the Act prescribe, among the things, the composition of the advisory committee and the factors it should take into consideration while formulating its recommendation to the Central Government on various proposals received for 'forest clearance'. In cases relating to proposals for de-reservation or diversion of forest land for non forest purposes, the most important condition stipulated by the Central Government is that of compensatory afforestation. The proponent of a project is required to submit a scheme for compensatory afforestation over an equivalent area of non-forest land, as far as possible, in the proximity of reserved or protected forest. However, no compensatory afforestation is required in respect of the proposals involving underground mining in forest land below 3 meters and in cases of renewal of mining leases unless new forest land is to be "freshly broken up". Over the years, the Courts interpreted various provision of the Forest (Conservation) Act 1980 in order to amplify its scope, with a view to preventing destruction of forest cover and protecting the environment.

In the **T.N. Godavarman Thirumulpad vs. Union of India**¹¹⁵ The Supreme Court laid down that since the Forest (Conservation) Act 1980 was enacted with a view to checking further deforestation which ultimately results in ecological imbalance, its provisions for forest conservation and allied matters “must apply to all forests irrespective of the nature of ownership and classification”. The words “forest land” accruing in Section 2 of the Act will not only include a “forest” as per the latter term’s dictionary meaning but also any area recorded as forest in government records irrespective of their ownership and classification.

In this context by the Supreme Court in the case *Ambica Quarry Works vs. State of Gujarat* (AIR 1987, SC1037). it was also laid down that prior approval of the Central Government is required for any non-forest activity within the area of any forest. Such ‘prior approval’ of the Central Government is also mandatory in respect of renewal of pre-existing leases,

The Environment Protection Act of 1986 (EPA) and the Environment (Protection) Rules 1986 framed under the Act provide an overarching framework for environmental protection in the country. EPA has a very broad scope for providing for the protection and improvement of environment and prevention of hazards to human beings, other living creatures, plants and property. Section 3 of the Act vests with the Central Government power “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution”. Specifically, the Act empowers the Central Government to lay down standards of quality of the environment and standards of emission or discharge of environmental pollutants. Section 7 of the Act prohibits the discharge or emission of environmental pollutants in excess of the prescribed standards.

V. Challenges of Sustainable Development

The challenges of sustainable development and its consequences are clearly visible. It is only invisible if we not want to see.

Population is a major challenge for the sustainable development. The basic challenges will be shortages of drinking water and arable land for food production.

Poverty is another major challenge because almost 25% of the world’s population lives on less than US Dollar 1 per day.

¹¹⁵ AIR 1997 SC 1228),

Inequality continues to be a serious obstacle to sustainable development with the number of people suffering from undernourishment. The fall of food prices over the past 30 years may have contributed to increases in consumption, but in many regions of the world arable terrains are limited, and the creation of new ones has a destructive effect on the remaining ecosystems. In the future, the growth of food production should not come at the expense of nature

Human health is also an obstacle in sustainable development. In many cases, deaths in developing countries are avoidable. Humanity should direct more attention and money in the coming years to the struggle against diseases.

Consumption of energy is a major challenge for the sustainable development. Consumption of all forms of energy is continually rising. The improvement of access to reliable, sustainable and environmentally friendly energy sources and services, as well as the creation of national programmes for energy effectiveness, is a particularly important task.¹¹⁶

VI. How to Develop Corporate Social Responsibility

Every company in the world have to adopt the corporate social responsibility as their bottom line to protect the environment because the environment protection issue is on the peak and if every company adopted the policy than it will help the countries to protect the environment

This is the basic of ‘sustainable development’ principle. Our father of nation already stated--

‘THERE IS ENOUGH ON THIS EARTH TO MEET THE NEED, BUT NOT THE GREED’

Has now become a universal slogan for ensuring environmental protection and sustainable development. Keeping the concept of Gandhi ji in mind to protect the environment and to reduce the environmental pollution companies can do many things and it helps them in increasing their profits also and by the small things also the companies can increase their profits like: Switch off the light and equipment when not working, Reduce the waste, Use recycle waste, Reduce use of water and Reduce the amount of paper.

If the corporate world makes the Corporate Social Responsibility as the bottom line in their work or in their projects than it will help the corporate world in the following ways:

Please your customers! Customers are becoming increasingly demanding. As awareness of the global scale of environmental problems grows, they are looking for companies to present

¹¹⁶ <http://www.academia.edu/1082298>

them with purchasing decisions which can be taken without compromising the future.

Reduce your costs! Wasted energy, wasted water, raw materials that are paid for and then thrown away, potential environmental accidents leading to fines - all these are costing your business money. You want to optimise your efficiency - and it can be a lot more creative and about improving quality than you would ever think.

Manage Risk! If companies are not initially thought about the environment and their product harm the environment than it will engage the company into the environment legislation, to save themselves if company initially take the Corporate Social Responsibility as bottom line of their business than by this they can manage the risk.

VII. Conclusion

Corporate Social Responsibility means the responsibilities on the companies for the development of the environment and for the community welfare and for the betterment of the society. CSR is highly responsible for the protection of the environment and sustainable development. If companies engage the CSR in their policies than they can protect the environment because by this, they initially done the steps to protect the environment.

Its high time now that we need to not only make strict provision but also to spread the awareness to masses.

INSOLVENCY & BANKRUPTCY CODE: AN OUTLINE

Rupal Sinha¹¹⁷

Insolvency & Bankruptcy are the terms that are perceived by a common person these days many a times. The constant scams, the amendments to various acts related to it, the penalties, etc. are few things that are trending in the minds of the people. In simple words, 'Insolvency' is the situation, where one entity (whether an individual or a corporate) is unable to pay their taken debts back. Whereas, 'Bankruptcy' is the condition where a person is legally declared by court to arrange funds or payback their debts, due to lack in the financial assets such as cash at bank. The Insolvency & Bankruptcy Code, since 2016 has been a game changer in the Indian market recently. It was recommended by Mr. T.K. Vishvanathan Committee in 2015 and was codified a year later after implementing a few changes in it. In earlier times, the insolvency process took a very long time to resolve their issues, which ultimately delayed the progression of law. Even if a process was started with an insolvent company it mostly resulted in winding up, which ensued in the losses of various associated people to that company. The main purpose of introducing the Insolvency & Bankruptcy Code, was addressing the issues relating to Debt Recovery Tribunals, so as to overcome its shortcomings. The provisions of the IBC, also presents new identities like Insolvency Resolution Professionals & Agencies, which are allotted with different set of roles and power that may help to speed-up the procedure of insolvency. The IBC was introduced to combine all the insolvency and bankruptcy related laws into one single act for its powerful enforcement. Although, there are certain loopholes, that still hinders these situations. Still, the code introduced is beneficial for our economy to clip and penalise the defaulters. This paper puts strain and descripts about the code in an articulate manner.

Keywords: *Insolvency, Insolvency Process & Resolution, Disputes with IBC & Effects.*

I. Introduction

The legal framework for insolvency resolution in India has underwent a structural change with the introduction of the Insolvency and Bankruptcy Code (IBC) 2016. This single law is a refurbishment of the insolvency and bankruptcy system in India, which replaces all laws relating to bankruptcy, even some from 1924¹¹⁸. In this paper, the understanding of the new legal framework will be seen through cases. There will be two major aspects of IBC, which are put on focus. The economic impact and the judicial process of the courts. 'The IBC is explicitly different from the existing legal framework and practices in many aspects.'¹¹⁹ This code does not dictate the form of the resolution effects, but the designs of the form of the process which will lead to the resolution, as referred in the case *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*¹²⁰. For all this, the code also adds new institutions to the system, such as; the Insolvency Professionals (IPs), the Insolvency Professional Agencies (IPAs) and the Information Utilities (IUs). These entities are to ensure an efficient and speedy resolution, with a statutory bankruptcy official to legalise the

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¹¹⁸ Bankruptcy Law Reforms Committee 2015

¹¹⁹ Sengupta, Sharma, and Thomas 2016

¹²⁰ AIR 2018 1 SCC 353

industries as well as the resolution process. This law establishes an agenda for a collective action by the creditors to resolve the financial stress on the debtor. The process moves from a debtor to a creditors, for deciding the resolution while being an impartial professional, who runs the operations of the debtor as a going concern. Additionally, the code authorises the National Company Law Tribunal (NCLT) as the adjudicating authority, which doesn't interfere in the resolution process, and pronounces the fairness of the process and its compliance with the law governing corporate liquidations. IBC designates the National Company Law Appellate Tribunal (NCLAT) as the appellate forum¹²¹. The Insolvency and Bankruptcy Code is considered as the most operative reforms brought with a potential of the transparently and speedy resolution of India's non-performing assets (NPAs) challenge. This Code seems to be a very effective and time-destined mechanism for dealing with the problems of increasing non-performing assets (NPAs). IBC has also focused on Mergers & Acquisitions concepts in the country. Many domestic and international investors are actively participating in the opportunity to acquire valuable assets at striking prices which is added with the prospect of generating higher returns. In a recent data concluded that the World Bank and IMF have immensely contributed to India's 30th place in 2018's 'Ease of Doing Business' ranks. IBC has truly enforced the concept of 'creditor control' instead of 'debtor's possession' and has maximised the value of recovery of various potential corporate debtors.

II. The Reforms of the Code

As the credit markets are progressed, it is important to note the rules and regulations, as well as the principal law, which remains relevant within the framework of the recent times. The history of most economies have shown that they have gone through various major changes in their bankruptcy systems & mechanisms. Those economies that do not commence such reforms have ended up with a weak credit market. The basic understanding of the outcomes of the current legal agendas and designing interventions requires a constant analysis of the enactment of the current legal framework. The following will highlight the difference obtained due to the code.

(1) Earlier IBC

Before IBC, the whole point of insolvency and bankruptcy was to ease the condition of the insolvent entities. Which really is a philanthropic side of the law. Nevertheless, among all this, the creditors weren't cared that much. Besides this, due to the existence of different

¹²¹ Binani Industries Limited v. Bank Of Baroda And Ors., Company Appeal No. 82 of 2018

bodies and different acts, the entire matter of insolvency resolution process was way too complicated. As a result, the process of the insolvency resolution took too much of a time in most of the cases. It even could take decades. Thus, there have been times where the owner of the debtor could have been long dead. This was a helpless situation for the creditors who desired to get their debts repaid.

(2) After the IBC

After the introduction of IBC, it was well advertised to make people aware of the new legislation. As a result of all this, many foreign investors began to seek India as a legible place for their investment. The reasons for this may as follows-

1. With lesser time frame for resolution, risk of dropping investment was drastically used for foreign investors.
2. The foreign investors can now employ a supply strategy.
3. More attention can be put towards the start-ups that are more likely to succeed.
4. Even a company goes insolvent, the IBC is geared towards maximizing the value of its assets through bringing changes in the mechanisms of it. This in turn became a bonus for investors.
5. The perks aided with the rise of businesses with easy buying & exiting opportunities in India.

However, the code isn't perfect yet as of 2018, there are some amendments made to the act. More amendments are about to arrive until every little bug of this code is fixed.

III. Critical Analysis

The first law introduced for dealing with insolvency and bankruptcy was SICA that referred companies to BIFR. A report of BIFR data from January - June 2016, shows a decreasing tendency in new cases. Moreover, the data clearly establishes the fact of abuse of BIFR provisions that came down significantly after the introduction of SARFAESI Act. The conclusion of this data also validates that the introduction of RDDBI Act had no impact on the appeal and has been misusing the BIFR forum. The cases that were referred to DRT under RDDBI Act suffered a similar fate too. The recovery percentage of cases governed by DRT was terrible and approximately 70,000 cases were pending with DRT as of 2014. The recovery percentage of insolvency cases administered through SARFAESI Act was somehow better. It clearly establishes the inefficacy of the existing legal and regulatory framework,

including SICA Act, Companies Act, RDDBI Act and SARFAESI Act. Now, to conclude with the reference to the above data, IBC is a great achievement if compared to the previous acts, mentioned above.

Disputes With IBC

The chief promise of IBC was the time-bound resolution process for debt recovery, has gone bad, which, still stays unresolved for very long period of time. Now this has led to an eroding effect on the investors and lenders. The process also allows the company to make fresh starts with a set of new promoters. But, with the time trends, we can see the promise under the threat. With the NCLT's infrastructure, a quantum of cases are flooding the system. The absence of established legal precedents, which only builds up over time, also makes the litigation very time-consuming. A data shows that the resolution, in shelter cases involves a large amounts of bad debts, and is often taken far longer than the prescribed time. "The NCLT courts are starting to resemble metropolitan magistrate's courts with little infrastructure and makes us wonder if the government is serious about recovery of debt,"¹²² And thus, the time issues are still continued.

IV. Conclusion

The Insolvency & Bankruptcy Law is somehow proved itself as an important tool for the well-functioning of the society despite those loopholes. The distribution of claims needs to be an impartial function for all the stakeholders including the creditors, workmen, taxpayers and the debtors. A speedy liquidation process of an enterprise with a long-term economic viability, will lead to losses for both the secured creditors and unsecured creditors. This recent Bill is indeed a noteworthy step in resolving debt and its related issues in this direction. Conversely, the Bill in its current form has some serious gaps which is making it unlikely to meet the desired objective of balancing the interests of the stakeholders and maximization of debt recovery. The Government needs to address these shortcomings in the Code on priority, by way of amendments. The time frame for resolution plan approval needs to be extended from the current drafted 180 days to a little longer time so that the aggrieved entity has much time to settle. But, the timeline shouldn't be in similarity with the defaulting firms and it must incorporate a classification based on total assets and the number of creditor claims. Creditors committee should have mandatory representation from the employees. No doubt, it has brought forward to reduce the time taken to deal with the issues of bankruptcy,

¹²² Says Mr. MV Kini, Senior Advocate , Supreme Court

but the code has somehow been converted into something that is driving this country towards a new age of economy, which is a good thing for our country. However, what this road of growth might lead to is still to be seen far.

INDIAN ECONOMY AND RISING WHITE COLLAR CRIMES

Kratika Joshi and Shreya Chakraborty¹²³

I. Introduction

From the very start of the 21st century, Corporate Frauds and scandals have turned out to be one of the major types of crime with the increase in ratio day by day. The term ‘Corporate Fraud’ earned more than a million entries during a Google search testifying to the popularity of the issue. These types of scams have the potential of causing damage running into billions of dollars for investors, clients and other suppliers. Corporate frauds can be regarded as ‘White Collar Crimes’. These are usually those crimes which are committed by high class professionals holding viable positions either in public or private entities. Federal Bureau of Investigation defines white collar crimes as, “illegal acts characterized by deceit, concealment or violation of trust, which are not dependent upon the application or threat of physical force or violence¹²⁴. The FBI further states that in cases of white collar crimes, “individuals and organizations commit these acts to obtain money, property or services; to avoid the payment or loss of money or services; or to secure personal or business advantages.”

White Collar Crimes includes a many instruments through which corporate frauds take place such as Bank fraud, Insider trading, Mail fraud, Embezzlement, Tax Evasion, Counterfeiting, Money Laundering, Financial Fraud and many more. The phrase “White Collar Crimes” was coined in 1939 during the speech given by Edward Sutherland to the American Sociologist Society. He in his published research paper on white collar criminality in the American Sociological Review defined the concept as, “A crime committed by the persons of respectability and high social status in course of their occupation.” White Collar Crimes by their very nature are very injurious to the large body of society and the impact in regard to the individual victim is almost negligible¹²⁵.

II. Reasons behind White Collar Crimes

Usual perspective of a common man about White collar crimes is that they are being committed quench the thirst of greed or to cover up the economic instability but there is different dimension to it as well. Sometimes these crimes are committed because of some

¹²³ Author is a student at Amity Law School, Amity University Rajasthan, Jaipur, Rajasthan.

¹²⁴ “Recent cases of white collar crime”

<http://www.onlinelawyersource.com/criminal_law/white_collar/recentcases.html>

¹²⁵ Sutherland E (1941). ‘White collar criminality’, American Sociological Review. Vol-V No. 1

personality traits are circumstantial pressures as well. However various reasons for commission of white collar crimes such as:

- First and the foremost, white collar crimes are not the type of crimes which resembles the usual definition of crime for a layman which involves bloodshed or street crimes thus people convince themselves that the acts committed by them are not crimes.
- Another reason for these crimes to take place is lack of awareness among the people. The nature of the crime being different from the traditional crimes is soul reason that people are unable to understand that they are the worst victims of it.
- Some portion of the population holds the opinion that the rules and regulations made by the government don't address the real life practical problems of competing in the free enterprise system.
- One of the most important reasons behind white collar crime is greed. The people committing these crimes are unable to overlook their hunger for money and fail to judge between what is right and what is wrong.

III. White Collar Crimes in India

With the advancement of globalization, trade and commerce and technology, white collar crimes have taken the shape of global phenomenon. And like any other country across the globe India is equally in the grip of the white collar criminality. Increasing trends of new variety of computer dominated white collar crimes have emerged which are known as the cyber-crimes. Instances of both white collar crimes and cyber-crimes are quite visible in the Indian economy. The controversial bank frauds and issues like phishing and other forms of cyber-crimes are a proof that there is a great impact in the economy as a whole. The injuries caused in the cases of bank frauds such as SBI Bank Scam and PNB Bank Scam are negligible. Simultaneously uncountable cases of cybercrimes have been reported where common man is often robbed by hacking into the bank account through internet services.

IV. Instruments of White-Collar Crime

- **Bank Frauds:** the main motive behind this crime is to defraud a bank of its funds. Criminals tend to vanish with huge amount of bank funds causing irreparable damage.
- **Cellular Phone fraud:** unauthorized use and tampering of cellular services. This usually takes place with the stoles phones or where a person signs up for a service under false identification.

- **Counterfeiting:** It occurs when someone imitates something without the authority to do so and pass on the product as genuine item. It usually is associated with money but also takes place with fashion industry as a whole.
- **Embezzlement:** This is a type of crime where a person entrusted with money or property takes benefit of it for his or her own use.

PNB Scam and its Impact

PNB filed complaint with CBI on 29 January 2018 telling the fraudulent exchange with Nirav Modi's firm alongside related bank official. Further, on 04th Feb 2018, CBI issued lookout notice against Nirav Modi. On 05th Feb 2018, PNB informed Stock Exchanges with regards to the fraud and its size which is \$ 1.77 billion on 14 Feb 2018. ¹²⁶(Gayathri and Mangaiyarkarasi, 2018)

The fraudulent transactions were "for the benefit of a few select account holders" The note had not referenced the name of the Fugitive Diamond merchant yet media discovered the name and the place which was the Mumbai branch of PNB where the branch had supposedly given LOUs for raising the buyer's credit for this diamond trader¹²⁷ (Bandopadhyay, 2018)

The LOU issuance had occurred at Mid Corporate Branch Brady House, Mumbai. (Krishna, 2018) (PTI, 2019) PNB employees (54 officials) issued fake Letter of Undertakings (LOU) which could prompt fund NOSTRO account of PNB by the Axis and Allahabad bank (Hong Kong branches), where this NOSTRO account of PNB could fund to overseas parties including that of Nirav Modi.¹²⁸ (Roy, Kalra, and Rocha, 2018) He is a luxury diamond jewellery designer who was ranked #57 in the Forbes list of India's billionaires in 2017. He is the founder and creative director of the Nirav Modi chain of diamond jewellery retail stores, and is the Chairman of Firestar International, the parent of the Nirav Modi chain, which has stores in key markets across the globe. The firms have Nirav Modi, his brother Nishal Modi, Mr. Nirav's wife Ami Nirav Modi, and Mehul Chinubhai Chokshi as partners.

¹²⁶Gayathri, S., & Mangaiyarkarasi, T. (2018). A Critical Analysis of the Punjab National. International Journal of Pure and Applied Mathematics 119 (12), 14857.

Applied Mathematics, 119 (12), 148

Applied Mathematics, 119 (12), 1485

¹²⁷Bandopadhyay, T. (2018, Feb19). The Anatomy of PNB fraud. Retrieved March 2, 2020, from [www.livemint.com: https://www.livemint.com/Opinion/oiMKS98wBunYNviWCVq6hJ/The-anatomy-of-the-PNB-fraud.html](https://www.livemint.com/Opinion/oiMKS98wBunYNviWCVq6hJ/The-anatomy-of-the-PNB-fraud.html)

¹²⁸Roy, A., Kalra, A., & Rocha, E. (2018, June 21). How PNB fraud happened: A 162-page report lays bare the lapses, Retrieved March 3, 2020, from [www.livemint.com: https://www.livemint.com/Companies/QVrxBXaZBX2t82KkFBSAOL/How-PNB-fraud-happened-A-162page-report-lays-bare-the-laps.html](https://www.livemint.com/Companies/QVrxBXaZBX2t82KkFBSAOL/How-PNB-fraud-happened-A-162page-report-lays-bare-the-laps.html)

The two employees of PNB straightforwardly utilized SWIFT and in doing so, they didn't focus on the core banking system (CBS). The FIR contained details like those two PNB employees, who were giving LOUs in unauthorized manner from last 7 years. Sometime later one of them resigned and new employee came to fill in his position. In January, when the authorities of firm requested fresh LOUs from PNB, the new PNB official requested the guarantee/collateral security. The authorities of firm referenced this had been never asked by the PNB administrator over the past 7 years. The doubt regarding the issuance of LOUs was raised and the bank was signaled regarding the same and the new employee looked into the detail of the matter.

After detailed investigation, it was realized that around 100 LOUs issued to these firms were without requesting collateral. PNB turned into the casualty of the fraud. It confronted the issue adding up to around 11,400 Crores. The PNB reported the same to the RBI and CBI.

Modi required money to import pearls and diamonds. He needed foreign currency loan and his earning through export was also in foreign currency. The most significant thing is that he wanted to borrow without his loan account. Thus, he orchestrated LOU from the PNB to get cheap buyer's credit in foreign currency, which is for a short term.

Ideally, Modi ought to have exported the pearls, diamonds and utilize the earnings for settling the due measure of LOU as and when requested by the bank as indicated by its standard system. Further, PNB need to have repaid the advance it has brought up in its NOSTRO account from the overseas banks. But, he used the earnings for different purposes without paying it to the bank. This practice had been a common occurrence for last 7 years.

Modi used to pay back the principal & interest on old LOU by new one. The complete LOUs taken by Nirav Modi and Mehul Chokshi stood at 293 as per the details of investigation. This way the fraud was repeating occurrence. Mr. Gopalnath Shetty, who was been working at foreign exchange department of the PNB branch in Mumbai since 31 March 2010, and his colleagues were supposedly utilizing SWIFT framework and no other Employees had consideration on it. There was no linkage of SWIFT to CORE framework.¹²⁹(Bandopadhyay, 2018) According to the FIR, SWIFT messages were issued to Allahabad bank and Axis Bank in Hong Kong.

How the banking process got converted into a Scam?

¹²⁹Bandopadhyay, T. (2018, Feb19). The Anatomy of PNB fraud. Retrieved March 2, 2020, from [www.livemint.com: https://www.livemint.com/Opinion/oiMKS98wBunYNviWCVq6hJ/The-anatomy-of-the-PNB-fraud.html](https://www.livemint.com/Opinion/oiMKS98wBunYNviWCVq6hJ/The-anatomy-of-the-PNB-fraud.html)

Letter of Undertaking (LOU) is a provision of bank guarantee. As per this, a bank allows its customer to raise money from another Indian bank's foreign branch in the form of a short term credit. The LOU serves to be a bank guarantee, on the back of which foreign branches of a few Indian banks — including Axis and Allahabad Bank — gave dollar loans to PNB. These foreign currency loans were used to fund PNB's Nostro accounts and from these accounts, funds moved to certain overseas parties. A Nostro account is the account an Indian bank (here, PNB) has with an overseas bank.

This was a case of operational risk. Operational risk (OR) depicts a failure in any of the banking systems, processes or people. It was the fault of the PNB employees who wanted to make faulty procedure of issuing LOUs for their own gains/benefits. Two bank officials of PNB had been issuing Letter of Credits for a long period to Nirav Modi without any collateral security, which amounted to a fraud of Rs.11,400 crores. The SWIFT messaging system had bypassed the Core Banking System (CBS) and operated. There was neither proper internal coordination nor any internal control or monitoring process. All auditors like concurrent, internal and statutory failed in finding out the problem. This resulted in the operational risk.

The credit quality of the borrower is important but more often than not, due to trust factor on local bank, the overseas Indian banks loans provides buyer credit without much scrutiny of the credit quality of the borrower.¹³⁰(Dugal, 2018)

The first SWIFT message was MT799 which was delivered to the overseas branches of Indian banks. The LOU issuing bank has NOSTRO account (account in the foreign currency) with the overseas bank branch and when they got SWIFT message, they promptly deposited foreign currency amount in the NOSTRO account of PNB.

There were no linkage or integration of SWIFT with CBS which at that time was not compulsory and hence many banks didn't have that linkage and because of this reason the fraudulent message remained unidentified or undetected. Major issue faced in case of PNB Scam was that the officials for their deceitful act had not just hacked into the SWIFT but also shared confidential SWIFT passwords with senior managerial staff of Modi's Company.

Impact of the scam:

The impact of the scam was felt by large group of stake holders be it customers, employees, Board of Directors, Government of India, etc. Customer were largely impacted for they

¹³⁰Dugal, I. (2018, February 24). PNB-Nirav Modi Fraud: Understanding the Deceptively Low Risk World of Buyer's Credit. Retrieved March 3, 2020, from www.bloomberquint.com

wanted to know the status/position of their deposits with the bank. Meanwhile the Bank was trying to instill confidence among the customer regarding them honoring their commitments.¹³¹(Tiwari, 2018)

Other banks too felt the impact of scam.³⁴ of the listed bank's share price fell between February 12 and February 15, 2018 while benchmark BSE index lost 1.2 per cent. There are five banks like Union Bank of India, SBI, UCO bank, Axis Bank, Allahabad Bank that have been directly affected by the scam as they had offered short term buyer's credit to PNB.¹³²(Sarkar, 2018)

Table 1: Credit Risk Exposure of Public Sector Banks

S.No.	PSBs	Exposure in INR Crores
1.	Union Bank of India	1920
2.	SBI	1360
3.	UCO Bank	2635
4.	Allahabad Bank	2400
5.	Axis Bank	200
Source-Bloomberg Quint, Compiled by the authors		

From the Table 1,

Union Bank's exposure in the fraud was Rs 1920 crores. The bank suffered a net loss in quarter 3 and its gross NPA also rose.

In case of **State Bank of India (SBI)**, Erosion in market cap was 8329 crore. From the Table 1, Bank's exposure in the scam was 1360 crore and the bank suffered a net loss-2416 crore.

Axis Bank lost -3.4 % while it's erosion in market cap was 4800crore. From the Table 1, Bank's exposure in PNB fraud-200 crore. There were rise in Gross NPAs.

¹³¹Tiwari, D. (2018, February 27). PNB fraud impact: PSBs told to keep foreign branches in check. Retrieved March 3, 2020, from [economictimes.indiatimes.com: https://economictimes.indiatimes.com/industry/banking/finance/banking/pnb-fraud-impact-psbs-told-to-keep-foreign-branches-in-check/articleshow/63089351.cms?from=mdr](https://economictimes.indiatimes.com/industry/banking/finance/banking/pnb-fraud-impact-psbs-told-to-keep-foreign-branches-in-check/articleshow/63089351.cms?from=mdr)

¹³²Sarkar, A. (2018, March 6). PNB Fraud Case: Axis Bank discloses Rs. 200 crore exposure to Nirav Modi, Gitanjali Gems Accounts. *Bloomberg Quint*. Retrieved March 3, 2020.

Allahabad Bank lost 9.9 percent. Erosion in market cap was at 484 crores. From the Table 1, Bank's exposure in scam- INR 2400 crores. The bank dived into a net loss 1263.79 crores. Its Gross NPA rose.¹³³(Bharadwaj, 2018). Also, the scam in **Allahabad bank** was due to internal employees only as they misused the SWIFT technique and never linked the transactions on SWIFT with CBS.¹³⁴ (Upadhyay, 2018)The fraud had its impact on another state owned entity which is the **Life Insurance Corporation (LIC)** as it was the single biggest investor in four entities majorly affected& as a result it lost Rs 1,400 crore over the last three trading sessions because of its investment in these companies.

Jewellery sector too burdened the impact of the scam as banks became skeptical while lending to them.¹³⁵ This in turn impacted the credit flow to sector and caused delays in extending advances. The shares of this sector of gems and jewellery dipped and caused a dent to the trade.

But the major impact faced was by the bank itself as its Global credit rating dipped. Moody's and Fitch raised doubts as to creditworthiness of the bank in wake of the scam. The bank's foreign currency issuer rating was downgraded by a notch to 'ba1', which non-investment grade, from 'Baa3'- is meaning below investment grade. This downgrade was a result of discovery of number of fraudulent transactions along with risk of weakening of bank's standalone credit profile.¹³⁶

V. Conclusion:

Banking Sector has a major influence over the stock market be it NIFTY or SENSEX. Scams and fraud are major factors that affect credibility of banking businesses and make investors lose confidence in investing as they doubt the transparency of business in the economy. Such incidences greatly hamper trade financing as overall perception of investor is changed and affected.

The Swift transactions which were happening without collateral security since the last 7 years were unidentified, why this was happening i.e. why the swift bypassed the CBS was the question of utmost importance. The messaging system was unmonitored even after various audits which was one of the major reasons few employees in agreement with the customer led

¹³³Bharadwaj, S. (2018, March 22). Nirav Modi case: PNB fraud affects stocks of Union Bank, Allahabad Bank, SBI, Axis Bank. Retrieved March 4, 2020 from [www.business today.in](https://www.business today.in/markets/stocks/nirav-modi-case-pnb-fraud-affects-stocks-of-union-bank-allahabad-bank-sbi-axis-bank/story/270786.html):
<https://www.business today.in/markets/stocks/nirav-modi-case-pnb-fraud-affects-stocks-of-union-bank-allahabad-bank-sbi-axis-bank/story/270786.html>

¹³⁴Upadhyay, D. (2018). Banking Scams in India. *Journal of Banking and Insurance Law*, 1 (2), 10

¹³⁵Gems and Jewellery - Shutdown and its impact. (2018, Feb 27). CARE Report

¹³⁶Das, S. (2018, Feb 20). Fitch, Moody's place PNB under review for downgrade. ET Bureau.

to such a big fraud, they not only defrauded their own institution but also hacked and shared the confidential data. To counter it's important that the risk management system of the bank be improved. A constant series of frauds indicate a weak and unplanned internal risk management. Had this not been the case the monetary loss could have been prevented. A proper follow-up needs to be maintained with the paying bank. These series of frauds have also questioned the role of RBI as regulator of banks, need is that RBI should empower the banks to swiftly deal with such offenders to avoid unwanted red-tapism.

The question as to why RBI didn't pay attention during auditing of these transactions? Where it went wrong while analyzing these transactions? The RBI surely after the scam took necessary steps for improvisation of the CBS, and these were welcome changes but the fault in past made loss which is difficult to recover. The scam impacted the economy adversely, even though it was PNB that was scammed but effects were prominent in not just banking sector but other sectors too which led to fall of credibility of Indian Economy.

This case was a case of fault in process which operational risk, it is thus important for future preventive measures that how the process got dirty be investigated. Herein there was no planning in risk management system, the system was unmonitored. Rise in such situations suggest that focus on risk management is necessary so that such unmonitored transactions be identified.

There is rise in the need of taking new decisions, new reforms, and autonomy to the banks but at the same time whether the banks are using that autonomy honestly or not, this watch needs to be kept by RBI.

It is evident that the advancement of science and technology has led to emergence of a new form of crime known as white collar crimes. This term per say has not been defined in the penal laws of India but the dimensions of white collar crimes are so wide that the provisions of the act include them in one way or other. The reason behind these crimes are basically because people lack awareness and they do not really consider these acts as crimes since they are way different than the traditional course of crime which happen in the society. The usual course to keep a check in the crime rate is through sanctions but there is no explicit provision for the sanction of these acts, what exists as sanctions are not in proportion with the intensity of crime, they seems to be petty in comparison to the level of criminality.

The provisions thus need to be amended to enhance punishments particularly in terms of fine charged, according to changed socio-economic conditions. Special Acts dealing with white collar crimes and the provisions of penal laws are to be interpreted in harmony to control the problem of fighting white collar crimes.

India to develop and maintain its growth needs to reduce fraudulent practices and corruption in government and private sector. These two factors are the major reason behind the reluctance of multinationals to invest in our country. In 2011, there was a fall in FDI and the international financial institutions outflow of funds from stock market also decreased which clearly indicated negative impact of these factors.

India thus must improve governance and take strict action against the offenders. The private sectors must implement the measures for prevention of fraudulent practices and focus on ethics to reduce frauds. Both the public and private sectors have to collaborate to minimize the risk of fraud and other white-collar crimes in India.

CORPORATE SOCIAL RESPONSIBILITY IN RAJASTHAN

Ms. Mishel Modi¹³⁷

The reason for this paper is to survey corporate social duties (CSR) exercises in Indian organizations after its enactment through organization charge act 2013 under segment 135. The study depends on surviving writing and will remember the models from current situation for Indian organizations. Auxiliary research is directed for the Indian organizations through their corporate sites pages containing data about their CSR activities. Data recorded in this examination paper is gotten from CSR reports, Annual Reports, Press Releases, White Papers and different references. Indian organizations have begun to comprehend that they can utilize CSR as a technique so as to pick up benefits and to improve a spot for all individuals. In the long haul, the organizations that are socially capable are effective. This paper is of incentive to the analyst and specialists of corporate social obligation.

Corporate social duty (CSR) is a trendy expression around the world. In the present globalized world, one of the extraordinary difficulties looked by firms is joining of CSR in business. Partners require a part more from organizations than just seeking after development and productivity. CSR has come a long route in India and other developing markets. From responsive exercises to supportable activities, corporates have unmistakably shown their capacity to have a huge effect in the general public and improve the general personal satisfaction. This paper centers around the idea of CSR, its measurements and pertinence in developing markets with unique reference to India. Corporate social duty (CSR) is a trendy expression around the world. In the present globalized world, one of the incredible difficulties looked by firms is reconciliation of CSR in business. Partners require a parcel more from organizations than just seeking after development and gainfulness. CSR has come a long path in India and other developing markets. From responsive exercises to maintainable activities, corporates have plainly displayed their capacity to have a noteworthy effect in the general public and improve the general personal satisfaction. This paper centers around the idea of CSR, its measurements and pertinence in developing markets with extraordinary reference to India.

I. Introduction

The Corporate Social Responsibility implies the manner by which business firms coordinate natural, financial and social worries into their way of life, values, procedure, basic leadership and tasks in a responsible and straightforward way and, in this way, prompting better production of riches, an improved society and better practices in the business association.

Assumptions regarding the dependable job of business in the public arena are expanding and the ongoing exploration on corporate social duty talk shows that there have been advancements of an assortment of instruments that intend to improve, assess and impart socially capable practices (Golob and Bartlett, 2007). We consider revealing a significant specialized apparatus, which can guarantee more noteworthy corporate straightforwardness and empower a superior commitment with partners. This is an exploratory examination intended to research the degree and nature of social and ecological revelation in corporate social reports.

¹³⁷ Author is a student at Amity Law School, Amity University Rajasthan, Jaipur, Rajasthan.

II. Corporate Social Responsibility

CSR alludes to the possibility that organizations need to put resources into socially and naturally applicable causes so as to connect and work with concerned gatherings having a stake in the organization's work. CSR is named as "Triple-Bottom-Line-Approach", which is intended to enable the organization to advance its business advantages alongside the obligations it holds towards the general public on the loose. CSR is unique and more extensive from demonstrations of foundations like supporting or some other magnanimous movement as the last is intended to be a shallow or surface level activity as a component of business technique, yet the previous attempts to dive deep and address longstanding financial and ecological issues.

III. Needs of Corporate Social Responsibility

CSR is answerable for producing a great deal of generosity to organizations either legitimately or in a roundabout way. These incorporate making workers increasingly steadfast and assist organizations with holding them over the long haul-

Make organizations increasingly genuine and help them in getting to a more noteworthy piece of the pie. Since organizations act morally, they face less legitimate obstacles.

Reinforce the altruism of organizations among the overall population and help in fortifying their "image esteem".

Help in the adjustment of financial exchanges in both the short and since a long time ago run

Help in constraining state's inclusion in corporate undertakings as organizations self-control and go about as generally moral.

CSR enables organizations and their parts to like their investors to help in the advancement of a nation's economy on a full scale level. They spur organizations to participate and speak with one another, their clients and the managerial hardware.

IV. Methodology

This is reported by examining that how Indian organizations saw CSR and what are the practices and activities that have been attempted by them. The investigation depends on information recorded by legislature of India for CSR for all kind of divisions and organizations. The auxiliary data is utilized for the investigation of this examination which is accessible as:

- (a) the distributed yearly reports and government site
- (b) executive's reports,
- (c) distributed leaflets
- (d) articles and news distributed about the CSR rehearses

V.Law Related to Corporate Social Responsibility Under Companies Act,2013

The Companies Act, 2013, a successor to The Companies Act, 1956, made CSR a mandatory demonstration. Under the notice dated 27.2.2014, under Section 135¹³⁸ of the new demonstration, CSR is obligatory for all organizations government or private or something else, if they meet any at least one of the accompanying monetary models.

The total assets of the organization ought to be Rupees 500 crores or more .The yearly turnover of the organization ought to be Rupees 1000 crores or more .Yearly net benefits of the organization ought to be at any rate Rupees 5 crores.

In the event that the organization meets any of the three monetary conditions as expressed above, they are required to make a board to uphold its CSR order, with in any event 3 chiefs, one of whom ought to be an autonomous executive

The duties of the previously mentioned advisory group will be:

- Production of an intricate approach to actualize its legitimately commanded CSR exercises. CSR acts ought to adjust to Schedule VII of the Companies Act, 2013.
- The advisory group will allot and review the cash for various CSR purposes.
- It will be answerable for directing the execution of various CSR exercises.
- The advisory group will give a yearly report on the different CSR exercises embraced.
- CSR approaches ought to be put on the organization's legitimate site, in the structure and arrangement affirmed by the advisory group.
- The top managerial staff will undoubtedly acknowledge and pursue any CSR related recommendation set up by the previously mentioned board.
- The previously mentioned board of trustees should normally evaluate the net benefits earned by the organization and guarantee that at any rate 2 percent of the equivalent is

¹³⁸ Corporate Social Responsibility.

spent on CSR related exercises.

- The board of trustees must guarantee that neighborhood issues and locales are investigated first as a major aspect of CSR exercises.

The expansive and significant highlights of the CSR laws are as per the following:

Quantum of cash used for CSR reasons for existing are to be obligatorily remembered for the yearly benefit misfortune report discharged by the organization.

The CSR rules came into power on first April 2014 and will incorporate auxiliary organizations, possessions and other outside corporate associations which are engaged with business exercises in India.

CSR has been characterized in a somewhat expansive way in Schedule VII of Companies Act, 2013. The definition is thorough as it incorporates those particular CSR exercises recorded in Schedule VII and other social projects not recorded in plan VII, whose consideration as a CSR movement is left to the organization's watchfulness.

"annihilating appetite and destitution, advancement of training and business, employment improvement ventures, advancing sex balance, ladies strengthening, inns for ladies and vagrants, mature age homes, day care, natural maintainability, security of widely varied vegetation, commitments to PM alleviation support, measures to profit military veterans, war widows and dependants, advancement of sports, and country improvement ventures".¹³⁹

Net benefits are determined based on Section 198 of Companies Act, 2013. Nonetheless, just local offices are incorporated and profit related installments are let well enough alone for the last computation of all out net benefits.

Organizations are permitted to execute CSR by means of any of the accompanying methods conceivable. Setting up a Trust or Society under Section 8 of the 2013 Companies act under its direct regulatory control.

Corporates can redistribute the CSR errands to built up social ventures foundations occupied with CSR exercises for a long time or more. These establishments are intended to take part in not revenue driven exercises. The corporates however should screen the social ventures intended to uphold their CSR order. Organizations can team up with individual organizations and work out some game plan dependent on the CSR rules.

CSR exercises ought to keep the underneath referenced principles:

¹³⁹ Schedule VII of Companies Act, 2013

- Any familial movement or demonstration of individual philanthropy isn't to be incorporated as a major aspect of CSR action.
- Any kind of commitment financial or generally by political associations is outside the domain of CSR exercises as demonstrated under Section 182 of the 2013 Companies Act.
- All CSR exercises are to be led in An indian area to be viewed as substantial.
- Organizations can use a limit of 5 percent of their complete use to help in limit working of their general public, trust or redistributed social endeavor.
- As expressed before recorded open organizations are ordered to have up to 3 chiefs as a component of their CSR board of trustees one of whom ought to consistently be free. Unlisted and privately owned businesses are permitted to have in any event 2 executives and no autonomous chief.
- CSR reports are to be obligatorily distributed on a yearly premise. The reports have a fixed configuration as planned by the CSR rules, which must incorporate subtleties like authority CSR approach, the quantity of assets devoted to CSR and its definite use just as a nitty gritty clarification for non-usage of assets assuming any. The said configuration and its constituents must be shown on the official site of the organization.
- CSR exercises started by an outside organization must be by means of its Indian auxiliary to be viewed as genuine under Section 135 of the organizations demonstration.
- Trusts made by organizations to do their commanded CSR assignments, are to be necessarily enrolled in certain states where it is obligatory under Income Tax, 1956.
- Organizations are permitted to co-work with their autonomous partners, gave the last has an appropriate following and detailing framework for CSR exercises that might be embraced.
- Organizations are permitted to take part in limit developing by dispensing to 5 percent of all costs to be brought about on CSR exercises to be given to preparing and preparing of work force to complete CSR and related exercises.
- Exercises that can't be considered as CSR incorporate.

- Operational and authoritative exercises of the business.
- CSR exercises that don't occur in An indian area.
- Worker and familial welfare exercises are carefully outside the domain of CSR assignments also.
- Financial assistance rendered to political outfits isn't considered as a CSR action also.
- Occasions like the long distance race, grant capacities, financial assistance rendered to altruistic establishments, supporting TV shows and so forth that are severe "one-off"-for example intended to happen only every so often are not considered CSR.
- Organizations can't report legitimate obligations rendered under acts or guideline like Labor Act, Land act and so on can't be considered as CSR errands.

VI. Corporate Social Responsibility in India

India has gone more distant than some other nation. In 2013, it instituted Section 135 of the Indian Organizations Act recommending an obligatory "CSR spend of 2% of normal net benefits during the three promptly going before money related years" for all organizations meeting indicated monetary edges. At the end of the day, organizations "having total assets of rupees five billion or more, or turnover of rupees ten billion or more or a net benefit of rupees fifty million or more during any monetary year" need to guarantee that they burn through 2% of normal net benefits made during the three going before years on CSR exercises.

One example of Corporate Social Responsibility in India:

TATA GROUP

The Tata Group aggregate in India does different CSR ventures, the vast majority of which are network improvement and neediness easing programs. Through self improvement gatherings, it has occupied with ladies strengthening exercises, pay age, country network advancement, and other social welfare programs. In the field of training, the Tata Group gives grants and gifts to various establishments.

The gathering additionally participates in medicinal services ventures, for example, the assistance of youngster instruction, inoculation, and production of familiarity with AIDS. Different territories incorporate financial strengthening through agribusiness programs, condition insurance, giving games grants, and foundation improvement, for example, clinics, explore focuses, instructive organizations, sports institute, and social focuses.

VII. Corporate Social Responsibility In Rajasthan

CSR is an initiative of the Rajasthan Government to provide a platform for interaction between various stakeholders engaged in stakeholder activities. It facilitates channelizing of CSR funds from companies for the State welfare. With reference to the CSR guidelines, this platform provides a list of eligible projects under various categories in the State companies to review and select. Each of these project is an identifies CSR project, verified and approved by various departments of the State Government. Along with project listing, this platform enlists companies and government bodies that are and have been executing CSR projects in various sectors. This initiative also facilitates interaction between State Government Departments, Companies and Not-for-Profit Organizations (NPO'S) for public welfare.

In Rajasthan Dabur has adopted 4 government schools.

"Dabur is focused on making a positive commitment to an increasingly practical future for India. As a feature of this crucial, have been moving in the direction of improving the learning condition for kids in reverse regions the nation over. We comprehend that schools are establishments for bestowing training to the more youthful age. At Dabur, we accept that instruction is both the way to a superior life and a key to guarantee generally speaking improvement of the general public. In an offer to improve enlistment levels and decrease the dropout rates in country and semi-urban schools, Dabur has taken up the onus of improving the framework in schools and improving the learning experience for youngsters in provincial India. This redo practice in Rajasthan is a piece of this crucial.

"Access to essential training is the most major right of any youngster. In any case, a similarly significant right is access to fundamental and clean sanitation offices and a sound learning condition in schools. Going ahead, Dabur India Ltd plans to reveal a large group of improvement activities planned for improving the employment of country people, especially ladies and kids, in the local.

Rajasthan government has established Rajasthan Corporate Social Responsibility Authority for successful usage of Corporate Social Responsibility (CSR) exercises, appropriate use of CSR assets and significant level checking.

CSR store will be set up in the state at the degree of power and infrastructural offices will be made through the reserve according to the needs of the state. Proposals will likewise be taken from modern gatherings.

Under the corporate social duty (CSR) plans, 134 organizations have spent Rs 436.81 crore in 2017-18 in Rajasthan which rose from Rs 388.79 crore in the earlier year.

Authorities said the CSR spending during 2018-19 could be all the more however they are yet to set up the last report.

The power will make an instrument for the administration and the organizations to meet up to take up welfare extends mutually for accomplishing scale and effect.

Mitsubishi Electric is known as a Global pioneer in Electric and Electronic Equipment for Residential, Commercial and Industrial applications.

Mitsubishi Electric India is moving in the direction of all around characterized CSR activities of offering back to the general public and be a piece of practical advancement. The organization is trying for its CSR Plan for FY19-20 and has included Jaipur too for a tree estate drive.

Mitsubishi Electric India sorted out a Tree Plantation and planted around 200 trees in Madhav Kanan Park, Nehru Nagar, Jaipur, Rajasthan. More than 10 workers from MEI and 20 volunteers from NGOs took an interest in the tree manor.

"By planting trees in the city, Mitsubishi Electric India needs to convey the message that expanding the green front of the city is of most extreme significance. As trees give spread from heat as well as help in improving water levels. Our adage is to advance condition preservation in all aspects of the nation, and we need the residents to savor and ensure clean condition".

Mitsubishi Electric India will keep on giving our offer towards condition's advancement and supportability in the coming future too. The organization will take up such CSR activity in different urban areas too.

VIII. Conclusion

The consequences of our investigation are extremely helpful for organizations that mean to plan their own maintainability structure and to recognize their social duty. Moreover, the topographical contrasts give us enough components to help our future work, that of setting up primary rules for a corporate social revealing structure considering the action of backups of biggest organizations and the principle pattern for non-money related detailing these days.

In the present condition of disarray and vulnerability, corporate social revealing has a lot to contribute. In this manner, our further research is as of now in progress to propose a national

calculated system that incorporates announcing social and ecological data with monetary data as per organizations' industry and size. Reestablishing certainty and trust in business sectors will require a move to long haul maintainable worth creation, and corporate duty announcing must be an instrument towards this end.

1) CSR methodologies have a perplexing character because of association of different sort of CSR rehearses.

2) Corporate have received various models of CSR exercises for their CSR intercessions, as far as kind of exercises, regarding usage methodologies, in terms of basic leadership forms and as far as contribution. This investigation has drawn out that various organizations may well receive altogether different sorts and strategies of association. There is nobody widespread model for CSR exercises and activities, which will be suitable for numerous kinds and sizes of organizations. The suitability of the CSR exercises may likewise shift with sort of industry in which the organization works.

3) Companies are distributing CSR spending plan and going through this cash deliberately on CSR exercises. The vast majority of the organizations, falling under the qualification criteria by Company Bill Act, in every one of the conditions of India are rehearsing CSR exercises and projects, which prompts social welfare everywhere level.

Analysing corporate governance of companies in emerging markets can be really tough. Despite that, emerging markets trends continue to have a unique set of characteristics which require special attention when assessing corporate governance at the national level and at the company level. This present book primarily focuses on the current discourse of Corporate Governance (CG) in emerging economies. In addition to its corporate governance theories, a plethora of concepts has been originated in present times. These concepts are varied in their meaning and application. The book focus on concepts like Cybercrimes, merger and Acquisition, Corporate Social responsibility, Digital responsibility, Insolvency and bankruptcy, Corporate Governance Ratings, Law and Governance in India, Corporate Crimes against Women, Environment and sustainability.

