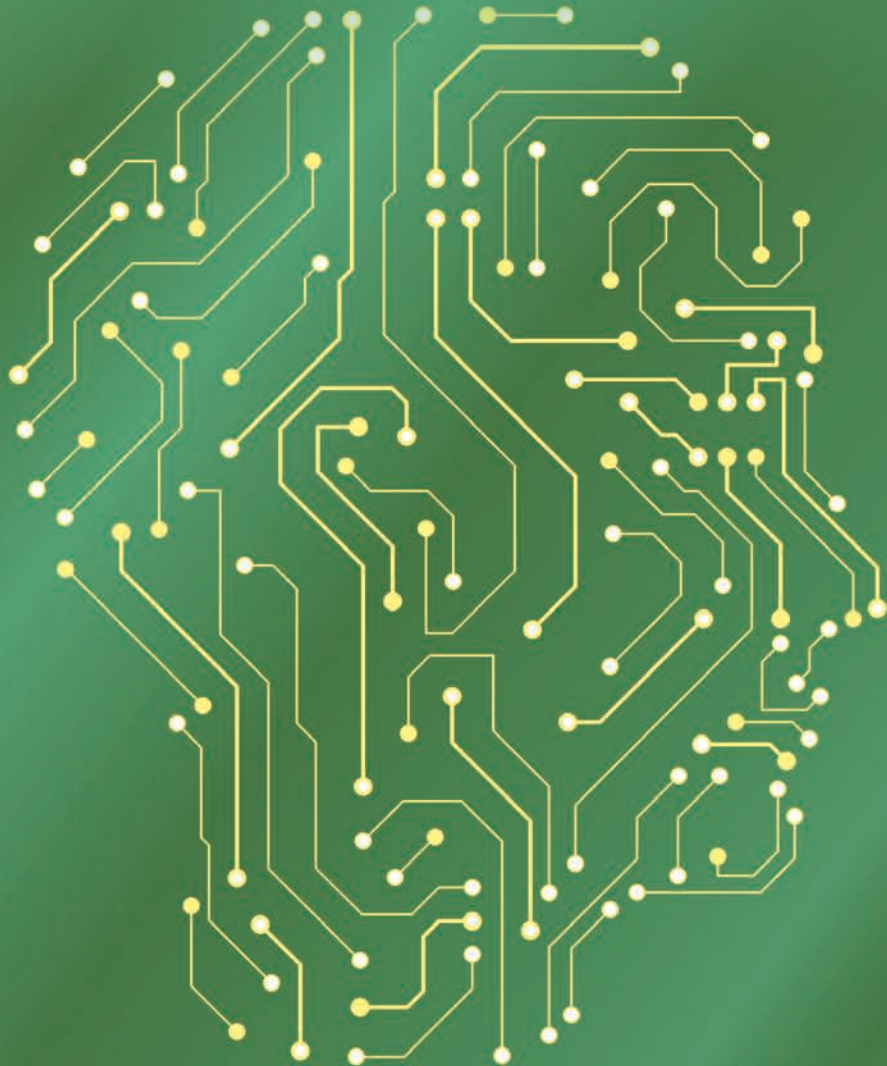




VOLUME 62 | No. 6 | DECEMBER 2013 | ₹ 100

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
SET UP BY AN ACT OF PARLIAMENT



FRAUDS AND PREVENTION

Values Virtues Vision

VOLUME 62 | No. 6 | DECEMBER 2013

THE CHARTERED ACCOUNTANT

₹ 100

Regulatory Initiatives and Measures to Curb Corporate Frauds



Fraud is an act of intentional deception resulting in disadvantage to others, meant to induce others to part with something of value or to surrender a legal right. Deception is to create a deliberate misrepresentation, a misleading falsehood or a concealment of information. Financial frauds can range from a minor employee theft to large scale of misappropriation of assets and manipulation of financial statement reporting. There are two important aspects of financial frauds—protection offered in the law and extent to which the law is enforced. India being one of the oldest legal systems in the world, has a Constitution that gives due recognition to statutes, case law and customary law consistent with its dispensations. There is a vast body of laws known as subordinate legislation, i.e. rules and regulations framed by the central and state governments and other local authorities. Then, there are interpretations of constitutional and legislative provisions by the Supreme Court of India and various high courts and tribunals in form of their decisions in cases. Read on to know more about initiatives and measures taken by the Central Government to stop the instances of corporate financial frauds...



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Fraud is an intentional act meant to induce another person to part with something of value or to surrender a legal right. It is a deliberate misrepresentation or concealment of information in order to deceive or mislead. Fraud can range from a minor employee theft to large scale of misappropriation of assets and manipulation of financial statement reporting. The two important aspects of corporate frauds are protection offered in the laws (*de jure protection*) and extent to which the laws are enforced (*de facto protection*).

India has one of the oldest legal systems in the world. The fountain source of law in India is its Constitution, which gives due recognition to statutes, case laws and customary laws consistent with its dispensations. Statutes are enacted by the Parliament and state and union territory legislatures. There is also a vast body of law known as subordinate legislation that exist in

form of *rules and regulations* framed by the central and state governments, and local authorities. Also, there are large bodies of cases where the Supreme Court of India and various High Courts and tribunals interpret and elaborate the relevant constitutional and legislative provisions, while taking decisions.

Regulations of Corporate Frauds in India

The Government, as provided in the preamble to the Constitution in India, must secure to all its citizens

social, economic, or political justice. Directive Principles of State Policy are fundamental in the governance of our country and they enjoin upon the state to apply these to direct its policy to sub serve the *common good* and to see to it that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment [Article 39 (b) and (c)]. Major enactments dealing with the prevention and regulation of corporate frauds in India are given in *Table 1* below:

Table 1: Major Acts Regulating Frauds in India

S. No.	Name of the Act	Section		Enforcement Authority	Appeal Against Order of the Authority/ Court
1.	The Companies Act, 1956/ The Companies Act, 2013	The Companies Act, 1956	The Companies Act, 2013	(i) Company Law Board (ii) Department at Ministry of Corporate Affairs (iii) Regional Director (iv) Registrar of Companies (v) Central Government	
		397 & 398 399 to 409 299 (1), 209A 235, 250	241 & 242 243, 244, 246 184, 207 & 208 210, 222		
2.	The Reserve Bank of India Act, 1934	58A, 58B, 58C, 58E(1), 58G, 31, 45E, 45-1A, 45MA, 45QA 45NA, 45J, 45S		Adjudicating Officer	Foreign Exchange Regulation Appellate Board
3.	The Securities and Exchange Board of India Act, 1992	11		The Securities and Exchange Board of India	Securities Appellate Tribunal followed by Supreme Court
4.	Corporate Governance Code read with Clause 49 (Listing Agreement)	-		Ministry of Corporate Affairs	High Court
5.	The Indian Contract Act, 1872	17		Civil Court	High Court
6.	The Money Laundering Act, 2002	4, 12, 13, 14, 66		Adjudicating Authority	Appellate Tribunal followed by High Court and finally to the Supreme Court
7.	The Competition Act, 2002	36, 41, 42, 43, 44, 45, 48		Competition Commission of India	Competition Appellate Tribunal followed by Supreme Court
8.	The Information Technology Act, 2000	65, 66, 66C, 66D, 66E, 67C		Controller of Certifying Authorities	Cyber Appellate Tribunal
9.	The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1971	5, 5A, 9, 10, 13, 14		Central Government	High Court
10.	The Indian Penal Code, 1860	463, 477A, 403 405, 415		Civil/ Criminal Courts	High Court

Various legislative measures, with a sectoral focus, deal with fraud and corruption in public domain. Securities and Exchange Board of India, Reserve Bank of India, Serious Fraud Investigation Office, Company Law Board, Central Vigilance Commission, Economic Offences Wing, Income Tax department, and various courts are major regulatory authorities under respective statutes, which seek to prevent and detect fraud and punish the guilty.

The perception of respondents about the effectiveness of existing regulatory mechanism to curb frauds was gathered through a survey conducted with the help of a structured questionnaire in terms of

ranking of existing regulatory mechanism, adequacy of existing regulatory mechanism to curb the fraud and the measures which are in place for preventing and controlling the fraud. The data collected are analysed in the following paragraphs.

Executives' Perception on Effectiveness of Regulatory Measures

A structured questionnaire was administered to the executives of sample companies to seek to ascertain the effectiveness of existing regulations in controlling and preventing corporate frauds. The results are presented in Table 2 below.

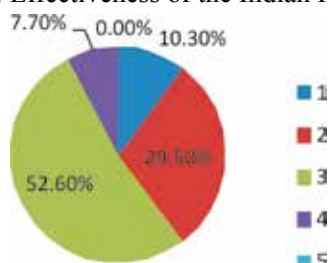
Table 2: Executives' Perception of the Effectiveness of Regulatory Measures

S. No.	Act Statute	Ranks Assigned										Mean Scores
		1		2		3		4		5		
		No.	%	No.	%	No.	%	No.	%	No.	%	
1	The Indian Penal Code. 1860	16	10.3	46	29.5	82	52.6	12	7.7	—	—	2.577
2	The Companies Act. 1956	4	2.6	72	46.2	58	37.2	14	9.0	8	5.1	2.679
3	The Income Tax Act. 1961	27	17.3	18	11.5	41	26.3	35	22.4	35	22.4	3.212
4	The Benami Transaction (Prohibition) Act. 198S	22	14.1	17	10.9	31	19.9	51	32.7	35	22.4	3.385
5	The Securities and Exchange Board of India Act. 1992	25	16.0	50	32.1	6	3.8	36	23.1	39	25.0	3.090
6	The Foreign Exchange Management Act. 1999	6	3.8	27	17.3	64	41.0	31	19.9	28	17.9	3.308
7	The Information Technology Act. 2000	13	8.3	20	12.8	55	35.3	38	24.4	30	19.2	3.333
8	The Prevention of Money Laundering Act. 2002	27	17.3	22	14.1	31	19.9	37	23.7	39	25.0	3.250

Table 2 shows the ranking of effectiveness of regulatory measures in controlling the fraud on a scale of one to five in the order of extent of effectiveness, while 1- being the lowest and 5- being the highest. Respondents' opinions on the individual regulations are analysed below:

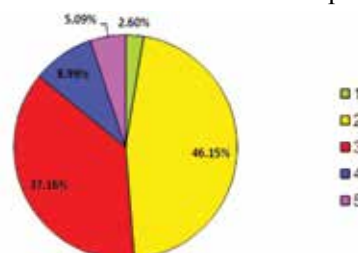
Effectiveness of the Indian Penal Code: As shown in Table 2, no respondent has assigned the fifth rank to the Indian Penal Code (IPC), while majority of the respondents has indicated the third rank to this statute. This is also shown in Figure 1 below. Thus, the respondents are of the view that the IPC does not serve as an effective measure to control the corporate fraud.

Figure 1: Effectiveness of the Indian Penal Code



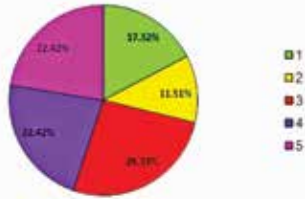
Effectiveness of Companies Act, 1956: This Act appears to be less effective in curbing the frauds, since a negligible number of respondents have given the fifth rank to this Act, while a significant number of respondents have assigned the second rank to the Companies Act, 1956. This is also shown in Figure 2.

Figure 2: Effectiveness of the Companies Act



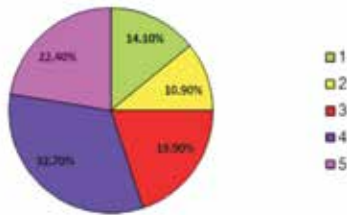
Effectiveness of Income-tax Act, 1961: As shown in Figure 3, a significant number of respondents have ranked this Act as an effective Act to control and prevent the frauds. As shown in Figure 3 below, the Income-tax Act is considered as the second most effective legislation in curbing the corporate frauds.

Figure 3: Effectiveness of the Income-tax Act



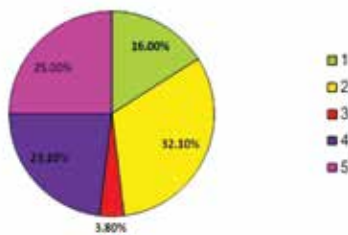
Effectiveness of Benami Transaction (Prohibition) Act, 1988: Only less than one fourth of the respondents have assigned equal rank to the Income-tax Act, 1961 and one third of the respondents have given fourth rank to this Act. As shown in *Figure 4* below, this Act is sufficiently effective in controlling frauds.

Figure 4: Effectiveness of the Benami Transaction (Prohibition) Act



Effectiveness of the Securities and Exchange Board of India Act, 1992: One fourth of the respondents perception about this Act was that it is most effective Act to control the corporate frauds, but the same percentage of respondents have opined that this Act was not that effective. As shown in *Figure 5* below, this may be probably due to the fact that the respondents who have considered this Act as an effective Act are concerned with the listed companies and the respondents whose perception is less effective are concerned with other than listed companies.

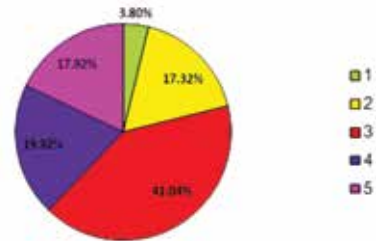
Figure 5: Effectiveness of the Securities and Exchange Board of India Act



Effectiveness of Foreign Exchange Management Act, 1999: The perception of one fifth of the respondents shows that this Act, being a relatively younger Act, has not been an effective instrument for controlling the

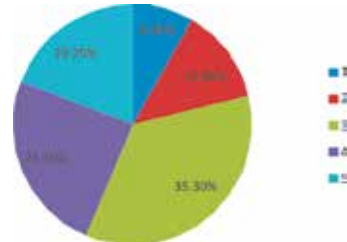
frauds. This is shown in *Figure 6* below.

Figure 6: Effectiveness of the Foreign Exchange Management Act



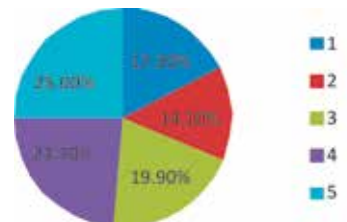
Effectiveness of Information Technology Act, 2000: This Act has also not been ranked as an effective regulation in controlling frauds since only one fifth of the respondents have given this Act as an effective Act as shown in *Figure 7* below.

Figure 7: Effectiveness of the Information Technology Act



Effectiveness of Prevention of Money Laundering Act, 2002: As shown in *Figure 8* below, a significant respondent has ranked this Act as an effective Act to control and prevent the frauds. Globalisation of corporate sector and introduction of new technologies are to a large extent responsible for the failure of regulatory mechanism.

Figure 8: Effectiveness of the Prevention of Money Laundering Act



Effectiveness of Fraud Regulatory Measures

In order to obtain the respondents average perception on the regulatory measures as presented in the Table 2, the mean score of all the respondents for a particular Act was calculated to get the opinion of the respondents about the effectiveness of the Acts. On the basis of

Securities and Exchange Board of India, Reserve Bank of India, Serious Fraud Investigation Office, Company Law Board, Central Vigilance Commission, Economic Offences Wing, Income Tax department, and various courts are major regulatory authorities under respective statutes, which seek to prevent and detect fraud and punish the guilty.

mean score, the effectiveness of the Acts is presented in Table 3 below.

Table 3: Effectiveness of Fraud Regulatory Measures

Rank	Act/ Statute	Mean Score of Effectiveness
I	The Benami Transaction (Prohibition) Act, 1988	3.385
II	The Information Technology Act, 2000	3.333
III	The Foreign Exchange Management Act, 1999	3.308
IV	The Prevention of Money Laundering Act, 2002	3.250
V	The Income-tax Act, 1961	3.212
VI	The Securities and Exchange Board of India Act, 1992	3.090
VII	The Companies Act, 1956	2.679
VIII	The Indian Penal Code, 1860	2.577

Respondents felt that the IPC, 1860 and the Companies Act, 1956 are less effective and prominent in preventing and curbing corporate frauds. A large support was found in favour of the Income-tax Act, 1961 and the Benami Transactions Act, 1988. Respondents' opinions on the SEBI Act, 1992 are mixed with large variations. Newer statutes like the FEMA and the IT Act are perceived to be stronger in combating frauds. Money-Laundering Act has also shown a higher variation. Corporate sector is controlled and regulated by the Companies Act, but the respondents have not given the first rank to this Act for controlling of the fraud. It is inferred that the Companies Act is considered to be an old legislation and Indian corporate sector has immensely expanded and foreign entities have also entered into Indian

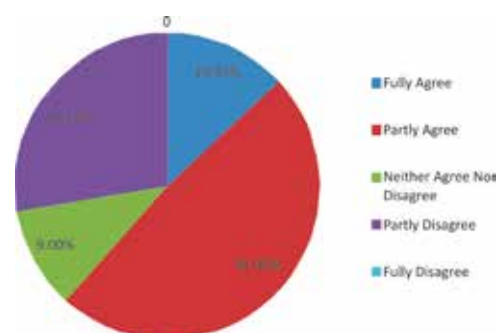
economy. [Responses had been collected before the enactment of new Companies Act.]

This leads us to conclude that the older statutes need to be amended suitably so that the confidence of the professionals and analysts is restored.

Perception of Adequacy of Regulatory Mechanism:

A structured questionnaire was designed to obtain the respondents perception about their agreement or disagreement in respect of adequacy of existing regulatory mechanism for preventing corporate frauds in India. The results are depicted in Figure 9 below.

Figure 9: Perception of the Adequacy of Regulatory Mechanism



As shown in the Figure 9, a large number of respondents agreed or partly agreed that the existing regulatory mechanism for prevention of corporate frauds in India was adequate duly supported by relatively smaller variance ($F=2.76$) across the respondents who have policy document in their organisation for prevention of the fraud. However, one fourth of the respondents who do not have a policy document for frauds reporting and prevention partly disagree on the sufficiency of regulation. This suggests that the confidence in the regulatory mechanism is specific to the individual's perception of the company, which is also evident from the formulation and publication of the fraud reporting and prevention document formulation and publication.

Aspects of Fraud Regulations

The questionnaire was also designed to measure the respondent's perception about the efficacy of reporting of frauds, and the litigation procedures to cover fraud aspects and the role of qualified and independent directors in audit committees in preventing frauds and

whether compulsory rotation of auditors might prevent or minimise the fraud. Results are shown in *Table 4* below.

Table 4: Perception on Reporting, Litigation Procedure, Independent Directors and Rotation of Auditors in the Prevention of Fraud

S. No.	Perception	Opinion					
		Yes		No		Can't Say	
		No.	%	No.	%	No.	%
1	'A Large number of frauds remain unreported.'	119	76.3	37	23.7	Nil	Nil
2	'The existing litigation procedure is sufficient to cover fraud aspects.'	39	25.0	111	71.2	6	3.8
3	'Qualified and independent directors in Audit Committees prevent frauds.'	91	58.3	65	41.7	Nil	Nil
4	'Rotation of Statutory Auditors and compulsory appointment of Internal Auditor prevent / minimise fraud.'	109	69.9	38	24.4	9	5.8

As shown in *Table 4*, a large majority of the respondents believed that a large number of frauds remain unreported in India and almost equally large number feel that litigation procedures are not sufficient to cover various aspects of frauds. This implies that there is some lacuna in the fraud prevention mechanism available in India. As per a 2011 study conducted by Jessica Erickson, many lawsuits target the same alleged misconduct, same defendants, and the same corporate coffers. More lawsuits do not necessarily help in combating the frauds.

Moreover, a majority of respondents felt that the qualified independent directors, if appointed by listed companies in their audit committees, will help in preventing frauds. In a study conducted by Marciukaityte, Szewczyk, Uzun and Varma in 2006, it was found that after the accusation of fraud, the companies increased the proportion of outside directors on their Board and the monitoring committees of the Board suggested improvements in internal control system, repair to damaged reputation, and reverted confidence in the company.



Furthermore, a significant majority of respondents expressed the opinion that the rotation of statutory auditors and compulsory appointment of qualified internal auditor can help in preventing or minimising

the frauds. In 2005, Payne and Ramsay proposed the need for increased focus on professional scepticism through training and continuous reminders to auditors; experience affects their level of professional scepticism. Wilks and Zimbelman had proposed in 2004 that appropriate audit policy and action plans improve fraud prevention and detection. Auditing standards ought to discourage auditors from anchoring on prior fraud risk assessment; they should be designed in such a way to maximise opportunities for auditors to learn from experience. Fortunately the new Companies Act includes a provision for specified class of companies shall have compulsory rotation of auditor after a certain period.

The enforcement of these regulatory measures and the relevant authorities are less effective due to political interference, delayed justice, and absence of heavy penalties, rigid bureaucratic structures and processes, tolerance of corruption and huge gap between policies and practice, lack of periodical training to the government officers of the regulatory bodies, and the lack of awareness of law.

Executives' Perception on Recent Regulatory Measures

In order to ascertain the effectiveness of recent measures, introduction of XBRL mode of accounting, stricter norms for presentation of financial statements by companies, strengthening of takeover code, stricter disclosures to the stock exchange related to sale/purchase of shares by the controlling group, stricter surveillance by the SEBI, training of auditors/ internal auditors/CEO/CFO relating to prevention of frauds, specialised course on fraud examination in India, like certified fraud examiners, to prevent and control frauds the respondents were asked to rank these seven types of measures, on a scale of one to five in the order of


A large support was found in favour of the Income-tax Act, 1961 and the Benami Transactions Act, 1988. Respondents' opinions on the SEBI Act, 1992 are mixed with large variations. Newer statutes like the FEMA and the IT Act are perceived to be stronger in combating frauds. Money-Laundering Act has also shown a higher variation.


effectiveness of recent measures, (1-being the highest and 5-being the lowest), The results are shown in *Table 5* below.

Table 5: Effectiveness of Recent Measures in Curbing Frauds

S. No.	Measures	Rating									
		Rank 1		Rank 2		Rank 3		Rank 4		Rank 5	
		No.	%	No.	%	No.	%	No.	%	No.	%
1	Introduction of XBRL mode of accounting	10	6.4	28	18.0	49	31.4	18	11.5	51	6.4
2	Stricter norms for presentation of financial statements by companies	17	10.9	22	14.1	55	35.3	56	35.9	6	3.9
3	Strengthening of takeover code	6	3.9	48	30.8	65	41.7	23	14.7	14	9.0
4	Stricter disclosures to stock exchange related to sale/ purchase of shares by the controlling group	31	19.9	17	10.9	30	19.2	55	35.3	23	14.7
5	Stricter surveillance by SEBI	22	14.1	6	3.9	73	46.8	40	25.6	15	9.6
6	Training of auditors/ internal auditors' CEO CFO relating to prevention of frauds	23	14.7	44	28.2	33	21.2	24	15.4	32	20.5
7	Specialised training course on fraud examination in India like Certified Fraud Examiners	24	15.4	19	12.2	31	19.9	62	39.7	20	12.8

It can be noted from the *Table 5* that the introduction of XBRL mode of accounting has diverse responses among the companies and the ratings are distributed on either side. This may be probably due to the fact that XBRL's complexity, combined with letting inexperienced users create data for transmission, increases the chances for errors. These errors might lead to a lack of investors' confidence in the system.

Stricter norms for presentation of companies' financial statements were perceived by respondents to be the most important measure for controlling frauds. These days, there is a large debate on the adoption of these IFRS and a large number of companies are reluctant to adopt the IFRS. A strengthening of the reporting regulation is expected to strengthen the process of controlling corporate frauds. While the takeover of companies received a relatively lower rating, *stricter disclosures to stock exchange* related to sale/ purchase of shares by the controlling groups and *stricter surveillance by the SEBI* received relatively higher ratings. The respondents also feel that the specialised course on fraud examination in India like the Certified Fraud Examiners can possibly help in solving the problem of corporate frauds.

Current Status

All companies are required to file their annual financial statements with the Registrar of Companies (ROC)

and listed companies have to additionally file these documents with the stock exchange where the shares are listed. The ROC is empowered by the Companies Act to call for information or explanation in relation to financial statements besides imposing penalties for non-compliance; however, we found very few cases of prosecution under these provisions. This could of course indicate that there are no major issues that require investigation and further explanation from companies; or it could indicate that the ROC does not scrutinise the financial statements that are routinely filed by companies of corporate governance report.

A study on corporate governance evolution and challenges on corporate governance in India conducted by Rajesh Chakrabarty has revealed that India has one of the best corporate governance laws but suffers from poor implementation which together with the socialistic policies of the pre-reform era has affected corporate governance. The study says that the legal Environment plays a crucial role in determining the nature of corporate governance in any country and encompasses two important aspects - the protection offered in the laws (*de jure* protection) and the extent to which the laws are enforced in real life (*de facto* protection). It further says that various laws in India seek to provide protection of shareholders' rights only on paper while the enforcement of laws is tardy and leaves much to be desired.

Although the SEBI is a relatively young institution, it has been fairly successful in fulfilling its mandate as the capital market regulator, ensuring the deepening of markets and the increasing participation of investors. However, the enforcement process tends to be somewhat arbitrary and rather opaque and leaves scope for discretion in the hands of the officials. Thus, even with alternative crafting of detailed governance rules by a group of elites with a deep understanding around the world, the reform process is meaningless unless an effective infrastructure is in place.

SEBI, MCA, and the Stock Exchanges together enjoy jurisdiction over the market. There is likelihood of overlapping. The new Companies Act has created a regulatory regime detailed enough to satisfactorily address such issues. Currently, there is no mechanism for ‘class action suits’. Moreover, civil courts are barred from hearing security fraud matters. Clause 49 of the Listing Agreement, read with Section 292A of the Companies Act, 1956 shows a mismatch between the audit committee consisting of independent director and internal auditor/external auditor, chief executive officer and chief financial officer of the company. As deficiencies in internal control and audit mechanism is neither pointed out nor discussed among the aforesaid parties. The Companies Act provides for appointment of an audit committee in a class of companies, but the audit committees are ineffective as they seem to be giving no dissent note to the Board of Directors. This shows that corporate governance compliance is not satisfactory. Section 217 of the Companies Act, 1956 provides for the Board of Directors’ report, which should include a Directors’ Responsibility statement. However, it seems that the Directors’ Responsibility Statement should contain a paragraph regarding the

comments of the Independent Director as to whether they agree with the Directors’ Responsibility Statement or not.

Certain classes of companies are required to appoint an independent director and form an audit committee, but the Act nowhere prescribes that at least one member of this committee or independent director should have financial literacy, meaning thereby that he should be able to understand the financial statements and point out the deficiencies on all items mentioned in the Clause 49 of Listing Agreement in case the company is listed and in the Board of Directors report in case the company is a closely-held one.

Recent Government Initiatives for Fraud Regulation

The Government of India have responded to corporate scandals and fraudulent activities by making legislative and regulatory reforms aimed at encouraging companies to become more self-governing. In recent years, a variety of laws and regulations have emerged, major being corporate governance. In recent times, several changes have been made in various laws and regulations relating to fraud, bribery and corruption, and some others are being proposed.

In a recent statement made by Union Corporate Affair Minister Shri Sachin Pilot published in *The Hindu* in February 2013, a High Power Steering Committee has been set up with technical experts from relevant fields to design a framework for a fraud prediction model by studying various cases and adopting the best practices being followed internationally. He also emphasised the need of a foolproof fraud prediction model. The salient features of the proposed bills are summarised in *Table 6* below.

Table 6: Recent Government Initiatives for Fraud Regulation in India - Basic features

S. No.	Name of the Bill	Major Provisions
1	The Companies Bill, 2012 (Recently enacted as the Companies Act, 2013)	<ul style="list-style-type: none"> a “Fraud”, in relation to the affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any person, whether or not there is any wrongful gain or wrongful loss. b Confers on the Serious Frauds Investigation Office (SFIO) the power to probe companies suspected of fraud. c The SFIO’s report filed in a court for framing charges to be considered equivalent to a police report under the Code of Criminal Procedure, 1973. d The power to arrest persons for suspected fraud; SFIO to coordinate its operations with those of other investigating agencies, viz, CBI and Enforcement Directorate e Heavy Financial penalties on independent professionals too. f Introduction of Secretarial Audit: Every listed company and company belonging to certain class of companies shall have Secretarial Audit done by a Company Secretary, in practice and such report shall be annexed with the Boards’ Report.

S. No.	Name of the Bill	Major Provisions
		<p>g Secretarial Standard: Each and every company has to follow Secretarial Standard issued by ICSI in respect of Board Meeting and Members' Meeting.</p> <p>h Class Action Suits : For the first time, a provision has been made for class action suits. It is provided that a specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the tribunal on behalf of the members or depositors</p>
2	The Public Interest Disclosure (Protection of Informers) Bill, 2010	<p>a Encourages disclosure of information in public interest; but the private sector is excluded.</p> <p>b Provides protection to the whistleblower.</p> <p>c Investigation not time-bound.</p>
3	The Prevention of Bribery of Foreign Public Officials (FPO) and Officials of Public International Organisations (OPIO) Bills 2011 (India's FCPA Equivalent)	<p>a Addition of new sections to strengthen the Act to deal separately with the offence of violating the norms of the Constitution, for using undue influence on public servants, misusing official powers and causing loss to the public exchequer.</p> <p>b Empowers the enforcement agencies to seize, attach and confiscate the property of convicted persons, who have amassed ill-gotten money.</p>
4	The Prevention of Corruption (Amendment) Act, 2011 (Proposed amendment to the PCA, 1988)	<p>a Addition of new sections to strengthen the Act to deal separately with the offence of violating the norms of the Constitution, for using undue influence on public servants, misusing official powers and causing loss to the public exchequer.</p> <p>b Empowers the enforcement agencies to seize, attach and confiscate the property of convicted persons, who have amassed ill-gotten money.</p>
5	Data Privacy Laws	<p>a Prevents the use or gathering of personal information without the knowledge of the concerned person.</p> <p>b Protects personal information and financial information, such as bank accounts, credit or debit cards or other payment instrument details.</p>

Suggestions and Implications

Given below are some of the suggestions and policy implications arising out of this research:

1. *Regulation for Scrutiny of Auditor's Role and Provisions for Rotation:* The act should have some provisions which would empower to regulatory authorities to scrutinise the role of statutory auditors of the company to meet the needs of investors, management and society as a whole. At present the statutory auditors are appointed on non- rotational basis, so the appointment of statutory auditors has to be on periodical rotational basis to avoid the nexus between the auditors and the management of the company.

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As per a 2011 study conducted by Jessica Erickson, many lawsuits target the same alleged misconduct, same defendants, and the same corporate coffers. More lawsuits do not necessarily help in combating the frauds.

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2. *Implementation of Corporate Governance in SMEs:* The Small and Medium Enterprise sector is the second largest employer, after agriculture. Applicability of corporate governance in SMEs may have the way for the companies to grow or attract additional investors as alternatives to borrow from Bank at high cost and corporate governance in their sector may improve internal control system, better accountability and higher profitability and it will also reduce the conflicts between business owners and management. Therefore, there is a need for conducting seminars, workshop, training programme and directors orientation program to propagate corporate governance norms, compliance culture, and social and environmental discipline among SMEs.
3. *Conducting of Due Diligence by Banks and Financial Institutions:* Banks and financial institutions are the major stakeholders in companies as finances are provided by them. In order to safeguard their interest, banks and financial institutions to effectively conduct due diligence

by independent professionals and agencies before sanctioning the working capital facilities or other financial assistance to the companies or investors as money lent to the corporate is the money of general public which are deposited with banks and financial institutions under various saving schemes.

4. *Setting up of Corporate Offence Wing with Criminal Powers:* Presently, there is no specific authority with arrest powers exists to deal with corporate frauds and SEBI being the major regulatory authority for listed companies have only civil powers, the advantage of which is taken by the corporate fraud perpetrators. It is suggested to form a Corporate Offence Wing on the parallel line of Economic Offence Wing has to be constituted to prevent and detect the corporate fraud and to punish the offenders and conspirators who are involved in committing corporate frauds.
5. *Recognition to Companies for Improved Corporate Governance:* The Institute of Company Secretaries of India (ICSI) for the last several years has been awarding companies for better corporate governance. It is suggested that government or other authorities should also encourage companies as well as professionals by awarding enough suitable awards for adopting better corporate governance.
6. *Coordination among Different Regulatory Authorities:* Regulatory agencies/authorities in India are increasingly identifying possible corporate frauds risks and becoming proactive in their actions and recently the Government of India constituted the Competition Commission of India to preview antitrust and monopolistic risk prior to large merger and acquisition as well as during operations. RBI has also stepped up of enforcement of anti-money laundry regulations. Proper coordination among numerous regulatory authorities is recommended.
7. *Vesting the SEBI with Powers to Punish:* The SEBI has power of only civil courts and to some extent

These days, there is a large debate on the adoption of these IFRS and a large number of companies are reluctant to adopt the IFRS. A strengthening of the reporting regulation is expected to strengthen the process of controlling corporate frauds. While the takeover of companies received a relatively lower rating, stricter disclosures to stock exchange related to sale/ purchase of shares by the controlling groups and stricter surveillance by the SEBI received relatively higher ratings.

Although the SEBI is a relatively young institution, it has been fairly successful in fulfilling its mandate as the capital market regulator, ensuring the deepening of markets and the increasing participation of investors. However, the enforcement process tends to be somewhat arbitrary and rather opaque and leaves scope for discretion in the hands of the officials.



have transnational jurisdiction issues. The SEBI has to be given power of a criminal court for imposing punishments to those who are actively involved in insider trading. All professional institutions who regulate chartered accountants, company secretaries and brand assets valuers should fix responsibility of their members, if they are found guilty of and they are not performing their duties in the ambit of professionalism.

Conclusion

Corporate governance issues are important for the international business community and financial institutions. In the corporate sector in India, there is considerable weakness in the proper corporate governance and regulatory mechanism which needs amendment in the existing regulatory framework. There is a time lag between the actual occurrence of a fraud and the information reaching the public domain, and public interest is adversely affected by such delay. The appointment of qualified and independent directors in the audit committees will also help in preventing or minimising frauds. The rotation of statutory auditors and compulsory appointment of qualified internal auditors would also tend to prevent frauds. For such changes there is an urgent need for reframing and amending the existing legislations as some of them are old and outdated. The auditors' training is also to be made compulsory in order to make them well-equipped with the changed regulatory measures and technological advancements. ■