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# EXPLORING THE STARTUPS IN INDIA: ANALYZING THEM WITH CORPORATE FRAUDS & INVESTOR PROTECTION

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## ABSTRACT

India is considered a developing nation throughout the globe, and in the past few years, it has been continuously growing. The corporate sector is constantly booming. Unemployment can be tackled by increasing the number of employment opportunities, which can be done with the help of start-ups. As per a report by Live mint Media, in 2020, start-ups raised over $10 billion through more than 1200 deals.

Roopa Kudva, the Managing Director of Omidyar Network India, once said in an interview that the momentum of investing and emerging has accelerated in this COVID - 19 pandemic as people have been gaining and building resilience which is needed for lower-income population and small businesses. If we compare the Indian corporate sector with the past decades, there were barely four or five mainstream Indian ventures.

The corporate sector in India is growing at a large scale, and it is also said that India is slowly moving towards Capitalism, but the question is, "Is India Ready?" Many corporate frauds and scams are happening in India. Is it safe for the corporate sector to move ahead with this problem? We have started the manuscript with a discussion of what has impacted the growth of start-ups in India.

Then we have discussed how important the Investor's role in the corporate sector is and are our investors protected? Are the Laws in India enough to fight corporate fraud and scams going around? We have also analyzed how much the investors in India are protected and the laws available for them. After exploring and analyzing all this, we have concluded our manuscript with our suggestions through which the corporate sector can improve in terms of investor protection and corporate frauds.


Keywords: Corporate Sector, Investors, Corporate Law, Indian Economy, Indian Ventures

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## Introduction

The Indian markets in the last few decades have expanded to a large extent despite there being a downfall in the Indian economy. There have been many start-ups coming up, and many investors have started investing in the Indian Market. There's a higher chance that the Indian economy will be in one of the top three economic powers of the world in the coming years, as predicted by the India Brand Equity Foundation (IBEF).[1]

Currently, "India is the fourth-largest unicorn base in the world with over 21 unicorns collectively valued at US$ 73.2 billion, as per the Hurun Global Unicorn List"[2], and it is expected that "India will have 100 unicorns by the year 2025, as per the reports of NASSCOM – Zinnov on "Indian Tech Start-Up".[3]

Start-ups, as the name, suggest that to start or incorporate a company. According to the Forbes Advisor, "A Start-up is a young company founded to develop a unique product or service. The goal is to introduce the start-up to the market and make it irresistible and irreplaceable for the public. Start-ups are well-rooted in innovation, addresses the deficiencies of existing products or creates entirely new categories of goods and services; thereby disrupting entrenched ways of thinking and doing business for entire industries."[4]

India has emerged as the third-largest start-ups' ecosystem in the world after U.S. and China, and the speed at which it is growing is a positive thing, and there is no indication of a slowdown in the near future. Over the last year, India has added three unicorns every month, making a count of 51 ahead of the U.K. with 32 unicorns and Germany with 18 unicorns.

The CRED founder Kunal Shah tops the list of investments with nine investments in start-ups, Binny Bansal having five investments, and Ratan Tata with four. Investing in start-ups

[1] ABOUT INDIAN ECONOMY GROWTH RATE & STATISTICS, IBEF, October 2021, https://www.ibef.org/economy/indian-economy-overview.

[2] Unicorn is a company whose worth is over US$ 1 Billion.

[3] Digital Acceleration, Deep-Tech Adoption, Driving Steady Growth For India's Tech Start-Up Ecosystem In 2021 – NASSCOM - Zinnov Report, NASSCOM, January 07, 2021, https://nasscom.in/press/digital-acceleration-deep-tech-adoption-driving-steady-growth-india's-tech-start-ecosystem.

[4] What Is A Startup?, Rebecca Baldridge, Forbes Advisor, April 1, 202, Benjamin Curry, https://www.forbes.com/advisor/investing/what-is-a-startup/.

has come into the limelight. Many people have started investing, and recently, the Infosys co-founders have also started investing in start-ups.

Start-ups are in trend as they are helping Indian Society to solve various problems. As per the survey done by GoDaddy, almost 60% of the Indians who are employed today aspire to be an entrepreneur.[5]

Masayoshi Son, the Chairman and the C.E.O. of Soft Bank Corp, once said in an interview that "We believe India is at a turning point in its development and have confidence that India will grow strongly over the next decade. As part of this belief, we intend to deploy significant capital in India over the next few years to support the development of the market."[6]

The start-ups are growing and buying other start-ups. Today, the government is also supporting the start-ups in their growth. The government launches many initiatives like Start-up India, Seed Fund Start-up India Initiative, "Support for International Patent Protection in Electronics & Information Technology (SIP-EIT), Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), NewGen Innovation and Entrepreneurship Development Centre (NewGen IEDC)", etc.

Start-ups have got boosted up in the Covid-19 pandemic, where it has positively impacted the Indian economy and created employment opportunities. People were losing their jobs in the pandemic, which gave people an edge to either start a start-up or work in a start-up.

Several countries across the globe have established legislation that is more specifically aimed at start ups and small ventures. For example, France has established a 4 billion fund to assist start-ups with liquidity issues, such as bridge funding rounds. Germany has established a customised start-up help programme aimed at increasing and streamlining venture capital funding, while the United Kingdom has proposed a co-financing fund for creative businesses in financial distress.[7]

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[5] Indians Employed in Organizations Today Aspire to be Entrepreneurs, Godaddy Survey Report, 2016, https://in.godaddy.com/hi/newsroom/press-releases/2016/in/indians-employed-in-organizations-today-aspire-to-be-entrepreneurs

[6] SoftBank Group to Invest $627 Million in Snapdeal, India's Largest Online Marketplace, Business Wire, October 27, 2014, https://www.businesswire.com/news/home/20141027006573/en/SoftBank-Group-to-Invest-627-Million-in-Snapdeal-India%E2%80%99s-Largest-Online-Marketplace.

[7] POLICY RESPONSES TO COVID-19, https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19.

**Is India Ready to Move Forward?**

A capitalist economy is governed solely by market forces and if the government's intervention in the market is nil. Absolute capitalism produces goods based on demand and capacity to pay but not on the population's needs. Presently, the private sector in India produces goods not based on needs but instead produces based on demand.

The current scenario is that the Government and the people both have a bit of capitalist ideology. As the CAD crisis of the year 1991, under the compulsion of the International Monitory Fund, India had opened its economy.

From that point onwards, the role of the private sector became essential, and the investment in many industries was spread to the private sectors. Through that, we can easily observe a gradual shift to a more capitalist kind of economy. Further disinvestment in many PSU took place, many vital sectors that previously had only a government monopoly were opened for the private sector.

Growth in the private sector is a positive sign for the Indian economy. Still, if we look into the Indian corporate history, there have been many corporate frauds and scams that have taken place, and there was no one to take responsibility for the same. An investor can invest money, but no one takes any responsibility if the money goes into vain.

NSEL SCAM

One of the famous scams was the NSEL Scam.

The NAFE and Financial Technologies Indian Ltd. promoted the national Spot Exchange Ltd (NSEL). Shreekant Javalgekar and Jignesh Shahwere held guilty of this scam. They procured funds from ignorant investors.

This is due to the fact that many fundamental commodities did not exist at all. Only paper was used to conduct the transactions. Retail investors were drawn to NSEL because it offered fixed returns on matched commodity contracts. In 2013, almost 300 brokers were accused of being involved in the Rs. 5.500-crore NSEL fraud.[8]

SARADHA SCAM

[8] The 3 Biggest Scams of the Past That Shook the Indian Stock Market, Securebooks, August 9, 2021, https://securebooks.in/2021/08/09/the-3-biggest-scams-of-the-past-that-shook-the-indian-stock-market/.

The Saradha Scam was another well-known con. Sudipta Sen, Chairman of the Saradha Group, a Chit Fund business, ran a number of investment programmes. The Ponzi schemes were the name for these types of scams. They didn't employ a sound investing strategy. Over a million people are said to have invested in this fraud.

In Assam, West Bengal, Odisha, and Jharkhand, the Saradha Group amassed vast sums from unsuspecting investors. The money was put into real estate, Bengali film production businesses, the media sector, and a variety of other ventures.

Sudipta Sen escaped with an 18-page letter in April 2013, bringing this swindle to light. Although the "Saradha fraud had no direct influence on the stock market of India, it did have an indirect impact. When such uncontrolled Ponzi schemes were floated in the market, Foreign Institutional Investors (FII) took a step back."[9]

SAHARA SCAM

Sahara India was established in 1978 as a privately held company. The Sahara Group's two firms, Sahara India Real Estate Corporation Ltd. (SIRECL) and Sahara Housing Investment Corporation Ltd., are primarily linked to the Sahara Scam (SHICL).

The "Sahara Prime City (a Sahara Group subsidiary) filed a DRHP with SEBI for its IPO on September 30, 2009. SEBI discovered certain irregularities in the fundraising procedure of the two Sahara Group companies while analysing the DRHP (Sahara India Real Estate Corporation and Sahara Housing Investment Corporation). On the 25th of December 2009 as well as the 4th of January 2010, SEBI received reports that SIRECL and SHICL were issuing Optionally Fully Convertible Debentures (OFCDs) and obtaining funds in an inappropriate manner. SEBI's reservations were confirmed correct as a result of these allegations."[10]

As a result, SEBI began an investigation into these two companies, and Sahara India Group was requested to clarify their financing technique. That's when SEBI discovered that SIRECL and SHICL had raised roughly Rs. 24000 crores via OFCD from investors ranging from Rs.

[9] 3 Past Biggest Scams That Shook Indian Stock Market, Trade Brains, August 3, 2021, https://tradebrains.in/biggest-scams-that-shook-indian-stock-market/.
[10] Past Biggest Scams That Shook Indian Stock Market, Trade Brains, August 3, 2021. https://tradebrains.in/biggest-scams-that-shook-indian-stock-market/.

2-2.5 crores. SEBI asserted its authority and questioned why Sahara had not sought authorization from it.[11]

The bonds, according to Sahara, are a composite substance. As a result, SEBI has no authority over it. It is instead administered by the Ministry of Corporate Affairs' Registrar of Companies (ROC). Before issuing the bonds, Sahara's two firms obtained clearance and filed the DRHP with the ROC.

In exchange, SEBI ordered Sahara's two firms to cease generating funds through OFCD and return the money to investors with a 15% interest rate. The order of the SEBI was challenged by the Sahara Group at the Allahabad High Court. SEBI's decision was limited by the Allahabad High Court in December 2010. The specified prohibition was lifted by the Allahabad High Court in April 2011, and the matter was subsequently taken to the Supreme Court of India.

According to reports, "there hasn't been a single case of an investor in either of the two Sahara enterprises submitting a police complaint or going to court between the time SEBI initially launched the investigation and the Subroto Roy's final imprisonment. However, this raises the likelihood of the Sahara Group engaging in large-scale money laundering to conceal illicit money. The Group has failed to comply with the Supreme Court's direction to show the source of monies utilised to make the alleged return payments."[12]

The Supreme Court ordered both entities to deposit the money of OFCD holders with SEBI at an interest rate of 15% within three months in August 2012. They were also instructed to provide SEBI with every OFCD holders' information so that the money might reach the investors.

In 2013, Sahara delivered 127 trucks to the SEBI headquarters, each holding boxes containing information about OFCD holders. The second set of papers was rejected by SEBI since the trucks arrived after office hours, including 25% of the investor information, according to Sahara. SEBI discovered that the files lacked accurate and full information on the investors. It was questioned if this was an instance of money laundering.

[11] Sahara scandal: 4-year chain of events that lead to Subrata Roy's arrest, Hindustan Times, Mar 01, 2014, https://www.hindustantimes.com/india/sahara-scandal-4-year-chain-of-events-that-lead-to-subrata-roy-s-arrest/story-gDfYTWadLXecqtkw08xNQJ.html.

[12] Sahara red-flagged for fraud probe: Rs 86,000 crore from 4 crore depositors, Khushboo Narayan, The Indian Express, September 3, 2020, https://indianexpress.com/article/business/companies/sahara-red-flagged-for-fraud-probe-rs-86000-crore-from-4-crore-depositors-6580931/.

Within three months, the Sahara Group failed to submit the money to the SEBI with a 15% interest rate. Sahara Group was ordered by the Supreme Court to pay in three payments. Sahara paid the first instalment of Rs. 5120 crores, but not the other two, claiming that the investors had already been paid.

By this point, the Supreme Court and the SEBI had both ruled that it was a case of money laundering. As a result, they began freezing Sahara India's bank accounts as well as their assets.

Subrata Roy, the Chairman of the Sahara Group, was detained on the orders of the Supreme Court on February 26, 2014. The Enforcement Directorate accused Sahara Group with money laundering in November 2017. Sahara Group has a long history of doing shady business. This time, though, they've been apprehended.[13]

FREEDOM 251 SCAM

There was a phone launched in the year 2016 by Ringing Bells Private Limited named "Freedom 251", and the price for the same was Rs. 251/-. People throughout the Indian territory ordered in bulk. Many customers paid in advance for the same.

Mohit Goel, the man behind the much-hyped and demanded phone "Freedom 251", has scammed about Rs 45 lakhs just by advertising posters with the name and picture of the Prime Minister of India, and no one was answerable for the same.

The same person was caught again in a fraud case of Rs. 200 crores for dry fruits, and this time, he was accused of defaulting payments of dry fruit traders after offering them advance payments and bulk orders to gain their trust. Still, no one is answerable for the same.[14]

Deloitte conducted a survey and found that over 62% of the independent directors have indicated that frauds will increase over the next two years due to this pandemic outbreak and everybody working from home.[15] COVID has significantly impacted cyberspace as everyone is working from home. In fact, corporate transactions or meetings are happening virtually.

[13] The Sahara Scam, Arti Bhatt, https://thecompany.ninja/sahara-scam/.
[14] Mohit Goel, man who tried to sell Freedom 251 phone for Rs 251, arrested in dry fruits business fraud, India Today, 25th August, 2021, https://www.indiatoday.in/technology/news/story/mohit-goel-man-who-tried-to-sell-freedom-251-phone-for-rs-251-arrested-in-dry-fruits-business-fraud-1845185-2021-08-25.
[15] 2021 Directors' alert, Deloitte Insights, 6th April, 2021, https://www2.deloitte.com/us/en/insights/topics/leadership/directors-alert/new-era-board-stewardship.html.

The growth of the Indian private sector is a positive sign for the Economy. Still, the question is whether India is ready to move towards capitalization and privatization despite these frauds taking place where no one is accountable.

**Investor Protection: An Undiscussed Issue**

Investor Protection is a broad term encompassing various measures designed to protect the investors from malpractices of companies, merchant bankers, depository participants and other intermediaries.

It's a term that everyone concerned with capital market regulation these days uses, whether it's the "Securities and Exchange Board of India, stock exchanges, investor groups, or the corporations themselves. The Securities and Exchange Board of India Act, 1992 defines the term Investor protection as Protecting the interest of the investors in securities and promoting the. development of and to regulate the securities market and for matters connected. therewith or incidental thereto."[16]

Investing in start-ups is in trend as many start-ups have become successful. There are more than 30 start-ups that have made it into the list of Unicorns this year. These companies were started with nothing, and within two to three years, they have managed to get into the bag of Unicorns. But as every coin have two sides, in the same way, start-ups can have a positive impact, but not always.

There can be times when scams can occur, and investors' can be scammed. Considering all the scams such as the Sahara or Harshad Metha or NSEL Scam, or Saradha Scam, is it safe for the investors to invest money, especially in the newly built start-ups? And if the investor's money is being scammed, then who would be responsible for the same?

RULES AND REGULATIONS

The Securities and Exchange Board of India Act, 1992 was introduced and enacted to empower Securities and Exchange Board of India with the statutory powers for the protection of investors interests in the securities. It would also help in the promotion of the development taken in the securities market and further for regulating the securities market. Basically, its regulatory authority involves and covers all businesses and corporations involved in

[16] SEBI ACT, 1992.

the transfer of securities and the issuance of capital, as well as all the intermediaries and individuals involved in the securities market.

The Securities and Exchange Board of India (SEBI) in order to protect the investors had taken few measures for their protection and trust. "The measures for Investors Protection by SEBI are like the formulation of Stock Exchange and other securities market business regulations, Registering and regulating the intermediaries of the business-like brokers, transfer agents, bankers, trustees, registrars, portfolio managers, investment consultants, merchant bankers, etc. It had also mentioned in their measures that there should be a proper recording and monitoring the work of custodians, depositors, participants, foreign investors, credit rating agencies, etc. It also says to register few investment schemes like the Mutual fund, Venture Capital Funds, etc and also to monitor their regulating. Furthermore, it also says to keep an eye on the promotion and the controlling of all the self-regulatory companies. It is also important to keep an eye and check on frauds and all those unfair trading methods concerning with securities market. They also suggest to regulate all the major transactions and takeover of the companies and keep an eye on them. In order to aware the investors of their rights and protection, they must carry out several investors awareness programme and education programmes and train them the intermediaries of the business. Additionally, they also suggest for inspection and auditing of the Securities Exchanges (SEs) and at the last it suggests to do an assessment of all the fees and other charges."[17]

There are various mechanisms of SEBI through which it ensures that Investors are being protected from time to time. It has issued several decrees, spearheaded numerous investor awareness campaigns, and established an investor protection fund (IPF) to compensate investors.

The Securities and Exchange Board of India (SEBI) has always given rules to the company's mutual funds, portfolio managers, merchant bankers, and others. These principles are intended to increase openness in operations and to prevent investors from being exploited.

When these criteria aren't followed, SEBI takes action through a panel. "SEBI also publishes public interest advertising to inform investors about the fundamental characteristics of various instruments and the minimal safeguards they should take before making an investment. If investors have issues with their investments in industrial securities and

[17] Office of Investor Assistance and Education, SEBI Investor, https://investor.sebi.gov.in/ipms.html

financial assets, they can file a complaint with SEBI. It also promotes the development of investment groups that share information via newsletters. SEBI has established guidelines for the sharing of firms' unaudited half-yearly results."[18] It has also revised the format of a prospectus in order to present more information to investors.

While applying for shares, it has presented stock investment as a new useful tool. This new instrument, which was developed with the help of banks, provides investors with protection from the time they become interested in the application money until the allotment of shares.

Apart from SEBI, "the government has established an Investor Education and Protection Fund (IEPF) under Section 205 C of the Companies Act, 1956, under which the company transfers unclaimed funds on account of dividends, matured deposits, matured debentures, share application money, and so on after seven years to the IEPF. The government must put this money into an Investor Education and Protection Fund. For this reason, the income from the businesses are credited to the Consolidated Fund of India through this fund. The fund might then be granted complete autonomy to implement programmes aimed at educating and safeguarding investors."[19]

Investor Awareness Programmes are held regularly by the stock exchanges to educate and improve the investor awareness about the capital market and, in particular, the stock market, the workings of stock exchanges, includes various topics such as:

- Instruments of Investment
- Portfolio approach
- Mutual funds
- Tax provisions
- Trading
- Clearing and Settlement
- Dematerialization of shares
- Information on Debt Market,
- Investors' Grievance Redressal system available with SEBI,

[18] Sebi's investor charter–Towards investor protection and grievance redressal, Sandeep Parekh, Financial Express, November 24, 2021, https://www.financialexpress.com/opinion/sebis-investor-charter-towards-investor-protection-and-grievance-redressal/2374662/.
[19] Sebi's investor charter–Towards investor protection and grievance redressal, Sandeep Parekh, Financial Express, November 24, 2021, https://www.financialexpress.com/opinion/sebis-investor-charter-towards-investor-protection-and-grievance-redressal/2374662/.

- BSE & Company Law Board
- Workshops and Information on Derivatives, Futures and Options, etc.

Through timely interventions, an effective Investor Grievance Redressal procedure at the corporate level might defend investors' interests. A corporation with a combined shareholder/deposit holder/debenture holder base of 1000 or more should be required to have a Stakeholders Relationship Committee.

**Conclusion and Suggestions**

The Indian private sector and Indian market had changed a lot from the Pre-Independence Era to 2021 especially post 1991 when liberalization was adopted in India. It opened various doors for foreign investors, and different trade practices took place in the Indian market.[20]

Now, as there was an increase in the trade practices, there was an increase in illegal trade and scams in the capital market, and the Government had realized that these laws weren't enough, so consequently, SEBI was established under the SEBI Act, 1992.

SEBI (Stock Broker & Sub Broker) Regulations, 1992, for example, was established by SEBI to maintain a frequent watch on brokers' and sub-brokers' daily actions in order to protect investors' interests. SEBI (Investment Advisers) Regulations, 2013 were also published by SEBI to supervise investment advisers' operations in the capital market, among other things.

However, for SEBI's framework to be successful, it must acknowledge investment advisers and asset managers' fiduciary responsibilities to their customers, regardless of their net worth or sophistication. The framework should also include some fundamental concepts that SEBI will use to decide which regulatory relaxations are permissible and which are not.

It would also be beneficial to define the fiduciary obligations that asset and wealth managers would have, such as disclosures and a governance mechanism that minimises the risk of misspelling. Companies that provide financial goods owe a fiduciary duty to their clients.

When completing investment analysis, making investment recommendations, and taking investment actions, industry experts must use reasonable caution and independent

[20] India's Trade Reform, ARVIND PANAGARIYA,Columbia University, https://w-ww.brookings.edu/wp-content/uploads/2016/07/2004_panagariya.pdf.

professional judgement. It is in SEBI's best interests to set the rules of the game in order to ensure that all investors are adequately protected.