

Corporate Financial Transgression and Effects of Changes in Regulatory System in India

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Abstract: *Financial Transgression is a problem which has surrounded the Corporate World. Violation of regulatory provisions and gaps in financial reporting practices have led to occurrence of frauds. Developing as well as Developed Nations, both are victims of this problem. This paper is an attempt to find the various reasons of financial transgression in India and evaluation of subsequent changes made thereafter by regulatory bodies in the statutes so that no such cases occur in future. Secondary sources of information were used to cover the cases of financial transgression in India for the period 1991 i.e. beginning of LPG regime till 2018 for the purpose of the paper which leads to changes in regulatory framework and reporting practices. The timeline of the cases in India is strategically hinting towards the weak regulatory system of India along with late changes made in the relevant regulatory framework. Whenever a new case of financial transgression has been reported, it reflected the loopholes in the system. So it is high time for India to learn a hard lesson for the growth of the economy.*

Keywords: *Financial Transgression, International Financial Reporting Standards (IFRS), Reforms, Regulatory System*

I. INTRODUCTION

Financial Transgression is the act which is against the rule of law which results into catastrophe for Corporate Sector, Regulatory Authority and economy of the concerned state. That act may be misappropriation of funds, misappropriation of accounts, false accounts statements, false corporate reporting to befool and deceit the investors, stakeholders, regulatory authority and government of the respective state. It is like a sin act done by culprits for their motive & results into the loss of money of the stakeholders and other investors of the organization, degradation of corporate impression of the state in the outlook of world. For the last so many years, economies of the world are facing many ups and downs and it is due to so many cases of financial transgression happening in corporate world and the collapse of stock markets. Financial transgression is a concern which has surrounded the corporate world. Violations of regulatory provisions and gaps in financial reporting practices have led to occurrence of such cases. Developing and developed nations, both are victims of this problem which resulted into major financial crisis for the government exchequer. Whenever corporate scandals occur, creative accounting is used to manipulate books of accounts to commit fraud. Even after following a number of accounting standards to prepare books of accounts, shrewd accountants have been able to find out the pigeon holes of manipulations which ultimately resulted into big financial scams, thereby destroying the public faith in the companies.

Revised Manuscript Received on October 05, 2019.

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There are number of ways an accounting fraud can be committed. It can be done by recording a fake income or recording that income from backdate, recording fake income the company never received, or backdate revenue, shifting current and future expenses to make the books look more lucrative. Thus, the way to practice the accounting and the interpretations that may give different solutions in similar situations are some black holes that may leave a huge scope for the corrupt accountants to do such acts. Efforts to improve corporate governance should focus on stock ownership of board members since it is positively related to both future operating Performance, and to the probability of disciplinary management turnover in poorly performing firms [1]. Legislators and policymakers should continue to develop and update the recommendations of national governance codes in order to address the potential failures of corporate governance mechanisms in place [3]. Enron Corporation scandal resulted into emergence of a new act namely Sarbanes Oxley Act, 2002 containing stringent provisions for auditors which impacted the whole accounting profession [14]. The Lehmann Brothers crisis in United States revealed number of factors that gave rise to it, prominent among them were unethical accounting and management practices, investing in risky and unsecured investments to earn more profits, with closed eyes of regulators. The watchdogs that are external auditors were also a big failure in performing their duties by not detecting and reporting such malpractice, ultimately resulted into stringent measures adopted by Security and Exchange Commission (SEC) to address Lehman failure to avert any future occurrence [15].

A. Regulatory Framework of India

The stock market transactions in India are regulated by Securities and Exchange Board of India (SEBI) whereas The Companies Act, 1956 and now Companies Act, 2013 contains the provisions applicable for companies. Guidelines relating to corporate governance practices are given by SEBI and Companies Act. Also, there are accounting standards followed by companies for preparing their financial statements which play major role in presenting a true and fair view of financial statements. Due to non-uniformity of accounting standards across the world, an effort is made to bring harmony in these standards by international bodies by introducing International Financial Reporting Standards (IFRS) which act as single set of high quality standards to make economic decisions. Genuine departure from these IFRS is allowed to avoid any confrontation with applicable laws, economic environment and traditions. Therefore, these IFRS are implemented in India with modifications in its actual form and named as Ind-AS (Indian Accounting Standards).

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Hence, these Ind-AS (Indian Accounting Standards) are the converged form of IFRS according to traditions, legal and economic environment of India and are issued by the Ministry of Corporate Affairs. Convergence with IFRS may not only help the investors in comparison for making investments but also will lower the risk of errors of judgments. Adoption is, however, done in the phased manner and that too for listed companies and other big unlisted companies as follows:

Table I: Criteria of Ind-AS applicability in India

Applicability Dates of Ind-AS in India	1-4-2015 to 31-3-2016	1-4-2016 to 31-3-2017	1-4-2017 onwards
Adoption Criteria	Voluntary Adoption	Mandatory Application for all Listed or Unlisted companies having Net worth \geq 500 crores	Mandatory Application for all Listed Companies & those unlisted Companies having Net Worth \geq 250 crores

These Ind-AS are still not applicable on banking and insurance companies for whom IFRS are being separately modified. These were to be implemented with effect from 1-4-2018 but implementation has been deferred to 1-4-2019 citing the reason of non-availability of infrastructural support.

II. REVIEW OF LITERATURE

Regulatory system or framework of the country determines the compliance requirements for those on whom such regulations are applicable. Provisions of Companies Act & SEBI both are the pillars of India's regulatory framework. Even after having such a regulatory system, there are violations of the provisions of both on continuous basis. Various cases of financial transgression in the Indian financial markets since 1991 have led to regulatory reforms, forming new institutions and strengthening the institutional framework [5]. The need for common global standards was felt due to globalization of capital markets [4, 6], to have a true and fair presentation of financial statement that could be easily accessible to all the potential users including potential investors across the world, for making easy comparability of international financial statements with Indian companies, and also to eliminate multiple reporting [12]. But the transition from Indian GAAP (Generally Accepted Accounting Principles) to IFRS was not easy. Stakeholders would face many difficulties because of this convergence. To overcome this problem, the remedy suggested was that they should be trained and IFRS should be introduced as a full time subject in the universities [16, 19]. The various cases of financial transgression happened in India highlighted that our banking, insurance and police agencies are not equipped with modern techniques to stop these scams so there is a need of implementing new techniques to stop these scams [7, 18]. Satyam case revealed fraudulent corporate reporting by manipulating loose accounting practices. It threatens future foreign investment flows and casts a cloud over growth in its booming sectors like outsourcing sector in case of India. So there is a need for

strong Corporate Governance [2]. The nature and perception of cases of financial transgressions in India and their consequences in the business and economic systems reveal that role of auditors should be redefined as fraud prevention policy and reporting of frauds both are missing. Financial institutions and banks are even not effective in using diligence, so there must be true adoption of IFRS and also responsibility must be fixed for any unprofessional behavior of the board members [9, 10]. A sound regulatory framework is fundamental to trust, particularly when cross border businesses are running [2, 11]. The financial development of any nation depends on strong investor protection and good governance [13]. There is a need for proper enforcement of ethical standards and governance codes in the corporate world besides changes in accounting regulation [17]. Otherwise individuals in the corporate world cannot be stopped from employing misleading reporting practices [8].

On the basis of above literature review, a research gap is clearly found with respect to cases of financial transgression that why they occurred time and again and whether changes made in regulatory framework were enough or not which has earlier not been part of the previous studies.

III. METHODOLOGY

Financial transgression occurs when there are gaps in the regulatory framework of the country. Even if the gaps do not appear on the surface, yet the financial transgression do occur. Not only the developing nations but the developed nations are also the victims of this problem which resulted into major financial losses to the government exchequer vis a vis loss of reputation of the companies as well as regulatory framework of the country. Financial transgression begins from the financial books. Books are prepared by accountants according to accounting standards. These standards are violated on perennial basis to manipulate the books of accounts by those who are expert in preparation of these financial statements. This paper mainly focuses on the gaps in regulatory framework and existing accounting standards which resulted into occurrence of cases of financial transgression and sufficiency of measures taken afterwards. So following three objectives are designed on the basis of above discussion:

1. To explore the gaps in the regulatory framework which lead to financial transgression in India.
2. To identify the reasons of financial transgression.
3. To find out whether regulatory reforms made after occurrence of cases of financial transgression were sufficient enough to reduce such cases or not.

IV. RESULTS AND DISCUSSION

As the era of Liberalization, Privatization and Globalization (LPG) began in 1991 in India and the major financial scams occurred in late 90's in India. So, the period starting from 1991 till current year has been taken into account for the purpose of the cases of financial transgression of this research paper which leads to changes in regulatory framework and financial reporting practices.

Descriptive research design is used for this paper and secondary sources are used to collect data. The following table shows the summary of cases of financial transgression in India along with the amount involved in these cases:

Table II: Financial Transgression Cases Happened in India

NAME OF SCAM	YEAR	AMOUNT IN ₹ CRORES
Harshad Mehta Scam	1991	3500
C.R. Bhansali Scam	1995	1200
Ketan Parekh Scam	1999	1500
UTI Scam	2001	4800
2G Scam	2008	176000
Satyam Scam	2009	8000
Sahara Scam	2010	24000
Adidas Scam	2012	870
Coal Scam	2012	186000
Sharda Chitfund Scam	2013	2460
NSEL Scam	2013	5000
Kingfisher Airlines Scam	2015	9400
PNB-Nirav Modi Scam	2018	11400

A. Gaps in Regulatory Framework

Harshad Mehta case was a case of violation of RBI directives & SEBI guidelines. Harshad Mehta exploited the loopholes in financial system through Ready Forward Deal (RF) and the Bank Receipts (BR). Price rigging mechanism was used by him in the stock market. In C.R.Bhansali Scam, People invested money based on attractive schemes run by CR Bhansali. But he transferred this money to his companies to invest in stock market. The fall of stock market in 1995 made bhansali trapped and he lost ₹1200 crores, he could not repay the investors. He also encashed interest warrants from banks particularly SBI, which were in fact fake. Ketan Parekh scam was a case of violation of RBI and SEBI guidelines. Circular trading mechanism was used to rig up the stock market and for this purpose, funds of banks and promoters were used. Ketan Parekh borrowed huge funds from Global Trust Bank and Madhavpura Merchantile Co-operative Bank to buy shares in fictitious names. He dumped the rigged up stocks in financial institutions like UTI and LIC. The impact of this scam was seen in postponing of sanctioning of private sector mutual funds. Also the Euro issues planned by many Indian companies were delayed. Ketan Parekh was also banned from trading in the stock market till 2017. In case of UTI scam, Ketan Parekh invested much of the UTI money in k10 stocks such as Himachal Futuristic, Zee Telefilms, Global Tele, and DSQ. In 1992, investments were shifted from debt to equity by UTI and repurchased occurred not at NAV of ₹ 8 but at higher price ₹ 14. In case of 2G scam, Irregularities were found in awarding spectrum licenses by the then government. Licenses were issued on first come first serve basis instead of public auction. Advancing of cutoff date for applying for licenses was also done which was illegal. In the Satyam scam which is considered to be mother of all scams in India, overstatement of assets \$1.47bn, non-existent cash shown in bank \$1.04 bn, underreporting of liabilities, ADRs purchased were not shown in balance sheet. Falsified

revenues, margins and cash balance, operating profit artificially boosted from 61 crores to 649 crores, Violation of disclosure practices in accounting standards, all were included in this scam. Sahara scam was a case of violation of capital raising norms and certain sections of Companies Act. SEBI guidelines were not followed while issuing OFCD (Optionally Fully Convertible Debentures). Parabanking activity was run by this company without regulatory disclosure and investor protection. In Adidas scam, Former MD & COO was charged with over invoicing ₹147 crores and running false franchisee referred Programme, 114 crores fake invoices, 98 crores Fudging company accounts, operating secret warehouses and violation of disclosure practices in accounting standards were also found in this case. In case of coal scam, Coal blocks were allotted and not auctioned, leading to estimated losses as per the Comptroller and Auditor General of India. Government policy paralysis came into picture out of this case. In case of Shardha chitfund scam, the companies run by this chitfund issued secured debentures and redeemable preferential debt and thereby violated section 67 of Companies Act where a company cannot raise capital from more than 50 people without issuing a proper prospectus. Already Shardha group was challenged by SEBI in 2009 when it opened more than 200 companies and did cross holdings. NSEL scam operated around agriculture products which were traded through commodity exchange. NSEL promoter Jignesh Shah by using fake warehouse receipts took its commission amount from Rs 2000 crore (in 2009) to Rs 3 lakh Crores (in 2013). Forward market commission (FMC) raised doubts in 2013 because of many factors like black marketing , profiteering etc. and asked for T+10 contracts only but it could bring only rupees 100 crore whereas contracts were amounting to rupees 5000 crores. Ultimately, it collapsed and Jignesh shah was arrested. Also NSEL CEO Anjani Sinha was arrested. Government banned E-series system. In case of Kingfisher Airlines scam, Mr Vijay Mallya was the chairman of this company and this airlines was in Persistent losses since 2006. Vijay Amritraj resigned as director, Anil Kumar Ganguly resigned as independent director. This company took loans from the consortium of banks but did not pay in time and tried to negotiate with the banks for paying quiet a less amount. Bankers did not accept his proposal and declared him as “willful defaulter”. Later he fled to United Kingdom to avoid the arrest. He is still absconded. In case of Punjab National Bank- Nirav Modi scam, PNB employees issued fake LoUs (Letter of Undertakings), 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. LoUs act as guarantee and buyers’ credit is normally given against 100% margin. On checking the records, it was found that the firms did not have any collateral for such credit. On further investigation into the account, it was revealed that the transactions between PNB and other banks were going on for years without being detected.

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This was because its software was not integrated with the SWIFT (Society for Worldwide Interbank Financial Telecommunication) messaging system that is used for international transactions.

B. Reasons of Financial Transgression in Context of Indian Cases

There were clear reasons found which lead to cases of financial transgression. In the following table, a ranking has been done for the various reasons that occurred time and again in the various cases.

Table III: Reasons of Financial Transgression with Ranks

Reasons of Financial Transgression	No of cases	Rank
Violation of Banking directives/weak banking system	5	2
Violation of SEBI guidelines	6	1
Govt. policy failure	2	4
Violation of disclosure norms	2	4
Use of creative accounting	3	3
Violation of Companies Act	1	5
Misappropriation of Assets/funds	1	5

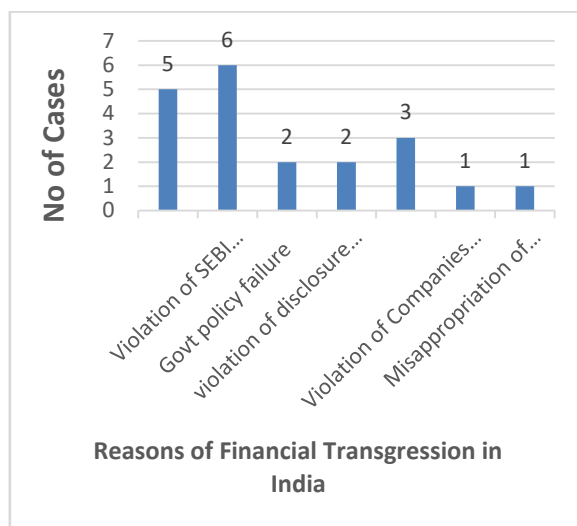


Fig 1: No. of cases of Financial Transgression in India

C. Reforms in Regulatory Framework

Before the occurrence of Harshad Mehta case, no statutory powers were vested with SEBI earlier, but in 1992, statutory powers were given and in 1995, additional statutory powers were given to SEBI so that it could regulate the stock market properly. Those brokers were suspended who were acting as Directors and other office bearers of BSE for alleged insider trading. CR Bhansali scam was almost done in continuation with Harshad Mehta scam, so whatever powers were assigned to SEBI, that was collective outcome of securities market scams. After Ketan Parekh scam, trading cycle was cut short from a week to a day by SEBI. Carry forward system in stock trading called "BADLA" was banned. SEBI also withdrew broker control over stock exchanges. After the occurrence of UTI scam, immediate steps were taken by government to bring back the faith of the public in UTI and other such government bodies. PSU (Public Sector

Undertakings) shares were transferred to a special unit scheme (SUS'99) subscribed by the government in 1998-99. UTI announced that a realistic dividend policy for US-64 scheme based on the performance of the fund in the market will be made. Finally, US-64 was made fully SEBI regulated scheme. After 2G scam, there was much uproar all across India because it was a huge loss to the exchequer of Indian government, so e-auctions were started by government in awarding spectrum distribution licenses. Satyam scam resulted into major reforms in regulatory system by implementing Ind-AS, Class action litigation, whistleblowing on frauds by auditors, imposition of criminal liability on auditors, mandatory rotation of audit firms every 10 years, more frequent audit committee meetings. In December 2009, Ministry of Corporate Affairs (MCA) also issued Corporate Governance guidelines based on this fraud. SEBI (issue of Capital Disclosure requirements) Regulation, 2009 already came into existence and later Companies Act 2013 came into existence with stringent norms with the help of which loopholes of Sahara scam were tried to be plugged. Ind AS applicability was made mandatory since 2016 which are more transparent than earlier accounting standards. Coal block e-auctions started after the occurrence of the coal scam. Serious Fraud Investigation Office (SFIO) provisions brought in Companies Act 2013 after the occurrence of Sharda chitfund scam and this case is being investigated by SFIO. SEBI (Prohibition for insider trading) regulation, 2015 & SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 was introduced to bring more transparency after the occurrence of NSEL scam. After the NSEL scam, Arvind Mayaram panel was constituted by government and FMC (Forward market commission) which was under consumer affairs ministry earlier, was shifted to finance ministry. The effect of kingfisher airlines scam was that role and number of independent directors increased in Companies Act 2013 because this case actually began in 2006 since the start of losses in kingfisher airlines. The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act 2002) is now replaced with amendment bill 2016 with more stringent provisions. Amendments were made in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 or SARFAESI Act by bringing in 2016 "Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 after the occurrence of Punjab National Bank- Nirav Modi scam. Because of these, bank could recover a huge amount from the sale of assets of Nirav Modi. Although government of India is finding it difficult to bring back Mr Nirav Modi from USA because of weak treaties between India and other countries.

V.CONCLUSION

Cases of financial transgression have occurred at a very rapid pace in the past. Perpetrators used to fly away to some safe heavens where we don't have strong treaties to bring them back to punish the guilty. This has happened in case of Vijay Mallya (kingfisher Airlines owner) and Nirav Modi (PNB-Nirav Modi Scam). So need is to take strong measures to have strong treaties with such countries.

If a guilty is punished, that always acts as an example for the others not to commit such things. India should learn a lesson from other countries where cases of financial transgression occurred particularly USA where various scandals occurred in late 90s and early years of 2000-2010, USA came with the very stringent Act namely Sarbanes Oxley Act, 2002. After this act, there was a big fall in cases of financial transgression. Corporate Governance mechanism will have to be made strong for companies and it will have to be linked with remuneration in such a manner that Directors who look after the affairs of the companies will not be encouraged to involve in such cases. There is utmost necessity to train the academicians first so that they can train the young generations in the field of accountancy to face the challenges posed by this convergence process i.e. adoption of IFRS. From the above discussion, it's clear that regulatory bodies have taken several measures to overcome the menace of financial transgression. Many committees were constituted like Narayan Murthy committee in India, which was constituted by SEBI to focus on the quality of financial disclosures and role of audit committee as well as the role of independent directors. SEBI was also empowered on different occasions by bringing new regulations. But it has been observed that major loopholes are there in Indian regulatory framework due to which India is regularly witnessing the cases of financial transgression. In India, however, due to changes in the relevant regulatory framework, no reduction in number of such cases has been reported. Cases of financial transgression have shaken the economy of India very badly and it is compelled and expected to do more on account of occurrence of such cases of financial transgression. Due to very rapid changes in technology, perpetrators are finding new ways to do such financial scams. So there is great need on the part of India to keep pace with such changes in technology and keep on changing the regulations on continuous basis and needs to take strong actions against the perpetrators. Regulatory Bodies and Governments should be more alert and responsive whenever they come across any such case of financial transgression.

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