CORPORATE GOVERNANCE REGIME IN INDIA: A TALE OF CONSTANT EMERGING CHALLENGES

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I. Introduction

Globalization and liberalization have brought in additional challenges to government across the globe. These new challenges largely arise from the increased role of the private sector in the developmental activities. These developmental activities were previously done by government agencies. The government withdrew its activities from certain areas which are categorized as commercial/ production-oriented in nature and encouraged private players to fill its shoes. These challenges have similar dimensions, be it the United States facing some of the biggest corporate frauds seen in the recent past, or in the least developed countries like Bangladesh facing corruption associated with the donor grants and aid programmes[1]. Therefore, corporate governance has evolved and grown significantly in last two decades.

II. Meaning and Definition of Corporate Governance

The Committee on Financial Aspects of Corporate Governance in the United Kingdom, popularly known as Cadbury Committee, defined the term corporate governance as "the system by which companies are directed and controlled. Corporate governance is concerned with holding the balance between economic and social goals and between individuals and communal goals…the aim is to align as nearly as possible the interests of individuals and corporations and society."[2]

Ten years later of Cadbury Report, Higgs Report emphasized on the other elements when it said, "corporate governance provides the architecture of accountability- the structure and processes to ensure companies are in the interest of their owners". Demb and Neubauer in their classic work, 'The Corporate Board: Confronting the Paradoxes', defines it as "the process by which corporations are made responsive to the rights and wishes of stakeholders."[3] This definition has emphasized in the process, which emphasized

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1 *See,*KallummalMurali, *Small Investor Protection and Issues in Corporate Governance: An IT-enabled Approach to the Decision Making Process of Firms*, in Jaivir Singh (ed.), Regulation, Institution, and Law (Social Science Press, 2007) p. 155.

2 Cadbury Sir Adrain, Corporate Governance and Chairmanship (Oxford University Press, 2003), 1.

3 Demb Ada &Neubauer F. Friedrich, The Corporate Board: Confronting the Paradoxes (Oxford University Press, 1992) p. 187.

that the board must meet expectations as per the changing demands. Arthur Levit, former chairman of the Securities Exchange Committee, in his book, 'Take on the Street', defines corporate governance as "the relationship between the investors, the management team and the board of directors of a company. Good corporate governance exists when these groups communicate openly and honestly."[4] But, all encompassing definition comes from the preamble of OCED Principle, which says: "corporate governance involves a set of relationship between a company's management, its board, its shareholders and stakeholders. Corporate governance also provides the structure through which the objectives of the companies are set, and the means of the attaining those objectives and monitoring performance are determined."[5]

These above-mentioned definition of corporate governance make clear two points: - *Firstly*, there are boundaries between companies and their board operators, and *secondly*, these boundaries are set by laws, regulations investors, shareholders, public opinion, and companies themselves.

The characteristics of corporate governance or the fundamental principles on which corporate governance is based, includes discipline, accountability, transparency, fairness, independence, responsibility, and social responsibility. These are seven characteristics on which corporate governance works. Though the origin could not be located correctly, some of the characteristics of corporate governance expressly recognised in CLSA Emerging Markets 2001. But these characteristics became popular after their appearance in famous King Report on Corporate Governance for South Africa 2002. King Report II expressly mentioned that: "successful governance in the world in the 21st century requires companies to adopt an inclusive and exclusive approach. The company must be open to institutional activism and there must be greater emphasis on the sustainable or nonfinancial aspects of its performance. Boards must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company's identified stakeholders. The correct balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company."[6]

4 Levit Authur, Take on the Street (Pantheon Books, New York, 2002).

5 OCED Principles of Corporate Governance, *available at* www.oced.org.

6 King Report on Corporate Governance for South Africa, 2002, *available at* www.mervynking.co.za.(last visited on October 16, 2017).

A. Significance of Corporate Governance

Firstly, due to privatization, many functions which were earlier in State's domain have been performed by corporate. And corporate are borrowing capitals generously either from government or public. Therefore, when the public fund is involved in corporate business, it requires good corporate governance.

Secondly, due to liberalization and technological advancement, it has become very easy to invest anywhere in the world. This has changed the rule of engagement or investment. A person invests his money only where he feels his money is safe and his investment will make a good profit. Safeguarding capital of investment requires rules of 'effective monitoring', which is one of the fundamentals of good corporate governance.

Thirdly, nowadays, promoters of corporate firms are getting sidelined. The financial intermediaries are making a huge investment in corporate. These financial intermediaries prefer companies managed by good professionals rather than traditional promoters. In practice, these professional managers are very much influenced by financial investors. This led to shifting of indirect control of corporate from promoter to institutional investors. This scattered stake holding also requires good corporate governance culture.

Fourthly, good corporate governance culture in a country plays a basic or most important role in attracting foreign capital at much lower costs. The reason is very simple, it creates a general goodwill for investment.

Lastly, collapses of prominent businesses, both in the financial and non-financial sectors, such as Polly Peck, BCCI, and later Baring, have led more emphasis on control of capital (e.g., to safeguarding assets etc). In India also, Satyam Saga, UTI scam, Harshad Mehta episode, Sahara, Mallya, Ranbaxy, and Tata episode are some of the examples of big name, whose wrongdoing sparked the issue of corporate governance.

B. Origin and Development of Corporate Governance

The concept of corporate governance has been with since companies began to take their present form. In 1600, East India Company was formed and its way of functioning gives an example of recognition of principles of corporate governance. Under the company, the directors were made directly accountable to the shareholders for capital expenditures and selection of important officials of the company.[7] This reference of East India Company is important to understand that the basic governance issues, power and accountability, has been

[7] *See*, *supra* n.2, p.3.

in existence since the beginning of the corporations.

In the nineteenth century, there were two important legislations of company law in the UK which are very relevant in terms of governance. The Joint Stock Company Act of 1844 required all new businesses with more than twenty- five participants to be incorporated. This gave them a legal status and personality of their own. At the same time, companies had to file their constitutions and annual accounts with the Registrar, thereby providing a degree of disclosure.[8]

Then, the Limited Liability Act of 1855, was enacted which limited the liability of shareholders to the amount of share capitals which they had invested, should their company become bankrupt. This protected their personal assets from the consequences of the corporation[9].

In the late 1980s and early 1990s several scandals and financial collapses surfaced which worried legislators, banks and shareholders. This led to a catena of measures getting introduced by the UK government to create an effective regulatory mechanism. In 1990 the government of UK announced the establishment of Financial Reporting Council (FRC). The FRC is the UK's independent regulator for corporate reporting and updating the UK Corporate Governance Code.

In May 1991, London Stock Exchange set up Cadbury Committee whose report was published in1992 in name of "Code of Best Practices". The report is considered as *magna carta* of corporate governance throughout the world. Main recommendations of this report includes all listed companies must comply with the code and non-compliance must be explained, separation of office of chairman and chief executive to avoid concentration of power, independent non-executive directors with more power and influences, major role of non-executive directors in audit, nomination and remuneration committee, duty of board to publish financial report, rotation of auditors, encouragement to institutional investors to make greater use of their voting right.

After publication of this report several other reports were published viz. Higgs Report (2003), Smith Review Report (2004), Hample Report. In 2003, a Combined Code on corporate governance was adopted which provided the splitting role of chairperson and CEO, the establishment of audit and nomination committee, the evaluation process of performance by board etc.[10]

[8] G.H. Grant, *The Evolution of Corporate Governance*, *available at*www.tcnj.edu.(last visited on October16, 2017).

[9] *Ibid.*

[10] Revision to the Corporate Governance Code and Guidance on Audit Committees, *available at* Http://www.frc.org.uk(last visited on October16, 2017).

This Code was revised in 2010 and known as UK Corporate Governance Code. Main changes made under the Code include, responsibility of the Chairman to ensure effective leadership, active involvement of directors including non-executive directors, independence of board and directors, periodic evaluation of performance of the company by independent people, proper risk management, mandatory reporting of source of company's revenue and profits, directors remuneration must be based on performance.[11]

United States as a society believed in the idea of free enterprises and celebrated capitalism. This provided an ideal environment for the growth of corporate governance. In early 20th century, two Acts were enacted in the United States, the Securities Act, 1933 and the Securities Exchange Act, 1934. Under these Acts, registration was made mandatory for companies offering public stock, financial disclosure and auditing were also made mandatory and deceitful standard and manipulative practices were prohibited.[12]

In the United States, the Sarbanes-Oxley Act, 2002 is very important for corporate governance. The passing of SOX should be seen against the backdrop of several huge corporate failures in the USA. The collapse, in particular, Enron and WorldCom, caused serious concern and became such a political issue that the United States government of the day [at that stage the Bush Administration] saw no option but to act quickly and rapidly. The key features of this Act includes:

i. Application to all issuers including foreign private issuers;
ii. Establishment of the public company accounting oversight board (PCAOB) to regulate registered public accounting firms and associated persons;
iii. Ensuring independence of auditors by prohibiting them from rendering certain non-audit services such as legal or expert service or human resource etc, rotation of auditors;
iv. Ensuring corporate responsibilities for the veracity of annual and periodic reports and provision for harsh punishment for violation of this responsibility;
v. Publication of all material financial and non –financial information in standard manner to avoid any confusion or misconception;
vi. The introduction of new criminal offences for destruction or alteration or concealment of documents.[13]

[11] *See*, Changes to the Combined Code, *available at* www.asgurst.com(last visited on October 16, 2017).
[12] K. Fred Skousen, Steve M. Glover & Douglas F.Prawitt, An Introduction to Corporate Governance (Thomson South-West, 2005)p. 48.
[13] *See*, Jane Bourne, *Accounting and Auditing Reforms: An Overview of Sarbanes-Oxley Act in America*, *available at* reference.sabinet.co.za.

III. Development of Corporate Governance in India

A. Corporate Governance in Ancient India

In India, there is amazing congruence between the structure of governance of those of ancient kingdoms of India and today's corporations. The ancient text and scripts are full of such commonalities. Kautilya mentioned fourfold duties of a king in *Arthashastra*, namely, '*Raksha'*(protection or risk management), '*Vriddhi'* (growth), '*Palana'* (maintenance) and '*Yogkshema'* (well being)[14]. These duties are very much similar to duties of CEO or board of management of modern corporation.

B. Corporate Governance in Modern India

Corporate governance reforms in India have involved a wide range of institutional and corporate initiatives that includes (a) improving of capital markets, (b) ensuring more effective protection of minority investors through promoting higher standards of information disclosure and enforcement, (c) reforming company board structure and operational systems to make the board directors more accountable to the shareholders and (d) reforming governance mechanisms of financial institutions. These initiatives have come from the government via government legislations, from SEBI in form of statutory regulations and through several self-disciplining and voluntary initiatives taken by the industry chambers and business associations, professional bodies and companies themselves.[15]

C. Formalising Governance code for Corporate Governance

The first formal attempt at formalising governance code for corporate governance came from the Confederation of Indian Industry, which in 1998 published the Desirable Code of Corporate Governance (CII, 1998). The CII document recommended several policies that could be adopted by Indian companies in line with international best practices, whether in private sector, the public sector, banks or financial institutions, all of which are corporate entities. This Code was voluntary in nature. Safeguarding of interests of investor, with special care to small investors, including higher transparency for business and industry, the felt need of movement towards international norms pertaining to information disclosure by corporate and all of above leading to a higher confidence of public at large in business and industry in light of greater integration of India in the world market were main rationale of this code.[16]

[14] Concept Paper on Corporate Governance Policy, 2012.
[15] *See*, Jayanti Sarkar & Subrata Sarkar, Corporate Governance in India (SAGE Publication, New Delhi, 2012) p. 103.
[16] *Id*. p. 82.

In 1999, the SEBI took a very important step to set a committee under chairmanship of Kumar Mangalam Birla (KMBCCG) to suggest measures to improve the standards of corporate governance of listed companies in India, particularly with respect to disclosure of material financial and non-financial information, responsibilities of independent and outsider directors on company boards, and to suggest safeguarding against insider trading. This Committee recommended that,[17]

i. Board to set qualified and independent audit committee to enhance the credibility of financial disclosures and to promote transparency.
ii. Audit Committee should have at least three directors with one being finance literate.
iii. Companies to provide consolidated statements in respect of all its subsidiaries in which they hold 51% or more of the share capital.
iv. Shareholders to show a greater degree of interest and involvement in the appointment of directors and the auditors.
v. Audit Committee should meet at least thrice in a year and Chairman of the Committee should be present in AGM.

After Enron debacle in 2001, U.S enacted stringent Sarbanes Oxley Act which also led Indian Government to wake up. The government of India appointed Naresh Chandra Committee to examine auditor- client relationship and the role of independent directors. This committee recommended audit firms rotation, audit committee to be set up by independent directors, companies to have at least 50 percent independent directors, and certain professional assignment should not be undertaken by auditors[18].

On the recommendations of KMBCCG, SEBI introduced 'Clause 49 of the Listing Agreement' in 2000. The defining feature of Clause 49 is that listed companies need to comply with a set of corporate governance regulations and disclose its compliance with these regulations in a separate section on corporate governance in their annual reports. The fundamental areas in which compliance is required are with respect to:

i. The board of directors,
ii. The audit committee,

[17] Meaning and concept of corporate governance, evolution of corporate governance in India and other part of world, need and essence of corporate governance and role of CAG in this regard, *see* Background Training Programme, *available at* rtialllahabad.cag.gov.in (last visited on October 16, 2017).

[18] *Ibid*.

iii. Subsidiary companies,
iv. Disclosures including those on RPTs,
v. CEO/CFO certification,
vi. Report on corporate governance; and
vii. Compliance.

Apart from the mandatory regulatory requirements, Clause 49 also contains some non-mandatory requirements such as the option of setting up a remuneration committee, shareholder rights, training of board members, audit qualifications, and so on. The compliance philosophy behind the Listing Regulations was mostly of the 'comply or else' approach to governance regulations, with certain key regulations being mandatory. While some other regulations, in Clause 49 were listed as non-mandatory, these did not fall strictly under the 'comply or explain' approach. Clause 49's requirements include[19]:

i. Minimum percentages of independent directors (50% or 33% depending on whether the Chairman was an executive director),
ii. Tightening up the definition of "independence",
iii. Mandating the number of board meetings per year,
iv. Developing a code of conduct,
v. Imposing limits on the number of directorships a director could simultaneously hold,
vi. Enhancing the power of the audit committee by requiring financial literacy, experience and independence of its members, and by expanding the scope of activities on which the audit committee had oversight,
vii. Certifications by the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of financials and overall responsibility for internal controls,
viii. Enhanced disclosure obligations (on many things including accounting treatment and related party transactions), and
ix. Enhanced requirements for holding companies when overseeing their subsidiaries.

Since the time Clause 49 came into effect in February 2000, its provisions have undergone periodic changes following intermittent assessment of its functioning. This was particularly so with respect to some of the key aspects of

[19] Kaishsh K. Dagar, *Ready Reckoner on Compliance with various Clauses/Provisions of Stock Exchange Listing Agreements and SEBI Regulation*, *available at*www.icsi.edu/cs/March2008/Articles/ReadyReckoner.pdf(last visited onOctober16, 2017).

governance – board constitution and disclosure rules[20]. The original regulation of February 2000 required that if there is non-executive chairman then at least one-third of board must constitute of independent director. It further provided that in case of executive Chairman the board must constitute of at least one-third of independent directors. The requirement was revised in April 2008 to provide for the situation where non-executive chairman happens to be promoter or is related to the promoter or management then it must follow the constitution provided in code of executive director.[21] The criteria for appreciating 'independence' of a director were also modified to bring it at par with best international practices by making it more objective.[22]

With regard to disclosure requirements too, these underwent major changes to ensure increasingly high quality of financial reporting. This has included the mandatory constitution of audit committee that are required to exercise 'oversight of the company's financial reporting process and the disclosure of financial information to ensure that the financial statement is correct, sufficient and credible'. Belatedly, the audit committee is required to review with the management the annual financial statements before submission to the board focusing, among other things, on changes in accounting policies and practices, major accounting entries based on 'exercise of judgement by management', compliance with accounting standards and any RPTs. The management, among its many responsibilities, has been made responsible to discuss financial performance of the company with respect to its operational performance, as well as disclose all personal 'material and commercial transactions' where there is conflict of interest with the company. Finally, for the first time, listed companies have been required to publish a separate section on corporate governance in the annual reports along with a detailed compliance report highlighting non-compliance, if any, of the mandatory requirements under Clause 49, citing reasons for the same and also highlighting adoption of any non-mandatory requirements.[23]

Another milestone in development of corporate governance culture in India is enactment of the Companies Act, 2013. This Act has borrowed the

[20] *See*, N.R. Narayana Murthy Committee Report, 2003.

[21] This regulation clearly stands out of line with the recommendations of the other committees, all of which have not seen much merit in making this distinction. For instance, the Naresh Chandra Committee, which has proposed that not less than 50 per cent of the board be constituted of independent directors [as in the case with the NYSE requirement] without making any separate and 'complex' distinction based on the executive status of the chairman.

[22] *See*, Shri Bhagwan Dahiya & Nandita Rathee, *Corporate Governance Developments in India*, in Christine A. Mallian (ed.), HANDBOOK ON INTERNATIONAL CORPORATE GOVERNANCE (Edward Elgar Publishing Ltd, 2011) p. 424.

[23] *Ibid*.

philosophy of American corporate governance. This Act has large influence of the Sarbanes-Oxley Act, 2002. This Act has also adopted many of the provisions of Clause 49 of the listing agreement. But most striking feature of this Act with respect to corporate governance is, provisions relating to 'independent director'. This Act clearly defines who independent director is, criteria for their appointment, tenure, remuneration and liability.[24] Schedule IV of the Act provides a code in which guidelines, role, functions and duties of independent directors are mentioned. The Code lays down very significant functions like safeguarding the interest of all stakeholders, particularly the minority holders, harmonizing the conflicting interest of the stakeholders, analyzing the performance of management, mediating in situations like the conflict between management and the shareholder's interest etc.[25] The importance of role of independent director in companies can be understood from the fact that they are expected to be independent from the management and act as the trustees of the shareholders.

In 2015, SEBI notified the 'Listing Obligations and Disclosure Requirements Regulations, 2015, which has two objectives, firstly, to align clauses of the Listing Agreements with the Companies Act, and secondly, to consolidate the conditions under other securities' listing agreements in one single regulation.[26] Main highlights of this regulations are: (i) disclosure of 'material' events and information by every listed companies which includes- acquisition of control, share or voting right, forms of inorganic structure like schemes of arrangements, sale or disposal of units, business divisions, subsidiaries, organic structuring of share capital like issuance, forfeiture, split-ups, consolidation, transfer restriction, revision of rotation etc; (ii) adoption of stricter like approach towards the composition of board, its committee and duties of directors[27]; (iii) duties of directors include, disclosure of every matter that directly affects the company, ensuring transparency while maintaining confidentiality, monitoring of governance practices, ensuring integrity of accounting and financial reporting, transparent nomination, harmonizing conflicting interests etc; (iv) provisions related to the Related Party Transactions (RTP) are made strict, such as now any RTP requires prior audit and board's approval.[28]

[24] *See*, Section 149, Companies Act, 2013.

[25] *See*, Schedule IV of the Companies Act, 2013.

[26] *See*, SEBI Listing Obligations and Disclosure Requirements Regulations, 2015, *available at* www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf (last visited on October16, 2017).

[27] *See*, Regulation 17 and 18 of SEBI Listing Obligations and Disclosure Requirements Regulations, 2015.

[28] *Id.*, Regulation 23(2).

IV. Emerging Issues of Corporate Governance in India

A. Satyam and after

Nine years after coming into force of clause 49, the biggest debacle of corporate governance of India surfaced at Satyam Computer Services Limited. This is compared as 'Enron of India'. On 7 January 2009, Ramalinga Raju, the Chairman and controlling owner of Satyam Limited (SCSL) – a listed blue chip InfoTech company in India as well in the US – resigned from his post after publicly declaring that Satyam's accounts have been falsified for several years with his explicit involvement. In his confession, he accepted inflated (non-existent) cash and bank balance of Rs. 5,040 crore, an accrued interest of Rs. 376 crore which is non-existent, an understated liability of Rs. 1,230 crore on account of funds arranged by him, an over stated debtors position of Rs. 490 crore (as against Rs. 2651 reflected in the books)[29]. This entire episode raised several serious questions. The *first* is the criminal behaviour of promoter who committed mammoth fraud on shareholders by siphoning thousands crore of rupees out of Satyam without shareholder's knowledge. The *second* question relates to Satyam's auditors. This is the basics, when you are doing audit and client says, "I've got billion bucks in the bank", you check with the bank that it's there.[30] But auditors failed, without any justification. The *third* relates to the independent directors on Satyam's board. How did they acquiesce to the huge $ 1.6 billion proposed related-party transaction between Satyam and Maytas? Why did none think that the proposal was inappropriate? Collegiality of independent director with management had compromised on its role as watchdog. They cannot be allowed to remain silent when they are required to attract attention by barking.

B. Sahara: An unlisted behemoth

After Satyam Scam, another big names failure is Sahara. 'Sahara' an unlisted behemoth issued optionally fully convertible debentures (OFCDs) between 2008-11. Through a subscription by around 22 million people, they raised around 174 billion rupees. SEBI found this to be a fraudulent conduct and was able to get an order from Supreme Court of India against 'Sahara', asking them to refund the amount to the investors. The Court also asked 'Sahara' to pay back the amount with 15 percent interest. The SEBI was asked to take the onerous burden to identify the investors and make repayments. 'Sahara was asked to provide details of investors within a period of ten days.[31] This

[29] The Satyam Saga, Annexure 1, Business Standards, 2009.

[30] Anand Kumar, ASATYAM @ SATYAM (Diamond Books, 2009) p. 32.

[31] Anurag K. Agarwal, *Corporate Governance: Financial Regulators and Courts Need to be on the Same Page*, *available at* www.iimahd.ernet.in/assets/snippets/workingpaperspdf/20163082092013-03-03.pdf, visited on 16-10-2016.

case is another dent on the image of good corporate governance in our country.

C. Ranbaxy: Fraud in worldwide regulatory filings

Failure of corporate governance norms at Ranbaxy is just one more example. It was alleged that Ranbaxy committed systematic fraud in its worldwide regulatory filings. They submitted fuzzed data before regulators, thus exposed the shareholder's investment to huge reputation and compliance risk[32]. Ranbaxy case is very much similar to Satyam case, because here also three persons are in the dock, i.e., promoter, auditors and independent directors.

D. Vijay Mallya's 9000 crore fraud

Last year, business tycoon Vijay Mallya was very much in news, not for his business stunt, but for committing fraud of Rs. 9000 crore on banks and running away from India. Fall of Mallya also reveals a gross violation of corporate governance norms. It was alleged that United Spirit Limited (USL) provided financial support and diverted its funds to UB group companies clandestinely, without board's approval. This was done when Mr Mallya was in charge of USL[33]. Apart from this, accounts were improperly stated, audits were stage-managed, deducted tax was not deposited with revenue department, provident funds deductions and contributions were also not deposited with the authorities. According to Section 186 of the Companies Act, inter group loans are permissible. But such loan can be given only with board's approval. According to this section, the board can pass such loan with the consent of all directors if it is in the interest of the company.[34] If giving loan is not in the interest of the company, then the board should not take such decision. It is the responsibility of the Board to protect the interests of minority shareholders.

E. Tata and Infosys and Boardroom events

Tata and Infosys are also two iconic Indian brand names. They hold enormous brand equity. But in recent times, these two names were in the centre of news for bad reasons and events of boardrooms raised serious questions of corporate governance. In both cases, owners or founders or promoters were in a tussle with top managing bodies. At Tata Sons, the controlling shareholders

[32] Navita Mahajan, *Strategies That Led To Failure- Case Study of Corporate Governance*, *available at* 2063-1-2042-1-10-20160927-pdf. Also *see*, Rishikesha T. Krishnan, *Ranbaxy: Fall of an Icon*, *available at* www.thehindubusinessline.com/news/variely/ranbaxy-fall-of-an-icon/article4784955.ece(last visited on October 16, 2017).

[33] *See*, Asish K Bhattacharya, *United Spirit Limited- A Case of Corporate Governance Failure?, available at* indiacsr.in/united-spirit-limited-a-case-of-corporate-governance-failure (last visited on October16, 2017).

[34] *See*, Section 186, Companies Act, 2013.

(Tata trusts, which own 68% stake) had lost faith in its chairman to lead the group and subsequently replaced him[35]. Ousted chairperson Cyrus Mistry raised very serious question of corporate governance at Tata Trust. He alleged that the company had suffered huge loss due to Mr Ratan Tata's style of working or his strategies. His allegations include a loan of a large sum to Shiva group-close to Mr Tata, fraud at Air Asia, the implication of several members of Tata Group in 2G Spectrum scam, an affordable car whose production cost were higher than selling price etc. According to him, this is shareholder's money, not of Mr Tata…governance charter across the Tata Trust needs to become more "accountable and transparent"[36].

On the other hand, Mr Murthy, founder of Infosys, raised serious objections about higher compensation to executives,[37] acquisition strategies and appointment of independent directors. He publicly expressed his unhappiness over misuse of shareholder's money. Apart from this, allegations were also made about several executives being benefitted from acquisition of Israeli automation firm Panaya for USD 200 million. However, in initial investigation by SEBI, nothing wrong was found. In mid of August, conflict between board and founders escalated, and Vikas Sikka stepped down. Nandan Nilekani is made new CEO and he promised to bring transparency in board functioning. In the meantime, SEBI also said that it will look into the violation of corporate governance's norms at Infosys afresh.

V. Conclusion

There is no doubt about the fact that, in a little span of time (one and half decade), standards of Indian corporate governance have improved substantially. There have been constant attempts to bring its legal and regulatory framework at par with the international standards and practices. But this is one facet of the coin. The other facet of the same coin reveals some different story. The reality is that, in spite of strong legal and regulatory framework, gross violations of corporate governance norms are very common in India.

The above-mentioned cases of failure of corporate governance in India reveal some points. *Firstly*, the big brand name does not provide a guarantee of observance of corporate governance norms. *Secondly*, in family businesses

[35] *See*, K. T. Jagannathan & Sanjay Vijaya Kumar, *Corporate Governance: A Tale of Two Titans*, The Hindu, March 04, 2017.

[36] *See*, *Corporate Governance: Cyrus Mistry Now Wants Govt to Examine Tata Trust*, *available at* Indianexpress.com/article/business/companies/corporate-governance-cyrus-mistry-now-wants-govt-to-examine-tata-trust-4412621/ (last visited on October16, 2017).

[37] The severance package of Rs.17.38 crore to former CFO, David Kennedy's compensation $868,250 million, Vikas Sikka's annual package of Rs.49 crore. *See*, *The Infosys Problem: Sikka's Pay, Corporate Governance and Upset Founders,* Business Standards, February 10, 2017.

such as Tata, Sahara, Satyam or USL, implementation and monitoring of corporate governance is a difficult task. *Thirdly*, right from Satyam to Ranbaxy, auditors are always in the dock, but still out of control. Ensuring the independence of auditor is most challenging and important job for regulatory authority. *Fourthly,* concern relates to the role of independent directors in the company. There is an old saying 'to whose bread you eat, you sing his song'. But in the case of independent directors, it is totally opposite. They take money from investments of shareholders but act in the interest of management. Satyam, Sahara, Tata, Infosys or Ranbaxy, all have independent directors of high repute. Independent directors of all these companies have earned big name, reputation, and creditability in their concerned field. But they failed to set an example of good 'independent' director. Now only time will tell what action regulatory authority will take against them if found guilty. *Fifth***,** Last but not the least, relates to the regulatory authority (SEBI). In spite of empowered with vast monitoring powers, it fails. It comes into action for damage control. Cases of books of companies having wrong entries, stage- managed audits, fake filed information are coming before it right from Satyam, but it still failed in Ranbaxy. It shows that the authority is required to be more prompt, diligent and conscious of going through the companies records.

Environment of corporate governance in India is not in good state, because how board and promoters are behaving, is not a good direction in which healthy business practices should be conducted. Therefore, it is high time for management of companies and regulatory authority to ensure that board of the company is independent to ensure higher level of transparency in the functioning of the company, audits are truthful, meaningful and independent and independent directors are not show pieces of company.