

40th National Convention of Company Secretaries

Theme: Vision 2020 : Transform, Conform and Perform

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**Venue: Aamby Valley, Aamby Valley City, Ambavane, Dist. Pune
Maharashtra (Near Lonavala)**

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**THE INSTITUTE OF
Company Secretaries of India**
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40th National Convention of Company Secretaries

VISION 2020 : TRANSFORM, CONFORM AND PERFORM

BACKGROUNDER

4th, 5th & 6th October, 2012
AAMBY VALLEY, AAMBY VALLEY CITY, AMBAVANE
DIST. PUNE MAHARASHTRA (NEAR LONAVALA)

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THEME PAPER

VISION 2020 : TRANSFORM, CONFORM AND PERFORM

CS N K JAIN*

The increasing acceleration to change has cascading effect, as the change in one spectrum has an impact on the other. While, communication and technology has been leaving a major impact on every field demanding the players to be in track, the changes in relevant field mandates the professionals to think out of box, to be with the change and to create a change for betterment. This means that being "good" at change isn't optional.

Vision 2020 being the mantra for forecasting the change in the forthcoming years in scientific manner that guides and emphasizes on 'preparedness' for change in line with the speed and path of change. This requires constant transformation from within, conformity with the evolving norms which are metamorphic in nature.

Businesses and professions should consider whether they are actively engaged in the change as it occurs for the purpose of understanding what products and services are considered of greatest value. Businesses should ask if these changes have been documented and validated in a scientific manner.

Creating a change and managing a change that results in better performance have become part and parcel of this competitive world. While managing change, the successful entrepreneurs look for creating a change for betterment. The profession of Company Secretaries is no exception to this new and evolving world.

In fact, the perception about the profession of Company Secretaries has undergone so many stages of transformation from 'record keeper'-Compliance officer - Business manager-Board Room advisor to - Governance professionals.....making it more visible and challenging. It is imperative for professionals to be not only in conformity with the direct changes such as new regulatory prescriptions, new business vehicles, and consequent increasing expectations etc. and but also implied changes such as technology, global integration, cross border expansion and movement of persons.

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For years, it is been read, learned and understood; change is constant, yet it holds such dynamism in itself. Change has significance in the ever faster moving world but such change becomes meaningful only when the determination to bring change is defined and well versed. On the other hand, change cannot happen unless one makes it happen, and change cannot result in value added reposition unless one drives it. As time changes, so does the world around. The vision to big change starts with every little change and such vision is called "to transform".

Transform

The word transform finds its meaning in the bible where the Greek definition of transform (metamorphoo), is to change into another form; to be transformed into something different or transfigured. The transformation – a radical change that catapults one into another dimension of existence, possibly the one that was not feasible without being transformed.

As the emerging paradigm is certainly demanding and will be more demanding with the passage of time, every paradigm needs a defined vision which stirs the imagination and creativity with motivation and determination so that the output is transformation.

With the announcement of the economic liberalization and growth measures for the Indian economy back in 1991, started the known paradigm shift i.e. the transformation.

Conform

Vision 2020 is metamorphic in nature where the need is to transform from the immature stages of reforms to a form where the whole structure is redefined not only in confirmation to the present but in conformation to the future. How to bridge this gap between present and future is what Vision 2020 focuses on.

Vision 2020 laid foundation for radical changes in the form of igniting minds to create niche. Creation means to first create in a thought process. Creation means to create opportunities. Creation means to create that transforms. The transformation has an intrinsic feature that it requires conformation. And conformation means to comply with evolving new standard, norms, practices and expectations.

Perform

The opportunities need to be realized by professionals to accomplish vision in line with sustainable competitive advantage through effective, efficient, value added performance.

To perform is to achieve defined goals and objectives. In the context of professionals, it is transform to prepare for future challenges. Transformation of professional means to lead and monitor the transformation towards high performance.

All members of a professional community operate under at least one of the three spheres of influence, i.e., transform, conform, perform and most often by a combination of them. At best, the three spheres when balanced, improve the quality and performance of the profession. The truism is in the fact, that to transform and to conform are incomplete without an obvious extension that is to perform.

It is in the annals of the profession of Company Secretaries that this profession has grown with a defined vision setting high benchmarks for itself. Setting new standards conforming to expectations of Vision 2020 will facilitate the profession in setting new benchmarks. This transformation will help the profession to actualize the gains derived from changes.

In this backdrop, the theme of the 40th National Convention has been devised as “**VISION 2020 – TRANSFORM, CONFORM AND PERFORM**” to be deliberated in the following four technical sessions:

1. Economic Volatility and Risk Management
2. CS – Whistle Blower or Conscience Keeper
3. Financial Markets – Engine for Economic Growth
4. Challenges and Opportunities in SME Sector

Volatility is Variability

Economic volatility is variability in economic parameters. Over the last few years, the India economy has become much more volatile; that is, the swings from boom to bust have greatly impacted the performance of the economy. Researchers have not been able to uncover potential drivers resulting in such variability in the economy. Despite several growth drivers like improved technology, better monetary policy; researchers have found little consensus on why such volatility exists despite favorable initiatives.

Economic Volatility of India can be assessed on two parameters, i.e., the rupee depreciation and the downgrade of the Sovereign rating.

In a recent report, it was pointed out that volatility was not something that most finance managers worried about. The exchange rate of the rupee changed predictably. Administered interest rates were changed infrequently, which were usually quite small. More worrisome were the regulatory changes that could alter the quantum of credit or the purposes for which credit could be given.

The main reasons for rupee depreciation are the supply-demand imbalance in the domestic foreign exchange market, mainly due to widening of current account deficit, slowdown in FII inflows, and heightened risk aversion due to the euro area sovereign debt crisis.

On the other hand, having scaled down India's rating outlook to 'negative' from 'stable' in April this year, S&P pointed out to downgrade India's sovereign credit rating to 'speculative' from the lowest notch of 'investment' grade; because of “Slowing GDP growth and political roadblocks to economic reforms”.

The report states that the Indian government's reaction to potentially slower growth and greater vulnerability to economic shocks could largely determine whether the country can maintain an investment-grade rating.

However, the report also suggests that despite recent problems, the Indian economy remains in much better shape to withstand this period of heightened global uncertainty than it was in the early 1990s, when it suffered a balance-of-payments crisis.

Risk Management

Risk is the reality of an economy. Whether large or small, closed or open, economies today operate in a risk-filled world. Sometimes, risk is considered as efficient measure to growth of the economy but at the same time, uncontrollable risks needs to be managed. That is, in this current economic downgrade, risk can emerge from both expected and unexpected sources. In this economic storm, economies must respond proactively, taking the proper steps to assess, prioritize and manage all risks in a strategic and consistent way.

With the advent of the new age, risks have assumed a completely different shape and proportion. Sometimes risks are alarming to the extent of derailing a country's economy or lead to extinction of a company. Global Financial Crisis of 2008 and the subsequent euro zone crisis is country examples and worldcom, enron, satyam are corporate examples.

INDIA RISK SURVEY REPORT 2012

FICCI and Pinkerton conducted India Risk Survey Report 2012. A risk survey format was designed to collect responses from professionals across sectors and regions of India, and from corporates outside of India. The format was available online and efforts were made to meet top end management for getting it filled. The format listed 12 prominent risks and respondents were required to rank the risks as per their criticality to their respective businesses. An open ended section was also included for respondents to add new entries of risks to the list. The risk of information and cyber insecurity has been rated as the highest risk to business establishments by almost all the respondents across sectors and regions. This concern has also been put forward by respondents from outside India. While IT and financial sectors count cyber insecurity as their apex risk, even the government, manufacturing and telecom sectors have rated it as their top three risks, they face. Traditional risks of terrorism, fire and crime have been rated at number two, three and four respectively. Strikes and IPR Theft have been rated at number six and seven respectively

With the globalisation and financial integration the economies become more volatile, like mis-governance, policy failure, recession affecting global trade, commerce and economic activities. In this context, the first technical session has been designed to deliberate upon the factors associated to sovereign downgrade resulting in economic volatility thereby, reasoning out the ways to mitigate the risk of sovereign downgrade.

Associated with economic volatility is risk management to minimise the effect of economic convulsions, the deliberations will also focus on risk management policy at government and the corporate level and imperatives for professionals including Company Secretaries in guiding the Boards to minimize the impact of economic volatility, through risk management measures.

Whistle Blower or Conscience Keeper!

Though, prima facie it may seem that both the heavy weighted word connote to mean the same, in reality there is a thin line of demarcation between the two.

Whistle blowing is about speaking out on malpractice, misconduct, corruption, or mismanagement witnessed; whereas, conscience is an inner feeling or voice viewed as acting as a guide to the rightness or wrongness of one's behavior.

The line of demarcation is that while whistle blowing pertains to the situation after the wrong is done, the conscience of a person stops one from committing the wrong. It is about “after and before” respectively. These are two sides of the boat, where keeping inside the boat is equally not viable as outside.

Across the EU countries, the term ‘whistleblower’ is associated with being an informant, a traitor or spy and/or a snitch. In many of the countries, these negative perceptions of whistle blowing are the result of years of authoritarian regimes and the existence of secret police networks. However, whistle blowing plays a vital role in exposing mismanagement and in prevention against wrong that arise from negligence, greed or corrupt behaviour in an organisation.

White Paper by PWC

PWC issued a paper on Whistle Blowing – An Effective Means to Combat Economic Crime. The survey was conducted in 2011 and subsequent round table discussions were held in 2012. 89 professionals from India completed online questionnaire. The targeted sample profile spanned across CEOs and senior professionals in functions like ethics and compliance, internal audit, risk management, finance, legal and human resource. Respondents were asked to respond to a set of core questions on corporate grievance reporting mechanisms and specific questions related to functioning of such mechanisms. The profile of participants of the round table discussion comprised of heads of legal, internal audit and general counsels.

The report says that the effectiveness of the mechanism is reliant on several factors such as tone at the top, accessibility to the mechanism, awareness and knowledge on the correct use of the mechanism, timely training to reinforce the message of good code of conduct, and well planned work flow for handling complaints. A lapse in any of the stages of implementation often results in a tedious and unyielding mechanism. There is no ‘one size fits all’ solution when it comes to the development of whistle blowing arrangements. In contrast, organisations should seek to tailor the design of their whistle blowing arrangements according to their unique operational and cultural circumstances, suggest the report.

An organisation’s commitment to an open and effective whistle blowing mechanism is embodied in its formal policy. The underlying essence of a whistle blowing policy lies in identifying risks and mitigating them through the use of a formal mechanism. Types of risks include the following:

- Malpractice, fraud or corruption;
- Illegal or criminal offences;
- Environmental damage;
- Health and safety risks; and
- Concealment of information relating to any of the above.

The white paper also mentioned that observing the regulatory framework and findings

of survey, it is evident that India has a long way to go before potential of whistle blowing is completely realised.

In an emerging corporate culture, there is a need to combat fraud and misconduct by having formal mechanisms in place by whatever name it is called, whether 'whistle blowing or conscience keeping'.

In this backdrop, from exclamation to question mark, the second technical session has been devised to deliberate on the dilemma arising out of the role of CS as whistle blower or conscience keeper and in particular :

- (i) The professional dilemma for Company Secretaries to prioritize when to be a conscience keeper and when to be a whistle blower.
- (ii) Impressing upon the Boards to have whistle blower policy with proper safeguards for the whistle blower.
- (iii) Professional values, standards and professionalism vis-a-vis role as whistle blower.
- (iv) Professional Whistle Blowers and Role of professional bodies.
- (v) The cost of Whistle blowing in terms of personal, family and economic security vis-a-vis social security system.
- (vi) Jurisdictional demarcation between conscience keeping and whistle blowing.

Financial Markets – Engine for Economic Growth

The financial services (financing, insurance etc.,) is growing faster than the average economic growth. The role of financial markets goes beyond economic out put.

In recent years, an increasing amount of attention has been devoted to the connection between financial markets and economic development. One of the most enduring debate is "whether financial development adds to economic growth or increased economic activities results in financial development."

The examples of financial market initiatives linked to economic development, may include RBI initiatives for infrastructure development, micro finance etc., SEBI initiatives like SME exchange, increasing importance to investor protection etc.

CII and Ernst & young issued a white paper titled 'India –the Dawn' highlighting the role of financial regulator under five aspects in respect to economic development. They are

- i. Promote growth and Development of the Industry.
 - ii. Foster Healthy Competition and Innovation;
 - iii. Protection of Consumers Rights and Interests;
 - iv. Monitor and Supervise; and
 - v. Overall systematic risk management.
-

The onset of economic financial reforms in the wake of balance of payments crisis in 1990-91, have created a fairly robust financial regulatory structure. The post liberalization has resulted in creation of vibrant regulators such as SEBI, IRDA, CCI, NSE, BSE, FMC, FIU etc., for bringing reforms and for monitoring and for supervision too. These reforms coupled with technology advancement has resulted in removal of physical trading to demat trading, removal of physical filing to on-line filings, free flow of trade beyond borders subject to supervision etc.

If economic growth is to be reaped, the sowing may be done financially. India's financial system—comprising its banks, equity markets, bond markets, and myriad other financial institutions—is a crucial determinant of the country's future growth trajectory. Reforms are an ongoing process and a number of initiatives have been taken in the last few years.

These reforms have been laying emphasis across the length and the breadth of the financial sector of the economy and a number of legislative measures to develop the financial sector have been taken. Micro finance sector is one of the newly emphasized sector. Department of Financial Services is formulating Micro Finance Institutions (Development and Regulation) Bill 2012 to provide a formal statutory framework for the promotion, development, regulation and orderly growth of the micro finance sector and to facilitate universal access to integrated financial services. Developing countries and emerging economies are expected to continue as growth drivers for the world economy.

Indian economy has grown at an unprecedented pace. It has attracted a huge inflow of Foreign Institutional Investments (FII). The entry of FIIs in the Indian financial market has also given commendable appreciation for the Indian investors. Many new companies are emerging on the horizon of the Indian market to raise capital for their expansions. All these factors contributed significantly to the growth of India.

Financial sector reforms being one of the factors for driving growth of an economy, this technical session has been devised to deliberate on the measures that have been taken by the Government to improve the growth of the economy via financial markets. This session will also highlight :

- (i) Role of financial markets to enable the economies to withstand the economic volatility.
- (ii) Financial market Governance and impact on economy
- (iii) Financial inclusion and sustainable Economic Growth.

Challenges and Opportunities in SME Sector

SMEs are universally acknowledged as major contributors to Gross Domestic Product (GDP) and even larger contributors to exports and employment. SMEs play a critical role in the economic and social development of emerging markets by creating employment opportunities and generating income for low-income groups. This fosters economic growth and social stability, and also contributes to the development of a dynamic private sector. Even in countries with large corporations such as the United States, SMEs contribute a very substantial percentage to the employment generation.

According to a recent study by the IFC and McKinsey and Company (McKinsey), there are almost 365 to 445 million MSMEs in emerging markets, of which 25 to 30 million are formally classified as SMEs. In developing countries, more than 90 per cent of all firms outside the agricultural sector are SMEs and micro enterprises, generating a significant portion of GDP.

In the Indian context, the critical role and place of the MSME sector in the Indian economy cannot be over-emphasized in employment generation, exports and economic empowerment of a vast section of the population. As per data released by the Ministry of MSME, there are about 26.1 million enterprises in this sector. The sector accounts for 45 per cent of manufactured output and 8 per cent of the GDP.

However, MSME sector is facing new challenges in the wake of increasing globalization and there is a pressing need for the MSME sector to reinvent itself by enhancing its efficiency and productivity in order to remain competitive, both domestically as well as internationally and take advantage of the new opportunities cropping up in an increasingly globalized world.

The challenges faced by SMEs, inter alia, include non-availability of timely and adequate finance and raw material, technological obsolescence, lack of infrastructure facilities, marketing bottlenecks, deficient managerial and technical skills, sub-optimal quality standards, sickness, competition from large enterprises, globalization, non-competitive real exchange rate, etc. The opening up of the world economy in the process of globalization and the rapid and extensive use of information technology have thrown up challenges for the small producers and manufacturers who have to not only survive competition but also keep pace with the rapidly changing technological scenario in the world.

The next level of growth in the Indian economy will have to necessarily come from the MSME sector, which can propel India's growth rate to a desirable level of 9-10 per cent and beyond in the medium-to long-term. In order to transform India into a major manufacturing hub, the Indian SMEs must embrace change so that they can survive and find a place for themselves in the global competitive environment. Efforts should be made to take full advantage of opportunities made available by globalization. This is possible only through enhancing efficiency and competitiveness through continuous technological innovations, quality improvement, better access to finance, diversification into new geographies and markets, modernization, adoption of better risk management and corporate governance practices, better human resource management, better infrastructure and investment climate.

"Vision 2020- Implications for MSMEs

FICCI - Grant Thornton Report on Vision 2020 – Implications for MSMEs highlights the strategic importance of the MSME sector in current economic scenario, brings out the imminent challenges for the MSME operating in India, and the way forward to help MSME sector achieve its full potential in order to be a growth engine for Indian economy by end of the decade.

FICCI's MSME Expert committee identified key constraints to the growth of MSMEs in India, those include non-availability of adequate and timely credit at cost effective rates,

technological obsolescence, access to markets, need for skilled human resources and infrastructural bottlenecks.

FICCI Survey on MSME Schemes

This Survey confirmed the general perception that there is limited awareness about the different support programmes amongst the target beneficiaries. More than 60% of the respondents were not aware of the MSME schemes and their benefits. 38 % of the respondents confirmed having used and benefitted from the MSME schemes. Out of this, 20% confirmed that they used the scheme at the time of expansion and Only 8% reported using the scheme at the stage of businesses startup.

Almost 42% respondents felt that the schemes are not easily accessible and 13% confirmed the need of external help to avail the benefits of the schemes. FICCI has made suggestions like involvement of the stakeholders at the time of perception of scheme itself, awareness initiatives for each schemes etc.,

In the light of above this technical session has been structured to deliberate upon -

- (i) Overview of SME model in Indian and other jurisdictions.
- (ii) Government Policy orientation, gaps and prescription.
- (iii) Financial, infrastructure and governance issues in SMEs
 - a. Availability of financing options
 - b. Physical infrastructure
 - c. Governance issues in the context of regulatory framework (97% of SMEs are either partnership firms or proprietary concerns which are under the regulatory jurisdiction of Provincial Insolvency Act, which provides for the attachment of personal properties), need for easy exit route for SMEs.
- (iv) Creating brand SME in global market.
- (v) Professional support and guidance to SME sector to make it sustainable business proposition to ensure global presence through alliances and acquisitions.

Conclusion

The Twelfth five year plan is centered around faster, sustainable and inclusive growth and is characterized by strong macro economic fundamentals. It has started with some slowdown in growth in the current year with continuing concern about inflation and a sudden increase in uncertainty about the global economy. Some of the challenges themselves originate from the economy's transition to a higher pedestal from Emerging Market Economies to Advanced Economies. There are also external challenges arising from the fact that the global economic environment is relatively much less favourable than it was earlier. These challenges call for accelerated efforts on multiple aspects, learning from the past experience and be on track with global developments.

Further, aspects like social connectivity and networking, technology have made both positive and negative spill overs on the businesses, professions and society. While the positive spill overs are in the form the globalization, technology, electronic communications etc , that has created ocean of opportunitiesf, the negative spill overs like expanded risk profile throws challenges before businesses and the professionals equally. This calls for redefining and fine-tuning the knowledge, skills and processes at regular intervals by being pro-active, innovative in tune with the business demand, while being ethical.

DISCUSSION PAPER*

VISION 2020 : TRANSFORM, CONFORM AND PERFORM

What India (and the World) will be like in the next 25 years will depend on the ideas that are developed and applied to define progress, manage development and govern societies.

*Scenarios: Shaping India's future, a paper by
Planning commission, July 2012*

India has been successfully travelling in the economic roller-coaster for quite sometime. The history of Indian sub-continent begins at least 600 BC with the Indus Valley Civilization. This flourishing economy has been lasting through several centuries albeit with its share of peaks and trough. The year 1991 was one of the major milestone for the Indian economy to emerge as one of the leading 'Emerging and Developing Economies' (EDEs), that paved the way to India to be an effective player of global market, through integration of trade and services.

The global economic landscape has given a positive tilt in favour of EDEs with the share of its global GDP rising from about 20 per cent in 2000 to 36 per cent by 2011 in terms of US dollar at market exchange rate. In terms of Purchasing Power Parity (PPP), the share rose from 37 per cent to almost 49 per cent. Thus, at the current juncture, the global economic weight is equally split between the EDEs and Advanced Economies (AEs). But, what is interesting is that the EDEs will continue to grow faster than the AEs, even under adverse economic conditions. This will increasingly tilt the global economic balance in favour of EDEs. Over the period 2000-11, India's share in world GDP rose from 1.5 per cent to 2.4 per cent in terms of US dollar, and from 3.8 per cent to 5.7 per cent in terms of PPP. This achievement, however, looks small considering India's large share of about 17.4 per cent in the global population. This indicates that the scope for transformation is still high. The solution is 'change for good', by creating 'scenarios' for reshaping the country.

A paper issued by Planning Commission of India in July 2012 through stakeholder consultation process, on 'Scenarios: Shaping India's future' discusses about creating scenarios for the country in tune with the change. The purpose of 'scenario thinking' is to project

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'what if'? What if we do not change our underlying theories in use about progress and governance? What could be the consequences? On the other hand, what if we begin to adopt alternative theories to guide our policies and actions? This conveys that we have to create and sail with the transformation, that demands conformance and performance.

The paper also discussed that the global environment has changed and become more turbulent by coming together of four sources in the new millennium. One is the speed and spread of global finance. The second is the strengthening of beliefs in human rights and democracy. The third is an increasing awareness of the limits of the natural environment to support 'business as usual' and the fourth, stirring up a storm of contention amongst these forces is the ubiquity of information available to citizens fuelled by new technologies and their acknowledged rights to information. These forces are sweeping across India also. Governments and corporate everywhere are being buffeted by them. They must change and develop new capabilities to conform to new expectations.

The paper basically describes three scenarios, viz., *Mudding Along*, *Falling Apart* and the *Flotilla Advances*. These scenarios result from three configurations of the methods by which inclusion is sought to be achieved, and the shape of governance and business models adopted for development of the country.

Mudding Along : Reforms are being made, but in piece meal. This does not address core governance issues and therefore is not effective. In this situation our nation is imagined to be sailing in ships in a flotilla on the sea that is often rough. The sea they are navigating through is the external global and national environment, and the increasing stress on the earth's resources. The flotilla would like to move faster but is slowed down because the ships are unable to keep together.

Falling Apart : This scenario conveys that the flotilla of ships trying to sail together, but ships keep colliding with each other. This scenario emerges from India remaining stuck in a centralized governance system whose theory in use is to exert control in the face of demands for devolution, by centralized mega schemes and projects and by redistribution of wealth through a system of handouts and subsidies.

Flotilla Advances : This is the future of India with federal governance system in which the wheels begin to mesh more smoothly, local governance institutions and small enterprises are nurtured and grow effectively. Livelihood opportunities, along with community based solutions and enterprises for addressing environment issues are seen to be sprouting. The flotilla is well co-ordinated with better navigation and communication system between all the ships.

It can be observed that these three situations demands businesses and professionals to advance in terms of strategy for inclusion, governance, capacity building, innovation, impact on natural resources, gaining of investors' confidence, preparedness for vulnerability to risk etc.

Scenario mapping for the profession of Company Secretaries

Correlating the same scenario to the profession of Company Secretaries, 'scenario

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mapping' is required in terms of forthcoming developments in business, technology, stakeholders' mindset etc. that has made an obvious impact on the profession. This raises many questions such as 'What to do to transform with the change? How to create a change? How to conform to the expectations of the stakeholders and how to perform surpassing their expectations? The situation clearly demands the following attributes –

- Manage with technological developments.
- Working inclusive innovation/growth.
- Implementing stronger values and standards of profession.
- Developing new capacities.
- Creating new opportunities in the emerging fields.
- Global networking.
- Equal Preference to environmental and social concerns.

Based on the direction, speed and dimensions of change and the expected attributes of professionals in the future scenario, the theme of the Convention has been kept as Vision 2020 - Transform, Conform and Perform to be deliberated in following sub-themes :

1. Economic Volatility and Risk Management
2. CS – Whistle Blower or Conscience Keeper
3. Financial Markets – Engines for Economic Growth
4. Challenges and Opportunities in SME Sector.

ECONOMIC VOLATILITY AND RISK MANAGEMENT

The Economic Volatility

The twin crises the world has suffered from during the past three years, namely the global financial crisis and the sovereign debt crisis originating in the eurozone, highlighted a fundamental truth of economics; large imbalances in either the real economy or the financial sector, or both, are bound to disrupt the functioning of economic systems. Excessive liberalisation and inadequate supervision of the global financial system allowed banks to accept dubious lending projects, and invent and proliferate questionable derivatives thus spreading the crisis to the rest of the world.

The last few years have been very challenging times for the policymakers, regulators and participants of the financial system. The crisis of 2007-08, now popularly referred to as the Global Financial Crisis (GFC), emanated from developed countries and considerably slowed down their growth and raised the unemployment to all-time highs. Due to various inter-linkages with the affected Advanced Economies (AEs), Emerging and Developing Economies (EDEs), including India, experienced the consequential impact by way of slowdown in trade, increase in risk perception and reversal of capital flows.

The sovereign debt crisis in the Eurozone has not only aggravated the macroeconomic conditions of the countries of the Eurozone but also, in turn, has deeply affected the balance sheets of global banks having exposures to these countries.

The European debt crisis and global slowdown are creating serious headwinds for the Indian recovery and posing major challenges for the economy. On the domestic front, the twin deficits, viz. current account deficit (CAD) and fiscal deficit, pose significant risks to macroeconomic stability and growth sustainability. Financing the huge fiscal deficit from internal domestic savings would potentially crowd out private investment, thus lowering growth prospects. This, in turn, deter capital inflows, making it more difficult to finance the increasing CAD which in a sense is a result of global slowdown.

With recent global developments contributing to a significant rebalancing of portfolios as a result of rapidly changing risk perceptions and appetites, the Indian macroeconomic environment has looked turbulent during the past year or so. It has been noted that Indian growth slowdown during 2008 crisis was more due to global developments while in the current phase of crisis it is due to a combination of both domestic and global factors. Taking up the latter, it is almost axiomatic that in a world that is highly globalised, developments in developed economies are bound to have considerable direct and indirect influence on our domestic economy and the financial system .

The Risk Management

Any organization, public or private, large or small, faces internal and external uncertainties that affect its ability to achieve its objectives. The effect of uncertainty on an organization's objectives is "risk." Risk management, commonly known in the business community as Enterprise Risk Management (ERM), can provide for the structured and explicit consideration of all forms of uncertainty in making any decision. The overarching principle of ERM is that it must produce value for the organization. It is the culture, processes and structures that is directed towards taking advantage of potential opportunities while managing potential adverse effects.

Corporations face the task of managing their risk exposures while remaining profitable and competitive at the same time. Managing risks is not a new challenge, yet it may get overlooked due to several reasons. The challenges and demands of volatile economic contemporary markets, customer expectations, regulatory authorities, employees and shareholders present organizations with an interesting array of contradictions.

Historically, the practice of risk management has been confined to the traditionally insurable risks such as loss from fire, earthquakes, wind, flood, legal liability and other relatively straightforward potential causes of loss. Solutions involving the purchase of insurance were emphasized, with focus on type of coverage, adequacy of limits and cost of risk transfer. Over the last thirty years, most major corporations have evolved a much more sophisticated view of risk management, encompassing traditional risk management concerns and adding new issues arising from the changing internal and external environments within which they work. Now, it is understood that every aspect of a company's operational and financial activity

contains the potential for risk that can negatively and meaningfully affect the success and viability of the organization.

ISO 31000 a standard on the Implementation of Risk Management, is applicable and adaptable for "any public, private or community enterprise, association, group or individual." ISO 31000 : 2009 provides generic guidelines for the design, implementation and maintenance of risk management processes throughout an organization. The scope of this approach to risk management is to enable all strategic, management and operational tasks of an organization throughout projects, functions, and processes to be aligned to a common set of risk management objectives.

Risk Management in Volatile Situations

During the times of tumultuous change, in an environment of complexity, exogenous risks can become more pronounced and difficult to predict. So in 2011, risk management leaders began shifting their focus from managing internal risks to devising internal responses to external events (e.g., economic shocks and regulatory change). They explored how they could put to work new, sophisticated tools for assessing and managing risks, from new hedging instruments offered by banks to internal scenario models and early-warning systems.

There have been various studies conducted on changing profile of risk management in volatile conditions. These studies uniformly indicate certain crucial aspects of risk management and includes :

- Role of Board and top management on ERM is crucial.
- Risk management is a continuous process.
- Technology plays a major role in ERM.
- Appointment of a dedicated senior officer (Chief Risk Officer)
- Risks are to be perceived in a co-ordinated manner.
- On going training on ERM is essential.
- Embedding ERM into the organizational culture is a must.
- ERM can be implemented in phases through risk priorities.
- ERM can be implemented with existing risk management resources, and can be expanded later.

Aftershock Adjusting to the New World of Risk Management

A survey by Deloitte and Forbes Insights, 2012 says that following the latest global economic crisis, many business risks are still in a state of flux and so are companies' efforts to manage them. A stunning 91% of companies plan to reorganize and reprioritize their risk management approaches in the next three years, as leaders strive to prepare their organizations for what many expect will remain a volatile, highly changeable risk environment.

Aftershock : Adjusting to the new world of risk management offers a glimpse into risk management's anticipated future direction among 192 U.S. executives from companies in the consumer and industrial products, life sciences, health care, technology, media and telecommunications. Among the findings:

- Leaders expect risk to become more volatile. Two-thirds of respondents identified financial risk as having the potential to be even more volatile over the next three years. More than half indicated that they believe that risks ranging from regulatory to technology to geopolitical/political concerns would increase in volatility over the next three years.
- Technology is a frequent focus of improvement. More than half of the respondents said that their companies planned to invest in continuous risk monitoring. Almost a third said that they were in the process of automating risk reporting.
- Social media risk rivals financial risk as an area of concern. Twenty-seven percent of respondents identified social media as one of the most important sources of risk over the next three years – the same percentage said the same about financial risk.
- Lack of awareness is the most common barrier to effectiveness. Twenty-eight percent of respondents said that their main risk management challenge was that "people are unaware of what they need to do concerning risk," more than the percentage citing any other factor.
- Risk management now lives in the C-Suite (i.e top management/influential people in the company). Twenty-six percent of respondents, a plurality, pointed to the CEO as the executive with primary responsibility for overall risk management; 23 percent named the CFO/Treasurer. Only 19 percent named the CRO/Head of Risk.
- Risk management budgets are frugal, but not stingy. About half of the respondents expected only minimal changes to risk management budgets for all risk categories. However, fewer than 15% of respondents across all risk areas thought that risk budgets would decrease over the next three years.

A Time of Reckoning for Risk Management

A time of reckoning for risk management' a survey was conducted by PWC in 2012 on changing perception of risk due to economic volatility covering more than 1,000 executives and risk management leaders. Concerns about further economic deterioration, economic uncertainty tops the list as the biggest perceived threat to companies in 2012, as ranked by 73% of those surveyed.

While all organizations expressed significant concerns about economic conditions, some industries are more exposed than others. Given the inextricable links between the economy and financial markets, it is not surprising that financial institutions see economic uncertainty as a critical risk (77%). Companies in the industrial products sector are almost equally concerned (74%), though their worries likely skew more toward reduced customer demand, higher costs, and other effects of economic volatility.

Elevating the Chief Risk Officer (CRO)

There is a growing awareness that the risk function's effectiveness could be compromised if it is not well integrated into both overall strategy and the operations and decision-making processes needed to run the business from day to day. In recognition of this, the creation of the CRO function in more organizations across sectors is an important advance in risk management and is likely to pick up momentum in coming years.

Linking risk management to strategic planning

During the strategic risk planning process, risk management and the execution of the strategic plan must be considered simultaneously. Companies continue to integrate risk management into decision-making processes relating to "traditional" functions such as strategic planning, investment/divestment, budgeting/forecasting, and performance measures. In new areas such as talent management and outsourcing, however, organizations are not yet effectively integrating these areas into decision-making. Addressing these gaps and integrating these new areas into decision making is important for company's improved ability to respond to, govern, and manage risks more effectively during period of rapid change.

Bolstering Information Technology

Although data privacy and security also rank as a critical risk, about 45% of the total organizations surveyed feel they currently manage this risk poorly. Data privacy and security was also singled out as an area that is likely to receive increased investment during 2012 and beyond.

According to a recent PwC paper, 'Fortifying Your Defenses: The Role of Internal Audit in Assuring Data Security and Privacy' (2012), the 2011 hacking of Sony's PlayStation Network cost the company more than \$171 million and analysts estimated the potential cost of investigations, compensation, lost business, and additional data security investments could go much higher. Even more worrisome, a June 2011 study conducted by the Ponemon Institute revealed that 90% of companies had computers that had been breached at least once in the prior 12 months.

All companies need to take stock of where to build better process, practices, procedures, and technical defenses. Companies with global expansion plans must be wary of increased risks that result when IT infrastructure spreads to support these plans, keeping in mind that an IT infrastructure network is only as good as its weakest link.

Practical Approach to ERM

The paper 'Embracing Enterprise Risk Management' by COSO authored by Mark L Frio and Richard J Anderson, identified the following Keys for common ERM, though the risk profile of organization may vary :

- Top Level Support for ERM from the Board and the Senior Management is important for strategic efforts and for establishing the desired 'internal environment to foster ERM success.

- ERM can be built at incremental steps, not necessarily at one shot.
- Focus should be initially on a small number of top risks.
- ERM can be initially implemented by leveraging the existing risk management resources, not necessarily through hi-tech automated tools with senior Chief Risk Officer.
- Slinging existing risk management activities across the organization.
- Embedding ERM into the business fabric of the organization.
- Providing on-going training on ERM to Board of Directors and Senior management.

This paper talks about following steps for implementing ERM and analyses as to 'where to start?' and 'How to go about ?'

Step 1 - Seek Board and Senior Management Leadership, Involvement and Oversight.

Step 2 - Select a Strong Leader to Drive the ERM Initiative.

Step 3 - Establish a Management Risk Committee or Working Group.

Step 4 - Conduct the Initial Enterprise-wide Risk Assessment & Develop an Action Plan.

Step 5 - Inventory the Existing Risk Management Practices.

Step 6 - Develop Initial Risk Reporting Structure.

Step 7 - Develop the Next Phase of Action Plans & Ongoing Communications.

In a world that's tied together ever more closely by trade, finance, and digital communications, risks are arising more quickly and unexpectedly than ever before, with significant potential impacts on companies' operations, reputations, and even survival. To thrive, companies must adopt a new and more robust approach to defining, communicating, and managing their global risk profile. Going forward, the only predictable thing about risk will be that it's always changing. The challenge for companies is to craft a risk management approach that's defined by its readiness—for anything.

CS WHISTLE BLOWER OR CONSCIENCE KEEPER

Our level of conscience determines our success in life, be it, personal, or professional. Those who seek to raise their conscience will see their success rise with it. Those who seek to raise their skills, knowledge, energy, strength, motives, attitudes, and values will see life respond on the outside accordingly. Often it occurs instantaneously. The most successful leaders are consistently those who are well developed at each of the physical, vital/emotion, psychological, and mental levels.

Business consciousness and integrity management has been described in the book 'Integrity Selling for the 21st Century: How to Sell the Way People Want to Buy' by Ron Willingham. The author observed that the integrity Selling is a process that both the business and their customers will feel good about doing. It's doing the right thing for people. When

the Company sells with integrity, they don't approach people with the intent of selling them something; rather, their goal is always to gain rapport and understand the customers to help them get what they need.

Integrity Selling is doing something for people. Its focus is to create value for customers. It's all about the stakeholders, not the company. When values, motives, and desire to help the customers are right, the actions and behaviors will be right. Customers want to do business with people they can trust. That's why strong ethics and values contribute more to selling success than strategies and techniques.

Personal integrity is the foundation required for success in the long term. It's impossible to have professional integrity without personal integrity. Unfortunately, Integrity takes backseat some times for short term success. WorldCom, Enron, Satyam.....were the prey for losing the personal integrity that has resulted in the business destruction as well. Thus, operating with integrity opens up other people to respond with more openness, honesty and truth.

In the current era of ever-growing competition, the professionals, entrepreneurs and businesses constantly encounter ethical dilemmas. Most of the times, entrepreneurial managers tend to feign away from ethical issues while taking decisions on dilemmas either due to ignorance or with purpose.

A study of workplace data collected by the Ethics Resource Center(ERC) indicates that employees tend to respond to an ethical culture/environment with improved company loyalty and a willingness to "go the extra mile" for their employer. The report, "Ethics and Employee Engagement," released by the ERC, suggests that "employee engagement is heavily influenced by factors that have nothing to do with money. The key findings and recommendations of the report pointed out that :

- Managers and supervisors need to demonstrate a commitment to ethics and foster open communication because employees' perceptions of company ethics affect overall engagement.
- When employees see misconduct in the workplace, they tend to be less engaged.
- Engaged employees are less likely to feel pressure to commit misconduct.
- Engaged employees are more likely to report misconduct, which reduces the organization's ethics risk.

"Besides being the right thing to do, this report indicates that there can be a direct return on investment in building an ethical culture," said Alice Eldridge, Vice President, Ethics and Business Conduct at Lockheed Martin Corporation, the sponsor of the report. "All companies, but especially those with a very large workforce, can draw a valuable lesson here." Mark Royal, a Hay Group Senior Consultant says that "A strong ethical culture can help foster and maintain higher levels of engagement – and higher levels of engagement can help reduce a company's ethics risk."

Hence, 'Conscience Keeping' or 'Whistle Blowing' is a part of ethical culture in the organization. Conscience keeping is broader aspect and includes Whistle Blowing also. The manner of implementing the same can be through implementing appropriate controls, by bringing ethical culture in the organization. There have been instances both positive and negative in respect of Whistle Blowing indicating that in some cases Whistle Blower succeeded, while in many cases they become victim for being honest.

Role of Company Secretaries

The role of Company Secretaries in bringing ethical climate in the organization includes:

- Drafting and implementing effective whistle blower policy.
- Effective compliance management.
- Advisory role to the Board and Senior management on sensitive and risk prone issues.
- Effective co-ordination between audit committee and the Board as a whole.
- Effective Enterprise Risk Management covering fraud risks.
- Implementing effective internal control mechanisms.
- Training to employees on ethics and governance.
- Strategy, Compliance, ethics mapping.
- Bringing ethical culture in the organization.
- Advise on control mechanism in tune with updated technology and change in the strategy.

FINANCIAL MARKETS – ENGINE FOR ECONOMIC GROWTH

Ancient Financial System in India

In ancient India loan deed forms called *rnpatra* or *rnlekhyā* were in use. These contained details such as the name of debtor and creditor, amount of loan, rate of interest, condition and time of repayment and was witnessed by a person of respectable means.

During the Mauryan period(322-185BC) an instrument called *adesha* was in use, which was an order on a banker instructing him to pay the money mentioned on the note to a third person, similar to a bill of exchange.

The loan deed used in the Mughal period, was called *dastawez* and was of two types i.e., *Dastawez-e-indultabad*, payable on demand, and *dastawez-e-miadi*, payable after a stipulated time.

The most important class of credit instruments that have evolved in India were termed *hundis*. The origin of hundi is not very clear but it is believed to have been in use for financing long-distance trade in the early medieval period on trading routes. Abul Fazl the great historian writes in 1596 about the level of sophistication that *hundis* have achieved by then.

BACKGROUNDER

Components of Financial System

Economic growth and development of any country depends upon a well-knit financial system. Financial system comprises, a set of sub-systems of financial institutions financial markets, financial instruments and services which help in the formation of capital. Thus a financial system provides a mechanism by which savings are transformed into investments and it can be said that financial system play a significant role in economic growth of the country by mobilizing surplus funds and utilizing them effectively for productive purpose.

The financial system is characterized by the presence of integrated, organized and regulated financial markets, and institutions that meet the short term and long term financial needs of both the household and corporate sector. Both financial markets and financial institutions play an important role in the financial system by rendering various financial services to the community. The financial system operates in close combination with financial market and financial institutions.

The following are the four main components of Indian Financial system

1. Financial Institutions
2. Financial Markets
3. Financial Instruments/Assets/Securities
4. Financial Services.

Pre-reforms Phase

Until the early 1990s, the role of the financial system in India was primarily restricted to the function of channeling resources from the surplus to deficit sectors. Whereas the financial system performed this role reasonably well, its operations came to be marked by some serious deficiencies over the years. The banking sector suffered from lack of competition, low capital base, low Productivity and high intermediation cost. After the nationalization of large banks in 1969 and 1980, the Government-owned banks dominated the banking sector. The role of technology was minimal and the quality of service was not given adequate importance. All these resulted in poor asset quality and low profitability. Among non-banking financial intermediaries, Development Finance Institutions (DFIs) operated in an over-protected environment with most of the funding coming from assured sources at concessional terms. In the insurance sector, there was little competition. The mutual fund industry also suffered from lack of competition and was dominated for long by one institution, viz., the Unit Trust of India. Financial markets were characterized by control over pricing of financial assets, barriers to entry, high transaction costs and restrictions on movement of funds/participants between the market segments.

Post Reforms Phase

The Government initiated reform process in 1991 by adopting open market policies and today there is a widespread financial market in India rooted from 'Capital Market' and 'Money

Market'. While capital market under the supervision of SEBI has led to several products through primary and secondary market issuances, money market under the supervision of RBI has expanded through innovative financing initiatives.

With respect to reforms in post liberalization period and economic growth the discussions may be made under the following heads as they are among the crucial contributors to economic growth :

- Banking Sector
- Capital Market
- Infrastructure financing
- Micro Financing

Banking Sector

The initiation of the financial sector reforms brought about a paradigm shift in the banking industry. The RBI constituted the Committee chaired by M. Narasimham, former RBI Governor in order to review the Financial System viz. aspects relating to the Structure, Organisations and Functioning of the financial system. The Narasimham Committee report on the banking sector reforms highlighted the weaknesses in the Indian banking system and suggested reform measures based on the Basel norms. The guidelines that were issued subsequently laid the foundation for the reforms in the Indian banking sector.

Banking Sector Reforms

The banking sector reforms essentially focused on the following:

- Reduction in SLR & CRR
- Deregulation of interest rates
- Transparent guidelines or norms for entry and exit of private sector banks
- Public sector banks allowed for direct access to capital markets
- Branch licensing policy has been liberalized
- Setting up of Debt Recovery Tribunals
- Asset classification and provisioning
- Income recognition
- Asset Reconstruction Fund (ARF)

In spite of the optimistic views about the growth of banking industry in terms of branch expansion, deposit mobilization etc, several distortions such as increasing NPAs and obsolete technology crept into the system, mainly due to the global changes occurring in the world economy. In this context, the government of India appointed second Committee under the

chairmanship of Mr. M. Narasimham to review the first phase of banking reforms and chart a programme for further reforms necessary to strengthen India's financial system so as to make it internationally competitive. The Committee reviewed the performance of the banks in light of first phase of banking sector reforms and submitted its report with some more focus and new recommendations, particularly in respect of Merger of strong units of banks; Adaptation of the 'narrow banking' concept to rehabilitate weak banks.

Banking Sector Reforms – Fresh Outlook

Rethinking for financial sector reforms have to be accorded, restructuring of the public sector banks in particular, to strengthen the Indian financial system and make it able to meet the challenges of globalization. The on-going reform process and the agenda for third reforms should focus mainly to make the banking sector reforms viable and efficient so that it could contribute to enhance the competitiveness of the real economy and face the challenges of an increasingly integrated global financial architecture.

Capital Market

Matching the cross border expansion of Indian Companies, the Indian Capital Markets have also grown exponentially over a period of time. The growth has been in every sphere - the amount of capital raised through primary issuances, exchange trading turnovers, the market indices and market capitalization, mutual fund assets, access to foreign markets for raising funds, foreign listing and foreign institutional investment. In fact, none of this would have been possible if the Indian markets had not developed a world class market. The efforts of the last two decades in developing an efficient market infrastructure have created a market that has made transactions transparent and settlements safer. The Indian Capital Market has come a long way from trading under the Banyan tree to internet trading.

Role of Capital market in economic development

The role of the Indian capital market in the development of the economy may be summarized as under :

- opportunities for companies to borrow funds needed for long-term investment purposes;
- avenue for the marketing of shares and other securities in order to raise fresh funds for expansion of operations;
- means of allocating the nations real and financial resources between various industries and companies;
- efficient and effective distribution of the resources for the optimal benefit to the economy;
- reduced reliance of the corporate sector on short-term financing for long-term projects;
- encourages inflow of foreign capital when foreign companies or investors invest in domestic securities, provides needed seed money for creative capital development and acts as a reliable medium for broadening the ownership.

Infrastructure Financing

While infrastructure development facilitates economic growth; economic growth increases demand for more infrastructure. Thus, development of adequate and quality infrastructure is a necessary condition to maintain growth momentum in any economy. The following are the policy measures taken by the Government for the development of infrastructure sector:

- According to the Planning Commission, during the first three years of Eleventh Five Year Plan, funds from the Central Government budget financed around 45 per cent of the total investment in infrastructure. The remaining 55 per cent was divided between debt financing (41 per cent) and equity financing (14 per cent). It is noteworthy that within the debt financing, commercial banks alone financed around 21 per cent and another 10 per cent was financed by the NBFCs. Notably other sources of financing, such as, External Commercial Borrowings (ECBs), equity, FDI and insurance companies financed less than 10 per cent of the total infrastructure investment each.
 - To support the high economic growth, the investment requirements in the infrastructure sector is estimated to be around 41 lakh crore (revised to Rs 45 lakh crore in the Approach paper for the Twelfth Plan) during the Twelfth plan period.
 - To facilitate infrastructure financing 100 per cent FDI is allowed under the automatic route in some of the sectors such as mining, power, civil aviation sector, construction and development projects, industrial parks, petroleum and natural gas sector, telecommunications and special economic zones.
 - Further, FDI is also allowed through the Government approval route in some sectors such as civil aviation sector, (Domestic Airlines (beyond 49 per cent), Existing airports (beyond 74 per cent to 100 per cent)); investing companies in infrastructure/services sector (except telecom); Petroleum and Natural Gas sector Telecommunications – Basic and Cellular Services (beyond 49 per cent to 74 per cent), ISP with gateways, radio paging, end-to-end bandwidth (beyond 49 per cent to 74 per cent, ISP without gateway (beyond 49 per cent); Satellites (up to 74 per cent) and, mining and mineral separation of titanium bearing minerals and ores (100 per cent).
 - Corporates implementing infrastructure projects were eligible to avail of ECB up to USD 500 million in a financial year under the automatic route. This limit has been raised to USD 750 million.
 - Infrastructure Finance Companies (IFCs) i.e., Non Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for the infrastructure sector as defined under the ECB policy, subject to certain conditions.
 - Government started encouraging Public-Private Partnership (PPP) projects in the infrastructure sector.
 - PPP mechanism provides built in credit enhancement for improving project viability by way of buyback guarantee, escrow arrangement, substitution rights for the lenders, etc.
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- RBI has issued Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions 2011 on November 21, 2011. These Directions apply to every infrastructure debt fund-non-banking financial company.

Microfinance

Inclusive growth always received special emphasis in the Indian policy making. Government of India and the Reserve Bank of India have taken several initiatives to expand access to financial systems to the poor. Some of the salient measures are nationalisation of banks, prescription of priority sector lending, differential interest rate schemes for the weaker sections, development of credit institutions such as Regional Rural Banks, etc.

Despite the policy efforts, gap remains in the availability of financial services in rural areas. The dependence of the rural poor on money lenders continues, especially for meeting emergent requirements. Such dependence is more pronounced in the case of marginal farmers, agricultural labourers, petty traders and rural artisans belonging to socially and economically backward classes and tribes whose capacity to save is too small.

It was in this backdrop that microfinance emerged in India. The Self-Help Group (SHG)-Bank Linkage Programme (SBLP) which was launched in 1992 on a pilot basis soon grew significantly. As per the latest estimates, SHGs enable 97 million poor households' access to sustainable financial services from the banking system and have an outstanding institutional credit exceeding Rs. 31,200 crore as at the end March 2011. SBLP is considered to be the fastest growing microfinance initiative in the world. The other model of microfinance, i.e. MFI model comprising of various entities, such as, non-banking financial companies (NBFCs), non-governmental organisations (NGOs), trusts, cooperatives, etc. has also been growing significantly in the recent years.

Reserve Bank constituted a Committee under the Chairmanship of Shri Y H Malegam to study issues and concerns in the MFI sector. The Committee examined the issues and made recommendations to address the present concerns. Some of the significant recommendations are as under:

- Creation of a separate category of NBFCs operating in the microfinance sector to be designated as NBFC-MFIs;
- Imposition of a margin cap and interest rate cap on individual loans;
- Requirement of transparency in interest charges;
- Lending by not more than two MFIs to individual borrowers;
- Creation of one or more credit information bureaus;
- Establishment of a proper system of grievance redressal by MFIs;
- Creation of one or more "social capital funds";
- Continuation of categorisation of bank loans to MFIs, complying with the regulation laid down for NBFC-MFIs, under the priority sector, etc.

In this context, the Microfinance Institutions (Development and Regulation) Bill, 2011 envisages the Reserve Bank of India as the sole regulator of microfinance sector covering all forms of MFIs in addition to NBFC - MFIs which are presently being regulated by the Reserve Bank.

Opportunities and Challenges - Roadmap 2020

Emerging markets like India have exhibited a strong growth momentum, driven by a robust demand, consumption and savings rate. A study by World Bank supports this by forecasting that the share of the five big emerging economies India, China, Indonesia, Brazil and Russia in 2020 will double to 16.1% from 7.8% in 1992.

“Indian Financial Markets: Roadmap 2020; Opportunities and Challenges – Mapping the Way Forward” a report published by PWC and ASSOCHAM elucidates opportunities and challenges in the backdrop of developments in the Indian banking and the capital markets sectors and attempts to look at the way forward for the industry. The Key findings of the report are as under :

- Statistics indicate the low penetration levels in the banking industry : “Only 37% of bank branches of Scheduled Commercial Banks are present in rural areas, with only around 40% of the population holding a bank account. Moreover, out of the 600,000 habitations in the country, only about 30,000 have a commercial bank branch.”
- Report suggests support of technology, simple product offerings and regulating the self-help groups, as some of the steps to help increase the reach of banking services.
- Infrastructure financing has been featured in the report as a key pillar of growth, with the banking sector playing an increasing role in building the growth momentum.
- Report lays emphasis on the role of the private sector towards funding infrastructure development, apart from strengthening the corporate bond market and increased participation from pension funds and insurance companies.
- With a population of more than a billion, a mere 1% of the population participates in capital markets, and of that only a fraction is active.

A huge challenge for financial institutions is functioning and retaining their efficiency in uncertain times. Business models are undergoing a structural change to accommodate the changing regulations and foster growth. There needs to be a well-defined framework to withstand disruptions and lead the financial markets towards growth and progression.

CHALLENGES AND OPPORTUNITIES IN SME SECTOR

The Small and Medium Enterprises (SMEs) play a catalytic role in the development process of most economies as they constitute a major part of the industrial activity. It reflected in terms of increasing number and rising proportion in the overall product manufacturing, employment, technical innovations and promotion of entrepreneurial skills. The contribution of SMEs in the development of Indian economy has been significant, both in terms of contribution to GDP and creation of employment opportunities.

Micro, Small and Medium Enterprises (MSMEs) always represented the model of socio-economic policies of Government of India. The Indian industrial economy is characterized by a dynamic and versatile set of enterprises which are micro, small and medium in terms of scale of operations. MSMEs category has been facilitating competitive advantage to Indian industry, because of their ability to make available low-volume customised products, flexible response and lower fixed overhead costs. It is estimated that in terms of value, the sector accounts for about 45 per cent of the manufacturing output and 40 per cent of the total exports of the country. The sector is estimated to employ about 595 lakh persons in over 261 lakh enterprises throughout the country. Further, this sector has consistently registered a higher growth rate than the rest of the industrial sector. There are over 6000 products ranging from traditional to high-tech items, which are being manufactured by the MSMEs in India. It is well known that the MSMEs provide good opportunities for both self-employment and wage employment.

Issues Concerning the MSME Sector

The MSME sector in India is heterogeneous, dispersed and mostly unorganized. They continue to face a number of common problems. Some of these are discussed as under:

(i) *Infrastructural Bottlenecks*

To ensure competitiveness of the MSMEs, it is essential that the availability of infrastructure, technology and skilled manpower are in tune with the global trends. MSMEs are either located in industrial estates set up many decades ago or are functioning within urban areas or have come up in an unorganised manner in rural areas. The state of infrastructure, including power, water, roads, etc. in such areas is poor and unreliable. Further, the MSME sector in India, with some exceptions, is characterised by low technology levels, which acts as a handicap in the emerging global market.

(ii) *Inadequate Capital/Financial Support*

Due to proactive policies of Government and Reserve Bank of India, the credit flow to Micro and Small Enterprises (MSE) has shown an increasing trend in the recent years. Nonetheless, financing continues to be most important challenge for the creation, survival and growth of Indian MSMEs, especially the innovative ones. Shortage of working capital, equity capital, etc. is widely recognized as the hurdle in the growth of MSEs. According to OECD report on "The Impact of the Global Crisis on SME and Entrepreneurship Financing and Policy Responses, 2009", MSMEs are generally more vulnerable in times of crisis for many reasons, such as difficulty to downsize as they are already small; less diversified in economic activities; weaker financial structure (i.e. lower capitalisation); lower or no credit rating; dependence on credit; fewer financing options, etc.

(iii) *Delayed Settlement of Dues*

The MSMEs generally experience delay in settlement of dues owed by the large scale buyers, thus, adversely affecting the flow of funds and business operations of the

MSMEs. Seasonal business faces this issue and suffers the most in debt collection. Many of the MSMEs still find it difficult to do so, because of the fear of loss of business and procedural hassles. To avoid recurrence of delayed payments, a need has been expressed by MSMEs for providing an in-built mechanism, which could include:

- (i) Establishment of a Central/State level government agency which regularly monitors and mandates the debt payment time period of large scale industries to MSMEs. The agency should benchmark and does ratings of the large sector companies on the basis of their debt payment period.
- (ii) Disallowance of CENVAT credit on goods purchased from MSMEs, if payment was not made within the stipulated period.
- (iii) To make deduction of expenses ineligible to the extent of outstanding dues for calculation of income tax, if the purchaser did not make the payment in the agreed time period.

(iv) *Technology Upgradation*

Technology is one of the most critical elements in the growth of the MSME sector. India is ranked very high in terms of availability of science and engineering personnel. However, MSMEs in India have not been able to fully utilize this vast pool of talent to achieve competitive edge in the global modern technology. The MSMEs are facing stiff competition from imports and need technological upgradation to produce better quality products at competitive rates. Given the financial limitation, IT budgets are usually small for MSMEs. In addition, adopting Information and Communication Technology is not a one-time cost because there are ongoing costs of maintenance, upgrading, and human capacity building.

(v) *Informational Inefficiency*

The Government has taken various steps and launched many schemes and programmes for the benefit of MSME sector. But many MSMEs are still not aware about the government schemes. Moreover, problems, such as, lengthy paper work, timeliness etc. in addressing business needs, make it difficult for MSMEs to avail benefit of the schemes.

(vi) *Inadequate Research & Development Support*

The larger the size of the enterprise, the more is its R&D expenditure. Due to limited availability of finance and skilled R&D professionals, micro enterprises find it difficult to engage in R&D activities for product improvement, which further restricts the growth and expansion of these enterprises.

(vii) *Procurement Problems*

Generally, MSMEs find it difficult to participate in public procurement mainly due to unavailability of financial guarantees, lack of knowledge about tender procedures, new opportunities and large size of contracts. Formulation of a Procurement Policy,

which sets an annual procurement target from the MSE sector for the Central Ministries/Departments/PSUs, could be a great support to this sector.

(viii) *Marketing Issues*

Unorganized sector enterprises generally find it difficult, for want of resources, to invest in market research, advertisement and packaging and are unable to carry out design and technical improvements to keep up with market demands.

(ix) *Access to Global Markets*

Many segments of SMEs, especially the traditional sectors, find it difficult to compete against aggressive marketing by the big domestic and multinational players. Handloom and power loom weavers, home-based food processing units, khadi institutions, attar perfumers, rural artisans, etc. are the worst affected. The major challenges faced by MSMEs in accessing global markets are market information, price competitiveness, cost of transport, availability of management skills, non-tariff barriers, domestic regulations, etc.

Approach paper to Twelfth Five Year Plan

Indian companies in many sectors have shown capacity for innovation, which needs to be nurtured and strengthened as we move into the Twelfth Plan. This calls for a greatly expanded programme of Research & Development (R&D), as well as other innovations, to lift Indian manufacturing to a higher level. It is important to emphasise that dynamism is not limited to large companies. Many companies in the MSME sector have also expanded and shown the capacity for innovation. However, much more needs to be done to strengthen and nurture the potential performance of this sector. Particularly important in this context are improved infrastructure services, including reliable power and better logistics for transport, as also better financial access, including development of institutions that can provide start-up finance for small and potentially innovative businesses.

Entrepreneurial capacity in the private sector is matched by an impressive pool of managerial talent and an increasingly skilled workforce. However, experience has shown that rapid growth in the recent past has been accompanied by shortages of specific skills and increasing rates of employee turnover. The MSME sector is particularly hard hit in key areas of skills. Therefore, much more needs to be done in the area of skill development to adequately complement the potential expansion in the level of economic activity. The expansion underway in educational and training institutions needs to be accelerated and more attention needs to be paid to the quality and appropriateness of skills being imparted. The government has taken a number of steps in this area and this need to be strengthened in the Twelfth Five Year Plan.

Opportunities for Company Secretaries

The following are the areas of opportunities for the Company Secretaries in MSMEs sector:

- Conversion into LLPs

- Setting up Governance Structure
- Raising of Funds
- Entrepreneurship Development
- Market Survey and Research on various products and services
- Preparation of project reports and financial documents
- Set up new manufacturing units in India and abroad
- Assistance and support for revival of sick SMEs
- Resolve Problems & Issues
- Human Resource Development and Financial Advisory Services
- Liaison with Government Departments & Agencies, Overseas Organisations
- Implementation of effective risk management system
- Corporate Governance and Compliance Management
- Due diligence on various issues
- Sector-specific regulatory requirements.

The great entrepreneurial spirit of Indian MSME, higher capital productivity and growing savings would be the key drivers of MSME growth momentum. The MSMEs have to continuously incorporate latest technology into their production processes to gain efficiency, as well as dynamism in their marketing and management functions, besides improving upon their inventory management. The MSME exporters may also attempt to diversify their export destinations and explore new markets including those within the domestic market, which by itself is very large.

Conclusion

India Attractiveness Survey conducted by Ernst & Young during the time when the dialogue among business leaders about the economic crisis was at peak, shows that regardless of today's crisis a strong increase in the number of FDIs in India is a clear indication that global investors view India as an attractive destination. By 2020, 25% of the survey respondents see India among the world's leading three destinations for manufacturing. The survey indicates lack of infrastructure and lack of governance and transparency as the obstacles and India needs innovation led culture.

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BLOW YOUR WHISTLE

CS ALKA KAPOOR* & CS RAKESH KUMAR**

"Whistle Blowing is an open disclosure about significant wrongdoing made by a concerned citizen totally or predominantly motivated by notions of public interest, who has perceived the wrongdoing in a particular role and initiates the disclosure of her or his own free will, to a person or agency capable of investigating the complaint and facilitating the correction of wrongdoing" - William De Maria

A whistleblower is the one who exposes wrongdoing, fraud, corruption or mismanagement in an organization. A whistleblower is a person who publicly complains/discloses the concealed misconduct on the part of an organization or body of people, usually from within that same organisation. Whistle blower may be an employee, former employee, vendor, customer or other stakeholder.

Corporate Governance refers to a set of systems/procedures, policies, practices & standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner. Whistle blowers are important stakeholders as they can work as a tool for authorities to get information of deviant behaviour or practices in organizations.

The term 'Whistle-blowing' is of relative recent entry into the vocabulary of public and corporate affairs, although the phenomenon itself is not new. It refers to the process by which insiders go public with their claims of malpractices by, or within, organisations - usually after failing to remedy the matters from the inside, and often at great personal risk to themselves. Sometimes the cost of such valiant efforts is just too high to pay.

The big question here is that in an organization where although lots of people are work, who will take chance against the possible risk involved? Who would blow the whistle about the wrongdoing/malpractices going on inside an organization? It's not only about just raising alarm, it is more about the impartiality and courage to start with.

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The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.

BACKGROUNDER

Whistle blower needs protection against retaliation/misbehavior by superiors. At the corporate level, the companies can provide protection to whistle blowers by establishing a well documented “Whistle Blower Policy” and ensuring its effectiveness practically. Just making a documented policy is not sufficient to develop confidence among the employees; examples should be set by taking action against the wrongdoing reported.

Whistle Blower Policy – A Good Governance Initiative by the Government/Regulatory Authorities/Corporate India

The concept of Whistle Blower Policy has been established in India through non-mandatory requirement of Clause 49 of Listing agreement. Further, Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs provide for the instituting mechanism for Whistle Blowing. These provides that-

- the Company should ensure the institution of a mechanism for employees to report concern about unethical behaviour, actual or suspected fraud, or violation of the company’s code of conduct or ethics policy.
- the Companies should also provide for adequate safeguards against victimization of employees who avail of the mechanism and also allow direct access to the chairperson of the Audit Committee in exceptional cases.

Further the Department of Public Enterprises ‘Guidelines on Corporate Governance for CPSEs 2010’ also provide for establishment of a mechanism for whistle blower policy and state that once established, the existence of the mechanism may be appropriately communicated within the organization.

The New Companies Bill, 2011 also contains provisions in respect of vigil mechanism (whistle blowing) which will enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices. Clause 177 of the bill provides for the establishment of vigil mechanism in every listed and prescribed class of companies and it also provides that companies shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. The establishment of such mechanism shall be disclosed on the website of the company and in the Board’s Report of the company.

ICSI National Award for Excellence in Corporate Governance also elicits information on the establishment of Whistle Blower Policy/mechanism by the companies participating in the Award.

Various companies in India and abroad have adopted Whistle Blower Policy which lays down the complaint process, redressal mechanism and confidentiality thereunder.

It has been observed during the evaluation process that over the years a good number of companies have formulated their ‘Whistle Blower Policy’ as a measure of preventing fraud and unethical behavior within the organization and the number of these companies has increased over the years.

In the Year 2010-11, 23 companies out of top 25 participating companies to the ICSI National Award for Excellence in Corporate Governance have reported that they have framed/ established the Whistle Blower Mechanism in their Company.

Few Indian examples of whistle blower policy:

(i) *Tata Steel limited*

The company has a whistle blower policy that provides a formal mechanism for all employees of the company to approach the Ethics Councilor/ Chairman of the Audit Committee of the company and make protective disclosures about the unethical behaviour, actual or suspected fraud or violation of the company's Code of Conduct. The Whistle blower policy is an extension of the Tata Code of Conduct, which requires every employee to promptly report to the Management any actual or possible violation of the Code or an event he becomes aware of that could affect the business or reputation of the company. The disclosures reported are addressed in the manner and within the time frame prescribed in the Policy.

(ii) *Wipro Limited*

The company has adopted an Ombudsprocess Policy wherein it has established procedures for receiving, retaining and treating complaints received and procedures for the confidential and anonymous submission by employees of complaints regarding possible violations of the code of conduct and ethics.

Under this policy, employees are encouraged to report questionable accounting matters, any fraudulent financial or other information to the stakeholders, any conduct that results in violation of the company's code of business Conduct and Ethics to management (on an anonymous basis, if employees so desire).

The policy also prohibits discrimination, retaliation or harassment of any kind against any employee who, based on the employees' reasonable belief that such conduct or practice have occurred or are occurring, reports that information or participates in the investigation. Personnel of the company have access to the Audit Committee.

(iii) *HDFC Limited*

The company has joined 'Corporate Whistleblower Initiative', a third party web-based reporting initiative which provides employees with a platform to communicate to the management, concerns about unethical behaviour, actual or suspected fraud or violation of the Corporation's code of conduct or ethics policy, in a secure and confidential manner. The setting of the said mechanism has been widely communicated to all employees of the Corporation.

Role of Professionals

Whistle blowing as an internal control mechanism tool in the hands of Audit Committee and Board of Directors, ensures detection of any fraud or any concern which might put the company's reputation at stake. Whistle blowing policy will never work as an automatic

protection to any organization from wrong doings. The effectiveness of system mainly depend upon how the wrong doings reported have been acted upon while providing sufficient protection to whistle blowers.

Board is responsible for encouraging whistle blowing in the organization. Where the employees are not confident of the process of whistle blowing mechanism of the company they would resist from being a part of the process.

The professionals like Company Secretaries being a bridge between the company's management and the Board hold the enormous responsibility on the one hand in establishing the Whistle blower mechanism in the company and on the other hand to develop the confidence of employees in that mechanism so that they can freely report any unethical practices, fraud or concern noticed in the company.

The professionals should ensure that the policies of the company are working in a right direction and implemented properly, if any changes required, the matter should be reported to the management/board immediately.

Whistle blowing – some cases

Case – I

Breadley Birkenfeld - tax cheats Whistle blower

The US tax agency has awarded Bradley Birkenfeld (a former Swiss banker) 104 million dollars (£65 million) for providing information about overseas tax cheats - the largest amount awarded by the Internal Revenue Service (IRS).

Bradley Birkenfeld is credited with exposing widespread tax evasion at Swiss bank UBS AG. Birkenfeld himself served about two-and-a-half years in prison for a fraud conspiracy conviction related to the case, which resulted in a 780 million dollars (£485 million) fine against the bank and an unprecedented agreement requiring UBS to turn over thousands of names of suspected American tax dodgers to the IRS. Birkenfeld has become something of a cause celebre among whistleblowers because of the magnitude of his case.

Case – II

Novartis Whistle Blower Case

Novartis was created in 1996 through the merger of Ciba-Geigy and Sandoz, two companies with a rich and diverse corporate history. Throughout the years, Novartis and its predecessor companies have discovered and developed many innovative products for patients and consumers worldwide.

Allegations

In this case the whistleblowers alleged that Novartis implemented a sophisticated marketing plan with the purpose of inducing physicians to prescribe their product namely Trileptal for various off-label uses which were neither Food and Drug Administration (FDA, U.S.)-approved nor demonstrated to be safe and effective.

According to the complaint, Novartis knew when it initiated this illegal marketing scheme that there was little credible scientific basis to justify its assertion that Trileptal was safe and effective for these off-label uses.

The whistleblowers also alleged that Novartis regularly provided illegal kickbacks to physicians who prescribed Trileptal for offlabel uses. These alleged business practices caused federal and state government health care programs to pay millions of dollars for prescriptions which were ineligible for payment.

While a physician may prescribe a drug for a use other than one for which it is approved, the Federal Food, Drug and Cosmetic Act prohibits a drug manufacturer from marketing or promoting a drug for non-approved uses. FDA only approved Trileptal for very specific uses, such as treatment of partial seizures in adults with epilepsy and as adjunctive therapy in the treatment of partial seizures in children ages four to sixteen. Novartis, however, marketed the drug to physicians for off-label uses, primarily for bipolar disorder and neuropathic pain.

The whistleblowers estimated that 50% of the total sales were for these off-label prescriptions, which were generated by an aggressive marketing campaign targeting psychiatrists and pain clinics.

The tactics adopted by the company also included organizing third-party continuing medical education programs that were actually controlled, promoted and designed by Novartis; distributing third-party articles, touting the off-label benefits of the drug, all while not disclosing that the articles were actually published by Novartis; and educating physicians on Medicaid reimbursement codes for off-label uses.

The second charge was brought by Jeremy Garrity. Mr. Garrity was an Associate Cardiovascular Metabolic Specialist in the Cardiovascular/Metabolic Division of the company from 2002- 2005 and an Area Scientific Sales Consultant from 2005-2008. Mr. Garrity's was fired in 2008 and later he filed a whistleblower lawsuit.

The federal government had to launch an investigation into offlabel marketing. Mr. Garrity detailed allegations of widespread kickbacks and illegal inducements to the physicians. He specifically alleged that Novartis had various programs utilized by its sales representatives to induce physicians to use its cardiovascular products, Diovan, Tekturna and Exforge. These programs primarily consisted of excess payments to physicians that were disguised as "consultant payments" or "speaker honoraria."

Moreover complainant alleged that Novartis implemented an aggressive recruitment effort, designed to train up to 4,000 physician-speakers from across the country. Instead of recruiting speakers based on their experience or credentials, Novartis targeted physicians based on their potential prescription-writing volume. Moreover, once physicians were accepted into the "speakers bureau," some Novartis managers required the speakers to meet minimum prescription levels.

Mr. Garrity alleged that "As long as they (physicians) had a prescription pad and were willing to prescribe our products, they qualified as Novartis speakers".

In U.S., Federal and State False Claims Acts allow private citizens with detailed knowledge of fraud to bring an action on behalf of the governments and to assist in the recovery of the governments' dollars. These statutes allow the government to recover three times the amount it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Successful whistleblowers can receive between 15 and 30 percent of the governments' recovery.

The whistleblowers were represented by national whistleblower law firm of Nolan & Auerbach, P.A. "Our clients are the true heroes of this fraud-fighting story," said founding partner of the Law Firm. "They risked their own careers and stood up for the American people."

Novartis Pharmaceuticals Corporation, agreed to pay \$237.5 million to resolve civil allegations that it unlawfully promoted its drug Trileptal for unapproved uses and that it paid illegal kickbacks to physicians to induce them to prescribe other of the company's drugs: Diovan, Exforge and Tekturna. In addition, the company agreed to pay a \$185 million criminal fine and to plead guilty to a misdemeanor charge of introducing misbranded drugs into interstate commerce, in 2010.

This turned on to become a successful whistle blower case.

Case – III

Miller and Halbert (US)

In 2007 three companies associated with US civil engineering czar Bill Harbert were found guilty by a jury of rigging bids for US-funded water and sewer system contracts in Egypt during the 1980s, being hit with a US\$34.34 million in damages (tripled under the False Claims Act for an award of US\$103 million).

The litigation was brought on the evidence of whistleblower Richard Miller, a former executive with a contractor that was involved in the bid rigging scheme. Miller stands to collect between 15% and 30% of the damages.

From the above cases it can be seen that whistle blowing on occasion can be both dangerous and financially rewarding, it depends upon the various jurisdiction and protection under the law to ascertain the level of risk involved.

Government Initiatives for promoting Whistle Blowing

Corruption is a social evil and one of the impediments felt in eliminating corruption in the Government and the public sector undertakings is lack of adequate protection to the complainants reporting the corruption or wilful misuse of power or wilful misuse of discretion which causes demonstrable loss to the Government or commission of a criminal offence by a public servant.

The Law Commission of India in its 179th Report, inter-alia, had recommended formulation of a specific legislation to encourage disclosure of information regarding corruption or mal-administration by public servants and to provide protection to the complainants. The Second Administrative Reforms Commission in its 4th Report on "Ethics in Governance" also recommended formulation of a legislation for providing protection to whistle blowers.

The CVC was set up in India by a Government Resolution initially in February 1964 on the recommendations of a Committee on Prevention of Corruption, headed by Shri K Santhanam, to advise and guide Central Government agencies in the field of vigilance related activities. Following the decision of the Supreme Court of India in the Vineet Narain case, a Government Resolution made the CVC a three member autonomous body. By enacting the Central Vigilance Act 2003, a statutory backing was given to the Commission. CVC is conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance and anti corruption work.

The Government of India had issued a Resolution No. 89, dated the 21st April, 2004 authorising the Central Vigilance Commission as the designated agency to receive written complaints from whistle-blowers. The said Resolution also, inter alia, provides for the protection to the whistle-blowers from harassment, and keeping the identity of whistle blowers concealed. It has been felt that the persons who report the corruption or wilfully misuse of power or wilfully misuse of discretion which causes demonstrable loss to the Government or commission of a criminal offence by a public servant need statutory protection as protection given to them by the said Resolution of the Government of India would not suffice.

After the death of whistleblowers like Satyendra Dubey, an employee of National Highway Authority and later Manjunath Shanmugam, government was forced to take a stand on protection of whistleblowers. It was decided by the Government to enact a stand alone legislation.

The Whistle Blowers Protection Bill, 2011 which is pending before the Indian parliament seeks to establish a mechanism to register complaints on any allegations of corruption or willfully misuse of power against a public servant. It provides safeguards against victimization of the person who makes the complaint.

CVC - "BLOW YOUR WHISTLE" Portal

BLOW YOUR WHISTLE is a technology supported fully transparent anti-corruption initiative of the Central Vigilance Commission (CVC), India's apex vigilance institution dealing with all matters of Corruption in the Central Government. The goal is to help build TEAM India that will help in realising everyone's dream of corruption free India. Creating awareness over the prevalence of corruption in the system and empowerment of the citizens in their fight against corruption and thus bringing about improvement in Efficiencies and Good Governance is the primary objective of this nation-wide programme.

BACKGROUND

CVC - Project VIGEYE (Vigilance Eye)

The United Nations General Assembly designated 9th December as the International Anti-Corruption Day and the same is being observed across the world since 2003. On this occasion, the CVC launched Project 'VIGEYE' on 9th December, 2010. Shri N. Vittal, former Central Vigilance Commissioner, launched Project 'VIGEYE' by symbolically registering himself as a VIGEYE with his mobile number and instantly received a user id and password which enable the user to lodge complaint, upload photos and videos.

Project VIGEYE (Vigilance Eye) is a citizen-centric initiative, wherein citizens join hands with the Central Vigilance Commission in fighting corruption in India. The term Vigeyeye refers to a person who is a vigilant citizen, a volunteer and one who helps the vigilance commission reporting corruption and in fighting it.

Project Vigeyeye is the platform through which vigilance information flows freely through common public, the government agencies and the vigilance commission, making it possible to achieve a step jump in improving the corruption index of the nation.

The important features of Project Vigeyeye are:

- Citizens have multiple channels to air their grievances and complaints to CVC -
 - (a) *Through their mobile phones* : by downloading the mobile application from the CVC website. The complaints can be better articulated with additional data like audio/ video/ photo evidence from their mobiles directly.
 - (b) *Through the internet* : by filling up the complaint form online they can attach audio/video/photo evidence.
 - (c) *Through telephone* : help line have been setup.
- The entire complaint processing is done online, in digital form, enabling fast and accurate processing of complaints.
- The concerned CVO will interact with the complainant directly over phone/email or in person, as the case may be, to take it forward.
- Status of the complaint is communicated back to the complainant - the communication loop becomes complete.

A Vigilant citizen can become a Vigeyeye by registering in the CVC website, by providing credentials such as name, email and phone number.

Filing Complaints

A complaint can be filed through the CVC Web Complaints System by log in to the CVC website. The textual content of the complaint can be enriched with additional information by attaching upto 5 files (such as photo, audio, video, documents) along with the complaint.

A complaint can also be filed through the mobile phones to the CVC. The application downloaded from the CVCs websites enables mobile users to file complaints with photo, or a

voice recording, or a video or a note from the mobile. The complaint is uploaded using the GPRS connectivity.

The complainant may choose the Organization and nature of the complaint for effective categorization and assignment of the complaint. The complaint is forwarded to the concerned CVO and the complainant is updated with the status. The complainant can login with registered mobile number and password to view the status of all the complaints filed.

Conclusion

In the end it can be concluded that strong Whistle Blower Protection is an essential pillar in Corporate Governance framework of a company and it is the responsibility of governance professionals serving as director, consultant, auditors and employees to ensure that the companies to which they are associated should adopt and implement this wise practice. The benefits derived from this mechanism would protect the company from any reputational crisis.

Various countries have now adopted comprehensive whistleblower protection laws which create mechanisms for reporting, investigate reports, and provide legal protections to the people who informed them. At national level the government should provide protection to whistle blowers by way of legal enactments and ensuring their enforcement in terms of strict & timely action on the matters reported. It will develop the confidence of citizens in raising their voice against the wrongdoing, fraud, corruption or mismanagement noticed in any public organization, which will lead to a successful vision of corruption free India.

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CAPITAL MARKETS : ENGINE FOR ECONOMIC GROWTH

CS SONIA BAIJAL* & MAHESH KUMAR AIRAN**

Capital Market being one of the significant component of every financial market, a developed, dynamic and vibrant capital market can immensely contribute for speedy economic growth and development. The government, the regulators and the financial institutions have an important role to play in building a strong and robust capital market.

It goes without saying that the efficiency of financial system largely depends upon the eminence and growth of its Capital Market. The Indian Capital Markets have also grown exponentially in the last few years matching the cross border expansion of Indian Companies,. The growth has been in every sphere - the amount of capital raised through primary issuances, exchange trading turnovers, the market indices and market capitalization, mutual fund assets, access to foreign markets for raising funds, foreign listing and foreign institutional investment. In fact, none of this would have been possible if the Indian Capital Markets had not developed in a world class market, through efficient physical and regulatory infrastructure. The efforts of the last decade in developing an efficient market infrastructure have created a market that has made transactions transparent and settlements safer. The Indian Capital Market has come a long way from trading under the Banyan tree to internet trading.

The market has transformed in the 20 years since SEBI was established as the statutory regulator of India's securities market. India's Capital Market in 2012 features a developed regulatory environment, a modern market infrastructure, a steadily increasing market capitalization and liquidity, better allocation and mobilization of resources, a rapidly developing derivatives market, a robust mutual fund industry, and increased issuer transparency demonstrating the following positives:

- Fully automated trading systems
- A wide range of products

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- An integrated platform for trading in both cash and derivatives
- Nationwide network for trading in variety of securities
- Enhanced quality of regulation
- Growing number of market participants
- Growth in volume of securities transactions
- Reduction in transaction costs
- Significant improvement in efficiency, transparency and safety
- Level of compliance at international standards.

The strength mentioned does provide one side of the coin only. There are associated challenges to the Capital Markets also which include:

- Reforming Primary Market Processes
- Competing internationally to attract foreign savings
- Developing Bond Market
- Introducing new products and processes
- Risk Management in the context of technology related challenges
- External shocks - Volatility due to huge capital inflows/outflows
- Cash versus Derivatives volume
- Governance of Stock Exchanges/ Securities Market Infrastructure Companies
- Risk Management in trading
- Limited Investor Awareness of financial instruments

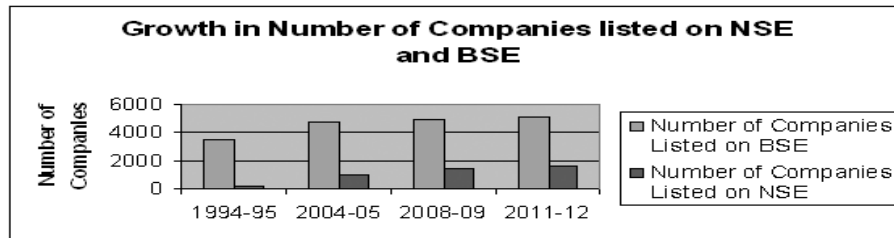
Fact Sheet of Indian Capital Market and Recent Initiatives

Number of Listed Companies

The two major Indian exchanges, the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) ranked 15th and 17th respectively among exchanges around the world in terms of market capitalization. There is continuous growth in the number of listed companies on NSE and BSE. Total listed companies on BSE in the year 1992-93 were 2,861 which increased significantly in the year 2004-05 to 4,731 and in the year 2011-12 increased to 5,112. Similarly, in the year 1997-98 listed companies on NSE were 612 which increase to 1,640 in the year 2011-12. As the number of Companies increasing significantly, the amount raised by companies through public issue increased from Rs.3928.56 crore in year 1998 to Rs.29598 crore year 2011.

BACKGROUND

Chart below shows the growth in the number of companies listed on NSE and BSE since 1994-95.



Source : SEBI Handbook of Statistics on the Indian Securities Market, 2011

Dematerialized Accounts

There has been a steady increase in the total number of investor accounts, which stood at 19.7 million at NSDL and CDSL combined at the end of February 2012, as against 19.4 million in February 2011. The total numbers of investor accounts are 121.9 lakh at NSDL and 79.8 lakh at CDSL at the end of June 2012. The number of investor accounts in June 2012 increased by 0.5 percent at NSDL and 0.3 percent at CDSL over the previous month.

At present, it is estimated that around 1.5 crore pan card holders with an income between 2-10 lakh do not have a demat account. The introduction of Rajiv Gandhi Equity Saving Scheme as well as the Basic Service Demat Account would also lead to substantial rise in number of demat accounts. Even if 20% avail the benefit of this scheme, additional Rs. 15,000 crores of long-term equity investment will be garnered in 2012-13 itself.

With a view to achieve wider financial inclusion, encourage holding of demat accounts and to reduce the cost of maintaining securities in demat accounts for retail individual investors, SEBI introduced the concept of basic services demat account (BSDA), effective from October 01, 2012. All depository participants (DPs) shall make available a "Basic Services Demat Account" (BSDA) with limited services and reduced costs compared to conventional demat accounts which includes the eligibility criteria of the individual to opt for BSDA, Option to open BSDA, charges, Services provided by DP to the account holder for Basic Services Demat Accounts such as transaction statement, Holding statement of the BSDA to be sent to the Account holder, Rationalisation of services with respect to regular accounts i.e. Services provided with respect to the Accounts with zero balance and nil transactions during the year, Accounts which become zero balance during the year and Accounts with credit balance. These BSDA will also offer SMS alert facility for debit transactions.

Market Intermediaries registered with SEBI

Growth in the market intermediaries in the emerging segment also shows a positive trend. Brokers in the currency derivatives increased from 2008 in the year 2010-11 to 2191 in year 2012-13. Foreign Institutional Investors increase form 1722 in year 2010-11 to 1758 in year 2012-13. The number of Depository Participants also rose from 805 in year 2010-11 to 856 in year 2012-13.

Preferential Allotments Listed at BSE and NSE

The cumulative mobilised amount for the financial year 2012-13, (till July 2012), stood at 32,082 crore through 114 preferential allotments (of which 41 allotments amounting 16,219 crore were listed at both BSE and NSE) as compared to 38 preferential allotments in July 2011-12 with the cumulative mobilized amount (till July 2011) of Rs. 18689 crore.

Investments by Mutual Fund

During 2011-12, Mutual Funds mobilized Rs 10 millions crore from the market as compared to Rs 49,406 crore in 2010-11 indicating an increase of 103%. The market value of assets under management stood at Rs 6,81,655 crore as on 30 November 2011 compared to Rs. 6,65,282 crore as on 31 March 2011, indicating an increase of 2.5 per cent. Thus Funds mobilized was more than double of earlier year, although the market value of the asset grew by only 2.5%. During June 2012, net investment made by the mutual funds in Debt and equity is Rs.78465 crore and Rs.296 crore respectively as against 35183 crore and Rs. 823 crore in the corresponding period of previous year.

Corporate Bond Market

The corporate sector mobilized Rs 46,389 from the primary debt market in December 2011. During June 2012, there were 880 trades with a value of 5,036 crore reported on BSE and NSE, 1,624 trades were reported with a trading value of 18,918 crore. Further, 3,092 trades with a value of 38,002 crore were reported to FIMMDA in June 2012.

The current market structure for corporate bonds is not an efficient response to transparency and liquidity issues but rather reinforces it further. As a result, changes to improve efficiency of the bond market will not emerge spontaneously from the market given the current market structure but would require external impetus in the form of regulatory / policy intervention. [Working Paper on New Thinking on Corporate Bond Markets in India, issued by Ministry of Finance, February 2011]

The paper conveys that the lack of transparency, less liquidity and inefficient intermediation in the process of market making contribute to the current state of the market. The impact of these three factors on the development of bond market in India, may be summarized as under:

- Efficiency in bond market is driven by transparency that allows bonds to be priced for all available information. Transparency in the bond market refers to the dissemination of information conveyed to all market participants regarding pre and post trade issues ranging from order interests to price and volume after trade is executed.
- Liquidity in bond market is driven by volume of bonds offered by issuers in the primary market on an on-going basis as well as the circulation of bonds in the secondary market with active investor participation. A greater participation of investors reduces search costs of both buyers and sellers and ease liquidity problems leading to a lower discount of the bond. Liquidity problems refer to the ease of selling the bond in a secondary market.

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- Intermediaries quote both buy and sell side prices and hold inventory to enable market making. Any inefficiency in this process automatically reflects in the pricing of bonds and thus adversely affects cost of borrowing of the issuers.

Optimal institutional architecture needs to reconcile business interests of every market participants – demand side, supply side and intermediaries. The policy recommendations focus on designing a self-sustaining ecosystem for investors, issuers and market makers. The Working Paper makes following policy recommendations:

- (a) Transform Credit Rating Agencies (CRA) and the credit rating process towards ensuring greater transparency.
 - All entities offering credit rating as a service must be registered as a credit rating agency.
 - Entities not registered as CRA should not be allowed to 'rate organisations' in a manner that is not calibrated to CRAs rating process for instruments issued by such organizations.
 - CRAs should not be allowed to carry out businesses like consulting on instrument design, etc even by an independent arm.
 - Transform corporate governance norms for CRAs.
 - Function responsible for assigning initial credit rating and function responsible for subsequent monitoring should be mandatorily separate (akin to credit and risk functions of the bank).
 - SEBI to conduct operations and process compliance audit of CRAs.
 - All credit ratings once obtained must be compulsorily published by the enterprise who is the issuer and have purchased the service.
 - (b) Improve reliability of benchmark yield curve – Encourage trusted issuers like banks/ FIs to issue bonds across maturities. Towards this, public sector banks and PSUs should raise atleast 50% of their 3 years maturity bond requirements from public issue.
 - (c) To encourage SMEs to issue bonds and raise funds from the debt market –
 - Offer special Repo window to market makers dealing with SME bonds. FIs focusing on SMEs like SIDBI could offer such special Repo windows.
 - To ensure that SME bond repo does not lead to any pocket of risk concentration, appropriate haircut needs to be set based on SME Credit rating.
 - Reduce landed cost of the bonds - No stamp duty to be levied on SMEs for issuing bonds, which are expected to have higher spreads than high rated corporate bonds.
 - (d) Broaden investor base by encouraging participation of retail, Qualified Institutional Investors, High Net worth investors, offer additional tax break on interest income from debt market instruments.
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- (e) Establish stop loss threshold during volatile and illiquid market to mitigate risks of market makers. This will set limits on when quotes can be suspended by market makers driven by either market circumstances or issuer performance.

Foreign Institutional Investors

There has been a marginal growth in the number of FIIs and Sub-accounts registered during the year 2011-12. The FIIs have been net sellers in the Indian equity and net buyers in the debt market activity during 2011-12 (April- December). However there is a decline of 79% in the amount invested in 2011-12. The types of FIIs investing into India have improved over the years from primarily hedge funds and long only funds to include pension funds and sovereign funds as well. This is long term money and adds stability to the markets.

In November 2011, the government reviewed the policy in the context of India's evolving macroeconomic situation and the need for enhancing capital flows and making available additional financial resources for the corporate sector and decided to (i) increase the current limit of FII investment in government securities by US \$ 5 billion, raising the cap to US \$ 15 billion (the incremental limit of US \$ 5 billion can be invested securities without any residual maturity criterion); and (ii) increase the current limit of FII investment in corporate bonds by US \$ 5 billion, raising the cap to US \$ 20 billion (the incremental limit of US \$ 5 billion can be invested in listed corporate bonds). The investment limit in long-term infrastructure corporate bonds, however, has been kept unchanged at US\$ 25 billion. With this, overall limit for FII investment in corporate bonds and government securities now stands at US\$ 60 billion.

Qualified Foreign Investor (QFI) scheme

In order to further liberalize the portfolio investment route, the Budget for 2011-12 permitted SEBI-registered MFs to accept subscriptions for equity schemes from foreign investors who meet the KYC requirements. The scope of the Budget announcement has now been expanded to allow SEBI-registered MFs to accept subscriptions from QFIs for debt schemes in the infrastructure sector. The QFI scheme has been operationalized on 9 August 2011.

P/E Investment

Private equity not only help companies to raise productivity but at the same time, it acts as a powerful driver of change: raising standards; fostering growth; promoting new opportunities for businesses and individuals; helping to overcome poverty and bringing hope.

Private equity represents a modest share of the \$1 trillion to be spent on infrastructure in 2012-2017, about half of which would come from private sector funds, compared with a target of one-third in the previous five years. It is noteworthy that there are PE investments exist in almost one third of India's largest 500 companies according to The Economic Times (ET-500 list, 2011). It includes Bharti Airtel, Hero Moto Corp, Suzlon Energy, Kotak Mahindra Bank, DLF limited, Max India, Sun Pharmaceuticals, etc. All these companies have been instrumental in shaping the growth of economy.

A Survey conducted by Deloitte in May 2012 indicates that with PE investors, "optimism"

remains on account of India's high relative growth rate supported by the existence of an economy at every price point. "Caution" arises due to the emergence of several previously unforeseen challenges for the PE industry, including the political risks, macroeconomic fluctuations and retrospective policy changes. PE firms are now reassessing and refocusing on the way they do business. With a somber global outlook, a slowdown in Indian GDP growth, high inflation and elevated deficits, the investor confidence at the moment is low and going forward is expected to be "cautiously optimistic".

Recent SEBI Initiatives

In order to enable speedier access to capital and effective capital management, there is a need to enable use of a wide array of capital instruments in the backdrop of streamlined statutory and regulatory framework allowing greater flexibility for issuers meeting defined criteria and a well functioning market for acquisition of corporate control. The recent measures taken by the SEBI for the developments of Capital Market are as follows:

Due Diligence in Direct Market Access

In case the facility of Direct Market Access (DMA) is used by the client through an investment manager, the investment manager may execute the necessary documents on behalf of the client(s). The specific Broker – Client Agreement for the purpose of DMA has been replaced with the "Terms and Conditions" document. The "Terms and Conditions" shall be provided to the client or investment manager acting on behalf of a client (s) for availing the DMA facility. Brokers are required to specifically authorize clients or investment managers acting on behalf of clients for providing DMA facility, after fulfilling Know Your Client requirements and carrying out necessary due diligence. The broker is also required to maintain proper records of such due diligence.

Activation of ISIN in case of additional issue of shares/ securities

In case of IPO for debt securities, the ISINs are activated only on the date of commencement of trading on the stock exchange. Further, in order to curtail the transfer of additional issue of shares/securities viz. further public offerings, rights issue, preferential allotment and bonus issue of the listed company, prior to receipt of final listing/ trading approval, the depositories are required to devise a mechanism so that such new securities created are frozen till the time final listing/ trading permission is granted by the Exchange. Depositories are advised to allot such additional shares/securities under a new temporary ISIN which is to be kept frozen. Upon receipt of the final listing/ trading permission from the exchange for such additional shares/ securities, the shares/securities credited in the new temporary ISIN are to be debited and the same would get credited in the pre existing ISIN for the said security. Thereafter, the additional securities become available for trading. The exchanges are advised to provide the details to the depositories whenever final listing/trading permission is given to securities.

SEBI Complaints Redressal System (SCORES)

The rapid growth in Indian capital markets and the spread of "equity culture" has

undoubtedly strained its infrastructure and regulatory resources. Nevertheless, the securities market regulator, the Securities and Exchanges Board of India (SEBI) has maintained a rate of around 95% in redressing investor grievances and has commenced processing of Investor complaints in a centralized web base complaints redress system 'SCORES' .

SEBI has advised all companies against whom complaints are pending on SCORES, to take appropriate necessary steps within 7 days of receipt of complaint by the concerned company through SCORES, so as to resolve the complaint within 30 days of receipt of complaint and also keep the complainant duly informed of the action taken thereon, failing which SEBI may initiate appropriate actions.

Audit Reports filed by listed companies

Clause 31 of the Listing Agreement has been amended requiring listed companies to submit the following forms, as may be applicable, along with copies of Annual reports submitted to stock exchanges:

- Form A : Unqualified/ Matter of Emphasis Report,
- Form B: Qualified/ Subject To/ Except For Audit Report

These forms are required to be signed by the a) Chief Executive Officer / Managing Director, b) Chief Financial Officer, c) Auditor and d) Chairman of the Audit Committee.

SEBI has also constituted the 'Qualified Audit Review Committee' (QARC) to review the cases received from the stock exchanges and guide SEBI in processing the qualified annual audit reports referred to by the stock exchanges

Further, SEBI inserted a new clause 31A requiring a company to restate its books of accounts on the directions issued by SEBI or by any other statutory authority, as per the provisions of the extant regulatory framework.

Business Responsibility Reports

SEBI inserted Clause 55 in the Equity Listing Agreement, mandating inclusion of Business Responsibility Reports ("BR reports") as part of the Annual Reports for listed entities in line with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' issued by the Ministry of Corporate Affairs. The highlights are as under:

- BR Reports as part of the Annual Reports is mandatory for top 100 listed entities based on market capitalisation at BSE and NSE as on March 31, 2012.
- Other listed entities may voluntarily disclose BR Reports as part of their Annual Reports.
- Those listed entities which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report but only furnish the same to their stakeholders along with the details of the framework under which their BR Report has been prepared.

- The provisions of this circular are applicable with effect from financial year ending on or after December 31, 2012. However, listed entities who are yet to submit their Annual Reports for financial year ended on March 31, 2012 may also include BR Reports as part of their Annual Reports on a voluntary basis.
- The Suggested Framework of the Business Responsibility Report includes:
 - Section A : General Information about the Company
 - Section B : Financial Details of the Company
 - Section C : Other Details including company having subsidiaries participating in the Business Responsibility initiative of the Parent company, number of such subsidiaries etc.
 - Section D : Business Responsibility Information
 - Section E : Principle-wise performance to assess compliance with Environmental, Social and Governance norms

In accordance to the circular issued by SEBI, BSE and NSE has placed the list of top listed 100 companies on their websites.

Rationalisation of sub broker surrender Process

SEBI has rationalized the process relating to surrender of registration by sub-brokers, requiring stock broker to issue a public advertisement in a local newspaper with wide circulation where the sub-broker's place of work is situated, informing the investors/general public about the surrender of registration of his sub-broker and not to deal with such sub-broker. In case of transition from sub broker to Authorized Person (AP) with the same stock broker and the same stock exchange, issue of advertisement in newspaper regarding surrender of sub broker registration is , however, not required.

The affiliating stock broker need to furnish an undertaking/ confirmation to the stock exchanges at the time of surrender of sub broker registration, that a communication has been sent to the clients of the sub broker individually. The affiliating stock broker and/or stock exchange is required to publish the details of sub-brokers whose registration has been surrendered or their new status as AP, as the case may be, on their respective websites for the information of the investors.

Manner of achieving minimum public shareholding

Clause 40A of Listing Agreement provides that the issuer company is required to achieve the minimum level of public shareholding specified in the Securities Contracts (Regulation) Rules, 1957, it may adopt any of the following methods to raise the public shareholding to the required level:-

- (a) Issuance of shares to public through prospectus; or
- (b) Offer for sale of shares held by promoters to public through prospectus; or

- (c) Sale of shares held by promoters through the secondary market
- (d) Institutional Placement Programme (IPP)

Existing listed Private sector companies have to ensure a minimum 25% Public shareholding by June 2013.

SEBI recently amended Clause 40A of the Listing Agreement to include the following additional methods with a view to facilitate listed entities to comply with the minimum public shareholding requirements within the time specified in Securities Contracts (Regulation) Rules, 1957 :-

- (a) Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from issue.
- (b) Bonus Issues to public shareholders, with promoters/promoter group shareholders forgoing their bonus entitlement to equity shares, whether present or future, that may arise from issue.
- (c) Any other method as may be approved by SEBI, on a case to case basis.

New governance rules for the depositories

SEBI, through SEBI (Depositories and Participants) Regulations, 1996 prescribed new governance rules for the depositories including those related to composition of their boards, salaries of senior officials and their listing. The highlights of the amendment are as under:-

- Associate, Control, Governing Board, Key Management Personnel, Persons Acting in Concert, Public Interest Director, Regulatory Department and Shareholder Director has been defined.
- A depository board would include shareholder directors, public interest directors and managing director.
- The chairperson would be elected from amongst the public interest directors.
- Number of Public interest directors cannot be less than the number of shareholder directors.
- Managing Director cannot be included in either the category of public interest directors or shareholder directors.
- All directors are required to abide by the Code of Conduct specified under its regulations.
- An ethics committee shall be constituted for overseeing implementation of this Code. The Compliance Officer shall execute the requirements laid down by the ethics committee.
- A Compensation committee would determine the pay of key management personnel.

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- A depository can apply for listing of its securities on a recognised stock exchange, subject to certain conditions.
 - Depositories need to segregate its regulatory departments from other departments and should have a 'Business Continuity Plan' for data and electronic records to prevent, prepare for, and recover from any disaster.
 - In order to ensure the segregation of regulatory departments, every depository shall adopt a "Chinese Wall" policy which separates the regulatory departments of the depository from the other departments. The employees in the regulatory departments shall not communicate any information concerning regulatory activity to any one in other departments.
 - In exceptional circumstances employees from other departments may be given confidential information on "need to know" basis, under intimation to the Compliance Officer.

Steps to re-energise Mutual Fund Industry

In order to increase penetration of mutual fund products and to energise the distribution network while protecting the interest of investors, SEBI initiated the following for the benefit of mutual fund industry, effective from October 01,2012 except the measures relating to direct Mutual Fund which shall become applicable from Jan.01,2013:

- The Mutual Funds can charge up to 30 percentage points of additional TER (Total Expense Ratio).
- A fee charged to investors for Mutual Fund investments under fund management and other heads -- if the new inflows from beyond top 15 cities are at least 30 per cent of gross new inflows in the scheme or 15 per cent of the average assets under management (year to date), whichever is higher.
- The top 15 cities would be decided on the basis of data compiled by the Association of Mutual Funds in India (AMFI) data for 'AUM by Geography - Consolidated Data for Mutual Fund Industry' as at the end of the previous financial year.
- Mutual Funds are required to make complete disclosures in their half yearly report to SEBI regarding the efforts to increase geographical penetration and the details of opening of new branches, especially those beyond top 15 cities.
- Mutual Funds are now allowed to charge service tax on investment and advisory fees to the scheme.
- Mutual Funds should launch schemes under a single plan and ensure that all new investors are subject to single expense structure.
- Existing schemes with multiple plans can accept fresh subscriptions only under one plan and other plans will continue till the existing investors remain invested in the plan.

- Mutual Funds are required to provide a separate plan for direct investments (investments not routed through distributor) in existing as well as new schemes.
- Such separate plans shall have a lower expense ratio excluding distribution expenses and commission, and no commission shall be paid from such plans.
- All the agents or distributors of Mutual Funds units are required to obtain certification from the National Institute of Securities Markets (NISM) and registration from AMFI.
- A new cadre of distributors, such as postal agents, retired government and semi-government officials, teachers and bank officers with a service of at least 10 years, and other similar persons (such as Bank correspondents) may be allowed to sell units of simple and performing mutual fund schemes

End Note

Capital markets in India have acquired greater depth and liquidity over the years. Steady reforms since 1991 have led to growing linkages and integration of the Indian economy and its financial system, particularly Capital Markets, with the global economy. Weak global economic prospects and continuing uncertainties in the international financial markets therefore, have had their impact on the emerging market economies. High growth rate and good returns has lead to steady capital inflow. The decisions by the Government to open the FDI in long restricted retail sector will enhance the investor confidence and also accelerate the Indian economy.

Corporate and Financial services players are the key catalysts driving inclusive growth, it is important to understand and appreciate the key challenges and hindrances that have prevented us from achieving full-financial inclusion in the past. Despite the efforts made so far, a sizeable majority of the population, particularly vulnerable groups, continue to remain excluded from the opportunities and services provided by the financial sector. In order to counter challenge the traditional methods of financial inclusion, a new approach need to be adopted- that entails development of viable business model, innovative products and services, partnerships among broader stakeholders and more participative role from government.

To enable the Capital markets of India to drive the economic growth, there is need to expand the participation of retail investor and also enhance the investor morale and domestic allocation. To attract the investments, procedure and processes for investments in financial products are required to be made simpler, sound reforms are necessary for better transparency.

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REMODELLING INNOVATION FOR SUSTAINABLE ECONOMIC GROWTH : SME A TOUCHSTONE

ARCHANA KAUL* & CS DISHA KANT**

Innovation directly proportional to growth

A business is always established with an idea to generate wealth and employment, but survival of business in the long run depends on sustained growth and innovation and in present knowledge-driven economy, innovation is the prime driver of progress. To survive in contemporary times of stiff competition, it is crucial to create, innovate, market and sustain innovativeness. Innovation and competitiveness have a dynamic, mutual relationship. Innovation thrives in a competitive environment and in turn, plays a key role in the achievement of success. Innovation generates economic value, new jobs in the economy and cultures of entrepreneurship. By virtue of its relationship with competitiveness, innovation emerges as a factor in promoting economic growth.

What Innovation Means

What does innovation mean? Generally we say 'successful exploitation of new ideas'. If we look at the meaning of the word "innovate" in any dictionary we will find something like this: To innovate is "to introduce something new." It does not say you need to be a creative genius.

In the simplest form, it means coming up with new ideas and putting them to work in our businesses and industries. Making a product or offering a service that no one had thought of before.

According to National Knowledge Commission 2007 survey:

'Innovation is defined as a process by which varying degrees of measurable value enhancement is planned and achieved, in any commercial activity. This process may be breakthrough or incremental, and it may occur systematically in a company or sporadically; it may be achieved by:

— introducing new or improved goods or services and/or

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- *implementing new or improved operational processes and/or*
 - *implementing new or improved organizational/ managerial processes*
- in order to improve market share, competitiveness and quality, while reducing costs.'*

In the context of Indian economic scenario, ability to generate wealth and create social good is worthless unless we capitalise on innovative ideas by unshackling entrepreneurship.

Realising that innovation is the engine for the growth of prosperity and national competitiveness in global landscape, the President of India declared 2010 as the 'Decade of Innovation'. Re-affirming the same Prime Minister Mr. Manmohan Singh at the 97th Indian Science Congress said that "The country must develop an innovation ecosystem to stimulate innovations. Innovators must be challenged to produce solutions our society needs. And innovative solutions with potential must be nurtured and rapidly applied."

Innovation can not anymore be shackled in Research & Development Departments of any organisation rather it has evolved to mean new and unique applications of old technologies, using design to develop new products and services, new processes and structures to improve performance in diverse areas, organisational creativity, and public sector initiatives to enhance delivery of services. Innovation is being seen as a means of creating sustainable and cost effective solutions for people at the bottom of the pyramid, and is being viewed as an important strategy for inclusive growth.

Innovative spill over and Micro, Small and Medium Enterprises

When it comes to sustained inclusive growth and equitable income distribution there is no magic wand. We have to work out a solution that is based on utility and sustenance. This reminds of Gandhian philosophy of inclusive growth; he believed in "production by the masses" rather than in mass production. Gandhiji's philosophy of inclusive growth has been fundamental to the rural renaissance of India.

Perhaps we acknowledge the Gandhian philosophy today. Establishing small-scale and medium-scale factories in smaller towns and remote corners of the country, is far more easy and accessible now than ever. Technological revolution and encouragement to entrepreneurial skills and advancement has turned around the wheel of economic sustained growth towards low capital intensive, employment generators, i.e. Medium, Small Scale Enterprises (MSME). Economic liberalization led to a significant competitive rise in the Indian economy and therefore in innovation. Innovation has positively impacted profitability of the manufacturing sector and a greater reduction in the costs for the service firms. MSMEs are innovative in terms that the product they offer has ingrained quality of mass acceptance, marketability, and work on business model of minimal for maximum. They work on the basis of Gandhian philosophy of *Getting More from Less for More*.

In India, the MSMEs play a pivotal role in the overall industrial economy of the country. In recent years the MSME sector has consistently registered higher growth rate compared to the overall industrial sector. With its agility and dynamism, the sector has shown admirable innovativeness and adaptability to survive the economic downturn and recession.

Worldwide, the MSMEs have been accepted as the engine of economic growth and for promoting equitable development. The major advantage of the sector is its employment potential at low capital cost. The labour intensity of the MSME sector is much higher than that of the large enterprises. The MSMEs constitute over 90% of total enterprises in most of the economies and are credited with generating the highest rates of employment growth and account for a major share of industrial production and exports.

MSMEs and Economic Development

According to the Report of The Working Group on Micro, Small & Medium Enterprises (MSMEs) Growth for 12th Five Year Plan (2012-2017), the micro sector contributes significantly to manufacturing output, employment and exports of the country. It is estimated that in terms of value, the sector accounts for about 45 per cent of the manufacturing output and 40 percent of total exports of the country. The sector is estimated to employ about 69 million persons in over 26 million units throughout the country. There are over 6000 products ranging from traditional to high- tech items, which are being manufactured by MSMEs in the country. It is well-known that MSME sector provides maximum opportunities for both self-employment and jobs, outside agriculture sector. The inclusiveness of the sector is underlined by the fact that nearly 50% of the MSMEs are owned by disadvantaged groups of society.

In times of cut throat competition, MSME have made their space in Indian and global economy. MSMEs have the apt to adapt local needs into business ideas, and to touch upon basic requirements of society leading to a sustainable business model which generates livelihood, employment opportunities for many. The business model is the utility model and speed at which MSMEs have grown is incredible.

Arthur B. Van Gundy in his book *Idea Power: Techniques and Resources to Unleash Creativity in Your Organization*, outlines seven important factors for creating a climate for innovation:

1. *Risk Taking* – Any change requires some acceptance of risk.
2. *Autonomy* – Creative ideas are best generated when there is some degree of freedom of thought.
3. *Performance / Reward* – You must link rewards to specific performance.
4. *Tolerance of Differences* – An innovative climate recognizes that everyone is not alike and innovation works when everyone can express their ideas.
5. *Top Management Support* – Creating an innovative climate begins at the top, not at the bottom.
6. *Initiating and Encouraging Ideas* – Innovation requires a continuous flow of ideas – lifeblood of the organization.
7. *Positive Response* – Innovative ideas should receive strong positive response, not just passive encouragement.

MSME's provide conducive environment to promote innovation and creativity.

As per the National Knowledge Commission (NKC) Report (2007) 17% of the MSMEs are highly innovative: 70%, 56% and 17% of MSMEs have introduced innovation that is "new to the industry", "new to India" and "new to the world" respectively.

MSMEs play a significant role in the economic development on the country, and their contribution to the economic development is attributed to its innovative ability. MSMEs are widely acknowledged as the source of innovation. Their ability to exploit new technologies, and to respond quickly to changing market needs, gives MSMEs a pivotal edge in the success of the any economy. MSMEs are more creative than Large Enterprises because of the indomitable spirit of the entrepreneur and creativity. However, scale of research and variety of customizable services vary. MSMEs are more adaptable to evolving trends; tend to create smaller, more practical systems because of their limited people power.

MSMEs can maximize their profitability by focusing on innovation and licensing or selling their innovations to large corporations for production and development. Innovation will help MSMEs in improving performance, growth efficiency, productivity, quality, competitive positioning and market share. Further, smart innovation helps in reducing the cost of product that an organization bring to market thus enhance the reach and prospects of the product along with best message for buyers. Innovation can result in a lower cost product, lower cost promotion and more sales.

C.K. Prahalad and R.A. Mashelkar in a article "Innovation's Holy Grail" in Harvard Business Review (July–August 2010) said that

"Smart Indian companies have come up with new technologies and radical business models to penetrate the country's mass markets. They have done this by transforming almost every element of the value chain, from supply-chain management to recruitment, and creating novel business ecosystems.

Some describe this phenomenon as an extension of the Indian tradition of jugaad: developing alternatives, improvisations, and makedos to overcome a lack of resources and solve seemingly insoluble problems. However, the term "jugaad" has the connotation of compromising on quality. We prefer "Gandhian innovation," because at the core of this type of innovation lie two of the Mahatma's tenets: "I would prize every invention of science made for the benefit of all," and "Earth provides enough to satisfy every man's need, but not every man's greed."

The smart Indian companies are none other than MSME sector which provide for sustainable business model. In India we have witnessed these jugaad's turning into business models, we have few practical business models to discuss and bring before you the creative entrepreneurial India

Creative Entrepreneurial India

CraftMyGift

Jyoti Ramnath is the founder of CraftMyGift (www.CraftMyGift.com), a company

specializing in creative and unique gifts in India. While at the idea stage, CraftMyGift won the best business plan award at MPWE (IIM-B) in 2007. A first generation entrepreneur, Jyoti has been able to take CraftMyGift from a new experimental concept to a fully functional business. Jyoti has been featured in the book "Inspiring Women to Start Innovative Enterprises" by Sria Majumdar. She was also selected as one of the 100 Most inspiring young entrepreneur fellow across Asia Pacific by FYSE (Foundation for Youth and Social Entrepreneurs) for 2009-10.

The company CraftMyGift was founded after finding a need in the market to create personalized gifts which speak emotions and preserve memories. With an eye for creative concepts CraftMygift is a global company creating life time gifts for customers all over the world. CraftMyGift does not have any retail outlets. It operates via the website www.craftmygift.com and takes orders online and carries out the necessary client interaction via telephone or email.

The company attracts customers from across the country. Some of their corporate clientele in Bangalore include Intel, Yahoo, Café Coffee Day, and Mobile Monday Bangalore.

HUSK POWER SYSTEMS : Small-scale biomass power generators

Rural electrification is one of the areas where India's Five Year Plans have not been successful. The conventional technologies and grids have failed to satisfy the persistent energy starvation in the country. A non-conventional technology solution that paved its way out of necessity than an option has a remarkable reach today.

Fastest growing MSME Husk Power Systems (HPS) is a rural empowerment enterprise. It focuses on inclusive rural development on the backbone of electric power. It creates a self-sustaining ecosystem in the villages it serves, enabling economic development along with environmental protection, physical well-being and strengthening of the rural communities. With a hybrid and a successfully financed business model HPS has won accolades world over.

It designs, installs and operates biomass-based power plants. Each plant uses proprietary gasification technology to convert abundant agricultural residue (procured from local farmers) into electricity, which is then distributed to rural households and micro-enterprises through a micro-grid system – providing a better quality, cheaper way to meet their need for energy.

HPS provides end-to-end renewable energy solutions by installing 25-kW to 100-kW 'mini power plants' and then wiring villages and hamlets of up to 4000 inhabitants to deliver electricity on a pay-for-use basis.

- HPS uses a biomass gasification based proprietary electricity generation process, that generates electricity using 100% producer gas based system.
- HPS distributes electricity directly to households and small businesses while keeping costs low by running insulated wires along bamboo poles to subscribing households, businesses and farms.

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- HPS Total Landed Cost of Installation < \$1,300 per kW.*
 - Operational Cost is < \$0.15/kWh.
 - Payment Structure: Consumers pre-pay a fixed monthly fee ranging from US\$2 - \$3 to light up two fluorescent lamps and one mobile charging station. This offers consumers savings of at least 30% over competing kerosene and diesel energy sources (annual savings of up to US\$50) and a lighting package that can serve the whole household. Additional customised packages are available to meet the varying needs of each customer.
 - Technology used: HPS manages a network of decentralised power plants across wide geographies using a cloud-based, real-time monitoring system. Electricity is distributed through micro-grids made from bamboo or other sustainable materials instead of concrete. A custommade pre-paid meter helps the company ensure that consumers utilise no more than the wattage they have paid for. Low-cost transformers developed by the company ensure consistent voltage flow and theft free distribution.

Further, it creates an ecosystem around each plant by providing income generation opportunities to local farmers and entrepreneurs. Additionally, it creates employment through its livelihood programmes such as the incense stick manufacturing program which largely employs women. This enables sustainable development within the communities HPS serves. Since 2008, HPS has successfully installed more than 80 plants in Bihar, providing electricity to over 200,000 people across 300 villages.

These are true examples of creative entrepreneurial India, a sustainable business model, that supports self sustainability of rural and young India.

IPR Solutions

In a knowledge driven society, technological innovation is regarded as an important factor that drives national competitiveness and corporate competitiveness alike. While innovation is the key word for every economy, India's challenge is to make innovation work for the masses and create sustainable businesses.

Innovative and creative ideas need to be developed, turned into innovative products or services and commercialized successfully so as to enable MSMEs to reap the benefits of innovation and creativity. Intellectual Property (IP), patents in particular, can be crucial for turning innovative ideas and inventions into competitive products that significantly increase profit margins.

IPR is being increasingly recognized as a powerful tool to create wealth through knowledge. MSMEs persistently face the challenge of extracting the latent value of their Intellectual Property (IP). It has always been difficult for them to use it effectively in their business strategy. Organisations that commit time and resources in protecting their intellectual property assets can increase their competitiveness in a variety of ways.

Use of Intellectual Property Rights can generate an additional income for MSMEs through the licensing, sale, or commercialization of the IP-protected products or services that may

significantly improve an enterprise's market share or raise its profit margins. IP also improves the worth of MSMEs in the eyes of potential, existing investors or financial institutions. Strategic use of IP assets can substantially increase the competitiveness of the MSMEs.

One major obstacle in the growth of MSMEs is the lack of proper marketing strategies. Intellectual Property is crucial for marketing of the products and services of small businesses if used efficiently. IP can build a strong image for the business as a whole in the minds of current and potential customers and in positioning their business in the market. IP rights, together with other marketing tools e.g. advertisements and other sales promotion activities are crucial for creating a differentiation for MSMEs products and services from other brands providing them their own identity and place in the market, diversifying the market strategy to various target groups, promotion of products and services and for giving that extra edge to their products & services to make them desirable in foreign markets.

Despite the need and benefits of IPR, MSMEs do not realize the significance of IPR to protect their ideas and innovation as they are more focussed on production and operation of their entity. There is need to facilitate better awareness on the strategic aspects of creating, managing, protecting and leveraging IP as a tool to further business opportunities and enable wealth creation. MSMEs are emerging as crucial players in the global knowledge economy and unlike larger firms, they may not have the necessary resources to make the best use of IP. In this context, it is essential for special awareness campaigns for MSMEs so that they are made fully aware of the various implications of IP and optimally translates such understandings into their everyday business practices.

Informal Advantage

The National Innovation Foundation-India (NIF), is India's national initiative to strengthen the grassroot technological innovations and outstanding traditional knowledge. National Innovation Foundation helps innovators get due reward for their innovations and ensure that such innovations diffuse widely through commercial and non-commercial channels. With major contribution from the Honey Bee Network, NIF has been able to build up a database of more than 1,60,000 ideas, innovations and traditional knowledge practices (not all unique) from over 545 districts of the country. Through the collaborations with R&D institutions, NIF helps in getting these innovations validated and converting them into value added technologies/products.

NIF has filed over 550 patents on behalf of the innovators and outstanding traditional knowledge holders of which thirty five patents have been granted in India and four in USA. Micro Venture Innovation Fund at NIF has provided risk capital for 178 projects, which are at different stages of incubation. NIF has succeeded in commercialising products across countries in six continents apart from being successful in materialising sixty four cases of technology licensing.

Many of these innovations have high potential for commercialization by small and medium scale entrepreneurs through exclusive or non-exclusive licenses. MSMEs can take advantage of such database and infact this is a platform for innovative MSMEs to showcase their innovations and modifications.

BACKGROUNDER

Innovation for Sustainable growth @ Government initiative

Setting up of a National Innovation Council (NInC) under the Chairmanship of Mr. Sam Pitroda, is a government initiative to discuss, analyse and help implement strategies for inclusive innovation in India and prepare a Roadmap for Innovation 2010-2020. NInC is a step towards creating a crosscutting system which will provide mutually reinforcing policies, recommendations and methodologies to implement and boost innovation performance in the country. The terms of reference of the Council specifically provides for creating a framework for Facilitating innovations by MSMEs.

In this context, the Council decided to set up a MSME Sectoral Innovation Council with an aim to re-define innovation to go beyond R&D laboratories and factories to offer novel solutions that lead to inclusive growth, foster appropriate eco-system across domains and sectors to strengthen entrepreneurship, focus on key drivers to ensure scalability, sustainability, durability and quality.

In this race of growth and prosperity of the corporate world, MSME sector has been gradually recognized as the most powerful and valuable strategic weapon. Traditional factors of production of land, labour, capital and organization are being replaced by knowledge, which is considered to be the key to formation of intellectual capital. Inventions have an inherent capability for improvement and progress. Knowledge, creativity, innovation and ideas could make or break a company likewise MSMEs. Intangible intellectual capitals are to be leveraged to improve performance and profitability to achieve sustainable growth and excellence. To achieve this, MSME has to pursue a long-established strategy of innovation to encourage its people to think and come up with new products from the company's core competence. One should bear in mind that creativity not only helps in solving immediate problems but also provides requisite momentum to adapt innovative and imaginative behaviour as part of the work culture, and to develop a conducive environment in the organization.

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CHANGING GLOBAL ECONOMIC SCENARIO AND ITS IMPACT ON INDIA

CS BANU DANDONA* & CHETNA SONI**

"While current solutions have stabilized the world economy, the world economy will not improve unless it receives further stimulus. Paul krugman author of End This Depression Now! (2012)"...

The story begin in the year 2007 when a new term "Sub-Prime Crisis" coined in the USA - became the reason for other economies to declare Sub-Prime Crisis as the root cause of everything happening and every mishap in their economies...

The situation has only changed to the extent that today the place is taken by Euro-zone crisis.....

Sub-Prime Crisis

Sub-Prime Crisis was the crisis under which financial institutions/banks/ mortgage brokers lured by huge amount of commission provided the fund to borrowers without verifying their credit worthiness or with little or no down payment.

The very simple reasons for easy credit or Sub-Prime were the steadily decreasing interest rates¹ backed by the U.S Federal Reserve from 1982 onward and large inflows of foreign funds for a number of years prior to the crisis. This fueled a housing construction boom and encouraged debt-financed consumption. **But these good days could not remain for long time. The bursting of "United States Housing Bubble" became the immediate cause of worst economic crisis.**

Shadow Banking System

Moreover the increase in shadow banking system (SBS) and its practices made the situation worse in USA. SBS means carrying the activities other than those which are

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1 From 2000 to 2003, the Federal Reserve lowered the federal funds rate target from 6.5% to 1.0% - (source <http://en.wikipedia.org>)

subject to regulation and monitoring by Central Government and conducting many of their transactions in ways that don't show up on their conventional balance sheet accounting and so are not visible to regulators or unsophisticated investors. Result of this practice leads to the failure of banks and financial institutions and such failure of two big banks namely **Lehman brothers and Merrill Lynch** had given first shock to the world's economy including India. Indian economy was badly affected because these banks have invested a substantial amount in the Indian banks which invested a huge amount in derivatives and in real sector.

Steps to resolve the crisis taken by US Government and The Central Bank

The U.S. Federal Reserve and the Central Bank in USA took many steps to expand money supplies to avoid the risk of a deflationary situation. In addition, US Government enacted large fiscal stimulus packages, by borrowing and spending to offset the reduction in private sector demand caused by the crisis. During the last quarter of 2008, Central Banks purchased US\$2.5 trillion of Government debt. This was the largest liquidity injection into the credit market, and the largest monetary policy action, in the world history. The Governments of European nations and the USA also raised the capital of their national banking systems by \$1.5 trillion, by purchasing newly issued preferred stock in their major banks.

Bailout packages

US Governments have also bailed out a number of firms incurring large financial obligations. Various U.S. Government agencies have committed or spent trillions of dollars in loans, asset purchases, guarantees, and direct spending.

Reforms by US President - The US Administration gave the final shape to some of its reformatory steps like--consumer protection, restriction on executive pay, banks/ financial institutions were cushioned with their capital requirements, expanded regulation to curb Shadow Banking System and derivatives, and enhanced authority to the Federal Reserve. These were some of the innovative steps taken by the Government which led the country out of crisis.

Similarly, the European regulators introduced Basel III regulations for banks. It increased capital ratios, limits on leverage, narrow definition of capital (to exclude subordinated debt), limit counter-party risk, and new liquidity requirements.

Finally NBER (National Bureau of Economic Research) declared that the recession that began in December 2007 ended in June 2009 and the financial crisis appeared to have ended about the same time. President Barack Obama declared on January 27, 2010, "the markets are now stabilized, and we've recovered most of the money we spent on the banks".

Euro Zone Crisis-What Went Wrong with the Great Euro Zone Experiment ?

On January 1, 1999 eleven European countries decided to denominate their currencies into a single currency.

The "Euro system" comprised the European Central Bank (ECB), with 11 central banks of participating States assuming the responsibility for monetary policy. The "Euro" took the

form of notes and coins in 2002, and replaced the domestic currencies. From eleven Euro zone members in 1999, the number increased to 17 in 2011.

Euro-zone crisis- A brief synopsis

- After the formation of Euro-zone in 1999 its member countries agreed to limit the 3% borrowing limit of GDP for each members from the Euro fund.
- But who followed the rules ? As per overall statistics available among the bigger EU countries Italy was the worst offender. It regularly broke the 3% annual borrowing limit. Followed by even Germany which flouted the rules but managed its borrowing because of its powerful export policy. Greece, manipulated its borrowing statistics to look good which was disclosed later.
- **Misleading entry by Greece** : As per the report by BBC news Greece used falsified financial records² to gain entry into the Euro zone. Greece bestowed far more benefits to its population than it could really afford, apparently thinking that it would forever have access to easy money at favorable rates.
- Unfortunately, the Euro zone expanded too quickly and the rapid growth in the number of states within the Euro zone made the decision-making more cumbersome. Member countries started taking undue benefit from the low interest rates and easy access to credit that they enjoyed.
- GDP of European countries has contracted, every year since the launch of the Euro. It shows very clearly the damage caused to the whole of the Euro-zone by the financial crisis
- The creation of Euro zone had an inherent contradiction of being a monetary union but not a fiscal union. Its introduction explicitly prevented the ECB (European Central Bank) or any national Central Bank from financing Government deficit.
- On 2nd May 2010, to reassure investors confidence, the EU and IMF put together a •110bn bailout package for Greece on the condition of implementing austerity measures.
- The position reached to the point where debt in these countries became a burden not because of Government profligacy but because each enjoyed easy credit which fuelled debt in households and the financial sector. The European Central Bank oversaw this situation and countries reached to the point of bankruptcy.

Member countries of Euro zone failed to see that other structural problems were far more dangerous to economic stability of the Euro zone that included the lack of control and regulation over national financial institutions

Present Situation in Euro Countries

- **Nasty recessions** : Spain and Italy are now facing nasty recessions, because of lack of

2 In late 2009, Greece admitted that its fiscal deficit was understated (12.7 % of GDP, as against 3.7 % stated earlier). (source-www.bbcnews.com)

fund and no-one is in the situation to spend. Companies and mortgage borrowers are involved in repayment of their debts. Exports have become uncompetitive.

- **“Your debt, your fault”** : On the demand of bailout packages from Germany (The 50 billion Euros demanded solely by Greece) gave this statement again and again that the member itself was responsible for its bankrupt condition. To end the crisis, the member countries agreed to write down half of the Greek debt owned by the private sector, recapitalize Europe's banks and boost the fund created as a firewall to protect solvent Euro-zone Governments. It is an ambitious plan, but Greece may need even more help.
- **Stricter budget rules** : The Government of both Germany and France have been the driving force for stricter budget rules for the Euro-zone, including fines for rule-breakers. But their steps have aroused some dissent.
- **Downgrading the credit rating** : France is now in a weaker position as it has lost its AAA credit rating from Standard and Poor's.
- **Increasing Unemployment and decreasing wages** : Deepening the recession in these countries means more unemployment (already over 20% in Spain), which has pushed wages down to more competitive levels.
- **The European Financial Stability Facility (EFSF)** is a special purpose vehicle/ consolidated bailout fund that was created as an emergency measure in May 2010, financed by members of the Euro zone. The mandate of the EFSF is to "safeguard financial stability in Europe by providing financial assistance" to Eurozone states in economic difficulty. Euro zone countries pledged 440 billion Euros in loan guarantees, which the EFSF used to supply 192 billion Euros in bailouts for Ireland, Portugal and Greece.

The EFSF can issue bonds or other debt instruments on the market with the support of the German Finance Agency. Emissions of bonds would be backed by guarantees given by the Euro area member states in proportion to their share in the paid-up capital of the European Central Bank (ECB). (<http://www.efsf.europa.eu>)

- **European Stability Mechanism (ESM)** : The EFSF, which was established with a total lending capacity of •440bn (€348bn), is due to be replaced by a permanent bailout fund called the European Stability Mechanism, with •500bn of firepower. It was originally to start up in 2013 when the EFSF will shut down, but it is now to become operational in late 2012. **ESM is sometimes described as Europe's version of the International Monetary Fund.** (<http://topics.nytimes.com>)

European leaders agreed that the bailout funds could recapitalize the banks in trouble directly. The specific amount to be disbursed from EFSF. But the leaders agreed that ESM would not act until a banking supervisory body overseen by the European Central Bank had been set up.

German court's Decision on ESM

On September 11 2012 , the court ruled in Germany in favour of its contribution to the bailout fund with a key condition attached that Germany's liabilities will be capped at •190billion . The ruling is considered as one of the most important decision in the court's 61-year history in Germany. The Euro reached a four-month high and European stock markets rose after this decision.

This is a milestone decision for the 17 European Union countries that use the Euro. Without German money and support, the bailout fund could not operate, means it could not proceed with plans to rescue Spanish banks or work with the ECB to control market interest rates.

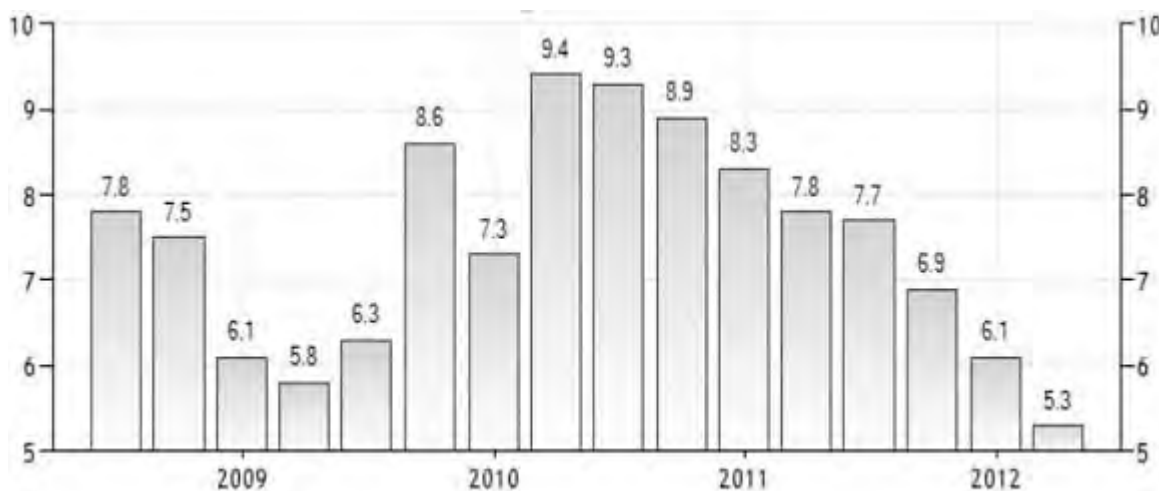
In brief Euro-zone has created nervousness in financial markets , as confidence eroded, the inflow of foreign capital dried up and public debt mounted. The markets have been penalizing one economy after another and the contagion effect seems to be spreading

But this is a good learning for India and other countries that "On the extreme, all private debt could potentially be public debt".

"It is the fiscal mismanagement that has spelt trouble for Europe. It is imperative that we draw the right lesson from this". (Dr. Manmohan Singh, Honourable Prime Minister India)

Indian scenario

INDIA GDP GROWTH RATE
Percent Change in Gross Domestic Product



SOURCE : WWW.TRADINGECONOMICS.COM INDIA CENTRAL STATISTICAL ORGANIZATION

The chart shows the decreasing trend of GDP in India . GDP of our country is reduced to 5.3% in comparison to the economy of China which is at 8.1% .

BACKGROUNDER

These growth rates are fabulous for developed nations but not for India and China as they need higher rates of growth to meet the demands of their vast and urbanizing populations.

Whatever the growth data and GDP analysis show, the truth is that India's problems are huge by any yardstick. Over half a billion people living on less than two dollars a day - a staggering number. The present economic tangle is a direct outcome of the fact that India is one of the few economies where nearly 25% of the productive workforce is required to support and subsidize the remaining. Moreover, rapid increase in inflation is breaking all the records. Accepted wisdom is that inflation hurts the poor the most and, since most people are poor, this can quickly lead to a backlash.

Causes of the above - We can divide the causes in two parts to know the effect of each one -

1. External Causes
2. Internal causes

External Causes

- It is very much clear that the external crisis affects India but to what extent ???.
- Is it only Euro-Zone crisis responsible for the present financial crisis in India ???

As per the article on Indian economy by the chairman of Asia Pacific, Boston Consulting Group India - "**Greece is in trouble, should Indians really be worried ?** Greece has 10 million people and is not growing, Bihar has 103 million people and has grown 10%. Italy, Spain and Greece account for 5% of world's GDP. By 2020 the US and Europe together will consume an additional \$7 trillion, Asia will add \$15 trillion (India and China-alone will make \$10 trillion)" Simply, it is only the Asian countries which will redesign the future. But with strict measures towards economy.

Internal Causes

There are multitude of internal causes like- huge Government subsidies, inflation, frequent rate hikes by RBI, lack of investment in core sectors, poor growth rate in agriculture, delayed policy decisions on behalf of the Government ('policy paralysis'), anti-growth and pro-inflation policies meted out by the socialist welfare state at the Centre, corruption at every strata of administration..

Effect of crisis on Indian economy

Beginning of Credit Crunch or declining of the liquidity : India is an emerging economy, so a huge percentage of investment in India come from outside the country, especially from US but due to recession in US, big institutions got collapsed and many of them reached to the point of breakdown. They started pulling out their investments from India.

It not only led to massive outflows of foreign institutional investment (FII) but also

compelled Indian banks and corporations to shift their credit demand from external sources to the domestic banking sector.

Effects of the above : The above fact has not only brought India into the position of credit crunch but due to this, demand of dollar rose up and rupee rose to the lowest point ever.

Also less inflow of foreign fund diluted the GDP growth of India as India was nowhere in the condition so soon to return those foreign funds as the same was utilised for subsidizing the petroleum and oil products and on dozens of infrastructure schemes.

Increasing import and decreasing export orders, as India's need of oil and petroleum did not reduce on the one hand and on the other export orders from emerged/developed economies declined drastically. (Merchandise exports shrunk by more than 17% from October 2008 to May 2009). The value of rupee vs dollar eroded.

Ratings agencies Standard & Poor's and Fitch down graded the rating of credibility of India and also its banking system. India risked losing the investment grade status and was under threat to have its name removed from the list of "BRICS" nation and be replaced by "Indonesia".

Direct Impact of Euro Crisis

As far as India is concerned, the European Union is a major trade partner accounting for as much as 20.2 per cent of India's exports (in 2009-10) and 13.3 per cent of India's imports. European Union countries imported roughly • 33.1 billion worth of Agriculture products, Fuel and mining products, machinery and transport equipment, chemicals, semi manufactured products textile and clothing products in 2010 from India.

The EU exports to India amounted to •34.8bl, majority of which was machinery, chemical products and semi manufactured items which was almost 2.6 percent of EU exports. Bilateral trade between the two grew on an average of 9.6 per cent during 2006-10. EU services exports to India during 2010 was •9.8 billion and EU imports from India was •8.1 billion.

The total FDI from EU during 2010 amounted to •3.0 billion while India also invested about •0.6 billion in the EU. In other words, a slowdown in the Euro zone and the EU is likely to have a major adverse impact on India's exports. (Source-Report by Ministry of finance, India)

Effects on Indian Companies - Those Indian Companies which depend upon foreign funds for financing their trading activities got badly hit by this crisis because funds were available at huge premium/interest rate to blue chip companies.

Side effect of the above - Because of above situation for companies following areas got affected-

- Reduction in expansion activities and so the production is reduced;
 - Increasing cost of production leading towards hyper inflation;
-

BACKGROUND

- Increasing rate of interest which again affected profitability of companies and which directly discouraged entrepreneurship ;
- Fear of getting out of market domestically and internationally;
- Government policy of PPP (public private partnership) has also got hit.

Impact on Service Sector

1. Banking Sector - Fortunately, India was able to avoid the first round of adverse effects because its banks were not overly exposed to sub-prime lending. Only one of the larger private sector banks was partly exposed, but it also managed to avoid a crisis because of its strong balance sheet and timely action by the Government. The banking sector as a whole remained financially sound. In fact, during the third quarter of FY2008–2009, which was a nightmare for many large global financial institutions, banks in India announced encouraging results and witnessed an impressive jump in their profitability (source-Kumar and Vashisht 2009).

Likewise, exports of services also faced a steep downturn. During the third quarter of FY2008–2009, growth in services exports declined to a mere 5.9%, as compared to 34% in the corresponding period the previous year

2. Earnings from travel, transportation, insurance, and banking services also suffered sharp contractions, while the growth of software exports declined by more than 21 percentage points.

From the above discussion it is quite clear that one critical situation in economy has harmful effects in other areas too and the cycle of these effect and side effects can dither the progress of any economy unless strict measures are taken at all the levels.

What is the Solution ???

The apprehension here is that Indian economy might slip back to 1991 level. Today, many of experts argue that India is nowhere near such a situation , because India still have lot of foreign currency reserves, and high rates of savings and investments. But others argue that at present India is facing twin deficits-i.e. Current Account Deficit(CAD) and Fiscal Deficit which are as large as they were in 1991 and without taking true "AUSTERITY" measures it is difficult to take Indian economy back to pre-reforms era.

Probable solution to the crisis in India-

India needs FDI, and India needs it now. It needs it to boost the economic growth. A bigger economic revival is possible if, money, technology and human expertise arrive from abroad on a much larger scale than it has been coming in last few years.

Tax measures - Tax clarity is demanded by all the sections including FIIs, amendments in Income Tax Act needs relook to attract foreign investment.

Strengthening of infrastructure - Infrastructure development in India needs push as a tool for strengthening demand and also to bring revival in the growth momentum. For this there is urgent need to promote Science, Engineering and Technology innovation and its

exploitation through technology transfer. There is also need to Take up international and industrial collaborative programmes for self - sustenance and resource generation.

Removal of corruption - In the last two decades, the emergence of an international good governance agenda has fostered the implementation of anti-corruption efforts in several countries. A strong effort is needed in India .

Getting back to Roots - Indian economy is agriculture based economy. It is a matter of serious concern that as a percentage of agriculture share on the GDP has reached so low that it has resulted food inflation to double digit level. Second Green revolution is needed to support farmers and also the people of India. Macro level policies including policies to strengthen agricultural and non-agricultural sector linkages should be done together to make proper supply of agricultural materials .

Controlling the Fiscal deficit/Controlling the Government expenditure - As per ASSOCHAM High borrowings/increasing expenditure by the Government and cost of funds is also responsible for increasing Current Account Deficit.

Economist Miller (1983) points out that fiscal deficit in all cases lead to generate inflationary pressure in the economy

Further, as per the key recommendations of the Thirteen Finance Commission (TFC), fiscal deficit should drop to 4.2% in 2012-13 and to 3% of the GDP in 2013-14. The target for FY'12 has already exceeded by almost 1.1%, and on the whole, it will be a challenging task for the finance ministry to bring down the deficit in-line with the TFC's suggestions in FY'13. Therefore, the budget needs to provide more measures for responsible fiscal management to make sure that the Government is able to achieve and reduce its fiscal deficit target, improve macro-economic management as per the Fiscal Responsibility and Budget Management Act 2003.

Proper check on different Social Schemes of Government- Without a doubt social schemes like MNREGA have benefitted a large part of society belonging to lower income group or labour class. It has no doubt improved their standard of living, but spending huge amount of money without proper analysis and monitoring and by neglecting the mal- practices in many districts have only increased the Fiscal Deficit of Government.

Spending under some heads, especially some social sector schemes, should be properly checked so that disbursement happens in transparent manner

- Harmonization in Regulatory approach so that more investors confidence is built up.
- Capital market reforms focussing on growth of mutual funds and simplification in commodity market.

Taxation measures

Following tax related measures are needed to improve the position.

- Negative list of service tax should be enhanced to give boost to different sectors.
 - Early implementation of GST and Direct Tax Code.
-

Monetary Measures - The steps to control the situation whether inflation or stagflation (inflation without development) largely lies in policy of orientation. It is expected from RBI to have cut on the interest rate to increase flow of money in the market. Reduction in repo rate to increase the investment will give a positive signal to the economy and be a good step in this regard.

Banking Basel Norms III should be simplified and the area of funding should be increased.

Good news for Indian Economy

Finally Government of India implemented its long-awaited decisions which are considered to be the panacea for sluggish economy. These are-

1. India raised the price of heavily subsidized diesel to rein in its fiscal deficit and counter the threat of becoming the first of the big emerging economies to be downgraded.
(13 September 2012, source: Financial express)
2. The Government restricted the supply of subsidised cooking gas to 6 cylinders per household in a year to fetch an additional Rs. 20,300 crore.
(13 September 2012, source: Financial express)
3. The Government allowed 51 percent FDI in multi-brand retail, 49 percent investment by foreign airlines in aviation sector and sale of equity in four PSUs. The slew of reforms decided upon include raising FDI cap in broadcasting from 49 percent to 74 percent and allowing foreign investment in power exchanges
(14 September 2012: Financial express)

It was greeted with elation by investors and raised expectations of more reforms to reverse an investment slump and give a kick start to economy.

RBI's credit policy review-

RBI increased the happiness by reducing the CRR rate (Effective rate-4.5%) that would some what address the problem of liquidity and the banks may also be prodded into marginally reducing the retail loan rate.

(17 September 2012: Financial express)

Conclusion

It is an old proverb that "*If we don't cut our coat according to our cloth, we may be in for bigger trouble.*" The same principle is applicable to any economy too. Such crises are not an overnight development. They are the gradual result of globalisation and financial integration, improper credit conditions, high-risk lending and borrowing practices, international trade imbalances, real estate bubbles, fiscal policy choices related to Government revenues and expenses

Conclusively it is in hand of the Government to keep the growth momentum continue. Power, Civil aviation, Infrastructure, Agriculture, Education and Health are the key sectors on which focussed attention is required. Surely the future of India is bright but not without immediate reformatory steps. Water harvesting and environment sectors with sustainable

development should also be considered for the development without affecting the future of next generations.

India is still growing at a rapid pace in comparison to other countries; however that should not deter from the opportunity to push through further reforms, create infrastructure and generate economic opportunities.

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ROLE OF PRACTISING COMPANY SECRETARIES IN SMEs

CS SAURABH JAIN* & CHITTARANJAN PAL**

The turnaround time has now become 'nano' for any business whether big or small. Accomplishing huge tasks in nano time limits is possible only with speed and skill to keep pace with speed and dimensions of change. Much like a formula one race, the business man of the modern economy needs to have a vision to be number one, the team to support him at the pit stop and the powerful vehicle at his command which can reach the speeds to enable him to become a champion.

Small scale sector in our country has mushroomed at a rapid pace. Much to the nature of mushrooms, the sector is fighting for survival and support from various sources ranging from regulatory, infrastructural, financial or other simple services which enable its survival and sustained growth.

SMEs are becoming more innovative by each passing day in their quest to excel the market and compete with their counterparts, they are coming up with products and services that catch the immediate attention of the consumers of such products and services. The highly competitive price at which such products and services are provided in the short run are not sustained for quite long and the first mover advantage that such SMEs have soon vanishes as large scale firms enter the markets with much cheaper and technologically superior versions of the same products and services.

The young entrepreneur has a high risk appetite and is visionary in his approach, much of the credit for this goes to the liberalisation policies of the government of India, easy access to Information and Communication Technology and the support received from the government.

Researches reveal that close to 8% of the GDP is contributed by SME sector. As per the Report of the Prime Minister's Task Force on Micro Small and Medium Enterprises 45% of the manufactured output and 40% of the country's exports are attributed to SMEs. But these figures are nothing much to be applauded for, as this is a minuscule portion of the huge potential that SMEs are yet to harness to their advantage.

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BACKGROUNDER

One group of researchers point out what plagues SME sector in India , the other sets up the blame for the dismal growth and development of the SME sector in the light of the huge potential that the sector offers. Yet another group has contributed to reams of paper in the form of various reports suggesting ways and means by which the government may encourage the SME sector to realise its full potential to make their presence felt in international markets.

A look at some of the unsponsored researches of some of the hugely successful SMEs in remote areas and small towns of India reveal exactly what it takes to be a true entrepreneur. The paragraphs below discuss some of the commonly reported challenges and problems being faced by SMEs throughout the country and how some of the adventurous SMEs have turned such challenges into opportunities for themselves with the help of professionals who guided them out of the troubled waters.

Several initiatives were taken over the years, by the Government of India and the Reserve Bank of India to enable the growth of MSMEs in recognition of their role in the overall development of the economy. Creation of institutions such as Industrial Development Bank of India (IDBI), Small Industries Development Bank of India (SIDBI), National Bank for Agriculture and Rural Development (NABARD), Export Import Bank of India (EXIM Bank), State Finance Corporation (SFCs), State Industrial Development Corporation (SIDCs), National Small Industries Corporation (NSIC), etc. has enabled necessary institutional support to MSMEs for meeting their credit needs. The data published by the various governmental and non-governmental agencies engaged in statistical research related to the MSME sector have concluded that there is no dearth of funding sources for MSMEs in the country as of now. The other side of the same is that although the banks have earmarked funds for priority sector lending as mandated, the same is still lying largely unutilised with the banks and financial institutions. The MSMEs claim that inspite of the measures taken by the Government of India to provide the much needed financing facilities to the MSMEs the capital is still short of the requirements or else the capital is unevenly distributed amongst various sectors in the SME segment.

A closer look at the situation reveals that the entrepreneurs are infact unaware of the quantum of lending facilities offered by various institutions or they are unable to meet the prudential lending criteria laid down by banks. Credit information about a small enterprise is not as easily available as it is for a larger firm and it is not cost effective for the lender to collect information on all small enterprises. Nor have the small enterprises adequate collateral to offer the lenders therefore, either refrain from lending or load the cost of information asymmetry into the lending rates. Another important factor is that risk assessment of smaller enterprises requires a separate set of tools as against the conventional tools, the absence of which is likely to dissuade banks from such lending. Further, smaller enterprises, in many instances, revolve around a single entrepreneur – Key man – and lack good succession planning which discourages creditors to lend to such enterprises.

As the epic has it "*Sachidevi*" was the wife of lord *Indra*, and lord *Kuber* was the Minister of Finance in his court. Release of funds to various other constituents of lord *Indra*'s court was done by lord *Kuber* under the order of lord *Indra* who always followed the advise of his

beloved wife *Sachidevi* in such matters. In the present day world the word "secretary" (or 'sachiv' in hindi) is quite synonymous to the word "*Sachidevi*". The banks (present day lord Kuber) despite having surplus of funds at their command shy away from lending the same to the needy, it is thus, high time that PCS (modern day *Sachidevi*) owing to their professional expertise, guide the banks and financial institutions through their diligence report of the potential borrowers.

PCS can also guide the MSME entrepreneurs in identifying the sources of funds with the least risk, funds that are cost effective and sufficient to meet the investment needs. On the other side they may help the MSMEs in preparing detailed project reports, laying down a succession plan, identifying suitable collaterals that may be acceptable to banks and other lenders, etc.

The profit making MSMEs generate surplus funds in the short run and are unable to find suitable investment options which may earn them the optimal returns and at the same time may provide liquidity to meet their seasonal working capital requirements. PCS may help maintain a database of such MSME having varying degrees of risk appetite and willing to lend funds to their lesser blessed counterparts in the MSME sector. This would be a win-win situation for both the sides as the MSME having surplus funds at its disposal may invest the same and earn optimal returns which are usually higher than the market return and on the other side the MSME requiring those funds may have easy access to such funds with lesser compliance costs and lesser formalities to be complied with.

MSMEs becoming sick has reached chronic figures, resulting in accumulation of huge NPAs on the balance sheets of banks and lending institutions. A sick unit is condemned by the society and its entrepreneurs are looked down upon making life more difficult for them and thereby reducing their prospects of starting any other business or reviving the sick business by infusing in more capital. Timely detection of sickness is critical for any enterprise as any delay in this regard impinges on the revival prospects of sick, but potentially viable, units. In order to speed up the process for identification of a unit as sick, the PCS may advise the lender as well as the borrower regarding the upcoming signs of sickness such as inability of the firm to pay its statutory dues or failure of the firm in depositing the statutory contributions towards insurance, etc. under the labour laws, siphoning off of funds to purposes other than for which they were borrowed, financing of capital expenditure out of working capital and vice versa. PCS may act as watchdog or an advisor preventing sickness of such units.

In the unfortunate event of the unit becoming sick the PCS may advise the lender and the borrower in devising a one-time settlement scheme, so as to reduce the NPAs for the bank and enable the entrepreneur to get out of the financial.

As MSMEs grow in size, their needs for working capital and other capital expenditure also increase proportionally, the Government has sanctioned setting up of a MSME exchange in order to enable the MSMEs to raise capital from the markets without having to resort to the burdensome borrowings from banks. There is a sea change in the outlook of the regulator towards the practicing company secretary due to their credibility in compliance towards the

corporate world. The government has recognised a huge role that PCS can play in the efficient and smooth functioning of the MSME exchange.

Cleaner production policies help MSMEs to enhance energy efficiency, reduce emissions and increase profitability in the long run. Recovery of valuable by-products and increased access to new markets, supply chains and financing, etc. are other benefits of such cleaner production measures. Institutions such as SIDBI are offering loans for energy efficient projects. The PCS has a vital role in guiding the MSMEs about such energy efficient and clean technologies being employed the world over in order to enable the MSMEs to have a dual advantage in the form of saving in energy costs, reduction in emissions and increase in profitability on the one hand and access to cheaper and easier financing facilities from financial institutions offering such "green" loans.

World over, the MSME sector is the highest generator of employment opportunities. For instance in the US the MSME sector employs over 50% of the workforce, the figure is approximately 12% of the total workforce in India. The MSMEs having an upward graph of growth suddenly receive shocks when their key employees and highly skilled workers abandon them in search of greener pastures. Empirical studies show that human capital is a significant determinant of growth. The ability of SMEs to adjust to the competitive pressures that come with trade liberalisation and globalisation depend on the level of skills available domestically. In fact, there are instances where lenders have reckoned the management skills as an innovative form of collateral for loans. The PCS in such a case may help a MSME in devising career paths for various categories of employees, designing incentive plans and transparent promotion policies in order to ensure employee loyalty to the organisation which is vital for their success.

Further, human capital issues for MSMEs include enhancing the managerial qualities of the MSME promoters and building skilled workforce for enhanced productivity. Several institutions such as National Institute of Micro, Small and Medium Enterprises (NIMSME) provide the training and capacity building support that is very crucial to MSMEs. The PCS can play a vital role in helping the MSMEs in identifying the training and development requirements of various staff members with the help of such institutions. PCS may also act as a catalyst between the MSME and the National Institutions in designing of industry specific training programmes for various levels of employees.

Technology is a game changer. It has the potential to cut down operating costs, enhance efficiency and also open up new markets and opportunities for MSMEs. MSMEs need to take full advantage of technology so as to remain competitive and viable. In fact, innovation and technology are the two tools MSMEs have with them that need to be capitalised fully to compete with firms much larger in size. The PCS have a role in advising and guiding MSMEs to incorporate the latest technology into their production processes as well as in their marketing and management functions, to cut costs, gain efficiency and consistency.

From the balance sheet perspective, risk is defined as the probability of actual cash flows falling below the projected cash flows. Anticipating the cash flow problems and developing the necessary coping skills to manage these shortfalls should be at the core of risk

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management strategy for MSMEs. Given the heightened volatility in recent times, MSMEs are increasingly exposed to various other risks such as interest rate risk and currency risks. The PCS may educate and guide the MSMEs about such risks and help to put in place risk management systems and processes.

MSMEs owing to their limitations of size and investment capabilities may not be in a position to service huge geographical areas. A solution to this lies in like minded individuals (entrepreneurs) coming together, who can work in cohesion in different geographical locations as self contained individual units servicing their clients with the help of other units in areas where the SME does not have a presence by setting up a network of SMEs having vertical or horizontal market synergies. It is here that a PCS can be of help to the SMEs sector by preparing and maintaining a data base of such like minded individuals and sharing the same with MSMEs which are in need of such data.

Company Secretaries owing to their competencies in diversified areas of business development can provide services such as BPO, LPO and KPO under the umbrella of Business Development Services (BDS) to MSMEs. All consultancy and advisory services, business linkage promotion and training, marketing assistance, information technology development and transfer would be covered under the BDS umbrella.

Conclusion

MSMEs play a critical role in the economic development given their contribution in employment generation, export competitiveness and, more importantly, entrepreneurial development. As MSMEs are spread across the length and breadth of the country and have a strong presence in rural areas, their growth also leads to more balanced and sustainable development and eases pressure on urban infrastructure. Given the present state of economy, MSMEs can play a critical role in strengthening country's export competitiveness and boost economic recovery. It is thus, imperative for Company Secretaries to act as catalysts in growth and development of MSMEs.

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WHISTLE BLOWING OR CONSCIENCE KEEPING IN A VOLATILE BUSINESS ENVIRONMENT - A STUDY OF GROWING INCIDENCES OF ECONOMIC CRIMES

CS LAKSHMI ARUN*

As we refer to the terms 'Whistle-Blowing' or 'Conscience-Keeping', the former is associated with raising voice against 'fraud' or 'misfeasance' and the later deals with the aspects like governance, code of conduct, ethics, fraud prevention etc. Conscience keeping is a much wider term that includes the aspects of whistle blowing too.

Having pro-active approach to conscience keeping refers to establishing systems and controls, training minds, imbibing culture into the organization that gets ingrained into the organizational biology, taking care of the aspects of governance, ethics etc.

This article is an attempt to highlight the control mechanisms which have inbuilt systems that shows the red flags, while any incidence of misgovernance is being committed, so that it can be prevented before its' occurrence.

An attempt has also been made to analyze some surveys in the recent past on fraud detection and control mechanism that also reveal that whistle blowing mechanism, though, a considered fraud risk mitigation measure, its' the effectiveness is still challenging.

Whistle Blowing - Arthashastra

Arthasastra written by Kautilya in the third century BC gives reference to the concept of whistle blowing. Accordingly, any informant (súchaka) who supplies information about embezzlement just under perpetration shall, if he succeeds in proving it, get as reward one-sixth of the amount in question; if he happens to be a government servant (bhritaka), he shall get for the same act one-twelfth of the amount. If an informant succeeds in proving only a part of a big embezzlement, he shall, nevertheless, get the prescribed share of the part of the embezzled amount proved. An informant who fails to prove (his assertion) shall be liable to monetary or corporal punishment, and shall never be acquitted. Any informant who withdraws his assertion prevailed upon by the insinuations of the accused shall be condemned to death.

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Control Mechanisms To Mitigate Fraud Risk- Arthasastra

Arthasastra identifies forty different ways to embezzle the Treasury. This is one of the earliest records documenting the science of embezzlement. The logic for listing them out is probably to educate supervisors on what to look out for, using the principle. i.e, control mechanisms.

Forty embezzlement techniques

1. What is collected earlier is accounted later
2. What is collected later is accounted earlier
3. What ought to be collected is not collected
4. What is hard to collect is shown as collected
5. What is collected is shown as not collected
6. What is not collected is shown as collected
7. Collected in part is shown as collected in full
8. Collected in full is shown as collected in part
9. Collected of one sort, is entered of another sort
10. Realized from one source, shown as from another source
11. What is payable is not paid
12. What is not payable is paid
13. What is payable is not paid in time
14. What is payable is paid earlier
15. Small gifts are accounted as large gifts, when giving gifts
16. Large gifts are accounted as small gifts, when receiving gifts
17. Gifted is of one sort, is entered is of another sort
18. Beneficiary entered in register is different from the one who received the gift
19. Materials received in treasury is removed or materials not received is accounted as received
20. Raw materials paid for are not accounted in the stores, while those that are not paid for are entered as received in stores
21. An aggregate amount received is entered as parts,
22. Parts received are entered as an aggregate
23. Commodities of greater value exchanged for those of smaller value

24. Commodities of smaller value exchanged for those of greater value
25. Value of goods inflated, by increasing the price
26. Value of goods deflated, by decreasing the price
27. Number of days increased.
28. Number of days decreased.
29. Discrepancy in the number of months in a year.
30. Discrepancy in the number of days in a month.
31. Inconsistency in the transaction carried on under personal supervision
32. Misrepresentation of the source of income
33. Inconsistency in accounting for charities
34. Incongruity in representing work done, .
35. Inconsistently in dealing with fixed [regular] items
36. Misrepresentation of the standard of fineness of gold and silver
37. Misrepresentation of the price of commodities
38. Using false weights and measures
39. Deception in counting articles
40. Use of false cubic measures

At the top of the list were techniques related to revenue, in the middle were techniques related to the cost, and the bottom of the list described techniques related to the use of fraudulent measurement standards.

The list can be bifurcated into 28 techniques related to documentation and 12 techniques related to physical goods and standards of measure. The techniques related to documentation can be further grouped under four heads:

- not recording a transaction,
- mismatch between the time of recording and the physical transaction,
- recording a fictitious transaction, and
- recording a transaction incorrectly.

Even after the advancement of human history over the last two thousand years, it is tough to find a new technique of embezzlement to add to this comprehensive list.

We are living in a highly dynamic, competitive and contestable world driven by globalization, information technology and innovation. In such an environment, Company Secretaries have larger role to play in establishing and implementing control mechanisms.

Conscience keeping vis –a-vis control mechanisms

Conscience keeping is not a 'Check-the-Box' approach. It is an integrated approach involving controls, ethics, employee development, organizational loyalty, risk assessment, policy related aspects etc., . Conscience keeping thus right from the perception is state of an action.

Different control mechanisms that results in enhancing ethical business environment work in tandem and not in isolation. Few such widely adopted control mechanisms are:

- Effective internal control mechanism
- Employee Due diligence
- Fraud awareness training
- Effective whistle blower policy
- Setting up of dedicated fraud investigation cell
- Developing ethical organizational culture
- Code of conduct at all levels
- Effective fraud control policy
- Effective Information Technology tools

Factors to Fraud and Establishment of Controls

'Fraud and Corporate Governance: Changing Paradigm in India'

A survey was conducted by Ernst & young in the year 2012, titled 'Fraud and Corporate Governance : Changing Paradigm in India'. The respondents were senior executives from diversified industries. The survey highlights top 5 frauds being, data and information theft, bribery and corruption, fraud by senior management and conflict of interest, vendor fraud, regulatory non-compliance.. The survey emphasizes on pro-active fraud risk management. The survey identifies certain areas of concern and also suggests certain control mechanisms.

Threat 1 : Information technology

The risks relating to data and information theft, which is mainly due to advancement in information technology, include Increased vulnerability due to anytime and anywhere accessibility; Leakage of Company and Customer's confidential information by current or ex-employees; Loss of confidential data due to external vulnerability; Manipulation of procurement, accounting or other IT-based process system.

Suggested Control Mechanisms to Threat 1 includes restricted access to copying and transferring of data; Monitoring of access to information; Classification of employees based on the information requirements; Establishment of systems that highlights aspects such as duplicate procurement, business by related parties, ghost vendors, split purchase orders etc.

Threat 2 : Ineffective whistle Blower System

Whistle blower system, though established by Indian Companies, as recommended by SEBI, many of them are found to be ineffective due to apprehensions relating to misuse of whistle blowing mechanism for personal vendetta, employee facing risk of exposure, absence of whistle blower hotline, absence of process relating to filtering and categorization of complaints etc.

Suggested Control Mechanism to Threat 2 includes, Establishment of whistle blower hotline; Protection to whistle blower; Systematic process of categorization and filtering of complaints to avoid frivolous complaints; Awareness and training to employees to report misconduct

Threat 3 : Management's overriding controls

Sometimes the management fail to strike a balance between business efficiency and compliances. This may either result in business failures or heavy non compliance and penalty.

Suggested Control Mechanism to Threat 3 includes understanding the fine line between compliance and business efficiency and erring on either carries a high penalty. Therefore the management is expected to implement suitable risk based control structures to manage compliance and business requirements.

Threat 4 : Bribery and Corruption

The reasons for bribery and corruption in an organization includes Inherent nature of industry; Weak tone at the top; Weak law enforcement; Lack of effective and compliance mechanism; Considered as accepted behavior; Absence of third party due diligence; Poor internal policies; Lack of Employee awareness and training.

Suggested Control Mechanism to Threat 4 includes stringent disciplinary procedures, improving tone at the top, training, transparency disclosures, third party due diligence, bribery and corruption reviews and due diligence etc.,

Threat 5 : Risk from Third parties

Third parties such as business associates, intermediaries, partners and vendors play a critical role in the success of the company. However, this association is also tagged with a range of risks and the key among them are fraud, regulatory and reputation risk.

Control Mechanism to Threat 5 includes assessment of the potential risk of conducting business with and develop appropriate risk management strategies in relation to third parties before engaging them, through third party due diligence.

Fraud still happens beyond control mechanisms....What to do ?

Fraud may still occur although the management has put in place the proper process, trained the company's employees on spotting problems, executed a robust fraud risk assessment initiative and designed internal controls to prevent and detect fraud.

The Survey saysHave a Fraud Response plan

It is essential for companies to formulate reactive elements for an effective fraud programme. The cornerstone of a reactive element in an antifraud programme is a competent team and its timely response to suspected fraud. To execute a fraud response plan effectively, it is necessary to establish an investigation protocol framework for a company's management. The protocols should state that all suspected fraud, regardless of the source needs to be reviewed and investigated. A designated team should determine the person to lead the investigation if external assistance is needed.

Navigating the Challenging Environment

Deloitte conducted a fraud survey in February 2012 on banking industry. This survey has been developed based on the survey questionnaire responses received from banks in India including public sector/private sector/co-operative/multinational banks, of different sizes and types of operations. An overwhelming 93% of the respondents indicated that there has been an increase in fraud incidents in the banking industry during the last year. It is also indicated that the average value of recovery for more than half of the respondents is less than 25% of the reported fraud losses.

This survey raises the following four questions. i.e What is happening?; What is issue?; How are the banks geared to fight the menace? and What will happen?

It covers current perception of fraud in the industry, fraud prone areas and root cause analysis, anti fraud framework and the role of technology, areas perceived to be vulnerable in the years to come and the cost of various anti-fraud measures.

Factors contributing to the fraud

The survey reveals that factors contributing to the fraud, include Collusion between employees and external parties; Lack of fraud risk framework within the organization; Business pressure to meet the targets; Lack of oversight over existing processes and controls by senior management; Change in the business strategy without change in business processes; Lack of tools to identify potential red flags; Difficult business scenario

Suggested Control Mechanisms

According to Deloitte survey control mechanisms to prevent fraud, may include Need for Board to ensure that its governance practices set the tone for fraud risk management; Recurring and systematic fraud risk assessment; Employ experienced outside agency for whistle blower hotline to enhance the perception of confidentiality; Anti-fraud policy and appropriate training; Documented policy to address and investigate fraud allegations.

Not-For-Profit Fraud Survey 2012

BDO is the fifth largest full service audit, tax and advisory firm in Australia and New Zealand. As the Not-For-Profit sector continues to evolve within Australia and New Zealand, so too will the challenges facing the sector. These challenges, which include fraud, can result in organisations being unable to achieve their key strategies and objectives.

The purpose of the BDO Not-For-Profit Fraud Survey 2012 is to provide the sector with an effective tool to help reduce the risk of fraud. Some specific reasons as to why respondents indicated fraud may become a greater problem in the future included:

- Greater use of e-commerce
- Ineffective Controls and operational procedures due to low resources
- Tougher economic times and increased financial pressure on individuals
- Changes in key personnel may increase the risk of fraud occurring'
- Organization along with increased staff and volunteers which may result in an increase in the risk of fraud'.

The respondents recommends following control mechanism to prevent fraud and to maintain an ethical organization.

- External Audit
- Strong Internal Controls
- Ethical Organizational Culture
- Strong Board Support
- Internal Audit
- Fraud Risk Assessment
- Strong Fraud Control Policy
- Whistle Blower hotline
- Prosecution of Offenders.

KPMG Fraud Survey Report, 2010

KPMG's Forensic practice in India has been undertaking the India Fraud Survey once every two years since 1995 to provide India Inc. with insights into the degree of fraud awareness, nature of fraud risks, trends in fraudulent activities, and the required mitigation strategies.

KPMG Fraud Survey Report 2010 reveals that

- There is a rise in the incidence of fraud. Ineffective control systems and diminishing ethical values are key contributors to this trend. Volatile economic conditions coupled with increasing business and technological complexities have led to increased opportunities for fraud. Organisations have to constantly deal with fraud and compliance challenges in today's business environment. Not surprisingly, a majority of the survey respondents perceive an increase in the level of fraud in India, in general, and also within their industry.

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- Seventy five percent of the respondents believe that fraud incidences in India have increased in the last two years, however, only 54 percent believe that fraud incidences have increased in their industry. Further, 45 percent of the respondents believe that fraudulent activities have increased in their organisation, again suggesting a rising trend in white-collar crime.
 - An overwhelming majority of the respondents indicated that the incidences of fraud, overall and specifically within their industry and company, is rising thereby indicating that India Inc needs to deal with fraud risks firmly.
 - Supply chain fraud (procurement, distribution and revenue leakage) is the single most exposed area.
 - Weak internal control systems, eroding ethical values and a reluctance on the part of the line managers to take decisive action against the perpetrators are cited as the most vital underlying reasons for frauds being on the rise.
 - Stakeholders in India continue to perceive financial statement fraud as a major area of concern. A desire to achieve / exceed targets and earnings of senior executives linked to financial performance are the reasons for senior management involvement in such frauds.
 - Ineffective whistle-blowing systems, lack of objective and independent internal audit functions with forensic skills, inadequate oversight of senior management activities by the audit committee and weak regulatory environment are the reasons for growing worries in respect of financial statement fraud.
 - Indian companies have a reactive approach to dealing with fraud. Even amongst those that do undertake a fraud risk assessment, the focus is more on financial frauds rather than a holistic assessment.
 - The usage of data analysis tools to analyse critical patterns and trends in data and understanding scenarios of potential fraud which should be inter-woven into the fraud risk assessment process is still work in progress.
 - Respondents suggest that a fraud risk management programme should be a shared responsibility across the company board, senior management, internal audit and risk functions.

The report reveals that strengthening of Corporate Governance and Fraud Risk Management are the mitigation tools for responding, detecting and preventing frauds.

PWC Global Economic Crime Survey 2011

This survey was based on interviews with more than 3877 respondents from more than 78 countries. According to the survey report, over 34 percent of respondents reported suffering one or more significant economic crimes during the past 12 months and cybercrime ranks as one of the top four economic crimes.

The suggestions that the organization to take to defend themselves from cyber attacks includes awareness of the Board about risks and opportunities in the cyber world, situational

awareness of cyber environment, recruiting people having necessary skills and expertise, taking tougher and clearer stance on cybercrime etc.,

Managing the Business Risk of Fraud

“Managing the Business Risk of Fraud”- A Practical Guide by The Institute of Internal Auditors, The American Institute of Certified Public Accountants, and Association of Certified Fraud Examiners have identified certain key principles regarding fraud risk for proactively establishing an environment to effectively manage an organization’s fraud risk. These include:

Principle 1 : As part of an organization’s governance structure, a fraud risk management program should be in place, including a written policy (or policies) to convey the expectations of the board of directors and senior management regarding managing fraud risk.

Principle 2 : Fraud risk exposure should be assessed periodically by the organization to identify specific potential schemes and events that the organization needs to mitigate.

Principle 3 : Prevention techniques to avoid potential key fraud risk events should be established, where feasible, to mitigate possible impacts on the organization.

Principle 4 : Detection techniques should be established to uncover fraud events when preventive measures fail or unmitigated risks are realized.

Principle 5 : A reporting process should be in place to solicit input on potential fraud, and a coordinated approach to investigation and corrective action should be used to help ensure that potential fraud is addressed appropriately and timely.

Stakeholders have clearly raised expectations for ethical organizational behavior. Organizations should respond to such expectations. Effective governance processes are the foundation of fraud risk management. Lack of effective corporate governance seriously undermines any fraud risk management programme. The organization’s overall tone at the top sets the standard regarding its tolerance of fraud.

- The board of directors should ensure that its own governance practices set the tone for fraud risk management and that management implements policies that encourage ethical behavior, including processes for employees, customers, vendors, and other third parties to report instances where those standards are not met. The board should also monitor the organization’s fraud risk management effectiveness, which should be a regular item on its agenda. To this end, the board should appoint one executive-level member of management to be responsible for coordinating fraud risk management and reporting to the board.

Regulatory Support To Conscience Keeping

We observe in the preceding paragraphs that the increasingly multi-directional flow of trade and investment has created a polycentric world in which opportunities, capabilities and competition are spread broadly across multiple spheres of influence. This also has

necessitated the governments to strengthen its legislations to tackle the various risks arising out of multi-dimensional trade in terms of fraud, corruption, bribery etc.,

The government has been taking initiatives to strengthen the existing legislations/bring new legislation in line with the growing need in this regard. Legislations like Right to Information Act, Prevention of Money Laundering Act, Competition Act, and various regulations issued by Capital Market Regulator, Securities contracts Regulation Act, Information Technology Act to address the aspect of 'Misfeasance'. Some of the following proposed legislations, would strengthen the legislative structure further:-

1. The Public Interest Disclosure (Protection of Informers) Bill 2010, to provide limited protection to whistle blower.
2. The prevention of Bribery of Foreign Public Officials (FPO) and officials of Public International Organisation (OPIO) Bill 2011 regarding acceptance of bribe by FPO, OPIOs.
3. Companies Bill 2011, providing more powers to Serious Fraud Investigation Office

Role of Company Secretaries

Having examined the surveys and the regulatory environment it becomes apparent that

- Technology has thrown both opportunities and controls to misfeasance.
- The role of Board in bringing ethical culture in the organization is crucial.
- Effective internal control systems are required.
- External Audit and internal audit has to be effective.
- Fraud risk assessment is required at frequent intervals.
- Business processes should be altered according to business policy.
- Due diligence is required at employee level and at third party level.
- Effective whistle Blowing systems is the need of today.
- Employee awareness and Training is essential
- Imbibing ethical culture into the organization should be an on on-going process.

What the Company Secretaries can do in this regard ?

- To advise the Board as to legal compliance and effective board procedures.
- To recommend a balanced Board of directors with adequate independent directors.
- To recommend training structure to HR department with respect to training of directors, senior management and other employees as to ethics, governance, fraud prevention etc.
- To establish processes to make whistle blowing system more effective. The company

Secretary may engage a trust worthy third party as whistle blowing hot line and to have effective co-ordination with him.

- Co-ordinate with HR department for employees' screening. He may suggest some information database for Know Your Employee(KYE) norms etc.
- Effective co-ordination with Audit Committee as to external audit, internal audit, establishment of internal control mechanisms etc.
- Recommend modification in business processes in line with the strategies.
- Understanding the technology on business processes, its impact on its' misuse and prevention/remedial measures.
- Be aware and conscious of Red flags or warning signals in the system.

Control mechanisms for ethical culture of an organization differs from industry to industry, organization to organization based on the type of industry, its size, nature or products, geographical location, background of the promoters and so on. Recommending control mechanisms suiting organizational need, is a comprehensive task which involves various aspects such as compliance, governance, training, strategy matching etc., The Company Secretaries have necessary knowledge, expertise and training to keep conscience prevail through out the organization..

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CYBER CRIME – A CRITICAL RISK FACTOR IN TECHNOLOGY DRIVEN ENVIRONMENT

CA JAI PRAKASH AGARWAL* & CA APARNA CHAUHAN**

“The modern thief can steal more with a computer than with a gun. Tomorrow’s terrorist may be able to do more damage with a keyboard than with a bomb”.

- National Research Council, 'Computers at Risk'

Cyber Risk in the current Economic scenario

The transformation process in the global economy leads to opportunities as well as threats. As the opportunities comes in the form of globalisation, liberalisation, technology transformation, innovation, healthy competition etc., the threats are in the form of Global economic crisis, euro zone crisis and several other forms of threats arising from technology, the cyber threat being the top most one.

According to India Risk Survey 2012, Information and cyber security risk has been rated as one of the top most risks. Norton’s Cyber Crime Report 2011 reveals that India loses approximately INR 34,110 crores annually due to cyber related crimes.

During the NASSCOM Global Leadership Awards, it was revealed that India is ranked fifth in the number of cybercrimes. Every year, cybercrime in India is going up by 50% during the last five years. Around 9000 Indian websites including those of government department were hacked.

What is Cyber Crime ?

In general terms, cyber crime means a criminal act that involves computers and networks. Cyber crime includes criminal acts such as hacking, phishing, and denial of service attacks that cause e-commerce websites to lose money. Now a days, cybercrime is one of the major threat to an economy as well to each and every organisation. As per, PwC's sixth global survey on economic crime, March 2012, Vol. 256, Cyber crime now ranks as one of the top four economic crime namely accounting fraud, asset misappropriation, bribery & corruption.

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To minimise the effects of cyber crime, necessary steps need to be taken through controlling mechanism such as system audit, through risk management and audit committee.

Today, most people and businesses rely on the internet and other technologies. As a result, they are potentially opening themselves for attacks from criminals anywhere in the world. Organisations must take measures for prevention and detection of cyber risk under risk management. Despite the effectiveness of risk management systems being deployed, there are always individuals or groups of individuals who are able to spot an opportunity and circumvent or override controls. This is especially true when it comes to cyber security. As headcounts fall in control functions across the globe, we fear more fraud will go undetected. The impact and skyrocketing costs of cyber crimes can be devastating to businesses. On this playing field, companies must deploy an ever-more robust defense.

This article throws light on types of crime focussing Information theft which has led to the loss of intellectual property, steal of credit card information, loss of electronic funds, and a host of other negative consequences, why it is increasing, how to control it through preventive measures like System audit where company secretaries can play vital role, risk management etc. and laws on cyber crime prevailing in India.

Different forms of Cyber Crime

Cyber Crimes like money cyber stalking, denial of service, e-mail abuse, chat abuse and other crimes are on the rise. Other than these forms of crime, Cyber Terrorist and Cyber Mafia are emerging with great force, whose activities are going to threaten the sovereignty of nations and world order. Furthermore, the damage caused by data theft cannot be overlooked which is considerably affecting each and every person by way of hacking of confidential information and use this with malafide intention. The cyber crime can be committed in the following ways:

Cyber Stalking : Cyber-stalking refers to the use of the internet, e-mail, or other electronic communications to harass another person. Under cyber stalking, a cyber stalker sends harassing or threatening electronic communication to the victim. In this form of cyber crime, stalker collects the information from internet resources such as personal profile and he may post this information on any website related to dating services, posing as if the victim is posting this information and invite the people to call the victim on her telephone numbers.

Denial of Service : This act is committed by a technique called spoofing and buffer overflow. The criminal spoofs the IP address and flood the network of the victim with repeated requests. Since the IP address is fake, the victim machine keeps waiting for response from the criminal's machine for each request. This consumes the bandwidth of the network which then fails to serve the legitimate requests and ultimately breaks down.

Hackers : Hacking in simple terms means illegal intrusion into a computer system without the permission of the computer owner/user. Hackers write or use ready-made computer programs to attack the target computer. They possess the desire to destruct and they get the kick out of such destruction. *Some hackers hack for personal monetary gains,*

such as to stealing the credit card information, transferring money from various bank accounts to their own account followed by withdrawal of money. This way of crime is also known as Data Theft.

Online Fraud : Fraudsters create authentic looking websites that are actually nothing but a spoof. The purpose of these websites is to make the user enter personal information. This information is then used to access business and bank accounts.

Pornography : Pornography means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, of sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct.

Software Piracy : Theft of software through the illegal copying of genuine programs or the counterfeiting and distribution of products intended to pass for the original is termed as software piracy.

Spoofing : Spoofing means a hacker logs-in to a computer illegally using a different identity than his own.

Virus Dissemination : A computer virus is a program that can 'infect' other legitimate programs by modifying them to include a possibly 'evolved' copy of itself. Viruses can spread themselves, without the knowledge or permission of the users, to potentially large numbers of programs on many machines. A computer virus passes from computer to computer like a biological virus passes from person to person.

At macro level, the theft of corporate and personal information was certainly a core tactic. Therefore, re-imagined and re-invigorated spectre of "hacktivism" rose to haunt organizations around the world. In recent years, theft of computerized customer and employee records has been rising at an alarming rate, with ever-increasing sophistication and audacity. These all forms of crime can come down or minimise through control mechanism such as system audit, strengthening of cyber laws, effectiveness of risk management etc. Before moving forward to control mechanism here reasons are identified due to which the cyber crime is increasing with such speed.

The percentage of cyber crime increased – why ?

Recently, a number of companies have had sensitive intellectual property stolen, highlighting the risk to companies caused by cyber crime. Over the past eighteen months, there have been many publicly reported attacks against defence, technology and infrastructure organizations, among them companies like Sony, Google and Yahoo are largely effected. Lesser-known attacks have involved entities such as DuPont, Walt Disney, General Electric and Johnson & Johnson.

In the month of September 2012, the Indian website of popular pizza retailer Domino's (www.dominos.co.in) was hacked by a Turkish Hacker group that calls itself Turkish Ajan Hacker Group. Details of about 37,000 accounts, including names, phone numbers, email addresses, passwords and city details, were leaked, and the passwords have been released

in plain text. Domino's India website was hacked using the SQL injection method and remote file inclusion, one of the most common methods for stealing private data from web databases.

Such, large-scale data breaches have cost companies well into the hundreds of millions of dollars. Breaches also create the potential for litigation or regulatory investigations when customers' personal information is compromised. As a result, breaches can have a significant and potentially devastating impact on a company's reputation or financial position.

As stated earlier, the Cyber crime is among the top four economic crimes viz. Accounting Fraud, Bribery and corruption, Asset Misappropriation. The reasons for such increase may be advancements in technology, increased focus from the regulators, the use of the internet on handheld devices has enabled everyone to have access to real time information, for e.g. news, cricket scores, stock prices, etc., and also to carry out functions like online trading, shopping and banking. These new devices have opened up new ways for criminals to commit cyber crime, be it on a micro scale by just targeting individual, or on a macro scale by targeting large networks. This has made consumers and organisations at large to be vulnerable to cyber crime risks. Moreover with extensive use of social media sites like facebook, twitter and the like, employees are unwittingly sharing confidential information. Organisations need to be aware that the employees might have a very different understanding of the risks such sites pose and hence need to be educated accordingly.

In the background of the recent incidents of cyber crime on multinational companies and financial institutions, it is evident that a greater number of organisations are becoming victims of cyber crime. One potential reason that may explain this sudden rise in cyber crime is the rise in the volume of e-business, greater penetration of internet and e-commerce.

Controlling Mechanism against the risk of Cyber Crime

While technological innovations continue to create new opportunities for growth through collaboration, they also give rise to new threats especially the threat of cyber crime. In this rapidly changing environment, audit committees, efficient system audit can play a key role in protecting organisations and their intellectual property rights from cyber criminals.

"With the extensive use of computation machine and internet for the way we work, shop and live; the risk of cyber insecurity is only going to increase with time. The solution lies in stringent laws by government, implementation of effective controls by corporate and high awareness among common public."

*Mr. Ananth S
Head Security & Compliance (Vice-President),
Mphasis Limited*

How controlling mechanisms can prevent cyber crime is explained here

- *System Audit* : System Audit is an important tool in controlling cyber crime. In system Audit, an information System expert equipped with the knowledge of Audit, verifies the various aspects of control in the information system environment of the organisation. He verifies the physical and logical control to identify the potential cyber

risks. System Audit has gained significant importance in view of increased cyber crime. Since most of our work has got digitalized, we have become more prone to cyber crime. Checking the logical control to verify the robustness of information system may certainly help an organisation in avoiding the unwanted circumstances.

- *Risk Management* : Risk Management is the process of identifying, assessing evaluating and controlling the various risks in the organisation. Since E- risks (Electronic risks) or a cyber risk poses a high threat for organisation survival, it has gained a significant importance in risk management. In risk management process, all potential e-risks may be identified and necessary preventive mechanism may be applied to avoid any cyber crime. The risk management will not be confined only to identifying, evaluating and implementing the control mechanism, here continuous evaluation of controls needs to be done so that possibility of cyber crime may be minimized or even mitigated.
- *Audit Committee* : Audit Committee is a very important tool in Risk management. As per Clause 49 of equity listing agreement, a listed company is required to set up an Audit committee chaired by an independent director. Audit committee is responsible for evaluating the control mechanism in the organisation. A strong Audit committee may get all the potential E-risks identified and thus get ensure that necessary action are taken for mitigating the ill effects of risks. With careful planning and the right advice, audit committees can play a crucial role in overseeing their organization's response to the risks of cyber crime.
- *Other ways* : To avoid the happening of cyber crime in the organisation, a company may adopt various other checks as it may adopt the e-security policy for the organisation and thus get ensured that each and everyone who transact with the organisation follow it. This may avoid much significant e-risk. Moreover a company may get the control through self assessment mechanism applied in the organisation. In this mechanism, every department/vertical is asked to identify the control areas where e- risks may be involved. This may help the organisation in identifying the cyber crime prone areas and company may concentrate on the areas identified for avoiding the e- risks.

Cyber Laws in India

The Information Technology (IT) Act, 2000 attempts to change outdated laws and provides ways to deal with cyber crimes. The Act offers the much-needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records.

The Indian Law has not given any definition to the term 'cyber crime'. In fact, the Indian Penal Code does not use the term 'cyber crime' at any point even after its amendment by the Information Technology (Amendment) Act, 2008. But "Cyber Security" is defined under Section (2)(b) IT Act, 2000 which means protecting information, equipment, devices computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction. The IT Act,

2000 as amended by The IT (Amendment) Act, 2008 is known as the Cyber law. It has a separate chapter XI entitled "Offences" in which various cyber crimes have been declared as penal offences punishable with imprisonment and fine.

The IT Act 2000 contains the following positive aspects

- Through this Act, email would now be a valid and legal form of communication and can be duly produced and approved in a court of law.
- Digital signatures have been given legal validity and sanction in the Act. The Act, open the doors for the entry of companies in the business of being Certifying Authorities for issuing Digital Signatures Certificates.
- The Act now allows Government to issue notification on the web thus heralding e-governance.
- The Act enables the companies to file any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in electronic form by means of such electronic form as may be prescribed by the appropriate Government.
- The IT Act also addresses the important issues of security, which are critical to the success of electronic transactions.
- Statutory remedy is also specified in the Act, in case if anyone breaks into their computer systems or network and cause loss.

Limitations of IT Act, 2000

The IT Act, though appears to be self sufficient, however, in the following situation it does not provide with definite solution:

- The law misses out the issue of Intellectual Property Rights, and there are no provisions for copyright, trademark or patent of electronic information and data.
- It doesn't talk of the rights and liabilities of domain name holders, the first step of entering into the e-commerce.
- It is silent over the regulation of electronic payments gateway and segregates the negotiable instruments from the applicability of the IT Act, which may have major effect on the growth of e-commerce in India.

Therefore, there are so many challenges ahead which need to be handled through other stringent provisions in legal form.

Regulatory Initiative with respect to Control Mechanisms

In order to highlight the growing threat to information security in India and focus related actions, Government had set up an Inter Departmental Information Security Task Force (ISTF) with National Security Council as the nodal agency. The Task Force studied and deliberated on the issues such as

- National Information Security Threat Perceptions

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- Critical Minimum Infrastructure to be protected
 - Ways and means of ensuring Information Security including identification of relevant technologies
 - Legal procedures required to ensure Information Security
 - Awareness, Training and Research in Information Security

In line with the recommendations of the ISTF, the following initiatives have been taken by the Government;

- Indian Computer Emergency Response Team (CERT-In) has been established to respond to the cyber security incidents and take steps to prevent recurrence of the same.
- Public Key Infrastructure (PKI) has been set up to support implementation of Information Technology Act and promote use of Digital Signatures.
- Government has been supporting R&D activities through premier Academic and Public Sector Institutions in the country.
- Information Security Policy Assurance Framework for the protection of Government cyberspace and critical infrastructure has been developed.
- Security Auditors have been empanelled for auditing, including vulnerability assessment & penetration testing of computer systems & networks of various organizations of the government, critical infrastructure organizations and those in other sectors of the Indian economy.

Role of Company Secretaries in Controlling Cyber Crimes

A company secretary may play a pivotal role in ensuring necessary information security control in the organisation. Since he is the principal officer of the company and he is secretary to the audit committee as well, he may get the independent evaluation of information security environment of the organisation and get the major risks identified. He may make Board aware about the implementation status of control mechanism in organisation and ensure the effective implementation of controls. Since he is a subject expert as well, he may advise the Board on various aspect where necessary control may help in avoiding the cyber crime in the organisation at his domain area.

Conclusion

Organisations need to be vigilant and proactive towards the risks emerging in the technology enabled environment due to Cyber crime. With new ways of doing business, new technologies and changing work environments, come new risks and new ways for fraudsters to carry out crimes. Organisations need to be aware of these changes and adapt their response mechanisms and Detection methods accordingly. Control mechanism need to be more effective to meet the challenges emerged from new technologies such as use of smart phones and tablet devices, social media and cloud computing. These new techniques offer a wealth of

attractive business solutions and opportunities, but they can also be a Pandora box of risks and dangers. For example, having a smart phone or a tablet device means carrying around your organisations sensitive and confidential information in your pocket which without precautions in place can be accessed by anyone, which can cause considerable harm both financial and non financial. It is now essential to ensure that cyber and information security issues are considered and corrective measures are taken at the top most level.

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INSOLVENCY REGIME FOR MSMEs

SURYA NARAYAN MISHRA*, CS SONU LAKHANI & SUDHIR SAKLANI**

*"..Post 1991, attention has been paid in India to legal constraints inhibiting entry. Much less attention has been paid to legal constraints inhibiting functioning, and so far as exit is concerned, no attention has been paid whatsoever, and this argument is stronger if one focuses small scale enterprises alone."
- Prof Bibek Debroy*

MSMEs Sector in India

The MSMEs sector constitutes an important segment of our national economy. The number of SMEs is estimated to be about 31 million¹. It is providing employment to an estimated 73 million² persons with an annual inclusion of 1.3 million. The MSMEs sector is estimated to contribute to about 45% of the total industrial output, 8% of GDP and nearly 40% to India's exports.

An overwhelming majority of small businesses in India are either proprietorships or partnerships. According to the 4th Census of Micro Small and Medium Enterprises 2006-2007, out of the total number of MSMEs, only 1.5 million are in the registered segment and the remaining 24.5 million (94%) are in the unregistered segment.

Accelerating internal & international competition and technological changes poses challenges to the sustainability of MSMEs. The sector faces many challenges, i.e. finance, infrastructure, technology etc. which may lead into sickness and inefficiency. This sickness may result in insolvency.

As regards Indian Insolvency Regime, Corporates are mainly regulated by Companies Act, LLPs are regulated by LLP Act and individuals are regulated by Personal Insolvency Acts. Since, majority of the SMEs are non corporate entities, they are governed by the Personal Insolvency Laws.

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The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.

BACKGROUND

Causes of Insolvency of MSMEs Sector

Although Indian MSMEs are a diverse and heterogeneous group, they face some common problems, that may result in insolvency, which are as under:

- Lack of availability of adequate and timely credit;
- High cost of credit;
- Collateral requirements;
- Limited access to equity capital;
- Procurement of raw materials at a competitive cost;
- Problems of storage, designing, packaging and product display;
- Lack of access to global markets;
- Inadequate infrastructure facilities, including power, water, roads, etc.;
- Low technology levels and lack of access to modern technology;
- Lack of skilled manpower for manufacturing, services, marketing, etc. and
- Absence of a suitable mechanism which enables the quick revival of viable sick enterprises and allows unviable entities to close down speedily;

Insolvency Regime in India

1. Sole Proprietorship

In case of individuals there are two insolvency Acts, one for the presidency towns and the other for the rest of the country. The Presidency –Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 respectively.

Since there is no separate legislation governing sole proprietorships, the above-mentioned Provincial and Presidency Acts will apply on sole proprietorship.

2. Partnership

Partnerships also come under the Provincial and Presidency Acts with respect to insolvency. The Partnership Act, 1932 (hereinafter referred to as "Partnership Act") also has some specific provisions that deal with dissolution of the partnership firm. The Partnership Act provides following modes of dissolution of a partnership, which are as under: -

- *Dissolution by agreement* : A firm can be dissolved with the consent of all the partners or in accordance with a contract between the partners.
 - *Compulsory dissolution* : A firm can be compulsorily dissolved if all or any of the partners are adjudicated as insolvent or on account of happening of any event the business of the firm has become unlawful.
 - *Dissolution by notice* : In case of a partnership at will, the firm may be dissolved, if any one of the partner gives a notice in writing to the other partners.
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- *Dissolution on happening of contingencies* : Subject to the contract between the partners a firm may be dissolved if the fixed term for which the firm was constituted was expired; or on the completion of undertaking, the firm was formed to carry out; or by the death of a partner; or by the adjudication of partner as insolvent.
 - *Dissolution by Court* : A court may order a partnership firm to be dissolved in the following cases:
 - (a) When a partner becomes of unsound mind;
 - (b) When a partner becomes permanently incapable of performing his/her duties as a partner;
 - (c) When partner deliberately and consistently commits breach of agreements relating to the management of the firm;
 - (d) when a partner's conduct is likely to adversely affect the business of the firm;
 - (e) when a partner transfers his/her interest in the firm to a third party;
 - (f) when the business of the firm cannot be carried on except at a loss;
 - (g) When the court regards dissolution to be just and equitable.

When a partner becomes insolvent, he ceases to become a partner of the firm, regardless of whether the firm itself is dissolved or not. The firm is not liable for any act of the insolvent partner. Under the Indian Partnership Act, the dissolution of the Firm can take place where the partners of the firm are being adjudged as insolvent.

- Section 41 of Partnership Act calls for compulsory dissolution when all or all but one of the partners of a firm are adjudged as insolvent.
- Section 42(d) Partnership Act also says that the partners can contract for dissolution to take place if one of the partners is adjudged as insolvent.

Such adjudication shall take place on application of the Provincial or Presidency Act – thus, adjudication of a partner as insolvent is to be governed by these two Acts. Section 44 Partnership Act lays down when the Court can order dissolution. More specifically, Section 44(g) says that this dissolution can be ordered on any other ground where the Court deems it fit. One of the grounds cited by the Court can thus be insolvency of the partner under the personal insolvency laws. Section 48 gives the scheme of settlement and what the various assets of the firm are to be applied to at the time of dissolution. It lays down how the assets of the firm and the partners are to be applied to pay off the debts of the firm. Section 69 allows the operation of the official assignee or the receiver under the Provincial and Presidency Acts to dispose off the properties of an insolvent partner, and thus allows operation of the mechanisms laid down by these acts with respect to the insolvency of a partnership firm. Thus, we find that while the Partnership Act gives a broad scheme for dissolution of the partnership, the Provincial and Presidency Acts will apply to the individual partners.

3. *Limited Liability Partnership (LLP)*

Limited Liability Partnership Act, 2008 has detailed provisions relating to compromise or arrangement of LLP.

Limited Liability Partnership Rules, provides for an arrangement for revival and rehabilitation of any LLP may be proposed under following circumstances:

- Failure to pay an outstanding debt [Rule 35(12)(i)(a)]

Where on a demand by the creditors of the LLP representing fifty per cent or more of its outstanding amount of debt the LLP has failed to pay the debt, within thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors.

- On direction by the Tribunal, pending petition of winding up of an LLP [Rule 35(12)(i)(b)]

Where a petition for winding up of a LLP is pending before the Tribunal, in terms of the directions given by the Tribunal on the winding up petition.

- On directions by the Tribunal, upon report of the liquidator [Rule 35(12)(i)(c)]

Where the liquidator has filed his report before the Tribunal, in terms of directions given by the Tribunal on the report of the Liquidator.

- Other persons who may make an application for sanction of the arrangement for revival and rehabilitation of any LLP [Rule 35(12)(ii)]

- a. LLP;
- b. any creditor;
- c. partner of the LLP;
- d. Liquidator (in case of winding up);

Some of the provisions of Companies Act in relation to winding up and dissolution are applicable on LLPs. The LLP Act provides for the power of the National Company Law Tribunal (hereinabove Tribunal) to enforce the compromise or arrangement and winding up. Further, the LLP Act provides for the completion of all actions relating to implementation of revival and rehabilitation arrangement.

4. *Corporate*

The law of insolvency for corporate is contained in the Companies Act, 1956 (1956 Act) under which winding up of companies is carried out and Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) which deals with revival and rehabilitation of sick companies.

Companies Act, 1956

In India, the Companies Act, 1956 provides for the law relating to corporate insolvency and *inter alia* contains the provisions for winding up of companies.

A company can be wound up in one of the following ways:

- Compulsory winding up by order of Court
- Voluntary winding up
 - Members' voluntary winding up
 - Creditors' voluntary winding up
- Winding up subject to supervision of the court

In addition, the Registrars of Companies are empowered under section 560 of the Companies Act to strike off the name of a defunct company from the register. An unregistered company or a foreign company can also be wound up under the provisions of the Companies Act.

Sick Industrial Companies (Special Provisions) Act, 1985

The process for rehabilitation, regulated by the Sick Industrial Companies (Special Provisions) Act 1985 is done through the institutional structure of Board of Industrial and Financial Restructuring ("hereinafter referred as BIFR").

Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI)

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. It is a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court.

The SARFAESI Act empowers the banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mis-matches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

Individual Insolvency Laws – Reforms Required

Mostly the SMEs in India are proprietorship concern or partnership firms. These business entities are governed by personal insolvency laws (comprising of Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920). The Law relating to personal insolvency has not been changed or amended the way corporate insolvency laws have to keep pace with the changing demands of the modern business environment. The existing Laws governing the Insolvency of SMEs do not prescribe any formal process governing the restructuring of

SMEs. Since, the process of Restructuring is not defined at all; it makes it even more difficult to carry out revival, mergers, acquisition or any other form of restructuring for SMEs. Some major problems faced by SMEs in relation to insolvency are as under:

1. *Attachment of Property*

Unlike limited liability entities, where the liability of the shareholder is limited to the extent of the contribution made or due from him, in proprietorships or partnerships there is no separation of personal liability and business liability. When a business fails, not only do the assets of the business but the entrepreneur's personal assets also get attached to pay off business dues. Further, all guarantors which are drawn from the critical social safety net of the small entrepreneur, get personally involved and in the eventuality of failure they also get implicated and the whole safety net crumbles.

2. *Absence of Revival Mechanism*

During the period when the insolvency petition is pending for disposal, there is no protection available under different Acts for recovery of statutory dues. There is no BIFR type of mechanism for small enterprises, where till the decision of case or order of BIFR no one can initiate recovery of debts by attachment of property under any law of the land. All the while when the entrepreneur struggles to revive the unit or in process of getting himself insolvent, because of his inability to pay statutory taxes or settle liabilities, he could be sued and penalized under several regulations.

3. *Position of Courts*

The insolvency mechanism through the two Acts is all but dysfunctional. The conditions of the Act are almost impossible to meet and terms are antiquated, and prejudiced. The absence of provisions sufficiently defining the power of Courts to decide question of law and fact arising in the insolvency proceedings are main problems of these Acts. The proceedings in such cases can be initiated in the District Court. Moreover, many of these conditions fall under criminal courts having their own timetable resulting in enormous delays. They take their own time adjudicating the petitions and are apt to enforce the processes of seizing debtor estates, appointing receivers and punitive remedies against the debtor including imprisonment. Indeed adjudicatory order on an insolvency petition under this Act lays the entrepreneur open to action including arrest and detention in a civil prison as if business failure were a criminal Act.

RBI on SMEs

Emphasis has been given by the Reserve Bank of India in this regard and the RBI has come up with Guidelines for Debt Restructuring of SMEs. The guidelines prescribe the minimum set of standards that has to be followed in any case of debt restructuring of SMEs.

Further the report of the 'Working Group on Rehabilitation of Sick SMEs' (RBI, 2007) highlights the shortcomings of the current dispensation.

The report states : "the normal action plan of any banker when a small unit is in stress is to stop operations in the account, serve a recall notice and initiate action under SARFAESI Act. Efforts for rehabilitation, if any, are ad hoc and not properly structured after viability study or analysis of the root causes of sickness etc. The bank staff puts in efforts to avoid classification of the account as NPA. All focus of the banks is centred on the asset classification and not health classification."

Key issues in SMEs insolvency

- (i) The case of MSMEs (Proprietorship & Partnership) is fundamentally different from that of corporates, both in terms of personal liabilities of promoters and related legal provisions. The liabilities of MSMEs (Proprietorship & Partnership) in the event of default are unlimited and there is no revival and rehabilitation procedure.
- (ii) There is no mechanism for addressing eventualities borne out of 'temporary stresses' in the life of an enterprise.
- (iii) There is absolutely no system for restructuring multi-agency statutory liabilities.
- (iv) The insolvency mechanism under the two Acts is largely dysfunctional both because of uninterested judicial dispensation for insolvency cases as well of extremely harsh post-insolvency treatment meted out to a debtor.

Suggestions

1. The two insolvency Acts should be substantially amended or replaced with a new, single and comprehensive law.
2. SMEs should be encouraged to incorporate themselves into LLPs, as LLP Act provides for efficient winding up mechanism and limited liability which does not extent to personal assets of the partners.
3. A time-bound restructuring mechanism for the SME sector may be devised, learning from the shortcomings of BIFR and providing effective protection against attachment of assets and imprisonment during the restructuring exercise.
4. There is need to have specialized quasi-judicial body i.e. bankruptcy and insolvency courts (fast-track).
5. The insolvency proceedings should not become too much advocate driven or such a mechanism could become out of reach for most MSMEs.
6. The professionals like Company Secretaries be given larger role in revival, rehabilitation and winding up of SMEs.

Conclusion

The case of small enterprise is fundamentally different from corporates both in terms of personal liabilities of promoters and related legal provisions. SMEs are the "missing part" in the insolvency reform efforts. A reform of the insolvency framework for SMEs should be specific, dynamic and functional. There is urgent need for substantive amendments in

Insolvency Acts (Presidency Town Insolvency Act, 1909 and Provincial Town Insolvency Act, 1920) or replacement by new (single and comprehensive) law in Indian legal system. Enactment of comprehensive Bankruptcy Law mechanism covering non-corporate entities is must. The whole solution lies with what the law ought to be.

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ECONOMIC DEVELOPMENT IN INDIA : AN OVERVIEW OF POLICY ORIENTATION

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"If you Don't Do It, It Wont Get Done"

The line fits true for anyone and in any economy too. Even after the series of crisis and some undesirable events in the world, India is still the nation with hope and pride. India is expected to overtake Japan as the world's third largest economy by 2015 and to surpass China as the most populous nation by 2030. Stronger economic policies, effective regulator regime, favourable demographics, a rising middle class, improving trade relations with neighbour countries and an enterprising business legends are the potentials to address present challenges and shape India's next wave of economic growth and transformation.

Backdrop of India's Economic Development

The economy of India is based in part on planning through its five-year plans, which are developed, executed and monitored by the Planning Commission. Following are the five year plans introduced by Government with their objectives at that time-

- First Five-Year Plan (1951–1956) – Stress on Agriculture
- Second Five-Year Plan (1956–1961) – Importance to Industrial development
- Third Five-Year Plan (1961–1966) – Decentralization
- Fourth Five-Year Plan (1969–1974) – To improve social economic structure
- Fifth Five-Year Plan (1974–1979) – Poverty alleviation
- Sixth Five-Year Plan (1980–1985) – Improve productivity through modernization
- Seventh Five-Year Plan (1985–1990) – Social justice
- Eighth Five-Year Plan (1992–1997) – To generate employment opportunities

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- Ninth Five-Year Plan (1997–2002) – Stabilizing the prices and food security
- Tenth Five-Year Plan (2002–2007) – Accelerate the growth of Indian economy
- Eleventh Five-Year Plan (2007–2012) – Education, Health, Infrastructure and environment development
- Twelfth Five Year Plan (2012) – Stress on sustainable development.

From the above it is clear that in every five year plan India's target was different.

India as an Idea

India's Prime Minister, Dr. Manmohan Singh has said that "India is an idea whose time has come." The Indian economy is increasingly integrating with the global one, and it has set for itself a long-term goal of doubling its share in global trade by 2020. The economic balance is definitely and decisively shifting to Asia, including India. Indian entrepreneurs are investing overseas successfully. International firms are finding a productive and profitable business destination in India. The process of engagement with India has truly taken off.

Under the present circumstances of economic crisis, India needs to find the answer for the following two questions-

1. "Are we fully ready for crisis/post crisis situation?"
2. If so, is it the sole responsibility of Government and Central Bank to take action towards solution of economic problems?

Getting the positive result for the economy is not only the responsibility of Government and Central Bank, it is the combined effort of all, including corporate bodies, self help groups, NGO's, Media and professionals etc. In India, people are facing two different domestic economic environments-one driven by Government and other driven by market players. There is a lot of contribution by Government as well as by the businesses, professions and society to boost the economic growth of India.

This article focuses on policy driven initiatives and Corporate/ NGO initiatives in the development of Indian economy.

I. Policy Driven Initiatives

1. RBI

The regulator Reserve Bank of India was set up in 1935. It was initially privately owned but nationalized in 1949 and is today owned by the Government of India (GoI). The main functions of RBI are:

- Monetary authority
- Regulator and supervisor of the financial system
- Manager of foreign exchange
- Issuer of currency

- Developmental role to support national objectives
- Banker to the Gol
- Banker to banks

Growth and development

- Adoption of financial inclusion policy, introduction of no- frills account
- Introduction of business correspondents
- Allowing new private sector banks in the sector
- Announcement of new bank licenses
- Greater opportunity for foreign banks
- Move toward bank holding company structure.

The reforms have brought in significant changes in the banking system, which emerged unscathed from the global financial crisis of 2008. The financial condition of the banking system has improved significantly with an overall CRR of 14.17% and net NPA of 0.97% as on March 2011. The advances of the banking system grew approximately 34 times in the last two decades from ₹1.163 billion as on March 1991 to ₹ 39.386 billion as on March 2011. The deposit base increased from ₹1,925 billion to ₹52.069 billion during the same period increasing approximately 27 times. The branch coverage has grown from 60,220 to 93,080 in the last two decades.

Recent RBI Policy Measures

- * Keeps repo rate unchanged at 8 percent.
- * Reverse repo stays at 7 percent.
- * Cash reserve ratio cut by 25 basis points to 4.50 percent, effective from the fortnight beginning September 22.
- * Statutory Liquidity Ratio stays at 23 percent of deposits.

Policy Stance

Keeping in its view the following factors RBI has taken the above initiatives :

- * Primary focus of monetary policy remains containing inflation and anchoring inflation expectations.
- * Even as demand pressures moderate, supply constraints and rupee depreciation are imparting pressures on prices.
- * As policy actions to stimulate growth materialise, monetary policy will reinforce the positive impact of these actions while maintaining its focus on inflation management.

- * Government's recent actions have initiated a shift in expenditure away from consumption (subsidies) and towards investment (including through FDI).
- * See pressures on inflation in the short term due to upward revision in diesel prices and rationalisation of LPG subsidy.
- * Risks from global factors, in terms of both capital movements and oil prices, will persist.

Economic Growth

- * Wedge between deposit growth and credit growth could widen on the back of the seasonal pickup in credit demand in the second half of the year 2012.
- * Persistent inflationary pressures alongside risks emerging from twin deficits, constrain a stronger response of monetary policy to growth risks.

2. SEBI

SEBI has introduced an array of reforms in the primary and secondary markets and catalysed modernization of the market infrastructure to prepare the market for the twenty-first century. India probably the only country in the world where all the exchanges have screen-based trading. Some of the initiatives taken by SEBI are :

- SEBI has increased retail investors limit to ₹ 2,00,000 from ₹ 1,00,000 in Initial Public Offerings (IPOs).
- SEBI introduced the option of making an issue through book-building and also introduced ASBA scheme (in IPOs) for investment by investors through bankers.
- The regulations for Foreign Institutional Investors (FIIs) were liberalized to provide greater flexibility and for widening the scope of their investments in the Indian securities market.
- SEBI has maintained a rate of around 95% in redressing investor grievances and has commenced processing of Investor complaints in a centralized web base complaints redress system SEBI Complaints Redressal System (SCORES).
- SEBI gave its final nod for setting up a stock exchange / a trading platform by a recognized Stock Exchange having nationwide trading terminals for SMEs. BSE & NSE has already set up the SME Exchange namely 'BSE SME' & 'Emerge'. MCX-SX is too in the process of setting up a SME Exchange.

3. MCA

The Indian economy has expanded at a rapid rate during the current decade and the corporate sector has been the biggest contributor in this growth story. The Ministry of Corporate Affairs is working towards reforming the enabling environment for effective functioning of the corporate sector, simultaneously; there is a strong argument for fostering sensitivity to community and social concerns as a part of the broader objective of inclusive growth. Some of the initiatives taken by MCA are:

- Introduction of MCA 21, e-governance and e-forms for filing documents electronically making paperless system.
- The payment of filing fee by the companies has been made completely online.
- XBRL a new initiative – requiring detailed information to be filed by corporate and with several validation checks by the MCA 21 system – an extensive awareness campaign has been launched.
- The Ministry has formulated “National Voluntary Guidelines on Social, Environmental and Economic responsibilities of Business” that will mainstream the subject of business responsibilities. The guidelines are a refinement over the Corporate Social Responsibility Voluntary Guidelines 2009.
- In order to have secured electronic platform for capturing accurate electronic processes, Central Depository Services (India) Ltd (CDSL) and National Securities Depositories Limited (NSDL) are being given approval by the Ministry of Corporate Affairs to provide their electronic platform for capturing accurate electronic voting in General meetings of the company.

4. Foreign Direct Investment

The Indian government is continuously working towards increasing foreign direct investment (FDI) flows into the country. The country enjoyed the second highest growth in FDI inflows in the world during 2011, which eventually generated over two lakh jobs. According to the Ernst & Young's (EY) 2012 India Attractiveness Survey, investors view India as an attractive investment destination. India stands as the fourth most attractive destination for FDI in the survey's global ranking.

The objective of the Government of India is to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth.

India received FDI worth US\$ 2.21 billion in February 2012, registering an annual growth of 74 per cent. Cumulative inflows for April-February 2011-12 stood at US\$ 28.40 billion.

A report by DIPP states that 'India has already emerged as one of the most preferred destinations for foreign investment and this eminent position will need to be sustained.' The Government of India has very recently taken certain initiatives allowing FDI in certain specific sectors which are as follows:

Multi Brand Retailing

The Union Cabinet on 14 September 2012 allowed the foreign direct investment (FDI) for 51 percent in the multi-brand retail chains and 49 percent in Aviation power exchanges industry subject to certain specific conditions.

Aviation sector

This will help in making equity invasion for the aviation companies seeking financial support at the time when maximum of the domestic airlines are passing through a phase of losses.

Investors who are not functional in airline business can own equity of 49 percent directly or indirectly in the Indian Aviation Companies.

Power Exchanges

1. 49 percent of FDI in power trading exchanges will be taken care of as per the regulation laid down by SEBI and Central Electricity Regulatory Commission (Power Market) Regulations, 2010.
2. The commerce minister stated that Foreign Institutional Investors cannot exceed a limit of 26 percent investment and the paid-up capital will be restricted to 23 percent.
3. FII can be permitted under automatic routes whereas; the FDI will be scrutinized under the route approved by the government.
4. The generation of electricity, power transmission and distribution along with trading will be done in accordance to the provisions of the Electricity Act 2003.
5. The current policy allows FDI up to 100 percent in power sector (atomic energy is an exception).

Broadcasting Services

The Government of India on 20 September 2012 hiked the foreign investment cap for the broadcasting service providers to 74 percent. The registered hike in foreign investment cap is for service providers of Direct to Home (DTH), modernized cable network and mobile television. This move of the government will allow the global players in acquiring major stakes in the broadcasting companies. Before his decision was passed, the eligibility of DTH and multi-system cable operators to make foreign investment was limited to 49 percent only.

In its decision the Cabinet Committee on Economic Affairs cleared its stand on the companies of broadcast content that the TV news Channels and FM radio channels can have a foreign investment cap of 26 percent. This decision was made to make sure that majority of control remains back in the hands of Indian Partner.

II. Societal Linked Initiatives

As per the 2011 Census, over 70 per cent of the total Indian population resides in villages and rural areas. Rural development, thus, has become an integral part of development schemes and gained paramount significance in the Five Year Plans. Constant efforts are being made by the Central and State governments for upliftment of the rural society, as well

as, to remodel and revolutionize the rural living standards across the country. In India, rural development is an integrated effort to eliminate poverty, and sustain growth across all rural sectors which is ultimately related to the growth of India.

The Indian corporate sector has been playing a significant role for the cause of rural development in the country. Some of the initiatives are discussed below:

(a) *ITC e-choupal*

It was introduced by ITC in June 2000. The word "choupal" is a Hindi word which means "village meeting place" and "e" – stands for electronic, so it is a village meeting place on an electronic platform.

Therefore, it is a virtual market place where vendors come together to do transactions. In this market farmers can transact directly with a processor and can realize better prices for their products.

Why this was initiated?

- To break the lengthy process of sending the product to Mandies and to give appropriate information to farmers with respect to seeds, fertilizers, farm practices, and mandi price.
- To revolutionize the procurement of aquaculture and agriculture products like soyabean, oilseeds, coffee, wheat & prawn.
- To bring efficacy in the ITC's procurement process.

Advantages of e-choupal :

- e-choupals are set up by ITC with solar power back-up and VSAT connectivity. The equipment cost for the e-choupal is borne by ITC.
- Allow farmers to compare global and local market price.
- Actual procurement is done at factories and warehouse hubs. The initial logging is done through the e-choupal, which provides price information and therefore price certainty.
- To farmers, they give access to operational information developed by ITC experts, pertaining to cropping, seeds, fertilizers etc.
- Although the prices offered by ITC are not higher than those at the mandi, still the farmer chooses ITC because the transactions are done closer home and the practice of weighing and quality assessment are more efficient and transparent. The farmers also save on travel time and costs and incur less wastage.

e-choupal services today reach out to more than 4 million farmers growing a range of crops i.e., soyabean, coffee, wheat, rice, pulses, shrimp in over 40,000 villages through more than 6500 kiosks across a large number of states.

(b) Infosys Rural BPO

Infosys BPO in addition to its other BPOs has deployed Rural BPO model where service providers operate in rural India to take advantage of low-cost operations. Infosys BPO partners with reputed and established rural BPOs to optimize costs backed by proven in-house practices and delivery mechanisms.

When BESCOM, the Karnataka State Electricity Board, approached Infosys to set up a call centre for them in 24 hours flat from scratch, Infosys turned to Rural Shores. The company promptly set up what was needed and now runs it for Infosys. This included writing the process scripts, recruiting and training 75 rural associates, and implementing call routing mechanisms. From the very first day, process associates at this rural centre have been achieving ticket closures within four hours of customers calling in.

Why this was initiated ?

- Leveraging low cost of operations and low attrition in rural India and passing the benefits to the client.
- Enabling BPOs as an attractive career stream to the rural educated citizens, therefore supporting socio economic balance.
- Cater to the regional language demands from Indian clients.

If 500 of India's 700 districts get a rural BPO centre with 500-1000 seats by, say, 2020 then it will provide about 10-12 lakh direct jobs (in two shifts) and many more indirect ones. The Rural Shores experience shows that it has a significant effect on migration and many a time they even find that natives of that area prefer to be closer to their roots, sometimes even sacrificing compensation.

Advantages of Rural BPOs :

- Rural BPOs are not just meeting but beating urban based BPOs in terms of its productivity.
- Cheaper in terms of infrastructure, logistics, compensation and training.
- What makes it even more socially attractive is that about 50% of employees are rural women who prefer to work closer to their villages or towns.
- Today, Rural Shores clients include American Express, WNS, Quattro, HDFC Bank, which are no different from the client list of any large IT company.

As the Indian BPO industry moves from the transactional to the transformational, from onshoring to near shoring and offshoring to rural shoring, the cycle is complete and virtuous. As India continues its relentless journey of conquering a larger slice of the global BPO pie, rural BPOs will play a significant part in making that happen.

SME Innovations

Innovation generates economic value, new jobs in the economy and cultures of

BACKGROUND

entrepreneurship. By virtue of its relationship with competitiveness, innovation emerges as a factor in promoting economic growth.

SMEs have greater innovation intensity than large firms. SMEs have been recognized as engines of equitable economic growth and development. They constitute a majority of total enterprises in most of the economies and account for a major share of industrial production. In India too, the SMEs play a pivotal role in the overall industrial economy of the country. Let's take some examples of innovations by SMEs:

(a) *Water ATM card*

An organization called 'Sarvajal' has found a modern solution to provide franchised water facilities to the remote areas that are deprived of clean water. The organization has introduced a unique device, which is known as a solar powered ATM.

It was started in the year 2008 to create market based mechanisms for health care. The organization thus came up with a unique idea of solar powered water ATMs that gives access to clean water to the people in the rural areas.

The ATM can be used with the help of a pre-pay card, which can be recharged through a cell phone. People can pre-pay to Sarvajal for water and use the cards to access the water ATMs. The ATMs treat the water with reverse osmosis and ultraviolet rays. The ATMs are cell phone network connected and if something goes wrong with the ATM then Sarvajal immediately finds out and rectifies it. The network of the Sarvejal's franchise is growing faster in the country.

Most villages have less than 100 families and can't really support their own RO machine. In order to get water to these villages, Sarvajal developed water ATMS using the RFID (Radio Frequency Identify Device) technology. Customers purchase a prepaid RFID card, which debits the amount (at 30 paise per litre) they dispense from the machine in 5, 10 and 20 litre quantities. The machine displays the balance on the card as well as the TDS (Total Dissolved Solids) levels.

Sarvajal's franchisee network is growing fast. So far, there are 120 facilities in India serving 60,000 people for the price of less than \$3 per month per family. In remote areas where clean water was impossible to come by before, this is more than just a luxury--it's a potentially life-saving technology.

(b) *Mera Gao Power*

61 million households in India do not have electricity. Communities resort to low quality sources of energy such as kerosene, wood, diesel, candles, and disposable batteries. Scaling the problem up, the Government of India estimates that 300 million people live without electricity. More than 600 million people in South Asia lack access to electricity, and worldwide the figure is approximately 1.4 billion.

Mera Gao Power has developed a low cost micro grid tailored to the needs of off-grid villages. Mera Gao Micro Grid Power (MGP) will construct and operate approximately 40 new village-level micro grid lighting facilities to reach 4,000 new customers and 20,000 new beneficiaries in Sitapur districts of Uttar Pradesh, India.

It builds and operates micro lighting utilities serving off-grid customers with a high quality, dependable lighting and mobile phone charging services. By tailoring its micro grid design to meet the specific needs of poor, off-grid households, MGP has developed the lowest cost micro grid in operation.

MGP will provide rooftop solar photovoltaic panels that villages can afford communally. MGP's service is anticipated to alleviate 4,000 household's dependency on kerosene, reducing kerosene consumption by 144,000 liters per year. By doing so, carbon emissions will be reduced by an estimated 400 tons per year.

Quality, dependable light transforms lives; children are able to study at night, adults are able to earn additional income, and indoor air quality is improved. Their services benefit women who traditionally spend more time working indoors and children who accidentally drink kerosene and inhale its fumes. With a commercial model, MGP expects to scale up its services to reach 1,000,000 people by 2017. MGP anticipates that customer households will experience fewer respiratory conditions, increased time children spend studying, and increased income.

(c) *Vaatsalya*

While 70% of India is living in semi-urban and rural areas, 80% of India's healthcare facilities are located in urban/metro areas. Vaatsalya is bridging this gap by building and managing hospitals/clinics in semi-urban and rural areas and bringing healthcare services where it is needed most. Vaatsalya is India's first hospital network focused on Tier II and Tier III towns.

How it started

Ashwin, one of the co-founders noticed that patients from Gulbarga and Bijapur used to go to Sholapur for secondary healthcare services, from Shimoga & Hassan to Mangalore, and from Vizianagaram & Narasanapetta to Vizag. These were such well-established train sectors that hospitals and clinics in Sholapur/Mangalore/Vizag optimized their operations around train arrival and departure timings. Because of these two trends, the idea of Vaatsalya was born. Its main focus was to reduce the travel associated with medical care by taking high quality healthcare directly to Tier II and III towns and make it affordable.

So how does Vaatsalya bring down the cost ?

Instead of creating hospital buildings from scratch, Vaatsalya hit upon the innovative idea of identifying an existing healthcare practice in the target town and acquiring it. The chief doctor/owner of the practice (usually a 20-30 bed clinic) would become the Managing Director of the new Vaatsalya-branded hospital. Instead of buying the hospital building, Vaatsalya enters into a long-term lease agreement with the clinic owner. Besides the model's cost savings, there are other advantages as well:

- Vaatsalya hits the ground running since the clinic already has an existing patient base and a standing in the town.

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- The chief doctor's reputation makes it easy to hire the first round of doctors for scaling the operation.

Vaatsalya's Small Town Hospitals

Vaatsalya opened its first hospital in Hubli in 2005. Vaatsalya supports a long list of state and central insurance programs – Karnataka-based Yeshaswini (started by Narayana Hrudalaya Foundation and catering to 17 lakh+ farmers) and Vajpayee Arogyasri (catering to 9 lakh+ BPL families), RSBY (Central), Rajiv Arogyasri (Andhra Pradesh's flagship healthcare inclusion program covering 2 crore BPL families), National Rural Health Mission & Janani Suraksha Yojana (for neonatal and maternal care), Arogya Raksha Yojana, Sampoorna Suraksha Yojana etc.

(d) *Health Management and Research Institute (HMRI)*

Health Management & Research Institute (HMRI), a non-profit organisation runs the '104' healthcare helpline in Andhra Pradesh and Assam, plans to roll out telemedicine services in six states beginning in about a year.

The 104 Advice helpline brings quality medical consultation to anyone with a phone across the state of Andhra Pradesh. As the number of Indians with cell phones booms, call-in health counseling is bringing scientific care to rural and undeveloped areas for the first time. Set up in 2007, the 104 Advice medical helpline run by HMRI has already grown from 200 calls per day to an average of 50,000. Mahindra Satyam is proud to provide the technical support for the world's largest health contact centre.

104 Advice provides all callers with accurate medical information, advice, and counseling in three languages (Telugu, Hindi, and English) around the clock. Their triage system orders and diverts calls to the right personnel using the triage classification of critical, serious, or stable states. Trained counselors, doctors, paramedics, and PhDs are standing by to provide counseling services, maintain up-to-date medical content, and analyze the calls so received.

Their proven state-of-the-art telecommunications equipment and technology enables them to track and analyze the calls received. In this way, they can track diseases across the state and identify broad patterns and epidemics. Their data help the government respond quickly and effectively to medical needs across Andhra Pradesh.

From day-to-day advice on hygiene to emergency counseling on snake bite treatment to psychological counseling to prescriptions by SMS, they are helping bring life-changing, and often life-saving, medical information to regions that have never had access before.

NGO Initiatives

Barefoot College

Established in 1972, the Barefoot College is a non-government organisation that has been providing basic services and solutions to problems in rural communities, with the

objective of making them self-sufficient and sustainable. These 'Barefoot solutions' can be broadly categorised into solar energy, water, education, health care, rural handicrafts, people's action, communication, women's empowerment and wasteland development.

Rural men and women irrespective of age, who are barely literate or not at all, and have no hope of getting even the lowest government job, are being trained to work as day and night school teachers, doctors, midwives, dentists, health workers, *balsevikas*, solar engineers, solar cooker engineers, water drillers, hand pump mechanics, architects, artisans, designers, masons, communicators, water testers, phone operators, blacksmiths, carpenters, computer instructors, accountants and kabaad-se-jugaad professionals.

The areas on which the Barefoot College concentrated are:

1. *Groundwater* : Survey, site selection, installation of hand pumps, repair and maintenance through community participation.
2. *Education* : Nursery schools, evening schools for dropouts, classes for women and girls.
3. *Medical care* : Preventive health programmes where a doctor is not needed. TB eradication, eye camps, immunisation camps, family planning camps, pre-natal and post-natal care, appliances for the handicapped, testing drinking water for contamination, decontamination of wells, homoeopathy.
4. *Women's programmes* : Training of traditional midwives, motivators in famine relief camps, nursery school teachers, awareness generating, work among rural women.
5. *Agricultural extension* : Development of unused and underutilised land allotted by government, soil and water testing, groundwater survey, engineering survey, seeds and fertiliser loans, credit, grain storage, marketing facilities, social forestry.
6. *Rural industry* : Working with leather workers, weavers and rural women in order to generate more income for their families; assistance with raw materials, marketing, design, and credit.
7. *Appropriate technology* : Use of biogas for generating power, photovoltaic cells for generating electricity in night schools, dispensaries.
8. *Animal husbandry* : Demonstrate how stall feeding of goats is useful for milk and meat but constitutes an ecological hazard; rearing of rabbits and sheep; the BC dealt only with the poor peasants' animals, not with buffaloes and cows.
9. *Communication* : Use of traditional media like puppetry to communicate with the rural poor; use of street plays and other media.

The Barefoot College takes uneducated middle-aged women from poor communities and trains them to become solar engineers and so create power and jobs in their communities. The college's 6-month programme brings together women from all over the world. Learning about electrical components and soldering without being able to read, write or understand English. They train women from more than 39 countries around the world to become Barefoot Solar Engineers and agents for sustainable change, in a bottom-up development model.

BACKGROUND

Role of Company Secretaries in the growth of India Inc.

*"It's the speed- how quickly people are moving. It's their passion and ambition.
Execution is something other can learn from India."*

Christian Seiwald, CEO, Sandoz GmbH

India on global horizon emerging as economic super power has created new challenges particularly in terms of widening gap between the well off and less well off. The India Inc. growth which is effective, inclusive and broad-based needs to be driven by Professionals like Company Secretaries who being more closely associated with the decision making process in the companies has assumed the role of a leader – a driving force behind formulating business strategies towards inclusive growth.

Company Secretaries, having the expert knowledge, are best placed to assist and guide the trade and industry in compliance with the various enactments. In addition, with their creative thinking and pro-active planning and management of existing and the upcoming obligations, Company Secretaries can add value in decision making. Every business decision whether raising finance or making investment, restructuring or takeover, or any other corporate action, has legal and tax implications. The Company Secretary, having vast knowledge of various laws is considered as compliance manager. Company Secretaries are recognised for providing various services under direct and indirect tax laws in India. The Company Secretaries not only protect the business from non-compliances but can enhance stakeholders' wealth by providing creative solutions to business issues. In view of the regulatory focus being on the self-regulation and e-governance, the role, responsibilities and scope for Company Secretaries have enhanced.

The Company Secretary as an Innovative Professional in the dynamic business environment have to ensure that the company ought to conduct several projects for the betterment of community under its corporate Social Responsibility apart from being Conscience Keeper of Corporate Governance. The objective of Company Secretary should be to achieve inclusive growth and sustainable development of the society.

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