

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can*

*bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **DEFRAUDING SHAREHOLDERS** **LIMITATIONS OF CORPORATE** **GOVERNANCE IN INDIA**

**WITH SPECIAL FOCUS ON THE SAHARA JUDGEMENT**

Authored by-1. Muskan Kuchhal (18010245)  
2. Ranvita Rao Juvvadi (18010303)  
3. Rishika Pandey (18010315)  
4. Sivani Lakshmi Madugula (18010393)

## **Abstract**

In the day and age where corporate investment is highly sought after, instances of malpractices and frauds are being witnessed at a rate higher than ever before. Over the past few decades, several examples of outright failure of corporate governance have earned headlines. The most common reasons for such scandals are often the lack of transparency, existence of multiple possible political nexuses of perpetrators, weak legislation provisions, and the ignorance of general investors. In this background, this paper aims at critically analyzing one such incident, that is, the Sahara judgement, and using it to highlight the limitations of corporate governance in India, while also providing suggestions to deal with the same.

## **Introduction**

In 1978, Subrata Roy founded one of India's largest conglomerates, the Sahara India Parivar. Within forty years, its net worth amounted to a whopping 68,174 crores and boasted a depositor base of over five crore people. Naturally, when the news of investor fraud broke out, it was a revelation that shocked the entire country. After four years of a long drawn public battle with SEBI, Subrata Roy finally surrendered in May 2014.<sup>1</sup>

This case is pertinent to discuss because it changed the face of corporate governance in India. It brought attention to the lack of strong mechanisms in the country that would ensure good corporate governance along with the need for stringent laws for investor protection. This paper aims to bring light to the failure of corporate governance in this case and how changes were made subsequently. Further, it also emphasizes the importance of regulation bodies such as the Securities and Exchange Board of India (SEBI), though granted wide discretionary powers, to not overregulate so as to cause a grave miscarriage of justice.<sup>2</sup> The role of public opinion and the media in shaping corporate regulations and practices is also discussed to shed light on another aspect of the focus of this paper. Towards the end, keeping in mind the adverse effect of cases pertaining to corporate frauds, a few measures which must be taken to prevent and reduce such occurrences are also suggested.

## **A Failure Of Corporate Governance**

Sahara started an investment program whose schemes were along the lines of an Indian bank's recurring or fixed deposits. Small investors were reached out to by the company's agents. These investors were promised higher returns than what banks would generate on amounts as small as 50 rupees per day. Optional Fully Convertible Debenture (OFCDs) were issued in the name of Sahara India Real Estate Corporation (SIRECL) and Sahara Housing Investment Corporation (SHICL). However, it was claimed that the money raised through these OFCDs

---

<sup>1</sup>Aniket Singh, "CASE ANALYSIS: SAHARA INDIA REAL ESTATE LIMITED & ORS. V. SECURITIES EXCHANGE BOARD OF INDIA & ORS." (December 2, 2016) <<https://legalvoiceblog.wordpress.com/2016/12/02/case-analysis-sahara-india-real-estate-limited-ors-v-securities-exchange-board-of-india-ors/>> accessed November 28, 2020.

<sup>2</sup> *DLF Limited v SEBI* [SAT Order in Appeal No. 331 of 2014].

was through private placements.<sup>3</sup> This was the start of the long legal battle between Sahara and SEBI which highlighted the failure of corporate governance in India.

Corporate governance is the system or set of principles based on which a company runs. Its three main pillars are transparency, accountability and fairness with its main aim being to ensure the long-term benefit of the stakeholders.<sup>4</sup> There was definitely a systematic failure of corporate governance in the Sahara case. One might even suggest that no concrete steps were taken to ensure that there was any system of principles in the first place. For starters, even though the OFCDs were issued in the name of SIRECL and SHICL, they were sold to investors under the name of the “Sahara Pariwar”,<sup>5</sup> the significance of which will be explored later on in this paper.

The very fact that the name of these two companies was not actively shared breaks down the pillar of transparency. What makes it worse is that one of these firms had a net worth of merely Rs. 11 lakhs while the other was making losses. This means that neither of the companies had the financial backing to collect crores worth of money from its investors. The pillar of accountability collapsed when the companies did not handle the public's money with any of the safeguards prescribed by SEBI. There was no clear accounting of funds, its audit and the supervision of its end use.<sup>6</sup>

The pillar of fairness ceased to exist when the board of directors let the red herring prospectuses contain misstatements and untrue statements. SIRECL passed a special resolution to raise funds by the way of private placement through unsecured OFCDs to associates, friends, employees and other individuals who were associated with Sahara. This was done

---

<sup>3</sup> Paramvir Singh, “Sahara India Corporate Governance: Failure of Two Sahara Companies” (*Academia.edu*) <[https://www.academia.edu/6816216/Sahara\\_India\\_corporate\\_governance\\_Failure\\_of\\_two\\_Sahara\\_companies](https://www.academia.edu/6816216/Sahara_India_corporate_governance_Failure_of_two_Sahara_companies)> accessed November 28, 2020.

<sup>4</sup> James McRitchie, “Corporate Governance In India” (*Corporate Governance* May 12, 2015) <<https://www.corpgov.net/2015/05/corporate-governance-in-india/>> accessed November 28, 2020.

<sup>5</sup> Navita Mahajan, “Strategies That Led to Failure - Case Study of Corporate Governance” (2016) 16 *Global Journal of Management and Business*.

<sup>6</sup> Uma Shashikant, “Sahara: A Landmark Case That Brought Focus on Investor Protection” (*The Economic Times*) <<https://economictimes.indiatimes.com/opinion/et-commentary/sahara-a-landmark-case-that-brought-focus-on-investor-protection/articleshow/31658922.cms>> accessed November 28, 2020.

without giving any sort of advertisement to the general public.<sup>7</sup> Promoters, directors and auditors play a key role in ensuring that corporate governance is carried out smoothly. However, in the pursuit of certain incentives, they can be distracted from doing so. The promoter in this case, Mr. Subrata Roy had his own image to maintain which would have been tarnished if he stopped the operations of the two companies on the grounds of it being illegal. He was on the path of becoming a brand in himself. In all likelihood, the directors of the company did not speak out and in fact, encouraged the breach of corporate governance probably to ensure the continuance of their tenure. As far as the auditors are concerned, they must have wanted to continue receiving their auditing fees even if it meant being a part of a scam of this magnitude.<sup>8</sup> It is interesting to note that the RBI forced Sahara to leave its auditing firm of twenty-five years leaving the intentions of the auditors, questionable.<sup>9</sup>

Sahara might have made profits in the short run by overlooking corporate governance, however, it eventually became liable to pay an extraneous amount. Thus, opting for unethical routes will only result in debt for the company and it is always wise to ensure corporate governance for long term benefits; especially in a country like India, which rewards the companies it trusts in the long run. Cases like this one which showcase the failure of corporate governance do not only harm the stakeholders of that company but also have a ripple effect in the rest of that country's market. It repels foreign investment in the Indian market. However, the government has certainly encouraged several new provisions to ensure corporate governance. We will discuss a few more suggestions that can be adopted to further strengthen the application of good corporate governance in the country's companies towards the end of the paper.

---

<sup>7</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

<sup>8</sup> Aditya Jaiswal, "How Shady Corporate Governance Has Given India Inc. a Bad Name" (*Capitalmind*, May 23, 2019) <<https://www.capitalmind.in/2019/05/guest-post-how-shady-corporate-governance-has-given-india-inc-a-bad-name/>> accessed November 28, 2020.

<sup>9</sup> Tamal Bandyopadhyay, "Regulators vs Sahara: the Untold Story" (*Mint*, September 30, 2012) <<https://www.livemint.com/Companies/HkBiwzHOPzmzC5SrDTuNKI/Regulators-vs-Sahara-the-untold-story.html>> accessed November 28, 2020.

## **Role Of SEBI - A Guardian Of The Indian Stock Markets**

The Securities and Exchange Board of India (SEBI) is an appointed authority in provisions within the SEBI Act of 1992, and regulates the financial markets of India. Although SEBI was initially established as a non-statutory body, the SEBI Act of 1992 declared the same as an autonomous body with statutory powers.<sup>10</sup> The late 1970s posed great problems to the stock exchanges in India, where numerous issues of malpractices and violation of the then Companies Act<sup>11</sup> had arisen. To remedy this, the role of SEBI was modified to ensure that the interests of both issuers and investors are adequately protected, by preventing insider trading and fraudulent practices, regulating companies, conducting inquiries to name a few. Further, SEBI is also competent to administer hearings and pass judgements on any issues of breach of ethics detected on the stock exchanges.

The Sahara case<sup>12</sup> led to crucial conclusions on the nature and jurisdiction of SEBI, while particularly considering what constitutes “Securities” within the Companies Act<sup>13</sup>, SCRA<sup>14</sup>, and SEBI Act<sup>15</sup>. During the pendency of the proceedings, the Supreme Court directed SEBI as an expert body to examine the nature of an OFCD<sup>16</sup> and whether it would come under ‘Hybrid Securities’ under the Companies Act. In the current case, both firms under Sahara were unlisted and issued OFCDs to collect money from investors for around two years and received a collection of over Rs.17,656 crores. There was an issuance of shares to 30 million investors while the requirements necessary for public issuance of securities were circumvented. Sahara contended that such issuance was only given to members associated with the companies, that is, members part of the *parivar*, and therefore, must be considered as a private issuance of shares, and thus, the matter must be dealt with by the Ministry of Corporate Affairs (MCA) and not SEBI. Both SEBI and the Supreme Court refuted this claim and referred to section 67(3) of the Act<sup>17</sup>, declaring the current offer as deemed to be a public offer. Further, the Court held

---

<sup>10</sup> Securities and Exchange Board of India Act 1992.

<sup>11</sup> The Companies Act 1956.

<sup>12</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

<sup>13</sup> The Companies Act 1956.

<sup>14</sup> The Securities Contracts (Regulation) Act 1956.

<sup>15</sup> Securities and Exchange Board of India Act 1992.

<sup>16</sup> Securities and Exchange Board Of India, Order 2011, WTM/KMA/CFD/392/06/2011.

<[https://www.sebi.gov.in/sebi\\_data/attachdocs/1310556344733.pdf](https://www.sebi.gov.in/sebi_data/attachdocs/1310556344733.pdf)> accessed 28 November 2020.

<sup>17</sup> The Companies Act 1956, s 67(3).

that the company invited a public demand for OFCDs through its issuance of Information Memorandum under Section 60B<sup>18</sup>, which is available with public companies only, which was also not complied with by Sahara as they did not publish a final prospectus. While deciding upon the same, the Court looked into the powers of SEBI to adjudicate under sections 55A of the Companies Act<sup>19</sup> and 11A, 11B of SEBI Act<sup>20</sup>, concluding that SEBI Act confers SEBI with certain unique powers to protect the interests of investors. Since such powers do not contravene any existing law and there exists no conflict of jurisdiction between both, and therefore, SEBI has the power to administer any listed public companies and also those public companies which plan to get their securities listed. Additionally, the ambiguity surrounding these sections was addressed in the Companies Bill of 2012<sup>21</sup>, where the undisputed jurisdiction of investment schemes involving more than 50 people was granted.

This judgement highlighted the unalloyed powers of SEBI with regard to both public listed and unlisted companies. Additionally, by way of Securities Laws Amendment Act<sup>22</sup> and as stated expressly under section 24 of the new Act<sup>23</sup>, SEBI could now investigate and raid any entity and sign agreements with financial regulators for information. Although this bill could not be passed, the new provisions of the Act and the judgement of the Sahara case granted adequate powers on SEBI to regulate Indian markets, some of which broadly influenced the current market systems. While the intention behind such grant of power is to ensure the stock markets are not ridiculed with instances of fraudulent practices, a question might arise as to the scope for misuse or misinterpretation of such powers granted.

This was precisely discussed in the case of *DLF v. SEBI*<sup>24</sup>, where the purpose for granting such discretionary powers was looked into. Under this case, the untimely delay by SEBI in writing the order violated the principles of fair hearing and the reliance on FAQs as an interpretation of law or as a binding statement must not be valid. While the matter is yet to be decided finally by the Supreme Court, the case highlighted the need for SEBI to adhere to rules and rely on relevant materials. While instances of the potential misuse of powers is not a reason enough to limit the powers of SEBI in the domain of stock markets, there is an active need to ensure that the granted powers are not exploited or dealt with in a hasty manner.

---

<sup>18</sup> The Companies Act 1956, s 60B.

<sup>19</sup> The Companies Act 1956, s 55A.

<sup>20</sup> Securities and Exchange Board of India Act 1992, s 11A-B.

<sup>21</sup> The Companies Bill, 2012, 121-C of 2011.

<sup>22</sup> The Securities Laws (Amendment) Act 2014.

<sup>23</sup> The Companies Act 2013, s 24.

<sup>24</sup> *DLF Limited v SEBI* [SAT Order in Appeal No. 331 of 2014].

## **Role Of Public Opinion And Media**

It is crucial to study the social implications that arose as a result of the Sahara fraud based on the investor's point of view and the regulatory framework at the time. Mr. Subrata Roy understood his clientele, that is, small investors who had no access to banks, at a time when no one else was willing to and fulfilled their needs through his money schemes. He also was fully cognizant of the Indian culture and the incorporation of the marketing strategy of Sahara – 'The World's Biggest Family' had a consequential influence over the Indian public who valued family. Over the years, he was photographed with top politicians, actors and corporate leaders – influencers who were respected by the public. The media, of course, played a big role in spreading this information. It is because of all these reasons, that he was able to garner a reputation and trust among the public who believed that he could do no wrong.

After he had established his position, he began to purposely engage himself in various business portfolios which had poor corporate governance direction and regulatory frameworks. The lack of transparency in Sahara's business transactions and dealings is one of the elements that contributed to its success over a brief period of time. It certainly worked in Sahara's favour that a substantial chunk of its investors were villagers who were unclear of the fraud associated with this model of business.<sup>25</sup>

To further expand upon the briefly mentioned role of the media, it is first important to understand its role in corporate governance. As the media discloses evaluations of firms and their leaders and can broadcast this information to a huge and far-reaching audience, it has the ability to impact the prestige of firms and firm leaders in a positive and negative manner, both. Additionally, playing its governance role, merely by reporting about firms' actions and thus giving the investors a louder voice, the media can influence firm outcomes.<sup>26</sup> In the beginning, the media worked in favour of Mr. Subrata Roy and took a turn in the opposite direction when a case was made against Sahara.

---

<sup>25</sup> TC Prince, 'Indian Corporate Governance and The Need for An Overarching Focus Shift of Policies; A Review Based on Sahara Group Scam' [2014] 3(7) Global Journal for Research Analysis  
<[https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent\\_issues\\_pdf/2014/July/July\\_2014\\_1565265372\\_116.pdf](https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent_issues_pdf/2014/July/July_2014_1565265372_116.pdf)> accessed 28 November 2020.

<sup>26</sup> Micheal K Bedner , 'The Role of the Media in Corporate Governance' (*Oxford Research Encyclopedias - Business and Management*, 2012)  
<<https://oxfordre.com/business/view/10.1093/acrefore/9780190224851.001.0001/acrefore-9780190224851-e-87>> accessed 28 November 2020.

Since people in society are more likely to not take the pain to gather the information themselves but rather listen when it becomes available for free, the role of the media becomes even more paramount. However, in the hunt for headline worthy news, there comes a tussle when confidential information is involved and whether or not the source should be revealed. This is one of the aspects that the Court dealt with in the Sahara Judgement and observed that “the media should follow a self-imposed restriction and should by itself know where to draw the line.”<sup>27</sup>

However, the Court, on discussing the doctrine of postponement, made it clear that when, in some cases, the matter at hand is too sensitive for the media to report on and if reported would have an unpropitious effect on court proceedings, the court may order the postponement of reporting by the media.

It appears that the Supreme Court has acted with honorable intentions whilst pronouncing the judgement but over time, the landmark judgement which vindicates the fundamental right of freedom of speech and expression, seems to be far away from the original goal it set out to achieve. Instead of laying down regulations to be followed by the media, the court relied upon self-regulation which has left the field wide open and resulted in substantial discretionary powers of the court to decide *sub judice* matters of postponement in reporting.<sup>28</sup> This will most likely result in confusion and excess litigation thus emphasizing the need for incorporation of the suggestions we propose in the paper, keeping in mind the influential role of the media.

## **Measures To Prevent Corporate Frauds In India**

Corporate frauds are detrimental to the economic well-being of a country as well as its image in the international scenario as a country with high cases of corporate frauds loses national as well as international investors owing to the risk factor and bad reputation. As we have already seen in this paper by virtue of the Sahara case<sup>29</sup>, corporate frauds not only affect the public at large but also other stakeholders like shareholders, employees and so on.

With regards to the culprits of corporate fraud in India, the institutions in place responsible for

---

<sup>27</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

<sup>28</sup> Anurag K Agarwal, 'Corporate Governance: Confidentiality and Role of Media in Changing Times' (*IIM Ahmedabad*, 2012) <<http://vslir.iima.ac.in>> accessed 28 November 2020.

<sup>29</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

punishing them are investigating and regulation bodies such as RBI, CBI, SEBI and so on.<sup>30</sup> Unfortunately, such bodies do not have specialists in the sphere of investigation which is why most culprits are able to find their way out with ease. This paper aims to offer a solution to this problem, while relying on the principles of Forensic Accounting.

Under Forensic Accounting, matters of business related with financial transactions are investigated. This helps predict and in turn prevent possible situations of fraud.<sup>31</sup> In the Indian scenario, this will be especially helpful because these days a large number of corporate frauds involve complicated issues of Information Technology (IT) which is an area of expertise for forensic accountants.

As mandated by the Companies Act, 2013 the corporate sector must audit accountants; the CAs, CS and CWA that are in charge of managing accounts. These professionals are neither equipped with the skills and knowledge expected in the workings of forensic accountants, nor are the subjects for the same present in the curriculum in India.<sup>32</sup> In the Sahara case<sup>33</sup> too, RBI had to undergo as many as eleven quarterly meetings in order to allow a forensic audit by KPMG.<sup>34</sup> This delay can be remedied by having forensic accountants and viewing Forensic Accounting as a separate profession in India. A curriculum must be put in place for the same.

Further, other measures which can effectively reduce corporate frauds in India are also suggested. The first among these is the need to amend the laws which criminalize corporate crimes. This is because when we see laws such as the Indian Telegraph Act, 1885 (ITA) we can see how these are outdated and need to have stricter punishments. For instance,

---

<sup>30</sup> Shirish Mishra and Gurbir Singh, 'Forensic Accounting: An Emerging Approach to Deal with Corporate Frauds in India' (2017) 9(2) Global Journal of Enterprise Information System. pg 105 <221-View Point (VP)-443-1-10-20200314.pdf> accessed 27<sup>th</sup> November 2020.

<sup>31</sup> Ibid pg 104.

<sup>32</sup> Ibid pg 106.

<sup>33</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

<sup>34</sup> Tamal Bandyopadhyay, 'Regulators vs Sahara: The untold story' (Live Mint, 1<sup>st</sup> October 2012) <<https://www.livemint.com/Companies/HkBiwzHOPzmmzC5SrDTuNKI/Regulators-vs-Sahara-the-untold-story.html>> accessed 28<sup>th</sup> November 2020.

the maximum penalty under ITA is jail for three years and a meagre fine of rupees one thousand only. What one must keep in mind while looking at this is that culprits of frauds in the Telecom sectors are booked under this act, which means that people committing frauds worth crores are facing this almost negligent penalty.<sup>35</sup>

The second measure is to make stricter provisions for bail. Culprits of high-level corporate frauds hire top tier lawyers who obtain bail for them. In this regard the courts should follow the judgement of *Narendrjeet Singh Sahni v/s Union of India*<sup>36</sup>, in which the Supreme Court held that the court should not provide bail to culprits who misplace the faith of people who have invested their entire life's savings with them.<sup>37</sup> In the Sahara case<sup>38</sup> too, despite committing fraud worth tens of crores, Subrata Roy was granted parole within two years after which he permanently stayed out of jail by making regular payments and fines.<sup>39</sup>

We could also consider the approach followed by the United Kingdom to deal with the range of financial scandals in the 1980s such as the collapse of the Bank of Credit and Commerce International and the Maxwell Group. There, a body that was controlled by private players was established and it defined corporate governance regulations and created measures to force companies to divulge performance in accordance with standards. It also allowed the force of the public and the media to change practices (crucial, having discussed the significance of the role of the media in our country).

---

<sup>35</sup> Gyanendra Kumar Sahu and Madhu Sudan Dash, 'Corporate Crimes: The Need for a Corporate Penal Code' (2015) 9(2A) Journal of Arts, Humanities & Management. pg 7 <<https://ddceutkal.ac.in/Journal/Search-Journal-July-15.pdf#page=7>> accessed 27<sup>th</sup> November 2020.

<sup>36</sup> *Narendrjeet Singh Sahni v Union of India*, [2001] Supp (4) SCR 114.

<sup>37</sup> Gyanendra Kumar Sahu and Madhu Sudan Dash, 'Corporate Crimes: The Need for a Corporate Penal Code' (2015) 9(2A) Journal of Arts, Humanities & Management. pg 8 <<https://ddceutkal.ac.in/Journal/Search-Journal-July-15.pdf#page=7>> accessed 27<sup>th</sup> November 2020.

<sup>38</sup> *Sahara India Real Estate Corpn. Ltd v SEBI*, [2013] 1 SCC.

<sup>39</sup> Samanwaya Rautray, 'Supreme Court directs Sahara chief Subrata Roy to appear before it on February 28' (*The Economic Times*, 31st January 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-directs-sahara-chief-subrata-roy-to-appear-before-it-on-february-28/articleshow/67773422.cms?from=mdr>> accessed 28th November 2020.

The advantage of this body was that it was self-regulatory and up to the body to impose penalties and thus, it sped up the process of justice<sup>40</sup>. If a similar route is followed in India, there would therefore be a reduction in the huge backlog of cases and assurance of timely investigation and trial.

Lastly, offenders in corporate fraud cases should not be allowed to enjoy the proceeds they keep receiving even after having committed fraud.<sup>41</sup> This is why, even after paying a heavy compensation, most of these offenders continue to live in luxury.

India has received the status of one of the fastest growing economies in the world. Due to many regulations and provisions mandated by law being backward and insufficient, especially in high profile cases there is a frequent occurrence of cases involving corporate fraud as the culprits think they can easily get away with them contrary to the view in criminal cases. To prevent and reduce the occurrence of corporate fraud and to instill a more serious attitude in people towards such offences, this paper offers the aforementioned measures to be implemented in India. Though companies may not always be recognized for being socially responsible, they must remember that irresponsibility does not go unseen and is not without price.

---

<sup>40</sup> Alexander Dyck and Luigi Zingales, 'The Corporate Governance Role of the Media' <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.195.609&rep=rep1&type=pdf>> accessed 28 November 2020

<sup>41</sup> Ibid pg 7 para 3.

## Conclusion

Investors are an important part of any company's growth and success. In a country like India where a good percentage of the population is uneducated, they become easy targets of manipulation. Frauds like these may limit the low-income citizen from investing in the market as in this case too, it was the poor who bore the brunt. The government owes its citizens strong mechanisms to ensure financial regulation. Despite Sahara's size and the scale at which it was operating its schemes, it took SEBI two years to get acquainted with the irregularities. This highlights the lack of interaction between the different financial sector regulators. The Financial Stability and Development Council is a regular forum for such interactions; however, it concentrates only on macro matters. More interaction on the grass-root level has to be encouraged.<sup>42</sup>

The reliance of the Indian economy on the corporate sector is only going to increase. Foreign investment too can only be attracted if ironclad financial regulations are set in place. The need to hold the big players of the corporate sector accountable and ensure that they can't bypass regulators is the need of the hour.

---

<sup>42</sup> Bajrang Lal, "A 'CASE STUDIES' ON Corporate Fraud in India – Sahara and Saradha"  
<<https://bajrang75.files.wordpress.com/2017/07/case-study-sahara-and-saradha-b-s.pdf>> accessed November 28, 2020.