ALLEVIATION OF CORPORATE CORRUPTION....LEGAL AND REGULATORY FRAMEWORK IN INTERNATIONAL PERSPECTIVE

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Regulatory agencies ; decisions

In the name of Allah,
the Most Beneficent,
the Most Merciful

MESSAGE OF QURAN:

"O those who believe, be upholders of justice - witnesses for Allah, even though against (the interest of) yourselves or the parents, and the kinsmen. One may be rich or poor; Allah is better caretaker of both. So do not follow desires, lest you should swerve. And if you twist or avoid (the evidence), then, Allah is all-aware of what you do."

[135] (4:135)

Final Approval

It is certified that we read the dissertation submitted by Miss Naheeda Ali, Registration NO #310-FSL-LLMCL-F10. Title: "Alleviation of Corporate Corruption, Legal and Regulatory Framework in International Perspective" as partial fulfillment of requirement for the degree of LL.M - Corporate Law.

We have evaluated the dissertation with respect to its scope, quality and excellence and found it up to International Islamic University requirement for awarding the degree of LL.M.

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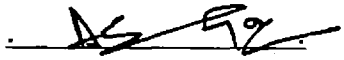

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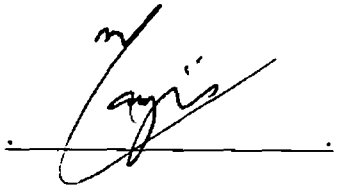

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ACKNOWLEDGEMENT

Thanks for the blessing of Allah almighty Who, surrounded me with loving caring and supportive ones.

DEDICATION

Dedicated to those courage's intellectuals, whose alleviate or wants to alleviate the corruption.

ACRONYM

ADB=Asian Development Bank

AGM=Annual General Meeting

AHERA= Asbestos Hazard Emergency Response Act

AICPA= American Institute of Certified Public Accountants

CAA =Clean Air Act SDWA=Safe Drinking Water Act

CAA=Clean Air Act

CBA=collective bargaining agreements

CCG=Code of Corporate Governance

CCPR=Composite Country Performance

CEO= Chief Executive Officer

CERCLA= Compensation, and Liability Act

CERCLA=Compensation, and Liability Act

CFO= Chief Financial Officer

COT=Carry-over Transactions

CPI= Corruption Perceptions Index

CPSIA= Consumer Product Safety Improvement Act

DFA= Dodd Frank Act

DFI=development finance institutions

DOJ=Department of Justice

EC=European Communities

ERA= Energy Reorganization Act of 1974

FASB=Financial Accounting Standards Board

FCPA=Foreign Corrupt Practices Act, 1977

FRSA=Federal Rail Safety Act

FSMA=Financial Services and Markets Act 2000

FWPCA= Federal Water Pollution Control Act

FWPCA=Federal Water Pollution Control Act

FY= Financial Year

GAAP= Generally Accepted Accounting Principles

GDP= Gross Domestic Product

IASB=Standards of International Accounting Standards Board

ICAP=Institute of Chartered Accountants of Pakistan

ICMAP=Institute of Cost and Management Accountants of Pakistan

IDA=International Development Association

IFRS=International Financial Reporting Standards

ISCA=International Safety Container Act

ISCO= International Standard Classification of Occupations

MOU= Memorandum of understanding

NAB=National Accountability Bureau

NASD= National Association Of Securities Dealers

NBFI= Non-bank financial institution

NSEI=National Stock Exchange of India

NTSSA= National Transit Systems Security Act

NYSE= New York Stock Exchange

OECD=Organization for Economic Cooperation and Development

OSH Act=Occupational Safety & Health Act

PSIA= Pipeline Safety Improvement Act

RPAFs=Registered Public Accounting Firms

SDWA=Safe Drinking Water Act

SEC=Securities Exchange Commission

SECP=Securities and Exchange Commission of Pakistan

SMC=Single Member Company

SOX=Sarbanes–Oxley Act, 2002

SRO=Self-Regulatory Organizations

STAA= Surface Transportation Assistance Act

SWDA= Solid Waste Disposal Act

SWDA=Solid Waste Disposal Act

TI=Transparency International

TIP =Transparency International Pakistan

TR=Term of references

TSCA=Toxic Substances Control Act

UNCAC=United Nations Convention against Corruption 2003

WB=World Bank

ABSTRACT

Corruption is one of the world's greatest challenges due to its occurrence, everywhere in the world and its detrimental effects on the progress of countries which hampers the economic growth in various ways like; deterring investment, raising transaction costs and uncertainty.
In This paper it is attempted to set the basic tools which are required to alleviate corporate corruption from Pakistan. To compete this purpose we see the world wild successful legislations, conventions, provisions of different treaties, guidelines and standards and their framework for combating this corruption. Which help us in Economic and social progress. The rule of law under good governance are also discussed as, some of the basic pre-requisites for fight against corruption in this paper.

In 1st chapter we discuss the corporate corruption its major types like Bribery, Accounting irregularities, Tax evasion, Insider trading, Money laundering, and Embezzlement. We analyze the following terms and see how developed countries treating them. We also pinpoint the prominent cases and legislation of different countries.

2nd chapter took up the Legal and regulatory frame works for alleviation of corporate corruption in comparative perspective. Here we mainly focus on those legislative frame works which are internationally recognize because of its effectiveness to combating corporate corruption. Provisions and applications of followings are under our discussion; US, Foreign Corrupt Practices Act: 1977, Sarbans–Oxley Act: 2002, United Nations Convention against Corruption: 2003, the UK Bribery Act: 2010.

3rd chapter deals with all Major features of legislations which are mention in chapter 2 and in other international conventions, treaties, standards etc which are considered as catalyst for combating corporate corruption i.e., Corporate control, Financial accounting information / financial reporting, Director responsibility, Corporate governances, Accountability, Compliances, Protection of whistle blower. If there is a strong legislative grip on these issues then corruption can be eliminated.
In this chapter we see that how the developed countries incorporate the following issue in there legislation like; protection of whistle blower and how to be benefited from whistle blower. We see which country made best legislation for the protection of whistle blower and what are the measures which make its best .The core purpose of all this is to improve Pakistani legislation for reducing corruption.

4th chapter analyses the legislation in Pakistan for Combating corporate corruption. Like; Companies Ordinance: 1984, Prevention of corruption act: 1974, Securities and Exchange Commission of Pakistan Act: 1997, National Accountability (Bureau) Ordinance: 1999, Code of Corporate Governance: 2002. We explain the following legislations and high light the specific provisions in comparisons with clauses of other international legislations and point out the flaws which needs for improvement.

5th chapter we discuss the corruption in Pakistan under the light of international reports like; Transparency International Pakistan, the World Bank and Asian Development Bank and suggest some recommendation for improving of economy under this comparative study.....!

CHAPTER: 1

CORPORATE CORRUPTION AND ITS NEXUSES WITH CORPORATE CRIME

1. Introduction:

The Corruption is complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slow down the economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the start-up costs required because of corruption[1].

Criminology refers the **corporate crime,** which committed either by "a corporation[2], or by individuals acting on behalf of a corporation or other business entity"[3]and corruption is its mode. Corruption implies "some form of illicit and criminal behavior for personal enrichment." Various agencies and researchers define corruption in divergent number as:

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[1] Gara'O, D.John . *Corporate Frauds : Detection and Prevention*. New York : John Wiley and Sons , 2004.&

http://journals.cambridge.org/action/displayFulltext?type=1&fid=1356544&jid=PSC&volumeId=40&issueId=04&aid=1356540&bodyId=&membershipNumber=&societyETOCSession= (accessed on 19.7.2011)

[2] i.e., business

[3] vicarious liability and corporate liability

2. Definitions of Corruption :

2.1 The United Nations (UN);

"Commission or Omission of an act in the performance of or in Connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted".

2.2 The Organization for Economic Cooperation and Development (OECD);

"The offering, giving, receiving, or soliciting of anything of Value to influence the action of a public official in the procurement process or in contract execution".

2.3 Transparency International (TI);

"The misuse of entrusted power for private gain". [4]

Corruption has been defined "according" & "against" the rules by Transparency International. In first part of definition it talks about receiver to receive in the form of compensation (bribe) when it is required by law. The second part prohibit receiver for providing illegal assistances and taking such reimbursement (bribery).

2.4 Asian Development Bank and World Bank (ADB &WB);

"Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those

[4] The World Bank, Helping Countries Combat Corruption: The Role of the World Bank, Poverty Reduction and Economic Management Network, September 1997. See pages 19-20 on definitions of corruption.

close to them, or induce others to do so, by misusing the position in which they are placed".

2.5 Library of Lexicon Law;

"An act done with intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another".

3. Typology of corruption:

According to its intensity. There are many types of crimes which evolve from corruption. It's all based on the abuse of position for limitless personal gains and this sort of personal gain are divided into following types of corruption like;

i. Petty corruption
ii. Grand corruption
iii. Influence peddling

At the one edge of spectrum we observed low-grade official worker receiving small amount for routine work like approval & transactions - petty corruption, next for transportation of projects and awarding major defense , billions of dollars has been paid to lawmakers– grand corruption, at the other end huge corruption exists which is made by politicians and the government leaders– influence peddling . Normally the Corruption is classified in;

Table 1: **Type of corruption;**

	Type of	Examples	Predominantly
1	Business Corruption	* Bribing officials * Accounting irregularity * irregularity in documents (research data) * Money laundering * Tax evasion * Insider trading * Embezzlement	Most countries
2	Political Corruption	* irregularity in voting *Against the people's will holding power.	Mostly in developing and less developed countries

4. Typology of Business Corruption:

The Asian organization of supream audit institution (ASOSAI) Guideline identified some of the most typical corporate corruption, as follows:

4.1. The Bribery:

It is such a form of corruption in which changing the behavior of recipient by giving money and gifts. It is known as the source of fraud which explain as: "the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty".[5]

It is mainly divided into two:

i. Corporate Bribery

ii. Commercial Briber

i. Corporate Bribery;

"It takes the form of prior payment intended to sway the purchasing decision of government officials or buyers or private businesses, as well as government's political decisions; it may also take the form of rebates to agents of a transaction after a sale has been made".[6]

ii. Commercial Bribery

"Frequently violates specific laws prohibiting such acts, as in the case of internal revenue service regulation or alcoholic beverage control laws"[7]. And many others are like bribery of public official, witness, foreign official, bank bribery etc.

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[5] *Black's Law Dictionary*

[6] Marshall B.Clinard, peter c.yeager, *Corporate Crime (the free press, a division of Macmillan publishing co., inc. NEW YORK , Collier Macmillan publishers LONDON), Pg#156.*

In the business employees managers and salespeople offer money or gifts in exchange of business to a potential client such as, In 2006, "**Siemens case** German prosecutors conducted a wide-ranging investigation of Siemens AG to determine that the Siemens employees paid bribes in exchange for business".[8]

In some cases when there is not well implemented mechanism of law for removing irregularities then bribes is the only solution for companies to run their business. When the white Glove which is commonly known as third party, in a contract is involved as a source for bribes then such contract is void. [9]

For combating, following legislations are made;

i. The Foreign Corrupt Practices Act 1977
ii. Bank Bribery Amendments Act of 1985
iii. Anti-Kickback Act of 1986
iv. OECD Convention against bribery, and most recent
v. UK bribery act 2011.

4.2. Accounting Irregularity:

An accounting irregularity is an accounting treatment or practice that does not conform to the normal laws, practices and rules of the accounting profession, having the deliberate intent to deceive or defraud. Accounting irregularities can consist of intentionally

[7] Ibid .

[8] U.S. v. Siemens Aktiengesellschaft, No. 1:08-cr-00367-RJL (D.D.C. 2008).

[9] International principle of law Trans-Lex.org

misstating amounts and other information in financial statements, or omitting information required to be disclosed. Accounting irregularities are commonly distinguished from unintentional mistakes or errors.[10]

Accounting equation is: assets = liabilities + equity

It's a balance sheet. The foundation for the balance sheet begins with the income statement, which is revenues - expenses = net income or net loss. It's followed by the retained earnings statement, which is beginning retained earnings + net income - dividends = ending retained earnings or beginning retained earnings - net loss - dividends = ending retained earnings. The current ratio is current assets divided by current liabilities. The debt to total assets ratio is total assets divided by total liabilities. This is whole accounting theory. Any wrong created here which later on becomes a crime under the head of accounting irregularity". [11]

Accounting irregularity is known as one of those crime that directly affect the financial statements by misrepresentation, wrong classification and statement which resulted in distorted financial picture through improper disclosure and manipulation of accounting data,

Enron, WorldCom, HealthSouth, Adelphia, Parmalat, Elan, Andersen... are the world largest dollar level of Fraud and "accounting manipulations" these shows a loopholes in GAAP (General Accepted Accounting Principles) e.g,

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[10] John W. Hendrikse, Leigh Hendrikse, "8.6 Accounting Irregularities", *Business governance handbook*, p. 84, http://books.google.co.uk/books?id=croQAGwkNi8C(accessed on 8.20.2011)

[11] Clare Roberts,Pauline , "*International Financial Accounting*". Financial times.Pitman publishing.

The Enron scandal was known as one of the biggest audit failure in American history, the share prices of effected companies were collapse and investors lost the trillions of dollars as well as loss the confidences in capital market, after the Wall Street crash. For controlling the financial irregularities following legislation were made;

i. Securities exchange act 1933&1934
ii. Sarbanes Oxley Act 2002
iii. Combined code of UK 1998
iv. Financial reporting council, guidance on audit committee, 2008

4.3. Tax Evasion:

"To under report or not to report taxable income willfully".[12]

Tax evasion is the intentional and illegal avoidance of paying mandatory taxes to the government. Ignorance of tax laws or incorrect interpretation of them does not qualify for the crime of evasion – intent to leave taxes unpaid must be proven in order to charge individuals or businesses with a financial crime.[13]

It subsist in all kinds of taxation, typically people avoid income taxes for becoming rich. It also occurs in transfer of money by trust. Following are the others types of tax evasion.

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[12]Gara'O , D John . *Corporate Frauds : Detection and Prevention*. New York : John Wiley and Sons , 2004.& http://www.julianhermida.com/contcorporate.htm, (assessed on 11.19.2011)

[13] Dr. Ikramul Haq, "Tax evasion and Tax avoidance, need to educate tax payer" Taxation (march, 2004).

i. Avoiding Payment on Income Taxes

ii. Trust Schemes

iii. Business Tax Evasion

i. Avoiding Payment on Income Taxes;

By making the fake statement on a return, for example amplified or fake deductions and unregistered income. Many corporate executives have been known to disregard personal expenses as business costs for avoiding personal income tax.

ii. The Trust Schemes;

Abusive trust schemes contend to transfer money into another's possession, but do not actually do it. Elaborate ladder systems are created in which one transfer after another occurs without the money ever leaving the control of its owner. The 'transfers' negate the taxes on the individual's income.

iii. The Business Tax Evasion;

Usually involves the misstatement of income or expenses. A business expense that lends itself particularly well to tax evasion schemes is payroll. Employers have been known to keep tax withholdings for themselves, pay employees in cash (under the table), or file false payroll tax returns. Sometimes, employment is leased out to a second company, and this transaction is used to hide income or exaggerate expenses.

Retail stores also find ways to avoid sales tax. They may collect sales tax reimbursement from customers but fail to report it. They may also make transactions for cash and neglect to report the sales. Stores have even been known to arrange with customers to fake an out-of-state sale so that the customer gets a better price and neither side has to pay salestax.

While within the state and in any other state there is a specific tax on some goods especially on its import and sale. Then buyers as well as sellers try to escape from taxation through illegal purchasing of goods like, they buy goods which have no tax stamps but "**taxpayer cannot be guilty of any intentional act of evading the tax laws**".[14]

As in a case : The defendant engaged in a fraud whereby contractors paid cheques to Mr. O'Connor's companies, which was then used to pay these company's workers in cash, thereby avoiding the need to deduct a tax contribution. Mr. O'Connor retained a 7% commission from the arrangement. Mr. O'Connor made a profit of almost $140,000, and the Commonwealth was defrauded of almost $1.5 million. As well as being ordered to repay over $160,000, Mr. O'Connor was sentenced to two years imprisonment with a non-parole period of 18 months.[15]

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[14]Dr. Ikramul Haq, "Tax evasion and Tax avoidance, need to educate tax payer" Taxation (march, 2004). Along with http://taxes.about.com/od/bankruptcy/qt/bankruptcy_tax.htm, (assessed on 11.19.2011)

[15] *R v O'Connor (NSWCCA 2002)*

Even **In Pakistan** The tax evasion has been estimated at Rs 500 billion that is almost half of the total tax collection of Rs 1,004 billion during the outgoing fiscal year. The untapped amount is almost equivalent to the countryâ€™s annual budget deficit. [16]

Law although tried to curb this offence through followings but, yet has not successful.

U.S: Tax Reform Act of 1986.

PK: Income Tax Ordinance 2001

4.4. Insider Trading:

Insider trading is not a crime but illegal insider trading is a crime as In August 2000, new rules and regulations was adopted by "Securities and Exchange Commission" (SEC) relating to it, define as; "Insider trading as any securities transaction made when the person behind the trade is aware of nonpublic material information, and is hence violating his or her duty to maintain confidentiality of such knowledge". (Under Rule 10b5-1)[17]

Insider trading is the use of nonpublic information in making a securities transaction or the distribution of such information for the purpose of influencing a transaction. Anyone who gives or receives confidential information that leads to a profitable stock trade could be found guilty of insider trading. Guilty parties may include the employees or directors of a public company, who may make trades themselves or convince private investors to do so; the investors who receive the information and make the trade; or

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[16] Stephen M. Bainbridge, "Insider Trading". Encyclopedia of Law and Economic, 790. http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/14-Jul-2008/Tax-evasion-peaks-to-half-of-total-revenue-collection, (assessed on 11.19.2011)

[17] Stephen M . Bainbridge, "Incorporation State Law Fiduciary Duties into the Federal Insider Trading Prohibition", 52 Washington and Lee Law Review.

independent parties that may hold information that is material to a company's success or failure. A hypothetical example of insider trading involving a third party would be if an individual at a printing company, who was paid to print private documents for a company, came across important information and advised someone else to make a trade. [18]

Legislation on insider trading;

In companies shares deals with valuable undisclosed information. This law emerged in united states after alleged the first insider trading case , when the Rothschild's benefited from insider trading and same in the Laidlaw v. Oregon, and then followed by the rest of world it is known as:

"Securities Exchange Act 1934"

"Today, out of more than 103 countries that have stock markets, 87(including Pakistan and India) have introduced insider trading rules"[19]. Following are the major legislation regarding insider trading;

i. Federal Securities Exchange Act 1933 & 1934
ii. EU, Directives on Insider Trading and Market Abuses
iii. Securities and Exchange Ordinance, 1969
iv. Finance Act, 1995
v. Financial Services and Markets Act 2000 (FSMA)

[18] Stephen M . Bainbridge, "Incorporation State Law Fiduciary Duties into the Federal Insider Trading Prohibition", 52 Washington and Lee Law Review. Along; http://www.investopedia.com/articles/03/100803.asp#axzz1e5nn0eVk (accessed on 8.20.2011)

[19] Utpal Bhattacharya and Hazem Daouk, "The World Price of Insider Trading", journal of finance 57, 75-108(2002).

vi. The SEBI Act, 1992

4.5. Money Laundering:

"Money laundering is the process of disguising illegal sources of money so that it looks like it came from legal sources"[20]. Article 1 of the draft European Communities (EC) Directive of March 1990" explain the Money Laundering according to this:

The conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.

In processing; first step is called placement. This is the act of moving the ill-gotten funds into a financial institution. The institution may be anything from a brokerage house or bank to a casino or insurance company. Placement can take place via cash deposit, wire transfer, check, money order, or other methods. This represents the most dangerous step for the criminal, as the government is always looking to account for such large deposits.

The second step is layering. This is a series of complex financial transactions meant to throw anyone who comes looking off the trail of the money. The removal of funds

[20] Gara'O, D.John . *Corporate Frauds : Detection and Prevention*. New York : John Wiley and Sons , 2004.& http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf (accessed on 10.21.2011)

from one institution will coincide with the addition of funds to another, but if one step goes unnoticed, tracing the origin of the money becomes difficult.

The final, and most important, step in the process is integration, also called 'cleaning' the money. In integration, the illegal funds are accounted for by adjusting a legitimate transaction. For instance, ordinary goods may be sold for a particular price, but the invoice will value them much higher. Then, the money obtained from the sale of these goods is deposited into the account with the dirty money. The false invoice would then account for both the legitimate profits and the illegal funds.

Following legislations were made by different countries for combating money laundering and protecting economy:

i. Basel committee on banking supervision 1974
ii. The Vienna convention 1988
iii. The Strasbourage conventions of 1990
iv. The OECD convention on money laundering 1997
v. The UN convention against transnational organized crime
vi. Anti money laundering ordinance 2007

4.6. Embezzlement;

"Embezzlement is the act of dishonestly appropriating or secreting assets by one or more individuals to whom such assets have been entrusted".[21]

It's also known as "financial" crime. Where an accountant can embezzle the money from company, and same like this, husband /wife can also "embezzle the funds" from each other. It could be done by employ from lower level to high level even partner also. It accrues in tax evasion, money laundering, financial discloser etc.

Usually, embezzlement is performed in a manner that is premeditated, systematic and/or methodical, with the explicit intent to conceal the activities from other individuals, usually because it is being done without their knowledge or consent. Often it involves the trusted person embezzling only a small proportion or fraction of the funds received, in an attempt to minimize the risk of detection. If successful, embezzlements can continue for years (or even decades) without detection. It is often only when the funds are needed, or called upon for use, that the victims realize the funds or savings are missing and that they have been duped by the embezzler.

15 century, the first documented case of embezzlement was reported in England. Later on the law was enacted in **1473**, in response of the **carrier's case**[22], the case where the agent entrusted to transport wool attempted to steal some of it for him.

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[21] Anonymous v. The Sheriff of London, Carrier's Case(1473) 13 Edw. IV, f.9, pl. 5

[22] http://www.legal-explanations.com/definitions/embezzlement.htm,, (accessed on 8.10.2011)

It was known as a landmark case in England; in this the doctrine of "**breaking bulk**" was adopted. If someone transporting merchandise on behalf of other (as bailee) and keeps the property by breaking it open and misappropriating the contents, it constitutes a crime of embezzlement.

In short, in this chapter, we have explored; what are the corporate corruption, its kinds, causes, and its effect nationally and internationally. In this regard we come to know that; Corruption is: When a public servant and any other individual misusing his powers for getting benefit for himself and for others Following are its different modes.

Bribery is such a mode of corruption in which every person (even third person, who is directly or indirectly involve) is charged who offering, giving, receiving and soliciting any valuable thing, inform of: money, commodity, right in action, undertaking for action, promotion, vote, freedom, property with the intention of effecting the working of any person or officers in the charge of legal and public duty for getting his personal benefit.

In Insider trading and financial discloser, we come to know that securities laws of every state encourage disclosing accurate and sufficient information not all information. So all public information, must share with public without any discrimination.

Money laundering is known as bad business practices which is started to secure wealth from state (tax) and normally such a large amount deposit in Switzerland's bank because it's a tax free. When it was started, various facilities were offered to whole world. And all shady character specially criminals avail this opportunity and still availing its most recent example in Pakistan is; "**Swiss cases of Benazir Bhutto**".

CHAPTER: 2

LEGAL AND REGULATORY FRAME WORKS FOR ALLEVIATION OF CORPORATE CORRUPTION IN COMPARATIVE PERSPECTIVE

Introduction:

"Phenomenon" of corruption is not newly developed. Centuries ago in "Indian, Chinese, Greek and in European civilization" have been recorded the incidences of bribing and seeking illicit favors. It's a nature of human being to fulfill its appetite of wealth & power did corruption in different ways.

Today experts acknowledge that the corruption demolish the market & competition, it creates pessimism in the people, challenging rule of law, smash up the administration legitimacy, as well as crumbles the dignity of private sector. These are the worse impact of corruption which easily destroys the economy of any state.

Role of corporate sector against the corruption has been augmented significantly from last twenty years. This research discloses the enthusiasm of corporate sector to discuss the problem regarding enabling atmosphere – means that business, away from functioning on "internal codes of conduct and regulatory framework". On international & national rank there are lots of regulatory frameworks are working for combating the corruption , some of them are now under our discussion ;

1. Foreign Corrupt Practices Act, 1977 (FCPA)

Introduction:

A "Foreign Corrupt Practices Act of 1977" was leaded by continuous corruption scams in 1970s. It forbid bribery by American and others companies to the foreign officials. Since its endorsement it has been contentious. By the view of some critics: it is unproductive and American business society argument that "it places U.S. enterprises at a competitive disadvantage abroad". From 1990s it turns out to be a model internationally for eliminate corruption and perk up the business atmosphere in the emerging world.

1.1 History Background:

In the mid of 1970 , Securities & Exchange Commission of USA made investigation by which they came to know that more than 400 U.S. Companies are involved in giving $300 million illicit payments to the officials of foreign government , political parties & politicians.

The abuses ran bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments. One major example was the Lockheed bribery scandals, in which officials of aerospace *company Lockheed* paid foreign officials to favor their company's products. Another was the Bananagate scandal in which Chiquita_Brands had bribed the President of Honduras to lower taxes. After Watergate[23] the FCPA was enacted by congress in 1977, which help in reconstructing the confidence of public in the business system of American and it also help for controlling bribery in foreign officials.[24]

1.2 Major Provisions:

It is known as "federal law". It is endorsed by United States of America in 1977, **President "Jimmy Carter"** signed it on 19, December 1977 but later on it is "amended in 1998" by "the International Anti-Bribery Act of *1998* which was designed to implement the anti-bribery conventions of the *Organization for Economic Co-operation and Development"*. It is mainly known for two of its main provisions;

1. Anti-bribery
2. Accounting

1.2.1 Provisions related to Anti-bribery:

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[23] *A series of scandals occurring during the Nixon administration in which members of the executive branch organized illegal political espionage against their perceived opponents and were charged with violation of the public trust, bribery, contempt of Congress, and attempted obstruction of justice.*

[24] Nicholas Cropp. "The Bribery Act 2010: Part 4: a comparison with the Foreign Corrupt Practices Act: nuance v nous", *Criminal Law Review*, 2011

Bribery provisions in this act in section 103 & 104 are based on two different types. In first type every bribes which is directly made by U.S. Companies is prohibited. In second type every organization is prohibited from intentionally placing for bribe by mediator.[25]

As FCPA prohibit: Issuers, domestic concerns, and any person from making use of interstate commerce corruptly, in furtherance of an offer or payment of anything of value to a foreign official, foreign political party, or candidate for political office, for the purpose of influencing any act of that foreign official in violation of the duty of that official, or to secure any improper advantage in order to obtain or retain business[26]. Entities which are particularly prohibited from making improper payments under FCPA are;

i. **The Issuers;**

Includes any U.S. or foreign corporation that has a class of securities registered, or that is required to file reports under the Securities and Exchange Act of 1934.

ii. **The Domestic concerns;**

Refers to any individual who is a citizen, national, or resident of the United States and any corporation and other business entity organized under the laws of the United States or having its principal place of business in the United States.

iii. **Any person;**

Covers both enterprises and individuals.

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[25] Deal In *Sections 103 and 104,* Foreign Corrupt Practices Act.

[26] http://www.foreign-corrupt-practices-act.org/foreign-corrupt-practices-act-news/5-siemens-ag-pays-450-million-to-settle-fcpa-bribery-charges.html (accessed on:11.22.2011)

These anti-bribery provisions of the FCPA are enforced by the Department of Justice (DOJ). U.S. persons who are unable to defend their actions in light of the FCP(anti-bribery provisions) face severe penalties. Penalties for violating the anti-bribery provisions of the FCPA vary based on whether the violator is a U.S. company or a U.S. individual. U.S. companies can be fined up to $2 million while U.S. individuals (including officers and directors of companies that have willfully violated the FCPA) can be fined up to $100,000 and imprisoned for up to five years, or both. In addition, civil penalties may be imposed.[27]

1.2.2 Accounting Provision :

It is needed for companies to "keep books and records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets". The logic behind these provision is to intricate for organizations to "cook the books" & conceal any corruption in the use of fund.[28]

Following provisions apply on issuers. It is binding on issuers to maintain accounts & records (because company is liable for these) and it must imitate issuer's assets and all kind of transactions.

1.2.2.1 Internal controls;

It is necessary for issuers to establish strong mechanism for internal accounting controls which give assurances that

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[27] http://www.foreign-corrupt-practices-act.org/foreign-corrupt-practices-act-news/5-siemens-ag-pays-450-million-to-settle-fcpa-bribery-charges.html (accessed on:11.22.2011)

[28] Deal In Section 102, Foreign Corrupt Practices Act

i. Transactions are not accomplished without management's endorsement.

ii. in financial statements all transactions are noted under generally accepted accounting principles (GAAP)

iii. After management's endorsement it is permitted to see assets.

If in record there is found such a internal document which misrepresents the financial transaction and it could be helped for charge in the records is considered the violation of the FCPA's provisions.

1.2.2.2 Liability for acts of subsidiaries;

On the act of foreign subsidiaries Issuers are responsible although that offensive act take place outside from the U.S. territory. The responsibility arises on the bases of issuer's incorporation of the subsidiary's financial statements in its own records and SEC filings.

1.2.2.3 Duties of minority owners;

It is the duty of issuers who hold 50% in company & in another company less than voting power, to adapt the accounting provisions. And for the growth of company and sustaining the mechanism of internal accounting control (it is duty of issuers) utilizing their powers.

1.2.2.4 National security Exception;

Issuers are exempted from every liability when they coordinate with federal government on the issue of national securities.

1.2.2.5 Application:

Remarkable suit application of FCPA are with BAE Systems, Baker Hughes, Daimler AG, Halliburton, KBR, Lucent Technologies, Monsanto, Siemens, Titan Corporation, Triton Energy Limited, Avon Products, and in vision Technologies. Former Representative William J. Jefferson, Democrat of Louisiana, was charged with violating this act by bribing Africangovernments for business interests[29]. In 2008, Siemens AG paid a $450 million fine for violating the FCPA. This is one of the largest penalties ever collected by the DOJ for an FCPA case.[30]

The U.S. Justice Department and the Securities and Exchange Commission are currently investigating whether Hewlett Packard Company executives paid about $10.9 million in bribery money between 2004 and 2006 to the Prosecutor General of Russia to win a million-dollar contract to supply computer equipment throughout Russia[31]. Indeed, ramped up USDOJ and SEC enforcement transformed 2010 into the FCPA's break-out year, and all indications are that 2011 and beyond will witness increasingly vigorous enforcement efforts and additional record-breaking prosecutions, fines, and disgorgements.[32]

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[29] http://www.nytimes.com/2009/08/06/us/06jefferson.html(accessed on:11.22.2011)

[30] http://www.foreign-corrupt-practices-act.org/foreign-corrupt-practices-act-news/5-siemens-ag-pays-450-million-to-settle-fcpa-bribery-charges.html (accessed on:11.22.2011)

[31] http://online.wsj.com/article/SB10001424052702304628704575186151115576646.html?mod=WSJ_latestheadlines(accessed on:11.22.2011)

[32] http://www.perkinscoie.com/files/upload/11_01_03_FunkArticle.pdf(accessed on:11.22.2011)

The July of 2011, "the DOJ opened an inquiry into the **News International phone hacking scandal** that brought down News of the World, the recently-closed UK tabloid newspaper. In cooperation with the Serious Fraud Office (United Kingdom), the DOJ will examine whether News Corporation violated the FCPA by bribing British Police Officers".[33]

In Short, The U.S. has stood alone for many years in its legislation against the bribery of foreign government officials. The U.S. position in this regard was in fact perceived by many U.S. persons to be a competitive disadvantage to doing business in foreign markets. Not only were foreign competitors permitted to offer bribes to foreign government officials, they were also allowed to deduct these payments as business expenses on their income tax returns. The U.S. complained for many years against these practices. Recently, these complaints have started to bear fruit. In early 1996, the International Chamber of Commerce (ICC) adopted new (Rules of Conduct to Combat Extortion and Bribery) and in so doing encouraged companies worldwide to adopt the conduct rules and incorporate them into their employee guidelines. [34]

Furthermore in, 1996 December, "General Assembly of the United Nations" implemented the "Declaration against Corruption and Bribery in International Commercial Transactions". The "United Nation" affiliated countries give assurance to:

i. Reject, tax deductibility of bribe given to the officials of foreign government
ii. Penalize, officials of foreign government for bribery in efficient & organize way.

[33] http://www.bbc.co.uk/news/business-14181119(accessed on:11.22.2011)

[34] http://library.findlaw.com/1997/Jan/1/126234.html(accessed on:11.22.2011)

iii. Set up the jurisdiction of bribery for the government officials of other country in accordance with international law.

Finally, 1998 April in conferences, "Organization for Economic Cooperation and development" implement a ruling which approved by 29 member states in which "banning the bribery of foreign government officials".[35] It's very heartening developments which provide some hope to U.S. citizen who participate in "foreign markets" on the vanguard of establishing honest and acceptable business practices. Therefore, "being more virtuous than thou, is an honorable, albeit non-effective long-term business strategy".

2. Sarbanes–Oxley Act, 2002

Introduction:

It's known as federal law of United States which endorsed in 30th July 2002 by Congress. It is named on the name of its sponsors "U.S. Senator Paul Sarbanes (D-MD) and U.S. Representative Michael G. Oxley (R-OH)". It is endorsed in reaction of long corporate & accounting scams like Enron, Adelphia, Tyco International, and WorldCom. Following scams destroy billions of dollars of the investors and loose investors confidence in capital market. Then it introduce new rules for all U.S. public company boards, management and public accounting firms for improving financial disclosures to protect investors from accounting errors and fraudulent practices in the enterprise. And this is administered by the Securities and Exchange Commission.

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[35] Ibid.

It is not just a rules for corporate practice but it explain "which records are to be stored and for how long". When President of USA George W. Bush signed it he stated, "It included the most far-reaching reforms of American business practices since the time of Franklin D. Roosevelt's Big Deal".

This act is known differently as in;

Senate; "Public Company Accounting Reform and Investor Protection Act"

House; "Corporate and Auditing Accountability and Responsibility Act"

Usually; "Sarbanes–Oxley, Sarbox or SOX"

2.1. Historical Background:

Many multifaceted elements developed the circumstances and atmosphere in which numbers of corporate scams take place in "2000–2002"[36]. The extravagant, highly-exposed scams at "Enron, WorldCom, and Tyco" rendering major issues like, "conflicts of interest and incentive compensation practices". The analysis of their multifarious and litigious reasons lead to the SOX in 2002.when in 2004 "Senator Paul Sarbanes" interrogated, he said:

"The Senate Banking Committee undertook a series of hearings on the problems in the markets that had led to a loss of hundreds and hundreds of billions, indeed trillions of dollars in market value. The hearings set out to lay the foundation for legislation. We scheduled 10

[36] Keith Slotter , Financial Fraud and the FBI ,(Paper Presented in LSU Fraud and Forensic Accounting Conference, America, 2007)

hearings over a six-week period, during which we brought in some of the best people in the country to testify...The hearings produced remarkable consensus on the nature of the problems: inadequate oversight of accountants, lack of auditor independence, weak corporate governance procedures, stock analysts' conflict of interests, inadequate disclosure provisions, and grossly inadequate funding of the Securities and Exchange Commission".

i. Auditor's conflicts of interest;

Prior to SOX, auditing firms, the primary financial (watchdogs) for investors, were self-regulated. They also performed significant non-audit or consulting work for the companies they audited. Many of these consulting agreements were far more lucrative than the auditing engagement. This presented at least the appearance of a conflict of interest. For example, challenging the company's accounting approach might damage a client relationship, conceivably placing a significant consulting arrangement at risk, damaging the auditing firm's bottom line.

ii. Boardroom failures ;

Boards of Directors, specifically Audit Committees, are charged with establishing oversight mechanisms for financial reporting in U.S. corporations on the behalf of investors. These scandals identified Board members who either did not exercise their responsibilities or did not have the expertise to understand the complexities of the businesses. In many cases, Audit Committee members were not truly independent of management.

iii. Conflicts of interest of Securities Analysts ;

The roles of securities analysts, who make buy and sell recommendations on company stocks and bonds, and investment bankers, who help provide companies loans or handle mergers and acquisitions, provide opportunities for conflicts. Similar to the auditor conflict, issuing a buy or sell recommendation on a stock while providing lucrative investment banking services creates at least the appearance of a conflict of interest.

iv. Inadequate funding of SEC;

The SEC budget has steadily increased to nearly double the pre-SOX level. In the interview cited above, Sarbanes indicated that enforcement and rule-making are more effective post-SOX.

v. Banking practices;

Lending to a firm sends signals to investors regarding the firm's risk. In the case of Enron, several major banks provided large loans to the company without understanding, or while ignoring, the risks of the company. Investors of these banks and their clients were hurt by such bad loans, resulting in large settlement payments by the banks. Others interpreted the willingness of banks to lend money to the company as an indication of its health and integrity, and were led to invest in Enron as a result. These investors were hurt as well.

vi. **Internet Bubble;**[37]

Investors had been stung in 2000 by the sharp declines in technology stocks and to a lesser extent, by declines in the overall market. Certain mutual fund managers were alleged to have advocated the purchasing of particular technology stocks, while quietly selling them. The losses sustained also helped create a general anger among investors.

vii. **Executive compensation;**

Stock option and bonus practices, combined with volatility in stock prices for even small earnings (misses), resulted in pressures to manage earnings. Stock options were not treated as compensation expense by companies, encouraging this form of compensation. With a large stock-based bonus at risk, managers were pressured to meet their targets.

2.2 Major Provisions of "SOX":

Followings are some major provisions of Sarbanes–Oxley Act 2002

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[37] *was a speculative bubble covering roughly 1995–2000 (with a climax on March 10, 2000, with the NASDAQ peaking at 5132.52 in intraday trading before closing at 5048.62) during which stock markets in industrialized nations saw their equity value rise rapidly from growth in the more recent Internet sector and related fields. While the latter part was a boom and bust cycle, the* ***Internet boom*** *is sometimes meant to refer to the steady commercial growth of the Internet with the advent of the world wide web, as exemplified by the first release of the Mosaic web browser in 1993, and continuing through the 1990s.*

2.2.1 Accounting Oversight Board;

Sec 101 -109 deals with the establishment of "Public Company accounting Oversight Board", and board is;

i. Constructed as non-profit organization, and run audits of public companies; it is under the authority of the SEC but above other professional accounting organizations such as the AICPA

ii. The Board is comprised of 5 members (appointees), with a maximum of two CPA's

iii. Among its duties are registering existing public accounting firms which prepare audits for publicly traded companies (issuers), reviewing registered public accounting firms (auditing the auditors), establishing and amending rules and standards (in cooperation with other standard setters), and in the event of non-compliance by registered public

accounting firms, to try such firms (and/or any related associate(s)) and penalize.

2.2.2 Auditor Independence;

Sec 201 -209 of SOX deals with provisions related to the independence of auditors, according to these;

i. Prohibits registered public accounting firms (RPAFs) who audit an issuer from performing specific non-audit services for that issuer, including but not limited to: bookkeeping, financial information systems design, appraisal services, actuarial

services, internal audit outsourcing services, management/human resource functions, broker/dealer, legal/expert services outside the scope of the audit.

ii. In addition to these limitations, audit functions and all other non-audit functions provided to the audit client must be pre-approved by the Board (such as tax services).

iii. Audit Partner rotation – Lead partner on 5 years, off 5 years; other partners on 7 years, off 2.

iv. RPAFs performing audits to issuers must report to issuer's audit committees about:

   a. critical accounting policies to be used in the audit,

   b. any written communication with management, and

   c. any deviations from GAAP in financial reporting

v. A conflict of interest arises and an RPAF may not perform audit services for any issuer employing – in the capacity of CEO, controller, CFO or any other equivalent title – a former audit engagement team member – there is a (cooling-off period) for one year i.e., an employee of an RPAF who works on an audit of an issuer may not turn around and directly go to work for that issuer – they must wait one year.

vi. Currently under investigation is the possibility of mandatory rotations of audit clients among registered public accounting firms.[38]

2.2.3 Corporate Responsibility;

Sec 301 -308, defines the responsibility which lies on corporate sector;

[38] Section: 201-209 of Sarbanes Oxley Act

i. Audit Committee; the committees establish by the board of a company for the purpose of overseeing financial reporting Independently and Establishes minimum independence standards for audit committees .Independence of the audit committee crucial in that it must,

   a. oversee and compensate RPAF to perform audit, and

   b. establish procedures for addressing complaints by the issuer regarding accounting, internal control, etc. (this lays the foundation for anonymous whistle blowing)

ii. CEOs and CFOs must certify in any periodic report the truthfulness and accurateness of that report – creates liability

iii. Under certain conditions of re-statement of financial due to material non-compliance, CEOs and CFOs will be required to forfeit certain bonuses and profits paid to them as a result of material miss-information.

2.2.4 Financial Disclosures;

Sec 401-409, deals with the mechanism of proper financial disclosures, according to this;

i. Issuers must disclose (off-balance sheet transactions) in periodic reports

ii. No issuer shall make, extend, modify or renew any personal loan to CEOs, CFOs (limited exceptions include company credit cards).

iii. Annual reports will contain internal control reports which state the responsibility of management for establishing such controls and their assessment of the effectiveness of such controls – which must be attested to by the auditor.

iv. In periodic reports filed, the issuer must disclose its code of ethics for senior financial officers, and if the issuer has not adopted such a policy, must disclose why not he adopted.

v. Issuer must disclose whether or not its audit committee is comprised of at least one financial expert, and if not, why

   a. Member considered financial expert if they have an understanding of GAAP, experience in preparing/auditing financials, experience with internal controls, and an understanding of audit committee functions.

vi. SEC must review disclosures (in financials) made by any issuer at least once every three years (similar to Board review of registered public accounting firms).

vii. Issuers must disclose in real time any additional information concerning material changes in the financial condition or operations of the issuer.[39]

2.2.5 Conflicts of Interest;

Sec 501 deals with the remover of conflict of interest, as it is stated;

National Securities Exchanges and registered securities associations must adopt rules designed to address conflicts of interest that can arise when securities analysts recommend securities in research reports, to improve objectivity of research and provide investors with useful and reliable information.

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[39] Robert , Moeller. *Sarbanes-Oxley and the new internal auditing rules*. New York : John Wiley and Sons , 2004.

2.2.6 Commission Resources and Authority;

Sec601-604, deals with commission resources and authority which deal it;

i. Increase 2003 appropriations for the SEC to $780 million, $98 million to be used to hire an additional 200 employees for enhanced oversight of auditors and audit services.

ii. SEC will define the laws setting minimum standards for profession conduct for attorneys practicing .

iii. SEC to conduct investigations of any security professional that has violated a security law. May censure, temporarily bar or deny right to practice.

2.2.7 Studies and Reports;

Sec 701-705 deals with studies and reports related to accounting firms;

i. It is the duty of "Comptroller General" to get knowledge about "consolidation of public accounting firms and analyze the past, present and future impact of the consolidations" and give the solution of all relevant issues e.g. "Coopers & Lybrand/Price Waterhouse combine to become Price Waterhouse Coopers; ToucheRoss/DeloitteHaskins merge to become Deloitte & Touche since 1989"

ii. SEC & Comptroller General have the authority to investigate the followings

   a. The role and function of credit rating agencies in the operation of the securities market,

b. The number of securities professionals (public accountants, investment bankers, attorneys) who have been found to have aided and abetted a violation of securities law and who have not been disciplined,

c. All enforcement actions by the SEC regarding re-statements, violations of reporting requirements, etc., for the five year period prior to the date the Act is passed, and

d. Whether investment banks and financial advisers assisted public companies in manipulating their earnings specifically Enron and WorldCom.

2.2.8 Corporate and Criminal Fraud Accountability;

Section: 801-807 deals with accountability including "corporate and criminal fraud";

i. To knowingly destroy, create, manipulate documents and/or impede or obstruct federal investigations is considered felony, and violators will be subject to fines or up to 20 years imprisonment, or both.

ii. All audit report or related work papers must be kept by the auditor for at least 5 years.[40]

iii. **Whistleblower protection** – employees of either public companies or public accounting firms are protected from employers taking actions against them, and are granted certain fees and awards such as Attorney fees.

[40] Section: 801-807 of Sarbanes Oxley Act

2.2.9 Penalty Enhancements;

Sec 901-906 deals with penalty enhancement for "white collar crime";

i. Under the act "Financial statements filed with the SEC by any public company must be certified by CEOs and CFOs; all financials must fairly present the true condition of the issuer and comply with SEC regulations";

ii. Breach of this must be result "in fines less than or equal to $5 million and /or a maximum of 20 years imprisonment".

iii. SEC prohibited to hold the set of director in public company for such a person who is convicted for securities deception.

2.2.10 Tax Returns;

Sec 1001 deal with corporate tax returns according to this act, "Federal income tax returns must be signed by the CEO of an issuer".

2.2.11 Corporate Fraud Accountability;

Sec 1101-1107 deals with provision related to accountability of "corporate fraud":

i. Anyone who Demolishing and changing documents, intention to damage reliability and hampering proceeding, must "subject to a fine and/or up to 20 years imprisonment".

ii. Commission has power to seize the "payments" of such person who engaged to examine for probable violation of security.

iii. Every penalizing act which is not in favor of whistleblowers and other informers is "subject to fine or 10 year imprisonment".

In Short, Many critics put responsibility on SOX for the financial crisis in 2007-2010, according to them it is because "of small number of Initial Public Offerings (IPOs) on American stock exchanges during 2008", after SOX implementation. Even in "December 21, 2008. *Wall St. Journal editorial"* affirmed that "The new laws and regulations have neither prevented frauds nor instituted fairness. But they have managed to kill the creation of new public companies in the U.S., cripple the venture capital business, and damage entrepreneurship".[41]

But mostly believe that Sarbanes Oxley Act offers "long term benefits" because it enhances the Investor confidence by ensuring the "reliable financial reporting" through SOX. It has a considerable effect on "corporate governance", by which companies are no more eligible to influence on goods, collections of things and sales after placing the real time reporting system. It needs "a standard data entry system" and "nurtures an ethical culture as it forces top management to be transparent and employees to be responsible for their acts and also protects whistle blowers".

[41] Steven a. Harrast and Lori Mason-Olesen , "Can Audit Committees Prevent Management Fraud?", The *CPA Journal.*

3. United Nations Convention against Corruption 2003. (UNCAC)

It's a former lawful obligatory tool for every state to combating corruption which offers comprehensive, global framework for removing corruption. UNCAC make it obligatory for all States Parties to implement, all its give remedy for controlling corruption. This effect on existing laws, institutes and practices. These precautions reflects significant progress at international level for eliminating corruption, the main purpose of this struggle is to; " promote the prevention, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange, and mechanisms for implementation". [42]

3.1 Introduction:

UNCAC approved by "United Nations General Assembly in Merida, Yucatan, Mexico, on 31 October 2003 by Resolution 58/4". It is drafted in "Arabic, Chinese, English, French, Russian and Spanish" and consists of 8 chapters and 71 articles.

Till May.15 of 2011, almost 154 countries become signatories of this convention. Now these states known as the party of this convention but there are many states which population is more than "1 million" not signed the convention till 15 May 2011, like: North Korea, Chad,

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[42] J.Beck, Michealry, Regulation and Bribe, Journal . Managerial and Economics Decision, Vol 10,

Somalia Eritrea and Oman. India became its signatory in 9 Dec 2005 and ratified in 1 May 2011, and Pakistan became its signatory in 9 Dec 2003 and ratified in 31 Aug 2007.

3.2 Historical Background:

The UNCAC is the most recent of a long series of developments in which experts and politicians have recognized the far-reaching impact of corruption and economic crimes, including money laundering that undermine the value of democracy, sustainable development, and rule of law-also the need to develop effective measures against it at both the domestic and international levels. International action against corruption has progressed from general consideration and declarative statements to legally binding agreements. While at the beginning of the discussion, measures were focused relatively narrowly on specific crimes, above all bribery, the definitions and understanding of corruption have become broader and so have the measures against it. The Conventions' (not only the UNCAC, but the Inter-American Convention against Corruption, the OECD Anti-Bribery Convention, the African Union Convention on Preventing and Combating Corruption) comprehensive approach and the mandatory character of many of its provisions give proof of this development. The UNCAC deals with forms of corruption that had not been covered by many of the earlier international instruments, such as trading in official influence, general abuses of power, and various acts of corruption in the private sector. A further significant development was the inclusion of a specific chapter of the Convention dealing with the recovery of assets, a major concern for countries that pursue the assets of former leaders and other officials accused or found to have engaged in corruption.[43]

3.3 Objectives of the Convention:

The main aim of UNCAC is, protect & promote the facilities for:

i. prevention and combating corruption
ii. international cooperation and technical assistance;
iii. integrity and accountability

It is applicable for preventing, investigating & prosecuting the corruption with many authorities for dealing with offences.

3.4 Major features of convention:

This convention mainly deals with 5 core issues: "prevention, criminalization, international cooperation, asset recovery, and technical assistance". It is binding on all member countries to implement all it policies regarding corruption and form such authority which is responsible to create harmonization between national and international standards of anti corruption and its enforcement.

3.4.1 Prevention;

According to convention, all member countries must enforce rules for avoiding corruption in "public and private sectors". They must add "transparent procurement systems,

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[43] http://en.wikipedia.org/wiki/United_Nations_Convention_against_Corruption, (accessed on 11.20.2011)

a merit-based civil service, and effective access to information regime, active involvement of civil society in the fight against corruption, an independent judiciary, elimination of bank secrecy laws, and public auditing procedures for requirements of financial and other disclosures with appropriate disciplinary measures". *Article 14* defines "the measure to prevent money laundering. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption".[44]

3.4.2. Criminalization;

It is binding on member countries to criminalized the following act "active bribery (the offer or giving of an undue advantage) of a national, international or foreign public official, passive bribery of a national public official and embezzlement of public funds. Other mandatory crimes include obstruction of justice, and the concealment, conversion or transfer of criminal proceeds, money laundering". Punishment extended to all such persons who attempted or committed corruption.

Article 20 on illegal enhancement is very contentious, it imputes criminal behavior to individuals whose assets cannot be explained in relation to their lawful income; for example a district official who lives in a mansion and drives a Mercedes. This has raised the alarm of some lawyers and human rights advocates, who maintain that such requirements reverse the presumption of innocence protected by many legal systems. Defenders of the principle argue that the prosecutor still shoulders the burden of proof, as he or she must

[44] Chapter II, Articles 5-14; united nation convention against corruption2003

demonstrate, beyond reasonable doubt, the lack of legal avenues for the accumulation of excess wealth.[45]

UNCAC stands for, better cooperation between national and international bodies and with civil society. There is a provision for the protection of witnesses, victims, expert witnesses and whistle blowers to ensure that law enforcement is truly effective.

3.4.3 International cooperation;

Member states bound for assist each other in cross-border criminal matters. This includes, for example, gathering and transferring evidence of corruption for use in court. The requirement of dual criminality, which has traditionally hindered cooperation, is loosened. Dual criminality stipulates that the alleged crime for which mutual legal assistance is sought must be criminal in both the demanding and requested countries.[46]

It is also define in Convention that coordination in "criminal" issues is binding and regarded in "civil and administrative" problems. The assistances can be asked in following acts like, "arrest, search, seizure and where dual criminality is required, it is sufficient that the conduct at issue constitutes a crime in both jurisdictions".

3.4.4 Asset recovery;

This is known as the essential code of UNCAC and its major part that is: "right to recovery of stolen state assets".

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[45] Chapter III, Articles 15-44; united nation convention against corruption2003

[46] Chapter IV, Articles 43-49; united nation convention against corruption2003

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[45] Chapter III, Articles 15-44; united nation convention against corruption2003

[46] Chapter IV, Articles 43-49; united nation convention against corruption2003

Under the observation of many spectators, *Chapter V* on asset recovery is the main selling point of the Convention, and the reason why so many developing countries have signed. *Chapter V's* provisions lay a framework, in both civil and criminal law, for tracing, freezing, forfeiting, and returning funds obtained through corrupt activities. The requesting state will in most cases receive the recovered funds as long as it can prove ownership. In some cases the funds may be returned directly to individual victims. As demonstrated by the long-running case in Swiss courts against former Nigerian leader Sani Abacha, who allegedly pocketed $5 billion in public funds while in power, it is extremely difficult for countries to recover even a fraction of their loss. The dramatic drain of funds can seriously affect a country's economic development.[47]

If there is no other solution then the member states can use the UNCAC as it is for resolving their issue as under, *Article 54(1) (a)*:

"Each State Party (shall)... take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another state party".

According to the Article 54, 54(2)(a) for "asset recovery" when there is logical reasons behind the request for "provisional freezing or seizing of property" then it must proceed according to the convention[48]. In Article 60 (5) it is define that developed countries help the developing states in investigation by providing "technical assistance".

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[47] J.Beck, Michealry, Regulation and Bribe, Journal . Managerial and Economics Decision, Vol 10,

[48] Chapter V, Articles 51-59 ; united nation convention against corruption2003

3.4.5 Technical assistance and information exchange;

The main object of this convention is to help the developing states to come at international standards. In Chapter VI includes provisions like: training, material, human resources, research, and information sharing. Training could be considered for topics such as investigative methods, the planning and development of strategic anti-corruption policies, preparing requests for mutual legal assistance, public financial management, and methods used to protect victims and witness in criminal cases. States parties should also consider helping each other conduct evaluations and studies on the forms, causes and costs of corruption in specific contexts, with a view to developing better policies for combating the problem.[49]

In short, the united nation convention against corruption deals "crimes" in wider level than any other conventions and it's become distinctive from other because of its feature of focusing in the "cross-border cooperation". Although still there are many lacunas in this convention like: "there it imposed no obligation to make bribery and embezzlement as a criminal offence in the private sector" But, it's true that UNCAC is a remarkable instrument for "anti-corruption" and it is treated as anti-corruption reforms.

[49] Chapter VI, Articles 60-62; united nation convention against corruption2003

3. The UK Bribery Act 2010

The "Bribery Act" is known as groundbreaking legislation. It prohibit bribe and declare as illicit, for making and accepting in every conditions for "private individual" and "public official". it has a near-universal jurisdiction, it doesn't apply only on UK companies, or "listed in London Stock Exchange". In fact, it applies to everyone who has any connection with UK. (The Bribery Act is being referred to, by many, like "the Foreign Corrupt Practices Act". It remove the ex "statutory and common law provisions" related with "bribery". It is defined "the toughest anti-corruption legislation in the world", many apprehensions elevated that this Act criminalize the behavior hence it is tolerable in world market but it creates harm for British corporate sectors and its implementation is also difficult.[50]

4.1 Historical Background;

Before the bribery Act 2010, following were the laws which used for combating bribery;

i. Public Bodies Corrupt Practices Act 1889,
ii. Prevention of Corruption Act 1906,
iii. Prevention of Corruption Act 1916

[50] G. Sullivan. "Legislative Comment the Bribery Act 2010" Criminal Law Review, 2011

It is defined: inconsistent, anachronistic and inadequate. A Poulson affair in 1972, the Salmon Committee on Standards in Public Life recommended updating and codifying these statutes, but the government of the time took no action. Similar suggestions were brought up in the first report by

i. "Committee on Standards in Public Life established by John Major in 1994"
ii. " Home Office published a draft consultation paper in 1997"

Which talk about the laws related to bribery and following the Law Commission's report *legislating the Criminal Code: Corruption* in 1998 . The consultation paper and report coincided with mounting criticism from the Organisation for Economic Co-operation and Development, who felt that, despite the United Kingdom's ratification of the OECD Anti-Bribery Convention, its bribery laws were inadequate.

4.2 How does it differ from the FCPA?

There are some significant differences: the Bribery Act makes it an offense to receive, as well as give, a bribe; bribery of private individuals and companies is criminalized; there is no need to prove corrupt intent; there is a strict liability corporate offense for failing to prevent bribery; there is no exemption for facilitation payments; and the extraterritorial reach has a broader impact for companies and individuals.[51]

[51] Nicholas Cropp. "The Bribery Act 2010: Part 4: a comparison with the Foreign Corrupt Practices Act: nuance v nous". *Criminal Law Review*, 2011

4.3 Act's Description;

This "**Bribery Act 2010"** is the Act of the Parliament of the United Kingdom, it consist of 20 sections, 6 principles and 2 schedules that covers the criminal law relating to bribery. Introduced to Parliament in the Queen's Speech in 2009 after passing by several process it succeed to obtain Royal consent at April.8.2010. As of February 2011, *Ken Clarke*, the Secretary of State for Justice, has yet to publish guidance on the interpretation and use of the Act, and has announced that it will not come into force until at least three months after such guidance is made available. The Ministry of Justice published the guidance on 28 March 2011. Ultimately it's become effective from July 1st 2011.

This code is applicable on every "companies, partnerships and individuals" lived in the "England, Scotland, Wales and Northern Ireland, as well as foreign companies and individuals doing business in the UK". It is world wildly excisable and globally applicable.[52]

The punishment for bribery according to this: maximum of 10 years imprisonment, unlimited fine, potential for the confiscation of property under the Proceeds of Crime Act 2002, disqualification of directors under the Company Directors Disqualification Act 1986.

4.4 Major features of the Act;

Followings are major features of the Acts; first time the bribery act 2010 introduced "four new criminal offences":

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[52] John Davey , Bribery in Commercial Relationship, Journal . Harvard Law Review , Vol . 87 (1996)

i. Active bribery – offer and pay bribe in public and private sector.

ii. Passive bribery –requesting or receiving a bribe in public and private sector.

iii. Bribery of "foreign public official" – this crime needed to observe under "OECD Convention"

iv. Letdown in prevention of "Corporate offence" – bribery commences because of it.[53]

4.4.1 Offences under the Act:

These are considered the main offence under this act;

1. The general Offences;

According to **"Sections 1 to 5"** following are the "general bribery offences". Although they establish a central concept of "improper performance".

a. Paying bribes: "it is an offence to offer or give a financial or other advantage with the intention of inducing that person to perform a ***relevant function or activity improperly*** or to reward that person for doing so".

b. Receiving bribes: "it is an offence to receive a financial or other advantage intending that a ***relevant function or activity*** should be performed ***improperly*** and in consequences".

[53] G. Sullivan. "Legislative Comment the Bribery Act 2010" Criminal Law Review, 2011

Relevant Function or Activity:

This comprises every activities of "public & business nature". Any Individuals who did such activities is assumed to do this in a "good faith, impartially and must be trust worthy".

Inadequate Performances:

These would be determined that either it infringes a hope of the prudent citizen of "UK" relevant to the performances of activities although that is not directly connected with UK. It means inadequate acts are those which are against the expectations of prudent persons. [54]

These definitions were widely drafted, so there is a potential risk that they could catch normal business conduct. This may well encourage an initial round of litigation when offences start to be prosecuted.

2. Bribery of foreign public officials:

It's a very diverse offense according to Section 6 of UK bribe Act, in line with the OECD Anti-Bribery Convention. This offence will be committed if any person offers or gives a financial or other advantages to a foreign public official with the intention of influencing the foreign public official and obtaining or retaining business, and the foreign public official was neither permitted nor required by written law to be influenced. To some

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[54] Amy Bell, "Legislative Comment The Bribery Act: what's all the fuss about?". *Legal Information Management,2011*

extend its minor analysis as compare to other crime, specially providing the "business nexus" element, but in other respects a wider test, given the broader concept of intention to "influence" instead of intention to induce "improper performance" as in the general offences.[55]

3. Failure of commercial organizations to prevent bribery:

In this act Sec:7 deals with the prevention of commercial bribery. It is applicable on all those "commercial organizations" which are doing their business in United Kingdom. This offence is one of strict liability, with no need to prove any kind of intention or positive action It is also one of vicarious liability; a commercial organization can be guilty of the offence if the bribery is carried out by an employee, an agent, a subsidiary, or another third-party, as found in Section 8. The location of the third-party is irrelevant to the prosecution—according to ***David Aaronberg and Nichola Higgins in the Archbold Review***: Therefore, a German business with retail outlets in the UK which pays a bribe in Spain could, in theory at least, face prosecution in the UK. [56]

"Commercial organization" can protect itself under the provision:7(2) by proving that when the "bribery" accrued it was at the point "adequate procedures designed to prevent persons associated with the organization from undertaking such conduct". After giving all explanation as define in relevant provision. All "burden of proof" lies on company.

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[55] John Davey , Bribery in Commercial Relationship, Journal . Harvard Law Review , Vol . 87 (1996)

[56] G. Sullivan. "Legislative Comment the Bribery Act 2010" Criminal Law Review, 2011

The most controversial offence is that which is committed by companies and partnerships. Either this is conducted by:

i. A person associated with a relevant commercial organization (which includes not only employees, but agents and external third parties) bribes another person (i.e. commits one of the offences above) intending to obtain or retain a business advantage; and
ii. The organization cannot show that it had adequate procedures in place to prevent bribes being paid.

This offence is intended to reverse the rules on corporate attribution in relation to bribery. Under the old law (and under the new general offences), a company was likely to be guilty of a bribery offence only if very senior management were involved. Under this corporate criminal offence, the company may be guilty even if no one within the company knew of the bribery. The company's defense is limited to showing that it had (adequate procedures) to prevent bribery. That effectively creates a burden on corporate to ensure that their anti-corruption procedures are sufficiently robust to stop any employees, agents or other third parties acting on the corporate behalf from committing bribery.[57]

According to the act it is necessary for government to give descriptive explanation on which level the "adequate procedures". This was published on 30 March 2011. Eventually, it's a court duty to determine that company has "adequate procedures".

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[57] Amy Bell, "The Bribery Act: what's all the fuss about?". *Legal Information Management, 2011*

4.4.2 Extra-Territoriality;

The scope of all new offences about territory explained in, Section 12 of this Act. It has a wider extent & extraterritorial application, offences may be prosecuted if:

i. Any individual ordinarily resident in the UK (whether or not a British national) can be prosecuted for bribery offences committed anywhere in the world; and

ii. If any act or omission which forms part of the offence occurs within the UK

iii. Any partnership or corporate (whether or not incorporated in the UK) can be prosecuted if it does business in the UK (e.g. through a permanent establishment, subsidiary or other operation), even if the offence was committed outside the UK.[58]

4.4.3 Penalty;

According to sec: 10,the authorization of any prosecution by the director of the appropriate prosecution agency before a case can go ahead; this is a shift from the old regime, which required the consent of the "Attorney General for England and Wales". Section 11, explains the penalties for individuals and companies found guilty of committing a crime. If an individual is found guilty of a bribery offence[59], tried as a summary offence and followings are the penalties;

i. For individuals: The maximum penalty is "ten years imprisonment and/or a fine".

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[58] G. Sullivan. "Legislative Comment the Bribery Act 2010" Criminal Law Review, 2011

[59] Section 10, of UK Bribery Act 2010.

ii. For company: maximum penalty is "unlimited fine. And the highest fine imposed to date in the UK for a corruption case is £8.5m".[60]

The Act rises the maximum jail term for bribery and there are many relevant factors which effect convection, like:

i. directors disentitlement;

ii. corporate segregation "from public procurement";

iii. asset amputation

In Short, this UK Bribery Act 2010 prohibits bribery or attempted bribery and is effective from July 1st 2011. Bribery includes business kickbacks, corrupt commissions, and other forms of illicit business payments to secure business or government contracts. The Act also prohibits payments made to obtain a business advantage, such as expediting goods though customs, attempting to receive a more favourable tax treatment and influencing legislation.

While the Act may change little from an individual's perspective, it puts significant pressure on corporate sector in United Kingdom and make certain that there is suitable "anti-corruption procedures" sooner than the implementation of act.

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[60] Amy Bell, "Legislative Comment The Bribery Act: what's all the fuss about?". *Legal Information Management,2011*

In this comparative legal study of regulatory frame works for combating corporate corruption, we discussed world known various legal frame works of different countries by following which that states succeed to combating corruption. Now here we critically analyzed its main provisions, implementation and effect.

CHAPTER: 3

MAJOR FEATURES OF LEGISLATIONS FOR COMBATING CORPORATE CORRUPTION

Introduction;

As we know that corrupt perform very frequent, this offensive attitude arises as the causal performances. "Corporate governance" is not as practiced as it is needed. The "Chairmen, chief executive officers and directors" selected under personal interest as well as under political influences and there is nothing like "Merit". The illicit junction of personal gain persuaded the "insider trading" it creates aggravation and hinder the "investor".

In short, whole system needs practical implementation in form of statutory legislation which should be mandatory in nature but, it based on the international guidelines, conventions, principles etc(which we seen in 2nd chapter) and many countries did so, they incorporate international rules and regulations in there national laws.

Now in this, we will discuss the major features, which are emphasized in international documents as the integral part for combating corporate corruption. These are the followings;

1. Corporate Control
2. Financial Reporting
3. Directors' responsibilities
4. Protection of Whistleblower

And we will also discuss that how the developed countries make legislation or adopt international standards/ rules in there national laws.

1. Corporate Control

1.1 Introduction:

Corporate control is a term which indicates toward the authority which takes action for company like: "operations and strategic planning, including capital allocations, acquisitions and divestments, top personnel decisions, and major marketing, production, and financial decisions". This theory is recurrently enforced on "publicly traded companies", it may be susceptible to changes in corporate control when large investors or other companies seek to wrest control from managers or other shareholders.

The notion of corporate control is similar to that of corporate governance; however, it is usually used in a narrower sense. Corporate control is concerned with who has—and, moreover, who exercises—the ultimate authority over significant corporate practices. Governance, by contrast, involves the broader interworking of the day-

to-day management, the board of directors, the shareholders at large, and other interested parties to formulate and implement corporate strategy.

1.2 Principles of corporate governance / legislation on corporate control:

Current debate on "corporate governance" inclined to standards define in these 3 instrument issued in 1990: "The Cadbury Report (UK, 1992), the Principals of Corporate Governance (OECD, 1998 and 2004), the Sarbanes-Oxley Act of 2002 (US, 2002)".

Cadbury and OECD reports;

These reports provide existing general principals on the basis of which it is assumed that the businesses perform its function to guarantee the appropriate governance.

Sarbanes-Oxley Act;

Which is also known as "Sarbox or Sox", it is enacted by "federal government of the United States". This act enforces many laws which were introduced by "Cadbury and OECD reports".

1.2.1 Right & equitable treatment of shareholders:

Under followings, right and equitable treatment of "shareholders" are discusses;

i. OECD, PRINCIPLES OF CORPORATE GOVERNANCE, 2004, ARTICLES II AND III.
ii. Cadbury, Adrian, Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London, December, 1992, Sections 3.4.
iii. Sarbanes-Oxley Act of 2002, US Congress, Title VIII.

It is necessary for company to honor the "rights of shareholders" by provide guidance to how to use his right, motivate him to attend the general meeting and providing him all relevant information.

1.2.2 Interest of other stakeholders:

Preamble and article iv (4) of "OECD PRINCIPLES OF CORPORATE GOVERNANCE 2004", define interest related to the stakeholders. According to this; "Organizations should recognize that they have legal, contractual, social, and market driven obligations to non-shareholder stakeholders, including employees, investors, creditors, suppliers, local communities, customers, and policy makers".

1.2.3 Role and responsibilities of Board:

Role and responsibilities of the board is defined under the provision of followings;

i. OECD, PRINCIPLES OF CORPORATE GOVERNANCE, 2004, ARTICLES VI,
ii. CADBURY, ADRIAN, REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE, GEE, LONDON, DECEMBER, 1992, SECTION 3.4

It is necessary for the board to have adequate and appropriate proficiency with power to analysis the activities of "management" as well as board must have sufficient liberty for performing its duty, free from any pressure.

1.2.4 Integration & Ethical Behaviors:

Ethical behavior and the integration are defined under the provision of followings;

i. CADBURY, ADRIAN, REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE, GEE, LONDON, DECEMBER, 1992, SECTION 3.2, 3.3, 4.33, 4.51 AND 7.4

ii. SARBANES-OXLEY ACT OF 2002, US CONGRESS, TITLE I, 101(C)(1), TITLE VIII, AND TITLE IX, 406.

The basic criteria which must be considered during the selection of "corporate officers and board members" is "integrity". It is necessary for the companies to establish the "code of conduct" for their employees for maintaining free and fair environment.

1.2.5 Adequate Disclosure and Transparency:

Following are the provision related to Disclosure and transparency.

i. CADBURY, ADRIAN, REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE, GEE, LONDON, DECEMBER, 1992, SECTION 3.2

ii. OECD, PRINCIPLES OF CORPORATE GOVERNANCE, 2004, ARTICLES 1- V

Companies must spell out to the public especially on "stakeholders" about the duties of their employ and enforced such mechanism by which the investor can investigate the authenticity of "company's financial reporting". Must make sure, that all comprehensive and accurate updates are accessible to the public.

2. Financial Reporting

2.1 Introduction:

It's known as: "formal record of the financial activities of a business, person, or other entity. Its keeps track of a company's financial transactions. Using standardized guidelines for a business enterprise, all the relevant financial information, presented in a structured manner and in a form easy to understand, is called the financial statements". There are 4 main kinds of it as:

1. Statement of Financial Position;

It is used as: balance sheet, reports on a company's assets, liabilities, and ownership equity of certain period.[61]

2. Statement of Comprehensive Income;

Income statement is use to access the net profit and loss of the listed company. It provides all details regarding the activities of company. It gives all information about revenues and expenses of the company. [62]

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[61] Robert F . Meigs and Walter B. Meigs, "*Accounting : The Basic For Business Decisions*" . 9th ed. 1993.

[62] Robert F . Meigs and Walter B. Meigs, "*Accounting : The Basic For Business Decisions*" . 9th ed. 1993.

3. Statement of Changes in Equity;

It defines the closing balances which is obtain after detecting the dividend from net profit and the alteration of the "company's equity" within the whole time of "reporting period".[63]

4. Statement of cash flows;

It's a statement related to company performances, operation, investment & financial activity. in the large companies, these statements are often complex and may include an extensive set of notes to the financial statements and explanation of financial policies and management discussion and analysis. The notes typically describe each item on the balance sheet, income statement and cash flow statement in further detail. Notes to financial statements are considered an integral part of the financial statements.[64]

2.2 objectives of Financial Statements:

The objective of financial statements is to provide information about the financial position, performance and changes in financial position of an enterprise that is useful to a wide range of users in making economic decisions it must be logical, appropriate, trustworthy and analogous. Define all "assets, liabilities, equity, income and expenses" which are linked with company's status.

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[63] Ibid.

[64] Robert F . Meigs and Walter B. Meigs, "*Accounting : The Basic For Business Decisions*" . 9th ed. 1993.

It must be comprehensible for users whose have a reasonable knowledge of business and economic activities and accounting and who are willing to study the information diligently. This is used for followings objectives:

i. Owners and managers require financial statements to make important business decisions that affect its continued operations. Financial analysis is then performed on these statements to provide management with a more detailed understanding of the figures. These statements are also used as part of management's annual report to the stockholders.

ii. Employees also need these reports in making collective bargaining agreements (CBA) with the management, in the case of labor unions or for individuals in discussing their compensation, promotion and rankings.

iii. Prospective investors make use of financial statements to assess the viability of investing in a business. Financial analyses are often used by investors and are prepared by professionals (financial analysts), thus providing them with the basis for making investment decisions.

iv. Financial institutions (banks and other lending companies) use them to decide whether to grant a company with fresh working capital or extend debt securities (such as a long-term bank loan or debentures) to finance expansion and other significant expenditures.

v. Government entities (tax authorities) need financial statements to ascertain the propriety and accuracy of taxes and other duties declared and paid by a company.

vi. Vendors who extend credit to a business require financial statements to assess the creditworthiness of the business.

2.3 Financial Disclosure and Audit Committee:

2.3.1 Legal Implications;

It's a duty of "audit committee" making proper disclosure; different countries have developed different laws, set of guidelines and rules for audit the financial statements of companies. Normally it is followed by the "independent accountants or auditing firms". Its generally observed rulings is: "generally accepted accounting principles (GAAP)"

These rules help in the formation of accurate "financial statements". Currently "International Accounting Standards Board" introduced the new "International Financial Reporting Standards" it is implemented by many organizations in "Australia, Canada and the European Union" and many others states like "South Africa" working on it.[65]

"Financial Accounting Standards Board" (FASB) in United States is working to introduce its new rules and standards. There it is necessary for public companies to fulfill all conditions which enforced "Securities and Exchange Commission" (SEC). Some landmarks in the development of "audit committees" are given:

i. In 1939: The New York Stock Exchange (NYSE) first endorsed the audit committee concept.
ii. 1972: The U.S. Securities and Exchange Commission (SEC) first recommends that publicly held companies establish audit committees composed of outside (non-management) directors.

[65] Steven a. Harrast and Lori Mason-Olesen , "Can Audit Committees Prevent Management Fraud?", The *CPA Journal.*

iii. 1977: NYSE adopts a listing requirement that audit committees be composed entirely of independent directors.

iv. 1988: AICPA issues SAS 61 Communication with Audit Committees addressing communications between the external auditor, audit committee and management of SEC reporting companies.

v. 1999: NYSE, NASD, AMEX, SEC and AICPA finalize major rule changes based on Blue Ribbon Committee on Improving the Effectiveness of the Corporate Audit Committee.

vi. 2002: Sarbanes-Oxley Act is passed in the wake of corporate scandals and includes whistleblower and financial expert disclosure requirements for audit committees.

2.3.2 Statutory Provisions of USA;

The responsibility of audit committee regarding disclosure, in USA is defined under the following;

i. The Sarbanes-Oxley Act of 2002, sec 301, 302, 401

ii. rule 10A-3 of the Securities and Exchange Act 1934

iii. rule303A.07,listing standards of the New York stock exchange

In the Sarbanes-Oxley Act of 2002 and rule 10A-3 of the Securities and Exchange Act 1934 are exactly same. Following are the responsibilities;

i. Audit committee of each issuer is responsible for the appointment and compensation of a registered public accounting firm as an outside auditor of the company for the purpose of preparing or issuing an audit report or related work.[66]

ii. Audit committee of each issuer is also responsible for the oversight of the work of the outside auditor and the outside auditor shall report directly to the audit committee.[67]

iii. Audit committee is responsible to establish procedure for redressing the complaints received by the issuer regarding accounting, internal controls, or auditing matters and the questionable accounting or auditing matters.[68]

2.3.2.1 Listing Standards of New York Stock Exchange:

Charter;

Under listing standards in "New York stock exchange" including other stock exchanges in USA "audit committees" shall contained the "written charter" which states its function, obligation & duties. [69] Followings are its obligation which defined in "listing standards of New York stock exchange";

i. To oversight financial reporting process in a company.[70]

ii. To meet with management and the "independent auditor" for analysis and discussion the listed company's annual audited financial statements and quarterly financial statements.[71]

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[66] See section 301, the Sarbanes-Oxley Act of 2002 and see, the Rule 10A-3 of the Securities and Exchange Act, 1934.
[67] Ibid.
[68] Ibid.
[69] See Rule 303A.07, Listing Standards of the New York Stock Exchange, 2009.
[70] Ibid.

iii. To oversight the performance of internal and independent auditors.[72]

iv. To oversight the qualification & freedom of independent auditor.[73]

v. To oversight the "regulatory compliance" of the rules by the company.[74]

vi. To prepare the "audit committee report as required by SEC".[75]

vii. Make the "annual performance evaluation of the audit committee".[76]

viii. Reporting the "board of directors" regularly.[77]

ix. To converse about "policies with respect to risk assessment and risk management".[78]

x. Must see the "management separately and periodically, internal auditors and independent auditors".[79]

xi. Must evaluate it by "independent auditor any audit problems or difficulties and management's response".[80]

2.3.3 Statutory Provisions of UK;

The audit committee is being dealt by the "code of corporate governance" called "combined code on corporate governance" 1998, amended in June 2008, released through "financial reporting council of UK & rules of Financial Services Authority" FSA. Formation, authority & responsibilities of audit committee regarding disclosure in UK are defined under the following;

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[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] Ibid.
[80] Ibid.

i. Combined code on corporate governance, A.1.2, C.3.1, C.3.2, and C.3.3.

ii. Disclosure and transparency rule (DTR) 7.1.1 , 7.8

iii. Listing authority rule, 9.8.6

Under the "combined code on corporate governance" the role and liabilities for committee stated in document that known: **"Term of references"** of the audit committee, according to this;

i. To supervise the financial reporting process of a company for ensuring reliability of the financial statements of the company.[81]

ii. To review company's internal financial control and risk management process.[82]

iii. To make recommendations to the company's board regarding hiring/firing, remuneration and terms of engagement of the external auditor. [83]

iv. To oversight and review the independence and effectiveness of the external auditor.[84]

v. To make and implement policy regarding engagement of the external auditor to provide non-audit services and to make recommendations to the board in this regard.[85]

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[81] The combined code on corporate governance, june2008, C.3.2, sees DTR7.1.3 Disclosure and Transparency Rule of the Financial Services Authority as amended on 29 June, 2008.
[82] Ibid.

[83] The Combined Code on Corporate Governance, June2008,C.3.6

[84] The Combined Code on Corporate Governance, June2008, C.3.2, and DTR7.1.3 as amended on 29 June 2008.

[85] Ibid.

vi. To make sure that proper arrangements are there for investigation and follow-up action in case any fraud is found in the financial statement of the company.[86]

vii. To evaluate the efficiency of the company's internal audit function and in case of companies where there is no internal audit function, audit committee should consider annually whether there is no internal audit function and accordingly should make a recommendation to the board.[87]

viii. The audit committee should ensure that the internal auditor has direct access to the audit committee and is accountable to the audit committee. [88]

ix. The audit committee should approve the appointment of the head of internal audit.[89]

x. To report the board of directors where the audit committee is not satisfied with any aspect of financial reporting of the company. [90]

xi. To review the significant financial reporting issues aroused in connection with the financial statements and corporate reports.[91]

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[86] The Combined Code on Corporate Governance, June2008,C.3.4

[87] The Combined Code on Corporate Governance, June2008,C.3.5

[88] Financial reporting council, guidance on audit committees, october2008, p.11.

[89] Ibid.

[90] Financial reporting council, guidance on audit committees, october2008, p.9.

[91] Ibid.

2.3.4 Statutory Provisions of India;

In Indian statute the Companies Act, 1956 deals with the audit committee and its responsibilities about disclosers. in start the Companies Act, 1956 was silent regarding audit committee and discloser but later on in 2000, section 292-A was included which deals with audit committee.

When any organization is willing to be listed in the stock exchanges so, its need to enter in an agreement with stock exchanges. That listing agreement is prescribed through "security and Exchange Board of India (SEBI)" while its compliances is mandatory.

According to the section "49(ii) of the listing agreement" deals with audit committees. This clause is last revised by "the securities and exchange board of India" on October 29, 2004 and the date for its compliance by the stock exchanges was 1st January, 2006. And this listing regulation of stock exchanges also deals with auditing committees. Followings are responsibilities for auditing committees under companies act, 1956 India.[92]

2.3.4.1 Term of reference;

Like UK, in India the term of reference is specified by the board of director for audit committee. And audit committee is needed to work according to term of reference.[93]

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[92] Section 292-A,the companies act,1956.
[93] Ibid.

2.3.4.2 Discussion with auditors;

The audit committee is required to make debate with "the auditors" regarding the mechanism of "internal control, scope of audit and the observations of the auditors".

2.3.4.3 Review of financial statements;

The audit committee is required to examine the half-yearly and annual financial statements before submission to the board.

2.3.4.4 Compliance of the internal control system;

It is required for "audit committee" ensure the "compliance of the internal control systems" of company.

2.3.4.5 Power to conduct investigation;

The audit committee is authorized to examine every issue related with financial statements and all documents related to organization must be given.

2.3.4.6 Professional advice;

The audit committee is authorized to take external professional advice, where necessary in order to carry out its functions.

2.3.4.7 Recommendations;

The audit committee is required to give suggestions to "board of directors" on every matter relating with financial management, including the audit report. The recommendations of audit committee on such matters are obligatory for board and in case if it do not admit these suggestions, it shall be bound to explain record the reasons to the shareholders.[94]

2.3.4.8 Chairman to attend the annual general meeting;

A "chairman of the audit committee" is required to be present in "annual general meetings" for clarify the queries of the shareholders.[95]

In Short, As we see that the financial disclosure is recognized in developed as well as in developing countries as a powerful tool for Companies to protect investor against corruption. And this effectiveness of financial disclosures is based on the statutory legal system which is designed by states under the international standards. And it is also necessary to have effective systems to implement and monitor the financial disclosures.

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[94] Ibid.
[95] Ibid.

4. Directors' Responsibilities

3.1 Introduction:

Directors' responsibilities are an integral part for combating corporate corruption if their duties are properly defined and follow. There is a number of "statutory, common law and equitable" responsibility on director of companies. It's the main element of "corporate law and corporate governance". Director responsibilities are similar to the responsibilities of "duties owed by trustees to beneficiaries, and by agents to principals". In the laws of various states there is lots of resemblance in the responsibilities of director as;

i. He is responsible to fulfill the obligations regarding company not any individuals like stakeholders, workers and creditor.
ii. It's his responsibility to dedicated with corporation & stay away from "conflict of interest".
iii. He must exhibit the elevated level of "care, skill & diligence"
iv. It is looking forward that his every action based on noble intention for the promotion of company.

3.2 Type of Director:

Director in the company is also a "member of its board". Directors are specific by the several classifications in the occurrence of further relation in company.

1. Inside director

2. Executive director
3. Non-executive director

1. Inside Director;

The insider director is a director who is also an employee, officer, major shareholder, or someone similarly connected to the organization. Inside directors represent the interests of the entity's stakeholders, and often have special knowledge of its inner workings, its financial or market position, and so on.

Usual inside director:

Following are the typical inside directors as:

i. the "Chief Executive Officer (CEO)" he can be "Chairman of the Board"
ii. the executive in company, like: "chief Financial Officer (CFO) or Executive Vice President"
iii. The shareholder.
iv. Representative of stakeholders such as labor unions, major lenders, or members of the community in which the company is located.

2. Executive director;

The inside director who is employed as a manager or executive of the organization is sometimes referred to as an executive director (not to be confused with the title executive director sometimes used for the CEO position). Executive directors often have a specified

area of responsibility in the organization, such as finance, marketing, human resources, or production.

3. Non executive / outside director;

The non executive / outside director is a member of the board who is not otherwise employed by or engaged with the organization, and does not represent any of its stakeholders. A typical example is a director who is president of a firm in a different industry.

Non executive directors are very experienced and valuable for the board. They deeply observe the "inside directors" to how they performing their duties regarding company. They become very helpful in resolving the issues among: "inside directors, shareholders and the board etc".

3.3. Statutory provisions regarding director's duty:

3.3.1. In United States:

Following are the legislation which deals with the duties of director in United States;

i. Sarbanes-Oxley Act;

This Act established the "new standards of accountability on boards of U.S. companies or companies listed on U.S. stock exchanges". According to this act: when the director is involved in accounting offences then he "heavily fine and prison". "Internal control" is the duty of director. Large number of organization appoints "internal auditors" to

observe its inner mechanism. In accordance to law they are, directly report to an audit board, consisting of directors more than half of whom are outside directors, one of whom is an accounting expert.

ii. Business Judgment Rules;

It's the United State concept which is developed from the case law in company law under this directors of a corporation are clothed with [the] presumption, which the law accords to them, of being [motivated] in their conduct by a bona fide regard for the interests of the corporation whose affairs the stockholders have committed to their charge.[96]

3.3.2. United Kingdom:

In UK following are the legislation which deals with director's duty;

Companies Act 2006 of UK:

Corporate governances as well as Directors related duties are the main significant alteration which is made in 2006, companies act. Following are its main seven codified duties:

1.The Duties Of Directors;

Under the act these are the duties which are binding on directors to act;

i. As define in company's constitution

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[96] *Gimbel v. Signal Cos.*, 316 A.2d 599, 608 (Del. Ch. 1974)

ii. For the promotion of a company;

iii. For exercising independent judgments;

iv. With reasonable care and professional expertise

v. Try to hold back from "conflicts of any interest"

vi. Avoid profit by any 3rd party

vii. Must describe all benefits in pre define dealings.

2.Act and its powers;

Under section 171, put up with the terms of the company's memorandum, articles of association, decisions made by shareholders.

Regarding proper purpose, directors are charged for exercising their powers. e.g. director issue large number of new shares, for defeating the potential takeover bid, not for raising capital. Which was improper purpose that stated in case; Harlowe's Nominees Pty v. Woodside (1968) 121 CLR 483 (Aust HC).

The seminal authority in relation to what amounts to a proper purpose is the Privy Council decision of Howard Smith Ltd v. Ampol Ltd.

Hogg v. Cramphorn Ltd. [1967] Ch 254, is the case in which concerned the power of the directors to issue new shares. It was alleged that the directors had issued a large number of new shares purely to deprive a particular shareholder of his voting majority. The court rejected an argument that the power to issue shares could only be properly exercised to

raise new capital as too narrow, and held that it would be a proper exercise of the director's powers to issue shares to a larger company to ensure the financial stability of the company.[97]

3. Promoter for Success of Company;

According to the Section: 172 , it's a "directors" responsibility to take such action which gives maximum profit to the "shareholders". There are some other elements which must be considered by director, these elements were very contentious when this law was formed. Following are those elements:

i. A long term consequences of decisions
ii. The interests of employees
iii. The need to foster the company's business relationships with suppliers, customers and others
iv. The impact on the community and the environment
v. The desire to maintain a reputation for high standards of business conduct
vi. The need to act fairly as between members.

4.Exercising Independent Judgment;

According to the Section:173, the directors must not fetter their discretion to act, other than pursuant to an agreement entered into by the company or in a way authorized by the company's articles.

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[97] Zabihollah rezaee, *"Financial Statement Fraud : Prevention and Detection"* , New York : John Wiley and Son, 2002.

Director has no authority to fetter his discretion, without the consent of the company, for exercising his authorities & it's not binding on him specified his voting right in future "board meeting".[98]

5.Exercising Reasonable Care, Skill and Diligence;

According to the Section:174 ,it is necessary work out according to these:

i. Someone with the general knowledge, skill and experience reasonably expected of a person carrying out the functions of the director (the objective test) and also

ii. The actual knowledge, skill and experience of that particular director (the subjective test).

6. Avoiding Conflicts of Interest;

According to the Section 175, Directors can't permit for any, conflict of interest. He is bound to act (perform) for the betterment of corporation. If he goes against the interest of corporation then he shall surrender all that which he earns.

Fiduciary duties, the director cannot take such duties in which his duties and interest conflict with that duties for which he is responsible (bound) by company. Regarding this just good faith is not enough he cannot escape from his liabilities[99].

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[98] Although as Gower points out, as well understood as the rule is, there is a paucity of authority on the point. But see *Clark v. Workman* [1920] 1 Ir R 107 and *Dawson International plc v. Coats Paton plc* 1989 SLT 655.

7. Company' Transaction;

According to Section:177 to declare an interest in a proposed transaction with the company, there are to be carved outs for matters that are not likely to give rise to a conflict of interest, or of which the directors are already aware. There will be additional statutory obligations to declare interests in relation to existing transactions.

Even though "changes to director's duties" was the important element of this act as; S239 The shareholders ability to ratify any conduct of a director (including breach of duty, negligence, default or breach of trust) is regulated by the statute, although S 239.7 leaves the door open for common law principles, previously the only guide on this. Under the Act, directors who are also shareholders, or persons connected to them, are not entitled to vote in relation to any ratification resolution concerning their actions.

i. Existing restrictions on companies indemnifying directors against certain liabilities were relaxed to permit indemnities by group companies to directors of corporate trustees and occupational pension schemes.
ii. SS261-3 the Act gave shareholders a statutory right to pursue claims against the directors for misfeasance on behalf of a company (a derivative action), although the shareholders need the consent of the court to proceed with such a claim.
iii. Certain transactions between the company and its directors which were previously prohibited by law have become lawful subject to the approval of shareholders (for example, loans from the company to its directors)

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[99] N,K, Jain . *" Corporate Laws : Administrative and Management"* . New Dehli: Deep & Deep Publication Pvt. Ltd.

iv. The Act requires at least one director on the board of the company to be a natural person, although corporate directors are still permitted.

v. The current age restriction of 70 for directors of public companies has been abolished. A new minimum age of 16 has been introduced for all directors who are natural persons (S157).

vi. Directors will have the option of providing Companies House with an address for service, which will in future enable their home addresses to be kept on a separate register to which access will be restricted.

4. Whistleblower

4.1 Introduction:

Any person who making disclosure or provide truthful information of any illegal or negligent act, which come under offences in organization or any other workplace, for the public interest is known as Whistleblower. They are protected, to encourage people to speak out if they find malpractice in an organization or workplace. They are mainly divided into two types according to their functions;

1. Internal whistleblowers
2. External whistleblowers

1. Internal whistleblowers;

Most of the time the "whistleblowers are internal whistleblowers, they report about the misconduct of their fellow employee or other superiors who are working in their company".

2.External whistleblowers,

They are those "who report the misconduct of outside persons and entities. In these cases, they may report about the misconduct to lawyers, law enforcement, watchdog agencies, or other local, state, or federal agencies. In some cases, external whistle blowing is encouraged by offering monetary reward".

4.2. Legislation for the protection of whistleblower;

When we are talking about the Legislation on whistleblower then we come to know that United States have a longer history in Such laws, while Britain's legislation is quite new and rest of the countries have been enacted whistleblower laws in the Beginning of 1990s. The purpose of these laws is to;

1. protect whistleblowers from reprisals
2. encourage timely and responsible public disclosures
3. Promote honesty in organization.

Thoms (1992: 83), using a Weberian analysis, argues that "Whistleblower legislation strives to control the agenda of whistleblowers and to contain their disclosures to channels which are under the purview of the state. Under regimes of authorized whistle blowing, the potential for criticism and review of the operations of the state by the public it is said to serve are virtually non-existent."

4.2.1 In United States,

A lawful cover is different "according to the subject matter of the whistle blowing". Initial US legislation which is specially designed for the "protection of whistleblowers was the United States False Claims Act 1863 and amended in 1986, which tried to combat fraud by suppliers of the United States government during the Civil War. The act encourages whistleblowers by insuring them a percentage of the money recovered and protect them from any kind of wrongful dismissal".

In US, OSHA administers the whistleblower protection provisions of 21 whistleblower protection statutes, including Section 11(c) of the Occupational Safety and Health Act (OSH Act), which prohibits any person from discharging or in any manner retaliating against any employee because the employee has exercised rights under the OSH ACT.

Provisions of the following Statutes:

i. Occupational Safety & Health Act (OSH Act),

ii. Surface Transportation Assistance Act (STAA),

iii. Asbestos Hazard Emergency Response Act (AHERA),

iv. International Safety Container Act (ISCA),

v. Energy Reorganization Act of 1974 (ERA),

vi. Clean Air Act (CAA),

vii. Safe Drinking Water Act (SDWA),

viii. Federal Water Pollution Control Act (FWPCA),

ix. Toxic Substances Control Act (TSCA),

x. Solid Waste Disposal Act (SWDA),

xi. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),

xii. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21),

xiii. Sarbanes-Oxley Act (SOX),

xiv. Amendments to SOX, enacted July 21, 2010 - Sections 922 and 929A of the Dodd Frank Act (DFA)

xv. Pipeline Safety Improvement Act (PSIA),

xvi. Federal Rail Safety Act (FRSA),

xvii. National Transit Systems Security Act (NTSSA),

xviii. Consumer Product Safety Improvement Act (CPSIA),

Usually, the employee protection provisions listed above prohibit covered employers from discharging or otherwise discriminating against any employee because the employee engaged in certain activities protected by law. The Occupational Safety and Health Administration (OSHA) administers the employee protection or **whistleblower** provisions of seventeen statutes.

Under the **Occupational Safety and Health Act (OSH Act), Section 11(c)** employees may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for exercising any right afforded by the OSH act, such as complaining to the employer union, OSHA, or any other government agency about workplace safety or health hazards; or for participating in OSHA inspection conferences, hearings, or other OSHA-related activities.

According to the **Surface Transportation Assistance Act (STAA)**, employees and certain independent contractors in the trucking industry may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting certain commercial motor vehicle (CMV) safety, health, or security concerns; for refusing to drive under dangerous circumstances or in violation of CMV safety, health, or security rules; for accurately reporting their hours on duty; for cooperating with safety or security investigations conducted by certain federal agencies; or for furnishing information to a

government agency relating to any accident or incident resulting in injury or death or damage to property in connection with CMV transportation.

Under the **Asbestos Hazard Emergency Response Act (AHERA)**, employees may file complaints with OSHA if they believe they have experienced discrimination or retaliation for reporting alleged violations of environmental laws relating to asbestos in elementary and secondary school systems.

Under the **International Safe Container Act (ISCA)**, employees may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting allegations of an unsafe cargo container.

Under the **Energy Reorganization Act (ERA)**, certain employees in the nuclear power and nuclear medicine industries may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of nuclear safety laws or regulations.

Employees may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of certain environmental laws or regulations. According to these:

i. Clean Air Act (CAA), Safe Drinking Water Act (SDWA),
ii. Federal Water Pollution Control Act (FWPCA),
iii. Toxic Substances Control Act (TSCA), Solid Waste Disposal Act (SWDA),
iv. Comprehensive Environmental Response,
v. Compensation, and Liability Act (CERCLA),

Under the **Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)**, employees of air carriers and their contractors and subcontractors may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of federal air carrier safety laws or regulations.

Under **the Sarbanes Oxley Act (SOX)**, in **Corporate and Criminal Fraud Accountability, Title VIII** - employees of certain publicly traded companies, companies with certain reporting requirements with the Securities and Exchange Commission (SEC), and their contractors, subcontractors, and agents may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of the federal mail, wire, bank, or securities fraud statutes, any rule or regulation of the SEC, or any other provision of federal law relating to fraud against shareholders.

In **Pipeline Safety Improvement Act (PSIA)**, employees of owners or operators of pipeline facilities and their contractors and subcontractors may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of federal law regarding pipeline safety or for refusing to violate such provisions.

Under the **Federal Rail Safety Act (FRSA)**, employees of railroad carriers and their contractors and subcontractors may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting an alleged violation of any federal law, rule or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of federal grants or other public funds intended to be used for railroad safety or security; reporting hazardous safety or security conditions; refusing to violate or assist in the violation of any federal law, rule, or regulation relating to railroad safety or security; refusing to work

when confronted by a hazardous safety or security condition related to the performance of the employee's duties (under imminent danger circumstances); or for requesting prompt medical or first aid treatment for employment-related injuries.

In **National Transit Systems Security Act (NTSSA)**, employees of public transportation agencies and their contractors and subcontractors may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting an alleged violation of any federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of federal grants or other public funds intended to be used for public transportation safety or security; reporting hazardous safety or security conditions; refusing to violate or assist in the violation of any federal law, rule, or regulation relating to public transportation safety or security; or refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties (under imminent danger circumstances).

Under the **Consumer Product Safety Improvement Act (CPSIA)**, employees of manufacturers, private labelers, distributors, and retailers may file complaints with OSHA if they believe that they have experienced discrimination or retaliation for reporting alleged violations of any law or regulation within the jurisdiction of the Consumer Product Safety Commission (CPSC) to the employer, the federal government, or a state attorney general; or for refusing to perform assigned tasks that the employee reasonably believes would violate CPSC requirements.

SARBANES–OXLEY ACT, 2002:

Even in 2002, they further add some rules regarding whistle blower protection. In this regard criminal penalties for retaliation for whistle blower "10 years imprisonment or fine or both", against the person who take any harmful action against the whistle blower (who provide any truthful information related to any officer under SOX to any law enforcement authority)[100].

4.2.2 Legislation in UK;

A "Public Interest Disclosure Act, 1998" of UK Gives the illicit cover to those persons who unveil some secret for exposing illicit act and important issues for the benefits of company or general public. This act prevents the "whistleblowers" from oppression & removal from office.

4.2.3 In Australia;

The ex-Police Commissioner Tony Lauer summed it as, Nobody in Australia much likes whistleblowers, particularly in an organization like the police or the government.

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[100] Section: 1107 of SARBANES–OXLEY ACT, 2002

4.2.4 In Canada :

Canadian protection for whistleblowers is notoriously poor by English-speaking countries' standards. Until recently there was no formal protection for those who spoke up from a position of knowledge inside government, with even senior civil servants (Shiv Chopra being one notable case) fired or constructively dismissed for speaking up about internal abuses.

In the private sector, the situation was even worse as Canada retained the unreformed common law of libel without the exceptions for public issues or public interest that were added in all other English-speaking countries. This made political libel cases unfortunately common, with one infamous case even filed by the Prime Minister himself versus Official Opposition for alleging that the Prime Minister, when in Opposition, had bribed MP Chuck Cadman.

Historically, many Canadian private sector business scandals had come to light only through the intervention of the US SEC or other regulators (Garth Drabinsky, Conrad Black, Steven Bingham being three notable examples), due in part to the lack of whistleblower protections, plaintiff-friendly libel laws and a lack of investigative journalism due to these.

Canada's parliament has instituted the Public Sector Integrity Office (Canada), a parliamentary office for the protection for whistleblowers who speak up against abuses in government. However, that office was itself cast into some doubt when the first Integrity Commissioner, Christiane Ouimet, was heavily criticized in the auditor general's report in

December 2010. Cabinet minister Stockwell Day defended the office but independent groups urged the re-opening of already closed files.

4.2.5 The India;

Law related to "whistle blower" has been formed in 2009 by the "Indian government" which is known as: "Right to Information Act" for establishing constancy in legislation, they want to enforce "ombudsman law".

In short, we can say that it is the demand of time to make laws for the protection of whistle blower, as many countries did. the whistle blowers are the important tools for combating corruption because they are helpful to identify and stop illegal acts Like; bribery, insider trading, tax evasion, falsifying document, etc. which are done by other employees and harmful for the interest of corporation and public at large.

In this chapter we have discussed some essential features which are the keys for combating corporate corruption. We pinpoint these keys from legislation which we saw in last chapter. In this we have studied all details nature, kind, cause of development, relevant provision and how developed states incorporate it in there law, where we stand how can we incorporate it in our law.

CHAPTER: 4

COMBATING CORPORATE CORRUPTION IN PAKISTAN

Introduction:

It is true to say that corruption is the 3rd biggest dilemma of corporations to do "business in Pakistan", subsequent to the "government bureaucracy and poor infrastructure". Roughly 40 percent of companies in Pakistan feel that corruption is one of their major concerns and in corruption the most common is "bribery" which prevail in the "law enforcement, procurement and in public & private sector".

Multiple struggles has been made from many years for developing "institutional mechanisms" for tackling the corruption related issues and Offers comprehensive plan for this purpose. Now in this chapter we will see the contribution of Pakistan for combating corporate corruption by making strong legislation, following are the corporate (corruption) related legislations;

1. Companies Ordinance, 1984
2. Prevention of corruption act 1974
3. The Securities and Exchange Commission of Pakistan Act, 1997

4. National Accountability (Bureau) Ordinance 1999

5. Code of Corporate Governance, 2002

1. Companies Ordinance, 1984

1.1 Introduction:

The "Companies Ordinance" which revokes Companies Act, 1913 was promulgated to, *inter alia*, consolidate and amend the law relating to companies by the view of healthy growth of corporate enterprises, protection of investors and creditors, promotion of investment and ultimately the development of economy. These objectives are met by detailed provisions in the Companies Ordinance pertaining to kinds, difference between a company and other associations, formation of company, promoters, pre-contracts, articles and memorandum of association, prospectus, membership, capital, shares, stock, mortgages, management, directors, meetings, resolutions, audit and accounts ,winding up, types and consequences of winding up and dissolution .[101]

1.2 Important provision:

Companies ordinance consist of 514 section, 16 parts and 8 schedules but following are its some important provision;

[101] Junaid Ashraf, WaQar I. Ghani, "Accounting development Pakistan", *The international journal of accounting.* Pg:183.

1.2.1 The Annual general meeting;

According to the ordinance, for conducting annual general meeting the period of "three months" has been given, within which it is binding on companies to present "annual audited accounts" to its member.

1.2.2 Fresh election of directors on request of substantial acquirer;

According to the ordinance: Fresh election of directors may now be requisitioned by a person holding at least, 12.5% Voting shares in a listed company. Such person shall not dispose off his shareholding for at least one year after the meeting at which fresh election has been carried out.

1.2.3 Investment in associated companies and undertakings;

Under ordinances: Applicability of restriction on investments in associated companies and undertakings has been extended on banking companies, financial institution, private companies and companies having their primary business as dealing in securities.

1.2.4 Special audit;

According to the ordinance, any special audit may now be instigated by Commission on its own motive or on requisition by members holding at least 20% of voting power in the company.

1.2.5 Distribution of Copies of balance sheet;

According to the ordinance, Private companies with paid up share capital of Rs. 7.5 million or more are now required to submit their annual audited accounts to the registrar within thirty days of holding of Annual General Meeting.

1.2.6 Limitation on declaration of dividend;

Under ordinance, Express limitation has now been placed on declaration or payment of dividend out of unrealized gain on investment property.

1.2.7 Qualification of auditors;

According to the ordinance, one of the disqualifications of a person to act as auditor of a company was his / her Indebtedness to the company. For this purpose, the person would not be deemed indebted, disqualified, if:

i. The person owes up to Rs. 500,000 to the company as credit card dues

ii. The person owes utilities dues to the company, and such dues are owed for a period not

more than ninety days[102].

1.3 Major Amendments in Companies Ordinance 1984:

SECP introduced a new concept in the Companies Ordinance, 2002 through Amendment. This is taken from "European Union model" according to this registration of

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[102] Shawkat Mahmood. *Company Law* . Islamabad : Legal Research Centre, 1995.

private limited companies as single member company is permitted. Later on, the Single Member Companies Rules were framed in 2003 to address the requirements of this new concept. The introduction of SMCs will facilitate sole proprietorships to obtain corporate status and give them the privilege of limited liability as well as encourage documentation of the economy.

Some other essential amendments that came through the "Finance Act 2008". Salient features of amendments in Ordinance 1984 are as follows:

i. In Section 158(1), a "company is required to hold its annual general meeting within four months of the close of its financial year", rather than within three months as previously prescribed.

ii. Sections 158(4) (a) and (b), If a listed company defaults on provisions relating to annual general meetings, it is liable for a fine of between PRs50, 000 and PRs500, 000; a maximum fine of PRs100, 000 applies for non-listed companies.

iii. Section 187(j), a person involved "in the business of brokerage, the spouse of such person or a sponsor, director or officer of a corporate brokerage house" may not be a company director, unless the company is a stock exchange.

iv. In relation to the exemptions to the bar on the appointment of managing agents at the sole discretion of the federal government by way of official notification, an arrangement with a managing agent may be exempted under Section 206(2) of the ordinance if it is made pursuant to an agreement or contract with a non-banking finance company that is (i) licensed to undertake asset management services in relation to an investment company registered with the Securities & Exchange

Commission, or (ii) licensed as a venture capital company in relation to a fund registered with the commission.[103]

v. The commission has increased discretion to determine the manner and form of certain internal activities of the company like; submission of annual accounts and the payment of dividends.

vi. Under Sections 233(1) and (4), if any corporation is not doing business with the intention of benefit, then the directors must "present to the annual general meeting the income and expenditure account for the period concluding no more than four months before the date of the meeting. Moreover, a company must provide details of its balance sheet and profit and loss account or income and expenditure account to every member of the company at least 21 days before the meeting" in which such documents will presented and in a manner and form specified by the commission.

vii. Under Section 251(1), Instead of dividends being paid within 45 days of their declaration, they must be paid within a period specified by the commission.[104]

viii. With regards to the regulation of non-banking finance companies, provision has been made to impose penalties on such companies for infringement of provisions in ordinance and "rules or regulations" form pursuant thereto.

We can say that the main aim of these amendments seems to be to enhance the commission's powers and make it more powerful and simultaneously make companies accountable to it.

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[103] Section 206(2)(c)
[104] Section 251(1)

2. Securities and Exchange Commission of Pakistan Act, 1997

2.1 Introduction:

The "Securities and Exchange Commission of Pakistan Act, 1997" provide for establishment of "Securities and Exchange Commission of Pakistan" which is known as "SECP". The Sec: 43(b) of SECP Act provided that rules under the Companies Ordinance, 1984 (the Companies Ordinance) or under any law being administered by the SECP shall be made by the SECP with the approval of the Federal Government. Similarly, the power to make regulations has been conferred by Section 40 of the SECP Act. This Act contain 11 parts which took some "policy decisions" regarding structuring, authorities & responsibilities of SECP, thus awarding the "administrative authority and financial independence" for fulfill its "regulatory and statutory responsibilities".

Securities and Exchange Commission started its function from "January 1999". In starting it was focused on the "regulation of corporate sector and capital market". With time, the directives of commission have been increased by adding "supervision and regulation of insurance companies, non-banking finance companies and private pensions". More over Commission commanded the various external service providers to the corporate and financial sectors, including chartered accountants, credit rating agencies, corporate secretaries, brokers, surveyors etc.

2.2 Major provision of Act:

Following are some important provision of "Securities and Exchange Commission of Pakistan Act, 1997".

2.2.1 Member of Policy Board;

Under the act it is stated that the "Policy Board of the Securities and Exchange Commission of Pakistan shall consist of (ten members instead of nine members") including 5 ex officio as;

i. Secretary to the Government of Pakistan, Finance Division;
ii. Secretary to the Government of Pakistan, Law Division;
iii. Secretary to the Government of Pakistan, Commerce Division;
iv. Chairman of the Commission;
v. Deputy Governor of the State Bank of Pakistan nominated by the Governor of the State Bank of Pakistan.

Remaining 4 nominated from: "Federal Government from private sector each must be well-known for his integrity, expertise and experience in the spheres of commerce and industry (particular securities industry), corporate law, accountancy, financial services, investment [insurance] banking, academia or other related relevant fields of expertise". And it is binding on Board's member to conduct 4 meetings in "calendar year" it's a minimum; otherwise they held meetings repeatedly as that is needed.

2.2.2 Casting vote;

According to amendment, the "Finance Minister, Adviser to Prime Minister on Finance shall be the Chairman of the Board" the chairman has the authority of using "casting vote" in case of tie.

2.2.3 Power and function of Commission;

According to newly introduced "section 20, sub-section (4)" the SECP is liable to "regulating professionals" which gives their services in "Financial market" like;

i. Regulating the issue of securities.
ii. Regulating the business in Stock Exchanges and any other securities markets.
iii. Supervising and monitoring the activities of any central depository and Stock Exchange clearing house.
iv. Registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with the securities markets in any manner.
v. Proposing regulations for the registration and regulating the working of collective investment schemes, including unit trust schemes.
vi. Promoting and regulating self-regulatory organizations including securities industry and related organizations such as Stock Exchanges and associations of mutual funds, leasing companies and other NBFIs.
vii. Prohibiting fraudulent and unfair trade practices relating to securities markets.
viii. Promoting investors education and training of intermediaries of securities markets.

ix. Conducting investigations in respect of matters related to this Act and the Ordinance and in particular for the purpose of investigating insider trading in securities and prosecuting offenders.

x. Regulating substantial acquisition of shares and the merger and take-over of companies.

xi. Calling for information from and undertaking inspections, conducting inquiries and audits of the Stock Exchanges and intermediaries and self-regulatory organizations in the securities market.

xii. Considering and suggesting reforms of the law relating to companies and bodies corporate, securities markets, including changes to the constitution, rules and regulations of companies and bodies corporate, Stock Exchanges or clearing houses;

xiii. Encouraging the organized development of the capital market and the corporate sector in Pakistan;

xiv. Conducting research in respect of any of the matters set out in this sub-section.

xv. Performing such functions and exercising such powers (other than the power to make any rules or regulations) under the Ordinance or any other law for the time being in force as may, after the commencement of this Act, be delegated to it by the Federal Government and exercising any power or performing any functions conferred on it by or under any other law for the time being in force.

xvi. Proposing regulations in respect of all or any of the aforesaid matters for the consideration and approval of the Board.

xvii. Exercising all powers, discharging all duties and performing all functions assigned to the Commission under, and generally administering, the Law of Insurance.

xviii. Ensuring and monitoring compliance by insurers, insurance surveyors and insurance intermediaries of all laws, rules and regulations pertaining to insurance for the time being in force.

xix. Regulating professional organizations connected with the insurance business.

xx. Encouraging the organized development of the insurance market in Pakistan.

2.2.4 Combating unfair trade practices;

It prohibits deceptive & unjust trading deals with "securities markets" in following ways under the act;

i. Promoting investors education and training of intermediaries of securities markets.

ii. Conducting investigations in respect of matters related to this Act and the Ordinance and in particular for the purpose of investigating insider trading in securities and prosecuting offenders.

iii. Regulating substantial acquisition of shares and the merger and take-over of companies.

iv. Calling for information from and undertaking inspections, conducting inquiries and audits of the Stock Exchanges and intermediaries and self-regulatory organizations in the securities market.

2.2.5 Right to appeal;

The section 33, sub-section:1, is proposed to be substituted, namely:

Except as otherwise provided any person aggrieved by an order of the Commission passed by One Commissioner or an officer authorized in this behalf by the Commission may within

thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under Sub-section (2):

Provided that no appeal shall lie against -

i. an administrative direction given by a Commissioner or an officer of the Commission;

ii. an order passed in exercise of the powers of revision or review;

iii. a sanction provided or decision made by a Commissioner or an officer of the Commission

to commence legal proceedings in a court of law; and

iv. An interim order which does not dispose of the entire matter.

2.2.6 Penalty for violation;

The newly enforced provision: Penalty for violation of rules and regulations is proposed to be inserted that any rule made under section 39 or regulation made under section 40 may provide that a contravention thereof shall be punishable with a fine which may extend to ten million Rupees and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day after the first during which such contravention Continues. A fine shall be imposed by the Commission after providing a reasonable opportunity of being heard to the party.

2.2.7 Issuances of directives, circulars, and guidelines;

The newly define provision: Power of the Commission to issue directives, circulars, guidelines etc. is proposed to be inserted that Commission shall have the power to issue such

directives, Codes, guidelines, circulars or notifications as are necessary to carry out the purposes of this Act, the rules and regulations made there under and all laws administered by it.

2.3 SECP as Regulator:

Now we will see the powers and functions of SECP as a regulator which is formed by "Securities and exchanges commission of Pakistan act 1997". In this we will mainly focus on all other laws and regulations with assist or empowered the SECP in following sectors;

1. Capital Market
2. Professional Service Provision

2.3.1 Capital Market:

SECP regulating the "capital market" like: licensing, coordination and even regulation of primary, secondary, intermediaries markets, and public offerings it also undertakes regular monitoring and surveillance of the market.

2.3.1.1 The Securities and Exchange Ordinance, 1969;

It's known as primary legislation which provide the;

i. Investor's protection,
ii. Capital market's regulations
iii. Securities's trading.

Following purposes can be achieved when the "stock exchanges" registered by the SECP & follow Securities and Exchange Ordinance, 1969 which prohibiting;

i. Insider trading,

ii. Deceitful activities,

iii. Wrong declaration, giving fabricated "applications for new shares".

2.3.1.2 The Securities and Exchange Rules, 1971;

This act gives the main requirement related to the:

i. Membership of stock exchanges,

ii. limitation for transactions of business,

iii. Maintenance of accounts.

Most important modification commence in this ruling for bring the functioning of "capital market" up to the international standards.

2.3.1.3 The Central Depositories Act, 1997;

This act is according to the needs of modern era because it has replaced the "manual system of physical handling and settlement of shares with a modern and efficient electronic" mechanism.

This act provides the foundation and procedure of a "book entry systems for transfer of securities by central depository companies", but for achieving desired results the "Central Depository Companies Rules, 1996" should be follow.

2.3.1.4 Listed Companies Ordinance, 2002;

The Listed Companies Ordinance, 2002 which is known for "Substantial Acquisition of Voting Shares and Takeovers". This is enforced to providing;

i. Transparent & equivalent dealing with every investor.
ii. Well-organized & sufficient mechanism to "substantial acquisition of voting shares.
iii. Takeovers of listed" corporation.

Followings aims needed to meet these obligations that in a listed company any person get hold on "more than 10 percent of the voting shares" its binding on him to inform in "company & stock exchange" about it. Likewise, when any individual want to hold "more than 25 percent voting shares" he must announced it publically and inform other "shareholders" through "letter".

2.3.1.5 The Margin Trading Rules, 2004;

The SECP has framed the margin trading rules, 2004 for making the trade practice in stock exchanges compatible to with international best practices.

By this Rules replace the Carry-over Transactions (COT) with margin financing for reducing "systemic risk and speculative trading associated with COT". It is necessary that, only those brokers, who are registered under SECP and meet the minimum net and adequacy requirements of capital will be allowed to participate in margin trading and margin financing. Margin trading is allowed in scrip fixed by the SECP, with the consultation of stock exchanges. Moreover, the SECP, with the consultation of stock exchanges can fix the limit of margin financing facility available to any single client of the broker.

2.3.2. Insurance Sector:

Previously this sector deal through "Ministry of Commerce" but this "regulatory authority" shifted on SECP after the enforcement of "Insurance Ordinance, 2000" which repealed Insurance Act, 1938.

2.3.2.1 Insurance Ordinance, 2000;

This Insurance Ordinance makes improvement in; capitalization, administration, markets policies, mechanism of efficient administration and protection for policy holder's rights. For achieving these purposes "Insurance Ordinance" instructs that the insurances business is permitted to those corporations which are registered in SECP.

2.3.2.2 SECP (Insurance) Rules, 2002;

The SECP framed the Insurance Rules in 2002 for enforcing different Claus from "Insurance Ordinance". It deals with multiple issues of "accounting, reporting, reinsurance, solvency, capital requirements for insurers, eligibility criteria for insurance agents/intermediaries, and conduct of surveyors" and many more.

2.3.3 Professional Service Providers:

As a "professional service provider" a scope of SECP as the "regulatory authority" is very divergent.

2.3.3.1 Accountants;

In Pakistan the profession of accountancy regulated through 2 main self-regulatory organizations (SROs) as,

i. Institute of Chartered Accountants of Pakistan (ICAP).

ii. Institute of Cost and Management Accountants of Pakistan.

By **"Companies Ordinance"** the SECP empowered to maintain the accountancy profession but, in the matters of "auditors and development of relevant financial reporting and framework for companies".

Moreover, **"Code of Corporate Governance"** also has many provisions related to precision & liberty to "auditors and accounting firms". The "Chairman" of SECP is representative of commission in "ICAP Council" that assists for better development and regulates the profession.

2.3.3.2 Companies Secretary;

Company secretaries, is an important part for the betterment of corporate governances but there is no sufficient regulation to regulating & supervising them. The main reason of fastest growth of this profession is; the legal requirements of appoint secretary in "listed companies and SMCs". SECP has laid down the criteria for appointing secretary in that companies, under:

i. Companies Rules, 1985

ii. Single Member Companies Rules, 2003

2.3.3.3 Administrators, Receivers and Liquidators;

In insolvency and prevention of mismanagement of the companies Administrators, receivers and liquidators play essential role. For coup up, various provisions are available as in; Companies Ordinance including Section 295 and SECP may order for;

i. Appointment of an administrator from a panel maintained by it to manage the affairs of a company that is not being run properly.
ii. Winding up of companies by the court, an official liquidator is appointed from a panel maintained by the court, on the recommendations of the SECP.

2.3.3.4 Stock Broker & Agent;

Reliability of brokers, agents is very essential to build the trust of investor in "capital market", as

i. **Securities and Exchange Ordinance, 1969;**

   Under this ordinances "SECP" empowered to check the "intermediaries associated with the securities market and SECP regulates the affairs of brokers and agents through the;

ii. **Brokers and Agents Registration Rules, 2001;**

   Under this, "SECP" authorized to revoke and cancel "the registration of brokers and agents" In case of any illegal or unethical activity and it can also enforce fine.

iii. **The Members Agents and Traders Rules, 2001;**

   This rule defines the Eligibility, Standards and requirement of "registration of agents and traders" for becoming a member of stock exchanges.

2.3.3.5 Financial analysts;

Financial and investment analysts play an important role in securities market because now there is no direct legal requirement for regulation or supervision of these service providers.

2.3.3.6 Insurance Surveyors and Intermediaries;

The regulation of professional organizations connected with insurance business. The SECP has to ensure and monitor the compliance of insurance surveyors and intermediaries with laws, rules and regulations pertaining to insurance. Define in SECP Act;

i. Section 20(4)(t)

ii. Section 20(4)(s)

The insurance law has put in place strict controls for insurance, agents and insurance brokers. Licensing, qualification and power for inspection in relation to insurance agents and insurance brokers are stated in Part XIII of the Insurance Ordinance while licensing and registration of insurance surveyors is to be monitored and maintained by the SECP as provided in Insurance Ordinance.[105]

2.3.3.7 The Actuaries;

SECP may give assent to or reject, on reasonable grounds, the appointment of an actuary by any insurance company under Section 26 of the Insurance Ordinance. The

[105] Sections 112 to 114 of Insurance Ordinance

responsibilities of actuaries and their dismissal are provided in Section 27 of the Insurance Ordinance. Moreover, Section 22(4)(da) of the SECP Act requires the SECP, while exercising its powers, to have regard to the professional competence and capability of persons engaged in the provision of services in the insurance industry. While the said provisions do provide the SECP with authority in respect of appointment of actuaries, there is no specific provision empowering the SECP to prescribe a code of conduct for actuaries or impose penalties in case of deviation from responsibilities laid down in the Insurance Ordinance.[106]

2.3.3.8 Credit Rating Companies;

Securities and Exchange Commission of Pakistan has a power of regulating the "credit rating companies" Under the;

i. Section 32-B of the Securities and Exchange Ordinance, 1969
ii. The Credit Rating Companies Rules, 1995.

These provide essential mechanism to register some working issues related to "credit rating companies". The commission is authorized for "registration, renewal and cancellation of licenses of these companies". Furthermore, commission can direct them for something important and it's binding on "credit rating companies" to present their "annual rating reports" before commission.[107]

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[106] Section 22(4)(da) of SECP Act

[107] Section 32-B of the Securities and Exchange Ordinance, 1969 and also see Credit Rating Companies Rules, 1995

In Short, this act introduced the reasonable, sufficient, dynamic & effective mechanism to eliminating the corruption according to the "international legal standards" to protect investor for "mitigation of systemic risk" and make the "capital market" efficient in Pakistan.

Commission actively participates in the activity of "ISCO" and implementing the best practices. It is also a member of international association of insurance supervision as well as member of Asian specific corporate... It has signed MOU with various regulators of the world for mutual cooperation.

3. National Accountability (Bureau) ordinance 1999.

3.1 Introduction:

The National Accountability (Bureau) ordinance, has been promulgated on November 16, 1999 right away after the "military" takeover through General "Pervez Musharraf on October 12, 1999" for dealing with anti-corruption scandals to eliminate corruption by providing open, translucent, "across board accountability" and also tasked with the gathering and managing the economic intelligence, and making efforts against the economic terrorism.

NAB is a statutory body formed under the National Accountability (Bureau) ordinance and it has complete "operational independence". The "Chairman" of NAB is nominated for specific duration through "President with consultation of Chief Justice of Pakistan". It took efficient steps for recognition, examination, prosecution, and immediate trial of fraudulent act, exploitation of authority, embezzlement & bribery etc. Its main objective or task regarding its official page:

"Is to work to eliminate corruption through a comprehensive approach encompassing prevention, awareness, monitoring and combating".[108]

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[108] Section 32-B of the Securities and Exchange Ordinance, 1969 and also see Credit Rating Companies Rules, 1995

3.2 Salient Features:

Following are the salient features of National Accountability Bureau;

i. It is Set up for removing corruption and holding (either that is natural person or legal) accused of such practices and matters.

ii. When there is abuse of authority, embezzlement, corruption & bribery commission take serious action by starting inquiry.

iii. Commission has developed the "finance institutions (DFIs), government and other agencies" for recover the asset from such individuals those are involved in international corruption and defaulter of banks.

iv. Execute the rule and regulation for develop understanding, impediment, scrutinizing and struggle to remove corruption from our society.

3.3 Main provision of National Accountability ordinance 1999:

Basically the National Accountability ordinance 1999 form with the view to combating corruption followings are its relevant provisions.

3.3.1 Corrupt practices and corruption;

Under section 9 0f NAB ordinances;

1. Anybody who is holding a public office person shall be liable for the offence of corruption and dishonest practices:
2. Anybody who gains or accedes to gain or offer benefits which are not legal and payments with an intention mentioned in "section: 161 of Pakistan penal code". If,

i. He receive precious object without any deliberation.

ii. He dishonestly or fraudulently converts property for the benefit of himself or somebody else.

iii. He by corruption obtain any property or valuable for himself or for his siblings or reliant.

iv. He illegally obtains or offer pecuniary or valuable things.

v. He miss uses his authorities to obtain or earns any advantage or errand for himself or any others.

vi. Any official deliberately initiates any orders, directions, plan or strategy for the sake of his own any other personal benefit.

vii. The offence specified in sec: 415 of PPC that is related to "cheating" are being commenced.

viii. The offence specified in sec: 405 of PPC that is the "criminal breach of trust" are being commenced by any person.

ix. According to sec: 409 0f PPC, if any person who is an agent, attorney, banker, merchant or broker in his capacity commends a breach of trust.

x. If he assists or aid any official to commence in scheming of offence related to corruption;

   a. Anybody who commends the offence of international defaulting.

b. Under this statute no offence will be bail able.

c. Chairman NAB after completion of investigation if satisfied can close the case against anybody or any official.[109]

3.3.2 Penalties for corruption and dishonest acts;

In ordinances sec: 10, 11 & 13 deal with punishments as; anybody who commends the "offence of corruption" or dishonest activities must penalized, the imprison can be extended up to 14 years and fine can be imposed any sort of benefit money or property obtained through corruption shall be forfeited.[110]

3.3.3 Imposition of fine;

Fine can be imposed on convicted people that will never fewer than the amount he gained in said corruption or by his relatives.[111]

3.3.4 Authority to freeze property;

The court and the chairman NAB have the power to freeze the property of accused.[112]

3.3.5 Power to call for Information from bank and financial institutions;

According to sec: 19,

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[109] NAB Ordinance 1991, Sec:9

[110] NAB Ordinance 1991, Sec:10

[111] NAB Ordinance 1991, Sec:11 & 12

[112] NAB Ordinance 1991, Sec:13

"Chairman NAB or officer of NAB" are authorized that he may "during the course of enquiry" of an offence under the ordinance can ask for any bank or financial institution to provide any information relating to any person or institution whosoever, containing, copies of entries made in bank and financial institutional books such as ledger, books of account, income statement, balance sheet, cash flow statement, retain earning, etc and these books and record shall be a certify copies in accordance with law but he not withstanding anything contained in any other law for the time being enforced.[113]

3.3.6 Reporting of suspicious financial transactions;

According to sec: 20, this is a responsibility of "banks and other financial institutions" to take action against suspicious transaction in any account where there is no logical reason, and on the base of professional judgment determine that it can comprise or may be associated with any crime , as define in ordinances.

Then "manager or director" is liable to inform in written form about that transaction to the "chairman NAB" as soon as possible.

If they failed to deliver such report then they shall be punishable with "rigorous imprisonment, which may extend to 5 years and with fine".[114]

3.3.7 International Corporation for mutual legal assistance;

Corruption and illegal financial transactions spread all over the world so, it is necessary for tracing, investigating and conducting trial that there must have international

[113] NAB Ordinance 1991, Sec:19

[114] NAB Ordinance 1991, Sec:20

mutual legal cooperation among different states. for coup-up these issues sec:21 has been provided in NAB ordinances, as it stated;

It has been provided that the "chairman NAB or any officer authorized by him" can ask to other countries for freeze / forfeit assets which are located in that state and then transfer all documents, evidence and assets or proceeds in Pakistan.

Everything existed in "Qanun-e-Shahadat order 1994", all proof, document and other substances or any other material delivered by the "foreign government shall be receivable as evidence in legal proceedings" according to this ordinances.

The ordinances, the chairman NAB is empowered to appoint any individual or corporation either in Pakistan or outside the Pakistan for discover and recognizing the asset attained through the accuse.[115]

[115] NAB Ordinance 1991, Sec:21

4. Code of Corporate Governance, 2002

4.1 Introduction:

Corporate governance is a worldwide phenomenon for improving corporate sector and avoiding corruption. The policy makers of developed as well as developing countries focused on its principles because it provide such rules which helps the business for long term sustainability and helpful for emerging markets like Pakistan. It is not protecting only the interest of investors, shareholders but also define standards for directors, regulators, executives, etc.

The Pakistani government establishes "Securities and Exchange Commission of Pakistan (SECP) in 1997" for enforcing "corporate governance" through "legal and regulatory framework". That helps in managing the "corporate sector".[116]

"Securities and Exchange Commission of Pakistan" struggle for creating favorable business environment for smooth development of economy by endorsing "laws and regulations". March 2002 SECP implement "Code of Corporate governance" for enforcing regulatory framework.[117]

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[116] http://www.worldbank.org/ifa/rosc_cg_pak.pdf(accessed on 8.8.2011)

[117] Zahid Zaheer , "Enhancing Corporate Governance Standards in Commonwealth Member Countries in sia : Pakistan".

4.2 Scope of Corporate Governance:

The Code is a comprehensive document, setting out the rules and guidelines to provide a better governance structure and is applicable to all listed companies through its implementation in the Listing Rules & Regulations. In addition, "State Bank of Pakistan" that is apex regulator for all banks in Pakistan have implemented Corporate Governance Guidelines as part of its prudential regulations governing banking companies. These guidelines follow a stricter observance of governance practices than in the Code itself. Subsequently, SECP which regulates Non-Banking Finance Companies has issued separate instructions requiring such companies to observe the Code.[118]

4.3 Major provisions of this code:

This Code majorly laid down the four important elements:

i. Board of Director

ii. Audit committee

iii. Appointment of Chief Financial Officer and companies secretaries

iv. Mechanism of Corporate and financial reporting.

4.3.1 Provisions related to Board of Director;

Which requires that there should be an effective representation of independent non executive directors, "independent director" means a director who is not connected with the listed company or its promoters or directors on the basis of family relationship and who does

[118] http://www.ifc.org/ifcext/cgf.nsf/AttachmentsByTitle/FOCUS7/$FILE/Focus7_AntiCorruption.pdf (accessed on 8.8.2011)

not have any other relationship, whether pecuniary or otherwise, with the listed company, its associated companies, directors, executives or related parties.

i. Director not to serve on boards of more than ten listed companies, Director Companies, must be a tax payer, and should not be a defaulter of loans. He must not be convicted, should be appointed for three years.

ii. The directors of listed companies shall exercise their powers and carry out their fiduciary

iii. Duties with a sense of objective judgment and independence in the best interests of the listed company.

iv. The Board of Directors establishes a system of sound internal control, which is effectively implemented at all levels within the listed company.

v. The Board of Directors of a listed company shall meet at least once in every quarter of the financial year. The Chairman of a listed company shall ensure that minutes of meetings of the Board of Directors are appropriately recorded.[119]

vi. Board of directors should establish sound system of internal control and issue a statement on the same, Statement of Ethics Statement Ethics--annual communication & annual confirmation. Significant issues/matters to be placed for decision of the Board.

vii. Board must ensure true & fairness of financial statements, and give certain statements going concern, related certain parties.

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[119] http://law.wustl.edu/wugslr/issues/volume5_2/p323Ibrahim.pdf(accessed on 28.6.2011)

4.3.2 Appointment of CFO and company secretary;

The appointment, remuneration and terms and conditions of employment of the Chief Financial Officer (CFO), the Company Secretary and the head of internal audit of listed companies shall be determined by the CEO with the approval of the Board of Directors. The CFO and the Company Secretary of a listed company shall attend meetings of the Board of directors.

4.3.3 Corporate and financial reporting framework;

There should be financial reporting or appropriate financial disclosure to shareholders by Directors. This code also requires a disclosure of interest by the director holding company's shares. External auditor is prohibited to hold listed companies shares. [120]

4.3.4 Audit committee;

The Board of Directors of every listed company shall establish an Audit Committee, which shall comprise not less than three members, including the chairman. Majority of the members of the Committee shall be from among the non-executive directors of the listed company and the chairman of the Audit Committee shall preferably be a non-executive director. The Audit Committee of a listed company shall meet at least once every quarter of the financial year. The Board of Directors of every listed company shall determine the terms of reference of the Audit Committee.[121]

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[120] Jeffrey Cohenetal , The Corporate Governance and Financial Reporting Quality , *Journal of Accounting Literature* .

[121] http://journals.cambridge.org/action/displayFulltext?type=1&fid=1422956&jid=IJC&volumeId=3&issueId=03&aid=1422948&bodyId=&membershipNumber=&societyETOCSession (accessed on 4.9.2011)

In short, overall business environment and corporate structure is improved after adopting code of corporate governance. It make companies much more responsible, ensuring accountability and transparency specially in the framework of financial reporting, addition of non executive directors in board etc. by following this code trust of investor can easily obtain which is necessary for strong economic structure.

This chapter contained effective Pakistani legislation which used for combating corporate corruption. We analyzed its main provisions, mechanism, implementation, effect and its lacunas in international perspective for removing our deficiencies.

"CONCLUSION AND RECOMMENDATIONS"

Corruption in Pakistan is increasing day by day which distort Pakistani economy and it's proved from the statistics of Transparency International report. According to recent "Transparency International Index: Pakistan is the 34th corrupt nation out of 178 countries of the world". Last year Pakistan was on 42nd position. (And In the 2010 survey, 31% of 4,224 respondents reported paying bribes) Pakistan required instant implementation of "good governance and transparent administration" for encounter the severe issue of "corruption".

Pakistan "Steel Mills, EOBI, PIA, Rental Power Plants, KESC, NIC, NHA, OGDC, PSO, Pepco, CDA, DP Division, DHAs, Pakistan Steel Mills, TCP, NBP" these organizations and institute are in trouble and facing serious corruption.

Transparency International (TI):

In press release of the Transparency International Pakistan (TIP) stated that "Pakistan's 2010 Corruption Perceptions Index (CPI) score is 2.3 against 2.4 in 2009, and out of 178 countries, its ranking as most corrupt country has slipped seven ranks, from 42 in 2009 to 34 most corrupt country in 2010".

Those who participated in formation of report for "Transparency International" stated that "corruption in Pakistan had massively increased during the last 12 months. You will soon be hearing really bad news about Pakistan," and they consider the main reason of corruption in Pakistan is the leaders and politicians of country who are the most corrupt people of this country.

World Bank (WB) and Asian Development Bank (ADB):

According to World Bank International Development Association (IDA), Ranking Resources Index, "Pakistan was 29th out of 75 countries in 2009, has slipped by five countries this year and reached 24th out of 77 countries".

According to Asian Development Bank: "ADB Composite Country Performance Rating (CCPR) had 12.79 score last year but this year this sore had come down to 12.20. Referring to yet another indication, the sources said the BTI, which adjudged Pakistan as 32nd out of 122 in 2009, this year found Pakistan's rank to have slipped by 21 countries, to 112 out of 122 countries".

The CPI 2010 report:

In this report it is reported "that corruption in Pakistan is increasing, while in Bangladesh it is decreasing. Bangladesh was known as the most corrupt country in 2001, 2002 and 2003 and its ranking in 2010 is 39 most corrupt countries. Such a reduction in corruption has paid dividends to Bangladesh whose annual GDP growth last year was over 5%, while Pakistan's GDP growth last year was near 2.4 %".

The direct impact of increased corruption is witnessed in the rise in the prices of food commodities which according to the latest official data of Federal Bureau of Statistics, have increased up to 120 percent in last one year and the Foreign Direct Investment for the fiscal year 2009-2010 dropped to US $ 2.21 billion from US$ 3.71 billion in financial year (FY) 2008-2009, and in July-Sept 2010 it is further dropped to US $ 387.4 million (68% of

last year). Moreover the Foreign debt on Pakistan increased from US $ 40 Billion in 1999 to US $ 46 billion in 2008, whereas in last two years it has increased to US $ 53.5 billion.

In Rule of Law Index, assessed 35 countries around the world on nine essential variables stated that the high-income countries normally respect the rule of law more than the poor countries. In Asia-Pacific, Japan, Australia and Singapore scored well with the Philippines and Indonesia dragged down by weak justice systems and corruption. Pakistan was near in bottom of almost every index, and worst in fundamental rights, corruption and access to civil justice.

The glaring proof of absence of the rule of law in Pakistan is clear from last year's mega corruption cases of National Insurance Corporation, Pakistan Steel Mills and Rental Power Plants. The corruption cases have been taken up by the Supreme Court suo moto action instead of the government and its higher accountability authority — the National Accountability Bureau.

But its commendable that the Supreme Court of Pakistan, which has a declared policy of Zero-Tolerance for Corruption on 22 March 2009, in its order of 12th October, 2010 in NICL Case No.18 of 2010 involving six procurements is considers the Violation of Public Procurement Rules 2004 as a criminal act. It is a landmark order, treating violation of Public Procurement Rules 2004 as a federal crime and it will help reduction in Corruption.

From above statistic we come to know that Corruption is the mother of all social ills and many socio-economic problems will automatically be resolved if corruption will be curbed. So, for curbing the corruption we need to review our legislations and then

enforcement mechanism because corruption always flourish on the basis of loopholes in the law and in the light of previous comparative study(previous chapters) on corporate corruption I will suggest some recommendations for combating corporate corruption and bring Pakistan in the list of developed countries. Following are the major area which needs reform.

Recommendations Regarding Bribery:

According to report Pakistan is places in those states where "bribery" is at peak. Bribery is such a disease which is the root cause of corruption and it exists everywhere in Pakistan at all sectors. It's a great hurdle in the way of progress because it restrains not only the foreign but also a local investor to invest in the capital market.

Unfortunately we have no legislation on commercial bribery. The legislation which we have is just deal with individuals and public servants. But there is no concept of penalizing the legal person who is involved in corrupt activities.

We need very comprehensive legislation for tackling this problem like UK and USA. They were also suffering the same problem like us then UK made the best legislation for combating corruption which is known as UK Bribery Act2010. Which is mandatory for business entities not just for avoiding but to prevent from corruption and in case of failure to do so, it is penalized. This is the most important thing .in detail I already discussed this Act in 2nd chapter. (See that).

Recommendations Regarding Tax Evasion:

Taxation is an essential tool of Transparency International, on which bases they form transparency reports. In this index Pakistan is near the bottom line because there is lowest number of tax payer. Taxation is known as the mirror of economic stability of every country because its hold government economy.

According to this transparency report: 14 sectors has ranked the police is the most corrupt department in Pakistan followed by Taxation and Utilities Departments, Political Parties, Registry and Permit service department, and Education.

But our weak system almost collapsed our economy and proved us one of the most corrupt countries. Although we have laws but its need some modification. Now there is a need to work on tax evasion and administration which are the main cause of corruption. Following are my recommendation.

Self Assessment Mechanism;

Deficiency in assessment mechanism is the main cause of tax evasion though self assessment mechanism was introduced in 2001 but it's not prove as beneficiary as it should be because of illiteracy, poor administration and some legal deficiencies like;

i. Law requires the filing of return but it does not required registration.
ii. Law requires proper document and record but it does not provide minimum uniform standard of record keeping.

iii. Law does not provide the mechanism for cross checking of all information provided in return.

iv. Law has omitted the audit check which is the threat of being caught.

v. Law determines the punishment for tax evader but it is not as deterrent as it should be.

vi. Law needs to increase the standard of liability.

These are the modification which we need to made and making it effective we need to develop the sense of responsibility in tax payers and educate them regarding taxation.

Recommendations Regarding Insider Trading:

Insider trading is such crime which affects the companies' at large. It's disclosing all secret of company which effect on its market value. In Pakistan "Securities and Exchange Ordinance, 1969 (Ordinance No.Xvii of 1969)" prohibit insider trading in a single chapter. It deals insider trading with market manipulation and other market abuses, while there is a differences between insider trading and market manipulation. So we need such legal document which deals with all issues of insider trading as USA did. Until we make separate legislation on this following are the necessary changes which we need to made;

i. Term should be clear because in existing law term "associated person" is used which is ambiguous. Its need clarity according to international stander. Like define difference between associated and connected person, who is insider and its liability.

ii. Codes of Corporate Disclosure Practices should be adopted by all listed companies and corporate entities for prevention as it in adopted in SEBI by India.

iii. In current law only financial liability is provided but like other countries it is needed that financial as well as criminal liability both should be fixed and there must be heavy penalties.

iv. There should be a special tribunal for dealing the matters related to insider trading and market abuses. As practiced in Hong Kong.

Recommendations Regarding Investor education:

It is very necessary to attract the investor for investment in capital market through education and attractive incentive. In Pakistan people are totally unaware about capital market and its importance for economy growth of the country. Such behavior not only belongs to illiterate, but literate people also reluctant to make investment. For the removal of this hesitation and attract the people there is a need to establish the terminals system in every city as did in India. In India only National Stock Exchange of India (NSE) has more than 2800 terminals covering more than 1500 cities of India. That's the reason because of which Indian securities market is one of the best market in world.

It is also necessary for attracting the investor, to remove the capital gain tax or if it is necessary to take then apply very nominal amount as it is practiced in many developed and developing state. It is considered the best way to attract the investor.

Recommendations Regarding Protection of whistleblower:

It is very essential to remove all types of "corruption" for protecting the assets and development of country. It is impossible until solid action is taken for make sure the "protection of whistleblowers, transparency and accountability, access to information".

The unavailability of "whistleblowers" security, ambiguities in legislatives framework are main source of corrupt practices in public and private organizations in "Pakistan", and other most important element is "immunity of government officials" it is provided according to law but most of the time law enforcing authorities become powerless in front of the most corrupt person, just because of immunity.

So, it is necessary to review the laws related to immunity and make sure that no one is above the law, and in Pakistan there is no specific legislation regarding protection of "whistleblower". It is such an important tool by which we can control the corruption.

If the state organs like executives and legislatives, seriously recognize their responsibilities by enactment and enforcement of law without any discrimination. Give priority to the national interest on their personal interest then corruption will be alleviating from every sector either that is public or private.

In nutshell, today the rampant corruption sends the wrong signal about us, which is against our integrity and dignity. We are the best nation with poor administration. We needs to improve our executives / administrative system otherwise we have adopted the perfect legislations according to our requirement which needs minor amendments according to time. Now if we are successful to implement the rule of law and administration of justice

then there will be no corruption and we will become strong economic power. Because we have enough laws which are according to international standards now it's a time of implementation...!

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