# Corporate Governance : Panting to Keep up with Scams

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## Abstract

India's top notch IT solutions provider "Satyam Inc," the recipient of the Golden Peacock Award for best corporate governance practices collapsed after its Chairman declared high level mismanagement with the company's accounts and the involvement of stewards of the company. Enron's debacle took the entire Wall Street by a sense of shock and disbelief. People found it difficult to believe as to how come such a behemoth corporation disappeared overnight. Worldcom, crushed by its $41 billion debt load, made its filing in the Southern District of New York. With $107 billion in assets, WorldCom's bankruptcy is the largest in United States history, dwarfing that of Enron Corp. In June 2005, Dennis Kozlowski, CEO of Tyco Electronics was convicted of misappropriating more than $400 million of Tyco's corporate funds. He is currently serving at least 8 years and 4 months at the Mid-State Correctional Facility in Marcy, New York. HealthSouth Scandal (2003), Freddie Mac (2003), American Insurance Group (2005), and Lehman Brothers (2008) are some of the corporate scandals that rocked the corporate world and shattered investors' confidence. The study highlighted prominent characteristics of different corporate governance models in action around the world, their salient features, and whether convergence is in the offing for these models. It also illustrated three different instances of corporate governance failure in companies based in different governance models following countries.



*Keywords :* corporate governance models, financial scandals, investor confidence, board of directors,

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Throughout history, the global corporate landscape has been scarred with incidences of scandals, scams, and racquets. These range from managerial pilferage to extremely well orchestrated acts such as tunneling, insider trading, and so forth. The culprits, along with their aides, are brought to book and the law of the land takes its course, but the financial and psychological damage inflicted to the investors and owners is beyond repair at times. Loss of investor confidence in a company's board of directors can have a ripple effect to the market as a whole because of interlocking directorate. It is the primary job of the board of directors to act as a fiduciary of the shareholders by overseeing the activity of a company's management and keep a check on potentially detrimental proposals.

Modern corporate establishments are characterized by separate ownership and management. Berle and Means (1932) stated about the precursors of separation and its ramifications. With an increase in the scale of operations and complexities therewith, companies generally managed by families needed to induct outsiders to manage businesses. The separation led to an inherent rift between the management and the owners. The owners accused the management of pursuing its personal interest instead of that of shareholders while taking important decisions, leading to a conflict between the two parties. Various measures have been taken to mitigate such incidences like performance-based pay for chief executives, granting a portion of ownership to the executive, options, and so forth. A different type of friction between two parties (Segato, 2006) arises where majority shareholders

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expropriate the interests of minority shareholders through various means such as tunneling, unfair transfer pricing, grafting, passing benefits through creation of subsidiary companies, and so forth (Salama & Prado, 2011).

The core issue in the study of corporate governance is the alignment of interests of different stakeholders of a company so that one does not benefit unfairly at the expense of other. Good corporate governance practices spell out steps to be undertaken to achieve the goal alignment possible for all concerned. This caselet delineates different models of corporate governance in the backdrop of corporate scandals that have rocked investors' faith big time. The study highlights prominent characteristics of different governance models in action around the world, their salient features, and whether convergence is in the offing for these models. It also illustrates three different instances of corporate governance failure in companies based in different governance models following countries. The incidents of corporate failures in countries following different models of governance mechanism insinuates that none of the models of corporate governance around the world are fool proof.

## Corporate Governance: A Brief Introduction

Corporate governance as a concept has been defined by various committees established to recommend best practices. These range from simple ones like one given by the Cadbury Committee (1992) : "Corporate governance is the system by which companies are directed and controlled" (para 2.5, p 14).

The Cadbury Committee (1992) put forth its contention in very clear terms :

> The country's economy depends on the drive and efficiency of its companies. Thus, the effectiveness with which their boards discharge their responsibilities determines Britain's competitive position. They must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance. (para 1.1, p. 10)

According to OECD (2004) :

> Corporate governance involves a set of relationships between a company's management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of a company are set, and the means of attaining those objectives and monitoring performance are determined. (Chapter 2, p. 19)

According to Shleifer and Vishny (1997), "corporate governance relates to the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment" (p. 737).

Post Cadbury and Greenbury reports, a governance committee was set up under Sir Ronald Hampel to review the implementation of recommendations by previous committees :

> Good corporate governance is not just a matter of prescribing particular corporate structures and complying with a number of hard and fast rules. There is a need for broad principles. All concerned should then apply these flexibly and with common sense to the varying circumstances of individual companies. This is how the Cadbury and Greenbury committees intended their recommendations to be implemented. It implies, on the one hand, that companies should be prepared to review and explain their governance policies, including any special circumstances which in their view justify departure from generally accepted best practices, and on

the other hand, shareholders and others should show flexibility in the interpretation of the code and should listen to directors' explanations and judge them on their merits. (Hampel Committee, 1998, p. 10)

The underlying commonality among all these definitions is the congruence of stakeholders to avoid conflict of interest as much as possible. Stakeholder is a blanket term used to incorporate all the parties concerned, however, for the most part, governance practices are focused on the shareholders and managers (Corporate Governance, n.d.)

Different theories have been put forward by researchers such as the agency theory stating that the management works as an agent of the owners (principal) and tries to fulfill personal goals instead of the company goals, leading to conflict between the two parties. The stewardship theory states that managers do recognize themselves as part of a company and care about a company as a steward upholding the fiduciary responsibilities and duties while rendering their services towards a company. Other than these two popular theories, there is the resource dependency theory stating that some executives or board members can use their resources/connections to benefit the company ; the tournament theory states that insider executives vie among themselves to reach the top executive position (Ahamed, 2013).

## Need for Good CG Practices

With the separation of the management from ownership and exponential growth in the size of corporations, it became imperative for the owners to hire people with required skill and expertise to manage burgeoning businesses, thereby sowing seed of potential conflict in interest of both parties. It, however, is not true that conflict of interest would arise only in firms with separated ownership and management. Sir Adrian Cadbury stated that family firms, where ownership and management does not have any distinction, face all problems that other firms face in addition to the family specific ones like family frictions, sibling rivalry for top positions, and so forth. Corporate governance practices attempt to align the interests of all stakeholders in order to reduce friction

**Figure 1. Premium Amount Investors are Willing to Pay for Good Governance**

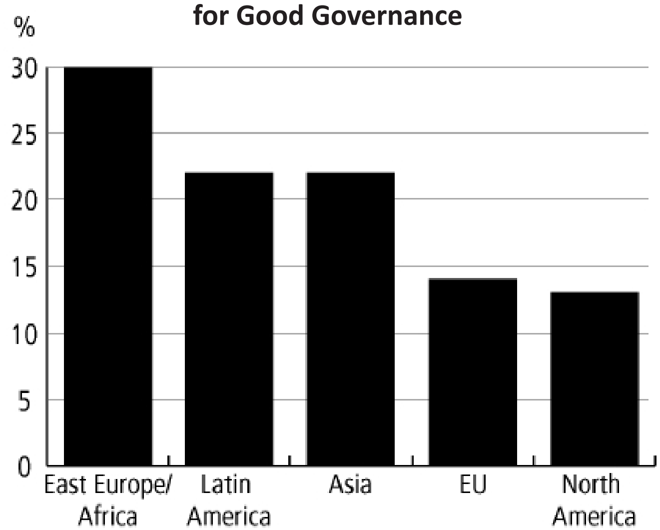


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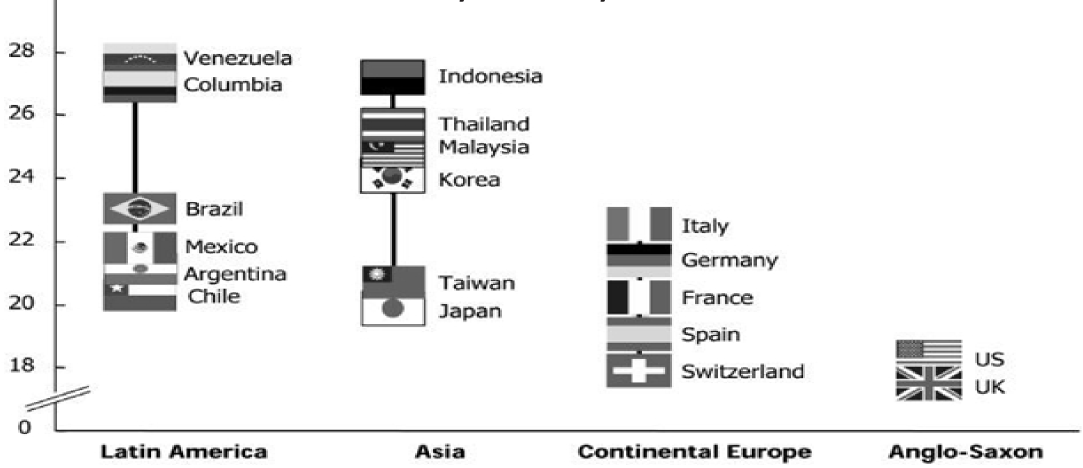
**Figure 2. Average Premium Investors are Willing to Pay Differs from Country to Country**




Source : Reproduced from McKinsey & Co. (2000, June). *Investor opinion survey* (p. 10). Retrieved from http://www.oecd.org/daf/ca/corporategovernanceprinciples/1922101.pdf

amongst them. The corporate governance practices comprise of components such as transparency in business dealings, disclosure of important financial and non financial information to the stakeholders, adherence to mandatory legal requisites and law of the land, empowered board of directors for independent monitoring of managerial activities, and most importantly, willingness and determination to implement best practices in spirit and not merely in words.

Good corporate governance practices are valued by investors and have positive financial repercussions. Surveys by McKinsey & Co. showed that investors were willing to pay a premium of up to 30% for companies following good corporate governance practices (Figure 1 and Figure 2). International Finance Corporation published a survey carried out in 2010 about corporate governance in emerging markets (Khanna & Zyla, n.d.). It highlighted that investors value good corporate governance practices Companies and pension funds often times shy away from investing in countries with poor investor protection and corporate governance practices not matching the international standards. This leads us to the next part of this article, which is the type of corporate governance model. Not only are good corporate governance practices desirable by investors, lack of it drives them away.

## Types of Corporate Governance Models

There are broadly two types of corporate governance models followed around the world known as the outsider model and the insider model. Important parameters on which the categorization of corporate governance models can be based upon are the structural framework of a company, institutional setting, and regulatory regime of the country. The structural framework encompasses the structure of board of directors and management and the control systems in place. Institutional setting refers to the institutions surrounding a company such as bank based or market based systems. The regulatory regime alludes to the legislative origin of corporate statute, its background, and degree of implementation in a country. Governance regime in a country is greatly influenced by the legal system prevalent there.

There are two broad categories of legal origin, that is, the British Common Law system and the French Civil Law system. The French Civil Law is further sub - categorized under German Civil law and Scandinavian Civil

Law system, which are similar to that of the French Civil Law System to a great extent. According to Porta, Lopez-de-Silanes, Shleifer, and Vishny (n.d.), the legal background influences current legal statute (laws are never written from scratch in any country), which in turn, describes the rights and legal protection of investors and other stakeholders.

**(1) The Outsider Model of Corporate Governance :** The outsider model is mostly followed in the countries which have a history of British colonialism such as the USA, India, Australia, and so forth. It is considered to be the most investor friendly model as their rights are properly defined and protected by the law (Porta et al., n.d.). Under this model, the focus of a firm with respect to interactions are transactional in nature. It focuses more on outsiders and shareholders than other stakeholders. It relies on the strength of the markets to allocate resources within firms. It also relies on incentives and external control systems to discipline and align managerial interests. In order to keep the managerial interests in line with that of shareholders, they are given stock ownership, and the remuneration and bonuses are linked with firm performance.

The outsider model has a single tier board structure (Lausten, 2002) comprising of directors and chairman of the board who oversee the activities of the top executives. Inclusion of more independent or non - executive directors on the board is encouraged in the recommendation of governance committees on the premise that non - executive directors would make more objective and just assessment of the management. An insider or executive director is associated with a company in some manner ; so, his/her career (if he/she is an employee) and fate is in some way linked to that company, which might resist him/her from taking bold decisions. The question then arises that if outsider directors are so beneficial, then why not have a board comprised entirely of outsider or non executive directors. Proponents against an all outsider board contend that, firstly, insiders have more information about a company than the outsiders, which could be useful in taking important decisions and secondly, insiders on the board get ready to assume higher responsibilities such as that of the CEO in the future.

In terms of institutional setting, outsider models are generally more inclined towards the market rather than banks to raise funds. As a matter of fact, the outsider model would go for a creditor that would provide a firm with cheaper capital. It so happens that in outsider model countries, markets are more mature and developed, making it easier for funds to get transferred from the public to corporates (Shleifer & Vishny, 1997).

**(2) The Insider Model of Corporate Governance:** The second type of popular corporate governance model is the insider model. This model is in contrast to the outsider model. It is a prevalent model in European countries sans UK. It is characterized by concentrated ownership by few shareholders, mostly founders and their family members. In some countries like Italy, the voting syndicate exists, where few block owners enter into an agreement to vote alike, keeping the control concentrated. The board of directors can have a two tier structure, namely the management board and supervisory board. The management board takes part in the day to day business activity of a firm ; whereas, the supervisory board advises them more like the board of directors in the outsider model. The contrasting feature in the board structure and component are the presence of executive members, employees, and family members on the board apart from the two-tier structure. The Management board, and to an extent, the supervisory board too have owners and employees of a firm on board. The focus of a firm is not exclusively bestowed on shareholders ; rather, all the stakeholders, including employees are taken cognizance of. There are firms following such a model that never laid-off employees in their history, irrespective of the bottom line (Japanese firms generally don't lay off). Firms following this model of CG rely more on banks than on the capital markets to generate capital, and as a result, it is not uncommon for a bank representative to be on the board. As pointed out in the previous section, the French civil law does not provide much statutory protection to investors (Porta et al., n.d.).

Other than these two prominent types of corporate governance models, there is another model known as the Japanese model of corporate governance. It is more like the European model, but is characterized by a unique

**Figure 3. Corporate Governance Reforms Worldwide : A Timeline**

| Pre-1997 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003/2004 |
|---|---|---|---|---|---|---|---|
| • Australia (2002) | • Finland (2000) | • Belgium (2000) | • Brazil (2002) | • Denmark (2001) | • Argentina | • Austria | • Bangladesh |
| • Canada (2004) | • Japan (2001) | • Greece (2001) | • China, Hong Kong (2001) | • Indonesia (2001) | • China, mainland | • Chile | • Cyprus |
| • France (2002) | • Kyrgyz Republic | • Germany (2003) | • Italy (2002) | • Philippines (2002) | • Czech Republic | • Colombia | • Mauritius |
| • Ireland (1999) | • Netherlands (2003) | • India (2003) | • Kenya (2000) | • Romania (2002) | • Malta | • Pakistan | • Oman |
| • New Zealand (2000) | • Sri Lanka | | • Malaysia | • Singapore (2001) | • Peru (2002) | • Poland | • Turkey |
| • South Africa (2002) | • Thailand | | • Mexico | | | • Russia | • Ukraine |
| • Spain (2003) | | | • Portugal | | | • Slovakia | |
| • Sweden (2001) | | | • South Korea | | | • Switzerland | |
| • UK (2003) | | | | | | | |
| • US (2003) | | | | | | | |

Source : Reproduced from McKinsey & Co. (2003, January). *Corporate Governance Reform is a Worldwide Phenomenon* (p.1). Retrieved from http://www.oecd.org/daf/ca/corporategovernanceprinciples/31874964.pdf

feature of interbank nexus, where one bank functions as the main bank supplying long and short term liquidity and presence of *keiretsus,* that is, a conglomeration of businesses linked together by cross-shareholdings to form a robust corporate structure. This model again is insider centric in its approach (Kang & Shivdasani, 1995).

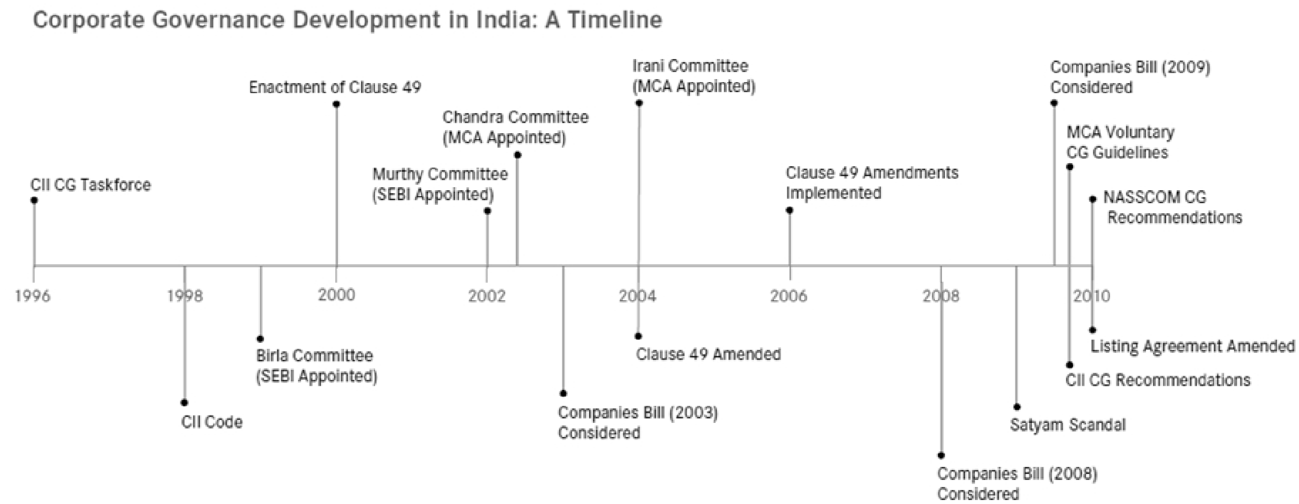
## Factors Influencing Corporate Governance

Stakeholders demand a better governed firm and are willing to pay a premium for that. Upon analysis, it becomes clear that markets are interconnected today like never before. People have invested in cross country companies, which over time, have grown so intricate and tightly knit that a dent on one has the potential to kick-start a domino effect (Mourdoukoutas, 2014). The fact that companies have grown exponentially in size and operations than they were a century ago coupled by the involvement of technology in the operational aspect, in particular, and every other aspect in general, makes today's corporation an all time bigger candidate to fail if it does. The bigger they are, the harder the fall is a suitable maxim to sum it up. Companies being a part of this extremely tough completion or sometimes in a bid to focus on other aspects such as expansion, and so forth find it hard to devote equal attention to the governance dimension. The negligence of governance inherently in the companies makes it an important issue for the regulatory authorities to take matters in their own hand as it is too important to be left on the internal governance mechanisms of the company itself. Important issues that regulatory agencies try to make the companies put in place are control mechanisms at different levels in the organization, so that, if the internal monitoring mechanism falters at one level, it could be tracked at the next level and fixed without being contagious.

An inherent wish to replicate good governance practices of other firms/countries by the investors is one important driver in this regard (Figure 3). History has witnessed many high profile corporate scandals and consequent committee formations, which came up with their list of mandatory, legally binding recommendations for the companies to adopt. With each such fraud coming up and stricter and tighter measures recommended by the companies, it is more desirable for stakeholders of other companies to implement those recommendations beforehand as a precautionary measure. A chronological list of corporate misbehavior and subsequent governance committee set up to plug the loopholes are exhibited in the Figure 4.

In addition to the regulations framed by regulatory agencies like SEC in the USA or SEBI in India or their equivalent in other countries, stock exchanges have their own set of rules, which need to be followed by the companies listed on them, that is, in 2003 NYSE, The New York Stock Exchange received SEC approval for new

**Figure 4. Corporate Governance Reforms : A Worldwide Phenomenon**

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corporate governance standards for listed companies, requiring boards to have a majority of independent directors, and requiring nomination, compensation, and audit committees to consist solely of independent directors.

It is a common notion, and people at large hold the view that introduction of more independent directors into a board reflects in greater effectiveness as independent members can put forth their views without any biases or vested interests. To a great extent, the logic is true and works in the outsider model of governance, but the same does not hold true, at least not to the same extent for the insider model of corporate governance (Varottil, 2010).

## A Brief History of Corporate Governance Committees

The Cadbury Committee, under the tutelage of Sir Adrian Cadbury, can well be considered as the precursor of all corporate governance committees. It paved the way and formed the precedent on which other committees built up. This report dealt with governance guidelines with a focus on the procedures of financial report production. Other committees borrowed heavily from that of Cadbury Committee and built upon its recommendation to improve the dimensions of governance further. The Greenbury Committee constituted after the Cadbury Committee focused on the remuneration of executives and non-executives board members. The Hampel report came out in 1998 in UK, which dealt with four major issues and also discussed with practical guidelines offered (a) the role of directors, (b) directors' compensation, (c) the role of shareholders, (d) accountability and audit. One of the most popular committees came out with the Sarbanes - Oxley Report in 2002, which dealt with establishment of the (PCAOB), auditors' independence, corporate responsibility, enhanced financial disclosures, analyst conflict of interest, commission resources and authority, corporate and criminal fraud accountability, while collar crime penalty enhancement, corporate tax returns, and corporate fraud accountability. The Higgs Report in 2003 dealt with non-executive directors, and the Smith Report in the same year dealt with audit committees.

During the beginning of the East Asian Crisis of 1997, the CII (Confederation of Indian Industries) came out with the report of voluntary code of corporate governance. It was not legally binding on the companies, but was advisable to adopt these measures. The CII Voluntary code of Corporate Governance was followed by the K.M. Birla Committee Report in 1999, which had both mandatory as well as voluntary recommendations. Mandatory recommendations of the Kumar Mangalam Committee included the constitution of Audit Committee and Remuneration Committee in all listed companies, appointment of one or more independent directors in them, recognition of the leadership role of the Chairman of a company, and enforcement of Accounting Standards. The Narayan Murthy Committee was constituted in 2002 in which mandatory recommendations focused on strengthening the responsibilities of audit committees ; improving the quality of financial disclosures, including those related to related-party transactions and proceeds from initial public offerings; requiring corporate executive boards to assess and disclose business risks in the annual reports of companies. This was followed by the Naresh Chandra Committee in 2003. The auditor-company relationship, auditing the auditors and independent directors in terms of role, remuneration, and training. The Corporate Governance Voluntary Guidelines 2009 by Ministry of Corporate Affairs, Government of India came in 2009.

From the discussion, we can observe a manifestation of a gradual improvement in a year on year basis, both in international as well as Indian governance standards.

## Is Convergence of CG Models the Road Ahead?

Studies have outlined the drawbacks of the internal model of corporate governance repeatedly, even though the history of the outsider model has been murky throughout. One plausible reason for it could be desirable characteristics of the outsider model, at least in theory. The insider model of corporate governance practices is plagued by many inconsistencies, such as high ownership concentration in the hands of few shareholders who elect executives of their choice. Such an arrangement leads to expropriation of wealth from minority shareholders by the majority shareholders who are hand in glove with the management. According to a McKinsey survey, concentrated ownership, low degree of disclosure, insufficient investor protection, family ownership, nepotism, internal strife, tunneling, and so forth are few of the shortcomings of the insider model that need to be addressed. Academics in their literary discourses and practitioners have both espoused for the convergence of best practices from both the models for a sustainable framework of CG. Favaro, Karlsson, and Neilson (2010) and Reddy (2001) emphasized that eventually, the corporate world shall witness a unified practice of governance. Its effects are already starting to show up, with corporate reforms implemented in several countries in different years to match up to the international standards.

## Three Caselets on CG Failure

A lot has been written about corporate governance failure in light of collapse of corporate giants like Enron and WorldCom. Hence, I present other instances where the failures are as dismal and worth paying attention in the following section.

**(1) CG Failure at Parmalat (Italy) :** The case deals with the financial scandal at Parmalat, one of the biggest companies in Italy. Parmalat was Italy's biggest and one of the largest food companies of the world. Popular for its dairy products throughout Italy, Parmalat was inherited by Mr. Calisto Tanzi in 1961 as a family business. The business grew exponentially in more than 30 countries. Driven by its strong financial backup, the company forayed into other industries such as juices, sauces, baking products, yogurts, soups, cookies, and mineral water in different countries. International expansion was mainly financed with debt and other ventures of Parmalat unfortunately were not bearing fruits and were going into losses. Parmalat entered into other speculative avenues when operative finances were dim. Parmalat's tourism business also went down, suffering huge losses. With dim prospects for the company, debt ridden Parmlat started issuing bonds whose security was provided by the alleged liquidity represented by the offshore schemes (Parmalat began to build a network of offshore mailbox companies (most of them registered in the Cayman Islands, tax harbor), which were used to hide losses through a mirror-game which made them appear as assets or provide liquidity) (UK Essays, n.d.).

The scandal came to light only in December 2003, when Parmalat was not in a position to honor a bond payment of 150 mn euros that had become due. Parmalat blamed the default on a speculative fund Epicrum, only to be found out that later that it was Parmalat only which owned Epicrum. Investigations revealed that Parmalat created assets where none existed and transferred money to its various subsidiaries around the world in a series of complicated derivative transactions. Rating agency Standard & Poor downgraded Parmalat's bond to junk status, which took a huge beating on its stock price. Fausto Tonna, the then CFO of Parmalat, later admitted to having fake accounts with banks. On December 27, Calisto Tanzi and all of Parmalat's executives were arrested under suspicion of fraud. Italian prosecutors investigated the alleged fraud and asked that in addition to all Parmalat executives, Bank of America and two auditors, Italian affiliates of Grant Thornton and Deloitte & Touche, be put on trial. The accused were awarded the following punishment (UK Essays, n.d.) :

- Calisto Tanzi : 10 year sentence for market rigging, accounting fraud (2009).
- Fausto Tonna, CFO : 2 year sentence for forgery, creating many offshore companies.
- Swiss Bank UBS : 357.5 million in settlements.

The ramifications of the failure of monitoring bodies in tracking a scandal of such scale are multi faceted. There was a slump in the firm's stock market (1.8 billion before the scandal), shares became almost worthless, and a face value of just 20% was allotted for its bonds. This sharp drop and the failure of the company in repayments led to a lower rating by S&P (Standard & Poor). Various parties were affected - investors, the employees across various countries who lost their jobs, the Brazilian and Australian dairy farmers were not paid for the delivered milk. In 2005, Parmalat was restructured and relisted under the Milan Stock Exchange after its various businesses were valued at € 2.95 billion and market capitalization at € 5 billion (UK Essays, n.d.).

**(2) CG Failure at Tyco (USA) :** Tyco has the distinction of being a high profile corporate shenanigan case in the year of Sarbanes Oxley Act (2002). Tyco's case is a case of CEO and executive extravagance using investors' money and trying to brush things under the carpet. Tyco had a history of aggressive growth by acquisitions. It started in 1960 as an Investment and Holding company. Post listing in 1964, it started a series of rapid acquisition, acquiring 16 companies in 1968. It continued on its acquisition spree till it became so big in 1982 that it was split into three major business segments: Fire protection, electronics, and packaging.

Dennis Kozlowski assumed the office of CEO after his impressive performance at Tyco's largest business segment; Grinnell Fire Protection Systems Company under the then CEO, John F. Fort III. Kozlowski continued his ascent to the corporate ladder from being the president of a business division, to being the CFO, to ultimately being the CEO of Tyco. His tenure as the CEO was marked with unmatched extravagance and splurge on luxury items and parties. Kozlowski also utilized his business acumen to associate Tyco with non-cyclical industries like healthcare, and so forth to check the volatility of the business. He handpicked executives and placed them at key positions. He was having a dream run, and his remuneration increased from $8 million in 1997 to $170 million in 1999, making him the second-highest-paid CEO in the United States at the time. The crack began to show up when the board of directors learned that Frank Walsh (one of its members) had received a $20 million commission for his part in securing and aiding the CIT merger, without the knowledge of the rest of the board. Walsh was fined and later resigned. Troubled by the notion that Kozlowski had made a major payment without informing them, board members launched an investigation into whether other board members had earned such commissions. The probe uncovered numerous expense abuses. As the investigation went on, new layers of corporate misconducts started appearing. Learning that he was about to be indicted for tax evasion, Kozlowski resigned as CEO on June 2, 2002. On June 3, he was arrested. In September of that year, Dennis Kozlowski and Mark Swartz, who also had resigned, were indicted on 38 felony counts for allegedly stealing $170 million from Tyco and fraudulently selling an additional $430 million in stock options. Among other allegations, Kozlowski was accused of taking

$242 million from a program intended to help Tyco employees buy company stock. Frank Walsh pleaded guilty and agreed to repay $20 million plus an additional $2 million in court costs. Jerry Boggess, the president of Tyco Fire and Security Division, was fired and accused of creating a number of “bookkeeping issues” negatively impacting earnings of shareholders. Richard Scalzo, the Price Waterhouse auditor who signed off on Tyco's 2002 audit, was fired. Tyco's stock plunged from $60 per share in January 2002 to $18 per share in December 2002, and investors lost millions of dollars. Many of the firm's 260,000 employees were also shareholders and watched their savings dwindle. Tyco's retirees found that their savings and retirement plans, which were tied up in company shares, plummeted with the company's stock price (Bio, n.d.).

In 2005, Kozlowski and Swartz both were found guilty on 22 of 23 counts of grand larceny, conspiracy, and falsifying business records and violating business law. The judge ordered both to pay $134 million to Tyco. Kozlowski was also ordered to pay a $70 million fine and Swartz a $35 million fine (Bio, n.d.).

**(3) CG Failure at Satyam (India) :** Satyam is an Indian case of corporate malpractice (Afsharipour, 2010) where the founder and his aides were involved in expropriating the minority shareholders through the process of tunneling. Satyam Inc. going down is a case of corporate governance failure in an emerging market where the regulations are not as stiff as their developed counterparts to begin with. Satyam was India's fourth largest IT solutions provider. The company was founded by Mr. Ramalinga Raju, who headed the board as Chairman. The company soon came to be regarded as the rising star of the Indian IT sector after a modest start in 1987. It went on to grow from strength to strength before getting listed in 1991 on the Bombay Stock Exchange, with a 17 times oversubscribed IPO. It continued its great run for the next decade before getting listed on the NYSE in 2001. In 2008, Satyam Computers annunciated to buy 100% stake in two of the companies owned by Mr. Raju's sons. Facing severe resistance from the shareholders in the form of share dumping and threat of legal action against that decision, Mr. Raju pulled out that decision, but Satyam stock took a beating on NYSE. This was followed by law-suits filed in the U.S. contesting the Maytas deal. The World Bank banned Satyam from conducting business for 8 years due to inappropriate payments to staff and inability to provide information sought on invoices. Four independent directors quit the Satyam board, and SEBI ordered promoters to disclose pledged shares to the stock exchange. Following a lot of tumultuous turns in the events that followed, Mr. Raju confessed in a letter to the board of directors that Satyam Computer Services had resorted to creative accounting to the tune of more than INR 5000 crore. He stated other facts about the real financial health of the company in that letter. He emphasized that none of his or the managing director's immediate or extended family or the members of the board had any idea about it. One particular criticism faced by Price Waterhouse Coopers PWC (the auditors for Satyam Computer Services Ltd.) was its inability to spot the inconsistencies in the financial statements of such a grand scale for 9 odd years. The Satyam scam shattered investor confidence in the corporate conduct.

Two ironical facts about this scandal are the name of the company per se, Satyam means “truth,” which the company had successfully hidden from its investors for as long as they could. The second ironical fact related to this scandal is that six months before the letter from the chairman came out divulging information of the scam, Satyam was awarded the prestigious Golden Peacock Award for outstanding governance practices. Satyam won awards from MZ Consult's for being a 'leader in India in CG and accountability'. In September 2008, the World Council for Corporate Governance awarded Satyam with the 'Global Peacock Award' for global excellence in corporate accountability.

As the news broke out, Satyam's shares fell to ₹ 11.50 on January 10, 2009, their lowest level since March 1998, compared to a high of ₹ 544 in 2008. In the New York Stock Exchange, Satyam shares peaked in 2008 at US $ 29.10, and by March 2009, they were trading around U.S. $1.80. Thus, investors lost $2.82 billion in Satyam (Ramsurya, 2009). Criminal charges were brought against Mr. Raju, including: criminal conspiracy, breach of trust, and forgery. After the Satyam fiasco and the role played by PwC, investors became wary of those companies who were clients of PwC (Blakely), which resulted in fall in share prices of around 100 companies varying between 5% to 15%. The news of the scandal (quickly compared with the collapse of Enron) sent jitters through the Indian stock market, and the benchmark Sensex index fell more than 5%. Shares in Satyam fell more than 70%.

## Managerial Implications

The managerial take away from this article is rather subtle than direct. Keeping in line with the governance regulations as well as some non binding regulations/recommendations of their respective country, managers should acquaint themselves of all the corporate governance regulations and put them in place in their companies. Implementation of non mandatory recommendations goes a long way in adding value to a company. The managements need to be proactive to prevent any outbreak/ possible outbreak and for checking possible loopholes by installing proper control mechanisms in place. If in some case, the governance structure fails, then it should be fixed at the earliest with minimal ramifications.

## Limitations of the Study and Scope for Further Research

This study has dealt with the topic in an elaborate discourse; however, it does not substantiate it with numbers. Lack of empirical evidence is one the shortcomings of this article. This study leaves the scope of taking it further from here by incorporating corporate governance variables in different countries and analyzing their impact on the likelihood of corporate failure. Studying the board characteristics, legal rights available to various stakeholders of a firm, and institutional settings in different countries such as the U.S.A, Japan, Scandinavian countries and South East Asian countries would, in and of itself, constitute a good academic exercise.

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