Good Governance -A Tool to Prevent Corporate Frauds

Prof. Gopal Krishna Agarwal
Jaypee Business School,
JIIT University
Noida, India

Dr. Yajulu Medury
Jaypee Education System
JIIT University
Noida, India

Abstract-Good Governance is beyond the realm of law. It stems from the mindset and culture of management and cannot be regulated only by legislation. Corporate Governance is a buzz word in businesses globally but Good Corporate Governance is still a distant dream in spite of efforts made by government legislations, regulatory bodies enforcing the rule book, professional bodies framing ethics module for their professionals and companies following the rule book in letter but not in spirit resulting into heinous corporate frauds with enormous loss to various stakeholders. Had good corporate governance been practiced by Enron, WorldCom and Satyam Computers like renowned and so-called professionally managed companies, business world and its stakeholders would not have been grappling in dark to find a fool proof solution for good governance for decades. This paper examines various facets of corporate governance noticed so far and practiced. It also identifies the probable gaps due to which good corporate governance could not be ensured even in best managed firms. The author is of the view that one major reason for this catastrophe has been the ineffective, mischievous and unethical role of professionals in ensuring good corporate governance. The author has also suggested as to how the professionals can play vital role to ensure good corporate governance and thereby detect and prevent corporate frauds.

Key Words: Good Corporate Governance, Corporate Frauds, Role of Professionals

I. INTRODUCTION

Sun spreads the sunrays down on the earth which again is life giving device on this earth. Moon provides cool atmosphere down on the earth. Similarly, water, a necessity to survive, flows down and down and quenches the thirst of millions of people. It never adopts down-up approach and Clouds rain down on earth for welfare of masses. All these examples of Almighty and many more support the good cause in a top-down approach. How can the employees or workers in the middle and lower levels of management in a corporate be expected to practice honesty unless honesty travels down from the top management? Yes, unless good practices are running in the blood veins of the top management including promoters and major shareholders, it would be grappling in the dark to find a solution for good corporate governance and consequently it will be very difficult to make effective efforts to detect and prevent corporate frauds. Corporate edifice stands on two foundation pillars-one board of directors and the other auditors. Since ages it has been tried and ensured that if the board of directors i.e. executive does not perform honestly, the watched dog- other corporate pillar i.e. auditor should bring out board's weaknesses in his report honestly. But in several cases of corporate scams it has emerged that both the pillars got aligned and became the party to the corporate frauds cheating millions of stakeholders. The recurrence of such cases could have been checked if law would have taken its recourse strictly and timely. Imposing only financial penalty and few years in prison would never stop the menace of corporate fraud and good corporate governance would have a place in literature only or at the max kill precious time of professionals in conferences and seminars. It will be apt to discuss corporate governance, good corporate governance and role of professionals in good governance to prevent/ minimise corporate frauds. It is given in following paragraphs.

A.Corporate Governance

Corporate governance has been defined by [1] as "a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and directors and thereby mitigating agency risks which may stem from the misdeeds of corporate officers." As per [2]; [3]; and [4] corporate governance refers to the system by which corporations are directed and controlled. The governance provides the structure through which organizations set and pursue their objectives, while reflecting the context of the social, regulatory and the market environment. The governance structure specifies the distribution of rights and responsibilities among different participants in the organization (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders). Governance is a mechanism for monitoring the actions, policies and decisions of corporations. Governance involves the alignment of interests among the stakeholders. It may be further defined as a governance practice set to run the corporate with the objective to ensure the value and welfare of all the stakeholders and pursued meticulously. Governing a corporate effectively must result in transparency and best practices on the one hand and a consistent healthy bottom-line for all the stakeholders on the other. Global debate is increasingly and interestingly in favour of not only practising ethics but creation of value in a transparent manner.

Shekher Datta, the then president of CII, in the foreword to the report of Rahul Bajaj Committee on Corporate Governance in India said that "Corporate Governance" is a phrase which implies transparency of management systems in business and industry, be it private sector or public sector. In US, Sarbanes-Oxley Act, 2002 established a significant milestone to ensure better corporate governance. This Act was prompted by the scams of Enron, WorldCom, KPMG, Quest, etc.

History of corporate governance goes back to the aftermath of the Wall Street Crash of 1929 when legal scholars Berle, Dodd and Means pondered on the changing role of the modern corporations in society. The managerial class emerged after World War II through emergence of multinational corporations and several Harvard Business School management professors studied and wrote about this new class of business managers about behavioural aspects etc. In the 1980s, [5] established principal-agent problem as a way of understanding corporate governance: the firm is seen as a series of contracts. Duties of corporate directors in US have expanded beyond their traditional legal responsibility of duty of loyalty to the corporation and its shareholders [6]. First half of 1990s saw large scale exodus of CEOs from world renowned corporations (e.g.: IBM, Kodak, Honeywell) and corporate governance issue was highly publicised by the press. In the early 2000s, the massive bankruptcies (and criminal malfeasance) of Enron and Worldcom, as well as other corporate scandals, such as Adelphia Communications, AOL, Arthur Anderson, Global Crossing, Tyco, led to increased political interest in corporate governance which ultimately triggered the passage of the Sarbenes-Oxley Act of 2002. Other triggers in the corporate governance of organizations included the financial crisis of 2008-9 and the level of CEO pay [7]. In 1997, East Asian financial crisis severely affected the economies of Thiland, Philippines, South Korea and Indonesia through the exit of foreign capital after property assets collapsed. The lack of corporate governance mechanism in these countries highlighted the weakness of the institutions in their economies.

Corporate Governance practices around the globe: Corporate Governance practices and models differ in various countries depending upon the variety of capitalism in which they are embedded. While the Anglo American model tends to emphasise the interests of shareholders, the coordinated or Multi-stakeholder model associated with Continental Europe and Japan recognizes the interests of workers, managers, suppliers, customers and community at large. A related distinction is between market-oriented and network-oriented models of corporate governance [8]. Few such models are discussed as under:

- United States and United Kingdom: The so-called "Anglo-American model" of corporate governance emphasizes the interests of shareholders. It relies on single-tiered Board of Directors that is normally dominated by non-executive directors elected by shareholders. Because of this, it is also known as "the unitary system"[9] and [10]. Within this system, many boards include some executives from the company (ex officio members of the board). Non-executive directors are expected to outnumber executive directors and hold key posts, including audit and compensation committees. The United States and the United Kingdom differ in one critical respect with regard to corporate governance: In the United Kingdom, the CEO generally does not also serve as Chairman of the Board, whereas in the US having the dual role is the norm, despite major misgivings regarding the impact on corporate governance [11].
- Continental Europe: Some continental European countries, including Germany and the Netherlands, require a two-tiered Board of Directors as a means of improving corporate governance [3]. In the two-tiered board, the Executive Board, made up of company executives, generally runs day-to-day operations while the supervisory board, made up entirely of non-executive directors who represent shareholders and employees, hires and fires the members of the executive board, determines their compensation, and reviews major business decisions [12]
- India: SEBI Committee on Corporate Governance defines corporate governance as the "acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their

own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal & corporate funds in the management of a company."

- *B Good Corporate Governance*

Good Governance: The term "Governance" and "Good Governance" are being increasingly used in management literature. Bad governance is being increasingly regarded as one of the root causes of all evils in our society as well as in corporate. Lending institutions especially international institutions have started funding those corporate which ensure Good Governance. Governance means the process of decision making and the process by which decisions are implemented or not implemented. On Good Governance the paper of "United Nations Economic and Social Commission for Asia and Pacific" remarks that "Good Governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It ensures that corruption is minimised, the views of minorities are taken into account and that the voices most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of the society" While the detailed discussion on eight parameters has been included elsewhere in this paper, it will be worth mentioning that the word society can very well be viewed as stakeholders in the context of a corporate.

[13] Remarked "The essence of good corporate governance is found in relationship of various participants in determining the directions and performance of organizations...Any business that looks to short run maximization of return of shareholders will destroy value in the medium to long run." Good corporate governance throws a sharp focus on the role of board of directors whatever might be the corporate vision and mission. Board of directors have to devise radical change in their perceptions and actions. They have not to think for their mutual benefit but for the welfare of all stakeholders. And the pre-requisite of the board to function transparently is that the composition of board should be such that its independent functioning is ensured. Sizeable number of independent directors, truly independent in letter and spirit, should find a place in the constitution of the board. The members of the board should be qualified and competent in one or more disciplines of the functioning of the corporation. They should attend the board meetings regularly and must take active interest. Fear psychosis that they may be removed from the board if they speak against the wishes of the promoter or major shareholder should not be the criteria of their working and continuance. Rather they should think and act in the interest of all stakeholders. This is a pious responsibility which is entrusted to the members of the board. If they act honestly and to the best of their capability, good corporate governance is bound to happen else it will remain a sheer dream to be cherished in wonderland. The governance flow from the board of directors, hence they are considered as governors of the company. Gandhian philosophy emphasizes upon the fact that business and ethics should go together. Governors should honour the ethical philosophy with singular dedication and determination to achieve the ideals of corporate governance.

Corporate-Political Nexus Detrimental to Governance: "Corporate-Political" nexus is highly detrimental to achieve good corporate governance. Financial contributions to political parties by the corporate has legislative backing in India and it has devastating effects on good governance. In 1957, Justice Chegla, one of the eminent jurists remarked thus: "...We think it is our duty to draw the attention of Parliament to the great danger inherent in permitting companies to make contributions to the funds of political parties. It is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country.....Wide power is conferred upon the directors to make these contributions and with the consent of the company, unlimited power is conferred upon them. As we know from experience, in a large number of cases the so-called sanction of the company is a mere camouflage. Either the directors control the company or some powerful person holds some large block of shares so as to control the voting

Good Internal Control Systems for Effective Governance: Besides ethical conduct of board of directors, good governance requires that efficient and adequate internal control systems should be introduced across the organization and their regular review and revision made to make them workable and adaptable with the changing business environment. These systems must ensure proper checks to control fraudulent practices in organizational functioning.

Auditor Great Contributory to Good Governance: Another arm which can contribute significantly in good corporate governance is the role of internal and external auditors. Independent auditors examine the affairs of the business and give their report to the management in case of internal auditors and to shareholders in case of statutory auditors. Again the issue of ethical practices surfaces to ensure good governance. The fraudulent actions of employees and management having financial impact on the bottom-line of the corporate results must be fearlessly reported. Auditors are very much responsible to the stakeholders at large and it is their social obligation to report the facts correctly. The overall objectives of internal audit are to suggest improvements in functioning of an organization and to strengthen the overall governance mechanism of the organization including its internal control system and strategic risk management [14]. The UK Cadbury Report states that: "The annual audit is one of the cornerstones of corporate governance" [9] para 5.1), yet the governance literature, excluding research on audit committees, has generally only recently begun to consider the association between the external audit quality as a governance device, and internal corporate governance mechanisms (eg [15], [16], [17].

The professional accounting and auditing bodies globally have suggested norms for auditors both for ethics to be followed and standards for audit programme. These must be followed by auditors in letter and spirit. Fear of losing the audit assignment or getting adequate compensation by the auditors are biggest culprits to fall prey to malpractices in audit work or reporting. These issues can be tackled by the professional accounting and auditing bodies by developing a mechanism through which the continuation of audit work may be ensured and if the auditor is found guilty of not discharging his/ her duties honestly, severe punishment may be inflicted upon him/her to stop future recurrences.

C.Professionals and Their Role in Good Governance

According to Professor A. M. Carr Sanders "a profession may be defined as an occupation based upon specialized intellectual study and training, the purpose of which is to supply skilled service or advice to others for a definite fee or salary". Thus, a profession must have following main attributes[1]:

- Body of systematized knowledge imparted to its members;
- Intellectual skills;
- High degree of intelligence and integrity;
- A spirit of service and concern for social values;
- Regulated entry into the profession
- Loyalty to institution, which controls the admission, discipline in and removal from the profession on account of indiscipline or misconduct.

United Nations Economic and Social Commission for Asia and Pacific has described in its paper on Good Governance: "Since governance is a process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision making and implementing the decisions made" [2].

Let us discuss first that who all are the actors/ professionals involved in the corporate functioning before we discuss their role in good governance. There may be internally employed professionals in the organizations and external professionals described as under:

Internally Employed Professionals: Chairman and Managing Director, Independent Directors, CEO, Chief Finance Officer, Company Secretary, Chief Internal Auditor, Commercial Chief, Human Resource Chief, Production Chief, Purchase Department Chief, Public Relations Officer, Communication Chief and Information Technology Chief.

External Professionals: Statutory Auditor, Internal Auditor, Legal Advisors and Merchant Banker.

Generally describing the desired character and behaviour of these professionals as a contribution to good corporate governance, it may be concluded that they should act with utmost honesty and ethics in the interest of all stakeholders. To be specific the role of some of these professionals in good corporate governance is very important and, hence, need little more discussion. While the role of internal and external auditor in good governance has been broadly covered in previous paragraph; role of some other professionals is worth mentioning here as under:

Chairman and Managing Director (CMD): As a leader of the team he has to demonstrate professionalism in all his actions be it chairing the board meetings and shareholders meetings, communicating at all levels the success and failures alike and transparently, presenting true financial

[1] (Source: Article "Professional Ethics and Company Secretary" by R. Ramchandran, FCS, (Past President, the ICSI), Mumbai published in Chartered Secretary November 2003 issue pp A366)

[2] (Source:United Nations Economic and Social Commission for Asia and Pacific on "What is Good Governance" www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/**governance**.asp taken on 13.07.2013

position and performance before the lenders and investors, working as a team and not as a dictator, ensuring all regulatory compliances timely or introducing adequate management and internal control systems to ensure smooth working and protection of assets of the organization. He must ensure that qualified team of professionals and workers are appointed across the organization to achieve the vision and mission of the firm.

Independent Directors: Independent person can take conscious and judicious decision. Hence, the pre-requisite to enhance the standard of corporate governance, role of independent directors is of paramount importance. The outcome of Kumarmangalam Birla Committee report made the term "Independent Director" an established norm to ensure good corporate governance. Securities Exchange Board of India incorporated clause 49 in listing agreement devoted to corporate governance and all listed companies are required to include the independent directors in its Board. Additionally, clause 49 also prescribes that Audit Committees should comprise of maximum independent directors. I am not discussing here the independence as such which is still a debated issue amongst the governance professionals but moot point of discussion is that the role played by independent directors to ensure Good Corporate Governance would improve transparency and accountability in the company management. Good number of promoters run the business to make money unethically as has emerged in Satyam Computer fraud and they would somehow try to influence the independent directors to align with their thinking, but here the conscience and ethics should play larger role for such independent directors to remain independent and they must see overall interest of all stakeholders of the company rather than the interest of promoter or major shareholder. Since all management team members cannot be expected to remain in the same boat to think honestly and ethically, the law should provide for the responsibility and accountability of independent directors. The independence of independent directors can be ensured through a mix of their appointment process, training through the institutes of independent directors opened for the purpose, adequate fee to discharge their function and stringent penalties under law to check the menace of losing independence.

Chief Executive Officer (CEO): CEO is top executive in the management hierarchy of any corporate and he has to be an officer of impeccable integrity and great professional skills. He should lead the team of professionals for success of the organization. CEO can be a great contributory for good corporate governance. His two way communication channels and information systems must be strong enough to demonstrate clarity and transparency in communication and timely flow of information up and down the line which would ensure cashing available avenues in time and exercising control measures to check economic lapses and other frauds.

Chief Finance Officer (CFO): Good governance demands that management of finance should be exceptional to optimise shareholders' wealth while keeping in mind interest of all other stakeholders. Since finance and accounts is an area which is prone to corporate frauds, professionalism demands that integrity is a pre requisite of good governance for a CFO. Many frauds which have surfaced, involvement of CFO has been found. Further, CFO must ensure that systems are in place to ensure payments to the suppliers and lenders on time and without harassment. This is an area where the goodwill of an organization is at stake which should be protected at all cost. In case of any financial trouble, communication with lenders and suppliers should be strengthened and they should be taken into confidence to walk shoulder to shoulder in bad times as well. Presentation of accounts must comply with the accounting standards and accounting policies and it should be transparent.

Company Secretary: Being the principal officer of the company responsibility for developing and implementing good corporate governance processes has fallen largely on the shoulders of the company secretary. The most effective company secretary is one who is regarded by the Board as its trusted advisor on all legal, regulatory and governance developments which may impact the company. [18] Has described the role of company secretary as a vital link between the company and its board of directors, shareholders, government and regulatory authorities. He ensures that board procedures are both followed and regularly reviewed and provides guidance to chairman and the directors on their responsibilities under various laws. He commands high position in value chain and acts as conscience seeker of the company. On corporate governance the ICSI further explains the role of company secretary as "advising on good governance practices and compliance of corporate governance norms as prescribed under various corporate, securities and other business laws and regulations and guidelines made there under."

Merchant Bankers: Merchant Bankers, though outsiders, play very important role at one point or another in the life of the corporate to create wealth through mobilization of resources and advisory services. They are the professionals who have been instrumental in economic disaster of 2008. They play a vital role to suggest the premiums for the public issue and structuring of other financial products. They justify their acts through their research arm which sometimes unjustifiably boasts the future growth and profitability and thereby suggests unrealistic price for public offerings. They plan and suggest their corporate clients how to befool the gullible investors through misinformation or withholding information in spite of strict regulations of regulatory bodies like SEBI. With the result innocent investors invest their hard earned money and burn their fingers. Their investments are swindled by the corporate in one form or the other over a period of time within the umbrella of laws of the country. Again the same question surfaces as to how the malpractices of these professionals can be curbed, whether through strictest legal recourse or ethical training or a mix of two, which again is a matter of further research. Here it would be enough to suggest that they should work in the larger interest of all the stakeholders.

II. OBJECTIVES OF THE STUDY

The objectives of this study are:

- To ascertain the factors which constitute good corporate governance beyond the realm of law;
- To identify the professionals whose role is significant to ensure good corporate governance; and
- To ascertain what role the professionals should play to improve corporate governance.
- To suggest how the good governance helps in preventing corporate frauds.

III. LITERATURE REVIEW

Many researchers have done the work on role of various professionals to ensure good corporate governance. The Conference Board's Blue Ribbon Commission on Public Trust and Private Enterprise proposed in January 2003 that "public companies separate the roles of chairman of the board and chief executive, and give the chairman post to an independent director. Board that don't designate a separate chairman should elect a powerful "lead" director, the panel recommended" [19]. This was suggested to ensure the major shift in the centre of gravity and balance of power which may be useful for good governance.

In The Practice of Management, [20] tackles the thorny issue of relationship between the boards and their CEOs and also addresses various fundamental issues surrounding effective corporate governance. Corporate governance experts, regulators and institutional investors have advocated a strong role for the independent directors. Under the changed corporate environment and newly enacted legislations independent board members have been expected to be far more vigilant and demanding. These directors have even claimed the head of top officers of the company as has been seen in case of Imclone Systems on 30th April, 2003 when both its chairman and CEO had to step down from the company. "The management change was forced by the company's independent directors, who seem to regard the latest tax investigations as the last straw.... The company's current difficulties led the independent members of the board of directors to conclude that a change in leadership was appropriate" Imclone said in a statement last night....Such a move would represent a newly activist approach for a board that has earned a reputation for laxity" [21]. Researchers agree that an effective board of directors can protect the interest of shareholders by ensuring that a firm's management formulates effective strategies [22]; [5]. Independent outside directors , who are employed by a firm and do not have an affiliation with its management are considered important in controlling agency costs, because they can be more effective in aligning the interests of owners and managers [23]. These directors apply their broad corporate experience in fulfilling their oversight role [24].

The Sarbanes-Oxley legislation –as well as new rules at the stock exchanges-now requires a greater number of independent directors who do not work or do business with a company or its executives. Indian Companies Act, 2013 has given new set of compulsions and teeth to independent directors. They are more accountable and responsive to ensure effective oversight. Corporate board meetings will no more be staid gatherings but will influence, with independent directors, corporate governance processes. Independent directors will not remain passive players in board meetings. Constant absenteeism will be dearer and absenteeism for 12 months from all board meetings would require the director to quit the office of the director. Coming to board meeting without reading agenda papers will be a regretful past. New law has strengthened the hands of such directors in peculiar situations involving corporate frauds. New provision has capped on number of directorships a person can hold in public companies (maximum 10 within overall limit of 20 directorship), limits the tenure to a maximum two consecutive terms of 5 years and after a cooling period of 3 years they are eligible for reappointment, and the directors would have to give reasons to registrar of companies for resignations. This would be helpful in better corporate governance. "This is far better system than the current one. With some certainty in tenure, independent directors are likely to be more independent," said Ashok Haldia, Director, PTC India Financial Services.

Currently corporate governance centres on the financial governance and hence, the role of CFO in corporate governance has increased tremendously. Seen from the responsibilities in the corporate governance system, CFO has undertaken the responsibilities concerning managing, law, governance, morality, management, and the responsibilities internally entrusted to the shareholders and those externally to the board [25]. With the global development, CFO will function as a manager of strategic plans, resources, achievement evaluation, flow system and controlling [26], which is extremely important to elevate the value of shareholders and to fulfil the corporate target [27].

Auditing literature especially internal auditing provides useful insights into the current and potential roles of internal audit function (IAF) in quality corporate governance. While a few studies suggest that the IAF and its activities do not affect firm employees or corporate governance [28]; [29], a fairly consistent finding across recent studies is that IAF can have positive influence on good corporate governance. The IAF deters financial reporting irregularities and employee theft [30]; [31]. Involvement of IAF can benefit firm performance [32]. Further, in addition to the research suggesting that the IAF can improve corporate governance, the growing importance is being seen in IAF ensuring quality corporate governance e.g., [33]. As compared to past, today many are looking to the IAF as part of the solution to a perceived breakdown in the systems of business reporting, internal control, and ethical behaviour [34].

[35] Guidance on Corporate Governance Role of the Company Secretary, in its introduction, has noted "Over recent years, responsibility for developing and implementing processes to promote and sustain good corporate governance has fallen largely within the remit of the company secretary. This note draws together and summarises the company secretary's main responsibilities in this continuously developing area. Before setting out specific responsibilities of the company secretary, it is important to note that the most effective company secretary is one who is regarded by the board as its trusted advisor and who:

- Keeps under review legislative, regulatory and governance developments that may impact the company and ensures that the board is appropriately briefed on them;
- Wins the confidence of and acts as a confidential sounding board to the chairman and other directors on issues of concerns; and
- Provides, where appropriate, a discreet but challenging voice in relation to board deliberations and decision making, drawing in particular on his or her professional experience and historical knowledge of the company."

ICSA in its note has summarised various responsibilities of a company secretary which would be quite useful for the furtherance the cause of good corporate governance.

With the above citation of literature review it is abundantly clear that professionals do play important role in good corporate governance.

IV. METHODOLOGY

Secondary data has been collected through manuals, corporate governance literature in annual reports of the companies, guidelines issued by various regulatory bodies, guidance note suggested by various institutes, legal provisions in legislations of different countries. Various research papers were reviewed and their findings were used as a secondary data to develop this paper.

Experienced corporate professionals were interviewed by the author of this paper, who himself has vast corporate experience for over three decades at senior/ top level, on various aspects of strengthening corporate governance across the corporate world. The important outcome of these discussions have been incorporated at relevant place under the head "data analysis and discussion".

V. DATA ANALYSIS AND DISCUSSION

A.United Nations Guidance Note

United Nations in its Guidance note on Good Governance has suggested eight characteristics for good governance. Accordingly, Good Governance should be "Participatory, Consensus Oriented, Accountable, Transparent, Responsive, Effective and Efficient, Equitable and Inclusive and Follows the Rule of Law."[3] Though these attributes have been suggested more in relation to country governance, a good corporate governance can follow these footsteps:

[3] Source: Guidance Note by United Nations Economic and Social Commission for Asia and the Pacific on "What is Good Governance?" URL: www.unescap.org/pdd taken on 17.09.2013

- Participation: Participation of all stakeholders in management processes in one form or the other would be key cornerstone for good governance. Effective communication can play the vital role in this process.
- Rule of Law: Impartial implementation of corporate rules across the organization would be hallmark in ensuring good governance. Minority's interest should always be protected.
- Transparency: Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided in easily understandable form.
- Responsiveness: Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.
- Consensus oriented: There are many actors in governance process and as many view points. The decisions should be taken largely with consensus keeping in view the larger interest of the stakeholders.
- Equity and Inclusiveness: All stakeholders must feel part of the organization and they do not feel excluded from the mainframe of the corporate edifice. Employees and minority shareholders should have opportunity to have a say for any sufferings.
- Effectiveness and efficiency: Good governance means that processes and institutions produce results making best use of available resources. The concept of good governance also covers the sustainable use of natural resources and the protection of the environment.
- Accountability: Accountability is a key requirement of good governance. All in charge of governance processes must be accountable to stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization. In general an organization or institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and rule of law.

B.Importance of Corporate Governance

The importance of corporate governance lies in its contribution both to business prosperity and accountability. Good governance ensures that all stakeholders with a relevant interest in the company's business are fully taken care of. Further, good governance can significantly contribute to prevent malpractices and fraud, although it cannot prevent them absolutely. Corporate structures and governance arrangements vary widely across the globe due to differences in local economic and social environment.

C.Outcome of recommendations of various committees on Corporate Governance

Cadbury committee was a landmark in thinking on corporate governance. Its recommendations were endorsed in UK and incorporated in listing rules. The report also got wide recognition in many other countries and it provided the yardstick against which corporate governance standards in other markets are being measured. Cadbury and Greebury committee reports were to address issues which had gone wrong-corporate failure in the first place and unjustified compensation packages in the privatised utilities in the second. These reports covered broad structures of board and compensation committee. And with these prescriptive rules, if followed, one may agree that corporate governance practices are followed and vice versa. This is "box ticking" kind of approach which takes no account of diversity of circumstances and experiences among the companies. It assumes, for example that the role of chairman and CEO should never be combined and there should be ideal number of non executive directors. Same rules cannot be applied in all circumstances. Further, box ticking approach is orthodox option to comply rather than diligent pursuit of corporate governance objectives. Under this corporate governance may be complied in letter but not in spirit and which may lead to the disaster even with 100 percent corporate governance compliance. This was exactly the case in Satyam Computers fraud. Satyam Computers was embodiment of corporate governance compliance on world map but it was an example of highest crooked governance. Hence, the essence of good corporate governance lies in application of informed and independent judgement by experienced and qualified professionals-executive and non executive directors including independent directors, the auditors, the company secretary and the CFO and never in "box ticking" approach.

In India too, the focus is more on complying with the requirement of clause 49 of the listing agreement for corporate governance and patting one's own back to fulfil the corporate governance norms but is it the end of the story? In spite of this compliance many corporate have reported financial statements fraudulently. Hence, the question is how this menace can be stopped and shareholders' wealth protected from evil eyes of bad masters. Role of professionals can really be helpful in this regard if the professional ethics are adhered in letter and spirit and professional bodies governing these professionals are very well equipped with arms and ammunitions of severest punishment for professional misconduct. Then the good corporate governance will not remain a far cry. Many researchers have concluded that the role of CEO, independent directors, auditors especially internal auditors and company secretary can add immense value to good governance and fraud control.

D.Role of outside consultants

Even the role of outside consultants/ professionals like merchant bankers can be of great help to pursue good governance. But these professionals have also become the victim of greed and falsely advise the management to show a better picture in public offering document and thereby help mobilize massive resources from the public by showing rosy picture. Since these professionals are also within the purview of regulatory authorities like SEBI in India, their conduct should be subject to scrutiny for inflicting severest penalties for professional misconduct.

"The special claim to fall under the definition of "profession" lies less in expertise than in dedication to something other than self-interest while providing service. That something else is a certain degree of altruism or suppression of self-interest when the welfare of those they serve requires it. The essence of a profession then is this act of "profession"-of promise, commitment and dedication to an ideal[4]".

VI. RECOMMENDATIONS

The result of various research works and my own study and experience testify that good corporate governance depends upon the effective board, the independent auditors, role of professionals and the effective legislation. Accordingly, my recommendations to improve corporate governance also centres around these key parameters. My recommendations address the issue of effectiveness of board, the auditor, role of professionals and the legislation as under:

- The board should comprise at least minimum prescribed independent directors and independence of these directors has to be ensured. Besides suggested norms to decide independence of directors by the legislations across the countries, independence can be ensured if a panel of these directors is maintained by a designated body appointed for the purpose. This body should specify the norms of qualification, experience and integrity parameters for empanelment of these directors and once empanelled, companies may pick the independent directors from this panel. These companies would be public limited companies who have accessed or are likely to access funds from the public, government, banks and financial institutions. This body would constantly review the actual character and performance of these directors once they take up assignment and if found guilty of misconduct, will take punitive action which may be even to debar the guilty from future assignments. Ascertaining independence is a good area for future research.
- Ensure appointing independent auditor. The independence of auditor can again be ensured through his appointment process. In a company where public funds are involved, a separate body should maintain and control the appointment, guidelines for ethics to be followed and should have power to punish for professional misconduct. This is another area for further research as to how this independence can be ensured.
- Role of professionals, although reviewed and regulated by respective professional bodies, should further be improvised through rigorous ethical training which may be taken up by the respective professional bodies. Punitive action is not up to the mark looking into the professional misconduct being observed since last few decades and needs a relook. Action for misconduct must also be speeded up as per the well known proverb "Action Delayed is Action Denied".
- Several legislations are in place but their effective implementation is questionable. Sometimes it takes, if not decades, years to punish the guilty. Further, the punishment is not up to the mark for financial impropriety. The investor who loses the money due to mischievous acts of management/ professionals becomes financially orphan and crippled. Few years

[4] Source: Dani, Om Prakash, FCS, (Past President, The ICSI and Group CFO, Mcorpglobal, New Delhi) in his article "Professional Ethics-An Intrispection", Chartered Secretary, Novemver 2003 ppA370

in prison for financial fraud are not enough. Again, the disposal of such cases needs a relook for speed and quantum of punishment so that future perpetrators shiver hundred times before even thinking for unfair financial practices and frauds. An important area for further research.

- Set up Rating Agencies for rating on 'Good Corporate Governance' especially for those companies which have accessed or going to access public funds and then their funding and related costs may be decided or ascertained. This rating should be continuously updated and published.

VII. CONCLUSION

Though suggested measures would definitely take care to enhance the chances of good corporate governance and thereby strengthen the fraud preventive measures. Good governance process would further require restructuring at political, bureaucracy, and corporate level because corruption and malpractices are deep rooted in the governance process and their eradication needs spiritual surgery.

REFERENCES

1. Sifuna, Anazett Pacy (2012). "Disclose or Abstain: The Prohibition of Insider Trading on Trial". Journal of International Banking Law and Regulation 27 (9).
2. "OECD Principles of Corporate Governance, 2004". OECD. Retrieved 2013-05-18.
3. Tricker, Adrian, Essentials for Board Directors: An A-Z Guide, Bloomberg Press, New York, 2009, ISBN 978-1-57660-354-3.
4. Rezaee, Zabihollah (2002), Financial Statement Fraud. John Wiley & Sons. ISBN 0-471-09216-9
5. Fama, E. F. , & Jensen, M. C. (1983). Separation of ownership and control. Journal of Law and Economics, XXVI, 301-325
6. Crawford, Curtis J. (2007), The Reform of Corporate Governance: Major Trends in the U.S. Corporate Boardroom, 1977-1997, doctoral dissertation, Capella University. (2)
7. Steven N. Kaplan, Executive Compensation and Corporate Governance in the U. S. : Perceptions, Facts and Challenges, Chicago Booth Paper No. 12-42, Fama-Miller Centre for Research in Finance, Chicago, July 2012
8. Sytse Douma & Hein Schreuder (2013) Economic Approaches to Organizations, 5th edition, chapter 15, London: Pearson
9. Cadbury, Adrian, Report of the Committee on the Financial Aspectsof Corporate Governance, Gee, London, December,1992.
10. Mallin, Christine A., "Corporate Governance Developments in the UK" in Mallin, Christine A (ed), Handbook on International Coorporate Governance: Country Analysis, Second Edition, Edward Elger Publishing, 2011, ISBN 978-1-84980-123-2
11. Bowen, William G, The Board Book: An Insider's Guide for Directors and Trustees, W. W. Norton & Company, New York & London, 2008, ISBN 978-0-393-06645-6
12. Hopt, Klaus J., "The German Two-Tier Board (Aufsichtsrat), A German View on Corporate Governance" in Hopt, Klaus J. And Wymeersch, Eddy (eds), Comparative Corporate Governance: Essays and Materials, de Gruyter, Berlin & New York, ISBN 3-11-015765-9
13. Bain, Neville and Band, David (1996), 'Winning Ways Through Corporate Governance', Palgrave Macmillan (October11, 1996)
14. Institute of Chartered Accountants of India (2006), SIA 1-Planning and Internal Audit
15. Anderson, D., J. R. Francis and D. J. Stokes, "Auditing, Directorships and the Demand for Monitoring." Journal of Accounting and Public Policy. 12 (1993): 353-375
16. Matolcsy, Z. P. , D. Stokes, and A. Wright. "The Value-Relevance of Board Composition within Corporate Governance." Working Paper, University of Technology, Sydney, Nov 1999.
17. Jubb, C. A. Choosing an Auditor: Corporate Governance, Interpersonal Associations and Investor Confidence, Unpublished PhD Thesis, The University of Melbourne,2000.
18. The Institute of Company Secretaries of India on Role of Company Secretary; www.icsi.edu/Student/ROLEOFCOMPANYSECRETARY.aspx. Retrieved 2013-09-14
19. Hymowitz, C. (2003, February 24), Changing the rules. Retrieved April 12, 2003, from The Wall Street Journal Web Site: http://online.wsj.com/
20. Drucker, P. F. (1995), The Practice of Management, New York: Harper & Row. Publishers, Inc..
21. Pollack, A. (4/30/2003). Top executive at ImClone steps down under pressure. The New York Times, p.C1.
22. Eisenhardt, K. M. (1989). Agency Theory: An assessment and review. Academy of Management Review, 14, 57-74Eugene Fama and Michael Jensen The Separation of Ownership and Control, (1983, Journal of Law and Economics) see also the 1989 article by Kathleen Eisenhardt ("Agency theory: an assessment and review", Academy of Management Review)
23. Daily, C. M. , & Dalton, D. R. (1994), Bankruptcy and corporate governance: The impact of board composition and structure. Academy of Management Journal, 37, 1603-1617.
24. Baysinger, B. D. & Hoskisson, R. E. (1990). The composition of board of directors and strategic control: Effects on corporate strategy. Academy of Management Review, 15, 71-87.
25. Shengli Du, The responsibility and status of CFO in corporate governance (J), Economic Heading, Jan. 2001
26. Shengli Du, The Construction of CFO Management Model and Framework of

Value Management System (J), Accounting Research, Jun. 2004.
27. Wilson, Jim, Elvin, Michae, "The CFO's Role in Corporate Governance (J)", ICMA Magazine, Apr. 1996, 70(3).
28. Churchill, N.C. and W.W. Cooper, 1965. A field study of internal auditing. The Accounting Review (October): 767-781
29. Uecker, W. C., A. P. Brief, and W. R. Kinney, Jr. 1981. Perception of the internal and external auditor as a deterrent to corporate irregularities. Accounting Review (July): 465-478
30. Schneider, A. And Wilner, N. 1990. A test of audit deterrent to financial reporting irregularities using the randomized response technique. The Accounting Review 65(3): 668-681
31. Hansen, S. C. 1997. Designing internal controls: The interaction between efficiency wages and monitoring. Contemporary Accounting Research 14(1): 129-163
32. Gordon, L.A., and K.J.Smith, 1992. Postauditing capital expenditures and firm performance: The role of asymmetric information. Accounting, Organizations and Society (November): 741-757
33. Antoine, R. 2004, Internal Audit: Spotlight shines on its new role. http://accounting.smartpros.com/x45449.xml
34. Bailey, A. D. , Jr., A. A. Gramling, and S. Ramamoorti, editors, 2003. Research Opportunities in Internal Auditing. Altamonte Springs, FL: Institute of Internal Auditors Research Foundation
35. Institute of Chartered Secretaries & Administrators 16 Park Cresent-London-W1B 1 AH; Web: www.icsa.org.uk

AUTHORS' PROFILE

Gopal Krishna Agarwal: A Chartered Accountant, Company Secretary and Cost & Management Accountant is having more than 35 years of experience in Corporate at CEO/ CFO/ MD/WTD levels and also teaching experience with premier institutes of the country like IITs, ICAI, ICSI, ICAI, etc. He has many research papers publication to his credit including a book chapter. Currently employed as Professor and Area Chair Jaypee Business School, JIIT University, NOida, U.P.

Email:gk.agarwal@jiit.ac.in;
gkagarwal29@hotmail.com

Dr. Yajulu Medury: A B. Tech.(Hons) from IIT Kharagpur, M.S. in Engineering Mechanics and Ph.D in Engineering Mechanics is currently working as Chief Operating Officer (Education Initiative) and Chancellor JIIT University, Noida, U.P. He has got many research publication to his credit.